Barclays Official

CALIFORNIA CODE OF REGULATIONS

Title 22. Social Security

Complete Title

(continued)

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Division 3. Health Care Services

Subdivision 1. California Medical Assistance Program*

(Originally Filed 2–28–66)

NOTE: Authority cited for Subdivision 1: Sections 14100, 14105 and 14106, Welfare and Institutions Code. Additional authority cited for regulations filed on 9–30–71: Sections 14005.6, 14106.5, 14122, 14124.5, 14134, W. & I. Code, and Sec. 53.6 of Chapter 577, Stats. of 1971. Additional authority cited: Section 14124.5, Welfare and Institutions Code. Additional authority cited for regulation filed 1–18–74: Sections 10541, 10553.1, 10554, 10554.1, 11004, 11050, 11100, 14000, 14005.1, 14005.2, 14005.4, 14005.7, 14008, 14016, 14017, 14023, 14051, 14053, 14053.6, 14060, 14061, 14100.1, 14132, 14184 and 14329, Welfare and Institutions Code. Reference: Sections 11004, 11050, 11100, 14000, 14005.1, 14005.2, 14005.4, 14005.6, 14005.7, 14008, 14016, 14017, 14023, 14051, 14053, 14053.6, 14059, 14100.1, 14132, 14133, 14184, 14256, 14261, 14301 and 14329, Welfare and Institutions Code.

Chapter 1. Introduction

§ 50000. Meaning of Words.

Words shall have their usual meaning unless the context or a definition clearly indicates a different meaning. Shall means mandatory. May means permissive. Should means suggested or recommended.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14124.5, Welfare and Institutions Code.

HISTORY

1. Repealer of Chapter 1 (Sections 50001–50011, not consecutive) and new Chapter 1 (Sections 50000–50009, 50009.1–50009.3) filed 12–20–76 as an emergency; designated effective 1–1–77. Certificate of Compliance included (Register 76, No. 52). For history of former Chapter 1, see Registers 66, Nos. 6 and 36; 67, Nos. 8, 15 and 23; 68, No. 43; 71, No. 40; 72, No. 5; 73, No. 26; 74, No. 3. For history of Subdivision 1, see Register 66, No. 6.
2. Amendment filed 6–22–87; operative 7–22–87 (Register 87, No. 27).

§ 50001. Department.

NOTE: Authority cited: Sections 10554.1 and 14124.5, Welfare and Institutions Code. Reference: Sections 17.1, 10000, 10002, 10020, 10021, 10022, 10023, 10024, 10025, 10052, 10058, 10554.1, 10555, 10600, 10608, 10800, 10800.1, 10803, 10806, 10809, 10850, 10851, 10852, 10853, 10900, 10950, 10951, 10952, 10953, 10954, 10956, 10957, 10958, 10959, 10960, 10961, 10962, 10963, 10964, 10965, 11000, 11002, 11003, 11004, 11005.5, 11008, 11008.2, 11008.6, 11008.7, 11008.9, 11008.10, 11018, 11050, 11051, 11052, 11053, 11054, 11055, 11057, 11100, 11102, 11150, 11151, 11152, 11153.7, 11155, 11157, 11158, 11205, 11257, 11452, 12150, 12152, 12305, 13000, 14000, 14000.2, 14001, 14002, 14003, 14005, 14005.1, 14005.4, 14005.7, 14005.8, 14005.9, 14005.12, 14005.13, 14006, 14007, 14008, 14008.5, 14009, 14011, 14012, 14013, 14014, 14015, 14016, 14017, 14018, 14019, 14023, 14026, 14050.1, 14050.2, 14050.3, 14051, 14052, 14053, 14054, 14057, 14061, 14062, 14063, 14100.1, 14103.6, 14104.3, 14109, 14112, 14115, 14119, 14122, 14124.5, 14133, 14140, 14141, 14142, 14143, 14144, 14201 and 14252, Welfare and Institutions Code and Chapter 2, Part 1, Division 1, Article 3.1, Section 306 et seq., Health and Safety Code, and to implement, interpret or make specific Chapter 1252, Statutes of 1977 (SB 363), SB 1410 (1978) and SB 1596 (1978).

HISTORY

1. Amendment filed 6–30–78 as an emergency; designated effective at 11:59 p.m. on 6–30–78 (Register 78, No. 26).
2. Certificate of Compliance transmitted to OAH 10–27–78; filed 10–31–78 (Register 78, No. 44).
3. Repealer filed 6–22–87; operative 7–22–87 (Register 87, No. 27).

§ 50002. Director.

NOTE: Authority cited: Sections 10554.1 and 14124.5, Welfare and Institutions Code. Reference: Sections 17.1, 10000, 10002, 10020, 10021, 10022, 10023, 10024, 10025, 10052, 10058, 10554.1, 10555, 10600, 10608, 10800, 10800.1, 10803, 10806, 10809, 10850, 10851, 10852, 10853, 10900, 10950, 10951, 10952, 10953, 10954, 10956, 10957, 10958, 10959, 10960, 10961, 10962, 10963, 10964, 10965, 11000, 11002, 11003, 11004, 11005.5, 11008, 11008.2, 11008.6, 11008.7, 11008.9, 11008.10, 11018, 11050, 11051, 11052, 11053, 11054, 11055, 11057, 11100, 11102, 11150, 11151, 11152, 11153.7, 11155, 11157, 11158, 11205, 11257, 11452, 12150, 12152, 12305, 13000, 14000, 14000.2, 14001, 14002, 14003, 14005, 14005.1, 14005.4, 14005.7, 14005.8, 14005.9, 14005.12, 14005.13, 14006, 14007, 14008, 14008.5, 14009, 14011, 14012, 14013, 14014, 14015, 14016, 14017, 14018, 14019, 14023, 14026, 14050.1, 14050.2, 14050.3, 14051, 14052, 14053, 14054, 14057, 14061, 14062, 14063, 14100.1, 14103.6, 14104.3, 14109, 14112, 14115, 14119, 14122, 14124.5, 14133, 14140, 14141, 14142, 14143, 14144, 14201 and 14252, Welfare and Institutions Code and Chapter 2, Part 1, Division 1, Article 3.1, Section 306 et seq., Health and Safety Code, and to implement, interpret or make specific Chapter 1252, Statutes of 1977 (SB 363), SB 1410 (1978) and SB 1596 (1978).

HISTORY

1. Amendment filed 6–30–78 as an emergency; designated effective at 11:59 p.m. on 6–30–78 (Register 78, No. 26).
2. Certificate of Compliance transmitted to OAH 10–27–78; filed 10–31–78 (Register 78, No. 44).
3. Repealer filed 6–22–87; operative 7–22–87 (Register 87, No. 27).

§ 50003. Medi–Cal Program.

HISTORY

1. Repealer filed 6–22–87; operative 7–22–87 (Register 87, No. 27).

§ 50004. Medi–Cal Program Administration.

(a) The Department is the single state agency approved by the Secretary of the Department of Health and Human Services to administer the Medi–Cal program.

(b) The Department shall administer the Medi–Cal program in accordance with the following:

(1) The State Plan under Title XIX of the Social Security Act.

(2) Applicable State law, as specified in the Welfare and Institutions Code.

(3) Medi–Cal regulations.

(c) The county welfare department in each county shall be the agency responsible for local administration of the Medi–Cal program under the direction of the Department.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 10722, 10743, 11050, 14001.1 and 14100, Welfare and Institutions Code.

HISTORY

1. Amendment filed 6–22–87; operative 7–22–87 (Register 87, No. 27).

§ 50005. Medi–Cal Regulations.

Regulations promulgated by the Department for purposes of administering the Medi–Cal program shall be known as Medi–Cal regulations. These regulations comprise Division 3, Title 22, California Administrative Code.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 10060, 10743, 14002 and 14124.5, Welfare and Institutions Code.

HISTORY

1. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 50006. Conformity with Federal Requirements.

HISTORY

1. Repealer filed 6–22–87; operative 7–22–87 (Register 87, No. 27).

§ 50007. Fiscal Intermediary.

Fiscal intermediary, as used in these regulations or in any other document pertaining to the Medi–Cal program and its administration, means any individual, partnership or association, corporation or institution contracting with the Department for the performance of fiscal services related to the program.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14000.3 and 14104.3, Welfare and Institutions Code.

HISTORY

1. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 50008. Liens.

HISTORY

1. Repealer filed 12–31–82 as an emergency; effective upon filing (Register 83, No. 2). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–30–83.
2. Certificate of Compliance transmitted to OAL 4–29–83 and filed 6–3–83 (Register 83, No. 23).

§ 50009. Medi–Cal Consultant.

Medi–Cal consultant, as used in these regulations, means the appropriate professional individual employed by the Department to render advice and determinations in matters related to services provided under Medi–

Cal. Appropriate Medi–Cal consultants shall personally review and sign any document as required by these regulations. Signatory authority of a Medi–Cal consultant shall not be delegated.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14119, Welfare and Institutions Code.

HISTORY

1. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 50009.1. Medical Review.

(a) Medical review means a periodic, not less than annual, evaluation of the health needs of each beneficiary in each mental hospital, skilled nursing facility and intermediate care facility. Medical Review is conducted by a Medical Review Team on behalf of the Department.

(b) Such review is to determine the quality and adequacy of the services being provided each beneficiary, the level of care required to meet each beneficiary's health needs and the necessity and desirability of the initial or continued placement of such patient in such facility.

(c) The review shall include a personal contact with and observation of each beneficiary and a review of each beneficiary's medical record by a Team member or members. The review may include a medical examination of the beneficiary by the Medi–Cal consultant when the consultant deems it necessary.

NOTE: Authority cited: Sections 10725, 10743 and 14124.5, Welfare and Institutions Code. Reference: Sections 14019.5, 14100.1, 14104 and 14119, Welfare and Institutions Code.

HISTORY

1. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 50009.2. Medical Review Team.

A Medical Review Team shall be comprised of a physician and other appropriate health and social service personnel necessary to conduct medical review.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14100.1, 14104, 14119 and 14133.1, Welfare and Institutions Code.

HISTORY

1. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 50009.3. Health Care Services.

Health care services means the medical services, social services, supplies, devices, drugs and any other medical care to which an eligible person is entitled pursuant to these regulations.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14021, 14053, 14132 and 14136, Welfare and Institutions Code.

HISTORY

1. Change without regulatory effect adding NOTE (Register 86, No. 49).

Chapter 2. Determination of Medi–Cal Eligibility and Share of Cost

Article 1. Definitions, Abbreviations and Program Terms

§ 50011. Definitions—General.

The definitions in this article shall apply to Chapter 2 of this division unless the context requires otherwise.

NOTE: Authority cited for Chapter 2: Sections 10554.1 and 14124.5, Welfare and Institutions Code. Reference Sections 17.1, 10000, 10002, 10020, 10021, 10022, 10023, 10024, 10025, 10052, 10058, 10554.1, 10555, 10600, 10608, 10800, *10800.1*, *10803*, *10806*, *10809*, 10850, 10851, 10852, 10853, 10900, 10950, 10951, 10952, 10953, 10954, 10956, 10957, 10958, 10959, 10960, 10961, 10962, 10963, 10964, 10965, 11000, 11002, 11003, 11004, 11005.5, 11008, 11008.2, 11008.6, 11008.7, 11008.9, 11008.10, 11018, 11050, 11051, 11052, 11053, 11054, 11055, 11057, 11100, 11102, 11150, 11151, 11152, 11153.7, 11155, 11157, 11158, 11205, 11257, 11452, 12150, 12152, 12305, 13000, 14000, 14000.2, 14001, 14002, 14003, 14005, 14005.1, 14005.4, 14005.7, 14005.8, 14005.9, 14005.12, 14005.13, 14006, 14007, 14008, 14008.5, 14009, 14011, 14012, 14013, 14014, 14015, 14016, 14017, 14018, 14019, 14023, 14026, 14050.1, 14050.2, 14050.3, 14051, 14052, 14053, 14054, 14057, 14061, 14062, 14063, 14100.1, 14103.6, 14104.3, 14109, 14112, 14115, 14119, 14122, 14124.5, 14133, 14140, 14141, 14142, 14143, 14144, 14201 and 14252, Welfare and Institutions Code and Chapter 2, Part 1, Division 1, Article 3.1, Section 306 et seq., Health and Safety Code.

HISTORY

1. Repealer of Chapter 2 (Sections 50024–50750, not consecutive) and new Chapter 2 (Sections 50011–50955, not consecutive) filed 12–20–76 as an emergency; designated effective 1–1–77. Certificate of Compliance included (Register 76, No. 52). For history of former Chapter 2, see Registers 66, Nos. 6, 19, 30; 67, Nos. 23, 34, 52; 68, Nos. 21, 43; 69, Nos. 3, 31; 70, No. 27; 71, Nos. 40, 52; 72, Nos. 5, 18, 27, 31, 40, 52; 73, Nos. 4, 18, 19, 22, 26, 36, 41, 52; 74, Nos. 3, 18, 41, 45, 46; 75, Nos. 6, 17, 23, 32, 48; 76, Nos. 14, 27, 29, 43.

§ 50012. Abbreviations.

The following abbreviations shall apply to chapter 2 of this division:

ABD.	Aged, Blind or Disabled.
ABD–MN.	Aged, Blind or Disabled—Medically Needy.
AFDC.	Aid to Families with Dependent Children.
AFDC–MN.	Aid to Families with Dependent Children—Medically Needy.
BRU.	Benefits Review Unit.
CETA.	Comprehensive Employment and Training Act.
CHDP.	Child Health and Disability Prevention Program.
EAS.	Eligibility and Assistance Standards Manual.
ETS.	Employment Training Services.
HIC.	Social Security Health Insurance Claim Number.
INS.	Immigration and Naturalization Service.
LTC.	Long–Term Care.
MBSAC.	Minimum Basic Standard of Adequate Care.
MFBU.	Medi–Cal Family Budget Unit.
MI.	Medically Indigent.
MN.	Medically Needy.
OASDI.	Old Age Survivors and Disability Insurance.
Other PA.	Other Public Assistance.
PA.	Public Assistance.
PCCM.	Primary Care Case Management.
PHP.	Prepaid Health Plan.
POE.	Proof of Eligibility.
SDX.	State Data Exchange.
SSN.	Social Security Number.
SSI/SSP.	Supplemental Security Income/State Supplemental Program.
UIB.	Unemployment Insurance Benefits.
WIN.	Work Incentive Program.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.1, 14050.1 and 14088, Welfare and Institutions Code.

HISTORY

1. Amendment filed 3–5–81; effective thirtieth day thereafter (Register 81, No. 10).
2. Amendment filed 7–31–81 as an emergency; effective upon filing (Register 81, No. 33). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–28–81.
3. Certificate of Compliance transmitted to OAL 11–6–81 and filed 1–27–82 (Register 82, No. 5)
4. Amendment filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
5. Amendment refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
6. Request to readopt amendment on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
8. Amendment filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.

9. Certificate of Compliance as to 3–25–91 order transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 50013. Adequate Consideration.

Adequate consideration means the receipt of cash or property which is fair and reasonable under the circumstances considering the net market value of property that is sold, converted or transferred.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14015, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 7–7–83 (Register 83, No. 29).

§ 50014. Adult.

(a) Adult means:

(1) A person who is 21 years of age or older.

(2) A blind or disabled MN person who is 18 to 21 years of age, living in the home of a parent and not currently enrolled in school, college, university, or a course of vocational or technical training to prepare him/her for gainful employment.

(3) A person who is 18 to 21 years of age, who is not living in the home of a parent or caretaker relative, is not claimed as a tax dependent of his/her parent(s) and is not receiving out–of–home care from a public agency.

(4) A person 14 to 18 years of age who is not living in the home of a parent or caretaker relative and who does not have a parent, caretaker relative or legal guardian handling any of his/her financial affairs.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4, 14005.7, 14008 and 14010, Welfare and Institutions Code.

HISTORY

1. Amendment filed 1–8–81; effective thirtieth day thereafter (Register 81, No. 2).
2. Amendment of subsection (a)(2), repealer of subsection (a)(3), subsection renumbering, amendment of newly designated subsection (a)(4), and amendment of NOTE filed 12–9–97; operative 1–8–98 (Register 97, No. 50).

§ 50015. Adverse Action.

(a) Adverse action means an action taken by a county department which discontinues Medi–Cal eligibility or increases an MFBU's share of cost. The following shall not be considered to be adverse actions:

(1) Discontinuance due to any of the following reasons:

(A) Death, for a one–person MFBU.

(B) The whereabouts of the beneficiary is unknown and the post office has returned county department mail directed to the beneficiary indicating no forwarding address.

(C) Admission to an institution which renders the beneficiary ineligible.

(D) The beneficiary also has Medi–Cal eligibility under another identity or category, or in another county or state; or will have such dual eligibility as of the first of the coming month if discontinuance action is not taken.

(E) Receipt of the beneficiary's clear and signed written statement that does either of the following:

1. States the beneficiary no longer wishes Medi–Cal benefits.

2. Gives information that requires discontinuance and includes the beneficiary's acknowledgment that this must be the consequence of supplying such information.

(2) An increase in an MFBU's share of cost due to either of the following:

(A) The voluntary inclusion of eligible family members who currently are not receiving benefits under any Medi–Cal program.

(B) Receipt of the beneficiary's clear and signed statement which gives information which requires an increase in the share of cost and includes the beneficiary's acknowledgment that this must be the consequence of supplying such information.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 10721, 10950 and 11050, Welfare and Institutions Code.

HISTORY

1. Amendment filed 12–15–77; effective thirtieth day thereafter (Register 77, No. 51).
2. Amendment filed 5–30–80 as an emergency; effective upon filing (Register 80, No. 22). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 9–27–80.
3. Certificate of Compliance filed 9–26–80 (Register 80, No. 39).
4. Amendment of subsection (a)(2)(A) filed 7–9–87; operative 8–8–87 (Register 87, No. 30).

§ 50016. Aid.

Aid means cash assistance, food stamps or Medi–Cal.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14050.2, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 7–7–83 (Register 83, No. 29).

§ 50017. Aid Category.

Aid category means the specific category under which a person is eligible to receive Medi–Cal.

§ 50018. Aid Code.

Aid code means the two–digit number which indicates the aid category under which a person is eligible.

§ 50019. Aid to Families with Dependent Children (AFDC).

Aid to Families with Dependent Children (AFDC) means the public assistance program that provides a cash grant and Medi–Cal to children deprived of parental support or care and their eligible relatives.

§ 50020. Aid to the Potentially Self–Supporting Blind (APSB).

NOTE: Authority cited: Sections 10725, and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.1, and 14050.1, Welfare and Institutions Code.

HISTORY

1. Repealer filed 7–31–81 as an emergency; effective upon filing (Register 81, No. 33) A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–28–81.
2. Certificate of Compliance transmitted to OAL 11–6–81 and filed 1–27–82 (Register 82, No. 5).

§ 50021. Applicant.

Applicant means the individual or family making, or on whose behalf is made, an application, request for restoration of aid or reapplication.

§ 50022. Application.

Application means a written request for aid.

§ 50023. Approval of Eligibility.

Approval of eligibility means the determination made by the county department that a person or family is eligible for Medi–Cal.

§ 50024. Beneficiary.

Beneficiary means a person who has been determined eligible for Medi–Cal.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14252, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 7–7–83 (Register 83, No. 29).

§ 50025. Benefits Review Unit (BRU).

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14016, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 7–7–83 (Register 83, No. 29).
2. Repealer filed 7–3–86; effective thirtieth day thereafter (Register 86, No. 27).

§ 50025.3. Board and Care.

(a) Board and care means receipt of board, room, personal care and designated supplemental services related to individual needs in one of the following nonmedical protective living environments certified in accordance with EAS 46–325.3 for a full calendar month:

(1) A licensed residential care facility.

(2) The home of a relative or legally appointed guardian or conservator, other than the home of a spouse or the home of a parent for a blind or disabled child.

(3) A home in which a child is placed by a court under Welfare and Institutions Code 727(a).

(4) An exclusive use home approved by a licensed home finding agency.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14005.13, Welfare and Institutions Code.

HISTORY

1. New section filed 1–8–81; effective thirtieth day thereafter (Register 81, No. 2).

§ 50025.5. Burial Insurance.

Burial insurance means insurance which by its terms can only be used to pay the burial expenses of the insured.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code.

HISTORY

1. New section filed 3–7–80; as an emergency; effective upon filing (Register 80, No. 9). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7–6–80.
2. Certificate of Compliance filed 6–6–80 (Register 80, No. 23).
3. Editorial correction of NOTE filed 7–7–83 (Register 83, No. 29).

§ 50025.6. California Standard Nomenclature (CSN), 1979.

NOTE: Authority cited: Section 57(c), Chapter 328, Statutes of 1982; Section 14124.5, Welfare and Institutions Code. Reference: Sections 14132, 14133 and 14122.1, Welfare and Institutions Code; and Section 53, Chapter 328, Statutes of 1982.

HISTORY

1. New section filed 6–24–83 as an emergency; effective upon filing (Register 83, No. 26). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–22–83.
2. Certificate of Compliance transmitted to OAL 10–21–83 and filed 11–23–83 (Register 83, No. 48).
3. Editorial correction renumbering Section 50025.6 to Section 51050 filed 12–20–83 (Register 83, No. 52).

§ 50026. Cash Grant.

Cash grant means the money payment made to a person eligible for AFDC, EVH or SSI/SSP.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.1 and 14050.1, Welfare and Institutions Code.

HISTORY

1. Amendment filed 7–31–81 as an emergency; effective upon filing (Register 81, No. 33) A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–28–81.
2. Certificate of Compliance transmitted to OAL 11–6–81 and filed 1–27–82 (Register 82, No. 5).

§ 50027. Certification Date for Claims Clearance.

Certification date for claims clearance means the date of the most recent service listed on the Record of Health Care Costs, MC 177S or MC 177P.

§ 50028. Certification—Effective Date.

Effective date of certification for Medi–Cal means the date the person is certified to receive Medi–Cal benefits.

§ 50029. Certification for Medi–Cal.

Certification for Medi–Cal means the determination by the county department or the Department that a person is eligible for Medi–Cal and has no share of cost, has met the share of cost or is in long–term care and has a share of cost which is less than the cost of long–term care at the Medi–Cal rate.

§ 50029.5. Certified Long–Term Care Insurance Policy or Certificate.

Certified Long–Term Care Insurance Policy or Certificate means any long–term care insurance policy or certificate certified by the Department of Health Services and approved for issue or delivery to California residents by the Department of Insurance as meeting the requirements set forth in Section 22005(e) of the Welfare and Institutions Code.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Sections 22004, 22005 and 22006, Welfare and Institutions Code.

HISTORY

1. New section filed 11–1–93 as an emergency; operative 11–1–93 (Register 93, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–1–94 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 11–1–93 order transmitted to OAL 2–17–94 and filed 3–31–94 (Register 94, No. 13).

§ 50030. Child.

(a) Child means a person under the age of 21 except for those persons who are specified as adults in Section 50014.

(b) An unborn is considered a child for Medi–Cal purposes.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 12305, 12305.5, 14001, 14005.1,14005.4, 14005.7, 14008, 14010, 14011, 14017, 14018, 14051, 14051.5, and 14052, Welfare and Institutions Code; Sections 25.6, 34.7, 34.9 and 34.10, Civil Code.

HISTORY

1. Amendment of subsection (a)(3) filed 10–31–78 as an emergency; designated effective 11–1–78 (Register 78, No. 44).
2. Certificate of Compliance filed 2–6–79 (Register 79, No. 6).
3. Amendment filed 1–8–81; effective thirtieth day thereafter (Register 81, No. 2).
4. Amendment of subsection (a), repealer of subsections (a)(1)–(a)(4) and amendment of NOTE filed 12–9–97; operative 1–8–98 (Register 97, No. 50).

§ 50031. Child Health and Disability Prevention Program (CHDP).

Child Health and Disability Prevention Program (CHDP) means the community based program for early identification and referral for treatment of persons under 21 years of age with potentially handicapping conditions.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14053 and 14100.1, Welfare and Institutions Code; Section 320, Health and Safety Code.

HISTORY

1. Editorial correction adding NOTE filed 7–7–83 (Register 83, No. 29).

§ 50032. Competent.

Competent means being able to act on one's own behalf in business and personal matters.

§ 50033. Contiguous Property.

Contiguous property means adjacent or adjoining property that is not separated by a road, street, right of way or in any other manner from property being considered.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 7–7–83 (Register 83, No. 29).

§ 50034. Conversion of Property.

Conversion of property means changing property from one form to another without changing ownership.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14006 and 14015, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 7–7–83 (Register 83, No. 29).

§ 50035. County Agency.

County agency means either an administrative division of a county government or a noncounty organization that has a contract with the county to act on the county's behalf.

§ 50035.5. County Cash–Based Medi–Cal Eligibility.

County cash–based Medi–Cal eligibility means eligibility for Medi–Cal benefits which is based upon a county department determination of eligibility for a cash grant or IHSS.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.1 and 14050.1, Welfare and Institutions Code.

HISTORY

1. New section filed 3–5–81; effective thirtieth day thereafter (Register 81, No. 10).

§ 50036. County Department.

County department means the department authorized by the county board of supervisors to administer aid programs, including Medi-Cal.

§ 50036.5. County Case Error Rate.

The county case error rate means the number of quality control case reviews found in error divided by the total number of completed case reviews in that county, exclusive of state caused errors.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14016(g), Welfare and Institutions Code.

HISTORY

1. New section filed 7-6-83 as an emergency; effective upon filing (Register 83, No. 33). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11-3-83.
2. Certificate of Compliance transmitted to OAL 11-3-83 and filed 12-6-83 (Register 83, No. 50).
3. Corrected Certificate of Compliance as to 7-6-83 order filed 1-9-84 (Register 84, No. 2).
4. Amendment filed 5-15-92; operative 6-15-92 (Register 92, No. 21).

§ 50036.6. Dependent Relative.

NOTE: Authority cited: Sections 10725, 14006.1 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code.

HISTORY

1. New section filed 7-24-84 as an emergency; effective upon filing (Register 84, No. 31). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11-21-84.
2. Order of Repeal of 7-24-84 emergency order filed 12-20-84 by OAL pursuant to Government Code Section 11349.6 (Register 84, No. 51).

§ 50037. Eligibility and Assistance Standards Manual (EAS).

Eligibility and Assistance Standards Manual (EAS) means the portion of the Manual of Policies and Procedures published by the State Department of Benefit Payments which includes regulations pertaining to the AFDC, APSB, SSP and EVH programs.

§ 50037.5. Eligibility Quality Control.

(a) Eligibility quality control means both of the following:

(1) Federally mandated review of Medi-Cal cases to ensue proper determination of eligibility.

(2) State mandated review of Medi-Cal cases within individual counties to ensure proper determination of eligibility.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14016 (b), (d) and (e)(1) and 14100.1, Welfare and Institutions Code.

HISTORY

1. New section filed 7-6-83 as an emergency; effective upon filing (Register 83, No. 33). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11-3-83.
2. Certificate of Compliance transmitted to OAL 11-3-83 and filed 12-6-83 (Register 83, No. 50).
3. Corrected Certificate of Compliance as to 7-6-83 order filed 1-9-84 (Register 84, No. 2).

§ 50038. Eligibility Services.

Eligibility services means those services provided by the county department relating to the initial and continuing determination of a person's or family's Medi-Cal eligibility.

§ 50038.5. Emergency Assistance (EA).

(a) Emergency Assistance (EA) means the public assistance programs that provide assistance for 30 days to:

(1) Families not meeting the qualifications for the federal AFDC-U program.

(2) Those children who are being, or are in immediate danger of being abused, neglected or exploited and to families of such children.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 87(c), Chapter 1594, Statutes of 1982. Reference: Sections 11250.5, 11406.5 and 14005.1, Welfare and Institutions Code; and Department of Social Services Manual of Policies and Procedures, Eligibility and Assistance Standards, Section 45-401.2 (incorporated into Title 22, California Administrative Code).

HISTORY

1. New section filed 12-31-82 as an emergency; effective upon filing (Register 83, No. 2). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4-30-83.
2. Certificate of Compliance transmitted to OAL 4-13-83 and filed 5-16-83 (Register 83, No. 21).
3. Editorial correction of subsections (a)(1) and (2) filed 5-16-83 (Register 83, No. 21).

§ 50039. Encumbrances of Record.

Encumbrances of record means obligations for which property is security, as evidenced by a written document.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 7-7-83 (Register 83, No. 29).
2. Amendment filed 6-3-87; operative 7-3-87 (Register 87, No. 24).

§ 50040. Fair Market Value.

NOTE: Authority cited: Sections 10725, 14006.1 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code.

HISTORY

1. New section filed 7-24-84 as an emergency; effective upon filing (Register 84, No. 31). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11-21-84.
2. Order of Repeal of 7-24-84 emergency order filed 12-20-84 by OAL pursuant to Government Code Section 11349.6 (Register 84, No. 51).

§ 50041. Family Member.

(a) Family member means the following persons living in the home:

(1) A child or sibling children.

(2) The parents married or unmarried of the sibling children.

(3) The stepparents of the sibling children.

(4) The separate children of either unmarried parent or of the parent or stepparent.

(b) If there are no children, family member means a single person or a married couple.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14051, 14052 and 14008, Welfare and Institutions Code.

HISTORY

1. Amendment filed 1-8-81; effective thirtieth day thereafter (Register 81, No. 2).

§ 50041.5. Federal Poverty Level.

The federal poverty level means an income level based on the official poverty line as defined by the federal Office of Management and Budget and revised annually or at any shorter interval the Secretary of Health and Human Services deems feasible and desirable pursuant to Section 9902(2), Title 42, United States Code.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 12, Chapter 1430, Statutes of 1989. Reference: Section 14005.3, Welfare and Institutions Code; and Section 9902(2), Title 42, United States Code.

HISTORY

1. New section filed 10-3-94 as an emergency; operative 10-3-94 (Register 94, No. 40). A Certificate of Compliance must be transmitted to OAL by 1-31-95 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of HISTORY NOTE 1 (Register 95, No. 9).
3. Repealed by operation of Government Code section 11346.1(g) (Register 95, No. 9).
4. New section refiled 3-3-95 as an emergency; operative 3-3-95 (Register 95, No. 9). A Certificate of Compliance must be transmitted to OAL by 7-1-95 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 3-3-95 order including amendment of section transmitted to OAL 2-22-95 and filed 4-5-95 (Register 95, No. 14).

§ 50042. Foster Child.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4 and 14005.7, Welfare and Institutions Code.

HISTORY

1. Repealer filed 8-8-80; effective thirtieth day thereafter (Register 80, No. 32).

§ 50043. Heirloom.

Heirloom means any item of personal property, other than cash and securities, which has substantially sentimental value, has been owned by

a family for at least two generations and is intended to be retained by the family in succeeding generations.

§ 50044. Home.

Home means real or personal property, fixed or mobile, located on land or water, in which a person or family lives.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 7–7–83 (Register 83, No. 29).

§ 50045. Immigration and Naturalization Service (INS).

Immigration and Naturalization Service (INS) means the branch of the United States Government that administers regulations regarding aliens in the United States.

§ 50045.1. Impairment Related Work Expenses (IRWE).

"Impairment Related Work Expenses" (IRWE) means those expenses of a working disabled QMB or SLMB program applicant/beneficiary which are necessary to become or remain employed. Such expenses include but are not limited to expenses which are:

(a) Required to control a disabling condition, thereby enabling the individual to work;

(b) Essential to meet the functional demands of a job, e.g., wheelchairs, respirators, prosthesis, attendant care;

(c) Necessary in preparing for work, in traveling to and from work, or assistance needed immediately upon returning from work (e.g., attendant care services, transportation costs, exterior ramps, and railing or pathways modified to the exterior of the applicant's/beneficiary's residence).

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 1382a(b) and 1396a(a), Title 42, United States Code; and Section 14005.11, Welfare and Institutions Code.

HISTORY

1. New section filed 8–13–90 as an emergency; operative 8–13–90 (Register 90, No. 40). A Certificate of Compliance must be transmitted to OAL by 12–11–90 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance transmitted to OAL 12–11–90 and filed 1–9–91 (Register 91, No. 8).
3. Amendment of opening statement filed 12–21–93; operative 1–20–94 (Register 93, No. 52).

§ 50045.3. Income and Eligibility Verification System.

The Income and Eligibility Verification System (IEVS) is the federally mandated system established to obtain, use and verify information relevant to determination of eligibility and share of cost.

NOTE: Authority cited: Sections 10725, 10740 and 14124.5, Welfare and Institutions Code. Reference: Sections 11025, 14001 and 14016.9, Welfare and Institutions Code; and 42 Code of Federal Regulations 435.940.

HISTORY

1. New section filed 7–16–87; operative 7–16–87 pursuant to Government Code Section 11346.2(d) (Register 87, No. 30).

§ 50045.5. In–Home Supportive Services.

In–Home Supportive Services (IHSS) means the social services program which provides necessary personal and domestic care so that aged, blind and disabled persons may remain in their own homes.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 12305, 12305.5, 14001, 14005.1, 14005.4, 14005.7, 14008, 14008.5, 14010, 14011, 14017, 14018 and 14051.5, Welfare and Institutions Code; Sections 25.6, 34.5, 34.7, 34.9 and 34.10, Civil Code.

HISTORY

1. New section filed 10–31–78 as an emergency; designated effective 11–1–78 (Register 78, No. 44).
2. Certificate of Compliance filed 2–6–79 (Register 79, No. 6).

§ 50046. Inmate.

Inmate means a person living or being cared for in an institution. Excluded from this definition are persons residing at a facility for vocational training or educational purposes, and persons temporarily in an institution pending more suitable arrangements, such as children in a local agency facility pending foster care placement.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11014, 11016 and 14053, Welfare and Institutions Code.

HISTORY

1. Amendment filed 4–1–83; effective thirtieth day thereafter (Register 83, No. 14).

§ 50047. Institution.

Institution means an establishment which provides food and shelter to four or more persons unrelated to the proprietor and in addition provides some treatment or services which meet needs beyond the basic provision of food and shelter.

§ 50048. Institution—Medical.

Medical institution means any public or private acute care hospital, acute psychiatric hospital, intermediate care facility, skilled nursing facility, or other medical facility licensed by an officially designated state standard setting authority.

§ 50049. Institution—Mental Diseases.

An institution for mental diseases means an institution primarily engaged in providing diagnosis, treatment or care for persons with mental illness.

§ 50050. Institution—Nonmedical.

Nonmedical institution means any institution providing nonmedical residential care, custodial care, custody or restraint. This includes penal institutions.

§ 50051. Institution—Private.

A private institution means a proprietary or nonprofit facility managed and controlled by an individual, private association or corporation.

§ 50052. Institution—Public.

Public institution means an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control. Excluded from this definition are medical facilities and publicly operated community residences designed to serve and serving no more than sixteen persons.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11014, 11016 and 14053, Welfare and Institutions Code.

HISTORY

1. Amendment filed 4–1–83; effective thirtieth day thereafter (Register 83, No. 14).

§ 50052.5. Institution—Tuberculosis.

Tuberculosis institution means an institution which is primarily engaged in providing diagnosis, treatment or care of persons with tuberculosis, including medical attention, nursing care and related services.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14053(14)(b), Welfare and Institutions Code.

HISTORY

1. New section filed 3–7–80; effective thirtieth day thereafter (Register 80, No. 9).

§ 50053. Intraprogram Status Change.

Intraprogram status change means a change in a person's or family's eligibility from one aid category to another aid category, in which the first digit of the aid code remains the same.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 10743 and 14100.1, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 7–7–83 (Register 83, No. 29).

§ 50054. Interprogram Transfer.

Interprogram transfer means a transfer of eligibility from one aid category to another aid category, in which the first digit of the aid code changes.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 10743 and 14100.1, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 7–7–83 (Register 83, No. 29).

§ 50054.5. Life Insurance.

Life insurance means a contract for which premiums are paid during the lifetime of the insured, and on which the insuring company pays the

face amount of the policy to the beneficiary upon the death of the insured. Life insurance may also be purchased by a single premium or by letting dividends accumulate.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11158 and 14006, Welfare and Institutions Code.

HISTORY

1. New section filed 3–7–80 as an emergency; effective upon filing (Register 80, No. 9). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7–6–80.
2. Certificate of Compliance filed 6–6–80 (Register 80, No. 23).

§ 50054.7. Limited Service Status.

Limited service status means that the beneficiary's use of the Medi–Cal card is limited because of enrollment in a noncomprehensive PHP or PCCM plan, improper utilization of service, application as a child under Section 50147.1 or participation in a pilot project conducted by the Department.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14010, 14017, 14088.16 and 14088.4, Welfare and Institutions Code.

HISTORY

1. New section filed 8–8–80; effective thirtieth day thereafter (Register 80, No. 32).
2. Amendment filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
3. Amendment refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
4. Request to readopt amendment on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
6. Amendment filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 3–25–91 order transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 50055. Linked.

Linked means meeting the SSI/SSP requirements of age, blindness or disability or the AFDC requirements of deprivation of parental support or care.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.7 and 14051, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 7–7–83 (Register 83, No. 29).

§ 50056. Long–Term Care (LTC).

Long–term care (LTC) means inpatient medical care which lasts for more than the month of admission and is expected to last for at least one full calendar month after the month of admission.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14050.3, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 7–7–83 (Register 83, No. 29).

§ 50057. Marriage.

Marriage means the state of being married, including a legal common law marriage, as defined in Section 4100 et seq., Chapter 2, Division 4, Part 5, Title 1, California Civil Code.

§ 50058. Medi–Cal.

Medi–Cal means California's medical assistance program and the benefits available under that program.

§ 50059. Medi–Cal Card.

Medi–Cal card means a computer printed or hand typed card issued each month to a person certified to receive Medi–Cal in order to identify the person as a Medi–Cal beneficiary and authorize the receipt of Medi–Cal covered services by that person.

§ 50059.5. State Dollar Error Rate.

The state dollar error rate means the Medicaid dollar error rate reported to the Department by the United States Department of Health and Human Services, less any portion of this error rate attributable to state caused errors.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14016(g), Welfare and Institutions Code.

HISTORY

1. New section filed 7–6–83 as an emergency; effective upon filing (Register 83, No. 33). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–3–83.
2. Certificate of Compliance transmitted to OAL 11–3–83 and filed 12–6–83 (Register 83, No. 50).
3. Corrected Certificate of Compliance as to 7–6–83 order filed 1–9–84 (Register 84, No. 2).
4. Amendment filed 5–15–92; operative 6–15–92 (Register 92, No. 21).

§ 50059.6. Federal Standard.

"Federal standard" means the Medicaid dollar error rate standard to which the State is held accountable by the Federal Government.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14016(g), Welfare and Institutions Code.

HISTORY

1. New section filed 8–23–83 as an emergency; effective upon filing (Register 83, No. 38). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12–21–83.
2. Certificate of Compliance filed 12–12–83 (Register 83, No. 50).
3. Amendment filed 5–15–92; operative 6–15–92 (Register 92, No. 21).

§ 50059.7. State Caused Errors.

State caused errors means case errors in a county for which the state assumes responsibility.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14016(g), Welfare and Institutions Code.

HISTORY

1. New section filed 5–15–92; operative 6–19–92 (Register 92, No. 21).

§ 50060. Medi–Cal Family Budget Unit (MFBU).

Medi–Cal Family Budget Unit (MFBU) means the persons who will be included in the Medi–Cal eligibility and share of cost determination.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4, 14005.7 and 14008, Welfare and Institutions Code.

HISTORY

1. Editorial correction of NOTE filed 7–7–83 (Register 83, No. 29).

§ 50060.5. Medi–Cal–Only Eligibility.

Medi–Cal–only eligibility means a person's or family's eligibility for Medi–Cal benefits that has been determined independently of an eligibility determination for any other aid or benefit program.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14005, Welfare and Institutions Code.

HISTORY

1. New section filed 8–7–78; effective thirtieth day thereafter (Register 78, No. 32).
2. Editorial correction adding NOTE filed 7–7–83 (Register 83, No. 29).

§ 50060.6. Medical Support.

Medical support is any liability or payment for the purpose of medical care available under a court or administrative order, including but not limited to health insurance, specific dollar amounts for medical purposes, and payments for medical care from any third party.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14008.6, 14023 and 14024, Welfare and Institutions Code; 42 CFR, Section 301.1.

HISTORY

1. New section filed 4–16–93 as an emergency; operative 4–16–93 (Register 93, No. 16). A Certificate of Compliance must be transmitted to OAL 8–16–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 4–16–93 order transmitted to OAL 8–13–93 and filed 9–23–93 (Register 93, No. 39).

§ 50061. Medically Indigent (MI) Person or Family.

Medically indigent (MI) person or family means a person or family eligible under the Medically Indigent program.

§ 50062. Medically Needy (MN) Person or Family.

Medically needy (MN) person or family means a person or family eligible under the Medically Needy program.

§ 50063. Minimum Basic Standard of Adequate Care (MBSAC).

Minimum Basic Standard of Adequate Care (MBSAC) means the amount necessary to provide an AFDC family with basic needs as specified in the EAS manual.

§ 50063.5. Minor Consent Services.

(a) Minor consent services means services related to:

(1) Sexual assault.

(2) Drug or alcohol abuse for children 12 years of age or older.

(3) Pregnancy.

(4) Family planning.

(5) Venereal disease for children 12 years of age or older.

(6) Sexually transmitted diseases designated by the Director for children 12 years of age or older.

(7) Mental health care for children 12 years of age or older who are mature enough to participate intelligently and which is needed to prevent the children from seriously harming themselves or others or because the children are the alleged victims of incest or child abuse.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14010, Welfare and Institutions Code; and Sections 25.9 and 34.7, Civil Code.

HISTORY

1. New section filed 4–28–82; effective thirtieth day thereafter (Register 82, No. 18).

§ 50064. Multiple Dwelling Unit.

Multiple dwelling unit means any dwelling with more than one separate living unit, that is, a unit which normally would include as a minimum a bathroom and a kitchen.

§ 50064.5. Nonrecurring Lump Sum Payment.

Nonrecurring lump sum payment means a payment accrued over more than one calendar month and not expected to be received again in the future. It does not include the amount of the monthly benefit normally attributable to the month for which eligibility is being determined.

HISTORY

1. New section filed 12–15–77; effective thirtieth day thereafter (Register 77, No. 51).

§ 50065. Obligate.

Obligate means to incur a cost for health care services.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.9 and 14019.3, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 7–7–83 (Register 83, No. 29).

§ 50066. Other Public Assistance (Other PA) Recipient.

Other Public Assistance (Other PA) recipient means a person eligible for Medi–Cal under one of the categories in the Other Public Assistance program.

§ 50067. Overpayment.

Overpayment means the receipt of Medi–Cal benefits when there is no entitlement to all or a portion of the benefits received.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14009, 14014, 14023 and 14024, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 7–7–83 (Register 83, No. 29).

§ 50068. Parent.

Parent means the natural or adoptive parent of a child.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14008, 14051 and 14052, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 7–7–83 (Register 83, No. 29).

§ 50068.5. Parent—Minor.

Minor parent means a person who meets the definition of a child and has his or her own child or children living in the home.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14008, 14010, 14051 and 14052, Welfare and Institutions Code.

HISTORY

1. New section filed 12–9–97; operative 1–8–98 (Register 97, No. 50).

§ 50069. Parents—Unmarried.

Unmarried parents means parents who are living together with their common child and the parents are not married to each other.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14008, 14051 and 14052, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 7–7–83 (Register 83, No. 29).

§ 50069.5. Parent—Unmarried Minor.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14008, 14051 and 14052, Welfare and Institutions Code.

HISTORY

1. New section filed 1–8–81; effective thirtieth day thereafter (Register 81, No. 2).
2. Repealer filed 12–9–97; operative 1–8–98 (Register 97, No. 50).

§ 50070. Patient.

Patient means a person receiving individual professional services directed by a licensed practitioner of the healing arts towards maintenance, improvement, or protection of health, or the alleviation of disability or pain.

§ 50071. Persons Living in the Home.

(a) Persons living in the home means all of the following:

(1) Persons physically present in the home;

(2) Persons temporarily absent from the home because of hospitalization, visiting, vacation, trips in connection with work, or because of similar reasons as limited by (d).

(3) Persons away at school or vocational training who will resume living in the home as evidenced by the person returning home for vacations, weekends and at other times.

(b) A temporary absence is normally one in which the person leaves and returns to the home in the same month or the following month.

(c) Whether a person is living in the home while in LTC or board and care shall be determined in accordance with Section 50377.

(d) A child, other than specified in (e), temporarily absent from the home in accordance with (a)(2) shall be considered to be living in the home as long as the parent continues to have responsibility for the care and control of the child. A parent continues to have responsibility for the care and control of a child until the court removes this responsibility or the parent voluntarily relinquishes it in accordance with Department of Social Services, Manual of Policies and Procedures, Division 30.

(e) The home in which a child shall be determined in accordance with Section 50374 when both of the following conditions exist:

(1) The child stays alternately for periods of one month or less with each of his/her parents.

(2) The child's parents are separated or divorced.

(f) An 18 to 21 year old or unmarried minor parent living on the parent's property shall not be considered to be living in the parent's home if both of the following conditions exist:

(1) The 18 to 21 year old or unmarried minor parent does not receive any support from the parents.

(2) The building the 18 to 21 year old or unmarried minor parents lives in would be considered other real property of the parents.

(g) A person whose institutional status results in ineligibility for Medi-Cal shall not be considered to be living in the home during any full month of institutionalization.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14008 and 14051, Welfare and Institutions Code.

HISTORY

1. Amendment filed 1-8-81; effective thirtieth day thereafter (Register 81, No. 2).
2. Amendment of subsection (c) filed 2-11-82; effective thirtieth day thereafter (Register 82, No. 7).
3. New subsection (f) filed 4-1-83; effective thirtieth day thereafter (Register 83, No. 14).
4. Amendment of subsection (d), relettering of former subsections (e) and (f) to subsections (f) and (g) and new subsection (e) filed 4-17-89; operative 5-17-89 (Register 89, No. 48).

§ 50071.5. Prepaid Health Plan.

(a) Prepaid health plan means any health care service plan as defined in Health and Safety Code Section 1345 (f) which:

(1) Is licensed as a health care service plan by the Commissioner of Corporations pursuant to the Knox-Keene Health Care Service Plan Act of 1975, Chapter 2.2, commencing with Section 1340, Division 2, Health and Safety Code, or has an application for licensure pending and was registered under the Knox-Mills Health Plan Act prior to its repeal in Chapter 941, Statutes of 1975.

(2) Meets the requirements for participation in the Medicaid Program, Title XIX of the Social Security Act, on an at risk basis.

(3) Has a contract with the Department to furnish directly or indirectly health services to Medi-Cal beneficiaries on a predetermined periodic rate basis.

(b) The term "prepaid health plan" does not include any pilot program contract entered into pursuant to Article 7, commencing with Section 14490, Chapter 8, Part 3, Division 9, Welfare and Institutions Code.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14016.5, Welfare and Institutions Code.

HISTORY

1. New section filed 8-8-80; effective thirtieth day thereafter (Register 80, No. 32).

§ 50071.6. Prepaid Health Plan—Comprehensive.

Comprehensive prepaid health plan means a prepaid health plan that is required by contract with the Department to provide the full scope of benefits available under the Medi-Cal program.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14016.5, Welfare and Institutions Code.

HISTORY

1. New section filed 8-8-80; effective thirtieth day thereafter (Register 80, No. 32).

§ 50071.8. Primary Care Case Management (PCCM) Plan.

Primary care case management plan or PCCM plan means any person or organization who:

(a) Has entered into a contract with the Department on a capitated or risk sharing basis, or both, to provide or arrange for the provision of health care services under the provisions of Article 2.9 commencing with section 14088, Welfare and Institutions Code; and

(b) Meets the requirements for participation in the Medicaid Program, as stated in Title XIX of the Social Security Act, on an at-risk basis.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14088, 14088.16 and 14088.2, Welfare and Institutions Code.

HISTORY

1. New section filed 3-9-90 as an emergency, operative 3-9-90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7-9-90.
2. New section refiled 7-9-90 as an emergency; operative 7-9-90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11-6-90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11-6-90 as an emergency; operative 11-6-90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3-6-91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11-6-90 order transmitted to OAL 2-22-91; disapproved by OAL on 3-25-91 (Register 91, No. 18).
5. New section filed 3-25-91 as an emergency; operative 3-25-91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7-23-91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3-25-91 order including amendment of section transmitted to OAL 7-19-91 and filed 8-19-91 (Register 92, No. 1).

§ 50072. Property—Community.

Community property means property acquired by either spouse during marriage, unless the property was acquired as separate property or with funds that can be identified as separate property.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14006 and 14008, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 7-7-83 (Register 83, No. 29).

§ 50073. Property—Personal.

Personal property means possessions or interests, exclusive of real property, that may be easily transported or stored; including but not limited to cash on hand, bank accounts, notes, mortgages, deeds of trust, cash surrender value of life insurance, motor vehicles, uncollected judgments, an interest in a firm in receivership, a lawsuit, patents and copyrights.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 7-7-83 (Register 83, No. 29).

§ 50074. Property—Real.

Real property means land and improvements which generally includes any immovable property attached to the land and any oil, mineral, timber or other rights related to the land.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 7-7-83 (Register 83, No. 29).

§ 50075. Property—Separate.

(a) Separate property means any item that is considered separate property under California Property Law. Generally, separate property is property acquired by an individual by any method prior to marriage, after obtaining an interlocutory or final judgment of dissolution, or while voluntarily separated; or at any time by gift or inheritance, or purchases made with funds that are separate property or with funds from the sale of separate property.

(b) Separate property also includes that portion of a couple's former community property which has been transmuted into separate property by a written interspousal agreement in accordance with 50403(c).

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14006, 14006.2 and 14008, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 7-7-83 (Register 83, No. 29).
2. New subsection (b) filed 2-16-88 as an emergency; operative 2-16-88 (Register 88, No. 10). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6-15-88.
3. New subsection (b) refiled 6-16-88 as an emergency; operative 6-16-88 (Register 88, No. 26). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10-14-88.
4. Emergency language of subsection (b) refiled and operative 6-16-88 repealed on 10-14-88 by operation of Government Code Section 11346.1 (Register 88, No. 49).
5. New subsection (b) filed 11-16-88; operative 11-16-88 pursuant to Government Code Section 11346.2(d) (Register 88, No. 49).

§ 50076. Property—Share of Community.

For the purpose of determining Medi-Cal eligibility, share of community property is to be treated as if each spouse owns one-half of the community property.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code.

HISTORY

1. Amendment filed 2–11–82; effective thirtieth day thereafter (Register 82, No. 7).

§ 50077. Public Agency.

Public agency means an administrative division of local, state or federal government, or an organization that has a contract to act in behalf of the local, state or federal government.

§ 50078. Public Assistance (PA) Recipient.

Public assistance (PA) recipient means a person or family receiving assistance under the AFDC, SSI/SSP, Indochinese refugee or Cuban refugee program.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.1 and 14050.1, Welfare and Institutions Code.

HISTORY

1. Amendment filed 8–7–78; effective thirtieth day thereafter (Register 78, No. 32).
2. Amendment filed 7–31–81 as an emergency; effective upon filing (Register 81, No. 33). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–28–81.
3. Certificate of Compliance transmitted to OAL 11–6–81 and filed 1–27–82 (Register 82, No. 5).

§ 50079. Public Funds.

Public funds means monies provided by local, state or federal government.

§ 50079.5. Publicly Operated Community Residence.

(a) Publicly operated community residence means a facility designed and planned to serve no more than 16 residents which is actually serving 16 or fewer residents. The facility provides food and shelter and must provide some additional services such as:

(1) Social services.

(2) Help with personal activities.

(3) Training in socialization and life skills.

(b) Excluded from this definition are:

(1) Residential facilities located on the grounds or immediately adjacent to any large institution or multi–purpose complex.

(2) Educational or vocational training facilities.

(3) Correctional or holding facilities for persons detained under the penal system.

(4) Medical treatment facilities.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11014, 11016 and 14053, Welfare and Institutions Code.

HISTORY

1. New section filed 4–1–83; effective thirtieth day thereafter (Register 83, No. 14).

§ 50079.6. Qualified Disabled and Working Individual.

"Qualified Disabled and Working Individual" means an individual who meets the eligibility criteria for the Qualified Disabled and Working Individual program specified in Section 50256.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 12, Chapter 1430, Statutes of 1989. Reference: Section 14005.3, Welfare and Institutions Code; and Sections 1396a(a)(10)(E) and 1396d(s), Title 42, United States Code.

HISTORY

1. Renumbering of former section 50079.6 to section 50079.7 and new section filed 10–3–94 as an emergency; operative 10–3–94 (Register 94, No. 40). A Certificate of Compliance must be transmitted to OAL by 1–31–95 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 91, No. 8.
2. Editorial correction of HISTORY NOTE 1 (Register 95, No. 9).
3. Reinstatement of section as it existed prior to emergency filed 3–2–95 by operation of Government Code section 11346.1(f) (Register 95, No. 9).
4. Renumbering of former section 50079.6 to section 50079.7 and new section refiled 3–3–95 as an emergency; operative 3–3–95 (Register 95, No. 9). A Certificate of Compliance must be transmitted to OAL by 7–1–95 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 3–3–95 order including amendment of NOTE transmitted to OAL 2–22–95 and filed 4–5–95 (Register 95, No. 14).

§ 50079.7. Qualified Medicare Beneficiary.

"Qualified Medicare Beneficiary" means an individual who meets the eligibility criteria for the Qualified Medicare Beneficiary program specified in Section 50258.

NOTE: Authority cited: Sections 10725, 14005.11 and 14124.5, Welfare and Institutions Code; and Section 12, Chapter 1430, Statutes of 1989. Reference: Section 1396d(p), Title 42, United States Code; and Section 14005.11, Welfare and Institutions Code.

HISTORY

1. Renumbering of former section 50079.6 to new section 50079.7 filed 10–3–94 as an emergency; operative 10–3–94 (Register 94, No. 40). A Certificate of Compliance must be transmitted to OAL by 1–31–95 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of HISTORY NOTE 1 (Register 95, No. 9).
3. Repealed by operation of Government Code section 11346.1(g) (Register 95, No. 9).
4. Renumbering of former section 50079.6 to section 50079.7 and new section refiled 3–3–95 as an emergency; operative 3–3–95 (Register 95, No. 9). A Certificate of Compliance must be transmitted to OAL by 7–1–95 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 3–3–95 order transmitted to OAL 2–22–95 and filed 4–5–95 (Register 95, No. 14).

§ 50080. Quality Control.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14016(b), (d) and (e)(1) and 14100.1, Welfare and Institutions Code.

HISTORY

1. Repealer filed 7–6–83 as an emergency; effective upon filing (Register 83, No. 33). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–3–83.
2. Certificate of Compliance transmitted to OAL 11–3–83 and filed 2–6–83 (Register 83, No. 50).
3. Corrected Certificate of Compliance as to 7–6–83 order filed 1–9–84 (Register 84, No. 2).

§ 50081. Reapplication.

Reapplication means an application for Medi–Cal–only eligibility made in the same county as a previous application, if the previous application was denied or withdrawn, or Medi–Cal–only eligibility based on the previous application has been discontinued for more than 12 months.

HISTORY

1. Amendment filed 8–7–78; effective thirtieth day thereafter (Register 78, No. 32).

§ 50082. Recipient.

Recipient means a person or family receiving aid under a public assistance program or the Other Public Assistance program.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.1 and 14050.1, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 7–7–83 (Register 83, No. 29).

§ 50083. Redetermination.

Redetermination means the review of a person's or family's Medi–Cal eligibility.

§ 50084. Relative.

Relative means a mother, father, grandfather, grandmother, son, daughter, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, niece, half–brother, half–sister, any such person of a preceding or succeeding generation denoted by a prefix of grand, great or great–great or the suffix in–law.

NOTE: Authority cited: Sections 10725, 14006.1 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.7, 14006 and 14008, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 7–7–83 (Register 83, No. 29).
2. Amendment filed 12–2–85 as an emergency; effective upon filing (Register 85, No. 50). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–1–86.
3. Certificate of Compliance transmitted to OAL 3–31–86 and filed 4–30–86 (Register 86, No. 18).

§ 50085. Relative—Caretaker.

Caretaker relative means a relative who provides care and supervision to a child, if there is no natural or adoptive parent in the home.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14005.7, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 7–7–83 (Register 83, No. 29).

§ 50086. Repayment.

Repayment means the liquidation of an overpayment in response to issuance of demands and recovery thereof by the Department of Benefit Payments.

§ 50087. Residence.

Residence means the place in which a person or family lives or is physically present if the person or family has no present intention of leaving.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14007 and 14016, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 7–7–83 (Register 83, No. 29).

§ 50088. Responsible Relative.

Responsible relative means a relative who is responsible to contribute to the cost of health care services received by a Medi–Cal beneficiary.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14008, 14008.5, 14009 and 14010, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 7–7–83 (Register 83, No. 29).

§ 50089. Restoration.

Restoration means the approval of Medi–Cal–only eligibility for a person or family in the same county as that in which they were previously eligible for Medi–Cal–only, if the effective date of the approval occurs within 12 months of the end of the previous period of eligibility.

HISTORY

1. Amendment filed 8–7–78; effective thirtieth day thereafter (Register 78, No. 32).

§ 50090. Share of Cost.

Share of cost means a person's or family's net income in excess of their maintenance need that must be paid or obligated toward the cost of health care services before the person or family may be certified and receive Medi–Cal cards.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.9 and 14054, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 7–7–83 (Register 83, No. 29).

§ 50091. Share of Encumbrances.

Share of encumbrances means that portion of the encumbrances attributed to each portion of jointly owned property.

§ 50091.5. Specified Low–Income Medicare Beneficiary.

"Specified Low–Income Medicare Beneficiary" (SLMB) means an individual who meets the eligibility criteria for the SLMB Program specified in Section 50258.1.

NOTE: Authority cited: Sections 10725 and 14124.5 of the Welfare and Institutions Code. Reference: Section 1396a(a)(10)(E)(iii), Title 42, United States Code.

HISTORY

1. New section filed 12–21–93; operative 1–20–94 (Register 93, No. 52).

§ 50092. Spenddown.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 57(c), Chapter 328, Statutes of 1982. Reference: Section 14019.6, Welfare and Institutions Code.

HISTORY

1. Repealer filed 8–18–82 as an emergency; effective upon filing (Register 82, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12–16–82.
2. Certificate of Compliance transmitted to OAL 12–14–82 and filed 1–21–83 (Register 83, No. 4).

§ 50093. State Data Exchange (SDX).

State Data Exchange (SDX) means the data system by which the Federal Government provides information to the State regarding the eligibility of SSI/SSP applicants and recipients.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14017, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 7–7–83 (Register 83, No. 29).

§ 50094. Stepparent.

Stepparent means a person who is married to the parent of a child and who is not the other parent of the child.

[The next page is 317.]

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11261, 14001.1 and 14005.7, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 7–7–83 (Register 83, No. 29).

§ 50095. Supplemental Security Income/State Supplemental Program (SSI/SSP).

Supplemental Security Income/State Supplemental Program (SSI/SSP) means the federal and state payments, respectively, which are based on need, and are paid to aged, blind or disabled persons.

§ 50095.1. Title II Disregard Person.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14005.7, Welfare and Institutions Code.

HISTORY

1. New section filed 1–5–78 as an emergency; effective upon filing (Register 78, No. 1).
2. Certificate of Compliance filed 5–5–78 (Register 78, No. 18).
3. Renumbering of Section 50095.1 to Section 50095.7 filed 8–9–85 as an emergency; effective upon filing (Register 85, No. 32). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12–9–85.
4. Certificate of Compliance as to 8–9–85 order transmitted to OAL 11–13–85 and filed 12–11–85 (Register 85, No. 50).

§ 50095.5. Therapeutic Wages.

(a) Therapeutic wages are wages earned by the individual when all of the following conditions are met:

(1) A physician who does not have a financial interest in the long–term care facility in which the individual resides, and who is in charge of the individual's case prescribes this work as therapy for the individual.

(2) The individual must be employed by the same long–term care facility in which he or she resides.

(3) The individual's employment does not displace any existing employees.

(4) The individual has resided in a long–term care facility continuously since September 1979.

NOTE: Authority cited: Sections 10725, 14005.13 and 14124.5, Welfare and Institutions Code. Reference: Section 14005.13, Welfare and Institutions Code.

HISTORY

1. New section filed 8–9–85 as an emergency; effective upon filing (Register 85, No. 32). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12–9–85.
2. Certificate of Compliance transmitted to OAL 11–13–85 and filed 12–11–85 (Register 85, No. 50).

§ 50095.7. Title II Disregard Person.

"Title II disregard person" means a person who meets all the conditions of Section 50564.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14005.7, Welfare and Institutions Code.

HISTORY

1. Renumbering of Section 50095.1 to Section 50095.7 filed 8–9–85 as an emergency; effective upon filing (Register 85, No. 32). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12–9–85. For prior history, see Registers 78, No. 18, and 78, No. 1.
2. Certificate of Compliance transmitted to OAL 11–13–85 and filed 12–11–85 (Register 85, No. 50).

§ 50096. Transfer of Property.

Transfer of property means a change in ownership whereby a person no longer holds title to, or beneficial interest in, property.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14006 and 14015, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 7–7–83 (Register 83, No. 29).

§ 50097. Verification.

Verification means the process of obtaining acceptable evidence which substantiates statements made by an applicant/beneficiary.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 57, Chapter 328, Statutes of 1982. Reference: Section 14011, Welfare and Institutions Code.

HISTORY

1. New section filed 8–18–82 as an emergency; effective upon filing (Register 82, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12–16–82.
2. Certificate of Compliance transmitted to OAL 12–14–82 and filed 1–21–83 (Register 83, No. 4).

Article 2. Administration

§ 50101. County Department Responsibilities.

(a) The county department shall:

(1) Be responsible for determining initial and continuing eligibility for Medi–Cal applicants or beneficiaries promptly and humanely, in accordance with:

(A) Medi–Cal regulations.

(B) Departmental directives.

(2) Construe Medi–Cal regulations fairly and equitably when determining Medi–Cal eligibility.

(3) Have available at each office copies of all laws, rules, regulations and bulletins relating to Medi–Cal.

(4) Comply with state hearing decisions of the Director.

(5) Assist applicants or beneficiaries in understanding their rights and responsibilities in relation to application for Medi–Cal.

(6) Evaluate the capacity of the applicants or beneficiaries to discharge their responsibilities as set forth in these regulations.

(7) Assist applicants or beneficiaries as needed in establishing their eligibility.

(8) Determine eligibility, assess need, and authorize personal care program services for eligible beneficiaries, as needed.

(b) The county department shall take the following actions whenever an applicant or beneficiary, who is applying for or receiving Medi–Cal on behalf of a child under eighteen years of age who was born out of wedlock or who has an absent parent, meets his/her responsibilities as specified in Section 50185 (a) 10.

(1) As soon as possible after the applicant's or beneficiary's opportunity to claim good cause as specified in 50771.5, and not later than two working days after approval of eligibility, the county shall provide to the district attorney the following forms, whether or not the Child/Spousal and Medical Support Notice and Agreement (CA 2.1 Notice and Agreement) has been completed;

(A) A completed Referral to District Attorney (CA 371, Revised December 1992)

(B) A Child Support Questionnaire (CA 2.1 Q Support Questionnaire, Revised March 1993), if one has been completed;

(C) Health Insurance Questionnaire (DHS 6155, Revised October 1990), if one has been completed.

(D) Any other forms or information requested by the district attorney.

(2) If the referral described in (1) above has previously been provided to the district attorney, the county shall promptly report to the district attorney whenever good cause has been claimed. The district attorney will suspend all activities to establish paternity or secure medical support until notified of a final determination of good cause by the county.

(3) The county shall promptly report to the district attorney all cases in which it has been determined that there is or is not good cause for refusal to cooperate as specified in Section 50771.5. The district attorney will not undertake to establish paternity or secure support if there has been a finding of good cause unless there also has been a determination by the county that the district attorney may proceed without the participation of the parent or caretaker relative. If there has been such a determination, the district attorney may undertake to establish paternity or secure support but may not involve the parent or caretaker relative.

(4) If the county determines that the applicant or beneficiary and the child on whose behalf the application was filed are not eligible, the applicant or beneficiary shall be informed that he/she may go to the district attorney for help in locating the absent parent(s) of the child, collecting child and medical support for the child, and establishing paternity.

(5) The county shall provide the district attorney with any information requested concerning medical support cases and shall advise the district attorney in writing if any of the following circumstances arise:

(A) A person is added to or deleted from the MFBU.

(B) The child ceases living with the person who is receiving Medi–Cal on his/her behalf.

(C) A child moves out of foster care and begins living with a parent or relative.

(D) A child has been accepted for adoption by a public or private adoption agency or such an acceptance has been terminated.

(E) Medi–Cal benefits have been discontinued.

(6) If the district attorney notifies the county that the applicant or beneficiary has not cooperated, the county shall verify the facts, determine whether he/she had good cause for failure to cooperate pursuant to Section 50771.5, and notify the district attorney of the determination.

(7) Prior to making a final determination of good cause for refusing to cooperate, the county shall:

(A) Afford the district attorney the opportunity to review and comment on the findings and basis for the proposed determination;

(B) Consider any recommendation from the district attorney; and from any witnesses on behalf of the applicant in any hearing that results from an applicant's or beneficiary's appeal of any county action relating to establishing paternity or securing medical support.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 10000, 10058, 10747, 10800. 10963, 11000, 11490, 14008.6 and 14016, Welfare and Institutions Code; and 42 C.F.R. Sections 433.135, 433.136, 433.137, 433.138, 433,145, 433.146, 433.147, 433.148 and 435.604.

HISTORY

1. Amendment filed 5–30–80 as an emergency; effective upon filing (Register 80, No. 22). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9–27–80.
2. Certificate of Compliance filed 9–26–80 (Register 80, No. 39).
3. Amendment of subsection (a)(2) filed 3–25–83; effective thirtieth day thereafter (Register 83, No. 13).
4. Editorial correction of NOTE filed 7–7–83 (Register 83, No. 29).
5. New subsection (a)(8) filed 4–14–93 as an emergency; operative 4–14–93. Submitted to OAL for printing only pursuant to section 8, AB 1773 (Chapter 939, Statutes of 1992) (Register 93, No. 16).
6. New subsections (b)–(b)(7)(B) and amendment of NOTE filed 4–16–93 as an emergency; operative 4–16–93 (Register 93, No. 16). A Certificate of Compliance must be transmitted to OAL 8–16–93 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 4–16–93 order including amendment of subsection (b)(1)(C) and NOTE transmitted to OAL 8–13–93 and filed 9–23–93 (Register 93, No. 39).

§ 50103. Civil Service or Merit Systems.

All persons employed by a county and engaged in administration of the Medi–Cal program shall be employed under a civil service or merit system that meets the requirements established by the California State Personnel Board.

§ 50105. Staffing Requirements.

(a) Medi–Cal eligibility services may be provided by personnel in those technical nonsocial work job classifications that are established by the county personnel agency responsible for approving such job classification.

(b) The county department shall assign Medi–Cal eligibility staff in sufficient numbers so that any applicant or beneficiary in need of eligibility services shall be provided with those services.

(c) Eligibility information shall be available 24 hours a day, 7 days a week, to persons with medical and related emergencies.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 10809 and 14001, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 7–7–83 (Register 83, No. 29).

§ 50106. Staff Training.

The county department shall train Medi–Cal eligibility staff in accordance with the training requirements of Division 14, Manual of Policies and Procedures, Department of Social Services.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 10800, 10820, 10900, 10906 and 14001, Welfare and Institutions Code.

HISTORY

1. Editorial correction filed 7–7–83 (Register 83, No. 29).

§ 50107. Civil Rights.

(a) The county department shall not discriminate against any applicant or beneficiary on the basis of race, color, creed, ethnic origin, sex, marital status, age, physical or mental handicap, national origin or political affiliation.

(b) Persons who believe that they have been discriminated against may file a grievance with the Department in accordance with departmental procedures.

§ 50109. Reports.

The county department shall submit reports as required by the Department and shall comply with such provisions as the Department may find necessary to ensure the correctness of the reports.

§ 50110. Medi–Cal Case.

(a) Each MFBU shall be one Medi–Cal case.

(b) Each Other PA person or Other PA family group shall be one Medi–Cal case.

(c) A PA recipient or PA family group shall not be a Medi–Cal case.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005 and 14008, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 7–7–83 (Register 83, No. 29).

§ 50111. Case Records and Confidentiality.

(a) The county department shall adhere to the requirements in Divisions 19 and 23, Manual of Policies and Procedures, Department of Social Services, governing:

(1) Maintenance of case records.

(2) Confidentiality of case records.

(3) Safeguarding federal tax information.

(4) Access to case records.

(b) The board of supervisors of a county may authorize the destruction of:

(1) Narrative portions of a case record which are over three years old in any case file, active or inactive, after audit by the county department.

(2) Case files which have remained inactive for a period of three years providing the Department has not notified the county department that unresolved issues or pending civil or criminal actions exist.

NOTE: Authority cited: Sections 10725, 10740 and 14124.5, Welfare and Institutions Code. Reference: Sections 10850–10853, 14001 and 14100.2, Welfare and Institutions Code; and 42 Code of Federal Regulations, 431.300 and 431.305.

HISTORY

1. Amendment filed 3–7–80; effective thirtieth day thereafter (Register 80, No. 9).
2. Amendment of subsection (a) filed 7–16–87; operative 7–16–87 pursuant to Government Code Section 11346.2(d) (Register 87, No. 30).

§ 50113. Forms.

(a) The county department shall use the forms prescribed by the Department in providing Medi–Cal eligibility services.

(b) Other forms shall not be substituted by the county department unless specifically approved by the Department.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 10820, 1085, 11050, 14001 and 14011, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 7–7–83 (Register 83, No. 29).

§ 50115. Quality Control—County Cooperation.

The county department shall cooperate with the Department in ensuring that federal quality control requirements are met.

§ 50116. Medi–Cal Fiscal Penalties.

(a) The Department shall assess fiscal penalties to counties whenever the state dollar error rate exceeds the federal standard.

(b) A county's case error rate shall be determined based on reviews by Department staff of a random sample of a minimum number of cases for each period, as follows:

(1) All cases shall be sampled in any county with less than 50 Medi–Cal cases.

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(2) Fifty cases in any county with greater than 0.01 percent and less than or equal to 0.50 percent of the Medi–Cal cases in the state.

(3) Seventy–five cases in any county with greater than 0.50 percent and less than or equal to 1.0 percent of the Medi–Cal cases in the state.

(4) One hundred cases in any county with greater than 1.0 percent and less than or equal to 3.0 percent of the Medi–Cal cases in the state.

(5) One hundred twenty–five cases in any county with greater than 3.0 percent and less than or equal to 10.0 percent of the Medi–Cal cases in the state.

(6) Six hundred fifty cases in any county with greater than 10.0 percent of the Medi–Cal cases in the state.

(c) Medi–Cal fiscal penalties established under this Section shall apply only to those counties for which case error rates are established.

(d) The Department shall determine which counties in the state are liable for fiscal penalties as follows:

(1) The 60 percent of counties in the state with the highest case error rates shall be liable if the state's dollar error rate exceeds the federal standard by 0.01 percent to 1.0 percent.

(2) The 70 percent of counties in the state with the highest case error rates shall be liable if the state's dollar error rate exceeds the federal standard by greater than 1.0 percent and less than or equal to 2.0 percent.

(3) The 80 percent of counties in the state with the highest case error rates shall be liable if the state's dollar error rate exceeds the federal standard by greater than 2.0 percent and less than or equal to 3.0 percent.

(4) The 90 percent of counties in the state with the highest case error rates shall be liable if the state's dollar error rate exceeds the federal standard by greater than 3.0 percent and less than or equal to 4.0 percent.

(5) All counties in the state shall be liable if the state's dollar error rate exceeds the federal standard by greater than 4.0 percent.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14016(c), (e) and (g), Welfare and Institutions Code.

HISTORY

1. New section filed 7–6–83 as an emergency; effective upon filing (Register 83, No. 33). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–3–83.
2. Certificate of Compliance transmitted to OAL 11–3–83 and filed 12–6–83 (Register 83, No. 50).
3. Corrected Certificate of Compliance as to 7–6–83 order filed 1–9–84 (Register 84, No. 2).
4. Amendment filed 5–15–92; operative 6–15–92 (Register 92, No. 21).

§ 50116.5. Appeal of Quality Control Review Findings.

(a) When the Department finds a sampled case that includes an ineligible person or a person with an understated share of cost, written notification which describes the error shall be sent to the county department.

(b) The county department shall respond to the Department in writing within two weeks from receipt of notification of the error and shall indicate whether it agrees or disagrees with the findings.

(c) If the county disagrees, the Department shall reevaluate the error findings, taking into consideration any additional facts contained in the county's response.

(d) The Department shall again notify the county of the Department's findings.

(e) The county may then appeal to the Chief, Medi–Cal Policy Division, requesting that the Department review the case and render a final decision.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14016(f), Welfare and Institutions Code.

HISTORY

1. New section filed 5–15–92; operative 6–19–92 (Register 92, No. 21).

§ 50117. Calculation of Medi–Cal Fiscal Penalties.

(a) The Department shall calculate the fiscal penalty for a liable county for each monitoring period as follows:

(1) A penalty multiple shall be calculated by multiplying a county's case error rate times its percentage of statewide Medi–Cal cases.

(2) A county's penalty multiple shall be divided by the sum of the penalty multiples of all counties then multiplied times the penalty bank.

(b) The penalty bank shall include only quality control federal fiscal sanctions, federal withholds, federal disallowances, and any associated General Fund expenditures, minus the value of any state assumed errors and the General Fund share of the value of client caused errors.

(c) The case error rate and penalty multiple shall be adjusted by excluding client errors for the purpose of determining the associated General Fund expenditures.

(d) If the Federal Government reduces or eliminates any quality control federal fiscal sanction, federal withhold or federal disallowance assessed a county as a penalty, the Department shall reduce or eliminate the corresponding fiscal penalty assessment including any associated General Fund expenditures to liable counties.

(e) The monitoring period shall be the federal fiscal year. Fiscal penalties shall apply to the entire monitoring period. The first monitoring period shall begin October 1, 1988.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14016(g), Welfare and Institutions Code.

HISTORY

1. New section filed 7–6–83 as an emergency; effective upon filing (Register 83, No. 33). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–3–83.
2. Certificate of Compliance transmitted to OAL 11–3–83 and filed 12–6–83 (Register 83, No. 50).
3. Corrected Certificate of Compliance as to 7–6–83 order filed 1–9–84 (Register 84, No. 2).
4. Amendment filed 5–15–92; operative 6–15–92 (Register 92, No. 21).

§ 50118. Application of Medi–Cal Fiscal Penalties.

(a) The Department shall notify the county in writing when it determines that a Medi–Cal fiscal penalty will be imposed.

(b) The county may request reconsideration of the Medi–Cal fiscal penalty in accordance with Section 50118.5.

(c) When a Medi–Cal fiscal penalty is imposed, the amount of the penalty shall be collected through direct repayment.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14016(f) and (i), Welfare and Institutions Code.

HISTORY

1. New section filed 7–6–83 as an emergency; effective upon filing (Register 83, No. 33). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–3–83.
2. Certificate of Compliance transmitted to OAL 11–3–83 and filed 12–6–83 (Register 83, No. 50).
3. Corrected Certificate of Compliance as to 7–6–83 order filed 1–9–84 (Register 84, No. 2).
4. Amendment filed 5–15–92; operative 6–15–92 (Register 92, No. 21).

§ 50118.5. Reconsideration of a Medi–Cal Fiscal Penalty.

(a) A county may request reconsideration of a Medi–Cal fiscal penalty if the county case error rate is caused by circumstances outside the control of the county. Such circumstances may include, but are not necessarily limited to, the following:

(1) Natural disasters which contribute significantly to the county case error rate.

(2) Work stoppages or other work activity beyond the control of the county which has a significant adverse impact on the processing of Medi–Cal eligibility cases.

(3) Failure by the Department to meet the minimum sample of cases specified in Section 50116.

(4) Such other occurrences as determined by the Director.

(b) The county shall have thirty days from the date of the Department's notice of fiscal penalty to file a written request for reconsideration with the Director. The request shall be signed by the county department Director and shall include a concise, detailed explanation of the basis for requesting reconsideration. The Director may, for good cause, extend the time to sixty days for the county to submit a request for reconsideration.

(c) Based on all the available written material, the Director shall address a decision on reconsideration to the county, in writing, within sixty days of receipt of the request.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14016(f), Welfare and Institutions Code.

HISTORY

1. New section filed 7–6–83 as an emergency; effective upon filing (Register 83, No. 33). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–3–83.
2. Certificate of Compliance transmitted to OAL 11–3–83 and filed 12–6–83 (Register 83, No. 50).
3. Corrected Certificate of Compliance as to 7–6–83 order filed 1–9–84 (Register 84, No. 2).
4. Amendment filed 5–15–92; operative 6–15–92 (Register 92, No. 21).

§ 50119. County Corrective Action Requirements.

(a) The county shall correct a case found in error during the Department's sample case review within thirty days after being notified of the Department's final decision that a case error has occurred.

(b) A county whose case error rate is found to be in excess of fifteen percent shall within 90 days of being notified by the Department of this error rate provide a written report to the Department which shall describe the steps the county has taken or plans to take to reduce or eliminate the causes of error. The Department shall provide direction on the form and content of the report and shall be responsible for approving the county's Corrective Action Plan.

(c) The data collected on an individual county during the review conducted by the Department shall be analyzed by the county to determine causes of error. The county shall utilize this information in conjunction with other information available to the county to develop and implement correction actions which will reduce or eliminate the causes of error.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14016(h), Welfare and Institutions Code.

HISTORY

1. New section filed 7–6–83 as an emergency; effective upon filing (Register 83, No. 33). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–3–83.
2. Certificate of Compliance transmitted to OAL 11–3–83 and filed 12–6–83 (Register 83, No. 50).
3. Corrected Certificate of Compliance as to 7–6–83 order filed 1–9–84 (Register 84, No. 2).
4. Amendment filed 5–15–92; operative 6–15–92 (Register 92, No. 21).

Article 3. County of Responsibility for Determination of Medi–Cal Eligibility

§ 50120. County of Responsibility.

(a) The county of responsibility shall be the county whose county department is responsible for determining the initial and continuing Medi–Cal eligibility for a person or family. The appropriate county of responsibility shall be determined in accordance with the regulations in this article.

(b) Disputes between counties regarding county of responsibility shall be resolved by the Director.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 10806 and 14016, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 7–7–83 (Register 83, No. 29).

§ 50121. Persons Eligible Under SSI/SSP.

The county of responsibility for determining Medi–Cal eligibility for persons eligible under AFDC or SSI/SSP shall be established in accordance with the regulations of the applicable public assistance program.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.1 and 14050.1, Welfare and Institutions Code.

HISTORY

1. Amendment filed 8–7–78; effective thirtieth day thereafter (Register 78, No. 32).
2. Amendment filed 7–31–81 as an emergency; effective upon filing (Register 81, No. 33). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–28–81.
3. Certificate of Compliance transmitted to OAL 11–6–81 and filed 1–27–82 (Register 82, No. 5).
4. Editorial correction of section heading filed 7–7–83 (Register 83, No. 29).

§ 50123. County of Responsibility—Persons with a Family.

(a) The county of responsibility for determining Medi–Cal eligibility for persons whose eligibility as MN, MI or Other PA is determined as part of a family, or based on family income, shall be either of the following:

(1) The county in which the family's residence is located.

(2) The county of physical presence if the family's residence is unclear.

(b) The county of responsibility for determining Medi–Cal eligibility for a family which includes a person under age 21 or, through December 31, 1982, an MI person, living away from the home and who is claimed by his/her parent as a dependent in order to receive a tax credit or deduction for state or federal income tax purposes shall be the county in which the claiming parent lives as determined in accordance with (a).

(c) The county of responsibility for determining Medi–Cal eligibility for a person who is claimed by his/her parent as a dependent or as a deduction for tax purposes and whose parent lives out of state shall be the county in which such person resides as determined in accordance with (a).

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; Section 57(c), Chapter 328, Statutes of 1982; and Section 87(c), Chapter 1594, Statutes of 1982. Reference: Sections 11050, 14005.4, 14005.7, 14008 and 14016(a) and (c), Welfare and Institutions Code.

HISTORY

1. New subsections (b) and (c) filed 10–1–82 as an emergency; effective upon filing (Register 82, No. 40). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1–29–83.
2. Certificate of Compliance including editorial correction of NOTE transmitted to OAL 1–28–83 and filed 2–28–83 (Register 83, No. 10).
3. Editorial correction of NOTE filed 4–12–83 (Register 83, No. 16).

§ 50125. County of Responsibility—Persons with No Family.

(a) The county of responsibility for determining Medi–Cal eligibility for persons whose eligibility as MN, MI or Other PA is not determined as part of a family, nor based on family income, shall be:

(1) The placing county for:

(A) Persons placed by a county agency in a private or county–administered facility in order to receive long–term care.

(B) Children placed by a county agency in foster or adoptive care under Aid Codes 04, 43, 44, 45, 46 and 47.

(2) The county in which the person's home is located, if the person is temporarily absent from the home as specified in Section 50071(a)(2).

(3) The county in which the person is living in all other situations.

NOTE: Authority cited: Sections 10725, 14006.1 and 14124.5, Welfare and Institutions Code. Reference: Sections 11050, 14005.4, 14006, 14008 and 14016(a) and (c), Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (a)(1)(B) filed 12–15–77; effective thirtieth day thereafter (Register 77, No. 51).
2. Amendment of subsections (a)(2) and (a)(3) filed 12–2–85 as an emergency; effective upon filing (Register 85, No. 50). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–1–86.
3. Certificate of Compliance transmitted to OAL 3–31–86 and filed 4–30–86 (Register 86, No. 18).

§ 50126. County of Responsibility—Persons Eligible Under Special Programs.

(a) The county of responsibility for determining Medi–Cal eligibility for persons eligible under the Cuban Refugee, Indochinese Refugee, and Medi–Cal Dialysis Programs shall be:

(1) The county in which the person's residence is located.

(2) The county of physical presence if the person's residence is unclear.

(b) The county of responsibility for determining Medi–Cal eligibility for persons eligible under the MC 800 Program shall be the county which owns the medical facility, or which has a contract with the hospital, where health services are received.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14016, Welfare and Institutions Code.

HISTORY
1. New section filed 3–7–80; effective thirtieth day thereafter (Register 80, No. 9).

§ 50127. Persons with a Guardian.

(a) The county of responsibility for persons with a county public guardian shall be the county in which the public guardian is located except that if the person is physically present in another county and the new county will accept a transfer of guardianship, the new county shall be the county of responsibility.

(b) The county of responsibility for persons with a private guardian or persons with a guardian employed by the state shall be established as if there were no guardian in accordance with Sections 50121, 50123 and 50129 through 50134, provided the ward is a resident of the State.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11050, 14001 and 14016, Welfare and Institutions Code.

HISTORY
1. Amendment filed 12–15–77; effective thirtieth day thereafter (Register 77, No. 51).
2. Editorial correction filed 7–7–83 (Register 83, No. 29).

§ 50129. County of Responsibility—Persons Placed in State Hospitals by County Mental Health Agencies or Regional Centers for the Developmentally Disabled.

Notwithstanding the requirements of any other section in this article, the county of responsibility for determining Medi–Cal eligibility for persons placed in state hospitals after screening and referral by a county mental health agency or a regional center for the Developmentally Disabled shall be the county in which the state hospital is located, unless the person's eligibility is determined as part of a family or based on family income. In this case the county of responsibility shall be determined in accordance with Section 50123.

§ 50131. Placement in Long–Term Care After Release from a State Hospital.

(a) Notwithstanding the requirements of any other section in this article, the county of responsibility for determining Medi–Cal eligibility for persons released from a state hospital and placed in a long–term care facility shall be the county in which the long–term care facility is located, with the following exceptions:

(1) If the person has a public guardian or conservator in the original county of placement into the state hospital, then that county shall remain the county of responsibility, unless the county in which the long–term care facility is located agrees to accept guardianship or conservatorship of the person.

(2) If the person's eligibility is determined as part of a family or based upon family income, then the county of responsibility shall be determined in accordance with Section 50123.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11050, 14001 and 14016, Welfare and Institutions Code.

HISTORY
1. Amendment filed 3–7–80; effective thirtieth day thereafter (Register 80, No. 9).
2. Editorial correction filed 7–7–83 (Register 83, No. 29).

§ 50133. County of Responsibility—Deceased Persons.

The county of responsibility for determining Medi–Cal eligibility for persons who are deceased shall be the county which would have been the county of responsibility at the time of the person's death.

§ 50134. County of Responsibility—Persons Absent from the State.

The county of responsibility for determining Medi–Cal eligibility for persons who are absent from the State and retain California residence, in accordance with Article 7 of these regulations, shall be the county which would have been the county of responsibility prior to the person's absence from the State.

§ 50135. Application Made in County Other Than County of Responsibility.

(a) The county in which a person applies for Medi–Cal shall accept the application and a Statement of Facts from such person or family on behalf of the county of responsibility. If a Statement of Facts cannot be obtained, the county accepting the application shall provide information to the county of responsibility for the latter county to locate the applicant.

(b) The information described above shall be forwarded to the county of responsibility not later than 15 days from the date of application.

(c) The county in which a person applies may with the consent of the applicant or beneficiary, choose to become the county of responsibility for determining initial eligibility and initiating an intercounty transfer.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11050, 14001 and 14016, Welfare and Institutions Code.

HISTORY
1. Editorial correction adding NOTE filed 7–7–83 (Register 83, No. 29).

§ 50136. Intercounty Transfer Procedure.

(a) An intercounty transfer shall be initiated if persons or families receiving Medi–Cal–only become the responsibility of a new county. The transfer shall be accomplished in accordance with the following procedure, as modified by Section 50138.

(1) The county department initiating the transfer shall inform the beneficiary in writing of his/her responsibility to apply for a redetermination of eligibility in the new county of residence and, within 7 calendar days of the date the county department learns of the change in county of responsibility, send the following to the county department in the new county of responsibility:

(A) Two copies of the Notification of Transfer, Form ABCDM 215, with Section A completed indicating the date of discontinuance determined in accordance with Section 50137.

(B) One copy of the most recently completed of each of the following forms with the Notification of Transfer, Form ABCDM 215, or within one week after this form is sent:

1. Application for Public Social Services, CA 1.
2. Statement of Fact, MC 210, MC 250 or CA 2.
3. Share of Cost Determination—MN and MI Person, MC 176M.
4. Allocation/Special Deduction Worksheet, MC 176W, if any.
5. Property Worksheet, MC 176P, if any.
6. Rights of Persons Requesting Medi–Cal, MC 216, if any.
7. Medi–Cal Responsibilities Checklist, MC 217, if any.
8. Verification of disability, if any.
9. Notification of Action, Utilization of Property, Form MC 239U, if the person or family is within a six–month utilization period at the time of transfer.

(C) The amount, if any, of a remaining adjustment for decreases in income pursuant to Section 50653.3.

(D) Other information that the initiating county considers important in order for the new county of responsibility to determine eligibility.

(2) The initiating county, if the person or family becomes the responsibility of a third county during the transfer process, shall:

(A) Notify the former new county department that the transfer is cancelled.

(B) Request the former new county department to forward to the county department of the current new county of responsibility all information and documents supplied by the initiating county and any additional information secured by the former new county.

(C) Send to the current new county department two copies of the Notification of Transfer, Form ABCDM 215, with Section A completed indicating the date of discontinuance determined in accordance with Section 50137.

(3) The county department in the new county of responsibility shall:

(A) Perform a redetermination of eligibility if the conditions of Section 50136 (a)(i) are met.

(B) Return to the initiating county department one copy of the Notification of Transfer form, Form ABCDM 215, within 30 days of receipt of the form. Section B shall be completed, indicating acceptance or refusal of the transfer, and the effective date of eligibility, if eligibility is approved in the new county.

(C) Send a Notice of Action to the person or family, if their eligibility is approved. A Notice of Action must also be sent to the person or family if eligibility is discontinued for failure to apply for a redetermination or if the person or family is no longer eligible. Such action shall be effective as established in accordance with Section 50137.

(4) If the Notification of Transfer form has not been returned within 30 days, the initiating county shall contact the new county to assure that continuous Medi-Cal coverage will be provided to the extent that eligibility exists.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11053 and 14016, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (a)(1)(B) filed 12-15-77; effective thirtieth day thereafter (Register 77, No. 51).
2. Amendment filed 8-8-80; effective thirtieth day thereafter (Register 80, No. 32).
3. Editorial correction filed 7-7-83 (Register 83, No. 29).
4. Amendment filed 4-17-86; effective thirtieth day thereafter (Register 86, No. 16).
5. Change without regulatory effect of subsection (a)(1)(C) (Register 87, No. 11).

§ 50137. Intercounty Transfer—Effective Date of Discontinuance/Eligibility.

(a) In a change in county of responsibility, the effective date of discontinuance as determined by the initiating county department shall be the last day of the month in which the 30th day after notification to the new county of the change in county of responsibility occurs except that:

(1) If the initiating county department determines the person or family is no longer eligible, the last day of the month in which the determination of ineligibility is made, provided a 10-day notice is given or is waived. Otherwise, discontinuance is effective on the last day of the month in which the 10-day notice is given.

(2) If the person or family is receiving Medi-Cal under either the Four Month or Nine Month Continuing Eligibility categories, the last day of the final month in which four month or nine month continuing eligibility exists.

(b) If the county department in the new county of responsibility determined that a person or family is eligible for Medi-Cal, the effective date of eligibility shall be the first day of the month following the month in which the initiating county department discontinues eligibility.

(c) Counties involved in an intercounty transfer may, by mutual agreement, establish a different effective date of discontinuance, if the initiating county department can suppress card issuance for the following month.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; Section 133.5, Chapter 102, Statutes of 1981; and Section 14, Chapter 1447, Statutes of 1984. Reference: Sections 10740, 11053, 14005.8, 14005.9, 14016(a) and 14100.1, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (a)(2) filed 4-15-85 as an emergency; effective upon filing (Register 85, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8-13-85. For prior history, see Register 84, No. 24.
2. Certificate of Compliance as to 4-15-85 order transmitted to OAL 8-13-85 and filed 9-18-85 (Register 85, No. 38).

§ 50138. Intercounty Transfer—Blindness or Disability Determination Pending.

(a) In a change of county of responsibility for persons or families who have an application pending for either the SSI/SSP or MN programs on the basis of blindness or disability, the responsibility shall be transferred to the new county in accordance with the following:

(1) If the person or family is eligible for Medi-Cal at the time the county of responsibility changes, responsibility shall be transferred in accordance with Sections 50136 and 50137.

(2) The pending determination of blindness or disability shall be retained by the initiating county department until the blindness or disability determination is received. The initiating county department shall forward the blindness or disability determination, along with the documents specified in Section 50136 (a) (1) (B), within 14 calendar days of the date the determination was received.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11053, 14001 and 14016, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 7-7-83 (Register 83, No. 29).

Article 4. Beneficiary Application Process

§ 50141. Application Process—General.

The county department shall receive and act upon all applications, reapplications, requests for restoration and redeterminations without delay and in accordance with the provisions of this article.

HISTORY

1. Change without regulatory effect amending article 4 heading filed 9-19-2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 38).

§ 50142. Screening.

(a) County departments that have established a procedure for screening potential applicants prior to application shall:

(1) Determine the Medi-Cal program under which the person or family should be processed.

(2) Provide information regarding Medi-Cal eligibility requirements to all persons being screened.

(3) Inform each person being screened of that person's rights under the Medi-Cal program, even if it appears that the person is ineligible. Rights of Persons Requesting Medi-Cal, MC 216, shall be explained to, and signed by, the person being screened.

(A) The original shall be retained by the county department. If the person being screened does not apply for Medi-Cal, the form shall be retained for at least 90 days.

(B) A copy shall be given to the person being screened.

§ 50143. Persons Who May File an Application for Medi-Cal.

(a) Any person who wishes to receive Medi-Cal may file an application. If the applicant for any reason is unable to apply on his own behalf, or is deceased, any of the following persons may file the application for the applicant.

(1) The applicant's guardian or conservator or executor.

(2) A person who knows of the applicant's need to apply.

(3) A public agency representative.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11050, 14001, 14005.4, 14005.7, 14016.1 and 14016.2, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 7-7-83 (Register 83, No. 29).
2. Amendment of subsection (a) filed 7-9-87; operative 8-8-87 (Register 87, No. 30).

§ 50145. Medi-Cal Application for Persons Applying for a Cash Grant or In-Home Supportive Services.

(a) A person or family applying and approved for any public assistance program as specified in Section 50227 or In-Home Supportive Services shall not be required to submit a separate application for Medi-Cal. Medi-Cal eligibility is established automatically.

(b) A person or family specified in (a) may also apply for retroactive Medi-Cal in accordance with Section 50148.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 12305, 12305.5, 14005.1, 14019, 14050.1 and 14051.5, Welfare and Institutions Code.

HISTORY

1. Amendment filed 8-7-78; effective thirtieth day thereafter (Register 78, No. 32).

2. Amendment filed 7–31–81 as an emergency; effective upon filing (Register 81, No. 33). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–28–81.
3. Certificate of Compliance transmitted to OAL 11–6–81 and filed 1–27–82 (Register 82, No. 5).
4. Amendment filed 7–9–87; operative 8–8–87 (Register 87, No. 30).

§ 50146. Medi–Cal Application for Persons Applying for In–Home Supportive Services.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.1 and 12305, Welfare and Institutions Code.

HISTORY

1. Amendment filed 8–7–78; effective thirtieth day thereafter (Register 78, No. 32).
2. Repealer filed 7–9–87; operative 8–8–87 (Register 87, No. 30).

§ 50147. Application for Medi–Cal Only.

(a) A person or family applying for Medi–Cal only shall submit a completed application form to the county department.

(b) The county department shall, within 30 days of receipt of a referral from the Department pursuant to 50183.5, contact an ABD person in a long–term care facility and assist the ABD person with the completion of an application form for Medi–Cal–only.

(1) An application for Medi–Cal–only shall be completed when:

(A) The ABD person has been in long–term care for more than the month of admission and is expected to remain in the facility for at least 30 days.

(B) The ABD person has nonexempt monthly gross income in excess of $44.90.

(2) The county department shall advise the Department immediately that an inappropriate referral has been received when the conditions in (1) do not exist.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11004, and 14016, Welfare and Institutions Code.

HISTORY

1. Amendment filed 4–13–81; effective thirtieth day thereafter (Register 81, No. 16).

§ 50147.1. Child Applying for Medi–Cal.

(a) A child may apply for Medi–Cal without parental contact in order to receive minor consent services.

(b) A child applying on the basis of a need for minor consent services other than mental health care shall submit to the county welfare department a completed and signed form Request for Eligibility for Limited Services indicating the need for services related to one or more of these needs.

(c) A child applying for Medi–Cal solely on the basis of a need for mental health care shall submit to the county welfare department a statement from a mental health professional: licensed marriage, family and child counselor; licensed educational psychologist; credentialed school psychologist; clinical psychologist; or a licensed psychologist which states that the child needs mental health treatment or counseling and meets both of the following conditions:

(1) Is mature enough to participate intelligently in the mental health treatment or counseling on an outpatient basis.

(2) Is one of the following:

(A) In danger of causing serious physical or mental harm to self or others without mental health treatment or counseling.

(B) The alleged victim of incest or child abuse.

(d) The county department shall process the applications of children applying under (b) and (c) in accordance with the following:

(1) If a child refuses to complete or sign the form or provide a statement of need for mental health care the child's application shall be denied.

(2) If a child is not competent to complete or sign the form, the person completing the Statement of Facts in accordance with Section 50163(a)(2) and (3) may sign the form on the child's behalf.

(3) After submission of the completed and signed form or statement of need for mental health care, the county department shall:

(A) Deny the application if a child is under 12 years of age and applying for services related to drug abuse, alcohol abuse, venereal disease or a sexually transmitted disease or for mental health care.

(B) Issue POE labels under the child's existing Medi–Cal status if the child is currently included in a public assistance case or an MFBU which has no share of cost and is not enrolled in a PHP or PCCM plan. The child's separate application shall be denied.

(C) Deny the application if the child is currently eligible for Medi–Cal and enrolled in a PHP or PCCM plan and refer the child to the PHP or PCCM plan for care.

(D) Process the application and determine eligibility if the child is one of the following:

1. Currently included in an MFBU which has a share of cost.
2. Part of a family not currently receiving Medi–Cal.
3. Excluded from an MFBU.
4. An ineligible member of an MFBU.

(E) If the child is an unmarried minor parent, he/she shall be included in the MFBU with his/her child for minor consent services only.

(e) When a child is not living with the child's parents and county department determines that no person or agency accepts legal responsibility for the child, the county department shall process the child's application and determine his or her eligibility as an adult if the child appears to be competent.

(f) The parents of a child applying in accordance with (b) or (c) shall neither be contacted regarding the child's application nor informed that the application has occurred.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.1, 14005.4, 14005.7, 14008, 14008.5, 14010, 14011, 14017, 14018, and 14088.3, Welfare and Institutions Code; Sections 25.6, 25.9, 34.5, 34.7, 34.9 and 34.10, Civil Code.

HISTORY

1. New section filed 10–31–78 as an emergency, designated effective 11–1–78 (Register 78, No. 44).
2. Certificate of Compliance filed 2–6–79 (Register 79, No. 15).
3. New subsection (c) filed 4–9–79; effective thirtieth day thereafter (Register 79, No. 15).
4. Amendment filed 4–28–82; effective thirtieth day thereafter (Register 82, No. 18).
5. Editorial correction filed 7–7–83 (Register 83, No. 29).
6. Amendment of subsections (c) and (d) filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
7. Amendment refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
8. Request to readopt amendment on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3–6–91.
9. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
10. Amendment of subsections (c) and (d) filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 3–25–91 order transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 50148. Application for Retroactive Medi–Cal.

(a) A person or family applying for retroactive Medi–Cal shall:

(1) Submit a completed application form to the county department, if the application is for retroactive coverage only.

(2) Request retroactive coverage in one of the following ways if the request for retroactive Medi–Cal is made in conjunction with, or after, an application for public assistance or Medi–Cal:

(A) On the application form.

(B) On the Statement of Facts.

(C) By submitting a written request.

(b) An application for retroactive coverage pursuant to (a)(2) must be submitted within one year of the month for which retroactive coverage is requested.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11050, 14001, 14019 and 14019.6, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 7–7–83 (Register 83, No. 29).
2. New subsection (b) filed 7–9–87; operative 8–8–87 (Register 87, No. 30).

§ 50149. Application Form.

(a) An application for Public Social Services shall be used as the application form for all Medi–Cal applications.

(b) The original of the completed form shall be placed in the case file.

(c) A copy of the completed form shall be given to the applicant at the time of application.

(d) Only one person's signature shall be required on the application or any other forms necessary to complete the eligibility determination.

(e) A new application form shall not be required for:

(1) Requests for restoration of aid.

(2) Interprogram transfers.

(3) Interprogram status changes.

(4) Request to add a family member to the Medi–Cal case.

(5) Redeterminations.

(6) Infants meeting the criteria under the Continued Eligibility Program as described in Section 50262.3.

NOTE: Authority cited: Sections 10725, 14016.10 and 14124.5, Welfare and Institutions Code. Reference: Sections 11050, 11053 and 14001, Welfare and Institutions Code.

HISTORY

1. Editorial correction filed 7–7–83 (Register 83, No. 29).
2. New subsection (e)(6) and amendment of NOTE filed 4–27–94 as an emergency; operative 4–27–94 (Register 94, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–25–94 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–27–94 order transmitted to OAL 8–24–94 and filed 9–29–94 (Register 94, No. 39).

§ 50151. Date of the Application.

(a) The date of application for a person or family applying for Medi–Cal shall be the date the completed application form is received by the county department.

(b) The date of application for a person or family applying for Medi–Cal in a county other than the county of responsibility shall be the date the completed application form is received by the county department in which the application is being made.

§ 50153. Medi–Cal Application—Process for All Programs.

(a) An application for Medi–Cal under any program other than SSI/SSP shall be an application for Medi–Cal under all such programs for which the person or family may be eligible.

(b) When taking an application, the county department shall:

(1) Determine the program under which the person or family may be eligible.

(2) Process the application under the appropriate program. Applications by persons who appear to be eligible for SSI/SSP shall be processed in accordance with (3). Applications by persons who appear to be eligible for AFDC hall be processed in accordance with (4).

(3) Refer persons who may be eligible for SSI/SSP, and who do not refuse to apply for that program, to the Social Security Administration for a determination of SSI/SSP eligibility.

(A) The referral shall be documented in the case file.

(B) Pending the SSI/SSP determination, the county department shall determine eligibility under any other program for which the person may be eligible.

(4) Applicants who appear to be eligible for an AFDC cash grant shall be advised of their potential eligibility and the application shall be processed under the AFDC cash grant program if the applicant so desires. The fact that the applicant was advised of potential AFDC cash grant eligibility shall be documented in the case file.

(c) A person or family may choose to have their application processed under any program for which they are eligible even if such program is not the most advantageous.

§ 50155. Withdrawal of Application—Request for Discontinuance.

(a) An applicant or beneficiary may withdraw an application for or request discontinuance from Medi–Cal by any of the following methods:

(1) Completion of a Request for Withdrawal of Application or Discontinuance of Eligibility form.

(A) The original shall be placed in the case file.

(B) A copy shall be given to the applicant.

(2) Submission of a signed request for withdrawal or discontinuance. The request for withdrawal or discontinuance shall be placed in the case file.

(3) Failing to respond to a Notice of Action which requests that the beneficiary contact the county to indicate a desire to continue eligibility.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11050 and 14001, Welfare and Institutions Code.

HISTORY

1. Editorial correction filed 7–7–83 (Register 83, No. 29).

§ 50157. Face–to–Face Interview.

(a) A face–to–face interview with the applicant, or the person completing the Statement of Facts, is required only at the time of application, reapplication, restoration or as specified in (d). The interview shall be completed within 30 days of the date of application, reapplication or restoration.

(b) A face–to–face interview shall not be required at time of application, reapplication or restoration for persons who have a government representative, such as a public guardian, acting on their behalf.

(c) A face–to–face interview at restoration shall not be required, for beneficiaries who have been notified that eligibility will be discontinued, if the request for restoration is received before the effective date of discontinuance.

(d) A face–to–face interview shall be required at redetermination of eligibility for persons or families indicated in this paragraph. The interview shall be completed within the month in which redetermination is required. A face–to–face interview shall be completed once a year at time of redetermination for all MFBUs which contain at least one AFDC–MN or MI member, except for MFBUs consisting of any of the following:

(1) Persons who receive Medi–Cal through the Aid for Adoption of Children program.

(2) Persons who have a government representative, such as a public guardian, acting on their behalf.

(3) MI children who are not living with a parent or relative and for whom a public agency is assuming financial responsibility in whole or in part.

(e) The face–to–face interview shall be conducted by a representative of the county department unless, for good reason, a direct interview between the county department and the applicant or the person completing the Statement of Facts is not possible. In such a situation, the interview may be conducted by another public agency acting on behalf of the county department.

(f) The representative of the agency conducting the interview shall verbally advise the applicant, or the person completing the Statement of Facts, in detail of the:

(1) Eligibility requirements.

(2) Medi–Cal benefits available under the Medi–Cal program.

(3) Confidential nature of information received, including the fact that the parents will not be contacted, without the applicant's consent if the applicant is a child, requesting Medi–Cal for minor consent services in accordance with Section 50147.1.

(4) Exchange of income and eligibility information through IEVS, including the fact that tax information will be obtained and that IEVS information will be used to verify income and eligibility.

(5) Purposes, provisions and availability of social services, the Family Planning Program, Child Health Disability Prevention (CHDP) Program, Special Supplemental Food Program for Women, Infants and Children (WIC) and other public or private resources.

(A) If the applicant is a pregnant, breastfeeding or postpartum woman as defined in Title 42, United States Code, Section 1786(b), or a parent/guardian of a child under the age of five, the applicant shall be provided with a WIC brochure to inform them of the availability of benefits provided under WIC.

(B) An oral explanation of the Special Supplemental Food Program for WIC benefits shall be given to those individuals who are unable to read.

(C) Referrals shall be made to the WIC program for all such individuals as specified in (A).

(D) The representative of the agency conducting the interview shall document by a notation on the Statement of Facts that the requirements of the CHDP program, as specified in subsections (f)(5) and (k) and Section 50184(b), and of the Special Supplemental Food Program for Women, Infants and Children (WIC) program as specified in (f)(5) and Section 50184(c), have been met.

(6) Possibility of being included in a quality control sample.

(7) Availability of Medi-Cal prepaid health plans and PCCM plans in the area.

(8) Right to request a fair hearing.

(9) Responsibility to report to the county department and to any provider of health care services any existing contractual or other legal entitlement to other health care coverage; and, to fully utilize other health care coverage before using Medi-Cal benefits. The information to be reported shall include the name of the other health care coverage, policy and group numbers, and termination date, if available. Willful failure to comply with these requirements is a misdemeanor.

(10) Responsibility to report to the county department the availability of any option to obtain other health care coverage through, but not limited to, the beneficiary's employer, labor union, trust fund, spouse or parent and to provide information requested by the Department which is necessary to determine if it would be cost effective for the Department to pay the premium to obtain or continue other health care coverage.

(11) Responsibility to apply for, and/or retain any available other health care coverage when there is no premium cost to the beneficiary. Compliance with this requirement shall be a condition of coverage for Medi-Cal covered benefits to the party responsible for the acquisition or continuance of such health care coverage, and shall not interfere with Medi-Cal benefits provided to the remaining family unit.

(12) Assignment of Rights Requirements as follows:

(A) Assignment to the state by an applicant, beneficiary, caretaker relative, or individual applying on behalf of an applicant, of all rights to medical support and to payments for medical care from a third party is a condition of eligibility.

(B) Receipts of Medi-Cal benefits shall constitute an assignment by operation of law except as provided below. This means that receipt of Medi-Cal benefits shall constitute automatic assignment of these rights that the individual may assign on his/her behalf, or on behalf of any other family member for whom he/she has the legal authority to assign such rights, as required in Section 50185.

(C) The county shall advise the individual that he/she has the right to refuse to assign these rights on behalf of himself/herself or the child on whose behalf application is made.

(D) An applicant, beneficiary, parent, or caretaker relative who does not wish to assign his/her rights or the rights of a person for whom he/she can legally assign rights to medical support and payments shall be given the opportunity to withdraw his/her Medi-Cal application, as specified in Section 50155.

(E) Refusal of the individual to assign these rights shall result in his/her denial or discontinuance of Medi-Cal eligibility.

(13) Responsibility of the applicant, beneficiary, parent, caretaker relative, or individual applying on behalf of the applicant, to cooperate in:

(A) Identifying and locating the absent parent.

(B) Establishing paternity for a child born out of wedlock for whom Medi-Cal is requested.

(C) Obtaining medical support and payments.

(D) Identifying and providing information concerning any third party who is or may be liable for medical care and services.

Failure of the applicant, beneficiary, parent, caretaker relative, or individual acting on behalf of an applicant to comply with the above shall result in denial or discontinuance of his/her eligibility unless good cause exists for not cooperating, as specified in Section 50771.5. If the applicant/beneficiary is a pregnant woman, cooperation with Sections (A), (B), and (C) above is waived until the end of the 60-day postpartum period.

(14) Applicant's or beneficiary's responsibilities as specified in Sections 50185 and 50187 which include but are not limited to:

(A) Responsibility to report to the county department when Medi-Cal may be billed for health care services received by the beneficiary as a result of an accident or injury caused by some other person's action or failure to act.

(B) Responsibility to report any changes in circumstances which may affect eligibility or share of cost within 10 calendar days following the date the change occurred.

(C) Responsibility to furnish Social Security account numbers for all persons for whom Medi-Cal is requested.

(D) Responsibility to apply for Medicare, if eligible, and furnish the Health Insurance Claim Number.

(g) During the interview, the representative of the agency conducting the interview shall complete and explain the contents of the following forms if the forms were not completed during screening:

(1) Important Information for Persons Requesting Medi-Cal (MC 210 Coversheet (9/91))

(2) Statement of Facts (Medi-Cal (MC 210 (3/92))

(3) Child Support Questionnaire (CA 2.1 Q Support Questionnaire (3/93)) and the Child/Spousal and Medical Support Notice and Agreement (CA 2.1 Notice of Agreement (12/89));

(4) Child Support Enforcement Program Notice (CS 196 (12/92)); and

(h) The applicant shall sign and date the forms referenced in subsection (g).

(i) The original of the Important Information for Persons Requesting Medi-Cal (MC 210 Coversheet (9/91)), and a copy of the Child Support Questionnaire (CA 2.1 Q Support Questionnaire (3/93)), and the Child/Spousal and Medical Support Notice and Agreement (CA 2.1 Notice of Agreement (12/89)) shall be placed in the case file.

(j) A copy of each relevant form referenced in i shall be given to the persons being interviewed and the originals of the Child Support Questionnaire (CA 2.1 Q (3/93)) and the Child/Spousal and Medical Support Notice and Agreement (CA 2.1 Notice of Agreement (12/89)) shall be forwarded, within two working days, to the district attorney.

(k) An informational pamphlet on the CHDP program shall be given to the applicant, if there are persons under 21 years of age in the family,

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11004, 14000, 14001, 14005, 14005.4, 14008.6, 14010, 14011, 14012, 14023, 14088.3, 14100.2 and 14124.91, Welfare and Institutions Code; and Section 1902(a), Social Security Act, Title 42, United States Code, Section 1786(b); Title 42, United States Code, Sections 1396a(a)(11),(51),(52) and (53); Title 42, Code of Federal Regulations, Section 431.635; 42 CFR, Subpart M, 431.635; and 42 C.F.R. Sections 433.135, 433.136, 433.137, 433.138, 433.145, 433.146, 433.147, 433.148 and 435.604.

HISTORY

1. Amendment of subsection (c) filed 12-15-77; effective thirtieth day thereafter (Register 77, No. 51).
2. Amendment filed 9-1-78; effective thirtieth day thereafter (Register 78, No. 35).
3. Amendment of subsection (d)(3) filed 8-8-80; effective thirtieth day thereafter (Register 80, No. 32).
4. Amendment filed 1-8-81; effective thirtieth day thereafter (Register 81, No. 2).
5. Editorial correction filed 7-7-83 (Register 83, No. 29).
6. Amendment of subsection (f) filed 7-16-87; operative 7-16-87 pursuant to Government Code section 11346.2(d) (Register 87, No. 30).
7. Amendment of subsection (f) filed 6-28-89; operative 7-28-89 (Register 89, No. 26).
8. Amendment of subsection (f)(7) filed 3-9-90 as an emergency; operative 3-9-90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7-9-90.
9. Amendment refiled 7-9-90 as an emergency; operative 7-9-90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11-6-90.

10. Request to readopt amendment on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11-6-90 as an emergency; operative 11-6-90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3-6-91 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 11-6-90 order transmitted to OAL 2-22-91; disapproved by OAL on 3-25-91 (Register 91, No. 18).
12. Amendment of subsection (f) filed 3-25-91 as an emergency; operative 3-25-91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7-23-91 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 3-25-91 order transmitted to OAL 7-19-91 and filed 8-19-91 (Register 92, No. 1).
14. Amendment of section and NOTE filed 4-16-93 as an emergency; operative 4-16-93 (Register 93, No. 16). A Certificate of Compliance must be transmitted to OAL 8-16-93 or emergency language will be repealed by operation of law on the following day.
15. Certificate of Compliance as to 4-16-93 order including amendment of NOTE transmitted to OAL 8-13-93 and filed 9-23-93 (Register 93, No. 39).
16. Amendment of subsection (f)(5), new subsections (f)(5)(A)-(D), repealer of subsection (*l*) and amendment of NOTE filed 8-22-96; operative 9-21-96 (Register 96, No. 34).

§ 50159. Statement of Facts.

(a) Following completion of the application form, a Statement of Facts shall be completed, signed and filed with the county department.

(b) The Statement of Facts shall be used by the county department in the determination of the applicant's:

(1) Eligibility.

(2) Share of cost.

(3) Other health care coverage.

§ 50161. Statement of Facts Form.

(a) A Statement of Facts is not required in determining Medi-Cal eligibility for a child receiving aid under the Aid for Adoption of Children program.

(b) A public agency, applying on behalf of a child who may be eligible as an MI child who is not living with a parent or relative and for whom a public agency is assuming financial responsibility in whole or in part, shall complete the Application and Statement of Facts for Child in Foster Care Supported by Public Funds, MC 250.

(c) An applicant applying for Medi-Cal under any other program shall complete the Statement of Facts, form MC 210.

(d) A person applying for Medi-Cal and requesting retroactive coverage shall complete the appropriate Statement of Facts for the current month and the Supplement to Statement of Facts for Retroactive Coverage/Restoration, MC 213, for the retroactive months. If only retroactive coverage is requested, a Statement of Facts, MC 210, shall be completed for one retroactive month for which Medi-Cal is requested and the MC 213 shall be completed for each additional retroactive month.

(e) An applicant or beneficiary who has a form CA 2 which has been completed within the last 12 months and which is on file with the county department need not complete the MC 210, unless the county department determines that the applicant's or beneficiary's circumstances have changed to such a degree as to require a new Statement of Facts.

(f) Any person requesting a restoration of Medi-Cal-only eligibility shall complete the Supplement to Statement of Facts for Retroactive Coverage/Restoration, form MC 213, unless the county department determines that the applicant's circumstances have changed to such a degree as to require a new MC 210, or unless a new MC 210 is required as part of redetermination of eligibility under Section 50189.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14005.4, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (c) filed 12-15-77; effective thirtieth day thereafter (Register 77, No. 51).
2. Amendment filed 8-7-78; effective thirtieth day thereafter (Register 78, No. 32).
3. Amendment of subsection (b) filed 8-8-80; effective thirtieth day thereafter (Register 80, No. 32).

§ 50163. Persons Who May Complete and Sign the Statement of Facts.

(a) The applicant or spouse of the applicant shall complete and sign the Statement of Facts, unless:

(1) The applicant is a child. Generally, the person or agency having legal responsibility for the child shall complete and sign the Statement of Facts. The child shall complete and sign the Statement of Facts if the child is competent and either of the following applies:

(A) The child is not living with the child's parents or caretaker relatives and the county has determined that no person or agency accepts legal responsibility for the child.

(B) The child is applying on his or her own behalf in accordance with Section 50147.1 (a).

(2) The applicant has a conservator, guardian or executor. In this case, the conservator, guardian or executor shall complete and sign the Statement of Facts.

(3) The applicant is incompetent, in a comatose condition or suffering from amnesia, and there is no spouse, conservator, guardian or executor. In this case:

(A) The county department shall evaluate the applicant's circumstances and determine whether or not there is a need for protective services.

(B) The Statement of Facts may be completed and signed on the applicant's behalf by a relative, a person who has knowledge of the applicant's circumstances, or a representative of a public agency or the county department.

(C) The person completing the Statement of Facts on behalf of the applicant shall provide all available information required on the Statement of Facts regarding the applicant's circumstances.

(D) If a county department representative completes and signs the Statement of Facts, another representative of that county department shall:

1. Confirm, by personal contact, the applicant's inability to act on his own behalf.

2. Countersign and approve any recommendations for eligibility.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11054, 14000, 14001, 14005.1, 14005.4, 14005.7, 14008, 14008.5, 14010, 14011, 14017, 14018 and 14051.5, Welfare and Institutions Code; Sections 25.6, 34.5, 34.7, 34.9 and 34.10, Civil Code.

HISTORY

1. Amendment of subsection (a)(1) filed 10-31-78 as an emergency; designated effective 11-1-78 (Register 78, No. 44).
2. Certificate of Compliance filed 2-6-79 (Register 79, No. 6).
3. Amendment filed 5-30-79 as an emergency; designated effective 6-1-79 (Register 79, No. 22).
4. Certificate of Compliance filed 9-19-79 (Register 79, No. 38).
5. Amendment of subsection (a)(1)(A) filed 2-11-82; effective thirtieth day thereafter (Register 82, No. 7).
6. Editorial correction of NOTE filed 7-7-83 (Register 83, No. 29).

§ 50165. Filing the Statement of Facts.

(a) At the time the Statement of Facts is given or mailed to an applicant, the county department shall:

(1) Set a reasonable deadline for returning the Statement of Facts to the county department.

(2) Inform the applicant of the deadline.

(b) If the Statement of Facts is not returned personally or by mail by the deadline specified in (a), the county department shall:

(1) Attempt to contact the applicant or beneficiary to determine the reason for the delay.

(2) Extend the deadline for returning the Statement of Facts if a valid reason for the delay, such as incapacity, is found.

(3) Deny the application or discontinue eligibility if a valid reason for the delay cannot be established.

(c) A copy of the completed Statement of Facts shall be provided to the individual who signed it, at the request of that individual.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 10001, 10060, 11004, 11050, 11054, 14001, 14011 and 14012, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (a) filed 12–15–77; effective thirtieth day thereafter (Register 77, No. 51).
2. Editorial correction adding NOTE filed 7–7–83 (Register 83, No. 29).

§ 50166. Obtaining Information for the Completion of the Statement of Facts.

(a) The county department or the representative of a public agency completing the Statement of Facts in accordance with Section 50163(a)(3) shall:

(1) Perform a diligent search to obtain available information regarding the applicant's circumstances applicable to Medi–Cal eligibility determination.

(2) Complete the Statement of Facts based upon the findings of the diligent search.

[The next page is 327.]

(3) Establish disability in accordance with Section 50167(a)(1).

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11054, 14000, 14001, and 14011, Welfare and Institutions Code.

HISTORY

1. New section filed 5–30–79 as an emergency; designated effective 6–1–79 (Register 79, No. 22).

2. Certificate of Compliance filed 9–19–79 (Register 79, No. 38).

§ 50167. Verification—Prior to Approval.

(a) With regard to information on the Statement of Facts, the county department shall obtain verification of the following items in the manner specified below, prior to approval of eligibility:

(1) Blindness, as determined in accordance with Section 50219, and federal disability, as determined in accordance with Section 50223 (a)(1) or (b), shall be verified by any of the following methods:

(A) By determining that the person was eligible as an MN person on the basis of blindness or disability in December 1973, and that there has been continuing eligibility since that time.

(B) By obtaining verification that a prior determination of blindness or disability is still valid. Verification shall be documented by viewing any of the following or similar items and noting in the case record the date of the award letter or notification and the disability onset and reexamination dates:

1. A Social Security Administration Title II award letter indicating receipt of disability benefits provided the reexamination date has not passed or a reexamination date is not indicated and the applicant is still receiving those benefits.

2. A Social Security Administration notification that Title II disability benefits have been increased or decreased provided the applicant is still receiving those benefits.

3. A Railroad Retirement Board notification of a total and permanent disability award provided the applicant is still receiving those benefits.

4. A signed statement from the Social Security Administration that states that the person is eligible for Title II benefits on the basis of a disability.

5. Documentation of a prior determination of disability under the MN program, if the determination was performed within the last 12 months unless:

a. The reexamination date has passed.

b. The applicant indicates his/her physical or mental condition has improved.

6. Data on the SDX or a signed statement from the Social Security Administration indicating that a person was discontinued from SSI/SSP for reasons other than cessation of disability provided the procedures specified in (D) are followed within twelve months of the SSI/SSP discontinuance date.

(C) By obtaining a letter from a physician verifying any of the physical or mental impairments meeting the federal definition of presumptive disability or blindness contained in Title 20, Code of Federal Regulations, Section 416.934, provided the procedures specified in (D) are followed after eligibility is determined.

(D) By following procedures established by the California Department of Social Services, Disability Evaluation Division. All necessary information shall be submitted to that division not later than 10 days after the receipt of the Statement of Facts by the county, except in the event of a delay due to circumstances beyond the control of the county.

(2) Incapacity, as defined in Section 50211, shall be verified by viewing one of the following:

(A) A current Medical Report form or written statement signed by a physician, licensed or certified psychologist or authorized member of their staff which documents that incapacity exists and gives the expected duration of the condition.

(B) A current Certificate of Disability form.

(C) Documentation of current receipt of Title II or Railroad Retirement disability benefits.

(D) Documentation of current receipt of SSI/SSP benefits based on disability or blindness.

(E) Documentation of current receipt of State Disability Insurance (SDI) or Worker's Compensation.

(F) If a current Medical Report form or a written statement cannot be obtained without delay, and no other verification of incapacity exists, a verbal statement from one of the persons specified in (A) shall be accepted as verification for up to 60 days pending receipt of written verification.

(3) Alien status shall be verified in accordance with the alienage verification and documentation procedures described in Article 7.

(4) The fact that the parents and a public or private agency will not accept legal responsibility for a child shall be verified by documented verbal or written communication with the parents and agencies, if the child is applying alone on the basis that neither the parents nor an agency will accept legal responsibility.

(5) SGA disability, as determined in accordance with Section 50223 (a) (2), shall be verified by following procedures established by the Department of Social Services, Disability Evaluation Division. All necessary information shall be submitted to the Department of Social Services by the county not later than 10 days after the receipt of the Statement of Facts by the county, except in the event of a delay due to circumstances beyond the control of the county.

(6) Identity of all persons other than those listed in (D). Identity shall be verified by viewing one of the following:

(A) California driver's license.

(B) Identification card issued by the Department of Motor Vehicles.

(C) Any other document which appears to be valid and establishes identity.

(D) Persons who are:

1. In an institution and contact is made with the facility to verify presence in the institution.

2. Receiving Medi–Cal through the Aid for Adoption of Children program.

3. Children in a family, if identity of one parent has been verified

4. Children requesting Medi–Cal for minor consent services in accordance with Section 50147.1.

5. MI children who are not living with a parent or relative and for whom a public agency is assuming financial responsibility in whole or in part.

6. Not acting on their own behalf and a government representative, such as a public guardian, is acting for them.

7. The spouse of a person whose identity has been verified.

(7) The following income and resources:

(A) Unearned income, which shall be verified by viewing any of the following:

1. Data from the IEVS which confirms information on the Statement of Facts.

2. Checks or copies of checks. County departments shall not require copies of checks issued by the United States Government.

3. Award letters.

4. Signed statements from persons or organizations providing the income.

5. Check stubs.

6. Statements from checking, savings or trust fund accounts which indicate that the income is directly deposited for the applicant or beneficiary by the persons or organizations providing the income.

7. The statement of the person completing the Statement of Facts, for income received from the United States Government. This statement shall constitute verification pending receipt by the county department of verification from appropriate government agency, when the verification in 1 through 6 cannot be provided.

(B) Income in kind, which shall be verified by a written statement from the provider of the items of need. Verification shall be limited to those items which the applicant is claiming have a lower value than the values established in accordance with Section 50511 (b).

(C) Earned income, which shall be verified by viewing paycheck stubs. If paycheck stubs are not available, a signed statement from the employer verifying the amount and frequency of the payments shall be obtained. If an individual is self–employed, records kept by such individual for tax purposes shall be viewed.

1. Therapeutic Wages as defined in Section 50095.5 shall be verified by obtaining all of the following:

a. A statement from the individual's physician which provides that he/she has no financial interest in the LTC facility in which the individual resides and that the work has been prescribed as therapy for the individual.

b. A statement from the facility in which the individual resides verifying the individual's employment by that facility and that such employment does not displace any existing employees.

c. A statement(s) from the facility(ies) verifying that the individual has been an LTC resident for a continuous period commencing at least five years prior to September, 1984.

d. The provisions of this regulation also apply to eligibility determination or redeterminations made retroactively to October 1, 1984.

(D) Fluctuating income, which shall be verified by viewing check stubs or a copy of the checks that show the amount of income. If these are not available a signed statement from the person or organization making the payments verifying the amount and frequency of the payments shall be obtained.

(E) Child care costs, which shall be verified by viewing receipts and/or canceled checks.

(F) Cost of care for an incapacitated person while someone else is employed, which shall be verified by viewing receipts and/or canceled checks.

(G) Deductible expenses for maintenance or improvement of income–producing property, as defined in Section 50508, which shall be verified by viewing actual receipts for such services or a signed statement from the person providing the service or goods verifying the nature and cost of the service or goods.

(H) The market value of real property, other than the principal residence, which shall be verified by viewing any of the following:

1. A current incorporated tax statement from the county Tax Assessor's Office.

2. Records maintained by the County Tax Assessor.

3. A written statement from a qualified real estate appraiser which gives the appraisal value of the property, when the applicant chooses to meet the conditions of Section 50412(a)(3).

(I) Checking or savings account balances, which shall be verified by viewing either of the following:

1. A current account statement from the institutions holding the funds.

2. Signed correspondence from the institution holding the funds.

(J) The value of stocks, bonds and mutual funds, which shall be verified by both:

1. Viewing the certificate or a signed statement from the issuing institution stating a description of the investment, including the number of shares owned.

2. Taking one of the following actions:

a. Telephone contact with a recognized stock exchange broker to establish at the current selling price of the property.

b. Establishment of the current selling price of the property through listings in a current newspaper.

(K) U.S. Savings Bonds values, which shall be verified by viewing the bond and by contacting any bank or institution where such bonds may be liquidated.

(L) The value of deeds of trusts, mortgages and other promissory notes, which shall be verified by both:

1. Viewing documents which state a description of the item.

2. Taking one of the following actions:

a. Viewing documents from the lender which establish the principal amount remaining on the note.

b. Viewing an appraisal obtained from a party qualified to appraise mortgages and notes as described in Section 50441 (c)(2).

c. Making a telephone contact with a recognized broker who buys, sells or appraises such items.

(M) The value of nonexempt motor vehicles, boats, campers or trailers, which shall be verified by viewing the appropriate document as follows:

1. Vehicle registration.

2. Appraisal statements when obtained pursuant to Sections 50461 and 50463.

(N) The cash surrender value of nonexempt life insurance policies, which shall be verified by viewing either of the following:

1. The value tables included in the policy.

2. Signed correspondence from the carrier indicating the current value.

(O) The value of nonexempt jewelry, which shall be verified by reviewing the appraisal statements.

(P) The value of burial trusts or prepaid burial contracts, which shall be verified by viewing the actual trust or contract or by viewing signed correspondence from the trustor or contractor which details its value.

(Q) The value of nonexempt property held in trust, which shall be verified by viewing either of the following:

1. A document indicating the trust's current value, executed by the trustor or executor.

2. An appraisal of the property obtained by the applicant from an agent qualified to appraise such property.

(R) Encumbrances of record on any item of property subject to verification, which shall be verified by either of the following:

1. A payment book issued by the institution or person holding the encumbrance which indicates the current amount of the encumbrance.

2. Written correspondence stating the amount of the encumbrance obtained by the applicant from the institution or person holding the encumbrance.

(S) The value of oil leases or mineral rights which shall be verified by one of the following:

1. Written or telephone contact with a member of a recognized professional appraisal society which establishes the current market value of the lease or right.

2. Viewing records maintained by the county tax assessor where the lease or right is located.

3. Written or telephone contact with the company/organization developing the natural resource which establishes the current market value.

(T) Health care benefits available through employment, retirement or military service which shall be verified by viewing those insurance policies which specifically name the applicant, health benefit identification cards, or letters from health care benefit providers. Health care benefits available through work related injuries or settlements from prior injuries shall be verified by viewing letters from the Workmen's Compensation Board, employers, or insurance companies.

(U) Application for unconditionally available income as determined in accordance with Section 50186, which shall be verified by viewing:

1. A Veterans Benefit Referral form, referral for veterans benefits.

2. Application printouts for disability insurance benefits.

3. Application printouts for unemployment insurance benefits.

4. Application receipts for OASDI benefits.

5. Application receipts for any other unconditionally available income source.

(V) Employee retirement contributions and other employee benefit contributions which shall be verified by viewing a statement from the employer.

(8) Except for women applying for minor consent services under Section 50147.1, a woman whose eligibility or share of cost is based on pregnancy shall provide a letter of verification from either a physician or a person certified as a nurse practitioner, midwife or physician's assistant.

(9) Property as defined in Section 50425 (a)(7) is listed for sale with a licensed real estate broker at its fair market value and a bona fide at-

tempt is being made to sell such property. This shall be verified by viewing a listing contract and appraisal from a qualified real estate appraiser.

(10) California residency shall be verified in accordance with Sections 50320.1 and 50320.2.

(b) The provisions of this section apply to all items listed in (a) at:

(1) Initial application and reapplication.

(2) The time a change is reported or at redetermination for items not previously verified.

(3) Redetermination for items which the county determines could have appreciated in value since the last verification.

(c) The applicant or the county shall make a diligent search to obtain documentation necessary to verify items (a)(7)(A) through (a)(7)(V) and (a)(9) above. Such a search shall include at a minimum, one contact with the appropriate person/organization from which this documentation could be obtained. When the county determines that such documentation cannot be obtained either by the applicant or by county within the promptness requirements listed in Section 50177, the county shall:

(1) List and retain in the case record all actions taken to obtain documentation required for verification.

(2) Obtain from the applicant, and retain in the case record, an affidavit dated and signed by the applicant under penalty of perjury which lists a description and value of any item for which documentation for verification purposes was determined not available.

(3) Obtain a signed and dated affidavit from the applicant under penalty of perjury which lists the amounts of any earned or unearned income received and retain this document in the case record.

NOTE: Authority cited: Sections 10725, 10740, 14006.1 and 14124.5, Welfare and Institutions Code. Reference: Sections 12305.5, 14001, 14005.1, 14005.3, 14005.4, 14005.7, 14005.13, 14006, 14007.5, 14008, 14010, 14011, 14017, 14018, 14051.5, 14148 and 14148.5, Welfare and Institutions Code; Sections 25.6, 34.5, 34.7, 34.9 and 34.10, Civil Code; Section 66 of Chapter 722, Statutes of 1992; Title 20, Code of Federal Regulations, Section 416.934; and 42 Code of Federal Regulations, 435.948.

HISTORY

1. Amendment of subsection (a)(8) filed 6-27-89 as an emergency; operative 6-27-89 (Register 89, No. 26). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repeated on 10-25-89. For prior history, see Register 87, No. 30.
2. Certificate of Compliance transmitted to OAL 10-25-89 and filed 11-22-89 (Register 89, No. 48).
3. Amendment of subsection (a)(1) filed 4-17-89; operative 5-17-89 (Register 89, No. 48).
4. New subsection (a)(10) and amendment of NOTE filed 5-17-93 as an emergency with Secretary of State by the Department of Health Services; operative 5-17-93. Submitted to OAL for printing only pursuant to 1992 Senate Bill 485 (Register 93, No. 21).
5. Amendment of subsections (a)(1)(B)1.-2., (a)(1)(B)4.-5. and (a)(1)(C), repealer of subsections (a)(1)(C)1.-13., amendment of subsections (a)(1)(D) and (a)(2), and amendment of NOTE filed 11-20-96; operative 12-20-96 (Register 96, No. 47).

§ 50167.2. Verification of Income—IEVS Requirements.

(a) In administering the Medi-Cal program, the county department shall adhere to the requirements in Division 20.006, Manual of Policy and Procedures, Department of Social Services, governing:

(1) Submission of information to IEVS on applicants, beneficiaries and any other family member whose income and resources are considered in establishing eligibility and share of cost, for persons in long-term care status except as provided in (c).

(2) Use of matched IEVS information received from the Departments of Health Services and Social Services.

(3) Time requirements for completing case action based on IEVS information.

(4) Maintenance of records.

(5) Submission of reports.

(b) The county department shall review and compare the IEVS information against information contained in the case file and shall verify that IEVS information pertains to the applicant, beneficiary or other family member and is applicable to case circumstances in accordance with procedures established by the Department prior to taking case action based upon IEVS information alone.

(c) The county department shall submit information on persons in Long-Term Care status only at application and at the annual redetermination.

(d) In addition to the requirements of (a) the county department shall submit to the Department for submittal to the State Wage Information Collection Agency, the name and Social Security Number of the absent parent of any child in the MFBU to the extent such information is available in order to identify employers of the absent parent and any third party liability.

NOTE: Authority cited: Sections 10725, 10740 and 14124.5, Welfare and Institutions Code. Reference: 42 Code of Federal Regulations 433.138(c) and (d), and 435.940-435.965.

HISTORY

1. New section filed 7-16-87; operative 7-16-87 pursuant to Government Code Section 11346.2(d) (Register 87, No. 30).

§ 50167.5. Verification of Unearned Income Information from Internal Revenue Service (IRS) or Franchise Tax Board (FTB)—IEVS Requirements.

(a) The county department shall not deny or terminate benefits to an applicant or beneficiary or increase the share of cost based on unearned income information from IRS or FTB until it has:

(1) Verified the amount of the income and the value of the property involved.

(2) Established whether the income or property was available to the individual.

(3) Determined the period or periods when the individual actually had the income or property.

(b) The county department shall verify the IRS or FTB information by either:

(1) Contacting the individual by a letter, written in a neutral, nonaccusatory manner, which advises of the:

(A) Information received from IEVS.

(B) Potential impact on eligibility or share of cost.

(C) Requirement to respond within 10 days.

(D) Consequences of failure to respond to the inquiry, as specified in Section 50175.

(2) Referring the case to the Department for investigation in accordance with procedures established by the Department.

NOTE: Authority cited: Sections 10725, 10740 and 14124.5, Welfare and Institutions Code. Reference: Sections 11004, 11025, 14001, 14011 and 14014, Welfare and Institutions Code; and 42 Code of Federal Regulations 435.955.

HISTORY

1. New section filed 7-16-87; operative 7-16-87 pursuant to Government Code Section 11346.2(d) (Register 87, No. 30).

§ 50168. Verification—Within 60 Days.

(a) With regard to information on the Statement of Facts, the county department shall obtain verification of the following items in the manner specified below, within 60 days of the date of initial application, but not necessarily prior to approval of eligibility:

(1) Social Security Numbers (SSNs) shall be submitted through the IEVS to the Social Security Administration for verification in accordance with procedures established by the Department.

(A) SSN(s) shall be confirmed by viewing Social Security cards, Social Security Administration form series OA-702. Any one of the following shall be acceptable if the Social Security card is not available:

1. An award letter, Medicare card or a check from the Social Security Administration showing the applicant's name and SSN with letters A, HA, J, T or M following the SSN.

2. Other documentation from the Social Security Administration upon approval by the Department.

(B) Application for an SSN or evidence of an SSN shall be confirmed by viewing Social Security Administration district office notification that application for an SSN or evidence of an SSN has been made.

(b) Medicare eligibility shall be verified by viewing a Health Insurance Card, form SSA–1966, an award letter showing the individual's Health Insurance Claim number (HIC), an Explanation of Medicare Benefits (EOMB) issued by the Medicare fiscal intermediary, or a bill for Premium Part A or Part B, form SSA 1545 or 1545A.

(c) If a person or family receives a Medi–Cal card prior to verification of an HIC number, SSN, application for an SSN or evidence of an SSN, and that verification is not completed within the time limit for reasons within the beneficiary's control:

(1) Eligibility no longer exists and the person shall be discontinued. In family situations only the person or persons whose number is not verified shall be discontinued.

(2) Eligibility shall not be reapproved until the required evidence is submitted.

NOTE: Authority cited: Sections 10725, 10740 and 14124.5, Welfare and Institutions Code; and Section 57, Chapter 328, Statutes of 1982. Reference: Sections 11004, 14001 and 14011, Welfare and Institutions Code; and 42 Code of Federal Regulations 435.910(g).

HISTORY

1. Amendment of subsections (a) and (b) filed 12–15–77; effective thirtieth day thereafter (Register 77, No. 51).
2. Amendment of subsections (a) and (c) and new subsection (d) filed 4–9–80; effective thirtieth day thereafter (Register 80, No. 15).
3. Amendment filed 1–8–81; effective thirtieth day thereafter (Register 81, No. 2).
4. Amendment filed8–18–82 as an emergency; effective upon filing (Register 82, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12–16–82.
5. Certificate of Compliance transmitted to OAL 12–14–82 and filed 1–21–83 (Register 83, No. 4).
6. Editorial correction of subsection (a)(1)(C) filed 7–7–83 (Register 83, No. 29).
7. Amendment filed 7–16–87; operative 7–16–87 pursuant to Government Code Section 11346.2(d) (Register 87, No. 30).

§ 50169. Additional Verification Requirements.

(a) The county department shall not require verification of information, other than the verification specified in these regulations, unless the county department considers the verification necessary to ensure a correct eligibility determination in the specific case.

(b) The need for in–home supportive services as determined under the IHSS program pursuant to the standards and procedures established for that program, DSS Manual of Policies and Procedures, division 30, sections 30–700 through 30–775, shall be verified prior to the application of the deduction specified in section 50551.6. Such determination and verification shall be limited to the type and amount of services needed. The payment for IHSS services shall be verified by viewing cancelled checks, or receipts signed by the provider of service.

(c) The county department shall document in the case file the type of verification obtained when verification is required under (a) or (b) or under sections 50167 and 50168.

(d) The following items shall be verified at each redetermination, restoration or reapplication.

(1) Incapacity.

(2) Legal responsibility for a child applying alone.

(3) Refusal of the parent to apply for an 18 to 21 year old child.

(4) Income, except income received from the United States government which has previously been verified in accordance with the provisions of sections 50167(a)(7)(A)1. through 5. or for which verification has been obtained from the appropriate government agency.

(5) Status and value of nonexempt property.

(6) The continuing need for IHSS services.

(7) Immigration status; provided, however, that the county department shall not require or request an applicant for or a beneficiary of restricted Medi–cal benefits to disclose their citizenship or immigration status, birthplace, country of citizenship, alien registration number and/or alien admission number, date of first entry into the United States, or name upon first entry into the United States.

(e) County departments shall verify the immigration status of all alien applicants for full Medi–Cal benefits and of persons applying for restricted Medi–Cal benefits who indicate they are amnesty aliens.

(f) The following items shall be verified whenever there is a change:

(1) Blindness.

(2) Disability.

(3) Immigration status; provided, however, that the county department shall not require or request an applicant for or a beneficiary of restricted Medi–cal benefits to disclose their citizenship or immigration status, birthplace, country of citizenship, alien registration number and/or alien admission number, date of first entry into the United States, or name upon first entry into the United States.

(4) SSN; provided, however, that the county department shall not require or request an applicant for or a beneficiary of restricted Medi–cal benefits to disclose whether they have a Social Security Number or what that number is.

(5) HIC number.

(6) A change in residency shall be verified whenever one of the following conditions exists:

(A) The applicant or beneficiary is absent from the state for less than 60 days and claims to be a resident of California, and the county has evidence to the contrary pursuant to Section 50321(a).

(B) The applicant or beneficiary is absent from the state for more than 60 days and claims to meet the conditions of Section 50323 for maintaining California residency.

(g) The following procedures shall apply, for persons who were determined eligible prior to the effective date of this subsection and who have not submitted an SSN, at the time of the next redetermination, restoration or reapplication:

(1) Section 50168(a)(1) shall apply when a face–to–face interview is required.

(2) Persons for whom a face–to–face interview is not required shall submit an SSN, or evidence of application for an SSN, within 60 days.

(h) Certification for Medi–Cal shall not be delayed or discontinued pending receipt of verification from a person who is currently eligible unless the beneficiary refuses to cooperate.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; Section 2, Chapter 364, Statutes of 1984; and Section 9, Chapter 1441, Statutes of 1988. Reference: Sections 14005.14, 14007.5 and 14011, Welfare and Institutions Code; and the *Crespin v. Kizer* court order (Alameda County Superior Court, December 16, 1992).

HISTORY

1. Amendment of subsections (d) and (e), and relettering of subsections (e), (f) and (g) filed 11–14–89 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 11–14–89 (Register 89, No. 48). A Certificate

of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3–14–90. For prior history, see Register 85, No. 43.

2. Amendment of subsections (d) and (e), and relettering of subsections (e), (f) and (g) refiled 3–8–90 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 3–13–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–11–90.
3. Certificate of Compliance as to 3–8–90 order transmitted to OAL 7–05–90 and disapproved 8–6–90 (Register 90, No. 42).
4. Amendment filed 8–23–90 as an emergency pursuant to section 9 of chapter 441 of the Statutes of 1988; operative 8–23–90 (Register 90, No. 42). A Certificate of Compliance must be transmitted to OAL by 12–21–90 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–23–90 order transmitted to OAL 11–20–90 and filed 12–17–90 (Register 91, No. 5).
6. New subsections (f)(6)–(f)(6)(B) and amendment of subsections (d)(7), (f)(3), (f)(4) and NOTE filed 5–17–93 as an emergency with Secretary of State by the Department of Health Services; operative 5–17–93. Submitted to OAL for printing only pursuant to 1992 Senate Bill 485 (Register 93, No. 21).

§ 50171. Clarification of Statement of Facts.

(a) All information provided on the Statement of Facts other than that verified in accordance with Sections 50167, 50168 and 50169 shall be accepted as a basis for determination of eligibility and share of cost, unless the Statement of Facts is unclear or inconsistent.

(b) If additional clarification is needed, the county department shall inform the person who signed the Statement of Facts of the information needed and the reason for the request. Such persons shall be responsible for securing the additional information.

(c) If the person who signed the Statement of Facts has difficulty in securing the necessary information, the county department shall, with the person's written consent, obtain the information. The Applicant Authorization for Release of Information form shall identify persons to be contacted and the specific information to be requested.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11004, 11050, 14001 and 14011, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (b) and new subsection (c) filed 12–15–77; effective thirtieth day thereafter (Register 77, No. 51).
2. Editorial correction of subsection (c) filed 7–7–83 (Register 83, No. 29).

§ 50172. Verification by Signature.

(a) The signature on the Statement of Facts shall be accepted as verification of the facts if both of the following conditions are met, except as specified in (c):

(1) The information required for establishing eligibility under these regulations is not available.

(2) The county department determines that the information provided on the Statement of Facts is sufficient to determine eligibility. If the information on the Statement of Facts is insufficient, the county department shall accept a signed statement, from the person completing the Statement of Facts, providing the necessary supplemental information.

(b) The county department shall state on the Statement of Facts that this is the only method of verification available, if this method of verification is used.

(c) The signature on the Statement of Facts shall not be accepted as verification of a person's SSN, application for an SSN or for evidence of an SSN.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14011, Welfare and Institutions Code.

HISTORY

1. New section filed 12–15–77; effective thirtieth day thereafter (Register 77, No. 51).
2. Amendment of subsection (a) and new subsection (c) filed 4–9–80; effective thirtieth day thereafter (Register 80, No. 15).

§ 50173. Eligibility Determination.

(a) The county department shall determine the person's or family's eligibility and share of cost after the applicant for Medi–Cal has applied, completed the Statement of Facts, and provided all essential information. The eligibility and share of cost determination shall be completed in the following manner:

(1) Those persons whose eligibility is being determined as Other PA recipients shall have their eligibility determined in accordance with the regulations and procedures governing the program to which they are linked and any other requirements applicable to their aid category, as specified in sections 50237 through 50247.

(2) Those persons whose eligibility is being determined as MN or MI shall have their eligibility and share of cost determined in accordance with articles 4 through 13 (commencing with section 50141).

(b) A determination based on the results of a county search for information under section 50166 shall be completed in the same manner as any other determination.

(1) Only the income and resources discovered through the search shall be considered available.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 9, Chapter 1441, Statutes of 1988. Reference: Sections 11054, 14000, 14001, 14007.5 and 14011, Welfare and Institutions Code.

HISTORY

1. New subsection (b) filed 5–30–79 as an emergency; designated effective 6–1–79 (Register 79, No. 22).
2. Certificate of Compliance filed 9–19–79 (Register 79, No. 38).
3. Amendment of subsection (b) filed 11–14–89 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 11–14–89 (Register 89, No. 48). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3–14–90.
4. Amendment of subsection (b) refiled 3–8–90 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 3–13–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–11–90.
5. Certificate of Compliance as to 3–8–90 order transmitted to OAL 7–5–90 and disapproved 8–6–90 (Register 90, No. 42).
6. Amendment of subsection (b) filed 8–23–90 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 8–23–90 (Register 90, No. 42). A Certificate of Compliance must be transmitted to OAL by 12–21–90 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 8–23–90 order transmitted to OAL 11–20–90 and filed 12–17–90 (Register 91, No. 5).

§ 50175. Denial or Discontinuance Due to Lack of Information, Noncooperation or Loss of Contact.

(a) The application shall be denied or eligibility shall be discontinued under any of the following circumstances:

(1) There is insufficient information available to make an eligibility determination, after the county department has made a reasonable effort to obtain the necessary information.

(2) The applicant or person completing the Statement of Facts fails, without good cause, to provide necessary verification or to cooperate with the county department in resolving incomplete, inconsistent or unclear information on the Statement of Facts.

(3) The beneficiary fails, without good cause, to return a status report required under Section 50191 (a) or (b).

(4) The applicant or beneficiary fails, without good cause, to participate in the face–to–face interview in accordance with Section 50157.

(5) The applicant or beneficiary fails, without good cause, to respond within 10 days to a letter from the county department identifying information received from the IEVS and requesting further information.

(6) The county department, after reasonable attempts to contact the applicant or beneficiary, determines that there is loss of contact.

(7) The applicant or beneficiary;

(A) Refuses to assign to the state all rights to medical support and payments as specified in Section 50185(a)(11).

(B) Fails to cooperate with the state, county department, and the district attorney's office, without good cause, as specified in Section 50771.5 in:

1. Providing information to establish paternity for a child under eighteen years of age born out of wedlock for whom Medi–Cal is requested;
2. Obtaining medical support and payments; and

3. Identifying and providing information to assist the state, county, or district attorney in pursuing any third party who is or may be liable to pay for medical care, services, or support.

In the case of a refusal to assign rights or to cooperate in (B) above, the parent or caretaker relative will be given the opportunity to withdraw his/her application. Refusal to withdraw the application shall result in his/her ineligibility as specified in Section 50379.

(b) A person or family whose eligibility is denied or discontinued for any of the reasons specified in (a) may:

(1) Reapply at any time, including the original month of application.

(2) Have the denial or discontinuance rescinded by providing evidence that the person or family had good cause for not meeting the conditions specified by the county department.

(c) For purposes of this section good cause includes, but is not limited to:

(1) Failure of the county to provide the beneficiary with the required status report form or with the information that failure to complete and return the form may result in discontinuance.

(2) Failure of the postal system to deliver the required status report forms in a timely manner.

(3) Physical or mental illness or incapacity of the beneficiary and the authorized representative which precludes their completion or return of the completed status report form in a timely manner, or which precludes their participation in the face–to–face interview.

(4) A level of literacy of the beneficiary and the authorized representative which, in conjunction with other social or language barriers, precludes the beneficiary and the authorized representative from completing the status report.

(5) Failure of the county to process properly the submitted Statement of Facts or status report form.

(6) Unavailability of transportation to the county department for the face–to–face interview.

(7) A determination by the county department that the applicant or beneficiary (1) failed to cooperate in obtaining medical support and payments for himself/herself and for any other individual for whom he/she is applying; in identifying and providing information to assist the state, county, and/or district attorney in pursuing any third party who is or may be liable to pay for medical care, services, and support; and in establishing paternity, but (2) met the good cause criteria specified in Section 50771.5.

NOTE: Authority cited: Sections 10725, 10740 and 14124.5, Welfare and Institutions Code. Reference: Sections 11004, 11050, 14001, 14008.6, 14011, 14012, 14014 and 14016, Welfare and Institutions Code; and 42 Code of Federal Regulations 435.955(c)(2); and 42 C.F.R. Sections 433.135, 433.136, 433.137, 433.138, 433.145, 433.146, 433.147, 433.148 and 435.604.

HISTORY

1. Amendment of subsection (b) filed 12–15–77; effective thirtieth day thereafter (Register 77, No. 51).
2. Amendment filed 9–1–78; effective thirtieth day thereafter (Register 78, No. 35).
3. Editorial correction of NOTE filed 7–7–83 (Register 83, No. 29).
4. Amendment of subsection (a) filed 7–16–87; operative 7–16–87 pursuant to Government Code Section 11346.2(d) (Register 87, No. 30).
5. New subsections (a)(7)–(a)(7)(B)3. and (c)(7), and amendment of subsections (a), (c)(5) and NOTE filed 4–16–93 as an emergency; operative 4–16–93 (Register 93, No. 16). A Certificate of Compliance must be transmitted to OAL 8–16–93 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 4–16–93 order including amendment of NOTE transmitted to OAL 8–13–93 and filed 9–23–93 (Register 93, No. 39).

§ 50176. Discontinuance Due to Death.

Eligibility, shall be discontinued at the end of the month in which a person dies.

§ 50177. Promptness Requirement.

(a) The county department shall complete the determination of eligibility and share of cost as quickly as possible but not later than any of the following:

(1) Forty–five days following the date the application, reapplication or request for restoration is filed.

(2) Ninety days following the date the application, reapplication or request for restoration is filed when eligibility depends on establishing disability or blindness.

(b) The 45– and 90–day periods may be extended for any of the following reasons:

(1) The applicant, the applicant's guardian, or other person acting on the applicant's behalf, has for good cause, been unable to return the completed Statement of Facts, Supplement to Statement of Facts for Retroactive Coverage/Restoration, or necessary verification in time for the county department to meet the promptness requirement.

(2) There has been a delay in the receipt of reports and information necessary to determine eligibility and the delay is beyond the control of either the applicant or the county department.

(c) The determination of eligibility shall be considered complete on the date the Notice of Action is mailed to the applicant.

NOTE: Authority cited: Sections 10725, 14124.5 and 14154.2(b), Welfare and Institutions Code. Reference: Sections 11052, 11055, 14001, 14011, 14016, and 14154.2(b) Welfare and Institutions Code; and 42 Code of Federal Regulations 435.911.

HISTORY

1. Amendment of subsection (b)(1) filed 12–15–77; effective thirtieth day thereafter (Register 77, No. 51).
2. Amendment filed 8–7–78; effective thirtieth day thereafter (Register 78, No. 32).
3. Amendment of subsection (b) filed 3–7–80 as an emergency; effective upon filing (Register 80, No. 9). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7–6–80.
4. Certificate of Compliance filed 6–6–80 (Register 80, No. 23).
5. Editorial correction of NOTE filed 7–7–83 (Register 83, No. 29).
6. Change without regulatory effect filed 1–9–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 8).

§ 50179. Notice of Action—Medi–Cal–Only Determinations or Redeterminations.

(a) County departments shall notify beneficiaries in writing of their Medi–Cal–only eligibility or ineligibility, and of any changes made in their eligibility status or share of cost. This notification shall be called the "Notice of Action."

(b) The Notice of Action shall be on a form prescribed by the Department and shall include the name and telephone number of the eligibility worker who completed the eligibility determination, and the date the form was completed. A copy of the Notice of Action shall be placed in the case file.

(c) The Notice of Action shall include the following:

(1) The approval, denial or discontinuance of eligibility, the recision of a denial or discontinuance, or the change in the share of cost and the effective date of the action.

(2) The amount of the share of cost, if any, and the amount of the net nonexempt income used to determine the share of cost.

(3) The reason an action is being taken and the law or regulation that requires the action, if the action is a denial, discontinuance or increase in share of cost.

(4) The right to request a State hearing if dissatisfied with:

(A) Any action or inaction by the county department that affects the applicant's or beneficiary's Medi–Cal eligibility or share of cost, except as limited in Section 50951(a).

(B) Any action taken by, or on behalf of, the Department that affects the applicant's or beneficiary's Medi–Cal benefits.

(5) The procedures for requesting a State hearing and the time limits within which a state hearing must be requested.

(6) The circumstances under which aid will be continued if a hearing is requested.

(7) A statement, when appropriate, regarding the information or action necessary to reestablish eligibility or determine a correct share of cost.

(d) The Notice of Action shall be mailed for:

(1) Adverse actions, at least 10 calendar days prior to the first of the month in which the action becomes effective, excluding the date of mailing.

(2) Discontinuances or increases in the share of cost which are not adverse actions, in sufficient time to reach the beneficiary by the effective date of the action.

(3) All other instances, no later than the date the county department takes the action.

(e) Duplicate Notices of Action shall be mailed to the administrator of the long-term care facility in which the applicant or beneficiary resides, if the applicant or beneficiary or person acting on their behalf has made such a request.

(f) Conditional notices, which advise applicants or beneficiaries that eligibility will be denied or discontinued unless specified actions are taken by the applicants or beneficiaries, shall not be considered to meet the Notice of Action requirements of (a).

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 10950, 10951, 11002, 11004, 11052, 11055, 14000, 14005, 14016, 14016.2, 14023, 14023.7 and 14124.90 Welfare and Institutions Code.

HISTORY

1. Amendments of subsections (a) and (c) filed 6-28-89; operative 7-28-89 (Register 89, No. 26). For prior history, see Register 81, No. 21.

2. Amendment of subsection (c)(1), repealer of subsections (c)(4)-(c)(7), and subsection renumbering filed 9-10-97; operative 10-10-97 (Register 97, No. 37).

§ 50179.5. Notice of Action—County Cash Assistance Determinations or Redeterminations Which Affect County Cash-Based Medi-Cal Eligibility.

(a) Persons who are granted, denied or discontinued from county cash-based programs shall be notified by the county department, in writing, of their eligibility or ineligibility for county cash-based Medi-Cal. Additionally, persons who are discontinued shall be notified of their continued Medi-Cal eligibility status in accordance with (c).

(b) The form of notification shall be one of the following:

(1) The appropriate Notice of Action prescribed by the Department of Social Services, if the notification regarding Medi-Cal eligibility does not affect the adequacy of timeliness of the cash assistance or IHSS notice.

(2) A Medi-Cal Notice of Action, if the notification regarding Medi-Cal eligibility would affect the adequacy of timeliness of the cash assistance or IHSS notice.

(c) A Notice of Action of discontinuance of county cash-based Medi-Cal shall include notice that one of the following actions has been taken:

(1) A referral for determination of Medi-Cal eligibility under another program is being made and notification of that determination will follow.

(2) A Medi-Cal-only determination has been made and the specific results of that determination.

(3) County cash-based Medi-Cal is being discontinued for one of the reasons stated in Section 50183 and a determination of Medi-Cal-only eligibility will require a separate application.

(4) A cash grant or IHSS is being discontinued due to failure of the recipient to submit data on current status, via Monthly AFDC Eligibility and Income Report form or another approved method. An automatic reevaluation of Medi-Cal eligibility under any program will be done only if the data is provided by the effective date of the notice.

(5) Additional information is required to permit completion of a Medi-Cal-only determination. The information required may include the person's wishes concerning continued Medi-Cal eligibility. The county department may require that the person provide the information by a specific date.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 11004, Welfare and Institutions Code.

HISTORY

1. New section filed 3-5-81; effective thirtieth day thereafter (Register 81, No. 10).

2. Editorial correction of subsection (c)(4) filed 7-7-83 (Register 83, No. 29).

§ 50179.7. Notice of Action—Medi-Cal Eligibility of SSI/SSP Recipients.

(a) The Department of Health Services shall notify persons determined to be eligible for SSI/SSP by the Social Security Administration that they are also eligible for Medi-Cal.

(b) The Department of Health Services shall notify persons whose Medi-Cal eligibility has been discontinued by the Department pursuant to Section 50183.5 that their public assistance Medi-Cal eligibility has been discontinued and that the county department will contact them to assist them with the completion of a Medi-Cal-only application.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11004 and 14016, Welfare and Institutions Code.

HISTORY

1. New section filed 4-13-81; effective thirtieth day thereafter (Register 81, No. 16).

§ 50180. Action Prior to Denial of Application.

Persons or families denied Medi-Cal eligibility under any program other than SSI/SSP shall have their circumstances evaluated by the county department prior to denial. If it appears that eligibility would exist under any program other than SSI/SSP, the application shall be processed under that program. The date of application shall be the date of the original application.

§ 50181. Action Following Denial of an SSI/SSP Application.

(a) Persons denied SSI/SSP eligibility, who then apply for Medi-Cal at the county department, shall have their application processed under the appropriate program. The date of application shall be:

(1) The date of the original application for SSI/SSP for those persons who apply at the county department within 30 days of receipt of a written notice of denial of SSI/SSP benefits.

(2) The date the person's completed application form is received by the county department for those persons who do not apply at the county department within the 30-day period specified in (1).

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11057, 14001, 14005.4 and 14005.7, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 7-7-83 (Register 83, No. 29).

§ 50182. Corrective Action on Denied Applications.

(a) A denial of an application shall be rescinded in either of the following situations:

(1) A fair hearing decision orders such action.

(2) The county department determines that the denial was in error.

(b) Medi-Cal eligibility that results from corrective action taken on a denied application shall be approved based on the date of the application that was denied.

§ 50183. Transfer Between Programs.

(a) A person or family who has been receiving Medi-Cal under any program other than SSI/SSP and whose eligibility is discontinued shall be evaluated by the county department to determine if Medi-Cal eligibility exists under any other program. If it appears that eligibility would exist for:

(1) AFDC regulations pertaining to the appropriate AFDC program shall be followed in transferring the case and establishing eligibility.

(2) SSI/SSP, the person shall be referred to the Social Security Administration. This referral shall be documented in the case file. Pending the SSI/SSP determination, the county department shall determine eligibility under any other program for which the person may be eligible.

(3) Only Medi-Cal-only the county department shall initiate an intraprogram status change or interprogram transfer to the appropriate aid category and shall determine eligibility under that aid category. A new application form is not required.

(b) The county shall not be required to evaluate Medi-Cal eligibility under another program when a beneficiary has:

(1) Been discontinued due to any of the following:

(A) A move out of state.

(B) A move with loss of contact.

(C) Death.

(2) Established Medi–Cal eligibility simultaneously in two or more different counties or under two or more different programs or identities, and eligibility was discontinued in all but one county or under all but one program or identity.

(3) Been discontinued from the program due to noncooperation in supplying information needed to meet cash grant or IHSS eligibility requirements, and those same requirements exist for all Medi–Cal–only programs for which the person may be eligible.

(c) Persons whose SSI/SSP eligibility has been discontinued may apply for Medi–Cal at the county department.

(1) A new application shall be completed, unless the family of the person discontinued from SSI/SSP is currently receiving Medi–Cal. In this case, the request for aid shall then be treated as a request to add a family member to the Medi–Cal case.

(2) The date of the application shall be the date the completed application form is received by the county department.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005 and 14016, Welfare and Institutions Code.

HISTORY

1. Amendment of subsections (a)(1) and (b)(1) filed 12–15–77; effective thirtieth day thereafter (Register 77, No. 51).
2. Amendment of subsection (a)(1) filed 8–7–78; effective thirtieth day thereafter (Register 78, No. 32).
3. Amendment filed 3–5–81; effective thirtieth day thereafter (Register 81, No. 10).
4. Editorial correction of subsection (a)(3) filed 7–7–83 (Register 83, No. 29).

§ 50183.5. Action Following Medi–Cal Discontinuance by the Department.

(a) The Department shall inform the county department of any ABD person whose Medi–Cal eligibility as an SSI/SSP PA recipient has been discontinued because the conditions in (1)(A) and (B) exist.

(1) The county department shall contact the person and assist the person with the completion of an application for Medi–Cal–only pursuant to Section 50147 when the following conditions exist.

(A) The person has been in long–term care for more than the month of admission and is expected to remain in the facility for at least 30 days.

(B) The person has nonexempt monthly gross income in excess of $44.90.

(2) The county department shall advise the Department immediately that an inappropriate referral has been received when the conditions in (1) do not exist.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11004 and 14016, Welfare and Institutions Code.

HISTORY

1. New section filed 4–13–81; effective thirtieth day thereafter (Register 81, No. 16).

§ 50184. Referral for Social Services.

(a) The county department shall refer a person or family for social services in accordance with Department procedures if it appears that there is a need for such services.

(b) A referral for social services shall also be made for the following needs related to the CHDP Program unless other arrangements have been made with the local CHDP Program:

(1) Assistance in:

(A) Arranging for screening services for persons under 21 years of age under the CHDP Program.

(B) Overcoming fears of medical treatment.

(C) Understanding the importance of preventive health.

(2) Arranging for transportation, child care or other services to enable the individual to take advantage of CHDP benefits.

(c) The county department shall notify all applicants who are pregnant, breastfeeding or postpartum women as defined in Section 50157(f)(5)(A) or parents/guardians of children under the age of five of the availability of benefits provided by the Special Supplemental Food Program for Women, Infants and Children (WIC) program by giving the applicant a WIC brochure.

(1) An oral explanation of WIC benefits shall be given to those individuals who are unable to read.

(2) Referral shall be made to the WIC program if there appears to be a need for such services for all such individuals, as specified in subsection (c) above.

(d) The Department of Health Services, no less frequently than annually, shall provide written notification concerning the WIC program to all Medi–Cal beneficiaries who might be pregnant, breastfeeding, or postpartum as defined in Section 50157(f)(5)(A), or a parent/guardian of a child under the age of five.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 10001, 10051, 14000, 14001 and 14001.1, Welfare and Institutions Code; Title 42, United States Code, Sections 1396a(a)(11), (51), (52) and (53); Title 42, Code of Federal Regulations, Section 431.635; and Section 1902(a) of the Social Security Act.

HISTORY

1. Editorial correction adding NOTE filed 7–7–83 (Register 83, No. 29).
2. New subsections (c)–(d) and amendment of NOTE filed 8–22–96; operative 9–21–96 (Register 96, No. 34).

§ 50185. Applicants' and Beneficiaries' General Responsibilities.

(a) As a condition of eligibility, applicants and beneficiaries, and persons acting on behalf of such applicants or beneficiaries, shall:

(1) Complete and participate in the completion of all documents required in the application process or in the determination of continuing eligibility.

(2) Make available to the county department all documents needed to determine eligibility and share of cost, as specified in Sections 50167 through 50172.

(3) Report all facts that are pertinent to the determination of eligibility and share of cost.

(4) Report the following facts to the county department that may affect the determination of eligibility and share of cost within 10 calendar days following the date the change occurred:

(A) Change of address.

(B) Change in property or income.

(C) Change in family composition.

(D) Change in other health care coverage.

(5) The requirement to report to the county department and to any provider of health care services any existing contractual or other legal entitlement to other health care coverage; and, to fully utilize other health care coverage before using Medi–Cal benefits. The information to be reported shall include the name of the other health care coverage, policy and group numbers, and termination date, if available.

(6) Responsibility to report to the county department the availability of any option to obtain other health care coverage through, but not limited to, the beneficiary's employer, labor union, trust fund, spouse or parent and to provide information necessary for the Department to determine if it would be cost effective for the Department to pay the premium to obtain or continue other health coverage.

(7) The requirement to apply for, and/or retain any available other health care coverage when there is no premium cost to the beneficiary. Compliance with this requirement shall be a condition of coverage for Medi–Cal covered benefits to the party responsible for the acquisition or continuance of such health care coverage, and shall not interfere with Medi–Cal benefits provided to the remaining family unit.

(8) Cooperate fully in any investigation that may be required for quality control.

(9) Report, apply for, and utilize all other health care coverage available to the individual or family group in accordance with Section 50763.

(10) Complete Medi–Cal status reports in accordance with Section 50191 (a) or (b).

(11) Promptly notify the county department which initially established Medi–Cal eligibility of any changes in residence from one county to another within the state and apply for a redetermination of eligibility within the new county of residence. "Apply for a redetermination of eligibility," as used in this section, is defined as any clear expression to the county department, whether verbal or written, that the beneficiary is living in the county and wishes to continue receiving Medi–Cal.

(12) Cooperate with the state, county department, and the district attorney's office in all of the following:

(A) Establishing paternity for a child under eighteen years of age born out of wedlock for whom Medi–Cal is requested.

(B) Obtaining medical support and payments; and

(C) Providing all of the information requested by the state, county department, and district attorney's office, which is necessary to identify, locate, and pursue any third party, including an absent parent, who is or may be liable for medical care and services or support.

(13) In the case of a woman who is pregnant, or a child who was born out of wedlock or whose parent is absent from the home, at the conclusion of the 60–day postpartum period:

(A) Complete the Child Support Questionnaire (CA 2.1 Q Support Questionnaire, Revised 3/93), the Child/Spousal and Medical Support Notice and Agreement (CA 2.1 Notice and Agreement, Revised 12/92), and any additional forms specified in the district attorney and approved by the Department of Health Services;

(B) Appear at the county department and at the office of the district attorney to provide information, when requested;

(C) Provide to the county department and to the district attorney all information which is relevant to the case.

(D) Appear as a witness in court or in other hearings and proceedings relating to (9) and (10) above.

(14) Assign to the state all rights to any medical support and to payments for medical care from any third party, as specified in Section 50157.

(b) Applicants and recipients whose eligibility is determined by the Social Security Administration shall, as a condition of eligibility, comply with subsections (a)(9), (a)(10), and (a)(11) above, and report to the Department and utilize all other health care coverage available to them in accordance with Section 50763.

(c) If the Statement of Facts has been completed and signed by someone other than the applicant or beneficiary, the responsibilities stated in (a) and (b) shall rest with that person as well as with the applicant or beneficiary.

(d) The county shall assist the applicant or beneficiary as necessary in meeting the requirements of this section.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 10740, 11004(a) and (b), 11053, 14001, 14008.6, 14011, 14016 and 14100.1, Welfare and Institutions Code; and 42 C.F.R. Sections 433.135, 433.136, 433.137, 433.138, 433.145, 433.146, 433.147, 433.148 and 435.604.

HISTORY

1. Amendment of subsection (a)(2) filed 12–15–77; effective thirtieth day thereafter (Register 77, No. 51).
2. New subsection (a) (7) filed 9–1–78; effective thirtieth day thereafter (Register 78, No. 35).
3. New subsection (a)(8) filed 6–14–84; designated effective 7–1–84 pursuant to Government Code section 11346.2(d) (Register 84, No. 24).
4. Amendment of section heading, subsections (a), (a)(6) and (b) and NOTE filed 4–16–93 as an emergency; operative 4–16–93 (Register 93, No. 16). A Certificate of Compliance must be transmitted to OAL 8–16–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 4–16–93 order including amendment of NOTE transmitted to OAL 8–13–93 and filed 9–23–93 (Register 93, No. 39).
6. Amendment of subsection (a)(4), new subsections (a)(4)(A)–(a)(7), and subsection renumbering filed 9–10–97; operative 10–10–97 (Register 97, No. 37).

§ 50185.5. Medi–Cal Managed Care Plan Assigned Enrollment Prior to Two–Plan Model Implementation or for Geographic Areas Not Designated for Two–Plan Model Implementation.

(a) This section applies to geographic areas specified by the director, which may include geographic areas designated for implementation of the two–plan model as defined in section 53810(n) prior to implementation of the two–plan model, and geographic areas not designated for two–plan model implementation. This section applies to aid categories specified by the director, pursuant to Welfare and Institutions Code Section 14016.5 and 14087.305.

(b) The following definitions apply to this section:

(1) Affiliate means an existing Medi–Cal managed care plan that has a written agreement to become a subcontractor to the local initiative or the commercial plan when the local initiative or commercial plan commences operation, or an entity that has been awarded the local initiative or commercial plan contract under the Two–Plan Model and is an existing Medi–Cal prepaid health plan contractor that is authorized under its Medi–Cal prepaid health plan contract to operate in the service area to which the plan has been awarded the commercial plan or local initiative contract under the Two–Plan Model.

(2) Assignment means the action taken by the health care options contractor to enroll an eligible beneficiary or an eligible family group into a Medi–Cal managed care plan when the beneficiary fails to select a managed care plan and does not provide a written certification of an established patient–provider relationship.

(3) Authorized affiliate means any existing Medi–Cal prepaid health plan that has been awarded the local initiative or commercial plan contract under the Two–Plan Model, or is an affiliate that has been authorized by the department to receive assignments after a local initiative or commercial plan has submitted a written request to the department that assignments be made to that affiliate.

(4) Commercial plan means a prepaid health plan in a designated geographic area awarded a contract by the department pursuant to sections 53800(b)(1).

(5) Commercial plan enrollment maximum means the enrollment level established by the department pursuant to section 53820(b).

(6) Confirmed conditional start date means the date established by the department on which a local initiative or commercial plan is authorized to begin operation under the Two Plan Model, subject to the local initiative or commercial plan fulfilling the conditions specified by the department at the time the confirmed conditional start date is given by the department.

(7) CP/LI ratio means the total enrollment of the commercial plan, or if the commercial plan is not operational, the combined total enrollment of the commercial plan affiliates, DIVIDED by the combined total enrollment of the local initiative affiliates. The source of the enrollment totals is the department's monthly Medi–Cal managed care capitation report.

(8) Fee–for–service managed care program means a program operated in a designated geographic area by an entity contracting with the Department under which services continue to be provided on a fee–for–service basis, but each Medi–Cal beneficiary is provided with a primary care provider who coordinates the beneficiary's Medi–Cal health care.

(9) Health care options contractor means the entity contracting with the department to provide applicants and beneficiaries with information on the available options to receive Medi–Cal benefits and to process applicant and beneficiary enrollment choices or assignments in designated geographic areas.

(10) Health care options presentation means a presentation in–person or by mail to Medi–Cal applicants and beneficiaries which provides information on the Medi–Cal managed care plans and fee–for–service op-

tions available within the designated geographic area in which the applicant or beneficiary resides.

(11) Local initiative means a prepaid health plan awarded a contract by the department pursuant to sections 53800(b)(2) and 53810(h).

(12) Local initiative enrollment minimum means the total number of Medi–Cal beneficiaries in the mandatory aid categories in the designated geographic area less the maximum enrollment level established pursuant to section 53820 of the commercial plan.

(13) Operational means a managed care plan is providing covered services to enrolled Medi–Cal beneficiaries and is entitled to receive capitation payments from the department.

(c) Applicants and beneficiaries shall be informed by the county welfare department of the availability of health care options presentations which explain the options for receiving Medi–Cal benefits and the obligation of the applicants and beneficiaries to attend a presentation. For beneficiaries who do not attend a health care options presentation, the department shall mail information explaining the beneficiary's health care options.

(1) The county welfare department shall inform applicants and beneficiaries of the availability of health care options presentations at the time of their initial eligibility and annual redetermination in the following geographic areas:

(A) Areas designated for the two–plan model, when:

1. only the commercial plan is operational; or

2. only the local initiative is operational; or

3. the department intends to award two commercial plan contracts and no local initiative contract, and only one commercial plan is operational.

(B) Areas not designated for the two–plan model.

(2) If, within the same geographical area, the local initiative is scheduled to become operational prior to the date the commercial plan is expected to become operational, the local initiative may submit a written request to the department that the department include all existing beneficiaries in the mandatory aid categories in the health care options notification process.

(d) At the health care options presentation or by mail, the department shall provide to the applicant or beneficiary information on Medi–Cal managed care plans operating within the geographic area in which the applicant or beneficiary resides.

(e) Each applicant or beneficiary shall submit in writing to the health care options contractor a choice to enroll in a Medi–Cal managed care plan or shall certify in writing that he or she has an established patient–provider relationship either:

(1) within 30 days of the applicant's or beneficiary's attendance at a health care options presentation; or,

(2) if the applicant or beneficiary does not attend a health care options presentation prior to the postmark date on which the health care options materials were mailed to the applicant or beneficiary, within 30 days of the postmark date of the mailed health care options materials.

(f) The health care options contractor shall assign beneficiaries failing to comply with the requirements of subsection (e) to an available Medi–Cal managed care plan that has capacity to accept new beneficiaries and that has a primary care service site serving the postal ZIP code area in which the beneficiary resides. To the extent possible, a beneficiary shall not be assigned to a different Medi–Cal managed care plan than other members of the same family group.

(g) In geographic areas designated for health care to be provided under the two–plan model, if more than one Medi–Cal managed care plan meets the conditions in (f), assignments shall be made as follows:

(1) If the local initiative is operational, all assignments will be directed to the local initiative until it reaches the local initiative enrollment minimum.

(2) If the local initiative is operational and has attained its enrollment minimum and the commercial plan is not operational but has authorized affiliates, one of every two assignments will be directed to the local initiative and one will be directed to an authorized affiliate of the commercial plan. Assignments to the commercial plan's affiliates will be evenly distributed among all authorized affiliates of the commercial plan. Assignments to the authorized commercial plan affiliates will continue until their combined enrollment total reaches the commercial plan enrollment maximum, at which time assignments to authorized commercial plan affiliates will be discontinued. Enrollment in the local initiative and commercial plan affiliates will be reviewed on a monthly basis. If the local initiative's enrollment falls below the local initiative's enrollment minimum, all assignments will be directed to the local initiative as needed to restore it to its enrollment minimum. After the local initiative has been restored to its enrollment minimum, assignments to the authorized commercial plan affiliates will be resumed as provided above until the commercial plan affiliates' combined enrollment total reaches the commercial plan enrollment maximum, at which time assignments to authorized commercial plan affiliates will be discontinued. If the commercial plan does not have any authorized affiliates, all assignments will be directed to the local initiative.

(3) If the commercial plan is operational and the local initiative is not operational but has authorized affiliates, and the combined total enrollment of the local initiative affiliates is less than the total enrollment of the commercial plan, assignments will be made as follows:

(A) If the CP/LI ratio is 1.0 or less, one of every two assignments will be directed to an authorized affiliate of the local initiative and one assignment will be directed to the commercial plan.

(B) If the CP/LI ratio is greater than 1.0 but less than or equal to 2.0, two of every three assignments will be directed to the authorized affiliates of the local initiative and one assignment will be directed to the commercial plan.

(C) It the CP/LI ratio is greater than 2.0 but less than or equal to 3.0, three of every four assignments will be directed to the authorized affiliates of the local initiative and one assignment will be directed to the commercial plan.

(D) If the CP/LI ratio is greater than 3.0, four of every five assignments will be directed to the authorized affiliates of the local initiative and one assignment will be directed to the commercial plan.

(E) For (g)(3)(A), (B), (C) and (D), assignments to the authorized local initiative affiliates will be evenly distributed among all authorized affiliates of the local initiative.

(F) Once (g)(3)(B), (C), or (D) have been applied, and the CP/LI ratio reaches 1.0 or less, until 90 days prior to the Local Initiative's confirmed conditional start date, one of every two assignments will be directed to an authorized affiliate of the local initiative and one assignment will be directed to the commercial plan. No further use of the CP/LI ratio will be made to determine assignments. When the commercial plan reaches its enrollment maximum, further assignments to the commercial plan will be discontinued. Enrollment totals in the commercial plan and the combined enrollment total for the local initiative affiliates will be reviewed on a monthly basis. If enrollment falls below the commercial plan enrollment maximum, assignments to the commercial plan will be resumed with the commercial plan receiving one of every two assignments until the commercial plan reaches the commercial plan enrollment maximum.

(G) Beginning 90 days prior to a local initiative's confirmed conditional start date, all assignments will be made to the authorized affiliates of the local initiative. These assignments will be evenly distributed among all authorized affiliates of the local initiative. When enrollment in the affiliates of the local initiative reaches the local initiative's minimum enrollment, one of every two assignments will be directed to an authorized affiliate of the local initiative and one assignment will be directed to the commercial plan. Assignments to the authorized affiliates of the local initiative will be evenly distributed among all authorized affiliates of the local initiative. Assignments to the commercial plan will continue until the enrollment total of the commercial plan equals the commercial plan enrollment maximum, at which time assignments to the commercial plan will be discontinued. The enrollment total of the commercial plan and

the combined enrollment total for the affiliates of the local initiative will be reviewed on a monthly basis. If the combined enrollment of the affiliates of the local initiative falls below the local initiative's enrollment minimum, all assignments will be directed to the authorized affiliates of the local initiative as needed to restore the combined enrollment in affiliates of the local initiative to the local initiative enrollment minimum. After enrollment in the affiliates of the local initiative has been restored to its enrollment minimum, assignments to the commercial plan will be resumed as provided above until the commercial plan's enrollment reaches the commercial plan enrollment maximum, at which time assignments to the commercial plan will be discontinued.

(4) If the commercial plan is operational, and the local initiative is not operational but has authorized affiliates, and the combined enrollment of the local initiative affiliates is equal to or greater than the enrollment in the commercial plan, one of every two assignments will be directed to an authorized affiliate of the local initiative and one assignment will be directed to the commercial plan. When the commercial plan reaches its enrollment maximum, further assignments to the commercial plan will be discontinued. Enrollment totals in the commercial plan and the combined enrollment total for the local initiative affiliates will be reviewed on a monthly basis. If enrollment falls below the commercial plan enrollment maximum, assignments to the commercial plan will be resumed with the commercial plan receiving one of every two assignments until the commercial plan reaches the commercial plan enrollment maximum.

(5) If the commercial plan is operational, and the local initiative is not operational and the local initiative does not have any authorized affiliates, all assignments will be directed to the commercial plan. When the commercial plan reaches its enrollment maximum, further assignment to the commercial plan will be discontinued. Enrollment in the commercial plan will be reviewed on a monthly basis. If enrollment falls below the commercial plan enrollment maximum, assignments to the commercial plan will be resumed with the commercial plan receiving all assignments until the commercial plan reaches its enrollment maximum.

(6) If neither the local initiative nor commercial plan is operational, but either one or both has authorized affiliates, assignment shall be as follows:

(A) If the local initiative does not have any authorized affiliates and the commercial plan has authorized affiliates, all assignments will be directed to the commercial plan's authorized affiliates. When the combined total enrollment of the commercial plan's affiliates reaches the commercial plan maximum, further assignments to the commercial plan's authorized affiliates will be discontinued. Enrollment in the commercial plan's affiliates will be reviewed on a monthly basis. If the combined total enrollment of the commercial plan's affiliates falls below the commercial plan maximum, assignments will be resumed until the combined enrollment in the commercial plan's affiliates reaches the commercial plan maximum.

(B) If the local initiative has authorized affiliates and the commercial plan does not have authorized affiliates, all assignments will be directed to the authorized affiliates of the local initiative.

(C) If the local initiative has not been given a confirmed conditional start date by the department, and the combined total enrollment of the local initiative affiliates is less than the combined total enrollment of the commercial plan affiliates, until the combined total enrollment of the local initiative affiliates is equal to or greater than the combined total enrollment of the commercial plan affiliates, assignments will be made as follows:

1. If the CP/LI ratio is 1.0 or less, one of every two assignments will be directed to the authorized affiliates of the local initiative and one assignment will be directed to an authorized affiliate of the commercial plan.

2. If the CP/LI ratio is greater than 1.0 but less than or equal to 2.0, two of every three assignments will be directed to the authorized affiliates of the local initiative and one assignment will be directed to an authorized affiliate of the commercial plan.

3. If the CP/LI ratio is greater than 2.0 but less than or equal to 3.0, three of every four assignments will be directed to the authorized affiliates of the local initiative and one assignment will be directed to an authorized affiliate of the commercial plan.

4. If the CP/LI ratio is greater than 3.0, four of every five assignments will be directed to the authorized affiliates of the local initiative and one assignment will be directed to an authorized affiliate of the commercial plan.

5. For (g)(6)(C)(1), (2), (3) and (4), assignments to the authorized affiliates of the local initiative will be evenly distributed among all authorized affiliates of the local initiative and assignments to authorized affiliates of the commercial plan will be evenly distributed among all authorized affiliates of the commercial plan.

6. Once (g)(6)(C), (2), (3) or (4) have been applied, and the CP/LI ratio reaches 1.0 or less, until 90 days prior to the local initiative's confirmed conditional start date, one of every two assignments will be directed to an authorized affiliate of the local initiative and one assignment will be directed to an authorized affiliate of the commercial plan. No further use of the CP/LI ratio will be made to determine assignments. Assignments to the authorized affiliates of the local initiative will be evenly distributed among all authorized affiliates of the local initiative and assignments to the authorized affiliates of the commercial plan will be evenly distributed among all authorized affiliates of the commercial plan. Assignments to the authorized affiliates of the commercial plan will continue until the combined enrollment total of the affiliates of the commercial plan equals the commercial plan enrollment maximum, at which time assignments to authorized affiliates of the commercial plan will be discontinued. In the case of an affiliate that has affiliated with both the local initiative and the commercial plan, the total enrollment of that affiliate will be included in the combined commercial plan enrollment totals to determine if the commercial plan enrollment maximum has been reached. The combined enrollment total for the affiliates of the commercial plan and combined total for the affiliates of the local initiative will be reviewed on a monthly basis. If the local initiative's enrollment falls below the local initiative's enrollment minimum, all assignments will be directed to the local initiative as needed to restore it to its enrollment minimum. After the local initiative has been restored to its enrollment minimum, assignments to the authorized affiliates of the commercial plan will be resumed as provided above until the combined enrollment of the authorized affiliates of the commercial plan reaches the commercial plan enrollment maximum, at which time assignments to the authorized affiliates of the commercial plan will be discontinued.

(D) If the combined enrollment of the affiliates of the local initiative is equal to or greater than the combined enrollment of the affiliates of the commercial plan, one of every two assignments will be directed to an authorized affiliate of the local initiative and one assignment will be directed to an authorized affiliate of the commercial plan. Assignments to the authorized affiliates of the local initiative will be evenly distributed among all authorized affiliates of the local initiative, and assignments to the authorized affiliates of the commercial plan will be evenly distributed among all authorized affiliates of the commercial plan. Assignments to the authorized affiliates of the commercial plan will continue until the combined enrollment total of affiliates of the commercial plan equals the commercial plan enrollment maximum, at which time assignments to the authorized affiliates of the commercial plan will be discontinued. In the case of an affiliate that has affiliated with both the local initiative and the commercial plan, the total enrollment of that affiliate will be included in the combined commercial plan enrollment totals to determine if the commercial plan enrollment maximum has been reached. The combined enrollment total for the affiliates of the commercial plan and combined total for the affiliates of the local initiative will be reviewed on a monthly basis. If enrollment falls below the commercial plan enrollment maximum, as–

signments to the authorized affiliates of the commercial plan will be resumed with the commercial plan receiving one of every two assignments until the combined enrollment of the affiliates of the commercial plan reaches the commercial plan enrollment maximum.

(E) Beginning 90 days prior to a local initiative's confirmed conditional start date, all assignments will be made to the authorized affiliates of the local initiative. These assignments will be evenly distributed among all authorized affiliates of the local initiative. When enrollment in the affiliates of the local initiative reaches the local initiative's minimum enrollment, one of every two assignments will be directed to an authorized affiliate of the local initiative and one assignment will be directed to an authorized affiliate of the commercial plan. Assignments to the authorized affiliates of the local initiative will be evenly distributed among all authorized affiliates of the local initiative and assignments to the authorized affiliates of the commercial plan will be evenly distributed among all authorized affiliates of the commercial plan. Assignments to the authorized affiliates of the commercial plan will continue until the combined enrollment total of the affiliates of the commercial plan equals the commercial plan enrollment maximum, at which time assignments to authorized affiliates of the commercial plan will be discontinued. In the case of an affiliate that has affiliated with both the local initiative and the commercial plan, the total enrollment of that affiliate will be included in the commercial plan's enrollment totals to determine if the commercial plan enrollment maximum has been reached. The combined enrollment total of the affiliates of the commercial plan and combined enrollment total for the affiliates of the local initiative will be reviewed on a monthly basis. If enrollment falls below the commercial plan enrollment maximum, assignments to the authorized affiliates of the commercial plan will be resumed with one of every two assignments directed to the authorized affiliates of the commercial plan until the combined enrollment of the affiliates of the commercial plan reaches its enrollment maximum. If the commercial plan does not have any authorized affiliates, all assignments will be directed to the authorized affiliates of the local initiative.

(7) Where the department awards two commercial plan contracts and no local initiative contract, assignment shall be as follows:

(A) If neither commercial plan is operational, assignments will be evenly distributed among authorized affiliates of the two commercial plans. When the combined total enrollment of a commercial plan's affiliates totals one–half of the mandatory enrollment population, assignments will cease for the authorized affiliates of that plan. In the case of an affiliate that has affiliated with both commercial plans, the total enrollment of this affiliate will be equally divided for purposes of computation of the enrollment total to determine when assignments will cease.

(B) If a single commercial plan is operational, assignments will be evenly distributed among the operational commercial plan and the authorized affiliates of the nonoperational commercial plan. Assignments to the authorized affiliates of the nonoperational commercial plan will be evenly distributed. When the total enrollment of the single operational commercial plan or the combined total enrollment of the authorized affiliates of the nonoperational commercial plan equals one–half of the mandatory enrollment in the designated geographic area, assignments will cease for that plan. In the case of an affiliate that has affiliated with both the operational and nonoperational commercial plan, the total enrollment of that affiliate will be equally divided for purposes of computation of the enrollment total to determine when assignments will cease.

(8) If both the local initiative and the commercial plan become operational in a geographic area prior to the implementation of mandatory enrollment of beneficiaries in the two plan model, assignments will be directed to the local initiative until it reaches its enrollment minimum, then assignments will be evenly distributed between the local initiative and the commercial plan. No assignments will be made to other Medi–Cal managed care plans. When the commercial plan reaches its enrollment maximum, further assignment to the commercial plan will be discontinued. Enrollment in the local initiative and commercial plan will be reviewed on a monthly basis. If the local initiative's enrollment falls below the local initiative's enrollment minimum, all assignments will be directed to the local initiative as needed to restore it to its enrollment minimum. After the local initiative has been restored to its enrollment minimum, assignments to the commercial plan will be resumed as provided above until the commercial plan's enrollment reaches the commercial plan enrollment maximum, at which time assignments to the commercial plan will be discontinued.

(9) This is a graphic presentation that illustrates the requirements set forth in sections (g)(1), (g)(2), (g)(3), (g)(4), (g)(5), (g)(6) and (g)(8):

	LI is not Operational and has NO Authorized Affiliates	LI is not Operational but has Authorized Affiliates & LI does NOT have a Confirmed Conditional Start Date	LI with Authorized Affiliates, & Beginning 90 days prior to Confirmed Cond'l Start Date	LI is Operational: LI Enrollment < LI Minimum	LI is Operational: LI Enrollment ≥ LI Minimum
CP is not Operational and has NO Authorized Affiliates	No assignments.	(g)(6)(B). All assignments to the authorized affiliates of the LI.	(g)(6)(B) & (g)(6)(E). All assignments to the auth. affiliates of the LI.	(g)(1). All assignments to the LI.	(g)(2). All assignments to the LI.
CP is not Operational but has Authorized Affiliates	(g)(6)(A). All assignments to authorized affiliates of CP.	(g)(6)(C). 1. *If CP/LI ratio* * ≤ *1*, 1 of 2 assignments to the authorized affiliates of the LI. 2. *If CP/LI ratio* > *1 and* ≤ *2*, 2 of 3 assignments to the authorized affiliates of the LI. 3. *If the CP/LI ratio* > *2 but* ≤ *3*, 3 of 4 assignments to the authorized affiliates of the LI. 4. *If the CP/LI ratio* > *3*, 4 of 5 assignments to the authorized affiliates of the LI. 6. If the combined enrollment of LI affiliates = combined CP affiliate enrollment, then 1 of 2 assignments to the authorized affiliates of the LI.	(g)(6)(E). All assignments to auth. affiliates of the LI until it reaches the LI Min. After LI Min. is reached then 1 of 2 assignments to the authorized affiliates of the LI.	(g)(1). All assignments to the LI until it reaches the LI Min. After the LI Min is reached then 1 of 2 assignments to LI.	(g)(2). 1 of 2 assignments to the LI.
CP is Operational: Enrollment is < CP Max.	(g)(5). All assignments to CP.	(g)(3). (A) *If CP/LI ratio* * ≤ *1*, 1 of 2 assignments to the authorized affiliates of the LI. (B) *If CP/LI ratio* > *1 and* ≤ *2*, 2 of 3 assignments to the authorized affiliates of the LI.. (C) *If the CP/LI ratio* > *2 but* ≤ *3*, 3 of 4 assignments to the authorized affiliates of the LI.. (D) *If the CP/LI ratio* > *3*, 4 of 5 assignments to the authorized affiliates of the LI. (F) If the combined enrollment of the LI affiliates = CP enrollment, then 1 of 2 assignments to the authorized affiliates of the LI.	(g)(3)(G). All assignments to the auth. affiliates of the LI until it reaches the LI Min. After LI Min. is reached then 1 of 2 assignments to the authorized affiliates of the LI.	(g)(1). All assignments to the LI until it reaches the LI Min. After the LI Min is reached then 1 of 2 assignments to LI.	(g)(8). 1 of 2 assignments to the LI.
CP Operational: Enrollment is ≥ CP Max.	(g)(5): No assignments.	(g)(3)(F) & (g)(4). All assignments to the authorized affiliates of the LI.	(g)(3)(G). All assignments to auth. affiliates of the LI.	(g)(8). All assignments to LI.	(g)(8). All assignments to LI.

* CP/LI ratio means the total enrollment of the commercial plan, or if the commercial plan is not operational the combined total enrollment of the commercial plan affiliates, DIVIDED by the combined total enrollment of the local initiative affiliates.

(h) In geographic areas not designated for two–plan model implementation, if the department contracts for a fee–for–service managed care program, assignments will be directed to the fee–for–service managed care contractor as long as the contractor has an available capacity. In other geographic areas, assignments will be evenly distributed among Medi–Cal managed care plans which have been approved by the department to participate in the assignment process and have available enrollment capacity consistent with the growth limits pursuant to section 53830.

(i) The health care options contractor shall notify the beneficiary in writing of the beneficiary's assignment to a Medi–Cal managed care plan at least ten working days prior to the submission of the assignment documents to the department for processing. The notice shall contain the name of the Medi–Cal managed care plan to which the beneficiary is assigned; the conditions defined in subdivisions (j)(1), (2) and (3); and the time frame for advising the health care options contractor if the assignment is not appropriate or if the beneficiary wishes to enroll in a different Medi–Cal managed care plan or certify to a patient–provider relationship.

(j) An assignment is not appropriate when:

(1) The time and distance a beneficiary is required to travel to obtain primary care services from his or her residence exceeds the normal practice for the community or 30 minutes or 10 miles, whichever is greater.

(2) Public transportation is not available to the primary care site, unless the managed care plan to which the beneficiary is assigned provides transportation for outpatient services. This criteria will not apply to the designated fee–for–service managed care program geographic areas where public transportation to Medi–Cal services has not historically been available to the beneficiary.

(3) Culturally and linguistically appropriate services are not available to the beneficiary.

(k) The beneficiary may notify the health care options contractor that the assignment meets one or more of the conditions in subdivisions (j)(1), (2), or (3) or the beneficiary requests enrollment in another Medi–Cal managed care plan. The beneficiary may also certify to a patient–provider relationship. The notice from the beneficiary shall be in writing and state, if applicable, the specific condition(s) making the assignment inappropriate and the desired action by the health care options contractor.

(l) For such notices from beneficiaries received within ten working days of the postmark date of the notice of assignment from the health care options contractor, the health care options contractor shall respond by accepting the patient–provider certification, if provided, or by enrolling the beneficiary in another Medi–Cal managed care plan of his or her choice.

(2) For such notices from beneficiaries received after the tenth working day from the postmark date of the notice of assignment from the health care options contractor, the health care options contractor shall assist the beneficiary to disenroll from the assigned Medi–Cal managed care plan and then either accept the patient–provider certification or enroll the beneficiary in another Medi–Cal managed care plan of his or her choice.

(3) If the beneficiary notifies the health care options contractor that the assignment is inappropriate because one or more of the conditions described in subdivisions (j)(1), (2), and (3) exist, and if another Medi–Cal managed care plan within the geographic area cannot provide for an appropriate assignment in relation to the conditions in (j)(1), (2) and (3), or if another Medi–Cal managed care plan within the geographic area can provide for appropriate assignment in relation to the conditions in (j)(1), (2) and (3), but does not have available capacity, the beneficiary may elect to obtain benefits by receiving a fee–for–service card whether or not the beneficiary has certified to a patient–provider relationship.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14016.5, 14016.6 and 14087.305, Welfare and Institutions Code.

HISTORY

1. New section filed 7–10–95; operative 7–10–95. Submitted to OAL for printing only pursuant to section 147, SB 485 (Ch. 722/92) (Register 95, No. 28).
2. Amendment of section filed 6–26–96; operative 6–26–96. Submitted to OAL for printing only pursuant to Section 147 SB 485 (Ch. 722/92) (Register 96, No. 27).
3. Amendment filed 8–30–96; operative 8–30–96. Submitted to OAL for printing only (Register 96, No. 36).

§ 50186. Unconditionally Available Income.

(a) An applicant or beneficiary shall, as a condition of Medi–Cal eligibility, take all actions necessary to obtain unconditionally available income. This includes applying for such income and cooperating in supplying the information requested by the agency making the award determination.

(b) Income shall be considered unconditionally available if the applicant or beneficiary has only to claim or accept the income. Such income includes, but is not limited to:

(1) Disability insurance benefits.

(2) Benefits available to veterans of military service.

(3) OASDI benefits.

(4) Unemployment insurance benefits.

(c) Public assistance benefits shall not be considered unconditionally available income.

(d) Only the person who refuses to apply for and accept unconditionally available income shall be rendered ineligible by such refusal.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4 and 14005.7, Welfare and Institutions Code.

HISTORY

1. New section filed 8–8–80; effective thirtieth day thereafter (Register 80, No. 32).

§ 50187. Social Security Numbers and Health Insurance Claim Numbers.

(a) Each applicant or beneficiary shall, as a condition of eligibility for full Medi–Cal benefits, obtain and provide to the county department a Social Security Number (SSN) and, if eligible, a Social Security Health Insurance Claim (HIC) Number. In addition, amnesty aliens eligible for restricted Medi–Cal benefits pursuant to section 50302(b)(3) must possess or have applied for an SSN and, if eligible, a HIC number.

(b) The SSN shall be provided at the time of application unless the applicant must apply for the number. If application for an SSN must be made, the number will be provided to the county department by the Department or by the Social Security Administration.

(c) The HIC number shall be provided by the applicant or beneficiary in accordance with section 50777.

(d) Medi–Cal shall not be denied, delayed or discontinued for an applicant or beneficiary because of these requirements unless the applicant or beneficiary refuses to cooperate.

(1) Eligibility of an applicant or beneficiary who refuses to apply for or provide a number shall be denied or discontinued.

(2) Eligibility of a child who is not applying on the child's own behalf shall be denied or discontinued if a parent or caretaker relative living with the child refuses to apply for or provide a number for the child.

(3) Persons ineligible for Medi–Cal in accordance with (1) or (2) shall be ineligible members of the MFBU in accordance with section 50379.

(e) The county department shall assist the applicant or beneficiary by explaining how to apply for an SSN orHIC number and by providing an SSA Referral Notice, form MC 194.

(f) The county shall notify the beneficiary if the information provided by that beneficiary does not result in verification of the SSN by SSA. Medi–Cal eligibility shall be discontinued if the beneficiary fails, without good cause, to respond to the notice within 60 days.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.7 and 14011, Welfare and Institutions Code; and Section 1320b(7)(a), Title 42, United States Code of Regulations.

HISTORY

1. Amendment of subsection (d)(3) filed 12–15–77; effective thirtieth day thereafter (Register 77, No. 51).
2. Amendment filed 4–9–80; effective thirtieth day thereafter (Register 80, No. 15).

3. Amendment of subsection (d) (3) filed 1–8–81; effective thirtieth day thereafter (Register 81, No. 2).
4. Amendment of subsection (a) filed 11–14–89 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 11–14–89 (Register 89, No. 48). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3–14–90.
5. Amendment of subsection (a) refiled 3–8–90 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 3–13–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–11–90.
6. Certificate of Compliance as to 3–8–90 order transmitted to OAL 7–5–90 and disapproved 8–6–90 (Register 90, No. 42).
7. Amendment of subsection (a) filed 8–23–90 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 8–23–90 (Register 90, No. 42). A Certificate of Compliance must be transmitted to OAL by 12–21–90 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 8–23–90 order transmitted to OAL 11–20–90 and filed 12–17–90 (Register 91, No. 5).

§ 50189. Redetermination—Frequency and Process.

(a) Persons or families determined to be eligible for Medi–Cal shall have their eligibility redetermined at least once every 12 months.

(b) At the time of the redetermination, the beneficiary shall complete a new Statement of Facts.

(c) The county department shall:

(1) Complete the redetermination within 12 months of the most recent of the following:

(A) Approval of eligibility on any application, reapplication or restoration which required a Statement of Facts form.

(B) Last redetermination.

(2) Inform beneficiaries in writing that income and eligibility information, including tax information, will be obtained through the IEVS.

(3) Verify information on the Statement of Facts in accordance with Section 50169 (d).

(4) Send a Notice of Action if there is a change in the beneficiary's eligibility status or share of cost.

(5) Provide an informational pamphlet on the CHDP program to the beneficiary which describes the CHDP benefits available, and how and where the benefits are provided in the county, if there are persons under 21 years of age in the family.

(d) A face–to–face interview shall be required at the time of redetermination for all MFBUs which contain at least one AFDC–MN or MI member, except for MFBUs consisting of any of the following:

(1) Persons who receive Medi–Cal through the Aid for Adoption of Children program.

(2) Persons who have a government representative, such as a public guardian, acting on their behalf.

(3) MI children who are not living with a parent or relative and for whom a public agency is assuming financial responsibility in whole or in part.

NOTE: Authority cited: Sections 10725, 10740 and 14124.5, Welfare and Institutions Code. Reference: Sections 11004, 14001, 14005.4 and 14012, Welfare and Institutions Code; and 42 Code of Federal Regulations 435.945(d).

HISTORY

1. Amendment of subsections (c) and (d) filed 12–15–77; effective thirtieth day thereafter (Register 77, No. 51).
2. Amendment of subsection (c)(1)(A) filed 8–7–78; effective thirtieth day thereafter (Register 78, No. 32).
3. Amendment of subsection (d) filed 9–1–78; effective thirtieth day thereafter (Register 78, No. 35).
4. Editorial correction to History Note 3 (Register 78, No. 40).
5. Amendment of subsection (d)(3) filed 8–8–80; effective thirtieth day thereafter (Register 80, No. 32).
6. Editorial correction of subsection (c)(1)(A) filed 7–7–83 (Register 83, No. 29).
7. Amendment of subsection (c) filed 7–16–87; operative 7–16–87 pursuant to Government Code Section 11346.2(d) (Register 87, No. 30).

§ 50191. Status Reports.

(a) The county department shall require the completion of a Medi–Cal Status Report form at three month intervals for all MFBU's which contain at least one AFDC–MN or MI person. The requirement to complete status reports shall not apply to the following:

(1) Persons who receive Medi–Cal through the Aid for Adoption of Children program.

(2) Persons who have a government representative, such as a public guardian, acting on their behalf.

(3) MI children who are not living with a parent or relative and for whom a public agency is assuming financial responsibility in whole or in part.

(4) Children who are requesting Medi–Cal in accordance with Section 50147.1.

(5) Persons who receive county General Assistance Benefits and whose Medi–Cal eligibility factors are monitored at least quarterly by the county Department under its general assistance program.

(6) MFBUs consisting solely of an eligible pregnant woman and/or infant under one year of age.

(b) In addition to the status reports required in accordance with (a), the county department, consistent with Article 2, may require persons or families to complete status reports at more frequent intervals.

NOTE: Authority cited: Sections 10725, 14016.10 and 14124.5, Welfare and Institutions Code; Section 133.5, AB 251, Chapter 102, Statutes of 1981. Reference: Sections 14005.4, 14005.9, 14010, 14011 and 14012, Welfare and Institutions Code.

HISTORY

1. Amendment filed 9–1–78; effective thirtieth day thereafter (Register 78, No. 35).
2. Amendment of subsection (a)(3) filed 8–8–80; effective thirtieth day thereafter (Register 80, No. 32).
3. Amendment of subsection (a) (4) filed 1–8–81; effective thirtieth day thereafter (Register 81, No. 2).
4. Amendment of subsection (a) and new subsection (c) filed 11–30–81 as an emergency; effective upon filing (Register 81, No. 49). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3–30–82.
5. Certificate of Compliance filed 3–30–82 (Register 82, No. 14).
6. Amendment of subsection (a) and repealer of subsection (c) filed 10–1–82 as an emergency; effective upon filing (Register 82, No. 40). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1–29–83.
7. Certificate of Compliance transmitted to OAL 12–30–82 and filed 2–2–83 (Register 83, No. 6).
8. Editorial correction of subsection (a) filed 7–7–83 (Register 83, No. 29).
9. Editorial correction of printing error in subsection (a) (Register 93, No. 35).
10. New subsection (a)(6) and amendment of NOTE filed 4–27–94 as an emergency; operative 4–27–94 (Register 94, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–25–94 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 4–27–94 order transmitted to OAL 8–24–94 and filed 9–29–94 (Register 94, No. 39).
12. Editorial correction of NOTE (Register 94, No. 39).

§ 50192. Testing Techniques for Redeterminations, Status Reporting and Verification.

(a) Notwithstanding Sections 50169, 50189 and 50191, the Director may, in counties selected by the Director, establish requirements for redeterminations, status reporting, and verification of information on the Statement of Facts for the purpose of testing the effectiveness of the different administrative requirements.

(b) Selection criteria may include, but shall not be limited to:

(1) Caseload size.

(2) Past county administrative requirements.

(3) Population characteristics.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 10600, 11004, 11050, 14001, 14005.4, 14005.7, 14011 and 14012, Welfare and Institutions Code.

HISTORY

1. New section filed 9–1–78; effective thirtieth day thereafter (Register 78, No. 35).
2. Editorial correction of NOTE filed 7–7–83 (Register 83, No. 29).

§ 50193. Beginning Date of Eligibility.

(a) The beginning date of eligibility for Medi–Cal for persons who apply under any public assistance program shall be the first day of the month of application, providing the person meets the citizenship, residency, linkage and financial eligibility criteria of the appropriate program, notwithstanding the beginning date of the cash grant. For persons

who do not meet these eligibility criteria during the month of application, the beginning date of eligibility shall be the first day of the first month in which the above specified eligibility criteria of the appropriate program are met.

(b) The beginning date of eligibility for Medi–Cal specified in (a) shall also apply to:

(1) Persons who apply for AFDC and meet eligibility criteria in the month of application but whose eligibility is denied because they no longer meet eligibility criteria at the time eligibility for AFDC is determined.

(2) Persons who apply for SSI/SSP and meet the eligibility criteria but are denied because they die before the application can be processed and an application is filed on their behalf at the county department within 30 days of receipt of a written notice of denial.

(c) The beginning date of eligibility for persons applying only for Medi–Cal shall be: the first day of the month of application, if all eligibility criteria of the appropriate Medi–Cal program are met. If the eligibility criteria are not met during the month of application, the beginning date of eligibility shall be the first day of the month, subsequent to the month of application, during which the eligibility criteria of the appropriate Medi–Cal program are met.

(d) For the purposes of (c), eligibility criteria are considered to be met throughout the month if they are met at any time during the month, except for persons specified in Section 50273(a).

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11014, 11016, 14005, 14018 and 14053, Welfare and Institutions Code.

HISTORY

1. Change without regulatory effect renumbering former section 50701 to new section 50193 filed 9–19–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 38).

§ 50195. Period of Eligibility.

(a) The period of eligibility for Medi–Cal for persons eligible for AFDC or SSI/SSP shall begin with the date specified in Section 50701 (a) and (b), and shall continue through each successive month during which the person is determined to be eligible.

(b) The period of eligibility for Medi–Cal for persons eligible as Other PA recipients shall begin with the date specified in Section 50701 (c), and shall continue through each successive month during which the person meets all eligibility requirements of the appropriate Other PA category.

(c) The period of eligibility for Medi–Cal for persons eligible as MN or MI, except as specified in (d), shall begin with the date specified in Section 50701 (c), and shall continue through each successive month during which the beneficiary meets the appropriate basic program requirements in Article 5 of this chapter and all of the following conditions:

(1) Has cooperated with the county department to the extent required by Sections 50185 and 50187.

(2) Has met the property requirements specified in Article 9 at some time during the month.

(3) Has met the citizenship, residence and institutional status requirements specified in Articles 6 and 7 at some time during the month.

(d) The period of eligibility for Medi–Cal for a child applying on his or her own behalf in accordance with Section 50147.1 (a) shall begin with the date specified in Section 50701 (c), and shall continue through each successive month during which the child meets both of the following conditions:

(1) Has met the conditions specified in (c).

(2) Has submitted a completed and signed form MC 4026 to the county department during the month in question which states that the child has a need for services related to sexual assault, drug or alcohol abuse, pregnancy, family planning or venereal disease.

(e) The period of eligibility shall be modified for any portion of a month in which a person is ineligible due to institutional status, as described in Section 50273.

(f) A final date of eligibility shall be established when the county department determines that the person or family will no longer meet all eligibility requirements as of the first of the following month. The final date shall be the last day of the:

(1) Current month, if the discontinuance is not an adverse action as defined in Section 50015.

(2) Current month, if the discontinuance is an adverse action and the 10–day advance notice requirements of Section 50179(e) will be met in the current month.

(3) Following month, if the discontinuance is an adverse action and the 10–day advance notice requirements will not be met in the current month.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11014, 11016 and 14053, Welfare and Institutions Code.

HISTORY

1. Change without regulatory effect renumbering former section 50703 to new section 50195 filed 9–19–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 38).

§ 50197. Retroactive Eligibility.

(a) In addition to the period of eligibility specified in Section 50703, an applicant shall be eligible for Medi–Cal in any of the three months immediately preceding the month of application or reapplication if all of the following requirements are met in that month:

(1) The county department determines that the applicant would have been eligible for one of the programs specified in Section 50201, except as specified in (c), had an application been made.

(2) The applicant received heath services.

(3) The applicant was not previously denied Medi–Cal for the month in question, unless the application was denied for one of the following reasons:

(A) County error.

(B) The applicant's failure to cooperate, when that failure, or the applicant's subsequent failure to reapply, was due to circumstances beyond the control of the applicant.

(b) The request for retroactive eligibility shall be made in accordance with Section 50148 and shall be treated as any other application, except that persons applying on the basis of disability shall have their disability determined prior to determining retroactive eligibility.

(c) A person 21 years of age or older shall not be retroactively eligible as a medically indigent person unless either of the following conditions exist.

(1) The person was residing in a skilled nursing or intermediate care facility during any part of both:

(A) The month of application.

(B) The month for which retroactive eligibility is requested.

(2) The person is a woman with a confirmed pregnancy.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4, 14019, 14019.6, 14142 and 14145, Welfare and Institutions Code.

HISTORY

1. Change without regulatory effect renumbering former section 50710 to new section 50197 filed 9–19–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 38).

§ 50199. Certification for Medi–Cal—Completion.

(a) A person or family determined to be eligible for Medi–Cal shall not receive a Medi–Cal card until certified for Medi–Cal.

(b) Certification for Medi–Cal shall be completed by:

(1) The county department for:

(A) Persons who have no share of cost or who have a share of cost for long–term care which is less than the cost of care.

(B) Persons who have a share of cost, other than those specified in (A), and who complete form MC 113, in accordance with Section 50658 (d).

(2) The Department for persons who have a share of cost, other than those specified in (1)(A) and (B).

HISTORY

1. Change without regulatory effect renumbering former section 50715 to new section 50199 filed 9–19–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 38).

Article 5. Medi–Cal Programs

§ 50201. Medi–Cal Programs—General.

(a) A person or family may be eligible for Medi–Cal under one of the following programs.

(1) Aid to Families with Dependent Children (AFDC).

(2) Supplemental Security Income/State Supplemental Program (SSI/SSP).

(3) Other Public Assistance (Other PA).

(4) Medically Needy (MN).

(5) Medically Indigent (MI).

(6) Miscellaneous Special Programs.

(7) Medi–Cal Special Treatment Programs.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14142 and 14145, Welfare and Institutions Code.

HISTORY

1. Amendment filed 8–7–78; effective thirtieth day thereafter (Register 78, No. 32).
2. Amendment filed 7–31–81 as an emergency; effective upon filing (Register 81, No. 33). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–28–81.
3. Certificate of Compliance transmitted to OAL 11–6–81 and filed 1–27–82 (Register 82, No. 5).
4. Amendment filed 7–19–82; effective thirtieth day thereafter (Register 82, No. 30).

§ 50203. Medically Needy Program.

(a) A person's eligibility shall be determined under the Medically Needy program if that person is any of the following:

(1) An aged, blind or disabled person who meets one of the following conditions:

(A) Is not eligible for or does not want to receive assistance as a PA or Other PA recipient.

(B) Has an application pending for SSI/SSP.

(2) A child or family member who is both:

(A) Linked to AFDC in accordance with Section 50205.

(B) Not eligible for or does not want to receive assistance as a PA or Other PA recipient.

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(3) A caretaker relative who chooses to be included in a child's MFBU in accordance with Section 50373 (a)(5) (A) 13 or when all children are PA or other PA.

(b) A person who meets the conditions of more than one of the following categories shall have eligibility determined on the basis of the category listed first unless the person requests otherwise:

(1) Blindness, as defined in Section 50219.

(2) Age, as defined in Section 50221.

(3) Disability, as defined in Section 50223.

(4) Linkage to AFDC, as defined in Section 50205.

(c) In order to be eligible under this program the persons listed in (a) shall meet the property, citizenship, residence, institutional status and cooperation requirements specified in these regulations.

(d) In order to be certified and receive a Medi-Cal card under this program, the persons listed in (a) shall be determined eligible and meet the income and share-of-cost requirements specified in these regulations.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14005.3 and 14005.7, Welfare and Institutions Code.

HISTORY

1. Repealer and new section filed 3-7-80 as an emergency; effective upon filing (Register 80, No. 9). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7-6-80.
2. Certificate of Compliance filed 6-6-80 (Register 80, No. 23).
3. Amendment of subsection (a) filed 2-11-82; effective thirtieth day thereafter (Register 82, No. 7).
4. Change without regulatory effect of subsection (a)(3) (Register 87, No. 11).
5. Amendment of subsection (a) and repealer of subsection (e) filed 4-17-89; operative 5-17-89 (Register 89, No. 48).

§ 50205. Linkage to AFDC.

(a) Linkage to AFDC exists if a child is living with a relative and deprived of parental support or care. Deprivation shall be established if all conditions of any one of the following sections are met at any time during the month:

(1) Deprivation—Deceased Parent, section 50209.

(2) Deprivation—Physical or Mental Incapacity of Parent, Section 50211.

(3) Deprivation—Absent Parent, Section 50213.

(4) Deprivation—Unemployed Parent, Section 50215.

(b) A child who is deprived of parental support or care for more than one reason, may have linkage to AFDC established on any basis of deprivation that is listed in (a). The advantages and disadvantages of each basis shall be explained to the applicant or beneficiary and the basis of deprivation shall be the choice of the child's parent or caretaker relative.

(c) All family members living in the home, except those children excluded from the MFBU in accordance with Section 50381 and children who are ineligible for Medi-Cal, shall be considered in determining whether linkage to AFDC exists. Family members also include persons who are PA or other PA recipients.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4, 14005.7, 14051 and 14052, Welfare and Institutions Code.

HISTORY

1. Amendment filed 3-7-80; effective thirtieth day thereafter (Register 80, No. 9).
2. New subsection (d) filed 1-8-81; effective thirtieth day thereafter (Register 81, No. 2).
3. Amendment filed 3-24-82; effective thirtieth day thereafter (Register 82, No. 13).
4. Amendment of subsections (b) and (c) filed 6-3-87; operative 7-3-87 (Register 87, No. 24).

§ 50207. Deprivation—Relinquishment for Adoption.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4, 14005.7, 14051 and 14052, Welfare and Institutions Code.

HISTORY

1. Repealer filed 3-24-82; effective thirtieth day thereafter (Register 82, No. 13).

§ 50209. Deprivation—Deceased Parent.

(a) Deprivation of parental support or care exists if either of the child's parents is deceased.

(b) Children of a deceased parent and the remaining parent living with the child shall be linked to AFDC on the basis of this deprivation factor.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14001.1 and 14005.7, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 7-7-83 (Register 83, No. 29).

§ 50211. Deprivation—Physical or Mental Incapacity of a Parent.

(a) Deprivation of parental support or care exists if either of the child's parents is physically or mentally incapacitated.

(b) A parent is incapacitated if such parent has a physical or mental illness, defect or impairment that is expected to last at least 30 days, is verifiable in accordance with Section 50167, and does either of the following:

(1) Reduces substantially or eliminates the parent's ability to support or care for the child.

(2) Causes one of the following situations:

(A) The parent is prevented from working full-time at a job in which customarily engaged, and from working full-time on another job for which equipped by education, training or experience or which could be learned by on-the-job training.

(B) Employers refuse to employ the parent for work the parent could do and is willing to do, because of behavioral or other disorders which interfere with the securing and maintaining of employment.

(C) The parent is prevented from accomplishing as much on a job as a regular employee and, as a result, is paid on a reduced basis.

(D) The parent is blind or disabled in accordance with Section 50223(a)(1) or (b).

(E) The parent has qualified for and is employed in a job which is rehabilitative or therapeutic or is in a sheltered workshop, and which is not considered to be full-time.

(c) The following persons shall be linked to AFDC on the basis of this deprivation factor:

(1) The children of an incapacitated parent.

(2) The incapacitated parent.

(3) The spouse of the incapacitated parent or the second parent of the children whose basis of deprivation is an incapacitated parent.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.3, 14005.7 and 14051, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (b)(2)(D) filed 3-7-80 as an emergency; effective upon filing (Register 80, No. 9). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7-6-80.
2. Certificate of Compliance filed 6-6-80 (Register 80, No. 23).
3. Amendment of subsection (b)(2)(A) filed 8-8-80; effective thirtieth day thereafter (Register 80, No. 32).
4. Amendment of subsection (c) filed 1-8-81; effective thirtieth day thereafter (Register 81, No. 2).
5. Amendment of subsection (b) filed 11-20-96; operative 12-20-96 (Register 96, No. 47).

§ 50213. Deprivation—Absent Parent.

(a) Deprivation of parental support or care exists if there is continued absence of one or both of a child's parents from the home.

(b) Deprivation does not exist when one or both of the parents is absent from the home on a temporary basis, such as for a:

(1) Visit.

(2) Trip.

(3) Temporary assignment undertaken in connection with current or prospective employment.

(4) Parental absence due solely to active duty in the uniformed services of the United States. Uniformed services means the Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanographic and Atmospheric Administration and Public Health Service of the United States.

(c) Continued absence shall be considered to exist when a parent is physically absent from the home and both of the following conditions exist:

(1) The nature of the absence results in an interruption or termination of the parent's functioning as a provider of maintenance, physical care, or guidance for the child, regardless of the reason for the absence or the length of time the parent has been absent.

(2) The known or indefinite duration of the absence precludes counting on the parent's performance of the function of planning for the present support or care of the children.

(d) When the conditions specified in (c) exist, regular or frequent visits with the child by a parent who is physically absent from the home shall not in and of itself prevent a determination that "continued absence" exists. "Continued absence" shall be considered to exist when the child lives with each parent for alternating periods of time.

(e) If the parent in the home has stated on the Statement of Facts that the other parent has left the family, this shall be considered to mean that there is continued absence unless the county department has conflicting information. In the case of conflicting information, the written statement shall be supported by at least one of the following:

(1) Written statements of the absent parent or other persons with prior knowledge of the family relationship.

(2) The actions of the applicant or beneficiary or the absent parent clearly indicate:

(A) Physical absence of the other parent.

(B) Interruption of or marked reduction in marital and family responsibilities.

(3) Other evidence that substantiates continued absence.

(f) Absence of a parent on active duty in the Armed Forces may or may not constitute deprivation, dependent upon whether or not the facts in the individual case indicate an interruption of, or marked reduction in, marital and family responsibilities. The county department shall determine if deprivation exists by examining each case individually in light of all relevant factors, including:

(1) Length of absence.

(2) Assignment to a duty station to which the family may not move.

(3) The financial impact on the family, if the parent may be accompanied to that station.

(4) The extent of family disruption that would be caused if family members would have to give up employment to accompany the parent to the assigned duty station.

(g) Children of an absent parent, and the parent in the home, shall be linked to AFDC on the basis of this deprivation factor. If the parent in the home is married, and the spouse also has children from a prior union, the following persons shall be linked to AFDC:

(1) The children of each parent, other than mutual children.

(2) Both parents.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4, 14005.7 and 14051, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (f)(2) filed 10–24–86; effective thirtieth day thereafter (Register 86, No. 43).
2. Amendment of subsection (b), repealer of subsection (e) and relettering of subsection (f) to subsection (e) filed 7–9–87; operative 8–8–87 (Register 87, No. 30).
3. Amendment of subsections (c)–(f) filed 4–17–89; operative 5–17–89 (Register 89, No. 48).

§ 50215. Deprivation—Unemployed Parent.

(a) Deprivation of parental support or care exists if a parent with whom the the child lives is any of the following as limited by (b), (c) and (d):

(1) Not working.

(2) Working less than 100 hours a month.

(3) Employed on an intermittent basis more than 100 hours per month and the hours in excess of 100 hours are of a temporary nature. Temporary nature is shown if the parent was under the 100 hour standard for the two prior calendar months and is expected to be under the standard during the next month.

(4) Unemployed and has been accepted for or is participating in an education or training program essential to future self–support which is all of the following:

(A) Directed toward a specific occupation and will qualify the unemployed person for an occupation in demand in the local area.

(B) A program which will be completed by the unemployed person within a maximum of two years.

(C) Not a program which involves post baccalaureate work.

(b) For deprivation due to unemployment to exist, the unemployed parent must meet all of the following conditions:

(1) Is the principal wage earner as determined in accordance with (c).

(2) Has not been employed, or has worked less than 100 hours, in the last 30 days.

(3) Is available for and actively seeking employment.

(4) Has not, without good cause, within the last 30 days either:

(A) Quit a job or employment related training.

(B) Refused a bona fide offer of employment or employment related training.

(5) Possesses, or has applied for, a Social Security number.

(6) Has not refused to apply for and accept any unemployment insurance benefits (UIB) to which he is entitled.

(7) Has established a connection with the labor force in either of the following ways:

(A) By meeting one of the following requirements in 6 calendar quarters within any 13 calendar quarter period ending within the year prior to the month of application for Medi–Cal:

1. Earns a gross income of at least $50 during the quarter.

2. Participated for at least five days during the quarter in any activity administered under any of the following:

a. The Work Incentive (WIN) program.

b. The Work Incentive Demonstration Program (WIN Demo).

c. The Community Work Experience Program (CWEP).

d. The Greater Avenues for Independence (GAIN) Program.

3. A combination of 1. and 2.

(B) By having received, or having been eligible to receive, UIB within the year prior to the month of application. A person is eligible to receive UIB if either of the following conditions is met:

1. The person would have been eligible to receive unemployment compensation upon filing an application.

2. The person performed work not covered by Unemployment Compensation Law, and the coverage of such work, if combined with any covered work, would create eligibility to receive unemployment compensation upon filing an application.

(8) Is not unemployed throughout the month as a result of participation in a labor dispute.

(c) The principal wage earner is the parent who has earned the greater amount of income in the 24 month period immediately preceding either of the following:

(1) The month of application, reapplication or restoration.

(2) The date of a redetermination that a family's circumstances have changed in such a way as to meet the requirements for deprivation due to the unemployment of a parent.

(d) The following persons shall be linked to AFDC on the basis of this deprivation factor:

(1) The children of the unemployed parent.

(2) The unemployed parent.

(3) The second parent of the children whose basis of deprivation is unemployed parent.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4, 14005.7 and 14051, Welfare and Institutions Code.

HISTORY

1. Amendment of subsections (a)(4) and (f) filed 12–15–77; effective thirtieth day thereafter (Register 77, No. 51).
2. Amendment filed 1–8–81; effective thirtieth day thereafter (Register 81, No. 2).

3. Amendment filed 4–2–82 as an emergency; effective upon filing (Register 82, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–31–82.
4. Certificate of Compliance transmitted to OAL within 120 days and filed 8–10–82 (Register 82, No. 33).
5. Repealer of subsection (b) (8) and relettering of subsection (b) (9) to subsection (b)(8) filed 12–8–83; effective thirtieth day thereafter (Register 83, No. 50).
6. Amendment of subsection (b) (7) (A) filed 10–24–86; effective thirtieth day thereafter (Register 86, No. 43).
7. Amendment of subsection (c) filed 4–17–89; operative 5–17–89 (Register 89, No. 48).
8. Editorial correction of printing error in subsections (d)(2) and (d)(3) (Register 93, No. 13).

§ 50216. Good Cause—Refusal of Employment.

(a) Good cause for refusal of employment or training or for quitting a job or training as required in Section 50215 (b), shall be found if the applicant or beneficiary refuses or quits for any of the following reasons:

(1) The offer of employment was from an employer who did not:

(A) Possess an appropriate license to engage in business.

(B) Withhold or hold in trust the employee contributions required by Part 2 of Division 1 of the Unemployment Insurance Code, Section 2601 et seq., for unemployment compensation disability benefits and does not transmit all such employee contributions to the Department of Social Services as required by Section 986 of the Unemployment Insurance Code.

(C) Carry either workers' compensation insurance or possess a certificate of self–insurance as required by Division 4 of the Labor Code, Section 3201 et seq.

(2) The employment or training violated applicable health and safety laws and regulations.

(3) The wage offered for the employment or training was less than the applicable state or federal minimum wage or was lower than the customary wage in the community for that particular employment or training as set by the Employment Development Department, whichever is higher.

(4) The acceptance of employment would preclude completion of a job training or educational program approved by the state or county.

(5) The employment or training was in excess of the individual's mental or physical capacity.

(6) The individual was ill or required to care for an ill member of the immediate family and no other care arrangements were feasible.

(7) Child care arrangements could not be made.

(8) The individual was without a means of getting to or from the place of employment or training.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.7 and 14051, Welfare and Institutions Code.

HISTORY

1. Amendment filed 12–15–77; effective thirtieth day thereafter (Register 77, No. 51).
2. Repealer of subsection (a)(5) and consecutive renumbering of subsections (a)(6)–(a)(9) to subsections (a)(5)–(a)(8) filed 4–2–82 as an emergency; effective upon filing (Register 82, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–31–82.
3. Certificate of Compliance transmitted to OAL within 120 days and filed 8–10–82 (Register 82, No. 33).
4. Editorial correction of subsections (a) and (a)(1)(B) filed 7–7–83 (Register 83, No. 29).

§ 50216.5. Linkage to AFDC—Placement in Foster Care.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4, 14005.7, 14051, and 14052, Welfare and Institutions Code.

HISTORY

1. New section filed 3–7–80; effective thirtieth day thereafter (Register 80, No. 9).
2. Amendment of subsection (a) filed 1–8–81; effective thirtieth day thereafter (Register 81, No. 2).
3. Repealer filed 3–24–82; effective thirtieth day thereafter (Register 82, No. 13).

§ 50217. Linkage to SSI/SSP.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14005.3, Welfare and Institutions Code.

HISTORY

1. Repealer filed 3–7–80 as an emergency; effective upon filing (Register 80, No. 9). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7–6–80.
2. Certificate of Compliance filed 6–6–80 (Register 80, No. 23).

§ 50219. Blindness.

(a) Persons shall be considered to be blind if there has been a medical determination that they have either of the following conditions:

(1) Central visual acuity of no more than 20/200 with correction.

(2) Tunnel vision, which is a limited visual field of 20 degrees or less.

§ 50221. Age.

(a) Persons are aged if they are 65 years of age or older. Persons are considered to be 65 years of age on the first day of the month in which they reach age 65.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.3, 14005.7 and 14050.1, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 7–7–83 (Register 83, No. 29).

§ 50223. Disability.

(a) Persons 18 years of age or over are disabled if they meet the definition in (1) or the definition in (2):

(1) Federally disabled persons are persons who meet the definition of disability in Title II or Title XVI, Social Security Act.

(2) SGA–disabled persons are persons who were once determined to be disabled in accordance with the provisions of the SSI/SSP program (Section 1614, Part A, Title XVI, Social Security Act) and meet both the following conditions:

(A) Were eligible for SSI/SSP but became ineligible because of engagement in substantial gainful activity as defined in Title XVI regulations.

(B) Continue to suffer from the physical or mental impairment which was the basis of the disability determination.

(b) Children who are under 18 years of age shall be considered to be disabled if they have any medically determinable physical or mental impairment of comparable severity to that which would make an adult disabled in accordance with (a)(1) or (2).

(c) Eligibility or share of cost determinations effective on or after January 1, 1980 shall be based on the provisions of this Section.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14005.3, Welfare and Institutions Code.

HISTORY

1. Amendment filed 3–7–80 as an emergency; effective upon filing (Register 80, No. 9). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7–6–80.
2. Certificate of Compliance filed 6–6–80 (Register 80, No. 23).
3. Amendment of subsection (a)(1) filed 7–2–80 effective thirtieth day thereafter (Register 80, No. 27).

§ 50227. Public Assistance Cash Grant Programs.

(a) Public assistance cash grant programs include the following programs:

(1) AFDC.

(2) SSI/SSP.

(3) Cuban Refugee Cash Grant.

(4) Indochinese Refugee Cash Grant.

(5) Emergency Assistance (EA).

(b) Except as provided in (d) and (e) below, persons receiving a cash grant under any one of the programs specified in (a) shall automatically receive a Medi–Cal card for each month in which they receive the cash grant.

(c) Except as provided in (d) and (e) below, persons not currently in receipt of a cash grant under one of the programs specified in (a), shall automatically receive a Medi–Cal card for each month in which they are ineligible for the cash grant because of either of the following reasons:

(1) Their cash grant has been suspended for an administrative reason such as to:

(A) Determine the amount of the cash grant.

(B) Adjust an overpayment.

(C) Change the recipient's representative payee.

(2) They are in the Zero Basic Grant category because the net income of the family exceeds the AFDC payment standard but does not exceed the Minimum Basic Standard of Adequate Care (MBSAC).

(d) Persons who (1) fail to assign to the state their rights or the rights of individuals for whom they can legally assign rights to medical support and/or (2) fail to cooperate, without good cause, in identifying and providing information regarding any other coverage or any third party who is or may be liable to pay for medical coverage, care, services, or support payments (including individuals required to cooperate in the establishment of paternity) shall be ineligible for Medi-Cal.

(e) Persons shall not be considered Public Assistance recipients for purposes of Medi-Cal eligibility when the following conditions exist. The person is both:

(1) Age 21 years or older.

(2) Receiving AFDC for which federal financial participation is not obtainable or EA as part of an unemployed parent family.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 87, Chapter 1594, Statutes of 1982, SB 2012. Reference: Sections 11250.5, 11406.5, 14005.1 and 14008.6, Welfare and Institutions Code; and 42 C.F.R. Sections 433.135, 433.136, 433.137, 433.138, 433.145, 433.146, 433.147, 433.148 and 435.604.

HISTORY

1. Amendment of subsection (a) filed 8–7–78; effective thirtieth day thereafter (Register 78, No. 32).
2. Amendment of subsection (a) filed 7–31–81 as an emergency; effective thirtieth day thereafter (Register 81, No. 33). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–28–81.
3. Certificate of Compliance transmitted to OAL 11–6–81 and filed 1–27–82 (Register 82, No. 5).
4. Amendment of subsections (a) and (b) and new subsection (d) filed 12–31–82 as an emergency; effective upon filing (Register 83, No. 2). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–30–83.
5. Certificate of Compliance transmitted to OAL 4–13–83 and filed 5–16–83 (Register 83, No. 21).
6. Editorial correction of NOTE filed 5–16–83 (Register 83, No. 21).
7. Amendment of subsections (b) and (c) and NOTE, new subsection (d) and subsection relettering filed 4–16–93 as an emergency; operative 4–16–93 (Register 93, No. 16). A Certificate of Compliance must be transmitted to OAL 8–16–93 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 4–16–93 order including amendment of NOTE transmitted to OAL 8–13–93 and filed 9–23–93 (Register 93, No. 39).

§ 50237. Other Public Assistance Program.

(a) The Other Public Assistance Program consists of categories of Medi-Cal beneficiaries defined in Sections 50243 through 50247. Except as specified in Sections 50243 through 50247, individuals applying for Medi-Cal under any of the Other Public Assistance Program categories shall meet all of the requirements of AFDC or SSI/SSP.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.1, 14005.7, and 14050.1, Welfare and Institutions Code.

HISTORY

1. Amendment filed 8–7–78; effective thirtieth day thereafter (Register 78, No. 32).
2. Amendment filed 7–31–81 as an emergency; effective upon filing (Register 81, No. 33). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–28–81.
3. Certificate of Compliance transmitted to OAL 11–6–81 and filed 1–27–82 (Register 82, No. 5).
4. Amendment filed 4–2–82 as an emergency; effective upon filing (Register 82, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–31–82.
5. Certificate of Compliance transmitted to OAL within 120 days and filed 8–10–82 (Register 82, No. 33).

§ 50241. Children Not in School or Training.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.1, 14005.7 and 14050.1, Welfare and Institutions Code.

HISTORY

1. Repealer filed 4–2–82 as an emergency; effective upon filing (Register 82, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–31–82.

§ 50243. Four Month Continuing Eligibility.

(a) The Four Month Continuing category includes persons who were:

(1) Discontinued from AFDC due solely to increased earnings from employment or increased hours of employment of a child in or added to the AFDC unit or a parent of a child or added to the filing unit, and were members of a family receiving an AFDC cash grant or eligible under Section 50227 (c)(1) in at least three of the six months immediately prior to the month they became ineligible for AFDC.

This Four Month Continuing category does not include persons who were discontinued from AFDC due to any of the following:

(A) A stepparent contribution.

(B) An increase in a stepparent contribution.

(C) The return of an absent parent to the home which ends deprivation.

(D) The stepparent's ability to meet the needs of the parent.

(E) The expiration of the $30 plus 1/3 or $30 earned income disregard.

(2) Discontinued from AFDC due (wholly or in part) to the collection or increased collection of child/spousal support, beginning August 1, 1984 and ending September 30, 1988 providing such persons were receiving an AFDC cash under Section 50227 (c)(1) in at least three of the six months prior to the month they became ineligible for AFDC.

(b) Eligibility for Four Month Continuing based on increased earnings or hours of employment shall continue for a period of four months following the most recent month in which the family became ineligible for AFDC, providing that the family maintains California residency and a family member continues to be employed.

(c) Eligibility for Four Month Continuing based (wholly or in part) on the collection or increased collection of child/spousal support shall continue for a period of four months following the most recent month in which the family became ineligible for AFDC.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.1 and 14050.1, Welfare and Institutions Code.

HISTORY

1. Amendment filed 3–7–80; effective thirtieth day thereafter (Register 80, No. 9).
2. Amendment of subsection (a)(1), (b) – (d) filed 4–15–85 as an emergency; effective upon filing (Register 85, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–13–85.
3. Certificate of Compliance including amendment transmitted to OAL 8–13–85 and filed 9–18–85 (Register 85, No. 38).
4. Amendment filed 9–11–87; operative 10–11–87 (Register 87, No. 37).
5. Amendment of subsection (b) filed 4–17–89; operative 5–17–89 (Register 89, No. 48).
6. Certificate of Compliance filed 9–12–79 (Register 79, No. 37).

§ 50244. Nine Month Continuing Eligibility.

(a) The Nine Month Continuing category includes persons who were discontinued from AFDC due solely to the expiration of the $30 plus 1/3 or $30 earned income disregard specified under that program.

(b) Eligibility under this category shall continue for a period of nine consecutive months following the most recent month in which the family became ineligible for AFDC, regardless of whether the other conditions of eligibility are met.

(c) The provisions of this regulation also apply to eligibility determinations or redeterminations made retroactively to October 1, 1984.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; Section 14, AB 1557, Chapter 1447, Statutes of 1984. Reference: Section 14005.8, Welfare and Institutions Code.

HISTORY

1. New section filed 4–15–85 as an emergency; effective upon filing (Register 85, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–13–85.

2. Certificate of Compliance including amendment of subsection (a) transmitted to OAL 8–13–85 and filed 9–18–85 (Register 85, No. 38).

§ 50245. In–Home Supportive Services (IHSS).

(a) A person shall be eligible under the In–Home Supportive Services (IHSS) category if the person is receiving IHSS as defined in the social services regulations of the Department of Social Services and all of the requirements in either (1) or (2) are met:

(1) The person:

(A) Is eligible for SSI/SSP but does not wish to apply or would be eligible for SSI/SSP except that the person's income is in excess of the SSI/SSP payment level.

(B) Is paying all of his or her net non–exempt income in excess of the SSI/SSP payment level toward the cost of IHSS.

(2) The person:

(A) Was once determined to be disabled in accordance with Section 1614, Part A, Title XVI, Social Security Act.

(B) Was eligible for SSI/SSP but became ineligible because of engagement in substantial gainful activity as defined in Title XVI regulations.

(C) Continues to suffer from the physical or mental impairments which were the basis of the disability determination.

(D) Has been determined by the county social services staff to require assistance in one or more of the areas specified under the definition of severely impaired in the social services regulations of the Department of Social Services.

(E) Is paying all of his or her net non–exempt income in excess of the SSI/SSP payment level toward the cost of IHSS.

(b) The provisions of this regulation shall also apply to eligibility determinations or redeterminations made retroactively to January 1, 1979.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 12305, 12305.5, Welfare and Institutions Code.

HISTORY

1. Amendment filed 8–7–78; effective thirtieth day thereafter (Register 78, No. 32).
2. Amendment filed 10–31–78 as an emergency; designated effective 11–1–78 (Register 78, No. 44).
3. Certificate of Compliance filed 2–6–79 (Register 79, No. 6).
4. Amendment filed 5–17–79 as an emergency; effective upon filing (Register 79, No. 20).
5. Certificate of Compliance filed 9–12–79 (Register 79, No. 37).

§ 50247. Twenty Percent Social Security Increase.

(a) The Twenty Percent Social Security Increase category includes persons or families who were all of the following:

(1) Eligible for or receiving a cash grant in August 1972.

(2) Entitled to monthly Social Security benefits in August 1972.

(3) Discontinued from cash grant eligibility solely because of the 20 percent increase in Social Security benefits under Public Law 92–336.

(b) Persons or families considered to have been eligible for or receiving a cash grant in August 1972 are those persons who were:

(1) Receiving a cash grant.

(2) Not receiving a cash grant due to adjustment for overpayment.

(3) Not receiving a cash grant because it had been suspended in order to determine the amount of the grant.

(4) Not receiving an AFDC cash grant because their income was less than the MBSAC but greater than the payment standard.

(5) Eligible for a cash grant but refused it.

(c) Persons or families considered to have been entitled to Social Security benefits in August 1972, ar those persons who either:

(1) Received Social Security benefits in August 1972.

(2) Subsequently received Social Security benefits which included retroactive payment for August 1972.

(d) Eligibility under this category shall be determined as follows:

(1) Establish that the conditions in (a) are met.

(2) Determine, on the Computation of SSP Payment for Adult Aid Recipients, SSP 1, or the AFDC Budget Worksheet, CA 241, the net income in accordance with SSI/SSP or AFDC regulations, whichever is appropriate.

(3) Subtract the amount of the 20 percent Social Security increase received in October 1972 from the net income.

(4) If the amount determined in (3) is less than the MBSAC or the SSI/SSP payment level, whichever is appropriate, the person is eligible under this category.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.1 and 14050.1, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (d)(2) filed 8–7–78; effective thirtieth day thereafter (Register 78, No. 32).
2. Amendment of subsection (d) filed 7–31–81 as an emergency; effective upon filing. A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–28–81.
3. Certificate of Compliance transmitted to OAL 11–6–81 and filed 1–27–82 (Register 82, No. 5).

§ 50249. Medically Needy Program.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14005.3, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (a) filed 12–15–77; effective thirtieth day thereafter (Register 77, No. 51).
2. Amendment of subsection (a)(1)(A) and (a)(2)(B) filed 8–7–78; effective thirtieth day thereafter (Register 78, No. 32).
3. Repealer filed 3–7–80 as an emergency; effective upon filing (Register 80, No. 9). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7–6–80.
4. Certificate of Compliance filed 6–6–80 (Register 80, No. 23).

§ 50251. Medically Indigent Program.

(a) A person under 21 years of age shall have eligibility determined under the Medically Indigent program if that person is any of the following:

(1) A person who cannot meet the eligibility requirements as a PA or Other PA recipient, an MN person, or an MN family member.

(2) A person who is not an MN family member because of the exclusion of a child from the MFBU.

(3) A child who is not living with a parent or relative and for whom a public agency is assuming financial responsibility in whole or in part.

(4) A child receiving assistance under Aid for Adoption of Children.

(5) A child who is not eligible as an AFDC MN person because the child is not living with a relative.

(6) A person under 21 years of age who can qualify as an MN blind or disabled person but chooses to apply as an MI person. The choice may be made by a person acting on behalf of the person under 21 years of age.

(b) A person age 21 years or older shall have eligibility determined under the Medically Indigent program if that person is all of the following:

(1) Under age 65.

(2) Unable to meet the eligibility requirements as PA or Other PA recipient, an MN person, or an MN family member.

(3) Either pregnant or residing in a skilled nursing or an intermediate care facility.

(c) In order to be eligible under this program, the persons listed in (a)(1), (2), (5), (6) and (b) shall meet the property, citizenship, residence, institutional status and cooperation requirements specified in these regulations.

(d) In order to be certified and receive a Medi–Cal card under this program the persons listed in (a)(1), (2), (5), (6) and (b) shall be determined eligible and meet the income and share of cost requirements specified in these regulations.

(e) Children specified in (a)(3) shall be eligible and certified for Medi–Cal:

(1) On the basis of the information provided by the public agency on form MC 250.

(2) Without considering the property or income of the child or the child's parents.

(f) The children specified in (a)(4) above shall be eligible and certified for Medi–Cal without any additional determinations by the county department.

(g) For purposes of this section:

(1) Persons are considered 21 years of age on the first day of the month following the month in which they reach age 21.

(2) Persons are considered 18 years of age on the first day of the month in which they reach age 18.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; Section 57(c), AB 799, Chapter 328, Statutes of 1982; and Section 87(c), SB 2012, Chapter 1594, Statutes of 1982. Reference: Sections 14005.4 and 14052, Welfare and Institutions Code.

HISTORY

1. Amendment of subsections (a)(2), (a)(3), (a)(5), and adoption of subsection (f) filed 8–7–78; effective thirtieth day thereafter (Register 78, No. 32).
2. Amendment filed 2–5–80 as an emergency; effective upon filing (Register 80, No. 6). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 6–5–80.
3. Certificate of Compliance transmitted to OAH 6–4–80 and filed 6–6–80 (Register 80, No. 23).
4. Amendment of subsection (a)(4) filed 8–8–80; effective thirtieth day thereafter (Register 80, No. 32).
5. Amendment filed 1–8–81; effective thirtieth day thereafter (Register 81, No. 2).
6. Amendment of subsections (a)–(c) filed 3–24–82; effective thirtieth day thereafter (Register 82, No. 13).
7. Amendment filed 12–31–82 as an emergency; effective upon filing (Register 83, No. 2). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–30–83.
8. Certificate of Compliance transmitted to OAL 4–13–83 and filed 5–16–83 (Register 83, No. 21).

§ 50253. Miscellaneous Special Programs.

Miscellaneous Special Programs are those specified in Sections 50255 through 50263.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14142 and 14145, Welfare and Institutions Code.

HISTORY

1. Amendment filed 7–19–82; effective thirtieth day thereafter (Register 82, No. 30).

§ 50255. Repatriate Program.

Persons eligible for cash payments and other assistance under the Repatriate program shall not be eligible for Medi–Cal. Medi–Cal eligibility may be established upon discontinuance from the program.

§ 50256. Qualified Disabled and Working Individual Program.

(a) Eligibility Criteria: To receive Medi–Cal benefits under the Qualified Disabled and Working Individual Program an eligible individual must:

(1) Be entitled to enroll in Part A Medicare hospital insurance benefits for the disabled and working, and

(2) Not have net nonexempt income that exceeds 200 percent of the federal poverty level as defined by Section 50041.5. The qualifying income level as defined in Section 50571 (the share of cost process for incurred medical expenses under Article 12 of this chapter) is not applicable under this program, and

(3) Not have property that exceeds twice the resource limit as defined by Section 50421.5.

(b) Period of Eligibility: Eligibility for the Qualified Disabled and Working Individual Program shall be in accordance with Sections 50701, 50703 and 50710.

(c) Benefits: The Department shall pay Medicare Part A hospital premiums for qualified disabled and working individuals as defined in Section 50079.6.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 12, Chapter 1430, Statutes of 1989. Reference: Section 14005.3, Welfare and Institutions Code; and Sections 1396a(a)(10)(E) and 1396d(s), Title 42, United States Code.

HISTORY

1. New section filed 10–3–94 as an emergency; operative 10–3–94 (Register 94, No. 40). A Certificate of Compliance must be transmitted to OAL by 1–31–95 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of HISTORY NOTE 1 (Register 95, No. 9).
3. Repealed by operation of Government Code section 11346.1(g) (Register 95, No. 9).
4. New section refiled 3–3–95 as an emergency; operative 3–3–95 (Register 95, No. 9). A Certificate of Compliance must be transmitted to OAL by 7–1–95 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 3–3–95 order including amendment of section and NOTE transmitted to OAL 2–22–95 and filed 4–5–95 (Register 95, No. 14).

§ 50257. Refugee Medical Assistance (RMA) and Entrant Medical Assistance (EMA).

(a) Refugees and entrants who are not otherwise eligible for Medi–Cal under federally–funded AFDC, SSI/SSP, MN or Medically Indigent Child programs may be eligible for Medi–Cal through the special federal programs of Refugee Medical Assistance (RMA) or Entrant Medical Assistance (EMA).

(b) Refugees and entrants who apply for Medi–Cal under the RMA or EMA programs shall:

(1) Meet the definition contained in the Department of Social Services (DSS) Manual of Policy and Procedures (MPP) of "refugee" (MPP sections 69.203.1 and 69.203.2), "children of refugees" (MPP section 69–203.3), or "entrant" (MPP sections 69–301 through 69–305).

(2) Have their eligibility for Medi–Cal under the RMA or EMA programs determined in accordance with articles 4 through 13 (commencing with section 50141) of this chapter; however, in–kind services and/or shelter provided to refugees by a sponsor or resettlement agency are not to be considered as income.

(3) Provide the name of the resettlement agency to the county welfare department.

(c) Recipients of Refugee Cash Assistance (RCA) or Entrant Cash Assistance (ECA) shall automatically receive a Medi–Cal card. But receipt of RCA/ECA is not a condition of RMA/EMA eligibility. Refugees may apply for "RMA/FMA–Only" benefits.

(d) Recipients of RCA/ECA who become ineligible for these cash programs solely because of increased earnings from employment will continue to be eligible for up to eight months of transitional RMA/EMA benefits with no share–of–cost. Eligibility for RMA/EMA is limited until the end of the RMA/EMA time–eligibility period specified in subsection (e) of this Section.

(e) Eligibility for Medi–Cal under the RMA or EMA programs shall be limited to the shorter of the following periods:

(1) The refugee's first eight months of United States residency, beginning with the month of entry, or the entrant's (including entrant children born in the United States resettlement camps) first eight months of parole (release from Immigration and Naturalization Service custody).

(2) The time period for which DHS determines that sufficient federal funds are available under the Refugee Resettlement Program (RRP) and Cuban and Haitian Entrant Program (CHEP).

(f) Refugees shall be ineligible for RMA/EMA if:

(1) They have been denied or terminated from RCA/ECA for failure or refusal to comply with registration, employment, education or training requirements of MPP section 69–208; or

(2) They are full–time students in an institution of higher education, as defined by MPP section 69–206.51, except where such enrollment is part of an employability plan developed by a county welfare department or its designee per MPP sections 69–206.52, 69–206.53, or 69–206.54, or is part of a plan for an unaccompanied minor meeting the requirements of sections 69–213.23 or 69–213.62.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; Section 57, Chapter 328, Statutes of 1982; and Section 87, Chapter 1594, Statutes of 1982. Reference: Sections 14005.4 and 14011.5, Welfare and Institutions Code; and Sections 400.90 through 400.156; 400.200 through 400.212, and 400.300 through 400.319, Title 45, Code of Federal Regulations.

HISTORY

1. Repealer and new section filed 12–31–82 as an emergency; effective upon filing (Register 83, No. 2). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–30–83.
2. Certificate of Compliance including editorial correction of subsection(b)(1) transmitted to OAL 4–13–83 and filed 5–16–83 (Register 83, No. 21).
3. Amendment of subsections (b)(1) and (d)(1) filed 8–7–90; operative 9–6–90 (Register 90, No. 39).

4. Amendment of section and NOTE filed 2–28–96; operative 3–29–96 (Register 96, No. 9).

§ 50258. Qualified Medicare Beneficiary Program.

(a) Eligibility Criteria: To receive Medi–Cal benefits under the Qualified Medicare Beneficiary program an individual eligible for such benefits must:

(1) Be entitled to Part A Medicare hospital insurance benefits, and

(2) Meet the qualifying income level as defined in section 50570 (the share of cost process for incurred medical expenses under article 12 of this chapter is not applicable under this program), and

(3) Meet the qualifying property (resource) limit as defined in section 50421.

(b) Period of Eligibility: Notwithstanding sections 50701, 50703 and 50710, eligibility for the Qualified Medicare Beneficiary Program shall begin the first of the month following the month of approval.

(c) Benefits: The Department shall pay: Medicare premiums, coinsurance, and deductibles for qualified Medicare beneficiaries as defined in section 50079.7.

NOTE: Authority cited: Sections 10725, 14005.11 and 14124.5, Welfare and Institutions Code; and Section 12, Chapter 1430, Statutes of 1989. Reference: Sections 1396a(a) and 1396d(p), Title 42, United States Code; and Section 14005.11, Welfare and Institutions Code.

HISTORY

1. New section filed 8–13–90 as an emergency; operative 8–13–90 (Register 90, No. 40). A Certificate of Compliance must be transmitted to OAL by 12–11–90

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or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance transmitted to OAL 12–11–90 and filed 1–9–91 (Register 91, No. 8).

3. Amendment of subsection (c) filed 10–3–94 as an emergency; operative 10–3–94 (Register 94, No. 40). A Certificate of Compliance must be transmitted to OAL by 1–31–95 or emergency language will be repealed by operation of law on the following day.

4. Editorial correction of HISTORY NOTE 3 (Register 95, No. 9).

5. Reinstatement of subsection (c) as it existed prior to emergency amendment filed 3–2–95 by operation of Government Code section 11346.1(f) (Register 95, No. 9).

6. Amendment of subsection (c) refiled 3–3–95 as an emergency; operative 3–3–95 (Register 95, No. 9). A Certificate of Compliance must be transmitted to OAL by 7–1–95 or emergency language will be repealed by operation of law on the following day.

7. Certificate of Compliance as to 3–3–95 order transmitted to OAL 2–22–95 and filed 4–5–95 (Register 95, No. 14).

§ 50258.1. Specified Low–Income Medicare Beneficiary Program (SLMB).

(a) Eligibility Criteria: A SLMB is ineligible as a QMB solely due to excess income. To receive Medi–Cal benefits under the SLMB program an individual eligible for such benefits must:

(1) Be entitled to Part A Medicare hospital insurance benefits, and

(2) Meet the qualifying income level as defined in Section 50570(b) (the share of cost process for incurred medical expenses under Article 12 of this chapter is not applicable under this program), and

(3) Meet the qualifying property (resource) limit as defined in Section 50421.

(b) Period of Eligibility: Eligibility for the SLMB program shall begin the first month eligibility is approved. A SLMB may be eligible for up to three months of retroactive benefits from the month of application as provided in Section 50710 but no earlier than January 1, 1993.

(c) Benefits: The Department shall pay Medicare Part B premiums for SLMB as defined in Section 50091.5.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 1396a(a)(10)(E)(iii), Title 42, United States Code.

HISTORY

1. New section filed 12–21–93; operative 1–20–94 (Register 93, No. 52).

§ 50259. Indochinese Refugee Status.

NOTE: Authority cited: Sections 10554.1 and 14124.5, Welfare and Institutions Code. Reference: Section 14005, Welfare and Institutions Code.

HISTORY

1. Amendment filed 7–20–78 as an emergency; effective upon filing (Register 78, No. 29).

2. Certificate of Compliance transmitted to OAH 11–16–78 and filed 11–17–78 (Register 78, No. 46).

3. Repealer filed 12–31–82 as an emergency; effective upon filing (Register 83, No. 2). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–30–83.

4. Certificate of Compliance transmitted to OAL 4–13–83 and filed 5–16–83 (Register 83, No. 21).

§ 50260. 60–Day Postpartum Services Program.

A pregnant woman who was eligible for and received Medi–Cal during the last month of pregnancy, shall continue to be eligible for all pregnancy related and postpartum services, for a 60–day period beginning on the last day of pregnancy, regardless of whether the other conditions of eligibility are met. Eligibility for this program ends on the last day of the month in which the 60th day occurs.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.3 and 14100.1, Welfare and Institutions Code; and 42 United States Code Section 1396a (e) (5).

HISTORY

1. New section filed 1–4–88 as an emergency; operative 1–4–88 (Register 88, No. 3). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5–4–88.

2. Certificate of Compliance transmitted to OAL 4–28–88 and filed 5–31–88 (Register 88, No. 23).

§ 50261. Special Medi–Cal Dialysis Programs.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14140, 14141, 14142, 14143 and 14145, Welfare and Institutions Code.

HISTORY

1. Amendment filed 5–16–80 as an emergency; effective upon filing (Register 80, No. 20). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 9–14–80.

2. Certificate of Compliance filed 8–22–80 (Register 80, No. 34).

3. Repealer filed 3–25–81 as an emergency; effective upon filing (Register 81, No. 13). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–23–81 (Register 81, No. 13).

4. Reinstatement of section as it existed prior to emergency repealer filed 3–25–81 by operation of Government Code Section 11346.1(f) (Register 82, No. 30).

5. Repealer filed 7–19–82; effective thirtieth day thereafter (Register 82, No. 30).

§ 50262. Special Zero Share of Cost Programs for Pregnant Women and Infants.

The following eligibility criteria shall apply to pregnant women, and infants under one year old with a share of cost. As used in this section the terms "woman" and "women" mean any female regardless of age. Counties shall determine eligibility for applicants and beneficiaries under either of the programs described in subsections (a)(1) and (a)(2). Eligibility shall first be determined under subsection (a)(1).

(a) Eligibility criteria:

(1) 185 Percent Program. The net nonexempt Medi–Cal Family Budget Unit (MFBU) income of an otherwise eligible pregnant woman, or infant under one year old, shall be above the maintenance income need level but shall not exceed 185 percent of the federal poverty level, as revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97–35).

(2) 200 Percent Program. The net nonexempt Medi–Cal Family Budget Unit (MFBU) income of an otherwise eligible pregnant woman, or infant under one year old, shall exceed 185 percent of the federal poverty level as specified in (a)(1) but shall not exceed 200 percent of the federal poverty level, as revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97–35).

(3) In determining net nonexempt income of the MFBU, all deductions and exemptions applicable solely to AFDC–MN persons or families, as provided in article 10, shall be allowed except health insurance premiums.

(4) A pregnant woman or infant may not reduce MFBU income to the 185 or 200 percent level by meeting a share of cost.

(5) If the pregnant woman and/or infant meet the requirements of the 200 Percent Program, but have assets which exceed the resource limit, the assets shall be waived for those applicants or beneficiaries in accordance with Section 50401(b).

(b) Period of Eligibility:

(1) Pregnant woman. Eligibility for the pregnant woman shall begin no earlier than the first day of the month for which pregnancy is verified. Eligibility shall end on the last day of the month of the 60–day period immediately following the last day of pregnancy.

(2) Infant. Eligibility for an infant shall end upon attainment of age one, unless the infant is an inpatient for whom medical services are provided during a continuous period which began before his/her first birthday. In that event, the infant shall continue to be eligible until the end of the stay for which the inpatient services are furnished.

(3) Retroactive eligibility. Eligibility for a pregnant woman or infant may be established retroactively in any of the three months immediately preceding the month of application as provided in section 50710.

(c) Scope of Benefits:

(1) A pregnant woman shall be eligible only for pregnancy related services, including services for conditions which complicate pregnancy.

(2) An otherwise eligible infant shall receive full Medi–Cal benefits if the infant is a United States citizen or meets the requirements of section 14007.5 of the Welfare and Institutions Code, as added by Statutes of 1988, chapter 1441, Section 3. If the infant does not meet the require-

ments of this subsection, services shall be restricted to treatment of emergency medical conditions only.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14007.5, 14148, 14148.1 and 14148.5, Welfare and Institutions Code.

HISTORY

1. New section filed 6–27–89 as an emergency; operative 6–27–89 (Register 89, No. 26). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–25–89.
2. Certificate of Compliance as to 6–27–89 order including change without regulatory effect of subsection (c)(2) transmitted to OAL 10–25–89 and filed 11–22–89 (Register 89, No. 48).
3. Amendment of subsections (a) and (b) filed 1–23–90 as an emergency; operative 1–23–90 (Register 90, No. 4). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 5–23–90.
4. Certificate of Compliance as to 1–23–90 order including amendment transmitted to OAL 5–22–90 and filed 6–21–90 (Register 90, No. 33).
5. Editorial correction of subsection (c) printing error (Register 90, No. 33).
6. New subsection (a)(5) filed 5–28–92 as an emergency; operative 5–28–92 (Register 92, No. 22). A Certificate of Compliance must be transmitted to OAL 9–25–92 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 5–28–92 order transmitted to OAL 9–25–92 and filed 10–19–92 (Register 92, No. 43).

§ 50262.3. Continued Eligibility Program for Pregnant/Postpartum Women and Infants.

(a) A pregnant woman who has applied for, been determined eligible for and is receiving Medi–Cal, shall continue to remain eligible for pregnancy–related services throughout the pregnancy and the 60–day postpartum period beginning on the last day of pregnancy, regardless of any increases in her family's income.

(b) Infants born to women who are eligible for and receiving Medi–Cal at the time of birth are automatically deemed eligible for one year without a separate Medi–Cal application and social security identification number. In addition, these infants shall remain eligible, regardless of any increases in the family's income, as long as the following conditions continue to apply:

(1) the infant continues to live with his/her mother; and

(2) the mother remains eligible for Medi–Cal or would have remained eligible if she were still pregnant.

(c) Individuals described in (a) or (b) above must continue to meet all other eligibility criteria.

NOTE: Authority cited: Sections 10725, 14016.10 and 14124.5, Welfare and Institutions Code. Reference: Title 42, Sections 1396a(e)(4), 1396a(e)(5) and 1396a(e)(6) of the United States Code.

HISTORY

1. New section filed 4–27–94 as an emergency; operative 4–27–94 (Register 94, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–25–94 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 4–27–94 order transmitted to OAL 8–24–94 and filed 9–29–94 (Register 94, No. 39).
3. Editorial correction of subsection (c) (Register 94, No. 39).
4. Editorial correction of Authority cite (Register 95, No. 43).

§ 50262.5. Special Zero Share of Cost Program for Children of Age One Up to Age Six (133 Percent Program).

(a) Children who have attained one year of age but have not attained six years of age are eligible to receive Medi–Cal benefits under the 133 Percent program if the following conditions are satisfied:

(1) The net nonexempt Medi–Cal Family Budget Unit (MFBU) income of otherwise eligible children shall not exceed 133 percent of the federal income official poverty line as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97–35).

(2) In determining net nonexempt income of the MFBU, all deductions and exemptions applicable solely to AFDC–MN persons or families, as provided in article 10, shall be allowed except health insurance premiums.

(3) A child may not reduce MFBU income to the 133 percent level by meeting a share of cost.

(4) When determining eligibility for the 133 Percent Program, property shall be disregarded in accordance with Section 50401(c).

(b) Period of Eligibility:

(1) The period of eligibility for the 133 Percent program shall begin no earlier than the first day of the month of the child's first birthday unless the child is an inpatient for whom medical services are provided during a continuous period which began before his/her first birthday and he/she remains eligible under the 185 or 200 percent program. Once the continuous inpatient stay ends, the child must be evaluated for the 133 Percent program if he/she has not attained age six.

(2) The period of eligibility for the 133 Percent program shall end on the last day of the month in which the child attains age six unless the child is an inpatient for whom medical services are provided during a continuous period which began before his/her sixth birthday. In that event, the period of eligibility continues under the 133 Percent program until the end of the stay for which the inpatient services are furnished so long as the child would have remained eligible under the 133 Percent program but for attaining the age of six.

(c) Scope of Benefits:

(1) An otherwise eligible child shall receive full Medi–Cal benefits if the child is a United States citizen or meets the requirements of section 50302. If the child does not meet the requirements of this section, services shall be restricted to treatment of emergency medical conditions only.

(2) Services provided under this section shall not be subject to any share of cost requirements.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.1, 14007.5, 14050.1 and 14148.75, Welfare and Institutions Code; and Title 42, Sections 1395(a)(3)(E), 1396a(a)(10)(A)(i)(VI), (e)(7), (*l*) and 1396b(v), United States Code.

HISTORY

1. New section filed 10–01–90 as an emergency; operative 10–1–90 (Register 90, No. 45). A Certificate of Compliance must be transmitted by OAL by 1–29–91 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance including amendment of subsections (a) and (c) transmitted to OAL 1–28–91 and filed 2–19–91 (Register 91, No. 12).
3. Amendment of subsection (a), new subsection (a)(4), and amendment of NOTE filed 4–2–98 as an emergency; operative 4–2–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 14148.75 (Register 98, No. 16). A Certificate of Compliance must be transmitted to OAL by 9–29–98 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsection (a), new subsection (a)(4), and amendment of NOTE refiled 4–15–98 as an emergency, including additional amendment of subsection (a)(4); operative 4–15–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 14148.75 (Register 98, No. 16). A Certificate of Compliance must be transmitted to OAL by 10–12–98 or emergency language will be repealed by operation of law on the following day.
5. Editorial correction of HISTORY 3 and HISTORY 4 (Register 98, No. 47).
6. Certificate of Compliance as to 4–15–98 order transmitted to OAL 10–9–98 and filed 11–18–98 (Register 98, No. 47).

§ 50262.6. Special Zero Share of Cost Program for Children of Age Six Up to Age Nineteen (100 Percent Program).

(a) Children who have attained six years of age but have not attained nineteen years of age are eligible to receive Medi–Cal benefits under the 100 Percent program if the following conditions are satisfied:

(1) The net nonexempt Medi–Cal Family Budget Unit (MFBU) income of otherwise eligible children shall not exceed 100 percent of the federal poverty level as defined in Section 50041.5.

(2) In determining net nonexempt income of the MFBU, all deductions and exemptions applicable solely to AFDC–MN persons or families, as provided in Article 10 of this chapter, shall be allowed except health insurance premiums.

(3) A child may not reduce MFBU income to the 100 percent level by meeting a share of cost.

(4) When determining eligibility for the 100 Percent Program, property shall be disregarded in accordance with Section 50401(c).

(5) Notwithstanding Section 50014, children are defined for this program as persons under 19 years of age.

(b) Period of Eligibility:

(1) The period of eligibility for the 100 Percent program shall begin no earlier than the first day of the month of the child's sixth birthday unless the child is an inpatient for whom medical services are provided during a continuous period that began before his/her sixth birthday and he/she remains eligible under Sections 50262 or 50262.5. Once the continuous inpatient stay ends, the child must be evaluated for the 100 Percent program if he/she has not attained age nineteen.

(2) The period of eligibility for the 100 Percent program shall end on the last day of the month in which the child attains age nineteen unless the child is an inpatient for whom medical services are provided during a continuous period that began before his/her sixth birthday. In that event, the period of eligibility continues under the 100 Percent program until the end of the stay for which the inpatient services are furnished so long as the child would have remained eligible under the 100 Percent program but for attaining the age of nineteen.

(c) Scope of Benefits:

(1) An otherwise eligible child shall receive full Medi-Cal benefits if the child is a United States citizen or meets the requirements of Section 50301. If the child does not meet the requirements of this section, services shall be restricted to treatment of emergency medical conditions and pregnancy related services only.

(2) Services provided under this section shall not be subject to any share of cost requirements.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.1, 14005.23, 14007.5, 14050.1 and 14148.75, Welfare and Institutions Code; and Title 42, Sections 1395(a)(3)(E), 1396a(a)(10)(A)(i)(VII), (e)(7), (*l*), 1396b(v) and 1396(*l*)(1)(D), United States Code.

HISTORY

1. New section filed 10–26–95 as an emergency; operative 10–26–95 (Register 95, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–23–96 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance, as to 10–26–95 order including editorial correction of subsection (b)(2), transmitted to OAL 2–21–96 and filed 3–20–96 (Register 96, No. 12).
3. Amendment of subsection (a), new subsections (a)(4) and (a)(5), and amendment of subsection (b)(1) and NOTE filed 4–2–98 as an emergency; operative 4–2–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 14148.75 (Register 98, No. 16). A Certificate of Compliance must be transmitted to OAL by 9–29–98 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsection (a), new subsections (a)(4) and (a)(5), and amendment of subsections (b)(1) and NOTE refiled 4–15–98 as an emergency, including additional amendment of subsection (a)(4); operative 4–15–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 14148.75 (Register 98, No. 16). A Certificate of Compliance must be transmitted to OAL by 10–12–98 or emergency language will be repealed by operation of law on the following day.
5. Editorial correction of HISTORY 3 and HISTORY 4 (Register 98, No. 47).
6. Certificate of Compliance as to 4–15–98 order transmitted to OAL 10–9–98 and filed 11–18–98 (Register 98, No. 47).

§ 50262.7. Targeted Case Management Services Program.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14132.44, Welfare and Institutions Code. Reference: Section 14132.44, Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–96; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 6, Chapter 305, Statutes of 1995 (Register 96, No. 27).
2. New section refiled 10–29–96 as an emergency; operative 10–29–96 (Register 96, No. 44). Submitted to OAL for printing only pursuant to Section 6, Chapter 305, Statutes of 1995. A Certificate of Compliance must be transmitted to OAL by 2–26–97 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of HISTORY 2 (Register 97, No. 15).
4. Repealed by operation of Government Code section 11346.1(g) (Register 97, No. 15).
5. New section filed 4–10–97; operative 4–10–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).
6. Change without regulatory effect renumbering former section 50262.7 to new section 51365 filed 6–9–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 24).

§ 50263. MC 800 Program.

(a) The MC 800 program is an eligibility process that a county department may choose to utilize to determine eligibility for persons receiving health care services at either a county medical facility or a county contract hospital. This process shall not be utilized unless the county department executes a waiver agreeing to abide by payment adjustments made pursuant to post–audits conducted by the Department, in accordance with procedures established by the Director.

(b) If the county department chooses to utilize the MC 800 program, persons who meet the requirements set forth in (c) shall be allowed to select one of the following methods of having their eligibility determined:

(1) The Medi–Cal application process, as specified in Article 4.

(2) The MC 800 process, in accordance with Department procedures.

(c) Persons who may have their eligibility determined in accordance with the MC 800 program are those who meet the requirements of the MI program and are all of the following:

(1) At least 21 years of age.

(2) Not eligible under any PA, Other PA, MN or special program.

(3) Not currently certified as a Medi–Cal beneficiary.

(4) Not applying for coverage for any health care services received prior to admission to or receipt of services at the county medical facility or county contract hospital.

(5) Not being transferred to a long–term care or private medical facility.

(6) Not eligible under another public program that must bill Medi–Cal for health care services provided to that program's beneficiaries.

HISTORY

1. Amendment of subsection (a) filed 8–7–78; effective thirtieth day thereafter (Register 78, No. 26).

§ 50264. Medi–Cal Special Treatment Programs.

(a) Medi–Cal Special Treatment Programs consist of:

(1) The Medi–Cal Special Treatment Programs—Only:

(A) The Medi–Cal Dialysis Only program which covers persons who are eligible under provisions of Article 17, only for dialysis and related services.

(B) The Medi–Cal Parenteral Hyperalimentation Only program which covers persons who are eligible under provisions of Article 17, only for parenteral hyperalimentation and related services.

(2) The Medi–Cal Special Treatment Programs—Supplement:

(A) The Medi–Cal Dialysis Supplement program which covers persons eligible under the Medically Needy or the Medically Indigent programs and who also meet the applicable eligibility requirements contained in Article 17.

(B) The Medi–Cal Parenteral Hyperalimentation Supplement program which covers persons who are eligible under the Medically Needy or Medically Indigent programs and who also meet the applicable eligibility requirements contained in Article 17.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14140, 14141, 14142, 14143, 14144 and 14145, Welfare and Institutions Code.

[The next page is 341.]

History

1. New section filed 3–25–81 as an emergency; effective upon filing (Register 81, No. 13). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–23–81.
2. Order of Repeal of 3–25–81 emergency order filed 4–3–81 by OAL pursuant to Government Code Section 11349.6 (Register 81, No. 14).
3. New section filed 7–19–82; effective thirtieth day thereafter (Register 82, No. 30).

§ 50265. Medi–Cal Aid Codes.

(a) Aid codes shall be used in the classification and reporting of Medi–Cal beneficiaries as required by the Department's written procedures.

History

1. Amendment filed 8–7–78; effective thirtieth day thereafter (Register 78, No. 32).

§ 50268. Tuberculosis (TB) Program.

(a) Eligibility Criteria: To be eligible under the Tuberculosis (TB) Program an individual shall:

(1) Be diagnosed by a Medi–Cal provider as infected with TB as defined in Section 51187.

(2) Have net nonexempt income as determined pursuant to Article 10 which does not exceed the maximum amount for a disabled individual as provided in 42 United States Code Section 1396a(a)(10)(A)(i).

(3) Have net nonexempt resources as determined pursuant to Article 9 which do not exceed the maximum amount for property reserve for a disabled individual as under 42 United States Code Section 1396a(a)(10)(A)(i). These amounts are specified in Section 50420.

(4) Meet the citizenship, immigration status, and documentation requirements for full Medi–Cal benefits as specified in Article 7.

(b) Period of Eligibility: Eligibility for the TB Program shall begin the first month eligibility is approved. A person with TB may be eligible for retroactive benefits in any of the three months immediately preceding the month of application as provided in Section 50710, but not earlier than October 1, 1994.

(c) Benefits: TB infected individuals under this program shall be eligible only for TB related services as defined in Section 51355.

(d) Individuals eligible under this program shall have no share of cost.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14059 and 14132, Welfare and Institutions Code.

History

1. New section filed 8–16–95 as an emergency; operative 8–16–95 (Register 95, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–14–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 12–14–95 as an emergency; operative 12–14–95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–12–96 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–8–96 as an emergency; operative 4–8–96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–6–96 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–8–96 order, including amendment of subsection (a)(3), transmitted to OAL 7–30–96 and filed 9–11–96 (Register 96, No. 37).

Article 6. Institutional Status

§ 50271. Institutional Status—General.

The status of being an inmate in public or private institutions shall be a factor in the determination of Medi–Cal eligibility as specified in Section 50273. The eligibility of inmates whose institutional status does not cause ineligibility under Section 50273 shall be contingent upon all other eligibility requirements being met.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11014, 11016 and 14053, Welfare and Institutions Code.

History

1. Repealer and new section filed 4–2–83; effective thirtieth day thereafter (Register 83, No. 14).

§ 50273. Medi–Cal Ineligibility Due to Institutional Status.

(a) Individuals who are inmates of public institutions are not eligible for Medi–Cal: The following individuals are considered inmates of a public institution:

(1) An individual in a prison, or a county, city, or tribal jail.

(2) An individual in a prison or jail: Prior to arraignment, prior to conviction, or prior to sentencing.

(3) An individual who is incarcerated, but can leave prison or jail on work release or work furlough and must return at specific intervals.

(4) Individuals released from prison or jail due to a medical emergency who would otherwise by incarcerated but for the medical emergency. Institutional status of such persons is not affected by transfer to a public or private medical facility.

(5) A minor in a juvenile detention center prior to disposition (judgement) due to criminal activity of the minor.

(6) A minor, after disposition, placed in a detention or correctional facility, including a youth ranch, forestry camp, or home which is part of the criminal justice system.

(7) A minor placed on probation by a juvenile court on juvenile intensive probation with specific conditions of release, including residence in a juvenile detention center.

(8) A minor placed on probation by a juvenile court on juvenile intensive probation to a secure treatment facility contracted with the juvenile detention center if the secure treatment facility is part of the criminal justice system.

(9) Individuals between the ages of 21–65 who are in an institution for mental diseases shall be considered inmates of a public institution until they are unconditionally released.

(b) Ineligibility for individuals classified as inmates in (a) begins on the day institutional status commences and ends on the day institutional status ends.

(c) The following individuals are not considered inmates of a public institution and shall be eligible for Medi–Cal provided that all other requirements for eligibility set out in this chapter are satisfied:

(1) An individual released from prison or jail on permanent release, bail, own recognizance (OR), probation, or parole with a condition of:

(A) Home arrest;

(B) Work release;

(C) Community service;

(D) Outpatient treatment;

(E) Inpatient treatment.

(2) An individual who, after arrest but before booking, is escorted by police to a hospital for medical treatment and held under guard.

(3) An individual in prison or jail who transfers temporarily to a halfway house or residential treatment facility prior to a formal probation release order.

(4) An individual released from prison or jail under a court probation order due to a medical emergency.

(5) A minor in a juvenile detention center prior to disposition (judgment) due to care, protection or in the best interest of the child (e.g., Child Protective Services) if there is a specific plan for that person that makes the stay at the detention center temporary. This would include those juveniles awaiting placement but still physically present in juvenile hall.

(6) A minor placed on probation by a juvenile court on juvenile intensive probation with home arrest restrictions.

(7) A minor placed on probation by a juvenile court on juvenile intensive probation to a secure treatment facility contracted with the juvenile detention center if the secure treatment facility is not part of the criminal justice system.

(8) A minor placed on probation by a juvenile court on juvenile intensive probation with treatment as a condition of probation:

(A) In a psychiatric hospital;

(B) In a residential treatment center;

(C) As an outpatient.

(9) Individuals released from an institution for mental diseases or transferred from such an institution to a public or private medical facility.

(10) Individuals on conditional release or convalescent leave from an institution for mental diseases.

(11) Individuals under age 22 who are patients in an institution for mental diseases, were institutionalized prior to their 21st birthday, and continue to receive inpatient psychiatric care.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11014, 11016 and 14053, Welfare and Institutions Code; Sections 4011.1 and 4015, Penal Code; 42 U.S.C. Section 1396d(a)(24)(A); and 42 CFR Sections 435.1008 and 435.1009.

HISTORY

1. Repealer and new section filed 4–1–83 effective thirtieth day thereafter (Register 83, No. 14). For prior history, see Register 77, No. 51.
2. Amendment filed 4–10–86; effective thirtieth day thereafter (Register 86, No. 15).
3. Amendment of subsections (c) and (d) filed 4–17–89; operative 5–17–89 (Register 89, No. 48.)
4. Repealer and new section filed 1–26–95; operative 2–27–95 (Register 95, No. 4).

§ 50275. Voluntary Inmates.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11014, 11016 and 14053, Welfare and Institutions Code.

HISTORY

1. Repealer filed 4–1–83; effective thirtieth day thereafter (Register 83, No. 14).

§ 50279. Limitations of Institutional Status.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11014, 11016 and 14053, Welfare and Institutions Code.

HISTORY

1. Repealer filed 4–1–83; effective thirtieth day thereafter (Register 83, No. 14).

Article 7. Alienage, Citizenship and Residence

§ 50301. Citizenship or Immigration Status for Full Medi–Cal Benefits.

(a) "Full Medi–Cal benefits" means all the services ordinarily covered by the Medi–Cal program.

(b) To be eligible for full Medi–Cal benefits, an applicant or beneficiary shall be a California resident who is one of the following:

(1) A citizen of the United States.

(2) A national of the United States from American Samoa or Swain's Island.

(3) An alien who has been lawfully admitted to the United States for permanent residence. This category includes "conditional permanent resident" who have been granted a two–year period lawful admission for of permanent residence in accordance with section 216 of the Immigration and Nationality Act (8 USC 1186a).

(4) An alien permanently residing in the United States under color of law. (PRUCOL).

(5) An amnesty alien (lawful temporary resident or lawful permanent resident) whose status has been adjusted in accordance with section 210, 210A or 245A of the Immigration and Nationality Act (8 USC sections 1160, 1161 or 1255a) if the alien meets one of the following conditions:

(A) The alien is aged, blind, disabled, or under 18 years of age, or

(B) More than five years has elapsed since the date the alien was granted lawful temporary resident status. The date of granting is the date the alien filed his or her application for lawful temporary resident status.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 9, Chapter 1441, Statutes of 1988. Reference: Section 14007.5, Welfare and Institutions Code.

HISTORY

1. Amendment filed 10–20–88 as an emergency; operative 10–20–88 (Register 88, No. 45). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–20–89.
2. Amendment refiled 2–10–89 as an emergency; operative 2–15–89 (Register 89, No. 8). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6–15–89.
3. Amendment refiled 6–5–89 as an emergency; operative 6–15–89 (Register 89, No. 23). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–13–89.
4. Certificate of Compliance transmitted to OAL 10–12–89 and disapproved by OAL on 11–13–89 (Register 89, No. 48).
5. Repealer and new section filed 11–14–89 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 11–14–89 (Register 89, No. 48). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3–14–90.
6. Repealer and new section refiled 3–8–90 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 3–13–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–11–90.
7. Certificate of Compliance as to 3–8–90 order transmitted to OAL 7–5–90 and disapproved 8–6–90 (Register 90, No. 42).
8. Repealer and new section filed 8–23–90 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 8–23–90 (Register 90, No. 42). A Certificate of Compliance must be transmitted to OAL by 12–21–90 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance including amendment as to 8–23–90 order transmitted to OAL 11–20–90 and filed 12–17–90 (Register 91, No. 5).

§ 50301.1. Documentation of Status as a Citizen or National of the United States.

(a) Applicants in this classification shall present a document which establishes their identify, such as a driver's license, and an original document which serves as evidence that an applicant is a citizen or national of the United States.

(1) If the applicant declares a birthplace outside of the United States or its outlying possessions, or

(2) If evidence exists which suggests that the applicant may be falsely claiming to be a citizen or national of the United States.

(b) Documents which establish status as a citizen or national of the U.S. include the following:

(1) A birth certificate issued by a governmental entity within the United States or its outlying possessions.

(2) A United States passport.

(3) United States Citizen Identification Card (INS Form I–197) or Identification Card for Use of Resident Citizen in the United States (I–179).

(4) Certificate of Naturalization (INS Form N–550 or N–570).

(5) Certificate of Citizenship (INS Form N–560 or N–561).

(6) Certification of Birth Abroad (Dept. of State Form FS–545 or DS–1350).

(7) Report of Birth: Child Born Abroad of American Parent or Parents (Dept. of State Form FS–240).

(8) Northern Mariana Identification Card issued by INS to persons born in the Northern Mariana Islands who are now U.S. citizens.

(9) A religious document, of which the issuing organization has a record, showing that the birth took place in the U.S. Religious documents shall be accepted only in the absence of other types of evidence.

(10) An Individual Fee Register Receipt (INS Form G–711) which shows that the person has filed an Application for a New Naturalization or Citizenship Paper (INS Form N–565).

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 9, Chapter 1441, Statutes of 1988. Reference: Sections 14011 and 14007.5, Welfare and Institutions Code.

HISTORY

1. New section filed 11–14–89 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988;operative 11–14–89 (Register 89, No. 48). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3–14–90.
2. New section refiled 3–8–90 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 3–13–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–11–90.
3. Certificate of Compliance as to 3–8–90 order transmitted to OAL 7–5–90 and disapproved 8–6–90 (Register 90, No. 42).
4. Repealer and new section filed 8–23–90 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 8–23–90 (Register 90, No. 42). A Certificate of Compliance must be transmitted to OAL by 12–21–90 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance including amendment as to 8–23–90 order transmitted to OAL 11–20–90 and filed 12–17–90 (Register 91, No. 5).

§ 50301.2. Documentation of Status as an Alien Lawfully Admitted for Permanent Residence.

Applicants in this classification shall present a document, such as a driver's license, which establishes their identity and one or more of the following documents:

(a) An Alien Registration Receipt Card (INS Form I–551 or earlier Forms I–151 of AR–3a).

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(b) An Arrival–Departure Record (INS Form I–94) or foreign passport with a special stamp showing that an Alien Registration Receipt Card (INS Form I–551) will be issued.

(c) An INS Form I–181b notification letter issued in connection with an INS Form I–181, Memorandum of Creation of Record of Lawful Permanent Residence, which shows that an Alien Registration Receipt Card (INS Form I–551) will be issued.

(d) A Permit to Re–enter the United States (INS Form I–327).

(e) A letter from the Canadian Department of Indian Affairs, a birth or baptismal record issued on a Canadian Indian reservation or tribal or school records which establish that an American Indian born in Canada is of at least one half American Indian ancestry.

(f) An Individual Fee Register Receipt (INS Form G–711) for replacement of a lost stolen or unreadable alien registration or alien admission document listed in this section.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 9, Chapter 1441, Statutes of 1988. Reference: Sections 14011 and 14007.5, Welfare and Institutions Code.

HISTORY

1. New section filed 11–14–89 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 11–14–89 (Register 89, No. 48). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3–14–90.
2. New section refiled 3–8–90 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 3–13–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–11–90.
3. Certificate of Compliance as to 3–8–90 order transmitted to OAL 7–5–90 and disapproved 8–6–90 (Register 90, No. 42).
4. Repealer and new section filed 8–23–90 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 8–23–90 (Register 90, No. 42). A Certificate of Compliance must be transmitted to OAL by 12–21–90 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–23–90 order transmitted to OAL 11–20–90 and filed 12–17–90 (Register 91, No. 5).

§ 50301.3. Documentation of Status as an Alien Permanently Residing in the United States Under Color of Law (PRUCOL).

Applicants in this classification shall present a document which establishes their identity, such as a driver's license, and one or more of the following INS–issued documents:

(a) Aliens admitted to the United States before April 1, 1980 in accordance with Immigration and Nationality Act (INA) section 203(a)(7) (8 USC 1153(a)(7)): Arrival–Departure Record, INS Form I–94, annotated "REFUGEE–CONDITIONAL ENTRY."

(b) Aliens paroled into the United States for an indefinite period including Cuban/Haitian Entrants and PublicInterest/Humanitarian Parolees: INS Form I–94, with notation that the alien has been paroled into the United States pursuant to INA section 212(d)(5) (8 USC 1182(d)(5)) or stamped "Cuban/Haitian Entrant (Status Pending) reviewable January 15, 1981. Employment authorized until January 15, 1981".

(c) Aliens subject to an Order of Supervision: INS Form I–220B.

(d) Aliens granted an indefinite stay of deportation: INS Form I–94 or a letter from INS showing this status.

(e) Aliens granted an indefinite voluntary departure: INS Form I–94 or a letter from INS showing this status.

(f) Aliens on whose behalf an INS Form I–130 (Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa) has been filed, with their families covered by the petition, who are entitled to voluntary departure but whose departure INS does not contemplate enforcing: INS Form I–94 showing this status or Alien Voluntary Departure Notice, INS Form I–210.

(g) Aliens who have filed applications for adjustment to lawfully admitted for permanent residence status that INS has accepted as "properly filed": an INS Form I–181 Memorandum of Creation of Record of Lawful Permanent Residence, an INS For I–94 (Arrival–Departure Record) stamped I&NA section 245 Applicant, or a properly endorsed U.S. passport.

(h) Aliens granted a stay of deportation for a specific period by court order, statute or regulation, or by individual determination of INS in accordance with INA section 106 (8 USC 1105a) or relevant INS Operating Instruction and whose departure INS does not contemplate enforcing: INS Form I–94, a letter from INS, or an order issued by a District Director of INS, the Executive Office of Immigration Review, or a federal court.

(i) Aliens granted asylum in accordance with INA section 208 (8 USC 1158): INS Form I–94 and a letter from INS showing this status.

(j) Aliens admitted as refugees since April 1, 1980: Arrival–Departure Record, INS Form I–94, annotated: "ADMITTED AS A REFUGEE PURSUANT TO SECTION 207 OF THE IMMIGRATION AND NATIONALITY ACT" or an unexpired Refugee Travel Document, INS Form I–571.

(k) Aliens granted voluntary departure, whose departure INS does not contemplate enforcing: INS Form I–94 showing this status or Alien Voluntary Departure Notice, INS Form I–210 bearing a departure date.

(l) Aliens in deferred action status pursuant to INS operating instructions:Alien Voluntary Departure Notice, INS Form I–210 or a letter from INS showing this status.

(m) Aliens who have applied for an adjustment of status from undocumented alien to alien lawfully admitted for permanent residence in accordance with INA section 249 (8 USC 1259) on the basis of having entered and continuously resided in the United States since before January 1, 1972: Individual Fee Register Receipt, INS Form G–711 and an Interview Appointment Letter, INS Form I–468.

(n) Aliens who have been granted suspension of deportation in accordance with INA section 244 (8 USC 1254) whose departure INS does not contemplate enforcing: Arrival–Departure Record, INS Form I–94 and an order issued by the Executive Office of Immigration Review.

(o) Aliens who deportation is being withheld in accordance with INA section 243(h) (8 USC 1253(h)): Arrival–Departure Record, INS Form I–94 and an order issued by the Executive Office of Immigration Review.

(p) Citizens of the Republic of the Marshall Islands or the Federated States of Micronesia who, in accordance with 48 USC sections 1681 through 1695, may live, work or study in the United States without restrictions: Arrival–Departure Record, INS Form I–94 annotated "CFA/MIS" or "CFA/FSM."

(q) Aliens granted extended voluntary departure for a specified time due to conditions in their home countries: Arrival–Departure Record, INS Form I–94 showing this status or Alien Voluntary Departure Notice, INS Form I–210.

(r) Aliens whose INS documents have been lost or stolen or are unreadable: An Individual Fee Register Receipt (INS Form G–711) which shows the person has applied for replacement of a lost, stolen or unreadable alien registration or alien admission document listed in this section.

(s) Aliens living in the United States with the knowledge and permission of INS whose departure that agency does not contemplate enforcing: INS documents which establish these facts.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 9, Chapter 1441, Statutes of 1988. Reference: Sections 14007.5 and 14011, Welfare and Institutions Code.

HISTORY

1. New section filed 11–14–89 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 11–14–89 (Register 89, No. 48). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3–14–90.
2. New section refiled 3–8–90 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 3–13–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–11–90.
3. Certificate of Compliance as to 3–8–90 order transmitted to OAL 7–5–90 and disapproved 8–6–90 (Register 90, No. 42).
4. Repealer and new section filed 8–23–90 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 8–23–90 (Register 90, No. 42). A Certificate of Compliance must be transmitted to OAL by 12–21–90 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance including amendment as to 8–23–90 order transmitted to OAL 11–20–90 and filed 12–17–90 (Register 91, No. 5).

§ 50301.4. Documentation of Status as an Amnesty Alien.

(a) Aliens whose status has been adjusted in accordance with Immigration and Nationality Act sections 210, 210A or 254A (8 USC sections 1160, 1161 or 1255a) who are applying for full Medi–Cal benefits shall present one of the following INS documents:

(1) Aliens granted lawful temporary resident status: Temporary Resident Card, INS Form I–688.

(2) Aliens granted lawful permanent resident status: Alien Registration Receipt Card, INS Form I–551 or an INS Form I–688 with a sticker on the back which reads "Temporary evidence of lawful admission for permanent residence and employment authorization. Valid for 1 year from the expiration date on the reverse of this I–688.....Form I–688 Ext."

(3) Aliens whose INS documents have been lost or stolen or are unreadable: An individual Fee Register Receipt (INS Form G–711) which shows the person has applied for replacement of a lost, stolen or unreadable I–688 or I–551.

(4) Aliens who were issued an I–688 extension sticker which subsequently was lost or stolen or which became unreadable: an I–94 (Arrival–Departure Record) with the stamp: "PROCESSED FOR I–551. TEMPORARY EVIDENCE OF LAWFUL ADMISSION FOR PERMANENT RESIDENCE. VALID UNTIL _____." (The expiration date is one year from the date lawful permanent residence status was granted.)

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 9, Chapter 1441, Statutes of 1988. Reference: Sections 14007.5 and 14011, Welfare and Institutions Code.

HISTORY

1. New section filed 11–14–89 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 11–14–89 (Register 89, No. 48). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3–14–90.
2. New section refiled 3–8–90 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 3–13–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–11–90.
3. Certificate of Compliance as to 3–8–90 order transmitted to OAL 7–5–90 and disapproved 8–6–90 (Register 90, No. 42).
4. Repealer and new section filed 8–23–90 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 8–23–90 (Register 90, No. 42). A Certificate of Compliance must be transmitted to OAL by 12–21–90 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance including amendment as to 8–23–90 order transmitted to OAL 11–20–90 and filed 12–17–90 (Register 91, No. 5).

§ 50301.5. Opportunity to Document Satisfactory Immigration Status.

(a) Alien applicants for full Medi–Cal benefits must present documents from INS or an order issued by the District Director of INS, the Executive Office of Immigration Review, or a federal court which serve as reasonable evidence of satisfactory immigration status for Medi–Cal purposes. After they are informed of this fact, they shall have 30 calendar days, or the time it actually takes the county department to process their Medi–Cal applications, whichever is longer, to submit such documents. The 30–day period begins at the time the applicant submits a completed form MC 13 (5/89) containing a declaration in writing, under penalty of perjury, which attests to his or her status as an alien.

(b) Applicants who do not present documentation indicating satisfactory immigration status within the period prescribed in subsection (a), are eligible for restricted Medi–Cal benefits if they meet all other program requirements.

(c) The county department shall provide adequate notice to the individual of any adverse action and shall accord to the individual an opportunity for a hearing in accordance with the Department of Social Services Manual of Policies and Procedures sections 22–017, 22–021 and 22–022.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 9, Chapter 1441, Statutes of 1988. Reference: Sections 10950 to 10965, inclusive, 14007.5 and 14011, Welfare and Institutions Code.

HISTORY

1. New section filed 11–14–89 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 11–14–89 (Register 89, No. 48). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3–14–90.
2. New section refiled 3–8–90 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 3–13–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–11–90.
3. Certificate of Compliance as to 3–8–90 order transmitted to OAL 7–5–90 and disapproved 8–6–90 (Register 90, No. 42).
4. Repealer and new section filed 8–23–90 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 8–23–90 (Register 90, No. 42). A Certificate of Compliance must be transmitted to OAL by 12–21–90 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance including amendment as to 8–23–90 order transmitted to OAL 11–20–90 and filed 12–17–90 (Register 91, No. 5).

§ 50301.6. Verification of Satisfactory Immigration Status.

(a) "Satisfactory immigration status" for Medi–Cal purposes means lawful admission for permanent residence in the United States, status as an alien permanently residing in the U.S. under color of law, or status as an amnesty alien.

(b) The authenticity of all INS–issued documents presented as reasonable evidence of such status shall be verified through the Systematic Alien Verification of Entitlements (SAVE) system operated by INS or by direct contact with INS officials.

(c) Applicants for full Medi–Cal benefits who have declared themselves to be aliens, must also declare in writing whether, to the best of their knowledge and belief, they have a satisfactory immigration status. Such aliens shall present INS–issued documents which indicate their status. At least one of these documents should contain an alien registration or alien admission number.

(d) A primary SAVE system verification shall be used to access the biographical/immigration status computer record contained in the Alien Status Verification Index maintained by INS. This procedure shall be used to verify the status of all aliens claiming satisfactory immigration status who present an INS–issued document which contains an alien registration or alien admission number.

(e) The secondary SAVE system verification procedure shall be used to forward copies of original INS documents in cases where:

(1) A primary check of the Alien Status Verification Index instructs the county department to "Institute secondary verification."

(2) The document presented indicates immigration status but does not include an alien registration or alien admission number.

(3) The Alien Status Verification Index record includes the alien registration or admission number on the document presented by the alien but does not match other information contained in the document.

(4) The document is suspected to be counterfeit or to have been altered.

(5) The document includes an alien registration number in the A60 000 000 (not yet issued) or A80 000 000 (illegal border crossing) series.

(6) The document is a fee receipt from INS for replacement of a lost, stolen or unreadable INS document.

(7) The document is one of the following: an INS Form I–181b notification letter issued in connection with an INS Form I–181 Memorandum of Creation of Record of Permanent Residence, an Arrival–Departure Record (INS Form I–94) or a foreign passport stamped "PROCESSED FOR I–551, TEMPORARY EVIDENCE OF LAWFUL PERMANENT RESIDENCE" that INS issued more than one year before the date of application for Medi–Cal.

(f) The status of amnesty aliens who are eligible only for restricted Medi–Cal benefits because they are not aged, blind, disabled or under 18 years of age, shall be verified through the SAVE system; provided, however, that the county department shall not require or request an applicant for or beneficiary of restricted Medi–cal benefits to disclose their citizenship or immigration status, birthplace, country of citizenship, alien registration number and/or alien admission number, date of first entry into the United States, name upon first entry into the United States, or whether they have a Social Security Number.

(g) Full Medi–Cal benefits received pending completion of a determination of immigration status by INS shall be reduced to restricted Medi–Cal benefits upon receipt of notice from the SAVE system, from an INS

official, or the applicant/beneficiary of a lack of satisfactory immigration status.

(h) The county department shall provide adequate notice to the individual of any adverse action and shall accord to the individual an opportunity for a hearing in accordance with the Department of Social Services Manual of Policies and Procedures and Procedures sections 22–017, 22–021 and 22–022.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 9, Chapter 1441, Statutes of 1988. Reference: Sections 10950 to 10965, inclusive, 14007.5 and 14011, Welfare and Institutions Code; and the *Crespin v. Kizer* court order (Alameda County Superior Court, December 16, 1992).

HISTORY

1. New section filed 11–14–89 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 11–14–89 (Register 89, No. 48). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3–14–90.
2. New section refiled 3–8–90 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 3–13–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–11–90.
3. Certificate of Compliance as to 3–8–90 order transmitted to OAL 7–5–90 and disapproved 8–6–90 (Register 90, No. 42).
4. Repealer and new section filed 8–23–90 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 8–23–90 (Register 90, No. 42). A Certificate of Compliance must be transmitted to OAL by 12–21–90 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance including amendment as to 8–23–90 order transmitted to OAL 11–20–90 and filed 12–17–90 (Register 91, No. 5).
6. Amendment of subsection (f) and NOTE filed 5–17–93 as an emergency with Secretary of State by the Department of Health Services; operative 5–17–93. Submitted to OAL for printing only pursuant to 1992 Senate Bill 485 (Register 93, No. 21).

§ 50302. Restricted Medi–Cal Benefits for Certain Aliens.

(a) "Restricted Medi–Cal benefits" to certain applicants and beneficiaries means program–covered services to treat an emergency medical condition as defined in section 14007.5(d) of the Welfare and Institutions Code and section 440.255 of title 42 of the Code of Federal Regulations, and pregnancy–related services, as defined in section 1(g) of chapter 1441 of the Statutes of 1988 and section 440.255 of title 42 of the Code of Federal Regulations.

(b) To be eligible for restricted Medi–Cal benefits, an applicant or beneficiary shall be a California resident, as specified in section 50320, who is one of the following:

(1) An alien who lacks a document from INS or an order issued by a District Director of INS, the Executive Office of Immigration Review, or a federal court that serves as reasonable evidence of satisfactory immigration status.

(2) A nonimmigrant alien legally admitted to the U.S. for a limited period.

(3) An amnesty alien whose status has been adjusted to lawful temporary resident or lawful permanent resident in accordance with section 210, 210A, or 245A of the Immigration and Nationality Act (8 USC section 1160, 1161, or 1255a) who is not eligible for full Medi–Cal benefits under these regulations.

(c) Alien applicants for restricted Medi–Cal benefits who lack documentation of satisfactory immigration status or who are nonimmigrant aliens shall meet all other requirements for program eligibility except for possessing or having applied for an SSN.

(d) Applicants for restricted Medi–Cal benefits who are amnesty aliens must possess or have applied for an SSN.

(e) The Systematic Alien Verification for Entitlements (SAVE) system operated by INS shall not be used to verify the immigration status of persons applying for restricted Medi–Cal benefits unless these persons indicate that they are amnesty aliens.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 9, Chapter 1441, Statutes of 1988. Reference: Sections 14007.5 and 14011, Welfare and Institutions Code.

HISTORY

1. New section filed 11–14–89 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 11–14–89 (Register 89, No. 48). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3–14–90.
2. New section refiled 3–8–90 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 3–13–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–11–90.
3. Certificate of Compliance as to 3–8–90 order transmitted to OAL 7–5–90 and disapproved 8–6–90 (Register 90, No. 42).
4. Repealer and new section filed 8–23–90 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 8–23–90 (Register 90, No. 42). A Certificate of Compliance must be transmitted to OAL by 12–21–90 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance including amendment as to 8–23–90 order transmitted to OAL 11–20–90 and filed 12–17–90 (Register 91, No. 5).

§ 50302.1. Limitations on Medi–Cal Benefits for Aliens.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 411, 431 and 432 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub.L. 104–193); Sections 501 and 508 of Division C (the "Immigration Reform and Immigrant Responsibility Act of 1996") of the Omnibus Consolidated Appropriations Act, 1997 (Pub.L 104–208); Sections 5302, 5562, 5571 and 5581 of the Balanced Budget Act of 1997 (Pub.L. 105–33) as amended by Sections 401 and 403 of the Taxpayer Relief Act of 1997 (Pub.L. 105–34.); 8 USC Sections 1101(a)(15) and 1621(b); Sections 14007.5 and 14011, Welfare and Institutions Code; and Section 1, Chapter 1441, Statutes of 1988.

HISTORY

1. New section filed 11–5–96 as an emergency; operative 12–1–96 (Register 96, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–31–97 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 97, No. 49).
3. New section filed 12–1–97; operative 12–1–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 49).
4. Change without regulatory effect repealing section filed 10–5–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 41).

§ 50302.2. Limitations on Medi–Cal Benefits for Aliens.

(a) Pursuant to Section 411 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 USC section 1611), and notwithstanding any other provision of this division, aliens who are not qualified aliens, nonimmigrant aliens under the Immigration and Nationality Act (INA) (8 USC section 1101 et seq.), or aliens paroled into the United States under Section 212(d)(5) of the INA (8 USC section 1182(d)(5)), for less than one year, are not eligible to receive the state–only funded long–term care services described in subdivision (f) of Section 1 of Chapter 1441 of the Statutes of 1988.

(b) A qualified alien is an alien who, at the time he or she applies for, receives, or attempts to receive a public benefit, is any of the following:

(1) An alien lawfully admitted for permanent residence under the INA (8 USC section 1101 et seq.).

(2) An alien who is granted asylum under Section 208 of the INA (8 USC section 1158).

(3) A refugee who is admitted to the United States under Section 207 of the INA (8 USC section 1157).

(4) An alien who is paroled into the United States under Section 212(d)(5) of the INA (8 USC section 1182(d)(5)) for a period of at least one year.

(5) An alien whose deportation is being withheld under Section 243(h) of the INA as in effect immediately before the effective date of Section 307 of Division C of Public Law 104–208 or Section 241(b)(3) of the Act (as amended by Section 305(a) of Division C of Public Law 104–208).

(6) An alien who is granted conditional entry pursuant to Section 203(a)(7) of the INA as in effect prior to April 1, 1980. (See editorial note under 8 USC section 1101, "Effective Date of 1980 Amendment".)

(7) An alien who is a Cuban and Haitian entrant (as defined in Section 501(e) of the Refugee Education Assistance Act of 1980).

(8) An alien who meets all of the conditions of subparagraphs (A), (B), (C), and (D) below:

(A) The alien has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse's or parent's family residing in the same household as the alien, and the spouse or parent of the alien consented to, or acquiesced in, such battery or cruelty.

(B) There is a substantial connection between such battery or cruelty and the need for the benefits to be provided.

(C) The alien has been approved or has a petition pending which sets forth a prima facie case for:

1. status as a spouse or child of a United States citizen pursuant to clause (ii), (iii), or (iv) of Section 204(a)(1)(A) of the INA (8 USC section 1154(a)(1)(A)),

2. classification pursuant to clause (ii) or (iii) of Section 204(a)(1)(B) of the INA (8 USC section 1154),

3. suspension of deportation and adjustment of status pursuant to Section 244(a)(3) of the INA (8 USC section 1254), as in effect prior to April 1, 1997,

4. status as a spouse or child of a United States citizen pursuant to clause (i) of Section 204(a)(1)(A) of the INA (8 USC section 1154(a)(1)(A)) or classification pursuant to clause (i) of Section 204(a)(1)(B) of the INA (8 USC section 1154(a)(1)(B)), or

5. Cancellation of removal pursuant to Section 240A(b)(2) of the INA.

(D) For the period for which benefits are sought, the individual responsible for the battery or cruelty does not reside in the same household or family eligibility unit as the individual subjected to the battery or cruelty.

(9) An alien who meets all of the conditions of subparagraphs (A), (B), (C), (D) and (E) below:

(A) The alien has a child who has been battered or subjected to extreme cruelty in the United States by a spouse or a parent of the alien (without the active participation of the alien in the battery or cruelty), or by a member of the spouse's or parent's family residing in the same household as the alien, and the spouse or parent consented or acquiesced to such battery or cruelty.

(B) The alien did not actively participate in such battery or cruelty.

(C) There is a substantial connection between such battery or cruelty and the need for the benefits to be provided.

(D) The alien meets the requirements of subsection (b)(8)(C) above.

(E) For the period for which benefits are sought, the individual responsible for the battery or cruelty does not reside in the same household or family eligibility unit as the child subjected to the battery or cruelty.

(10) An alien child who meets all of the conditions of subparagraphs (A), (B), and (C) below:

(A) The alien child resides in the same household as a parent who has been battered or subjected to extreme cruelty in the United States by that parent's spouse or by a member of the spouse's family residing in the same household as the parent and the spouse consented or acquiesced to such battery or cruelty.

(B) There is a substantial connection between such battery or cruelty and the need for the benefits to be provided.

(C) The alien child meets the requirements of subsection (b)(8)(C) above.

(c) For purposes of this section, there is a "substantial connection between such battery or cruelty and the need for benefits to be provided" if the alien declares, and the county welfare department verifies, any of the following circumstances:

(1) The alien or the alien's child is receiving cash assistance based on battery or extreme cruelty;

(2) The benefits are needed due to a loss of financial support resulting from the alien's and/or his or her child's separation from the abuser;

(3) The benefits are needed because the alien or his or her child requires medical attention or mental health counseling, or has become disabled, as a result of the battery or cruelty;

(4) The benefits are needed to provide medical care during an unwanted pregnancy resulting from the abuser's sexual assault or abuse of, or relationship with, the alien or his or her child, and/or to care for any resulting children; or

(5) The medical coverage and/or health care services are needed to replace medical coverage or health care services the applicant or child had when living with the abuser.

(d) For purposes of this section, "nonimmigrant" is defined the same as in Section 1101(a)(15) of the INA (8 USC section 1101(a)(15)).

(e) For purposes of establishing eligibility for state–only funded long–term care services described in subdivision (f) of Section 1 of Chapter 1441 of the Statutes of 1988, all of the following requirements must be met:

(1) The alien must declare himself or herself to be a qualified alien under subsection (b), a nonimmigrant alien under subsection (d), or an alien paroled into the United States for less than one year under Section 212(d)(5) of the INA (8 USC section 1182(d)(5)). The alien shall declare that status through use of the "Supplemental Alienage and Immigration Status Declaration" MC 13S (12/96).

(2) The alien must present documents issued by or acceptable to the Immigration and Naturalization Service (INS) which serve as reasonable evidence of the alien's declared status.

(3) The alien must complete and sign Form MC 13S (12/96).

(4) The documentation presented by the alien as reasonable evidence of the alien's declared immigration status must be submitted to the INS for verification through the Systematic Alien Verification for Entitlements (SAVE) system procedures as follows:

(A) A primary SAVE system verification must be used to access the biographical/immigration status computer record contained in the Alien Status Verification Index maintained by the INS. Subject to subparagraph (B), this procedure must be used to verify the status of all aliens who claim to be qualified aliens and who present an INS–issued document that contains an alien registration or alien admission number.

(B) The secondary SAVE system verification procedure must be used to forward copies of original INS documents evidencing an alien's status as a qualified alien, as a nonimmigrant alien under the INA, or as an alien paroled into the United States under Section 212(d)(5) of the INA (8 USC section 1182(d)(5)), for less than one year in any of the following cases:

1. a primary check of the Alien Status Verification Index instructs the county department to "Institute secondary verification."

2. The document presented indicates immigration status but does not include an alien registration or alien admission number.

3. The Alien Status Verification Index record includes the alien registration or admission number on the document presented by the alien but does not match other information contained in the document.

4. The document is suspected to be counterfeit or to have been altered.

5. The document includes an alien registration number in the A60 000 000 (not yet issued) or A80 000 000 (illegal border crossing) series.

6. The document is a fee receipt from INS for replacement of a lost, stolen or unreadable INS document.

7. The document is one of the following: an INS Form I–181b notification letter issued in connection with an INS Form I–181 Memorandum of Creation of Record of Permanent Residence, an Arrival–Departure Record (INS Form I–94) or a foreign passport stamped "PROCESSED FOR I–551, TEMPORARY EVIDENCE OF LAWFUL PERMANENT RESIDENCE" that INS issued more than one year before the date of application for Medi–Cal.

(5) Verification of the alien's declared status must be received from the INS before eligibility for state–only funded long–term care services is established.

(f) A nonprofit charitable organization that provides federal, state, or local public benefits shall not be required to determine, verify, or otherwise require proof of eligibility of any applicant or beneficiary with respect to his or her immigration status or alienage.

(g) Nothing in this section shall be construed to withdraw eligibility for state public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease.

(h) An alien who is a qualified alien pursuant to paragraphs (8), (9) or (10) of subsection (b), will remain eligible for Medi–Cal benefits as long as the need for benefits related to the battery or cruelty is necessary as determined by the county welfare department, and the alien continues to meet all Medi–Cal program eligibility requirements. The county eligibility worker shall review the alien's circumstances to evaluate the benefi-

ciary's continued need for Medi-Cal benefits at the annual redetermination.

(i)(1) Any alien who was made eligible for state-only funded long-term care services for the month in which this section becomes effective and whose services are terminated, suspended, or reduced, pursuant to subsection (a), is entitled to a hearing, pursuant to Welfare and Institutions Code Section 10950 and Title 22, California Code of Regulations, Section 50951, on the issue of whether the alien is a qualified alien as defined under subsection (b), a nonimmigrant alien as defined under subsection (d), or an alien paroled into the United States for less than one year under Section 212(d)(5) of the INA or on the issue of whether a service requested by the alien falls within one of the exceptions provided in 8 USC section 1621(b).

(2) Subject to the provisions of Welfare and Institutions Code Section 10950 and Title 22, California Code of Regulations, Section 50951, any alien whose application for Medi-Cal benefits is denied for any reason, including the provisions of subsection (a), is entitled to a hearing.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: 8 USC Sections 1101, 1611, 1621, 1641 and 1642; Sections 501 and 508 of Division C (the "Immigration Reform and Immigrant Responsibility Act of 1996") of the Omnibus Consolidated Appropriations Act, 1997 (Pub.L. 104-208); Sections 5302, 5562, 5571 and 5581 of the Balanced Budget Act of 1997 (Pub.L. 105-33) as amended by Sections 401 and 403 of the Taxpayer Relief Act of 1997 (Pub.L. 105-34.); Sections 14007.5 and 14011, Welfare and Institutions Code; and Section 1, Chapter 1441, Statutes of 1988.

HISTORY

1. New section filed 3-4-98; operative 9-4-98 (Register 98, No. 10).

§ 50303. Alien Status Verification.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 9, Chapter 1441, Statutes of 1988. Reference: Section 14007.5, Welfare and Institutions Code; and Sections 1, 2 and 3, Chapter 1441, Statutes of 1988.

HISTORY

1. Repealer and new section filed 10-20-88 as an emergency; operative 10-20-88 (Register 88, No. 45). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2-20-89.
2. Repealer and new section refiled 2-10-89 as an emergency; operative 2-15-89 (Register 89, No. 8). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6-15-89.
3. Repealer and new section refiled 6-5-89 as an emergency; operative 6-15-89 (Register 89, No. 23). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10-13-89.
4. Certificate of Compliance transmitted to OAL 10-12-89 and disapproved by OAL on 11-13-89 (Register 89, No. 48).
5. Repealer filed 11-14-89 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 11-14-89 (Register 89, No. 48). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3-14-90.
6. Repealer refiled 3-8-90 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 3-13-90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7-11-90.
7. Certificate of Compliance as to 3-8-90 order transmitted to OAL 7-5-90 and disapproved 8-6-90 (Register 90, No. 42).
8. Repealer filed 8-23-90 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 8-23-90 (Register 90, No. 42). A Certificate of Compliance must be transmitted to OAL by 12-21-90 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 8-23-90 order transmitted to OAL 11-20-90 and filed 12-17-90 (Register 91, No. 5).
10. Editorial correction of printing error in HISTORY 8. (Register 91, No. 32).

§ 50304. Written Declaration of Status as a Citizen of the United States, a National of the United States, or an Alien.

(a) Individuals requesting or receiving Medi-Cal benefits shall state in writing, under penalty of perjury, whether they are citizens or nationals of the United States or aliens. In the case of a child under 21 years of age, the child's parent, caretaker relative, or legal guardian shall attest to this fact on the child's behalf unless the child is considered an adult for Medi-Cal purposes in accordance with sections 50014 and 50030(a).

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 9, Chapter 1441, Statutes of 1988. Reference: Sections 14007.5 and 14011, Welfare and Institutions Code.

HISTORY

1. Repealer filed 10-20-88 as an emergency; operative 10-20-88 (Register 88, No. 45). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed and former section reinstated as it existed prior to emergency repeal on 2-20-89.
2. Repealer refiled 2-10-89 as an emergency; operative 2-15-89 (Register 89, No. 8). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6-15-89.
3. Repealer refiled 6-5-89 as an emergency; operative 6-15-89 (Register 89, No. 23). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10-13-89.
4. Certificate of Compliance transmitted to OAL 10-12-89 and disapproved by OAL on 11-13-89 (Register 89, No. 48).
5. Repealer and new section filed 11-14-89 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 11-14-89 (Register 89, No. 48). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3-14-90.
6. Repealer and new section refiled 3-8-90 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 3-13-90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7-11-90.
7. Certificate of Compliance as to 3-8-90 order transmitted to OAL 7-5-90 and disapproved 8-6-90 (Register 90, No. 42).
8. Repealer and new section filed 8-23-90 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 8-23-90 (Register 90, No. 42). A Certificate of Compliance must be transmitted to OAL by 12-21-90 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 8-23-90 order transmitted to OAL 11-20-90 and filed 12-17-90 (Register 91, No. 5).

§ 50305. Documentation of an Alien's Legal Status.

HISTORY

1. Repealer filed 10-20-88 as an emergency; operative 10-20-88 (Register 88, No. 45). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed and former section reinstated as it existed prior to emergency repeal on 2-20-89.
2. Repealer refiled 2-10-89 as an emergency; operative 2-15-89 (Register 89, No. 8). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6-15-89.
3. Repealer refiled 6-5-89 as an emergency; operative 6-15-89 (Register 89, No. 23). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10-13-89.
4. Certificate of Compliance transmitted to OAL 10-12-89 and disapproved by OAL on 11-13-89 (Register 89, No. 48).
5. Repealer filed 11-14-89 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 11-14-89 (Register 89, No. 48). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3-14-90.
6. Repealer refiled 3-8-90 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 3-13-90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7-11-90.
7. Certificate of Compliance as to 3-8-90 order transmitted to OAL 7-5-90 and disapproved 8-6-90 (Register 90, No. 42).
8. Repealer filed 8-23-90 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 8-23-90 (Register 90, No. 42). A Certificate of Compliance must be transmitted to OAL by 12-21-90 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 8-23-90 order transmitted to OAL 11-20-90 and filed 12-17-90 (Register 91, No. 5).

§ 50310. WR 6 Procedure.

HISTORY

1. Repealer filed 10-20-88 as an emergency; operative 10-20-88 (Register 88, No. 45). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed and former section reinstated as it existed prior to emergency repeal on 2-20-89.
2. Repealer refiled 2-10-89 as an emergency; operative 2-15-89 (Register 89, No. 8). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6-15-89.
3. Repealer refiled 6-5-89 as an emergency; operative 6-15-89 (Register 89, No. 23). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10-13-89.
4. Certificate of Compliance transmitted to OAL 10-12-89 and disapproved by OAL on 11-13-89 (Register 89, No. 48).
5. Repealer filed 11-14-89 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 11-14-89 (Register 89, No. 48). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3-14-90.
6. Repealer refiled 3-8-90 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 3-13-90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7-11-90.
7. Certificate of Compliance as to 3-8-90 order transmitted to OAL 7-5-90 and disapproved 8-6-90 (Register 90, No. 42).

8. Repealer filed 8–23–90 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 8–23–90 (Register 90, No. 42). A Certificate of Compliance must be transmitted to OAL by 12–21–90 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 8–23–90 order transmitted to OAL 11–20–90 and filed 12–17–90 (Register 91, No. 5).

§ 50311. Lawful Presence in the United States.

HISTORY

1. New subsection (c) filed 12–15–77; effective thirtieth day thereafter (Register 77, No. 51).
2. Repealer filed 10–20–88 as an emergency; operative 10–20–88 (Register 88, No. 45). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed and former section reinstated as it existed prior to emergency repeal on 2–20–89.
3. Repealer refiled 2–10–89 as an emergency; operative 2–15–89 (Register 89, No. 8). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6–15–89.
4. Repealer refiled 6–5–89 as an emergency; operative 6–15–89 (Register 89, No. 23). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–13–89.
5. Certificate of Compliance transmitted to OAL 10–12–89 and disapproved by OAL on 11–13–89 (Register 89, No. 48).
6. Repealer filed 11–14–89 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 11–14–89 (Register 89, No. 48). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3–14–90.
7. Repealer refiled 3–8–90 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 3–13–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–11–90.
8. Certificate of Compliance as to 3–8–90 order transmitted to OAL 7–5–90 and disapproved 8–6–90 (Register 90, No. 42).
9. Repealer filed 8–23–90 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 8–23–90 (Register 90, No. 42). A Certificate of Compliance must be transmitted to OAL by 12–21–90 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 8–23–90 order transmitted to OAL 11–20–90 and filed 12–17–90 (Register 91, No. 5).

§ 50313. Legal Entry for a Limited Period.

HISTORY

1. Repealer filed 10–20–88 as an emergency; operative 10–20–88 (Register 88, No. 45). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed and former section reinstated as it existed prior to emergency repeal on 2–20–89.
2. Repealer refiled 2–10–89 as an emergency; operative 2–15–89 (Register 89, No. 8). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6–15–89.
3. Repealer refiled 6–5–89 as an emergency; operative 6–15–89 (Register 89, No. 23). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–13–89.
4. Certificate of Compliance transmitted to OAL 10–12–89 and disapproved by OAL on 11–13–89 (Register 89, No. 48).
5. Repealer filed 11–14–89 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 11–14–89 (Register 89, No. 48). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3–14–90.
6. Repealer refiled 3–8–90 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 3–13–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–11–90.
7. Certificate of Compliance as to 3–8–90 order transmitted to OAL 7–5–90 and disapproved 8–6–90 (Register 90, No. 42).
8. Repealer filed 8–23–90 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 8–23–90 (Register 90, No. 42). A Certificate of Compliance must be transmitted to OAL by 12–21–90 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 8–23–90 order transmitted to OAL 11–20–90 and filed 12–17–90 (Register 91, No. 5).

§ 50320. California Residence—General.

(a) California residence is a requirement for Medi–Cal eligibility.

(b) California residence shall be established by either of the following if the verification requirements of Section 50320.1 are met:

(1) The applicant is physically present and is living in California with the intention to remain permanently or for an indefinite period.

(2) The applicant is physically present, is living in California and entered the State with a job commitment or to seek employment, whether or not currently employed.

(c) Children living with their parents shall have their residence determined as that of their parents, except that parents who do not meet the California residency requirements may establish California residence for their children if both of the following circumstances apply. The parents:

(1) Intend for their children to remain in California on other than a temporary basis.

(2) Have made arrangements for the children to remain in California independent of the parents.

(d) Family members may establish separate residences without a break in marital or family ties. Only those family members who meet the requirements of this article shall be eligible for Medi–Cal.

(e) Once California residence is established it continues until residence is established in another state or country.

(f) A person's declaration on the MC 210 Statement of Facts (Medi–Cal), or on the SAWS 2 Statement of Facts, together with the evidence required in Section 50320.1, shall be accepted for purposes of establishing residence unless there is evidence to the contrary.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 66, Chapter 722, Statutes of 1992 and 42 Code of Federal Regulations 435.403.

HISTORY

1. Relettering of subsection (c) to subsection (d) and new subsection (c) filed 2–6–80 as an emergency; effective upon filing. A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 6–6–80. (Register 80, No. 6).
2. Certificate of Compliance filed 6–6–80 (Register 80, No. 23).
3. Amendment filed 10–23–81; effective thirtieth day thereafter (Register 81, No. 43).
4. Amendment of subsection (b)–(b)(2), (e), (f) and NOTE filed 5–17–93 as an emergency with Secretary of State by the Department of Health Services; operative 5–17–93. Submitted to OAL for printing only pursuant to 1992 Senate Bill 485 (Register 93, No. 21).

§ 50320.1. California Residence—Evidence.

(a) In addition to the declaration of residence on the MC 210 Statements of Facts (Medi–Cal), or on the SAWS 2 Statement of Facts, California residence is not established unless both of the following conditions are met as required in Subdivision 50230(f):

(1) The applicant produces one of the following:

(A) A current California rent or mortgage receipt or utility bill in the applicant's name bearing the current address of the applicant. Rent receipts provided by a relative shall not be accepted for purposes of Section 50320.1(a)(1) in the absence of other credible evidence that supports a finding that the applicant is a resident of California pursuant to Section 50320(b) unless the relative declares under penalty of perjury that the information set forth on the rent receipt provided by the applicant is true and correct.

(B) A current and valid California motor vehicle driver's license or California Identification Card issued by the California Department of Motor Vehicles in the applicant's name bearing the current address of the applicant.

(C) A current and valid California motor vehicle registration in the applicant's name bearing the current address of the applicant.

(D) A document showing that the applicant is employed in this state.

(E) A document showing that the applicant has registered with a public or private employment service in this state.

(F) Evidence that the applicant has enrolled his or her children in a school in this state.

(G) Evidence that the applicant is receiving public assistance other than Medi–Cal in this state.

(H) Evidence that the applicant has registered to vote in this state.

(I) Any evidence produced in accordance with subdivision b.

(2) The applicant declares under penalty of perjury, that all of the following apply:

(A) The applicant does not maintain a principal residence outside this state. When an applicant is unable to make this declaration because he or

she claims an out-of-state principal residence as exempt property under section 50425, the county shall consider any evidence provided by the applicant pursuant to Section 50320.2(c).

(B) The applicant is not receiving public assistance outside this state. As used in the section, "public assistance" does not include unemployment insurance benefits.

(b) If an applicant, including but not limited to homeless persons and migrant workers, declares under penalty of perjury, that he or she does not have one of the residency verification documents required in Subdivision (a)(1)(A) through (a)(1)(H), the county shall consider, pursuant to

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Section 50320.2, any other evidence produced by an applicant to verify residency except those documents specified in subdivision 50320.2(b).

NOTE: Authority cited: Sections 10725, 14007.1 and 14124.5, Welfare and Institutions Code. Reference: Section 66, Chapter 722, Statutes of 1992; and 42 Code of Federal Regulations 435.403.

HISTORY

1. New section filed 5–17–93 as an emergency with Secretary of State by the Department of Health Services; operative 5–17–93. Submitted to OAL for printing only pursuant to 1992 Senate Bill 485 (Register 93, No. 21).

§ 50320.2. California Residency—County Verification.

(a) The county may request clarification of the applicant's residency if it determines that any information provided as part of his or her Medi–Cal application is inconsistent with the statement on the MC 210 Statement of Facts (Medi–Cal), or on the SAWS 2 Statement of Facts that the applicant is a resident of California.

(b) A declaration, affidavit, or other statement from the applicant, or any other person that the applicant is a resident of California is unacceptable as verification of residency in the absence of other credible evidence that supports a finding that the applicant is a resident of California pursuant to Section 50320(b).

(c) When an applicant claims an out–of–state principal residence as exempt property under Section 50425, the county shall determine that such an applicant is a resident of California only if a preponderance of the credible evidence provided under Section 50320.1 supports a finding that the applicant is a resident of California pursuant to Section 50320(b).

(d) A migrant worker who claims to be a resident of California pursuant to Section 50320(b)(2) shall provide evidence that he or she entered the state with a job commitment or evidence that he or she entered the state to seek employment, whether or not currently employed. The county shall determine that such an applicant is a resident of California only if a preponderance of the credible evidence supports a finding that the applicant is a resident of California pursuant to Section 50320(b)(2).

(e) The county may determine that the claim on the MC 210 Statement of Facts (Medi–Cal), or on the SAWS 2 Statement of Facts is supported, and that the applicant is a resident of California if a preponderance of the credible evidence produced by the applicant supports a finding that the applicant is a resident of California. If a preponderance of the credible evidence produced by the applicant does not support the finding that the applicant is a resident of California, the applicant shall be determined not to be a resident of California, shall be denied eligibility for Medi–Cal benefits, and shall be afforded all notification and fair hearing rights provided to any person denied eligibility for Medi–Cal.

(f) A denial of a determination of residency may be appealed in the same manner as any other denial of eligibility. The Administrative Law Judge shall receive any proof of residency offered by the applicant and may inquire into any facts relevant to the question of residency. A determination of residency shall not be granted unless a preponderance of the credible evidence supports either the applicant's intent to remain indefinitely in this state, or any other basis provided by the laws governing the Medi–Cal program for establishing residency for Medi–Cal eligibility.

NOTE: Authority cited: Sections 10725, 14007.1 and 14124.5, Welfare and Institutions Code. Reference: Section 66, Chapter 722, Statutes of 1992; and 42 Code of Federal Regulations 435.403.

HISTORY

1. New section filed 5–17–93 as an emergency with Secretary of State by the Department of Health Services; operative 5–17–93. Submitted to OAL for printing only pursuant to 1992 Senate Bill 485 (Register 93, No. 21).

§ 50321. Temporary Absence from the State.

(a) Residence shall not be affected by temporary absence from the State for periods of 60 days or less. An absence of 60 days or less shall be presumed to be a temporary absence unless there is evidence to the contrary.

(b) An application, restoration, redetermination or reapplication from an applicant or beneficiary who is temporarily absent from the State for 60 days or less shall be accepted.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: 42 Code of Federal Regulations 435.403.

HISTORY

1. New NOTE filed 5–17–93 as an emergency with Secretary of State by the Department of Health Services; operative 5–17–93. Submitted to OAL for printing only pursuant to 1992 Senate Bill 485 (Register 93, No. 21).

§ 50323. Absence from the State for More Than 60 Days.

(a) Absence from the State for more than 60 days shall be presumptive evidence of the applicant's or beneficiary's intent to change residence from California to a place outside the State unless the person declares in writing both:

(1) An intent to return to California.

(2) The existence of one of the following circumstances:

(A) Illness or emergency circumstances which prohibit return to California.

(B) Family members with whom the applicant or beneficiary lives are California residents and are physically present in the State.

(C) The applicant or beneficiary maintains California housing arrangements.

(b) Unless there is evidence to the contrary, California residence may be considered to be terminated when an applicant or beneficiary leaves California and then takes any of the following actions in another state:

(1) Purchases, leases or rents a residence.

(2) Becomes employed.

(3) Obtains an out–of–state driver's license.

(4) Applies for aid in another state.

(c) Medi–Cal shall be discontinued effective the last day of the month in which residence terminated, if the 10 day notice can be given. Otherwise, the discontinuance shall be effective the last day of the following month.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: 42 Code of Federal Regulations 435.403.

HISTORY

1. Amendment of subsection (a) and new NOTE filed 5–17–93 as an emergency with Secretary of State by the Department of Health Services; operative 5–17–93. Submitted to OAL for printing only pursuant to 1992 Senate Bill 485 (Register 93, No. 21).

§ 50325. Death During Absence from the State.

A person who dies during an absence from the State shall be considered a resident if there is evidence that the requirements of Section 50321 or Section 50323 were met at the time of death.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: 42 Code of Federal Regulations 435.403.

HISTORY

1. New NOTE filed 5–17–93 as an emergency with Secretary of State by the Department of Health Services; operative 5–17–93. Submitted to OAL for printing only pursuant to 1992 Senate Bill 485 (Register 93, No. 21).

§ 50327. Persons Living on Land Leased or Owned by the United States.

Persons living within the boundaries of California on land owned or leased by the Federal Government shall be considered California residents.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: 42 Code of Federal Regulations 435.403.

HISTORY

1. New NOTE filed 5–17–93 as an emergency with Secretary of State by the Department of Health Services; operative 5–17–93. Submitted to OAL for printing only pursuant to 1992 Senate Bill 485 (Register 93, No. 21).

§ 50329. Persons on Parole from Correctional or Other Institutions.

Persons on parole from correctional or other institutions may establish California residence.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: 42 Code of Federal Regulations 435.403.

HISTORY

1. New NOTE filed 5–17–93 as an emergency with Secretary of State by the Department of Health Services; operative 5–17–93. Submitted to OAL for printing only pursuant to 1992 Senate Bill 485 (Register 93, No. 21).

§ 50331. United States Citizen Children of Aliens.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14007, Welfare and Institutions Code.

HISTORY

1. Repealer filed 2–6–80 as an emergency; effective upon filing. A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 6–6–80 (Register 80, No. 6).
2. Certificate of Compliance filed 6–6–80 (Register 80, No. 23).

§ 50333. Foster Children and Institutionalized Persons Placed Out–of–State.

(a) A child placed in out–of–state foster care maintains California residence if the child was placed under either of the following:

(1) Through the Interstate Compact on the Placement of Children.

(2) By a state or county agency responsible for the child's care.

(b) A person placed in an out–of–state institution by a state or county agency responsible for the person's care maintains California residence unless the other state accepts responsibility for the person.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14007, Welfare and Institutions Code.

HISTORY

1. Amendment filed 10–23–81; effective thirtieth day thereafter (Register 81, No. 43).

§ 50334. Out–of–State Foster Children and Institutionalized Persons Placed in California.

(a) An out–of–state child placed in foster care in California is a California resident if both of the following conditions are met:

(1) The child was placed by an out–of–state court directly with a guardian or foster parent in California.

(2) The other state has not adopted the Interstate Compact on the Placement of Children.

(b) An out–of–state person placed in an institution in California by another state agency, or a local government agency in another state, responsible for the person's care remains a resident of the placing state unless a California state or county agency accepts responsibility for the person.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14007, Welfare and Institutions Code.

HISTORY

1. Amendment filed 10–23–81; effective thirtieth day thereafter (Register 81, No. 43).

§ 50336. Other Persons in Out–of–State Institutions.

(a) The Director shall have the authority to determine the state of residence for a person who is living in an institution in another state when that state's medical assistance agency claims the person is a California resident.

(b) Applications for Medi–Cal on behalf of the persons specified in (a) shall be referred to the Director by the county department.

(c) The determination shall be made in accordance with federal Medicaid regulation 42 CFR 435.403, and shall be based upon such factors as the person's age, competency, former state of physical presence, the residence of the person's parents or in accordance with an interstate agreement entered into by the Director and another state's medical assistance agency.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14007, Welfare and Institutions Code.

HISTORY

1. New section filed 10–23–81; effective thirtieth day thereafter (Register 81, No. 43).
2. Amendment of subsection (c) filed 5–17–93 as an emergency with Secretary of State by the Department of Health Services; operative 5–17–93. Submitted to OAL for printing only pursuant to 1992 Senate Bill 485 (Register 93, No. 21).

§ 50338. Other Persons in California Institutions.

(a) Persons living in California institutions, other than persons specified in Section 50334 shall be considered California residents.

(b) Notwithstanding (a), the Director shall have the authority to determine the state of residence for persons in California institutions in accordance with federal Medicaid regulation 42 CFR 435.403. The determination shall be based upon such factors as the person's age, competency, former state of physical presence and the residence of the person's parents, or in accordance with an interstate agreement entered into by the Director and another state's medical assistance agency. The county department shall, upon request by the Director, obtain the information necessary for the determination to be made.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14007, Welfare and Institutions Code.

HISTORY

1. New section filed 10–23–81; effective thirtieth day thereafter (Register 81, No. 43).
2. Amendment of subsection (b) filed 5–17–93 as an emergency with Secretary of State by the Department of Health Services; operative 5–17–93. Submitted to OAL for printing only pursuant to 1992 Senate Bill 485 (Register 93, No. 21).

Article 8. Responsible Relatives and Unit Determination

§ 50351. Responsible Relatives.

(a) The responsibility of a relative to contribute to the cost of health care services of a Medi–Cal applicant or beneficiary shall be limited to spouse for spouse and parent for child.

(b) In determining Medi–Cal eligibility and share of cost, relative responsibility shall be determined in accordance with the following:

(1) Relative responsibility shall be spouse for spouse when the spouses are living together in the home.

(2) If one or both of the spouses is in LTC or board and care, the spouses income and property shall be considered available in determining each other's eligibility and share of cost in accordance with the MFBU composition provision of Section 50377.

(3) If neither of the spouses is in LTC or board and care but the spouses are living apart, the spouses shall have their eligibility and share of cost determined as single persons the day following the separation, if it is known that the separation will not be temporary in accordance with Section 50071(b).

(4) Relative responsibility shall be parent for child living in the parent's home and persons specified in (c), except that the parents shall neither be held financially responsible for, nor asked or required to contribute to, or provide other health care coverage for, the cost of minor consent services which the child applies for in accordance with Section 50147.1(a).

(c) Notwithstanding Sections 50014 and 50030, any person whether living in the home or away from the home, shall be considered a child and his/her parent shall be considered a responsible relative when both of the following conditions exist:

(1) The person is 18 years of age or older but under 21.

(2) The parent claims the child as a dependent in order to receive a tax credit or deduction for state or federal income tax purposes.

(d) Where, under Section 50373(a)(5), deeming occurs that is not spouse for spouse or parent for child as required under subsection (a), and the family has excess property or a share of cost, or both, the county shall redetermine the budget unit to ensure that each person's available income is deemed only to that person's child or spouse. For the purposes of this subsection, "deeming" is the process by which the income of one person is treated as available to another person.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 87(c), Chapter 1594, Statutes of 1982. Reference: Sections 14008, 14008.6 and 14010, Welfare and Institutions Code; and Sections 25.9 and 34.7, Civil Code; and 42 C.F.R. Sections 433.135, 433.136, 433.137, 433.138, 433.145, 433.146, 433.147, 433.148 and 435.604; and *Sneed v. Kizer* (N.D. Cal 1990) 728 F. Supp. 607.

HISTORY

1. Amendment filed 1–28–77 as an emergency; effective upon filing (Register 77, No. 5).
2. Certificate of Compliance filed 4–22–77 (Register 77, No. 17).
3. Amendment of subsections (a)(2)(C) and (b), and repealer of subsection (d) filed 10–31–78 as an emergency; designated effective 11–1–78 (Register 78, No. 44).

4. Certificate of Compliance filed 2–6–78 (Register 79, No. 6).
5. Amendment filed 1–8–81; effective thirtieth day thereafter (Register 81, No. 2).
6. Amendment of subsection (b)(4) filed 4–28–82; effective thirtieth day thereafter (Register 82, No. 18).
7. Amendment filed 10–1–82 as an emergency; effective upon filing (Register 82, No. 40). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1–29–83.
8. Certificate of Compliance transmitted to OAL 1–28–83 and filed 2–28–83 (Register 83, No. 10).
9. Amendment of subsection (c)(1) filed 12–3–85; effective thirtieth day thereafter (Register 85, No. 49).
10. Amendment of subsection (b)(2) and NOTE and repealer of subsection (d) filed 4–16–93 as an emergency; operative 4–16–93 (Register 93, No. 16). A Certificate of Compliance must be transmitted to OAL 8–16–93 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 4–16–93 order including amendment of NOTE transmitted to OAL 8–13–93 and filed 9–23–93 (Register 93, No. 39).
12. New subsection (d) and amendment of NOTE filed 12–9–97; operative 1–8–98 (Register 97, No. 50).

§ 50371. Medi–Cal Family Budget Unit.

(a) The Medi–Cal Family Budget Unit (MFBU) shall be the basic unit of persons considered in determining a person's or family's eligibility and share of cost. The MFBU shall be established in accordance with Sections 50373 through 50379. Members of the MFBU may be excluded from an established MFBU in accordance with Section 50381.

(b) Changes in the MFBU shall be reflected in the share of cost determination within the time frames specified in Section 50565, except that the changes may be reflected in the month the changes are reported if it is to the beneficiary's advantage. Any advantage shall be explained to the beneficiary. The beneficiary shall determine whether the change shall be reflected in the month it is reported.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.5, 14005.7, 14008 and 14051, Welfare and Institutions Code.

HISTORY

1. Amendment filed 1–28–77 as an emergency; effective upon filing (Register 77, No. 5).
2. Certificate of Compliance filed 4–22–77 (Register 77, No. 17).
3. Amendment of subsections (e) and (f) and repealer of subsection (i) filed 12–15–77; effective thirtieth day thereafter (Register 77, No. 51).
4. Amendment filed 3–7–80; effective thirtieth day thereafter (Register 80, No. 9).
5. Amendment filed 1–8–81; effective thirtieth day thereafter (Register 81, No. 2).
6. Amendment of subsection (a) filed 4–17–89; operative 5–17–89 (Register 89, No. 48).

§ 50373. Medi–Cal Family Budget Unit Determination, No Family Member in LTC or Board and Care.

(a) The MFBU for a family with no family member in LTC or board and care shall be determined in accordance with the following:

(1) Family members who are PA or Other PA recipients, except for persons eligible for four month or nine month continuing eligibility, shall not be included in the MFBU.

(2) All family members living in the home, other than those specified in (1), shall be included in the MFBU in accordance with (5) whether or not they are eligible for, or wish to receive, Medi–Cal. Potential members of the MFBU may be excluded in accordance with Section 50381.

(3) All family members living in the home, except those children excluded from the MFBU in accordance with 50381 and children who are ineligible for Medi–Cal, shall be considered in determining whether linkage to AFDC exists. Family members also include persons who are PA or other PA recipients.

(4) A person who is 18 years of age or older, but under age 21, is claimed as a dependent in order to receive a tax credit or deduction for state or federal income tax purposes shall be included in his/her parent's MFBU.

(5) Once the potential members of the MFBU have been identified, the MFBU shall be determined in accordance with the following as modified by Section 50374:

(A) Family members living in the home.	(B) MFBU
1. Individual adult.	1. Individual adult.
2. Individual, spouse.	2. Individual, spouse.
3. Parent, children.	3. Parent, children.
4. Both unmarried parents, mutual children.	4. Both unmarried parents, mutual children.
5. Both unmarried parents, mutual children, separate children of either or both parents.	5. Both unmarried parents, mutual children, separate children, except that when all the mutual children are excluded in accordance with Section 50381, each unmarried parent and that parent's separate children shall be in a separate MFBU.
6. Parent, spouse, mutual children.	6. Parent, spouse, mutual children.
7. Parent, spouse, mutual children and/or separate child of either or both parents.	7. Parent, spouse, mutual children, separate children or the parent and the separate children of that parent if the conditions of 50375 are met.
8. Minor parent, minor parent's children, the minor parent's parent and that person's spouse and/or children.	8. Two MFBU's: a. Minor parent as an ineligible member, minor parent's children. b. Minor parent, the minor parent's parent and that person's spouse and/or children (MFBU is determined in accordance with (3) through (7)).
9. Unmarried minor parent, second unmarried parent, their mutual children, separate children of either or both, unmarried minor parent's parent and that person's spouse and/or children.	9. Two MFBU's: a. Unmarried minor parent as an ineligible member, second unmarried parent, separate children of either unmarried parents, mutual children. b. Unmarried minor parent, the unmarried minor parent's, parent(s) and his/her spouse and/or children (MFBU is determined in accordance with (3) through (7)).
10. Married minor parent, minor parent's spouse, their mutual children, separate children of either or both, minor parent's parent and that person's spouse and/or children.	10. Three MFBU's: a. Married minor parent; married minor parent's spouse and children as ineligible members, and married minor parent's parent and that person's spouse as ineligible member(s). b. Married minor parent as an ineligible member, married child's spouse and children. c. Married minor parent as an ineligible member, married minor's parent and that person's spouse and/or children.
11. Child living with the child's parents requesting Medi–Cal for minor consent services, whose application is being processed in accordance with Section 50147.1(d) (3) (D), the child's children.	11. Child and the child's children.
12. Sibling children if all other family members are PA or Other PA.	12. Sibling children.
13. Parent, spouse if all children are PA or other PA.	13. Parent, spouse.
14. Sibling children, caretaker relative.	14. Sibling children and caretaker relative, when the caretaker relative chooses to be included.
15. Caretaker relative if all children are PA or other PA.	15. Caretaker relative.
16. Sibling children, caretaker relative, caretaker relative's spouse and/or children.	16. Two MFBU's: a. Sibling children. b. Caretaker relative and his/her spouse and/or children (MFBU is determined in accordance with (3) through (7)).
17. Caretaker; sibling children; caretaker's spouse. (Spouse does not want Medi–Cal or is not eligible).	17. Caretaker; sibling children.
18. Caretaker; sibling children; caretaker's spouse; their own children. (Spouse has no linkage. Caretaker has linkage only as a caretaker relative.	18. Two MFBU's: a. Caretaker; sibling children. b. Caretaker and caretaker's spouse as ineligible; their own children.
19. Caretaker; sibling children; other related sibling children.	19. Two MFBU's: a. Sibling children. (Caretaker has linkage only as a caretaker relative). b. Other sibling children; Caretaker or c. Sibling children; caretaker. d. Other sibling children.
20. Caretaker; sibling children; caretaker's spouse is PA. (Caretaker has linkage only as a caretaker relative).	20. Caretaker; sibling children.
21. Caretaker; sibling children are PA; caretaker's spouse; their own children. (Caretaker has linkage only as a caretaker relative or chooses to be linked to related children other than his/her own).	21. Two MFBU's: a. Caretaker. b. Caretaker as ineligible; spouse; his/her own children.
22. Caretaker; sibling children; caretaker's spouse is PA; their own children. (Caretaker has linkage only as a caretaker relative or chooses to be linked to related children other that his/her own).	22. Two MFBU's: a. Caretaker; sibling children. b. Caretaker as ineligible member; his/her own children.

(C) Family members, not living in the home.	(D) MFBU
1. Person 18 to 21 when the person is claimed by his/her parent(s) as a dependent in order to receive a tax credit or deduction for state or federal income taxation.	1. Person and parents in accordance with (A).
2. Person 18 to 21, person's spouse and children, and person's parent(s) when the person is claimed by his/her parent(s) as a dependent in order to receive a tax credit or deduction for state or federal income taxation.	2. Three MFBU's. a. Person claimed as a tax dependent; person's spouse and children as ineligible members, and person's parent(s) as ineligible members(s). b. Person claimed as a tax dependent as an ineligible member, person's spouse and children. c. Person claimed as a tax dependent as an ineligible member, person's parent(s).
3. Child in foster care.	3. Child.
4. Sibling children in foster care.	4. Each sibling child is in his/her own MFBU even if placed in the same foster home.
5. Child detained or place by a court or court designated agency under Welfare and Institutions Code Sections 300 or 601.	5. Child.
6. Child not living with a parent or relative for whom a public agency is assuming financial responsibility in whole or in part.	6. Child.
7. Child not living with a parent or caretaker relative when parents or public agencies have been contacted to determine whether they will accept legal responsibility for the child.	7. Child.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4, 14005.7, 14005.8, 14008 and 14010, Welfare and Institutions Code.

HISTORY

1. Amendment of subsections (a)(1) and (a) (4) filed 4–15–85 as an emergency; effective upon filing (Register 85, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–13–85. For prior history, see Register 83, No. 21.
2. Certificate of Compliance transmitted to OAL, 8–13–85 and filed 9–18–85 (Register 85, No. 38).
3. Amendment of subsection (a)(4) filed 12–3–85; effective thirtieth day thereafter (Register 85, No. 49).
4. Change without regulatory effect of subsections (a)(2) and (a)(5) (A) 10. (Register 87, No. 11).
5. Amendment of subsection (a)(3) filed 6–3–87; operative 7–3–87 (Register 87, No. 47). Ed. Note: The changes to the text of subsection (a)(3) were printed in Register 87, No. 24; however, the HISTORY NOTE was inadvertently omitted.
6. Amendment of subsection (a)(5) filed 4–17–89; operative 5–17–89 (Register 89, No. 48).
7. Editorial correction of printing error in subsection (a)(5)(B)9. (Register 93, No. 13).
8. Amendment of section and NOTE filed 12–9–97; operative 1–8–98 (Register 97, No. 50).

§ 50374. MFBU Determination—Child Stays Alternately with Each Parent.

(a) A child, who stays alternately for periods of one month or less with each of his/her parents and the parents are separated or divorced, shall be included in the MFBU of the parent specified in this section. The child shall be included in the MFBU of the parent:

(1) With whom the child stays for the majority of time unless the other parent can establish that he/she has majority responsibility, as defined in (c), or care and control of the child.

(2) Who has majority responsibility, as defined in (c), when the child spends an equal amount of time with each parent.

(3) Who applies for Medi–Cal on behalf of the child, when the child spends an equal amount of time with each parent and each parent exercises an equal share of care and control responsibilities. When both parents apply for Medi–Cal for such a child, the child's MFBU shall be determined in accordance with (b).

(b) A child described in (a) (3) shall be included in the MFBU of the parent who solely meets one of the following conditions in the order specified. The parent who:

(1) Is designated in a current court order as the primary parent for purposes of public assistance, under Civil Code, Section 4600.5(h).

(2) Is eligible for Medi–Cal.

(3) Is designated, through mutual agreement of both parents, as the primary parent for purposes of public assistance.

(4) First applied for Medi–Cal on behalf of the child.

(c) For purposes of this section, when determining which parent has majority responsibility for care of a child, the following factors shall be considered. In addition, other similar factors shall also be considered as a single factor may not be determinative. The determination shall include, the extent to which the parent:

(1) Decides where the child attends school.

(2) Deals with the school on educational decisions and problems.

(3) Controls participation in extracurricular and recreational activities.

(4) Arranges medical and dental care services.

(5) Claims the child as a tax dependent.

(6) Purchases and maintains the child's clothing.

(d) Once the MFBU has been determined with (a), (b) and (c), the child shall remain in that MFBU while staying with the other parent for alternating periods of one month or less. If the child stays with the other parent consecutively for more than one month, then the child shall be included in the MFBU of that parent.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.7, 14008 and 14051, Welfare and Institutions Code.

HISTORY

1. New section filed 4–17–89; operative 5–17–89 (Register 89, No. 48).

§ 50375. Medi–Cal Family Budget Unit Determination, Stepparent Cases.

(a) Family members in a family which includes a stepparent shall be in the same MFBU unless only the separate children of one parent wish to receive Medi–Cal.

(b) If the applicant requests that only the separate children of one parent receive Medi–Cal, the right to make this choice and its effects shall be explained to the applicant at the time of the face–to–face interview.

(c) The stepparent unit shall consist of the following:

(1) Stepparent.

(2) Parent.

(3) Mutual children.

(4) Stepparent's separate children.

(d) When only the separate children of one parent will receive Medi–Cal:

(1) The parent of the separate children shall be an ineligible member of the separate children's MFBU in accordance with Section 50379(e).

(2) The members of the stepparent unit, other than the parent of the separate children shall be excluded from the MFBU in accordance with Section 50381(b).

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4, 14005.7, 14008, 14051 and 14052, Welfare and Institutions Code.

HISTORY

1. New section filed 1–8–81; effective thirtieth day thereafter (Register 81, No. 2).
2. Amendment of subsection (c) filed 2–11–82; effective thirtieth day thereafter (Register 82, No. 7).
3. Amendment of subsection (a)(3) filed 6–3–87; operative 7–3–87 (Register 87, No. 24).
4. Amendment filed 12–9–97; operative 1–8–98 (Register 97, No. 50).

§ 50377. Medi–Cal Family Budget Unit (MFBU) Determination, Family Member in Long–Term Care or Board and Care.

(a) An aged, blind or disabled person who is in LTC or board and care shall be in his/her own MFBU, except as provided in (c).

(b) An aged, blind or disabled person's spouse who is in LTC or board and care shall be in his/her own MFBU, except as provided in (c).

(c) Spouses and their children shall be in the same MFB for property evaluations until the end of the sixth full month of LTC or board and care status when all of the following conditions are met:

(1) Both spouses are aged, blind or disabled.

(2) One or both spouses is in LTC or board and care.

(3) Both spouses apply for and are eligible for Medi–Cal.

(d) A person who is in LTC or board and care who is not aged, blind or disabled and whose spouse is not aged, blind or disabled shall be included in the MFBU with the person's spouse, and/or children or, where the person is a child, with the child's parents.

(e) A child who is a ward of the court or the responsibility of a public agency due to a voluntary placement by a parent or guardian and who is a patient in a medical facility shall be in the child's own MFBU.

(f) A child who is not blind or disabled, who is in LTC and who was not living with the child's parents immediately prior to entering LTC shall be in the child's own MFBU.

(g) Income and property available to the MFBUs established in accordance with this section shall be determined in accordance with Sections 50557 and 50403.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 5, Chapter 1221, Statutes of 1985. Reference: Sections 14005.4, 14005.7, 14005.16 and 14008, Welfare and Institutions Code.

HISTORY

1. New section filed 1–8–81; effective thirtieth day thereafter (Register 81, No. 2).
2. Amendment filed 12–2–85 as an emergency; effective upon filing (Register 85, No. 50). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–1–86.
3. Amendment refiled 3–28–86 as an emergency; effective upon filing (Register 86, No. 13). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–28–86.
4. Certificate of Compliance as to 3–28–86 order filed 6–6–86 (Register 86, No. 23).

§ 50379. Ineligible Members of the Medi–Cal Family Budget Unit.

(a) Persons who are ineligible for Medi–Cal for any of the following reasons shall be ineligible members of the MFBU, as limited by (b).

(1) Refusal to apply for a Social Security number except as specified in Section 50302(c).

(2) Refusal to apply for a Medicare health insurance claim number.

(3) Refusal to apply for and accept unconditionally available income.

(4) Inability to meet the basic eligibility criteria for any of the Medi–Cal programs.

(5) Parents who reside outside the state and who claim their children residing in the state as dependents in order to receive a tax credit or deduction for state or federal income tax purposes.

(6) Refusal by a parent or caretaker relative to assign to the state all rights to medical support and payments for medical care from any third party.

(7) Refusal by a parent or caretaker relative, without good cause as specified in Section 50771.5, to cooperate in establishing paternity for a child under eighteen years of age born out of wedlock for whom Medi–Cal is requested and in obtaining medical support and payments, and in identifying and providing information concerning any third party who is or may be liable to pay for medical care or support.

(b) A child ineligible for Medi–Cal for any of the reasons listed in (a) who has separate income or property may be treated as an ineligible member of the MFBU or be excluded from the MFBU in accordance with Section 50381. This choice is the option of the person who has legal responsibility for the child.

(c) Persons who are eligible for four month continuing eligibility or Transitional Medi–Cal shall be ineligible members of the MFBU.

(d) Minor parents living with their parents shall be ineligible members of the MFBU that includes the minor parent's children except when the minor parent wishes to receive only minor consent services. Minor parents who wish to receive Medi–Cal, other than minor consent services, shall be included in the MFBU with their parents.

(e) The parent of the separate children in a stepparent case who are the only family members who wish to receive Medi–Cal in accordance with Section 50375 shall be an ineligible member of the separate children's MFBU.

(f) The following persons shall be ineligible members of the MFBU when a person 18 to 21 is claimed by his/her parent as a dependent in order to receive a tax credit or deduction for state or federal income taxation:

(1) The spouse, children, and parent(s) of the person 18 to 21 claimed as a tax dependent shall be ineligible members of the MFBU which includes the tax dependent.

(2) The person 18 to 21 claimed as a tax dependent shall be an ineligble member of the MFBUs which include either:

(A) His/her parent(s).

(B) His/her spouse and children.

(g) Ineligible members of a MFBU shall:

(1) Be included in the MFBU for the purpose of determining eligibility based on property and share of cost.

(2) Have their health care costs used to meet the share of cost.

(3) Not be issued a Medi–Cal card.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; Section 87(c), Chapter 1594, Statutes of 1982; and Section 14, Chapter 1447, Statutes of 1984. Reference: Sections 14005.4, 14005.7, 14005.8, 14005.12, 14007.1, 14008 and 14008.6, Welfare and Institutions Code; Title 42, Section 1396r–6, UNited States Code; and 42 C.F.R. Sections 433.135, 433.136, 433.137, 433.138, 433.145, 433.146, 433.147, 433.148 and 435.604.

HISTORY

1. New section filed 1–8–81; effective thirtieth day thereafter (Register 81, No. 2).
2. New subsections (a)(5)–(6), filed 10–1–82 as an emergency; effective upon filing (Register 82, No. 40). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1–29–83.
3. Relettering of subsection (f) to subsection (g) and new subsection (f) filed 12–21–82 as an emergency; effective upon filing (Register 82, No. 52). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–20–83.
4. Amendment of subsection (a)(5) filed 12–31–82 as an emergency; effective upon filing (Register 83, No. 2). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–30–83.
5. Certificate of Compliance as to 10–1–82 order transmitted to OAL 1–28–83 and filed 2–28–83 (Register 83, No. 10).
6. Certificate of Compliance as to 12–21–82 order transmitted to OAL 4–19–83 and filed 5–16–83 (Register 83, No. 21).
7. Certificate of Compliance as to 12–31–82 order transmitted to OAL 4–13–83 and filed 5–16–83 (Register 83, No. 21).
8. Amendment of subsections (c) and (g)(2) filed 4–15–85 as an emergency; effective upon filing (Register 85, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–13–85.
9. Certificate of Compliance including amendment of subsection (g)(2) transmitted to OAL 8–13–85 and filed 9–18–85 (Register 85, No. 38).
10. New subsections (a)(7) and (a)(8) and amendment of NOTE filed 4–16–93 as an emergency; operative 4–16–93 (Register 93, No. 16). A Certificate of Compliance must be transmitted to OAL 8–16–93 or emergency language will be repealed by operation of law on the following day.

11. Certificate of Compliance as to 4–16–93 order including amendment of NOTE transmitted to OAL 8–13–93 and filed 9–23–93 (Register 93, No. 39).
12. Amendment of section and NOTE filed 12–9–97; operative 1–8–98 (Register 97, No. 50).

§ 50381. Persons Excluded from the Medi–Cal Family Budget Unit.

(a) Any child, other than an unborn or an infant during the first two months of life, may be excluded from the MFBU. This choice shall be the option of the person who has legal responsibility for the child. Excluded children shall not:

(1) Apply separately unless they apply for minor consent services.

(2) Be included in the MFBU for the purpose of determining eligibility and share of cost.

(3) Be considered in determining the program for which the persons included in the MFBU are eligible.

(4) Have their health care costs used to meet the MFBU's share of cost.

(b) All the members of the stepparent unit established in accordance with Section 50375, other than the parent of the separate children receiving Medi–Cal, shall be considered excluded from the MFBU. The excluded members shall not:

(1) Apply separately unless they apply for minor consent services.

(2) Be included in the MFBU for the purpose of determining eligibility and share of cost.

(3) Have their health care costs used to meet the MFBU's share of cost.

(c) The county department shall explain to the applicant who has a choice of being included or excluded from the MFBU the advantages and disadvantages of such an action before the choice is made.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4, 14005.7 and 14008, Welfare and Institutions Code.

HISTORY

1. New section filed 1–8–81; effective thirtieth day thereafter (Register 81, No. 2).
2. Amendment of subsections (a), (a)(4) and (b)(3) filed 12–9–97; operative 1–8–98 (Register 97, No. 50).

Article 9. Property

§ 50401. Property Evaluation.

(a) After determining the appropriate Medi–Cal program for the members of the MFBU, the county department shall evaluate the property holdings of the MFBU to determine:

(1) Property to be included in determining eligibility.

(2) The value of the included property.

(3) Whether the total value of the included property exceeds the property reserve limits specified in Section 50420.

(b) After determining the value of all property to be included in the property reserve of the MFBU, the value shall be waived for a pregnant woman and/or infant if those applicants or beneficiaries are found to be eligible under the 200 Percent program as provided in Section 50262(a).

(c) When determining eligibility under the Percent programs, as described under Sections 50262.5 and 50262.6, property shall be disregarded.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14006, 14148.5 and 14148.75, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 6–10–83 (Register 83, No. 24).
2. New subsection (b) and amendment of NOTE filed 5–28–92 as an emergency; operative 5–28–92 (Register 92, No. 22). A Certificate of Compliance must be transmitted to OAL 9–25–92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 5–28–92 order transmitted to OAL 9–25–92 and filed 10–19–92 (Register 92, No. 43).
4. New subsection (c) and amendment of NOTE filed 4–2–98 as an emergency; operative 4–2–98. *Submitted to* OAL *for printing* only pursuant to Welfare and Institutions Code section 14148.75 (Register 98, No. 16). A Certificate of Compliance must be transmitted to OAL by 9–29–98 or emergency language will be repealed by operation of law on the following day.
5. Editorial correction of HISTORY 4 (Register 98, No. 47).
6. Reinstatement of section as it existed prior to 4–2–98 emergency amendment by operation of Government Code section 11346.1(f) (Register 98, No. 47).
7. New subsection (c) and amendment of NOTE filed 11–18–98; operative 11–18–98 (Register 98, No. 47).

§ 50402. Availability of Property.

Property which is not available shall not be considered in determining eligibility.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code.

HISTORY

1. Change without regulatory effect adding NOTE filed 10–11–88 (Register 88, No. 45).

§ 50403. Treatment of Property: Separate and Community Property.

(a) The separate property and share of community property of any person included in the MFBU shall be considered in determining Medi–Cal eligibility.

(b) A spouse's share of community property is always one–half of the current total community property.

(c) For purposes of establishing eligibility, an interspousal agreement entered into pursuant to Welfare and Institutions Code Section 14006.2 shall:

(1) be written, dated and signed by both spouses or by a person who has the legal authority to enter into such agreements on behalf of either spouse;

(2) list each asset being transmuted;

(3) clearly designate the owner of each asset;

(4) list the value of each asset; and

(5) evidence an equal division of the nonexempt community property.

(d) If an interspousal agreement does not comply with (c)(4) of this section, the county shall request additional information from the applicant, or other party mentioned in (c)(1) to supplement the agreement and verify the methodology used to value assets. Such information may be necessary pursuant to verification requirements contained in Article 4 of this Division.

(e) If an interspousal agreement evidences an unequal division of the nonexempt community property, and the applicant received the smaller share of such property under the agreement, the county shall determine whether the transfer was for adequate consideration in accordance with Sections 50408 and 50409.

(1) If the county determines that the transfer was not for adequate consideration and was made in order to establish eligibility or to reduce the share of cost, the county shall give the applicant's spouse the option of reconveying to the applicant in accordance with Section 50411(d)(1) an amount of property sufficient to provide each spouse with equal shares of the total nonexempt community property identified in the interspousal agreement.

(2) If the applicant's spouse does not reconvey property pursuant to (e)(1) above, the county shall assess a period of ineligibility for the applicant in accordance with Section 50411.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14006, 14006.2, 14008, 14008.5 and 14015, Welfare and Institutions Code.

HISTORY

1. Amendment filed 1–8–81; effective thirtieth day thereafter (Register 81, No. 2).
2. New subsections (c), (d) and (e) filed 11–16–88; operative 11–16–88 pursuant to Government Code Section 11346.2(d) (Register 88, No. 49).

§ 50404. Owner of Property.

(a) The owner of property, for Medi–Cal eligibility purposes, shall be the person who holds legal title to the property unless otherwise specified in these regulations.

(b) Ownership of property may be vested in one individual or shared with other individuals.

(c) Notwithstanding (a), a person shall be the owner of separate property designated in a written interspousal agreement.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14006 and 14006.2, Welfare and Institutions Code.

HISTORY

1. New subsection (c) filed 2–16–88 as an emergency; operative 2–16–88 (Register 88, No. 10). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6–15–88.
2. New subsection (c) refiled 6–16–88 as an emergency; operative 6–16–88 (Register 88, No. 26). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–14–88.
3. Emergency language of new subsection (c) refiled and operative 6–16–88 repealed on 10–14–88 by operation of Government Code Section 11346.1 (Register 88, No. 49).
4. New subsection (c) filed 11–16–88; operative 11–16–88 pursuant to Government Code Section 11346.2(d) (Register 88, No. 49).

§ 50405. Contracts of Sale.

(a) Property purchased under a signed contract of sale by the applicant or beneficiary shall be included in the property reserve of the applicant or beneficiary.

(b) Property being sold by the applicant or beneficiary under a signed contract of sale shall not be considered the property of the applicant or beneficiary. The interest payments received under the contract of sale shall be unearned income. The principal payments received under the contract of sale shall be property.

(c) Property being purchased or sold under a verbal or unsigned contract of sale shall be considered the property of the seller until the sale is complete.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code.

HISTORY

1. Change without regulatory effect adding NOTE filed 10–11–88 (Register 88, No. 45).

§ 50406. Conversion or Transfer of Property.

Conversion or transfer of property may affect eligibility. Sections 50407 through 50411 describe methods of converting or transferring property, and the effect of each method on eligibility.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14006 and 14015, Welfare and Institutions Code.

HISTORY

1. Change without regulatory effect adding NOTE filed 10–11–88 (Register 88, No. 45).

§ 50407. Conversion of Property—Treatment.

(a) Conversion of property in itself from one form to another has no effect on eligibility; however, the property obtained through a conversion may have an effect on eligibility and therefore shall be evaluated to determine its effect.

(b) Insurance or other third–party payments for the loss or damage of property shall be treated as converted property rather than income.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14006 and 14015, Welfare and Institutions Code.

HISTORY

1. Change without regulatory effect adding NOTE filed 10–11–88 (Register 88, No. 45).

§ 50408. Transfer of Property Which Does Not Result in Ineligibility.

(a) Transfer of property shall not result in ineligibility for Medi–Cal under any of the following conditions:

(1) The property would have been considered exempt pursuant to Section 50418 of Article 9 of Division 3 of this title at the time of transfer.

(2) The net market value of the property transferred, when included in the property reserve, would not result in ineligibility. The determination of value shall be made as of the time of transfer. If eligibility exists, the value of the property shall no longer be considered.

(3) Adequate consideration is received. Adequate consideration is the fair market value of the property as defined in Section 50412 and includes:

(A) A transfer which was to satisfy a legal debt.

(B) A transfer which was to reimburse someone other than a responsible relative, as specified in Section 50351, for care or benefits provided on the basis of an agreement or understanding that reimbursement would be made. The applicant or beneficiary shall provide evidence that clearly establishes that the value of the care or benefits provided was reasonably equivalent to the value of the property transferred.

(C) A written transmutation of a married couple's nonexempt community property into equal shares of separate property through an interspousal agreement.

(4) Foreclosure or repossession of the property was imminent at the time of transfer, and there is no evidence of collusion.

(5) The transfer was made in return for an enforceable contract for life care which does not include complete medical care. In this case, each full item of need provided under the life care contract shall be considered income in kind in accordance with Section 50509.

(6) The transfer was made without adequate consideration but the applicant or beneficiary provides convincing evidence to the county as specified in Section 50409(b), to overcome the presumption that the

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transfer was for the purpose of establishing eligibility or reducing the share of cost.

(b) There is a presumption that property transferred by the applicant or beneficiary more than two years preceding the date of initial application was not transferred to establish eligibility or reduce the share of cost. Such property shall not be considered in determining eligibility.

(c) While the transfer of property by an applicant or beneficiary from one form to another, as described in (a) above, has no effect on eligibility, any property obtained by an applicant or beneficiary through such a transfer may have an effect on eligibility and therefore shall be evaluated to determine its effect.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14006, 14006.2 and 14015, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (b) filed 12–15–77; effective thirtieth day thereafter (Register 77, No. 51).
2. Amendment filed 3–7–80; effective thirtieth day thereafter (Register 80, No. 9).
3. New subsection (a)(2)(C) filed 2–16–88 as an emergency; operative 2–16–88 (Register 88, No. 10). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6–15–88.
4. New subsection (a)(2)(C) refiled 6–16–88 as an emergency; operative 6–16–88 (Register 88, No. 26). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–14–88.
5. Amendment filed 6–28–88; operative 7–28–88 (Register 88, No. 27).
6. New subsection (a)(2)(C) refiled and operative 6–16–88 repealed 10–14–88 pursuant to Government Code Section 11346.1 (Register 88, No. 49).
7. New subsection (a)(2)(C) filed 11–16–88; operative 11–16–88 pursuant to Government Code Section 11346.2(d) (Register 88, No. 49).

§ 50409. Transfer of Property Which Results in Ineligibility.

(a) Transfer of property shall result in ineligibility for Medi–Cal if:

(1) the transfer met none of the conditions specified in Section 50408; or

(2) the transfer was in return for an enforceable life care contract which includes complete medical care.

(b) Transfer of property without adequate consideration shall result in ineligibility for Medi–Cal if the transfer was made to establish eligibility or to reduce the share of cost.

(1) It shall be presumed that property transferred without adequate consideration was for the purpose of establishing eligibility or to reduce the share of cost as limited by (2).

(2) To overcome the presumption, the applicant or beneficiary has the burden of establishing that this presumption is not correct.

(A) The applicant or beneficiary shall provide evidence which may include verification of the onset of traumatic injury or illness, diagnosis of a previously undetected disability condition or unexpected loss of income or resources after transfer and/or that adequate resources were available at the time of the transfer of property for support and medical care considering such things as the applicant's or beneficiary's age, health, life expectancy, and ability to understand extent of resources.

(B) Such evidence may also include other subjective evidence including, but not limited to, evidence that the claimant transferred in order to avoid probate and/or that the claimant had no knowledge of Medi–Cal or its benefits at the time of the transfer.

(C) However, any such evidence presented must be convincing evidence in order to overcome the presumption stated in (b)(1) above.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14006 and 14015, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (a) filed 12–15–77; effective thirtieth day thereafter (Register 77, No. 51).
2. Editorial correction adding NOTE filed 6–10–83 (Register 83, No. 24).
3. Amendment filed 6–28–88; operative 7–28–88 (Register 88, No. 27).

§ 50410. Transfer of Property with Retention of a Life Estate.

Property transferred by the applicant or beneficiary with retention of a life estate shall be treated as any other transfer to determine whether the transfer results in ineligibility.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14015, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 6–10–83 (Register 83, No. 24).

§ 50411. Period of Ineligibility Due to Transfer of Property.

(a) Following a determination of ineligibility due to the transfer of property, there shall be a period of ineligibility. This period shall be the time during which the net market value of the property at the time of transfer, less consideration received, would have supported the applicant or beneficiary and the applicant's or beneficiary's family.

(b) The period of ineligibility shall be computed in the following manner:

Determine the net market value of the property at the time of transfer less any consideration received which is the net value of the property transferred.

(2) Determine the portion of the net value of the property transferred which, if included in the property reserve at the time of transfer, would not have caused such reserve to exceed the property limit that was applicable at that time.

(3) The portion of the net value of the property transferred that would not have fallen within the property limit at the time of transfer is the excess net value of the property transferred and shall be used to determine the period of ineligibility.

(4) The number of months in the period of ineligibility shall be determined by dividing the excess net value of the property transferred by the monthly maintenance need for the applicant or beneficiary and the applicant's or beneficiary's family. The maintenance needs used shall be the maintenance needs in effect during each individual month since the date of the transfer. Income received by the family after the transfer shall not affect this computation.

(5) The period of ineligibility may be further reduced by deducting the actual cost to the applicant or beneficiary of the following:

(A) Medical expenses.

(B) Out–of–home care costs in excess of the maintenance needs.

(C) Major home repairs necessary to put the home into a liveable condition.

(c) The period of ineligibility shall begin the first of the month following the date the transfer which resulted in ineligibility occurred, unless a 10 day notice is required and cannot be given. In that case, the period of ineligibility shall begin the first of the next month.

(d) The period of ineligibility shall end when any of the following situations occur:

(1) The property which was transferred and caused ineligibility is reconveyed to the applicant or beneficiary.

(2) The applicant or beneficiary receives adequate consideration for the property.

(3) Deduction of the amounts specified in (b) (4) and (5) has reduced the excess net market value to zero.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14006 and 14015, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (b)(4) and (b)(5) filed 12–15–77; effective thirtieth day thereafter (Register 77, No. 51).
2. Editorial correction adding NOTE filed 6–10–83 (Register 83, No. 24).

§ 50412. Market Value of Property.

(a) The market value of real property shall be (1) or (2), unless the applicant or beneficiary chooses to meet the conditions of (3), and (3) is lower:

(1) The assessed value determined under the most recent property tax assessment, if the property is located in California.

(2) The value established by applying the assessment method used in the area where the property is located, if the property is located outside of California.

(3) The value established as the result of an appraisal by a qualified real estate appraiser, if the appraisal is obtained by the applicant or beneficiary and provided to the county department.

(b) The market value of each item of personal property shall be determined by the specific methods contained in this article.

(c) The market value of notes secured by deeds of trust and mortgages which are considered as other real property in accordance with Section 50441(b) shall be established in accordance with Section 50441(c).

NOTE: Authority cited: Sections 10725, 14006.1 and 14124.5, Welfare and Institutions Code; and Section 57, Chapter 328, Statutes of 1982. Reference: Sections 11153.7 and 14006, Welfare and Institutions Code.

HISTORY

1. Amendment filed 1–28–77 as an emergency; effective upon filing (Register 77, No. 5).
2. Certificate of Compliance filed 4–22–77 (Register 77, No. 17).
3. Amendment of subsections (a)(3) and (c) filed 5–6–81; effective thirtieth day thereafter (Register 81, No. 19).
4. Amendment of subsection (a)(1) filed 12–31–82 as an emergency; effective upon filing (Register 83, No. 2). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–30–83.
5. Certificate of Compliance transmitted to OAL 4–29–83 and filed 6–3–83 (Register 83, No. 23).
6. Amendment of subsection (a)(3) filed 7–24–84 as an emergency; effective upon filing (Register 84, No. 31). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–21–84.
7. Order of Repeal of 7–24–84 emergency order filed 12–20–84 by OAL pursuant to Government Code Section 11349.6 (Register 84, No. 51).
8. Amendment of subsection (a)(3) filed 12–2–85 as an emergency; effective upon filing (Register 85, No. 50). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–1–86.
9. Certificate of Compliance transmitted to OAL 3–31–86 and filed 4–30–86 (Register 86, No. 18).

§ 50413. Encumbrances.

(a) Encumbrances of record are obligations for which the property is security. Encumbrances include, but are not limited to:

(1) Loans.

(2) Attachments for debts and taxes.

(3) Chattel mortgages and liens.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 6–10–83 (Register 83, No. 24).

§ 50414. Share of Encumbrances Determination.

(a) The share of encumbrances shall be determined as follows:

(1) Determine the total market value of the property.

(2) Determine the market value of the portion of the property that is to be considered.

(3) Divide the amount determined in (2) by the amount determined in (1) to obtain the percentage that the portion of property is of the total property.

(4) Multiply the total encumbrances on the property by the percentage determined in (3) above. This is the share of encumbrances.

§ 50415. Net Market Value of Property.

(a) The net market value of real or personal property is the owner's equity in that property.

(b) The net market value shall be determined by subtracting the encumbrances of record from the market value.

(c) The net market value of real or personal property owned jointly with other persons shall be determined by subtracting the beneficiary's share of encumbrances from the beneficiary's interest in the property.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code.

HISTORY

1. Change without regulatory effect adding NOTE filed 10–11–88 (Register 88, No. 45).

§ 50416. Utilization Requirements.

(a) Other real property, as specified in Section 50427(b), shall be utilized in order to be exempt unless the net market value, when added to the net market value of other nonexempt property, falls within the limits set forth in Section 50420.

(b) The property is utilized if any of the following requirements are met:

(1) The beneficiary is receiving net yearly income from the property of at least six percent of the net market value of the property.

(A) For property not limited to seasonal use, this requirement is met if the net monthly income from the property is one–twelfth of six percent of the net market value of the property.

(B) For property limited to seasonal use, this requirement is met if the net yearly income is six percent of the net market value of the property. Property limited to seasonal use includes, but is not limited to:

1. Farmland.

2. Summer cabins.

(C) For purpose of determining net yearly income from property limited to seasonal use, the year is considered to begin in the first month of the year in which income normally begins. Income from all months of the year shall be considered in determining net yearly income of the property, regardless of the eligibility status of the beneficiary in those months.

(2) The property has been sold, or the sale is in escrow and there is a bona fide attempt to close the sale.

(c) The applicant or beneficiary shall be allowed six months to meet utilization requirements. The six month period shall be known as the utilization period, and shall begin on the first of the month following issuance of a notice of action informing the applicant or beneficiary that the property is not yielding sufficient income, as required in (b). The utilization period shall be stayed during periods of ineligibility in accordance with (1).

(d) The utilization period may be extended for a maximum of one year for good cause, as specified in Section 50417.

(e) The utilization period shall be extended for as long as the property is listed for sale, provided all of the following conditions are met:

(1) The county department determines that utilization requirements can only be met by sale of the property. This determination shall be made using evidence provided by the applicant or beneficiary, which may be, but is not limited to, either of the following:

(A) A written statement from a qualified real estate appraiser which gives the appraisal value of the property and its income potential.

(B) A certificate of condemnation.

(2) The property is listed for sale with a licensed real estate broker at the market value, as determined in accordance with Section 50412(a).

(3) The beneficiary provides the following evidence every six months, and at any other time it is requested by the county department:

(A) A statement from the real estate agency that no bona fide offer has been rejected.

(B) Copies of any offers that have been submitted and the reasons for rejection.

(C) Evidence of the efforts being made to advertise the property for sale.

(f) If the applicant or beneficiary utilizes the property by sale, the property shall be sold for at least market value, unless the property was sold under either of the following situations, and the applicant or beneficiary submits evidence that there was a bona fide attempt to sell at market value.

(1) The property was listed with a licensed real estate broker for at least three months and the final sale price was similar to comparable sales in the area.

(2) There was an inability to sell the property for the market value and the county department determines that the final sale price was reasonable.

(g) An existing environmental impact report involving a property shall be considered by the county department in determining the utilization potential of the property.

(h) A life estate interest in real property shall be utilized in accordance with this section.

(i) The applicant or beneficiary may arrange for a reassessment of the property during the utilization period. The assessment shall affect utilization as follows:

(1) The reassessment value shall be used in determining utilization requirements.

(2) The reassessment shall not affect the beginning date or the length of the utilization period.

(j) The entire net market value of property not utilized in accordance with this section shall be included in the property reserve on the first of the month following the last month of the utilization period.

(k) A utilization period shall begin whenever:

(1) An applicant, with other real property that is not being utilized, becomes eligible except as specified in (1).

(2) The other real property of a beneficiary, that has been utilized, is no longer utilized.

(3) The net market value of other real property, when added to the net market value of other nonexempt property, no longer falls within the limits set forth in Section 50420.

(*l*) When a utilization period has begun and the beneficiary becomes ineligible for Medi-Cal prior to its expiration, the remainder of the utilization period shall be applied if eligibility is subsequently reestablished and the property is not utilized at that time. However, if the beneficiary can verify that the property was utilized at any time during the period of ineligibility, a new utilization period shall begin.

NOTE: Authority cited: Sections 10725, 14006.1 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code.

HISTORY

1. Amendment of subsections (e)(1)(A) and (k) filed 12-2-85 as an emergency; effective upon filing (Register 85, No. 50). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4-1-86. For prior history, see Register 83, No. 4.
2. Certificate of Compliance transmitted to OAL 3-31-86 and filed 4-30-86 (Register 86, No. 18).

§ 50417. Utilization—Good Cause.

(a) Good cause, as required in Section 50416 (d), shall be found only if the applicant or beneficiary has made a bona fide effort to meet utilization requirements and is unable to do so because of circumstances beyond such person's control.

(b) Circumstances beyond a person's control shall include any of the following situations:

(1) Death of a part owner of the property and inability or refusal of the administrator or executor of the estate or other responsible person to complete disposition of the property if such person is other than the applicant or beneficiary.

(2) Misplaced reliance by the applicant or beneficiary upon what appeared to be a bona fide offer. The county department shall require a copy of the written offer for the property as evidence that the offer was bona fide. Misplaced reliance may have resulted if the offer was either of the following:

(A) Bona fide but the purchaser was unable to complete the purchase.

(B) Apparently bona fide but eventually found not to be bona fide.

(3) Prolonged illness causing the seller to be homebound or hospitalized during the utilization period and unable to take the necessary action to meet utilization requirements or to arrange for an agent to do so.

(4) Like reasons which the county department determines meet the general intent of good cause.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11153.7 and 14006, Welfare and Institutions Code.

HISTORY

1. Editorial correction filed 6-10-83 (Register 83, No. 24).

§ 50418. Exemption of Property.

(a) Certain real and personal property is exempt and shall not be included in determining eligibility. These property exemptions are specified in Sections 50425 through 50489.

(b) All real and personal property not exempt as specified in (a) is nonexempt property.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code.

HISTORY

1. Change without regulatory effect adding NOTE filed 10-11-88 (Register 88, No. 45).

§ 50419. Property Reserve.

The property reserve is the net market value of the nonexempt property of those persons whose property is considered in determining the eligibility of the MFBU.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code.

HISTORY

1. Change without regulatory effect adding NOTE filed 10-11-88 (Register 88, No. 45).

§ 50420. Property Limit.

(a) The property reserve shall not exceed the following limits.

Number of Persons Whose Property is Considered	*Property Limit 1985*	*Property Limit 1986*	*Property Limit 1987*	*Property Limit 1988*	*Property Limit 1989*
1 person	1,600	1,700	1,800	1,900	2,000
2 persons	2,400	2,550	2,700	2,850	3,000
3 persons	2,550	2,700	2,850	3,000	3,150
4 persons	2,700	2,850	3,000	3,150	3,300
5 persons	2,850	3,000	3,150	3,300	3,450
6 persons	3,000	3,150	3,300	3,450	3,600
7 persons	3,150	3,300	3,450	3,600	3,750
8 persons	3,300	3,450	3,600	3,750	3,900
9 persons	3,450	3,600	3,750	3,900	4.050
10 persons or more	3,600	3,750	3,900	4,050	4,200

(b) The members of the MFBU shall be ineligible for Medi-Cal if the condition specified in (a) above is not met at some time during the month in which application is made.

(c) If the property reserve has been in excess of the property limit from the first day of the month of application through the date of application the MFBU shall be eligible under the following conditions:

(1) The property reserve is brought within the property limit in any manner other than transfer without adequate consideration by the last day of the month of application.

(2) All other conditions of eligibility are met.

(d) The provisions of this regulation also apply to eligibility determinations or redeterminations made retroactively to January 1, 1985.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 57(c), Chapter 328, Statutes of 1982. Reference: Sections 14006 and 14019.6, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (a), (b) and new subsection (d) filed 4–15–85 as an emergency; effective upon filing (Register 85, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–13–85. For prior history, see Register 83, No. 16.
2. Certificate of Compliance as to 4–15–85 order transmitted to OAL 8–13–85 and filed 9–18–85 (Register 85, No. 38).

§ 50420.5. Separation of Community Property: Spouse in Long-Term Care Facility.

(a) The value of property available to an applicant or beneficiary who is in a skilled nursing or intermediate care facility and is in a MFBU separate from his or her spouse shall be determined to meet the property reserve limits if the value as determined in (1)(E) or (2)(D) of this subsection is equal to or less than the applicable property reserve limit.

(1) If the applicant or beneficiary has entered into an interspousal agreement prior to or on the date of entry into a skilled nursing or intermediate care facility and the agreement meets the requirements set forth in section 50403(c) and (d), the county shall determine:

(A) The value of the applicant or beneficiary's nonexempt separate property resulting from the interspousal agreement.

(B) The value of the applicant or beneficiary's one-half share of any nonexempt community property acquired since or not included in the interspousal agreement.

(C) The value of the applicant or beneficiary's nonexempt separate property from sources other than the interspousal agreement.

(D) The value of any nonexempt separate property owned by the applicant or beneficiary's spouse and/or the applicant or beneficiary's spouse's share of nonexempt community property which is actually made available to the applicant or beneficiary.

(E) The value of property determined in (a)(1)(A) through (D) of this section remaining after deducting expenditures made for the applicant or beneficiary's own benefit as defined in (b) of this section and verified losses, if any, in the market value of such property since the date of the interspousal agreement.

(2) If the date the interspousal agreement was executed is later than the date of entry into a skilled nursing or intermediate care facility, or in the absence of an interspousal agreement which meets the requirements of section 50403 (c), (d) and (e), the county shall determine:

(A) The value of the applicant or beneficiary's nonexempt separate and one-half share of nonexempt community property on the date of most recent entry, as limited by (d) of this section, into a skilled nursing or intermediate care facility.

(B) The value of the applicant or beneficiary's share of any nonexempt separate and one-half share of nonexempt community property acquired from the date of most recent entry into a skilled nursing or intermediate care facility to the date eligibility is determined.

(C) The value of any nonexempt separate property owned by the applicant or beneficiary's spouse and/or the applicant or beneficiary's spouse's share of nonexempt community property which is actually made available to the applicant or beneficiary.

(D) The value of property determined in (a)(2)(A) through (C) of this section remaining after deducting expenditures made for the applicant or beneficiary's own benefit, as defined in (b) of this section, and verified losses, if any, in the market value of such property since the date of entry into a skilled nursing or intermediate care facility.

(b) Expenditures for the applicant or beneficiary's own benefit shall include but are not limited to:

(1) Expenditures for the applicant or beneficiary's own medical expenses.

(2) Expenditures associated with property owned by the applicant or beneficiary and for improvements to such property in proportion to his or her ownership interest in the property, for example.

(A) Payments made on the mortgage on a jointly owned principal residence.

(B) Payments made on a note on a jointly owned motor vehicle.

(C) Expenditures for improvements on a jointly owned principal residence.

(3) Expenditures for other exempt or nonexempt property for the sole benefit of the applicant or beneficiary including, but not limited to, personal effects, recreational items, and burial trusts.

(4) Transfer of nonexempt assets for adequate consideration as defined in 50408(a)(3).

(c) For purposes of this section, it shall be presumed that all property is community property. This presumption may be rebutted by either spouse.

(d) The mere change of residence from one medical facility to another shall not be considered a new entry into LTC for purposes of subsection (a) of this section.

(e) Effective 1/1/90, the regulations contained in this section shall not apply to an institutionalized spouse as defined by section 1924 (h)(1) of Title XIX of the Social Security Act.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14006, 14006.2 and 14008, Welfare and Institutions Code; and Section 1924, Title XIX, Social Security Act (Section 1396r-5, Title 42, United States Code).

HISTORY

1. New section filed 10–13–89 as an emergency pursuant to Sections 5 and 6(d) of Chapter 1221, Statutes of 1985; operative 10–13–89 (Register 89, No. 44). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–13–90.
2. New section filed 2–26–90 as an emergency pursuant to Sections 5 and 6(d) of Chapter 1221, Statutes of 1985; operative 2–26–90 (Register 90, No. 9). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 6–26–90.
3. Certificate of Compliance as to 2–26–90 order including amendment of subsections (a) and (b) transmitted to OAL 6–8–90 and filed 7–9–90 (Register 90, No. 34).

§ 50421. Limits and Methods of Property Determination for the Qualified Medicare Beneficiary (QMB) or the Specified Low-Income Medicare Beneficiary (SLMB).

(a) To qualify for the QMB or SLMB programs, the net nonexempt property of a QMB or SLMB applicant/beneficiary cannot exceed twice the Supplemental Security Income (SSI) program property limit.

(1) Adult.

(A) A QMB or SLMB applicant/beneficiary who is married or is 18 years of age or older shall be considered an adult for purposes of this section.

(B) Only the property of the QMB or SLMB applicant/beneficiary and his/her spouse, if living in the home, shall be considered in determining net nonexempt property. Such property shall be determined in accordance with Article 9 and shall be compared to twice the SSI property limit for one person (or two persons, if the spouse is living in the home).

(2) Child.

(A) A QMB or SLMB applicant/beneficiary who is unmarried and younger than 18 years of age shall be considered a child for purposes of this section.

(B) Net nonexempt property shall be determined in accordance with article 9. Only the property of the QMB or SLMB child and his/her parent(s) shall be considered in determining net nonexempt property. For purposes of this subsection, the parent(s) includes stepparent(s).

(C) The parent(s)'s net nonexempt property shall be compared to the SSI property limit for one or two persons (depending upon the number of parents in the home). If the parent(s)'s net nonexempt property does not exceed this property limit, only the QMB or SLMB child's property shall be considered. If the parent(s)'s net nonexempt property exceeds the SSI property limit, the excess amount over the SSI property limit shall be added to the QMB or SLMB child's own net nonexempt property. The QMB or SLMB child's total net nonexempt property shall be compared to twice the Medi-Cal property limit for one person.

(D) If there are two or more QMB or SLMB children in the home, the excess amount of the parent(s)'s net nonexempt property over the SSI property limit shall be divided by the number of QMB or SLMB children and that quotient added to each child's net nonexempt property. The net nonexempt property of the QMB or SLMB child shall no longer be increased by his/her share of the parental allocation when:

1. The parental allocation of net nonexempt property when added to the QMB or SLMB child's own net nonexempt property exceeds twice the SSI property limit for one person, or

2. The QMB or SLMB child is found ineligible as a QMB or SLMB for any other reason. When a QMB or SLMB child no longer qualifies to receive a share of the parent(s)'s nonexempt property, the parent(s)'s net nonexempt property shall then be redivided by the number of remaining QMB or SLMB children in the home and that quotient added to the net nonexempt property of each of those children.

NOTE: Authority cited: Sections 10725, 14005.11 and 14124.5, Welfare and Institutions Code; and Section 12, Chapter 1430, Statutes of 1989.Reference: Sections 416.1202 and 416.1205, Title 20, Code of Federal Regulations; Section 1396a(a), Title 42, United States Code; and Section 14005.11, Welfare and Institutions Code.

HISTORY

1. New section filed 8-13-90 as an emergency; operative 8-13-90 (Register 90, No. 40). A Certificate of Compliance must be transmitted to OAL by 12-11-90 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance transmitted to OAL 12-11-90 and filed 1-9-91 (Register 91, No. 8).
3. Amendment filed 12-21-93; operative 1-20-94 (Register 93, No. 52).

§ 50421.5. Limits and Methods of Property Determination for the Qualified Disabled and Working Individual (QDWI).

(a) To qualify for the QDWI program, the net nonexempt property of a QDWI applicant/beneficiary cannot exceed twice the Supplemental Security Income (SSI) resource limit in accordance with Section 1613, Title XVI of the Social Security Act.

(b) Only the property of the QDWI applicant/beneficiary and, if married, his/her spouse, if living in the home, shall be considered in determining net nonexempt property. Such property shall be determined in accordance with Section 50420.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 12, Chapter 1430, Statutes of 1989. Reference: Section 14005.3, Welfare and Institutions Code; and Sections 1396a(a)(10)(E) and 1396d(s), Title 42, United States Code.

HISTORY

1. New section filed 10-3-94 as an emergency; operative 10-3-94 (Register 94, No. 40). A Certificate of Compliance must be transmitted to OAL by 1-31-95 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of HISTORY NOTE 1 (Register 95, No. 9).
3. Repealed by operation of Government Code section 11346.1(g) (Register 95, No. 9).
4. New section refiled 3-3-95 as an emergency; operative 3-3-95 (Register 95, No. 9). A Certificate of Compliance must be transmitted to OAL by 7-1-95 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 3-3-95 order including amendment of subsection (b) and NOTE transmitted to OAL 2-22-95 and filed 4-5-95 (Register 95, No. 14).

§ 50422. Liens.

NOTE: Authority cited: Sections 10725, 14006.1 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code.

HISTORY

1. New section filed 7-24-84 as an emergency; effective upon filing (Register 84, No. 31). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11-21-84.
2. Order of Repeal of 7-24-84 emergency order filed 12-20-84 by OAL pursuant to Government Code Section 11349.6 (Register 84, No. 51).

§ 50423. Items of Property to Be Considered.

(a) The items of property to be considered in determining eligibility are described in Sections 50425 through 50489. Each of these sections indicates:

(1) Whether all or a portion of the item of property is exempt.

(2) The method for determining the net market value of the specific item of property.

(3) Any other information necessary to evaluate the property.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code.

HISTORY

1. Change without regulatory effect adding NOTE filed 10-11-88 (Register 88, No. 45).

§ 50425. Property Used As a Principal Residence.

(a) A principal residence may consist of real or personal property, fixed or mobile, located on land or water. The principal residence includes land or buildings surrounding, contiguous to, or appertaining to the residence.

(b) The following items of real property may serve as a principal residence:

(1) A house.

(2) The entire multiple unit dwelling if any portion of the multiple unit dwelling serves as the principal residence of the applicant or beneficiary.

(3) The items listed in (d). These items shall be considered as real property when they are assessed as real property by the county assessor of the county in which the property is located.

(c) Property which the applicant or beneficiary uses or formerly used as a home shall be exempt as the principal residence if any of the following situations exist:

(1) The applicant or beneficiary lives on the property.

(2) The family of the applicant or beneficiary lives on the property and Medi-Cal eligibility is determined in either of the following ways:

(A) With the applicant or beneficiary and the family in a single MFBU.

(B) With the income of the family considered in determining the applicant's or beneficiary's eligibility.

(3) The applicant or beneficiary is absent from the property for any reason, including admittance to LTC, and declares in writing that he/she intends to return to the property to live.

(4) The applicant or beneficiary is absent from the property and has a spouse, child under age 21 or a dependent relative, who lives on the property. A disabled child age 21 or older is considered a dependent relative for purposes of this regulation only.

(5) A sibling or child age 21 or over of the applicant or beneficiary has continuously resided on the property for at least one year immediately prior to the date the applicant or beneficiary entered a SNF or ICF and continues to reside there.

(6) The property cannot be sold because there are legal obstacles preventing the sale and the applicant or beneficiary or person acting on his/her behalf provides evidence of attempts to overcome such obstacles.

(7) The applicant or beneficiary no longer lives on the property, does not intend to return to the property, the property is not otherwise exempt and the property cannot be readily converted to cash but a bona fide effort is being made to sell the property. A bona fide effort to sell means that the property is listed for sale with a licensed real estate broker for its fair market value established by a qualified real estate appraiser, a good faith effort is being made to sell the property, offers at fair market value are accepted, and the applicant or beneficiary has supplied proof of compliance with these conditions to the county.

(d) The following items of personal property may serve as a principal residence:

(1) A mobile home.

(2) A houseboat.

(3) A motor vehicle used as a residence.

(4) Any other shelter not attached to the land and used as a residence.

(e) Only one property may be exempt as the principal residence.

(f) Real property formerly used as a principal residence shall be considered other real property, effective the first of the month following the date the property is no longer used as a principal residence as specified in (a). Such property shall be subject to all conditions placed upon other real property in these regulations.

(g) Personal property formerly used as a principal residence shall be evaluated as an item of personal property beginning the first of the month following the date the property is no longer used as a principal residence as specified in (c).

NOTE: Authority cited: Sections 10725, 14006.1 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code.

HISTORY

1. Amendment filed 12–2–85 as an emergency; effective upon filing (Register 85, No. 50). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–1–86. For prior history, see Register 84, No. 51.
2. Certificate of Compliance including amendment of subsections (a)–(c) transmitted to OAL 3–31–86 and filed 4–30–86 (Register 86, No. 18).
3. Change without regulatory effect of subsection (g) (Register 87, No. 11).

§ 50426. Property Used to Purchase a Principal Residence.

(a) The proceeds from the sale of real property retained by an applicant or beneficiary who does not own a suitable principal residence or who wishes to sell the current principal residence and purchase a new principal residence shall be exempt for a period of six months from the date of receipt of the proceeds so long as the proceeds from the sale of the real property are intended to be used to purchase a principal residence. Such proceeds may also be applied to the costs of moving, necessary furnishings, and repair or alteration to the principal residence.

(b) If a portion of the proceeds specified in (a) is diverted to some other purpose, the status of the remainder is not affected provided such remainder is being retained to apply toward the purchase of a principal residence.

NOTE: Authority cited: Sections 10725, 14006.1 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code.

HISTORY

1. Amendment filed 12–15–77; effective thirtieth day thereafter (Register 77, No. 51).
2. Amendment filed 12–2–85 as an emergency; effective upon filing (Register 85, No. 50). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–1–86.
3. Certificate of Compliance transmitted to OAL 3–31–86 and filed 4–30–86 (Register 86, No. 18).

§ 50427. Other Real Property.

(a) Real property not exempt as a principal residence, including deeds of trust as specified in Section 50441(b), is other real property.

(b) Other real property not exempt under any other section of these regulations shall be exempt if both of the following conditions are met:

(1) The combined net market value of all other real property is $6,000 or less.

(2) The owner meets the utilization requirements set forth in Section 50416.

(c) Other real property with a net market value of more than $6,000 shall be considered as follows:

(1) The first $6,000 of net market value shall be exempt if the owner meets the utilization requirements set forth in Section 50416.

(2) The net market value in excess of $6,000 shall be included in the property reserve.

NOTE: Authority cited: Sections 10725, 14006.1 and 14124.5, Welfare and Institutions Code; Section 57(c), Chapter 328, Statutes of 1982; Section 87, Chapter 1594, Statutes of 1982. Reference: Sections 11153.7 and 14006, Welfare and Institutions Code.

HISTORY

1. Amendment filed 12–2–85 as an emergency; effective upon filing (Register 85, No. 50). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–1–86. For prior history, see Register 84, No. 51.
2. Certificate of Compliance transmitted to OAL 3–31–86 and filed 4–30–86 (Register 86, No. 18).

§ 50428. Liens.

(a) The Department shall record a lien against the ownership interest in the principal residence of an institutionalized beneficiary if the property meets the provisions of Section 50425 (a)(7) unless:

(1) The individual did not receive a Notice of Action according to the provisions of Section 50179 or has not had the opportunity for a state hearing according to the provisions of Article 18 (commencing with Section 50951) of this Chapter. Such Notice shall include the following:

(A) The beneficiary has stated he/she does not intend to return to the principal residence from long term care;

(B) A lien will be recorded against the property for the cost of all Medi–Cal claims paid or to be paid on the beneficiary's behalf.

(C) The recording of the lien does not mean ownership of the property is lost or transferred.

(D) The requirements to list the property for sale that the applicant or beneficiary must meet to remain eligible for Medi–Cal in accordance with Section 50425.

(E) The beneficiary has the right to a county level review and a state hearing prior to recording of the lien or imposing any requirements to list the property for sale.

(F) The procedures for requesting a county level review and the time limits within which such requests must be made.

(b) Any recorded lien for an amount equal to the cost of medical care provided may be foreclosed only after one of the following:

(1) The beneficiary sells the property.

(2) The beneficiary dies and the following conditions are met:

(A) There is no surviving spouse.

(B) The beneficiary has no surviving child who is under the age of 21 or who is blind or disabled.

(c) Any lien shall dissolve when the beneficiary is discharged from LTC and returns to the principal residence to live.

(d) The county department shall notify the Department upon a determination that:

(1) All the criteria set forth in Section 50428(a) are met; or

(2) A person in long term care has been discharged and has returned to the principal residence to live.

NOTE: Authority cited: Sections 10725, 14006.1 and 14124.5, Welfare and Institutions Code: Section 57(c), Chapter 328, Statutes of 1982; and Section 87, Chapter 1594, Statutes of 1982. Reference: Section 14006, Welfare and Institutions Code.

HISTORY

1. New section filed 12–31–82 as an emergency; effective upon filing (Register 83, No. 2). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–30–83.
2. Certificate of Compliance including editorial correction of subsection (b)(1)(B) transmitted to OAL 4–29–83 and filed 6–3–83 (Register 83, No. 23).
3. Editorial correction of subsection (b)(1)(B) refiled 7–6–83 (Register 83, No. 28).
4. Repealer filed 7–24–84 as an emergency; effective upon filing (Register 84, No. 31). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–21–84.
5. Order of Repeal of 7–24–84 emergency order filed 12–20–84 by OAL pursuant to Government Code Section 11349.6 (Register 84, No. 51).
6. Amendment filed 12–2–85 as an emergency; effective upon filing (Register 85, No. 50). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–1–86.
7. Certificate of Compliance transmitted to OAL 3–31–86 and filed 4–30–86 (Register 86, No. 18).

§ 50429. Value and Division of Real Property Where Part Is Used As a Home.

NOTE: Authority cited: Sections 10725, 14006.1 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code.

HISTORY

1. Repealer filed 7–24–84 as an emergency; effective upon filing (Register 84, No. 31). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–21–84.
2. Order of Repeal of 7–24–84 emergency order filed 12–20–84 by OAL pursuant to Government Code Section 11349.6 (Register 84, No. 51).
3. Repealer filed 12–2–85 as an emergency; effective upon filing (Register 85, No. 50). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–1–86.
4. Certificate of Compliance transmitted to OAL 3–31–86 and filed 4–30–86 (Register 86, No. 18).

§ 50431. Land Contiguous to the Home—Value and Division.

NOTE: Authority cited: Sections 10725, 14006.1 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code.

HISTORY

1. Repealer filed 7–24–84 as an emergency; effective upon filing (Register 84, No. 31). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–21–84.
2. Order of Repeal of 7–24–84 emergency order filed 12–20–84 by OAL pursuant to Government Code Section 11349.6 (Register 84, No. 51).
3. Repealer filed 12–2–85 as an emergency; effective upon filing (Register 85, No. 50). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–1–86.
4. Certificate of Compliance transmitted to OAL 3–31–86 and filed 4–30–86 (Register 86, No. 18).

§ 50433. Single Family Dwelling Used in Part As a Business—Value and Division.

NOTE: Authority cited: Sections 10725, 14006.1 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code.

HISTORY

1. Repealer filed 7–24–84 as an emergency; effective upon filing (Register 84, No. 31). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–21–84.

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2. Order of Repeal of 7–24–84 emergency order filed 12–20–84 by OAL pursuant to Government Code Section 11349.6 (Register 84, No. 51).
3. Repealer filed 12–2–85 as an emergency; effective upon filing (Register 85, No. 50). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–1–86.
4. Certificate of Compliance transmitted to OAL 3–31–86 and filed 4–30–86 (Register 86, No. 18).

§ 50435. Multiple Dwelling Unit—Value and Division.

NOTE: Authority cited: Sections 10725, 14006.1 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code.

HISTORY

1. Repealer filed 7–24–84 as an emergency; effective upon filing (Register 84, No. 31). Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–21–84.
2. Order of Repeal of 7–24–84 emergency order filed 12–20–84 by OAL pursuant to Government Code Section 11349.6 (Register 84, No. 51).
3. Repealer filed 12–2–85 as an emergency; effective upon filing (Register 85, No. 50). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–1–86.
4. Certificate of Compliance transmitted to OAL 3–31–86 and filed 4–30–86 (Register 86, No. 18).

§ 50437. Land with More Than One Building—Value and Division.

NOTE: Authority cited: Sections 10725, 14006.1 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code.

HISTORY

1. Repealer filed 7–24–84 as an emergency; effective upon filing (Register 84, No. 31). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–21–84.
2. Order of Repeal of 7–24–84 emergency order filed 12–20–84 by OAL pursuant to Government Code Section 11349.6 (Register 84, No. 51).
3. Repealer filed 12–2–85 as an emergency; effective upon filing (Register 85, No. 50). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–1–86.
4. Certificate of Compliance transmitted to OAL 3–31–86 and filed 4–30–86 (Register 86, No. 18).

§ 50441. Mortgages, Deeds of Trust and Other Promissory Notes.

(a) Mortgages, notes secured by deeds of trust and other promissory notes which can be sold or discounted shall be included in the property reserve, except as specified in (b).

(b) A mortgage, or a note secured by a deed of trust, from the sale of real property owned by the applicant or beneficiary shall be considered other real property and subject to all the conditions placed upon other real property in these regulations.

(c) The market value of all mortgages and notes shall be the value as established in (1), unless the applicant or beneficiary chooses to meet the conditions of (2), and (2) is lower:

(1) The principal amount remaining on the note.

(2) The appraised value obtained by the applicant or beneficiary from a party qualified to appraise such items. Parties qualified to appraise such items include, but are not limited to, any of the following:

(A) Banks.

(B) Savings and Loan Associations.

(C) Credit Unions.

(D) Licensed loan or mortgage brokers.

(d) Proceeds from mortgages and notes shall be considered as follows:

(1) The principal portion of the payment shall be treated as property.

(2) The interest portion of the payment shall be unearned income and shall be included in determining the share of cost.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code.

HISTORY

1. New section filed 5–6–81; effective thirtieth day thereafter (Register 81, No. 19). For prior history, see Registers 81, No. 15; 80, No. 48; 77, No. 51; 77, No. 17; and 77, No. 5.
2. Editorial correction of NOTE filed 1–21–83 (Register 83, No. 4).

§ 50442. Life Estate.

(a) A life estate interest in real property shall be considered real property.

(b) A life estate interest in personal property shall be considered personal property.

(c) The value of a life estate shall be:

(1) The entire market value of the property on which the life estate is held if the applicant or beneficiary was the owner of the property prior to selling the property and he/she is retaining a life estate interest in the property, and the Life estate is revocable, or

(2) In all other instances, the value determined in accordance with the California State Gift Inheritance Tax Formula or, at the applicant's or beneficiary's option, a lesser value established by a person qualified to appraise such items as described in Section 50441 (c) (2).

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code; and 42 United States Code Section 1396a (a) (10) (C).

HISTORY

1. Editorial correction adding NOTE filed 6–10–83 (Register 83, No. 24).
2. Amendment of subsection (c) filed 5–17–89; operative 6–16–89 (Register 89, No. 20).

§ 50443. American Indian's Interest in Land Held in Trust by United States Government.

The entire market value of an American Indian's interest in land held in trust by the United States Government shall be exempt.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code.

HISTORY

1. Change without regulatory effect adding NOTE filed 10–11–88 (Register 88, No. 45).

§ 50445. Federal Payments to Indians and Alaskan Natives—Property.

(a) Payments received from the Federal Government under Public Law 90–507 shall be excluded from consideration as personal property when the total of nonexempt personal property, including such payments does not exceed $2,000 for each individual. Payments converted into other property shall be treated the same as the payments. However, if the property received through such a conversion is again converted, the property acquired is included in the property reserve unless otherwise exempt.

(b) Payments received from the Federal Government under Public Law 92–254 or Section 6 of Public Law 87–775 shall be exempt.

(c) Per capita payments distributed pursuant to any judgment of the Indian Claims Commission or the Court of Claims in favor of any Indian Tribe are exempt.

(d) Shares of stock and money payments made to Alaskan Natives under the Alaskan Native Claims Settlement Act are exempt as long as the payments or stock remain separately identifiable and not comingled with nonexempt resources. Any property obtained from stock investments under the Act is not exempt.

(e) Receipts derived from lands, as specified in Section 50537(e), shall be exempt providing all of the following conditions are met. The monies:

(1) Are retained by the original recipient.

(2) Are not commingled.

(3) Can be separately identified as a proportionate share of the applicant's or beneficiary's property.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code.

HISTORY

1. New subsection (e) filed as an emergency 6–17–80; (Register 80, No. 25). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–16–80.
2. Certificate of Compliance filed 9–26–80 (Register 80, No. 39).

§ 50446. Payments to Victims of the National Socialist Persecution.

(a) Payments received from the Federal Republic of Germany (German Reparations Payments) pursuant to the federal law on the Compensation of Victims of the National Socialist Persecution (Federal Compen–

sation Law) shall be exempt from consideration as personal property provided these funds are not spent and are kept identifiable.

(b) If the funds referred to in subsection (a) have been spent, the property acquired with the funds shall be included in the property reserve unless otherwise exempt.

(c) If the exempt funds referred to in subsection (a) have been commingled with nonexempt funds, it is the applicant's or beneficiary's responsibility to be able to distinguish which are the exempt commingled funds. It is presumed that withdrawals from an account in which exempt and nonexempt funds have been commingled were made from the nonexempt fund first.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.5 and 14006, Welfare and Institutions Code, and Program Operations Manual SI 01120.405.

HISTORY

1. New section filed 9–4–91; operative 10–4–91 (Register 92, No. 2).
2. Editorial correction of subsection (c) (Register 95, No. 45).

§ 50448. Payments to Victims of Crimes—Treatment as Property.

Payments made under the California Victims of Crimes program, which are exempt as income in the month of receipt in accordance with Section 50534, shall be exempt as property for the 9–month period beginning after the month in which the payment was received.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; Sections 1383(a)(9), 1382b(a) and 1396a(r), Title 42, United States Code. Reference: Section 13959, Government Code; Section 14006(c), Welfare and Institutions Code.

HISTORY

1. New section filed 10–4–93; operative 11–3–93 (Register 93, No. 41).

§ 50448.5. Relocation Assistance Benefits.

(a) Relocation assistance benefits are payments made by a public agency to a person who has been relocated as a result of a program of area redevelopment, urban renewal, freeway construction, or any other public development involving demolition or condemnation of existing housing.

(b) Relocation Assistance Benefits paid by a public agency shall be exempt provided these these funds are not spent and are kept identifiable.

(c) If the exempt funds referred to in subsection (b) have been commingled with nonexempt funds, it is the applicant's or beneficiary's responsibility to be able to distinguish which are the exempt commingled funds. It is presumed that withdrawals from an account in which exempt and nonexempt funds have been commingled were made from the nonexempt funds first.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 1396a(r)(2) and 4636, Title 42, United States Code; Sections 14005.4, 14005.7 and 14006, Welfare and Institutions Code; and United States Department of Health and Human Services Social Security Administration "Program Operations Manual SI 00830.655, SI 01130.670 and SI 01130.700."

HISTORY

1. New section filed 3–30–98; operative 4–29–98 (Register 98, No. 14).

§ 50449. Earned Income Tax Credit.

The actual Earned Income Tax Credit (EITC) payment or an advance payment of the Earned Income Tax Credit made by an employer shall be exempt in the month following the month of receipt.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code; Sections 1612b, 1613a and 1902r(2), Social Security Act [42 U.S.C. Sections 1382a(b), 1382b(a), and 1396a(r)(2)].

HISTORY

1. New section filed 2–2–93; operative 3–4–93 (Register 93, No. 6).

§ 50451. Cash on Hand.

Cash on hand shall be included in the property reserve, unless it is income received in that month.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code.

HISTORY

1. Change without regulatory effect adding NOTE filed 10–11–88 (Register 88, No. 45).

§ 50453. Checking and Savings Accounts.

(a) The entire amount in checking and savings accounts to which the applicant or beneficiary has unrestricted access shall be included in the property reserve, subject to the limitations in Section 50453.5 and the following conditions:

(1) Income received during a month and deposited in a checking or savings account shall not be considered as property during that month.

(2) Accounts held with persons who are not family members shall be considered available in their entirety if the applicant or beneficiary has unrestricted access to the funds, unless the conditions of (3) are met.

(3) If the applicant or beneficiary presents evidence which clearly establishes that all or a portion of the funds specified in (2) are the property of a person who is not a family member, those funds shall not be considered the property of the applicant or beneficiary.

(b) If an applicant or beneficiary has restricted access to a checking or savings account such as accounts which require two signatures or savings accounts held in trust by other than the applicant or beneficiary, only those funds actually available shall be included in the property reserve.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code.

HISTORY

1. Amendment filed 3–7–80; effective thirtieth day thereafter (Register 80, No. 9).

§ 50453.5. Savings of a Child.

Reasonable amounts saved from a child's exempt earnings for future education or for other future identifiable needs are exempt as property.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code.

HISTORY

1. New section filed 3–7–80; effective thirtieth day thereafter (Register 80, No. 9).

§ 50453.7. Long–Term Care Insurance Exemption.

(a) Property shall be exempt up to the amount of benefits that have been paid for Long–Term Care services countable towards the Medi–Cal property exemption as defined in Section 58023 in behalf of the Medi–Cal applicant or Medi–Cal beneficiary under a certified long–term care insurance policy or certificate certified by the State to provide this exemption.

(b) Property exempted under subsection (a) shall also be exempt from any recovery by the State of payments made for medical services.

(c) Income received from property exempt under subsection (a) shall be nonexempt and shall be treated in accordance with regulations contained in Article 10 of Chapter 8.

(d) The Medi–Cal applicant or Medi–Cal beneficiary shall provide verification from the insurance company of the amount of qualified benefits paid which entitle that applicant or beneficiary to an exemption under subsection (a). After notifying the Department in accordance with Probate Code, Sections 215 and 9202, the person handling the estate of a deceased Medi–Cal beneficiary shall also provide verification to the Department from the insurance company of the amount of qualified benefits paid which entitle that deceased beneficiary to an exemption under subsection (b).

(1) If the verification provided by the insurance company is found to be in error resulting in the ineligibility of the Medi–Cal applicant or Medi–Cal beneficiary, the County shall notify the Department to take appropriate actions against the insurance company under Section 58082(e).

(2) If the verification provided by the insurance company is found to be in such a condition that the County cannot determine whether the Medi–Cal applicant or Medi–Cal beneficiary is entitled to an exemption under subsection (a), the County shall determine that the Medi–Cal applicant or Medi–Cal beneficiary is not entitled to such an exemption and shall notify the Department to take appropriate actions against the insurance company under Section 58082(f) of the Partnership Regulations for Insurers.

(3) If the verification provided to the Department by the person handling the estate of a deceased beneficiary is found to be either in error, or

in such a condition that the Department cannot determine whether the deceased beneficiary is entitled to an exemption under subsection (b), the Department shall take appropriate actions against the insurance company under Section 58082(e) and (f).

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Sections 22004, 22005 and 22006, Welfare and Institutions Code.

HISTORY

1. New section filed 11–1–93 as an emergency; operative 11–1–93 (Register 93, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–1–94 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 11–1–93 order including amendment of subsection (d)(3) transmitted to OAL 2–17–94 and filed 3–31–94 (Register 94, No. 13).
3. Editorial correction of printing errors in subsections (a), (d) and (d)(2) (Register 94, No. 13).

§ 50454. Income Tax Refunds.

Income tax refunds shall be included in the property reserve.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14006, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 6–10–83 (Register 83, No. 24).

§ 50454.5. California Franchise Tax Board Payments.

(a) The following payments or funds received from the California Franchise Tax Board shall be exempt:

(1) Renters Credits.

(2) Senior Citizens Homeowners and Renters Property Assistance.

(3) Senior Citizens Tax Postponement.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code, Reference: Section 11008.4, Welfare and Institutions Code.

HISTORY

1. New section filed 4–17–89; operative 5–17–89 (Register 89, No. 48) .

§ 50455. Lump Sum Payments.

(a) Nonrecurring lump sum social insurance payments, such as nonrecurring lump sum payments of any of the items specified in section 50507(a)(1) through (9), shall be included in the property reserve, except as provided in (b).

(b) Retroactive SSI and Title II benefit payments shall not be included in the property reserve for a period of six months after the month in which they are received.

(c) The provisions of this regulation also apply to eligibility determinations or redeterminations made retroactively to October 1, 1984.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4, 14005.7, 14005.8 and 14006, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 6–10–83 (Register 83, No. 24).
2. Amendment filed 4–15–85 as an emergency; effective upon filing (Register 85, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–13–85.
3. Certificate of Compliance as to 4–15–85 order transmitted to OAL 8–13–85 and filed 9–18–85 (Register 85, No. 38).
4. Change without regulatory effect amending subsection (a) filed 6–14–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 35).

§ 50456. Stocks, Bonds, Mutual Funds.

Stocks, bonds and mutual funds shall be included in the property reserve. The value of these items shall be the closing price on the date the property is evaluated.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code.

HISTORY

1. Change without regulatory effect adding NOTE filed 10–11–88 (Register 88, No. 45).

§ 50457. United States Savings Bonds.

United States Savings Bonds shall be included in the property reserve. The value of these bonds shall be the amount for which they can be sold.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code.

HISTORY

1. Change without regulatory effect adding NOTE filed 10–11–88 (Register 88, No. 45).

§ 50459. Promissory Notes.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code.

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HISTORY

1. Amendment filed 12–15–77; effective thirtieth day thereafter (Register 77, No. 51).
2. Repealer filed 11–26–80 as an emergency; effective upon filing (Register 80, No. 48). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3–26–81.
3. Certificate of Compliance transmitted to OAL 3–9–81 and filed 4–7–81 (Register 81, No. 15).

§ 50461. Motor Vehicles.

(a) One motor or other vehicle that is used for transportation shall be exempt, subject to the following conditions:

(1) The applicant or beneficiary shall be allowed to choose which vehicle used for transportation shall be exempt except that recreational and commercial vehicles shall be considered to be used for transportation only if other motor vehicles are not available to provide transportation for the applicant or beneficiary.

(2) A vehicle owned by an applicant or beneficiary who no longer drives shall be exempt when other individuals use the vehicle to meet the transportation needs of the applicant or beneficiary.

(b) The net market value of all nonexempt motor vehicles shall be included in the property reserve.

(c) The net market value of a motor vehicle shall be determined by the following process:

(1) Determine the class of the motor vehicle.

(2) Determine the vehicle license fee which does not include registration or weight fees, using the class and the State Department of Motor Vehicles license fee chart.

(3) Multiply the vehicle license fee by 50. This is the market value of the motor vehicle.

(4) Subtract any encumbrances of record from the market value. This is the net market value.

(d) In those cases where the class of the motor vehicle is unknown or unavailable, the county department or the applicant or beneficiary shall contact the State Department of Motor Vehicles to determine the class or license fee of the motor vehicle.

(e) In those cases where the applicant or beneficiary does not agree with the net market value:

(1) Three appraisals by auto dealers, insurance adjustors or personal property appraisers shall be submitted to the county department.

(2) The average of these appraisals shall be the market value.

(3) The net market value shall be the market value minus any encumbrances of record.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4 and 14005.7, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (d) and new subsection (e) filed 12–15–77; effective thirtieth day thereafter (Register 77, No. 51).
2. Amendment of subsections (a)(1) and (d) filed 8–8–80; effective thirtieth day thereafter (Register 80, No. 32).

§ 50463. Boats, Campers, Trailers.

(a) The net market value of boats, campers, and trailers and mobile homes, which are not assessed as real property by the county assessor, shall be included in the property reserve unless exempt as either of the following:

(1) A principal residence.

(2) A vehicle used for transportation.

(b) Items in (a) which are assessed as real property by the county assessor of the county in which the property is located and which are not exempt as a home shall be considered as other real property and treated in accordance with Section 50427.

(c) The net market value of these items shall be determined as follows:

(1) The market value shall be any of the following:

(A) The average of three appraisals by dealers, insurance adjustors or personal property appraisers submitted to the county department by the applicant or beneficiary.

(B) The market value placed on the item by the county assessor.

(C) The market value of the item determined by use of the State Department of Motor Vehicle's license fee chart.

(D) The original purchase price of the item if the applicant or beneficiary does not wish or is unable to provide three appraisals or the market value cannot be determined in accordance with (B) or (C).

(2) The net market value shall be the market value less any encumbrances of record.

(d) Eligibility or share–of–cost determinations effective on or after January 1, 1980, shall be based on the provisions of this section.

NOTE: Authority cited: Sections 10725, 14006.1 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (b)(1) filed 12–15–77; effective thirtieth day thereafter (Register 77, No. 51).
2. Amendment filed 3–7–80 as an emergency; effective upon filing (Register 80, No. 9). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7–6–80.
3. Certificate of Compliance filed 6–6–80 (Register 80, No. 23).
4. Amendment of subsection (a)(1) filed 12–2–85 as an emergency; effective upon filing (Register 85, No. 50). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–1–86.
5. Certificate of Compliance transmitted to OAL 3–31–86 and filed 4–30–86 (Register 86, No. 18).

§ 50465. Household Items.

All items used to furnish and equip a home shall be exempt.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 6–10–83 (Register 83 No. 24).

§ 50467. Personal Effects.

(a) All items of clothing shall be exempt.

(b) The following jewelry shall be exempt:

(1) Wedding and engagement rings.

(2) Heirlooms.

(3) Any other item of jewelry with a net market value of $100 or less.

(c) The net market value of jewelry not exempted above shall be included in the property reserve.

(d) The net market value of jewelry shall be determined as follows:

(1) The applicant or beneficiary shall submit at least one written appraisal of current market value by a jeweler, insurance adjustor or personal property appraiser, or proof of the purchase price in the form of a sales slip which shall establish the market value.

(2) Subtract any encumbrances of record from the market value. This is the net market value.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code; and 42 CFR 435.851.

HISTORY

1. Amendment of subsection (d) filed 8–18–82 as an emergency; effective upon filing (Register 82, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12–16–82.
2. Certificate of Compliance transmitted to OAL 12–14–82 and filed 1–21–83 (Register 83, No. 4).
3. Editorial correction of NOTE filed 6–10–83 (Register 83, No. 24).
4. Amendment of subsection (d)(1) filed 10–24–86; effective thirtieth day thereafter (Register 86, No. 43).

§ 50469. Recreational Items.

(a) All recreational items shall be exempt, except for:

(1) Recreational motor vehicles, such as motor homes and snowmobiles, which shall be considered in accordance with Section 50461.

(2) Boats, campers and trailers, which shall be considered in accordance with Section 50463.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 6–10–83 (Register 83, No. 24).

§ 50471. Musical Instruments.

All musical instruments shall be exempt.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 6–10–83 (Register 83, No. 24).

§ 50473. Livestock and Poultry.

(a) Livestock and poultry retained primarily for personal use shall be exempt.

(b) The net market value of livestock and poultry retained primarily for profit shall be included in the property reserve except to the extent exempt as business property in accordance with Section 50485.

(c) The net market value of livestock and poultry shall be the net market value listed by the applicant or beneficiary on the Statement of Facts, unless the county department determines further verification is required. If verification is required:

(1) The applicant or beneficiary shall submit three appraisals from persons or businesses dealing in livestock and poultry. The average of these appraisals shall be the market value.

(2) Subtract any encumbrances of record from the market value. This is the net market value.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 12305 and 12305.5, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (b) filed 5–17–79 as an emergency; effective upon filing (Register 79, No. 20).
2. Certificate of Compliance filed 9–12–79 (Register 79, No. 37).

§ 50475. Life Insurance.

Life insurance policies, except term insurance, owned by a member of the MFBU on the life of any individual in the family shall be exempt if the combined face value of all of the policies on the insured individual is $1,500 or less. If the combined face value of all of the policies exceeds $1,500, the net cash surrender value of life insurance policies shall be included in the property reserve.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code.

HISTORY

1. Amendment filed 6–3–87; operative 7–3–87 (Register 87, No. 24).
2. Editorial correction of printing error (Register 89, No. 16).

§ 50476. Burial Insurance.

Burial insurance with no cash surrender value shall be exempt. Burial insurance with a cash surrender value shall be considered a revocable burial fund and shall be treated as provided for in section 50479.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11158, 12152 and 14006, Welfare and Institutions Code; and Section 416.1231, Title 20, Code of Federal Regulations.

HISTORY

1. New section filed 3–7–80 as an emergency; effective upon filing (Register 80, No. 9). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–6–80.
2. Certificate of Compliance filed 6–6–80 (Register 80, No. 23).
3. Amendment filed 5–29–91; operative 6–28–91 (Register 91, No. 31).

§ 50477. Burial Plots, Vaults and Crypts.

(a) Any burial plot, vault or crypt retained by the applicant or beneficiary for use by any member of the family shall be exempt. For the purposes of this section only, the family shall include the applicant or beneficiary, his/her spouse, adult or minor children (including adopted and stepchildren), siblings, parents, adoptive parents, and the spouses of those individuals.

(b) The net market value of any burial plot not exempted above is other real property and shall be subject to all conditions placed on other real property in these regulations.

(c) The net market value of any burial vault or crypt not exempted above is personal property and shall be included in the property reserve.

(d) The net market value of a burial plot, vault or crypt shall be the net market value listed by the applicant or beneficiary on the Statement of Facts, unless the county department determines further verification is required. If verification is required:

(1) The applicant or beneficiary shall submit a statement of value from the organization from which the plot, vault or crypt was purchased. This statement of value shall be the market value.

(2) Subtract encumbrances of record from the market value. This is the net market value.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11158, 12152 and 14006, Welfare and Institutions Code; and Section 416.1231, Title 20, Code of Federal Regulations.

HISTORY

1. Editorial corrections adding NOTE filed 6–11–83 (Register 83, No. 24).
2. Amendment of subsection (a) filed 5–29–91; operative 6–28–91 (Register 91, No. 31).

§ 50479. Burial Funds.

(a) All of the following burial funds for an individual shall be exempt.

(1) Money or securities placed in an irrevocable trust for funeral, cremation, or interment expenses with the following trustees: any banking institution or trust company empowered by the State of California to act as trustee in the handling of trust funds, cemetery authority which has established an endowment care fund, or not less than three persons one of whom may be in the employ of a funeral director.

(2) Money or securities placed in an irrevocable trust created by the deposit in an insured savings institution made by one person of his or her own money in his or her own name as trustee for a funeral director to provide payment for funeral services rendered by the funeral director upon the depositor's death.

(3) Life or burial insurance purchased specifically for funeral, cremation, or interment expense, which is placed in an irrevocable trust or which has no loan or surrender value available to the recipient.

(4) Securities issued by a licensed cemetery authority which by their terms are convertible only into payment for funeral, cremation, or interment expenses.

(b) The first $1,500 paid for designated burial funds for funeral, cremation or interment expenses for an individual shall be exempt when the fund is revocable.

(c) Designated burial funds include burial trusts, prepaid burial contracts, burial insurance, annuities or any separately identifiable assets which are clearly designated as set aside for the expenses connected with the individual's burial, cremation, or other funeral arrangements.

(d) Interest earned on or appreciation in value of either an exempt burial fund described in subsection (a), above or revocable designated burial fund described in subsections (b) and (c), above shall be exempt if it is left to accumulate and become part of the separately identifiable burial fund.

(e) The amount of designated burial funds which are not exempt shall be included in the property reserve.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11158 and 14006, Welfare and Institutions Code; Section 1396a(r)(2), Title 42, United States Code; and Sections 416.1201 and 416.1231, Title 20, Code of Federal Regulations.

HISTORY

1. Amendment filed 3–7–80 as an emergency; effective upon filing (Register 80, No. 9). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–6–80.
2. Certificate of Compliance filed 6–6–80 (Register 80, No. 23).
3. Amendment filed 5–29–91; operative 6–28–91 (Register 91, No. 31).
4. Amendment of section heading, section and NOTE filed 10–25–95; operative 11–24–95 (Register 95, No. 43).

§ 50481. Disaster and Emergency Assistance Payments.

Disaster and emergency assistance payments, regardless of the date of receipt, and any interest earned from such payments, shall be permanently exempt and shall not be included in the property reserve. This exemption applies only to such payments received from federal, state, or local government agencies, or disaster assistance organizations.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code; and 42 U.S.C. Sections 1382a(b)(11) and (12), 1382b(a)(6), 1396a(a)(10), 5121 et seq. and 5155(d).

HISTORY

1. New section filed 10–5–93; operative 11–4–93 (Register 93, No. 41).
2. Editorial correction of NOTE (Register 97, No. 15).

§ 50483. Loans.

(a) Loans shall be exempt as property in the month in which they are any of the following:

(1) Exempt as income in accordance with Section 50533.

(2) Treated as income in the month of receipt because no repayment is required.

(b) Loans which require repayment, except those exempted in (a)(1), shall be included in the property reserve beginning in the month of receipt.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code.

HISTORY

1. Amendment filed 9–17–79 as an emergency; effective upon filing (Register 79, No. 38). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 1–15–80.
2. Certificate of Compliance transmitted to OAH 1–8–80 and filed 1–16–80 (Register 80, No. 3).

§ 50485. Business Property.

(a) Equipment, inventory, licenses and materials owned by the applicant or beneficiary which are necessary for employment, for self–support or for an approved plan of rehabilitation or self–care necessary for employment shall be exempt.

(1) Equipment, inventory, licenses and materials shall be considered necessary for employment if either of the following conditions is met:

(A) The applicant's or beneficiary's employer requires that the applicant or beneficiary provide this property as a condition of employment.

(B) The applicant or beneficiary is currently unemployed but has been required to use this property for employment in the past and can provide reasonable evidence that the applicant or beneficiary is actively seeking employment which will require the use of the same property. This property shall be exempt for a maximum of one year from the date the beneficiary became unemployed if this condition is met.

(2) Equipment, inventory, licenses and materials shall be considered necessary for self–support if the applicant or beneficiary obtains a reasonable rate of return from the use of this property.

(A) A business or means of self–support that has been in existence for more than one year shall be considered to be realizing a reasonable rate of return if it is earning an annual net income equal to six percent of the net market value of the property. Net income shall be determined in accordance with Sections 50505 and 50517(a)(5).

(B) A business or means of self–support that has been in existence for more than one year and is not earning net income equal to six percent of the net market value of the property shall be considered to be providing a reasonable rate of return for a maximum of six months if the applicant or beneficiary can show by objective evidence that the property will begin earning six percent within six months.

(C) A business or means of self–support shall not be required to realize any actual income during the first year of operation in order to meet the requirement for realizing a reasonable rate of return.

(D) A business or means of self–support that has been in existence for more than one year and is resumed after an illness, or a period of convalescence from an illness or injury, shall not be required to realize any actual income during the first six months of resumed operation in order to meet the requirement for realizing a reasonable rate of return.

(E) A business or means of self–support that has provided the applicant or beneficiary with income in the past shall be considered to be providing a reasonable rate of return for a maximum of one year during a period when it is not in operation if the applicant or beneficiary can provide evidence that both of the following conditions are met:

1. The business or means of self–support is not in operation due to reasons beyond the applicant's or beneficiary's control.

2. Operation will be resumed within one year of the date operation ceased.

(3) Equipment, inventory, licenses and materials shall be considered necessary for an approved plan of rehabilitation or self–care necessary for employment if the county department determines that the property is necessary for any of the following:

(A) Training which will lead to employment or self–support.

(B) Future employment or a means of self–support that will result from a plan of rehabilitation established by the county or the Department of Rehabilitation.

(C) Employment or a means of self–support that will continue after a period of illness or a period of convalescence or both.

(b) Motor vehicles shall be considered equipment only if used for employment or for a means of self–support other than for commuting to and from work.

(c) Cash on hand and money in checking accounts necessary for the functioning of a business or a means of self–support shall be exempt up to a maximum of three times the average monthly cash expenditures of the business.

(d) Real property used in whole or in part as a business or as a means of self–support shall be considered other real property in accordance with Section 50427.

(e) Stocks, bonds and other similar items of personal property shall not be considered property necessary for employment or self–support even in those instances where the beneficiary holds stock in the corporation in which the beneficiary is employed.

(f) A person who owns equipment, inventory, licenses and materials for self–support shall not be required to be personally involved in the business or means of self–support in order for the property to be exempt under (a).

(g) The net market value of business equipment, inventory, licenses and materials shall be the amount listed by the applicant or beneficiary on the Statement of Facts, unless the county department determines that Sections 50442 through 50489 provide a method of valuing the specific item of property or that further verification is required.

(1) If any of the sections between Sections 50442 and 50489 can be applied as a method of valuing the specific item of property that method shall be used.

(2) If the county determines that further verification is required and Sections 50442 through 50489 do not apply:

(A) The applicant or beneficiary shall submit an appraisal from an appropriate dealer, insurance adjuster or personal property appraiser. The value listed on the appraisal shall be the market value.

(B) The county shall subtract encumbrances of record from the market value. This is the net market value.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11155, 12305, 12305.5, and 14006, Welfare and Institutions Code.

HISTORY

1. Amendment filed 5–17–79 as an emergency; effective upon filing (Register 79, No. 20).
2. Certificate of Compliance filed 9–12–79 (Register 79, No. 37).
3. Amendment filed 1–16–80; effective thirtieth day thereafter (Register 80, No. 3).

§ 50487. Stocks Held by Natives of Alaska.

Shares of stock in a regional or village corporation held by natives of Alaska for a 20 year period during which such stock cannot be conveyed, transferred or surrendered, shall be exempt.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 6–11–83 (Register 83, No. 24).

§ 50489. Trusts—General.

(a) Property and income held in trust for the benefit of an individual or individual's spouse shall be treated in accordance with Sections 50489 through Section 50489.9. These sections shall supersede any other section(s) of this article.

(b) For purposes of sections 50489 through 50489.9, the following definitions apply:

(1) "Annuitant" means a person who has the right to receive payments from an annuity. The annuity shall be annuitized based upon the life expectancy of the annuitant.

(2) "Annuitized" means that an annuity is paying a fixed, equal amount to the annuitant on a periodic basis. Payments shall be no less frequent than monthly over a number of years equal to or less than the annuitant's life expectancy as indicated in life expectancy tables provided by the Secretary for the Department of Health and Human Services, contained in Section 3258.9 (Revision 64), Part 3 of the Health Care Financing Administration's State Medicaid Manual and titled "Life Expectancy Table—Males and Life Expectancy Table—Females". The final annuity payment may be for an amount less than the previously fixed annuity payments in order to fully exhaust benefits under the annuity. An annuity shall be considered annuitized even though it may provide an annual cost of living adjustment equal to or less than 5%.

(3) "Annuity" means a contract to make periodic payments of a fixed or variable sum paid to an annuitant which are payable unconditionally. Annuity payments may continue for a fixed period of time or for as long as an annuitant lives. An annuitant purchases an annuity with his or her property or property rights. Annuities shall be established to provide the annuitant with payments representing principal and interest which are more than the fair market value of the property used to purchase the annuity. Annuities purchased prior to August 11, 1993, other periodic payment plans, or annuities that are purchased with property rights belonging to someone other than the Medi–Cal applicant/beneficiary or spouse shall continue to be treated in accordance with Title 22, Section 50402 and Article 10 of this chapter.

(4) "Assets" shall mean all income and property of the individual or the individual's spouse, including income or property which the individual or spouse is entitled to, but does not receive because of circumstances brought about by:

(A) the individual or the individual's spouse, or

(B) any other individual or entity, including a court or administrative body, with legal authority to act in place of, or on behalf of, the individual or the individual's spouse, or

(C) any other individual or entity, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

(5) "Beneficiary" means any individual or individuals designated in the trust instrument as benefiting in some way from the trust.

(6) "Date of establishment" means the date the trust document (in the case of a trust), annuity purchase agreement (in the case of an annuity), or other creating document (in the case of a similar legal device) is signed and dated. A trust is not considered to be established on the date it has been amended.

(7) "Irrevocable trust" means a trust which cannot be revoked by its own terms or a trust deemed to be irrevocable under State law.

(8) "Revocable trust" means a trust which can be revoked by its own terms or a trust deemed to be revocable under State law.

(9) "Similar legal device" (SLD) means any legal instrument, device or arrangement that involves the transfer of assets from an individual or entity (transferor) to another individual or entity (transferee) with the intent that the assets be held, managed, or administered by an individual or entity for the benefit of the transferor or certain other individuals. SLDs also include annuities purchased on or after August 11, 1993.

(10) "Trust" means any arrangement in which an individual or entity (trustor) transfers assets to a trustee with the intent that the assets be held, managed, or administered by the trustee(s) for the benefit of the trustor or certain designated individuals (beneficiaries). The trust must be valid under State law. The term "trust" also includes any legal instrument or device similar to a trust as described in subsection (b)(9) of this section.

(11) "Trustee" means any individual(s), entity, trust advisory committee, or individual(s) with power of appointment, who manages, holds, or administers a trust for the trust beneficiary or beneficiaries.

(12) "Trustor" means an individual who creates a trust. A trustor is also known as the "settlor" or "grantor".

(c) For purposes of this article, trusts shall be classified in three ways:

(1) Medicaid Qualifying Trusts (MQT): A trust established prior to August 11, 1993, as described in Section 50489.1.

(2) OBRA 93 Trusts: A trust established on or after August 11, 1993 as described in Section 50489.5.

(3) Other Trusts: A trust other than those described in subsections (c)(1) or (c)(2) of this section.

(d) Placement of assets in, or distributions from, a trust other than a burial trust which is exempt pursuant to Section 50479 shall be considered a transfer of assets.

(e) Verification of trusts shall be performed by the county in accordance with subsections (e)(1) and (e)(2) of this section.

(1) A written trust shall be verified by examining the trust documents and any other related documents.

(2) An oral trust shall be verified by written affidavit and by any other related documents. Affidavits shall be dated and signed under penalty of perjury, and shall specify the terms of the oral agreement. Real property cannot be held in an oral trust. Oral trusts which are held in financial institutions are subject to Section 50402.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.7, 14006 and 14015(a), Welfare and Institutions Code; and Sections 1396a(r)(2)(A) and 1396p(c), (d) and (e), Title 42, United States Code.

HISTORY

1. Repealer and new section filed 4–6–94; operative 5–6–94 (Register 94, No. 14). For prior history, see Register 87, No. 30.
2. Repealer and new section filed 1–28–98; operative 1–28–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 5).

§ 50489.1. Medicaid Qualifying Trusts.

(a) Pursuant to Title 42, U.S.C., Section 1396a(k) as it existed prior to repeal, a Medicaid Qualifying Trust (MQT):

(1) Is one which was established prior to August 11, 1993, other than by will, by an individual or the individual's spouse, or by the individual's guardian, conservator, or legal representative who is acting on the individual's behalf; and which

(2) Provides that the individual or the spouse may receive all or part of the income or principal of the trust that is dispersed directly or to another person or entity on behalf of that individual; and which

(3) Gives the trustee(s) discretion in distributing funds to the individual, to the spouse, or to another person or entity on behalf of that individual; and

(4) Is not described in Section 50489.9, and

(5) May be revocable or irrevocable, and

(6) May be established to enable the individual or the spouse to qualify for Medi–Cal.

(b) For purposes of this section, "individual" means a person or spouse who establishes an MQT and who is a beneficiary of the MQT.

(c) Property in an MQT is available as specified below:

(1) If the MQT is revocable, it shall be available.

(2) If the MQT is irrevocable then:

(A) Any amount distributed from the principal of the MQT to the individual, to the spouse, or to another person or entity on behalf of that individual or spouse shall be available property.

(B) Any amount distributed from the income of the MQT to the individual, to the spouse, or to another person or entity on behalf of that individual or spouse shall be considered income and shall be subject to Article 10 of this chapter.

(C) The maximum amount that the trustee(s) could distribute to the individual, to the spouse, or to another person or entity on behalf of that individual or spouse from trust principal shall be considered available property. The maximum amount is the amount the trustee(s) may distribute if the trustee(s) were to exercise full discretion under the terms of the MQT.

(D) The maximum amount that the trustee(s) may distribute to the individual, to the spouse, or to another person or entity on behalf of that individual or spouse from trust income if the trustee(s) were to exercise full discretion under the terms of the MQT is available income and is subject to Article 10 of this chapter.

(E) Any amount of trust principal for which the trustee(s) has no discretion to release to the individual, to the spouse, or to another person or entity on behalf of that individual or spouse shall be considered transferred property. The date of the transfer shall be the date the trust was established, the date the trust receives the property, or the date disbursement is foreclosed, whichever is the most recent.

(F) Any amount of trust income for which the trustee(s) has no discretion to release to the individual, to the spouse, or to another person or entity on behalf of that individual or spouse shall be considered transferred assets. The date of the transfer shall be the date trust disbursement is foreclosed, or the date the trust receives income, whichever is the most recent. Transfers of income occurring prior to August 11, 1993, shall not be considered.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.7, 14006 and 14015(a), Welfare and Institutions Code; and Sections 1396a(r)(2)(A) and 1396p(c), (d) and (e), Title 42, United States Code.

HISTORY

1. New section filed 1–28–98; operative 1–28–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 5).

§ 50489.5. OBRA 93 Trusts Established On or After August 11, 1993.

(a) An OBRA 93 trust:

(1) Is established, in part or in whole, with assets of an individual or individual's spouse, on or after August 11, 1993, other than by will; and

(2) Is not described in Section 50489.9, and

(3) Shall be treated in accordance with the remainder of this section.

(b) The provisions of this section shall apply to OBRA 93 trusts without regard to:

(1) the purposes for which the trust is established,

(2) whether the trustee(s) has, or exercises, any discretion under the terms of the trust,

(3) restrictions on when, or whether, distributions may be made from the trust, or

(4) restrictions on the use of trust assets or distributions.

(c) The provisions of this section shall apply to any OBRA 93 trust if it was established by any of the following:

(1) the individual, or

(2) the individual's spouse, or

(3) any other person or entity, including a court or administrative body, with legal authority to act in place of, or on behalf of, the individual or the individual's spouse, regardless of whether that person or entity claims to be acting in such a capacity at the time of the action, or

(4) any other person or entity, including any court or administrative body, acting at the direction, or upon the request of, the individual or the individual's spouse.

(d) In the case of an OBRA 93 trust which includes the assets of someone other than the individual or the individual's spouse, the provisions of this section shall apply only to that portion of the trust containing the assets of the individual or the individual's spouse.

(e) In the case of a revocable OBRA 93 trust:

(1) trust income and principal shall be considered property available to the individual who has the right, power, and authority to revoke the trust and to use the proceeds, and

(2) payments from the trust to, or for the benefit of, the individual or spouse shall be considered income of that individual or spouse in accordance with Article 10 of this chapter, and

(3) if payments are made to any person or entity, other than the individual or spouse, for any purpose other than for the benefit of the individual or spouse, those payments shall be considered transferred assets as of the date of payment.

(f) In the case of an irrevocable OBRA 93 trust:

(1) if payment(s) can be made from the trust to, or for the benefit of, the individual or spouse at any time or under any circumstances, the portion of the trust income or principal from which payment(s) to the individual or spouse could be made shall be considered property available to that individual or spouse,

(2) if payment(s) from the trust income or principal is made to, or for the benefit of, the individual or spouse, the payment(s) shall be considered income of that individual or spouse, in accordance with Article 10 of this chapter,

(3) if payment(s) is made from the trust income or principal for any other purpose, the payment(s) shall be considered a transfer of assets by the individual or spouse as of the date of payment, and

(4) if any portion of the trust income or principal from which payment cannot be made to, or for the benefit of, the individual or spouse, then that portion shall be considered a transferred asset. The value of the assets transferred shall include the amount of assets used to establish the trust and any assets added to that portion. Payments which have been made from that portion of the trust shall not be deducted from the value of the assets transferred. The date of transfer shall be the date the trust was established, the date the trust receives the asset or the date disbursement is foreclosed, whichever is most recent.

(g) In the case of an annuity:

(1) Payments shall be considered income in accordance with Article 10 of this chapter, and

(2) Section 50402 shall apply only to the extent that it is not inconsistent with subsections (g)(2)(A)–(g)(2)(D) of this section.

(A) The undistributed balance of the annuity shall be considered unavailable if the annuity contract is annuitized upon the life expectancy of the individual or spouse or for a shorter period of time.

(B) The life expectancy of the annuitant shall be determined in accordance with life expectancy tables specified by the Secretary of the Department of Health and Human Services, contained in Section 3258.9 (Revision 64), Part 3 of the Health Care Financing Administration's State Medicaid Manual and titled "Life Expectancy Table—Males and Life Expectancy Table—Females".

(C) Any payment scheduled to occur beyond the life expectancy of the individual or spouse as determined in accordance with subsection (g)(2)(B) of this section shall be considered a transfer of assets.

(D) Any payment made to, or set aside for, another individual (other than for the sole benefit of the spouse), shall be considered a transfer of assets.

(h) The county must consider whether undue hardship exists before eligibility may be denied under this section. Eligibility shall not be denied based upon the provisions of this section if undue hardship is found to exist. The provisions of this section shall be waived if the application of these provisions would work an undue hardship. If undue hardship, in accordance with the provisions of this subsection, is considered and found not to apply, the county shall state that on the notice of action. For purposes of this section, undue hardship exists when all of the conditions in subsections (h)(1) through (h)(4) of this section exist or when the conditions in subsections (h)(5) or (h)(6) of this section exists. The county shall notify the individual that undue hardship is being considered prior to denying eligibility to any individual under this section.

(1) The trust assets cannot, under any circumstances, be used to provide for the health care or medical needs of the Medi–Cal applicant or Medi–Cal beneficiary, and

(2) Health care cannot be obtained from, and medical needs cannot be met by, any source other than Medi–Cal without depriving the individual of food, clothing or shelter or other necessities of life, and

(3) The individual's parents (if the individual is under 21) or the individual's spouse, cannot provide for the health care and medical needs or health care coverage of the individual without depriving themselves of food, clothing or shelter or other necessities of life, and

(4) The courts have denied a good faith petition to release the trust assets to pay for the required medical care.

(A) A petition to release the trust assets shall not be considered a valid good faith petition if the petition contains language which suggests or requests that the courts do anything other than release the trust assets needed to pay for the required medical care.

(B) The counties shall verify that the criteria contained in subsections (h)(4) and (h)(4)(A) of this section, concerning a valid good faith petition and court order exist by examining the petition and the court order.

(C) Subsection (h)(4) of this section does not apply to an annuity.

(5) No person shall be made ineligible to the extent the trust contains otherwise exempt income or property.

(6) No person shall be made ineligible due to the application of subsection (g) of this section, concerning an annuity purchased prior to March 1, 1996 when the annuity cannot be annuitized to comply with the provisions of subsection (g) of this section. Any annuity purchased prior to March 1, 1996 which cannot be annuitized to comply with the provisions of subsection (g) of this section, shall continue to be considered in accordance with Section 50402.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.7, 14006 and 14015(a), Welfare and Institutions Code; and Sections 1396a(r)(2)(A) and 1396p(c), (d) and (e), Title 42, United States Code.

HISTORY

1. New section filed 1–28–98; operative 1–28–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 5).

§ 50489.9. Trusts Other than Those Described in 50489.1 or 50489.5.

(a) Trusts described in subsections (a)(1) through (a)(4) of this section, shall be considered available in accordance with subsection (b) of this section:

(1) Trusts that are not described in Section 50489.1 or Section 50489.5.

(2) Any trust established prior to April 7, 1986, which benefits no one other than a mentally retarded person who resides in an intermediate care facility for the mentally retarded.

(3) A trust established on or after August 11, 1993, which meets all of the following conditions:

(A) A trust, or portion of a trust, that contains the assets of an individual or spouse who was both disabled as verified in accordance with Section 50167(a)(1) and under the age of 65 when the trust was established and who is currently disabled whether or not he/she is age 65 or over, and

(B) A trust that is established for the benefit of the disabled individual or disabled spouse in subsection (a)(1)(A) of this section by a parent, grandparent, legal guardian of the individual, or a court, and where

(C) The State receives all remaining funds in the trust, or respective portion of the trust, upon the death of the individual or spouse or upon termination of the trust up to an amount equal to the total medical assistance paid on behalf of that individual by the Medi–Cal program. A trust, or respective portion of the trust, will still be considered for the benefit of the individual or spouse if the trust permits funds to be used for other purposes when the trust's terms permit such use only after payment of the State's interest pursuant to this subsection.

(4) A trust established on or after August 11, 1993, which meets all the conditions listed in subsections (a)(4)(A) through (a)(4)(F) of this section:

(A) the trust contains the assets of the individual or spouse who is disabled as verified in accordance with Section 50167(a)(1), and

(B) the trust is established and managed by a nonprofit association, and

(C) a separate account is maintained for each trust beneficiary, but for purposes of investment and management of funds, the trust pools these accounts, and

(D) the accounts in the trust are established, except for purposes of subsection (a)(4)(E) of this section, solely for the benefit of the disabled individual or disabled spouse, as defined in subsection (a)(4)(F) of this section, by the disabled individual or disabled spouse, his or her parents, his or her grandparents, or the legal guardian of that individual, or by a court, and

(E) the State receives, upon the death of the disabled individual or disabled spouse, all funds remaining in the individual's account, up to an amount equal to the total amount of medical assistance paid on behalf of that individual by the Medi–Cal program. The State shall receive this amount only to the extent that funds remain in that individual's account and are not retained by the trust to cover management and investment fees associated with that account.

(F) In determining whether an account may be considered solely for the benefit of the disabled individual or disabled spouse, both subsections (a)(4)(F)(1) and (a)(4)(F)(2) of this section shall apply.

(1) Except in accordance with subsection (a)(4)(E) of this section, the account funds must benefit no one other than the disabled individual or disabled spouse for whose benefit the account was established before the State's interest has been satisfied pursuant to subsection (a)(4)(E) of this section.

(2) If the trust permits funds to be used for any purpose other than for the sole benefit of the disabled individual or disabled spouse for whose benefit the trust or account was established, before the State's interest has been satisfied pursuant to subsection (a)(4)(E) of this section, the account will not be considered solely for the benefit of that individual or spouse. Such accounts shall be treated pursuant to Section 50489.5. An account will still be considered for the sole benefit of the individual or spouse if the trust permits funds to be used for other purposes when the trust's terms permit such use only after payment of the State's interest pursuant to subsection (a)(4)(E) of this section.

(b) Trusts described in subsections (a)(1) of this section through (a)(4) of this section, shall be considered available as specified in subsections (b)(1) and (b)(2) of this section.

(1) If the trust is revocable, trust income and principal shall be considered available to the person who has the right, power, and authority to revoke the trust and to use the proceeds.

(A) Trust income is income, and is subject to Article 10 of this chapter. If trust income is not distributed in the month of receipt, it is available property.

(B) Trust principal is available property.

(2) If the trust is irrevocable, the trust assets are not available until distributed.

(c) Any augmentations or additions made to a trust described in subsection (a)(3) of this section or subsection (a)(4) of this section after the disabled individual or disabled spouse for whose benefit the trust was established reaches the age of 65 shall be considered a transfer of assets for less than adequate consideration; earlier augmentations or additions shall not be considered transferred for less than adequate consideration.

(d) In the case of a trust described in subsection (a)(3) of this section or (a)(4) of this section, to ensure that the Department recovers the costs of medical care it provided, the Department's Third Party Liability Branch shall be notified

(1) by the county, whenever the county becomes aware of a Medi–Cal applicant or Medi–Cal beneficiary who is a trust beneficiary, and

(2) by the trustee, upon death of the trust beneficiary, termination of the trust, or change of trustee.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.7, 14006 and 14015(a), Welfare and Institutions Code; and Sections 1396a(r)(2)(A) and 1396p(c), (d) and (e), Title 42, United States Code.

HISTORY

1. New section filed 1–28–98; operative 1–28–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 5).

Article 10. Income

§ 50501. Income—General.

(a) Income includes benefits in cash or in kind from:

(1) Labor.

(2) Services provided.

(3) Business activities.

(4) Returns from real or personal property.

(5) Contributions.

(6) Other similar sources.

(b) Income from sources listed in (a) shall be considered as income only if it is currently available in accordance with Sections 50513 through 50517.

(c) Income from sources listed in (a) shall be divided into three types:

(1) Gross earned income as described in Section 50503.

(2) Gross unearned income as described in Section 50507.

(3) Income in kind as described in Section 50509.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4, 14005.7, 14005.9 and 14005.12, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 6–10–83 (Register 83, No. 24).

§ 50503. Gross Earned Income.

(a) Gross earned income includes:

(1) Wages, including amounts designated for meals provided by an employer or business enterprise, salaries, bonuses and commissions from an employer or business enterprise.

(2) Net profits from self–employment as determined in accordance with Section 50505.

(3) Earnings under Title 1 of the Elementary and Secondary Education Act.

(4) Payments under the Job Training Partnership Act (JTPA). Payments which are identified by the local JTPA office as an incentive payment or training allowance shall be considered as gross unearned income.

(5) Payments under the Economic Opportunity Act.

(6) Training incentive payments and work allowances under ongoing manpower programs other than WIN or JTPA.

(7) Income received for having provided IHSS services.

(8) Net income from real or personal property as determined in accordance with Section 50508 which is the result of continuous and appreciable effort on the part of the applicant or beneficiary. This includes income from:

(A) Room and board.

(B) The rental of rooms which requires daily effort on the part of the beneficiary.

(C) A business enterprise.

(D) The sale of produce, livestock, poultry, dairy products and other similar items.

(9) Earnings from public service employment.

(10) Actual Earned Income Tax Credit (EITC) payment received for taxable year 1980 and thereafter whether received as a tax refund or received as an advance payment.

(11) Tips actually received for the performance of work activities, notwithstanding the amount calculated by the employer for tax withholding purposes.

(12) For purposes of applying Sections 50543, 50553.1, 50553.3, and 50553.5 of Title 22 of the California Code of Regulations to AFDC–MN or MI persons, Temporary Workers Compensation payments which are (i) employer funded, (ii) made to an individual who remains employed during recuperation from a temporary illness or injury pending his/her return to the job, and (iii) are specifically characterized under State law as temporary wage replacements.

(13) For purposes of applying Sections 50543, 50553.1, 50553.3, and 50553.5 of Title 22 of the California Code of Regulations to AFDC–MN or MI persons, State Disability Insurance payments.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; Sawyer v. Anderson, Belshé, et al., U.S. District Court, EDCA, No. CIV S–94–0228 GEB JFM; and Tinoco v. Belshé, U.S. District Court, NDCA, No. C94 0947 WHO. Reference: Sections 14005.4, 14005.7 and 14005.8, Welfare and Institutions Code.

HISTORY

1. Amendment filed 3–7–80; effective thirtieth day thereafter (Register 80, No. 9).
2. New subsections (a)(10) and (b) filed 4–15–85 as an emergency; effective upon filing (Register 85, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–13–85.
3. Certificate of Compliance as to 4–15–85 order transmitted to OAL 8–13–85 and filed 9–18–85 (Register 85, No. 38).
4. Amendment filed 6–3–87; operative 7–3–87 (Register 87, No. 24).
5. New subsections (a)(12) and (a)(13) and amendment of NOTE filed 3–11–97; operative 4–10–97 (Register 97, No.11).

§ 50505. Net Profit from Self–Employment.

(a) The net profit from self–employment shall be an estimation of the annual net income for the current year based on the federal tax return filed for the previous year as limited by (c).

(b) If there is no tax return for the previous year or there is evidence that using the tax return would give an inaccurate estimation of income, the county department shall use current business records. In this circumstance, net profit shall be determined in accordance with (d) and (e).

(c) The following expenses, when used to determine annual net income on the federal tax return, shall not be deducted:

(1) Entertainment costs.

(2) Depreciation.

(3) Purchase of capital equipment expenditures.

(4) Payments on the principal of loans for capital assets or durable goods.

(d) Net profit of a self–employed person shall be determined by subtracting from the gross business income, expenses which are directly related to the production of goods or services, and without which the goods or services could not be produced. Such expenses include, but are not limited to:

(1) Transportation costs to call upon customers or deliver goods.

(2) Payments of the interest of loans for capital assets or durable goods.

(3) Payments for rental of space or equipment.

(4) Wages and other benefits paid to employees.

(5) Material and supply costs.

(6) Maintenance and repair costs.

(e) Personal expenses such as income tax payments, lunches and transportation to and from work are not classified as business expenses and shall not be deducted.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4, 14005.7, 14005.9 and 14005.12, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 6–10–83 (Register 83, No. 24).
2. Amendment filed 4–17–89; operative 5–17–89 (Register 89, No. 48).

§ 50507. Gross Unearned Income.

(a) Gross unearned income includes:

(1) Old age, survivors and disability insurance payments from the Social Security Administration (OASDI).

(2) Annuities, which are sums paid yearly or at other specific intervals in return for payment of a fixed sum by the annuitant.

(3) Pensions.

(4) Retirement payments.

(5) Disability payments except for the State Disability Insurance benefits considered to be earned income under Section 50503(a)(13) of this Title.

(6) Veterans payments which include:

(A) Pensions based on need.

(B) Compensation payments.

(C) Educational assistance.

(7) Workers' Compensation payments, except for any amount determined to be unavailable in accordance with Section 50515, and except for Temporary Workers Compensation payments considered to be earned income under Section 50503(a)(12) of this Title.

(8) Railroad Retirement and any other payments made by the Railroad Retirement Board.

(9) Unemployment Insurance Benefits.

(10) Proceeds from a life insurance policy which are in excess of the lesser of:

(A) $1,500.

(B) The amount expended on the insured person's last illness and burial expenses.

(11) Other insurance payments.

(12) Loans which do not require repayment.

(13) Gifts.

(14) Non-exempt child/spousal support, whether provided voluntarily or by court order.

(15) Inheritances which are in the form of cash, securities or other liquid assets.

(16) Contributions from any source.

(17) Prizes and awards.

(18) Net income from the rental of real or personal property which is not considered gross earned income in accordance with Section 50503(a)(8).

(19) Dividends.

(20) Interest payments from any source, including trust, trust deeds and contracts of sale.

(21) Royalties, including but not limited to payments to a holder of a patent or copyright, for the use of the invention, or to the owner of a mine, oil well or similar holdings, for the extraction of the product or other use.

(22) Income of a PA or Other PA recipient which is not used to determine the recipient's eligibility.

(23) Incentive payments or training allowances under JTPA.

(24) Any other income which is available to meet current needs in accordance with Section 50513.

(25) Any of the items specified in (10) through (24) if received in a lump sum payment.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; Sawyer v. Anderson, Belshé, et al., U.S. District Court, EDCA, No. CIV S-94-0228 GEB JFM; and Tinoco v. Belshé, U.S. District Court, NDCA, No. C94 0947 WHO. Reference: Sections 14005.4, 14005.7 and 14005.8, Welfare and Institutions Code.. Reference: Sections 14005.4, 14005.7, 14005.8 and 14006, Welfare and Institutions Code.

HISTORY

1. Amendment of subsections (a)(1), (a)(12) and (a)(22) filed 9-17-79 as an emergency; effective upon filing (Register 9, No. 38). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 1-15-80.
2. Certificate of Compliance transmitted to OAL 1-8-80 and filed 1-16-80 (Register 80, No. 3).
3. Amendment of subsection (a)(14) and new subsection (b) filed 4-15-85 as an emergency; effective upon filing (Register 85, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8-13-85.
4. Certificate of Compliance including amendment of subsection (a) transmitted to OAL 8-13-85 and filed 9-18-85 (Register 85, No. 38).
5. Amendment filed 6-3-87; operative 7-3-87 (Register 87, No. 24).
6. Amendment of subsection (a)(6) filed 2-16-88 as an emergency; operative 2-16-88 (Register 88, No. 10). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6-15-88.
7. Emergency language filed 2-16-88 repealed by operation of Government Code Section 11346.1 (Register 88, No. 27).
8. Amendment of subsection (a)(6) refiled 6-22-88 as an emergency; operative 6-22-88 (Register 88, No. 27). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10-20-88.
9. Certificate of Compliance transmitted to OAL 6-20-88 and filed 7-15-88 (Register 88, No. 31).
10. Amendment of subsections (a)(5) and (a)(7) and amendment of NOTE filed 3-11-97; operative 4-10-97 (Register 97, No.11).

§ 50508. Net Income from Property.

(a) Net income from property shall be considered in determining share of cost and shall be computed as follows:

(1) If the income is from the rental of real property, subtract the following expenses, as limited by (b), from the gross income:

(A) Taxes and assessments.

(B) Interest on encumbrance payments. The principal portion of the payments shall not be deducted.

(C) Insurance.

(D) Utilities.

(E) Upkeep and repairs. The amount of this item shall be the greater of the following:

1. The actual amount expended for upkeep and repairs during the month.

2. Fifteen percent of the gross monthly rental plus $4.17 per month.

(2) In determining whether utilization requirements are met in accordance with Section 50416 (a) (1) only the amount specified in (a) (1) (E) 1. shall be deducted rather than the amount specified in (a) (1) (E) 2.

(3) If the income is from the rental of rooms, or the provision of board and room or board and care, which does not require a business license, the net income shall be 10 percent of the gross amount received.

(4) If the income is from the provision of board and room or board and care which requires a business license, or from self-employment, the net income is the net profit from self-employment as determined in accordance with Section 50505.

(5) If the income is from a deed of trust or a mortgage, the net income is the amount specified in Section 50441 (c).

(6) If the income is from property in which the person holds a life estate, the net income is the amount actually received.

(7) If the income is from personal property, the net income is the amount actually received.

(b) If the income is from the rental of unit(s) of a multiple unit dwelling or other dwellings on property that is exempt as the principal residence and the applicant or beneficiary is living in a portion of the property, the expenses specified in (a) which are common to the property as a whole shall be prorated as follows:

(1) Determine the number of rooms in the building. If there is more than one building, determine the number of rooms in all of the buildings together. For the purpose of this section, rooms include any room other than the following:

(A) Bathroom.

(B) Hallway.

(C) Closet.

(D) Unfinished basement, loft or attic.

(2) Determine the number of rooms which are producing the rental income.

(3) Based upon the number of rooms, determine the percentage of the property which is producing the rental income.

(4) Apply the percentage determined in accordance with (3) to the expenses specified in (a) which are common to the property as a whole. This is the amount which shall be subtracted from the gross income.

NOTE: Authority cited: Sections 10725, 14006.1 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4, 14005.7 and 14006, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (a)(5) filed 12-15-77; effective thirtieth day thereafter (Register 77, No. 51).
2. Editorial correction adding NOTE filed 6-10-83 (Register 83, No. 24).
3. Amendment of subsection (a)(1) and new subsection (b) filed 12-2-85 as an emergency; effective upon filing (Register 85, No. 50). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4-1-86.
4. Certificate of Compliance transmitted to OAL 3-31-86 and filed 4-30-86 (Register 86, No. 18).

§ 50509. Income in Kind.

(a) Income in kind is any support or maintenance received in kind from a person other than a responsible relative for:

(1) Housing.

(2) Utilities.

(3) Food.

(4) Clothing.

(b) Income in kind shall be considered as income only if the entire item of need is provided.

(c) The value of free board and lodging received during a temporary absence from the home shall be considered as follows:

(1) If the absence is for one month or less, the income in kind value shall not be considered income.

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(2) If the absence is for more than one month, the income in kind value shall be considered income to the extent that it exceeds the actual costs of maintaining the home to which the beneficiary will return.

(d) Income in kind which is received as earned income shall be subject to earned income exemptions and deductions.

(e) Income in kind which is received as unearned income shall be subject to unearned income exemptions and deductions.

(f) Income in kind from a parent shall not be considered in determining the eligibility of a child when any of the following conditions exists:

(1) The child's application is being processed for minor consent services in accordance with Section 50147.1(a)(3)(D).

(2) The child is an unmarried minor parent and the share of cost is being determined for the MFBU that includes the child's children.

(3) The child is an unborn, except that if the mother is receiving income in kind, there is income in kind to the unborn.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4 and 14005.7, Welfare and Institutions Code.

HISTORY

1. New subsection (f) filed 1–8–81; effective thirtieth day thereafter (Register 81, No. 2).

§ 50511. Value of Income in Kind.

(a) The value of the income in kind for the items specified in Section 50509 (a) shall be the lesser of the following:

(1) The actual cost or net market value of the item, or

(2) The income in kind amounts effective July 1, 1981 for housing, utilities (including telephone), food and clothing specified in (d) as adjusted for any increases or decreases in the cost of living specified in (b).

(b) Individual income in kind amounts shall be adjusted by the same percentage increase or decrease that is applied to the AFDC Maximum Aid Payment levels pursuant to Section 11453 Welfare and Institutions Code. Such adjustments shall be effective at the same time as adjustments to the AFDC payment levels become effective as specified in Section 11453, Welfare and Institutions Code.

(c) If one of the items listed in 50509(a) is shared with persons who are not included in the MFBU and who are not responsible for members of the MFBU, the income in kind value to the members of the MFBU shall be the lesser of:

(1) Their share of the net market value or actual cost of the item.

(2) The value determined in accordance with (a) (2).

(d) The income in kind amounts effective July 1, 1981 are as follows:

(1) Housing.
(A) One person MFBU ..... $111 per month.
(B) Two person MFBU ..... $150 per month.
(C) Three person MFBU ..... $163 per month.

(1) Housing.
(A) One person MFBU ..... $111 per month.
(B) Two person MFBU ..... $150 per month.
(C) Three person MFBU ..... $163 per month.
(D) Four person or larger MFBU ..... $173 per month.

(2) Utilities, including telephone.
(A) One person MFBU ..... $25 per month.
(B) Two person MFBU ..... $26 per month.
(C) Three person MFBU ..... $28 per month.
(D) Four person or larger MFBU ..... $29 per month.

(3) Food.
(A) One person MFBU ..... $62 per month.
(B) Two person MFBU ..... $133 per month.
(C) Three person MFBU ..... $169 per month.
(D) Four person MFBU ..... $209 per month.
(E) Five person MFBU ..... $252 per month.
(F) Six person MFBU ..... $293 per month.
(G) Seven person MFBU ..... $327 per month.
(H) Eight person MFBU ..... $358 per month.
(I) Nine person MFBU ..... $391 per month.
(J) Ten person or larger MFBU ..... $424 per month.

(4) Clothing.
(A) One person MFBU ..... $20 per month.
(B) Two person MFBU ..... $37 per month.
(C) Three person MFBU ..... $56 per month.
(D) Four person MFBU ..... $74 per month.
(E) Five person MFBU ..... 92 per month.
(F) Six person MFBU ..... $110 per month.
(G) Seven person MFBU ..... $129 per month.
(H) Eight person MFBU ..... $144 per month.
(I) Nine person MFBU ..... $165 per month.
(J) Ten person or larger MFBU ..... $181 per month.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; Section 32, SB 633, Statutes of 1981, Chapter 69. Reference: Sections 14005.4 and 14005.7, Welfare and Institutions Code.

HISTORY

1. Amendment filed 7–1–77 as an emergency; effective upon filing (Register 77, No. 27).
2. Certificate of Compliance filed 10–27–77 (Register 77, No. 44).
3. Amendment filed 9–25–79 as an emergency; effective upon filing (Register 79, No. 39). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 1–23–80.
4. Certificate of Compliance filed 1–16–80 (Register 80, No. 3).
5. Amendment of subsections (a) and (c) filed 9–30–80 as an emergency; effective upon filing (Register 80, No. 40). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed 1–30–81.
6. Amendment of subsections (a) and (c) filed 12–3–80; effective thirtieth day thereafter (Register 80, No. 49).
7. Certificate of Compliance as to 9–30–80 order filed 1–27–81 (Register 81, No. 5).
8. Amendment of subsections (a) and (c) filed 10–2–81 as an emergency; effective upon filing (Register 81, No. 40).
9. Certificate of Compliance as to 10–2–81 order transmitted to OAL 1–15–82 and filed 2–1–82 (Register 82, No. 6).
10. Amendment filed 1–13–86; effective thirtieth day thereafter (Register 86, No. 3).

§ 50512. Ownership of Income.

(a) Except as specified in (b), income is considered to belong to the person who:

(1) Is named on a negotiable instrument.

(2) Is given cash.

(3) Receives the income in kind.

(b) In the case of a married couple it shall be presumed that each spouse has a one–half community property ownership interest in the total monthly gross earned and unearned income of both spouses providing all of the following conditions exist:

(1) One spouse is in LTC and the other spouse is noninstitutionalized.

(2) There is no break in marital ties.

(3) The LTC spouse receives an amount of income which is greater than the amount of income received by the noninstitutionalized spouse.

(c) The community property ownership presumption in (b) shall be rebuttable by either spouse who provides evidence that all or a portion of the total income is owned separately by one spouse.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 5, Chapter 1221, Statutes of 1985. Reference: Sections 14005.4, 14005.7 and 14005.16, Welfare and Institutions Code; and Sections 687, 5105 and 5110, Civil Code.

HISTORY

1. Renumbering and amendment of former Section 50513(d) to Section 50512 filed 12–2–85 as an emergency; effective upon filing (Register 85, No. 50). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–1–86. For prior history, see Register 77, No. 51.
2. Renumbering and amendment of former Section 50513(d) to Section 50512 refiled 3–28–86 as an emergency; effective upon filing (Register 86, No. 13). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–28–86.

3. Certificate of Compliance including amendment of subsection (b) as to 3–28–86 ordered filed 6–6–86 (Register 86, No. 23).

EXPLANATORY NOTE:

1. Approval by OAL of the Certificate of Compliance for the amendment of Section 50512, filed 6–6–86, was made in the absence of a final determination by the Secretary of the United States Department of Health and Human Services pursuant to Section 1116 of the federal Social Security Act that a conflict exists between Section 50512 or Chapter 1221 of the California Statutes of 1985 and any federal statute or regulation.

§ 50513. Availability of Income.

(a) Only income which is actually available to meet the needs of a person or family shall be considered in determining that person's or family's share of cost.

(b) Income shall be considered available in the month it is received unless it is:

(1) To be apportioned over time in accordance with Section 50517.

(2) Unavailable in accordance with Section 50515.

(c) Income is considered to be received on the day it becomes available for use by the person.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 5, Chapter 1221, Statutes of 1985. Reference: Sections 14005.4, 14005.7 and 14005.16, Welfare and Institutions Code; and Sections 687, 5105 and 5110, Civil Code.

HISTORY

1. Amendment of subsection (d) filed 12–15–77; effective thirtieth day thereafter (Register 77, No. 51).
2. Renumbering and amendment of Section 50513(d) to Section 50512 filed 12–2–85 as an emergency; effective upon filing (Register 85, No. 50). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–1–86.
3. Renumbering and amendment of Section 50513(d) to Section 50512 refiled 3–28–86 as an emergency; effective upon filing (Register 86, No. 13). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–28–86.

§ 50515. Unavailable Income.

(a) Income which is not available to meet current needs of a person or family shall not be considered in determining that person's or family's share of cost. Unavailable income includes, but is not limited to, the following:

(1) That portion of Worker's Compensation and other public or private insurance settlements which is either of the following:

(A) Designated for medical, legal or other such expenses.

(B) Not controlled by the applicant or beneficiary or person acting on his behalf.

(2) That portion of a contribution that is both of the following:

(A) From a person living in the household who has no legal responsibility to support, such as an unrelated adult or an adult child.

(B) Used to meet the actual costs of the contributor's share of the housing, utilities, food and other household costs. If actual costs are unavailable, the amounts specified in Section 50511 shall be used. This shall be the difference between the income–in–kind values for the family size with the person included and excluded.

(3) That portion of the monthly income of a medically needy person residing in a licensed board and care facility which is both of the following:

(A) Paid to the facility for residential care and support.

(B) In excess of the appropriate maintenance need level as determined in accordance with Section 50603.

(4) An advance or a reimbursement from an employer to cover expenses necessary for job performance is unavailable to the extent that the advance or reimbursement does not exceed the actual out–of–pocket costs of the employee.

(b) When a person is in LTC and is in his/her own MFBU in accordance with Section 50377, his/her spouse's share of the community property owned income shall be considered unavailable to the LTC person.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4, 14005.7 and 14005.16, Welfare and Institutions Code.

HISTORY

1. New subsection (a)(3) filed 11–17–83 as an emergency; effective upon filing (Register 83, No. 49). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3–17–84.
2. Certificate of Compliance as to 11–17–83 order transmitted to OAL 3–16–84 and filed 4–17–84 (Register 84, No. 16).
3. New subsection (b) filed 12–2–85 as an emergency; effective upon filing (Register 85, No. 50). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–1–86.
4. New subsection (b) refiled 3–28–86 as an emergency; effective upon filing (Register 86, No. 13). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–28–86.
5. Certificate of Compliance as to 3–28–86 order filed 6–6–86 (Register 86, No. 23).

EXPLANATORY NOTE:

1. Approval by OAL of the Certificate of Compliance for the amendment of Section 50515(b), filed 6–6–86, was made in the absence of a final determination by the Secretary of the United States Department of Health and Human Services pursuant to Section 1116 of the federal Social Security Act that a conflict exists between Section 50515(b) or Chapter 1221 of the California Statutes of 1985 and any federal statute or regulation.
6. New subsection (a)(4) filed 7–9–87; operative 8–8–87 (Register 87, No. 30).

§ 50517. Apportionment of Income over Time.

(a) Income shall be considered available in the month received, unless it is apportioned over time in accordance with the following:

(1) Income earned and received in more than eight but less than twelve months under an annual contract of employment shall be apportioned equally over the period of the contract beginning with the first month of the contract.

(2) Income received more frequently than monthly or semi–monthly shall be converted to monthly income in accordance with (3) if both of the following conditions are met:

(A) The beneficiary wishes to receive Medi–Cal for more than two months.

(B) The beneficiary is to receive the income for a full month.

(3) Income shall be converted to monthly income by the following methods:

(A) Multiply weekly income by 4.33 or 4 1/3.

(B) Multiply income received every two weeks by 2.167 or 2 1/6.

(4) Income received less frequently than monthly shall be converted to monthly income by the following methods.

(A) Divide quarterly income by three.

(B) Divide income received every two months by two.

(5) Income from self–employment, as determined in accordance with Section 50505, shall be determined on an annual basis and apportioned monthly.

(6) Loans which do not require repayment and are not exempt in accordance with Section 50533, and which specify that they are to cover a certain period of time shall be apportioned over that period of time.

(7) Interest income from a deed of trust or contract of sale shall be determined on an annual basis and apportioned monthly.

(8) Interest income which is received less frequently than monthly and is not exempt as specified in Section 50542 shall be apportioned as follows:

(A) Determine the number of months of the period during which the interest accrued.

(B) Divide the interest income by the number of months in the interest period.

(C) Consider the amount determined in (B) as income in each of the months of the next interest period.

NOTE: Authority cited: Sections 10725, 14005.9(c) and 14124.5, Welfare and Institutions Code; Section 133.5, AB 251, Chapter 102, Statutes of 1981. Reference: Sections 14005.4, 14005.7, 14005.9, and 14006, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (a) and repealer of subsection (b), filed 12–15–77; effective thirtieth day thereafter (Register 77, No. 51).
2. Amendment of subsection (a)(6) filed 9–17–79 as an emergency; effective upon filing (Register 79, No. 38). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 1–15–80.
3. Certificate of Compliance transmitted to OAH 1–8–80 and filed 1–16–80 (Register 80, No. 3).

4. Amendment filed 11–30–81 as an emergency; effective upon filing (Register 81, No. 49). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3–30–82.
5. Certificate of Compliance filed 3–30–82 (Register 82, No. 14).
6. Amendment of subsection (a) filed 10–1–82 as an emergency; effective upon filing (Register 82, No. 40). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1–29–83.
7. Certificate of Compliance transmitted to OAL 12–30–82 and filed 2–2–83 (Register 83, No. 6).

§ 50517.1. Apportionment of Income Exemptions and Deductions.

(a) Income exemptions and deductions shall be apportioned over time using the procedures for apportioning income over time.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4 and 14005.7, Welfare and Institutions Code.

HISTORY

1. New section filed 12–15–77; effective thirtieth day thereafter (Register 77, No. 51).
2. Editorial correction adding NOTE filed 6–11–83 (Register 83, No. 24).

§ 50518. Fluctuating Income.

(a) Fluctuating income shall be determined by estimating the amount to be received in the month unless the conditions of (b) are met. This estimate shall be made considering all of the following:

(1) The income pattern over the last year.

(2) The actual income received in the last month.

(3) The beneficiary's statement of anticipated income.

(b) Actual income shall be used if it is known at the time the share of cost determination is being made. In no instance shall the share of cost determination be delayed solely to determine the actual income.

(c) The provisions of this section shall not apply to income from self-employment which shall be determined in accordance with Section 50505 and apportioned in accordance with Section 50517(a)(5).

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4, 14005.7 and 14005.12, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 6–10–83 (Register 83, No. 24).
2. New subsection (c) filed 7–9–87; operative 8–8–87 (Register 87, No. 30).

§ 50519. Income Exemptions and Deductions—General.

(a) Certain items of earned and unearned income shall be exempt from consideration in determining a beneficiary's share of cost. Income which remains after the application of the exemptions specified in Sections 50523 through 50544 shall be nonexempt income.

(b) Certain amounts of income shall be deducted from nonexempt income to determine the net income to be used in determining the share of cost. Income which remains after the application of the deductions specified in Sections 50547 through 50555.2 shall be net nonexempt income.

(c) Exemptions and deductions do not apply uniformly to all MN and MI categories nor to both earned and unearned income. Restrictions are stated where applicable.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 57(c), Chapter 328, Statutes of 1982. Reference: Sections 14005.4 and 14005.7, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (b) filed 8–18–82 as an emergency; effective upon filing (Register 82, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12–16–82.
2. Certificate of Compliance transmitted to OAL 12–16–82 and filed 1–21–83 (Register 83, No. 4).
3. Amendment of NOTE filed 4–12–83 (Register 83, No. 16).

§ 50521. Payments Exempt from Consideration as Income.

Income specified in Sections 50523 through 50544 shall be exempt. These exemptions shall apply to all MN and MI persons, unless otherwise specified.

§ 50523. Property Tax Refunds.

Refunds or rebates of taxes on real property shall be exempt.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4 and 14005.7, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 6–10–83 (Register 83, No. 24).

§ 50523.5. California Franchise Tax Board Payments.

The payments which are exempt property pursuant to Section 50454.5 shall also be exempt income in the month of receipt.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 11008.4, Welfare and Institutions Code.

HISTORY

1. New section filed 4–17–89; operative 5–17–89 (Register 89, No. 48).

§ 50524. Child/Spousal Support Received by AFDC–MN and MI Family Members.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 14, Chapter 1447, Statutes of 1984. Reference: Sections 14005.4, 14005.7 and 14005.8, Welfare and Institutions Code.

HISTORY

1. New section filed 4–15–85 as an emergency; effective upon filing (Register 85, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–13–85.
2. Certificate of Compliance transmitted to OAL 8–13–85 and filed 9–18–85 (Register 85, No. 38).
3. Renumbering and amendment of Section 50524 to Section 50554.5 filed 7–9–87; operative 8–8–87 (Register 87, No. 30).

§ 50525. Public Assistance and General Relief Grants.

(a) Public assistance cash grants shall be exempt.

(b) In addition to public assistance cash grants, the following cash payments from county agencies are exempt:

(1) Special circumstances payments provided to SSI/SSP recipients pursuant to EAS regulations.

(2) Emergency loans provided to SSI/SSP recipients pursuant to EAS regulations.

(3) General Relief or General Assistance payments.

(4) Cash value of food stamps.

(5) Immediate need payments provided to AFDC recipients pursuant to EAS 40–129.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4 and 14005.7, Welfare and Institutions Code.

HISTORY

1. New subsections (b)(4) and (b)(5) filed 8–8–80; effective thirtieth day thereafter (Register 80, No. 32).

§ 50526. Work Incentive Program (WIN).

Earnings from public service employment under the WIN program are exempt.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4 and 14005.7, Welfare and Institutions Code.

HISTORY

1. New section filed 3–7–80; effective thirtieth day thereafter (Register 80, No. 9).

§ 50527. Social Services.

(a) Payments received for social services provided in accordance with Title XX of the Social Security Act shall be exempt, whether provided in kind or as a direct payment to the individual for purchase of designated services. Such services include, but are not limited to:

(1) In-Home Supportive Services.

(2) Child care.

(3) Training and rehabilitation services, including payment for training expenses.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4, and 14005.7, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (a)(1) filed 8–7–78; effective thirtieth day thereafter (Register 78, No. 32).
2. Editorial correction adding NOTE filed 6–10–83 (Register 83, No. 24).

§ 50528. Assistance Based on Need.

(a) Assistance based on need which is furnished by the State or any political jurisdiction thereof, as specified in (b), shall be exempt if the payment is all of the following:

(1) Made regularly on a periodic basis at least once a quarter or made to a specific group or class of individuals in similar circumstances or situations.

(2) Made in cash, which may be currency or any negotiable instrument.

(3) Issued in an amount based on the need of the individual.

(b) Assistance based on need includes payments from the following and similar sources:

(1) Short–Doyle.

(2) Regional centers for the Developmentally Disabled.

(3) Probation departments.

(c) Payments made pursuant to public law, when the law specifically exempts such payment from eligibility and share of cost determinations, shall be considered assistance based on need.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4 and 14005.7, Welfare and Institutions Code.

HISTORY

1. Amendment filed 3–7–80; effective thirtieth day thereafter (Register 80, No. 9).

§ 50529. Federal Housing Assistance.

(a) Federal housing assistance in the form of rent subsidies, loans or partial house payments under the U. S. Housing Act of 1937, the National Housing Act, Title V of the Housing Act of 1949 or the Housing and Urban Development Act of 1965 shall be exempt.

HISTORY

1. Amendment filed 12–15–77; effective thirtieth day thereafter (Register 77, No. 51).

§ 50530. Training Expenses.

The allowance for training expenses paid by the Department of Rehabilitation to persons participating in that Department's training programs shall be exempt.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4 and 14005.7, Welfare and Institutions Code.

HISTORY

1. New section filed as an emergency 6–17–80 (Register 80, No. 25). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 10–16–80.
2. Certificate of Compliance filed 9–26–80 (Register 80, No. 39).

§ 50531. Foster Care Payments.

(a) Payments from any source, received by a foster parent for the care of a foster child, shall be exempt except for:

(1) The portion of the payment designated by the county department for care and supervision, if such a designation is made.

(2) Payments made to a foster parent when a foster child is temporarily absent from the foster home for a month or more.

(3) Payments made to ensure availability of a room or rooms for foster children.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4, and 14005.7, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 6–10–83 (Register 83, No. 24).

§ 50533. Exempt Loans, Grants, Scholarships and Fellowships.

(a) The following loans, grants, scholarships and fellowships are exempt:

(1) Loans made under Title III of the Federal Economic Opportunity Act, Special Program to Combat Poverty in Rural Areas.

(2) Loans or grants to an undergraduate student for educational purposes made or insured by the Federal Commissioner of Education. These include, but are not limited to:

(A) Supplemental Education Opportunity grants.

(B) National Direct Student loans.

(C) College Work Study.

(D) Basic Educational Opportunity grants.

(E) Federal insured student loans.

(3) Educational loans or grants to undergraduate students when it is verified that they are awarded on the basis of the student's need. These include, but are not limited to:

(A) Extended Opportunity Program loans and grants.

(B) Bureau of Indian Affairs loans and grants.

(C) California State scholarships (Cal Grant A).

(D) College Opportunity grants (Cal Grant B).

(E) Occupational, Educational–Training grants (Cal Grant C).

(4) Funds for readers, or educational scholarships, which are all of the following:

(A) Provided to an aged, blind or disabled person enrolled in a California public school or institution of higher learning.

(B) Awarded by an educational institution.

(C) Not available to meet basic needs.

(5) Other loans, grants, scholarships or fellowships, or portions thereof, to undergraduate or graduate students if the following conditions are met:

(A) The loan, grant, scholarship or fellowship document specifically limits the use of the funds for purposes other than current living costs.

(B) The loan, grant, scholarship or fellowship would not be available if used for any purpose other than the one specified.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4, 14005.7, 11008.7, 11008.9, 11008.10 and 12152, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (a) filed 12–15–77; effective thirtieth day thereafter (Register 77, No. 51).
2. Amendment filed 3–7–80; effective thirtieth day thereafter (Register 80, No. 9).

§ 50534. Payments to Victims of Crimes—Treatment as Income.

Payments made under the California Victims of Crimes program shall be exempt as income in the month of receipt and thereafter as property in accordance with Section 50448, and shall not be considered to be unconditionally available income pursuant to Section 50186.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Sections 1382a(b), 1383(a)(9) and 1396a(r), Title 42, United States Code. Reference: Sections 14005.4 and 14005.7, Welfare and Institutions Code and Section 13959 et seq., Government Code.

HISTORY

1. New section filed as an emergency 6–17–80 (Register 80, No. 25). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–16–80.
2. Certificate of Compliance filed 9–26–80 (Register 80, No. 39).
3. Amendment of section heading, text and NOTE filed 10–4–93; operative 11–3–93 (Register 93, No. 41).

§ 50535. Relocation Assistance Benefits.

Relocation assistance benefits shall be exempt if paid by a public agency to a person who has been relocated as a result of a program of area redevelopment, urban renewal, freeway construction, or any other public development involving demolition or condemnation of existing housing.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4 and 14005.7, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 6–10–83 (Register 83, No. 24).

§ 50535.5. Disaster and Emergency Assistance Payments.

Disaster and emergency assistance payments, whether in cash or in–kind, regardless of the date of receipt, and any interest earned from such payments, shall be exempt and shall not be included in the share of cost computation. This exemption applies only to such payments received from federal, state, and local government agencies, or disaster assistance organizations.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4 and 14005.7, Welfare and Institutions Code; and 42 U.S.C. Sections 1382a(b)(11) and (12), 1382b(a)(6), 1396a(a)(10), 5121 et seq. and 5155(d).

HISTORY

1. New section filed 10–5–93; operative 11–4–93 (Register 93, No. 41).

§ 50536. Payments to Victims of the National Socialist Persecution.

(a) Payments received from the Federal Republic of Germany (German Reparations Payments) pursuant to the federal law on the Compensation of Victims of the National Socialist Persecution (Federal Compensation Law) as enacted on June 29, 1956 shall be exempt as income in the month received.

(b) Interest earned on German Reparations Payments shall not be exempt and shall be considered countable unearned income in the month received.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.5, and 14006, Welfare and Institutions Code, and Program Operations Manual System SI 01120.405.

HISTORY

1. New section filed 12–10–85; effective thirtieth day thereafter (Register 85, No. 50).
2. Amendment filed 9–4–91; operative 10–4–91 (Register 92, No. 2).

§ 50537. Federal Payments to Indians and Alaskan Natives—Income.

(a) Payments made to Indians under Public Law 90–507 shall be considered personal property rather than income to the extent specified in Section 50445.

(b) Per capita payments made to Indians under Section 6 of Public Law 87–775 and Public Law 92–254 shall be exempt.

(c) Per capita payments distributed pursuant to any judgment of the Indian Claims Commission or the Court of Claims in favor of any Indian Tribe are exempt.

(d) Payments made to Alaskan Natives under the Alaskan Native Claims Settlement Act are exempt. Income obtained from stock investments under the Act is not exempt.

(e) Receipts derived from lands held in trust and distributed by the federal government to members of the following Indian tribes are exempt:

(1) Bad River Bank of the Lake Superior Tribe of Chippewa Indians of Wisconsin.
(2) Blackfeet Tribe, Blackfeet, Montana.
(3) Cherokee Nation of Oklahoma, Oklahoma.
(4) Cheyenne River Sioux Tribe, Cheyenne River, South Dakota.
(5) Crow Creek Sioux Tribe, Crow Creek, South Dakota.
(6) Lower Brule Sioux Tribe, Lower Brule, South Dakota.
(7) Devil's Lake Sioux Tribe, Fort Totten, North Dakota.
(8) Fort Belknap Indian Community, Fort Belknap, Montana.
(9) Assinboine and Sioux Tribes, Fort Peck, Montana.
(10) Lac Courte Oreilles Band of Lake Superior Chippewa Indians, Lac Courte and Oreilles, Wisconsin.
(11) Keweenaw Bay Indian Community, L'Anse, Michigan.
(12) Minnesota Chippewa Tribe, White Earth, Minnesota.
(13) Navajo Tribe, Navajo, New Mexico.
(14) Oglala Sioux Tribe, Pine Ridge, South Dakota.
(15) Rosebud Sioux Tribe, Rosebud, South Dakota.
(16) Shoshone–Bannock Tribe, Fort Hall, Idaho.
(17) Standing Rock Sioux Tribe, Standing Rock, North and South Dakota.
(18) Seminole Indians, Florida.
(19) Pueblos of Zia and Jemez, New Mexico.
(20) Stockbridge Munsee Indian Community, Wisconsin.
(21) Burns Indian Colony, Oregon.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4 and 14005.7, Welfare and Institutions Code.

HISTORY

1. New subsection (e) filed as an emergency 6–17–80 (Register 80, No. 25). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 10–16–80.
2. Certificate of Compliance filed 9–26–80 (Register 80, No. 39).
3. Change without regulatory of subsection (a) (Register 87, No. 11).

§ 50538. VISTA Payments.

Payments made under the Domestic Volunteer Services Act of 1973 to VISTA volunteers are exempt.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4 and 14005.7, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 6–10–83 (Register 83, No. 24).

§ 50539. Job Training Partnership Act (JTPA) Payments.

(a) All earnings of a child which are derived from participation in JTPA programs shall be exempt for up to six months per calendar year. Other JTPA payments made to a child shall be exempt at all times.

(b) Payments, other than earnings, to an adult which are derived from participation in JTPA programs shall be exempt to the extent that the payment reimbursements do not exceed the adult's actual training expenses.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4 and 14005.7, Welfare and Institutions Code.

HISTORY

1. Amendment filed 3–7–80; effective thirtieth day thereafter (Register 80, No. 9).
2. Repealer and new section filed 6–3–87; operative 7–3–87 (Register 87, No. 24).

§ 50540. Executive Volunteer Programs.

Payments for supportive services or reimbursement of out–of–pocket expenses made to persons serving in the Service Corps of Retired Executives (SCORE) and the Active Corps of Executives (ACE) pursuant to Section 418 of Public Law 93–113 are exempt.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4 and 14005.7, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 6–10–83 (Register 83, No. 24).

§ 50541. Senior Citizen Volunteer Programs.

Compensation received by beneficiaries who are 60 years of age or older, for volunteer services performed under the Retired Senior Volunteer program, the Foster Grandparents program or the Older Americans Community Service program of the National Older Americans Act, shall be exempt.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4 and 14005.7, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 6–10–83 (Register 83, No. 24).

§ 50542. Irregular or Infrequent Income.

(a) The first $60 of casual or inconsequential unearned income per calendar quarter shall be exempt if either of the following conditions are met.

(1) The income is received not more than twice per quarter.
(2) The income cannot be reasonably anticipated.

(b) Earned income not exceeding $30 per calendar quarter shall be exempt if either of the following conditions are met:

(1) The income is received not more than twice per quarter.
(2) The income cannot be reasonably anticipated.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4 and 14005.7, Welfare and Institutions Code.

HISTORY

1. Amendment filed 12–15–77; effective thirtieth day thereafter (Register 77, No. 51).
2. Editorial correction adding NOTE filed 6–10–83 (Register 83, No. 24).

§ 50543. Student Exemption.

(a) All earned income, including earnings from JTPA after the six months' exemption pursuant to Section 50539 has expired, of an AFDC–MN or MI child shall be exempt if the child is either of the following:

(1) A full–time student.

(2) A part–time student with a school schedule that is equal to at least one–half of a full–time curriculum, and the child is not employed full–time.

(b) For purposes of this exemption the following definitions apply:

(1) School attendance means enrollment and attendance in a school, college, university, or in a course of vocational or technical training de–

signed to fit the child for gainful employment and includes participation in the Job Corps program under the Economic Opportunity Act.

(2) Full–time student means a student who has a school schedule equal to a full–time curriculum, as defined by the school attended.

(3) Part–time employment means employment for less than 173 hours per month.

(c) The student exemption shall also apply to full or part–time earnings between school terms or during vacation periods, if the child plans to continue school attendance during the next term or when the vacation period ends.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4 and 14005.7, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (b) filed 12–15–77; effective thirtieth day thereafter (Register 77, No. 51).
2. Editorial correction adding NOTE filed 6–10–83 (Register 83, No. 24).
3. Amendment of subsection (a) filed 6–3–87; operative 7–3–87 (Register 87, No. 24).

§ 50543.5. Earned Income Tax Credit.

(a) The actual Earned Income Tax Credit (EITC) payment shall be exempt as income whether received as a tax refund or an advance payment.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14005.7, Welfare and Institutions Code; Sections 402(a)(8)(A)(viii), 1612b, 1613a and 1902r(2) Social Security Act (42 U.S.C. Sections 602, 1382a(b), 1382b(a) and 1382a(r)(2)).

HISTORY

1. New section filed 9–28–89 as an emergency; operative 10–1–89 (Register 89, No. 40). A Certification of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1–29–90.
2. Certificate of Compliance as to 9–28–89 order including amendment transmitted to OAL 1–26–90 and filed 2–21–90 (Register 90, No. 9).
3. Amendment of section heading, text and NOTE filed 2–2–93; operative 3–4–93 (Register 93, No. 6).

§ 50544. Earnings of Children Under Age 14.

Earnings of children under 14 years of age shall be exempt.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4, and 14005.7, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 6–10–83 (Register 83, No. 24).

§ 50545. Deductions from Income.

The deductions specified in Sections 50547 through 50555.2 shall be deducted from nonexempt income in the sequence presented in these regulations to determine net nonexempt income.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 57(c), Chapter 328, Statutes of 1982. Reference: Sections 14005.4 and 14005.7, Welfare and Institutions Code.

HISTORY

1. Amendment filed 8–18–82 as an emergency; effective upon filing (Register 82, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12–16–82.
2. Certificate of Compliance transmitted to OAL 12–16–82 and filed 1–21–83 (Register 83, No. 4).
3. Editorial correction of NOTE filed 4–12–83 (Register 83, No. 16).

§ 50547. Educational Expenses.

(a) Documented educational expenses for college or similar training courses which are incurred by a beneficiary shall be deducted either from any income received for educational purposes, as defined in (b), or from any loan received for educational purposes, which is considered as property in accordance with Section 50483(b). Such educational expenses shall be apportioned over the period of time they are intended to cover to determine the monthly deduction. Documented expenses incurred by the beneficiary include any of the following items or services necessary for school attendance:

(1) Tuition.

(2) Books.

(3) Fees.

(4) Equipment and supplies.

(5) Special clothing needs.

(6) Child care services.

(7) Costs of transportation to and from school based on the mode most economically available and feasible in the particular circumstances. If it is determined that personal car usage meets these criteria, all actual transportation costs will be prorated based on the percentage of miles driven to and from school to total miles driven each month. Allowable transportation costs include, but are not limited to, car payments, car insurance and registration, and gasoline.

(b) Income for educational purposes includes, but is not limited to:

(1) Exempt student loans, grants or fellowships, as identified in Section 50533.

(2) Nonexempt student loans, grants or fellowships which do not require repayment.

(3) Social Security and Veteran's Administration payments to a child attending school which are based on a deceased or disabled parent's entitlement.

(4) Veterans Educational Assistance program payments (GI Bill).

(c) The beneficiary educational expenses shall first be deducted from the totally exempt loans or grants identified in Section 50533. Any remaining educational expenses shall next be deducted from other loans for educational purposes, that are considered property in accordance with Section 50483(b), and finally from other income received for educational purposes.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4 and 14005.7, Welfare and Institutions Code.

HISTORY

1. Amendment of subsections (a) and (b) filed 12–15–77; effective thirtieth day thereafter (Register 77, No. 51).
2. Amendment filed 3–7–80; effective thirtieth day thereafter (Register 80, No. 9).
3. Repealer of subsection (a)(6) and renumbering of subsection (a)(7) to (a)(6) filed 4–2–82 as an emergency; effective upon filing (Register 82, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–31–82.
4. Certificate of Compliance transmitted to OAL within 120 days and filed 8–10–82 (Register 82, No. 33)
5. New subsection (a)(7) filed 6–3–87; operative 7–3–87 (Register 87, No. 24).

§ 50549. Deductions from Income—MFBUs Which Include Aged, Blind or Disabled MN Persons.

The deductions in Section 50549.1 through 50551.6 shall be subtracted from nonexempt income of MFBUs which include aged, blind or disabled MN persons. These deductions are applied only if a member of the MFBU applies and is found eligible as aged, blind or disabled. Each deduction shall apply only to the income specified in the section which defines that deduction.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.3, 14005.7 and 14005.14, Welfare and Institutions Code.

HISTORY

1. Amendment filed 2–7–78 as an emergency; effective upon filing (Register 78, No. 6).
2. Certificate of Compliance filed 5–5–78 (Register 78, No. 18).
3. Amendment filed 1–20–81 as an emergency; effective upon filing (Register 81, No. 4). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5–19–81.
4. Order of Repeal of 1–20–81 order filed 1–29–81 by OAL pursuant to Government Code Section 11349.6(Register 81, No. 4).
5. Editorial Correction of Order of Repeal filed 1–30–81 (Register 81, No. 4).
6. Amendment filed 11–4–81; effective thirtieth day thereafter (Register 81, No. 45).
7. Editorial correction of NOTE filed 6–10–83 (Register 83, No. 24).

§ 50549.1. Support Payment from an Absent Parent.

One–third of any payment made by an absent parent for the support of a disabled or blind child shall be deducted from the total payment.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.3 and 14005.7, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 6–10–83 (Register 83, No. 24).

§ 50549.2. Any Income Deduction—Unearned Income.

(a) Twenty dollars shall be deducted from the combined nonexempt unearned income of all aged, blind or disabled MN persons and the spouse or parents of these persons.

(b) That portion of the allowable $20 deduction which is in excess of the combined nonexempt unearned income shall be subtracted from the combined nonexempt earned income in accordance with Section 50551.2.

(c) The provisions of this regulation also apply to eligibility determinations or redeterminations made retroactively to January 1, 1977.

HISTORY

1. Amendment filed 2–7–78 as an emergency; effective upon filing (Register 78, No. 6).
2. Certificate of Compliance filed 5–5–78 (Register 78, No. 18).

§ 50549.3. Guardian and Conservator Fees.

(a) Reasonable court approved guardian/conservator fees shall be allowed as a deduction to the unearned income of an aged, blind, or disabled medically needy person if all of the following conditions are met:

(1) The fees are paid to a court–appointed guardian or conservator of an individual who has been declared by a court to be substantially unable to manage his/her own financial resources and then only to the extent the fees are actually owed in the month in which the payment is made.

(2) A court–appointed guardian or conservator is required by the entity paying the unearned income as a condition of rendering payment to incompetent persons.

(3) The guardian or conservator provides a signed statement from the entity making such payment verifying the requirement set forth in (a)(2).

(b) Payments rendered by the Social Security Administration or other entity to incompetent persons which may be made to a representative payee or other similar individual regardless of guardian/conservator status, shall not be considered to meet the conditions specified in subsection (a)(2).

(c) When the conditions set forth in subparagraph (a) are not met, the unearned income of an aged, blind, or disabled medically needy person which is used to pay reasonable or court ordered guardian/conservator fees shall be considered available in accordance with section 50513.

NOTE: Authority cited: Sections 10725, 14124.5(a) and 14154.2(b), Welfare and Institutions Code; 42 CFR Section 435.831; and 42 U.S.C. Section 1396a(r). Reference: 20 CFR Sections 416.601 and 416.1123(b)(3); 42 U.S.C. Section 1383(a)(2)(A).

HISTORY

1. New section filed 11–2–90 as an emergency; operative 11–2–90 (Register 90, No. 50). A Certificate of Compliance must be transmitted to OAL by 3–4–91 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 11–2–90 order including amendments transmitted to OAL 3–1–91 and filed 4–1–91 (Register 91, No. 16).

§ 50551. Student Deduction.

(a) A maximum of $1,620 per year shall be deducted from the nonexempt earned income of a blind or disabled person who is all of the following:

(1) Under age 22.

(2) Not now married.

(3) Not a parent.

(4) Enrolled or will be enrolled in school for at least eight hours a week during one month of either the following:

(A) Current calendar quarter.

[The next page is 369.]

(B) Next calendar quarter.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.3 and 14005.7, Welfare and Institutions Code.

HISTORY

1. Repealer and new section filed 2–7–78 as an emergency; effective upon filing (Register 78, No. 6).
2. Certificate of Compliance filed 5–5–78 (Register 78, No. 18).
3. Editorial correction adding NOTE filed 6–10–83 (Register 83, No. 24).
4. Change without regulatory effect of subsection (a)(4) (Register 87, No. 11).

§ 50551.1. Thirty Dollars Plus One–Third—MFBUs Which Include Aged, Blind or Disabled MN Persons.

(a) The first $30 plus one–third of the remainder shall be deducted from the nonexempt earned income of an AFDC–MN or MI person, if the person meets all of the following:

(1) Is the spouse or parent of an aged, blind or disabled MN person.

(2) Was eligible for and receiving an AFDC cash grant, as specified in (b) from any state, in one of the four months immediately prior to the month in which the deduction will be applied.

(3) Did not receive the $30 plus one–third deduction in any AFDC cash family budget unit for four consecutive months without an intervening twelve consecutive month period when he/she was not an AFDC recipient.

(b) A person is considered to have been receiving an AFDC cash grant if that person meets any of the following conditions:

(1) Was receiving an AFDC money payment.

(2) Was not receiving an AFDC money payment due to the adjustment of an overpayment.

(c) When the beneficiary has received the $30 plus one–third deduction in any MFBU or AFDC Assistance Unit for four consecutive months as provided in (a) above, he/she shall be eligible for a $30 disregard for a period of eight consecutive months immediately following the end of the four consecutive months.

(d) If for any reason the beneficiary does not receive the $30 deduction in a month that month shall nonetheless count as one of the eight consecutive months.

(e) When the additional eight consecutive month period has expired, a beneficiary shall not be entitled to receive either the $30 plus one–third or the $30 deduction again until he/she has not received AFDC for twelve consecutive months.

(f) The provisions of this regulation also apply to eligibility determinations or redeterminations made retroactively to October 1, 1984.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; Section 14, AB 1557, Chapter 1447, Statutes of 1984. Reference: Sections 14005.4, 14005.7 and 14005.8, Welfare and Institutions Code.

HISTORY

1. Repealer and new section filed 2–7–78 as an emergency; effective upon filing (Register 78, No. 6).
2. Certificate of Compliance filed 5–5–78 (Register 78, No. 18).
3. Amendment filed 4–2–82 as an emergency; effective upon filing (Register 82, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–31–82.
4. Certificate of Compliance transmitted to OAL within 120 days and filed 8–10–82 (Register 82, No. 33).
5. Amendment of subsection (a)(2) and new subsections (c), (d), (e), and (f) filed 4–15–85 as an emergency (Register 85, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–13–85.
6. Certificate of Compliance including amendment of subsections (c)–(e) transmitted to OAL 8–13–85 and filed 9–18–85 (Register 85, No. 38).

§ 50551.2. Any Income Deduction—Earned Income.

(a) That portion of the income deduction specified in Section 50549.2 which is in excess of the nonexempt unearned income shall be subtracted from the combined nonexempt earned income of aged, blind or disabled MN persons and the spouse or parents of these persons.

(b) The provisions of this regulation also apply to eligibility determinations or redeterminations made retroactively to January 1, 1977.

HISTORY

1. Amendment filed 2–7–78 as an emergency; effective upon filing (Register 78, No. 6).
2. Certificate of Compliance filed 5–5–78 (Register 78, No. 18).
3. Change without regulatory effect of subsection (a) (Register 87, No. 11).

§ 50551.3. Sixty–Five Plus One–Half.

(a) The first $65 plus one–half of the remainder shall be deducted from the combined nonexempt earned income of all aged, blind or disabled MN persons and the spouse or parents of these persons.

(b) The provisions of this regulation also apply to eligibility determinations or redeterminations made retroactively to January 1, 1977.

HISTORY

1. Amendment filed 2–7–78 as an emergency; effective upon filing (Register 78, No. 6).
2. Certificate of Compliance filed 5–5–78 (Register 78, No. 18).

§ 50551.4. Work Expenses of the Blind.

In addition to the deduction in Section 50551.3 the actual cost of work related expenses shall be deducted from the nonexempt earned income of a blind person.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.3 and 14005.7, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 6–10–83 (Register 83, No. 24).

§ 50551.5. Income Necessary to Achieve Self–Support.

(a) Nonexempt earned or unearned income of a blind or disabled person shall be deducted, if such income is needed to implement a plan of self–support which meets all of the following criteria:

(1) Is in writing.

(2) Was initiated and approved while the person was receiving SSI/SSP.

(3) Has not been subsequently abandoned.

§ 50551.6. Cost of In–Home Supportive Services—ABD–MN and SGA Disabled.

(a) The amount actually paid for in–home supportive services provided to any ABD–MN person, or to a SGA–disabled person as defined in Section 50223(a)(2) shall be deducted from the combined nonexempt income of the SGA–disabled or ABD–MN person and the responsible relative, except as limited by (b), (c) and (d).

(b) The cost of in–home supportive services (IHSS) shall be a deduction only when all of the following conditions are met:

(1) The services are provided by a person other than a family member living in the home.

(2) The services have been determined to be necessary pursuant to an IHSS needs assessment described in Section 50169(b), and:

(3) The costs for these services have been reduced by any veterans benefit designated as an Aid and Attendance payment.

(c) In–home supportive services means those services which may be provided under the IHSS program.

(d) For ABD–MN persons, the provisions of this section shall be limited to persons who, without in–home supportive services, would require 24–hour–a–day care in a health facility or community care facility as evidenced by a statement signed by a physician.

NOTE: Authority cited: Sections 10725, 14005.14 and 14124.5, Welfare and Institutions Code; and Section 2, Chapter 364, Statutes of 1984. Reference: Sections 14005.3 (Section 1, Chapter 1156, Statutes of 1979), 14005.14 and 14024, Welfare and Institutions Code.

HISTORY

1. New section filed 1–20–81 as an emergency; effective upon filing (Register 81, No. 4). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5–19–81.
2. Order of Repeal of 1–20–81 order filed 1–29–81 by OAL pursuant to Government Code Section 11349.6 (Register 81, No. 4).
3. New section filed 11–4–81; effective thirtieth day thereafter (Register 81, No. 45).
4. Amendment filed 5–30–85 as an emergency; effective upon filing (Register 85, No. 22). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9–27–85.

5. Certificate of Compliance transmitted to OAL 9–24–85 and filed 10–24–85 (Register 85, No. 43).
6. Amendment of subsection (b) filed 2–16–88 as an emergency; operative 2–16–88 (Register 88, No. 10). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6–15–88.
7. Emergency language filed 2–16–88 repealed by operation of Government Code Section 11346.1 (Register 88, No. 27).
8. Amendment of subsection (b) refiled 6–22–88 as an emergency; operative 6–22–88 (Register 88, No. 27). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–20–88.
9. Certificate of Compliance transmitted to OAL 6–20–88 and filed 7–15–88 (Register 88, No. 31).

§ 50553. Deductions from Earned Income—AFDC–MN, MI or Ineligible Members of the MFBU.

(a) The deductions specified in Sections 50553.1 through 50553.5 shall be subtracted in sequence from the nonexempt gross earned income of each AFDC–MN or MI persons, or persons who are ineligible members of the MFBU, except as specified in (b).

(b) An AFDC–MN or MI person, or an ineligible member of the MFBU, who is included in the same MFBU as the person's aged, blind or disabled MN spouse or child shall not receive the deductions specified in Sections 50553.1 through 50553.5.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4 and 14005.7, Welfare and Institutions Code; and Section 402 (a)(8)(iii), Social Security Act (42 U.S.C. Section 602).

HISTORY

1. Amendment filed 2–7–78 as an emergency; effective upon filing (Register 78, No. 6).
2. Certificate of Compliance filed 5–5–78 (Register 78, No. 18).
3. Amendment filed 2–11–82; effective thirtieth day thereafter (Register 82, No. 7).
4. Amendment of subsection (a) filed 4–2–82 as an emergency; effective upon filing (Register 82, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–31–82.
5. Certificate of Compliance transmitted to OAL within 120 days and filed 8–10–82 (Register 82, No. 33).
6. Amendment filed 9–28–89 as an emergency; operative 10–1–89 (Register 89, No. 40). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1–29–90.
7. Certificate of Compliance as to 9–28–89 order transmitted to OAL 1–26–90 and filed 2–21–90 (Register 90, No. 9).

§ 50553.1. Deduction for Work Expenses.

(a) Ninety dollars for mandatory deductions and work related expenses shall be deducted from the earned income of each AFDC–MN and MI person.

(b) The provisions of this regulation also apply to eligibility determinations or redeterminations made retroactively to October 1, 1989.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4 and 14005.7, Welfare and Institutions Code; and Section 402 (a) (8) (ii), Social Security Act (42 U.S.C. Section 602).

HISTORY

1. Amendment filed 2–7–78 as an emergency; effective upon filing (Register 78, No. 6).
2. Certificate of Compliance filed 5–5–78 (Register 78, No. 18).
3. Amendment of subsection (a) and repealer of subsection (e) filed 8–8–80;effective thirtieth day thereafter (Register 80, No. 32).
4. Repealer and new section filed 4–2–82 as an emergency; effective upon filing (Register 82, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–31–82.
5. Certificate of Compliance transmitted to OAL within 120 days and filed 8–10–82 (Register 82, No. 33).
6. Amendment filed 4–15–85 as an emergency; effective upon filing (Register 85, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–13–85.
7. Certificate of Compliance as to 4–15–85 order transmitted to OAL 8–13–85 and filed 9–18–85 (Register 85, No. 38).
8. Amendment filed 9–28–89 as an emergency; operative 10–1–89 (Register 89, No. 40). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1–29–90.
9. Certificate of Compliance as to 9–28–89 order transmitted to OAL 1–26–90 and filed 2–21–90 (Register 90, No. 9).

§ 50553.2. Deduction for Dependent Care.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4 and 14005.7, Welfare and Institutions Code.

HISTORY

1. Repealer and new section filed 4–2–82 as an emergency; effective upon filing (Register 82, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–31–82.
2. Repealer of subsection (b)(2) filed 7–16–82 as an emergency; effective upon filing (Register 82, No. 29). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–13–82.
3. Certificate of Compliance as to 4–2–82 order transmitted to OAL within 120 days and filed 8–10–82 (Register 82, No. 33).
4. Certificate of Compliance as to 7–16–82 order transmitted to OAL within 120 days and filed 8–10–82 (Register 82, No. 33).
5. New subsection (b)(2) filed 12–8–83; effective thirtieth day thereafter (Register 83, No. 50).
6. Renumbering and amendment of former Section 50553.2 to Section 50553.5 filed 9–28–89 as an emergency; operative 10–1–89 (Register 89, No. 40). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1–29–90.
7. Certificate of Compliance as to 9–28–89 order transmitted to OAL 1–26–90 and filed 2–21–90 (Register 90, No. 9).

§ 50553.3. Thirty Dollars Plus One–Third.

(a) Thirty dollars of nonexempt earned income of each AFDC–MN or MI person, plus one–third of the remainder, shall be deducted if the person who is earning the income meets both of the following conditions:

(1) Was eligible for and receiving an AFDC cash grant, as specified in (b), from any state in one of the four months immediately prior to the month in which the deduction will be applied.

(2) Did not receive the $30 plus one–third deduction in any AFDC cash family budget unit for four consecutive months without an intervening twelve consecutive month period when he/she was not an AFDC recipient.

(b) A person is considered to have been receiving an AFDC cash grant if that person meets any of the following conditions:

(1) Was receiving an AFDC money payment.

(2) Was not receiving an AFDC payment due to the adjustment of an overpayment.

(c) When the beneficiary has received the $30 plus one–third deduction in any MFBU or AFDC Assistant Unit for four consecutive months as provided in (a) above, he/she shall be eligible for a $30 disregard for a period of eight consecutive months immediately following the end of the four consecutive months.

(d) If for any reason the beneficiary does not receive the $30 deduction in a month that month shall nonetheless count as one of the eight consecutive months.

(e) When the additional eight consecutive month period has expired, a beneficiary shall not be entitled to receive either the $30 plus one–third or the $30 deduction again until he/she has not received AFDC for twelve consecutive months.

(f) The provisions of this regulation also apply to eligibility determinations or redeterminations made retroactively to October 1, 1984.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; Section 14, Chapter 1447, Statutes of 1984. Reference: Sections 14005.4, 14005.7 and 14005.8, Welfare and Institutions Code.

HISTORY

1. Amendment filed 12–15–77; effective thirtieth day thereafter (Register 77, No. 51).
2. Repealer and new section filed 4–2–82 as an emergency; effective upon filing (Register 82, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–31–82.
3. Certificate of Compliance transmitted to OAL within 120 days and filed 8–10–82 (Register 82, No. 33).
4. New subsections (c), (d), (e), and (f) filed 4–15–85 as an emergency; effective upon filing (Register 85, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–13–85.
5. Certificate of Compliance as to 4–15–85 order transmitted to OAL 8–13–85 and filed 9–18–85 (Register 85, No. 38).

§ 50553.5. Deduction for Dependent Care.

(a) The amount as determined in accordance with (b) shall be deducted from the remaining earned income of an AFDC–MN or MI person when both of the following conditions exist:

(1) The person has reasonable and necessary costs of obtaining child care for a child in the MFBU or care for an incapacitated person in the MFBU.

(2) The county department determines that adequate dependent care cannot be provided by another member of the MFBU.

(b) The amount deducted in accordance with (a) shall be the actual amount paid as limited by the following:

(1) A maximum of $200 per child under two years of age.

(2) A maximum of $175 per child two years of age or older.

(3) A maximum of $175 per incapacitated person.

(c) This deduction shall also apply when the care is provided by a member of the MFBU, other than a spouse or parent, who terminated employment specifically to provide the necessary care.

(d) The provisions of this regulation also apply to eligibility determinations or redeterminations made retroactively to October 1, 1989.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4 and 14005.7, Welfare and Institutions Code; and Sections 402(a)(8)(iii) and 1902 (r)(2), Social Security Act (42 U.S.C. Section 602).

HISTORY

1. Renumbering of former Section 50553.2 to Section 50553.5, and amendment of subsections (b) and (d) filed 9–28–89; operative 10–1–89 (Register 89, No. 40). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1–29–90.
2. Certificate of Compliance as to 9–28–89 order transmitted to OAL 1–26–90 and filed 2–21–90 (Register 90, No. 9).

§ 50554. Court Ordered Alimony or Child Support.

(a) Court ordered alimony or child support, or child support paid pursuant to an agreement with a district attorney, shall be deducted from the income of an AFDC–MN or MI beneficiary when it is actually paid by that beneficiary.

(b) The amount deducted shall be the lesser of the amount:

(1) Actually paid.

(2) Specified in the court order or agreement with a district attorney.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4 and 14005.7, Welfare and Institutions Code.

HISTORY

1. New section filed 1–8–81; effective thirtieth day thereafter (Register 81, No. 2).

§ 50554.5. Child/Spousal Support Received by AFDC–MN and MI Family Members.

(a) Fifty dollars per month shall be deducted from the child/spousal support received by AFDC–MN and MI family members, whether provided voluntarily or by court order, when received and due in the current month.

(b) Fifty dollar for each month shall be deducted from child support received by AFDC–MN and MI family members for past months if both of the following conditions are met:

(1) The payments for past months are received by the family member in the current month.

(2) The payments were made by the absent parent in the month the payment was due.

(c) Child support payments shall be considered to meet the conditions described in (b) only in cases where the absent parent makes payment as described and required in a court order, agreement with the district attorney, voluntary payment schedule, or other such document which establishes a duty to pay child support and includes but is not limited to cases where one of the following conditions is met:

(1) The agreement or court order specifies a payment schedule which requires annual, semi–annual, quarterly or other multiple month payments for reasons other than payment of past due amounts.

(2) Payment is made but not received due to circumstances beyond the control of both the absent parent and the AFDC–MN or MI family member. Such circumstances include, but are not limited to the following:

(A) Payment is made timely to the district attorney or court and not passed on to the AFDC–MN or MI person until a subsequent month.

(B) Payment for each month is made through payroll deduction or garnishment of wages and is not forwarded to the AFDC–MN or MI person until the subsequent month.

(d) The provisions of this regulation also apply to eligibility determinations or redeterminations made retroactively to October 1, 1989.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4, 14005.7 and 14005.8, Welfare and Institutions Code; and Section 402(a)(8)(A)(vi), Social Security Act (42 U.S.C. Section 602).

HISTORY

1. Renumbering and amendment of Section 50524 to Section 50554.5 filed 7–9–87; operative 8–8–87 (Register 87, No. 30).
2. Amendment of subsections (a) and (b), and new subsections (c) and (d) filed 9–28–89 as an emergency; operative 10–1–89 (Register 89, No. 40). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1–29–90.
3. Certificate of Compliance as to 9–28–89 order transmitted to OAL 1–26–90 and filed 2–21–90 (Register 90, No. 9). %

§ 50555. Deductions from Any Income—All MN or MI Programs.

The deductions specified in Sections 50555.1 through 50555.2 shall be subtracted from any nonexempt income that remains after the application of all preceding exemptions and deductions.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4 and 14005.7, Welfare and Institutions Code.

HISTORY

1. Amendment filed 8–18–82 as an emergency; effective upon filing (Register 82, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12–16–82.
2. Editorial correction of NOTE filed 4–12–83 (Register 83, No. 16).
3. Editorial correction of NOTE filed 6–10–83 (Register 83, No. 24).

§ 50555.1. Income of an MN or MI Person Used to Determine Public Assistance Eligibility of Another Family Member.

(a) That portion of the income of an MN or MI person or a person responsible for the MFBU which is counted in determining the eligibility of a spouse, parent or child as a PA or Other PA recipient shall be deducted.

(b) Income of a stepparent and the value of income in kind provided by a stepparent which is counted in determining the eligibility of a spouse or stepchildren as PA or Other PA recipients shall be deducted.

HISTORY

1. Amendment filed 12–15–77; effective thirtieth day thereafter (Register 77, No. 51).

§ 50555.2. Health Insurance Premiums.

(a) Health insurance premiums shall be deducted if paid by and purchased for any person in the family.

(b) Health insurance payments paid less often then monthly shall be averaged on a monthly basis.

(c) The premium for Part B Medicare shall be deducted for those months in which the beneficiary actually makes the payment, notwithstanding Section 50773(b).

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4 and 14005.7, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 6–10–83 (Register 83, No. 24).

§ 50555.3. Court Ordered Child Support.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4 and 14005.7, Welfare and Institutions Code.

HISTORY

1. Repealer filed 1–8–81; effective thirtieth day thereafter (Register 81, No. 2).

§ 50555.4. Special Deduction for Aged, Blind or Disabled MN.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 57(c), Chapter 328, Statutes of 1982. Reference: Section 8, Chapter 328, Statutes of 1982.

HISTORY

1. Amendment of subsection (a)(2) filed 12–15–77; effective thirtieth day thereafter (Register 77, No. 51).
2. Repealer filed 8–18–82 as an emergency; effective upon filing (Register 82, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12–16–82.
3. Certificate of Compliance transmitted to OAL 12–16–82 and filed 1–21–83 (Register 83, No. 4).

§ 50557. Treatment of Income.

(a) The following income shall be considered in determining the share of cost of a person or family:

(1) Net nonexempt income of all persons included in the MFBU in accordance with Section 50371 through 50381.

(2) Income specified in Sections 50558 through 50564.

(b) That portion of the income of persons excluded from the MFBU as PA or Other PA recipients which was used to determine their PA or Other PA eligibility shall not be considered. All income of persons eligible for four months or nine months continuing eligibility shall be considered.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; Section 14, Chapter 1447, Statutes of 1984. Reference: Sections 14005.4, 14005.7 and 14005.8, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (b) filed 12–15–77; effective thirtieth day thereafter (Register 77, No. 51).
2. Amendment of subsection (a)(2) filed 1–5–78 as an emergency; effective upon filing (Register 78, No. 1).
3. Certificate of compliance filed 5–5–78 (Register 78, No. 18).
4. Amendment filed 1–8–81; effective thirtieth day thereafter (Register 81, No. 2).
5. Amendment of subsection (b) filed 4–15–85 as an emergency; effective upon filing (Register 85, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–13–85.
6. Certificate of Compliance as to 4–15–85 order transmitted to OAL 8–13–85 and filed 9–18–85 (Register 85, No. 38).

§ 50558. Income of Persons Excluded from the MFBU.

(a) The income of children excluded from the MFBU shall not be counted in determining the share of cost for the MFBU.

(b) In addition to their own income, children excluded from the MFBU shall be allocated an amount to meet their combined need, which shall be determined as follows, unless the condition of (c) is met:

(1) Determine the maintenance need for the MFBU with the children included.

(2) Determine the maintenance need for the MFBU with the children excluded.

(3) Subtract the amount determined in (2) from the amount determined in (1).

(4) Subtract the net nonexempt income of all excluded children from the amount determined in (3). This is the amount that shall be allocated to the children excluded from the MFBU.

(c) The income of the members of a stepparent unit who are excluded from the MFBU shall be treated in accordance with Sections 50559 and 50561.

NOTE: Authority cited: Sections 10725 and 14124, Welfare and Institutions Code. Reference: Sections 14005.4, 14005.7 and 14008, Welfare and Institutions Code.

HISTORY

1. Amendment filed 1–8–81; effective thirtieth day thereafter (Register 81, No. 2).

§ 50559. Income Deemed Available from the Stepparent.

(a) If there is a stepparent living in the home and only the parent and the parent's separate children are included in the MFBU, the income deemed available from the stepparent shall be determined as follows:

(1) Combine the stepparent's nonexempt unearned income with the stepparent's gross earned income minus the deduction for work expenses specified in Section 50553.1.

(2) Deduct, from the amount determined in (1), the following amounts:

(A) Amounts actually paid by the stepparent to persons not living in the home but who are claimed as dependents for purposes of determining the stepparent's Federal personal income tax liability.

(B) Voluntary or court–ordered child support and alimony payments made by the stepparent to persons not living in the home.

(C) The maintenance need for the stepparent unit which includes the:

1. Stepparent.
2. Mutual children.
3. Stepparent's children.

(3) The remainder, if any, is income available to the MFBU.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 5, Chapter 1221, Statutes of 1985. Reference: Sections 14005.4, 14005.7 and 14005.16, Welfare and Institutions Code.

HISTORY

1. Amendment filed 1–8–81; effective thirtieth day thereafter (Register 81, No. 2).
2. Amendment filed 2–11–82; effective thirtieth day thereafter (Register 82, No. 7).
3. Repealer and new section filed 4–2–82 as an emergency; effective upon filing (Register 82, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–31–82.
4. Certificate of Compliance transmitted to OAL within 120 days and filed 8–10–82 (Register 82, No. 33).
5. Amendment filed 12–2–85 as an emergency; effective upon filing (Register 85, No. 50). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–1–86.
6. Amendment refiled 3–28–86 as an emergency; effective upon filing (Register 86, No. 13). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–28–86.
7. Reinstatement of section as it existed prior to emergency amendment filed 3–28–86 by operation of Government Code Section 11346.1(f) (Register 86, No. 23).

§ 50561. Treatment—Stepparent Cases.

(a) If there is a stepparent living in the home, and only the parent and the parent's separate children are included in the MFBU, the income considered in determining the share of cost of those children shall be:

(1) The income of the children.

(2) The income of the parent.

(3) The income available from the stepparent as determined in accordance with Section 50559.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 5, Chapter 1221, Statutes of 1985. Reference: Sections 14005.4, 14005.7, 14008 and 14005.16, Welfare and Institutions Code.

HISTORY

1. Amendment filed 1–8–81; effective thirtieth day thereafter (Register 81, No. 2).
2. Amendment filed 12–2–85 as an emergency; effective upon filing (Register 85, No. 50). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–1–86.
3. Amendment refiled 3–28–86 as an emergency; effective upon filing (Register 86, No. 3). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–28–86.
4. Reinstatement of section as it existed prior to emergency amendment filed 3–28–86 by operation of Government Code Section 11346.1(f) (Register 86, No. 23).

§ 50563. Treatment of Income—Aged, Blind or Disabled MN Person or Person's Spouse in LTC or Board and Care.

(a) When an aged, blind or disabled MN person or the spouse of that person is in LTC or board and care and that person has a spouse and/or children who are not Public Assistance recipients, the income of that person shall be treated in the following manner, beginning the first of the month the spouses, or the parent and children, are in separate MFBUs:

(1) The net nonexempt income of the person in LTC or board and care which is in excess of the appropriate maintenance need for that person in accordance with the provisions of Article 11 of this chapter shall be allocated to the spouse and/or children as follows:

(A) When the family is applying for Medi-Cal, determine the maintenance need for the spouse and/or children other than any children excluded from the MFBU.

(B) When only the person in LTC or board and care is applying for Medi-Cal, determine the maintenance need for the spouse and/or all the children.

(C) Subtract the net nonexempt income of the spouse and/or children, other than the excluded children, from the amount determined in (A) or (B). This is the amount that shall be allocated to the spouse and/or children from the net nonexempt income of the MN person in LTC or board and care which is in excess of the maintenance need as determined in (1).

(2) If the person in LTC or board and care is a stepparent:

(A) The stepchildren shall be treated as natural children of the person in LTC or board and care.

(B) The allocation shall be determined in accordance with (1).

(b) In no event shall any income be allocated from the family members living at home to the person in long-term care or board and care.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.1, 14005.4, 14005.7, 14008, Welfare and Institutions Code.

HISTORY

1. Amendment filed 1-28-77 as an emergency; effective upon filing (Register 77, No. 5).
2. Certificate of Compliance filed 4-22-77 (Register 77, No. 17).
3. Amendment filed 3-7-80; effective thirtieth day thereafter (Register 80, No. 9).
4. Amendment filed 1-8-81; effective thirtieth day thereafter (Register 81, No. 2).
5. Amendment of subsection (a), repealer of subsection (b) and relettering of subsection (c) to subsection (b) filed 8-18-82 as an emergency; effective upon filing (Register 82, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-16-82.
6. Certificate of Compliance transmitted to OAL 12-16-82 and filed 1-21-83 (Register 83, No. 4).
7. Editorial correction of subsections (a)(1) and (a)(2)(A) filed 1-21-83 (Register 83, No. 4).
8. Amendment of subsection (a) filed 7-9-87; operative 8-8-87 (Register 87, No. 30).

§ 50564. Treatment of Income—Persons No Longer Receiving Title XVI Due to a Cost of Living Increase in OASDI Benefits Under Title II.

(a) The provisions of this section shall be applied to any MFBU which includes an aged, blind or disabled person who meets all of the following conditions:

(1) Was eligible for and receiving Title XVI benefits in any month since April 1977.

(2) Was in receipt of OASDI Title II benefits and received a cost of living increase since April 1977.

(3) Has not been entitled to Title XVI benefits in any month since receipt of a Title II cost of living increase, including the month of receipt of the Title II increase.

(4) Would be entitled to Title XVI benefits, as determined in accordance with Department procedures, if the Title II cost of living increases received after Title XVI ineligibility occurred are disregarded. Increases to be disregarded include the increase which rendered Title XVI ineligibility.

(b) The aged, blind or disabled person in the MFBU who meets all of the conditions specified in (a) shall be eligible for Medi-Cal as a Title II Disregard person with no share of cost.

(c) The net nonexempt income of the Title II Disregard person shall be considered when determining the share of cost for the remaining family members.

(d) The Title II Disregard person shall be considered a member of the MFBU when determining the maintenance need in accordance with Section 50601.

(e) The share of cost for the MFBU shall be processed in accordance with Section 50660.

(f) The provisions of this regulation also apply to eligibility determinations or redeterminations made retroactively to September 1, 1978.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14005.7, Welfare and Institutions Code.

HISTORY

1. New section filed 1-5-78 as an emergency; effective upon filing (Register 78, No. 1).
2. Certificate of Compliance filed 5-5-78 (Register 78, No. 18).
3. New subsection (c) filed 6-30-78 as an emergency; effective upon filing (Register 78, No. 26).
4. Amendment filed 5-24-79 as an emergency; designated effective 6-1-79 (Register 79, No. 21).
5. Certificate of Compliance filed 9-19-79 (Register 79, No. 38).

§ 50565. Projection of Anticipated Income.

NOTE: Authority cited: Sections 10725, 14005.9(c) and 14124.5, Welfare and Institutions Code, Section 133.5, AB 251, Chapter 102, Statutes of 1981. Reference: Section 14005.9, Welfare and Institutions Code.

HISTORY

1. Amendment filed 12-15-77; effective thirtieth day thereafter (Register 77, No. 51).
2. Repealer and new section filed 11-30-81 as an emergency; effective upon filing (Register 81, No. 49). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3-30-82.
3. Certificate of Compliance filed 3-30-82 (Register 82, No. 14).
4. Repealer filed 10-1-82 as an emergency; effective upon filing (Register 82, No. 40). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1-29-83.
5. Certificate of Compliance transmitted to OAL 12-30-82 and filed 2-2-83 (Register 83, No. 6).

§ 50567. Adjustment for Decreases in Income.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; Section 133.5, AB 251, Chapter 102, Statutes of 1981. Reference: Section 14005.9, Welfare and Institutions Code.

HISTORY

1. Repealer filed 11-30-81 as an emergency; effective upon filing (Register 81, No. 49). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3-30-82.
2. Certificate of Compliance filed 3-30-82 (Register 82, No. 14).

§ 50569. County Failure to Change Income.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; Section 133.5, AB 251, Chapter 102, Statutes of 1981. Reference: Section 14005.9, Welfare and Institutions Code.

HISTORY

1. Repealer filed 11-30-81 as an emergency; effective upon filing (Register 81, No. 49). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3-30-82.
2. Certificate of Compliance filed 3-30-82 (Register 82, No. 14).

§ 50570. Income Determination and Limit for the Qualified Medicare Beneficiary (QMB) or the Specified Low-Income Medicare Beneficiary (SLMB).

(a) To determine the eligibility of an adult, couple, or child for the QMB program, net nonexempt income shall not exceed 90% of the official poverty level in 1990, 100% of the official poverty level in 1991 and thereafter, as defined by the federal Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981. Income attributable to a Title II cost of living adjustment is excluded according to federal law.

(b) To determine the eligibility of an adult, couple, or child for the SLMB program, net nonexempt income shall not exceed 110% in 1993 and 1994, rising to 120% in 1995 and ongoing of the official poverty level in each year as defined by the federal Office of Management and Budget in accordance with Section 4501 of the Omnibus Budget Reconciliation Act of 1990. Income attributable to a Title II cost of living adjustment is excluded according to federal law.

(c) Net nonexempt income shall first be determined in accordance with all the applicable provisions of Article 8 and Article 10, except that the health insurance premiums as specified under Section 50555.2 are not allowed and the deduction for IRWE as defined in Section 50045.1 is allowed.

(d) If ineligibility results from the computation under (c) above, the net nonexempt income then will be determined following SSI methodology specified in Section 1612, Title XVI of the federal Social Security Act.

NOTE: Authority cited: Sections 10725, 14005.11 and 14124.5, Welfare and Institutions Code; and Section 12, Chapter 1430, Statutes of 1989. Reference: Sections 1396a(a)(10)(E)(iii) and 1396d(p), Title 42, United States Code; Section 4501,

Omnibus Budget Reconciliation Act of 1990, Public Law 101–508; and Section 14005.11, Welfare and Institutions Code.

HISTORY

1. New section filed 8–13–90 as an emergency; operative 8–13–90 (Register 90, No. 40). A Certificate of Compliance must be transmitted to OAL by 12–11–90 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance including amendment transmitted to OAL 12–11–90 and filed 1–9–91 (Register 91, No. 8).
3. Amendment of section heading, new subsection (b) and subsection redesignation, and amendment of newly designated subsections (c)–(d) and NOTE filed 12–21–93; operative 1–20–94 (Register 93, No. 52).

§ 50571. Income Determination and Limit for the Qualified Disabled and Working Individual (QDWI).

(a) To qualify for the QDWI Program, the net nonexempt income of a QDWI applicant/beneficiary cannot exceed 200 percent of the federal poverty level.

(b) Net nonexempt income shall be determined following SSI methodology specified in Section 1612, Title XVI of the federal Social Security Act.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 12, Chapter 1430, Statutes of 1989. Reference: Section 14005.3, Welfare and Institutions Code; and Sections 1396a(a)(10)(E) and 1396d(s), Title 42, United States Code.

HISTORY

1. New section filed 10–3–94 as an emergency; operative 10–3–94 (Register 94, No. 40). A Certificate of Compliance must be transmitted to OAL by 1–31–95 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of HISTORY NOTE 1 (Register 95, No. 9).
3. Repealed by operation of Government Code section 11346.1(g) (Register 95, No. 9).
4. New section refiled 3–3–95 as an emergency; operative 3–3–95 (Register 95, No. 9). A Certificate of Compliance must be transmitted to OAL by 7–1–95 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 3–3–95 order including amendment of NOTE transmitted to OAL 2–22–95 and filed 4–5–95 (Register 95, No. 14).

Article 11. Maintenance Need

§ 50601. Maintenance Need—General.

(a) The amount of income a person or family is allowed to retain for living expenses shall be determined by adding the following:

(1) The maintenance need for the members of the MFBU living in the home as determined in accordance with Section 50603.

(2) The maintenance need for the members of the MFBU in long–term care as determined in accordance with Section 50605.

§ 50603. Maintenance Need—Persons Living in the Home.

(a) The maintenance need for members of the MFBU living in the home shall be determined in the following manner with amounts of 1 cent or more rounded to the next highest dollar.

(1) The maintenance need for an MFBU consisting of one individual shall equal 80 percent of the AFDC payment level for a family of two persons multiplied by 133 1/3 percent.

(2) The maintenance need for an MFBU consisting of two adults shall equal the AFDC payment level for a family of three persons multiplied by 133 1/3 percent.

(3) The maintenance need for an MFBU consisting of two persons when one or both persons are not adults and for an MFBU consisting of three through ten persons shall equal 133 1/3 percent of the AFDC payment level for a family group of corresponding size.

(4) The monthly maintenance need determined in accordance with (1) through (3) shall be calculated on an annual basis, rounded to the next higher multiple of $100, and then prorated.

(5) The maintenance need for an MFBU consisting of 11 or more persons shall equal the maintenance need level for a family group of 10 established in accordance with (3) and (4) plus an amount equal to the AFDC MBSAC increase level for additional persons in excess of 10 for each MFBU member in excess of 10.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 124.7, Chapter 323, Statutes of 1983. Reference: Sections 14005.12 and 14008, Welfare and Institutions Code.

HISTORY

1. Repealer and new section filed 8–18–82 as an emergency; effective upon filing (Register 82, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12–16–82. For prior history, see Register 82, No. 13.
2. New section refiled 12–16–82 as an emergency; effective upon filing (Register 82, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–15–83.
3. Certificate of Compliance as to 8–18–82 and 12–16–82 orders transmitted to OAL 12–31–82 and filed 2–1–83 (Register 83, No. 6).
4. Amendment of subsection (a) and repealer of subsections (b) and (c) filed 2–1–83; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 83, No. 6).
5. Amendment filed 11–17–83 as an emergency; effective upon filing (Register 83, No. 49). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3–17–84.
6. Certificate of Compliance as to 11–17–83 order transmitted to OAL 3–16–84 and filed 4–17–84 (Register 84, No. 16).

§ 50604. Maintenance Need—Family Members Maintaining Separate Residences with Eligibility Determined As a Single MFBU.

(a) An MFBU which includes a child who maintains a separate residence from his/her parent(s) in accordance with Section 50351(c) shall be assigned a combined maintenance need to be calculated according to (1) through (3).

(1) In accordance with Section 50603, determine the maintenance need for the separate household of the child as follows:

(A) For one child living alone or one child sharing a residence with other persons not financially responsible for the child, use the maintenance need level for one person established in accordance with Section 50603(a).

(B) For two or more children who are living together and who are claimed as dependents by the parent(s) for tax purposes, use the maintenance need level for the corresponding number of persons established in accordance with Section 50603(a).

(C) For two or more children who live alone in separate residences, use the maintenance need level for one for each child established in accordance with Section 50603(a).

(D) For a married child living with his/her spouse, use the maintenance need level for two established in accordance with Section 50603(a).

(2) Determine the maintenance need for the parent's household in accordance with Section 50603.

(3) Combine the maintenance need determined in (1) and (2). This is the total maintenance need for the entire MFBU.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; Section 57(c), Chapter 328, Statutes of 1982; and Section 87(c), Chapter 1594, Statutes of 1982. Reference: Sections 14005.12 and 14008, Welfare and Institutions Code.

HISTORY

1. New section filed 10–1–82 as an emergency; effective upon filing (Register 82, No. 40). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1–29–83.
2. New subsection (a)(1)(D) filed 12–21–82 as an emergency; effective upon filing (Register 82, No. 52). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–20–83.
3. Certificate of Compliance as to 10–1–82 order transmitted to OAL 1–28–83 and filed 2–28–83 (Register 83, No. 10).
4. Amendment of subsection (a)(1)(A)–(C) filed 2–28–83; effective thirtieth day thereafter (Register 83, No. 10).
5. Certificate of Compliance as to 12–21–82 order including amendment of subsection (a)(1)(D) transmitted to OAL 4–19–83 and filed 5–16–83 (Register 83, No. 21).

§ 50605. Maintenance Need—Persons in Long–Term Care.

(a) The maintenance need for a member of the MFBU in long–term care shall be either of the following:

(1) Thirty–five dollars for personal and incidental needs, when the beneficiary will remain in long–term care for the entire calendar month.

(2) For individuals with therapeutic wages, thirty–five dollars plus an additional amount equal to either a) 70 percent of the gross therapeutic earnings; or, b) 70 percent of the maintenance need level allowed for a

noninstitutionalized person or family of corresponding size, as described in Section 50603, whichever is less.

(A) The provisions of subsection (a)(2) of this regulation also apply to eligibility determinations or redeterminations made retroactively to October 1, 1984.

(3) The appropriate maintenance need determined in accordance with Section 50603, if the person will be in long-term care for only a portion of the month.

(b) An LTC patient shall retain an amount of income for upkeep of a home in addition to the amount specified for personal and incidental needs in (a) (1) if all of the following conditions are met.

(1) The spouse or family of the LTC patient is not living in the home.

(2) The home, whether rented or owned by the LTC patient, is actually being maintained for the return of the LTC patient.

(3) There is a verified medical determination that the LTC patient will return home within six months of the date LTC patient status was established.

(c) The amount allowed for upkeep of the home, if the conditions specified in (b) are met, shall be:

(1) One hundred thirty-three and one-third percent of the income in kind value of housing for one person pursuant to Section 50511(a) and (b), if the applicant or beneficiary has been living alone in the home.

(2) One hundred thirty-three and one-third percent of the income in kind value of housing for 2 persons pursuant to Section 50511(a) and (b) divided by 2, if the home is shared with persons for whom the applicant or beneficiary has no legal responsibility for support.

(3) One hundred thirty-three and one-third percent of the income in kind value of housing for 2 persons pursuant to Section 50511(a) and (b) divided by 2 for each spouse, if the beneficiary and spouse have been living together and both have become LTC patients and will return home within six months.

(4) The amount allowed for upkeep of the home as determined according to (1) through (3) shall be calculated on an annual basis, rounded to the next higher multiple of $100, and then prorated.

(d) The LTC patient shall also retain an amount of income to pay for the support of a disabled relative if all the of following conditions are met.

(1) The disabled relative is not the LTC patient's:

(A) Spouse.

(B) Child, as defined in Section 50030.

(2) The LTC patient has contributed and will continue to contribute to the support of the disabled relative on a regular basis.

(e) The amount allowed for the support of a disabled relative, if the conditions specified in (d) are met, shall be the lesser of:

(1) The actual amount contributed.

(2) The maintenance need level for one person established in accordance with Section 50603(a)(1), minus the disabled relative's net income.

NOTE: Authority cited: Sections 10725, 14005.13 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.12 and 14005.13, Welfare and Institutions Code.

HISTORY

1. Amendment of subsections (c) and (e) filed 8-18-82 as an emergency; effective upon filing (Register 82, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-16-82. For prior history, see Register 82, No. 13.
2. Amendment of subsections (c) and (e) refiled 12-16-82 as an emergency; effective upon filing (Register 82, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4-15-83.
3. Certificate of Compliance as to 8-18-82 and 12-16-82 orders transmitted to OAL 12-31-82 and filed 2-1-83 (Register 83, No. 6).
4. Amendment of subsections (c) and (e)(1) filed 2-1-83; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 83, No. 6).
5. Amendment of subsections (c) and (e) filed 11-17-83 as an emergency; effective upon filing (Register 83, No. 49). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3-17-84.
6. Certificate of Compliance as to 11-17-83 order transmitted to OAL 3-16-84 and filed 4-17-84 (Register 84, No. 16).
7. Amendment of subsection (a)(1) filed 4-4-85 as an emergency; effective upon filing (Register 85, No. 15). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8-2-85.
8. Amendment of subsection (a)(2) filed 8-9-85 as an emergency, effective on filing (Register 85, No. 32). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-9-85.
9. Certificate of Compliance as to 4-4-85 order transmitted to OAL 7-30-85 and filed 8-29-85 (Register 85, No. 36).
10. Certificate of Compliance as to 8-9-85 order transmitted to OAL 11-13-85 and filed 12-11-85 (Register 85, No. 50).
11. Amendment of subsection (c) filed 4-16-86; effective thirtieth day thereafter (Register 86, No. 16).

Article 12. Share of Cost

§ 50651. Share of Cost—General.

Share of cost shall be determined and processed in accordance with the requirements of this article.

§ 50652. Share of Cost Period.

NOTE: Authority cited: Sections 10724, 10725, 14005.9(c) and 14124.5, Welfare and Institutions Code; Section 133.5, AB 251, Chapter 102, Statutes of 1981. Reference: Section 14005.9, Welfare and Institutions Code.

HISTORY

1. New section filed 11-30-81 as an emergency; effective upon filing (Register 81, No. 49). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3-30-82.
2. Certificate of Compliance filed 3-30-82 (Register 82, No. 14).
3. Repealer filed 10-1-82 as an emergency; effective upon filing (Register 82, No. 40). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1-29-83.
4. Certificate of Compliance transmitted to OAL 12-30-82 and filed 2-2-83 (Register 83, No. 6).

§ 50653. Determination of Share of Cost.

(a) The share of cost shall cover a one month period and be determined as follows:

(1) For MFBUs which do not include a person in LTC:

(A) Determine the net nonexempt income available to the members of the MFBU.

(B) Round the total net nonexempt income determined in (A) to the nearest dollar, with amounts ending in 50 cents or more rounded to the next higher dollar.

(C) Determine the appropriate maintenance need for the MFBU in accordance with Section 50603.

(D) Subtract the combined maintenance need from the total rounded net nonexempt income. The remainder, if any, is the share of cost.

(2) For MFBUs which include a person in LTC:

(A) Determine the total countable income available to the MFBU in the month.

(B) Add to the total countable income any amounts previously deducted in accordance with Sections 50547 through 50554.

(C) Subtract from the amount determined in (B) the deductions and allocations specified in Sections 50555.1 through 50555.4 and 50563. This is the net nonexempt income available to the MFBU.

(D) Round the total net nonexempt income determined in (C) to the nearest dollar, with amounts ending in 50 cents or more to the next highest dollar.

(E) Determine the appropriate maintenance need in accordance with Section 50601.

(F) Subtract the amount determined in (E) from the amount determined in (D). This amount, if any, is the share of the cost.

(b) The share of cost shall be determined:

(1) At the time of application, reapplication or restoration.

(2) When there is a change in income, family composition or any other factor affecting the share of cost. In these instances the share of cost shall be determined in accordance with Sections 50653.3 and 50655.5.

NOTE: Authority cited: Sections 10725, 14005.9(c) and 14124.5, Welfare and Institutions Code; Section 133.5, AB 251, Chapter 102, Statutes of 1981. Reference: Sections 14005.4, 14005.7 and 14005.9, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (b)(2) filed 8–8–80; effective thirtieth day thereafter (Register 80, No. 32).
2. Amendment filed 1–8–81; effective thirtieth day thereafter (Register 81, No. 2).
3. Amendment filed 7–31–81 as an emergency; effective upon filing (Register 81, No. 33). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–28–81.
4. Amendment filed 11–30–81 as an emergency; effective upon filing (Register 81, No. 49). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3–30–82.
5. Amendment of subsection (a)(2) filed 12–23–81; effective thirtieth day thereafter (Register 81, No. 52).
6. Certificate of Compliance as to 7–31–81 order transmitted to OAL 11–6–81 and filed 1–27–82 (Register 82, No. 5).
7. Certificate of Compliance as to 11–30–81 order filed 3–30–82 (Register 82, No. 14).
8. Amendment of subsection (a) filed 10–1–82 as an emergency; effective upon filing (Register 82, No. 40). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1–29–83.
9. Certificate of Compliance transmitted to OAL 12–30–82 and filed 2–2–83 (Register 83, No. 6).
10. Editorial correction of NOTE filed 4–12–83 (Register 83, No. 16).

§ 50653.3. Changes Which Decrease the Share of Cost.

(a) In situations where a change in income or other circumstances, which results in a decrease in the share of cost is reported by the beneficiary in a timely manner, as specified in Section 50185, the county department shall:

(1) Make the necessary changes in the ongoing share of cost by the first of the month following the month in which the change was reported.

(2) Determine what the share of cost should have been for the month in which the change occurred.

(3) Implement the beneficiary's choice of either of the following:

(A) Having an adjustment made in future months in accordance with (c) for the months in which income in excess of the correct share of cost was paid or obligated toward medical bills.

(B) Having the correct Form MC 177S or Medi–Cal card with a share of cost issued and processed for the months in which the share of cost should have been lower.

(b) In situations where a change in income or other circumstances, which results in a decrease in the share of cost, is not reported by the beneficiary in a timely manner, as specified in Section 50185, the county department shall:

(1) Make the necessary changes in the ongoing share of cost by the first of the month following the month in which the change was reported.

(2) Not make an adjustment for the excess income the beneficiary may have paid or obligated prior to county action specified in (b)(1) unless the county department determines that there was good cause for failure to report in a timely manner. Good cause shall be determined in accordance with Section 50175.

(c) When it is determined in accordance with (a) or (b) that there has been a decrease in the share of cost which is to be adjusted, the adjustment shall be made in accordance with the following:

(1) The period of adjustment shall begin with the month the county department takes action in accordance with (a) or (b), and shall terminate when the total adjustment has been made.

(2) The amount of the adjustment is the difference between the original share of cost and the corrected share of cost.

(3) The amount of the adjustment or a portion of the adjustment equal to the share of cost shall be subtracted from the share of cost each month until the adjustment is completed.

NOTE: Authority cited: Sections 10725, 14005.9 and 14124.5, Welfare and Institutions Code; Section 133.5, AB 251, Chapter 102, Statutes of 1981. Reference: Sections 14005.4, 14005.7 and 14005.9, Welfare and Institutions Code.

HISTORY

1. New section filed 11–30–81 as an emergency; effective upon filing (Register 81, No. 49). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3–30–82.
2. Certificate of Compliance filed 3–30–82 (Register 82, No. 14).
3. Amendment of subsections (a) and (b) filed 10–1–82 as an emergency; effective upon filing (Register 82, No. 40).
4. Certificate of Compliance transmitted to OAL 12–30–82 and filed 2–2–83 (Register 83, No. 6).
5. Editorial correction of NOTE filed 4–12–83 (Register 83, No. 16).

§ 50653.5. Changes Which Increase the Share of Cost.

(a) Except as described in Section 50262.3, in situations where a change in income or other circumstances, which result in an increase in the share of cost, is reported by the beneficiary in a timely manner, as specified in Section 50185, the county department shall make necessary changes effective:

(1) Immediately, if the increase is due to the voluntary inclusion of a family member who has income. The share of cost to be met shall be either of the following:

(A) The total increased share of cost shall be met by all members of the MFBU providing Medi–Cal cards have not been issued to the MFBU for the share–of–cost month and form MC 177S has not been submitted to the Department in accordance with Section 50658(c).

(B) The difference between the increased share of cost and the former share of cost shall be met by the newly included family member(s) when Medi–Cal cards have been issued to the MFBU for the share–of–cost month or form MC 177S has been submitted to the Department in accordance with Section 50658(c).

(2) In accordance with the following, in all other instances:

(A) The first of the month following the month in which the change was reported, if a 10 day notice can be given.

(B) The first of the second month following the month in which the change was reported, if the change cannot be made in accordance with (A).

(b) In situations where a change in income or other circumstances, which results in an increase in the share of cost determination, is not reported by the beneficiary in a timely manner, as specified in Section 50185, the county department shall:

(1) Make the changes to the ongoing share of cost in accordance with (a).

(2) Determine what the share of cost should have been for the months in which the beneficiary should have had a share of cost or an increased share of cost.

(3) Report a potential overpayment in accordance with Section 50783 which incorporates 50781, if the beneficiary:

(A) Received a Medi–Cal card and should have had a share of cost.

(B) Met a share of cost which was less than the corrected share of cost.

NOTE: Authority cited: Sections 10725, 14016.10 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.9 and 14009, Welfare and Institutions Code.

HISTORY

1. New section filed 11–30–81 as an emergency; effective upon filing (Register 81, No. 49). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3–30–82.
2. Certificate of Compliance filed 3–30–82 (Register 82, No. 14).
3. Amendment filed 10–1–82 as an emergency; effective upon filing (Register 82, No. 40). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1–29–83.
4. Certificate of Compliance transmitted to OAL 12–30–82 and filed 2–2–83 (Register 83, No. 6).
5. Amendment of subsection (a)(1) filed 7–9–87; operative 8–8–87 (Register 87, No. 30).
6. Amendment of subsections (b)(2) and (b)(3) and NOTE filed 4–13–93; operative 5–13–93 (Register 93, No. 16).
7. Amendment of subsection (a) and NOTE filed 4–27–94 as an emergency; operative 4–27–94 (Register 94, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–25–94 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 4–27–94 order transmitted to OAL 8–24–94 and filed 9–29–94 (Register 94, No. 39).
9. Editorial correction of NOTE (Register 94, No. 39).

§ 50653.7. Changes in Share of Cost Determination Due to Administrative Error.

(a) An administrative error which causes the share of cost amount to be in excess of the correct share of cost amount shall be adjusted in accordance with Section 50653.3(a).

(b) If the county fails to take action on an increase in income within the time frames specified in Section 50653.5, excess income received after the time the county department should have taken action shall not be reported as a potential overpayment.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; Section 133.5, AB 251, Chapter 102, Statutes of 1981. Reference: Section 14005.9, Welfare and Institutions Code.

HISTORY

1. New section filed 11–30–81 as an emergency; effective upon filing (Register 81, No. 49). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3–30–82.
2. Certificate of Compliance filed 3–30–82 (Register 82, No. 14).

§ 50655. Record of Health Care Costs—Share of Cost.

(a) The Record of Health Care Costs—Share of Cost, form MC 177S, shall be used to verify that health care costs have been obligated or paid by the beneficiary in an amount equal to the share of cost. The form shall be used for all beneficiaries who have a share of cost, except as specified in (b).

(b) Form MC 177S shall not be used for beneficiaries who meet both of the following conditions:

(1) Are in long–term care.

(2) Have a share of cost which is less than or equal to the monthly cost of care at the Medi–Cal reimbursement rate for the long–term care facility.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 57(c), Chapter 328, Statutes of 1982. Reference: Sections 14005.4, 14005.7, 14005.9, 14006 and 14019.6, Welfare and Institutions Code.

HISTORY

1. Amendment filed 8–8–80; effective thirtieth day thereafter (Register 80, No. 32).

[The next page is 377.]

2. Amendment filed 8–18–82 as an emergency; effective upon filing (Register 82, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12–16–82.

3. Certificate of Compliance transmitted to OAL 12–14–82 and filed 1–21–83 (Register 83, No. 4).

4. Change without regulatory effect of subsection (a) (Register 87, No. 11).

§ 50657. Completion of Form MC 177S.

(a) Form MC 177S shall be completed as follows:

(1) The identifying information shall be completed by the county department. The only persons who shall be listed on form MC 177S as eligible to have the cost of their health services used to meet the share of cost are those:

(A) Eligible members of the MFBU in accordance with Sections 50373, 50375 and 50377.

(B) Ineligible members of the MFBU in accordance with Section 50379.

(2) Form MC 177S shall be issued to the beneficiary for each month during which the beneficiary must meet a share of cost.

(A) For continuing beneficiaries, form MC 177S shall be issued prior to the first day of the month of eligibility.

(B) For new and restored beneficiaries, form MC 177S shall be issued at the time the approval notice of action is issued.

(3) The beneficiary shall present form MC 177S to each provider when the cost of services provided will be used to meet the share of cost.

(4) The provider will list on the form MC 177S health services which have been provided and meet all of the following criteria.

(A) Were provided in the month specified on form MC 177S. Services are considered to have been provided in the month if the date of service is within the month. The date of service for:

1. Health services provided under a Global Billing Agreement is the date the last service under the agreement is rendered or the date of delivery, if the global billing is for pregnancy and delivery.

2. Dental prosthesis, prosthetic and orthotic appliances, and eye appliances is the date the item is actually ordered from the fabricating laboratory.

3. Prescription drugs is the date the item was actually received.

4. All other health services is the date the service was actually rendered.

(B) Have not been submitted as a claim against the Medi–Cal program.

(C) Have not been paid by Medicare, other health coverage, or any other party, and the provider for the amounts listed on form MC 177S.

(5) For each service listed the provider shall include:

(A) The date of service, in accordance with (a) (4) (A).

(B) The total cost of the service provided.

(C) The amount billed to the patient.

(D) The patient Medi–Cal identification number.

(E) Either of the following:

1. For Medi–Cal program covered services, the procedure/drug code for the service provided.

2. For other services, a description of the service provided, such as inpatient, drug or dental.

(F) The Medi–Cal provider number or provider license number.

(6) The provider shall sign a declaration under penalty of perjury that:

(A) Each service listed on form MC 177S was provided to the person listed on the date specified.

(B) Payment for the amount listed in the Billed Patient column will be sought from the patient and not from the Medi–Cal program or a third–party payor.

(7) When the amount in the Billed Patient column of form MC 177S equals or exceeds the share of cost, the beneficiary or the beneficiary's representative shall:

(A) Sign the form indicating that the beneficiary has assumed legal responsibility for the amount shown in the Billed Patient column.

(B) Return the form to the county department.

(b) For purposes of this section, the following definitions shall apply:

(1) Provider means the person or entity which provides health services to the persons listed on form MC 177S and which is a Medi–Cal provider or a licensed practitioner meeting the criteria of a Medi–Cal provider in accordance with Article 3, Chapter 3.

(2) Health services means the medical services, social services, supplies, devices, drugs and any other medical care provided to a person listed on form MC 177S by a provider as defined in (b)(1).

NOTE: Authority cited: Sections 10725, 14005.9 and 14124.5, Welfare and Institutions Code; Section 133.5, AB 251, Chapter 102, Statutes of 1981; and Section 57(c), Chapter 328, Statutes of 1982; and Section 14, AB 1557, Chapter 1447, Statutes of 1984. Reference: Sections 14005, 14005.4, 14005.7, 14005.8, 14005.9, 14018, 14019 and 14019.6, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (a)(1)(A) filed 4–15–85 as an emergency; effective upon filing (Register 85, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–13–85. For prior history, see Register 83, No. 16.

2. Certificate of Compliance including amendment of subsection (a)(1)(A) transmitted to OAL 8–13–85 and filed 9–18–85 (Register 85, No. 38).

3. Amendment filed 7–3–86; effective thirtieth day thereafter (Register 86, No. 27).

§ 50658. Form MC 177S Processing.

(a) When the share of cost has been met, the beneficiary shall return the signed form MC 177S to the county department. The county department shall review form MC 177S to ensure that:

(1) The case description portion of the form is complete.

(2) The services listed were provided to persons listed on form MC 177S.

(3) The providers have completed the form in accordance with Section 50657(a)(4) through (6).

(4) The beneficiary or the beneficiary's representative has signed the form.

(b) If the items specified above are not completed correctly, the following action shall be taken:

(1) The county department shall attempt to obtain the information necessary for completion of form MC 177S verbally from either of the following:

(A) The beneficiary.

(B) The provider.

(2) If the information necessary to correct form MC 177S cannot be obtained verbally the county department shall:

(A) Identify the information needed.

(B) Return the form to the beneficiary.

(3) When the amount shown in the Billed Patient column is in excess of the share of cost amount, the county department shall:

(A) Explain to the beneficiary that the amount shown in the Billed Patient column is the amount for which he has assumed legal responsibility.

(B) Attempt to correct the error in accordance with (b) (1) and (2) if the beneficiary states that the assumption of legal responsibility for the cost of services in excess of the share of cost was not intentional.

(c) After form MC 177S has been determined to be correct and complete, the following action shall be taken, unless the conditions specified in (d) are met.

(1) The first two pages of form MC 177S shall be submitted to Department of Health Services, Key Data Entry Unit. In addition a copy of form MC 176M shall be submitted with form MC 177S if an adjustment to the share of cost is being made pursuant to Section 50653.3.

(2) Key Data Entry Unit will certify that the share of cost has been met.

(3) The Department will issue Medi–Cal cards to the persons included in the MFBU.

(d) If the beneficiary signs a Certification of Medical Need/Request for Medi–Cal Card, MC 113, which indicates a need for medical services prior to normal anticipated receipt of a Department issued Medi–Cal card, the county department shall:

(1) Enter the date of certification for claims clearance on form MC 177S.

(2) Issue a Medi-Cal card to each person who has been listed on form MC 113 as having an immediate need. Card issuance procedures specified in Article 14 shall be followed.

(3) Indicate on form MC 177S and form MC 176M, if required, the persons who have been issued a card.

(4) Forward form MC 177S and form MC 176M, if required, to the Key Data Entry Unit.

NOTE: Authority cited: Sections 10725, 14005.9(c) and 14124.5, Welfare and Institutions Code; Section 133.5, AB 251, Chapter 102, Statutes of 1981. Reference: Sections 14005.4, 14005.7, 14005.9 and 14017, Welfare and Institutions Code.

HISTORY

1. Amendment of Subsection (a)(3) and new subsection (a)(8) filed 11-30-81 as an emergency; effective upon filing (Register 81, No. 49). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3-30-82.
2. Certificate of Compliance filed 3-30-82 (Register 82, No. 14).
3. Amendment of subsection (a)(3) filed 10-1-82 as an emergency; effective upon filing (Register 82, No. 40). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1-29-83.
4. Certificate of Compliance transmitted to OAL 12-30-82 and filed 2-2-83 (Register 83, No. 6).
5. Editorial correction of NOTE filed 4-12-83 (Register 83, No. 16).
6. Amendment filed 7-3-86; effective thirtieth day thereafter (Register 86, No. 27).

§ 50659. Long-Term Care Patients with a Share of Cost.

(a) Form MC 177S shall not be required for a person or family with a share of cost when all the following conditions are met:

(1) One or more members of the MFBU are LTC patients.

(2) The share of cost is less than or equal to the monthly cost of care at the Medi-Cal reimbursement rate for the long-term care facility.

(b) If the conditions listed in (a) are met:

(1) All members of the MFBU who are not LTC patients shall be issued Medi-Cal cards with no share of cost listed.

(2) The LTC patient shall be issued a Medi-Cal card that shows the share of cost.

(3) If there is more than one LTC patient in the MFBU, the MFBU share of cost shall be divided equally among the LTC patients.

(c) If an MFBU includes LTC patients and the share of cost is in excess of the cost of care at the Medi-Cal rate, the MFBU shall meet its share of cost by using form MC 177S procedures described in this article.

NOTE: Article cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4, 14005.7, 14005.9 and 14006, Welfare and Institutions Code.

HISTORY

Amendment of subsection (a) and new subsection (d) filed 8-8-80 (Register 80, No. 32).

2. Amendment filed 7-3-86; effective thirtieth day thereafter (Register 86, No. 27).

§ 50660. MFBUs Which Include a Title II Disregard Person.

(a) Form MC 177S shall not be required for an aged, blind or disabled person who meets the conditions specified in Section 50564. Each Title II disregard person shall be issued a Medi-Cal card with no share of cost.

(b) The remaining MFBU members with a share of cost shall have their case processed in accordance with Section 50655. Those services received by the aged, blind or disabled MN person meeting the conditions of Section 50564 shall not be used to meet the remaining MFBU members' share of cost.

(c) A person meeting the conditions of Section 50564 shall be identified in the case file by the notation "Title II Disregard Person" beside the person's name on the applicable MC 176.

NOTE: Authority cited: Section 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4 and 14005.7, Welfare and Institutions Code.

HISTORY

1. New section filed 1-5-78 as an emergency; effective upon filing (Register 78, No. 1).
2. Certificate of Compliance filed 5-5-78 (Register 78, No. 18).
3. New subsection (d) filed 6-30-78 as an emergency; effective upon filing (Register 78, No. 26).
4. Editorial correction deleting subsection (d) filed 6-10-83 (Register 83, No. 24).

Article 13. Period of Eligibility

§ 50701. Beginning Date of Eligibility.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11014, 11016, 14005, 14018 and 14053, Welfare and Institutions Code.

HISTORY

1. Amendment of subsections (a) and (b)(2) filed 8-7-78; effective thirtieth day thereafter (Register 78, No. 32).
2. Amendment of subsections (a) and (b) filed 7-31-81 as an emergency; effective upon filing (Register 81, No. 33). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11-28-81.
3. Certificate of Compliance transmitted to OAL 11-6-81 and filed 1-27-82 (Register 82, No. 5).
4. Amendment of subsection (d) filed 4-1-83; effective thirtieth day thereafter (Register 83, No. 14).
5. Amendment filed 6-3-87; operative 7-3-87 (Register 87, No. 24).
6. Change without regulatory effect repealing article 13 and renumbering former section 50701 to new section 50193 filed 9-19-2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 38).

§ 50703. Period of Eligibility.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11014, 11016 and 14053, Welfare and Institutions Code .

HISTORY

1. Amendment of subsection (a) filed 8-7-78; effective thirtieth day thereafter (Register 78, No. 32).
2. Amendment of subsection (d) filed 10-31-78 as an emergency; designated effective 11-1-78 (Register 78, No. 44).
3. Certificate of Compliance filed 2-6-79 (Register 79, No. 6).
4. Amendment of subsection (f) filed 5-30-80 as an emergency; effective upon filing (Register 80, No. 22). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 9-27-80.
5. Certificate of Compliance filed 9-26-80 (Register 80, No. 39).
6. Amendment of subsection (a) filed 7-31-81 as an emergency; effective upon filing (Register 81, No. 31). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11-28-81.
7. Certificate of Compliance transmitted to OAL 11-6-81 and filed 1-27-82 (Register 82, No. 5).
8. Amendment of subsection (c) filed 12-31-82 as an emergency; effective upon filing (Register 83, No. 2). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4-30-83.
9. Amendment of subsection (e) filed 4-1-83; effective thirtieth day thereafter (Register 83, No. 14).
10. Certificate of Compliance as to 12-31-82 order transmitted to OAL 4-13-83 and filed 5-16-83 (Register 83, No. 21).
11. Change without regulatory effect renumbering section 50703 to section 50195 filed 9-19-2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 38).

§ 50710. Retroactive Eligibility.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4, 14019, 14019.6, 14142 and 14145, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (a)(1) filed 7-19-82; effective thirtieth day thereafter (Register 82, No. 30).
2. Repealer of subsection (a)(3)(C) filed 8-18-82 as an emergency; effective upon filing (Register 82, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-16-82.
3. Amendment of subsection (a)(1) and new subsection (c) filed 9-1-82 as an emergency; effective upon filing (Register 82, No. 38). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-30-82.
4. Amendment of subsection (c) filed 10-1-82 as an emergency; effective upon filing (Register 82, No. 40). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1-29-83.
5. Certificate of Compliance as to 9-1-82 order filed 12-30-82 (Register 83, No. 1).
6. Editorial correction of 12-30-82 Certificate of Compliance filed 1-3-83 (Register 83, No. 1).
7. Certificate of Compliance as to 8-18-82 order transmitted to OAL 12-14-82 and filed 1-21-83 (Register 83, No. 5).
8. Certificate of Compliance as to 10—82 order transmitted to OAL 1-28-83 and filed 2-25-83 (Register 83, No. 9).

9. Amendment of subsection (a)(2) filed 7–9–87; operative 8–8–87 (Register 87, No. 30).
10. Change without regulatory effect renumbering section 50710 to section 50197 filed 9–19–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 38).

§ 50715. Certification for Medi–Cal—Completion.

HISTORY

1. Change without regulatory effect renumbering section 50715 to section 50199 filed 9–19–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 38).

Article 14. Medi–Cal Card Use and Issuance

§ 50731. Medi–Cal Card Use.

(a) Persons certified for Medi–Cal shall receive a Medi–Cal card or either a PHP identification card, or a PCCM plan restricted card and shall show proof of eligibility for Medi–Cal services by one of the following:

(1) Presenting a valid Medi–Cal card to the Medi–Cal provider of their choice.

(2) Presenting their valid PHP identification card to a provider in the PHP in which the beneficiary is enrolled. PHP enrollees may obtain their services under emergency circumstances from non–PHP providers by presenting their valid PHP identification card to the provider for purposes of billing the PHP. PHP enrollees also may be entitled to a restricted Medi–Cal card if they are enrolled in a noncomprehensive PHP.

(3) Presenting a valid PCCM plan restricted card to a provider in the PCCM plan in which the beneficiary is enrolled. PCCM plan enrollees may obtain services under emergency circumstances from nonplan providers by presenting a valid PCCM plan restricted card to the provider for purposes of billing the PCCM plan.

(b) Children who are receiving both SSI/SSP and an AFDC/BHI supplemental payment shall receive a Medi–Cal card under the SSI/SSP program only.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14017, 14018 and 14088.16, Welfare and Institutions Code.

HISTORY

1. Amendment filed 8–8–80; effective thirtieth day thereafter (Register 80, No. 32).
2. Amendment of subsection (a) filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
3. Amendment refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
4. Request to readopt amendment on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
6. Amendment of subsection (a) filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 3–25–91 order including amendment of subsection (a)(3) transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 50732. Medi–Cal—Signature Requirement.

(a) Each Medi–Cal beneficiary must sign and date his/her Medi–Cal card in the space provided upon receipt and prior to presentation of the card for any services.

(b) The requirement in (a) above shall not apply to the following:

(1) Medi–Cal beneficiaries who are under 18 years of age.

(2) Medi–Cal beneficiaries who are in Long Term Care as defined in Section 50056.

(c) For purposes of subsection (a), for persons who are unable to sign their name or make a mark in lieu of a signature, "sign" shall mean a determination by the provider of services that the individual is unable to sign the Medi–Cal card because of a disability.

NOTE: Authority cited: Section 14124.5 Welfare and Institutions Code. Reference: section 14018, Welfare and Institutions Code.

HISTORY

1. New section filed 1–3–86 as an emergency; effective upon filing (Register 86, No. 1).
2. Order of Repeal of 1–3–86 emergency order filed 1–3–86 by OAL pursuant to Government Code Section 11349.6 (Register 86, No. 1).
3. New section filed 1–28–86 as an emergency; effective upon filing (Register 86, No. 5). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5–28–86.
4. Certificate of Compliance including amendment transmitted to OAL 5–16–86 and filed 6–5–86 (Register 86, No. 23).

§ 50733. Medi–Cal Card—Authorization for Services.

(a) The Medi–Cal card shall be authorization for the person named on the card to receive those Medi–Cal covered services for which the person is eligible.

(b) The Medi–Cal card shall be authorization for payment of claims only for the cost of Medi–Cal covered services which are all of the following:

(1) Incurred during the month in which the Medi–Cal card is valid.

(2) Not paid or obligated by the beneficiary to meet the share of cost requirement.

(3) Not provided by the PHP or PCCM plan of which the beneficiary is a member.

(4) Not payable by a third party under a contractual or other legal entitlement.

(5) Not prohibited due to the limited service status of the beneficiary.

(c) A mother's Medi–Cal card shall be authorization for services for her newborn child, if the conditions of (b) are met, during the month of birth and the month following the month of birth.

(d) It shall be a misdemeanor for a beneficiary to sell, furnish, give or lend the beneficiary's Medi–Cal card to any other person or persons for their use.

NOTE: Authority cited: Sections 10725, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14010, 14017, 14018 and 14088.16, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (d) filed 12–15–77; effective thirtieth day thereafter (Register 77, No. 51).
2. Amendment of subsections (a), (b) and (d) filed 8–8–80; effective thirtieth day thereafter (Register 80, No. 32).
3. Amendment of subsection (b)(3) filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
4. Amendment refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
5. Request to readopt amendment on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
7. Amendment of subsection (b) filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 3–25–91 order transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 50735. Locations at Which Medi–Cal Card May Be Used.

(a) The Medi–Cal card shall be authorization for payment for Medi–Cal covered services received in any California county.

(b) The Medi–Cal card shall be authorization for payment for Medi–Cal covered services provided outside California in accordance with Section 51006.

§ 50737. Format of Medi-Cal Card.

(a) A Medi-Cal card issued by the Department or by the county department in accordance with these regulations shall be used to authorize services.

(b) The Medi-Cal card for persons with no share of cost shall contain:

(1) Complete and accurate information identifying the beneficiary, the program under which eligibility has been established and other health care coverage entitlement.

(2) Valid month and year and whether it is a past month Medi-Cal card.

(3) Information on limited service or PHP status, if applicable.

(4) Two MEDI labels, if the card is a full complement card.

(5) Proof of eligibility (POE) labels.

(c) The Medi-Cal card for persons who have met their share of cost and are required to complete form MC 177S, shall contain:

(1) The items listed in (b).

(2) The date of certification for claims clearance.

(d) The Medi-Cal card for persons in long-term care, with a share of cost less than or equal to the monthly cost of care at the Medi-Cal reimbursement rate for the long-term care facility, shall contain:

(1) The items listed in (b).

(2) The amount of the share of cost.

NOTE: Authority cited: Sections 10725, 14005.9(c), 14124.5 and 14312, Welfare and Institutions Code; Section 133.5, AB 251, Chapter 102, Statutes of 1981. Reference: Sections 14005.9, 14010 and 14017, Welfare and Institutions Code.

HISTORY

1. Amendment filed 8-8-80; effective thirtieth day thereafter (Register 80, No. 32).
2. Amendment of subsection (c) filed 11-30-81 as an emergency; effective upon filing (Register 81, No. 49). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3-30-82.
3. Certificate of Compliance filed 3-30-82 (Register 82, No. 14).

4. Amendment of subsection (c) filed 10–1–82 as an emergency; effective upon filing (Register 82, No. 40). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1–29–83.
5. Certificate of Compliance transmitted to OAL 12–30–82 and filed 2–2–83 (Register 83, No. 6).

§ 50739. Full Complement and POE Only Medi–Cal Cards.

(a) A full complement Medi–Cal card is one which has POE labels and two MEDI labels. This type of Medi–Cal card shall be issued to a beneficiary who is not enrolled in a PHP:

(1) As the initial card for the current month of certification for Medi–Cal.

(2) As the initial card for any month of a retroactive period during which there is certification for Medi–Cal.

(3) As a replacement card for a person who is entitled to and has requested a card, has completed a Request for Medi–Cal Card or Additional POE Labels, form MC 110, and has not received a card.

(4) As a replacement card if the original was incorrect or mutilated and was returned to the county department with both MEDI labels intact.

(b) A Medi–Cal card with POE labels only shall be issued:

(1) To replace a lost or stolen card or a mutilated card with the MEDI labels missing.

(2) When additional POE labels are requested.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14017, Welfare and Institutions Code.

HISTORY

1. Amendment of subsections (a)(4) and (b)(1) filed 12–17–77; effective thirtieth day thereafter (Register 77, No. 51).
2. Amendment filed 8–8–80; effective thirtieth day thereafter (Register 80, No. 32).

§ 50740. Medi–Cal Cards for Restricted Medi–Cal Benefits to Certain Aliens.

An alien who is eligible for restricted Medi–Cal benefits, and who meets all other eligibility requirements, shall receive a Medi–Cal card which entitles him or her to program–covered services to treat an emergency medical condition as defined in section 14007.5(d) of the Welfare and Institutions Code and section 440.255 of title 42 of the Code of Federal Regulations, and pregnancy–related services, as defined in section 1(g) of chapter 1441 of the Statutes of 1988, and section 440.255 of title 42 of the Code of Federal Regulations.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 9, Chapter 1441, Statutes of 1988. Reference: Section 14007.5, Welfare and Institutions Code.

HISTORY

1. New section filed 11–14–89 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 11–14–89 (Register 89, No. 48). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3–14–90.
2. New section refiled 3–8–90 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 3–13–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–11–90.
3. Certificate of Compliance as to 3–8–90 order transmitted to OAL 7–5–90 and disapproved 8–6–90 (Register 90, No. 42).
4. New section filed 8–23–90 as an emergency pursuant to section 9 of chapter 1441 of the Statutes of 1988; operative 8–23–90 (Register 90, No. 42). A Certificate of Compliance must be transmitted to OAL by 12–21–90 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance including amendment as to 8–23–90 order transmitted to OAL 11–20–90 and filed 12–17–90 (Register 91, No. 5).

§ 50741. Medi–Cal Card Issuance by the Department.

(a) The Department shall issue a Medi–Cal card to each person who is not enrolled in a comprehensive PHP and is any of the following:

(1) Reported by the county department as both eligible and certified for Medi–Cal and for whom the county department is requesting that a card be issued.

(2) Reported by the Social Security Administration as eligible for SSI/SSP.

(3) Certified for Medi–Cal by BRU.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14017, Welfare and Institutions Code.

HISTORY

1. Amendment filed 3–5–81; effective thirtieth day thereafter (Register 81, No. 10).

§ 50742. Limitations on Eligibility Reports and Card Issuance Requests Submitted by the County Department.

(a) The county department shall not submit a report of eligibility to the Department for a person for a given month, or request the Department to issue a Medi–Cal card for a person for a given month, as long as any one of the following applies to that person for that month:

(1) The county has information which requires discontinuance of the person for that month.

(2) The person is subject to discontinuance for the month due to loss of contact or noncooperation.

(b) The county department shall not request the Department to issue a Medi–Cal card for a person for a month during the following periods:

(1) From time of county receipt of information which requires that the person be assigned a share of cost and receive a form MC 177S for a month, until the completed MC 177S is submitted to the county department.

(2) From time of county receipt of information which requires that an LTC person receive an increased share of cost, until determination of the increased share of cost is made.

(c) The county department shall not withhold a report of eligibility for the beneficiary for the coming month if information requiring an adverse action is received too late in a month for the county department to make that action effective the coming month because timely notice of the adverse action cannot be provided to the beneficiary.

(d) This section applies to all Medi–Cal eligibles including public assistance recipients.

(e) The report of eligibility data required by this section shall be completed in accordance with schedules issued by the Director.

NOTE: Authority cited: Sections 10554.1 and 14124.5, Welfare and Institutions Code. Reference: Sections 10600, 10850, 11004, 11050, 11051, 11052, 11054, 11055, 12305, 14000.2, 14001, 14005, 14005.1, 14005.4, 14005.7, 14011, 14012, 14014, 14016, 14050.1, 14051 and 14052, Welfare and Institutions Code.

HISTORY

1. New section filed 9–1–78; effective thirtieth day thereafter (Register 78, No. 35).

§ 50743. Medi–Cal Card Issuance by the County Department—No Share of Cost.

(a) The county department shall issue a current or past month Medi–Cal card as limited by Section 50746, to each person who meets all of the following conditions:

(1) Is eligible for SSI/SSP. The county department shall verify SSI/SSP eligibility by obtaining information from the SDX data available to the county. If the SDX data on the individual does not appear to be accurate or complete, proof of eligibility shall be any of the following:

(A) The SSI/SSP check for the month for which the card is requested.

(B) Documentation from the Social Security Administration verifying eligibility.

(C) An SSI/SSP award letter received that month.

(D) An approved Title XVI emergency loan for that month.

(E) Other proof of eligibility as specified by the Department.

(2) Is not enrolled in a comprehensive PHP for the month for which a card is requested.

(3) Needs any of the following:

(A) Additional or duplicate POE labels.

(B) A replacement for a mutilated card.

(C) A replacement for a card containing erroneous data.

(D) A replacement Medi–Cal card because the original card was not received. In this case, the SSI/SSP recipient shall complete and sign form MC 110.

(b) The county department may issue current or past month Medi-Cal cards, as limited by Section 50746, to all other Medi-Cal eligibles who meet all of the following conditions:

(1) Do not have a share of cost.

(2) Are not enrolled in a comprehensive PHP for the month for which a card is requested.

(3) Did not receive a Medi-Cal card. In this case, the beneficiary shall complete and sign form MC 110.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14017.8 and 14115, Welfare and Institutions Code.

HISTORY

1. Amendment filed 12-15-77; effective thirtieth day thereafter (Register 77, No. 51).
2. Amendment filed 3-5-81; effective thirtieth day thereafter (Register 81, No. 10).
3. Amendment of subsection (a) filed 7-9-87; operative 8-8-87 (Register 87, No. 30).

§ 50745. Medi-Cal Card Issuance by the County Department—Share of Cost.

(a) The county department may issue current or past month Medi-Cal cards, as limited by Section 50746, to persons who are in long-term care and have a share of cost which is less than or equal to the monthly cost of care at the Medi-Cal reimbursement rate for the long-term care facility unless the person in long-term care also has a spenddown of property.

(b) The county department shall issue current month Medi-Cal cards with MEDI or POE labels to persons with a share of cost met by use of form MC 177S, if the person who requests the card signs a form MC 110 which indicates a need for medical services prior to normal anticipated receipt of a Department issued Medi-Cal card. In this case the county department shall process form MC 177S in accordance with Section 50658.

(c) The county department may issue current or past month Medi-Cal cards with POE labels only, as limited by Section 50746, to persons with a share of cost if certification by the county department or BRU has occurred.

(d) The Director may order the suspension of county issuance of Medi-Cal cards for persons with a share of cost, if the Director determines that the cost of the procedure is exceeding allowable costs under the Department's program for control of county department Medi-Cal administrative costs.

(1) The Director shall inform a county department of the suspension in that county, in writing, 30 days prior to the effective date of the suspension.

(2) The Director may reinstate the county issuance of Medi-Cal cards for persons with a share of cost, if it is determined that sufficient funds are available. Notification of the reinstatement shall be in writing.

§ 50746. Limitation on Medi-Cal Card Issuance.

(a) The county department shall not provide a Medi-Cal card or request that a Medi-Cal card be issued by the Department to any Medi-Cal beneficiary more than one year subsequent to the month of service, unless one of the following conditions is met:

(1) A court action requires that a Medi-Cal card be issued.

(2) An adopted State hearing decision or other administrative hearing decision requires a redetermination of eligibility which results in a beneficiary's entitlement to a Medi-Cal card.

(3) An adopted State hearing decision states that, due to a county department or Department administrative error, a Medi-Cal card for a month was not received by the beneficiary.

(4) The Department requests that the Medi-Cal card be issued.

(5) The county department has determined that an administrative error has occurred.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14017 and 14115, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (a) filed 5-30-80 as an emergency; effective upon filing (Register 80, No. 22). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 9-27-80.
2. Certificate of Compliance filed 9-26-80 (Register 80, No. 39).
3. Repealer of subsection (b) filed 7-9-87; operative 8-8-87 (Register 87, No. 30).

§ 50749. Control of County Issued Medi-Cal Cards.

(a) The county department shall record every Medi-Cal card issued or voided by the county department on the Control Log for MC 301, form HAS 2007.

(b) The county department may, with Department approval, use a substitute for form HAS 2007.

(c) The county department shall account for stocks of Medi-Cal cards, as required by the Department.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14017, Welfare and Institutions Code.

HISTORY

1. Amendment filed 8-8-80; effective thirtieth day thereafter (Register 80, No. 32).

§ 50751. Report of Eligibles.

(a) The Department shall compile a monthly report of all persons eligible for Medi-Cal. This Report of Eligibles shall include all persons:

(1) Certified for Medi-Cal by the county department and reported to the Department for issuance of Medi-Cal cards or listing as enrolled in a PHP or PCCM plan.

(2) Certified for Medi-Cal and issued Medi-Cal cards by the county department.

(3) With a share of cost. These persons are reported as eligible but not certified for Medi-Cal.

(4) Certified for Medi-Cal and issued Medi-Cal cards by Benefits Review Unit.

(5) Reported by the Social Security Administration as eligible.

(b) The county department shall report the information specified in (a)(1), (2) and (3) in accordance with Department procedures.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14017.8 and 14088.16, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (a)(1) filed 3-9-90 as an emergency; operative 3-9-90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7-9-90.
2. Amendment refiled 7-9-90 as an emergency; operative 7-9-90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11-6-90.
3. Request to readopt amendment on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11-6-90 as an emergency; operative 11-6-90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3-6-91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11-6-90 order transmitted to OAL 2-22-91; disapproved by OAL on 3-25-91 (Register 91, No. 18).
5. Amendment of subsection (a) filed 3-25-91 as an emergency; operative 3-25-91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7-23-91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3-25-91 order transmitted to OAL 7-19-91 and filed 8-19-91 (Register 92, No. 1).

Article 15. Other Health Care Coverage and Medicare Buy-In Coverage

§ 50761. Other Health Care Coverage—General.

A beneficiary with other health care coverage is not entitled to receive health care benefits and services under the Medi-Cal schedule of benefits until the other health care coverage available has been exhausted or denied for lack of service coverage. This requirement shall not, however, apply to beneficiaries covered under Medi-Cal capitated contracting arrangements except to the extent permitted under a contract.

NOTE: Authority cited: Section 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 10020, 14000, 14023, 14023.7 and 14490, Welfare and Institutions Code.

HISTORY

1. Repealer and new section filed 6–28–89; operative 7–28–89 (Register 89, No. 26).

§ 50763. Beneficiary Responsibility—Other Health Care Coverage.

(a) An applicant or beneficiary shall:

(1) Apply for, and/or retain any available health care coverage when no cost is involved.

(2) Report to the county department any entitlement to other health care coverage at the time of application, reapplication, or redetermination; and report any change in entitlement no later than 10 calendar days from the date the beneficiary was notified of the change by the employer or insurer. The report shall include name of carrier, policy and group numbers, and termination date, if available.

(3) Utilize other available health care coverage prior to utilizing Medi–Cal coverage.

(4) Report to the county department services received as the result of an accident or injury as specified in Section 50771 (b), and report the information specified in Section 50771(d)(2).

(5) Provide current other health care coverage billing information to the provider at the time the service is received. This information shall include the name of the other health care coverage, policy and group numbers, and termination date, if available.

(b) Compliance with the other health care coverage requirements of subsection (a)(l) shall be a condition of receiving Medi–Cal covered benefits to the party responsible for the acquisition or continuance of such health care coverage, and shall not interfere with Medi–Cal benefits provided to the remaining family unit..

HISTORY

1. Amendment filed 6–28–89; operative 7–28–89 (Register 89, No. 26)

§ 50765. County Department Responsibility—Other Health Care Coverage.

(a) The county department shall:

(1) Determine the other health care coverage in effect or available to an applicant or beneficiary upon each determination or redetermination of Medi–Cal.

(2) Code the other health care coverage using the coding system prescribed by the Department.

(3) Provide information regarding the beneficiary's other health care coverage to the Department in the manner, form and frequency requested.

(4) Notify the Department that the beneficiary's other health care coverage has lapsed or will lapse no later than five working day's following the receipt of such information.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference Sections 14124.90 and 14124.91, Welfare and Institutions Code.

HISTORY

1. Amendment filed 6–28–89; operative 7–28–89 (Register 89, No. 26).

§ 50769. Department Responsibility—Other Health Care Coverage.

(a) On the Medi–Cal card of beneficiaries who have other health care coverage, the Department shall place an indicator code to give notice to providers and beneficiaries that other health care coverage must be utilized prior to billing the Medi–Cal program.

(b) The Department's fiscal intermediary shall, as directed by the Department, deny provider claims submitted for beneficiaries who have other health care coverage unless the claim is accomplished by a notice of denial of non–coverage of service, termination of coverage, or partial payment which is less than the Medi–Cal schedule of benefits for the service or benefit provided. A provider of service may submit a copy of the original notice of denial or explanation of benefits letter from the other health care coverage. This notice or letter is valid for a period of one year from the date the service was denied. The notice or letter must be accompanied by a completed Medi–Cal claim form for the same service provided to the beneficiary as indicated on the notice or letter.

(c) When Medi–Cal payment has been made before the other health care coverage has been identified, the Department shall recover payments from the parties having a legal obligation.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code, Reference: Sections 14023, 14023.7, 14124.90. Welfare and Institutions Code.

HISTORY

1. Repealer and new section filed 6–28–89; operative 7–28–89 (Register 89, No. 28).

§ 50771. Recovery of Third Party Payments.

(a) A beneficiary shall reimburse the Department for any payment received for health care services which were paid by Medi–Cal, if the payment received by the beneficiary is made by either of the following:

(1) A federal or state program.

(2) A legal or contractual entitlement.

(b) A beneficiary who receives health care services as a result of an accident or injury caused by some other person's action or failure to act shall furnish the Department with an assignment of rights to receive payment for those services, if those services will be billed to Medi–Cal. If the beneficiary is unable to make the assignment, the beneficiary's guardian, attorney or the person acting on the beneficiary's behalf shall do so.

(c) The Department may file a lien against the property of a beneficiary if the beneficiary fails to comply with the requirement in (b).

(d) The county department shall provide the following written information to the Department of Benefit Payments concerning a beneficiary who may meet the conditions of (b).

(1) The name and address of the beneficiary.

(2) The name and address of the:

(A) Attorney handling the case.

(B) Insurance carriers responsible for payment.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 87, Chapter 1594, Statutes of 1982. Reference: Section 14006, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (c) filed 12–31–83 as an emergency; effective upon filing (Register 83, No. 2). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–30–83.
2. Certificate of Compliance transmitted to OAL 4–29–83 and filed 6–3–83 (Register 83, No. 23).

§ 50771.5. Determination of Good Cause for Refusal to Cooperate.

(a) Good cause exists when cooperation is against the best interest, as specified in (b) and (c) below, of an applicant, beneficiary, or child for whom application is made or Medi–Cal received. These regulations shall not preclude the county welfare department from contracting with the district attorney for assistance in the investigation of good cause claims.

(b) Good cause exists if the applicant's or beneficiary's cooperation in securing medical support and payments, establishing paternity, identifying and providing information concerning liable or potentially liable third parties is reasonably anticipated to result in serious physical or emotional harm;

(1) To the child for whom support is to be sought;

(2) To the parent or caretaker relative with whom the child is living as specified in (d) below.

(c) The county believes that proceeding to secure medical support or establish paternity would be detrimental to the child for whom such support would be sought because at least one of the following circumstances exists:

(1) The child for whom such support is sought was conceived as a result of incest or forcible rape;

(2) Legal proceedings for the adoption of the child are pending before a court of competent jurisdiction; or

(3) The applicant or beneficiary is currently being assisted by a public or licensed private social service agency to resolve the issue of whether

to keep the child or relinquish him/her for adoption, and the discussions have not gone on for more than three months.

(d) Serious physical or emotional harm as it relates to the parent or caretaker relative means substantial reduction of the capacity of the parent or caretaker relative to care for the child adequately. The mere belief of the parent, caretaker relative, applicant, or beneficiary that cooperation could or would result in harm shall not be a sufficient basis for finding good cause.

(e) A finding of good cause for emotional harm shall be based only upon a demonstration of an emotional impairment that substantially affects the individual's functioning. The county shall consider the following when determining emotional harm:

(1) The present emotional state of the individual subject to emotional harm;

(2) The emotional health history of the individual subject to emotional harm;

(3) The intensity and probable duration of the emotional impairment;

(4) The degree of cooperation to be required; and

(5) The extent of the involvement of the individual in the paternity establishment or support enforcement activity to be undertaken.

(f) An applicant, beneficiary, parent, or caretaker relative who claims to have good cause for refusing to cooperate shall have the burden of proof in establishing the existence of good cause. The individual shall be required to:

(1) Specify the circumstances described in (b) above that the individual believes provides sufficient good cause for not cooperating;

(2) Provide sufficient information (such as the putative father or absent parent's name and address, if known) to permit an investigation pursuant to (*l*) below; and

(3) Provide corroborative evidence as described in Section 50771.5(g) within 20 days from the day the claim of good cause was made. In exceptional cases, where the county determines the individual requires additional time because of the difficulty of obtaining corroborative evidence, a reasonable additional period of time shall be allowed upon request of the individual and approval by county supervisory personnel.

(g) Good cause may be corroborated by:

(1) Birth certificate or medical or law enforcement records which indicate that the child was conceived as the result of incest or forcible rape;

(2) Court documents or other records which indicate that legal proceedings for adoption are pending before a court of competent jurisdiction;

(3) Court, medical, criminal, child protective services, psychological, or law enforcement records which indicate that the putative father or absent parent might inflict physical or emotional harm on the child, parent, or caretaker relative;

(4) Medical records which indicate emotional health history and the present emotional health status of the parent, caretaker relative, or the child for whom support would be sought; or written statements from a mental health professional indicating a diagnosis or prognosis concerning the emotional health of the parent, caretaker relative, or the child for whom support would be sought;

(5) A written statement from a public or licensed private social service agency that the applicant or beneficiary is being assisted by the agency to resolve the issue of whether to keep the child or relinquish him/her for adoption;

(6) Statements under penalty of perjury from individuals, other than the applicant or beneficiary, with actual knowledge of the circumstances which provide the basis for the good cause claim.

(h) The county shall examine the corroborative evidence supplied by the applicant, beneficiary, parent, or caretaker relative to ensure that it actually verifies the good cause claim.

(i) If, after examining the corroborative evidence submitted by the individual, the county wishes to request additional corroborative evidence which is needed to justify a determination of good cause, the county shall:

(1) Promptly inform the applicant or beneficiary that additional corroborative evidence is needed; and

(2) Specify the type of evidence which is needed.

(j) Upon request, the county shall:

(1) Advise the applicant or beneficiary how to obtain the necessary evidence.

(2) Make a reasonable effort to obtain specific information which the applicant or beneficiary is not reasonably able to obtain without assistance.

(k) Where a claim is based on the individual's anticipation of physical harm as defined in (d) above, and corroborative evidence is not submitted in support of the claim:

(1) The county shall make reasonable efforts to examine, review, and evaluate the good cause claim when it believes that:

(A) The claim is credible without corroborative evidence; and

(B) Corroborative evidence is not available.

(2) Good cause shall be found if the claimant's statement and the investigation which is conducted satisfy the county that the individual has good cause for refusing to cooperate.

(3) A determination that good cause exists shall be reviewed and approved or disapproved by county supervisory personnel and the county's findings shall be recorded in the case record.

(*l*) In the course of determining whether good cause exists, the county shall not contact the absent parent or putative father from whom support would be sought unless such contact is determined to be necessary to establish the good cause claim.

(1) Prior to making contact with the absent parent or putative father, the county will inform the applicant or beneficiary that the absent parent or putative father may be contacted unless the applicant or beneficiary:

(A) Presents additional corroborative evidence or information so that contact with the parent or putative father becomes unnecessary:

(B) Withdraws the application for assistance or requests discontinuance.

(2) The county shall inform the applicant or beneficiary that he/she may request the good cause claim be denied. If the applicant or beneficiary makes this request, the county shall send the appropriate Notice of Action.

(m) Prior to making a final determination of good cause for refusing to cooperate, the county shall:

(1) Afford the district attorney the opportunity to review and comment on the findings and basis for the proposed determination;

(2) Consider any recommendation from the district attorney; and

(3) Give the district attorney the opportunity to participate as a witness in any hearing (under the Department of Social Services Manual of Policies and Procedures (DSS–MMP) Chapter 22–000) that results from an applicant's or beneficiary's appeal of any county action relating to establishing paternity or securing medical support.

(n) The county shall determine whether or not good cause exists, based on the applicant's or beneficiary's statement, together with the corroborative evidence, if the statement and evidence provide a sufficient basis for making a determination. The county may further verify the good cause claim through an investigation if necessary.

(o) The determination of whether or not good cause exists shall be made within 45 days from the day the good cause claim is made. This time standard may be exceeded only where the case record documents that the county needs additional time because:

(1) The information required to verify the claim cannot reasonably be obtained within 45 days; or

(2) The applicant or beneficiary did not provide corroborative evidence within the period required by (f)(3).

(p) The applicant or beneficiary shall be notified on the appropriate Notice of Action form of the final determination that good cause does or does not exist. If good cause does not exist, the notice shall also specify that:

(1) The applicant or beneficiary will be afforded an opportunity to cooperate, to withdraw the application for assistance, or to have the case closed; and

(2) Continued refusal to cooperate will result in ineligibility for the applicant or beneficiary who refuses, in accordance with Section 50379; however, eligibility will be granted for the other members of the MFBU, if otherwise eligible.

(q) If good cause exists, the county shall determine whether medical support enforcement may proceed without unreasonable risk of harm to the child, parent, or caretaker or relative if the caretaker relative does not participate in these medical support activities.

(1) This determination shall be in writing, shall contain the county's findings and basis for the determination, and shall be entered into the case record.

(2) If the county determines that good cause exists and that the district attorney may proceed to establish paternity and enforce medical support, the county shall notify the applicant or beneficiary to enable such individual to withdraw his/her application or to have the record closed.

(3) Prior to making this determination, the county shall afford the district attorney an opportunity to review and comment on the findings and basis for the proposed determination and shall consider any recommendation from the district attorney.

(r) Good cause may be denied if the individual fails to meet his/her responsibilities as specified in (f) above.

(s) If the district attorney determines that a beneficiary has failed or refused to cooperate within the meaning of Section 50185(a)(9) and (a)(10), the district attorney will provide the county with a statement which specifies the circumstances of the beneficiary's failure or refusal. The county shall take action to terminate Medi-Cal to the beneficiary only when it has verified on the basis of all available evidence that the beneficiary failed or refused to cooperate without good cause.

(t) The failure of a foster parent or caretaker relative who is not requesting Medi-Cal as part of the child's MFBU, to comply with this requirement shall not affect eligibility for the MFBU members. In foster care situations, the child's natural parent and the placing agency shall be asked to cooperate to the extent possible.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11477 and 14008.6, Welfare and Institutions Code; and 42 C.F.R. Sections 433.135, 433.136, 433.137, 433.138, 433.145, 433.146, 433.147, 433.148 and 435.604.

HISTORY

1. New section filed 4–16–93 as an emergency; operative 4–16–93 (Register 93, No. 16). A Certificate of Compliance must be transmitted to OAL 8–16–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 4–16–93 order including amendment of NOTE transmitted to OAL 8–13–93 and filed 9–23–93 (Register 93, No. 39).

§ 50772. Veterans Aid and Attendance Payments.

(a) A Veterans Aid and Attendance payment is a veterans benefit designated to purchase aid and attendance services, and it shall be considered a third party payment.

(b) A beneficiary who receives Veterans Aid and Attendance payments shall be required to utilize this benefit in accordance with the following:

(1) Beneficiaries in LTC shall utilize the Aid and Attendance payments for LTC services prior to the utilization of Medi-Cal benefits. Such utilization shall occur through the share of cost process described in Article 12, that is, any amounts for Veterans Aid and Attendance payments shall be added to the share of the cost amount determined in Section 50653(a)(2)(F).

(2) Beneficiaries not in LTC shall utilize the Aid and Attendance payments for the cost of IHSS prior to the application of the income deduction specified in Section 50551.6.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14024, Welfare and Institutions Code.

HISTORY

1. New section filed 2–16–88 as an emergency; operative 2–16–88 (Register 88, No. 10). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6–15–88.
2. Emergency language filed 2–16–88 repealed by operation of Government Code Section 11346.1 (Register 88, No. 27).
3. New section refiled 6–22–88 as an emergency; operative 6–22–88 (Register 88, No. 27). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–20–88.
4. Certificate of Compliance transmitted to OAL 6–20–88 and filed 7–15–88 (Register 88, No. 31).

§ 50773. Medicare Buy–in.

(a) Medicare Buy–In is the payment of Medicare Part B premiums by the Department under the California Medicare Buy–In agreement with the Social Security Administration for Medi–Cal beneficiaries who are:

(1) Eligible under the SSI/SSP, Other PA or MN program on the basis of age.

(2) Eligible under the SSI/SSP, Other PA or MN program on the basis of blindness or disability and also eligible for Medicare Part B in accordance with section 50775(a).

(b) State payment of Part B premiums under the Buy–In provisions shall become effective the:

(1) Second month after the month in which Medi–Cal eligibility is approved for MN persons who were not eligible for a federally covered Medi–Cal program in the month before their first month of MN eligibility.

(2) First month of eligibility for PA and Other PA recipients and MN persons not specified in (1).

(3) The first month after the month of eligibility for qualified Medicare beneficiaries in accordance with Section 50258.

(4) The first month eligibility is approved for Specified Low–Income Medicare Beneficiaries in accordance with Section 50258.1.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.1 and 14050.1, Welfare and Institutions Code; and Section 1396a(a)(10)(E)(iii), Title 42, United States Code.

HISTORY

1. Amendment of subsections (a)(1) and (a)(2) filed 8–7–78; effective thirtieth day thereafter (Register 78, No. 32).
2. Amendment of subsection (a) filed 7–31–81 as an emergency; effective upon filing (Register 81, No. 33). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–28–81.
3. Certificate of Compliance transmitted to OAL 11–6–81 and filed 1–27–82 (Register 82, No. 5).
4. Amendment of subsection (b)(1) filed 5–15–90; operative 6–14–90 (Register 90, No. 25).
5. Amendment of subsection (b) filed 8–13–90 as an emergency; operative 8–13–90 (Register 90, No. 40). A Certificate of Compliance must be transmitted to OAL by 12–11–90 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance transmitted to OAL 12–11–90 and filed 1–9–91 (Register 91, No. 8).
7. New subsection (b)(4) and amendment of subsection (b)(3) and NOTE filed 12–21–93; operative 1–20–94 (Register 93, No. 52).

§ 50775. Medicare Coverage.

(a) Persons eligible for both Medicare Part A (Hospital) and Part B (Outpatient) benefits under the Social Security Act, Title XVIII, are persons or their spouses who have the required number of quarters of covered employment, are citizens of the United States or aliens legally present in the United States for at least five years, and who meet at least one of the following:

(1) Are 65 years of age or over.

(2) Are entitled to disability, including blindness, benefits for at least 24 consecutive months under Title II of the Social Security Act, or Railroad Retirement program.

(3) Meet the requirements for the receipt of Medicare as a patient with chronic renal disease.

(b) Persons eligible for only Medicare Part B benefits are persons who are either citizens of the United States or are aliens legally present in the United States for at least five years, and are all of the following:

(1) Not eligible for Medicare Part A.

(2) Sixty–five years of age or over.

HISTORY

1. Amendment filed 12–15–77; effective thirtieth day thereafter (Register 77, No. 51).

§ 50777. Requirement to Apply for Medicare.

(a) The following Medi–Cal applicants and beneficiaries shall be required to apply for Medicare Part A:

(1) Any person 64 years and 9 months of age or older.

(2) Persons applying for Medi–Cal on the basis of blindness or disability.

(3) Persons who are receiving disability payments under title II of the Social Security Act or Railroad Retirement program unless the county can obtain verification of receipt of Social Security title II disability payments in accordance with section 50167. In these instances Medicare enrollment is deemed to be automatic beginning with the 25th month of receipt of this benefit and application is not required.

(4) Persons receiving dialysis–related health care services.

(b) The following Medi–Cal applicants and beneficiaries shall be required to apply for Medicare Part B:

(1) Persons who are applying for Medi–Cal on the basis of being aged.

(2) Persons applying for Medi–Cal on the basis of blindness or disability unless the county can obtain verification of receipt of Social Security Title II disability payments in accordance with section 5167. In these instances Medicare enrollment is deemed to be automatic beginning with the 25th month of receipt of this benefit and application is not required.

(3) Persons receiving dialysis–related health care services, unless the county can obtain verification of receipt of Medicare Part A benefits in accordance with section 50167. In these instances, Medicare Part B enrollment is deemed to be automatic and application is not required.

(c) The persons specified in (a) and (b) shall submit verification to the county department of the approval or denial of their Medicare eligibility within 60 days of the date they are notified of the requirement to apply or within 10 days of the notification of approval or denial if their eligibility for Medicare is not determined within 60 days. Except for those persons applying under Sections 50258 and 50256, persons who would only be eligible for Medicare Part A if they paid a premium shall not be required to accept Part A benefits.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005, 14005.3, 14005.11 and 14109, Welfare and Institutions Code; Sections 426(b), 426–1, 1396a(a), 1396d(p), 1396d(s) and 9902(2), Title 42, United States Code; and Sections 4–7.18(b)(2), 405.210(b)(1)(iv), 408.5, 408.12, 408.13 and 435.603, Title 42, Code of Federal Regulations.

HISTORY

1. Amendment of subsection (a)(4) and repealer of subsection (a)(5) filed 5–16–80 as an emergency; effective upon filing (Register 80, No. 20). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9–14–80.
2. Certificate of Compliance filed 8–22–80 (Register 80, No. 34).
3. Amendment filed 7–5–88; operative 8–4–88 (Register 88, No. 31).
4. Amendment of subsection (c) filed 8–13–90 as an emergency; operative 8–13–90 (Register 90, No. 40). A Certificate of Compliance must be transmitted to OAL by 12–11–90 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance transmitted to OAL 12–11–90 and filed 1–9–91 (Register 91, No. 8).
6. Amendment of subsection (c) and NOTE filed 10–3–94 as an emergency; operative 10–3–94 (Register 94, No. 40). A Certificate of Compliance must be transmitted to OAL by 1–31–95 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY NOTE 6 (Register 95, No. 9).
8. Reinstatement of subsection (c) and NOTE as they existed prior to emergency amendment filed 3–2–95 by operation of Government Code section 11346.1(f) (Register 95, No. 9).
9. Amendment of subsection (c) and NOTE refiled 3–3–95 as an emergency; operative 3–3–95 (Register 95, No. 9). A Certificate of Compliance must be transmitted to OAL by 7–1–95 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 3–3–95 order including amendment of subsection (c) transmitted to OAL 2–22–95 and filed 4–5–95 (Register 95, No. 14).

§ 50778. Other Health Care Coverage Premium Payment.

(a) The Department in accordance with the period of eligibility as stipulated within the policyholder's contract, or in accordance with the period of eligibility as stipulated for continuation of coverage under federal law, shall pay the premiums to provide other health care coverage for a beneficiary with entitlement to such coverage when the annual cost of the premium is less than half the estimated cost of Medi–Cal benefits. The estimated cost of Medical benefits shall be determined by the Department by the review of either:

(1) Costs of covered medical services received by the beneficiary during the preceding year, irrespective of the payment source; or

(2) Estimated annual cost of medical services for the treatment of the beneficiary's pre–existing medical condition.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14124.91, Welfare and Institutions Code: and 42 USC 1396 b(A)(1).

HISTORY

1. New section filed 6–28–89; operative 7–28–89 (Register 89, No. 26).

Article 16. Overpayments, Fraud and Improper Utilization

§ 50781. Potential Overpayments.

(a) A potential overpayment occurs when all of the following conditions exist, as limited by (b).

(1) A beneficiary, or other person acting on the beneficiary's behalf, has been informed verbally and in writing on the MC 210 cover sheet (9/91), and the certification in the Statement of Facts (Medi–Cal), MC 210 (3/92), or on the cover sheet to and the Application for Cash Aid, Food Stamps, and/or Medical Assistance (SAWS 1) (9/90) CA 1/DFA 285–A1, or on the Important Information For Applicants and Recipients For Cash Aid, Food Stamps and Medical Assistance (SAWS 2A) (5/92) (Important Information) CA2/DFA 285–A2/MC 210, or on the Statement of Facts Cash and Food Stamps – (JA2) (4/90) CA2/DFA 285–A2 of his/her responsibility to report completely and accurately, facts required pursuant to Subdivision 1, Chapter 2, which would affect eligibility or share or cost, and to report any changes in those facts within 10 days.

(2) A beneficiary or the person acting on the beneficiary's behalf has completed and signed the Medi–Cal Applicant/Beneficiary Understanding, MC 210 (9/91) cover sheet and the certification in the Statement of Facts (Medi–Cal) MC 210 (3/92), or the certification in the Statement of Facts Cash Aid and Food Stamps – (JA2) (4/90) CA2/DFA 285–A2, or the certification in the Application for Cash Aid, Food Stamps, and/or Medical Assistance (SAWS 1) (9/90) CA1/DFA 285–A1, or the certification in the Important Information For Applicants and Recipients For Cash Aid, Food Stamps and Medical Assistance (SAWS 2A) (5/92) (Important Information) CA2/DFA 285–A2/MC 210 and has, within his/her competence, done any of the following:

(A) Provided incorrect oral or written information.

(B) Failed to provide information required pursuant to Subdivision 1, Chapter 2, which would affect the eligibility or share of cost determination.

(C) Failed to report changes in circumstances regarding any information required pursuant to Subdivision 1, Chapter 2, which would affect eligibility or share of cost within 10 days of the change.

(3) These facts, when considered in conjunction with other information available on the beneficiary's circumstances, would result in ineligibility or an increased share of cost.

(b) If an increase occurred in a person's income or assets and that increase would not have affected the person's eligibility or share of cost in the month in which there was an increase in income or assets or in the following month because of the 10–day notice requirements specified in Sections 50179, 50185 and 50653.5, no potential overpayment exists in either such month.

(c) No potential overpayment exists if the beneficiary informed the county department of circumstances which would result in ineligibility or an increased share of cost, and the county department failed to act on the information.

(d) No potential overpayment exists when there is a failure on the part of a beneficiary to perform an act which is a condition of eligibility if the failure is due to an error by the Department or the county department.

(e) For purposes of this section, potential overpayments shall be determined by applying the laws in effect in the month or months for which the potential overpayment is being determined.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11004, 14009 and 14016.4, Welfare and Institutions Code.

HISTORY

1. Repealer and new section filed 12–30–81 as an emergency; effective upon filing (Register 82, No. 1). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–29–82.
2. Certificate of Compliance transmitted to OAL 4–23–82 and filed 5–12–82 (Register 82, No. 20).
3. New subsection (a)(3) and amendment of subsection (c) filed 5–12–82; effective thirtieth day thereafter (Register 82, No. 20).
4. Amendment of section and NOTE filed 4–13–93; operative 5–13–93 (Register 93, No. 16).

§ 50781.5. Potential Overpayments—Unreported Other Health Coverage.

(a) A potential overpayment occurs when a beneficiary, or the person acting on the beneficiary's behalf, has knowingly failed to report other health coverage under either of the following circumstances:

(1) The other health coverage is of a type designated by the Department as not subject to post–service reimbursement, and the beneficiary who fails to utilize such other health coverage without good cause; or

(2) The beneficiary has received services for which Medi–Cal paid, and the beneficiary also claimed and received payment through private health care coverage.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14009, 14016.4 and 14024, Welfare and Institutions Code.

HISTORY

1. New section filed 4–13–93; operative 5–13–93 (Register 93, No. 16).

§ 50782. Fraud.

Fraud occurs if an overpayment occurs and the beneficiary or the person acting on the beneficiary's behalf willfully failed to report facts as specified in Section 50781(a) with the intention of deceiving the Department, the county department or the Social Security Administration for the purpose of obtaining Medi–Cal benefits to which the beneficiary was not entitled.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11004, 14009, 14014 and 14016.4, Welfare and Institutions Code.

HISTORY

1. Amendment filed 12–30–81 as an emergency; effective upon filing (Register 82, No. 1). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–29–82.
2. Certificate of Compliance transmitted to OAL 4–23–82 and filed 5–12–82 (Register 82, No. 20).
3. Amendment of section and NOTE filed 4–13–93; operative 5–13–93 (Register 93, No. 16).

§ 50783. County Action on Potential Overpayment.

(a) The county department shall take the following action when it appears that there may be a potential overpayment:

(1) Determine the correct eligibility status and share of cost based on the correct income, property and other circumstances.

(2) Determine whether a potential overpayment exists in accordance with Section 50781.

(3) If a potential overpayment exists, refer it to the Department or to the county unit contracting with the Department to collect overpayments in accordance with the procedures established by the Department.

(4) In those instances where the potential overpayment is due to the willful failure to report facts and there was a person acting on behalf of the beneficiary:

(A) Determine whether the beneficiary is competent to handle his/her own affairs.

(B) If the beneficiary is competent, require that the beneficiary act on his/her own behalf in the future.

(C) If the beneficiary is not competent, refer the case to Social Services and/or the public guardian or conservator to ensure that the beneficiary's interests are protected.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; Section 133.5, Chapter 102, Statutes of 1981. Reference: Sections 11004, 14009 and 14016.4, Welfare and Institutions Code.

HISTORY

1. Repealer and new section filed 12–30–81 as an emergency; effective upon filing (Register 82, No. 1). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–29–82.
2. Certificate of Compliance transmitted to OAL 4–23–82 and filed 5–12–82 (Register 82, No. 20).

§ 50785. Action on Overpayment—Department of Health.

NOTE: Authority cited: Section 10725 and 14124.5, Welfare and Institutions Code; Section 133.5, Chapter 102, Statutes of 1981. Reference: Sections 11004, 14009 and 14016.4, Welfare and Institutions Code.

HISTORY

1. Repealer filed 12–30–81 as an emergency; effective upon filing (Register 82, No. 1). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–29–82.
2. Certificate of Compliance transmitted to OAL 4–23–82 and filed 5–12–82 (Register 82, No. 20).

§ 50786. Action on Overpayment—Department of Health Services or County Unit Contracted to Collect Overpayments.

(a) Upon receipt of a potential overpayment referral, the Department's Recovery Section or the county unit contracted to collect overpayments shall:

(1) Determine the amount of Medi–Cal benefits received by the beneficiary for the period in which there was a potential overpayment.

(2) Compute the actual overpayment in accordance with the following:

(A) When the potential overpayment was due to excess property, the actual overpayment shall be the lesser of the:

1. Actual cost of services paid by the Department during that period of consecutive months in which there was excess property throughout each month.

2. Amount of property in excess of the property limit during that period of consecutive months in which there was excess property throughout each month. This excess amount shall be determined as follows:

a. Compute the excess property at the lowest point in the month for each month.

b. The highest monthly amount determined in a. shall be the amount of the excess property for the entire period of consecutive months.

(B) When the potential overpayment was due to increased share of cost, the actual overpayment shall be the lesser of the:

1. Actual cost of services received in the month(s) which were paid by the Department.

2. Amount of the increased share of cost for the month(s) in which services were received which were paid by the Department.

(C) When the overpayment was due to excess property and increased share of cost, the actual overpayment shall be a combination of (A) and (B).

(D) When the potential overpayment was due to other factors which result in ineligibility the overpayment shall be the actual cost of services paid by the Department.

(E) Potential overpayments, due to beneficiary possession of other health coverage that is not subject to post–services reimbursement, shall be processed by the Department to determine and recover actual overpayments in all cases. The actual overpayment in such cases shall be the actual cost of services paid by the Department which would have been covered by private health insurance or other health coverage, had the coverage been known to the Department. The actual overpayment shall not include any costs which can be recovered directly by the Department from the health insurance carrier or other source.

(3) Refer those cases where there appears there may be fraud to the Investigations Branch of the Department.

(4) Take appropriate action to collect overpayments in accordance with Section 50787.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11004, 14005.9, 14009 and 14016.4, Welfare and Institutions Code.

HISTORY

1. Amendment filed 12–30–81 as an emergency; effective upon filing (Register 82, No. 1). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–29–82.
2. Certificate of Compliance transmitted to OAL 4–23–82 and filed 5–12–82 (Register 82, No. 20).
3. Amendment filed 5–12–82; effective thirtieth day thereafter (Register 82, No. 20).
4. Amendment of subsection (a)(2)(A)2. filed 6–3–87; operative 7–3–87 (Register 87, No. 24).
5. Amendment of subsections (a)(2)(B)1. and 2. and NOTE filed 4–13–93; operative 5–13–93 (Register 93, No. 16).

§ 50787. Demand for Repayment.

(a) The Department or the county unit contracted to collect overpayments shall demand repayment of actual overpayments in accordance with procedures established by the Department.

(b) The Department or the county unit contracted to collect overpayments shall inform the beneficiary, or the person acting on the beneficiary's behalf, in writing, of the overpayment amount and of his/her right to a state hearing on the overpayment in accordance with Section 50951. If the person requests a state hearing on the overpayment, collection action shall be suspended until a final decision has been rendered in accordance with Section 50953.

(c) The Department or the county unit contracted to collect overpayments may take other collection actions as permitted under state law against the income or resources of the beneficiary or the income and resources of any person who is financially responsible for the cost of the beneficiary's health care in accordance with Sections 50088, 50163, and 50185.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11004, 14009, 14014, 14016.4 and 14024, Welfare and Institutions Code.

HISTORY

1. Amendment filed 12–30–81 as an emergency; effective upon filing (Register 82, No. 1). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–29–82.
2. Certificate of Compliance transmitted to OAL 4–23–82 and filed 5–12–82 (Register 82, No. 20).
3. New subsection (b) and subsection relettering, and amendment of newly designated subsection (c) and NOTE filed 4–13–93; operative 5–13–93 (Register 93, No. 16).

§ 50789. Failure to Repay.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; Section 133.5, Chapter 102, Statutes of 1981. Reference: Sections 11004, 14009 and 14016.4, Welfare and Institutions Code.

HISTORY

1. Repealer filed 12–30–81 as an emergency effective upon filing (Register 82, No. 1). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–29–82.
2. Certificate of Compliance transmitted to OAL 4–23–82 and filed 5–12–82 (Register 82, No. 20).

§ 50791. Medi–Cal Overpayments Fraud—AFDC Cash Grant.

(a) When an AFDC overpayment occurs, the county department shall:

(1) Investigate any potential Medi–Cal fraud which is incidental to AFDC cash grant fraud and take appropriate action.

(2) Determine whether there was ineligibility for Medi–Cal as an AFDC recipient. If so, the county shall determine whether:

(A) Medi–Cal eligibility existed under any other program.

(B) There was a potential Medi–Cal overpayment.

(C) Report potential Medi–Cal overpayments to the county unit designated to collect Medi–Cal overpayments caused by AFDC recipients.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; Section 133.5, Chapter 102, Statutes of 1981. Reference: Sections 11004, 14009 and 14016., Welfare and Institutions Code.

HISTORY

1. Amendment filed 12–30–81 as an emergency; effective upon filing (Register 82, No. 1). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–29–82.
2. Certificate of Compliance transmitted to OAL 4–23–82 and filed 5–12–82 (Register 82, No. 20).
3. Amendment of subsection (a)(2)(C) filed 5–12–82; effective thirtieth day thereafter (Register 82, No. 20).

§ 50793. Utilization Restrictions.

(a) A beneficiary who has been determined by the Department to be misusing or abusing Medi–Cal benefits by obtaining drugs or other services at a frequency or amount not medically necessary may be subjected to one or more of the following forms of utilization restriction:

(1) Prior authorization for all Medi–Cal services.

(2) Prior authorization for specific Medi–Cal services.

(3) Restriction to utilization of a specific, beneficiary– or Department–selected pharmacy.

(4) Restriction to a specific, beneficiary– or Department–selected primary provider of medical services.

(b) Utilization restriction shall not apply in the following situations:

(1) Emergencies as defined in Section 51056.

(2) Referral of the restricted beneficiary to another provider by the beneficiary– or Department–selected primary provider of medical services.

(c) The Department shall impose utilization restriction upon a beneficiary only on the written order of the Director or the Director's designee. The written order, hereinafter referred to as the Notice of Action, shall:

(1) Include the reasons for the action.

(2) State the dates of the restriction period.

(3) Explain the beneficiary's right to and procedures for requesting a hearing.

(4) Be mailed to the beneficiary by regular mail at least ten days prior to the effective date.

(d) The restriction as described in (a) above shall be for a period of two (2) years from the effective date on the Notice of Action.

(e) Should the Department find during the term of the restriction that the potential for abuse still exists, so as to warrant continued restriction beyond the two (2) year period, the Department may extend the period of restriction. Each such extension shall:

(1) Be for an additional period of two (2) years.

(2) Require a separate Notice of Action in accordance with (c) above except that the Notice of Action must be mailed at least ninety (90) days prior to the effective date of the action.

(f) Should the beneficiary's request for a hearing be received prior to the effective date of the action:

(1) Said action will not be taken until the hearing has been held and a final decision rendered.

(2) The effective date of the action will be the first day of the month following the adoption, by the Director, of the final hearing decision, provided the notice of decision was mailed at least ten (10) days prior to the effective date of the action.

(g) Should the beneficiary's request for a hearing be received on or subsequent to the effective date of the action, said action will remain in full force and effect until the hearing has been held and a final decision rendered.

(h) Under no circumstances shall the months wherein a beneficiary is off restricted status solely due to requesting a hearing be counted toward the two year period as provided for in (d) or (e) above.

(i) There is no right to a hearing when a beneficiary is placed on restricted status as a result of his or her conviction of any misdemeanor or felony involving fraud or abuse of medical assistance benefits or services or in connection with any public assistance program.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14124.5, Welfare and Institutions Code.

HISTORY

1. Amendment filed 8–16–78 as an emergency; designated effective 8–16–78 (Register 78, No. 32).

2. Certificate of Compliance filed 12–12–78 (Register 78, No. 50).
3. Amendment filed 6–22–87; operative 7–22–87 (Register 87, No. 28).

Article 17. Dialysis Medi–Cal Program

§ 50801. Medi–Cal Special Treatment Programs—General.

For the purposes of determining eligibility for Medi–Cal Special Treatment Programs, the regulations in this article shall supersede any conflicting regulations in this chapter.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14141, 14142, 14143, 14144 and 14144.5, Welfare and Institutions Code.

HISTORY

1. Amendment filed 5–16–80 as an emergency; effective upon filing (Register 80, No. 20). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 9–14–80.
2. Certificate of Compliance filed 8–22–80 (Register 80, No. 34).
3. Amendment filed 3–25–81 as an emergency; effective upon filing (Register 81, No. 13). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–23–81.
4. Order of Repeal of 3–25–81 emergency order filed 4–3–81 by OAL pursuant to Government Code Section 11349.6 (Register 81, No. 14).
5. Amendment filed 7–19–82; effective thirtieth day thereafter (Register 82, No. 30).
6. Editorial correction of NOTE filed 11–10–83 (Register 83, No. 46).

§ 50803. Medi–Cal Special Treatment Programs Beneficiary.

(a) Medi–Cal Special Treatment Programs beneficiary means a person who is either a Medi–Cal Special Treatment Programs—Only beneficiary or a Medi–Cal Special Treatment Programs—Supplement beneficiary.

(1) Medi–Cal Special Treatment Programs—Only beneficiary means a person who has been determined eligible for Medi–Cal Special Treatment Programs—Only coverage in accordance with Section 50817(b).

(2) Medi–Cal Special Treatment Programs—Supplement beneficiary means a person who is a Medi–Cal Medically Needy or Medically Indigent beneficiary and who has been determined eligible for the Medi–Cal Special Treatment Programs—Supplement coverage in accordance with Section 50817(c).

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4, 14005.7, 14141, 14142, 14143, 14144 and 14144.5, Welfare and Institutions Code.

HISTORY

1. Amendment filed 5–16–80 as an emergency; effective upon filing (Register 80, No. 20). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 9–14–80.
2. Certificate of Compliance filed 8–22–80 (Register 80, No. 34).
3. Amendment filed 3–25–81 as an emergency; effective upon filing (Register 81, No. 13). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–23–81.
4. Order of Repeal of 3–25–81 emergency order filed 4–3–81 by OAL pursuant to Government Code Section 11349.6 (Register 81, No. 14).
5. Amendment filed 7–19–82; effective thirtieth day thereafter (Register 82, No. 30).
6. Editorial correction of NOTE filed 11–10–83 (Register 83, No. 46).

§ 50805. Real Property—Medi–Cal Special Treatment Programs

Real property means any interest in land and improvements.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14140, 14141, 14142, 14143, 14144 and 14144.5, Welfare and Institutions Code.

HISTORY

1. Amendment filed 5–16–80 as an emergency; effective upon filing (Register 80, No. 20). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 9–14–80.
2. Certificate of Compliance filed 8–22–80 (Register 80, No. 34).
3. Amendment filed 3–25–81 as an emergency; effective upon filing (Register 81, No. 13). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–23–81.
4. Order of Repeal of 3–25–81 emergency order filed 4–3–81 by OAL pursuant to Government Code Section 11349.6 (Register 81, No. 14).
5. Amendment of section heading filed 7–19–82; effective thirtieth day thereafter (Register 82, No. 30).
6. Editorial correction of NOTE filed 11–10–83 (Register 83, No. 46).

§ 50807. Personal Property—Medi–Cal Special Treatment Programs.

Personal property means cash, savings accounts, securities and similar items; notes, mortgages and deeds of trust; the cash surrender value of life insurance on the life of the beneficiary, spouse or any member of the family; motor vehicles; and any other property or equity other than real property.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14140, 14141, 14142, 14143, 14144 and 14144.5, Welfare and Institutions Code.

HISTORY

1. Amendment filed 5–16–80 as an emergency; effective upon filing (Register 80, No. 20). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 9–14–80.
2. Certificate of Compliance filed 8–22–80 (Register 80, No. 34).
3. Amendment filed 3–25–81 as an emergency; effective upon filing (Register 81, No. 13). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–23–81.
4. Order of Repeal of 3–25–81 emergency order filed 4–3–81 by OAL pursuant to Government Code Section 11349.6 (Register 81, No. 14).
5. Amendment of section heading filed 7–19–82; effective thirtieth day thereafter (Register 82, No. 30).
6. Editorial correction of NOTE filed 11–10–83 (Register 83, No. 46).

§ 50809. Gross Income—Medi–Cal Special Treatment Programs.

Gross income means adjusted annual gross income as used for purposes of federal income tax reporting.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14140, 14141, 14142, 14143, 14144 and 14144.5, Welfare and Institutions Code.

HISTORY

1. Amendment filed 5–16–80 as an emergency; effective upon filing (Register 80, No. 20). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 9–14–80.
2. Certificate of Compliance filed 8–22–80 (Register 80, No. 34).
3. Amendment filed 3–25–81 as an emergency; effective upon filing (Register 81, No. 13). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–23–81.
4. Order of Repeal of 3–25–81 emergency order filed 4–3–81 by OAL pursuant to Government Code Section 11349.6 (Register 81, No. 14).
5. Amendment of section heading filed 7–19–82; effective thirtieth day thereafter (Register 82, No. 30).
6. Editorial correction of NOTE filed 11–10–83 (Register 83, No. 46).

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§ 50811. Annual Net Worth.

Annual net worth means the total market value of all property and gross income received for a 12–month period by the applicant or beneficiary, in accordance with Section 50825.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14141, 14142, 14143, 14144 and 14144.5, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 11–10–83 (Register 83, No. 46).

§ 50813. Percentage Obligation.

Percentage obligation means the percent of the cost of dialysis or parenteral hyperalimentation and related services for which a Medi–Cal Special Treatment Programs beneficiary must either pay or assume full legal responsibility.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14141, 14142, 14143, 14144 and 14144.5, Welfare and Institutions Code.

HISTORY

1. Amendment filed 5–16–80 as an emergency; effective upon filing (Register 80, No. 20). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 9–14–80.
2. Certificate of Compliance filed 8–22–80 (Register 80, No. 34).
3. Amendment filed 3–25–81 as an emergency; effective upon filing (Register 81, No. 13). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–23–81.
4. Order of Repeal of 3–25–81 emergency order filed 4–3–81 by OAL pursuant to Government Code Section 11349.6 (Register 81, No. 14).
5. Amendment filed 7–19–82; effective thirtieth day thereafter (Register 82, No. 30).
6. Editorial correction of NOTE filed 11–10–83 (Register 83, No. 46).

§ 50815. Application Process—Medi–Cal Special Treatment Programs.

(a) The county department shall receive and act on applications for the Medi–Cal Special Treatment Programs in accordance with Article 4.

(1) The Application for Public Social Services, Form CA 1, shall be used as the application form.

(2) The name of the applicable Medi–Cal Special Treatment Program shall be indicated immediately above the "Medi–Cal card" box on Form CA 1.

(b) The county, in addition to meeting the requirements of Section 50157(f) and (g), shall provide Medi–Cal Special Treatment Programs—Supplement applicants a copy of the applicable Medi–Cal Special Treatment Programs—Supplement Client Information statement at the initial and redetermination or reapplication interviews. A signed and dated copy of the applicable Medi–Cal Special Treatment Programs—Supplement Client Information statement shall be placed in the case folder.

(c) A redetermination shall be required annually.

(d) The county department shall require Medi–Cal Special Treatment Programs—Only and Medi–Cal Special Treatment Programs—Supplement beneficiaries to complete a Medi–Cal Status Report, Form MC 176S, no later than the third month following the month of Medi–Cal Special Treatment Programs eligibility approval and at three month intervals thereafter. Status reports shall not be required during the quarter in which an annual redetermination is completed.

(1) A reevaluation shall be made when a change in circumstances affects the percentage obligation or eligibility.

(2) Information supplied on the status report shall be considered in reevaluating percentage obligation or eligibility.

(e) Retroactive eligibility, as defined by Section 50710, shall not be provided under the Medi–Cal Special Treatment Programs.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4, 14005.7, 14141, 14142, 14143, 14144 and 14144.5, Welfare and Institutions Code.

HISTORY

1. Amendment filed 5–16–80 as an emergency; effective upon filing (Register 80, No. 20). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 9–14–80.
2. Certificate of Compliance filed 8–22–80 (Register 80, No. 34).
3. Amendment of subsection (d) filed 10–3–80; effective thirtieth day thereafter (Register 80, No. 40).
4. Amendment filed 3–25–81 as an emergency; effective upon filing (Register 81, No. 13). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–23–81.
5. Order of Repeal of 3–25–81 emergency order filed 4–3–81 by OAL pursuant to Government Code Section 11349.6 (Register 81, No. 14).
6. Amendment filed 7–19–82; effective thirtieth day thereafter (Register 82, No. 30).
7. Editorial correction of NOTE filed 11–10–83 (Register 83, No. 46).

§ 50817. Eligibility Requirements—Medi–Cal Special Treatment Programs.

(a) Applicants for Medi–Cal Special Treatment programs shall meet cooperation, citizenship, residence, institutional status and transfer of property requirements in Article 4, 6 and 9.

(b) Applicants shall be eligible for Medi–Cal Special Treatment Programs—Only coverage if they are all of the following:

(1) In need of dialysis or parenteral hyperalimentation and related services.

(2) Otherwise eligible for Medi–Cal under Section 50203 as Medically Needy or Section 50251 as Medically Indigent except for property which exceeds the limits set forth in Article 9.

(3) Not eligible for renal dialysis Medicare if under 65 years of age. Medicare eligibility shall not affect Medi–Cal Special Treatment Programs—Only eligibility for persons age 65 or for persons applying for parenteral hyperalimentation coverage.

(c) Applicants shall be eligible for the Medi–Cal Special Treatment Programs—Supplement coverage if they are all of the following:

(1) Eligible under Section 50203 as Medically Needy or Section 50251 as Medically Indigent. Medicare eligibility shall not affect Medi–Cal Special Treatment Programs—Supplement eligibility.

(2) In need of dialysis or parenteral hyperalimentation and related services.

(3) Employed or self–employed.

(4) Earning an individual gross income that exceeds the minimum maintenance need for one person.

(d) Applicants for the Medi–Cal Special Treatment Programs shall apply for Medicare as follows:

(1) Applicants for dialysis coverage shall apply for Medicare within ten days of making application for a Medi–Cal Special Treatment Program. Applicants who fail to apply for Medicare within the prescribed time period, except for good cause as exemplified under Section 50175 (c), shall have the application denied under that specific Medi–Cal Special Treatment Program.

(2) Applicants for or beneficiaries of parenteral hyperalimentation coverage shall apply for Medicare in accordance with Section 50777.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4, 14005.7, 14015, 14141, 14142, 14143, 14144 and 14144.5, Welfare and Institutions Code.

HISTORY

1. Amendment filed 5–16–80 as an emergency; effective upon filing (Register 80, No. 20). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 9–14–80.
2. Certificate of Compliance filed 8–22–80 (Register 80, No. 34).
3. Amendment filed 3–25–81 as an emergency; effective upon filing (Register 81, No. 13). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–23–81.
4. Order of Repeal of 3–25–81 emergency order filed 4–3–81 by OAL pursuant to Government Code Section 11349.6 (Register 81, No. 14).
5. Amendment filed 7–19–82; effective thirtieth day thereafter (Register 82, No. 30).
6. Editorial correction of NOTE filed 11–10–83 (Register 83, No. 46).
7. Amendment of subsections (b)(2) and (b)(3) filed 6–3–87; operative 7–3–87 (Register 87, No. 24).

§ 50819. Verification Requirements—Medi–Cal Special Treatment Programs.

(a) All Medi–Cal Special Treatment Program applicants or beneficiaries shall provide the following:

(1) Applicable verification required under Article 4.

(2) A copy of the Social Security statement of Medicare status to the county department within ten days of receipt.

(b) Dialysis Program beneficiaries shall provide verification of Medicare status at the following times:

(1) Annual redetermination, if previous verification does not indicate current status.

(2) Each month in which it appears there may be a change in Medicare eligibility status if the beneficiary is currently ineligible for Medicare.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14141, 14142, 14143, 14144 and 14144.5, Welfare and Institutions Code.

HISTORY

1. Amendment filed 5–16–80 as an emergency; effective upon filing (Register 80, No. 20). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 9–14–80.
2. Certificate of Compliance filed 8–22–80 (Register 80, No. 34).
3. Amendment filed 3–25–81 as an emergency; effective upon filing (Register 81, No. 13). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–23–81.
4. Order of Repeal of 3–25–81 emergency order filed 4–3–81 by OAL pursuant to Government Code Section 11349.6 (Register 81, No. 14).
5. Amendment filed 7–19–82; effective thirtieth day thereafter (Register 82, No. 30).
6. Editorial correction of NOTE filed 11–10–83 (Register 83, No. 46).

§ 50820. Eligibility Determination for Medi–Cal Special Treatment Programs.

(a) The county department shall determine a person's eligibility for the Medi–Cal Special Treatment programs as follows:

(1) Persons who apply for the Medi–Cal Dialysis Only Program or the Medi–Cal Dialysis Supplement Program shall have their eligibility determined as of the month of application.

(2) Persons who apply for the Medi–Cal Parenteral Hyperalimentation Only Program or the Medi–Cal Parenteral Hyperalimentation Supplement Program on or before the last day of the second month following the month these regulations are effective shall have their eligibility determined retroactively to January 1, 1981, for months in which they otherwise meet program eligibility requirements.

(3) Persons who apply for the Medi–Cal Parenteral Hyperalimentation Only Program or the Medi–Cal Parenteral Hyperalimentation Supplement Program after the last day of the second month following the month these regulations are effective shall have their eligibility determined as of the month of application.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14142 ad 14144.5, Welfare and Institutions Code.

HISTORY

1. New section filed 5–16–80 as an emergency; effective upon filing (Register 80, No. 20). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 9–14–80.
2. Certificate of Compliance filed 8–22–80 (Register 80, No. 34).
3. Amendment filed 3–25–81 as an emergency; effective upon filing (Register 81, No. 13). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–23–81.
4. Order of Repeal of 3–25–81 emergency order filed 4–3–81 by OAL pursuant to Government Code Section 11349.6 (Register 81, No. 14).
5. Amendment filed 7–19–82; effective thirtieth day thereafter (Register 82, No. 30).
6. Editorial correction of NOTE filed 11–10–83 (Register 83, No. 46).

§ 50821. Medi–Cal Special Treatment Program.

(a) The Department shall provide a Medi–Cal Special Treatment Program card to each Medi–Cal Special Treatment Programs beneficiary. Each Medi–Cal Special Treatment Program card shall identify the program for which the beneficiary is eligible.

(b) The individual Medi–Cal Special Treatment Program cards shall be authorization for payment of the cost of covered services in accordance with regulations of the Department, if the costs of those services:

(1) Were incurred during the period covered by the Medi–Cal Special Treatment Programs card.

(2) Are not payable by a third party under contractual or other legal entitlement.

(3) Are not paid or obligated by the Medi–Cal Special Treatment Programs beneficiary as part of the percentage obligation.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14141, 14142, 14143, 14144 and 14144.5, Welfare and Institutions Code.

HISTORY

1. Amendment filed 5–16–80 as an emergency; effective upon filing (Register 80, No. 20). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 9–14–80.
2. Certificate of Compliance filed 8–22–80 (Register 80, No. 34).
3. Amendment filed 3–25–81 as an emergency; effective upon filing (Register 81, No. 13). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–23–81.
4. Order of Repeal of 3–25–81 emergency order filed 4–3–81 by OAL pursuant to Government Code Section 11349.6 (Register 81, No. 14).
5. Amendment filed 7–19–82; effective thirtieth day thereafter (Register 82, No. 30).
6. Editorial correction of NOTE filed 11–10–83 (Register 83, No. 46).

§ 50823. Beginning Date of Eligibility—Medi–Cal Special Treatment Programs.

The beginning date of eligibility for the Medi–Cal Special Treatment Programs shall be the first of the month of application or the first of the month during which there is eligibility, whichever is later. However, the beginning date of eligibility for persons who apply for either the Medi–Cal Parenteral Hyperalimentation Only Program or the Medi–Cal Parenteral Hyperalimentation Supplement Program on or before the last day of the second month following the month these regulations are effective shall be the first of the month in which there is eligibility as determined pursuant to Section 50820(a)(2).

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14141, 14142, 14143, 14144 and 14144.5, Welfare and Institutions Code.

HISTORY

1. Amendment filed 5–16–80 as an emergency; effective upon filing (Register 80, No. 20). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 9–14–80.
2. Certificate of Compliance filed 8–22–80 (Register 80, No. 34).
3. Amendment filed 3–25–81 as an emergency; effective upon filing (Register 81, No. 13). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–23–81.
4. Order of Repeal of 3–25–81 emergency order filed 4–3–81 by OAL pursuant to Government Code Section 11349.6 (Register 81, No. 14).
5. Amendment filed 7–19–82; effective thirtieth day thereafter (Register 82, No. 30).
6. Editorial correction of NOTE filed 11–10–83 (Register 83, No. 46).

§ 50825. Determination of Annual Net Worth.

(a) Annual net worth shall be determined by combining the net market value of all property, other than the property excluded in (c), and the net income reasonably expected to be received in a 12–month period by the persons whose property and income are considered in accordance with (b). The initial 12–month period shall begin on the first of the month of initial eligibility.

(b) In determining the annual net worth of a beneficiary, the property and income of the following persons shall be considered:

(1) The beneficiary.

(2) The beneficiary's spouse.

(3) The beneficiary's parents, if the beneficiary is all of the following:

(A) Under 21 years of age.

(B) Unmarried.

(C) Living with the parents.

(c) The following real and personal property shall be excluded in determining annual net worth:

(1) One motor vehicle used for the transportation needs of the beneficiary or any member of the family.

(2) The first $40,000 of market value of the beneficiary's home. The remaining market value, less pro rata encumbrances, shall be included in net worth determination.

(3) The first $1,000 paid for life insurance placed in burial trusts for funeral, cremation or interment expenses.

(4) Wedding and engagement rings, heirlooms, clothing, household furnishings and equipment.

(5) Equipment, inventory, licenses and materials owned by the applicant or beneficiary which are necessary for employment, for self-support or for an approved plan of rehabilitation or self-care necessary for employment shall be exempt as follows:

(A) Motor vehicles necessary for employment or self-support, in addition to the motor vehicle exempt in (c)(1), shall be exempt.

(B) Other property necessary for employment or self-support shall be exempt in accordance with 50485.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11155, 11158, 14140, 14141, 14142 and 14144.5, Welfare and Institutions Code.

HISTORY

1. Amendment of subsections (a) and (c)(3) filed 5-16-80 as an emergency; effective upon filing (Register 80, No. 20). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 9-14-80.
2. Certificate of Compliance filed 8-22-80 (Register 80, No. 34).
3. Amendment filed 7-19-82; effective thirtieth day thereafter (Register 82, No. 30).
4. Editorial correction of NOTE filed 11-10-83 (Register 83, No. 46).
5. Editorial correction of NOTE (Register 97, No. 37).

§ 50827. Determination and Application of Percentage Obligation—Medi-Cal Special Treatment Programs.

(a) The percentage obligation shall be based upon the annual net worth of the Medi-Cal Special Treatment Programs applicant or beneficiary.

(b) The percentage obligation shall be applied to the cost of allowable services remaining unpaid, after the Medi-Cal Special Treatment Programs beneficiary has utilized benefits available under any other federal or state law or other contractual or legal entitlements.

(c) The amount of the percentage obligation shall not be:

(1) A claim against any of the Medi-Cal Special Treatment Programs.

(2) Reimbursed by a third party.

(d) The percentage obligation of a Medi-Cal Special Treatment Programs—Only beneficiary shall be determined as follows:

(1) Applicants or beneficiaries who are determined to have an annual net worth of less than $5,000 shall be assigned a zero percentage obligation.

(2) Applicants or beneficiaries who are determined to have an annual net worth of $5,000 or more shall be assigned a percentage obligation of two percent for each $5,000 of net worth, including the first $5,000.

(e) The percentage obligation of a Medi-Cal Special Treatment Programs—Supplement beneficiary shall be determined as follows:

(1) Applicants or beneficiaries who are determined to have an annual net worth of less than $5,000 shall be assigned a zero percentage obligation.

(2) Applicants or beneficiaries who are determined to have an annual net worth of $5,000 or more shall be assigned a percentage obligation of one percent for each $5,000 of net worth, including the first $5,000.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14141, 14142, 14143, 14144 and 14144.5, Welfare and Institutions Code.

HISTORY

1. Amendment fled 5-16-80 as an emergency; effective upon filing (Register 80, No. 20). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 9-14-80.
2. Certificate of Compliance filed 8-22-80 (Register 80, No. 34).
3. Amendment filed 3-25-81 as an emergency; effective upon filing (Register 81, No. 13). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7-23-81.
4. Order of Repeal of 3-25-81 emergency order filed 4-3-81 by OAL pursuant to Government Code Section 11349.6 (Register 81, No. 14).
5. Amendment filed 7-19-82; effective thirtieth day thereafter (Register 82, No. 30).
6. Editorial correction of NOTE filed 11-10-83 (Register 83, No. 46).

§ 50829. Declaration of Acceptance.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14142 and 14144.5, Welfare and Institutions Code.

HISTORY

1. Repealer filed 7-19-82; effective thirtieth day thereafter (Register 82, No. 30).
2. Editorial correction of NOTE filed 11-10-83 (Register 83, No. 46).

§ 50831. Share of Cost—Medi-Cal Special Treatment Programs—Supplement Beneficiary.

(a) Services within the Medi-Cal scope of benefits, other than services covered under the Medi-Cal Special Treatment Programs—Supplement shall be subject to a share of cost.

(b) Share of cost shall be determined in accordance with Section 50653.

(c) Costs which are paid or obligated by the beneficiary under the Medi-Cal Special Treatment Programs—Supplement in any one month shall be applied to the share of cost for that month.

(d) A Medi-Cal Special Treatment Programs—Supplement beneficiary, who is a member of an MFBU which has met its share of cost, shall be certified as eligible for Medi-Cal services and shall be issued a Medi-Cal card in accordance with Section 50658. Once certified for full Medi-Cal coverage, all Medi-Cal services received by a beneficiary during that month shall be covered under the provisions of the full Medi-Cal program rather than under the provisions of the Medi-Cal Special Treatment Programs—Supplement.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4, 14005.7, 14005.9, 14054 and 14144.5, Welfare and Institutions Code.

HISTORY

1. New section filed 5-16-80 as an emergency; effective upon filing (Register 80, No. 20). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 9-14-80.
2. Certificate of Compliance filed 8-22-80 (Register 80, No. 34).
3. Amendment filed 3-25-81 as an emergency; effective upon filing (Register 81, No. 13). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7-23-81.
4. Order of Repeal of 3-25-81 emergency order filed 4-3-81 by OAL pursuant to Government Code Section 11349.6 (Register 81, No. 14).
5. Amendment filed 7-19-82; effective thirtieth day thereafter (Register 82, No. 30).
6. Editorial correction of NOTE filed 11-10-83 (Register 83, No. 46).

Article 18. State Administrative Hearings

§ 50951. Right to State Hearing.

(a) Applicants or beneficiaries shall have the right to a State hearing if dissatisfied with any action or inaction of the county department, the Department of Health Services or any person or organization acting in behalf of the county or he Department relating to Medi-Cal eligibility or benefits. There is no right to a state hearing where the sole issue is the application of a State or federal law and both of the following conditions are met:

(1) The applicant or beneficiary does not question that the State or federal law has been correctly applied.

(2) The State or federal law requires a reduction in Medi-Cal entitlement for some or all beneficiaries.

(b) The right to a state hearing shall be governed by the provisions of Sections 10950 through 10965, Welfare and Institutions Code.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 10950-10965, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (a) filed 12-15-77; effective thirtieth day thereafter (Register 77, No. 51).
2. Amendment and new Article 18 title filed 5-30-80 as an emergency; effective upon filing (Register 80, No. 22). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 9-27-80.

3. Certificate of Compliance filed 9–26–80 (Register 80, No. 39).
4. Amendment of subsection (a) filed 1–13–81 as an emergency; effective upon filing (Register 81, No. 3). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 5–13–81.
5. Certificate of Compliance transmitted to OAL 4–22–81 and filed 5–19–81 (Register 81, No. 21).
6. Amendment of subsection (a) filed 7–17–81; effective thirtieth day thereafter (Register 81, No. 29).

§ 50953. State Hearing Procedures.

(a) Fair hearings under the provision of the statute specified in Section 50951 (b) shall be conducted in accordance with the regulations and procedures of the Department of Social Services (DSS), unless otherwise specified in these regulations. Department of Health Services regulations shall prevail over DSS regulations in the circumstances of a State hearing related to termination or reduction of medical services in accordance with Sections 51014.1 and 51014.2.

(b) Prehearing procedures and representation at the hearing shall be the responsibility of the:

(1) County for those State hearings in which the issue involves county action or inaction.

(2) Department for those State hearings in which the issue involves Department action or inaction.

(3) Both the county and the Department when the issue involves action or inaction by both the county and the Department.

(c) The Director may develop an agreement with another agency to perform the State hearings. The Department shall retain sole authority for decision–making on Medi–Cal issues.

(1) Each proposed decision involving Medi–Cal issues shall be submitted to the Department for action. Substantive review for the conformity of the proposed decision to the Department's regulations and policies shall be the sole responsibility of the Director. The Director shall take action on the proposed decision within 30 days following actual receipt by the Department.

(2) All requests for rehearing or reconsideration of cases involving Medi–Cal shall be acted upon by the Director. The Director shall grant or deny the request no earlier than 5 nor later than 15 working days after the request is actually received by the Department. If action is not taken by the Director within this period, the request for rehearing shall be deemed denied.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 10950–10965, 14001 and 14124.5, Welfare and Institutions Code.

HISTORY

1. Amendment of subsections (a) and (b) filed 12–15–77; effective thirtieth day thereafter (Register 77, No. 51).
2. Amendment of subsection (a) filed 3–15–79 as an emergency; effective upon filing (Register 79, No. 11).
3. Certificate of Compliance filed 6–28–79 (Register 79, No. 26).
4. Amendment filed 5–30–80 as an emergency; effective upon filing (Register 80, No. 22). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 9–27–80.
5. Certificate of Compliance filed 9–26–80 (Register 80, No. 39).
6. Amendment of subsection (c)(2) filed 12–27–85; effective thirtieth day thereafter (Register 85, No. 52).

§ 50955. Fair Hearing—Assistance in Filing.

The county department shall assist the applicant or beneficiary in filing a request for a fair hearing, if the applicant or beneficiary requests such assistance.

Article 19. Medi–Cal Estate Recovery

§ 50960. Definitions.

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code. Reference: Section 1396p(b), 42 USC; and Section 14009.5, Welfare and Institutions Code; *Belshe v. Hope* (1995) 33 Cal. App. 4th 161; and *California Advocates for Nursing Home Reform v. Bontá* (2003) 106 Cal. App. 4th 498.

HISTORY

1. Relocation and amendment of article 19 heading and new section filed 5–2–94 as an emergency; operative 5–2–94 (Register 94, No. 18). A Certificate of Compliance must be transmitted to OAL by 8–30–94 or emergency language will be repealed by operation of law on the following day.
2. Repealed on 8–31–94 by operation of law.
3. Amendment of article 19 heading and new section filed 4–27–95 as an emergency; operative 4–27–95 (Register 95, No. 17). Exempt from OAL review pursuant to Chapter 147, Statutes of 1994, section 32. A Certificate of Compliance must be transmitted to OAL by 10–24–95 or emergency language will be repealed by operation of law on the following day.
4. Amendment of article 19 heading and new section refiled 11–22–95 as an emergency; operative 11–22–95 (Register 95, No. 47). Exempt from OAL review pursuant to Chapter 147, Statutes of 1994, section 32. A Certificate of Compliance must be transmitted to OAL by 3–21–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 4–27–95 order, including amendment of subsections (c) and (d) and NOTE, transmitted to OAL 2–6–96 and filed 3–19–96 (Register 96, No. 12).
6. Amendment of section and NOTE filed 7–27–2004 as an emergency; operative 7–27–2004 (Register 2004, No. 31). Exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75. A Certificate of Compliance must be transmitted to OAL by 11–24–2004 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7–27–2004 order transmitted to OAL 11–19–2004 and filed 1–3–2005 (Register 2005, No. 1).
8. Repealer filed 3–23–2005; this filing is deemed an emergency and is exempt from review by OAL pursuant to Welfare and Institutions Code section 14043.75(a); effective 3–23–2005 (Register 2005, No. 12). A Certificate of Compliance must be transmitted to OAL by 7–21–2005 or emergency language will be repealed by operation of law on the following day.
9. Reinstatement of section as it existed prior to 3–23–2005 emergency repeal by operation of Government Code section 11346.1(f) (Register 2005, No. 41).
10. Repealer filed 5–10–2006; operative 5–10–2006 pursuant to Government Code section 11343.4 (Register 2006, No. 19).

Chapter 2.5. Third Party Liability

Article 1. Definitions

§ 50960.2. Annuity.

"Annuity" means a contract, which gives a person or entity the right to receive periodic payments of a fixed or variable sum, either for life or for a term of years, and which also may include a lump sum payment or periodic payments upon the death of the decedent.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 1396p(b), 42 USC; Section 14009.5, Welfare and Institutions Code; *Belshé v. Hope* (1995) 33 Cal. App. 4th 161; and *California Advocates for Nursing Home Reform v. Bontá* (2003) 106 Cal. App. 4th 498.

HISTORY

1. New chapter 2.5, article 1 (sections 50960.2–50960.36) and new section filed 3–23–2005; this filing is deemed an emergency and is exempt from review by OAL pursuant to Welfare and Institutions Code section 14043.75(a); effective 3–23–2005 (Register 2005, No. 12). A Certificate of Compliance must be transmitted to OAL by 7–21–2005 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 2005, No. 41).
3. New section filed 5–10–2006; operative 5–10–2006 pursuant to Government Code section 11343.4 (Register 2006, No. 19).
4. Change without regulatory effect amending NOTE filed 4–15–2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 16).

§ 50960.4. Applicant.

"Applicant" means a dependent, heir, or survivor of the decedent seeking a waiver of his or her portion of the Department's estate claim due to substantial hardship.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 1396p(b), 42 USC; Section 14009.5, Welfare and Institutions Code; *Belshé v. Hope* (1995) 33 Cal. App. 4th 161; and *California Advocates for Nursing Home Reform v. Bontá* (2003) 106 Cal. App. 4th 498.

HISTORY

1. New section filed 3–23–2005; this filing is deemed an emergency and is exempt from review by OAL pursuant to Welfare and Institutions Code section

14043.75(a); effective 3–23–2005 (Register 2005, No. 12). A Certificate of Compliance must be transmitted to OAL by 7–21–2005 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 2005, No. 41).
3. New section filed 5–10–2006; operative 5–10–2006 pursuant to Government Code section 11343.4 (Register 2006, No. 19).
4. Change without regulatory effect amending NOTE filed 4–15–2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 16).

§ 50960.6. Dependent.

"Dependent" means an immediate family or blood relative of the decedent who relied on the decedent for support and who is entitled to receive estate property.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 1396p(b), 42 USC; Section 14009.5, Welfare and Institutions Code; *Belshé v. Hope* (1995) 33 Cal. App. 4th 161; and *California Advocates for Nursing Home Reform v. Bontá* (2003) 106 Cal. App. 4th 498.

HISTORY

1. New section filed 5–10–2006; operative 5–10–2006 pursuant to Government Code section 11343.4 (Register 2006, No. 19).
2. Change without regulatory effect amending NOTE filed 4–15–2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 16).

§ 50960.9. Equity Interest.

"Equity interest" means the fair market value of the property to which the decedent held legal title or interest at the time of death (to the extent of such interest), less the amount owed in deeds of trust, mortgages, and liens on record at the time of death.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 1396p(b), 42 USC; Section 14009.5, Welfare and Institutions Code; *Belshé v. Hope* (1995) 33 Cal. App. 4th 161; and *California Advocates for Nursing Home Reform v. Bontá* (2003) 106 Cal. App. 4th 498.

HISTORY

1. New section filed 3–23–2005; this filing is deemed an emergency and is exempt from review by OAL pursuant to Welfare and Institutions Code section 14043.75(a); effective 3–23–2005 (Register 2005, No. 12). A Certificate of Compliance must be transmitted to OAL by 7–21–2005 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 2005, No. 41).
3. New section filed 5–10–2006; operative 5–10–2006 pursuant to Government Code section 11343.4 (Register 2006, No. 19).
4. Change without regulatory effect amending NOTE filed 4–15–2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 16).

§ 50960.12. Estate.

"Estate" means either:

(a) For individuals who die on or after October 1, 1993, and for payments made on or after October 1, 1993, "estate" is defined as all real and personal property and other assets in which the decedent had any legal title or interest at the time of death (to the extent of such interest), including assets conveyed to a dependent, heir, survivor, or assignee of the decedent through joint tenancy, tenancy in common, survivorship, life estate, living trust, annuities purchased on or after September 1, 2004, life insurance policy that names the estate as the beneficiary or reverts to the estate, or any retirement account that names the estate as the beneficiary or reverts to the estate;

(b) For individuals who died prior to October 1, 1993, "estate" is defined according to the common law. For purposes of this article, estate includes property that passes from a decedent to his or her heirs by way of a revocable inter vivos trust.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 1396p(b), 42 USC; Section 14009.5, Welfare and Institutions Code; *Belshé v. Hope* (1995) 33 Cal. App. 4th 161; and *California Advocates for Nursing Home Reform v. Bontá* (2003) 106 Cal. App. 4th 498.

HISTORY

1. New section filed 3–23–2005; this filing is deemed an emergency and is exempt from review by OAL pursuant to Welfare and Institutions Code section 14043.75(a); effective 3–23–2005 (Register 2005, No. 12). A Certificate of Compliance must be transmitted to OAL by 7–21–2005 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 2005, No. 41).
3. New section filed 5–10–2006; operative 5–10–2006 pursuant to Government Code section 11343.4 (Register 2006, No. 19).
4. Change without regulatory effect amending NOTE filed 4–15–2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 16).

§ 50960.15. Estate Hearing.

"Estate hearing" means a hearing conducted in person, before the hearing office appointed by the Director, in which an applicant may seek a waiver of the claim because of substantial hardship.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 1396p(b), 42 USC; Section 14009.5, Welfare and Institutions Code; *Belshé v. Hope* (1995) 33 Cal. App. 4th 161; and *California Advocates for Nursing Home Reform v. Bontá* (2003) 106 Cal. App. 4th 498.

HISTORY

1. New section filed 3–23–2005; this filing is deemed an emergency and is exempt from review by OAL pursuant to Welfare and Institutions Code section 14043.75(a); effective 3–23–2005 (Register 2005, No. 12). A Certificate of Compliance must be transmitted to OAL by 7–21–2005 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 2005, No. 41).
3. New section filed 5–10–2006; operative 5–10–2006 pursuant to Government Code section 11343.4 (Register 2006, No. 19).
4. Change without regulatory effect amending NOTE filed 4–15–2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 16).

§ 50960.21. Fair Market Value.

"Fair market value" means the price that goods or property would bring in an open market of willing buyers and sellers, with neither party being under pressure to buy or sell, at the time of the decedent's death.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 1396p(b), 42 USC; Section 14009.5, Welfare and Institutions Code; *Belshé v. Hope* (1995) 33 Cal. App. 4th 161; and *California Advocates for Nursing Home Reform v. Bontá* (2003) 106 Cal. App. 4th 498.

HISTORY

1. New section filed 3–23–2005; this filing is deemed an emergency and is exempt from review by OAL pursuant to Welfare and Institutions Code section 14043.75(a); effective 3–23–2005 (Register 2005, No. 12). A Certificate of Compliance must be transmitted to OAL by 7–21–2005 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 2005, No. 41).
3. New section filed 5–10–2006; operative 5–10–2006 pursuant to Government Code section 11343.4 (Register 2006, No. 19).
4. Change without regulatory effect amending NOTE filed 4–15–2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 16).

§ 50960.23. Heir.

"Heir" means a person who survives the decedent and is designated to receive some or all of the decedent's property.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 1396p(b), 42 USC; Section 14009.5, Welfare and Institutions Code; *Belshé v. Hope* (1995) 33 Cal. App. 4th 161; and *California Advocates for Nursing Home Reform v. Bontá* (2003) 106 Cal. App. 4th 498.

HISTORY

1. New section filed 3–23–2005; this filing is deemed an emergency and is exempt from review by OAL pursuant to Welfare and Institutions Code section 14043.75(a); effective 3–23–2005 (Register 2005, No. 12). A Certificate of Compliance must be transmitted to OAL by 7–21–2005 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 2005, No. 41).
3. New section filed 5–10–2006; operative 5–10–2006 pursuant to Government Code section 11343.4 (Register 2006, No. 19).
4. Change without regulatory effect amending NOTE filed 4–15–2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 16).

§ 50960.26. Irrevocable Transfer.

"Irrevocable transfer" means a grant of an interest in real property where the transferor does not retain the right to revoke the interest granted.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 1396p(b), 42

USC; Section 14009.5, Welfare and Institutions Code; *Belshé v. Hope* (1995) 33 Cal. App. 4th 161; and *California Advocates for Nursing Home Reform v. Bontá* (2003) 106 Cal. App. 4th 498.

HISTORY

1. New section filed 3–23–2005; this filing is deemed an emergency and is exempt from review by OAL pursuant to Welfare and Institutions Code section 14043.75(a); effective 3–23–2005 (Register 2005, No. 12). A Certificate of Compliance must be transmitted to OAL by 7–21–2005 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 2005, No. 41).
3. New section filed 5–10–2006; operative 5–10–2006 pursuant to Government Code section 11343.4 (Register 2006, No. 19).
4. Change without regulatory effect amending NOTE filed 4–15–2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 16).

§ 50960.29. Life Estate.

"Life estate" means an interest in real property whose duration is limited to the life of the estate holder or some other designated person, that grants the life estate tenant the right of occupancy and may include the right to receive any income derived from the property.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 1396p(b), 42 USC; Section 14009.5, Welfare and Institutions Code; *Belshé v. Hope* (1995) 33 Cal. App. 4th 161; and *California Advocates for Nursing Home Reform v. Bontá* (2003) 106 Cal. App. 4th 498.

HISTORY

1. New section filed 3–23–2005; this filing is deemed an emergency and is exempt from review by OAL pursuant to Welfare and Institutions Code section 14043.75(a); effective 3–23–2005 (Register 2005, No. 12). A Certificate of Compliance must be transmitted to OAL by 7–21–2005 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 2005, No. 41).
3. New section filed 5–10–2006; operative 5–10–2006 pursuant to Government Code section 11343.4 (Register 2006, No. 19).
4. Change without regulatory effect amending NOTE filed 4–15–2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 16).

§ 50960.32. Revocable Transfer.

"Revocable transfer" means a grant of an interest in real property where the transferor retains the right to revoke the interest granted, including a grant of a remainder interest in real property where the remainder interest does not transfer until the death of the grantor.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 1396p(b), 42 USC; Section 14009.5, Welfare and Institutions Code; *Belshé v. Hope* (1995) 33 Cal. App. 4th 161; and *California Advocates for Nursing Home Reform v. Bontá* (2003) 106 Cal. App. 4th 498.

HISTORY

1. New section filed 3–23–2005; this filing is deemed an emergency and is exempt from review by OAL pursuant to Welfare and Institutions Code section 14043.75(a); effective 3–23–2005 (Register 2005, No. 12). A Certificate of Compliance must be transmitted to OAL by 7–21–2005 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 2005, No. 41).
3. New section filed 5–10–2006; operative 5–10–2006 pursuant to Government Code section 11343.4 (Register 2006, No. 19).
4. Change without regulatory effect amending NOTE filed 4–15–2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 16).

§ 50960.34. Survivor.

"Survivor" means a person who becomes entitled to receive estate property by reason of having survived the decedent.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 1396p(b), 42 USC; Section 14009.5, Welfare and Institutions Code; *Belshé v. Hope* (1995) 33 Cal. App. 4th 161; and *California Advocates for Nursing Home Reform v. Bontá* (2003) 106 Cal. App. 4th 498.

HISTORY

1. New section filed 5–10–2006; operative 5–10–2006 pursuant to Government Code section 11343.4 (Register 2006, No. 19).
2. Change without regulatory effect amending NOTE filed 4–15–2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 16).

§ 50960.36. Voluntary Post Death Lien.

"Voluntary post death lien" means an encumbrance that is voluntarily agreed to and placed on real property to secure the unpaid portion of the Department's estate claim until the claim is paid in full.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 1396p(b), 42 USC; Section 14009.5, Welfare and Institutions Code; *Belshé v. Hope* (1995) 33 Cal. App. 4th 161; and *California Advocates for Nursing Home Reform v. Bontá* (2003) 106 Cal. App. 4th 498.

HISTORY

1. New section filed 3–23–2005; this filing is deemed an emergency and is exempt from review by OAL pursuant to Welfare and Institutions Code section 14043.75(a); effective 3–23–2005 (Register 2005, No. 12). A Certificate of Compliance must be transmitted to OAL by 7–21–2005 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 2005, No. 41).
3. New section filed 5–10–2006; operative 5–10–2006 pursuant to Government Code section 11343.4 (Register 2006, No. 19).
4. Change without regulatory effect amending NOTE filed 4–15–2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 16).

Article 2. Estate Recovery

§ 50961. Estate Claims.

(a) The Department shall claim against the estate of a decedent, or against any recipient of the decedent's property by distribution or survival, an amount equal to the lesser of:

(1) All payments made by the Medi–Cal program on behalf of the decedent, except for those payments specified under subsection (c) that are not included in the claim; or,

(2) The decedent's equity interest in the property at the time of death (to the extent of such interest).

(b) All payments made by the Medi–Cal program on behalf of decedents:

(1) Age 65 and older, who died prior to July 11, 1994, shall include all payments made for services provided at age 65 and older;

(2) Age 65 and older, who died on or after July 11, 1994, shall include all payments made from age 65 and older, in addition to any payments made from age 55 to 64 that were paid on or after October 1, 1993;

(3) Age 55 to 64, who died on or after July 11, 1994, shall include only those payments made on or after October 1, 1993.

(c) The Department's claim shall include all payments made by the Medi–Cal program on behalf of the decedent, including nursing facility and other long–term care services, home and community based services, inpatient/outpatient services, durable medical equipment, related hospital and prescription drug services, health care and insurance premiums, and payments to managed care plans. The Department's claim shall not include payments made for personal care services provided under In–Home Support Services, or the cost of premiums, co–payments and deductibles paid on behalf of either Qualified Medicare Beneficiaries or Specified Low–Income Medicare Beneficiaries (QMB/SLMB).

(d) The Department shall provide an exemption of the claim in any of the following circumstances:

(1) Where the decedent was under age 55 when the services were provided, unless the decedent was an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution;

(2) During the lifetime of a surviving spouse;

(3) When, as of the date of decedent's death, there is a surviving child of the decedent who is under age 21, and who can provide the Department with the documentary evidence specified in Section 50966(a)(2), to the address specified in Section 50966(a);

(4) When, as of the date of the Department's notice of claim, there is a surviving child of the decedent who is blind, or disabled, within the meaning of Section 1614 of the Federal Social Security Act (42 USC Section 1382c), and who qualifies for a claim exemption under Section 50966.

(e) The Department shall waive the proportionate share of its claim against any applicant who qualifies for a waiver due to a substantial hardship, as specified in Section 50963(a).

(f) The Department shall not enforce collection of the proportionate share of an estate claim for any applicant who is awaiting the resolution of a hardship waiver request or an estate hearing. However, the Department shall enforce collection of its claim from the remaining dependent(s), heir(s), or survivor(s) for his or her proportionate share of the claim.

(g) The Department shall reduce its claim in accordance with Section 50453.7(b) for insurance benefits received under the California Partnership for Long-Term Care.

(h) The Department shall claim against annuities as part of a decedent's estate. The Department's claim shall be recovered from the value of an annuity, annuity payments, or distributions receivable by any person or entity from the date the annuity payments or distributions are designated to be made. The Department's claim shall apply to the annuity, annuity payments, or distributions regardless of the funding source for the annuity.

(i) Where the decedent made an irrevocable transfer of a remainder interest in property with a retained life estate, the Department's claim shall not apply against the life estate or the remainder interest. Where the decedent held a life estate and made a revocable transfer of the remainder interest in the property, the Department's claim shall apply to the fair market value of the property as if title to the property had remained solely with the decedent. Where the decedent made a revocable transfer of a remainder interest in property and made an irrevocable grant of a life estate in the property, the Department's claim shall apply to the fair market value of the remainder interest. Where the decedent made a revocable transfer of a remainder interest in property and made a revocable grant of a life estate in the property, the Department's claim shall apply to the fair market value of the property as if title to the property had remained solely with the decedent.

(j) The Department's claim shall not apply against property interests that the decedent irrevocably transferred before death.

(k) A voluntary post death lien shall be proposed, in accordance with Section 50965, to secure the unpaid portion of the Department's claim until the claim is paid in full.

(*l*) Except for claims governed by Probate Code Sections 9203 and 19203, the Department shall charge simple interest, at the rate of seven percent per annum, on the unpaid portion of its claim until the claim is fully satisfied.

(1) Where there has been no claim exemption sought pursuant to Section 50961(d) or a substantial hardship waiver requested in accordance with Section 50963, simple interest shall begin to accrue on the date of notice of claim or the date of distribution, whichever is later.

(2) Where a claim exemption has been sought pursuant to Section 50961(d) or a substantial hardship waiver has been requested in accordance with Section 50963, simple interest shall begin to accrue on the 15th day following the date of the final determination of the claim exemption or substantial hardship waiver request.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 1382(c) and 1396p(b), 42 USC; Section 14009.5, Welfare and Institutions Code; Sections 9203 and 19203, Probate Code; *Belshé v. Hope* (1995) 33 Cal. App. 4th 161; *Dalzin v. Belshé* (N.D. Cal. 1997) 993 F. Supp. 732; *California Advocates for Nursing Home Reform v. Bontá* (2003) 106 Cal. App. 4th 498; and California Constitution, Article 15, Section 1.

HISTORY

1. Relocation of article 19 heading and new section filed 5-2-94 as an emergency; operative 5-2-94 (Register 94, No. 18). A Certificate of Compliance must be transmitted to OAL by 8-30-94 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 92, No. 39.
2. Repealed on 8-31-94 by operation of law.
3. New section filed 4-27-95 as an emergency; operative 4-27-95 (Register 95, No. 17). Exempt from OAL review pursuant to Chapter 147, Statutes of 1994, section 32. A Certificate of Compliance must be transmitted to OAL by 10-24-95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11-22-95 as an emergency; operative 11-22-95 (Register 95, No. 47). Exempt from OAL review pursuant to Chapter 147, Statutes of 1994, section 32. A Certificate of Compliance must be transmitted to OAL by 3-21-96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 4-27-95 order, including amendment of subsection (c)(2), repealer of subsections (c)(3)-(d) and new subsection (d), transmitted to OAL 2-6-96 and filed 3-19-96 (Register 96, No. 12).
6. New subsection (g) and amendment of NOTE filed 7-27-2004 as an emergency; operative 7-27-2004 (Register 2004, No. 31). Exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75. A Certificate of Compliance must be transmitted to OAL by 11-24-2004 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7-27-2004 order transmitted to OAL 11-19-2004 and filed 1-3-2005 (Register 2005, No. 1).
8. New article 2 heading and repealer and new section filed 3-23-2005; this filing is deemed an emergency and is exempt from review by OAL pursuant to Welfare and Institutions Code section 14043.75(a); effective 3-23-2005 (Register 2005, No. 12). A Certificate of Compliance must be transmitted to OAL by 7-21-2005 or emergency language will be repealed by operation of law on the following day.
9. Repeal of new article 2 heading and section and reinstatement of section as it existed prior to 3-23-2005 emergency by operation of Government Code sections 11346.1(f)-(g) (Register 2005, No. 41).
10. New article 2 heading and repealer and new section filed 5-10-2006; operative 5-10-2006 pursuant to Government Code section 11343.4 (Register 2006, No. 19).
11. Amendment of section and NOTE filed 7-16-2007; operative 8-15-2007 (Register 2007, No. 29).

§ 50962. Notification.

(a) Within 90 days of the date of death of an individual who received or may have received Medi-Cal benefits, or was the surviving spouse of a person who received Medi-Cal benefits, the attorney for the estate, or if there is no attorney, the beneficiary, the personal representative, or the person in possession of property of the decedent, shall give written notice by mail of the decedent's death to the Director of the Department of Health Care Services at his or her Sacramento office, or, Estate Recovery Section, Mail Stop 4720, P.O. Box 997425, Sacramento, CA 95899-7425. The notice shall include a copy of the decedent's death certificate. Any other notice or submission of county vital records (i.e., death certificate) to the State Registrar of Vital Statistics or other governmental entities shall not satisfy this requirement.

(b) Date of notice of the decedent's death to the Director shall be deemed as the date that the notice is postmarked; or in the absence of a postmark, the date stamp posted by the Department upon receipt of the notice; or in the absence of a date stamp, the date on the original proof of mailing that references the decedent's name, from the person or entity giving notice to the Department.

(c) The Department shall provide written notice to the person handling the decedent's estate, which includes the following:

(1) The basis for the estate claim; the specific statutes and regulations supporting the claim; the basis for an exemption from the claim; the right to seek a waiver of the Department's claim; the right to contest the Department's claim; the right to request an estate hearing if dissatisfied with the waiver decision; the timeframes for requesting a waiver or estate hearing; and the basis for the applicant to seek a waiver or estate hearing due to substantial hardship; and

(2) A copy of the itemized Medi-Cal payments that constitute the basis for the claim; and

(3) An Application for Hardship Waiver, form DHCS 6195 (8/07).

(d) The person handling the estate of the decedent shall notify all dependents, heirs, or survivors of the Department's claim and their right to seek a waiver of or to contest the Department's claim against the estate. The person handling the estate shall also notify any surviving child of the decedent, or his or her representative, of the right to seek an exemption from the Department's claim.

(e) An applicant has 60 days from the date stated on the Department's notice of claim in which to submit an application for waiver due to substantial hardship.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 1396p(b), 42 USC; Section 14009.5, Welfare and Institutions Code; Sections 215, 1215, 9202

and 19202, Probate Code; and *California Advocates for Nursing Home Reform v. Bontá* (2003) 106 Cal. App. 4th 498.

HISTORY

1. New section filed 5–2–94 as an emergency; operative 5–2–94 (Register 94, No. 18). A Certificate of Compliance must be transmitted to OAL by 8–30–94 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 92, No. 39.
2. Repealed on 8–31–94 by operation of law.
3. New section filed 4–27–95 as an emergency; operative 4–27–95 (Register 95, No. 17). Exempt from OAL review pursuant to Chapter 147, Statutes of 1994, section 32. A Certificate of Compliance must be transmitted to OAL by 10–24–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–22–95 as an emergency; operative 11–22–95 (Register 95, No. 47). Exempt from OAL review pursuant to Chapter 147, Statutes of 1994, section 32. A Certificate of Compliance must be transmitted to OAL by 3–21–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 4–27–95 order, including amendment of section, transmitted to OAL 2–6–96 and filed 3–19–96 (Register 96, No. 12).
6. Amendment of section and NOTE filed 3–23–2005; this filing is deemed an emergency and is exempt from review by OAL pursuant to Welfare and Institutions Code section 14043.75(a); effective 3–23–2005 (Register 2005, No. 12). A Certificate of Compliance must be transmitted to OAL by 7–21–2005 or emergency language will be repealed by operation of law on the following day.
7. Reinstatement of section and NOTE as they existed prior to 3–23–2005 emergency amendment by operation of Government Code section 11346.1(f) (Register 2005, No. 41).
8. Amendment of section and NOTE filed 5–10–2006; operative 5–10–2006 pursuant to Government Code section 11343.4 (Register 2006, No. 19).
9. Amendment of subsections (c)–(e) and amendment of NOTE filed 7–16–2007; operative 8–15–2007 (Register 2007, No. 29).
10. Change without regulatory effect amending subsections (a) and (c)(3) filed 4–15–2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 16).

§ 50963. Substantial Hardship Criteria.

(a) The Department shall waive an applicant's proportionate share of the claim if the applicant can demonstrate through submission of a written, completed Application for Hardship Waiver, form DHCS 6195 (8/07), or, if applicable, at an estate hearing, that enforcement of the Department's claim would result in substantial hardship to the applicant. In determining the existence of substantial hardship, the Department shall waive an applicant's proportionate share of the claim if one or more of the following factors apply:

(1) When allowing the applicant to receive the inheritance from the estate would enable the applicant to discontinue eligibility for public assistance payments and/or medical assistance programs; or,

(2) When the estate property is part of an income–producing business, including a working farm or ranch, and recovery of medical assistance expenditures would result in the applicant losing his or her primary source of income; or,

(3) When an aged, blind, or disabled applicant has continuously lived in the decedent's home for at least one year prior to the decedent's death and continues to reside there, and is unable to obtain financing to repay the State. The applicant shall apply to obtain financing, for an amount not to exceed his or her proportionate share of the claim, from a financial institution as defined in Probate Code Section 40. The applicant shall provide the Department with a denial letter(s) from the financial institution; or,

(4) When the applicant provided care to the decedent for two or more years that prevented or delayed the decedent's admission to a medical or long–term care institution. The applicant must have resided in the decedent's home during the period care was provided and continue to reside in the decedent's home. The applicant must provide written medical substantiation from a licensed health care provider(s), which clearly indicates that the level and duration of care provided prevented or delayed the decedent from being placed in a medical or long–term care institution; or,

(5) When the applicant transferred the property to the decedent for no consideration; or,

(6) When equity in the real property is needed by the applicant to make the property habitable, or to acquire the necessities of life, such as food, clothing, shelter or medical care.

(b) A substantial hardship shall not exist when the decedent or applicant created the hardship by using estate planning methods to divert or shelter assets in order to avoid estate recovery.

(c) To the extent that there currently is, or later becomes, any conflict between the preceding criteria and the standards that may be specified by the Secretary of the Department of Health and Human Services, the federal standards shall prevail.

(d) The Department shall provide written notification to the applicant of its decision regarding the hardship waiver application within 90 days of the application's submission.

(e) If an application for hardship waiver is denied, the Department shall provide the applicant with notice of the right, the address, and the timeframe to request an estate hearing, at the time it provides notice of its decision.

(f) The Department shall issue its decision on an applicant's hardship waiver application prior to and independent of its consideration of a voluntary post death lien.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 1396p(b), 42 USC; Section 40, Probate Code; and Section 14009.5, Welfare and Institutions Code; State Medicaid Manual HCFA–Pub. 45–3, Transmittal No. 65 §3810; and *California Advocates for Nursing Home Reform v. Bontá* (2003) 106 Cal. App. 4th 498.

HISTORY

1. New section filed 5–2–94 as an emergency; operative 5–2–94 (Register 94, No. 18). A Certificate of Compliance must be transmitted to OAL by 8–30–94 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 92, No. 39.
2. Repealed on 8–31–94 by operation of law.
3. New section filed 4–27–95 as an emergency; operative 4–27–95 (Register 95, No. 17). Exempt from OAL review pursuant to Chapter 147, Statutes of 1994, section 32. A Certificate of Compliance must be transmitted to OAL by 10–24–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–22–95 as an emergency; operative 11–22–95 (Register 95, No. 47). Exempt from OAL review pursuant to Chapter 147, Statutes of 1994, section 32. A Certificate of Compliance must be transmitted to OAL by 3–21–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 4–27–95 order, including amendment of subsections (a) and (a)(4) and new subsections (d)–(f), transmitted to OAL 2–6–96 and filed 3–19–96 (Register 96, No. 12).
6. Amendment of section heading, section and NOTE filed 3–23–2005; this filing is deemed an emergency and is exempt from review by OAL pursuant to Welfare and Institutions Code section 14043.75(a); effective 3–23–2005 (Register 2005, No. 12). A Certificate of Compliance must be transmitted to OAL by 7–21–2005 or emergency language will be repealed by operation of law on the following day.
7. Reinstatement of section heading, section and NOTE as they existed prior to 3–23–2005 emergency amendment by operation of Government Code section 11346.1(f) (Register 2005, No. 41).
8. Amendment of section heading, section and NOTE filed 5–10–2006; operative 5–10–2006 pursuant to Government Code section 11343.4 (Register 2006, No. 19).
9. Change without regulatory effect amending subsection (a) and NOTE filed 4–15–2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 16).

§ 50964. Estate Hearing.

(a) An applicant may challenge the Department's hardship waiver decision by requesting an estate hearing. The request must be in writing and mailed to the Director of the Department through his or her designee, the Office of Administrative Hearings and Appeals, within 60 days of the date of the Department's decision inscribed at the top of the Department's notice.

(1) The Department shall provide the applicant at least 30 days notice of the date, time and place of the hearing. The hearing shall be conducted within 60 days from the date of the request, and may be continued for good cause, such as illness, injury or incarceration of the applicant.

(2) For an in–state applicant the Department shall conduct the hearing within the California Court of Appeal district where the applicant resides.

In the case of an out-of-state applicant, the hearing shall be conducted in Sacramento, California.

(3) At the estate hearing, the applicant and/or the applicant's representative shall have the opportunity to be heard, offer evidence, and present witnesses in support of the request for a waiver. All testimony shall be submitted under oath, affirmation, or penalty of perjury. The proceedings at the estate hearing shall be electronically recorded. The applicant and/or the applicant's representative shall be prepared to leave copies of all documents which support the applicant's request for a waiver with the hearing officer.

(b) The hearing shall be conducted in an impartial manner by a hearing officer appointed by the Director.

(c) A proposed decision, stating the applicable law, evidence and reasoning upon which the decision is based, shall be submitted to the Director no more than 30 days after the hearing record is closed. Within 30 days after the proposed decision is received by the Director, the Director may adopt the proposed decision, reject the proposed decision and have a decision prepared based upon the record, or refer the matter to the hearing officer to take additional evidence. If the Director takes no action within 30 days after receipt of the proposed decision, the decision shall be deemed adopted.

(d) Any errors or omissions in the information provided by the applicant that would affect the Department's decision may be a basis for denial of the request for hardship waiver.

(e) The decision shall be final upon adoption by the Director and no further administrative appeal shall occur. Copies of the decision shall be mailed by certified mail to the applicant or his or her designated representative.

(f) Judicial review of the final decision of the Department may be had by filing a petition for a writ of administrative mandate in accordance with the provisions of Section 1094.5, et seq., Code of Civil Procedure.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 1396p(b), 42 USC; Section 1094.5, et seq., Code of Civil Procedure; Section 14009.5, Welfare and Institutions Code; and Section 69100, Government Code.

HISTORY

1. New section filed 5–2–94 as an emergency; operative 5–2–94 (Register 94, No. 18). A Certificate of Compliance must be transmitted to OAL by 8–30–94 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 92, No. 39.
2. Repealed on 8–31–94 by operation of law.
3. New section filed 4–27–95 as an emergency; operative 4–27–95 (Register 95, No. 17). Exempt from OAL review pursuant to Chapter 147, Statutes of 1994, section 32. A Certificate of Compliance must be transmitted to OAL by 10–24–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–22–95 as an emergency; operative 11–22–95 (Register 95, No. 47). Exempt from OAL review pursuant to Chapter 147, Statutes of 1994, section 32. A Certificate of Compliance must be transmitted to OAL by 3–21–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 4–27–95 order, including amendment of section and NOTE, transmitted to OAL 2–6–96 and filed 3–19–96 (Register 96, No. 12).
6. Amendment of section and NOTE filed 3–23–2005; this filing is deemed an emergency and is exempt from review by OAL pursuant to Welfare and Institutions Code section 14043.75(a); effective 3–23–2005 (Register 2005, No. 12). A Certificate of Compliance must be transmitted to OAL by 7–21–2005 or emergency language will be repealed by operation of law on the following day.
7. Reinstatement of section and NOTE as they existed prior to 3–23–2005 emergency amendment by operation of Government Code section 11346.1(f) (Register 2005, No. 41).
8. Amendment of subsections (a) and (e) and NOTE filed 5–10–2006; operative 5–10–2006 pursuant to Government Code section 11343.4 (Register 2006, No. 19).
9. Change without regulatory effect amending NOTE filed 4–15–2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 16).

§ 50965. Voluntary Post Death Lien.

(a) The Department shall propose a voluntary post death lien on the real property of the estate, and other real property that the dependent(s), heir(s), or survivor(s) has an interest in, when one or more of the dependent(s), heir(s), or survivor(s) are:

(1) Living in and not willing to sell the real property, and

(2) Unable to pay the Department's claim in full, and

(3) Can demonstrate as provided in subsection (b) that he or she is unable to obtain financing.

(b) The Department shall offer to accept a voluntary post death lien as soon as it has been determined that the dependent(s), heir(s), or survivor(s) is unable to pay or to obtain financing to pay their proportionate share of the estate claim. The dependent(s), heir(s), or survivor(s) shall apply to obtain financing, for an amount not to exceed his or her proportionate share of the claim, from a financial institution as defined in Probate Code Section 40, and shall provide the Department with a denial letter(s) from the financial institution.

(c) A voluntary post death lien shall be proposed independent of a decision on an applicant's request for a waiver due to a substantial hardship.

(d) In addition to the placement of a lien on the real property, the Department shall require that monthly payments be made to the Department of Health Care Services, Estate Recovery Section, MS 4720, P.O. Box 997421, Sacramento, CA 95899–7421. The monthly payments shall be in accordance with the dependent's, heir's, or survivor's financial ability to pay, and shall be adjusted as needed. Monthly payments shall continue until the lien amount owed to the Department by the lienee, plus interest, is paid in full. Payments shall not be required when a dependent's, heir's, or survivor's income is below the federal poverty level.

(e) The voluntary post death lien will accrue simple interest at the rate of seven percent per annum, and becomes due and payable, including all interest accrued, upon the first to occur of the following:

(1) The death of the dependent(s), heir(s), or survivor(s); or,

(2) The sale, refinance, transfer, or change in title to the real property; or,

(3) Escrow funding; and/or

(4) Default in payments.

(f) In the event of a transfer of an interest in, or title to, real property subject to the voluntary post death lien without payment of the lien, the lienee shall provide notification of the transfer, with the identity and address of the new titleholder(s), by mail to the Department at the address specified in subsection (g), within 30 days of the transfer. The lienee shall notify the new titleholder(s) of the voluntary post death lien prior to the transfer of title, and the obligation to satisfy the lien pursuant to this Section. The new titleholder(s) shall make arrangement for full satisfaction of the Department's lien with the Estate Recovery Section.

(g) When the dependent(s), heir(s), or survivor(s) agree to a voluntary post death lien, the Department will prepare and mail the lien documents to the dependent(s), heir(s), or survivor(s) for notarized signature(s). The dependent(s), heir(s), or survivor(s) shall return the notarized documents to the Department of Health Care Services, Estate Recovery Section, MS 4720, P.O. Box 997425, Sacramento, CA 95899–7425. Upon receipt of the lien documents, the Department shall forward the documents to the County Recorder's Office where the property is located for recording of the lien.

(h) The Department shall issue a release of lien to the County Recorder's Office after full payment of the lien with accrued interest is received.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 1396p(b), 42 USC; Section 40, Probate Code; Section 14009.5, Welfare and Institutions Code; *California Advocates for Nursing Home Reform v. Bontá* (2003) 106 Cal. App. 4th 498; and California Constitution, Article 15, Section 1.

HISTORY

1. New section filed 3–23–2005; this filing is deemed an emergency and is exempt from review by OAL pursuant to Welfare and Institutions Code section 14043.75(a); effective 3–23–2005 (Register 2005, No. 12). A Certificate of Compliance must be transmitted to OAL by 7–21–2005 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 92, No. 39.
2. Repealed by operation of Government Code section 11346.1(g) (Register 2005, No. 41).
3. New section filed 5–10–2006; operative 5–10–2006 pursuant to Government Code section 11343.4 (Register 2006, No. 19).
4. Change without regulatory effect amending subsections (d), (f) and (g) and NOTE filed 4–15–2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 16).

§ 50966. Claim Exemption.

(a) The Department shall withdraw its claim against the estate of a deceased Medi–Cal beneficiary when the surviving child or his or her representative provides the following documentary evidence to the Department of Health Care Services, Estate Recovery Section, Mail Stop 4720, PO Box 997425, Sacramento, CA 95899–7425, which demonstrates the surviving child was blind or disabled as of the date of the Department's notice of claim:

(1) Documented proof of blindness or disability in the form of a copy of an award letter from the Federal Social Security Administration (SSA) or any correspondence from the SSA that provides verification of the surviving child's blindness or disability and that the blindness or disability existed on the date of the Department's notice of claim. This documentation is not required if the surviving child is enrolled in Medi–Cal with a blindness or disability aid code. If the surviving child is over age 65, is not in possession of the award letter, and his or her SSA/Supplemental Security Income disability benefits were converted to an aged category, the Department will accept a verification of benefits, awarded prior to age 65, from the SSA as proof that the benefits were based on blindness or disability criteria; and

(2) Documented proof that he or she is a surviving child of the decedent, such as a copy of a birth certificate or adoption papers.

(b) The Department will suspend collection activity on its claim for 60 days from notification, by telephone at the number on the Department's notice of claim or in writing to the Department, that the required documentary evidence as specified in subsection (a) will be provided. If, after 60 days, the Department does not receive the documentary evidence, collection activity will resume until such evidence is received.

(c) When documentary evidence of blindness or disability does not already exist, the surviving child or his or her representative may submit a request for a disability determination to the Department by telephone at the number on the notice of claim, or in writing at the address specified in subsection (a). Such a request must be submitted within 60 days from the date of the Department's notice of claim.

(d) Upon receipt of a disability determination request, the Department shall suspend collection activity on its claim. The Department shall mail a letter with the forms listed in subsection (d)(1) through (3) inclusive, to the surviving child or his or her representative, explaining that the forms, and the documented proof specified in subsection (a)(2), must be completed and mailed to the Department within 30 days from the date of the letter. For the purposes of the forms required under this subsection the term "applicant" means a surviving child seeking an exemption of the Department's claim.

(1) Applicant's Supplemental Statement of Facts for Medi–Cal, MC 223 (05/07); and

(2) Authorization for Release of Information, MC 220 14 pt (04/08); and

(3) Appointment of Representative—Estate Recovery, DHCS 6249 (3–08), (complete only if applicable).

(e) If within 30 days the Department does not receive the completed forms and documented proof, pursuant to subsection (d), a second letter shall be mailed to the surviving child or his or her representative granting an additional 30 days from the date of the second letter. Failure to submit the completed forms and documented proof within the additional timeframe will result in the resumption of collection activity.

(f) The California Department of Social Services (DSS) shall make the disability determinations on behalf of the Department when the surviving child's earned income does not exceed the federal Substantial Gainful Activity (SGA) limit. The Department shall forward the completed forms in subsection (d) to the DSS when earned income on the Applicant's Supplemental Statement of Facts for Medi–Cal, MC 223 (05/07) does not exceed the SGA limit. The DSS shall mail its decision to the Department. When earned income exceeds the SGA limit, the Department shall notify the surviving child or his or her representative that the disability determination cannot be made and collection activity shall resume.

(g) The Department shall notify the surviving child or his or her representative by mail of the disability determination made by the DSS. The disability determination is not subject to review through an administrative hearing.

(1) If the DSS determines that the surviving child qualifies as blind or disabled under the meaning of Section 1614 of the Federal Social Security Act (42 USC Section 1382c), the Department's claim shall be deemed withdrawn as of the determination date.

(2) If the DSS determines that the surviving child does not qualify as blind or disabled under the meaning of Section 1614 of the Federal Social Security Act (42 USC Section 1382c), collection activity shall resume.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 421, 1382c and 1396p(b), 42 USC; Section 14009.5, Welfare and Institutions Code; *Dalzin v. Belshé* (N.D. Cal. 1997) 993 F. Supp. 732; and *California Advocates for Nursing Home Reform v. Bontá* (2003) 106 Cal. App. 4th 498.

HISTORY

1. New section filed 7–16–2007; operative 8–15–2007 (Register 2007, No. 29).
2. Change without regulatory effect amending subsections (a), (d)(1)–(3) and (f) and NOTE filed 4–15–2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 16).

Chapter 3. Health Care Services

Article 1. Application and Enrollment

§ 51000. Agent.

"Agent" means a person who has been delegated the authority to obligate or act on behalf of an applicant or provider.

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code; and Section 78, Chapter 146, Statutes of 1999. Reference: Section 14043.75, Welfare and Institutions Code; 42, U.S.C., Sections 1320a–3, 1320a–7, 1396a(a)(38), 1396b(i)(2); and 42, Code of Federal Regulations, Part 455.

HISTORY

1. Renumbering of former article 1 to article 1.3, new article 1 (sections 51000–51000.55) and section filed 9–28–99 as an emergency; operative 9–28–99 (Register 99, No. 40). A Certificate of Compliance must be transmitted to OAL by 3–27–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
2. Renumbering of former article 1 to article 1.3, new article 1 (sections 51000–51000.55) and section refiled 11–24–99 as an emergency; operative 11–24–99 (Register 99, No. 48). A Certificate of Compliance must be transmitted to OAL by 5–22–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
3. Renumbering of former article 1 to article 1.3, new article 1 (sections 51000–51000.55) and section refiled 5–5–2000 as an emergency; operative 5–22–2000 (Register 2000, No. 18). A Certificate of Compliance must be transmitted to OAL by 9–19–2000 or emergency language will be repealed by operation of law on the following day.
4. Renumbering of former article 1 to article 1.3, new article 1 (sections 51000–51000.55) and section refiled 8–28–2000 as an emergency; operative 9–6–2000 (Register 2000, No. 35). A Certificate of Compliance must be trans-

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mitted to OAL by 1–4–2001 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 8–28–2000 order transmitted to OAL 12–26–2000 and filed 2–8–2001 (Register 2001, No. 6).

§ 51000.1. Applicant.

"Applicant" means any individual, partnership, group, association, corporation, institution, or entity, and the officers, directors, owners, managing employees, or agents thereof, that applies to the Department for enrollment as a provider in the Medi–Cal program.

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code. Reference: Sections 14043 and 14043.1, Welfare and Institutions Code.

HISTORY

1. New section filed 9–28–99 as an emergency; operative 9–28–99 (Register 99, No. 40). A Certificate of Compliance must be transmitted to OAL by 3–27–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
2. New section refiled 11–24–99 as an emergency; operative 11–24–99 (Register 99, No. 48). A Certificate of Compliance must be transmitted to OAL by 5–22–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
3. New section refiled 5–5–2000 as an emergency; operative 5–22–2000 (Register 2000, No. 18). A Certificate of Compliance must be transmitted to OAL by 9–19–2000 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 8–28–2000 as an emergency; operative 9–6–2000 (Register 2000, No. 35). A Certificate of Compliance must be transmitted to OAL by 1–4–2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–28–2000 order transmitted to OAL 12–26–2000 and filed 2–8–2001 (Register 2001, No. 6).
6. Amendment of section and NOTE filed 9–29–2004 as an emergency; operative 10–7–2004 (Register 2004, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–4–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL pursuant to Welfare and Institutions Code section 14043.75.
7. Amendment of section and NOTE refiled 1–27–2005 as an emergency; operative 2–5–2005 (Register 2005, No. 4). A Certificate of Compliance must be transmitted to OAL by 6–6–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.
8. Amendment of section and NOTE refiled 6–2–2005 as an emergency; operative 6–7–2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 10–5–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.
9. Certificate of Compliance as to 6–2–2005 order transmitted to OAL 9–29–2005 and filed 11–10–2005 (Register 2005, No. 45).

§ 51000.1.1. Application or Application Package.

"Application" or "Application Package" means a completed and signed application form, including an application for continued enrollment, signed under penalty of perjury or notarized pursuant to Welfare and Institutions Code Section 14043.25, a Disclosure Statement, a Provider Agreement, and all attachments or changes in the form, statement, or agreement.

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code. Reference: Sections 14043.1 and 14043.25, Welfare and Institutions Code.

HISTORY

1. New section filed 2–8–2001; operative 2–8–2001 (Register 2001, No. 6).
2. Redesignation of former section 51000.101 as new section 51000.1.1 and amendment of section heading, section and NOTE filed 9–29–2004 as an emergency; operative 10–7–2004 (Register 2004, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–4–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL pursuant to Welfare and Institutions Code section 14043.75.
3. Redesignation of former section 51000.101 as new section 51000.1.1 and amendment of section heading, section and NOTE refiled 1–27–2005 as an emergency; operative 2–5–2005 (Register 2005, No. 4). A Certificate of Compliance must be transmitted to OAL by 6–6–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.
4. Redesignation of former section 51000.101 as new section 51000.1.1 and amendment of section heading, section and NOTE refiled 6–2–2005 as an emergency; operative 6–7–2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 10–5–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.
5. Certificate of Compliance as to 6–2–2005 order, including amendment of section, transmitted to OAL 9–29–2005 and filed 11–10–2005 (Register 2005, No. 45).

§ 51000.2. Beneficiary.

"Beneficiary" means any person certified as eligible for services under the Medi–Cal program.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 78, Chapter 146, Statutes of 1999. Reference: Sections 14000 and 14005, Welfare and Institutions Code.

HISTORY

1. New section filed 9–28–99 as an emergency; operative 9–28–99 (Register 99, No. 40). A Certificate of Compliance must be transmitted to OAL by 3–27–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
2. New section refiled 11–24–99 as an emergency; operative 11–24–99 (Register 99, No. 48). A Certificate of Compliance must be transmitted to OAL by 5–22–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
3. New section refiled 5–5–2000 as an emergency; operative 5–22–2000 (Register 2000, No. 18). A Certificate of Compliance must be transmitted to OAL by 9–19–2000 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 8–28–2000 as an emergency; operative 9–6–2000 (Register 2000, No. 35). A Certificate of Compliance must be transmitted to OAL by 1–4–2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–28–2000 order transmitted to OAL 12–26–2000 and filed 2–8–2001 (Register 2001, No. 6).

§ 51000.3. Business Address.

"Business address" means the location where an applicant or provider provides services, goods, supplies, or merchandise, directly or indirectly, to a Medi–Cal beneficiary. A post office box or commercial box is not a business address. The business address for the location of a vehicle or vessel owned and operated by an applicant or provider enrolled in the Medi–Cal program and used to provide services, goods, supplies, or merchandise, directly or indirectly, to a Medi–Cal beneficiary shall either be the business address location listed on the provider's application as the location where similar services, goods, supplies, or merchandise would be provided, or the applicant's or provider's pay to address.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code. Reference: Sections 14043.1 and 14043.62, Welfare and Institutions Code; and Title 45, Code of Federal Regulations, Sections 162.408 and 162.412.

HISTORY

1. New section filed 9–28–99 as an emergency; operative 9–28–99 (Register 99, No. 40). A Certificate of Compliance must be transmitted to OAL by 3–27–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
2. New section refiled 11–24–99 as an emergency; operative 11–24–99 (Register 99, No. 48). A Certificate of Compliance must be transmitted to OAL by 5–22–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
3. New section refiled 5–5–2000 as an emergency; operative 5–22–2000 (Register 2000, No. 18). A Certificate of Compliance must be transmitted to OAL by 9–19–2000 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 8–28–2000 as an emergency; operative 9–6–2000 (Register 2000, No. 35). A Certificate of Compliance must be transmitted to OAL by 1–4–2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–28–2000 order transmitted to OAL 12–26–2000 and filed 2–8–2001 (Register 2001, No. 6).
6. Amendment of section and NOTE filed 9–29–2004 as an emergency; operative 10–7–2004 (Register 2004, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–4–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL pursuant to Welfare and Institutions Code section 14043.75.
7. Amendment of section and NOTE refiled 1–27–2005 as an emergency; operative 2–5–2005 (Register 2005, No. 4). A Certificate of Compliance must be trans-

mitted to OAL by 6–6–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.

8. Amendment of section and NOTE refiled 6–2–2005 as an emergency; operative 6–7–2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 10–5–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.
9. Certificate of Compliance as to 6–2–2005 order transmitted to OAL 9–29–2005 and filed 11–10–2005 (Register 2005, No. 45).
10. Change without regulatory effect amending section and NOTE filed 2–28–2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 9).

§ 51000.4. Business Telephone.

"Business telephone" means the telephone number at the business address of the applicant or provider. A beeper number, answering service, biller or billing service, pager, facsimile machine, answering machine, or a cellular telephone shall not be used as the primary business telephone. A cellular telephone shall not be used as the primary business telephone, except for a provider enrolled in the Medi–Cal program pursuant to Welfare and Institutions Code Section 14043.15(b)(2).

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code. Reference: Sections 14043.15 and 14043.7, Welfare and Institutions Code.

HISTORY

1. New section filed 9–28–99 as an emergency; operative 9–28–99 (Register 99, No. 40). A Certificate of Compliance must be transmitted to OAL by 3–27–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
2. New section refiled 11–24–99 as an emergency; operative 11–24–99 (Register 99, No. 48). A Certificate of Compliance must be transmitted to OAL by 5–22–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
3. New section refiled 5–5–2000 as an emergency; operative 5–22–2000 (Register 2000, No. 18). A Certificate of Compliance must be transmitted to OAL by 9–19–2000 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 8–28–2000 as an emergency; operative 9–6–2000 (Register 2000, No. 35). A Certificate of Compliance must be transmitted to OAL by 1–4–2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–28–2000 order, including amendment of section, transmitted to OAL 12–26–2000 and filed 2–8–2001 (Register 2001, No. 6).
6. Amendment filed 2–3–2003 as an emergency; operative 2–3–2003 (Register 2003, No. 6). Emergency amendments exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75. Amendments to remain in effect for 180 days pursuant to section 78, chapter 146, Statutes of 1999 (AB 1107). A Certificate of Compliance must be transmitted to OAL by 8–4–2003 or emergency language will be repealed by operation of law on the following day.
7. Amendment refiled 8–5–2003 as an emergency; operative 8–5–2003 (Register 2003, No. 32). Emergency amendments exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75. Amendments to remain in effect for 180 days pursuant to section 78, chapter 146, Statutes of 1999 (AB 1107). A Certificate of Compliance must be transmitted to OAL by 2–2–2004 or emergency language will be repealed by operation of law on the following day.
8. Amendment refiled 2–3–2004 as an emergency; operative 2–3–2004 (Register 2004, No. 6). Emergency amendments exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75. A Certificate of Compliance must be transmitted to OAL by 6–2–2004 or emergency language will be repealed by operation of law on the following day.
9. Reinstatement of section as it existed prior to 2–3–2004 emergency amendment by operation of Government Code section 11346.1(f) (Register 2004, No. 24).
10. Amendment refiled 6–8–2004 as an emergency; operative 6–8–2004 (Register 2004, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–6–2004 or emergency language will be repealed by operation of law on the following day.
11. Reinstatement of section as it existed prior to 6–8–2004 emergency amendment by operation of Government Code section 11346.1(f) (Register 2004, No. 41).
12. Amendment of section and NOTE filed 9–29–2004 as an emergency; operative 10–7–2004 (Register 2004, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–4–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL pursuant to Welfare and Institutions Code section 14043.75.
13. Amendment of section and NOTE refiled 1–27–2005 as an emergency; operative 2–5–2005 (Register 2005, No. 4). A Certificate of Compliance must be transmitted to OAL by 6–6–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.
14. Amendment of section and NOTE refiled 6–2–2005 as an emergency; operative 6–7–2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 10–5–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.
15. Certificate of Compliance as to 6–2–2005 order transmitted to OAL 9–29–2005 and filed 11–10–2005 (Register 2005, No. 45).

§ 51000.5. Capital.

"Capital" means the total of all money invested in, and property or services contributed to, an applicant's or provider's business enterprise for the purpose of starting, acquiring, equipping, and operating the applicant's or provider's business enterprise.

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code: and Section 78, Chapter 146, Statutes of 1999. Reference: Section 14125.8, Welfare and Institutions Code.

HISTORY

1. New section filed 9–28–99 as an emergency; operative 9–28–99 (Register 99, No. 40). A Certificate of Compliance must be transmitted to OAL by 3–27–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
2. New section refiled 11–24–99 as an emergency; operative 11–24–99 (Register 99, No. 48). A Certificate of Compliance must be transmitted to OAL by 5–22–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
3. New section refiled 5–5–2000 as an emergency; operative 5–22–2000 (Register 2000, No. 18). A Certificate of Compliance must be transmitted to OAL by 9–19–2000 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 8–28–2000 as an emergency; operative 9–6–2000 (Register 2000, No. 35). A Certificate of Compliance must be transmitted to OAL by 1–4–2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–28–2000 order transmitted to OAL 12–26–2000 and filed 2–8–2001 (Register 2001, No. 6).

§ 51000.6. Change of Ownership.

"Change of Ownership" means:

(a) For a partnership, the removal, addition, or substitution of a partner.

(b) For an unincorporated sole proprietorship, the transfer of title and property to another person.

(c) For a corporation, the merger of the applicant's or provider's corporation into another corporation, or the consolidation of two or more corporations, resulting in the creation of a new corporation. The transfer of corporate stock or the merger of another corporation into the applicant's or provider's corporation does not constitute a "change of ownership" but may constitute a "change of ownership or control interest," as defined in Section 51000.15, and may require disclosure under Section 51000.35, or a reporting of changed or additional information pursuant to Section 51000.40.

(d) For a lease, the lease of all or part of an applicant's or provider's facility constitutes a change of ownership of the leased portion.

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code. Reference: Sections 14043.2, 14043.26 and 14043.27, Welfare and Institutions Code; 42, U.S.C., Sections 1320a–3, 1320a–7, 1396a(a)(38), 1396b(i)(2); and 42, Code of Federal Regulations, Part 455.

HISTORY

1. New section filed 9–28–99 as an emergency; operative 9–28–99 (Register 99, No. 40). A Certificate of Compliance must be transmitted to OAL by 3–27–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
2. New section, including amendments, refiled 11–24–99 as an emergency; operative 11–24–99 (Register 99, No. 48). A Certificate of Compliance must be transmitted to OAL by 5–22–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
3. New section refiled 5–5–2000 as an emergency; operative 5–22–2000 (Register 2000, No. 18). A Certificate of Compliance must be transmitted to OAL by 9–19–2000 or emergency language will be repealed by operation of law on the following day.

4. New section refiled 8–28–2000 as an emergency; operative 9–6–2000 (Register 2000, No. 35). A Certificate of Compliance must be transmitted to OAL by 1–4–2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–28–2000 order, including amendment of subsection (c), transmitted to OAL 12–26–2000 and filed 2–8–2001 (Register 2001, No. 6).
6. Amendment of subsection (c) and NOTE filed 9–29–2004 as an emergency; operative 10–7–2004 (Register 2004, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–4–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL pursuant to Welfare and Institutions Code section 14043.75.
7. Amendment of subsection (c) and NOTE refiled 1–27–2005 as an emergency; operative 2–5–2005 (Register 2005, No. 4). A Certificate of Compliance must be transmitted to OAL by 6–6–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.
8. Amendment of subsection (c) and NOTE refiled 6–2–2005 as an emergency; operative 6–7–2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 10–5–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.
9. Certificate of Compliance as to 6–2–2005 order, including further amendment of NOTE, transmitted to OAL 9–29–2005 and filed 11–10–2005 (Register 2005, No. 45).

§ 51000.6.1. Deactivate.

"Deactivate" means the provider number issued to a provider for a specific location shall no longer be used to bill the Medi–Cal Program for health care services, goods, supplies or merchandise provided, directly or indirectly, to Medi–Cal beneficiaries on or after the effective date of the deactivation.

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code. Reference: Sections 14043.2, 14043.36, 14043.37, 14043.62 and 14043.7, Welfare and Institutions Code.

HISTORY

1. New section filed 11–10–2005; operative 11–10–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 45).

§ 51000.7. Enrolled or Enrollment in the Medi–Cal Program.

"Enrolled or enrollment in the Medi–Cal program" means authorized under any processes by the Department or its agents or contractors to receive, directly or indirectly, reimbursement for the provision of services, goods, supplies, or merchandise to a Medi–Cal beneficiary.

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code. Reference: Sections 14043.1, 14043.2, 14043.25, 14043.26, 14043.29 and 14043.65, Welfare and Institutions Code.

HISTORY

1. New section filed 9–28–99 as an emergency; operative 9–28–99 (Register 99, No. 40). A Certificate of Compliance must be transmitted to OAL by 3–27–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
2. New section refiled 11–24–99 as an emergency; operative 11–24–99 (Register 99, No. 48). A Certificate of Compliance must be transmitted to OAL by 5–22–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
3. New section refiled 5–5–2000 as an emergency; operative 5–22–2000 (Register 2000, No. 18). A Certificate of Compliance must be transmitted to OAL by 9–19–2000 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 8–28–2000 as an emergency; operative 9–6–2000 (Register 2000, No. 35). A Certificate of Compliance must be transmitted to OAL by 1–4–2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–28–2000 order transmitted to OAL 12–26–2000 and filed 2–8–2001 (Register 2001, No. 6).
6. Amendment of section heading, section and NOTE filed 9–29–2004 as an emergency; operative 10–7–2004 (Register 2004, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–4–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL pursuant to Welfare and Institutions Code section 14043.75.
7. Amendment of section heading, section and NOTE refiled 1–27–2005 as an emergency; operative 2–5–2005 (Register 2005, No. 4). A Certificate of Compliance must be transmitted to OAL by 6–6–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.
8. Amendment of section heading, section and NOTE refiled 6–2–2005 as an emergency; operative 6–7–2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 10–5–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.
9. Certificate of Compliance as to 6–2–2005 order transmitted to OAL 9–29–2005 and filed 11–10–2005 (Register 2005, No. 45).

§ 51000.8. Group Provider Number.

"Group Provider Number" means the unique identification number assigned to a provider group applicant or reassigned to a provider group by the Department of Health Services to obtain reimbursement from the Medi–Cal program.

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code; and Section 78, Chapter 146, Statutes of 1999. Reference: Section 14043.45, Welfare and Institutions Code.

HISTORY

1. New section filed 9–28–99 as an emergency; operative 9–28–99 (Register 99, No. 40). A Certificate of Compliance must be transmitted to OAL by 3–27–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
2. New section refiled 11–24–99 as an emergency; operative 11–24–99 (Register 99, No. 48). A Certificate of Compliance must be transmitted to OAL by 5–22–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
3. New section refiled 5–5–2000 as an emergency; operative 5–22–2000 (Register 2000, No. 18). A Certificate of Compliance must be transmitted to OAL by 9–19–2000 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 8–28–2000 as an emergency; operative 9–6–2000 (Register 2000, No. 35). A Certificate of Compliance must be transmitted to OAL by 1–4–2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–28–2000 order transmitted to OAL 12–26–2000 and filed 2–8–2001 (Register 2001, No. 6).

§ 51000.9. Indirect Ownership Interest.

(a) "Indirect Ownership Interest" means an ownership interest in any entity that has an ownership interest in the applicant or provider. This term includes an ownership interest in any entity that has an indirect ownership interest in the applicant or provider.

(b) The amount of indirect ownership interest is determined by multiplying the percentages of ownership in each entity. For example, if A owns 10 percent of the stock in a corporation which owns 80 percent of the stock of the applicant or provider, A's interest equates to an 8 percent indirect ownership interest in the applicant or provider and shall be reported pursuant to Section 51000.35. Conversely, if B owns 80 percent of the stock of a corporation which owns 5 percent of the stock of the applicant or provider, B's interest equates to a 4 percent indirect ownership interest in the applicant or provider and need not be reported.

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code; and Section 78, Chapter 146, Statutes of 1999. Reference: Section 14043.2, Welfare and Institutions Code; 42, U.S.C., Sections 1320a–3, 1320a–7, 1396a(a)(38), 1396b(i)(2); and 42, Code of Federal Regulations, Part 455.

HISTORY

1. New section filed 9–28–99 as an emergency; operative 9–28–99 (Register 99, No. 40). A Certificate of Compliance must be transmitted to OAL by 3–27–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
2. New section refiled 11–24–99 as an emergency; operative 11–24–99 (Register 99, No. 48). A Certificate of Compliance must be transmitted to OAL by 5–22–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
3. New section refiled 5–5–2000 as an emergency; operative 5–22–2000 (Register 2000, No. 18). A Certificate of Compliance must be transmitted to OAL by 9–19–2000 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 8–28–2000 as an emergency; operative 9–6–2000 (Register 2000, No. 35). A Certificate of Compliance must be transmitted to OAL by 1–4–2001 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 8–28–2000 order transmitted to OAL 12–26–2000 and filed 2–8–2001 (Register 2001, No. 6).

§ 51000.10. Line of Credit.

"Line of Credit" means a right granted by an applicant or provider to any other person or entity to defer payment to applicant or provider for the purchase of services, goods, supplies, or merchandise, from applicant or provider up to a predetermined number or amount of services, goods, supplies, or merchandise, or a predetermined amount of money.

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code; and Section 78, Chapter 146, Statutes of 1999. Reference: Section 14125.8, Welfare and Institutions Code.

HISTORY

1. New section filed 9–28–99 as an emergency; operative 9–28–99 (Register 99, No. 40). A Certificate of Compliance must be transmitted to OAL by 3–27–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
2. New section refiled 11–24–99 as an emergency; operative 11–24–99 (Register 99, No. 48). A Certificate of Compliance must be transmitted to OAL by 5–22–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
3. New section refiled 5–5–2000 as an emergency; operative 5–22–2000 (Register 2000, No. 18). A Certificate of Compliance must be transmitted to OAL by 9–19–2000 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 8–28–2000 as an emergency; operative 9–6–2000 (Register 2000, No. 35). A Certificate of Compliance must be transmitted to OAL by 1–4–2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–28–2000 order transmitted to OAL 12–26–2000 and filed 2–8–2001 (Register 2001, No. 6).

§ 51000.10.1. Location.

"Location" means a street, city, or rural route address or a site or place within a street, city, or rural route address, and the city, county, state, and nine digit ZIP Code. A post office box or commercial box is not a location.

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code. Reference: Sections 14043.1 and 14043.62, Welfare and Institutions Code.

HISTORY

1. New section filed 9–29–2004 as an emergency; operative 10–7–2004 (Register 2004, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–4–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL pursuant to Welfare and Institutions Code section 14043.75.
2. New section refiled 1–27–2005 as an emergency; operative 2–5–2005 (Register 2005, No. 4). A Certificate of Compliance must be transmitted to OAL by 6–6–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.
3. New section refiled 6–2–2005 as an emergency; operative 6–7–2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 10–5–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.
4. Certificate of Compliance as to 6–2–2005 order transmitted to OAL 9–29–2005 and filed 11–10–2005 (Register 2005, No. 45).

§ 51000.11. Mailing Address.

"Mailing address" means the address at which the applicant or provider wishes to receive general program correspondence, such as bulletin articles and Provider Manual updates. The mailing address includes the post office box number, or the street number and name, room or suite number or letter, and the city, state and 9–digit zip code.

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code; and Section 78, Chapter 146, Statutes of 1999. Reference: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code.

HISTORY

1. New section filed 9–28–99 as an emergency; operative 9–28–99 (Register 99, No. 40). A Certificate of Compliance must be transmitted to OAL by 3–27–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
2. New section refiled 11–24–99 as an emergency; operative 11–24–99 (Register 99, No. 48). A Certificate of Compliance must be transmitted to OAL by 5–22–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
3. New section refiled 5–5–2000 as an emergency; operative 5–22–2000 (Register 2000, No. 18). A Certificate of Compliance must be transmitted to OAL by 9–19–2000 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 8–28–2000 as an emergency; operative 9–6–2000 (Register 2000, No. 35). A Certificate of Compliance must be transmitted to OAL by 1–4–2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–28–2000 order transmitted to OAL 12–26–2000 and filed 2–8–2001 (Register 2001, No. 6).

§ 51000.12. Managing Employee.

"Managing employee" means a general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over, or who directly or indirectly conducts the day–to–day operation of an applicant or provider.

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code; and Section 78, Chapter 146, Statutes of 1999. Reference: Section 14043.2, Welfare and Institutions Code; 42, U.S.C., Sections 1320a–3, 1320a–7, 1396a(a)(38), 1396b(i)(2); and 42, Code of Federal Regulations, Part 455.

HISTORY

1. New section filed 9–28–99 as an emergency; operative 9–28–99 (Register 99, No. 40). A Certificate of Compliance must be transmitted to OAL by 3–27–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
2. New section refiled 11–24–99 as an emergency; operative 11–24–99 (Register 99, No. 48). A Certificate of Compliance must be transmitted to OAL by 5–22–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
3. New section refiled 5–5–2000 as an emergency; operative 5–22–2000 (Register 2000, No. 18). A Certificate of Compliance must be transmitted to OAL by 9–19–2000 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 8–28–2000 as an emergency; operative 9–6–2000 (Register 2000, No. 35). A Certificate of Compliance must be transmitted to OAL by 1–4–2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–28–2000 order transmitted to OAL 12–26–2000 and filed 2–8–2001 (Register 2001, No. 6).

§ 51000.13. Ownership Interest.

"Ownership interest" means the possession of equity in the capital, the stock, or the profits of the applicant or provider.

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code; and Section 78, Chapter 146, Statutes of 1999. Reference: Section 14043.2, Welfare and Institutions Code; 42, U.S.C., Sections 1320a–3, 1320a–7, 1396a(a)(38), 1396b(i)(2); and 42, Code of Federal Regulations, Part 455.

HISTORY

1. New section filed 9–28–99 as an emergency; operative 9–28–99 (Register 99, No. 40). A Certificate of Compliance must be transmitted to OAL by 3–27–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
2. New section refiled 11–24–99 as an emergency; operative 11–24–99 (Register 99, No. 48). A Certificate of Compliance must be transmitted to OAL by 5–22–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
3. New section refiled 5–5–2000 as an emergency; operative 5–22–2000 (Register 2000, No. 18). A Certificate of Compliance must be transmitted to OAL by 9–19–2000 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 8–28–2000 as an emergency; operative 9–6–2000 (Register 2000, No. 35). A Certificate of Compliance must be transmitted to OAL by 1–4–2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–28–2000 order transmitted to OAL 12–26–2000 and filed 2–8–2001 (Register 2001, No. 6).

§ 51000.14. Pay To Address.

"Pay to address" means the address at which the applicant or provider wishes to receive payment for the provision of healthcare services, equip-

ment or supplies to Medi-Cal beneficiaries. The pay to address includes the post office box number, or the street number and name, room or suite number or letter, the city, state and 9-digit zip code.

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code; and Section 78, Chapter 146, Statutes of 1999. Reference: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code.

HISTORY

1. New section filed 9-28-99 as an emergency; operative 9-28-99 (Register 99, No. 40). A Certificate of Compliance must be transmitted to OAL by 3-27-2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
2. New section refiled 11-24-99 as an emergency; operative 11-24-99 (Register 99, No. 48). A Certificate of Compliance must be transmitted to OAL by 5-22-2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
3. New section refiled 5-5-2000 as an emergency; operative 5-22-2000 (Register 2000, No. 18). A Certificate of Compliance must be transmitted to OAL by 9-19-2000 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 8-28-2000 as an emergency; operative 9-6-2000 (Register 2000, No. 35). A Certificate of Compliance must be transmitted to OAL by 1-4-2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8-28-2000 order transmitted to OAL 12-26-2000 and filed 2-8-2001 (Register 2001, No. 6).

§ 51000.15. Person with an Ownership or Control Interest.

(a) "Person with an ownership or control interest" means a person or corporation that:

(1) Has an ownership interest totaling 5 percent or more in an applicant or provider.

(2) Has an indirect ownership interest equal to 5 percent or more in an applicant or provider.

(3) Has a combination of direct and indirect ownership interests equal to 5 percent or more in an applicant or provider.

(4) Owns an interest of 5 percent or more in any mortgage, deed of trust, note, or other obligation secured by the applicant or provider if that interest equals at least 5 percent of the value of the property or assets of the applicant or provider.

(5) Is an officer or director of an applicant or provider that is organized as a corporation.

(6) Is a partner in an applicant or provider that is organized as a partnership.

(b) To determine percentage of ownership, mortgage, deed of trust, note or other obligation, the percentage of interest owned in the obligation is multiplied by the percentage of the applicant or provider's assets used to secure the obligation. For example, if A owns 10 percent of a note secured by 60 percent of the provider's assets, A's interest in the provider's assets equates to 6 percent and shall be reported pursuant to Section 51000.35(a). Conversely, if B owns 40 percent of a note secured by 10 percent of the provider's assets, B's interest in the provider's assets equates to 4 percent and need not be reported.

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code; and Section 78, Chapter 146, Statutes of 1999. Reference: Section 14043.2, Welfare and Institutions Code; 42, U.S.C., Sections 1320a-3, 1320a-7, 1396a(a)(38), 1396b(i)(2); and 42, Code of Federal Regulations, Part 455.

HISTORY

1. New section filed 9-28-99 as an emergency; operative 9-28-99 (Register 99, No. 40). A Certificate of Compliance must be transmitted to OAL by 3-27-2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
2. New section refiled 11-24-99 as an emergency; operative 11-24-99 (Register 99, No. 48). A Certificate of Compliance must be transmitted to OAL by 5-22-2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
3. New section refiled 5-5-2000 as an emergency; operative 5-22-2000 (Register 2000, No. 18). A Certificate of Compliance must be transmitted to OAL by 9-19-2000 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 8-28-2000 as an emergency; operative 9-6-2000 (Register 2000, No. 35). A Certificate of Compliance must be transmitted to OAL by 1-4-2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8-28-2000 order, including amendment of subsection (b), transmitted to OAL 12-26-2000 and filed 2-8-2001 (Register 2001, No. 6).

§ 51000.15.1. Preenrollment Period or Preenrollment.

"Preenrollment period" or "preenrollment" includes the period of time during which an application package for enrollment, continued enrollment, or for the addition of or change in a location is pending with the Department.

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code. Reference: Section 14043.1, 14043.26 and 14043.4, Welfare and Institutions Code.

HISTORY

1. New section filed 9-29-2004 as an emergency; operative 10-7-2004 (Register 2004, No. 41). A Certificate of Compliance must be transmitted to OAL by 2-4-2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL pursuant to Welfare and Institutions Code section 14043.75.
2. New section refiled 1-27-2005 as an emergency; operative 2-5-2005 (Register 2005, No. 4). A Certificate of Compliance must be transmitted to OAL by 6-6-2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.
3. New section refiled 6-2-2005 as an emergency; operative 6-7-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 10-5-2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.
4. Certificate of Compliance as to 6-2-2005 order transmitted to OAL 9-29-2005 and filed 11-10-2005 (Register 2005, No. 45).

§ 51000.16. Provider Group.

"Provider Group" means two or more rendering providers doing business together under a group provider number assigned by the Department of Health Services.

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code. Reference: Sections 14043.15 and 14043.26, Welfare and Institutions Code.

HISTORY

1. New section filed 9-28-99 as an emergency; operative 9-28-99 (Register 99, No. 40). A Certificate of Compliance must be transmitted to OAL by 3-27-2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
2. New section refiled 11-24-99 as an emergency; operative 11-24-99 (Register 99, No. 48). A Certificate of Compliance must be transmitted to OAL by 5-22-2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
3. New section refiled 5-5-2000 as an emergency; operative 5-22-2000 (Register 2000, No. 18). A Certificate of Compliance must be transmitted to OAL by 9-19-2000 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 8-28-2000 as an emergency; operative 9-6-2000 (Register 2000, No. 35). A Certificate of Compliance must be transmitted to OAL by 1-4-2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8-28-2000 order transmitted to OAL 12-26-2000 and filed 2-8-2001 (Register 2001, No. 6).
6. Amendment of section and NOTE filed 9-29-2004 as an emergency; operative 10-7-2004 (Register 2004, No. 41). A Certificate of Compliance must be transmitted to OAL by 2-4-2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL pursuant to Welfare and Institutions Code section 14043.75.
7. Amendment of section and NOTE refiled 1-27-2005 as an emergency; operative 2-5-2005 (Register 2005, No. 4). A Certificate of Compliance must be transmitted to OAL by 6-6-2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.
8. Amendment of section and NOTE refiled 6-2-2005 as an emergency; operative 6-7-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 10-5-2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.
9. Certificate of Compliance as to 6-2-2005 order, including amendment of NOTE, transmitted to OAL 9-29-2005 and filed 11-10-2005 (Register 2005, No. 45).

§ 51000.17. Provider Group Applicant.

"Provider Group Applicant" means more than one individual rendering provider applying to be enrolled as a provider group.

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code; and Section 78, Chapter 146, Statutes of 1999. Reference: Sections 14043 and 14043.1, Welfare and Institutions Code.

HISTORY

1. New section filed 9–28–99 as an emergency; operative 9–28–99 (Register 99, No. 40). A Certificate of Compliance must be transmitted to OAL by 3–27–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
2. New section refiled 11–24–99 as an emergency; operative 11–24–99 (Register 99, No. 48). A Certificate of Compliance must be transmitted to OAL by 5–22–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
3. New section refiled 5–5–2000 as an emergency; operative 5–22–2000 (Register 2000, No. 18). A Certificate of Compliance must be transmitted to OAL by 9–19–2000 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 8–28–2000 as an emergency; operative 9–6–2000 (Register 2000, No. 35). A Certificate of Compliance must be transmitted to OAL by 1–4–2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–28–2000 order transmitted to OAL 12–26–2000 and filed 2–8–2001 (Register 2001, No. 6).

§ 51000.18. Provider Identification Number or PIN.

"Provider Identification Number or PIN" means the unique identification number assigned to a provider to:

(a) Submit electronic claims for reimbursement.

(b) Verify a beneficiary's eligibility.

(c) Determine whether the beneficiary has met his/her share of cost, if applicable.

(d) Complete a Medi–Service reservation or reversal.

(e) Gain access to the provider telecommunications network for check write or claim information, payment history, or to verify procedure codes and rates of reimbursement.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 78, Chapter 146, Statutes of 1999. Reference: Sections 14040 and 14124.5, Welfare and Institutions Code.

HISTORY

1. New section filed 9–28–99 as an emergency; operative 9–28–99 (Register 99, No. 40). A Certificate of Compliance must be transmitted to OAL by 3–27–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
2. New section refiled 11–24–99 as an emergency; operative 11–24–99 (Register 99, No. 48). A Certificate of Compliance must be transmitted to OAL by 5–22–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
3. New section refiled 5–5–2000 as an emergency; operative 5–22–2000 (Register 2000, No. 18). A Certificate of Compliance must be transmitted to OAL by 9–19–2000 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 8–28–2000 as an emergency; operative 9–6–2000 (Register 2000, No. 35). A Certificate of Compliance must be transmitted to OAL by 1–4–2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–28–2000 order, including amendment of subsection designators, transmitted to OAL 12–26–2000 and filed 2–8–2001 (Register 2001, No. 6).

§ 51000.19. Provider.

"Provider" shall have the same meaning as in Section 51051.

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code; and Section 78, Chapter 146, Statutes of 1999. Reference: Sections 14043 and 14043.1, Welfare and Institutions Code.

HISTORY

1. New section filed 9–28–99 as an emergency; operative 9–28–99 (Register 99, No. 40). A Certificate of Compliance must be transmitted to OAL by 3–27–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
2. New section refiled 11–24–99 as an emergency; operative 11–24–99 (Register 99, No. 48). A Certificate of Compliance must be transmitted to OAL by 5–22–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
3. New section refiled 5–5–2000 as an emergency; operative 5–22–2000 (Register 2000, No. 18). A Certificate of Compliance must be transmitted to OAL by 9–19–2000 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 8–28–2000 as an emergency; operative 9–6–2000 (Register 2000, No. 35). A Certificate of Compliance must be transmitted to OAL by 1–4–2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–28–2000 order transmitted to OAL 12–26–2000 and filed 2–8–2001 (Register 2001, No. 6).

§ 51000.20. Provider Number.

"Provider Number" means the unique identification number assigned to an applicant or reassigned to a provider by the Department of Health Services to obtain reimbursement from the Medi–Cal program.

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code; and Section 78, Chapter 146, Statutes of 1999. Reference: Section 14043.45, Welfare and Institutions Code.

HISTORY

1. New section filed 9–28–99 as an emergency; operative 9–28–99 (Register 99, No. 40). A Certificate of Compliance must be transmitted to OAL by 3–27–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
2. New section refiled 11–24–99 as an emergency; operative 11–24–99 (Register 99, No. 48). A Certificate of Compliance must be transmitted to OAL by 5–22–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
3. New section refiled 5–5–2000 as an emergency; operative 5–22–2000 (Register 2000, No. 18). A Certificate of Compliance must be transmitted to OAL by 9–19–2000 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 8–28–2000 as an emergency; operative 9–6–2000 (Register 2000, No. 35). A Certificate of Compliance must be transmitted to OAL by 1–4–2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–28–2000 order transmitted to OAL 12–26–2000 and filed 2–8–2001 (Register 2001, No. 6).

§ 51000.20.1. Provider Transferor.

(a) "Provider Transferor" means a provider that joins a transferee applicant to its Medi–Cal provider agreement, including its rights to use the provider number issued by the Department for that location when any of the following events occur;

(1) A change of ownership as defined in Section 51000.6.

(2) A sale or transfer of 50 percent or more of the assets owned by the corporation at the location for which a provider number was issued.

(3) A cumulative change in the person(s) with an ownership or control interest of 50 percent or more since the information provided in the last complete application package that was approved for enrollment.

(4) When a new Taxpayer Identification Number is issued by the Internal Revenue Service (IRS).

(5) When the Board of Pharmacy requires a new site permit, pursuant to Chapter 9 (commencing with Section 4000) Division 2 of the Business and Professions Code.

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code. Reference: Sections 14043.25 and 14043.26, Welfare and Institutions Code; and 42 Code of Federal Regulations, Part 489.

HISTORY

1. New section filed 11–10–2005; operative 11–10–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 45).

§ 51000.20.9. Rendering Practitioner.

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code. Reference: Sections 2505, 2746, 2834 and 3500, Business and Professions Code; Section 100185.5, Health and Safety Code; and Sections 14043.1, 14043.26 and 14043.47, Welfare and Institutions Code.

HISTORY

1. New section filed 9–29–2004 as an emergency; operative 10–7–2004 (Register 2004, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–4–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL pursuant to Welfare and Institutions Code section 14043.75.

2. New section refiled 1–27–2005 as an emergency; operative 2–5–2005 (Register 2005, No. 4). A Certificate of Compliance must be transmitted to OAL by 6–6–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.
3. New section refiled 6–2–2005 as an emergency; operative 6–7–2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 10–5–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.
4. Certificate of Compliance as to 6–2–2005 order, including repealer of section, transmitted to OAL 9–29–2005 and filed 11–10–2005 (Register 2005, No. 45).

§ 51000.21. Rendering Provider.

"Rendering provider" means an individual provider who renders healthcare services, or provides goods, supplies, or merchandise, as a member of a provider group and uses the group provider number to bill the Medi–Cal program.

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code; and Section 78, Chapter 146, Statutes of 1999. Reference: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code.

HISTORY

1. New section filed 9–28–99 as an emergency; operative 9–28–99 (Register 99, No. 40). A Certificate of Compliance must be transmitted to OAL by 3–27–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
2. New section refiled 11–24–99 as an emergency; operative 11–24–99 (Register 99, No. 48). A Certificate of Compliance must be transmitted to OAL by 5–22–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
3. New section refiled 5–5–2000 as an emergency; operative 5–22–2000 (Register 2000, No. 18). A Certificate of Compliance must be transmitted to OAL by 9–19–2000 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 8–28–2000 as an emergency; operative 9–6–2000 (Register 2000, No. 35). A Certificate of Compliance must be transmitted to OAL by 1–4–2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–28–2000 order transmitted to OAL 12–26–2000 and filed 2–8–2001 (Register 2001, No. 6).

§ 51000.22. Rendering Provider Number.

"Rendering provider number" means the unique identification number assigned to a rendering provider to identify the rendering provider on claims submitted by a provider group under a group provider number.

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code; and Section 78, Chapter 146, Statutes of 1999. Reference: Section 14043.45, Welfare and Institutions Code.

HISTORY

1. New section filed 9–28–99 as an emergency; operative 9–28–99 (Register 99, No. 40). A Certificate of Compliance must be transmitted to OAL by 3–27–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
2. New section refiled 11–24–99 as an emergency; operative 11–24–99 (Register 99, No. 48). A Certificate of Compliance must be transmitted to OAL by 5–22–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
3. New section refiled 5–5–2000 as an emergency; operative 5–22–2000 (Register 2000, No. 18). A Certificate of Compliance must be transmitted to OAL by 9–19–2000 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 8–28–2000 as an emergency; operative 9–6–2000 (Register 2000, No. 35). A Certificate of Compliance must be transmitted to OAL by 1–4–2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–28–2000 order, including amendment of NOTE, transmitted to OAL 12–26–2000 and filed 2–8–2001 (Register 2001, No. 6).

§ 51000.23. Significant Business Transaction.

"Significant business transaction" means any business transaction or series of transactions that involve health care services, goods, supplies, or merchandise related to the provision of services to Medi–Cal beneficiaries that, during any one fiscal year, exceed the lesser of $25,000 or 5 percent of an applicant's or provider's total operating expenses.

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code; and Section 78, Chapter 146, Statutes of 1999. Reference: Section 14043.2, Welfare and Institutions Code; 42, U.S.C., Sections 1320a–3, 1320a–7, 1396a(a)(38), 1396b(i)(2); and 42, Code of Federal Regulations, Part 455.

HISTORY

1. New section filed 9–28–99 as an emergency; operative 9–28–99 (Register 99, No. 40). A Certificate of Compliance must be transmitted to OAL by 3–27–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
2. New section refiled 11–24–99 as an emergency; operative 11–24–99 (Register 99, No. 48). A Certificate of Compliance must be transmitted to OAL by 5–22–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
3. New section refiled 5–5–2000 as an emergency; operative 5–22–2000 (Register 2000, No. 18). A Certificate of Compliance must be transmitted to OAL by 9–19–2000 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 8–28–2000 as an emergency; operative 9–6–2000 (Register 2000, No. 35). A Certificate of Compliance must be transmitted to OAL by 1–4–2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–28–2000 order, including amendment of section, transmitted to OAL 12–26–2000 and filed 2–8–2001 (Register 2001, No. 6).

§ 51000.24. Subcontractor.

"Subcontractor" means an individual, agency, or organization:

(a) To which an applicant or provider has contracted or delegated some of its management functions or responsibilities of providing healthcare services, equipment or supplies to its patients.

(b) With whom an applicant or provider has entered into a contract, agreement, purchase order, lease, or leases of real property, to obtain space, supplies, equipment, or services provided under the Medi–Cal Program.

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code; and Section 78, Chapter 146, Statutes of 1999. Reference: Section 14043.2, Welfare and Institutions Code; 42, U.S.C., Sections 1320a–3, 1320a–7, 1396a(a)(38), 1396b(i)(2); and 42, Code of Federal Regulations, Part 455.

HISTORY

1. New section filed 9–28–99 as an emergency; operative 9–28–99 (Register 99, No. 40). A Certificate of Compliance must be transmitted to OAL by 3–27–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
2. New section refiled 11–24–99 as an emergency; operative 11–24–99 (Register 99, No. 48). A Certificate of Compliance must be transmitted to OAL by 5–22–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
3. New section refiled 5–5–2000 as an emergency; operative 5–22–2000 (Register 2000, No. 18). A Certificate of Compliance must be transmitted to OAL by 9–19–2000 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 8–28–2000 as an emergency; operative 9–6–2000 (Register 2000, No. 35). A Certificate of Compliance must be transmitted to OAL by 1–4–2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–28–2000 order transmitted to OAL 12–26–2000 and filed 2–8–2001 (Register 2001, No. 6).

§ 51000.24.1. Successor Liability with Joint and Several Liability.

"Successor Liability with Joint and Several Liability" means a provider transferor joins a transferee applicant to its Medi–Cal provider agreement, including its rights to use the provider number issued by the Department for that location.

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code. Reference: Sections 14043.25 and 14043.26, Welfare and Institutions Code; and 42 Code of Federal Regulations, Part 489.

HISTORY

1. New section filed 11–10–2005; operative 11–10–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 45).

§ 51000.25. Supplier.

"Supplier" means any manufacturer, principal labeler, wholesaler and any other primary supplier from which an applicant or provider pur-

chases services, goods, supplies, or merchandise, used in carrying out its responsibilities under Medi–Cal.

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code; and Section 78, Chapter 146, Statutes of 1999. Reference: Section 14043.2, Welfare and Institutions Code; 42, U.S.C., Sections 1320a–3, 1320a–7, 1396a(a)(38), 1396b(i)(2); and 42, Code of Federal Regulations, Part 455.

HISTORY

1. New section filed 9–28–99 as an emergency; operative 9–28–99 (Register 99, No. 40). A Certificate of Compliance must be transmitted to OAL by 3–27–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
2. New section refiled 11–24–99 as an emergency; operative 11–24–99 (Register 99, No. 48). A Certificate of Compliance must be transmitted to OAL by 5–22–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
3. New section refiled 5–5–2000 as an emergency; operative 5–22–2000 (Register 2000, No. 18). A Certificate of Compliance must be transmitted to OAL by 9–19–2000 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 8–28–2000 as an emergency; operative 9–6–2000 (Register 2000, No. 35). A Certificate of Compliance must be transmitted to OAL by 1–4–2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–28–2000 order transmitted to OAL 12–26–2000 and filed 2–8–2001 (Register 2001, No. 6).

§ 51000.25.1. Suspend.

"Suspend" includes a deactivation, and means health care services, goods, supplies, or merchandise provided, directly or indirectly, to a Medi–Cal beneficiary shall not be reimbursed under the Medi–Cal program until the provider is reinstated by the Department.

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code. Reference: Sections 14043.2, 14043.36, 14043.37 and 14043.7, Welfare and Institutions Code.

HISTORY

1. New section filed 11–10–2005; operative 11–10–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 45).

§ 51000.25.2. Transferee Applicant.

(a) "Transferee Applicant" means an individual or entity that joins a provider transferors' Medi–Cal provider agreement including the use of the provider number issued by the Department for that location when any of the following events occur:

(1) A change of ownership as defined in Section 51000.6.

(2) A sale or transfer of 50 percent or more of the assets owned by the corporation at the location for which a provider number was issued.

(3) A cumulative change in the person(s) with an ownership or control interest of 50 percent or more since the information provided in the last complete application package that was approved for enrollment.

(4) When a new Taxpayer Identification Number is issued by the Internal Revenue Service (IRS).

(5) When the Board of Pharmacy requires a new site permit, pursuant to Chapter 9 (commencing with Section 4000) Division 2 of the Business and Professions Code.

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code. Reference: Sections 14043.25 and 14043.26, Welfare and Institutions Code; and 42 Code of Federal Regulations, Part 489.

HISTORY

1. New section filed 11–10–2005; operative 11–10–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 45).

§ 51000.26. Wholly Owned Supplier.

"Wholly owned supplier" means a supplier whose total ownership interest is held by an applicant or provider or by a person, persons, or other entity with an ownership or control interest in an applicant or provider.

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code; and Section 78, Chapter 146, Statutes of 1999. Reference: Section 14043.2, Welfare and Institutions Code; 42, U.S.C., Sections 1320a–3, 1320a–7, 1396a(a)(38), 1396b(i)(2); and 42, Code of Federal Regulations, Part 455.

HISTORY

1. New section filed 9–28–99 as an emergency; operative 9–28–99 (Register 99, No. 40). A Certificate of Compliance must be transmitted to OAL by 3–27–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
2. New section refiled 11–24–99 as an emergency; operative 11–24–99 (Register 99, No. 48). A Certificate of Compliance must be transmitted to OAL by 5–22–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
3. New section refiled 5–5–2000 as an emergency; operative 5–22–2000 (Register 2000, No. 18). A Certificate of Compliance must be transmitted to OAL by 9–19–2000 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 8–28–2000 as an emergency; operative 9–6–2000 (Register 2000, No. 35). A Certificate of Compliance must be transmitted to OAL by 1–4–2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–28–2000 order transmitted to OAL 12–26–2000 and filed 2–8–2001 (Register 2001, No. 6).

§ 51000.30. Medi–Cal Provider Application for Enrollment, Continued Enrollment, or Enrollment at a New, Additional, or Change in Location.

(a) As a condition for enrollment, continued enrollment, or enrollment at a new, additional, or change in location, an applicant or provider shall meet the Standards of Participation specified in Chapter 7 (commencing with Section 14000) and Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code, and Division 3, Title 22, California Code of Regulations, and either:

(1) Be certified by the Department to participate in the Medi–Cal program and be a:

(A) Clinic licensed by the Department pursuant to Chapter 1 (commencing with Section 1200) of Division 2 of the Health and Safety Code, including a clinic, operated by a licensed clinic, that is exempt from licensure pursuant to Section 1206(h) of the Health and Safety Code; or

(B) Health facility licensed by the Department pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code; or

(C) Adult day health care provider licensed pursuant to Chapter 3.3 (commencing with Section 1570) of Division 2 of the Health and Safety Code; or

(D) Home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2 of the Health and Safety Code; or

(E) Hospice licensed pursuant to Chapter 8.5 (commencing with Section 1745) of Division 2 of the Health and Safety Code; or

(2) Submit to the Department a completed application package on forms specified in subsection (c), below, Section 51000.35, and Section 51000.45. These forms shall:

(A) Contain complete and accurate information.

(B) Be signed under penalty of perjury by an individual who is the sole proprietor, partner, corporate officer, or by an official representative of a governmental entity or non–profit organization, who has the authority to legally bind the applicant seeking enrollment, or the provider seeking continued enrollment, or the provider seeking enrollment at a new, additional, or change in location, as a Medi–Cal provider.

(C) Contain an original signature in ink.

(D) Be notarized by a Notary Public, unless the applicant or provider is licensed pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, the Osteopathic Initiative Act, the Chiropractic Initiative Act, or is a lawfully organized group consisting of persons who are so licensed. The Certificate of Acknowledgement signed by the Notary Public shall be in the form specified in Section 1189 of the Civil Code.

(b) For applicants or providers enrolled pursuant to subdivision (a)(2), the following events require the submission of a new complete application package:

(1) When there is a change of ownership as defined in Section 51000.6;

(2) When 50 percent or more of the assets owned by the corporation at the location for which a provider number has been issued are sold or transferred;

(3) When a new Taxpayer Identification (ID) Number is issued by the IRS;

(4) When the Board of Pharmacy requires a new site permit, pursuant to Chapter 9 (commencing with Section 4000) Division 2 of the Business and Professions Code;

(5) When the deletion of one or more rendering providers for a provider group, results in one remaining rendering provider.

(6) When there is a cumulative change, of 50 percent or more in the person(s) with an ownership or control interest since the information provided in the last complete application package that was approved for enrollment;

(7) When a transferee applicant meets the requirements for successor liability with joint and several liability set forth in Section 51000.32.

(c) The applicant or provider, when required pursuant to subsection (a)(2) through (b), shall complete, as applicable:

(1) The "Medi-Cal Provider Group Application," DHS 6203 (Rev. 07/05), incorporated by reference herein; or

(2) The "Medi-Cal Provider Application," DHS 6204 (Rev. 07/05), incorporated by reference herein; or

(3) One of the applications from the following list, each incorporated by reference herein, which is applicable to their provider type:

(A) "Medi-Cal Durable Medical Equipment Provider Application," DHS 6201 (Rev. 07/05).

(B) "Medi-Cal Orthotics and Prosthetics Provider Application," DHS 6202 (Rev. 07/05).

(C) "Medi-Cal Pharmacy Provider Application," DHS 6205 (Rev. 07/05).

(D) "Medi-Cal Medical Transportation Provider Application," DHS 6206 (Rev. 07/05).

(E) "Medi-Cal Physician Application/Agreement," DHS 6210 (Rev. 07/05).

(F) "Medi-Cal Rendering Provider Application/Disclosure Statement/Agreement for Physician and Allied Providers," DHS 6216 (07/05).

(G) "Medi-Cal Nonphysician Medical Practitioner and Licensed Midwife Application," DHS 6248 (Rev. 07/05).

(4) One of the applications specified in (c)(2) or (c)(3)(G) for each nonphysician medical practitioner and licensed midwife under the supervision of a physician and surgeon.

(d) The applicant or provider, when required pursuant to subsection (a) through (b) above, shall indicate on the application:

(1) Whether the applicant or provider is requesting enrollment, or continued enrollment, enrollment at a new, additional, or change in location, or enrollment pursuant to subsection (b) above, and the provider's current provider number(s) or group number(s) if any.

(2) Whether the applicant or provider is a governmental entity or is a partnership, unincorporated sole proprietorship, corporation or limited liability company. If the applicant or provider is a partnership, a copy of the fully executed partnership agreement shall be submitted with the application.

(3) The legal name under which the applicant or provider is applying for enrollment, continued enrollment, enrollment at a new, additional or change in location, or enrollment pursuant to subsection (b) above. The legal name of the individual, partnership, provider group, association, corporation, institution, or entity, shall be the name currently on file with the Internal Revenue Service (IRS). If the applicant or provider is using a fictitious name, a copy of the Fictitious Business Name Statement, or Fictitious Name Permit, shall be submitted with the application.

(4) The business address of the applicant or provider.

(5) The business telephone number of the applicant or provider.

(6) The pay to address, if different from the business address specified on the application.

(7) The mailing address, if different from the business or pay to addresses.

(8) If the applicant or provider is an individual, the date of birth and gender of the applicant or provider.

(9) If the applicant or provider is an individual, the driver's license number or state-issued identification card number, and the state of issuance, of the applicant or provider. A copy of the applicant's or provider's valid driver's license, or state-issued identification card, shall be submitted with the application. The driver's license or state-issued identification card shall be issued within the 50 United States or the District of Columbia.

(10) The license or certificate number, or other approval to provide health care services, of the applicant or provider, including those of the rendering provider(s) in a provider group, and the effective and expiration dates. A copy of the valid license, certificate, or other approval, shall be submitted with the application.

(11) The Medicare billing number, if the applicant or provider is enrolled in the Medicare program.

(12) The Taxpayer Identification Number issued by the IRS under the name of the applicant or provider, or the social security number issued under the name of the applicant or provider. A copy of the IRS Form 941, Form 8109-C, Letter 147-C, or Form SS-4 (Confirmation Notification) shall be submitted with the application.

(13) The provider type of the applicant or provider and, if the applicant or provider is a physician, all of the following:

(A) A listing of his/her specialt(y)ies.

(B) The location, current status and past history of all hospital privileges.

(C) If requesting preferred provider status, documentation shall be submitted at the time of submission of the application package to show that the physician meets all of the criteria listed in the Provider Bulletin, titled "Preferred Provider Status" dated February 2005, accessible on the Medi-Cal web site at www.medi-cal.ca.gov at the Provider Enrollment link, under Statutes, Regulations and Provider Bulletins.

(14) The names, social security numbers (optional), and dates of birth of all rendering providers, if the applicant is a provider group applicant.

(15) The applicant's or provider's Seller's Permit number, if applicable. A copy of the Seller's Permit shall be submitted with the application.

(16) If the applicant intends to provide or the provider currently provides durable medical equipment as defined in Section 51160, or is a medical device retailer as defined in Section 51251, or claims reimbursement for the items listed in Section 51521 or 51526, the applicant or provider shall submit the "Medi-Cal Durable Medical Equipment Provider Application," DHS 6201 (Rev. 07/05), with the information specified in (A) through (D) below. This requirement does not apply to a provider who is authorized to submit claims for reimbursement for durable medical equipment, incontinence medical supplies, or prosthetic and orthotic appliances based on enrollment in the Medi-Cal program as a provider type other than a Durable Medical Equipment and Medical Supply Provider.

(A) A statement indicating whether the applicant or provider has a retail business open and available to the general public that is readily identifiable as a place in which the applicant or provider sells, rents or leases durable medical equipment or medical supply items either in stock on the premises, or in a warehouse under the applicant's or provider's direct control, and has an established place of business, as specified in Section 51000.60.

(B) The days and hours of operation of the applicant's or provider's business.

(C) The address of any warehouse(s) under the direct control of the applicant or provider in which the applicant or provider engages in sales, leasing, or rental of items, and if applicable, the name(s), address(es), and telephone number(s) of the person(s) who hold an ownership interest in the warehouse(s).

(D) A statement of the composition and percentage of the applicant's or provider's current business activities including whether the applicant intends to provide or provider currently provides:

1. Beds.
2. Incontinence medical supplies.
3. Ostomy supplies.
4. Infusion equipment and supplies.
5. Oxygen equipment and supplies.

6. Urinary catheters, bags and related supplies.

7. Wheelchairs.

(17) If the applicant or provider is a pharmacy as defined in Section 51106 and provides pharmaceutical services as defined in Section 51107, the applicant or provider shall submit the "Medi–Cal Pharmacy Provider Application," DHS 6205 (Rev. 07/05), with the following information:

(A) A statement indicating whether the applicant or provider has a retail established place of business that meets the criteria specified in Section 51000.60. If the applicant or provider does not have a business open and available to the general public, an explanation shall be provided.

(B) The National Council for Prescription Drug Programs (NCPDP) number.

(C) The Drug Enforcement Agency (DEA) registration certificate, and the effective and expiration dates. A copy of the DEA registration shall be submitted with the application, if controlled substances are dispensed.

(D) The California State Board of Pharmacy (CSBP) permit number and the effective date. A copy of the CSBP permit shall be submitted with the application.

(E) The name of the pharmacist–in–charge at the business address, as required by Section 4113 of the Business and Professions Code.

(F) The driver's license number or state–issued identification card, and the state of issuance, of the pharmacist–in–charge. A copy of the driver's license, or state–issued identification card of the pharmacist–in–charge shall be submitted with the application.

(G) The social security number (optional) of the pharmacist–in–charge.

(H) The information specified in subsections (d)(16)(B) through (D), above, and the percentage of the applicant's or provider's total business activities represented by the sale of prescription drugs, and meets the requirements of Welfare and Institutions Code Section 14043.34.

(I) The license number of the pharmacist–in–charge. A copy of the license issued to the pharmacist–in–charge shall be submitted with the application.

(18) If the applicant intends to provide or the provider currently provides medical transportation services as defined in Section 51151, and claims reimbursement for services as a provider of medical transportation as defined in Section 51152, or provides nonemergency medical transportation as defined in Section 51151.7, the applicant or provider shall submit the "Medi–Cal Medical Transportation Provider Application," DHS 6206 (Rev. 07/05), with the following information:

(A) For emergency transportation by ambulance, the California Highway Patrol (CHP) certificate number and the date of issuance. A copy of the CHP certificate shall be submitted with the application.

(B) For nonemergency medical transportation, as defined in Section 51151.7, by litter van or wheelchair van registered with DMV as a commercial vehicle, the vehicle identification number (VIN), make and model, year, and license plate number of each vehicle. Proof of full coverage commercial insurance for each vehicle, indicating the VIN for each covered vehicle, shall be submitted.

(C) For air ambulance transportation, the Federal Aviation Administration (FAA) certificate number. A copy of the FAA certificate and a statement on company letterhead of where the aircraft is hangared shall be submitted with the application.

(D) For each driver of nonemergency medical ground transportation vehicles and for each pilot of aircraft(s) employed by the applicant or provider:

1. Full legal name.

2. California driver's license number and the expiration date. A copy of the valid California driver's license shall be submitted with the application.

3. Driving history printout issued by the Department of Motor Vehicles (DMV). A copy of the driving history printout shall be submitted with the application.

4. Medical examination report, DL–51, issued by the DMV and the effective and expiration dates. A copy of the DL–51 shall be submitted with the application.

5. A copy of the certificates for first aid and CPR specified in Sections 51231.1 and 51231.2 shall be submitted with the application.

6. A copy of the standard pre–employment drug and alcohol lab test results shall be submitted with the application.

7. Pilot's license number of the pilot. A copy of the license shall be submitted with the application.

(E) Days and hours of business operation.

(F) Geographic area within which the city or county has issued a business license or permit to provide medical transportation services. A copy of the license or permit shall be submitted with the application.

(G) The documentation required by Sections 51231.1 and 51231.2.

(19) If the applicant intends to provide or the provider currently provides lab services as defined in Section 51137.1, or 51137.2, a Clinical Laboratory Improvement Amendment (CLIA) certificate appropriate for the level of testing performed and a state license or registration shall be submitted. If the applicant or provider performs a test included within the 80000 series of the Physician's Current Procedural Terminology (CPT) codes, a CLIA certificate appropriate for the level of testing performed shall also be submitted if the applicant or provider performs or submits claims for any of the following CPT codes: 78110, 78111, 78120, 78121, 78122, 78130, 78160, 78191, 78270, 78271 and 78272. A copy of the CLIA certificate and the state license or registration shall be submitted with the application.

(20) If the applicant or provider is a nonphysician medical practitioner or licensed midwife as defined in Sections 51170, 51170.1, 51170.2, 51170.3 and 51191, the applicant or provider shall submit the "Medi–Cal Nonphysician Medical Practitioner and Licensed Midwife Application," DHS 6248 (07/05) with the following information:

(A) For the nonphysician medical practitioner and licensed midwife:

1. The license/certification number of the applicant or provider, and the effective and expiration dates. A copy of the valid license or certificate shall be submitted with the application.

2. Date first employed by employing provider including verification of employment.

3. Maximum work hours per week at this location.

4. Hours of supervision per week at this location.

5. For nurse practitioners, the duration of the nurse practitioner training program and the name of the school providing the training program, or equivalent experience.

(B) For the employing provider:

1. Legal Name that is currently on file with the Internal Revenue Service (IRS).

2. Medical License Number. A copy of the valid license shall be submitted with the application.

3. Provider number.

4. Business address.

5. Type of facility at the business address.

6. Type of service delivered at the business address.

7. Business telephone number.

8. Other Medi–Cal provider(s), if any, for whom the applicant currently works, including the name, provider number, business address of each employing provider and the maximum hours per week the applicant works.

(C) For the supervising provider:

1. Legal Name that is currently on file with the Internal Revenue Service (IRS).

2. Medical License Number. A copy of the valid license shall be submitted with the application.

3. Provider number.

4. Driver's license number or state–issued identification card number, and the state of issuance, of the applicant or provider. A copy of the applicant's or provider's valid driver's license, or state–issued identification card, shall be submitted with the application. The driver's license or state–issued identification card shall be issued within the 50 United States or the District of Columbia.

5. Business telephone number.

6. Type of practice/specialty.

7. Name of each nonphysician medical practitioner or licensed midwife supervised, the provider type, and the maximum number of hours worked.

(21) For the individual signing the application, who shall have the authority to legally bind the applicant or provider seeking enrollment, continued enrollment, enrollment at a new, additional, or change in location, or enrollment pursuant to subsection (b) above, the following shall be provided:

(A) The full legal name and title.

(B) Date of birth.

(C) Gender.

(D) Social security number (optional).

(E) The driver's license number or state-issued identification card number and state of issuance. The driver's license or state-issued identification card shall be issued within the 50 United States or the District of Columbia. A copy of the valid driver's license, or state-issued identification card, shall be submitted with the application.

(e) The applicant or provider shall comply with all state and local laws and ordinances regarding business licensing and operations, and shall obtain all state and local licenses and permits necessary to provide the services, goods, supplies, or merchandise being provided or services being rendered by the applicant or provider. A copy of each license and permit shall be submitted with the application. Failure to obtain and maintain all necessary licenses and permits, including but not limited to, a business license, a fictitious name statement, a seller's permit, or a pharmacy or home medical device retailer license, shall result in the disapproval of an applicant's application, or the temporary suspension and deactivation of the provider's number.

(f) The applicant or provider shall obtain and show evidence of maintaining:

(1) Worker's Compensation insurance as required by state law;

(2) Liability insurance that covers premises and operation; and

(3) For any individual licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, the Osteopathic Initiative Act, or the Chiropractic Initiative Act, Professional Liability Insurance coverage.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725, 14043.45, 14043.75 and 14124.5, Welfare and Institutions Code. Reference: Sections 14043.15, 14043.2, 14043.25 and 14043.26, Welfare and Institutions Code; and Title 45, Code of Federal Regulations, Sections 162.408 and 162.412.

HISTORY

1. New section filed 9-28-99 as an emergency; operative 9-28-99 (Register 99, No. 40). A Certificate of Compliance must be transmitted to OAL by 3-27-2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
2. New section, including amendments, refiled 11-24-99 as an emergency; operative 11-24-99 (Register 99, No. 48). A Certificate of Compliance must be transmitted to OAL by 5-22-2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
3. New section refiled 5-5-2000 as an emergency; operative 5-22-2000 (Register 2000, No. 18). A Certificate of Compliance must be transmitted to OAL by 9-19-2000 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 8-28-2000 as an emergency; operative 9-6-2000 (Register 2000, No. 35). A Certificate of Compliance must be transmitted to OAL by 1-4-2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8-28-2000 order, including amendment of section, transmitted to OAL 12-26-2000 and filed 2-8-2001 (Register 2001, No. 6).
6. Amendment of section and NOTE filed 2-3-2003 as an emergency; operative 2-3-2003 (Register 2003, No. 6). Emergency amendments exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75. Amendments to remain in effect for 180 days pursuant to section 78, chapter 146, Statutes of 1999 (AB 1107). A Certificate of Compliance must be transmitted to OAL by 8-4-2003 or emergency language will be repealed by operation of law on the following day.
7. Amendment of section and NOTE refiled 8-5-2003 as an emergency; operative 8-5-2003 (Register 2003, No. 32). Emergency amendments exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75. Amendments to remain in effect for 180 days pursuant to section 78, chapter 146, Statutes of 1999 (AB 1107). A Certificate of Compliance must be transmitted to OAL by 2-2-2004 or emergency language will be repealed by operation of law on the following day.
8. Amendment, including further amendment of section and NOTE, refiled 2-3-2004 as an emergency; operative 2-3-2004 (Register 2004, No. 6). Emergency amendments exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75. A Certificate of Compliance must be transmitted to OAL by 6-2-2004 or emergency language will be repealed by operation of law on the following day.
9. Reinstatement of section as it existed prior to 2-3-2004 emergency amendment by operation of Government Code section 11346.1(f) (Register 2004, No. 24).
10. Amendment refiled 6-8-2004 as an emergency; operative 6-8-2004 (Register 2004, No. 24). A Certificate of Compliance must be transmitted to OAL by 10-6-2004 or emergency language will be repealed by operation of law on the following day.
11. Reinstatement of section as it existed prior to 6-8-2004 emergency amendment by operation of Government Code section 11346.1(f) (Register 2004, No. 41).
12. Amendment of section heading, section and NOTE filed 9-29-2004 as an emergency; operative 10-7-2004 (Register 2004, No. 41). A Certificate of Compliance must be transmitted to OAL by 2-4-2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL pursuant to Welfare and Institutions Code section 14043.75.
13. Amendment of section heading, section and NOTE refiled 1-27-2005 as an emergency; operative 2-5-2005 (Register 2005, No. 4). A Certificate of Compliance must be transmitted to OAL by 6-6-2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.
14. Amendment of section heading, section and NOTE refiled 6-2-2005 as an emergency; operative 6-7-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 10-5-2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.
15. Certificate of Compliance as to 6-2-2005 order, including further amendment of section, transmitted to OAL 9-29-2005 and filed 11-10-2005 (Register 2005, No. 45).
16. Amendment of subsections (d)(1), (d)(20)(B)3., (d)(20)(B)8., (d)(20)(C)3. and (e) and amendment of NOTE filed with the Secretary of State on 2-28-2008 (Register 2008, No. 9). Exempt from review by the Office of Administrative Law pursuant to Welfare and Institutions Code section 14043.45.

§ 51000.31. Medi-Cal Provider Group or Rendering Provider Application for Enrollment, Continued Enrollment or Enrollment at a New, Additional or Change in Location.

(a) The provider group applicant or provider group shall;

(1) Submit a provider group application package pursuant to Section 51000.30(a) through (b) that lists all rendering providers at the business address for which the application package is submitted.

(2) Cease using the provider group number to submit claims whenever the deletion of one or more rendering provider results in less than two remaining rendering providers.

(b) A rendering provider shall:

Apply for enrollment in the Medi-Cal program by submitting "Medi-Cal Rendering Provider Application/Disclosure Statement/Agreement for Physician/Allied Providers," DHS 6216 (07/05) pursuant to Section 51000.30 if not already currently enrolled as a Medi-Cal provider.

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code. Reference: Sections 14043.15, 14043.2, 14043.25 and 14043.26, Welfare and Institutions Code.

HISTORY

1. New section filed 9-29-2004 as an emergency; operative 10-7-2004 (Register 2004, No. 41). A Certificate of Compliance must be transmitted to OAL by 2-4-2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL pursuant to Welfare and Institutions Code section 14043.75.
2. New section refiled 1-27-2005 as an emergency; operative 2-5-2005 (Register 2005, No. 4). A Certificate of Compliance must be transmitted to OAL by 6-6-2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.
3. New section refiled 6-2-2005 as an emergency; operative 6-7-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 10-5-2005 or emergency language will be repealed by operation of law on the

following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.

4. Certificate of Compliance as to 6–2–2005 order, including amendment of section and NOTE, transmitted to OAL 9–29–2005 and filed 11–10–2005 (Register 2005, No. 45).

§ 51000.32. Requirements for Successor Liability with Joint and Several Liability.

(a) A provider transferor may elect successor liability with joint and several liability by meeting both of the following conditions:

(1) By letter postmarked no later than five days after the occurrence of any event listed in Section 51000.30(b), the provider transferor and the transferee applicant shall submit to the Department the "Successor Liability with Joint and Several Liability Agreement," DHS 6217 (11/05), signed and dated by both, which includes the following information:

(A) The legal name of provider transferor which shall be the name currently on file with the Internal Revenue Service (IRS).

(B) Current provider number for the location affected.

(C) Fictitious business name of the provider transferor, if applicable.

(D) The legal name of transferee applicant which shall be the name currently on file with the Internal Revenue Service (IRS).

(E) Current provider number(s) of transferee applicant, if applicable.

(F) Fictitious business name of the transferee applicant, if applicable.

(G) A statement signed and dated by both the provider transferor and the transferee applicant wherein they accept joint and several liability for all debts arising from the Medi–Cal provider agreement applicable to the location for which a provider number was issued by the Department.

(2) The transferee applicant shall submit to the Department within 35 days of the occurrence of any event listed in Section 51000.30(b), a complete application package pursuant to Section 51000.30.

(b) Notwithstanding the Provider Bulletin, titled "Effective Date of Enrollment," dated June 2004, accessible on the Medi–Cal web site at www.medi–cal.ca.gov at the Provider Enrollment link, under Statutes, Regulations and Provider Bulletins, if the transferee applicant is enrolled based on an application submitted pursuant to Section 51000.30(b), the effective date of enrollment shall be the date on the notice and the provider transferor's provider number shall be deactivated effective that date.

(c) If an application submitted pursuant to 51000.30(b) is denied based on the transferee applicant's failure to meet the criteria specified in Section 51000.50(a), the provider transferor's Medi–Cal provider agreement along with the provider number originally issued for that location shall be deactivated as of the date of the occurrence of any event listed in Section 51000.30(b). Both the provider transferor and the transferee applicant shall be jointly and severally liable to the Department for all amounts paid for services, goods, supplies, or merchandise, provided directly or indirectly, to a Medi–Cal beneficiary after that date.

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code. Reference: Sections 14043.15, 14043.2, 14043.25 and 14043.26, Welfare and Institutions Code; and 42, Code of Federal Regulations, Part 489.

HISTORY

1. New section filed 11–10–2005; operative 11–10–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 45).

§ 51000.35. Disclosure Requirements.

(a) The applicant or provider shall disclose all the information required by 42, Code of Federal Regulations, Sections 455.104, 455.105 and 455.106, on the "Medi–Cal Disclosure Statement," DHS 6207 (Rev. 02/05) or the "Medi–Cal Rendering Provider Application/Disclosure Statement/Agreement for Physician/Allied Providers," DHS 6216 (07/05), incorporated by reference herein, and submit the disclosure statement with the application required by Sections 51000.30 and 51000.40. The disclosure statement shall include all of the following:

(1) The name, address, title and percentage of ownership or control interest of each person(s) with an ownership or control interest, as defined in Section 51000.15, in the applicant or provider, or in any subcontractor in which the applicant or provider has direct or indirect ownership of 5 percent or more.

(2) Whether any of the persons named in subsection (a)(1), above, is related to another such as spouse, parent, child or sibling.

(3) The name and address of any other health care provider in which a person(s) with an ownership or control interest in the applicant or provider also has an ownership or control interest. This requirement applies to the extent that the applicant or provider can obtain this information by requesting it in writing from the health care provider. The applicant or provider shall:

(A) Keep copies of all these requests and the responses to them.

(B) Make them available to the Department upon request.

(C) Advise the Department when there is no response to a request.

(4) The name and address of each person(s) with an ownership or control interest in any subcontractor with whom the applicant or provider has had business transactions involving health care services, goods, supplies or merchandise related to the provision of services to a Medi–Cal beneficiary that total more than $25,000 during the 12–month period immediately preceding the date of the application, or immediately preceding the date on the Department's request for such information.

(5) Any significant business transactions between the applicant or provider and any wholly owned supplier, or between the applicant or provider and any subcontractor, during the 5–year period ending on the date of the application, or ending on the date of the written request by the Department for such information.

(6) The identity of any person(s) who has ownership or control interest in the applicant or provider, or is an agent or managing employee of the applicant or provider, who has within the previous ten years of the date of the application package:

(A) Been convicted of any felony or misdemeanor involving fraud or abuse in any government program; or

(B) Been found liable in any civil proceeding involving fraud or abuse in any government program; or

(C) Entered into a settlement in lieu of conviction involving fraud or abuse in any government program.

(b) The applicant or provider shall also state on the "Medi–Cal Provider Disclosure Statement, DHS 6207 (Rev. 02/05):"

(1) Whether the applicant or provider has ever participated in the Medi–Cal program as a provider and, if applicable, the names under which the applicant or provider participated, and all provider numbers previously assigned to the applicant or provider.

(2) Whether the applicant or provider has ever participated in other states' Medicaid programs as a provider and, if applicable, the name of the state(s), the name(s) under which the applicant or provider participated, and the provider number(s).

(3) Whether the applicant or provider has ever been suspended from a Medicare or Medicaid program and, if applicable:

(A) The provider number(s), including rendering provider number(s) and group provider number(s), assigned to the applicant or provider that was/were suspended.

(B) The effective date(s) of the suspension(s).

(C) If the applicant or provider was suspended and subsequently reinstated, the date(s) of the reinstatement(s) and a copy of the letter(s) of reinstatement shall be included with the application.

(4) Whether the license, certificate, or other approval to provide health care, of the applicant or provider has ever been suspended or revoked, or whether the applicant or provider has otherwise lost that license, certificate, or approval, or has surrendered that license, certificate or approval while a disciplinary hearing on that license, certificate or approval was pending. And, if the applicant is a pharmacy, whether the license of the pharmacist–in–charge has ever been suspended or revoked, or whether the pharmacist–in charge has otherwise lost his/her license, or surrendered his/her license while a disciplinary hearing on his/her license was pending. If applicable, the applicant or provider shall indicate the state(s) in which the action(s) against his/her license occurred, or occurred against the license of the pharmacist–in–charge, and the effective date(s) of the licensing authority's order(s). The applicant or provider shall provide written confirmation from the licensing authority that his/her pro-

fessional privileges, or those of the pharmacist–in–charge, have been restored.

(5) Whether the license, certificate or other approval to provide health care of the applicant or provider has been disciplined by any licensing authority. And, if the applicant or provider is a pharmacy, whether the Board of Pharmacy license of the pharmacist–in–charge has ever been disciplined by any licensing authority. If applicable, the applicant or provider shall indicate what action(s) was/were taken against his/her license, or what action(s) was/were taken against the license of the pharmacist–in–charge, where the action(s) against his/her license was/were taken, or was/were taken against the license of the pharmacist–in–charge, and the effective date(s) of the licensing authority's decision(s).

(6) The driver's license number for each person who has a direct or indirect ownership interest totaling 5 percent or more in the applicant or provider. A copy of the driver's license of such persons shall be submitted with the application. If such persons does not have a driver's license, a copy of his/her state–issued identification card shall be submitted.

(7) If the applicant intends to sell, or the provider currently sells incontinence medical supplies:

(A) A statement of all sources of capital of the applicant or provider.

(B) The names and addresses of all manufacturers, suppliers and other providers with whom the applicant or provider has any type of business relationship relative to the provision of services, goods, supplies, or merchandise, to Medi–Cal beneficiaries.

(C) The names and addresses of all persons and entities to whom the applicant or provider has extended a line of credit of $5,000 or more.

(c) Each applicant or provider shall submit a new disclosure statement to the Department within 35 days of any change to the information previously submitted to the Department on any disclosure statement as required by this Article. When there is a cumulative change of 50 percent or more in the person(s) with an ownership or control interest, since the information provided in the last completed application package that was approved for enrollment, a new application package is required pursuant to Section 51000.30. Changes of less than 50 percent shall be reported pursuant to Section 51000.40.

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code. Reference: Sections 14043.2, ,14043.26, 14043.27, 14043.36 and 14125.8, Welfare and Institutions Code; 42, U.S.C., Sections 1320a–3, 1320a–7, 1396a(a)(38), 1396b(i)(2); and 42, Code of Federal Regulations, Part 455.

HISTORY

1. New section filed 9–28–99 as an emergency; operative 9–28–99 (Register 99, No. 40). A Certificate of Compliance must be transmitted to OAL by 3–27–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
2. New section, including amendments, refiled 11–24–99 as an emergency; operative 11–24–99 (Register 99, No. 48). A Certificate of Compliance must be transmitted to OAL by 5–22–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
3. New section refiled 5–5–2000 as an emergency; operative 5–22–2000 (Register 2000, No. 18). A Certificate of Compliance must be transmitted to OAL by 9–19–2000 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 8–28–2000 as an emergency; operative 9–6–2000 (Register 2000, No. 35). A Certificate of Compliance must be transmitted to OAL by 1–4–2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–28–2000 order, including amendment of section, transmitted to OAL 12–26–2000 and filed 2–8–2001 (Register 2001, No. 6).
6. Amendment of subsections (a)–(a)(3), (a)(4), (a)(6) and (c) and amendment of NOTE filed 9–29–2004 as an emergency; operative 10–7–2004 (Register 2004, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–4–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL pursuant to Welfare and Institutions Code section 14043.75.
7. Amendment of subsections (a)–(a)(3), (a)(4), (a)(6) and (c) and amendment of NOTE refiled 1–27–2005 as an emergency; operative 2–5–2005 (Register 2005, No. 4). A Certificate of Compliance must be transmitted to OAL by 6–6–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.
8. Amendment of subsections (a)–(a)(3), (a)(4), (a)(6) and (c) and amendment of NOTE refiled 6–2–2005 as an emergency; operative 6–7–2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 10–5–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.
9. Certificate of Compliance as to 6–2–2005 order, including amendment of subsections (a) and (b) and amendment of NOTE, transmitted to OAL 9–29–2005 and filed 11–10–2005 (Register 2005, No. 45).

§ 51000.40. Reporting of Additional or Changed Information to Provider Applications.

(a) A provider, including a provider group, shall report to the Department within 35 days of any addition or change in the information previously submitted in the application package.

(b) A provider, including a provider group, shall complete the form "Medi–Cal Supplemental Changes," DHS 6209 (Rev. 11/05), incorporated by reference herein, to add or change the following information, or to request the following actions:

(1) "Pay to" or "mailing" address.

(2) Business telephone number.

(3) Managing employee.

(4) Pharmacist–in–charge, if the provider is a pharmacy.

(5) Medicare billing number.

(6) Business activities, if the provider currently provides durable medical equipment and/or incontinence medical supplies and:

(A) The change requires the issuance of a new license, permit, or certificate; or

(B) The provider is adding or deleting incontinence medical supplies.

(7) Name under which the provider or provider group is doing business (DBA).

(8) CLIA number.

(9) Deactivation of a provider number.

(10) Re–issuance of a Provider Identification Number (PIN).

(11) For provider of medical transportation services:

(A) Vehicle or aircraft information.

(B) Driver or pilot information, or the addition of information on a new driver or pilot.

(C) The days and/or hours of operation of the applicant's or provider's business.

(D) The geographic area(s) served.

(12) A change of less than 50 percent in the person(s) with an ownership or control interest, as defined in Section 51000.15, of the provider, or provider group that does not result in a new Taxpayer Identification Number being issued by the IRS. Any cumulative change of 50 percent or more in the person(s) with an ownership or control interest, since the information provided in the last complete application package was approved for enrollment, requires a new application required pursuant to Section 51000.30(b)(6).

(13) Specialty Code.

(c) A nonphysician medical practitioner or licensed midwife shall complete the "Medi–Cal Nonphysician Medical Practitioner and Licensed Midwife Application, "DHS 6248 (Rev. 07/05), to report to the Department any change in information previously submitted, as required pursuant to Section 51000.30(d), to add or change the following information, or to request the following actions:

(1) Delete a nonphysician medical practitioner or licensed midwife;

(2) Change the supervising physician, when the employing provider remains the same;

(3) Change the hours of supervision;

(4) Change the maximum hours worked per week.

(d) The Department may require the provider to submit a new application package when the provider uses the form "Medi–Cal Supplemental Changes," DHS 6209 (Rev. 11/05) to report information not listed in subsection (b) above.

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code. Reference: Sections 14043.15, 14043.2, 14043.25 and 14043.26, Welfare and Institutions Code.

HISTORY

1. New section filed 9–28–99 as an emergency; operative 9–28–99 (Register 99, No. 40). A Certificate of Compliance must be transmitted to OAL by 3–27–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
2. New section, including amendments, refiled 11–24–99 as an emergency; operative 11–24–99 (Register 99, No. 48). A Certificate of Compliance must be transmitted to OAL by 5–22–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
3. New section refiled 5–5–2000 as an emergency; operative 5–22–2000 (Register 2000, No. 18). A Certificate of Compliance must be transmitted to OAL by 9–19–2000 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 8–28–2000 as an emergency; operative 9–6–2000 (Register 2000, No. 35). A Certificate of Compliance must be transmitted to OAL by 1–4–2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–28–2000 order, including amendment of section, transmitted to OAL 12–26–2000 and filed 2–8–2001 (Register 2001, No. 6).
6. Amendment of section heading, section and NOTE filed 9–29–2004 as an emergency; operative 10–7–2004 (Register 2004, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–4–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL pursuant to Welfare and Institutions Code section 14043.75.
7. Amendment of section heading, section and NOTE refiled 1–27–2005 as an emergency; operative 2–5–2005 (Register 2005, No. 4). A Certificate of Compliance must be transmitted to OAL by 6–6–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.
8. Amendment of section heading, section and NOTE refiled 6–2–2005 as an emergency; operative 6–7–2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 10–5–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.
9. Certificate of Compliance as to 6–2–2005 order, including further amendment of section, transmitted to OAL 9–29–2005 and filed 11–10–2005 (Register 2005, No. 45).

§ 51000.45. Provider Agreement.

An applicant or provider shall sign and submit one of the following provider agreements, as applicable:

(a) "Medi–Cal Provider Agreement," DHS 6208 (Rev. 05/05), incorporated by reference herein.

(b) "Medi–Cal Physician Application/Agreement," DHS 6210 (Rev. 07/05), incorporated by reference herein.

(c) "Medi–Cal Rendering Provider Application/Disclosure Statement/Agreement for Physician/Allied Providers," DHS 6216 (07/05), incorporated by reference herein.

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code. Reference: Sections 14043.2, 14043.25 and 14123.25(a), Welfare and Institutions Code; 42 U.S.C. Sections 1320a–3, 1320a–7, 1396a(a)(38), 1396b(i)(2); and 42 Code of Federal Regulations Parts 431 and 455.

HISTORY

1. New section filed 9–28–99 as an emergency; operative 9–28–99 (Register 99, No. 40). A Certificate of Compliance must be transmitted to OAL by 3–27–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
2. New section, including amendments, refiled 11–24–99 as an emergency; operative 11–24–99 (Register 99, No. 48). A Certificate of Compliance must be transmitted to OAL by 5–22–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
3. New section refiled 5–5–2000 as an emergency; operative 5–22–2000 (Register 2000, No. 18). A Certificate of Compliance must be transmitted to OAL by 9–19–2000 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 8–28–2000 as an emergency; operative 9–6–2000 (Register 2000, No. 35). A Certificate of Compliance must be transmitted to OAL by 1–4–2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–28–2000 order, including amendment of section and NOTE, transmitted to OAL 12–26–2000 and filed 2–8–2001 (Register 2001, No. 6).
6. Amendment filed 2–3–2003 as an emergency; operative 2–3–2003 (Register 2003, No. 6). Emergency amendments exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75. Amendments to remain in effect for 180 days pursuant to section 78, chapter 146, Statutes of 1999 (AB 1107). A Certificate of Compliance must be transmitted to OAL by 8–4–2003 or emergency language will be repealed by operation of law on the following day.
7. Amendment refiled 8–5–2003 as an emergency; operative 8–5–2003 (Register 2003, No. 32). Emergency amendments exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75. Amendments to remain in effect for 180 days pursuant to section 78, chapter 146, Statutes of 1999 (AB 1107). A Certificate of Compliance must be transmitted to OAL by 2–2–2004 or emergency language will be repealed by operation of law on the following day.
8. Amendment refiled 2–3–2004 as an emergency; operative 2–3–2004 (Register 2004, No. 6). Emergency amendments exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75. A Certificate of Compliance must be transmitted to OAL by 6–2–2004 or emergency language will be repealed by operation of law on the following day.
9. Reinstatement of section as it existed prior to 2–3–2004 emergency amendment by operation of Government Code section 11346.1(f) (Register 2004, No. 24).
10. Amendment refiled 6–8–2004 as an emergency; operative 6–8–2004 (Register 2004, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–6–2004 or emergency language will be repealed by operation of law on the following day.
11. Reinstatement of section as it existed prior to 6–8–2004 emergency amendment by operation of Government Code section 11346.1(f) (Register 2004, No. 41).
12. Amendment of section and NOTE filed 9–29–2004 as an emergency; operative 10–7–2004 (Register 2004, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–4–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL pursuant to Welfare and Institutions Code section 14043.75.
13. Amendment of section and NOTE refiled 1–27–2005 as an emergency; operative 2–5–2005 (Register 2005, No. 4). A Certificate of Compliance must be transmitted to OAL by 6–6–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.
14. Amendment of section and NOTE refiled 6–2–2005 as an emergency; operative 6–7–2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 10–5–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.
15. Certificate of Compliance as to 6–2–2005 order, including further amendment of section, transmitted to OAL 9–29–2005 and filed 11–10–2005 (Register 2005, No. 45).

§ 51000.50. Application Review Criteria and Notice of Department Action.

(a) The Department shall review the applicant's or provider's completed application package for enrollment, continued enrollment, enrollment at a new, additional, or change in location, or enrollment pursuant to Section 51000.30(b) in the Medi–Cal program. The applicant or provider shall meet the following requirements for enrollment in the Medi–Cal program:

(1) The application package shall be signed and notarized if required by Section 51000.30(a)(2).

(2) The information specified in Sections 51000.30, 51000.35, and 51000.45, and all required submittals and attachments to the application package have been received by the Department.

(3) The applicant or provider has a valid license, certificate, or other approval necessary to perform the healthcare services or to provide the goods, supplies, or merchandise within the applicable provider of service category or subgroup of that category.

(4) The applicant or provider meets all applicable standards for participation in the Medi–Cal program specified in Chapter 7 (commencing with section 14000) and Chapter 8 (commencing with 14200) of Part 3 of Division 9 of the Welfare and Institutions Code, and Division 3, Title 22, California Code of Regulations.

(5) The applicant or provider has obtained all state and local licenses, permits, or authorizations necessary to operate a business at the business address for which the application package is submitted and to perform the health care services or to provide the goods, supplies, or merchandise

with the applicable provider of service category or subgroup of that category.

(6) All fines, and debts due and owing, including overpayments and penalty assessments, to any federal, state, or local government entity that relates to Medicare, Medicaid, Medi–Cal, or any other federal and state health care program, have been paid, or satisfactory arrangements have been made to fulfill the obligation or the fine or debt has been excused by legal proceedings.

(7) No applicant, provider, person with an ownership or control interest in the applicant or provider, or person who is a director, officer, or managing employee of an applicant or provider, has been convicted of any felony, or convicted of any misdemeanor involving fraud or abuse in any government program, related to neglect or abuse of a patient in connection with the delivery of a healthcare item or service, or in connection with the interference with, or obstruction of, any investigation into health care related fraud or abuse, or has been found liable for fraud or abuse in any civil proceeding, or has entered into a settlement in lieu of conviction for fraud or abuse in any government program within ten years of the date of the application package.

(8) No applicant, provider, person with an ownership or control interest in the applicant or provider, or person who is a director, officer, or managing employee of an applicant or provider shall be under investigation for any healthcare related fraud or abuse at the time of the application for enrollment, continued enrollment, enrollment at a new, additional, or change in location, enrollment pursuant to Section 51000.30(b), or during the preenrollment period.

(9) The applicant or provider has satisfactorily corrected any discrepancies in the application package or identified in a background check, preenrollment inspection or unannounced visit within the time limit specified by the Department. If the applicant or provider cannot satisfactorily correct one or more discrepancies because they occurred in the past, then the application shall be denied.

(10) The applicant or provider has satisfactorily demonstrated to the Department that the business address for which the application package was submitted is an established place of business as specified in Section 51000.60, at the time of application and at the time of any background check, preenrollment inspection or unannounced visit.

(11) If applicable, the period of time during which an applicant or provider has been barred from reapplying has passed.

(12) The information submitted by the applicant or provider is accurate and complete.

(b) Within 30 days of receipt of an application package, the Department shall provide written notice to inform the applicant or provider that either:

(1) A moratorium has been imposed pursuant to Welfare and Institutions Code, Section 14043.55 or 14125.8, on the enrollment of providers in the specific provider of service category for which the applicant or provider has applied. If a moratorium has been imposed, the Department shall return the application package to the applicant or provider with the notice.

(2) The Department has received the applicant's or provider's application package and shall evaluate the application package based upon the criteria contained in this Chapter and its governing statutes.

(c) An applicant or provider who requests consideration as a preferred provider shall be notified within 90 days whether the applicant or provider meets or does not meet all of the criteria listed in the Provider Bulletin, titled "Preferred Provider Status", dated February 2005, accessible on the Medi–Cal Web site at www.medi-cal.ca.gov at the Provider Enrollment link, under Statute, Regulations, and Provider Bulletins. If an applicant or provider is notified that the applicant or provider does not meet the criteria for a preferred provider, the application package submitted shall be processed in accordance with the remainder of this section.

(d) Within 180 days of receipt by the Department of an application package, or within 180 days from the date of the notice to an applicant or provider that the applicant or provider does not qualify as a preferred provider, the Department shall give written notice to the applicant or provider of one of the following:

(1) The applicant or provider is granted provisional provider status for a period of 12 months, effective from the date on the notice; or

(2) The application package is incomplete, describing which information is required, or which attachments are outstanding and/or inadequate. The application package shall be returned at the time of this notice to the applicant, who may re–submit the application package at any future date. When an application package is re–submitted, it may include the materials previously submitted along with the materials necessary to correct the outstanding and/or inadequate information, provided the materials are current and valid at the time of re–submission; or

(3) The Department is exercising its authority under Welfare and Institutions Code Section 14043.37, 14043.4, or 14043.7 to conduct background checks, preenrollment inspections, or unannounced visits; or

(4) The application package is denied based on the applicant's or provider's failure to meet the criteria specified in subsection (a), or failure to comply with the requirements specified in this Chapter or its governing statutes.

(e) If the re–submitted application package is received by the Department within 60 days of the date of the notice of an incomplete application pursuant to subsection (d)(2) above, the Department shall continue to process the application package and shall, within 60 days of the receipt of the re–submitted application package, send a notice indicating one of the following actions:

(1) The applicant or provider is granted provisional provider status for a period of 12 months, effective from the date on the notice; or

(2) The Department is exercising its authority under Welfare and Institutions Code, Section 14043.37, 14043.4, or 14043.7 to conduct background checks, preenrollment inspections, or unannounced visits; or

(3) The application package is denied based on the applicant's or provider's failure to meet the criteria specified in subsection (a), or failure to comply with the requirements specified in this Chapter or its governing statutes.

(f) If a re–submitted application package for enrollment, continued enrollment, enrollment at a new additional or change in location, or enrollment pursuant to Section 51000.30(b), is not received by the Department within 60 days of the date of the notice of an incomplete application pursuant to subsection (d)(2) above, the application package shall be denied by operation of law pursuant to Welfare and Institutions Code Section 14043.26. If the failure to re–submit an application package is by a provider applying for continued enrollment, the provider shall be subject to immediate deactivation of all provider numbers, pursuant to Welfare and Institutions Code Section 14043.26(e)(2)(B). Nothing in this subsection prevents the provider from reapplying as a new applicant by submitting a new application package, which shall receive a new application received date.

(g) If a background check is conducted pursuant to Welfare and Institutions Code, Section 14043.37, a preenrollment inspection is conducted pursuant to Welfare and Institutions Code Section 14043.4, or an unannounced visit is conducted pursuant to Welfare and Institutions Code, Section 14043.7, prior to enrollment, continued enrollment, enrollment at a new, additional or change in location, or enrollment pursuant to Section 51000.30(b), the Department shall provide written notice to the applicant or provider of the following:

(1) The applicant or provider is granted provisional provider status for a period of 12 months, effective from the date on the notice; or

(2) Discrepancies were found with the information provided by the applicant or provider on the application package that require remediation. The applicant or provider shall have 60 days from the date of the notice to provide the requested information and documentation to the Department in order to remediate the discrepancies. If no response is received or the discrepancies are not remediated within the 60 days, the application shall be denied by operation of law pursuant to Welfare and Institutions Code Section 14043.26; or

(3) Discrepancies were found with the information provided by the applicant or provider on the application package that cannot be remediated and the application shall be denied by operation of law pursuant to Welfare and Institutions Code Section 14043.26.

(4) The application is denied based on the applicant's or provider's failure to meet the criteria specified in subsection (a), or failure to comply with the requirements specified in this Chapter or its governing statutes.

(5) A provider whose application for continued enrollment has been denied pursuant to subsection (g)(2), (g)(3), or (g)(4) above, shall prior to any hearing be subject to temporary suspension and deactivation of all provider numbers pursuant to Welfare and Institutions Code, Section 14043.2, 14043.36, 14043.37 and 14043.7.

(h) Any notice by the Department of a denial of an application package shall specify the reason(s) for denial and the administrative remedies, if any, that may be pursued by the applicant or provider.

(i) An applicant or provider whose application package has been denied for enrollment, continued enrollment, enrollment at a new, additional, or change in location, or enrollment pursuant to Section 51000.30(b), may appeal the application package denial, in accordance with Welfare and Institutions Code, Section 14043.65.

(j) An applicant or provider whose application package has been denied for failure to submit to the Department requested information or documentation pursuant to Welfare and Institutions Code Section 14043.26(e)(2)(A) or failure to remediate discrepancies identified by the Department Welfare and Institutions Code Section 14043.26(f)(2)(A) may reapply for enrollment in the Medi–Cal program by submitting a new application package that shall be reviewed anew.

(k) An applicant or provider whose application package has been denied for failing to disclose information or for providing false information pursuant to Welfare and Institutions Code Section 14043.2, or denied because it is under investigation pursuant to Welfare and Institutions Code Section 14043.36, shall be barred from reapplying for enrollment in the Medi–Cal program for a period of three years from the date of the denial notice. The Department shall not deny enrollment to an applicant or provider whose felony or misdemeanor charges did not result in a conviction.

(*l*) An applicant shall not apply for enrollment within 10 years from the date of the conviction for any offense or for any act included in Welfare and Institutions Code Section 14043.36. An applicant or provider whose application package has been denied based on a conviction for any offense or for any act included in Welfare and Institutions Code Section 14043.36, shall be barred from reapplying for enrollment in the Medi–Cal program for a period of 10 years from the date of the denial notice or from the date of the final decision following an appeal from that denial.

(m) An applicant or provider whose application package has been denied based on two or more convictions for any offense or two or more acts included in Welfare and Institutions Code Section 14043.36, shall be permanently barred from applying for enrollment in the Medi–Cal program.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code. Reference: Sections 14043.2, 14043.26, 14043.28, 14043.36, 14043.37, 14043.4, 14043.6, 14043.65 and 14043.7, Welfare and Institutions Code; 42 U.S.C. Sections 1320a–3, 1320a–7, 1396a(a)(38) and 1396b(i)(2); and Title 42, Code of Federal Regulations, Part 455.

HISTORY

1. New section filed 9–28–99 as an emergency; operative 9–28–99 (Register 99, No. 40). A Certificate of Compliance must be transmitted to OAL by 3–27–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
2. New section refiled 11–24–99 as an emergency; operative 11–24–99 (Register 99, No. 48). A Certificate of Compliance must be transmitted to OAL by 5–22–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
3. New section refiled 5–5–2000 as an emergency; operative 5–22–2000 (Register 2000, No. 18). A Certificate of Compliance must be transmitted to OAL by 9–19–2000 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 8–28–2000 as an emergency; operative 9–6–2000 (Register 2000, No. 35). A Certificate of Compliance must be transmitted to OAL by 1–4–2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–28–2000 order, including amendment of section, transmitted to OAL 12–26–2000 and filed 2–8–2001 (Register 2001, No. 6).
6. Amendment of section and NOTE filed 2–3–2003 as an emergency; operative 2–3–2003 (Register 2003, No. 6). Emergency amendments exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75. Amendments to remain in effect for 180 days pursuant to section 78, chapter 146, Statutes of 1999 (AB 1107). A Certificate of Compliance must be transmitted to OAL by 8–4–2003 or emergency language will be repealed by operation of law on the following day.
7. Amendment of section and NOTE refiled 8–5–2003 as an emergency; operative 8–5–2003 (Register 2003, No. 32). Emergency amendments exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75. Amendments to remain in effect for 180 days pursuant to section 78, chapter 146, Statutes of 1999 (AB 1107). A Certificate of Compliance must be transmitted to OAL by 2–2–2004 or emergency language will be repealed by operation of law on the following day.
8. Amendment of section and NOTE refiled 2–3–2004 as an emergency; operative 2–3–2004 (Register 2004, No. 6). Emergency amendments exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75. A Certificate of Compliance must be transmitted to OAL by 6–2–2004 or emergency language will be repealed by operation of law on the following day.
9. Reinstatement of section and NOTE as they existed prior to 2–3–2004 emergency amendment by operation of Government Code section 11346.1(f) (Register 2004, No. 24).
10. Amendment of section and NOTE refiled 6–8–2004 as an emergency; operative 6–8–2004 (Register 2004, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–6–2004 or emergency language will be repealed by operation of law on the following day.
11. Reinstatement of section as it existed prior to 6–8–2004 emergency amendment by operation of Government Code section 11346.1(f) (Register 2004, No. 41).
12. Amendment of section and NOTE filed 9–29–2004 as an emergency; operative 10–7–2004 (Register 2004, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–4–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL pursuant to Welfare and Institutions Code section 14043.75.
13. Amendment of section and NOTE refiled 1–27–2005 as an emergency; operative 2–5–2005 (Register 2005, No. 4). A Certificate of Compliance must be transmitted to OAL by 6–6–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.
14. Amendment of section and NOTE refiled 6–2–2005 as an emergency; operative 6–7–2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 10–5–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.
15. Certificate of Compliance as to 6–2–2005 order, including further amendment of section, transmitted to OAL 9–29–2005 and filed 11–10–2005 (Register 2005, No. 45).
16. Change without regulatory effect amending subsections (e), (f) and (g)(2) and amending NOTE filed 2–28–2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 9).

§ 51000.51. Provisional Provider and Preferred Provisional Provider Status.

(a) The Department shall grant provisional provider status for a period of 12 months, or preferred provisional status for a period of 18 months, subject to the provisions of Welfare and Institutions Code Sections 14043.26 through 14043.29, when:

(1) An application for enrollment of a new provider is approved.

(2) An application for continued enrollment of a provider is approved.

(3) An application for enrollment of an additional location, or change of location for a provider is approved.

(4) An application for any change pursuant to Section 51000.30(b) is approved.

(5) The Department fails to take any action listed in Section 51000.50(d) within 180 days after receiving an application package. The applicant or provider shall be granted provisional provider status, effective on the 181st day.

(b) When a provider currently enrolled in the Medi–Cal program at one or more locations, who has submitted an application package for enrollment at an additional or change in location, begins billing for services provided at an additional or change of location, using their existing pro-

vider number, the provider shall be considered to be on provisional provider status. If the provider is subject to Welfare and Institutions Code Section 14043.47(c), the provider shall submit documentation in the application package that identifies the physician providing services at every three locations.

(c) Provisional provider status or preferred provisional provider status shall be terminated, by the Department, pursuant to Welfare and Institutions Code Section 14043.27(c)(1) – (12), regardless of whether the period of time for which the provisional provider status or preferred provisional provider status was granted has elapsed.

(d) Termination of provisional provider status or preferred provisional provider status, by the Department, shall include deactivation of all provider numbers used by the provider at any location, to obtain reimbursement from the Medi–Cal program, except where the termination is based upon a ground related solely to a specific location.

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code. Reference: Sections 14043.2, 14043.26, 14043.27, 14043.36, 14043.37, 14043.4 and 14043.7, Welfare and Institutions Code; 42 U.S.C. Sections 1320a–3, 1320a–7, 1396a(a)(38) and 1396b(i)(2); and 42 Code of Federal Regulations Part 455.

HISTORY

1. New section filed 9–29–2004 as an emergency; operative 10–7–2004 (Register 2004, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–4–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL pursuant to Welfare and Institutions Code section 14043.75.
2. New section refiled 1–27–2005 as an emergency; operative 2–5–2005 (Register 2005, No. 4). A Certificate of Compliance must be transmitted to OAL by 6–6–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.
3. New section refiled 6–2–2005 as an emergency; operative 6–7–2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 10–5–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.
4. Certificate of Compliance as to 6–2–2005 order transmitted to OAL 9–29–2005 and filed 11–10–2005 (Register 2005, No. 45).

§ 51000.52. Provider Numbers.

(a) When provisional provider status or preferred provisional provider status is granted, the Department shall issue a provider number which shall be used exclusively for the location for which it is issued, except for providers subject to subdivisions (1), (2), or (3) below:

(1) If the practice of the provider's profession or delivery of services, goods, supplies, or merchandise is such that services, goods, supplies, or merchandise are rendered or delivered only at locations other than the provider's business address and this practice or delivery of services, goods, supplies, or merchandise has been disclosed in the application package approved by the Department when the provisional provider status or preferred provisional provider status was granted; or

(2) If a provider submits claims under an existing provider number for services rendered at an additional or change in location, pursuant to Section 51000.51(b); or

(3) A rendering provider in a group receives only one provider number, which does not change by location or provider group.

(b) A provider number issued following submission of an application pursuant to Section 51000.30(a)(2) and (b) is exclusive to the provider to which it is issued and shall not be transferred or assigned, except when a transferee applicant meets the successor liability with joint and several liability requirements set forth in Section 51000.32.

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code. Reference: Sections 14043.15, 14043.2, 14043.26, 14043.27, 14043.36, 14043.37, 14043.4, 14043.47, 14043.6, 14043.65 and 14043.7, Welfare and Institutions Code; 42 U.S.C. Sections 1320a–3, 1320a–7, 1396a(a)(38) and 1396b(i)(2); and 42 Code of Federal Regulations Part 455.

HISTORY

1. New section filed 9–29–2004 as an emergency; operative 10–7–2004 (Register 2004, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–4–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL pursuant to Welfare and Institutions Code section 14043.75.
2. New section refiled 1–27–2005 as an emergency; operative 2–5–2005 (Register 2005, No. 4). A Certificate of Compliance must be transmitted to OAL by 6–6–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.
3. New section refiled 6–2–2005 as an emergency; operative 6–7–2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 10–5–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.
4. Certificate of Compliance as to 6–2–2005 order, including amendment of subsection (b), transmitted to OAL 9–29–2005 and filed 11–10–2005 (Register 2005, No. 45).

§ 51000.53. Deactivation of a Provider Number(s).

(a) The Department shall deactivate, immediately and without prior notice, the provider numbers issued to a provider to obtain reimbursement from the Medi–Cal program, under the following circumstances:

(1) When warrants or documents mailed to a provider's mailing address, pay to address, or business address, are returned by the United States Postal Service as not deliverable.

(2) When a provider has not submitted a claim for reimbursement from the Medi–Cal program for one year.

(3) When the person or entity that was issued the provider number no longer exists by operation of law or otherwise.

(4) When an application for change in location, pursuant to Welfare and Institutions Code Section 14043.26 (h), is approved the provider number assigned to the previous location shall be deactivated.

(5) When the provider has a license, certificate, or other approval to provide healthcare revoked or suspended by a federal, California, or another state's licensing, certification, or approval authority, or has otherwise lost that license, certificate, or approval, or has surrendered that license, certificate, or approval while a disciplinary hearing on that license, certificate, or approval was pending.

(6) When a provider receives written notice that it is subject to the requirement for continued enrollment pursuant to Section 51000.55 and fails to respond to the Department within the time frames required by Sections 51000.50 and 51000.55.

(7) When a provider submits a written request for termination or deactivation of its provider number.

(8) When an application submitted pursuant to Section 51000.30(b) is approved, and the provider transferor and transferee applicant meet the requirements set forth in Section 51000.32, the provider number originally issued for that location shall be deactivated.

(9) When an application submitted pursuant to Section 51000.30(b) is denied on the transferee applicant's failure to meet the criteria specified in Section 51000.50(a), the provider transferor's provider number originally issued for that location shall be deactivated.

(b) Prior to taking action to deactivate a provider number pursuant to (a)(1), (a)(2) of this section, the Department shall use due diligence in attempting to contact the provider by telephone or in writing to ascertain whether the provider wishes to continue to participate in the Medi–Cal program.

(c) During the provisional provider status period or preferred provisional provider status period, the Department shall deactivate a provider number pursuant to Welfare and Institutions Code Section 14043.27.

(d) An applicant or provider who has had one or more provider numbers used to obtain reimbursement from the Medi–Cal program deactivated pursuant to this section may appeal this action pursuant to Welfare and Institutions Code Section 14043.65.

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code. Reference: Sections 14043.2, 14043.26, 14043.27, 14043.28, 14043.36, 14043.37, 14043.62 and 14043.7, Welfare and Institutions Code; 42 U.S.C. Sections 1320a–3, 1320a–7, 1396a(a)(38) and 1396b(i)(2); and 42 Code of Federal Regulations Part 455.

HISTORY

1. New section filed 9–29–2004 as an emergency; operative 10–7–2004 (Register 2004, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–4–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL pursuant to Welfare and Institutions Code section 14043.75.

2. New section refiled 1–27–2005 as an emergency; operative 2–5–2005 (Register 2005, No. 4). A Certificate of Compliance must be transmitted to OAL by 6–6–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.
3. New section refiled 6–2–2005 as an emergency; operative 6–7–2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 10–5–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.
4. Certificate of Compliance as to 6–2–2005 order, including amendment of section, transmitted to OAL 9–29–2005 and filed 11–10–2005 (Register 2005, No. 45).
5. Editorial correction of subsection (a)(8) (Register 2006, No. 36).

§ 51000.55. Requirements for Continued Enrollment.

(a) The Department shall periodically identify a specific provider of service category or subgroup of that category that will be subject to the continued enrollment requirements of this section.

(b) The Department shall provide individual written notice to each of the providers in the specific category or subgroup of a category that has been identified for continued enrollment, and will notify those providers that they are subject to this section. This notice for continued enrollment shall be mailed to the provider's business address and mailing address on file with the Department.

(c) When a provider receives written notice for continued enrollment pursuant to subsection (b) above, the provider shall respond to the Department within 35 days from the date of the notice to declare its intent to either apply for continued enrollment or to withdraw from the Medi–Cal program. Providers that fail to respond to the Department within 35 days from the date of the notice shall be subject to termination from the Medi–Cal program and deactivation of all provider numbers issued to that provider.

(d) Within 180 days of receipt of a declaration of a provider's intent to apply for continued enrollment in the Medi–Cal program, the Department shall send a notice transmitting instructions to that provider on how to apply for continued enrollment.

(e) Within 70 calendar days from the date of the Department's notice pursuant to subsection (d), the provider shall submit to the Department a complete application package for continued enrollment in the Medi–Cal program. The Department shall review the completed application package in accordance with Section 51000.50. Providers that fail to submit to the Department a complete application package within 70 calendar days from the date of the notice shall be subject to immediate termination from the Medi–Cal program and deactivation of all provider numbers issued to that provider.

(f) Upon receipt of a declaration of a provider's intent to withdraw from enrollment in the Medi–Cal program, the Department shall immediately terminate the provider's enrollment in the Medi–Cal program and shall deactivate all provider numbers issued to that provider.

(g) A provider may appeal the termination or the deactivation pursuant to this subsection in accordance with Welfare and Institutions Code, Section 14043.65.

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code. Reference: Sections 14043.2, 14043.26, 14043.28, 14043.29 and 14043.7, Welfare and Institutions Code.

HISTORY

1. New section filed 9–28–99 as an emergency; operative 9–28–99 (Register 99, No. 40). A Certificate of Compliance must be transmitted to OAL by 3–27–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
2. New section, including amendments, refiled 11–24–99 as an emergency; operative 11–24–99 (Register 99, No. 48). A Certificate of Compliance must be transmitted to OAL by 5–22–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
3. New section refiled 5–5–2000 as an emergency; operative 5–22–2000 (Register 2000, No. 18). A Certificate of Compliance must be transmitted to OAL by 9–19–2000 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 8–28–2000 as an emergency; operative 9–6–2000 (Register 2000, No. 35). A Certificate of Compliance must be transmitted to OAL by 1–4–2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–28–2000 order, including amendment of subsection (e), transmitted to OAL 12–26–2000 and filed 2–8–2001 (Register 2001, No. 6).
6. Amendment filed 2–3–2003 as an emergency; operative 2–3–2003 (Register 2003, No. 6). Emergency amendments exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75. Amendments to remain in effect for 180 days pursuant to section 78, chapter 146, Statutes of 1999 (AB 1107). A Certificate of Compliance must be transmitted to OAL by 8–4–2003 or emergency language will be repealed by operation of law on the following day.
7. Amendment refiled 8–5–2003 as an emergency; operative 8–5–2003 (Register 2003, No. 32). Emergency amendments exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75. Amendments to remain in effect for 180 days pursuant to section 78, chapter 146, Statutes of 1999 (AB 1107). A Certificate of Compliance must be transmitted to OAL by 2–2–2004 or emergency language will be repealed by operation of law on the following day.
8. Amendment refiled 2–3–2004 as an emergency; operative 2–3–2004 (Register 2004, No. 6). Emergency amendments exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75. A Certificate of Compliance must be transmitted to OAL by 6–2–2004 or emergency language will be repealed by operation of law on the following day.
9. Reinstatement of section as it existed prior to 2–3–2004 emergency amendment by operation of Government Code section 11346.1(f) (Register 2004, No. 24).
10. Amendment refiled 6–8–2004 as an emergency; operative 6–8–2004 (Register 2004, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–6–2004 or emergency language will be repealed by operation of law on the following day.
11. Reinstatement of section as it existed prior to 6–8–2004 emergency amendment by operation of Government Code section 11346.1(f) (Register 2004, No. 41).
12. Amendment of section heading, section and NOTE filed 9–29–2004 as an emergency; operative 10–7–2004 (Register 2004, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–4–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL pursuant to Welfare and Institutions Code section 14043.75.
13. Amendment of section heading, section and NOTE refiled 1–27–2005 as an emergency; operative 2–5–2005 (Register 2005, No. 4). A Certificate of Compliance must be transmitted to OAL by 6–6–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.
14. Editorial correction of subsection (d) (Register 2005, No. 22).
15. Amendment of section heading, section and NOTE refiled 6–2–2005 as an emergency; operative 6–7–2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 10–5–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.
16. Certificate of Compliance as to 6–2–2005 order transmitted to OAL 9–29–2005 and filed 11–10–2005 (Register 2005, No. 45).

§ 51000.60. Established Place of Business.

(a) The applicant or provider shall have an established place of business appropriate and adequate for the services billed or claimed to the Medi–Cal program as relevant to his or her scope of practice or type of business. This section does not apply to an applicant or provider who is subject to Section 51000.30(a)(1)(A) – (E).

(b) Failure to have an established place of business at the time of any inspection by the Department for enrollment, continued enrollment, enrollment at a new, additional or change in location, or enrollment pursuant to Section 51000.30(b) warrants denial of an application or shall make a provider subject to temporary suspension from the Medi–Cal program, which shall include temporary deactivation of all provider numbers, issued to that provider, effective 15 days from the date of notice to the provider.

(c) "Established place of business" means a business address of the provider or applicant that meets all of the following criteria:

(1) Is open and conducting business at the time the application is submitted for participation in the Medi–Cal program;

(2) Has the administrative and fiscal foundation to survive as a going concern. This criterion shall be shown by financial records such as a business plan, bank statements, loan documents, promissory notes, invoices, accounts receivable, business tax records, payroll records and contractual agreements;

(3) Has adequate inventory and staff to meet current and anticipated sales and service requirements for its business;

(4) Operates in compliance with Section 51000.30(e);

(5) Has Worker's Compensation insurance as required by state law;

(6) Obtains and maintains, for any individual licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, the Osteopathic Initiative Act, or the Chiropractic Initiative Act, Professional Liability insurance coverage in an amount not less than $100,000 per claim, with a minimum annual aggregate of not less than $300,000, from an authorized insurer pursuant to Section 700 of the Insurance Code;

(7) Has the necessary equipment, office supplies and facilities available to carry out its business, including storage and retrieval of all documentation as required by Section 51476;

(8) Has the necessary service agreements to process cash and credit card transactions if operating as a retail business, or has the necessary payment mechanisms to process patient billing claims if the applicant or provider is a physician/medical practice; and

(9) Unless the applicant is requesting enrollment or the provider is enrolled pursuant to Welfare and Institutions Code Section 14043.15(b)(2) the following criteria also apply;

(A) Is located in a building either owned by the applicant or provider, or the applicant or provider has obtained a signed lease agreement.

(B) Has regular and permanently posted business hours;

(C) Is identifiable as a medical/healthcare provider or business, by permanently attached signage that identifies the name of the provider or business as shown on the application.

(D) Obtains and maintains Liability insurance coverage, that covers premises and operation, in an amount not less than $100,000 per claim, with a minimum annual aggregate of not less than $300,000, from an authorized insurer pursuant to Section 700 of the Insurance Code.

(d) If the applicant or provider intends to provide or currently provides durable medical equipment as defined in Section 51160, or is a medical device retailer as defined in Section 51251, or is a pharmacy as defined in Section 51106 and provides pharmaceutical services as defined in Section 51107, all criteria in subsection (a) through (c) above must be met, and the applicant or provider must additionally meet the following criteria:

(1) Provides service to the general public on a walk-in basis during regular business hours. A request for exemption from this requirement shall be stated on the application, appropriate for the services provided, and requires the approval of the Department;

(2) Has adequate inventory in stock either on the premises, or in a warehouse under the applicant's or provider's direct control, to meet current and anticipated sales volume.

NOTE: Authority cited: Sections 10725, 14043.37, 14043.4, 14043.75 and 14124.5, Welfare and Institutions Code; Section 700, Insurance Code. Reference: Sections 14043, 14043.1, 14043.27, 14043.37, 14043.4, 14043.62 and 14043.7, Welfare and Institutions Code.

HISTORY

1. New section filed 9–29–2004 as an emergency; operative 10–7–2004 (Register 2004, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–4–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL pursuant to Welfare and Institutions Code section 14043.75.
2. New section refiled 1–27–2005 as an emergency; operative 2–5–2005 (Register 2005, No. 4). A Certificate of Compliance must be transmitted to OAL by 6–6–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.
3. Amendment of section heading, section and NOTE refiled 6–2–2005 as an emergency; operative 6–7–2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 10–5–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.
4. Certificate of Compliance as to 6–2–2005 order, including amendment of subsection (d)(1) and amendment of NOTE, transmitted to OAL 9–29–2005 and filed 11–10–2005 (Register 2005, No. 45).

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Article 1.3. General Provisions

§ 51001. Beneficiary.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14000 and 14005, Welfare and Institutions Code.

HISTORY

1. Amendment filed 6–5–67 as an emergency; effective upon filing. Certificate of Compliance filed 6–9–67 (Register 67, No. 23).
2. Amendment filed 6–22–87; operative 7–22–87 (Register 87, No. 27).
3. Renumbering of former article 1 to article 1.3 and repealer of section filed 9–28–99 as an emergency; operative 9–28–99 (Register 99, No. 40). A Certificate of Compliance must be transmitted to OAL by 3–27–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
4. Renumbering of former article 1 to article 1.3 and repealer of section refiled 11–24–99 as an emergency; operative 11–24–99 (Register 99, No. 48). A Certificate of Compliance must be transmitted to OAL by 5–22–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
5. Renumbering of former article 1 to article 1.3, and repealer of section refiled 5–5–2000 as an emergency; operative 5–22–2000 (Register 2000, No. 18). A Certificate of Compliance must be transmitted to OAL by 9–19–2000 or emergency language will be repealed by operation of law on the following day.
6. Renumbering of former article 1 to article 1.3, and repealer of section refiled 8–28–2000 as an emergency; operative 9–6–2000 (Register 2000, No. 35). A Certificate of Compliance must be transmitted to OAL by 1–4–2001 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 8–28–2000 order transmitted to OAL 12–26–2000 and filed 2–8–2001 (Register 2001, No. 6).

§ 51002. Beneficiary Billing.

(a) A provider of service under the Medi–Cal program shall not submit claims to or demand or otherwise collect reimbursement from a Medi–Cal beneficiary, or from other persons on behalf of the beneficiary, for any service included in the Medi–Cal program's scope of benefits in addition to a claim submitted to the Medi–Cal program for that service, except to:

(1) Collect payments due under a contractual or legal entitlement pursuant to Section 14000 (b) of the Welfare and Institutions Code.

(2) Bill a long–term care patient for the amount of his liability.

(3) Collect copayment pursuant to Welfare and Institutions Code Section 14134.

(b) In the event that a beneficiary willfully refuses to provide current other health care coverage billing information as described in Section 50763 (a) (5) to a provider, upon giving the beneficiary written notice of intent, the provider may bill the beneficiary as a private pay patient. This shall not apply for beneficiaries covered under Medi–Cal capitated contracting arrangements. Capitated contractor or subcontractor billing beneficiaries covered under Medi–Cal capitated contracting arrangements shall be governed by applicable laws including Welfare and Institutions Code and by; the terms of the contract.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; Section 133.5 of Chapter 102, Statutes of 1981; and Section 2 of Chapter 237, Statutes of 1981. Reference: Section 14134, Welfare and Institutions Code.

HISTORY

1. Amendment filed 1–18–74; effective thirtieth day thereafter (Register 74, No. 3). For prior history, see Register 72, No. 5.
2. Amendment filed 8–8–78; effective thirtieth day thereafter (Register 78, No. 32).
3. New subsection (2)(3) filed 11–17–81 as an emergency; effective upon filing (Register 81, No. 47). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3–17–82.
4. Certificate of Compliance transmitted to OAL 3–16–82 and filed 4–16–82 (Register 82, No. 16).
5. Amendment filed 6–28–89; operative 7–28–89 (Register 89, No. 26).

§ 51003. Treatment Authorization Requests (TARs).

(a) "Prior authorization," or "authorization" means authorization granted by a designated Medi–Cal consultant or by a Primary Care Case Management (PCCM) plan and is obtained through submission and approval of a TAR. The responsibilities of the Medi–Cal consultant shall not be delegated, except to the extent provided under Sections 51013 and 51014. Authorization may be granted by a PCCM plan only for beneficiaries enrolled in that PCCM plan and the responsibilities of the PCCM plan shall not be delegated except as provided under Section 51003.7.

(b) A TAR received by the Department from a Fee–For–Service Medi–Cal provider shall be reviewed for medical necessity only.

(c) "Reauthorization" means authorization of a new TAR for continuation of previously authorized Medi–Cal services.

(1) "Request for Non–Acute Continuing Services," as used in Section 51014.1(e), means a new TAR for continuation of previously approved services received by the Department from Fee–For–Service Medi–Cal providers in the following categories:

(A) Long–Term Care, specifically Skilled Nursing Facility, Intermediate Care Facility and Subacute levels of care.

(B) General Inpatient Hospice Care.

(C) Home and Community–Based Waiver Services, including all related services.

(D) Early Periodic Screening Diagnosis and Treatment (EPSDT) Supplemental Home Nursing and Related Services.

(E) All other non–acute services under the Medi–Cal program when the treating physician (i.e., the physician, podiatrist, or dentist who is treating the beneficiary and certifying that the services must be continued) substantiates on or with the request in writing that the same level or frequency of services should be continued because the treatment goal approved on the original TAR has not been achieved, without regard to the length of time the service has been provided. To meet the requirement to substantiate the need for continuing care, justification of medical necessity shall be submitted pursuant to subsection (d).

(2) "Request by a provider for Acute Continuing Services," as used in Section 51014.1(f), means a Request for Extension of Stay in Hospital, form 18–1 (8/93) used for approval of acute care services in hospitals, including submission of requests to on–site Medi–Cal reviewers or to the local Medi–Cal Field Office. This request shall be submitted when the treating physician (i.e., the physician, dentist or podiatrist certifying the need for acute care pursuant to Section 51327(a)(3)(A)) has determined that the beneficiary cannot safely be discharged because acute care services continue to be medically necessary, for one of the following reasons:

(A) Further acute care is needed for the purpose of treating the condition or conditions for which acute care was originally approved for an acute admission requiring authorization.

(B) Complications directly related to the diagnosis for which acute care was originally approved have arisen and necessitate further acute care.

(C) Further acute care is needed for an illness contracted during the course of an approved acute admission if the illness most likely occurred because the beneficiary was hospitalized.

(d) In addition to the information specified in Section 51456, a provider submitting a TAR shall explain why the services are medically necessary or submit supporting documentation indicating medical necessity.

(e) Authorization may be granted only for Medi–Cal benefits that are medically necessary and do not exceed health care services received by the public generally for similar medical conditions. The "Manual of Criteria for Medi–Cal Authorization," published by the Department in January 1982, last revised January 1, 2006, and herein incorporated by reference in its entirety, shall be the basis for the professional judgments of Medi–Cal consultants or PCCM plans in their decisions on authorizations for services or conditions listed in the Manual. Such authorization shall be valid for the number of days specified by the Medi–Cal consultant or PCCM plan up to a maximum of 180 days, unless otherwise specified in this chapter. The Medi–Cal consultant or PCCM plan may grant authorization for up to a maximum of two years when the treatment as authorized is clearly expected to continue unmodified for up to or beyond two years.

(f) Authorization may be granted only for the lowest cost item or service covered by the Medi–Cal program that meets the beneficiary's medical needs.

(g) A provider may appeal the decision of a Medi–Cal consultant on a TAR pursuant to Section 51003.1. A provider appealing the decision

of a PCCM plan on a TAR shall file the appeal in accordance with Section 56262.

(h) Rural Health Clinics and Federally Qualified Health Centers are not subject to TAR requirements.

*NOTE: The December 1996 revision of this provision was made by emergency regulation package R-60-96E. Implementation of R-60-96E was enjoined on November 26, 1996 (*Carmen Doe, et al.* v. *Wilson, et al.*, City and County of San Francisco Superior Court No. 982521). The change to the Manual of Criteria for Medi-Cal Authorization included in R-60-96E that would have occurred in December 1996 is of no force or effect.

NOTE: Authority cited: Sections 10725, 14105, 14124.5, 14132.22, 14132.5, 14133 and 14133.05, Welfare and Institutions Code; and Sections 20 and 1267.7, Health and Safety Code. Reference: Sections 14053, 14064, 14081, 14087, 14088, 14088.16, 14088.2, 14103.6, 14105.12, 14132, 14132.22, 14132.25, 14132.5, 14132.42, 14132.8, 14133, 14133.05, 14133.1, 14133.25 and 14133.3, Welfare and Institutions Code; *Jeneski* v. *Meyers* (1984) 163 Cal. App.3d 18, 209 Cal. Rptr. 178; *Duran* v. *Belshé*, San Diego County Superior Court Case No. 674204, (1995); and *Fresno Community Hospital and Medical Center v. State of California, et al.*, Fresno County, Superior Court Case No. 555694-9, (1996).

HISTORY

1. Amendment of subsection (e) filed 10-27-88 as an emergency; operative 10-27-88 (Register 88, No. 45). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2-24-89. For prior history, see Register 88, No. 15.
2. Certificate of Compliance including amendment of subsection (e) transmitted to OAL 2-24-89 and filed 3-27-89 (Register 89, No. 13).
3. Amendment of subsection (e) filed 8-16-89; operative 9-15-89 (Register 89, No. 33).
4. Amendment of subsections (a), (b)(3), (c), (e) and (g) filed 3-9-90 as an emergency; operative 3-9-90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7-9-90.
5. Amendment of subsection (e) filed 4-6-90 as an emergency; operative 4-6-90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 8-6-90.
6. Amendment refiled 7-9-90 as an emergency; operative 7-9-90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11-6-90.
7. Amendment of subsection (e) filed 8-2-90 as an emergency readoption of 4-6-90 order; operative 8-2-90 (Register 90, No. 41). A Certificate of Compliance must be transmitted to OAL by 11-30-90, or emergency language will be repealed by operation of law on the following day.
8. Amendment of subsection (c) filed 10-26-90 as an emergency; operative 10-26-90 (Register 90, No. 50). A Certificate of Compliance must be transmitted to OAL by 2-25-91 or emergency language will be repealed by operation of law on the following day.
9. Request to readopt amendment on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11-6-90 as an emergency; operative 11-6-90 (Register 91, No. 1). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3-6-91.
10. Certificate of Compliance as to 8-2-90 order transmitted to OAL 10-16-90 and filed 11-15-90 (Register 91, No. 6).
11. Readoption and amendment of 10-26-90 order correcting omission of subsection (c) contained in 11-6-90 order, filed 1-18-91 as an emergency; operative 1-18-91 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 5-20-91 or emergency language will be repealed by operation of law on the following day.
12. Amendment of subsection (e) filed 2-11-91 as an emergency; operative 2-11-91 (Register 91, No. 12). A Certificate of Compliance must be transmitted to OAL by 6-11-91 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 10-26-90 order transmitted to OAL 2-22-91 and filed 3-25-91 (Register 91, No. 15).
14. Certificate of Compliance as to 1-18-91 order transmitted to OAL 2-22-91 and filed 3-25-91 (Register 91, No. 15).
15. Certificate of Compliance as to 11-6-90 order transmitted to OAL 2-22-91; disapproved by OAL on 3-25-91 (Register 91, No. 18).
16. Amendment of subsections (a), (b), (c), (e) and (g) filed 3-25-91 as an emergency; operative 3-25-91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7-23-91 or emergency language will be repealed by operation of law on the following day.
17. Request to readopt 2-11-91 order pursuant to Government Code section 11346.1 granted and filed 5-15-91 as an emergency; operative 6-11-91 (Register 91, No. 26). A Certificate of Compliance must be transmitted to OAL by 10-9-91 or emergency language will be repealed by operation of law on the following day.
18. Request to readopt 5-15-91 order and 8-29-91 order pursuant to Government Code section 11346.1, and merging 5-15-91 order and 8-29-91 order together, granted and filed 10-4-91 as an emergency; operative 10-4-91 (Register 91, No. 52). A Certificate of Compliance must be transmitted to OAL 2-1-92 or emergency language will be repealed by operation of law on the following day.
19. Certificate of Compliance as to 3-25-91 order including amendment of subsection (a) transmitted to OAL 7-19-91 and filed 8-19-91 (Register 92, No. 1).
20. Amendment of subsection (e) filed 8-29-91 as an emergency; operative 8-29-91 (Register 92, No. 10). A Certificate of Compliance must be transmitted to OAL 12-27-91 or emergency language will be repealed by operation of law on the following day.
21. Amendment of subsection (e) refiled 12-23-91 as an emergency; operative 12-23-91 (Register 92, No. 18). A Certificate of Compliance must be transmitted to OAL 4-21-92 or emergency language will be repealed by operation of law on the following day.
22. Certificate of Compliance as to 12-23-91 order transmitted to OAL 4-1-92 and filed 5-5-92 (Register 92, No. 21).
23. Editorial correction to HISTORY 21 (Register 92, No. 24).
24. Change without regulatory effect amending subsection (e) filed 1-27-92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 24).
25. Request to readopt 10-4-91 order pursuant to Government Code section 11346.1(h) granted and filed 1-28-92 as an emergency; operative 2-4-92 (Register 92, No. 24). A Certificate of Compliance must be transmitted to OAL 6-3-92 or emergency language will be repealed by operation of law on the following day.
26. Request to readopt 1-28-92 order pursuant to Government Code section 11346.1(h) granted and filed 6-8-92 as an emergency; operative 6-3-92 (Register 92, No. 24). A Certificate of Compliance must be transmitted to OAL 10-7-92 or emergency language will be repealed by operation of law on the following day.
27. Request to readopt 6-8-92 order pursuant to Government Code section 11346.1(h) granted and filed 10-6-92 as an emergency; operative 10-7-92 (Register 92, No. 41). A Certificate of Compliance must be transmitted to OAL 2-4-93 or emergency language will be repealed by operation of law on the following day.
28. Change without regulatory effect amending subsection (e) filed 3-1-93; operative 3-31-93 (Register 93, No. 10).
29. Editorial correction of printing error (Register 93, No. 15).
30. Reinstatement of subsection (e) as it existed prior to emergency amendment filed 2-11-91 by operation of Government Code section 11346.1(f) (Register 93, No. 15).
31. Amendment of subsection (e) filed 4-12-93; operative 4-12-93. Submitted to OAL for printing only pursuant to SB 485, section 147 (Register 93, No. 16).
32. Amendment of subsection (e) filed 6-29-93 as an emergency; operative 6-29-93 (Register 93, No. 27). A Certificate of Compliance must be transmitted to OAL by 10-27-93 or emergency language will be repealed by operation of law on the following day.
33. Amendment of subsection (e) filed 9-16-93 as an emergency; operative 9-16-93 (Register 93, No. 38). A Certificate of Compliance must be transmitted to OAL by 1-14-94 or emergency language will be repealed by operation of law on the following day.
34. Certificate of Compliance as to 6-29-93 order transmitted to OAL 10-22-93 and filed 12-7-93 (Register 93, No. 50).
35. Redesignation of former subsection (g) to subsection (h) and new subsection (g) filed 2-10-94 as an emergency; operative 2-10-94 (Register 94, No. 5). A Certificate of Compliance must be transmitted to OAL by 6-10-94 or emergency language will be repealed by operation of law on the following day.
36. Certificate of Compliance as to 9-16-93 order transmitted to OAL 1-13-94 and filed 2-28-94 (Register 94, No. 8).
37. Amendment of subsections (c)(1) and (c)(1)(D), new subsection (c)(1)(H), and amendment of subsection (e) and NOTE filed 10-20-94; operative 10-20-94 (Register 94, No. 42).
38. Reinstatement of subsection (g) as it existed prior to emergency amendment filed 3-3-95 by operation of Government Code section 11346.1(f) (Register 95, No. 9).
39. Editorial correction switching HISTORY 12 and 13 and deleting print-only language from HISTORY 37 (Register 95, No. 14).
40. Amendment of subsection (e) filed 7-19-95 as an emergency; operative 7-19-95 (Register 95, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-16-95 or emergency language will be repealed by operation of law on the following day.
41. Amendment of subsection (e) refiled 11-20-95 as an emergency; operative 11-20-95 (Register 95, No. 47). A Certificate of Compliance must be transmitted to OAL by 3-19-96 or emergency language will be repealed by operation of law on the following day.
42. Amendment of subsection (e) and NOTE filed 4-1-96 as an emergency; operative 4-1-96 (Register 96, No. 14). A Certificate of Compliance must be transmitted to OAL by 9-30-96 pursuant to Welfare and Institutions Code section 14132.22 or emergency language will be repealed by operation of law on the following day.
43. Certificate of Compliance as to 7-19-95 order, including further amendment of subsection (e) and amendment of NOTE transmitted to OAL 3-19-96 and filed 4-24-96 (Register 96, No. 17).
44. Editorial correction of NOTE and HISTORY 42 (Register 96, No. 35).
45. Amendment of subsection (e) and NOTE refiled 8-28-96 as an emergency; operative 9-30-96 (Register 96, No. 35). A Certificate of Compliance must be transmitted to OAL by 1-28-97 or emergency language will be repealed by operation of law on the following day.
46. Amendment of subsection (e) and Manual of Criteria for Medi-Cal Authorization (incorporated by reference) filed 11-5-96 as an emergency; operative

12–1–96 (Register 96, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–31–97 or emergency language will be repealed by operation of law on the following day.
47. Certificate of Compliance as to 8–28–96 order, including further amendment of subsection (e) and new footnote, transmitted to OAL 1–23–97 and filed 3–10–97 (Register 97, No. 11).
48. Amendment of subsection (e) and NOTE filed 9–22–97 as an emergency; operative 9–22–97 (Register 97, No. 39). A Certificate of Compliance must be transmitted to OAL by 1–20–98 or emergency language will be repealed by operation of law on the following day.
49. Amendment of subsection (e) filed 12–1–97; operative 12–1–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 49).
50. Amendment of subsection (e) and NOTE, including further amendment of subsection (e), refiled 1–12–98; operative 1–21–98 (Register 98, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–21–98 or emergency language will be repealed by operation of law on the following day.
51. Amendment of subsection (e) filed 4–10–98 as an emergency; operative 4–10–98 (Register 98, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–10–98 or emergency language will be repealed by operation of law on the following day.
52. Amendment of subsection (e) and NOTE refiled 5–21–98 as an emergency; operative 5–21–98 (Register 98, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–18–98 or emergency language will be repealed by operation of law on the following day.
53. Certificate of Compliance as to 4–10–98 order, including further amendment of subsection (e), transmitted to OAL 7–27–98 and filed 9–4–98 (Register 98, No. 36).
54. Certificate of Compliance as to 5–21–98 order, including further amendment of subsection (e) and NOTE transmitted to OAL 9–16–98 and filed 10–27–98 (Register 98, No. 44).
55. Change without regulatory effect amending subsection (e) filed 10–5–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 41).
56. Amendment of subsection (e) and NOTE filed 3–13–2000 as an emergency; operative 3–13–2000 (Register 2000, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–11–2000 or emergency language will be repealed by operation of law on the following day.
57. Amendment of subsection (e) filed 3–27–2000 as an emergency; operative 3–30–2000 (Register 2000, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–28–2000 or emergency language will be repealed by operation of law on the following day.
58. Amendment of subsection (e) filed 6–5–2000 as an emergency; operative 6–5–2000 (Register 2000, No. 23). A Certificate of Compliance must be transmitted to OAL by 10–3–2000 or emergency language will be repealed by operation of law on the following day.
59. Certificate of Compliance as to 3–13–2000 order transmitted to OAL 7–5–2000 and filed 8–14–2000 (Register 2000, No. 33).
60. Amendment of subsection (e) refiled 8–21–2000 as an emergency; operative 10–3–2000 (Register 2000, No. 34). A Certificate of Compliance must be transmitted to OAL by 1–31–2001 or emergency language will be repealed by operation of law on the following day.
61. Certificate of Compliance as to 3–27–2000 order transmitted to OAL 7–17–2000 and filed 8–28–2000 (Register 2000, No. 35).
62. Amendment of subsection (e) filed 9–22–2000 as an emergency; operative 9–22–2000 (Register 2000, No. 38). A Certificate of Compliance must be transmitted to OAL by 1–22–2001 or emergency language will be repealed by operation of law on the following day.
63. Amendment of subsection (e) refiled 1–23–2001 as an emergency; operative 1–23–2001 (Register 2001, No. 4). A Certificate of Compliance must be transmitted to OAL by 5–23–2001 or emergency language will be repealed by operation of law on the following day.
64. Certificate of Compliance as to 8–21–2000 order transmitted to OAL 1–3–2001 and filed 2–5–2001 (Register 2001, No. 6).
65. Certificate of Compliance as to 1–23–2001 order transmitted to OAL 2–7–2001 and filed 3–16–2001 (Register 2001, No. 11).
66. Amendment of subsection (e) and NOTE filed 9–29–2004; operative 10–29–2004 (Register 2004, No. 40).
67. Amendment of section heading, section and NOTE filed 2–22–2007; operative 3–24–2007 (Register 2007, No. 8).
68. Amendment of subsection (e) and NOTE filed 11–6–2007; operative 12–6–2007 (Register 2007, No. 45).

§ 51003.1. Provider Appeal Process for Treatment Authorization Requests (TARs).

(a) A provider of services may appeal the decision of a Medi–Cal consultant regarding a TAR, as follows:

(1) The provider shall submit a written appeal to the Medi–Cal Operations Division Headquarters in Sacramento within 180 calendar days from the date on the TAR, which is the date a decision on the TAR is made by the Medi–Cal consultant.

(A) The written appeal shall be:

1. Post marked by the United States Postal Service,

2. Personally delivered to the Department and date stamped upon receipt, or

3. Labeled with the date deposited with a common carrier for delivery to the Department.

(B) When the last day of the 180 day appeal period falls on a Saturday, Sunday or Holiday, the final date to submit the appeal would be the next business day.

(2) The written appeal shall include:

(A) Original TAR number and service type requested,

(B) Date(s) or service(s) in dispute,

(C) Reason the appeal should be granted,

(D) Any additional documentation that a provider chooses to submit that supports the basis for the conclusion that the services are medically necessary, and

(E) A new, completed TAR for the services appealed.

(b) The Department shall review the provider appeal and send a written decision, and the basis for that decision, to the provider:

(1) When the appeal decision is based on a review of documented medical necessity, the written decision shall be sent to the provider within 180 calendar days from the date of receipt by the Department.

(2) When the appeal decision is a denial based on failure to submit the appeal within 180 calendar days from the date of the decision on the original TAR, the written decision shall be sent to the provider within 60 calendar days from the date of receipt by the Department.

(c) If a provider is not satisfied with the appeal decision, the provider may seek a judicial remedy pursuant to Section 1085 of the Code of Civil Procedure.

NOTE: Authority cited: Sections 10725, 14105, 14124.5, 14132.22, 14132.5, 14133 and 14133.05, Welfare and Institutions Code; and Section 1267.7, Health and Safety Code. Reference: Sections 14053, 14064, 14081, 14087, 14088, 14088.16, 14088.2, 14103.6, 14105.12, 14132, 14132.22, 14132.25, 14132.5, 14132.42, 14132.8, 14133, 14133.05, 14133.1, 14133.25 and 14133.3, Welfare and Institutions Code; *Jeneski* v. *Meyers* (1984) 163 Cal. App. 3d 18, 209 Cal. Rptr. 178; *Duran* v. *Belshé*, San Diego County Superior Court Case No. 674204, (1995); and *Fresno Community Hospital and Medical Center v. State of California, et al.*, Fresno County, Superior Court Case No. 555694–9, (1996).

HISTORY

1. New section filed 4–14–93 as an emergency; operative 4–14–93. Submitted to OAL for printing only pursuant to section 8, AB 1773 (Chapter 939, Statutes of 1992) (Register 93, No. 16).
2. Renumbering of former section 51003.1 to section 51003.3 and new section 51003.1 filed 2–22–2007; operative 3–24–2007 (Register 2007, No. 8).

§ 51003.3. Prior Authorization of Personal Care Benefits.

"Prior Authorization," "reauthorization," or "approval" of a beneficiary of Medi–Cal personal care benefits means authorization granted by the staff of the designated county department.

NOTE: Authority cited: Section 14132.95, Welfare and Institutions Code; Section 8, Chapter 939, Statutes of 1992; Section 3, Chapter 7, Statutes of 1993. Reference: Section 14132.95, Welfare and Institutions Code; Section 1396d(a)(7) of Title 42, of the United States Code; Article 7 (commencing with Section 12300) of Part 3 of Division 9 of the Welfare and Institutions Code; Section 440.170(f) of Title 42 of the Code of Federal Regulations.

HISTORY

1. Renumbering of former section 51003.1 to section 51003.3, including amendment of section and NOTE, filed 2–22–2007; operative 3–24–2007 (Register 2007, No. 8).

§ 51003.7. Prior Authorization Under Primary Care Case Management Contracts.

(a) All Medi–Cal covered services not included in the PCCM plan contract as part of the capitated services provided to a PCCM plan member are subject to prior authorization by the member's PCCM plan except:

(1) Dental Services.

(2) Emergency services as defined in section 51056(a).

(3) Those services determined by the Department to be exempt from PCCM plan prior authorization requirements as specified in each PCCM plan contract. In determining which services shall not be subject to prior authorization, the Department shall consider the factors specified in section 51159(a).

(b) No payment shall be made by the Department for Medi–Cal covered services rendered by a nonplan provider to a PCCM plan member

when the provider failed to obtain the required prior authorization from the PCCM plan.

(c) The Department shall recoup payments erroneously made to a provider for Medi–Cal covered services rendered to a PCCM plan member without proper authorization.

(d) The PCCM plan medical director may delegate responsibility for authorizing medical services to another plan physician or subcontracting physician. The PCCM plan and medical director retain final responsibility for all authorizations or denials of Treatment Authorization Requests for all Medi–Cal noncapitated services rendered to PCCM plan members. The physician accepting the delegation of authority shall agree in writing to:

(1) Review and either defer, authorize, or deny Treatment Authorization Requests for Medi–Cal covered noncapitated services to be rendered to PCCM plan members in accordance with section 51003.

(2) Respond to inquiries from the fiscal intermediary regarding Treatment Authorization Requests which have been submitted for PCCM plan members.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14088, 14088.4 and 14177, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of section transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 51004. Copayment.

(a) Copayment as used in these regulations refers to a specified amount of money which a beneficiary must expend for an outpatient visit to or by a provider, for each prescribed drug and for nonemergency services received in an emergency room as set forth in Welfare and Institutions Code Section 14134.

(b) A visit means all services provided on one occasion by one provider and billed on one claim.

(c) A drug prescription means a written instruction by a physician for the preparation and dispensing of a medicine.

(d) Perinatal care means services received during the full period of gestation and the first month following birth.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; Section 133.5 of Chapter 102, Statutes of 1981; and Section 2 of Chapter 237, Statutes of 1981. Reference: Section 14134, Welfare and Institutions Code.

HISTORY

1. Repealer filed 5–14–76 as an emergency; effective upon filing (Register 76, No. 20). For prior history, see Register 72, No. 18.
2. Certificate of Compliance filed 9–8–76 (Register 76, No. 37).
3. New section filed 11–17–81 as an emergency; effective upon filing (Register 81, No. 47). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3–17–82.
4. Certificate of Compliance transmitted to OAL 3–16–82 and filed 4–16–82 (Register 82, No. 16).

§ 51005. Other Health Care Coverage.

(a) Wherever beneficiaries eligible for benefits under this program are also eligible for the same benefits, either full or partial, under any other State or Federal medical care program or under other contractual or legal entitlement, including but not limited to a private group or indemnification insurance program or the Federal Medicare program, the Department shall require the full utilization of benefits available through the other programs, before utilizing Medi–Cal covered benefits. This requirement shall not apply to beneficiaries covered under Medi–Cal capitated contracting arrangements except to the extent permitted under the capitated contract.

(1) The maximum reimbursement by Medi–Cal for services rendered to beneficiaries with other State, Federal, or private health care coverage shall be the reimbursement calculated on a claim for similar services established under chapter 7 (sections 14000 through 14199) of the Welfare and Institutions Code, less the amount of the payment made by the other State, Federal, or private health care program.

(2) Where a claim for medical services involves coverage under both the Medicare and Medi–Cal programs, the maximum reimbursement by Medi–Cal shall be the amount established for similar services under chapter 7 (sections 14000 through 14199) of the Welfare and Institutions Code, less the amount paid by Medicare. In the event the Department cannot for any reason establish the amount it would have paid for similar services, the maximum reimbursement shall be the amount of the Medicare deductible and coinsurance claimed.

(b) If the billing information is different from what appears on the Medi–Cal card, or is not on the Medi–Cal card a provider of services shall notify the Department of any other health care coverage of a Medi–Cal beneficiary within 60 days of learning such entitlement exists. The information shall include the name and Medi–Cal identification number of the beneficiary, the insured and the name of the health insurance carrier providing the beneficiary's other health care coverage; the policy and group number, and termination date, if available. This information shall be provided to the Department's Health Insurance Unit referral desk via the toll free telephone number 1–800–952–5294 as published in the Medi–Cal Provider Manuals and Provider Bulletins.

(c) If the Department has established probable existence of third party liability before a claim is filed, the Department's fiscal intermediary shall, as directed by the Department, deny provider claims submitted for a beneficiary who has other health care coverage in effect unless the claim is accompanied by a notice of denial of liability, proof of termination of coverage, or partial payment notice. The provider shall first seek payment from the beneficiary's other health care coverage prior to submitting a claim to the Department.

(d) When the Department has paid for services and other health care coverage benefits are available as enumerated in subsection (a), the Department may recover payment for those services from the liable party.

(e) Whenever the Department receives payment for a health care service provided to a beneficiary which is in excess of both the amount which the Department has expended on behalf of the beneficiary for said service, and the administrative costs incurred in the collection of such payment, the excess shall be returned to the payor who made the payment.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14000, 14005, 14023, 14023.7, 14024, 14109.5, 14124.90 and 14490, Welfare and Institutions Code; and Chapter 93, Statutes of 1989.

HISTORY

1. Amendment filed 1–22–71; designated effective 3–1–71 (Register 71, No. 4). For prior history, see Register 70, No. 27.
2. New subsections (b), (c) and (d) filed 7–13–73; effective thirtieth day thereafter (Register 73, No. 28).
3. New NOTE filed 8–30–84 (Register 84, No. 35).
4. Amendment filed 6–28–89; operative 7–28–89 (Register 89, No. 26).
5. Amendment of subsection (a) filed 1–29–90 as an emergency; operative 1–29–90 (Register 90, No. 5). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 5–29–90.
6. Change without regulatory effect pursuant to section 100(b)(3), Title 1, California Code of Regulations amending subsections (a)(1) and (2), filed 6–5–90 (Register 90, No. 30).
7. Amendment of subsections (a)(1) and (2) refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL by 11–6–90 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 1–29–90 order transmitted to OAL 10–24–90 and filed 11–26–90 (Register 91, No. 2).

§ 51006. Out–of–State Coverage.

(a) Necessary out–of–state medical care, within the limits of the program, is covered only under the following conditions:

(1) When an emergency arises from accident, injury or illness; or

(2) Where the health of the individual would be endangered if care and services are postponed until it is feasible that he return to California; or

(3) Where the health of the individual would be endangered if he undertook travel to return to California; or

(4) When it is customary practice in border communities for residents to use medical resources in adjacent areas outside the State; or

(5) When an out–of–state treatment plan has been proposed by the beneficiary's attending physician and the proposed plan has been received, reviewed and authorized by the Department before the services are provided. The Department may authorize such out–of–state treatment plans only when the proposed treatment is not available from resources and facilities within the State.

(6) Prior authorization is required for all out–of–state services, except:

(A) Emergency services as defined in Section 51056.

(B) Services provided in border areas adjacent to California where it is customary practice for California residents to avail themselves of such services. Under these circumstances, program controls and limitations are the same as for services from providers within the State.

(b) No services are covered outside the United States, except for emergency services requiring hospitalization in Canada or Mexico.

NOTE: Authority cited: Sections 10725 and 14125.5, Welfare and Institutions Code. Reference: Section 14122, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (a)(5) filed 1–18–74; effective thirtieth day thereafter (Register 74, No. 3). For prior history, see Register 72, No. 5.
2. Change without regulatory effect adding NOTE (Register 86, No. 49).

[The next page is 395.]

§ 51007. Discrimination.

No provider of services receiving payment through this program shall discriminate against any beneficiary on the basis of race, color, age, sex, religion, ancestry, national origin or physical or mental disability.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 10000 and 14100.1, Welfare and Institutions Code; and Section 11135, Government Code.

HISTORY

1. Amendment filed 6–5–67 as an emergency; effective upon filing. Certificate of Compliance filed 6–9–67 (Register 67, No. 23).
2. Amendment filed 7–15–85; effective thirtieth day thereafter (Register 85, No. 29).

§ 51008. Bills for Service.

(a) Except for good cause, bills for service provided pursuant to the Medi–Cal Program (Welfare and Institutions Code, Division 9, Part 3, Chapter 7), shall be received by the fiscal intermediary, or otherwise as designated by the Director, not later than the sixth month following the month of service and shall be in the form prescribed by the Director.

(b) As used in this section:

(1) "Month of service" means the month in which a:

(A) Service is provided or supplies are furnished.

(B) Dental prosthesis, custom–made eye appliance, custom–made prosthetic appliance, or custom–made orthotic appliance is ordered from the fabricating laboratory.

(C) Trial period prior authorized or required under these regulations is completed for a prosthetic appliance or orthotic appliance covered under Section 51315, a hearing aid covered under Section 51319, or an item of durable medical equipment covered under Section 51321.

"Good cause" means circumstances beyond the control of the provider, as specified in Section 51008.5.

(c) A Resubmission Turnaround Document (RTD), which has been sent by the fiscal intermediary for correction or additional information, must be received back from the provider not later than 60 days following the date of the RTD. The claim is subject to denial of payment if corrections or additional information furnished by the provider on the RTD are incomplete, inaccurate or untimely.

(d) A request for adjustment or reconsideration of an adjudicated claim must be received by the fiscal intermediary not later than six months following the date of payment or denial of the claim by the fiscal intermediary. If favorable resolution of a claim is not obtained, a grievance or complaint concerning the processing or payment of the claim must be filed in accordance with Section 51015.

NOTE: Authority cited: Sections 10725, 14105, 14115 and 14124.5, Welfare and Institutions Code. Reference: Sections 14115, 14124.1, 14124.2 and 14133, Welfare and Institutions Code.

HISTORY

1. New section filed 9–7–66 as an emergency; effective upon filing; Certificate of Compliance included (Register 66, No. 30).
2. Amendment filed 7–1–70; designated effective 8–1–70 (Register 70, No. 27).
3. Amendment of subsection (a) filed 5–9–73 as an emergency; effective upon filing (Register 73, No. 19).
4. Certificate of Compliance filed 9–5–73 (Register 73, No. 36).
5. Amendment of subsection (b) filed 12–23–75; effective thirtieth day thereafter (Register 75, No. 52).
6. Amendment of subsection (b) filed 11–29–79; effective thirtieth day thereafter (Register 79, No. 48).
7. New subsections (c) and (d) filed 4–25–80; effective thirtieth day thereafter (Register 80, No. 17).
8. New subsections (b)(3) and (e) filed 7–31–81; effective thirtieth day thereafter (Register 81, No. 31).
9. Amendments of subsection (a)–(d), and renumbering and amendment of former subsection (e) to section 51008.5 filed 12–6–85; effective thirtieth day thereafter (Register 85, No. 49).
10. Repealer of subsections (b)(1)(D) and (E) and amendment of subsections (a), (c), (d) and NOTE filed 9–16–92; operative 10–16–92 (Register 92, No. 38).

§ 51008.1. Upper Billing Limit.

(a) Bills submitted pursuant to Section 51008 for durable medical equipment as defined in Section 51160, medical supplies authorized pursuant to Section 51320, or incontinence medical supplies listed in Section 51526(c) shall not exceed an amount that is the lesser of:

(1) The usual charges made to the general public, or

(2) The net purchase price of the item, which shall be documented in the provider's books and records, plus no more than a 100 percent mark–up. Documentation shall include, but not be limited to, evidence of purchase such as invoices or receipts.

(A) Net purchase price is defined as the actual cost to the provider to purchase the item from the seller, including any rebates, refunds, discounts or any other price reducing allowances, known by the provider at the time of billing the Medi–Cal program for the item, that reduce the item's invoice amount.

(B) The net purchase price shall reflect price reductions guaranteed by any contract to be applied to the item(s) billed to the Medi–Cal program.

(C) The net purchase price shall not include provider costs associated with late payment penalties, interest, inventory costs, taxes, or labor.

(D) Where a custom wheelchair as defined in (d) is subject to the provisions of this regulation, the provider may bill the provider's cost of labor to assemble the custom wheelchair which is above the 100 percent mark–up, only when the inclusion of the actual labor cost would result in a bill that exceeds the net purchase price of the entire custom wheelchair plus a 100 percent mark–up. Regardless of any codes used to bill the wheelchair base or frame of a custom wheelchair, where inclusion of the provider's actual cost for assembly of the custom wheelchair exceeds the amount of the allowed 100 percent mark–up, the provider shall be allowed to add to the bill submitted under 51008 that actual cost of labor that exceeds the 100 percent mark–up to the claim line that would otherwise have been used to bill only the custom wheelchair's base or frame.

(E) If the provider's actual cost of labor is included in the bill, the actual time spent assembling the entire custom wheelchair shall be itemized by hours or fractions thereof and the per hour cost of labor, and each shall be documented in the provider's books and records.

(b) Providers shall not submit bills pursuant to this section for items obtained at no cost.

(c) Bills for items of rented durable medical equipment are excluded from the upper billing limit provisions in subsection (a)(2).

(d) A custom wheelchair, either manual or power, is one which has been uniquely constructed or assembled to address a particular patient's individual medical needs for positioning, support and mobility.

NOTE: Authority cited: Sections 10725, 14043.75, 14105, 14105.2 and 14124.5, Welfare and Institutions Code; and Section 78, Chapter 146, Statutes of 1999. Reference: Sections 14100.7, 14103.7, 14105.2 and 14125, Welfare and Institutions Code.

HISTORY

1. New section filed 2–27–2003 as an emergency; operative 3–1–2003 (Register 2003, No. 9). Pursuant to statutes of 1999, chapter 146, section 78, a Certificate of Compliance must be transmitted to OAL by 8–28–2003 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of HISTORY 1 (Register 2003, No. 20).
3. New section refiled 8–28–2003 as an emergency; operative 8–28–2003 (Register 2003, No. 35). Pursuant to statutes of 1999, chapter 146, section 78, a Certificate of Compliance must be transmitted to OAL by 2–24–2004 or emergency language will be repealed by operation of law on the following day.
4. Order of 8–28–2003 repealed by operation of law (Register 2004, No. 9).
5. New section filed 2–24–2004; operative 2–25–2004 (Register 2004, No. 9). Pursuant to section 14043.75(a) of the Welfare and Institutions Code, this filing is deemed an emergency and exempt from review by OAL. A Certificate of Compliance must be transmitted to OAL by 6–24–2004 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–24–2004 order, including new subsections (a)(2)(A)–(E), amendment of subsection (b) and new subsections (c) and (d), transmitted to OAL 3–12–2004 and filed 4–26–2004 (Register 2004, No. 18).

§ 51008.5. Billing Procedures for Claims Delayed by Good Causes.

(a) The Department, upon review of substantiating documentation received to justify good cause for late submittal of the claim, may receive and authorize the processing late claims if the reason for delayed submission is due to the following circumstances which are beyond the control of the provider:

(1) Failure of the patient or legal representative, due to deliberate concealment or physical or mental incapacity, to present identification as a Medi–Cal beneficiary. Delayed billing shall be submitted not later than 60 days after the date certified by the provider as the date the patient was first identified as a Medi–Cal beneficiary. The date certified by the provider as the date the patient was first identified shall not be later than one year after the month in which the service was rendered. Identification of a patient as a Medi–Cal beneficiary means presentation of any of the following for the month of service:

(A) Medi–Cal card.

(B) MEDI label.

(C) Proof of eligibility (POE) label.

(D) Any of the above indicating Kaiser, Ross–Loos or CHAMPUS coverage, when accompanied by denial of coverage or an explanation of the other coverage by that carrier.

(2) Billing involving other coverage, including Medicare or other health insurance coverage. Billing shall be submitted not later than one year after the month of service to permit the provider to obtain proof of payment, partial payment or nonliability of the carrier.

(3) Initiation of legal proceedings to obtain payment of a liable third party, pursuant to Section 14115 of the Welfare and Institutions Code.

(4) Determination by the Director that the provider was prevented from submitting bills for services, within the time limits set forth in Section 51008, due to circumstances beyond the control of the provider, as described below. The Director may extend the time period for the submission of bills for a period not to exceed one year from the date of service for any of the following:

(A) Delay or error in the certification or determination of Medi–Cal eligibility by the State or county.

(B) Damage to or destruction of the provider's business office or records by a natural disaster, including fire, flood or earthquake; or circumstances involving such disaster have substantially interfered with processing bills in a timely manner.

(C) Delay of required authorization by:

1. Medi–Cal Field Services.
2. Professional Standards Review Organization.
3. California Children's Services.

(D) Compliance with Section 51470 (b) involving undelivered custom–made items.

(E) Delay by the Department in enrolling a provider or fiscal intermediary in supplying billing forms to the provider.

(F) Theft, sabotage or other deliberate, willful acts by an employee.

(G) Other circumstances that are clearly beyond the control of a provider that have been reported to the appropriate law enforcement or fire agency when applicable.

(H) The unforeseen cessation of maternity care for a patient for whom prenatal care was provided on the assumption that global billing would be used.

(b) Circumstances that shall not be considered beyond the control of the provider include, but are not limited to:

(1) Negligence by employees.

(2) Misunderstanding of or unfamiliarity with Medi–Cal regulations.

(3) Illness or absence of any employee trained to prepare bills.

(4) Delays caused by the United States Postal Service or any private delivery service.

(5) Special circumstances that cause a billing delay beyond the time limitations specified in this Section 51008. Such bills may be submitted for processing beyond the time limits specified in Section 51008, provided such submittal is within 60 days after the date of resolution of the circumstances causing the billing delay. These circumstances include:

(A) Court decisions.

(B) State hearing decisions.

NOTE: Authority cited: Sections 10725, 14105, 14115 and 14124.5, Welfare and Institutions Code. Reference: Sections 14115, 14124.1, 14124.2 and 14133, Welfare and Institutions Code.

HISTORY

1. Renumbering and amendment of former section 51008(e) to section 51008.5 filed 12–6–85; effective thirtieth day thereafter (Register 85, No. 49). For prior history, see Register 81, No. 31.
2. New subsection (a)(4)(H) and amendment of NOTE filed 9–16–92; operative 10–16–92 (Register 92, No. 38).

§ 51009. Confidential Nature of Records.

All individual medical records of beneficiaries acquired by individuals or institutions providing care, the Department, or any other state or local agency, or by any organization contracting to provide administrative services under this program, shall be confidential and shall not be released without the written consent of the beneficiary or his personal representative. This shall not preclude the release of statistical or summary data or information in which individual beneficiaries are not, and cannot be, identified, nor shall it preclude exchange of information between individuals or institutions providing care, fiscal intermediaries, and state or local official agencies. Neither shall this section preclude exchange of information necessary for the purpose of effecting recovery as provided in Welfare and Institutions Code, Sections 10020 through 10025, 14024 and 14124.70 through 14124.79 with persons liable thereunder.

NOTE: Authority cited: Sections 10725, 14100.2 and 14124.5, Welfare and Institutions Code. Reference: Section 14100.2, Welfare and Institutions Code.

HISTORY

1. Refiled 6–5–67 as an emergency; effective upon filing, Certificate of Compliance filed 6–9–67 (Register 67, No. 23).
2. Amendment filed 11–15–68; effective thirtieth day thereafter (Register 68, No. 43).
3. Amendment filed 7–13–73; effective thirtieth day thereafter (Register 73, No. 28).
4. Editorial correction (Register 81, No. 38).
5. New NOTE filed 12–13–84 (Register 84, No. 50).

§ 51011. Identification of Beneficiary.

(a) All out–of–hospital and inpatient services may be provided subject to the limitations specified in the scope of benefits, and subject to the Medical Assistance classification of the beneficiary upon presentation by a beneficiary of a valid medical care eligibility card issued by a local welfare department, except where these regulations specify that prior authorization for a specific service is required, and evidence of such authorization is presented or furnished, such card shall be deemed adequate authorization to provide services up to the expiration date specified on the card. Limitations to personal care services are specified in Section 51350.

NOTE: Authority cited: Section 14132.95, Welfare and Institutions Code; Section 8, Chapter 939, Statutes of 1922; Section 3, Chapter 7, Statutes of 1993. Reference: Section 14132.95, Welfare and Institutions Code; Section 1396d(a)(7) of Title 42, of the United States Code; Article 7 (commencing with Section 12300) of Part 3 of Division 9 of the Welfare and Institutions Code; Section 440.170(f) of Title 42 of the Code of Federal Regulations.

HISTORY

1. Refiled 6–5–67 as an emergency; effective upon filing. Certificate of Compliance filed 6–9–67 (Register 67, No. 23).
2. Amendment of subsection (a) filed 4–14–93 as an emergency; operative 4–14–93. Submitted to OAL for printing only pursuant to section 8, AB 1773 (Chapter 939, Statutes of 1992) (Register 93, No. 16).

§ 51011.1. Year 2000 Alternate Procedure for Verification of Eligibility.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14018.2, Welfare and Institutions Code.

HISTORY

1. New section filed 12–27–99 as an emergency; operative 12–27–99 (Register 99, No. 53). A Certificate of Compliance must be transmitted to OAL by 4–25–2000 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 2001, No. 46).

§ 51013. California Children Services.

A beneficiary under age 21 who has a medical or surgical condition which would qualify for services under California Children Services,

shall be referred to that program for case management and prior authorization by the appropriate local or state administrative agency for California Children Services. Medical care not provided through California Children Services shall be provided through the procedures established in these regulations.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14000 and 14133, Welfare and Institutions Code.

HISTORY

1. Refiled 6–5–67 as an emergency; effective upon filing. Certificate of Compliance filed 6–9–67 (Register 67, No. 23).
2. Amendment filed 6–22–87; operative 7–22–87 (Register 87, No. 27).
3. Editorial correction of first sentence (Register 95, No. 45).

§ 51014. Vocational Rehabilitation Services.

Whenever a service is requested on behalf of a Medi–Cal beneficiary on the basis that such service is needed for vocational rehabilitation, that beneficiary shall be referred in writing by the Medi–Cal consultant to the State Department of Rehabilitation for counseling and evaluation.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14113, Welfare and Institutions Code.

HISTORY

1. New section filed 5–31–68; effective thirtieth day thereafter (Register 68, No. 21).
2. Amendment filed 12–7–87; operative 1–6–88 (Register 87, No. 50).

§ 51014.1. Fair Hearing Related to Denial, Termination or Reduction in Medical Services.

(a) In addition to any notice mailed pursuant to section 50179, 53261, 53452, 56261, or 56452, each beneficiary shall be informed in writing, at the time of application to the program and by the Department on a quarterly basis thereafter, of the right to a fair hearing upon receipt of notice of:

(1) Any action, other than approval, including but not limited to deferral or denial, taken by the Department or a Medi–Cal managed care plan on a request by a provider for any medical service.

(2) Any intended action by the Department or a Medi–Cal managed care plan to terminate or reduce any medical service.

(b) The written notice of the right to a fair hearing shall specify:

(1) The method by which a hearing may be obtained.

(2) That the beneficiary may be either:

(A) Self represented.

(B) Represented by an authorized third party such as legal counsel, relative, friend or any other person.

(3) The circumstances under which the medical service shall be continued pending decision on the fair hearing.

(4) The time limit for requesting fair hearing.

(c) Except as provided in (d), notice of intended action to reduce or terminate authorization for a medical service prior to expiration of the period covered by the authorization shall be mailed by the Department or by the Medi–Cal managed care plan to the beneficiary at least 10 days before the effective date of action. The notice shall include:

(1) A statement of the action the Department or Medi–Cal managed care plan intends to take.

(2) The reason for the intended action.

(3) A citation of the specific regulations or Medi–Cal managed care plan authorization procedures supporting the intended action.

(4) An explanation of the beneficiary's right to request a fair hearing for the purpose of appealing the Department's or Medi–Cal managed care plan's decision.

(5) An explanation of the procedure to request a hearing.

(6) An explanation of the circumstances under which a medical service shall be continued if a hearing is requested.

(d) The Department or Medi–Cal managed care plan may dispense with the 10 day mailing requirement in (c), but shall mail the notice of action before the date of action and shall meet all other requirements, when any of the following circumstances occur:

(1) The Department or Medi–Cal managed care plan receives a clear written statement signed by the beneficiary stating that the beneficiary no longer wishes to receive continuous medical service.

(2) The beneficiary has been admitted or committed to an institution and is no longer eligible for Medi–Cal benefits or, for a Medi–Cal managed care plan member, is no longer enrolled in the Medi–Cal managed care plan.

(3) The beneficiary has been accepted for medical assistance in another state or a new jurisdiction and that fact has been established by the jurisdiction presently providing assistance.

(4) A change in level of medical care is prescribed by the beneficiary's physician.

(5) The Department, or Medi–Cal managed care plan with the concurrence of the Department, obtains facts indicating the medical service should be terminated because of the probable fraud of the beneficiary. In this case notice shall be mailed at least 5 days before the action becomes effective.

(e) Except as provided in (g), notice of a reduction or termination as defined in (e)(1) and (2) shall be mailed by the Department or Medi–Cal managed care plan to the beneficiary or to the person identified as the beneficiary's authorized representative in records submitted by the health care provider requesting the services. The notice shall contain the information required by (c), except that it shall describe the action the Department or Medi–Cal managed care plan has taken rather than an action it intends to take. It shall be deposited with the United States postal service in time for pick–up no later than the third working day after the reduction or termination.

(1) "Termination" as used in this subdivision means denial by the Department or Medi–Cal managed care plan of a request for non–acute continuing services, as defined in section 51003(c)(1).

(2) "Reduction" as used in this subdivision means approval by the Department or Medi–Cal managed care plan of a request for non–acute continuing services as defined in section 51003(c)(1), at less than the amount or frequency requested and less than the amount or frequency approved on the immediately preceding authorization. There is no reduction if a shorter time period of services than requested is approved, as long as the amount or frequency of services during that period has not been reduced from the previously approved level.

(f) Except as provided in (g), notice of a termination as defined in (f)(1), shall be personally delivered or mailed as provided below. Notice shall be personally delivered to the beneficiary in his or her hospital room unless the beneficiary's treating physician has certified in writing that such personal delivery may result in serious harm to the beneficiary. If the treating physician has so certified, notice shall be mailed to the mailing address of the beneficiary or the person, if any, identified as the beneficiary's authorized representative in hospital medical records or documents submitted by the hospital to the Department or Medi–Cal managed care plan. Notice required by this subdivision shall contain the information required by (c) except that it shall describe the action the Department or Medi–Cal managed care plan has taken rather than an action it intends to take. It shall be personally delivered or be mailed no later than the first working day after termination.

(1) "Termination" as used in this subdivision means denial by the Department or Medi–Cal managed care plan of a request by a provider for acute continuing services, as defined in section 51003(c)(2). There is no termination when the field office consultant or Medi–Cal managed care plan approves less than the full number of acute care days requested.

(g) Notice of termination or reduction as provided for in (e) and (f) is not required in any of the following circumstances:

(1) By the date that notice would otherwise be personally delivered or mailed;

(A) Non–acute services requested for a limited time period are provided in full or,

(B) In the case of acute care services, the beneficiary is discharged from the hospital.

(2) The only days of acute care denied have already been provided to the beneficiary.

(3) The Department or Medi–Cal managed care plan authorized acute care days subject to specific services being performed during a specified time, and the Department or Medi–Cal managed care plan retroactively denies these previously authorized days because such services were delayed or not performed.

(h) Notice of action taken, or intended action other than approval for either a written or verbal request by a provider for medical service, other than those specified under subdivisions (c), (e) and (f) or sections 53261 or 56261, shall be transmitted by the Department or Medi–Cal managed care plan to the provider of service. The method of transmittal of the notice of action taken or intended action may be either written or verbal. Should the beneficiary not receive notification from the provider of the Department's or Medi–Cal managed care plan's decision, the beneficiary may contact the provider to obtain such notification.

(i) For the purposes of this section, "medical service" means those services that are subject to prior authorization pursuant to section 51003 or the Medi–Cal managed care plan's authorization procedures.

(j) For the purposes of this section, "Medi–Cal managed care plan" means a prepaid health plan as defined in section 50071.5 or a primary care case management plan as defined in section 50071.8.

(k) The provisions of this section apply to Medi–Cal managed care plans only for beneficiaries who are enrolled in the Medi–Cal managed care plan and for medical services that are covered in the contract between the Department and the Medi–Cal managed care plan. The provisions of this section do not apply to the decisions of providers serving beneficiaries enrolled in Medi–Cal managed care plans when prior authorization of the service by the Medi–Cal managed care plan's authorization procedures is not a condition of payment for the medical service.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 10950, 14088, 14088.4, 14124.5 and 14311, Welfare and Institutions Code.

HISTORY

1. New section filed 3–15–79 as an emergency; effective upon filing (Register 79, No. 11).
2. Certificate of Compliance filed 6–28–79 (Register 79, No. 26).
3. Amendment of subsection (c) and new subsections (e)–(g) filed 10–26–90 as an emergency; operative 10–26–90 (Register 90, No. 50). A Certificate of Compliance must be transmitted to OAL by 2–25–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–26–90 order transmitted to OAL 2–22–91 and filed 3–25–91 (Register 91, No. 15).
5. Amendment of section and NOTE filed 10–17–95; operative 11–16–95 (Register 95, No. 42).

§ 51014.2. Medical Assistance Pending Fair Hearing Decision.

(a) Continued medical assistance as set forth in (b), (c), and (d) below, pending a hearing decision shall be provided only if the beneficiary appeals in writing to the Department for a hearing within 10 days of the mailing or personal delivery of the notice of action pursuant to section 51014.1(c), (e) or (f), or before the effective date of action.

(b) In the case of a termination or reduction pursuant to section 51014.1(c), authorization shall be maintained until the period covered by the existing authorization expires, the date a hearing decision is rendered, or the date on which the hearing is otherwise withdrawn or closed, whichever is earliest.

(c) In the case of a termination of acute care services pursuant to section 51014.1(f), acute care authorization pending a hearing shall begin:

(1) The first day after the previously approved length of stay for continuing acute care if the request for extension by a provider was submitted to the on–site Medi–Cal reviewer during the first on–site visit after the previously approved length of stay expired.

(2) The sixth day of hospitalization if a request for extension pursuant to section 51003(c)(2)(B)5. was submitted to the on–site Medi–Cal reviewer during the first on–site visit after the first five days of hospitalization.

(3) The day the request for extension was submitted to the Department or to the Medi–Cal managed care plan if neither (1) nor (2) apply.

(4) The date of the termination decision if a decision on the request for extension was initially deferred pending the receipt of additional information.

Authorization pending a hearing pursuant to this subdivision shall end on the date a hearing decision is rendered, the date on which the hearing appeal is withdrawn or closed, the date the treating physician documents that the beneficiary is ready for lower level of care, or the date of discharge, whichever is earliest.

(d) In the case of a termination or reduction of non–acute care services pursuant to section 51014.1(e), authorization shall begin:

(1) Upon expiration of the previous authorization if the request by a provider for reauthorization is submitted prior to such expiration, or

(2) The day of receipt of a completed request for reauthorization not requiring additional information from the provider, or

(3) The date of deferral of a decision on a request for reauthorization, when such deferral was necessary because of an incomplete request or because additional medical information is needed.

Authorization pending a hearing pursuant to this subdivision ends on the date through which services were requested by the treating physician, the date a hearing decision is rendered, or the date on which the hearing appeal is withdrawn or closed, whichever is earliest.

(e) Notwithstanding (a), (c), and (d), continued medical assistance pursuant to (c) or (d):

(1) is not required at a greater amount or frequency of services than approved for the immediately preceding period of authorization,

(2) is not required in the case of acute care services if the beneficiary has been discharged from the hospital at the time that continued authorization would otherwise be put into effect,

(3) is not required in the case of non–acute care services requested for a limited time period, if they have been provided in full at the time that continued authorization would otherwise be put into effect.

(f) For the purposes of this section, "Medi–Cal managed care plan" means a prepaid health plan as defined in section 50071.5 or a primary care case management plan as defined in section 50071.8.

(g) The provisions of this section apply to Medi–Cal managed care plans only for beneficiaries who are enrolled in the Medi–Cal managed care plan and for medical services that are covered in the contract between the Department and the Medi–Cal managed care plan.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Sections 1250, 1267.7 and 1275.3, Health and Safety Code. Reference: Sections 10950, 14088, 14088.4, 14124.5 and 14311, Welfare and Institutions Code; and Sections 1250 and 1275.3, Health and Safety Code.

HISTORY

1. Amendment refiled by the Department of Health Services with the Secretary of State on 5–30–89 as an emergency pursuant to Health and Safety Code section 1275.3; operative 5–30–89. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 89, No. 23). For prior history, see Register 89, No. 1.
2. Certificate of Compliance as to 5–30–89 order transmitted to OAL 9–27–89 and filed 10–26–89 (Register 89, No. 44).
3. Amendment filed 10–26–90 as an emergency; operative 10–26–90 (Register 90, No. 50). A Certificate of Compliance must be transmitted to OAL by 2–25–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–26–90 order transmitted to OAL 2–22–91 and filed 3–25–91 (Register 91, No. 15).
5. Amendment of section and NOTE filed 10–17–95; operative 11–16–95 (Register 95, No. 42).

§ 51015. Provider Grievances and Complaints.

When a provider of services has a grievance or complaint concerning the processing or payment of his claims for services provided under the Medical Assistance Program the following procedures must be met:

(a) The provider shall initiate an appeal, by submitting a grievance or complaint in writing, within 90 days of the action precipitating the grievance or complaint, to the appropriate fiscal intermediary identifying the claims involved and specifically describing the disputed action or inaction regarding such claims.

(b) The fiscal intermediary shall acknowledge the written grievance or complaint within 15 days of its receipt.

(c) The fiscal intermediary shall determine whether or not the grievance or complaint shall be referred to professional peer review.

(1) When the grievance or complaint is not referred to professional peer review, the fiscal intermediary shall review the merits of the grievance or complaint and send a written decision of its conclusion and reasons therefor to the provider within 30 days of the acknowledgment of the receipt of the grievance or complaint.

(2) When the grievance or complaint is referred to professional peer review:

(A) All parties concerned shall be notified that the referral has been made to professional peer review and that a final determination will require up to 60 days from the acknowledgment of receipt of the grievance or complaint.

(B) The professional peer review shall make its evaluation and submit its findings and recommendations to the fiscal intermediary and the provider within 30 days of the referral from the fiscal intermediary.

(C) The fiscal intermediary, after taking into consideration the findings and recommendations of the professional peer review, shall send a written decision to the provider.

(d) After these procedures have been followed, a provider who is not satisfied with the appeal decision by the fiscal intermediary, may seek appropriate judicial remedies in compliance with Section 14104.5 of the Welfare and Institutions Code, no later than one year after receiving notice of the decision.

NOTE: Authority cited: Sections 14104.5 and 14124.5, Welfare and Institutions Code. Reference: Section 14104.5, Welfare and Institutions Code.

HISTORY

1. Amendment filed 1–25–79; effective thirtieth day thereafter (Register 79, No. 4). For prior history, see Registers 66, No. 30; 68, No. 43; 70, No. 30; and 74, No. 3.
2. Amendment filed 12–6–85; effective thirtieth day thereafter (Register 85, No. 49).
3. Amendment filed 4–2–92; operative 4–2–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 14).

§ 51015.1. Special Claims Review Appeals.

NOTE: Authority cited: Sections 14105, 14124.5 and 14133(b), Welfare and Institutions Code. Reference: Sections 14104.5 and 14133(b), Welfare and Institutions Code.

HISTORY

1. New Section filed 12–20–78; effective thirtieth day thereafter (Register 78, No. 51).
2. Repealer filed 6–24–2003; operative 7–24–2003 (Register 2003, No. 26).

§ 51015.2. Providers of Personal Care Services Grievance and Complaints.

Notwithstanding Section 51015, when a provider of personal care services has a grievance or complaint concerning the processing or payment of money for services rendered, the following procedures must be met:

(a) The provider shall initiate an appeal, by submitting a grievance or complaint in writing within 90 days of the action precipitating the grievance or complaint, to the designated county department identifying the claims involved and specifically describing the disputed action or inaction regarding such claims.

(b) The designated county department shall acknowledge the written grievance or complaint within 15 days of its receipt.

(c) The designated county department shall review the merits of the grievance or complaint and send a written decision of its conclusion and reasons to the provider within 30 days of the acknowledgement of the receipt of the grievance or complaint.

(d) After following this procedure, a provider who is not satisfied with the decision by the designated county department may seek appropriate judicial remedies in compliance with Section 14104.5 of the Welfare and Institutions Code, no later than one year after receiving notice of the decision.

NOTE: Authority cited: Section 14132.95, Welfare and Institutions Code; Section 8, Chapter 939, Statutes of 1922; Section 3, Chapter 7, Statutes of 1993. Reference: Section 14132.95, Welfare and Institutions Code; Section 1396d(a)(7) of Title 42, of the United States Code; Article 7 (commencing with Section 12300) of Part 3 of Division 9 of the Welfare and Institutions Code; Section 440.170(f) of Title 42 of the Code of Federal Regulations.

HISTORY

1. New section filed 4–14–93 as an emergency; operative 4–14–93. Submitted to OAL for printing only pursuant to section 8, AB 1773 (Chapter 939, Statutes of 1992) (Register 93, No. 16).

Article 1.5. Provider Audit Appeals

§ 51016. Definitions.

(a) The following definitions shall be used throughout this article unless otherwise noted.

(1) Audits or Examination Report. "Audit or examination report" means a document that presents the final audit or examination findings and is formally issued to the provider by the Department upon the completion of the audit or examination.

(2) Completed Audit or Examination. "Completed audit or examination" means an audit or examination for which an audit or examination report has been issued.

(3) "Date of mailing" means the date postmarked on the envelope if postage was prepaid and the envelope was properly addressed.

(4) Demand for Repayment. "Demand for repayment" means a written notice issued to the provider by the Department that identifies the amount of the overpayment, determined by an audit or examination, that must be repaid. The notice may be made through the issuance of a statement of accountability, statement of account status, letter, or any combination of the foregoing.

(5) Duplicate. "Duplicate" means a counterpart or facsimile copy of the original produced by the same impression or from the same matrix as the original or by some technique of accurate reproduction.

(6) "Exit conference" means an informal meeting, between the provider and those Department representatives responsible for the audit or examination, at which the preliminary findings of the audit or examination are discussed.

(7) Formal Hearing. "Formal hearing" means an administrative hearing conducted by a hearing officer pursuant to Section 14171(b), Welfare and Institutions Code, and the provisions of this article.

(8) Hearing Auditor. "Hearing auditor" means an individual designated to conduct the informal level of review.

(9) Hearing Officer. "Hearing officer" means a hearing officer appointed by the Director pursuant to Section 14171(b), Welfare and Institutions Code.

(10) Informal Conference. "Informal conference" means a proceeding conducted in person or by telephone, for the purpose of scheduling the informal level of review and formal hearing; exchanging documents; and resolving other preliminary matters.

(11) Informal Level of Review. "Informal level of review" means an informal hearing for institutional providers and a pretrial conference for non–institutional providers, held by a hearing officer or hearing auditor prior to a formal hearing to clarify or resolve facts and issues in dispute.

(12) Party. "Party" means the provider, the Department and any person, other than a hearing officer, allowed to appear in the proceedings.

(13) Institutional Provider. "Institutional provider" means any of the following:

(A) Any individual, entity or organization of a type required to be licensed pursuant to either Chapter 1 (commencing with Section 1200) or Chapter 2 (commencing with Section 1250) of Division 2, Health and Safety Code, or exempt from licensure pursuant to Section 1206(b) through (l) Health and Safety Code, or Section 1254 Health and Safety Code which provides services or supplies under the Medi–Cal program, and is subject to audit by the Department.

(B) Any individual, entity, or organization of a type required to file a cost report or cost information with the Department.

(14) Non–institutional Provider. "Non–institutional provider" means any individual, entity, or organization other than those defined in subsec-

tion (13) who provides services or supplies under the Medi–Cal program, and who is subject to audit by the Department.

(15) File. "File" means delivery of a pleading or other paper to, and its date stamping by, the Office of Administrative Hearings and Appeals, Office of Legal Services, Department of Health Services.

(16) Serve. "Serve" means the delivery of a pleading or other paper on a party in the manner provided by Government Code Section 11505(c).

NOTE: Authority cited: Sections 14105, 14124.5 and 14171, Welfare and Institutions Code. Reference: Sections 14171 and 14172.5, Welfare and Institutions Code.

HISTORY

1. Repealer of Section 51016 and new Article 1.5 (Sections 51016–51043) filed 3–2–76; designated effective 4–1–76 (Register 76, No. 10). For prior history, see Register 72, No. 11, and Register 75, No. 23.
2. Repealer of Article 1.5 (Sections 51016–51043) and new Article 1.5 (Sections 51016–51047) filed 5–8–80; effective thirtieth day thereafter (Register 80, No. 19).
3. Amendment filed 10–11–84; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 84, No. 41).
4. Amendment filed 9–17–85; effective thirtieth day thereafter (Register 85, No. 38).

§ 51017. Provider Audit Hearing.

A provider may request a hearing under the provisions of this article to examine any disputed audit or examination finding which results in an adjustment to Medi–Cal program reimbursement or reimbursement rates by submitting a Statement of Disputed Issues to the Department in accordance with Section 51022.

NOTE: Authority cited: Sections 14105, 14124.5 and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

HISTORY

1. Amendment filed 7–15–85; effective thirtieth day thereafter (Register 85, No. 29).

§ 51018. Home Office—Chain Organization Related Entities.

The home office of a chain organization has no separate right to an individual hearing under this article. Where a provider in a chain organization disputes an audit or examination finding concerning the allocation of home office costs, other related entity costs or any other matter affecting all or some of the providers in the chain organization, all providers in the chain organization that are affected by the issue in dispute shall be made parties to the proceedings for the purpose of resolution of that issue only, in accordance with Section 51030.

NOTE: Authority cited: Sections 14105, 14124.5, and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

§ 51019. Amended Cost Reports.

(a) An amended cost report may be submitted by a provider and accepted by the Department for the fiscal period or periods for which proceedings are pending under this article.

(b) The hearing officer may suspend the proceedings until identification of any additional disputes that may result from an amended report filed by a provider.

(c) Additional issues which are raised by accepted cost report amendments may be included in the proceedings at the request of the provider in accordance with Section 51022.

(d) The hearing officer may dismiss the proceeding without prejudice to the right to request a subsequent hearing under this article when the hearing officer deems this course to be appropriate.

NOTE: Authority cited: Sections 14105, 14124.5, and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

§ 51020. Amended Audit Report.

(a) An amended audit report may be issued by or on behalf of the Department for the fiscal period or periods for which proceedings are pending under this article.

(b) The hearing officer may suspend the proceedings until identification of any additional disputes that may result from an amended audit report.

(c) Additional issues in dispute which are raised by the amended audit report may be included in the proceedings at the request of the provider in accordance with Section 51022.

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(d) The hearing officer may dismiss the proceeding without prejudice to the right to request a subsequent hearing under this article when the hearing officer deems this course to be appropriate.

NOTE: Authority cited: Sections 14105, 14124.5, and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

§ 51021. Exit Conference and Audit Report.

(a) The provider shall be afforded a reasonable opportunity to participate in an exit conference after the conclusion of any field audit or examination of records or reports of a provider, by or on behalf of the Department, and prior to the issuance of the Audit Report. The purpose of the exit conference is to:

(1) Inform the provider of the audit or examination findings and the supporting reasons and evidence.

(2) Inform the provider of the specific instances in which no records were found to substantiate claims billed to the program which was the subject of the audit or examination.

(3) Allow the provider an opportunity to present relevant information concerning the audit or examination findings.

(b) The provider must make available to the Department any records which were identified as unavailable for review or missing within 15 calendar days of the exit conference to be included in the Audit Report.

(c) Where the audit or examination involves the records or reports of a provider of pharmaceutical services:

(1) The auditor or reviewer shall identify missing prescriptions by beneficiary name, beneficiary number, prescription number and date of service to the provider at the exit conference.

(2) The audit worksheets relating to exceptions taken shall be furnished to the provider subsequent to the submission of missing prescriptions pursuant to subsection (b), in the event that a request for repayment of an overpayment is made.

(d) An audit or examination findings issued by or on behalf of the Department shall include the following:

(1) A complete copy of the audit report which identifies all items to which exception has been taken, the monetary value of each and the reason for the exception, including citation to the appropriate statutory or regulatory authority.

(2) Notice of the provider's right to a hearing pursuant to the provisions of this article. A copy of the provisions of this article shall accompany such notice.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14170 and 14171, Welfare and Institutions Code.

HISTORY

1. Editorial correction of NOTE filed 12–14–84 (Register 84, No. 50).

§ 51022. Request for Hearing.

(a) An Institutional provider may request a hearing for any disputed audit or examination finding as follows:

(1) A written request shall be filed with the Department within 60 calendar days of the receipt of the written notice of the audit or examination findings.

(2) This request may be amended at any time during the 60 calendar day period.

(b) A Non–institutional provider may request a hearing on any disputed audit or examination finding as follows:

(1) A written request shall be filed with the Department within 30 calendar days of the receipt of the audit or examination finding.

(2) This request may be amended at any time during the 30 calendar day period.

(c) All late requests by either Institutional or Non–institutional providers shall be denied and the audit or examination findings deemed final unless the provider establishes in writing good cause for late filing within 15 calendar days of being notified of the untimeliness of its request.

(d) The request shall be known as "Statement of Disputed Issues." It shall be in writing, signed by the provider or the authorized agent, and shall state the address of the provider and of the agent, if any agent has been designated. A provider or the agent shall specify the name and address of the individual authorized on behalf of the provider to receive any and all documents, including the final decision of the Director, relating to proceedings conducted pursuant to this article. The Statement of Disputed Issues need not be formal, but it shall be specific as to each issue as are in dispute, setting forth the provider's contentions as to those issues and the estimated amount each issue involves. The information specified in subsection (e) shall also be included. If the hearing officer determines that a Statement of Disputed Issues fails to state the specific grounds upon which objection to the specific item is based, the provider or the agent shall be notified that it does not comply with the requirement of this regulation, and the reasons therefor.

(1) An Institutional provider shall be granted 30 calendar days after the date of the mailing of the notice of deficiency to the provider within which to file an amended Statement of Disputed Issues.

(2) A Non–institutional provider shall be granted 15 calendar days after the date of mailing of the notice of deficiency within which to file an amended Statement of Disputed Issues.

(3) If within the time permitted in (1) or (2) above, the Institutional or Non–institutional provider, respectively, or the agent fails to amend its appeal as notified, the appeal as to those issues shall be rejected.

(e) The request shall also specify whether the provider does or does not wish that an informal level of review among the parties be held, together with the reasons therefor. Either party may request, or the hearing officer may order, that a telephone conference call be initiated among the parties for discussion of the advisability of conducting an informal level of review. The hearing officer shall decide whether an informal level of review would be appropriate and notify the parties of this decision in writing.

NOTE: Authority cited: Sections 14105, 14124.5 and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

HISTORY

1. Amendment filed 10–11–84; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 84, No. 41).
2. Editorial correction of Authority cite (Register 95, No. 45).

§ 51023. Informal Level of Review.

(a) If the hearing officer determines that an informal level of review is appropriate, it shall be ordered and scheduled as soon as reasonably possible. The hearing officer, or a hearing auditor designated by the hearing officer, shall preside at this informal level of review.

(b) Written notice of the time and place of informal level of review shall be mailed to each party at least 30 calendar days before the date of the informal level of review. This period may be shortened with the consent of the parties. Any party may waive notice. This notice may be combined with the notice of formal hearing.

(c) Efforts shall be made to resolve the facts and issues in dispute in a fair and equitable manner, subject to the requirements of state and federal law. Matters in dispute, raised in the provider's Statement of Disputed Issues pursuant to Section 51022, which are not discussed or raised at the informal level of review shall not be deemed waived.

(d) The proceedings at the informal level of review shall be electronically recorded unless the parties agree otherwise.

(e) The results of the informal level of review shall be:

(1) Served on the parties, within a reasonable time, in the form of a written Report of Findings or Pretrial Order.

(2) For Institutional providers, the report of findings shall be considered as final unless the provider submits written request for a formal hearing in accordance with Section 51024.

NOTE: Authority cited: Sections 14105, 14124.5 and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

HISTORY

1. Amendment filed 10–11–84; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 84, No. 41).
2. Amendment of subsection (c) filed 7–15–85; effective thirtieth day thereafter (Register 85, No. 29).

§ 51024. Request for Formal Hearing.

(a) The form and content of the request shall be as specified in Section 51022(d).

(b) An Institutional provider shall have 30 calendar days following the receipt of the written Report of Findings within which to file a request for formal hearing with the Director. The request shall be deemed filed on the date mailed to the Department. The audit findings, as amended by the Report of Findings, shall be considered final and deemed dispositive of all issues raised i the Statement of Disputed Issues filed pursuant to Section 51022 at the end of this period unless good cause for late filing is found.

(c) A request for formal hearing filed after the time permitted in subsection (b) shall be rejected unless the provider establishes in writing good cause for late filing within 15 calendar days of being notified of the untimeliness of its request.

(d) A formal hearing shall routinely be scheduled in each case involving a Non–institutional provider. No separate request for formal hearing shall be required.

NOTE: Authority cited: Sections 14105, 14124.5 and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

HISTORY

1. Amendment filed 10–11–84; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 84, No. 41).

§ 51025. Notice of Formal Hearing.

Written notice of the time and place of formal hearing shall be mailed to each party at least 30 calendar days before the date of hearing. This period may be shortened with the consent of the parties. Any party may waive notice.

NOTE: Authority cited: Sections 14105, 14124.5 and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

§ 51026. Department Mailings.

NOTE: Authority cited: Sections 14105, 14124.5 and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

HISTORY

1. Repealer filed 7–15–85; effective thirtieth day thereafter (Register 85, No. 29).

§ 51027. Time and Place of Informal Level of Review and Formal Hearing.

(a) The hearing officer shall determine the time and place of an informal level of review or formal hearing. The informal level of review or formal hearing shall be held at one of the following locations.

(1) In the County of:

(A) San Francisco if the provider resides within the First Appellate District.

(B) Los Angeles if the provider resides within the Second or Fourth Appellate District.

(C) Sacramento if the provider resides within the Third or Fifth Appellate District.

(b) Notwithstanding subdivision (a), the hearing officer may select:

(1) A different place nearer the place where the provider resides.

(2) Any place within the State agreeable to the parties.

NOTE: Authority cited: Sections 14105, 14124.5 and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

HISTORY

1. Amendment filed 7–15–85; effective thirtieth day thereafter (Register 85, No. 29).

§ 51028. Merger of Successive Requests for Hearings.

NOTE: Authority cited: Sections 14105, 14124.5 and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

HISTORY

1. Repealer filed 7–15–85; effective thirtieth day thereafter (Register 85, No. 2).

§ 51029. Consolidation of Proceedings.

NOTE: Authority cited: Sections 14105, 14124.5 and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

HISTORY

1. Repealer filed 7–15–85; effective thirtieth day thereafter (Register 85, No. 29).

§ 51030. Hearing Officer's Authority.

(a) The hearing officer may, on his/her own motion or the motion of any party, as the hearing officer deems appropriate:

(1) Consolidate for hearing or decision any number of issues or appeals when the facts and circumstances are similar and no substantial right of any party will be prejudiced.

(2) Join other parties, grant continuances and hold additional formal hearings as necessary to dispose of all issues.

(3) Hear any issue before any other issue in the proceeding where it is found that the decision on that issue could abate further proceedings.

(4) Prepare a proposed decision on any separately heard issue for the Director's signature and postpone hearing on any remaining issues until a final decision has been issued by the Director.

NOTE: Authority cited: Sections 14105, 14124.5 and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

HISTORY

1. Repealer and new section filed 7–15–85; effective thirtieth day thereafter (Register 85, No. 29).

§ 51031. Severance of Issues.

NOTE: Authority cited: Sections 14105, 14124.5 and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

HISTORY

1. Repealer filed 7–15–85; effective thirtieth day thereafter (Register 85, No. 29).

§ 51032. Discovery.

(a) After the acceptance of the Statement of Disputed Issues, a party, upon written request made to another party, prior to the hearing and within thirty (30) calendar days after receipt of the Notice of Acceptance of the Statement of Disputed Issues or within fifteen (15) calendar days after the receipt of the Notice of Acceptance of an amended Statement of Disputed Issues or issuance of a Report of Findings, is entitled to:

(1) Obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the informal hearing or formal hearing.

(2) Inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

(A) Statements pertaining to the subject matter of the proceeding made by any party to another party or person.

(B) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for disputed audit or examination findings, not included in subdivision (2)(A).

(C) All writings, including but not limited to audit work papers, patient ledgers, medical records and invoices or things which the party then proposes to offer into evidence.

(D) Other writing or thing which is relevant and which would be admissible in evidence.

(E) Investigative reports made for or on behalf of the Department or other party pertaining to the subject matter of the proceeding, to the extent that such reports:

(1) Contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the disputed audit or examination findings.

(2) Reflect matters perceived by the investigator in the course of his investigation.

(3) Contain or include by attachment any statement or writing described in subsections (2)(A) through (2)(D) inclusive, or summary thereof.

(4) For the purpose of this section, "statements" includes written statements by the person, signed or otherwise authenticated by the person, stenographic, mechanical, electrical or other recordings, or transcripts thereof, or oral statements by the person and written reports or summaries of such oral statements.

(5) Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

(6) Any denial of discovery by a party shall be in writing and shall be accompanied by a written statement describing the specific reasons for denial as to each item of discovery denied. Such a denial shall be mailed within 30 calendar days from the date of filing the request for discovery.

(b) A party shall have the same rights as are accorded a party under the provisions of Section 11507.7 of the Government Code in the event that a request for discovery pursuant to this section has not been granted. In the event an order to show cause is issued, a copy shall be filed with each party.

(c) The provisions of this article provide the exclusive right to and method of discovery as to any proceeding governed by this article.

NOTE: Authority cited: Sections 14105, 14124.5, and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (a) filed 7–15–85; effective thirtieth day thereafter (Register 85, No. 29).

§ 51033. Subpoenas and Witnesses.

(a) The hearing officer shall issue subpoenas and subpoenas duces tecum before the formal hearing, for attendance or production of documents at the formal hearing, as necessary or at the request of any party. The hearing officer may also issue subpoenas and subpoenas duces tecum after the formal hearing has commenced. Compliance with the provisions of Section 1985, California Code of Civil Procedure, shall be a condition precedent to the issuance of a subpoena duces tecum.

(b) The process issued pursuant to subsection (a) shall be extended to all parts of the State and shall be served in accordance with the provisions of Sections 1987 and 1988, California Code of Civil Procedure. No witness shall be obliged to attend at a place out of the county in which he resides unless the distance be less than 150 miles from his place of residence except that the hearing officer, upon affidavit of any party showing that the testimony of such witness is material and necessary, may endorse on the subpoena an order requiring the attendance of such witness.

(c) All witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the State or any political subdivision thereof, shall receive fees and all witnesses appearing pursuant to subpoena, except the parties, shall receive mileage in the same amount and under the same circumstances as prescribed by law for witnesses in civil actions in a superior court.

(d) Witnesses appearing pursuant to subpoena, except the parties, who attend formal hearings at points so far removed from their residences as to prohibit return thereto from day to day shall be entitled, in addition to fees and mileage, to a per diem compensation of $3.00 for expenses of subsistence for each day of actual attendance and for each day necessarily occupied in traveling to and from the hearing. Fees, mileage and expenses of subsistence shall be paid by the party at whose request the witness is subpoenaed.

NOTE: Authority cited: Sections 14105, 14124.5, and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

§ 51034. Depositions.

(a) On verified petition of any party, the hearing officer may order that the testimony of any material witness residing within or without the State be taken by deposition in the manner prescribed by law for depositions in civil actions. The petition shall set forth:

(1) The nature of the pending proceeding.

(2) The name and address of the witness whose testimony is desired.

(3) A showing of the materiality of his testimony.

(4) A showing that the witness will be unable or cannot be compelled to attend.

(5) A request for an order requiring the witness to appear and testify before an officer named in the petition for that purpose.

(b) The hearing officer's order for taking of testimony by deposition from a witness residing out–of–State shall be supported by a court order. The court order shall be obtained by filing a petition in the Superior Court of Sacramento County, in accordance with Section 11189, Government Code.

NOTE: Authority cited: Sections 14105, 14124.5, and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

§ 51035. Affidavits.

(a) Any party may mail or deliver to the opposing party, at least ten calendar days prior to a formal hearing or a continued hearing, a copy of any affidavit to be introduced in evidence, together with a notice as provided in subsection (b). Unless the opposing party, within seven days after such mailing or delivery, mails or delivers to the proponent a request to cross–examine an affiant, the right to cross–examine such affiant is waived and the affidavit, if introduced in evidence, shall be given the same effect as if the affiant had testified orally. If an opportunity to cross–examine an affiant is not offered after request therefor is made as herein provided, the affidavit may be introduced in evidence, but shall be given only the same effect as other hearsay evidence.

(b) The notice referred to in subsection (a) shall be substantially in the following form:

NOTICE

The accompanying affidavit of (here insert name of affiant) will be introduced as evidence at the formal hearing in (here insert title of proceeding). (Here insert name of affiant) will not be called to testify orally and you will not be entitled to question him unless you notify (here insert name of proponent or his attorney) at (here insert address) that you wish to cross–examine him. To be effective your request must be mailed or delivered to (here insert name of proponent or his attorney) on or before (here insert a date seven days after the day of mailing or delivering the affidavit to the opposing party).

NOTE: Authority cited: Sections 14105, 14124.5, and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

§ 51036. Preparation for Formal Hearing.

A party appearing at a formal hearing shall have necessary evidence and witnesses present and be ready to proceed. Each party shall make available sufficient copies, as indicated by the hearing officer, of any documents to be introduced in evidence. The hearing officer, if necessary and following reasonable notice, may require any or all parties to submit a written statement of contentions and reasons, together with any requested documents. Each party submitting written statements and documents shall also provide a copy to all other parties.

NOTE: Authority cited: Sections 14124.5 and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

HISTORY

1. Amendment filed 7–15–85; effective thirtieth day thereafter (Register 85, No. 29).

2. Editorial correction of Authority cite (Register 95, No. 45).

§ 51037. Conduct of Formal Hearing.

(a) Testimony shall be taken only on oath, affirmation or penalty of perjury.

(b) The proceedings at the formal hearing shall be electronically recorded.

(c) Each party shall have the right to:

(1) Call and examine parties and witnesses.

(2) Introduce exhibits.

(3) Question opposing witnesses and parties on any matter relevant to the issue even though the matter was not covered in the direct examination.

(4) Impeach any witness regardless of which party first called the witness to testify.

(5) Rebut the evidence against him.

(d) The provider shall not be called to testify during presentation of the Department's prima facie case pursuant to subsection (i). A provider who thereafter fails to testify, in the provider's behalf, may be called and examined by the Department as if under examination.

(e) The formal hearing need not be conducted according to technical rules relating to evidence and witnesses.

(1) Relevant evidence, including hearsay, shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions.

(2) Hearsay evidence shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

(3) The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions and irrelevant and unduly repetitious evidence shall be excluded.

(f) The following additional exception to the "best evidence" rule (Evidence Code Section 1500) applies:

(1) A duplicate is admissible to the same extent as an original unless:

(A) A genuine question is raised as to the authenticity of the original or the duplicate.

(B) It would be unfair to admit the duplicate in lieu of the original.

(g) A hearing officer may question any party or witness and may admit any relevant and material evidence.

(h) The hearing officer shall control the taking of evidence in a manner best suited to ascertain the facts ad safeguard the rights of the parties. Prior to taking evidence, the hearing officer shall set forth the order in which evidence will be received.

(i) The Department shall present its audit findings and evidence first at the hearing. The Department has the burden of proof of demonstrating, by a preponderance of the evidence, that the audit findings were correctly made. Once the Department has presented such a prima facie case, the burden of proof shifts to the provider to demonstrate, by a preponderance of the evidence, that the provider's position regarding disputed issues is correct.

(j) The burden of producing evidence as to a particular fact is on the party against whom a finding on that fact would be required in the absence of further evidence.

(k) The hearing shall be conducted in the English language. The proponent of any testimony to be offered by a witness who does not speak the English language proficiently shall provide an interpreter, approved by the hearing officer, proficient in the English language and the language in which the witness will testify, to serve as interpreter during the hearing. The cost of the interpreter shall be paid by the party providing the interpreter.

NOTE: Authority cited: Sections 14105, 14124.5, and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

§ 51038. Official Notice.

(a) The hearing officer shall take official notice of those matters which must be judicially noticed by a court under Section 451 of the Evidence Code. The hearing officer may take official notice of those matters set forth in Section 452 of the Evidence Code.

(b) Parties present at the formal hearing shall be informed of the matters to be noticed, and those matters shall be noted in the record, referred to therein, or appended thereto.

(c) Each party shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the hearing officer.

NOTE: Authority cited: Sections 14105, 14124.5, and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

§ 51039. Continued or Further Hearings.

(a) A hearing officer may continue a formal hearing to another time or place if deemed advisable or upon request and a showing of good cause.

(1) Written notice of the time and place of the continued formal hearing, except as provided herein, shall be in accordance with this article.

(2) Oral notice of the time and place of the continued formal hearing may be given to each party present at the formal hearing. Such oral notice shall be confirmed in writing by the hearing officer subsequent to the formal hearing.

(b) The hearing officer may order a further formal hearing prior to the decision, if the hearing officer deems advisable or on a showing of good cause. Notice shall be given in accordance with Section 51025.

NOTE: Authority cited: Sections 14105, 14124.5, and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

§ 51040. Evidence.

(a) In Non–institutional provider cases, notwithstanding any other provision of these regulations, and unless otherwise ordered by the assigned Administrative Law Judge, the parties shall:

(1) Not less than ten (10) calendar days prior to the pretrial conference, file a list of all documents and other items to be offered into evidence at the formal hearing, except for impeachment or rebuttal, with a brief statement following each document describing its substance or purpose and the identity of the sponsoring witness.

(2) Not less than seven (7) calendar days prior to the date on which the formal hearing is scheduled to commence, exchange copies of all documents and other items to be offered into evidence at the formal hearing other than for impeachment or rebuttal. Each proposed exhibit shall be premarked for identification.

(3) Prior to the commencement of the formal hearing, any party proposing to object to the receipt in evidence of any proposed exhibit shall advise the opposing party of such objection. The parties shall confer with respect to any objections in advance of the formal hearing and attempt to resolve them. Failure to comply with the requirements of (1) or (2) above shall constitute a ground for objection to the introduction of undisclosed documents and other items, into evidence other than for impeachment or rebuttal.

(b) In all cases, the hearing officer, in order to obtain additional evidence necessary for the proper determination of the case, may:

(1) Continue the formal hearing and hold the record open for either party to produce additional evidence.

(2) Close the hearing and hold the record open in order to permit the introduction of additional documentary evidence. Any material submitted after the close of the formal hearing shall be made available to both parties and each party shall have the opportunity for rebuttal.

(3) Order a further formal hearing if the nature of the additional evidence or the refutation thereof makes a further hearing desirable.

NOTE: Authority cited: Sections 14105, 14124.5 and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

HISTORY

1. Amendment filed 10–11–84; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 84, No. 41).

§ 51041. Representation at a Formal Hearing.

(a) A hearing officer or hearing auditor may refuse to allow any person to represent a party in any hearing when the person:

(1) Engages in unethical, disruptive or contemptuous conduct.

(2) Intentionally fails to comply with the proper instructions or orders of the hearing officer or hearing auditor or the provisions of this article.

(b) This section shall not be construed to limit the right of a party or its representative to make evidentiary and procedural objections and state the reasons therefor.

NOTE: Authority cited: Sections 14105, 14124.5 and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (a) filed 7–15–85; effective thirtieth day thereafter (Register 85, No. 29).

§ 51042. Oral Argument and Briefs.

(a) The hearing officer shall grant oral and may grant written argument at the request of any party made prior to the close of the formal hearing. The parties shall be advised as to the time and manner within which written argument is to be filed.

(b) The hearing officer may require any party to submit written memoranda pertaining to any or all issues raised in the formal hearing.

NOTE: Authority cited: Sections 14105, 14124.5 and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

§ 51043. Disqualification of Hearing Officer.

(a) A hearing officer shall voluntarily withdraw from any proceedings in which the hearing officer:

(1) Cannot give a fair or impartial hearing.

(2) Has an interest.

(b) A party may request the disqualification of a hearing officer by filing an affidavit stating in detail the grounds upon which it is claimed that a fair and impartial hearing cannot be given or that the hearing officer has an interest in the proceeding. The hearing officer shall immediately present the affidavit to the Chief Counsel of the Department who shall:

(1) Investigate the allegations and advise the complaining party in writing of the decision granting or denying the request to disqualify the hearing officer. A copy of the decision shall be mailed to the other parties. Or

(2) Reassign the case to another hearing officer without investigation.

NOTE: Authority cited: Sections 14105, 14124.5 and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutons Code.

HISTORY

1. Amendment of subsection (b)(1) filed 7–15–85; effective thirtieth day thereafter (Register 85, No. 29).

§ 51044. Decision.

(a) The hearing officer shall take the matter under submission at the conclusion of the hearing. A proposed decision, in a form that may be adopted as the decision of the Director, shall be submitted to the Director as soon as practical. A copy of the proposed decision, upon submission to the Director, shall be:

(1) Filed by the Department as a public record.

(2) Served by the Department on each party in the case and each party's representative.

(b) The Director may:

(1) Adopt the proposed decision without reading or hearing the record.

(2) Reject the proposed decision and have a decision prepared based upon the documentary and electronically recorded record, with or without taking additional evidence. The Director shall decide no case provided for in this paragraph without affording the parties the opportunity to present either oral or written argument.

(3) Refer the matter to the hearing officer to take additional evidence. If the case is so assigned, the hearing officer shall prepare a proposed decision as provided in subsection (a), upon the additional evidence and the documentary and electronically recorded record of the prior hearing. A copy of such proposed decision shall be furnished to each party and each party's representative as prescribed in subsection (a).

(c) The decision shall be final upon adoption by the Director. Copies of the decision of the Director shall be mailed by certified mail to the designated representative of the provider.

(d) A dismissal may be issued if a provider fails to appear at a formal hearing. A copy of such dismissal shall be mailed to each party together with a statement of the provider's right to reopen the hearing.

(e) The Director may vacate any dismissal if the provider makes application in writing, within ten calendar days after personal service or receipt of such dismissal, showing good cause for failure to appear at the hearing. Lack of good cause shall be inferred if a continuance of the formal hearing is not requested promptly upon discovery of the reasons for failure to appear at the hearing.

(f) If a party to a formal hearing other than the provider fails to appear at a hearing and the hearing officer issues a decision on the merits adverse to that party's interests, the decision shall be accompanied by a statement of the party's right to make application to vacate the decision. The application may be in writing and shall be made within ten calendar days after personal service or mailing of the decision. Upon a showing of good cause for failure to appear at the hearing, the Director may issue an order to vacate the decision and the matter may be set for further hearing. Lack of good cause will be inferred when a continuance of the hearing was not requested promptly upon discovery of the reasons for failure to appear at the hearing.

(g) The parties shall be given written notice of an order granting or denying any application to vacate a decision.

NOTE: Authority cited: Sections 14105, 14124.5 and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

§ 51045. Reconsideration.

(a) The Department may order a reconsideration of all or part of the case on its own motion or on petition of any party. The power to order a reconsideration shall expire 30 calendar days after delivery or mailing of a decision to the provider. The Department may grant a stay of expiration of its power to order reconsideration:

(1) for up to 30 days for the purpose of enabling a party to file a petition for reconsideration; or

(2) for up to 10 days when needed solely for the purpose of considering a petition filed prior to expiration of its power to order reconsideration.

The petition of a party shall be deemed denied if the Department takes no action within the time allowed for ordering reconsideration.

(b) The case may be:

(1) Reconsidered by the Department on all the pertinent parts of the records and such additional evidence and arguments as may be permitted.

(2) Assigned to a hearing officer for further written or oral hearing.

(c) The decision for a reconsideration assigned to a hearing officer shall be subject to the procedure provided in section 51044.

NOTE: Authority cited: Sections 14105, 14124.5 and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

HISTORY

1. Change without regulatory effect amending subsection (a) filed 10–4–90 pursuant to section 100, title 1, California Code of Regulations (Register, No. 45).

§ 51046. Judicial Review.

NOTE: Authority cited: Sections 14105, 14124.5 and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

HISTORY

1. Repealer filed 7–15–85; effective thirtieth day thereafter (Register 85, No. 29).

§ 51047. Recovery of Overpayments.

(a) When it is established upon audit that an overpayment has been made to a provider, the Department shall begin liquidation of any overpayment to a provider 60 days after issuance of the first Statement of Accountability or demand for repayment. The demand for repayment or Statement of Accountability shall be issued no later than 60 days after the issuance of the audit or examination report establishing such overpayment. The overpayment shall be recovered by any of the following methods:

(1) Lump sum payment by the provider.

(2) Offset against current payments due to the provider.

(3) A repayment agreement executed between the provider and the Department.

(4) Any other method of recovery available to and deemed appropriate by the Director.

(b) An offset against current payments shall continue until one of the following occurs:

(1) The overpayment is recovered.

(2) The Department enters into an agreement with the provider for repayment of overpayment.

(3) The Department determines, as a result of proceedings under this article, that there is no overpayment.

(c) The provider shall pay interest at the rate of seven percent per annum on any unrecovered overpayment in all cases where the statement of account status was issued before June 28, 1981. In all other cases, the provider shall pay interest as provided by Welfare and Institutions Code Section 14171(f).

(d) Nothing in this section shall prohibit a provider from repaying all or a part of the disputed overpayment without prejudice to his right to a hearing under this article.

(e) Any recovered overpayment that is subsequently determined to have been erroneously collected shall be promptly refunded to the provider, together with interest computed at the legal rate of seven percent per annum from the date of such liquidation or 60 days after issuance of the audit or examination findings, whichever is later. The provisions of this paragraph shall apply only to those overpayments determined by audit reports issued after April 6, 1976 and before June 28, 1981. In all other

cases, interest shall be paid in accordance with the provisions of Sections 14171(e) and 14172.5, Welfare and Institutions Code.

(f) As used in this section, "Statement of Account Status" also includes statement of accountability or demand for repayment.

NOTE: Authority cited: Sections 14105, 14124.5 and 14171, Welfare and Institutions Code. Reference: Sections 14171, 14171.5 and 14172.5, Welfare and Institutions Code.

HISTORY

1. Amendment filed 9–15–82 as an emergency; effective upon filing (Register 82, No. 38). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1–13–83.
2. Certificate of Compliance transmitted to OAL 1–13–83 and filed 2–16–83 (Register 83, No. 8).
3. Editorial correction of NOTE filed 12–13–84 (Register 84, No. 50).
4. Amendment filed 9–17–85; effective thirtieth day thereafter (Register 85, No. 38).
5. Editorial correction of subsection (f) (Register 95, No. 45).
6. Change without regulatory effect amending subsection (a) filed 5–24–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 22).

§ 51048. Administrative Review of Performance Under Selective Provider Contracts.

(a) As an alternative to judicial review pursuant to Welfare and Institutions Code Section 14087.27(a), administrative review of disputes between a contracting hospital and the state relating to performance under the Selective Provider Contracting Program shall be heard by an independent hearing examiner appointed by the Director of the Department of Health Services.

(b) The independent hearing examiner shall conduct an administrative hearing and render a proposed decision to be adopted by the Director pursuant to the applicable procedural requirements of Article 1.5, Provider Audit Appeals (Sections 51016–51047) with the following exceptions:

(1) There shall be no exit conference or informal hearings.

(2) All references to a hearing officer shall apply to the independent hearing examiner appointed by the Director pursuant to Welfare and Institutions Code Section 14087.27.

NOTE: Authority cited: Sections 14124.5 and 14082, Welfare and Institutions Code; Section 57, Chapter 328, Statutes of 1982; and Chapter 1594, Statutes of 1982. Reference: Section 14087.27, Welfare and Institutions Code.

HISTORY

1. New section filed 10–8–82 as an emergency; effective upon filing (Register 82, No. 41). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–5–83.
2. Certificate of Compliance transmitted to OAL 12–31–82 and withdrawn 1–28–83 (Register 83, No. 12).
3. New section refiled 1–28–83 as an emergency; effective upon filing (Register 83, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5–28–83.
4. Certificate of Compliance transmitted to OAL 5–26–83 and filed 6–30–83 (Register 83, No. 27).
5. Editorial correction of subsection (b) (Register 95, No. 45).

Article 1.6. Skilled Nursing Facility and Intermediate Care Facility Certification Appeals Procedure

§ 51048.1. Limitations.

(a) A skilled nursing and/or intermediate care facility Medi–Cal provider may, in accordance with the regulations contained in Sections 51048.2 through 51048.8, appeal the decision of the Department that a facility is not qualified to participate in the Medi–Cal program.

(b) The Department in rendering its determination shall set forth the pertinent facts and conclusions upon which the determination is made, and shall notify the provider of its right to appeal under subdivision (a).

(c) The effective date of a determination rendered under this article is as follows:

(1) A determination not to renew a certification is effective on the date the existing certification actually expires.

(2) A determination to deny a certification is effective upon the receipt of the determination by the provider, except, if the provider files a request for reconsideration under Section 51048.3, the determination shall be effective upon receipt of the reconsidered determination by the provider.

(d) These appeal processes are only available to Medi–Cal providers of skilled nursing facilities who do not participate in the Medicare program. Providers who participate in both Medi–Cal and Medicare may appeal certification decisions to the Department of Health and Human Services in accordance with 42 CFR, 405.1501 et seq. A final decision rendered pursuant to 42 CFR 405.1501 et seq. is binding for purposes of Medi–Cal participation.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14100.1, Welfare and Institutions Code.

HISTORY

1. New Article 1.6 (Sections 51048.1–51048.8) filed 7–31–85; effective thirtieth day thereafter (Register 85, No. 31).

§ 51048.2. Right to a Reconsideration.

(a) A skilled nursing and/or intermediate care facility provider who disagrees with a determination that the skilled nursing or intermediate care facility does not qualify as a provider of services in the Medi–Cal program may, in accordance with Section 51048.3, request that the Department reconsider that decision.

(b) The reconsideration of a nonrenewal of an existing provider agreement shall be completed prior to the end of the certification period.

(c) The reconsideration of a denial of an initial application for certification shall be made within 30 days of the receipt of the request for a reconsideration.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14100.1, Welfare and Institutions Code.

HISTORY

1. Editorial correction of subsection (a) (Register 95, No. 45).

§ 51048.3. Request for Reconsideration.

(a) If a provider or authorized representative of the provider requests a reconsideration, the request shall be filed within 15 days after the date of receipt of notice of the determination that the provider does not qualify as a Medi–Cal provider. The request shall be filed with the Director of the Department of Health Services or the designee authorized to accept such requests.

(b) A request for reconsideration shall:

(1) Be in writing.

(2) State the reasons upon which the provider disagrees with the determination.

(3) Include relevant evidence.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14100.1, Welfare and Institutions Code.

§ 51048.4. Reconsidered Determination.

(a) The Department shall review each request for reconsideration that is filed in accordance with Section 51048.2. The Department shall reconsider the determination and the reasons on which it was based. The Department shall issue, within 30 days of the receipt of the request, a reconsidered determination affirming, revising, in whole or in part, or reversing the determination.

(b) The reconsidered determination shall be based upon the evidence considered in making the original determination and any other evidence submitted by the provider and verified by the Department.

(c) The written reconsidered determination shall be mailed to the provider or his authorized representative. The reconsidered determination shall:

(1) Contain the reason or reasons for affirming, revising or reversing the determination.

(2) Inform the provider of the right to a full evidentiary hearing.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14100.1, Welfare and Institutions Code.

§ 51048.5. Right to Full Evidentiary Hearing.

(a) A skilled nursing facility or intermediate care facility provider which disagrees with the Department's reconsidered determination that the skilled nursing facility or intermediate care facility does not qualify as a provider of services in the Medi–Cal program may, by complying with Section 51048.6 request a full evidentiary hearing or the provider

may by–pass the informal reconsideration process and appeal the Department's decision directly to the evidentiary hearing process.

(b) The hearing shall provide an opportunity for the provider to:

(1) Appear before an impartial hearing officer to offer evidence to rebut the Department's determination concerning the provider's ability to render services in the Medi–Cal program.

(2) Be represented by counsel or another representative.

(3) Be heard in person.

(4) Call witnesses.

(5) Present oral and documentary evidence.

(6) Cross–examine witnesses.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14100.1, Welfare and Institutions Code.

§ 51048.6. Request for a Full Evidentiary Hearing.

(a) A request for a full evidentiary hearing shall be made in writing and signed by the provider or authorized representative of the skilled nursing facility or intermediate care facility concerned. The request shall be filed:

(1) With the Director, Department of Health Services, or the designee authorized to accept such requests.

(2) Within 15 days after the date the notice of the determination or reconsidered determination is received by the provider.

(b) A request for hearing shall contain:

(1) A statement as to the specific issues in the preceding determination with which the provider disagrees.

(2) The basis for provider's contention that the determination is incorrect.

(c) The provider or authorized representative of the skilled nursing facility or intermediate care facility shall bear sole responsibility for filing the request for full evidentiary hearing.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14100.1, Welfare and Institutions Code.

§ 51048.7. Full Evidentiary Hearing.

(a) The Department, within 30 days following receipt of a request for a full evidentiary hearing submitted in accordance with Section 51048.6, shall:

(1) Mail notification of the time and place of the hearing to the provider or the provider's authorized representative.

(2) Appoint an impartial hearing officer.

(b) The written decision of the hearing officer shall be mailed to the provider or provider's authorized representative within 30 days of the hearing and shall:

(1) Contain reasons for the decision.

(2) State evidence upon which the decision is based.

(3) Inform the provider of the right to judicial review in accordance with Section 1094.5, Code of Civil Procedure.

(c) The evidentiary hearing shall be held either before or within 90 days after the effective date of the nonrenewal or denial.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14100.1, Welfare and Institutions Code.

§ 51048.8. Termination of a Provider.

(a) The Department may terminate certification of a skilled nursing facility or intermediate care facility provider prior to the expiration date of the certification upon those grounds specified in Welfare and Institutions Code, Section 14123, for the suspension and temporary suspension of a provider from the medical assistance program or as specified in subdivision (b).

(b) A final decision which terminates the certification of a skilled nursing facility or intermediate care facility provider prior to the expiration date of the certification which is entered under the Medicare review procedures specified in Section 51048.1 is binding and effective immediately for purposes of Medi–Cal participation and such final decision shall constitute a finding that the termination is necessary to protect the public welfare or the interest of the medical assistance program.

(c) Proceedings to terminate a certification shall be conducted according to Government Code, Section 11500, et seq.

NOTE: Authority cited: Sections 10725 and 14124.6, Welfare and Institutions Code. Reference: Section 14123, Welfare and Institutions Code.

§ 51048.9. Remedies Other Than Termination.

(a) The Department may impose a remedy other than or in addition to termination of a provider as provided in Section 1919(h)(2) of the Social Security Act. (Section 1396r(h)(2) of Title 42 of the United States Code).

(b) In deciding what remedy to impose, the Department shall select the remedy using the factors and standards contained in subpart F (commencing with section 488.400) of part 488 of subchapter E of chapter IV of Title 42 of the Code of Federal Regulations.

(c) The provisions of this Article shall apply to facility appeals of remedies other than termination.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14100.1, Welfare and Institutions Code.

HISTORY

1. New section filed 7–18–96 as an emergency; operative 7–18–96 (Register 96, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–15–96 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 7–18–96 order transmitted to OAL 11–14–96 and filed 12–31–96 (Register 97, No. 1).

Article 2. Definitions

§ 51050. Health Care Financing Administration's Common Procedure Coding System.

Health Care Financing Administration's Common Procedure Coding System (HCPCS) means a coded listing and description of health care services and items prepared and updated annually by theU.S. Health Care Financing Administration. HCPCS consists of the Physicians' Current Procedural Terminology (CPT), published by the American Medical Association, and other codes and descriptions authorized by the Health Care Financing Administration to describe services and items not contained in the CPT. HCPCS is used by all Medicare and Medicaid Programs nationwide to identify and describe covered benefits under their respective programs. To the extent not elsewhere adopted in these regulations, HCPCS, and each of its subsequent updates, is herein incorporated by reference into these regulations.

EDITORIAL NOTE: Pursuant to the provisions of Title 1 of the California Administrative Code, Section 20, this regulation is not printed in full herein. The Health Care Financing Administration's Common Procedure Coding System, and each of its annual updates, may be examined at the Department of Health Services, Benefits Branch, 714 P Street, Sacramento. It is published in two separate documents. Copies of the HCPCS Level II Code Book can be purchased from St. Anthony Publishing, Inc., P.O. Box 96561, Washington, DC 20090. Copies of the CPT can be purchased from the American Medical Association by calling 800–621–8335.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 433.123, Title 42, Code of Federal Regulations.

HISTORY

1. Editorial correction renumbering former Section 50025.6 to Section 51050 filed 12–20–83 (Register 83, No. 52). For prior history, see Registers 83, No. 48 and 83, No. 26.
2. Repealer and new section filed 10–1–87; operative 10–31–87 (Register 87, No. 41).
3. Amendment of section heading and section filed 7–28–97 as an emergency; operative 7–28–97 (Register 97, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–25–97 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–28–97 order transmitted to OAL 11–19–97 and filed 1–6–98 (Register 98, No. 2).

§ 51051. Provider.

(a) "Provider" means any individual, partnership, group, association, corporation, institution, or entity, and the officers, directors, owners, managing employees, or agents of any partnership, group association, corporation, institution, or entity, that provides services, goods, supplies, or merchandise, directly or indirectly, to a Medi–Cal beneficiary, and that has been enrolled in the Medi–Cal program.

(b) Providers include, but are not limited to:
Acupuncturists
Audiologists
Blood Banks
Child Health and Disability Prevention Providers
Chiropractors
Christian Science Facilities
Christian Science Practitioners
Clinical Laboratories or Laboratories
Comprehensive Perinatal Providers
Dental School Clinics
Dentists
Dispensing Opticians
Durable Medical Equipment and Medical Supply Providers
Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Providers
EPSDT Supplemental Services Providers
Fabricating Optical Laboratory
Hearing Aid Dispensers
Home Health Agencies Hospices
Hospital Outpatient Departments
Hospitals
Intermediate Care Facilities
Intermediate Care Facilities for the Developmentally Disabled
Licensed Midwife
Local Educational Agency Providers
Nurse Anesthetists
Nurse Midwives
Nurse Practitioners
Nursing Facilities
Occupational Therapists
Ocularists Optometrists
Orthotists
Organized Outpatient Clinics
Outpatient Heroin Detoxification Providers
Personal Care Service Providers
Pharmacies/Pharmacists
Physical Therapists
Physicians
Podiatrists
Portable X-ray Services
Prosthetists
Providers of Medical Transportation
Psychologists Rehabilitation
Centers Renal Dialysis Centers and Community Hemodialysis Units
Respiratory Care Practitioners
Rural Health Clinics
Short-Doyle Medi-Cal Providers
Skilled Nursing Facilities
Speech Therapists
Targeted Case Management Providers

NOTE: Authority cited: Sections 10725, 14043.75, 14100.1, 14015 and 14124.5, Welfare and Institutions Code; Section 87, Chapter 1594, Statutes of 1982; and Section 13, Chapter 502, Statutes of 1990. Reference: Sections 14043, 14043.1, 14043.15, 14043.26, 14043.27, 14043.36, 14100.1, 14105, 14105.3, 14115.6, 14124.5, 14132, 14132.39, 14132.4, 14132.44 and 14134.5, Welfare and Institutions Code; Section 33, Chapter 456, Statutes of 1990; Section 1250(k), Health and Safety Code; Section 1206, Business and Professions Code; and Title 42 United States Code, Section 263a.

HISTORY

1. Amendment of subsection (b) filed 10–27–87 as an emergency; operative 10–27–87 (Register 87, No. 44). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–24–88. For prior history, see Register 87, No. 38.
2. Certificate of Compliance transmitted to OAL 2–24–88 and filed 3–22–88 (Register 88, No. 15).
3. Amendment filed 11–28–88 as an emergency; operative 11–28–88 (Register 89, No. 11). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3–28–89.
4. Certificate of Compliance as to 11–28–88 order transmitted to OAL 3–27–89 and filed 4–26–89 (Register 89, No. 18).
5. Amendment of subsection (b) filed 10–1–90 as an emergency; operative 10–1–90 (Register 90, No. 45). A Certificate of Compliance must be transmitted to OAL by 1–29–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 10–1–90 order transmitted to OAL 1–29–91 and filed 2–28–91 (Register 91, No. 13).
7. Amendment of subsection (b) filed 5–24–91 as an emergency; operative 5–24–91 (Register 91, No. 26). A Certificate of Compliance must be transmitted to OAL by 9–23–91 or emergency language will be repealed by operation of law on the following day.
8. Amendment of subsection (b) filed 4–14–93 as an emergency; operative 4–14–93. Submitted to OAL for printing only pursuant to section 8, AB 1773 (Chapter 939, Statutes of 1992) (Register 93, No. 16).
9. Amendment of subsection (b) adding Local Educational Agency Providers filed 12–22–93 as an emergency; operative 12–22–93 (Register 93, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–22–94 or emergency language will be repealed by operation of law on the following day.
10. Amendment of subsection (b) and NOTE filed 1–20–94 as an emergency; operative 1–20–94 (Register 94, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–20–94 or emergency language will be repealed by operation of law on the following day.
11. Amendment of subsection (b) adding Early and Periodic Screening, Diagnosis and Treatment, and Supplemental EPSDT Providers filed 4–4–94 as an emergency; operative 4–4–94 (Register 94, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–2–94 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 12–22–93 order transmitted to OAL 4–20–94 and filed 6–2–94 (Register 94, No. 22).
13. Certificate of Compliance as to 1–20–94 order transmitted to OAL 5–19–94 and filed 7–1–94 (Register 94, No. 26).
14. Amendment of subsection (b) adding Early and Periodic Screening, Diagnosis and Treatment and Supplemental EPSDT Providers refiled 8–1–94 as an emergency; operative 8–1–94 (Register 94, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–29–94 or emergency language will be repealed by operation of law on the following day.
15. Amendment of subsection (b) adding Early and Periodic Screening, Diagnosis and Treatment and Supplemental EPSDT Providers refiled 10–24–94 as an emergency; operative 10–24–94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–21–95 or emergency language will be repealed by operation of law on the following day.
16. Amendment of subsection (b) adding Early and Periodic Screening, Diagnosis and Treatment and Supplemental EPSDT Providers refiled 2–22–95; operative 2–22–95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–22–95 or emergency language will be repealed by operation of law on the following day.
17. Certificate of Compliance as to 2–22–95 order including amendment of section transmitted to OAL 3–16–95 and filed 4–27–95 (Register 95, No. 17).
18. Amendment of subsection (b) and NOTE filed 7–1–96; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 6, Chapter 305, Statutes of 1995 (Register 96, No. 27).
19. Amendment of subsection (b) and NOTE refiled 10–29–96 as an emergency; operative 10–29–96 (Register 96, No. 44). Submitted to OAL for printing only pursuant to Section 6, Chapter 305, Statutes of 1995. A Certificate of Compliance must be transmitted to OAL by 2–26–97 or emergency language will be repealed by operation of law on the following day.
20. Editorial correction of HISTORY 19 (Register 97, No. 15).
21. Reinstatement of subsection (b) and NOTE as they existed prior to emergency amendment filed 7–1–96 by operation of Government Code section 11346.1(f) (Register 97, No. 15).
22. Amendment of subsection (b) and NOTE filed 4–10–97; operative 4–10–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).
23. Amendment of subsection (b) filed 6–23–97; operative 7–23–97 (Register 97, No. 26).
24. Amendment of subsection (b) filed 8–10–99 as an emergency; operative 8–10–99 (Register 99, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–8–99 or emergency language will be repealed by operation of law on the following day.
25. Amendment of section heading, section and NOTE filed 9–28–99 as an emergency; operative 9–28–99 (Register 99, No. 40). A Certificate of Compliance must be transmitted to OAL by 3–27–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
26. Amendment of section heading, section and NOTE refiled 11–24–99 as an emergency; operative 11–24–99 (Register 99, No. 48). A Certificate of Compliance must be transmitted to OAL by 5–22–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
27. Certificate of Compliance as to 8–10–99 order transmitted to OAL 12–7–99 and filed 1–14–2000 (Register 2000, No. 2).
28. Amendment of section heading, section and NOTE refiled 5–5–2000 as an emergency; operative 5–22–2000 (Register 2000, No. 18). A Certificate of

Compliance must be transmitted to OAL by 9–19–2000 or emergency language will be repealed by operation of law on the following day.

29. Amendment of section heading, section and NOTE refiled 8–28–2000 as an emergency; operative 9–6–2000 (Register 2000, No. 35). A Certificate of Compliance must be transmitted to OAL by 1–4–2001 or emergency language will be repealed by operation of law on the following day.
30. Amendment of subsection (b) and amendment of NOTE filed 10–24–2000 as an emergency and submitted to OAL for printing only pursuant to Section 78, Chapter 146, Statutes of 1999; operative 10–24–2000 (Register 2000, No. 43). A Certificate of Compliance must be transmitted to OAL by 4–23–2001 or emergency language will be repealed by operation of law on the following day.
31. Certificate of Compliance as to 8–28–2000 order transmitted to OAL 12–26–2000 and filed 2–8–2001 (Register 2001, No. 6).
32. Editorial correction of HISTORY 30 (Register 2001, No. 14).
33. Amendment of subsection (b) and amendment of NOTE refiled 4–4–2001 as an emergency and submitted to OAL for printing only pursuant to Section 78, Chapter 146, Statutes of 1999; operative 4–4–2001 (Register 2001, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–2–2001 or emergency language will be repealed by operation of law on the following day.
34. Certificate of Compliance as to 4–4–2001 order transmitted to OAL 7–31–2001 and filed 9–5–2001 (Register 2001, No. 36).
35. Amendment of subsection (b) and amendment of NOTE filed 9–3–2004; operative 10–3–2004 (Register 2004, No. 36).
36. Amendment of subsection (a) and NOTE filed 9–29–2004 as an emergency; operative 10–7–2004 (Register 2004, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–4–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL pursuant to Welfare and Institutions Code section 14043.75.
37. Amendment of subsection (a) and NOTE refiled 1–27–2005 as an emergency; operative 2–5–2005 (Register 2005, No. 4). A Certificate of Compliance must be transmitted to OAL by 6–6–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.
38. Amendment of subsection (a) and NOTE refiled 6–2–2005 as an emergency; operative 6–7–2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 10–5–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.
39. Certificate of Compliance as to 6–2–2005 order, including further amendment of subsection (a), transmitted to OAL 9–29–2005 and filed 11–10–2005 (Register 2005, No. 45).

§ 51052. Blood Bank.

"Blood bank" means a facility that collects, stores, and distributes human blood and blood derivatives.

NOTE: Authority cited: Sections 10725 and 14105, Welfare and Institutions Code. Reference: Section 14132(g), Welfare and Institutions Code.

HISTORY

1. New section filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).
2. Certificate of Compliance filed 1–8–76 (Register 76, No. 2).
3. Charge without regulatory effect adding NOTE (Register 86, No. 49).

§ 51053. Physician.

"Physician" means a doctor of medicine or osteopathy.

NOTE: Authority cited: Sections 10725 and 14105, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

HISTORY

1. Sections 51053 and 51055 refiled 6–5–67; effective upon filing. Certificate of Compliance filed 6–9–67 (Register 67, No. 23).
2. Amendment filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).
3. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51055. Physicians' Services.

"Physicians' services" means professional services performed or provided by physicians, including, but not limited to, surgery, anesthesiology, radiology, consultations, and home, office and institutional calls.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132(a), Welfare and Institutions Code.

HISTORY

1. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51056. Emergency Services.

(a) Except as provided in subsection (b), "emergency services" means those services required for alleviation of severe pain, or immediate diagnosis and treatment of unforeseen medical conditions, which, if not immediately diagnosed and treated, would lead to disability or death.

(b) For purposes of providing treatment of an emergency medical condition to otherwise eligible aliens pursuant to Welfare and Institutions Code Section 14007.5(d), "emergency medical condition" means a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in any of the following:

(1) Placing the patient's health in serious jeopardy.

(2) Serious impairment to bodily functions.

(3) Serious dysfunction of any bodily organ or part.

(c) Emergency services are exempt from prior authorization, but must be justified according to the following criteria:

(1) Any service classified as an emergency, which would have been subject to prior authorization had it not been so classified, must be supported by a physician's, podiatrist's, dentist's, or pharmacist's statement which describes the nature of the emergency, including relevant clinical information about the patient's condition, and states why the emergency services rendered were considered to be immediately necessary. A mere statement that an emergency existed is not sufficient. It must be comprehensive enough to support a finding that an emergency existed. Such statement shall be signed by a physician, podiatrist, dentist, or pharmacist who had direct knowledge of the emergency described in this statement.

(A) The provision for pharmacist certification of emergency services shall pertain only to the dispensing of drugs.

(2) The Department may impose postservice prepayment audit as set forth in Section 51159(b), to review the medical necessity of emergency services provided to beneficiaries. The Department may require providers to follow the procedures for obtaining authorization on a retroactive basis as the process for imposing postservice prepayment audits. Requests for retroactive authorization of emergency services must adequately document the medical necessity of the services and must justify why the services needed to be rendered on an emergency basis.

(d) Program limitations set forth in Sections 51304 and 51310 are not altered by this section.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code; Section 57(c), Chapter 328, Statutes of 1982; and Section 147, Chapter 722, Statutes of 1992. Reference: Sections 14007.5, 14059, 14103.6, 14132, 14133 and 14133.1, Welfare and Institutions Code; and Title 42, United States Code, Section 1396b(v)(3).

HISTORY

1. Amendment of subsections (a) and (b) and new subsection (c) filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40). For prior history, see Register 72, No. 5.
2. Amendment of subsection (b) filed 1–30–73; effective thirtieth day thereafter (Register 73, No. 5).
3. Amendment of subsection (b) filed 9–1–82 as an emergency; effective upon filing (Register 82, No. 37). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12–30–82.
4. Certificate of Compliance transmitted to OAL 12–30–82 and filed 2–3–83 (Register 83, No. 6).
5. Change without regulatory effect of NOTE (Register 86, No. 49).
6. Amendment of subsection (a), new subsections (b)–(b)(3), and subsection relettering filed 4–12–93; operative 4–12–93. Submitted to OAL for printing only pursuant to SB 485, section 147 (Register 93, No. 16).
7. Amendment of subsection (c)(1) and new subsection (c)(1)(A) filed 8–7–95 as an emergency; operative 8–7–95 (Register 95, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–5–95 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 8–7–95 order transmitted to OAL 11–30–95 and filed 1–11–96 (Register 96, No. 2).

§ 51056.1. Experimental Services.

(a) Experimental services means those drugs, equipment, procedures or services that are in a testing phase undergoing laboratory and/or animal studies prior to testing in humans.

(b) Investigational services means those drugs, equipment, procedures or services for which laboratory and animal studies have been completed and for which human studies are in progress but:

(1) Testing is not complete; and

(2) The efficacy and safety of such services in human subjects are not yet established; and

(3) The service is not in wide usage.

(c) The determination that a service is experimental or investigational is based on:

(1) Reference to relevant federal regulations, such as those contained in Title 42, Code of Federal Regulations, Chapter IV (Health Care Fi-

nancing Administration) and Title 21, Code of Federal Regulations, Chapter I (Food and Drug Administration);

(2) Consultation with provider organizations, academic and professional specialists pertinent to the specific service;

(3) Reference to current medical literature.

NOTE: Authority cited: Sections 10725, 14105, 14105.44, and 14124.5, Welfare and Institutions Code. Reference: Sections 14059, 14105.44, 14124.5, 14132 and 14133.3, Welfare and Institutions Code.

HISTORY

1. New section filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40). For history of prior section, see Register 71, No. 44.
2. Change without regulatory effect adding NOTE (Register 86, No. 49).
3. Amendment filed 12–18–87 as an emergency; operative 12–18–87 (Register 88, No. 1). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–18–88.
4. Certificate of Compliance including amendment of subsections (b) and (c) transmitted to OAL 4–14–88 and filed 5–16–88 (Register 88, No. 21).

§ 51056.2. Unlabeled Use of Drugs.

Unlabeled use of drugs means the use of an already marketed drug for a clinical indication not listed in the approved labeling of the drug by the U.S. Food and Drug Administration.

NOTE: Authority cited: Sections 10725, 14105, 14105.44 and 14124.5, Welfare and Institutions Code. Reference: Sections 14059, 14105.44 and 14132, Welfare and Institutions Code.

HISTORY

1. Certificate of Compliance as to 12–18–87 order including new section transmitted to OAL 4–14–88 and filed 5–16–88; operative 5–16–88 (Register 88, No. 21).

§ 51057. Dentist.

"Dentist" means a doctor of dental surgery (D.D.S.), dental medicine (D.M.D.), or dental science (D.D.Sc.).

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14059 and 14132, Welfare and Institutions Code.

HISTORY

1. Sections 51057, 51059, 51061, 51063, 51065, 51067, 51069 and 51071 refiled 6–5–67 as an emergency; effective upon filing. Certificate of Compliance filed 6–9–67 (Register 67, No. 23).
2. Amendment filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).
3. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51059. Dental Services.

"Dental services" means professional services performed or provided by dentists including diagnosis and treatment of malposed human teeth, of disease or defects of the alveolar process, gums, jaws and associated structures; the use of drugs, anesthetics and physical evaluation; consultations; home, office and institutional calls.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14059 and 14132(h), Welfare and Institutions Code.

HISTORY

1. Amendment filed 8–25–67 as an emergency; designated effective 9–1–67 (Register 67, No. 34).
2. Original section refiled 12–28–67 as an emergency; designated effective upon filing, and with an effective date of 9–1–67 (Register 67, No. 52). Certificate of Compliance included.
3. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51060. Dental School Clinic.

"Dental school clinic" means an organized unit which, under the management of a dental school, provides dental services.

NOTE: Authority cited: Section 14105, Welfare and Institutions Code; and Section 57(c), Chapter 328, Statutes of 1982. Reference: Sections 14133, 14133.1 and 14133.25, Welfare and Institutions Code.

HISTORY

1. New section filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).
2. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51061. Emergency Dental Services.

HISTORY

1. Repealer filed 9–30–71 as an emergency; designated effective 10–1–71 (Register 71, No. 40). For prior history, see Register 67, No. 52.
2. Certificate of Compliance—Section 11422.1, Gov. Code, filed 1–25–72 (Register 72, No. 5).

§ 51063. Diagnostic Dental Services.

HISTORY

1. Repealer filed 8–25–67 as an emergency; designated effective 9–1–67 (Register 67, No. 34).
2. Original section refiled 12–28–67 as an emergency; designated effective upon filing, and with an effective date of 9–1–67 (Register 67, No. 52). Certificate of Compliance included.
3. Repealer filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).

§ 51065. Restorative Dental Services.

HISTORY

1. Repealer filed 8–25–67 as an emergency; designated effective 9–1–67 (Register 67, No. 34).
2. Original section refiled 12–28–67 as an emergency; designated effective upon filing, and with an effective date of 9–1–67 (Register 67, No. 52). Certificate of Compliance included.
3. Repealer filed 9–30–71 as an emergency; designated effective 10–1–71 (Register 71, No. 40).
4. Certificate of Compliance—Section 11422.1, Gov. Code, filed 1–25–72 (Register 72, No. 5).

§ 51066. Orthodontic Dental Services.

HISTORY

1. New section filed 8–14–70; designated effective 9–15–70 (Register 70, No. 33).
2. Repealer filed 9–30–71 as an emergency; designated effective 10–1–71 (Register 71, No. 40).
3. Certificate of Compliance—Section 11422.1, Gov. Code, filed 1–25–72 (Register 72, No. 5).

§ 51067. Registered Nurse.

"Registered nurse" means any person having a current license to practice in California issued by the Board of Registered Nursing.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14124.5, Welfare and Institutions Code.

HISTORY

1. Amendment filed 6–22–87; operative 7–22–87 (Register 87, No. 27).

§ 51069. Licensed Vocational Nurse.

Licensed Vocational Nurse means any person having a current license to practice vocational nursing in California issued by the Board of Vocational Nurse Examiners.

NOTE: Authority cited: Sections 10725, 14105 and 14124, Welfare and Institutions Code: Reference: Section 14124.5, Welfare and Institutions Code.

HISTORY

1. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51070. Psychiatric Technician.

HISTORY

1. New section filed 1–30–73; effective thirtieth day thereafter (Register 73, No. 5).
2. Repealer filed 6–22–87; operative 7–22–87 (Register 87, No. 27).

§ 51071. Chiropractor.

"Chiropractor" means a doctor of chiropractic.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

HISTORY

1. Amendment filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).
2. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51073. Chiropractic Services.

Chiropractic services means services a chiropractor may perform under California laws limited to treatment involving manual manipulation of the spine.

NOTE: Authority cited: Sections 14053 and 14105, Welfare and Institutions Code. Reference: Section 14053, Welfare and Institutions Code.

HISTORY

1. Amendment filed 2–23–67 as an emergency; effective upon filing (Register 67, No. 8).
2. Certificate of Compliance—Section 11422.1, Government Code—filed 4–12–67 (Register 67, No. 15).
3. Amendment filed 6–22–87; operative 7–22–87 (Register 87, No. 27).

§ 51074. Acupuncturist.

"Acupuncturist" means a person who is trained in the theory and method of acupuncture.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14053 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 4–30–81; effective thirtieth day thereafter (Register 81, No. 18).

§ 51074.5. Acupuncture Services.

"Acupuncture services" means the stimulation of a certain point or points on or near the surface of the body by the insertion of needles to prevent, modify or alleviate the perception of severe, persistent chronic pain resulting from a generally recognized medical condition.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14053 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 4–30–81; effective thirtieth day thereafter (Register 81, No. 18).

§ 51075. Podiatrist.

"Podiatrist" means a doctor of surgical chiropody (D.S.C.), doctor of podiatric medicine (D.P.M.), doctor of surgical podiatry (D.S.P.), or doctor of podiatry (D.P. or Pod. D.).

[The next page is 407.]

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

HISTORY

1. Refiled 6–5–67 as an emergency; effective upon filing. Certificate of Compliance filed 6–9–67 (Register 67, No. 23).
2. Amendment filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).
3. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51077. Podiatry Services.

"Podiatry Services" means services a podiatrist may perform under California laws.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14059 and 14132, Welfare and Institutions Code.

HISTORY

1. Amendment filed 6–5–67 as an emergency; effective upon filing. Certificate of Compliance filed 6–9–67 (Register 67, No. 23).
2. Amendment filed 9–30–71 as an emergency; designated effective 10–1–71 (Register 71, No. 40).
3. Certificate of Compliance—Section 11422.1, Gov. Code, filed 1–25–72 (Register 72, No. 5).
4. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51079. Physical Therapist.

"Physical Therapist" means a person trained to practice physical therapy.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132(a), Welfare and Institutions Code.

HISTORY

1. Amendment filed 2–23–67 as an emergency; effective upon filing (Register 67, No. 8).
2. Certificate of Compliance—Section 11422.1, Government Code—filed 4–12–67 (Register 67, No. 15).
3. Amendment filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).
4. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51081. Physical Therapy.

"Physical therapy" means treatment prescribed by a physician, dentist or podiatrist of any bodily condition by the use of physical, chemical and other properties of heat, light, water, electricity or sound, and by massage and active, resistive or passive exercise.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

HISTORY

1. Amendment filed 5–14–76 as an emergency; effective upon filing (Register 76, No. 20). For prior history, see Register 73, No. 5.
2. Certificate of Compliance filed 9–8–76 (Register 76, No. 37).
3. Amendment filed 9–4–80; effective thirtieth day thereafter (Register 80, No. 36).

§ 51082. Respiratory Care Practitioner.

(a) A respiratory care practitioner is a person trained and licensed as specified in Business and Professions Code section 3700 et seq., while acting within the scope of practice for respiratory care providers authorized by California law, to provide therapy, management, rehabilitation, diagnostic evaluation, and care of patients with deficiencies and abnormalities which affect the pulmonary system and associated aspects of cardiopulmonary and other systems.

(b) Respiratory care practitioners must meet the standards for participation in the Medi–Cal program as specified in section 51225.5 to implement the written or verbal orders of a physician pertaining to the practice of respiratory care.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14509 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 6–23–97; operative 7–23–97 (Register 97, No. 26).

§ 51082.1. Respiratory Care Practitioner Services.

(a) Respiratory care practitioner services means medically necessary services rendered within scope of practice of a respiratory care practitioner under the supervision of a physician for the therapy, management, rehabilitation, diagnostic evaluation, and care of patients with deficiencies, and abnormalities, which affect the pulmonary system and associated aspects of cardiopulmonary and other systems functions. These services include, but are not limited to:

(1) direct and indirect pulmonary care services;

(2) direct and indirect respiratory care procedures, including the administration of pharmacological, diagnostic, and therapeutic agents necessary to implement treatment, disease prevention, pulmonary rehabilitation, or diagnostic regimen prescribed by a physician and surgeon;

(3) observation and monitoring of signs and symptoms, general behavior and physiological responses to respiratory care treatment and diagnostic testing; and

(4) diagnostic and therapeutic services which may include:

(A) administration of medical gases (except general anesthetics), aerosols, humidification, and environmental control systems;

(B) pharmacologic agents related to respiratory care procedures;

(C) mechanical or physiological ventilatory support;

(D) bronchopulmonary hygiene;

(E) cardiopulmonary resuscitation;

(F) maintenance of natural airways;

(G) insertion without cutting tissues and maintenance of artificial airways;

(H) diagnostic and testing techniques required for implementation of respiratory care protocols; and

(I) collection and analysis of blood specimens, and specimens from the respiratory tract.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14509 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 6–23–97; operative 7–23–97 (Register 97, No. 26).

§ 51083. Occupational Therapist.

HISTORY

1. Amendment filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).
2. Repealer filed 6–22–87; operative 7–22–87 (Register 87, No. 27).

§ 51085. Occupational Therapy.

"Occupational therapy" means services prescribed by a physician, dentist or podiatrist to restore or improve a person's ability to undertake activities of daily living when those skills are impaired by developmental or psycho–social disabilities, physical illness or advanced age.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14059 and 14132, Welfare and Institutions Code.

HISTORY

1. Amendment filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).
2. Amendment filed 5–14–76 as an emergency; effective upon filing (Register 76, No. 20).
3. Certificate of Compliance filed 9–8–76 (Register 76, No. 37).
4. Amendment filed 9–4–80; effective thirtieth day thereafter (Register 80, No. 36).
5. Change without regulatory effect of NOTE (Register 86, No. 49).

§ 51087. Dietitian.

HISTORY

1. Amendment filed 1–30–73; effective thirtieth day thereafter (Register 73, No. 5).
2. Repealer filed 6–22–87; operative 7–22–87 (Register 87, No. 27).

§ 51089. Dietitian's Services.

HISTORY

1. Repealer filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).

§ 51090. Dispensing Optician.

"Dispensing optician" means an individual or firm which fills prescriptions of physicians for prescription lenses and kindred products and fits and adjusts such lenses and spectacle frames. A dispensing optician is also authorized to act on the advice, direction and responsibility of a physician or optometrist in connection with the fitting of a contact lens or contact lenses.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).

2. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51091. Optometrist.

"Optometrist" means a doctor of optometry.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14060, Welfare and Institutions Code.

HISTORY

1. Amendment filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).
2. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51093. Optometric Services.

"Optometric Services" means any services an optometrist may perform under the laws of this state.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14059, 14060 and 14132, Welfare and Institutions Code.

HISTORY

1. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51094. Hearing Aid Dispenser.

"Hearing aid dispenser" means a person engaged in the fitting or selling of hearing aids to an individual with impaired hearing.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40). For history of former section, see Register 72, No. 5.
2. Amendment filed 9–4–80; effective thirtieth day thereafter (Register 80, No. 36).

§ 51094.1. Hearing Aid.

Hearing aid means any aid prescribed as specified in Section 51319 for the purpose of aiding or compensating for impaired human hearing loss.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14059 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 5–14–76 as an emergency; effective upon filing (Register 76, No. 20).
2. Certificate of Compliance filed 9–8–76 (Register 76, No. 37).
3. Amendment filed 9–4–80; effective thirtieth day thereafter (Register 80, No. 36).
4. Change without regulatory effect of NOTE (Register 86, No. 49).

§ 51095. Speech Pathologist.

"Speech pathologist" means a person who performs procedures of identification, measurement and correction or modification of speech, voice or language disorders and conditions, and who does counseling related to such disorders and conditions.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

HISTORY

1. Amendment filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40). For prior history, see Register 67, No. 23.
2. Amendment filed 9–4–80; effective thirtieth day thereafter (Register 80, No. 36).

§ 51096. Speech Pathology Services.

Speech pathology services mean services for the purpose of identification, measurement and correction or modification of speech, voice or language disorders and conditions, and counseling related to such disorders and conditions.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14059 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 5–14–76 as an emergency; effective upon filing (Register 76, No. 20).
2. Certificate of Compliance filed 9–8–76 (Register 76, No. 37).
3. Amendment filed 9–4–80; effective thirtieth day thereafter (Register 80, No. 36).
4. Change without regulatory effect of NOTE (Register 86, No. 49).

§ 51097. Audiologist.

"Audiologist" means a person who performs procedures of measurement, appraisal, identification and counseling related to hearing and disorders of hearing; provides rehabilitation services for the modification of communicative disorders resulting from hearing loss affecting speech, language and auditory behavior; and recommends and evaluates hearing aids.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14059 and 14132, Welfare and Institutions Code.

HISTORY

1. Amendment filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).
2. Amendment filed 9–4–80; effective thirtieth day thereafter (Register 80, No. 36).
3. Change without regulatory effect of NOTE (Register 86, No. 49).

§ 51098. Audiological Services.

"Audiological services" means services for: the measurement, appraisal, identification and counseling related to hearing and disorders of hearing; the modification of communicative disorders resulting from hearing loss affecting speech, language and auditory behavior; and the recommendation and evaluation of hearing aids.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14059 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 5–14–76 as an emergency; effective upon filing (Register 76, No. 20).
2. Certificate of Compliance filed 9–8–76 (Register 76, No. 37).
3. Amendment filed 9–4–80; effective thirtieth day thereafter (Register 80, No. 36).
4. Change without regulatory effect of NOTE (Register 86, No. 49).

§ 51098.5. Sign Language Interpreter Services.

"Sign language interpreter services" means those services specified in Section 51309.5, which are provided by a certified or non–certified interpreter, who meets the standards set forth in Section 51202.5, to facilitate effective communication between:

(a) a deaf or hearing–impaired Medi–Cal beneficiary and a Medi–Cal enrolled provider during the course of a medically necessary health care examination or other procedure, or

(b) a deaf or hearing impaired adult representative of the Medi–Cal beneficiary and a Medi–Cal enrolled provider when necessary to facilitate the provision of medically necessary health care services to the beneficiary, or

(c) a deaf or hearing impaired adult who receives services or training on behalf of the Medi–Cal beneficiary and the Medi–Cal enrolled provider when necessary to provide medically necessary health care services to the beneficiary.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725 and 14105, Welfare and Institutions Code. Reference: Section 54.1, Civil Code; Section 14000, Welfare and Institutions Code; 42 USC Sections 12101 et seq.; 28 CFR Sections 35.130(a) and (b); and 45 CFR Sections 84.4(a) and (b).

HISTORY

1. New section filed 8–21–2000 as an emergency; operative 8–21–2000 (Register 2000, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–2000 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 8–21–2000 order transmitted to OAL 12–19–2000 and filed 2–2–2001 (Register 2001, No. 5).
3. Amendment of section and NOTE filed 8–7–2008; operative 9–6–2008 (Register 2008, No. 32).

§ 51099. Psychologist.

"Psychologist" means a person trained in the assessment, treatment, prevention, and amelioration of emotional and mental health disorders.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

HISTORY

1. Amendment filed 5–8–69; effective thirtieth day thereafter (Register 69, No. 19).
2. Amendment filed 9–30–71 as an emergency; designated effective 10–1–71 (Register 71, No. 40).
3. Certificate of Compliance—Section 11422.1, Gov. Code, filed 1–25–72 (Register 72, No. 5).
4. Amendment filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).
5. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51100. Psychologist Services.

HISTORY

1. New section filed 6–23–66; effective upon filing; Certificate of Compliance included (Register 66, No. 19).
2. Repealer filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).

§ 51101. Orthotist.

"Orthotist" means a person who makes and fits orthopedic braces for the support of weakened body parts or the correction of body defects.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

HISTORY

1. Sections 51101, 51103, 51105, 51107 and 51109 refiled 6–5–67 as an emergency; effective upon filing. Certificate of Compliance filed 6–9–67 (Register 67, No. 23).
2. Amendment filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).
3. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51102. Ocularist.

"Ocularist" means a person who is trained to design, fabricate, and fit artificial eyes.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 7–23–87; operative 8–22–87 (Register 87, No. 31).

§ 51103. Prosthetist.

"Prosthetist" means a person who makes and fits artificial limbs or other parts of the body.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

HISTORY

1. Amendment filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).
2. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51104. Durable Medical Equipment and Medical Supply Providers.

"Durable Medical Equipment and Medical Supply Providers" means individuals or entities identified as assistive device and sickroom supply dealers in Welfare and Institutions Code, Section 14105.2 who furnish the following:

(a) Durable medical equipment, as defined in Section 51160.

(b) Medical supplies, covered in accordance with Section 51320 and reimbursed in accordance with Section 51520.

(c) Incontinence medical supplies, as defined in Section 14125.1 of the Welfare and Institutions Code.

NOTE: Authority cited: Sections 10725, 14105, 14105.21 and 14124.5, Welfare and Institutions Code; and Section 78, Chapter 146, Statutes of 1999. Reference: Sections 14043.75, 14059, 14105.2 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).
2. Change without regulatory effect adding NOTE (Register 86, No. 49).
3. Amendment of section heading, section and NOTE filed 10–24–2000 as an emergency and submitted to OAL for printing only pursuant to Section 78, Chapter 146, Statutes of 1999; operative 10–24–2000 (Register 2000, No. 43). A Certificate of Compliance must be transmitted to OAL by 4–23–2001 or emergency language will be repealed by operation of law on the following day.
4. Editorial correction of HISTORY 3 (Register 2001, No. 14).
5. Amendment of section heading, section and NOTE refiled 4–4–2001 as an emergency and submitted to OAL for printing only pursuant to Section 78, Chapter 146, Statutes of 1999; operative 4–4–2001 (Register 2001, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–2–2001 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 4–4–2001 order transmitted to OAL 7–31–2001 and filed 9–5–2001 (Register 2001, No. 36).
7. Amendment of first paragraph and amendment of NOTE filed 2–27–2003 as an emergency; operative 3–1–2003 (Register 2003, No. 9). Pursuant to statutes of 1999, chapter 146, section 78, a Certificate of Compliance must be transmitted to OAL by 8–28–2003 or emergency language will be repealed by operation of law on the following day.
8. Editorial correction of HISTORY 7 (Register 2003, No. 20).
9. Amendment of first paragraph and amendment of NOTE refiled 8–28–2003 as an emergency; operative 8–28–2003 (Register 2003, No. 35). Pursuant to statutes of 1999, chapter 146, section 78, a Certificate of Compliance must be transmitted to OAL by 2–24–2004 or emergency language will be repealed by operation of law on the following day.
10. Order of 8–28–2003 repealed by operation of law (Register 2004, No. 9).
11. Amendment of first paragraph, repealer of subsection (d) and amendment of NOTE filed 2–24–2004; operative 2–25–2004 (Register 2004, No. 9). Pursuant to section 14043.75(a) of the Welfare and Institutions Code, this filing is deemed an emergency and exempt from review by OAL. A Certificate of Compliance must be transmitted to OAL by 6–24–2004 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 2–24–2004 order, including amendment of NOTE, transmitted to OAL 3–12–2004 and filed 4–26–2004 (Register 2004, No. 18).

§ 51104.1. Incontinence Medical Supply Dealer.

"Incontinence Medical Supply Dealer" means any person, partnership, corporation, or other entity that is a retailer who maintains an inventory of and is an outlet for incontinence medical supplies, and who provides these supplies directly to the general public.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code; and Section 36, Chapter 456, Statutes of 1990. Reference: Section 14132, Welfare and Institutions Code; and Section 33, Chapter 456, Statutes of 1990.

HISTORY

1. New section filed 5–24–91 as an emergency; operative 5–24–91 (Register 91, No. 26). A Certificate of Compliance must be transmitted to OAL by 9–23–91 or emergency language will be repealed by operation of law on the following day.

§ 51105. Pharmacist.

"Pharmacist" means a doctor of pharmacy (Pharm.D.), Bachelor of Science in Pharmacy (B.S.), or a person trained to practice pharmacy in an accredited college of pharmacy or an approved apprentice program prior to 1937.

NOTE: Authority cited: Sections 14053 and 14105, Welfare and Institutions Code. Reference: Sections 14053 and 14059, Welfare and Institutions Code.

HISTORY

1. Amendment filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).
2. New NOTE filed 6–22–87; operative 7–22–87 (Register 87, No. 27).

§ 51106. Pharmacy.

"Pharmacy" is a facility where a pharmacist stores, compounds, and dispenses drugs.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132(d), Welfare and Institutions Code.

HISTORY

1. New section filed 9–30–71 as an emergency; designated effective 10–1–71 (Register 71, No. 40).
2. Certificate of Compliance—Section 11422.1, Gov. Code, filed 1–25–72 (Register 72, No. 5).
3. Amendment filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).
4. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51107. Pharmaceutical Services.

"Pharmaceutical Services" means professional services provided by pharmacists in the dispensing of drugs and medical supplies on the legal prescription of a licensed practitioner.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132(d), Welfare and Institutions Code.

HISTORY

1. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51108. Inpatient.

"Inpatient" means a person who has been admitted to a hospital, skilled nursing facility, or intermediate care facility for bed occupancy for purposes of receiving inpatient services. A person is considered an inpatient when he is formally admitted as an inpatient with the expectation that he will remain at least overnight and occupy a bed, even though it later develops that he can be discharged or that he is transferred to another facility and does not actually use a bed overnight.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14059 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).
2. Amendment filed 8–8–78; effective thirtieth day thereafter (Register 78, No. 32).
3. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51109. Hospital.

"Hospital" means any institution, place, building, or agency which meets the standards specified in Section 51207 of these regulations and which maintains and operates organized facilities for one or more persons for the diagnosis, care and treatment of human illness, which may include convalescence and care during and after pregnancy, or which maintains and operates organized facilities for any such purpose, and to which persons may be admitted for overnight stay or longer.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14110 and 14132, Welfare and Institutions Code.

HISTORY

1. Amendment filed 5–8–69; effective thirtieth day thereafter (Register 69, No. 19).
2. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51110. Hospital Acute Care.

(a) "Hospital acute care" means those services provided by a hospital to patients who need, or must have available the facilities, services, and equipment described in Section 51207 for prevention, diagnosis, or treatment of illness or injury.

(b) The determination of need for acute care shall be made in accordance with Sections 51003 and 51327.

(c) An acute care patient able to reasonably sustain a transport in an Emergency Medical Technician I (EMT–1) staffed ambulance, with no expected increase in morbidity or mortality, shall be considered stable for the purpose of transport.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code; and Section 57 (c), Chapter 328, and Section 87 (c), Chapter 1594, Statutes of 1982. Reference: Sections 14081, 14087, 14110, 14132 and 14133.3, Welfare and Institutions Code.

HISTORY

1. Amendment filed 10–13–71 as an emergency; designated effective 10–13–71 (Register 71, No. 42). For prior history, see Register 68, No. 43.
2. Certificate of Compliance—Section 11422.1, Gov. Code, filed 1–25–72 (Register 72, No. 5).
3. Amendment filed 2–3–83 as an emergency; effective upon filing (Register 83, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6–3–83.
4. Certificate of Compliance transmitted to OAL 6–3–83 and filed 7–6–83 (Register 83, No. 28).
5. Change without regulatory effect of NOTE (Register 86, No. 49).

§ 51110.1. Hospital Extended Care.

HISTORY

1. Amendment filed 10–13–71 as an emergency; designated effective 10–13–71 (Register 71, No. 42). For prior history, see Register 68, No. 43.
2. Certificate of Compliance—Section 11422.1, Gov. Code, filed 1–25–72 (Register 72, No. 5).
3. Repealer filed 7–16–75 as an emergency; effective upon filing (Register 75, No. 29).
4. Certificate of Compliance filed 11–12–75 (Register 75, No. 46).

§ 51110.2. Hospital Long–Term Care.

HISTORY

1. Amendment filed 10–13–71 as an emergency; designated effective 10–13–71 (Register 71, No. 42). For prior history, see Register 68, No. 43.
2. Certificate of Compliance—Section 11422.1, Gov. Code, filed 1–25–72 (Register 72, No. 5).
3. Repealer filed 7–16–75 as an emergency; effective upon filing (Register 75, No. 29).
4. Certificate of Compliance filed 11–12–75 (Register 75, No. 46).

§ 51110.3. Hospital Extended Care Facility.

HISTORY

1. New section filed 2–23–67 as an emergency; effective upon filing (Register 67, No. 8).
2. Certificate of Compliance—Section 11422.1, Government Code—filed 4–12–67 (Register 67, No. 15).
3. Amendment filed 11–15–68; effective thirtieth day thereafter (Register 68, No. 43).
4. Amendment of subsection (b) filed 1–18–74; effective thirtieth day thereafter (Register 74, No. 3).
5. Repealer filed 7–16–75 as an emergency; effective upon filing (Register 75, No. 29).
6. Certificate of Compliance filed 11–12–75 (Register 75, No. 46).

§ 51110.4. Hospital Intermediate Care.

HISTORY

1. New section filed 3–30–72 as an emergency; effective upon filing (Register 72, No. 15).
2. Certificate of Compliance filed 7–27–72 (Register 72, No. 31).
3. Repealer filed 7–16–75 as an emergency; effective upon filing (Register 75, No. 29).
4. Certificate of Compliance filed 11–12–75 (Register 75, No. 46).

§ 51111. Inpatient Hospital Services.

"Inpatient Hospital Services" include the following services furnished by a hospital:

(a) Bed and board;

(b) Nursing and related services, use of hospital facilities, medical social services ordinarily furnished by the hospital, and such drugs, biologicals, supplies, appliances and equipment, as are ordinarily furnished by the hospital;

(c) Other diagnostic and therapeutic services ordinarily furnished by the hospital, exclusive of physicians' services;

(d) Medical and surgical services performed by interns and residents–in–training, as defined in Section 1861 (b) of Title XVIII of the Federal Social Security Act; and

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(e) Administrative services performed by physicians for the hospital.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14059 and 14132, Welfare and Institutions Code.

HISTORY

1. Sections 51111 and 51113 refiled 6–5–67 as an emergency; effective upon filing. Certificate of Compliance filed 6–9–67 (Register 67, No. 23).
2. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51112. Hospital Outpatient Department.

"Hospital outpatient department" means a hospital unit which provides services for the prevention, diagnosis, and treatment of disease, illness, or injury to outpatients.

NOTE: Authority cited: Sections 10725, 14105 and 14124, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).
2. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51113. Hospital Outpatient Department Services.

"Hospital outpatient department services" means diagnostic, preventive or therapeutic services furnished on an outpatient basis on the premises of a hospital. Hospital based home health agency services, home dialysis services, portable X–ray services, and collection of laboratory specimens need not be furnished on the premises of the facility.

NOTE: Authority cited: Sections 10725, 14105 and 14124, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

HISTORY

1. Amendment filed 9–30–71 as an emergency; designated effective 10–1–71 (Register 71, No. 40). For prior history, see Register 70, No. 27.
2. Certificate of Compliance—Section 11422.1, Gov. Code, filed 1–25–72 (Register 72, No. 5).
3. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51115. Organized Outpatient Clinic.

(a) "Organized outpatient clinic" means a medical care facility that is established, organized, and licensed pursuant to Section 406, Title 17, California Administrative Code, and which provides services for the prevention, diagnosis and treatment of disease, illness or injury on an outpatient basis, and which is not part of a hospital.

(b) "Organized outpatient clinic with surgical facilities" means an organized outpatient clinic which conforms to the standards established in Title 17, California Administrative Code, Section 425(c)(4)(A) and (B).

NOTE: Authority cited: Sections 14105 and 14124, Welfare and Institutions Code. Reference: Sections 14100.1, 14105, 14124 and 14132, Welfare and Institutions Code.

HISTORY

1. Amendment filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40). For prior history, see Register 72, No. 5.
2. Amendment filed 12–30–77; designated effective 2–1–78 (Register 77, No. 53).
3. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51115.1. Organized Outpatient Clinic Services.

(a) "Organized Outpatient Clinic Services" means preventive, diagnostic, therapeutic, and rehabilitative services that are:

(1) Provided to outpatients;

(2) Provided by a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients; and

(3) Except in the case of certified nurse–midwife services, furnished by or under the direction of a physician or dentist.

(b) A clinic may not provide patients with room and board and professional services on a continuous 24–hour–a–day basis.

(c) Eligibility for clinic services is limited to those patients:

(1) Who for the purpose of receiving necessary health care go or are brought to a clinic;

(2) Who receive services in the clinic;

(3) Who within a 24–hour period leave the clinic site at which the services are provided.

NOTE: Authority cited: Sections 14100.1, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14000, 14124.5 and 14132, Welfare and Institutions Code; 42 CFR 440.90; and 42 CFR 440.2. (Section filed 9–10–86, operative 10–10–86; Register 86, No. 37)

§ 51115.5. Rural Health Clinic.

"Rural health clinic" means an organized outpatient clinic or hospital outpatient department, located in a rural shortage area, which has been certified by the Secretary, United States Department of Health and Human Services.

NOTE: Authority cited: Sections 14100.1, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14100.1, 14105 and 14124.5, Welfare and Institutions Code.

HISTORY

1. New section filed 8–1–78 as an emergency; effective upon filing (Register 78, No. 31).
2. Certificate of Compliance transmitted to OAH 11–28–78 and filed 11–29–78 (Register 78, No. 48).
3. Amendment filed 6–22–87; operative 7–22–87 (Register 87, No. 27).

§ 51115.6. Rural Health Clinic Services.

"Rural health clinic services" means preventative, diagnostic, therapeutic, rehabilitative or treatment services, including, but not limited to, primary care services provided by a rural health clinic.

NOTE: Authority cited: Sections 14100.1, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14100.1, 14100.5, 14105 and 14124.5, Welfare and Institutions Code.

HISTORY

1. New section filed 8–1–78 as an emergency; effective upon filing (Register 78, No. 31).
2. Certificate of Compliance transmitted to OAH 11–28–78 and filed 11–29–78 (Register 78, No. 48).

§ 51115.7. Rural Shortage Area.

"Rural shortage area" means a census tract designated by the Secretary, Department of Health and Human Services, as rural and deficient in personal health services or primary medical manpower.

NOTE: Authority cited: Sections 14100.1, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14100.1, 14105 and 14124.5, Welfare and Institutions Code.

HISTORY

1. New section filed 8–1–78 as an emergency; effective upon filing (Register 78, No. 31).
2. Certificate of Compliance transmitted to OAH 11–28–78 and filed 11–29–78 (Register 78, No. 48).
3. Amendment filed 6–22–87; operative 7–22–87 (Register 87, No. 27).

§ 51116. Outpatient Heroin Detoxification Services.

(a) "Outpatient detoxification services" means the administering or furnishing by a physician, or under the ongoing supervision of a physician, either of the following:

(1) Methadone as a substitute narcotic drug in decreasing doses to reach a diminished or drug free state in a period not to exceed 21 days.

(2) Nonnarcotic drugs to reduce or eliminate, over a period not to exceed 21 days, an individual's dependence on heroin or other morphine–like drugs.

NOTE: Authority cited: Section 14105, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 6–23–77; effective thirtieth day thereafter (Register 77, No. 26).
2. Renumbering of Section 51163 to Section 51116 filed 7–29–77 as an emergency; designated effective 8–1–77 (Register 77, No. 31).
3. Editorial renumbering of Section 51163 to Section 51116 (Register 77, No. 48).

§ 51117. Rehabilitation Center.

"Rehabilitation center" means a facility which provides an integrated multidisciplinary program of restorative services designed to upgrade or maintain the physical functioning of patients.

NOTE: Authority cited: Sections 10725, 14105 and 14124, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 12–24–71, as an emergency; effective upon filing (Register 71, No. 52). For history of former section, See Register 71, No. 40.
2. Certificate of Compliance—Section 11422.1, Gov. Code, as to 9–30–71 filing, filed 1–25–72 (Register 72, No. 5).

3. Certificate of Compliance as to 12–24–71 filing, filed 4–19–72 (Register 72, No. 18).
4. Amendment filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).
5. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51118. Intermediate Care Facility.

"Intermediate care facility" means a facility which is licensed as such by the Department or is a hospital or skilled nursing facility which meets the standards specified in Section 51212 and has been certified by the Department for participation in the Medi–Cal program.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14110 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 3–30–72 as an emergency; effective upon filing (Register 72, No. 15).
2. Certificate of Compliance filed 7–27–72 (Register 72, No. 31).
3. Amendment filed 1–18–74; effective thirtieth day thereafter (Register 74, No. 3).
4. Amendment filed 7–16–75 as an emergency; effective upon filing (Register 75,No. 29).
5. Certificate of Compliance filed 11–12–75 (Register 75, No. 46).
6. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51119. Rehabilitation Services.

HISTORY

1. Sections 51119 and 51121 refiled 6–5–67 as an emergency; effective upon filing. Certificate of Compliance filed 6–9–67 (Register 67, No. 23).
2. Repealer filed 9–30–71 as an emergency; designated effective 10–1–71 (Register 71, No. 40).
3. Certificate of Compliance—Section 11422.1, Gov. Code, as to 9–30–71 filing, filed 1–25–72 (Register 72, No. 5).

§ 51120. Intermediate Care Services.

(a) Intermediate care services means services provided in hospitals, skilled nursing facilities or intermediate care facilities to patients who:

(1) Require protective and supportive care, because of mental or physical conditions or both, above the level of board and care.

(2) Do not require continuous supervision of care by a licensed registered or vocational nurse except for brief spells of illness.

(3) Do not have an illness, injury, or disability for which hospital or skilled nursing facility services are required.

(b) With respect to services furnished to individuals under age 65, intermediate care services may include services in a public institution (or distinct part thereof) for mentally retarded or persons with related conditions only if:

(1) The primary purpose of such institution (or distinct part thereof) is to provide a program of health or rehabilitative services for mentally retarded individuals and such institutions meet standards as may be prescribed by the United States Department of Health and Human Services.

(2) The mentally retarded individual with respect to whom a request for payment is made has been determined to need and is receiving active treatment under such a program.

(3) Payment for intermediate care services to any such institution (or distinct part thereof) will not be used to displace with Federal funds any non–Federal expenditures that are already being made for mentally retarded persons.

(c) Intermediate care services do not include:

(1) Services rendered in accordance with Section 51305, Physician Services; 51306, Optometry Services; 51307, Dental Services; 51308, Chiropractic Services; 51309, Psychology, Physical Therapy, Occupational Therapy, Speech Therapy, and Audiology Services; 51310, Podiatry Services; 51311, Laboratory, Radiological, and Radioisotope Services; 51312, Prayer or Spiritual Healing; 51313, Pharmaceutical Services and Prescribed Drugs; 51314, Rehabilitation Center Outpatient Services; 51315, Prosthetic and Orthotic Appliances; 51317, Eyeglasses, Prosthetic Eyes, and Other Eye Appliances; 51319, Hearing Aids; 51320, Medical Supplies; 51321, Durable Medical Equipment, except as provided in Section 51321 (h) (4); 51323, Medical Transportation Services; 51325, Blood and Blood Derivatives; 51326, Nurse Anesthetist Services; 51327, Inpatient Hospital Services; 51328, Outpatient Heroin Detoxification Services; 51330, Chronic Hemodialysis; 51330.1, Renal Homotransplantation; 51331, Hospital Outpatient Department Services and Organized Outpatient Clinic Services; 51337, Home Health Agency Services; 51340, Early and Periodic Screening Services; and 51341, Short–Doyle Medi–Cal Provider Services.

(2) Other equipment and supplies for which prior authorizations have been granted to other providers by the Medi–Cal Consultant and which are therefore separately billed by other providers of services; nor

(3) Personal care items and services not reimbursable by the California Medical Assistance Program as a medical care service but for which a personal and incidental allowance is provided.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14110 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 3–30–72 as an emergency; effective upon filing (Register 72, No. 15).
2. Certificate of Compliance filed 7–27–72 (Register 72, No. 31).
3. Amendment of subsections (a) and (c)(1) filed 8–8–78; effective thirtieth day thereafter (Register 78, No. 32).
4. Amendment of subsections (a) and (b)(1) filed 6–22–87; operative 7–22–87 (Register 87, No. 27).

§ 51120.5. Nursing Facility.

Nursing facility means a facility that is licensed as either a skilled nursing facility or an intermediate care facility.

NOTE: Authority cited: Section 14105, Welfare and Institutions Code; and Section 13, Chapter 502, Statutes of 1990. Reference: Section 1250(k), Health and Safety Code.

HISTORY

1. New section filed 10–1–90 as an emergency (Register 90, No. 45). A Certificate of Compliance must be transmitted to OAL by 1–29–91 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 10–1–90 order transmitted to OAL 1–29–91, filed 2–28–91 (Register 91, No. 13).

§ 51121. Skilled Nursing Facility Services.

(a) Skilled nursing facility means any institution, place, building, or agency which is licensed as a skilled nursing facility by the Department or is a distinct part or unit of a hospital, meets the standard specified in section 51215 of these regulations (except that the distinct part of a hospital does not need to be licensed as a skilled nursing facility) and has been certified by the Department for participation as a skilled nursing facility in the Medi–Cal program

(b) As used in this chapter and defined in this section, the term "skilled nursing facility" shall include the terms "skilled nursing home," "convalescent hospital," "nursing home," or "nursing facility."

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code: and Section 13, Chapter 502, Statutes of 1990. Reference: Sections 14110 and 14132, Welfare and Institutions Code; and Section 1250(k), Health and Safety Code.

HISTORY

1. Amendment filed 7–1–70; designated effective 8–1–70; Register 70, No., 27).
2. Amendment of subsection (a) and new subsection (b) filed 7–13–73; effective thirtieth day thereafter (Register 73, No. 28).
3. Amendment filed 7–16–75 as an emergency; effective upon filing (Register 75, No. 29).
4. Certificate of Compliance filed 11–12—75 (Register 75, No. 46).
5. Change without regulatory effect adding NOTE (Register 86, No. 49).
6. Amendment of subsection (b) filed 10–1–90 as an emergency; operative 10–1–90 (Register 90, No. 45). A Certificate of Compliance must be transmitted to OAL by 1–29–91 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 10–1–90 order transmitted to OAL 1–29–91, filed 2–28–91 (Register 91, No. 13).

§ 51123. Skilled Nursing Facility Services.

(a) Skilled nursing facility services include:

(1) Room and board.

(2) Nursing and related care services.

(3) Commonly used items of equipment, supplies and services used for the medical and nursing benefit of patients as set forth in 51511 (b).

(b) Skilled nursing facility services do not include:

(1) Services rendered in accordance with Section 51305, Physician's Services; 51306, Optometry Services; 51307, Dental Services; 51308, Chiropractic Services; 51309, Psychology, Physical Therapy, Occupational Therapy, Speech Therapy, and Audiology Services; 51310, Podiatry Services; 51311, Laboratory, Radiological, and Radioisotope Services; 51312, Prayer or Spiritual Healing; 51313, Pharmaceutical Services and Prescribed Drugs; 51314, Rehabilitation Center Outpatient Services; 51315, Prosthetic and Orthotic Appliances; 51317, Eyeglasses, Prosthetic Eyes, and Other Eye Appliances; 51319, Hearing Aids; 51320, Medical Supplies, other than those described under (a) (3) above; 51321, Durable Medical Equipment, other than those described under (a) (3) above; 51323, Medical Transportation Services; 51325, Blood and Blood Derivatives; 51326, Nurse Anesthetist Services; 51327, Inpatient Hospital Services; 51328, Outpatient Heroin Detoxification Services; 51330, Chronic Hemodialysis; 51330.1, Renal Homotransplantation; 51331, Hospital Outpatient Department Services and Organized Outpatient Clinic Services; 51337, Home Health Agency Services; 51340, Early and Periodic Screening Services; and 51341, Short–Doyle Medi–Cal Provider Services.

(2) Other equipment and supplies for which prior authorizations have been granted to other providers by the Medi–Cal consultant and which are therefore separately billed by other providers of services.

(c) Skilled nursing facility services do not include items and services which are provided under State Department of Social Services regulations.

NOTE: Authority cited: Section 14124.5, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (b)(1) filed 8–8–78; effective thirtieth day thereafter (Register 78, No. 32). For prior history, see Register 73, No. 28.
2. Amendment of subsections (a)(3) and (c) filed 6–22–87; operative 7–22–87 (Register 87, No. 27).

§ 51124. Skilled Nursing Facility Level of Care.

(a) "Skilled Nursing facility level of care" means that level of care provided by a skilled nursing facility meeting the standards for participation as a provider under the Medi–Cal program as set forth in Section 51215 of this division.

(b) The skilled nursing facility level of care is the level of care needed by Medi–Cal beneficiaries who do not require the full range of health care services provided in a hospital as hospital acute care or hospital extended care, but who require the continuous availability of skilled nursing care provided by licensed registered or vocational nurses, or the equivalent thereof, as set forth in Section 51215.

(c) Skilled nursing care provided in participating skilled nursing facilities is the composite of necessary observation, assessment, judgment, supervision, documentation, and teaching of the patient and includes specific tasks and procedures.

(d) Skilled nursing procedures provided as a part of skilled nursing care are those procedures which must be furnished under the direction of a registered nurse in response to the attending physician's orders, and are either performed or supervised by a licensed registered nurse, a licensed vocational nurse or in the case of institutions for mentally retarded or distinct parts of institutions which are certified as skilled nursing facilities and providing care for mentally retarded patients, by a licensed psychiatric technician. A need for one or more skilled nursing procedures does not necessarily indicate a medical need for skilled nursing facility services. Rather, the need must be for a level of service which includes the continuous availability of procedures such as, but not necessarily limited to, the following: administration of intravenous, intramuscular, or subcutaneous injections, and intravenous or subcutaneous infusions; gastric tube or gastrostomy feedings; nasopharygeal aspiration; insertion or replacement of catheters; application of dressings involving prescribed medications and aseptic techniques; treatment of extensive decubiti and other widespread skin disorders; heat treatments which require observation by licensed personnel to evaluate the patient's progress; administration of medical gases under prescribed therapeutic regimen; and restorative nursing procedures which require the presence of a licensed nurse.

(e) Other health care services, such as physical, occupational or speech therapy, require specialized training for proper performance. The need for such therapies does not necessarily indicate a need for nursing facility services.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14108 and 14110, Welfare and Institutions Code.

HISTORY

1. New section filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).
2. Amendment filed 7–13–73; effective thirtieth day thereafter (Register 73, No. 28).
3. Change without regulatory effect adding NOTE (Register 86, No. 49).
4. Editorial correction of printing error in section heading (Register 94, No. 17).

§ 51124.1. Transitional Inpatient Level of Care.

NOTE: Authority cited: Sections 10725, 14105.981 and 14132.22, Welfare and Institutions Code. Reference: Sections 14105.981 and 14132.22, Welfare and Institutions Code.

HISTORY

1. New section filed 4–1–96 as an emergency; operative 4–1–96 (Register 96, No. 14). A Certificate of Compliance must be transmitted to OAL by 9–30–96 pursuant to Welfare and Institutions Code section 14132.22 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of HISTORY 1 (Register 96, No. 35).
3. New section refiled 8–28–96 as an emergency; operative 9–30–96 (Register 96, No. 35). A Certificate of Compliance must be transmitted to OAL by 1–28–97 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 8–28–96 order, including new subsection (a)(4) and amendment of subsection (c)(2)(A), transmitted to OAL 1–23–97 and filed 3–10–97 (Register 97, No. 11).
5. Change without regulatory effect repealing section filed 6–12–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 24).

§ 51124.2. Medi–Cal Care Coordinator.

"Medi–Cal Care Coordinator" means the designated Medi–Cal consultant who authorizes, reauthorizes, and coordinates, as required, medically necessary services for a beneficiary. The Medi–Cal Care Coordinator shall be a physician or registered nurse. The extent of the participation of the Medi–Cal Care Coordinator is determined by the complexity and multiplicity of service needs of the patient. The Medi–Cal Care Coordinator shall work, as required, with the physicians, the facility discharge coordinators, preadmission screeners and other facility personnel, as required, to coordinate and authorize those services needed by the patient and which are authorized by the Medi–Cal Program.

NOTE: Authority cited: Sections 10725, 14105.981 and 14132.22, Welfare and Institutions Code. Reference: Sections 14105.981 and 14132.22, Welfare and Institutions Code.

HISTORY

1. New section filed 4–1–96 as an emergency; operative 4–1–96 (Register 96, No. 14). A Certificate of Compliance must be transmitted to OAL by 9–30–96 pursuant to Welfare and Institutions Code section 14132.22 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of HISTORY 1 (Register 96, No. 35).
3. New section refiled 8–28–96 as an emergency; operative 9–30–96 (Register 96, No. 35). A Certificate of Compliance must be transmitted to OAL by 1–28–97 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 8–28–96 order transmitted to OAL 1–23–97 and filed 3–10–97 (Register 97, No. 11).

§ 51124.5. Subacute Level of Care.

(a) Subacute level of care means a level of care needed by a patient who does not require hospital acute care but who requires more intensive licensed skilled nursing care than is provided to the majority of patients in a skilled nursing facility.

(b) To be eligible for subacute level of care a patient's condition shall meet all of the criteria as provided for in the Subacute Level of Care Criteria contained in the Manual of Criteria for Medi–Cal Authorization referenced in Title 22, California Code of Regulations (CCR), Section 51003(e) as determined by the patient's attending physician and as approved by the appropriate Medi–Cal field office medical consultant or

equivalent authorizing agent, who is responsible for authorizing the level of care.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14132.25, Welfare and Institutions Code.

HISTORY

1. New section filed 6–3–86 as an emergency; effective upon filing (Register 86, No. 23). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–1–86.
2. Section refiled 11–3–86 as an emergency; effective 10–1–86 (Register 86, No. 45). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1–29–87.
3. Certificate of Compliance including amendment filed 1–20–87 (Register 87, No. 4).
4. Amendment of subsection (b) filed 10–27–88 as an emergency; operative 10–27–88 (Register 88, No. 45). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–24–89.
5. Certificate of Compliance transmitted to OAL 2–24–89 and filed 3–27–89 (Register 89, No. 13).

§ 51124.6. Pediatric Subacute Care Services.

(a) Pediatric subacute care services are the health care services needed by a person under 21 years of age who uses a medical technology that compensates for the loss of a vital bodily function.

(b) Medical necessity for pediatric subacute care services shall be substantiated by any one of the following items in (1) through (4) below:

(1) A tracheostomy with dependence on mechanical ventilation for a minimum of six hours each day;

(2) Dependence on tracheostomy care requiring suctioning at least every six hours, and room air mist or oxygen as needed, and dependence on one of the four treatment procedures listed in (B) through (E) below:

(A) Dependence on intermittent suctioning at least every eight hours, and room air mist or oxygen as needed;

(B) Dependence on continuous intravenous therapy including administration of therapeutic agents necessary for hydration or of intravenous pharmaceuticals; or intravenous pharmaceutical administration of more than one agent, via a peripheral or central line, without continuous infusion;

(C) Dependence on peritoneal dialysis treatments requiring at least four exchanges every 24 hours;

(D) Dependence on tube feeding, naso–gastric or gastrostomy tube;

(E) Dependence on other medical technologies required continuously, which in the opinion of the attending physician and the Medi–Cal consultant require the services of a professional nurse.

(3) Dependence on total parenteral nutrition or other intravenous nutritional support, and dependence on one of the five treatment procedures listed in (b)(2)(A) through (E) above;

(4) Dependence on skilled nursing care in the administration of any three of the five treatment procedures listed in (b)(2)(A) through (E) above.

(c) Medical necessity for pediatric subacute skilled nursing care shall be further substantiated by all of the following conditions:

(1) The intensity of medical/skilled nursing care required by the patient shall be such that the continuous availability of a registered nurse in the pediatric subacute unit is medically necessary to meet the patient's healthcare needs, and not be any less than the nursing staff ratios specified in Section 51215.8(g) and (i);

(2) The patient's medical condition has stabilized such that the immediate availability of the services of an acute care hospital, including daily physician visits, are not medically necessary;

(3) The intensity of medical/skilled nursing care required by the patient is such that, in the absence of a facility providing pediatric subacute care services, the only other medically necessary inpatient care appropriate to meet the patient's health care needs under the Medi–Cal program is in an acute care licensed hospital bed.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14114 and 14132.25, Welfare and Institutions Code.

HISTORY

1. New section filed 4–13–94 as an emergency; operative 4–1–94. Emergency adoption submitted to OAL for printing only pursuant to section 4, AB 36 (chapter 1030, Statutes of 1993) (Register 94, No. 15).
2. Certificate of Compliance as to 4–13–94 order including amendment of section transmitted to OAL 9–26–94 and filed 10–20–94 (Register 94, No. 42).
3. Editorial correction of HISTORY 1 and 2 (Register 95, No. 14).

§ 51124.7. Preceptorship.

"Preceptorship", as referenced in Section 51215.8(k), means a one–to–one teaching relationship wherein a registered nurse meeting the qualifications specified in Section 51215.8(j) works with a licensed nurse, as specified in Section 51215.8(k)(2), to enhance the licensed nurse's clinical competency in providing nursing services to the types of pediatric patients with technology dependency for whom the facility provides care.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14114 and 14132.25, Welfare and Institutions Code.

HISTORY

1. New section filed 10–20–94; operative 10–20–94 (Register 94, No. 42).
2. Editorial correction of HISTORY 1 (Register 95, No. 14).

§ 51125. Home Health Agency.

HISTORY

1. Refiled 6–5–67 as an emergency; effective upon filing. Certificate of Compliance filed 6–9–67 (Register 67, No. 23).
2. Amendment filed 7–1–70; designated effective 8–1–70 (Register 70, No. 27).
3. Repealer filed 7–7–86; effective thirtieth day thereafter (Register 86, No. 28).

§ 51127. Coordinated Home Care.

HISTORY

1. Amendment filed 6–23–66 as an emergency; effective upon filing; Certificate of Compliance included (Register 66, No. 19).
2. Repealer filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).

§ 51128. Specialized Rehabilitative Services in Skilled Nursing Facilities or Intermediate Care Facilities.

"Specialized rehabilitative services" means physical therapy, occupational therapy, speech therapy or audiology services furnished to inpatients of skilled nursing or intermediate care facilities by providers meeting the standards set forth in Article 3 of these regulations.

NOTE: Authority cited: Section 14124.5, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 9–12–75 as an emergency; effective upon filing (Register 75, No. 37).
2. Certificate of Compliance filed 1–8–76 (Register 76, No. 2).
3. Change without regulatory effect of NOTE (Register 86, No. 49).

§ 51129. Home Health Agency Services.

HISTORY

1. Amendment filed 1–30–73; effective thirtieth day thereafter (Register 73, No. 5). For prior history, see Register 72, No. 5.
2. Amendment filed 5–14–76 as an emergency; effective upon filing (Register 76, No. 20).
3. Certificate of Compliance filed 9–8–76 (Register 76, No. 37).
4. Repealer filed 7–7–86; effective thirtieth day thereafter (Register 86, No. 28).

§ 51131. Home Nursing Services.

NOTE: Authority cited: Sections 14100.1, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14100.1, 14105 and 141245, Welfare and Institutions Code.

HISTORY

1. New section filed 8–1–78 as an emergency; effective upon filing (Register 78, No. 31). For history of former Section 51131, see Register 72, No. 40.
2. Certificate of Compliance transmitted to OAH 11–28–78 and filed 11–29–78 (Register 78, No. 48).
3. Repealer filed 7–7–86; effective thirtieth day thereafter (Register 86, No. 28).

§ 51132. Short–Doyle Medi–Cal Providers.

"Short–Doyle Medi–Cal providers" means any agency, individual, organization, or facility which has been approved by the Department to participate in the Short–Doyle Medi–Cal program.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14021, Welfare and Institutions Code.

HISTORY

1. New section filed 9–29–75 as an emergency; effective upon filing (Register 75, No. 40).
2. Certificate of Compliance filed 1–8–76 (Register 76, No. 2).
3. Change without regulatory effect of NOTE (Register 86, No. 49).

§ 51133. Home Health Aide Services.

HISTORY

1. Amendment filed 6–23–66 as an emergency; effective upon filing; Certificate of compliance included (Register 66, No. 19).
2. Repealer filed 9–30–71 as an emergency; designated effective 10–1–71 (Register 71, No. 40).
3. Certificate of Compliance—Section 11422.1, Gov. Code, filed 1–25–72 (Register 72, No. 5).

§ 51134. Short–Doyle Medi–Cal Provider Services.

"Short–Doyle Medi–Cal provider services means those community mental health services covered by the Short–Doyle Act which are provided by a Short–Doyle Medi–Cal provider.

NOTE: Authority cited: Section 14131, Welfare and Institutions Code. Reference: Section 14021, Welfare and Institutions Code.

HISTORY

1. New section filed 9–29–75 as an emergency; effective upon filing (Register 75, No. 40).
2. Certificate of Compliance filed 1–8–76 (Register 76, No. 2).

§ 51135. Healing by Prayer or Spiritual Means.

"Healing by prayer or spiritual means" means services of Christian Science Practitioners.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14059 and 14132, Welfare and Institutions Code.

HISTORY

1. Refiled 6–5–67 as an emergency; effective upon filing. Certificate of Compliance filed 6–9–67 (Register 67, No. 23).
2. Amendment filed 8–25–67 as an emergency; designated effective 9–1–67 (Register 67, No. 34). Certificate of Compliance filed 8–30–67.
3. Amendment filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).
4. Change without regulatory effect adding NOTE (Register 86, No. 49).

[The next page is 413.]

§ 51136. Christian Science Facility.

HISTORY

1. New section filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).
2. Repealer filed 6–22–87; operative 7–22–87 (Register 87, No. 27).

§ 51137. Laboratory.

HISTORY

1. Repealer filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40). For prior history, see Register 68, No. 43.

§ 51137.1. Clinical Laboratory or Laboratory.

"Clinical Laboratory" or "Laboratory" means any place used, organized, or operated, for the examination, detection, identification, measurement, or enumeration of any particular entity or substance, which consists of materials derived from the human body for the purpose of providing information for diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings, or used as an aid in the prevention, prognosis, monitoring, or treatment of a physiological or pathological condition in a human being.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code; Section 1206, Business and Professions Code; and Title 42 United States Code, Section 263a.

HISTORY

1. New section filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).
2. Amendment filed 8–6–76; effective thirtieth day thereafter (Register 76, No. 32).
3. Change without regulatory effect adding NOTE (Register 86, No. 49).
4. Amendment of section heading, text and NOTE filed 1–20–94 as an emergency; operative 1–20–94 (Register 94, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–20–94 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–20–94 order transmitted to OAL 5–19–94 and filed 7–1–94 (Register 94, No. 26).

§ 51137.2. Clinical Laboratory or Laboratory Services.

"Clinical laboratory or laboratory services" include the biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other types of examination of materials derived from the human body, for purposes of diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code; Section 1206, Business and Professions Code; and Title 42 United States Code, Section 263a.

HISTORY

1. New section filed 1–20–94 as an emergency; operative 1–20–94 (Register 94, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–20–94 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–20–94 order transmitted to OAL 5–19–94 and filed 7–1–94 (Register 94, No. 26).

§ 51139. Radiological and Radioisotope Services.

Radiological and Radioisotope Services means diagnostic and therapeutic X–ray and radioisotope services.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

HISTORY

1. Amendment filed 6–23–66 as an emergency; effective upon filing; Certificate of Compliance included (Register 66, No. 19).
2. Amendment filed 11–15–68; effective thirtieth day thereafter (Register 68, No. 43).
3. Repealer and new section filed 5–2–73; effective thirtieth day thereafter (Register 73, No. 18).
4. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51141. Outpatient Services.

HISTORY

1. Sections 51141, 51143 and 51145 refiled 6–5–67 as an emergency; effective upon filing. Certificate of Compliance filed 6–9–67 (Register 67, No. 23).
2. Repealer filed 9–30–71 as an emergency; designated effective 10–1–71 (Register 71, No. 40).
3. Certificate of Compliance—Section 11422.1, Gov. Code, filed 1–25–72 (Register 72, No. 5).

§ 51142. Inpatient Services.

"Inpatient services" means preventive diagnostic, or treatment services provided in a hospital, skilled nursing facility, or intermediate care facility to a patient who is a registered inpatient in that facility.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).
2. Amendment filed 8–8–78; effective thirtieth day thereafer (Register 78, No. 32).
3. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51143. Outpatient Services.

"Outpatient services" means preventive, diagnostic, or treatment services other than inpatient services.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

HISTORY

1. Amendment filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40). For prior history, see Register 72, No. 31.
2. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51145. Home.

For the purposes of providing home health agency services, home means any place of residence of a beneficiary, other than while a registered inpatient of a hospital or skilled nursing facility or intermediate care facility.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

HISTORY

1. Amendment filed 9–30–71 as an emergency; designated effective 10–1–71 (Register 71, No. 40).
2. Certificate of Compliance—Section 11422.1, Gov. Code, filed 1–25–72 (Register 72, No. 5).
3. Amendment filed 8–8–78; effective thirtieth day thereafter (Register 78, No. 32).
4. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51145.1. "Home" Defined for the Personal Care Services Program.

For purposes of Section 51350(b), "home" means that place in which the beneficiary chooses to reside. A person receiving an SSI/SSP payment for a nonmedical out–of–home living arrangement is not considered to be living in his/her "home". The beneficiary's "home" does not include a board and care facility, a facility licensed by the California State Department of Health Services nor a community care facility or a residential care facility licensed by the California State Department of Social Services.

NOTE: Authority cited: Section 14132.95, Welfare and Institutions Code; Section 8, Chapter 939, Statutes of 1922; Section 3, Chapter 7, Statutes of 1993. Reference: Section 14132.95, Welfare and Institutions Code; Section 1396d(a)(7) of Title 42, of the United States Code; Article 7 (commencing with Section 12300) of Part 3 of Division 9 of the Welfare and Institutions Code; Section 440.170(f) of Title 42 of the Code of Federal Regulations.

HISTORY

1. New section filed 4–14–93 as an emergency; operative 4–14–93. Submitted to OAL for printing only pursuant to section 8, AB 1773 (Chapter 939, Statutes of 1992) (Register 93, No. 16).

§ 51146. Homebound Patient.

A homebound patient is defined as one who is essentially confined to his home due to illness or injury, and if ambulatory or otherwise mobile, is unable to be absent from his home except on an infrequent basis or for periods of relatively short duration; e.g. for a short walk prescribed as therapeutic exercise.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–70; designated effective 8–1–70 (Register 70, No. 27).

2. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51147. Medical Social Work or Medical Social Services.

Medical Social Work or Medical Social Services, as referred to in Section 51125 and 51129 means professional services, provided by a person with a master's degree from a recognized school of social work, to assist individuals and groups in their efforts to solve medical–social problems that arise as a result of their illness or disabilities.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

HISTORY

1. Amendment filed 6–5–67 as an emergency; effective upon filing. Certificate of Compliance filed 6–9–67 (Register 67, No. 23).
2. Amendment filed 9–30–71 as an emergency; designated effective 10–1–71 (Register 71, No. 40).
3. Certificate of Compliance—Section 11422.1, Gov. Code, filed 1–25–72 (Register 72, No. 5).
4. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51149. Social Work Services.

HISTORY

1. Refiled 6–5–67 as an emergency; effective upon filing. Certificate of Compliance filed 6–9–67 (Register 67, No. 23).
2. Repealer filed 9–30–71 as an emergency; designated effective 10–1–71 (Register 71, No. 40).
3. Certificate of Compliance—Section 11422.1, Gov. Code, filed 1–25–72 (Register 72, No. 5).

§ 51151. Medical Transportation Services.

"Medical transportation services" means the transportation of the sick, injured, invalid, convalescent, infirm or otherwise incapacitated persons by ambulances, litter vans or wheelchair vans licensed, operated, and equipped in accordance with applicable state or local statutes, ordinances or regulations. Medical transportation services do not include transportation of beneficiaries by passenger car, taxicabs or other forms of public or private conveyances.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 6–23–66 as an emergency; effective upon filing; Certificate of Compliance included (Register 66, No. 19).
2. Amendment filed 2–25–70; designated effective 4–1–70 (Register 70, No. 9).
3. Amendment filed 5–22–80; effective thirtieth day thereafter (Register 80, No. 21).

§ 51151.1. Ambulance.

"Ambulance" means a vehicle specially constructed, modified, equipped and used for the purpose of transporting sick, injured, invalid, convalescent, infirm or otherwise incapacitated persons.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 5–22–80; effective thirtieth day thereafter (Register 80, No. 21).

§ 51151.2. Ambulance Patient.

"Ambulance patient" means a patient whose medical condition requires the specialized services, equipment and personnel available in an ambulance.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 5–22–80; effective thirtieth day thereafter (Register 80, No. 21).

§ 51151.3. Litter Van.

"Litter van" means a vehicle which is modified, equipped and used for the purpose of providing nonemergency medical transportation for those patients with stable medical conditions who require the use of a litter or gurney and which is not routinely equipped with the medical equipment or personnel required for the specialized care provided in an ambulance.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 5–22–80; effective thirtieth day thereafter (Register 80, No. 21).

§ 51151.4. Litter Van Patient.

"Litter van patient" means a patient whose medical condition is such that the patient may be transported by a litter van.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 5–22–80; effective thirtieth day thereafter (Register 80, No. 21).

§ 51151.5. Wheelchair Van.

"Wheelchair van" means a vehicle which is modified, equipped and used for the purpose of providing nonemergency medical transportation for wheelchair van patients and which is not routinely equipped with the medical equipment or personnel required for the specialized care provided in an ambulance.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 5–22–80; effective thirtieth day thereafter (Register 80, No. 21).

§ 51151.6. Wheelchair Van Patient.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 5–22–80; effective thirtieth day thereafter (Register 80, No. 21).
2. Repealer filed 6–22–87; operative 7–22–87 (Register 87, No. 27).

§ 51151.7. Nonemergency Medical Transportation.

"Nonemergency medical transportation" means transportation by ambulance, litter van and wheelchair van of the sick, injured, invalid, convalescent, infirm or otherwise incapacitated persons whose medical conditions require medical transportation services but do not require emergency services or equipment during transport.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 5–22–80; effective thirtieth day thereafter (Register 80, No. 21).

§ 51152. Provider of Medical Transportation.

"Provider of medical transportation" means an individual or organization furnishing medical transportation services as defined in Section 51151.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 1–30–73; effective thirtieth day thereafter (Register 73, No. 5).
2. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51153. Other Medically Indicated Transportation Service.

HISTORY

1. New section filed 6–23–66 as an emergency; effective upon filing; Certificate of Compliance included (Register 66, No. 19).
2. Repealer filed 2–25–70; designated effective 4–1–70 (Register 70, No. 9).

§ 51154. Renal Dialysis Center.

"Renal dialysis center" means a facility which provides chronic hemodialysis and evaluates and treats renal disease.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).
2. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51155. Community Hemodialysis Unit.

"Community hemodialysis unit" means a facility which provides chronic hemodialysis and supervision of patients undergoing chronic home hemodialysis.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).
2. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51156. Renal Homotransplantation Center.

"Renal homotransplantation center" means a hospital at which renal homotransplantation is performed and which provides or has available the supportive personnel and services required to perform renal homotransplantation.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).
2. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51157. Renal Dialysis, Renal Homotransplantation and Related Services.

(a) "Renal dialysis" means removal by artificial means of waste products normally excreted by the kidneys. Such removal may be accomplished by the use of an artificial kidney or peritoneal dialysis on a continuing basis.

(b) "Renal homotransplantation" means the implantation of a kidney from one person to another for the treatment of renal disease.

(c) "Related services" means hospital inpatient and physician's services related to the treatment of renal failure, stabilization of renal failure, treatment of complications of dialysis, and dialysis related laboratory tests, medical supplies, and drugs.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14140–14144, Welfare and Institutions Code.

HISTORY

1. New section filed 4–25–75 as an emergency, effective upon filing (Register 75, No. 17).
2. Certificate of Compliance filed 8–7–75 (Register 75, No. 32).

§ 51158. Nurse Anesthetist.

Nurse Anesthetist means a registered nurse who has completed a course of training in a School of Anesthesia accredited by the American Association of Nurse Anesthetists.

NOTE: Authority cited: Sections 14105, 14115.3 and 14124.5, Welfare and Institutions Code. Reference: Section 14115.3, Welfare and Institutions Code.

HISTORY

1. New section filed 5–1–75 as an emergency; effective upon filing (Register 75, No. 18).
2. Certificate of Compliance filed 8–19–75 (Register 75, No. 34).
3. Repealer filed 2–5–88; operative 3–6–88 (Register 88, No. 8).

§ 51159. Utilization Controls.

Utilization controls that may be applied to services set forth in this chapter include:

(a) Prior authorization, which is approval in advance of the rendering of service of the medical necessity and program coverage of the requested services, by a Department of Health consultant or PCCM plan. In determining what services shall be subject to prior authorization, the Director shall consider factors which include, but are not limited to:

(1) Whether the services to be controlled are generally considered to be elective procedures.

(2) Whether other physician procedures not subject to prior authorization are sufficient in scope and number to afford beneficiaries reasonable access to necessary health care services.

(3) The level of program payment for procedures.

(4) The cost effectiveness of applying prior authorization as a utilization control.

(b) Postservice prepayment audit, which is review for medical necessity and program coverage after service was rendered but before payment is made. Payment may be withheld or reduced if the service rendered was inappropriate.

(c) Postservice postpayment audit, which is review for medical necessity and program coverage after service was rendered and the claim paid. The department may take appropriate steps to recover payments made if subsequent investigation uncovers evidence that the claim should not have been paid.

(d) Limitation on number of services, which means certain services may be restricted as to number within a specified time frame.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14088.16, 14105, 14106, 14132, 14133 and 14133.25, Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–75 as an emergency; designated effective 7–1–75 (Register 75, No. 27).
2. Certificate of Compliance filed 10–24–75 (Register 75, No. 43).
3. Amendment filed 9–1–82 as an emergency; effective upon filing (Register 82, No. 37). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12–30–82.
4. Certificate of Compliance transmitted to OAL 12–30–82 and filed 2–3–83 (Register 83, No. 6).
5. Amendment of subsection (a) filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
6. Amendment refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
7. Request to readopt amendment on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
9. Amendment of subsection (a) filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 3–25–91 order including amendment of NOTE transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 51159.1. Peer Review.

The Department may request peer review of provider claims or practices by medical, pharmaceutical or other professional associations or societies. The recommendations of the peer review body to the Department shall be advisory but shall be carefully considered by the Department.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14132 and 14133, Welfare and Institutions Code.

HISTORY

1. New section filed 11–28–75; designated effective 1–1–76 (Register 75, No. 48).
2. Repealer and new section filed 5–15–81; effective thirtieth day thereafter (Register 81, No. 20).

§ 51160. Durable Medical Equipment.

Durable medical equipment means equipment prescribed by a licensed practitioner to meet medical equipment needs of the patient that:

(a) Can withstand repeated use.

(b) Is used to serve a medical purpose.

(c) Is not useful to an individual in the absence of an illness, injury, functional impairment, or congenital anomaly.

(d) Is appropriate for use in or out of the patient's home.

NOTE: Authority cited: Section 14105, Welfare and Institutions Code. Reference: Sections 14131 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 5–14–76 as an emergency; effective upon filing (Register 76, No. 20).
2. Certificate of Compliance filed 9–8–76 (Register 76, No. 37).
3. Change without regulatory effect of NOTE (Register 86, No. 49).
4. Amendment of first paragraph and new subsections (a)–(d) filed 6–5–2000 as an emergency; operative 6–5–2000 (Register 2000, No. 23). A Certificate of Compliance must be transmitted to OAL by 10–3–2000 or emergency language will be repealed by operation of law on the following day.
5. Amendment of first paragraph and new subsections (a)–(d) refiled 8–21–2000 as an emergency; operative 10–3–2000 (Register 2000, No. 34). A Certificate of Compliance must be transmitted to OAL by 1–31–2001 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 8–21–2000 order, including further amendment of subsections (c) and (d), transmitted to OAL 1–3–2001 and filed 2–5–2001 (Register 2001, No. 6).

§ 51161. Prosthetic and Orthotic Appliances.

Prosthetic and orthotic appliances means those appliances prescribed by a physician, dentist or podiatrist for the restoration of function or replacement of body parts.

NOTE: Authority cited: Section 14105, Welfare and Institutions Code. Reference: Sections 14131 and 14132, Welfare and Institutions Code.

HISTORY
1. New section filed 5–14–76 as an emergency; effective upon filing (Register 76, No. 20).
2. Certificate of Compliance filed 9–8–76 (Register 76, No. 37).
3. Change without regulatory effect of NOTE (Register 86, No. 49).

§ 51162. Eyeglasses, Prosthetic Eyes, and Other Eye Appliances.

Eyeglasses, prosthetic eyes and other eye appliances means those items prescribed by a physician or optometrist for medical conditions related to the eye.

NOTE: Authority cited: Section 14105, Welfare and Institutions Code. Reference: Sections 14131 and 14132, Welfare and Institutions Code.

HISTORY
1. New section filed 5–14–76 as an emergency; effective upon filing (Register 76, No. 20).
2. Certificate of Compliance filed 9–8–76 (Register 76, No. 37).
3. Change without regulatory effect of NOTE (Register 86, No. 49).

§ 51162.1. Fabricating Optical Laboratory.

"Fabricating optical laboratory" means a laboratory which surfaces, cuts and edges ophthalmic lenses; fabricates eye appliances as specified in Section 51519.2; and has entered into an exclusive area negotiated contract with the Department of Health Services. An "exclusive area negotiated contract" means a non–bid contract let under the statutory authority of Section 14105.3 of the Welfare and Institutions Code which allows the Department to purchase ophthalmic appliances for Medi–Cal beneficiaries living in a designated geographic area from a specific fabricating optical laboratory.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 87, Chapter 1594, Statutes of 1982. Reference: Sections 14105.3 and 14132, Welfare and Institutions Code; Section 26685, Health and Safety Code; and Sections 2541.3 and 2541.6, Business and Professions Code.

HISTORY
1. New section filed 11–28–88 as an emergency; operative 11–28–88 (Register 89, No. 11). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3–28–89.
2. Certificate of Compliance as to 11–28–88 order including amendment transmitted to OAL 3–27–89 and filed 4–26–89 (Register 89, No. 18).
3. Editorial correction of text adding "as specified in Section 51519.2" which was inadvertently omitted from Register 89, No. 18 and correction of History No. 2 (Register 89, No. 38).

§ 51163. Human Reproductive Sterilization.

(a) Human reproductive sterilization means any medical treatment, procedure or operation, for the purpose of rendering an individual permanently incapable of reproducing.

(b) In this section, and in Sections 51305.1 through 51305.6, "sterilization" means human reproductive sterilization.

NOTE: Authority cited: Sections 14105, 14124.5 and 14191, Welfare and Institutions Code. Reference: Sections 14053, 14059, 14132 and 14191, Welfare and Institutions Code.

HISTORY
1. New section filed 5–27–77; effective thirtieth day thereafter (Register 77, No. 22).
2. Amendment titled 6–24–80; designated effective 10–15–80 (Register 80, No. 26).

§ 51164. Intermediate Care Facility for the Developmentally Disabled.

Intermediate care facility for the developmentally disabled means a facility which:

(a) Meets the provisions of Section 76079 of Title 22 of the California Administrative Code, and

(b) Has as its primary purposes, the furnishing of health 24–hour developmental, training and habilitative, and supportive health services to persons with a developmental disability as defined in Welfare and Institutions Code Section 4512.

NOTE: Authority cited: Section 14124.5, Welfare and Institutions Code; and Sections 208.4, Health and Safety Code. Reference: Section 14132, Welfare and Institutions Code; and Section 1250, Health and Safety Code.

HISTORY
1. Emergency language filed 3–29–84 repealed by operation of Government Code Section 11346.1(f) (Register 85, No. 19).
2. Amendment filed by the Department of Health Services with the Secretary of State on 8–1–84 as an emergency; effective upon filing. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 85, No. 19).
3. Certificate of Compliance including amendment filed by the Department of Health Services with the Secretary of State on 11–28–84. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 85, No. 25).

§ 51164.1. Intermediate Care Facility for the Developmentally Disabled Habilitative.

(a) Intermediate care facility for the developmentally disabled habilitative means a facility which:

(1) Has as its primary purposes, the furnishing of 24–hour personal care, developmental, training and habilitative, and supportive health services in a facility with 15 beds or less to residents with a developmental disability. Developmental disability is a disability which originates before age 18 and is a permanent substantial handicap as defined in Welfare and Institutions Code Section 4512.

(2) Provides services to the developmentally disabled in the least restrictive community type setting.

NOTE: Authority cited: Section 14124.5, Welfare and Institutions Code; and Sections 208.3, 208.4 and 1267.7, Health and Safety Code. Reference: Section 14132, Welfare and Institutions Code; and Section 1250, Health and Safety Code.

HISTORY
1. New section filed by the Department of Health Services with the Secretary of State on 8–1–84 as an emergency; effective upon filing. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 85, No. 19).
2. Certificate of Compliance filed by the Department of Health Services with the Secretary of State on 11–28–84. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 85, No. 25).

§ 51164.2. Intermediate Care Facility for the Developmentally Disabled–Nursing.

Intermediate care facility for the developmentally disabled–nursing means a facility which:

(a) Has as its primary purpose, the furnishing of 24–hour nursing supervision, personal care, training and habilitative services in a facility with 4–15 beds to medically fragile developmentally disabled beneficiaries, or to beneficiaries who demonstrate a significant developmental delay that may lead to a developmental disability if not treated. Such beneficiaries shall have been certified by a physician as not requiring continuous skilled nursing care. Developmental disability is a disability as defined in Welfare and Institutions Code Section 4512.

(b) Provides services to medically fragile developmentally disabled beneficiaries in the least restrictive community setting.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Sections 208, 208.4 and 1275.3, Health and Safety Code. Reference: Sections 1250, 1250.1 and 1275.3, Health and Safety Code.

HISTORY
1. New section refiled by the Department of Health Services with the Secretary of State on 5–30–89 as an emergency pursuant to Health and Safety Code Section 1275.3; operative 5–30–89. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 89, No. 23). For prior history, see Register 89, No. 1.
2. Certificate of Compliance as to 5–30–89 order including amendment of subsection (a) transmitted to OAL 9–27–89 and filed 10–26–89 (Register 89, No. 44).

§ 51165. Intermediate Care Facility Services for the Developmentally Disabled.

(a) Intermediate care facility services for the developmentally disabled means those services provided in intermediate care facilities for the developmentally disabled, pursuant to the provisions of Sections 76301 through 76413 of Title 22 of the California Administrative Code, except as indicated in (b).

(b) Intermediate care facility services for the developmentally disabled except as reimbursed under Section 51510.1 do not include:

(1) Services rendered in acordance with Section 51305, Physicians' Services; 51306, Optometry Services; 51307, Dental Services; 51308, Chiropractic Services; 51309, Psychology, Physical Therapy, Occupational Therapy, Speech Therapy and Audiological Services; 51310, Podiatry Services; 51311, Laboratory, Radiological and Radioisotope Services; 51312, Prayer or Spiritual Healing; 51313, Pharmaceutical Services and Prescribed Drugs; 51314, Rehabilitation Center Outpatient Services; 51315, Prosthetic and Orthotic Appliances; 51317, Eyeglasses,

Contact Lenses, Low Vision Aids, Prosthetic Eyes and Other Eye Appliances; 51319, Hearing Aids; 51320, Medical Supplies; 51321, Durable Medical Equipment, except as provided in Section 51321(h)(4); 51323, Medical Transportation Services; 51325, Blood and Blood Derivatives; 51326, Nurse Anesthetist Services; 51327, Inpatient Hospital Services; 51328, Outpatient Detoxification Services; 51330, Chronic Hemodialysis; 51330.1, Renal Homotransplantation; 51331, Hospital Outpatient Department and Organized Outpatient Clinic Services; 51337, Home Health Agency Services; 51340, Early and Periodic Screening Services; and 51341, Short-Doyle/Medi-Cal Provider Services.

(2) Other equipment and supplies for which prior authorizations have been granted to other providers by the Medi-Cal consultant and which are therefore separately billed by other providers of services.

(3) Personal care items and services for which a personal and incidental allowance is provided.

NOTE: Authority cited: Section 14124.5, Welfare and Institutions Code; and Section 208.4, Health and Safety Code. Reference: Section 14132, Welfare and Institutions Code; and Section 1250, Health and Safety Code.

HISTORY

1. Amendment filed 3-29-84 as an emergency; designated effective 4-1-84 (Register 84, No. 15). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7-30-84. For prior history, see Registers 84, No. 2; 82, No. 31 and 79, No. 9.
2. Emergency language filed 3-29-84 repealed by operation of Government Code Section 11346.1(f) (Register 85, No. 19).
3. Amendment filed by the Department of Health Services with the Secretary of State on 8-1-84 as an emergency; effective upon filing. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 85, No. 19).
4. Certificate of Compliance including amendment of subsection (b)(1) filed by the Department of Health Services with the Secretary of State on 11-28-84. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 85, No. 25).

§ 51165.1. Intermediate Care Facility Services for the Developmentally Disabled Habilitative.

Intermediate care facility services for the developmentally disabled habilitative means those services provided pursuant to Sections 76853 through 76906 of Title 22 of the California Administrative Code. Included are services of the interdisciplinary professional staff/team in providing case conference review of clients' developmental needs, developing and implementing programs and providing specific training and expertise to the program staff who implement the individual service plans.

NOTE: Authority cited. Section 14124.5, Welfare and Institutions Code; and Sections 208.3, 208.4 and 1267.7, Health and Safety Code. Reference: Section 14132, Welfare and Institutions Code; and Section 1250, Health and Safety Code.

HISTORY

1. New section filed by the Department of Health Services with the Secretary of State on 8-1-84 as an emergency; effective upon filing. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 85, No. 19).
2. Certificate of Compliance filed by the Department of Health Services with the Secretary of State on 11-28-84. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 85, No. 25).

§ 51165.2. Intermediate Care Facility Services for the Developmentally Disabled—Nursing.

Intermediate care facility services for the developmentally disabled-nursing means those services provided pursuant to Sections 73856 through 73907, Title 22, California Code of Regulations.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Sections 208, 208.3, 208.4, 1250.1 and 1275.3, Health and Safety Code. Reference: Sections 1250.1 and 1275.3, Health and Safety Code.

HISTORY

1. New section refiled by the Department of Health Services with the Secretary of State on 5-30-89 as an emergency pursuant to Health and Safety Code Section 1275.3; operative 5-30-89. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 89, No. 23). For prior history, see Register 89, No. 1.
2. Certificate of Compliance as to 5-30-89 order including amendment transmitted to OAL 9-27-89 and filed 10-26-89 (Register 89, No. 44).

§ 51170. Nonphysician Medical Practitioner.

"Nonphysician medical practitioner" means a nurse midwife, physician's assistant, or nurse practitioner who provides primary care.

NOTE: Authority cited: Sections 14053, 14105, 14124.5 and 14132, Welfare and Institutions Code. Reference: Article 12.5 of Chapter 5, Articles 2 and 2.5 of Chapter 6, and Chapter 7.7, Business and Professions Code.

HISTORY

1. New section filed 8-1-78 as an emergency; effective upon filing (Register 78, No. 31).
2. Certificate of Compliance filed 8-9-78 (Register 78, No. 31).

§ 51170.1. Physician's Assistant.

(a) "Physician's assistant" means a person whom the California Board of Medical Quality Assurance has currently:

(1) Certified as a primary health care, women's health care or emergency care physician's assistant.

(2) Approved to perform direct patient care services under the supervision of a primary care physician approved by the Board.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14059 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 8-1-78 as an emergency; effective upon filing (Register 78, No. 31).
2. Certificate of Compliance filed 8-9-78 (Register 78, No. 31).
3. Change without regulatory effect of NOTE (Register 86, No. 49).

§ 51170.2. Nurse Midwife.

"Nurse midwife" means a person who is licensed as a registered nurse and who is currently certified as a nurse midwife by the California Board of Registered Nursing.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14059 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 8-1-78 as an emergency; effective upon filing (Register 78, No. 31).
2. Certificate of Compliance filed 8-9-78 (Register 78, No. 31).
3. Change without regulatory effect of NOTE (Register 86, No. 49).

§ 51170.3. Nurse Practitioner.

(a) "Nurse practitioner" means a licensed registered nurse:

(1) Who is certified by the Board of Registered Nursing as a nurse practitioner.

(2) Whose practice is predominantly that of primary care.

(b) "Certified family nurse practitioner" means a nurse practitioner, as defined in (a), who is authorized or permitted by the Board of Registered Nursing to hold oneself out as a family nurse practitioner and is currently practicing as such.

(c) "Certified pediatric nurse practitioner" means a nurse practitioner, as defined in (a), who is authorized or permitted by the Board of Registered Nursing to hold oneself out as a pediatric nurse practitioner and is currently practicing as such.

NOTE: Authority cited: Sections 14105, 14124.5 and 14132.41, Welfare and Institutions Code. Reference: Sections 14059, 14132 and 14132.41, Welfare and Institutions Code; and Sections 2834, 2835 and 2836, Business and Professions Code.

HISTORY

1. New section filed 8-1-78 as an emergency; effective upon filing (Register 78, No. 31).
2. Certificate of Compliance filed 8-9-78 (Register 78, No. 31).
3. Change without regulatory effect of NOTE (Register 86, No. 49).
4. Amendment of subsection (a)(1) and NOTE and new subsections (b) and (c) filed 5-3-93 as an emergency; operative 5-3-93 (Register 93, No. 19). A Certificate of Compliance must be transmitted to OAL 8-31-93 or emergency language will be repealed by operation of law on the following day.
5. Reinstatement of section as it existed prior to emergency amendment filed 5-3-93 by operation of Government Code section 11346.1(f) (Register 93, No. 44).
6. Amendment of subsection (a)(1) and NOTE and new subsections (b) and (c) refiled 10-27-93 as an emergency; operative 10-27-93 (Register 93, No. 44). A Certificate of Compliance must be transmitted to OAL by 2-25-94 or emergency language will be repealed by operation of law on the following day.

7. Certificate of Compliance as to 10–27–93 order including amendment of NOTE transmitted to OAL 10–18–93 and filed 12–2–93 (Register 93, No. 49).

§ 51170.5. Primary Care.

(a) "Primary care" means health professional services provided in a continuing relationship established with an individual or family group in order to provide:

(1) Surveillance of health needs.

(2) Access to comprehensive health care.

(3) Referral to other health professionals.

(4) Health counseling and patient education.

(b) Primary care is generally provided by those health professionals, including nonphysician medical practitioners, whose practice is predominantly that of general medicine, family practice, internal medicine, pediatrics, obstetrics or gynecology.

NOTE: Authority cited: Sections 14053, 14105, 14124.5 and 14132, Welfare and Institutions Code. Reference: Article 12.5 of Chapter 5, Articles 2 and 2.5 of Chapter 6, and Chapter 7.7, Business and Professions Code.

HISTORY

1. New section filed 8–1–78 as an emergency; effective upon filing (Register 78, No. 31).
2. Certificate of Compliance filed 8–9–78 (Register 78, No. 31).

§ 51171. Physician–Practitioner Interface.

"Physician–Practitioner Interface" means the system of collaboration and physician supervision by which medical treatment services provided by physicians and nonphysician medical practitioners are integrated and made consistent with accepted medical practice.

NOTE: Authority cited: Sections 14053, 14105, 14124.5 and 14132, Welfare and Institutions Code. Reference: Article 12.5 of Chapter 5, Articles 2 and 2.5 of Chapter 6 and Chapter 7.7, Business and Professions Code.

HISTORY

1. New section filed 8–1–78 as an emergency; effective upon filing (Register 78, No. 31).
2. Certificate of Compliance filed 8–9–78 (Register 78, No. 31).

§ 51172. Date of Service.

Notwithstanding any other Department regulation, for purposes of billing for prescribed drugs, the date of service means the date a prescription is filled. If the drug has not been received by the beneficiary or the beneficiary's representative within 15 days after the prescription is filled, the pharmacy must reverse the claim and refund the payment to the Department.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14124.1 and 14124.2, Welfare and Institutions Code.

HISTORY

1. New section filed 4–9–80; effective thirtieth day thereafter (Register 80, No. 15).
2. Amendment filed 1–9–95; operative 3–1–95 (Register 95, No. 2).

§ 51173. Acute Administrative Days.

Acute administrative days means those days approved in an acute inpatient facility which provides a higher level of medical care than that currently needed by the patient.

NOTE: Authority cited: Section 14105(a), Welfare and Institutions Code. Reference: Section 14105(a), Welfare and Institutions Code.

HISTORY

1. New section filed 4–28–82; designated effective 6–1–82 (Register 82, No. 18).

§ 51173.1. In–Home Medical Care and Nursing Facility Waiver Services.

"In–home medical care waiver services and nursing facility waiver services" means those medical services provided in a beneficiary's place of residence to beneficiaries who would otherwise require acute hospital or nursing facility inpatient care for at least 90 consecutive days. Such services shall be provided by organizations or individuals approved by the Department to provide such services. For purposes of in–home medical care waiver services and nursing facility waiver services, the beneficiary's place of residence may include congregate living situations or facilities licensed as congregate living health facilities, if the home setting is not medically appropriate or available. For the purpose of providing in–home medical care services, congregate living situations do not include community care facilities licensed pursuant to Section 1500, Health and Safety Code, except that in–home medical care waiver and nursing facility waiver services may be provided to ventilator–dependent children residing in foster care homes in accordance with Section 1507.5, Health and Safety Code.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14114 and 14132, Welfare and Institutions Code; and Section 1507.5, Health and Safety Code.

HISTORY

1. New section filed 9–1–82 as an emergency; effective upon filing (Register 82, No. 37). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12–30–82.
2. Certificate of Compliance transmitted to OAL 12–30–82 and filed 2–2–83 (Register 83, No. 6).
3. Amendment filed 6–18–87; operative 7–18–87 (Register 87, No. 25).
4. Amendment of section heading, text and NOTE filed 10–20–94; operative 10–20–94 (Register 94, No. 42).
5. Editorial correction of HISTORY 4 (Register 95, No. 14).

§ 51174. Paramedic Ambulance Services.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 4–20–82 as an emergency; effective upon filing (Register 82, No. 18).
2. Order of Repeal of 4–20–82 emergency order filed 4–29–82 by OAL pursuant to Government Code Section 11349.6 (Register 82, No. 18).
3. New section filed 7–6–82 as an emergency; effective upon filing (Register 82, No. 28). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 11–3–82.
4. Certificate of Compliance as to 7–6–82 order transmitted to OAL 11–3–82 and filed 12–3–82 (Register 82, No. 49).
5. Repealer filed 8–9–85; effective thirtieth day thereafter (Register 85, No. 32).

§ 51175. Nurse Midwife Services.

Nurse midwife services means services provided by nurse midwives, acting within the scope of their practice.

NOTE: Authority cited: Section 14124.5, Welfare Institutions Code. Reference: Section 14132.4, Welfare and Institutions Code.

HISTORY

1. New section filed 12–21–83; effective thirtieth day thereafter (Register 83, No. 52).

§ 51176. Home and Community–Based Waiver Services.

(a) Home and community–based waiver services which are permitted and defined under appropriate federal waiver are those services available to individuals in order to avoid institutionalization. Federal waivers as used in this chapter in reference to home and community–based services are embodied in the following:

(1) Waiver for service to the developmentally disabled effective October 1, 1992 and as periodically amended and/or renewed;

(2) Waiver for services to the elderly effective July 1, 1987 and as periodically amended and/or renewed;

(3) In–Home Medical Care Services Waiver, effective July 1, 1987 and as periodically amended and/or renewed;

(4) Skilled Nursing Facility Level of Care Waiver, effective July 1, 1987 and as periodically amended and/or renewed;

(5) Model Waiver, effective July 1, 1988 and as periodically amended and/or renewed;

(6) Waiver for People with AIDS and Related Conditions, effective January 1, 1989 and as periodically amended and/or renewed; and

(7) Nursing Facility Waiver Services.

(b) Home and community–based services may include the following:

(1) Case Management

(2) Home–maker

(3) Home Health Aide

(4) Personal Care

(5) Habilitation

(6) Respite Care

(7) Day Treatment

(8) Other services as determined necessary by the Department to accomplish the objectives of the program.

EDITORIAL NOTE: The approved waivers are available for review at Department of Health Services, Chief, Alternative Services Unit, Medi-Cal Benefits Branch, 714 P Street, Sacramento, CA 95814.

NOTE: Authority cited: Section 14124.5, Welfare and Institutions Code; and Statutes of 1982, Chapter 1594, Section 87. Reference: Sections 14114 and 14132(s), Welfare and Institutions Code.

HISTORY

1. New section filed 2–25–83 as an emergency; effective upon filing (Register 83, No. 10). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed 6–25–83.
2. Certificate of Compliance including editorial correction transmitted to OAL 6–22–83 and filed 7–27–83 (Register 83, No. 31).
3. Amendment of section heading, subsections (a)–(a)(1), repealer of subsection (a)(2), redesignation and amendment of former subsection (a)(3), new subsections (a)(3)–(7) and amendment of EDITORIAL NOTE filed 10–20–94; operative 10–20–94 (Register 94, No. 42).
4. Editorial correction of HISTORY 3 (Register 95, No. 14).

§ 51177. Swing Bed Services.

Swing bed services are skilled nursing facility services as defined in Section 51123 which are provided by a swing bed facility.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 1339.5, 1339.7, 1339.8, 1339.9, 1339.15 and 1339.19, Health and Safety Code.

HISTORY

1. New section filed 1–17–86; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 86, No. 3).

§ 51178. Swing Bed Facility.

Swing bed facility means a hospital as defined in Section 51109 which meets the standards for swing bed facility participation specified in Section 51247.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 1339.3, 1339.5, 1339.9 and 1339.15, Health and Safety Code.

HISTORY

1. New section filed 1–17–86; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 86, No. 3).

§ 51179. Comprehensive Perinatal Services.

"Comprehensive perinatal services" means obstetrical, psychosocial, nutrition, and health education services, and related case coordination provided by or under the personal supervision of a physician during pregnancy and 60 days following delivery.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14053, 14132 and 14134.5, Welfare and Institutions Code.

HISTORY

1. New section filed 2–17–87 as an emergency; effective upon filing (Register 87, No. 8). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6–17–87.
2. New section refiled as an emergency 6–5–87; operative 6–17–87 (Register 87, No. 25). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–15–87.
3. Certificate of Compliance including amendment filed 9–17–87 (Register 87, No. 38).

§ 51179.1. Comprehensive Perinatal Provider.

"Comprehensive perinatal provider" means any general practice physician, family practice physician, obstetrician/gynecologist, pediatrician, a group, any of whose members are one of the above–named physicians, or any preferred provider organization, organized outpatient clinic, or any other clinic holding a valid Medi–Cal provider number, approved by the Department to provide comprehensive perinatal services.

NOTE: Authority cited: Section 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14053, 14132 and 14134.5, Welfare and Institutions Code.

HISTORY

1. New section filed 2–17–87 as an emergency; effective upon filing (Register 87, No. 8). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6–17–87.
2. New section refiled as an emergency 6–5–87; operative 6–17–87 (Register 87, No. 25). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–15–87.
3. Certificate of Compliance filed 9–17–87 (Register 87, No. 38).

§ 51179.2. Comprehensive Perinatal Nutrition Services.

"Comprehensive perinatal nutrition services" means direct patient care nutrition services provided by any qualified professional as specified in Section 51179.7, pursuant to protocols as defined in Section 51179.10.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14053, 14132 and 14134.5, Welfare and Institutions Code.

HISTORY

1. New section filed 2–17–87 as an emergency; effective upon filing (Register 87, No. 8). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6–17–87.
2. New section refiled 6–5–87 as an emergency; operative 6–17–87 (Register 87,No. 25). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–15–87.
3. Certificate of Compliance including amendment filed 9–17–87 (Register 87, No. 38).

§ 51179.3. Comprehensive Perinatal Psychosocial Services.

"Comprehensive perinatal psychosocial services" means direct patient care psychosocial services provided by any qualified professional as specified in Section 51179.7, pursuant to protocols as defined in Section 51179.10.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14053, 14132 and 14134.5, Welfare and Institutions Code.

HISTORY

1. New section filed 2–17–87 as an emergency; effective upon filing (Register 87, No. 8). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6–17–87.
2. New section refiled 6–5–87 as an emergency; operative 6–17–87 (Register 87, No. 25). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–15–87.
3. Certificate of Compliance including amendment filed 9–17–87 (Register 87, No. 38).

§ 51179.4. Comprehensive Perinatal Health Education Services.

"Comprehensive perinatal health education services" means direct patient care health education services provided by any qualified professional as specified in Section 51179.7, pursuant to protocols as defined in Section 51179.10.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14053, 14132 and 14134.5, Welfare and Institutions Code.

HISTORY

1. New section filed 2–17–87 as an emergency; effective upon filing (Register 87, No. 8). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6–17–87.
2. New section refiled 6–5–87 as an emergency; operative 6–17–87 (Register 87, No. 25). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–15–87.
3. Certificate of Compliance including amendment filed 9–17–87 (Register 87, No. 38).

§ 51179.5. Personal Supervision.

"Personal supervision" means evaluation, in accordance with protocols, by a licensed physician, of services performed by others through direct communication, either in person or through electronic means.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14053, 14132 and 14134.5, Welfare and Institutions Code.

HISTORY

1. New section filed 2–17–87 as an emergency; effective upon filing (Register 87, No. 8). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6–17–87.
2. New section refiled 6–5–87 as an emergency; operative 6–17–87 (Register 87, No. 25). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–15–87.
3. Certificate of Compliance including amendment filed 9–17–87 (Register 87, No. 38).

§ 51179.6. Case Coordination.

"Case coordination" means organizing the provision of comprehensive perinatal services, and includes, but is not limited to, supervision of all aspects of patient care including antepartum, intrapartum, and postpartum.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14053, 14132 and 14134.5, Welfare and Institutions Code.

HISTORY

1. New section filed 2–17–87 as an emergency; effective upon filing (Register 87, No. 8). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6–17–87.
2. New section filed 6–5–87 as an emergency; operative 6–17–87 (Register 87, No. 25). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–15–87.
3. Certificate of Compliance filed 9–17–87 (Register 87, No. 38).

§ 51179.7. Comprehensive Perinatal Practitioner.

(a) "Comprehensive Perinatal Practitioner" means any one of the following:

(1) A physician who is either:

(A) A general practice physician, or

(B) A family practice physician, or

(C) A pediatrician, or

(D) An obstetrician–gynecologist.

(2) A Certified Nurse Midwife as defined in Section 51170.2.

(3) A Registered Nurse who is licensed as such by the Board of Registered Nursing and who has one year experience in the field of maternal and child health.

(4) A Nurse Practitioner as defined in Section 51170.3.

(5) A Physician's Assistant as defined in Section 51170.1.

(6) A social worker who either:

(A) Holds a Master's Degree or higher in social work or social welfare from a college or university with a Social Work Degree program accredited by the Council on Social Work Education and who has one year of experience in the field of Maternal and Child Health, or

(B) Holds a Master's Degree in psychology or Marriage, Family and Child counseling and has one year of experience in the field of Maternal and Child Health, or

(C) Holds a Baccalaureate Degree in social work or social welfare from a college or university with a Social Work Degree program accredited by the Council on Social Work Education and who has one year experience in the field of Maternal and Child Health.

(7) A health educator who either has:

(A) A Master's Degree (or higher) in Community or Public Health Education from a program accredited by the Council on Education for Public Health and who has one year of experience in the field of Maternal and Child Health, or

(B) A Baccalaureate Degree with a major in Community or Public Health Education and who has one year of experience in the field of Maternal and Child Health.

(8) A childbirth educator who is:

(A) Licensed as a Registered Nurse by the Board of Registered Nursing and has one year experience in a program which complies with the "Guidelines for Childbirth Education" (last published in 1981), herein incorporated by reference in its entirety and available from the American College of Obstetricians and Gynecologists, 600 Maryland Avenue, South West, Suite 300 East, Washington, D.C., 20024–2588 or

(B) A Certified Childbirth Educator who has completed a training program and is currently certified to teach that method of childbirth education by the American Society for Psychoprophylaxis in Obstetrics, or Bradley, or the International Childbirth Education Association.

(9) A dietitian who is registered, or is eligible to be registered by the Commission on Dietetic Registration, the credentialing agency of the American Dietetic Association, with one year of experience in the field of perinatal nutrition.

(10) A comprehensive perinatal health worker who:

(A) Is at least 18 years of age, is a high school graduate or equivalent, and has at least one year of full–time paid practical experience in providing perinatal care;

(B) Provides services in a clinic that is either licensed or exempt from licensure under Section 1200 et seq. and 1250 et seq. of the Health and

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Safety Code, under the direct supervision of a comprehensive perinatal practitioner as defined in Section 51179.7(a)(1).

(11) A licensed vocational nurse who is licensed under Section 2516 of the Business and Professions Code and who has one year of experience in the field of Maternal and Child Health.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14053, 14132 and 14134.5, Welfare and Institutions Code.

HISTORY

1. New section filed 2–17–87 as an emergency; effective upon filing (Register 87, No. 8). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6–17–87.
2. New section refiled 6–5–87 as an emergency; operative 6–17–87 (Register 87, No. 25). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–15–87.
3. Certificate of Compliance including amendment filed 9–17–87 (Register 87, No. 38).

§ 51179.8. Individualized Care Plan.

"Individualized Care Plan" means a document developed by a comprehensive perinatal practitioner(s) in consultation with the patient. The plan consists of four components; obstetrical, nutritional, health education, and psychosocial. Each component includes identification of risk conditions, prioritization of needs, proposed interventions including methods, timeframes, and outcome objectives, proposed referrals and staff persons' respective responsibilities, based on the results of assessments.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14053, 14132 and 14134.5, Welfare and Institutions Code.

HISTORY

1. New section filed 2–17–87 as an emergency; effective upon filing (Register 87, No. 8). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6–17–87.
2. New section refiled 6–5–87 as an emergency; operative 6–17–87 (Register 87, No. 25). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–15–87.
3. Certificate of Compliance including repealer of former Section 51179.8, and renumbering and amendment of Section 51179.9 to Section 51179.8 filed 9–17–87 (Register 87, No. 38).

§ 51179.9. Protocol.

"Protocol" means written procedures for providing psychosocial, nutrition, and health education services and related case coordination. Protocols shall be approved by the Comprehensive Perinatal Provider as defined in Section 51179.7(a)(1) and the Comprehensive Perinatal Practitioners as defined in Sections 51179.7(a)(6)() or 51179.7(a)(6)(B), and Section 51179.7(a)(7)(A) and Section 51179.7(a)(9). Protocols shall be developed, approved, and adopted within six months of the effective date of provider approval as a Comprehensive Perinatal Provider.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14053, 14132 and 14134.5, Welfare and Institutions Code.

HISTORY

1. New section filed 2–17–87 as an emergency; effective upon filing (Register 87, No. 8). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6–17–87.
2. New section refiled 6–5–87 as an emergency; operative 6–17–87 (Register 87, No. 25). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–15–87.
3. Certificate of Compliance including renumbering of former Section 51179.9 to Section 51179.8, and renumbering and amendment of Section 51179.10 to Section 51179.9 filed 9–17–87 (Register 87, No. 38).

§ 51179.10. Protocol.

NOTE: Authority cited: Sections 1725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14053, 14132 and 14134.5, Welfare and Institutions Code.

HISTORY

1. New section filed 2–17–87 as an emergency; effective upon filing (Register 87, No. 8). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6–17–87.
2. New section refiled 6–5–87 as an emergency; operative 6–17–87 (Register 87, No. 25). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–15–87.
3. Certificate of Compliance including renumbering and amendment of Section 51179.10 to Section 51179.9 filed 9–17–87 (Register 87, No. 38).

§ 51180. Hospice Care.

(a) Hospice care means the provision of palliative and supportive items and services described below to a terminally ill individual as defined in Section 51180.2, who has voluntarily elected to receive such care in lieu of curative treatment related to the terminal condition, by a hospice provider or by others under arrangements made by a hospice provider:

(1) Nursing sevices;

(2) Physical or occupational therapy, or speech–language pathology;

(3) Medical social services under the direction of a physician;

(4) Home health aide and homemaker services;

(5) Medical supplies and appliances;

(6) Drugs and biologicals;

(7) Physician services;

(8) Short–term inpatient care;

(9) Counseling, including bereavement, dietary and spiritual counseling;

(10) Any other item or service for which payment may otherwise be made under the Medi–Cal program.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14053 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 10–27–87 as an emergency; operative 10–27–87 (Register 87, No. 44). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–24–88.
2. Certificate of Compliance transmitted to OAL 2–24–88 and filed 3–22–88 (Register 88, No. 15).
3. Amendment of subsections (a)(2) and (a)(9) and new subsection (a)(10) filed 3–27–2000 as an emergency; operative 3–30–2000 (Register 2000, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–28–2000 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 3–27–2000 order transmitted to OAL 7–17–2000 and filed 8–28–2000 (Register 2000, No. 35).

§ 51180.1. Hospice.

(a) Hospice means a public agency or private organization, or a subdivision thereof, or a facility which:

(1) Is primarily engaged in providing the items and services described in Section 51180 to terminally ill individuals.

(2) Makes such services available as needed on a 24–hour basis, and

(3) Provides bereavement counseling for the immediate family and significant others.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14053 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 10–27–87 as an emergency; operative 10–27–87 (Register 87, No. 44). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–24–88.
2. Certificate of Compliance transmitted to OAL 2–24–88 and filed 3–22–88 (Register 88, No. 15).

§ 51180.2. Terminally Ill.

Terminally ill means that an individual's medical prognosis as certified by a physician is that his or her life expectancy is six months or less.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14053 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 10–27–87 as an emergency; operative 10–27–87 (Register 87, No. 44). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–24–88.
2. Certificate of Compliance transmitted to OAL 2–24–88 and filed 3–22–88 (Register 88, No. 15).

§ 51180.3. Routine Home Care.

Routine home care means care provided in the individual's residence which is not continuous care.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14053 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 10–27–87 as an emergency; operative 10–27–87 (Register 87, No. 44). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–24–88.
2. Certificate of Compliance transmitted to OAL 2–24–88 and filed 3–22–88 (Register 88, No. 15).

§ 51180.4. Continuous Home Care.

Continuous home care means care provided in the individual's residence, which consists predominately of skilled nursing care, for a minimum of eight hours in a 24–hour period, for the palliation or management of acute medical symptoms and/or when the family or caregiver is physically or emotionally unable to manage the patient's care.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14053 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 10–27–87 as an emergency; operative 10–27–87 (Register 87, No. 44). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–24–88.
2. Certificate of Compliance including amendment transmitted to OAL 2–24–88 and filed 3–22–88 (Register 88, No. 15).

§ 51180.5. Respite Care.

Respite care means short–term inpatient care in an acute hospital, skilled nursing facility/Level B, intermediate care facility/Level A, or a hospice facility which is organized to provide inpatient care directly, when necessary to relieve family members or others primarily caring for the individual.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14053 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 10–27–87 as an emergency; operative 10–27–87 (Register 87, No. 44). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–24–88.
2. Certificate of Compliance transmitted to OAL 2–24–88 and filed 3–22–88 (Register 88, No. 15).
3. Amendment filed 3–27–2000 as an emergency; operative 3–30–2000 (Register 2000, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–28–2000 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 3–27–2000 order transmitted to OAL 7–17–2000 and filed 8–28–2000 (Register 2000, No. 35).

§ 51180.6. General Inpatient Care.

General inpatient care means services in an acute hospital, skilled nursing facility/Level B, or a hospice facility which is organized to provide inpatient care directly, for the purpose of pain control or acute or chronic symptom management.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14053 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 10–27–87 as an emergency; operative 10–27–87 (Register 87, No. 44). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–24–88.
2. Certificate of Compliance transmitted to OAL 2–24–88 and filed 3–22–88 (Register 88, No. 15).
3. Editorial correction of HISTORY 2 (Register 95, No. 45).
4. Amendment filed 3–27–2000 as an emergency; operative 3–30–2000 (Register 2000, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–28–2000 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 3–27–2000 order transmitted to OAL 7–17–2000 and filed 8–28–2000 (Register 2000, No. 35).

§ 51180.7. Representative.

Representative means a person who, because of a terminally ill individual's mental or physical incapacity, is lawfully authorized in accordance with the procedures set forth in Civil Code Section 2500 et seq. or otherwise to execute or revoke an election for hospice care or terminate medical care on behalf of the individual.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14053 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 10–27–87 as an emergency; operative 10–27–87 (Register 87, No. 44). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–24–88.
2. Certificate of Compliance transmitted to OAL 2–24–88 and filed 3–22–88 (Register 88, No. 15).

§ 51181. Personal Care Services Provider.

A personal care services provider is that individual, county employee, or county contracted agency authorized by the Department of Health Services to provide personal care services to eligible beneficiaries. An individual provider shall not be a family member, which for purposes of this section means the parent of a minor child or a spouse.

NOTE: Authority cited: Section 14132.95, Welfare and Institutions Code; Section 8, Chapter 939, Statutes of 1922; Section 3, Chapter 7, Statutes of 1993. Reference: Section 14132.95, Welfare and Institutions Code; Section 1396d(a)(7) of Title 42, of the United States Code; Article 7 (commencing with Section 12300) of Part 3 of Division 9 of the Welfare and Institutions Code; Section 440.170(f) of Title 42 of the Code of Federal Regulations.

HISTORY

1. New section filed 4–14–93 as an emergency; operative 4–14–93. Submitted to OAL for printing only pursuant to section 8, AB 1773 (Chapter 939, Statutes of 1992) (Register 93, No. 16).

§ 51182. Personal Representative.

For purposes of Section 51204 and 51350, "personal representative" means the duly appointed guardian or conservator of the individual or a person representing the individual provided that it can be established with reasonable certainty through forms, documents or correspondence that such person is authorized to represent the individual.

NOTE: Authority cited: Section 14132.95, Welfare and Institutions Code; Section 8, Chapter 939, Statutes of 1922; Section 3, Chapter 7, Statutes of 1993. Reference: Section 14132.95, Welfare and Institutions Code; Section 1396d(a)(7) of Title 42, of the United States Code; Article 7 (commencing with Section 12300) of Part 3 of Division 9 of the Welfare and Institutions Code; Section 440.170(f) of Title 42 of the Code of Federal Regulations.

HISTORY

1. New section filed 4–14–93 as an emergency; operative 4–14–93. Submitted to OAL for printing only pursuant to section 8, AB 1773 (Chapter 939, Statutes of 1992) (Register 93, No. 16).

§ 51183. Personal Care Services.

Personal care services include (a) personal care services and (b) ancillary services prescribed in accordance with a plan of treatment.

(a) Personal care services include:

(1) Assisting with ambulation, including walking or moving around (i.e., wheelchair) inside the home, changing locations in a room, moving from room to room to gain access for the purpose of engaging in other activities. Ambulation does not include movement solely for the purpose of exercise.

(2) Bathing and grooming including the cleaning the body using a tub, shower or sponge bath, including getting a basin of water, managing faucets, getting in and out of tub, or shower, reaching head and body parts for soaping, rising, and drying. Grooming includes hair combing and brushing, shampooing, oral hygiene, shaving and fingernail and toenail care.

(3) Dressing includes putting on and taking off, fastening and unfastening garments and undergarments, and special devices such as back or leg braces, corsets, elastic stockings/garments and artificial limbs or splints.

(4) Bowel, bladder and menstrual care including assisting the person on and off toilet or commode and emptying commode, managing clothing and wiping and cleaning body after toileting, assistance with using and emptying bedpans, ostomy and/or catheter receptacles and urinals, application of diapers and disposable barrier pads.

(5) Repositioning, transfer skin care, and range of motion exercises.

(A) Includes moving from one sitting or lying position to another sitting or lying position; e.g., from bed to or from a wheelchair, chair, sofa, and the like, coming to a standing position and/or rubbing skin and repositing to promote circulation and prevent skin breakdown. However, if decubiti have developed, the need for skin and wound care is a paramedical service.

(B) Such exercises shall include the carrying out of maintenance programs, i.e., the performance of the repetitive exercises required to maintain function, improve gait, maintain strength, or endurance; passive exercises to maintain range of motion in paralyzed extremities; and assistive walking.

(6) Feeding, hydration assistance including reaching for, picking up, grasping utensil and cup; getting food on utensil, bringing food, utensil, cup to mouth, manipulating food on plate. Cleaning face and hands as necessary following meal.

(7) Assistance with self administration of medications. Assistance with self–administration of medications consists of reminding the beneficiary to take prescribed and/or over–the–counter medications when they are to be taken and setting up Medi–sets.

(8) Respiration limited to nonmedical services such as assistance with self–administration of oxygen, assistance in the use of a nebulizer, and cleaning oxygen equipment.

(9) Paramedical services are defined in Welfare and Institutions Code Section 12300.1 as follows:

(A) Paramedical services include the administration of medications, puncturing the skin or inserting a medical device into a body orifice, activities requiring sterile procedures, or other activities requiring judgment based on training given by a licensed health care professional.

(B) Paramedical services are activities which persons could perform for themselves but for their functional limitations.

(C) Paramedical services are activities which, due to the beneficiary's physical or mental condition, are necessary to maintain the beneficiary's health.

(b) Ancillary services are subject to time per task guidelines when established in Sections 30–758 and 30–763.235(b) and 30–763.24 of the Department of Social Services' Manual of Policies and Procedures and are limited to the following:

(1) Domestic services are limited to the following:

(A) Sweeping, vacuuming, washing and waxing of floor surfaces.

(B) Washing kitchen counters and sinks.

(C) Storing food and supplies.

(D) Taking out the garbage.

(E) Dusting and picking up.

(F) Cleaning oven and stove.

(G) Cleaning and defrosting refrigerator.

(H) Bringing in fuel for heating or cooking purposes from a fuel bin in the yard.

(I) Changing bed linen.

(J) Miscellaneous domestic services (e.g., changing light bulbs and wheelchair cleaning, and changing and recharging wheelchair batteries) when the service is identified and documented by the case worker as necessary for the beneficiary to remain safely in his/her home.

(2) Laundry services include washing and drying laundry, and is limited to sorting, manipulating soap containers, reaching into machines, handling wet laundry, operating machine controls, hanging laundry to dry if dryer is not routinely used, mending, or ironing, folding, and storing clothing on shelves, in closets or in drawers.

(3) Reasonable food shopping and errands limited to the nearest available stores or other facilities consistent with the beneficiary's economy and needs; compiling a list, bending, reaching, and lifting, managing cart or basket, identifying items needed, putting items away, phoning in and picking up prescriptions, and buying clothing.

(4) Meal preparation and cleanup including planning menus; e.g., washing, peeling and slicing vegetables; opening packages, cans and bags, mixing ingredients; lifting pots and pans; reheating food, cooking, and safely operating stove, setting the table and serving the meals; cutting the food into bite–size pieces; washing and drying dishes, and putting them away.

(5) Assistance by the provider is available for accompaniment when the beneficiary's presence is required at the destination and such assistance is necessary to accomplish the travel limited to:

(A) Accompaniment to and from appointments with physicians, dentists and other health practitioners. This accompaniment shall be authorized only after staff of the designated county department has determined that no other Medi–Cal service will provide transportation in the specific case.

(B) Accompaniment to the site where alternative resources provide in–home supportive services to the beneficiary in lieu of IHSS. This accompaniment shall be authorized only after staff of the designated county department have determined that neither accompaniment nor transportation is available by the program.

(6) Heavy Cleaning which involves thorough cleaning of the home to remove hazardous debris or dirt.

(7) Yard hazard abatement which is light work in the yard which may be authorized for:

(A) removal of high grass or weeds and rubbish when this constitutes a fire hazard

(B) removal of ice, snow or other hazardous substances from entrances and essential walkways when access to the home is hazardous.

(c) Ancillary services may not be provided separately from personal care services listed in section (a) above.

NOTE: Authority cited: Section 14132.95, Welfare and Institutions Code; Section 8, Chapter 939, Statutes of 1922; Section 3, Chapter 7, Statutes of 1993. Reference: Section 14132.95, Welfare and Institutions Code; Section 1396d(a)(7) of Title 42, of the United States Code; Article 7 (commencing with Section 12300) of Part 3 of Division 9 of the Welfare and Institutions Code; Section 440.170(f) of Title 42 of the Code of Federal Regulations.

HISTORY

1. New section filed 4–14–93 as an emergency; operative 4–14–93. Submitted to OAL for printing only pursuant to section 8, AB 1773 (Chapter 939, Statutes of 1992) (Register 93, No. 16).

§ 51184. Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program Definitions.

(a) EPSDT Screening Services means:

(1) An initial, periodic, or additional health assessment of a Medi–Cal eligible individual under 21 years of age provided in accordance with the requirements of the Child Health and Disability Prevention (CHDP) program as set forth in Title 17, Sections 6800 et seq.; or

(2) A health assessment, examination, or evaluation of a Medi–Cal eligible individual under 21 years of age by a licensed health care professional acting within his or her scope of practice, at intervals other than those specified in paragraph (a)(1) to determine the existence of physical or mental illnesses or conditions; or

(3) Any other encounter with a licensed health care professional that results in the determination of the existence of a suspected illness or condition or a change or complication in a condition for a Medi–Cal eligible person under 21 years of age.

(b) EPSDT diagnosis and treatment services means only those services provided to persons under 21 years of age that:

(1) Are identified in section 1396d(r) of title 42 of the United States Code,

(2) Are available under this chapter without regard to the age of the recipient or that are provided to persons under 21 years of age pursuant to any provision of federal Medicaid law other than section 1396d(a)(4)(B) and section 1396a(a)(43) of title 42 of the United States Code, and

(3) Meet the standards and requirements of Sections 51003 and 51303, and any specific requirements applicable to a particular service that are based on the standards and requirements of those sections.

(c) EPSDT supplemental services means health care, diagnostic services, treatment, and other measures, that:

(1) Are identified in Section 1396d(r) of Title 42 of the United States Code.

(2) Are available only to persons under 21 years of age,

(3) Meet any one of the standards of medical necessity as set forth in paragraphs (1), (2), or (3) of Section 51340(e), and

(4) Are not EPSDT diagnosis and treatment services.

(d) EPSDT supplemental services include EPSDT case management services when provided by EPSDT case managers described in paragraph (h)(4).

(e) EPSDT diagnosis and treatment provider means any of the providers listed under Section 51051, other than EPSDT supplemental services providers.

(f) EPSDT Supplemental Services Provider means a person enrolled pursuant to Section 51242 to provide EPSDT supplemental services as defined in subsection (c).

(g) EPSDT case management services means services that will assist EPSDT-eligible individuals in gaining access to needed medical, social, educational, and other services.

(h) EPSDT case manager means:

(1) A targeted case management (TCM) provider under contract with a local governmental agency described in Section 14132.44 of the Welfare and Institutions Code.

(2) Entities and organizations, including Regional Centers, that provide TCM services to persons described in Section 14132.48 of the Welfare and Institutions Code.

(3) A unit within the Department designated by the Director.

(4) A child protection agency, other agency or entity serving children, or an individual provider, that the Department finds qualified by education, training, or experience, and that the Department enrolls pursuant to Section 51242 to provide EPSDT case management services.

(i) For purposes of the EPSDT program, excepting pediatric day health care EPSDT services provided as EPSDT supplemental services, the term "services" is deemed to include supplies, items, or equipment.

(j) EPSDT supplemental services include pediatric day health care EPSDT services when provided by a pediatric day health care facility.

(k) For purposes of pediatric day health care EPSDT services, the following definitions shall apply:

(1) "Pediatric day health care EPSDT services" means services that:

(A) Promote the physical, developmental and psychosocial well-being of individuals eligible for EPSDT services who are medically fragile as defined in Section 1760.2(b) of the Health and Safety Code and who live with their parent, foster parent, or legal guardian.

(B) Provide medically necessary skilled nursing care and therapeutic interventions which include occupational therapy, physical therapy, speech therapy and medical nutrition therapy provided by licensed or registered therapists and furnished in response to the attending physician's orders and in accordance with the individual's plan of treatment. These services do not include respite care pursuant to Section 14132.10(a), of the Welfare and Institutions Code.

(C) Are provided in a day program of less than 24 hours that is individualized and family-centered, with developmentally appropriate activities of play, learning and social interaction designed to optimize the individual's medical status and developmental functioning so that he or she can remain within the family.

(2) "Pediatric day health care facility" means a facility that is licensed pursuant to Section 1760 of the Health and Safety Code. For purposes of providing pediatric day health care EPSDT services, a pediatric day health care facility may also be referred to as the "facility".

(3) "Pharmaceutical services" means medications, including prescription and nonprescription, and total parental nutrition supplied to eligible beneficiaries by licensed nursing personnel and administered upon orders of the attending physician.

(4) "Nutrition services" means a minimum of one meal per day, between meal nourishment, and consultation services by the facility's dietitian.

NOTE: Authority cited: Sections 10725, 14124.5 and 14195, Welfare and Institutions Code; and Sections 100275, 125000 and 125100, Health and Safety Code. Reference: Sections 14059, 14132 and 14132.10, Welfare and Institutions Code; Sections 125000 and 125100, Health and Safety Code; and 42 U.S.C. 1396d(r).

HISTORY

1. New section filed 4-4-94 as an emergency; operative 4-4-94 (Register 94, No. 14). A Certificate of Compliance must be transmitted to OAL by 8-2-94 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 8-1-94 as an emergency; operative 8-1-94 (Register 94, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-29-94 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 10-24-94 as an emergency; operative 10-24-94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2-21-95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 2-22-95; operative 2-22-95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-22-95 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 2-22-95 order including amendment of section transmitted to OAL 3-16-95 and filed 4-27-95 (Register 95, No. 17).
6. Amendment of subsection (i), new subsections (j)-(k)(4) and amendment of NOTE filed 11-10-99 as an emergency; operative 11-10-99 (Register 99, No. 46). A Certificate of Compliance must be transmitted to OAL by 3-9-2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 11-10-99 order, including further amendment of subsection (k)(1)(B) and (k)(4), transmitted to OAL 3-8-2000 and filed 4-19-2000 (Register 2000, No. 16).

§ 51185. Targeted Case Management Services Program Definitions.

(a) "Encounter" means a face-to-face contact or a significant telephone contact in lieu of a face-to-face contact when environmental considerations preclude a face-to-face encounter, for the purpose of rendering one or more targeted case management service components by a case manager. For the target populations specified in Section 50262.7(a)(3)(B), (C) or (D), the encounter may be with persons acting on behalf of the Medi-Cal beneficiary.

(b) "High-risk persons" means those persons who have failed to take advantage of necessary health care services, or do not comply with their medical regimen or who need coordination of multiple medical, social and other services due to the existence of an unstable medical condition in need of stabilization, substance abuse or because they are victims of abuse, neglect, or violence, including, but not limited to, the following individuals:

(1) Women, infants, children and young adults to age 21.

(2) Pregnant women.

(3) Persons with Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome.

(4) Persons with reportable communicable disease.

(5) Persons who are technology dependent. Solely for the purposes of the Targeted Case Management Services program, "technology dependent persons" means those persons who use a medical technology, embodied in a medical device, that compensates for the loss of normal use of a vital body function and require skilled nursing care to avert death or further disability.

(6) Persons with multiple diagnoses who require services from multiple health/social service providers.

(7) Persons who are medically fragile. Solely for the purposes of the Targeted Case Management Services program, "medically fragile persons" means those persons who require ongoing or intermittent medical supervision without which their health status would deteriorate to an acute episode.

(c) "Host county" means the local governmental agency that has been designated by all local governmental agencies participating in the targeted case management program, to be the administrative and fiscal intermediary between the department and all participating local governmental agencies.

(d) "Local Governmental Agency" means a county or chartered city.

(e) "Skilled Professional Medical Personnel" means a physician, dentist, or nurse, or other specialized personnel who has completed a 2-year or longer program leading to an academic degree or certification in a medically-related profession and who performs duties and responsibilities requiring professional medical knowledge and skills, and who is in an employer-employee relationship with the local governmental agency.

(f) "Year", "current year" or "fiscal year" means the period July 1 through June 30.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14132.44, Welfare and Institutions Code. Reference: Section 14132.44, Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–96; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 6, Chapter 305, Statutes of 1995 (Register 96, No. 27).
2. New section refiled 10–29–96 as an emergency; operative 10–29–96 (Register 96, No. 44). Submitted to OAL for printing only pursuant to Section 6, Chapter 305, Statutes of 1995. A Certificate of Compliance must be transmitted to OAL by 2–26–97 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of HISTORY 2 (Register 97, No. 15).
4. Repealed by operation of Government Code section 11346.1(g) (Register 97, No. 15).
5. New section filed 4–10–97; operative 4–10–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

§ 51187. Tuberculosis (TB) Infection.

(a) Tuberculosis (TB) Infection means a condition in which living tubercle bacilli are present in an individual with or without producing active disease.

(b) For the purposes of this program, an individual is considered TB infected if a physician indicates a positive diagnosis or a suspicion of TB infection in his/her diagnosis. A TB infected individual includes, but is not limited to, an individual who:

(1) Has a positive Tuberculin skin test using the Mantoux method and who receives treatment for latent TB infection or active TB;

(2) Has a negative Tuberculin skin test but whose sputum culture or culture from another tissue sample is positive for the Tuberculosis organism;

(3) Has never received a Tuberculin skin test but whose sputum culture or culture from another tissue sample is positive for the Tuberculosis organism;

(4) Has a negative Tuberculin skin test and whose sputum or other tissue culture for TB is not or cannot be obtained, but in the physician's judgement he/she requires and is given TB–related drug and/or surgical therapy;

(5) Is symptomatic with a negative TB skin test who is being treated with a TB drug regimen while awaiting the TB culture results because the physician suspects he/she may have active TB, until such time as the individual's culture turns out to be negative for TB, causing the TB drug regimen to be discontinued.

NOTE: Authority cited: Sections 14005.20, 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14059 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 8–16–95 as an emergency; operative 8–16–95 (Register 95, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–14–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 12–14–95 as an emergency; operative 12–14–95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–12–96 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–8–96 as an emergency; operative 4–8–96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–6–96 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–8–96 order, including amendment of subsection (b) and new subsections (b)(1)–(5), transmitted to OAL 7–30–96 and filed 9–11–96 (Register 96, No. 37).

[The next page is 423.]

§ 51187.1. Tuberculosis (TB) Related Services.

(a) Tuberculosis (TB) Related Services for persons eligible for the TB program pursuant to Section 50268 means outpatient medical services related to the diagnosis and treatment of TB infection.

(1) TB diagnostic services means those outpatient services necessary to confirm the presence of TB infection or active disease.

(2) TB related treatment means all outpatient services necessary for the medical management and follow-up of TB infection and/or active disease, which may include drug therapy, Targeted Case Management pursuant to the requirements of Section 14132.44, Welfare and Institutions Code and directly observed therapy (DOT) when provided by a provider listed under Section 51051, who meets the qualifications specified in Section 51276. DOT means the direct observation of the ingestion of prescribed anti-tuberculosis medications by TB infected persons. DOT includes:

(A) Delivering of prescribed medications;

(B) Assisting with the means to ingest prescribed medications;

(C) Observing the ingestion of prescribed medications;

(D) Monitoring for signs of nonadherence or adverse side effects;

(E) Documenting that prescribed medications have been ingested; and

(F) Reporting compliance and/or other problems.

NOTE: Authority cited: Sections 14005.20, 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14059, 14132 and 14132.44, Welfare and Institutions Code.

HISTORY

1. New section filed 8-16-95 as an emergency; operative 8-16-95 (Register 95, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-14-95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 12-14-95 as an emergency; operative 12-14-95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4-12-96 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4-8-96 as an emergency; operative 4-8-96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8-6-96 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4-8-96 order, including amendment of subsection (a)(2), new subsections (a)(2)(A)-(F), and amendment of NOTE, transmitted to OAL 7-30-96 and filed 9-11-96 (Register 96, No. 37).

§ 51190.1. Local Educational Agency (LEA) Eligible Beneficiary.

For the purposes of this article, a "Local Educational Agency (LEA) eligible beneficiary" means a person eligible for services under Title XIX of the Social Security Act and certified for Medi-Cal who is one of the following:

(a) Under age 22 and enrolled in a school within an LEA in California. Any person who becomes 22 years of age while participating in an Individualized Education Plan or Individualized Family Service Plan may continue his or her participation in the program for the remainder of that current school year; or

(b) A Medi-Cal eligible family member of a student meeting subsection (a) above.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14053 and 14132, Welfare and Institutions Code; and 42 U.S.C. Sections 1396a and 1396d.

HISTORY

1. New section filed 12-22-93 as an emergency; operative 12-22-93 (Register 93, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-22-94 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-22-93 order including amendment of subsections (a) and (b) transmitted to OAL 4-20-94 and filed 6-2-94 (Register 94, No. 22).

§ 51190.2. Local Educational Agency (LEA) Provider.

"Local Educational Agency (LEA) Provider" means a Local Educational Agency (LEA), that meets the definition in Education Code, Section 33509(e), and that meets the Medi-Cal program requirements pursuant to Section 51270(a). LEA Providers may be enrolled retroactively to January 1, 1993.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14053 and 14132, Welfare and Institutions Code; and Section 33509(e), Education Code.

HISTORY

1. New section filed 12-22-93 as an emergency; operative 12-22-93 (Register 93, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-22-94 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-22-93 order transmitted to OAL 4-20-94 and filed 6-2-94 (Register 94, No. 22).

§ 51190.3. Local Educational Agency (LEA) Practitioner.

(a) A "Local Educational Agency (LEA) Practitioner" means an employee or individual under contract to an LEA Provider to furnish LEA Services to LEA eligible beneficiaries. All LEA practitioners except the practitioner identified in (21) below shall provide documented evidence of being licensed, certified, registered, or otherwise credentialed to practice in California as one of the following:

(1) A licensed physician,

(2) A licensed registered nurse, including a registered credentialed school nurse or a certified public health nurse,

(3) A certified nurse practitioner,

(4) A licensed vocational nurse,

(5) A licensed clinical social worker,

(6) A registered dietician,

(7) A licensed physician's assistant,

(8) A licensed psychologist,

(9) A licensed marriage, family and child counselor,

(10) A licensed optometrist,

(11) A licensed speech therapist,

(12) A licensed audiologist,

(13) A credentialed school psychologist,

(14) A credentialed school social worker,

(15) A credentialed school counselor,

(16) A registered school audiometrist,

(17) A credentialed language, speech and hearing specialist,

(18) A licensed physical therapist,

(19) A registered occupational therapist,

(20) A licensed psychiatrist, or

(21) A trained health care aide as specified in Section 51491(g)(1).

(b) Any person who is suspended from participation in the Medi-Cal program may not furnish services as an LEA Practitioner.

(c) An LEA practitioner shall provide services only within his/her appropriate scope of practice.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14053 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 12-22-93 as an emergency; operative 12-22-93 (Register 93, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-22-94 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-22-93 order transmitted to OAL 4-20-94 and filed 6-2-94 (Register 94, No. 22).

§ 51190.4. Local Educational Agency (LEA) Services.

"Local Educational Agency (LEA) Services" means preventive, diagnostic, therapeutic, and rehabilitative services that are:

(a) Listed in Section 51360;

(b) Medically necessary as defined in Welfare and Institutions Code, Section 14059.5;

(c) Provided on an outpatient basis; and

(d) Provided to an LEA eligible beneficiary, as defined in Section 51190.1; by an LEA practitioner, as defined in Section 51190.3; on or after January 1, 1993.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14053, 14059.5 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 12-22-93 as an emergency; operative 12-22-93 (Register 93, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-22-94 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 12–22–93 order including amendment of opening statement transmitted to OAL 4–20–94 and filed 6–2–94 (Register 94, No. 22).

§ 51190.5. Managed Care Plan.

"Managed Care Plan" means an entity contracting with the Department to provide health care services to enrolled Medi–Cal beneficiaries under Chapter 7, commencing with Section 14000 or Chapter 8, commencing with Section 14200 of Division 9, Part 3 of the Welfare and Institutions Code.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14000 et seq., 14053, 14132, 14200 et seq., Welfare and Institutions Code.

HISTORY

1. New section filed 12–22–93 as an emergency; operative 12–22–93 (Register 93, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–22–94 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12–22–93 order including amendment transmitted to OAL 4–20–94 and filed 6–2–94 (Register 94, No. 22).

§ 51191. Licensed Midwife.

"Licensed Midwife" means an individual who holds a current, unrevoked, unsuspended license to practice midwifery under the Licensed Midwifery Practice Act of 1993, as set forth in Business and Professions Code Section 2505, et seq., and the regulations adopted thereunder.

NOTE: Authority cited: Sections 14124.5, Welfare and Institutions Code. Reference: Section 14132.39, Welfare and Institutions Code; and Sections 2505–2521, Business and Professions Code.

HISTORY

1. New section filed 9–3–2004; operative 10–3–2004 (Register 2004, No. 36).

§ 51192. Licensed Midwife Services.

Licensed midwife services means services rendered by a licensed midwife, which are performed in accordance with Section 2507 of the Business and Professions Code, and Section 51356 of this Chapter.

NOTE: Authority cited: Sections 14124.5, Welfare and Institutions Code. Reference: Section 14132.39, Welfare and Institutions Code; and Section 2507, Business and Professions Code.

HISTORY

1. New section filed 9–3–2004; operative 10–3–2004 (Register 2004, No. 36).

Article 3. Standards for Participation

§ 51200. Basic Requirement for Program Participation.

(a) In addition to any other statutory or regulatory conditions for participation in the Medi–Cal program and any federal requirements for participation in Medicaid, as a condition for enrollment, or continued enrollment, an applicant or provider also shall meet the standards specified in this Article, applicable to their provider type, and the requirements specified in Sections 51000.30 through 51000.55. Failure to meet applicable standards for participation shall result in the denial of the applicant's or provider's application for enrollment, or continued enrollment, as specified in Section 51000.50.

(b) Any provider who violates any provision of law or regulation that governs the Medi–Cal program shall be subject to temporary or permanent suspension from the Medi–Cal program, as permitted by Section 14123, Welfare and Institutions (W&I) Code.

(c) All providers shall be subject to temporary suspension, including temporary deactivation of all provider numbers used by the provider to obtain reimbursement from the Medi–Cal program, under any of the following circumstances:

(1) The provider has failed to disclose all information required in federal Medicaid regulations or any other information required by the Department, or has disclosed false information, as specified in Section 14043.2, W&I Code.

(2) The provider is discovered to be under investigation for fraud or abuse, as specified in Section 14043.36.

(3) The provider has failed to remediate discrepancies that are discovered as a result of an unannounced visit to the provider, as specified in Section 14043.7, W&I Code.

(d) All applicants applying for enrollment, or providers applying for continued enrollment, in the Medi–Cal program shall be certified for participation in the Medicare program of the Federal Social Security Act (Title XVIII), if they provide services that are included in the Medicare scope of benefits and if they provide those services to persons who are eligible beneficiaries of the Medicare program.

(e) Any provider who requests the performance of a clinical laboratory test or examination for a Medi–Cal beneficiary, or upon a biological specimen derived from a Medi–Cal beneficiary, shall provide with the request to the clinical laboratory diagnostic information relevant to the test or examination for which the request is made, including the latest International Classification of Diseases, 9th Revision, or the latest published editions or amendments thereto, Clinical Modification (ICD–9–CM) code numbers, to the highest level of specificity indicating medical necessity for all laboratory tests as required under the Medicare program pursuant to 42, U.S.C., Section 1395u(p) and 42, CFR, Section 424.32.

(f) In addition to meeting and complying with all applicable requirements specified in Articles 1, 2, and 3, any place where a provider, as defined in Section 51051(a), renders laboratory or clinical laboratory services as defined in Section 51137.2 and any person performing, supervising, consulting on, or directing such laboratory or clinical laboratory services shall meet and maintain compliance with the requirements of Section 51211.2.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code; and Section 78, Chapter 146, Statutes of 1999. Reference: Sections 14043.1, 14043.36, 14043.75, 14123 and 14132, Welfare and Institutions Code; Sections 101150–101160, Health and Safety Code; and Sections 1200–1327, Business and Professions Code.

HISTORY

1. New section filed 4–30–74; effective thirtieth day thereafter (Register 74, No. 18).
2. Designation of subsection (a), new subsection (b) and NOTE filed 1–20–94 as an emergency; operative 1–20–94 (Register 94, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–20–94 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 1–20–94 order transmitted to OAL 5–19–94 and filed 7–1–94 (Register 94, No. 26).
4. Amendment of subsection (b) and NOTE filed 8–28–97 as an emergency; operative 8–28–97 (Register 97, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–26–97 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–28–98 order transmitted to OAL 12–24–97 and filed 2–9–98 (Register 98, No. 7).
6. Amendment of section and NOTE filed 10–24–2000 as an emergency and submitted to OAL for printing only pursuant to Section 78, Chapter 146, Statutes of 1999; operative 10–24–2000 (Register 2000, No. 43). A Certificate of Compliance must be transmitted to OAL by 4–23–2001 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 6 (Register 2001, No. 14).
8. Amendment of section and NOTE refiled 4–4–2001 as an emergency and submitted to OAL for printing only pursuant to Section 78, Chapter 146, Statutes of 1999; operative 4–4–2001 (Register 2001, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–2–2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 4–4–2001 order, including further amendment of subsection (e), transmitted to OAL 7–31–2001 and filed 9–5–2001 (Register 2001, No. 36).
10. New subsection (g) filed 2–3–2003 as an emergency; operative 2–3–2003 (Register 2003, No. 6). Emergency amendments exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75. Amendments to remain in effect for 180 days pursuant to section 78, chapter 146, Statutes of 1999 (AB 1107). A Certificate of Compliance must be transmitted to OAL by 8–4–2003 or emergency language will be repealed by operation of law on the following day.
11. New subsection (g) refiled 8–5–2003 as an emergency; operative 8–5–2003 (Register 2003, No. 32). Emergency amendments exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75. Amendments to remain in effect for 180 days pursuant to section 78, chapter 146, Statutes of 1999 (AB 1107). A Certificate of Compliance must be transmitted to OAL by 2–2–2004 or emergency language will be repealed by operation of law on the following day.
12. New subsection (g) refiled 2–3–2004 as an emergency; operative 2–3–2004 (Register 2004, No. 6). Emergency amendments exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75. A Certificate of Compliance must be transmitted to OAL by 6–2–2004 or emergency language will be repealed by operation of law on the following day.

13. Reinstatement of section as it existed prior to 2-3-2004 emergency amendment by operation of Government Code section 11346.1(f) (Register 2004, No. 24).
14. New subsection (g) refiled 6-8-2004 as an emergency; operative 6-8-2004 (Register 2004, No. 24). A Certificate of Compliance must be transmitted to OAL by 10-6-2004 or emergency language will be repealed by operation of law on the following day.
15. Reinstatement of section as it existed prior to 6-8-2004 emergency amendment by operation of Government Code section 11346.1(f) (Register 2004, No. 41).

§ 51200.01. Established Place of Business.

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code; Section 700, Insurance Code; and Section 78, Chapter 146, Statutes of 1999. Reference: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code.

HISTORY

1. New section filed 2-3-2003 as an emergency; operative 2-3-2003 (Register 2003, No. 6). Emergency adoption exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75. Adoption to remain in effect for 180 days pursuant to section 78, chapter 146, Statutes of 1999 (AB 1107). A Certificate of Compliance must be transmitted to OAL by 8-4-2003 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 8-5-2003 as an emergency; operative 8-5-2003 (Register 2003, No. 32). Emergency adoption exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75. Adoption to remain in effect for 180 days pursuant to section 78, chapter 146, Statutes of 1999 (AB 1107). A Certificate of Compliance must be transmitted to OAL by 2-2-2004 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 2-3-2004 as an emergency; operative 2-3-2004 (Register 2004, No. 6). Emergency adoption exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75. A Certificate of Compliance must be transmitted to OAL by 6-2-2004 or emergency language will be repealed by operation of law on the following day.
4. Repealed by operation of Government Code section 11346.1(g) (Register 2004, No. 24).
5. New section refiled 6-8-2004 as an emergency; operative 6-8-2004 (Register 2004, No. 24). A Certificate of Compliance must be transmitted to OAL by 10-6-2004 or emergency language will be repealed by operation of law on the following day.
6. Repealed by operation of Government Code section 11346.1(g) (Register 2004, No. 41).

§ 51201. Physical Therapy.

HISTORY

1. Repealer filed 9-27-72; designated effective 11-1-72 (Register 72, No. 40). For prior history, see Register 72, No. 31.

§ 51201.1. Physical Therapist.

A physical therapist shall be licensed as a Registered Physical Therapist by the California Board of Medical Quality Assurance, or similarly registered or licensed by a comparable agency in the state in which the therapist practices, and shall be a graduate of a program in physical therapy approved by the agency or organization recognized by the Council on Post Secondary Accreditation or the U.S. Department of Education, or its equivalent. Physical therapists certified by the Physical Therapy Examining Committee may perform tissue penetration for the purpose of evaluating neuromuscular performance.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14059, 14105 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 9-27-72; designated effective 11-1-72 (Register 72, No. 40).
2. Amendment filed 8-8-78; effective thirtieth day thereafter (Register 78, No. 32).
3. Amendment filed 6-22-87; operative 7-22-87 (Register 87, No. 27).

§ 51202. Speech Pathologist.

A speech therapist shall be licensed by the Speech Pathology and Audiology Examining Committee of the State Board of Medical Quality Assurance or similarly licensed by a comparable agency in the state in which he practices.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 9-27-72; designated effective 11-1-72 (Register 72, No. 40).
2. Amendment filed 11-4-76; effective thirtieth day thereafter (Register 76, No. 45).
3. Amendment filed 9-4-80; effective thirtieth day thereafter (Register 80, No. 36).

§ 51202.5. Sign Language Interpreters.

(a) Individuals who provide sign language interpreter services shall possess the ability to communicate effectively, accurately and impartially both receptively and expressively in a health care setting, and either;

(1) Hold a current certification by one of the following:

(A) The National Registry of Interpreters for the Deaf (RID):

(B) The National Association of the Deaf (NAD)/California Association of the Deaf (CAD) at a competency Level IV or V only; or

(C) The California Department of Rehabilitation at a competency Level III and possess a certificate from RID, NAD/CAD at a competency Level IV or V only; or

(2) Be non-certified.

(b) An individual who provides sign language interpreter services shall not be related to the beneficiary by heredity or by marriage, or live in the same household.

(c)(1) A beneficiary may select an individual to provide sign language interpreter services, except those persons excluded in (b).

(2) In an emergency or acute care situation or in the event the Medi-Cal enrolled provider determines that the interpreter selected by the beneficiary does not communicate effectively, accurately or impartially, and may adversely affect the health and well-being of the beneficiary due to inaccurate interpretation of a diagnosis or a misunderstanding of medical advice or instruction, the Medi-Cal enrolled provider is required to select a different interpreter. Whenever a Medi-Cal enrolled provider acts pursuant to this paragraph, he or she shall provide a written statement of reasons for the action. The Medi-Cal enrolled provider shall maintain this statement in the medical record of the beneficiary and make it available to the State upon request pursuant to Section 51476(g).

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725 and 14105, Welfare and Institutions Code. Reference: Section 54.1, Civil Code; Section 14000, Welfare and Institutions Code; 42 USC Sections 12101 et seq.; 28 CFR Section 36.303; and 45 CFR Section 84.22(c).

HISTORY

1. New section filed 8-21-2000 as an emergency; operative 8-21-2000 (Register 2000, No. 34). A Certificate of Compliance must be transmitted to OAL by 12-19-2000 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 8-21-2000 order transmitted to OAL 12-19-2000 and filed 2-2-2001 (Register 2001, No. 5).
3. Amendment of subsection (a), redesignation of former subsection (c) as new subsection (c)(1), new subsection (c)(2) and amendment of NOTE filed 8-7-2008; operative 9-6-2008 (Register 2008, No. 32).

§ 51203. Occupational Therapy.

HISTORY

1. Refiled 6-5-67 as an emergency; effective upon filing. Certificate of Compliance filed 6-9-67 (Register 67, No. 23).
2. Amendment filed 3-30-72 as an emergency; effective upon filing (Register 72, No. 15).
3. Certificate of Compliance filed 7-27-72 (Register 72, No. 31).
4. Repealer filed 9-27-72; designated effective 11-1-72 (Register 72, No. 40).

§ 51203.1. Occupational Therapist.

An occupational therapist shall be a graduate of a curriculum in occupational therapy approved by the Council on Education of the American Medical Asscoition in collaboration with the American Occupational Therapy Association, and shall be registered by the American Occupational Therapy Association.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 9-27-72; designated effective date 11-1-72 (Register 72, No. 40).
2. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51204. Personal Care Services Provider.

All providers of personal care program services must be approved by Department of Health Services and shall sign the "Personal Care Pro-

gram Provider/Enrollment Agreement" form [SOC 426(1/93)] designated by the Department agreeing to comply with all applicable laws and regulations governing Medi–Cal and the providing of personal care services. Beneficiaries shall be given a choice of service provider.

(a) Individual providers will be selected by the beneficiary, by the personal representative of the beneficiary, or in the case of a minor, the legal parent or guardian. The beneficiary or the beneficiary's personal representative, or in the case of a minor, the legal parent or guardian shall certify on the provider enrollment document that the provider, in the opinion of the beneficiary, is qualified to provide personal care so long as the person signing is not the provider.

(b) Contract agency personal care providers shall be selected in accordance with Welfare and Institutions Code section 12302.1. The contract agency shall certify to the designated county department that the workers it employs are qualified to provide the personal care services authorized.

NOTE: Authority cited: Section 14132.95, Welfare and Institutions Code; Section 8, Chapter 939, Statutes of 1922; Section 3, Chapter 7, Statutes of 1993. Reference: Section 14132.95, Welfare and Institutions Code; Section 1396d(a)(7) of Title 42, of the United States Code; Article 7 (commencing with Section 12300) of Part 3 of Division 9 of the Welfare and Institutions Code; Section 440.170(f) of Title 42 of the Code of Federal Regulations.

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HISTORY

1. New section filed 4–14–93 as an emergency; operative 4–14–93. Submitted to OAL for printing only pursuant to section 8, AB 1773 (Chapter 939, Statutes of 1992) (Register 93, No. 16).

§ 51205. Prosthetic and Orthotic Appliance Facilities.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14059 and 14132(k), Welfare and Institutions Code.

HISTORY

1. Amendment filed 6–23–66 as an emergency; effective upon filing; Certificate of Compliance included (Register 66, No. 19).
2. Amendment filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).
3. Change without regulatory effect adding NOTE (Register 86, No. 49).
4. Repealer filed 4–20–98; operative 5–20–98 (Register 98, No. 17).

§ 51206. Hospitals, Home Health Agencies and Laboratories.

HISTORY

1. Repealer filed 4–30–74; effective thirtieth day thereafter (Register 74, No. 18). For prior history, see Register 73, No. 52.

§ 51207. Hospitals.

(a) A hospital, to be eligible for participation in the program, shall:

(1) Be certified, or meet the requirements for certification under Title XVIII of the Federal Social Security Act.

(2) Be licensed pursuant to the provisions of Chapter 2 of the Health and Safety Code.

(3) Have an organized medical staff that has promulgated medical staff by–laws, rules, and regulations which include provisions that assure correct utilization and high quality of professional services rendered to Medi–Cal beneficiaries in the hospital.

(4) Take timely and definitive action, including initiating proceedings to suspend or terminate hospital privileges, against medical staff members who provide inappropriate or excessive services, or services of inferior quality to Medi–Cal beneficiaries.

(b) Notwithstanding the provisions of paragraph (a) of this regulation, eligibility for participation in the program shall be conditional on compliance with Welfare and Institutions Code 14105.5.

(c) Notwithstanding any other provisions of these regulations, those hospitals operated by, or listed and certified by, the First Church of Christ Scientist, Boston, Massachusetts, are eligible for participation in the program provided they conform to governmental requirements with regard to housing, fire protection, safety, and sanitation.

(d) A hospital which does not meet all of the requirements of this section, may nevertheless, be paid under the program for services furnished by it to eligible beneficiaries of the program on an emergency basis as defined in Section 51056, provided it meets the requirements specified in subsection (a)(2) of this Section. This provision shall apply in each case only until such time as the patient may be moved safely to an institution that meets the requirements of the remainder of this Section.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14105 and 14110, Welfare and Institutions Code.

HISTORY

1. Amendment filed 1–22–71; designated effective 3–1–71 (Register 71, No. 4). For prior history, see Register 70, No. 30.
2. Amendment filed 1–18–74; effective thirtieth day thereafter (Register 74, No. 3).
3. Amendment filed 3–7–80; effective thirtieth day thereafter (Register 80, No. 9).
4. Amendment of subsection (a) filed 8–23–85; effective thirtieth day thereafter (Register 85, No. 34).

§ 51208. Dispensing Optician.

A dispensing optician shall have a permit as a registered dispensing optician issued by the California Board of Medical Quality Assurance or shall hold a permit issued by a comparable agency in the state in which he practices.

NOTE: Authority cited: Section 14015, Welfare and Institutions Code. Reference: Sections 14059, 14131 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).
2. Amendment filed 8–8–78; effective thirtieth day thereafter (Register 78, No. 32).
3. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51208.1. Fabricating Optical Laboratory.

A fabricating optical laboratory, as defined in Section 51162.1, shall meet all of the following conditions:

(a) Be licensed by the Department as a device manufacturer, in accordance with Section 10376, Title 17, California Code of Regulations; and

(b) Meet the quality standards for prescription ophthalmic appliances as specified in the American National Standards Institute (ANSI) Standard Z80.1, copyright 1972, published by the American National Standards Institute, 1430 Broadway, New York, NY 10018; and

(c) Enter into an exclusive area negotiated contract for ophthalmic appliances with the Department of Health Services.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 87, Chapter 1594, Statutes of 1982. Reference: Sections 14105.3 and 14132, Welfare and Institutions Code; Section 26685, Health and Safety Code; and Sections 2541.3 and 2541.6, Business and Professions Code.

HISTORY

1. New section filed 11–28–88 as an emergency; operative 11–28–88 (Register 89, No. 11). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3–28–89.
2. Certificate of Compliance as to 11–28–88 order transmitted to OAL 3–27–89 and filed 4–26–89 (Register 89, No. 18).

§ 51209. Hospital Outpatient Department.

A hospital outpatient department shall be operated by a hospital certified for participation in the Medi–Cal Program and shall be staffed by personnel who meet the standards of Division 3, Chapter 3, Article 3 of Title 22, California Administrative Code when providing services outlined in Section 51331.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14019.5, 14059, 14110 and 14132, Welfare and Institutions Code.

HISTORY

1. Refiled 6–5–67 as an emergency; effective upon filing. Certificate of Compliance filed 6–9–67 (Register 67, No. 23).
2. Amendment filed 9–30–71 as an emergency; designated effective 10–1–71 (Register 71, No. 40).
3. Certificate of Compliance—Section 11422.1, Gov. Code, filed 1–25–72 (Register 72, No. 5).
4. Amendment filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).
5. Amendment filed 6–22–87; operative 7–22–87 (Register 87, No. 27).

§ 51210. Blood Banks.

Blood banks shall be licensed by the Department in accordance with the provisions of Division 2, Chapter 4, Sections 1600 to 1623 inclusive, of the Health and Safety Code.

NOTE: Authority cited: sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14110 and 14132, Welfare and Institutions code.

HISTORY

1. New section filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).
2. Amendment filed 1–18–74; effective thirtieth day thereafter (Register 74, No. 3).
3. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51211. Other Organized Outpatient Services.

HISTORY

1. Amendment filed 2–23–67 as an emergency; effective upon filing (Register 67, No. 8).
2. Certificate of Compliance—Section 11422.1, Government Code—filed 4–12–67 (Register 67, No. 15).
3. Repealer filed 9–30–71 as an emergency; designated effective 10–1–71 (Register 71, No. 40).
4. Certificate of Compliance—Section 11422.1, Gov. Code, filed 1–25–72 (Register 72, No. 5).

§ 51211.1. Organized Outpatient Clinic.

An organized outpatient clinic shall be a clinic, or an establishment for handicapped persons, which is so licensed by and which meets the standards for such licensure of the Department, or is similarly licensed by a comparable agency in the state in which it is located, or is exempt from licensure under the provisions of Section 1206 or Section 1505 of the California Health and Safety Code.

(a) In any organized outpatient clinic which provides physical therapy services, there shall be at least one physical therapist who meets the standards of Section 51201.1, and such other properly trained and supervised physical therapy personnel as are necessary to meet the needs of the organized outpatient clinic.

(b) In any organized outpatient clinic which provides occupational therapy services, there shall be at least one registered occupational therapist who meets the standards of Section 51203.1 and such other properly trained and supervised occupational therapy personnel as are necessary to meet the needs of the organized outpatient clinic.

NOTE: Authority cited: Section 14105, Welfare and Institutions Code. Reference: Sections 14100.1, 14105 and 14124.5, Welfare and Institutions Code.

HISTORY

1. New section filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).
2. Amendment filed 1–18–74; effective thirtieth day thereafter (Register 74, No. 3).
3. Amendment filed 5–25–76; effective thirtieth day thereafter (Register 76, No. 22).
4. Change without regulatory effect adding NOTE (Register 86, No. 49).
5. Change without regulatory effect amending first paragraph filed 10–30–95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 44).

§ 51211.2. Laboratory or Clinical Laboratory.

(a) A laboratory or clinical laboratory in California or receiving biological specimens (as defined in Business and Professions Code section 1206) originating in California shall:

(1) Be operated under a current, unrevoked and unsuspended clinical laboratory license or registration issued by the department pursuant to division 2, chapter 3, (commencing with section 1200) of the Business and Professions Code; or a current, unrevoked and unsuspended certificate of approval issued by the department pursuant to sections 1000–1003 inclusive of the Health and Safety Code; or be exempt from licensure and registration under Business and Professions Code section 1241 or 1244; and

(2) Have a current, unrevoked and unsuspended, certificate appropriate for the type and complexity of clinical laboratory tests or examinations performed, issued pursuant to the federal Clinical Laboratory Improvement Amendments (CLIA) of 1988, 42 United States Code section 263a; P.L. 100–578 and its implementing regulations, 42, Code of Federal Regulations part 493. If the United States Department of Health and Human Services (HHS) exempts clinical laboratories, laboratories or public health laboratories licensed, registered or otherwise approved by the department from the requirements of CLIA pursuant to (p) of section 263a of title 42 of the United States Code and section 493.513 of title 42 of the Code of Federal Regulations, this subsection's requirements regarding a CLIA certificate shall not apply, but only to those clinical laboratories, laboratories or public health laboratories exempted by HHS and only for the period of such exemption.

(3) If providing services to persons who are Medicare eligible, be certified or meet the requirements for certification under title XVIII of the Federal Social Security Act, and have elected to provide services under title XVIII, or

(4) If providing services to persons who are not Medicare eligible, be certified or meet the requirements for certification under title XVIII of the Federal Social Security Act.

(b) All persons performing, supervising, consulting on, or directing laboratory or clinical laboratory services in California or on biological specimens originating in California shall comply with the requirements set forth in division 2, chapter 3 (commencing with section 1200) of the Business and Professions Code and the regulations adopted thereunder for the type and complexity of testing performed.

(c) For the purposes of providing laboratory services for qualified practitioners whose practices are conducted solely in states other than California and on biological specimens that do not originate in California, a laboratory or clinical laboratory shall be certified to provide services under the federal Clinical Laboratory Improvement Amendments (CLIA) of 1988, 42 United States Code section 263a; P.L. 100–578 and shall be licensed, registered or otherwise approved by the appropriate state agency in the state in which it is located, if such licensure, registration or approval is required.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code; Sections 101150–101165, Health and Safety Code; Sections 1200–1327, Business and Professions Code; Title 42 United States Code, Sections 263a, 1395w–2, 1396a(a)(9)(C), 1395x(e)(9), 1395x(s)(13) and (14), 1395x(aa)(2)(G), 1396n(a)(1)(B), Title 42 Code of Federal Regulations, Sections 405.2163, 405.2171, 410.5, 410.32, 416.49, 416.107, 417.800, 418.92, 440.30, 482.27, 482.53, 483.75, 484.14, 485.58, 485.304, 488.54, 491.9 and 583.460.

HISTORY

1. New section filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).
2. Amendment filed 12–28–73 as an emergency; designated effective 1–1–74. Certificate of Compliance included (Register 73, No. 52).
3. Amendment of subsection (a) filed 8–6–76; effective thirtieth day thereafter (Register 76, No. 32).
4. Change without regulatory effect adding NOTE (Register 86, No. 49).
5. Amendment of section heading, text and NOTE filed 1–20–94 as an emergency; operative 1–20–94 (Register 94, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–20–94 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 1–20–94 order including amendment of subsections (a)–(a)(1) and NOTE transmitted to OAL 5–19–94 and filed 7–1–94 (Register 94, No. 26).
7. Amendment of section and NOTE filed 8–28–97 as an emergency; operative 8–28–97 (Register 97, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–26–97 or emergency language will be repealed by operation of law on the following day.
8. Editorial correction of subsections (b) and (c) (Register 98, No. 7).
9. Certificate of Compliance as to 8–28–98 order transmitted to OAL 12–24–97 and filed 2–9–98 (Register 98, No. 7).

§ 51211.5. Rural Health Clinic Standards for Participation.

(a) Each rural health clinic shall:

(1) Be licensed or exempt from licensure under Chapter 1, Division 2, California Health and Safety Code.

(2) Be located in a rural shortage area at the time of initial certification or be a private, nonprofit facility that meets all other conditions except for location in a shortage area and was operating in a rural area on July 1, 1977 that was subsequently determined by the Secretary, Department of Health and Human Services, to have an insufficient supply of physicians to meet the needs of the area served.

(3) Be certified and continue to meet the standards for certification as a rural health clinic established by the Secretary, Department of Health and Human Services.

(4) Provide that a physician or nonphysician medical practitioner be available to furnish patient care services at all hours of clinic operation. A nonphysician medical practitioner shall be available to furnish patient care services at least 60 percent of the hours of clinic operation.

(5) Execute a provider participation agreement with the Director containing, but not limited to, the following provisions:

(A) The participation agreement shall be subject to the same terms and conditions, and be coterminous with the period of eligibility, specified by the Secretary, Department of Health and Human Services.

(B) The participation agreement, including that of a provider who voluntarily withdraws from participation in Medicare, shall continue to be valid only if the provider continues to be certified as meeting the stan-

dards as a rural health clinic established by the Secretary, Department of Health and Human Services.

(C) The provider may terminate the participation agreement by filing a written notice with the Director stating the effective date of termination. The Director may approve:

1. The date selected by the clinic.

2. A date that is six months after the date on which the clinic filed notice.

3. A date that is less than six months after the date on which the clinic filed notice if the Director determines that termination on that date would not unduly disrupt service to the community served or interfere with the administration of the Medi–Cal program.

(D) A clinic that ceases to furnish services to the community shall be deemed to have voluntarily terminated the participation agreement, effective on the last day of service.

(6) Maintain any records and accounts required by the Director in accordance with State and Federal law.

(b) The Department shall take appropriate action to deny or terminate the rural health clinic's participation under Medi–Cal upon notification that a provider participation agreement with a facility under Title XVIII of the Act has been terminated.

(c) A clinic whose agreement has been cancelled or otherwise terminated by the Department shall not be issued another provider participation agreement until the reasons which caused the cancellation or termination have been removed and a reasonable assurance provided the survey agency that they will not recur.

NOTE: Authority cited: Sections 14100.1, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14100.1, 14105 and 14124.5, Welfare and Institutions Code.

HISTORY

1. New section filed 8–1–78 as an emergency; effective upon filing (Register 78, No. 31).
2. Certificate of Compliance transmitted to OAH 11–28–78 and filed 11–29–78 (Register 78, No. 48).
3. Amendment of subsections (a)(5) and (6) and new subsections (b) and (c) filed 2–5–79; effective thirtieth day thereafter (Register 79, No. 6).
4. Amendment of subsection (a) filed 6–22–87; operative 7–22–87 (Register 87, No. 27).

§ 51212. Intermediate Care Facility.

(a) An intermediate care facility as defined in section 51118 shall:

(1) Be licensed by the Department of Health Services as an intermediate care facility unless exempt under state law from licensure. (Facilities which are licensed by the Department of Health services as a hospital or skilled nursing facility may also provide intermediate care services if they meet all the requirements of this section.)

(2) Be certified to participate in the Medi–Cal program as a provider of intermediate care services and execute a provider participation agreement with the Department, and be in compliance with the requirements contained in title XIX of the Social Security Act and regulations promulgated pursuant thereto. The certification notice shall be conspicuously posted in the facility on a public bulletin board in the area open to and usually frequented by patients, physicians, and visitors.

(3) Assure that Medi–Cal beneficiaries in the facility are visited by their attending physicians in accordance with section 51334(f) of this chapter.

(4) Grant access to Medi–Cal beneficiaries and their records to authorized personnel of the Department.

(b) Notwithstanding any other provisions of these regulations, those sanitaria or skilled nursing facilities operated by, or listed and certified by the First Church of Christ, Scientist, Boston, Massachusetts, shall be eligible for participation in this program as an intermediate care facility provided they conform with the requirements of the local governmental authorities in the areas in which they are located with regard to housing, fire protection, safety, and sanitation.

(c) Facilities shall notify the Medi–Cal consultant's office within 48 hours of all discharges or deaths of Medi–Cal beneficiaries in their facilities.

NOTE: Authority cited: Sections 14105 and 14110, Welfare and Institutions Code; and section 13, chapter 502, Statutes of 1990. Reference: Sections 14124.5, 14132 and 14132(n), Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (b) filed 8–8–78; effective thirtieth day thereafter (Register 78, No. 32).
2. Repealer of subsection (d) filed 3–2–79; effective thirtieth day thereafter (Register 79, No. 9). For prior history, see Register 75, No. 46).
3. Change without regulatory effect of NOTE (Register 86, No. 49).
4. Amendment filed 10–1–90 as an emergency; operative 10–1–90 (Register 90, No. 45). A Certificate of Compliance must be transmitted to OAL by 1–29–91 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 10–1–90 order including amendment of subsection (a)(2) transmitted to OAL 1–29–91, filed 2–28–91 (Register 91, No. 13).

§ 51213. Rehabilitation Center.

(a) A rehabilitation center shall be certified by the Department as meeting the requirements of this section, shall be approved by the Department and shall meet the requirements of either (b) or (c) and all the other provisions of this section.

(b) Such rehabilitation center shall be a hospital, which meets the standards for participation set forth in Section 51207 and which is currently participating in the program and which was an organized outpatient department, and which

(1) Has an organized rehabilitation service, and

(2) Has as chief of the rehabilitation service a physician who has the necessary training and experience to assure proper patient assessment and care.

(c) If it is not a hospital which meets the requirements of (b) above, the rehabilitation center shall be an organized outpatient clinic. Each such rehabilitation center shall have an organized rehabilitation service and shall provide sufficient professional supervision to assure that the extended treatment plan of the attending physician will be properly carried out.

(d) The rehabilitation center shall provide two or more of the following services:

(1) Physical therapy

(2) Occupational therapy

(3) Speech therapy

(4) Audiology

(e) The rehabilitation center shall meet the standards set forth in Section 51209 or 51211.1 when providing physical therapy and occupational therapy, and employ personnel who meet the definitions set forth in Section 51079 when providing physical therapy, Section 51083 when providing occupational therapy, Section 51095 when providing speech therapy and Section 51097 when providing audiology services.

(f) The rehabilitation center shall establish and maintain a record of diagnosis, condition, treatment plan, services provided, and functional results on each patient treated. Such medical records shall include the following:

(1) The extended treatment plan required pursuant to the provisions of Section 51314 (a).

(2) Patient identification, including Social Security number.

(3) A medical history, including a recent physical examination.

(4) Attending physician's orders.

(5) A complete record of all services rendered by the rehabilitation center.

(6) Progress notes.

(7) Copies of laboratory and radiology reports as they relate to conditions treated by the rehabilitation center.

(8) Medication records.

(g) Each such rehabilitation center shall have written policies that provide for:

(1) Arrangements with Medi–Cal providers to provide laboratory, x–ray, and other ancillary services on an as needed basis.

(2) A utilization review plan that includes:

(A) The organization and composition of a utilization review committee, which shall include at least one physician and which shall be responsible for the utilization review functions.

(B) The frequency of meetings which shall be not less than monthly.

(C) A selection of cases for review on a random sample basis of not less than one case in every ten.

(D) A summary of the number and types of cases reviewed, and the findings on each.

(E) The actions to be taken by the rehabilitation center based on the findings and recommendations of the utilization review committee.

(3) Notification of the utilization review committee of all new patients for whom the rehabilitation center assumes responsibility for treatment. The utilization review committee shall also be provided with a monthly updated list of all rehabilitation center patients.

(4) The medical records of each patient to be available from the rehabilitation center for the use of the utilization review committee.

(5) The names and office or facility locations of consultants who are available to provide consultation on an individual case basis to the rehabilitation center, on request, for those professional services provided by the rehabilitation center.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14019.5, 14059, 14110 and 14132, Welfare and Institutions Code.

HISTORY

1. Amendment of subsections (c) and (e) filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40). For prior history, see Register 72, No. 31.
2. Amendment of subsection (a) filed 1–18–74; effective thirtieth day thereafter (Register 74, No. 3).
3. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51214. Hearing Aid Dispenser.

A Hearing Aid Dispenser shall be licensed as a hearing aid dispenser by the California Board of Medical Quality Assurance.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40). For history of prior section see Register 72, No. 5.
2. Amendment filed 11–21–77; effective thirtieth day thereafter (Register 77, No. 48).
3. Amendment filed 8–8–78; effective thirtieth day thereafter (Register 78, No. 32).
4. Amendment filed 6–22–87; operative 7–22–87 (Register 87, No. 27).

§ 51215. Skilled Nursing Facilities.

(a) A skilled nursing facility, as defined in section 51121, shall:

(1) Be licensed by the Department of Health Services unless exempt under state laws from licensure. (facilities which are licensed by the Department of Health Services as hospitals may also provide skilled nursing facility services if they meet all of the requirements of this section.

(2) Be certified to participate in the Medi–Cal program as a provider of skilled nursing facility services by being in compliance with the Medicare and Medicaid requirements of Titles XVIII and XIX of the Social Security Act and regulations promulgated pursuant thereto.

(3) Execute a provider participation agreement with the Department of Health Services for participation in the Medi–Cal program. Facilities participating in both the Medicare and Medicaid programs shall be subject to the same terms and conditions, and be coterminous with the period of approval of eligibility, specified by the United States Department of Health and Human Services pursuant to title XVIII of the Social Security Act. Upon notification that a provider participation agreement with a facility under title XVIII of the Act has been terminated, the Department may take appropriate action to deny or terminate the facility's participation under Medi–Cal. A facility whose agreement under title XVIII has

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been canceled or otherwise terminated shall not be issued another provider participation agreement until the reasons which caused the cancellation or termination have been removed and a reasonable assurance provided the survey agency that they will not recur.

(4) Assure that Medi–Cal beneficiaries in the facility are visited by their attending physicians in accordance with section 51335 (f) of this chapter.

(5) Notify the Medi–Cal consultant's office within 48 hours of all discharges and deaths of Medi–Cal beneficiaries in that facility.

(b) Notwithstanding the provisions of subsection (a) of this regulation, eligibility for participation in the program shall be conditional on compliance with Welfare and Institutions Code section 14105.5.

(c) Notwithstanding any other provisions of these regulations, those sanitaria or skilled nursing facilities operated by, or listed and certified by the First Church of Christ Scientist, Boston, Massachusetts, shall be eligible for participation in this program, provided they conform to housing, fire protection, safety and sanitation requirements of the local communities where they are located.Execute a provider participation agreement with the Department of Health Services for participation in the Medi–Cal program. Facilities

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code; and Section 13, Chapter 502; Statutes of 1990. Reference: Sections 14110 and 14132, Welfare and Institutions Code.

HISTORY

1. Amendment of subsections (a)(1) and (a)(7) filed 1–30–73; effective thirtieth day thereafter (Register 73, No. 5). For prior history, see Register 72, No.18).
2. Amendment filed 1–18–74; effective thirtieth day thereafter (Register 74, No. 3).
3. Repealer and new section filed 7–16–75 as an emergency; effective upon filing (Register 75, No. 29).
4. Certificate of Compliance filed 11–12–75 (Register 75, No. 46).
5. Amendment filed 6–22–87; operative 7–22–87 (Register 87, No. 27).
6. Amendment filed 10–1–90 as an emergency; operative 10–1–90 (Register 90, No. 45). A Certificate of Compliance must be transmitted to OAL by 1–29–91 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 10–1–90 order including amendment of subsection (a)(2) transmitted to OAL 1–29–91, filed 2–28–91 (Register 91, No. 13).

§ 51215.4. Transitional Inpatient Care Unit.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14105.981 and 14132.22, Welfare and Institutions Code.

HISTORY

1. New section filed 4–1–96 as an emergency; operative 4–1–96 (Register 96, No. 14). A Certificate of Compliance must be transmitted to OAL by 9–30–96 pursuant to Welfare and Institutions Code section 14132.22 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of subsections (*l*)–(n) and (o)(5) and HISTORY 1 (Register 96, No. 35).
3. New section refiled 8–28–96 as an emergency; operative 9–30–96 (Register 96, No. 35). A Certificate of Compliance must be transmitted to OAL by 1–28–97 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 8–28–96 order, including amendment of section, transmitted to OAL 1–23–97 and filed 3–10–97 (Register 97, No. 11).
5. Change without regulatory effect repealing section filed 6–12–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 24).

§ 51215.5. Subacute Care Unit.

(a) A subacute care unit means an identifiable unit of a skilled nursing facility accommodating beds including contiguous rooms, a wing, a floor, or a building that is approved by the Department for such purpose.

(b) In addition to the requirements set forth in subsections (c) through (l) a subacute care unit shall comply with all of the licensing and certification requirements set forth in Title 22, Division 5, otherwise applicable to a skilled nursing facility.

(c) The facility shall accept and retain only those subacute patients for whom it can provide adequate care.

(d) Subacute beds shall not be dual classified as swing beds as they are defined in Section 1339.5 of the Health and Safety Code.

(e) Subacute care units shall employ sufficient nursing staff as follows: freestanding SNFs shall provide a minimum daily average of 3.8 actual licensed nursing hours per patient day and 2.0 actual certified nurse assistant (CNA) hours per patient day; distinct part SNF's shall provide a minimum daily average of 4.0 actual licensed nursing hours per patient day and 2.0 actual CNA hours per patient day. Subacute units that do not utilize CNAs shall employ sufficient licensed nursing staff to provide 4.8 actual licensed nursing hours per patient day.

(f) In providing for the licensed nursing hours requirement in accordance with subsection (e) above, each subacute care unit shall have a minimum of one registered nurse (RN) per shift.

(g) Each RN and LVN shall upon hire provide to the employer evidence of the following: (1) A minimum of six months experience within the past two years working in a general acute care facility; or (2) An acquired equivalent competency appropriate to the type of subacute patient the facility provides care for.

(h) Nursing staff assigned to the subacute care unit shall not be assigned other duties outside of the subacute care unit during any given shift.

(i) The facility shall provide documentation upon request by the Department that the Director of Nursing, and all subacute care staff are participating in an ongoing educational program in accordance with Title 22, California Code of Regulations, Division 5, Section 70213(c), focused on subacute care.

(j) Physician services shall be provided in a subacute care unit in accordance with Title 22, California Code of Regulations, Division 5, Section 72303, with the exception of (b)(1).

(k) The attending physician shall perform an initial evaluation and prepare a written report of physical examination of the patient within 48 hours of admission to the subacute care unit.

(*l*) The subacute care unit shall provide the required services in accordance with Title 22, California Code of Regulations, Division 5, Section 72301(d).

NOTE: Authority cited: Sections 10725 and 14124.5 Welfare and Institutions Code. Reference: Section 14132.25, Welfare and Institutions Code.

HISTORY

1. New section filed 6–3–86 as an emergency; effective upon filing (Register 86, No. 23). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–1–86.
2. Section refiled 11–3–86 as an emergency; effective 10–1–86 (Register 86, No. 45). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1–29–87.
3. Certificate of Compliance including amendment filed 1–20–87 (Register 87, No. 4).
4. Amendment of subsections (e), (f), (i), (j) and (l) filed 10–27–88 as an emergency; operative 10–27–88 (Register 88, No. 45). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–24–89.
5. Certificate of Compliance including amendment of subsection (e) transmitted to OAL 2–24–89 and filed 3–27–89 (Register 89, No. 13).

§ 51215.6. Participation Requirements for the Adult Subacute Program and Pediatric Subacute Program.

(a) Adult subacute services and pediatric subacute services shall be provided by a licensed general acute care hospital with distinct–part skilled nursing beds or a freestanding certified nursing facility that enters into a contract with the Department.

(b) Each applicant for an initial contract, contract amendment, or contract renewal to provide adult subacute services or pediatric subacute services, shall submit a completed application, or written request in the case of contract amendment, to the Department containing, but not limited to, evidence of the following:

(1) Licensure as a general acute care hospital with or without distinct–part skilled nursing beds, a skilled nursing facility or a Congregate Living Health Facility;

(2) Certification as a Medicare and Medi–Cal provider;

(3) History as a licensed health care facility for a period of 12 months prior to and during the initial application process, contract amendment, or contract renewal as follows:

(A) Maintenance of an uninterrupted Medi–Cal provider agreement; and

(B) As applicable to the type of facility, all deficiencies in patient care, or deficiencies of a severity which would impose immediate jeopardy or actual harm to a resident's/patient's health or safety during a facility certification survey, complaint survey or special incident investigation. The Department may terminate a contract, impose contract penalties, or deny the award of a contract, a contract amendment, or contract renewal in other instances of deficiencies found during a facility certification survey, complaint survey or special incident investigation that would not impose immediate jeopardy or actual harm to a resident's/patient's health or safety, but are determined to be widespread. These deficiencies are determined by the Department or the Center for Medicare and Medicaid Services, and

(C) As applicable to the type of facility, all citations as defined by Health and Safety Code Sections 1424(c), (d) and (e) that pertain to patient care. The presence of a citation or citations shall not, in itself, constitute the basis for denial of the contract application, amendment or renewal. A citation or citations shall be evaluated for impact on such areas as patient care, patient safety, fraud and for indications of a pattern of noncompliance.

(4) As applicable to the type of facility, documentation that the applicant can comply with one or more of the following:

(A) With Section 51215.5 for adult subacute services;

(B) With Section 51215.8 for pediatric subacute services.

(5) An applicant for an adult subacute or pediatric subacute contract shall, in addition to the requirements of (b) of this section, provide evidence that the location of the proposed subacute unit has a subacute population and a need for subacute services. This evidence shall include a list of potential patients, with each patient's Medi–Cal identification number, current level of care, and the address of each patient's current location. The requirements of this subsection shall also apply to adult subacute and pediatric subacute contract amendments and renewals.

(6) An applicant for an adult subacute or pediatric subacute contract that is a general acute care hospital with distinct–part skilled nursing beds shall, in addition to the requirements of (b)(3) of this section, have a history of maintaining the appropriate accreditation for participation in the Medicare and Medi–Cal programs, and maintaining supplemental authorization by Licensing and Certification for a distinct–part which functions as a skilled nursing facility service. The requirements of this subsection shall also apply to adult subacute and pediatric subacute contract amendments and renewals.

(7) Nothing in this section shall preclude a new licensee without a history of providing care in a licensed health care facility from being eligible to enter into a contract with the Department to provide subacute care services to adult or pediatric patients if all other applicable requirements of the subacute care program are met.

(c) Freestanding certified nursing facilities shall specify in their application that the location of the proposed unit is within close proximity to a general acute care hospital with which the freestanding certified nursing facility has a transfer agreement and with which the physicians who assume responsibility for treatment management of patients receiving transitional inpatient care services have staff privileges.

(d) The Department shall not be precluded from imposing one or more penalties specified in subsections (1) through (5) below upon a contractor under the provisions of this section as an interim alternative to contract termination. Such action shall apply to a contractor that fails to comply with any term or condition of the initial, amended, or renewed contract and any applicable laws and regulations. Penalties may include, but are not limited to:

(1) Suspension of new admissions;

(2) Relocation of selected patients;

(3) Transfer of selected patients;

(4) Reduction in the number of beds under contract;

(5) Reduction in the term of the contract.

(e) A contract entered into under the provisions of this section shall be renewed by the Department unless the Department determines good cause is shown for nonrenewal. Good cause shall include, but not be limited to the following:

(1) Failure of the contractor to comply with the terms and conditions of the initial contract and applicable laws and regulations;

(2) Failure of the contractor to comply with the provisions of an amended or renewed contract and applicable laws and regulations;

(3) The Department's determination, based upon the contractor's past performance under its contract, that the Contractor does not have the ability to fulfill the terms of a renewed contract with the State. The Contractor's remediation of a single or multiple areas of noncompliance shall not be construed as relief from contract nonrenewal.

(f) Contract nonrenewal shall commence following 30 calendar days' written notice of nonrenewal by the Department to the contractor. The contractor shall be responsible for the appropriate and safe disposition of affected patients. Reimbursement to the contractor for services provided to all affected patients shall continue, unless the contractor fails to actively pursue appropriate, alternative placement for the patients.

(g) A contract entered into under the provisions of this section shall be terminated by the Department at any time during the contract term when the Department has determined good cause exists, as established in (e) of this section.

(1) The Department shall give 30 calendar days' written notice to the contractor prior to the termination of a contract.

(2) The contract shall be terminated immediately if the Department determines that there is an immediate threat to the health and safety of Medi–Cal beneficiaries.

(3) Upon notice of contract termination, the contractor shall be responsible for the appropriate and safe disposition of affected patients. Reimbursement to the contractor for services provided to all affected patients shall continue, unless the contractor fails to actively pursue appropriate, alternative placement for the patients.

(h) The provider, with 120 calendar days' written notice to the Department, may cancel an adult or pediatric subacute contract with the Department.

(i) Upon the receipt of an application to provide adult subacute care, or pediatric subacute care, the Department shall:

(1) Within 30 calendar days from receipt of the application, inform the applicant in writing whether the application is complete and acceptable or that the application is deficient and what specific information or clarification is necessary.

(2) Within 90 calendar days from receipt of a complete application, approve or deny the application.

(3) Within 60 calendar days from receipt of any information or clarification necessary to make an application complete, reach a decision to approve or deny the application for participation in the adult subacute program or pediatric subacute program.

(4) Within the 90 calendar days after an application is initially received, conduct an onsite review of the facility.

(5) Upon approval for participation in the adult subacute program or pediatric subacute care program, send a contract to the applicant.

(j) If an application for an initial contract, a contract amendment, or a contract renewal, for the adult subacute program, or pediatric subacute program is denied, the applicant has 30 calendar days from the date of the receipt of written notification of the denial to submit a written appeal to the Department. This written appeal shall contain factual statements as to why the applicant meets the criteria which have been cited as the basis for the denial of the application. The Department shall issue a written decision within 60 calendar days of receipt of the applicant's appeal.

(k) A separate and distinct cost center shall be established and maintained in order to identify and segregate costs for adult and/or pediatric subacute patients separately from costs for other patients who may be served within the certified nursing facility.

(1) Cost reporting for the adult subacute or pediatric subacute unit in freestanding certified nursing facilities shall be maintained according to generally accepted accounting principles and the uniform accounting system adopted by the State and specified in the Accounting and Reporting Manual for California Long–Term Care Facilities, pursuant to Section 97019, and shall be submitted in the manner approved by the State specified in the Accounting and Reporting Manual for California Long–Term Care Facilities, pursuant to Section 97019.

(2) Cost reporting for the adult subacute or pediatric subacute unit in distinct part skilled nursing units in general acute care hospitals shall be maintained according to generally accepted accounting principles and the uniform accounting system adopted by the State and specified in the Accounting and Reporting Manual for California Hospitals, pursuant to Section 97018, and shall be submitted in the manner approved by the State specified in the Accounting and Reporting Manual for California Hospitals, pursuant to Section 97019.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14132.25, Welfare and Institutions Code; and Section 15376(a) and (b), Government Code; and Title 42 Code of Federal Regulations, Part 413.

HISTORY

1. New section filed 6–3–85 as an emergency; effective upon filing (Register 86, No. 23). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–1–86.
2. Section refiled 11–3–86 as an emergency; effective 10–1–86 (Register 86, No. 45). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1–29–87.
3. Certificate of Compliance including amendment (and renumbering and amendment of former Section 51215.7 to subsections (b)–(d)) filed 1–20–87 (Register 87, No. 4).
4. Amendment of section and NOTE filed 4–13–94 as an emergency; operative 4–1–94. Emergency amendment submitted to OAL for printing only pursuant to section 4, AB 36 (chapter 1030, Statutes of 1993) (Register 94, No. 15).
5. Certificate of Compliance as to 4–13–94 order including amendment of section transmitted to OAL 9–26–94 and filed 10–20–94 (Register 94, No. 42).
6. Editorial correction of HISTORY 4 and 5 (Register 95, No. 14).
7. New subsections (d)–(d)(2) and subsection relettering filed 4–6–95; operative 4–6–95 (Register 95, No. 14).
8. Repealer of section heading and section, new section heading and section and amendment of NOTE filed 4–1–96 as an emergency; operative 4–1–96 (Register 96, No. 14). A Certificate of Compliance must be transmitted to OAL by 9–30–96 pursuant to Welfare and Institutions Code section 14132.22 or emergency language will be repealed by operation of law on the following day.
9. Editorial correction of subsection (c)(3)(B) and HISTORY 8 (Register 96, No. 35).
10. Repealer of section heading and section, new section heading and section and amendment of NOTE refiled 8–28–96 as an emergency; operative 9–30–96 (Register 96, No. 35). A Certificate of Compliance must be transmitted to OAL by 1–28–97 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 8–28–96 order, including amendment of section, transmitted to OAL 1–23–97 and filed 3–10–97 (Register 97, No. 11).
12. Amendment of subsections (d)(3)(B) and (d)(3)(C) and amendment of NOTE filed 4–1–2003 as an emergency; operative 4–1–2003 (Register 2003, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–30–2003 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 4–1–2003 order transmitted to OAL 7–28–2003 and filed 8–18–2003 (Register 2003, No. 34).
14. Change without regulatory effect amending section heading and section filed 6–12–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 24).

§ 51215.7. Application for Subacute Care Contract.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14132.25, Welfare and Institutions Code.

HISTORY

1. New section filed 6–3–86 as an emergency; effective upon filing (Register 86, No. 23). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–1–86.
2. Section refiled 11–3–86 as an emergency; effective 10–1–86 (Register 86, No. 45). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1–29–87.
3. Certificate of Compliance including renumbering and amendment of former Section 51215.7 to Section 51215.6 (b)–(d) filed 1–20–87; effective upon filing (Register 87, No. 4).
4. Editorial correction of HISTORY 2 (Register 95, No. 45).

§ 51215.8. Pediatric Subacute Care Unit.

(a) A pediatric subacute care unit means an identifiable unit of a certified nursing facility licensed as a skilled nursing facility and meeting the standards for participation as a provider under the Medi–Cal program set forth in this section, accommodating beds including contiguous rooms, a wing, a floor, or a building that is approved by the Department for such purpose. In addition to the requirements set forth in this section, a facility providing pediatric subacute care unit services shall comply with all of the licensing requirements set forth in Title 22, Division 5, otherwise applicable to licensure as a skilled nursing facility.

(b) To the highest practicable extent, the pediatric subacute unit shall provide a safe, clean, comfortable and nurturing home–like environment designed to promote normal child development.

(c) Pediatric subacute beds shall not be dual classified as swing beds as they are defined in Section 1339.5, Health and Safety Code.

(d) The facility shall accept and retain only those pediatric subacute patients for whom it can provide appropriate care in accordance with this section, and as defined in Section 51124.6(c)(1).

(e) The pediatric subacute care unit shall house patients based on their ages, gender, and/or developmental levels, and/or social needs in a manner planned to promote the growth and development of all those housed together.

(f) The facility shall provide for a comprehensive developmental assessment for each pediatric subacute care patient who is under 36 months of age. The assessment shall be performed by a qualified professional with training and expertise specific to the assessment of, and program planning for, infant and child development. The professional who performs the developmental assessment shall:

(1) Assess the patient's abilities and needs in at least the following areas, where applicable, within 14 calendar days of admission to the pediatric subacute care unit:

(A) Sensorimotor development including gross motor skills, fine motor skills and visual motor perception;

(B) Social development and cognitive development;

(C) Self–help development including developmentally appropriate feeding, toileting, dressing, and grooming;

(D) Language and communication skills; and

(E) Play and recreation needs.

(2) Prepare a developmental program for each patient with specific goals and plan of activities to reach each goal;

(3) Provide direct developmental services to patients in accordance with the developmental program;

(4) Provide ongoing instruction to pediatric subacute direct patient care unit staff on the daily activities required to facilitate continuity of the developmental program;

(5) Monitor the progress of the patient in reaching the goals of the developmental program, reassess the patient and revise the developmental program at appropriate intervals, but at least quarterly;

(6) Maintain a record of the developmental program in the patient's medical chart, including regular progress notes;

(7) Participate in the interdisciplinary team conferences;

(8) Provide family training as appropriate;

(9) Make recommendations to the Service Coordinator, as provided for in (j) of this Section, regarding the provision of continuing developmental services prior to the patient's discharge to a lower level of care.

(g) The facility shall incorporate each patient's developmental program into the comprehensive nursing care plan for each patient. The nursing care plan shall be revised based on changes in the developmental program.

(h) In accordance with (j)(3) of this Section, the facility shall work with the Local Education Agency in the development and implementation of an Individual Education Plan (IEP) for each pediatric subacute care patient who is 36 months of age and older. The facility shall incorporate those activities identified in the IEP, as appropriate, into the patient's comprehensive nursing care plan. To facilitate continuity of services, the facility shall obtain instruction from the Local Education Agency for the

pediatric subacute direct patient care unit staff in performing activities in the IEP when the child is not in a formal educational session.

(i) In accordance with (j)(3) and (j)(4) of this section, the facility shall work with the Regional Center, as defined in Title 17, California Code of Regulations, Section 54302(a)(43) or the Local Education Agency Provider, as defined in Title 22, California Code of Regulations, Section 51190.2, in the development and implementation of an Individual Family Service Plan (IFSP), as specified in Government Code Section 95020, for each pediatric subacute patient who is under 36 months of age. The facility shall incorporate those identified activities in the IFSP, as appropriate, into the patient's comprehensive nursing plan. To facilitate continuity of services, the facility shall obtain instruction from the Regional Center or Local Education Agency Provider for the pediatric subacute unit staff in performing activities in the IFSP.

(j) Each pediatric subacute care unit shall designate a person or persons as the Service Coordinator whose time is equal, in hours, to one full–time position for every 20 patients. This position shall be dedicated to the pediatric subacute care unit and be separate from the nurse staffing hours required by (k) of this section. The Service Coordinator(s) shall be either a registered nurse or individual with a baccalaureate degree in social work who possesses the knowledge and ability to assess the current needs of each pediatric subacute patient and the available resources in the facility and community to meet those needs. The Service Coordinator's activities shall include, but not be limited to:

(1) Coordination of patient admission activities;

(2) Liaison between the patient, family members, the interdisciplinary team and community to assure that services to meet the patient's needs are initiated and met in accordance with their plans of care and treatment;

(3) Referral to and collaboration with Early Intervention Programs as described in the Individuals with Disabilities Education Act, 20 United States Code, Section 1400, et seq., Early Intervention Program, 20 United States Code, Section 1471, and with Special Education Programs, as described in the California Education Code, Section 56000 et seq.;

(4) Coordination with local or state agencies and programs providing services to children, such as the Regional Center, California Children's Services, Child Protective Services;

(5) Coordination of patient and family teaching;

(6) Preparation and implementation of a discharge plan for each patient's return home, to other appropriate placement or leave of absence. This shall include the identification and arrangement of services and equipment for the patient to effectuate discharge or leave of absence;

(k) Pediatric subacute care units shall define, implement, and maintain a system for determining patient requirements for nursing care based on patient needs with goals that are time limited, as demonstrated in each patient's comprehensive care plan. Nursing personnel shall be sufficient to assure prompt recognition of any untoward change in patient condition, and to facilitate appropriate nursing, medical or other appropriate intervention. The pediatric subacute care unit shall utilize nursing staff in at least the following minimum ratios: a minimum daily average of 5.0 actual unduplicated licensed nursing hours per patient day, and 4.0 actual certified nurse aide hours per patient day.

(*l*) In providing for the licensed nursing hours requirement in accordance with subsection (k) of this section, each pediatric subacute unit shall provide:

(1) A registered nurse as the pediatric subacute unit's head nurse/nurse manager; and

(2) A minimum of one registered nurse per shift, not including the unit's head nurse/nurse manager, unless at least 80% of the time of that nurse is spent in direct patient care. In such a case, the remaining 20% of time of that nurse shall be spent in managerial duties for the pediatric subacute unit.

(m) The head nurse/nurse manager shall upon hire provide to the employer evidence specified in subsections (m)(1) and (2) below:

(1) Current California licensure as a registered nurse, and a minimum of two years experience within the last five years which shall include nursing supervision, and providing care to the types of pediatric patients with technology dependency for whom the facility provides care; and

(2) Within one year of his/her date of hire, proof of completion of at least 30 continuing education units specific to the physical and psycho–social assessment of, and provision of care to, the critically ill child.

(n) Each licensed nurse shall provide to the employer evidence of either of the following:

(1) Upon hire, a minimum of six months experience within the past two years providing care to the types of pediatric subacute patients with technology dependency for whom the facility provides care; or

(2) An acquired competency, to be documented in the licensed nurse's personnel records, including:

(A) Proof of completion of at least 15 continuing education units specific to the provision of care to the critically ill child within one year of his/her date of hire, and

(B) Proof of completion, within two months of employment, of at least 40 hours of direct employee specific preceptorship, provided by a registered nurse meeting the qualifications specified in Section 51215.8(m), designed to promote the licensed nurse's clinical competency in providing nursing services to the types of pediatric patients with technology dependency for whom the facility provides care. The preceptorship may be provided during the licensed nurse's normal working tour of duty.

(o) All pediatric subacute care licensed and certified nursing staff shall either have upon hire, or prior to the completion of the orientation period described in Title 22, Section 72517(d), obtain and subsequently maintain, pediatric cardiopulmonary resuscitation certification.

(p) The registered nurse member of the pediatric subacute care licensed nursing staff on each shift shall either have upon hire, or within 90 calendar days of his/her date of hire, obtain and subsequently maintain, pediatric advanced cardiopulmonary resuscitation life support certification.

(q) No nursing staff person assigned to the pediatric subacute unit, including the unit's head nurse/nurse manager, shall be assigned duties outside of the pediatric subacute care unit during any given shift when the staff person is assigned to the pediatric subacute unit.

(r) In complying with the staff development requirements specified in Section 72517(a)(1), the facility shall focus on the nursing care and developmental needs of pediatric patients for whom it provides care. The facility shall maintain documentation of compliance with this section and provide it upon request by the Department.

(s) Each nurse aide assigned to the pediatric subacute care unit shall meet the nurse aide certification requirements set forth in Sections 71801 through 71853.

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(t) The pediatric subacute care unit shall utilize a licensed Respiratory Care Practitioner to provide a minimum of 3.0 hours per patient day to each ventilator dependent patient, and a minimum of 2.0 hours per patient day to each non–ventilator dependent patient, of medically necessary respiratory care services, when provided under the order of a person lawfully authorized to give such an order, and according to each pediatric subacute beneficiary's assessment and care plan. A licensed Respiratory Care Practitioner shall be present in the nursing facility 24 hours a day and may have assigned duties outside the pediatric subacute care unit.

(u) Each facility providing pediatric subacute services shall provide for the consultant services of a registered dietician with demonstrated background and/or clinical experience in pediatric nutrition. The pediatric registered dietician shall provide a comprehensive nutrition assessment within seven working days of the child's admission to the pediatric subacute unit followed by development and implementation of a nutrition care plan in accordance with accepted pediatric nutrition standards of care.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14132.25, Welfare and Institutions Code.

HISTORY

1. New section filed 4–13–94 as an emergency; operative 4–1–94. Emergency adoption submitted to OAL for printing only pursuant to section 4, AB 36 (chapter 1030, Statutes of 1993) (Register 94, No. 15).
2. Certificate of Compliance as to 4–13–94 order including amendment of section transmitted to OAL 9–26–94 and filed 10–20–94 (Register 94, No. 42).
3. Editorial correction of HISTORY 1 and 2 (Register 95, No. 14).
4. Amendment of section and NOTE filed 6–30–97 as an emergency; operative 6–30–97 (Register 97, No. 27). A Certificate of Compliance must be transmitted to OAL by 10–28–97 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 6–30–97 order transmitted to OAL 10–22–97 and filed 11–26–97 (Register 97, No. 48).

§ 51215.9. Pediatric Subacute Care Unit—Physician Services.

(a) Physician services shall be provided in a pediatric subacute care unit in accordance with Section 72303, Title 22, California Code of Regulations, with the exception of (b)(1) of that section, and in accordance with (a) and (b) of this section.

(b) Each pediatric subacute patient's attending physician shall perform an initial history and physical examination of the patient and prepare a written report of the examination within 24 hours of the patient's admission to the pediatric subacute care unit. In addition to documentation of history and physical examination, this report shall include a plan of treatment that addresses, at a minimum, the following areas:

(1) The patient's level of function;

(2) History of dependence on and potential for weaning from medical technology(ies);

(3) Nutritional status, including growth history, anthropometric status and dietary needs; and

(4) Need for physical therapy, occupational therapy or speech therapy assessment and services.

(c) Medi–Cal beneficiaries receiving pediatric subacute care services shall be visited by their attending physician at least twice weekly during the first month of stay, and at a minimum of once each week thereafter, and more often as the patient's condition warrants.

(d) A certified pediatric nurse practitioner or certified family nurse practitioner may, in collaboration with the pediatric subacute care unit patient's attending physician, provide non–duplicative services to pediatric subacute care unit patients within the scope of their practice requirements.

(e) Each pediatric subacute care unit shall have a medical director who is a pediatrician currently certified by the American Board of Pediatrics, with demonstrated experience in caring for pediatric patients with dependence on medical technology. This requirement shall apply to a physician who has assumed the responsibility of medical director of a pediatric subacute care unit on or after the adoption date of this regulation. The pediatric subacute care unit medical director shall:

(1) Act as liaison between facility administration and physicians attending pediatric subacute patients;

(2) Be responsible for reviewing and evaluating pediatric subacute administrative and medical care policies and procedures;

(3) Act as a consultant to the head nurse/nurse manager in matters relating to pediatric subacute patient care services;

(4) Provide attending physician services to all pediatric subacute patients in the event of the absence or non–availability of other attending physicians;

(5) Be responsible for reviewing pediatric subacute unit employees' preemployment and annual health examination reports.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14132.25, Welfare and Institutions Code.

HISTORY

1. New section filed 6–30–97 as an emergency; operative 6–30–97 (Register 97, No. 27). A Certificate of Compliance must be transmitted to OAL by 10–28–97 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6–30–97 order transmitted to OAL 10–22–97 and filed 11–26–97 (Register 97, No. 48).

§ 51215.10. Pediatric Subacute Care Unit—Rehabilitation Therapy Services.

(a) Each pediatric subacute care unit shall define, implement and maintain a system for assessing and meeting patient needs for all appropriate physical, occupational and speech therapy services including supportive and maintenance programs. The appropriate therapist shall develop a plan of treatment, as specified in (g) or (j) of this section, which shall be integrated into an individualized comprehensive plan of care consistent with an interdisciplinary team approach in meeting each child's needs.

(b) The following definitions shall apply only to this section:

(1) "Physician" shall mean a licensed medical doctor who is a pediatric physiatrist or a physician with knowledge and experience in the rehabilitation of infants, children and adolescents.

(2) "Therapist" shall mean a licensed or registered physical therapist, occupational therapist or speech pathologist with experience in pediatric rehabilitation services.

(c) Each pediatric subacute care patient shall receive, not more than 14 calendar days prior to, or within seven calendar days after admission to a pediatric subacute care unit, a complete rehabilitation assessment performed by a physician. Such assessment shall reflect the actual status of the child at the time of admission to the pediatric subacute care unit and shall be repeated as clinically indicated by change in functional or cognitive status of the child.

(d) In addition to the complete rehabilitation assessment specified in (c) of this section, the physician shall, based on functional potential and maintenance needs of the pediatric subacute care patient, develop and recommend a program of therapy to be provided after admission to the pediatric subacute care unit.

(e) Each pediatric subacute care patient shall receive a physical therapy and occupational therapy assessment and have a plan of treatment developed by the appropriate therapist reflective of the medical recommendations specified in (d) of this section, within 14 days of admission to the pediatric subacute care unit, unless medically contraindicated and documented as such in the medical record. Subsequent physical therapy and occupational therapy assessments shall be performed quarterly or more often as clinically indicated.

(f) A speech therapy assessment shall be provided to pediatric subacute care patients as medically indicated and a plan of treatment developed that identifies measurable functional goals within specific time frames.

(g) For each pediatric subacute care patient, in developing the plan of treatment specified in (e) of this section, the therapist shall:

(1) Develop, periodically review and revise a time limited, goal oriented plan of supportive or maintenance interventions;

(2) Instruct appropriate pediatric subacute care unit staff on the provision of the interventions.

(h) The therapy services specified in (e) through (g) of this section shall be considered a part of the pediatric subacute care services authorized in accordance with Section 51335.6(c).

(i) In addition to the therapy services as specified in (e), (f) and (g) of this section, supplemental rehabilitation therapy services provided in a pediatric subacute care unit may be covered separately for pediatric subacute care patients who, as determined by the physician who performs the assessment specified in (c) of this section:

(1) Can tolerate a minimum of four hours per week of any combination of direct therapy provided by or under the direct supervision of a therapist as specified in (b) of this section.

(2) Demonstrate the potential to achieve, or continue to achieve, measurable functional goals within specific time frames in such areas as mobility, activities of daily living or the reduction of nursing care.

(i) For each pediatric subacute care patient for whom supplemental rehabilitation therapy services are requested, the physician shall participate in the continuing rehabilitation plan of treatment by providing ongoing rehabilitation consultation and direction to the rehabilitation therapy staff in addition to the review and approval of the rehabilitation plan of treatment.

(k) For each pediatric subacute care patient for whom supplemental rehabilitation therapy services are requested, in addition to the requirements to (e), (f) and (g), the therapist shall document in the supplemental rehabilitation therapy plan of treatment:

(1) The specific type, number and frequency of direct therapy services to be performed by or under the direct supervision of the appropriate therapist;

(2) Therapeutic goals of the services provided by each discipline and anticipated duration of treatment.

(*l*) Supplemental rehabilitation therapy services shall be covered separately from the pediatric subacute care services authorized in accordance with Section 51335.6(c).

(m) Supplemental rehabilitation therapy services shall be subject to the standards of medical necessity as set forth in Sections 51303(a) and 51340(e). Authorization requests shall be initiated by the facility.

(1) For the initial requests for supplemental rehabilitation therapy services, a treatment authorization request (TAR) shall be submitted within 10 working days of the development of the patient's plan of treatment accompanied by the documentation as required by the Department.

(2) For reauthorization or requests for continuation of supplemental rehabilitation therapy services, a TAR shall be accompanied by a statement describing the pediatric subacute care patient's progress and documentation demonstrating the continued medical necessity of these services.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14132.25, Welfare and Institutions Code.

HISTORY

1. New section filed 6–30–97 as an emergency; operative 6–30–97 (Register 97, No. 27). A Certificate of Compliance must be transmitted to OAL by 10–28–97 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6–30–97 order transmitted to OAL 10–22–97 and filed 11–26–97 (Register 97, No. 48).

§ 51215.11. Pediatric Subacute Care Unit—Ventilator Weaning.

(a) Each pediatric subacute care unit shall define, implement and maintain a system for assessing, on admission and at least quarterly, those pediatric patients who are dependent, in part or completely, on mechanical ventilation for the appropriateness of reduction or elimination of such dependence.

(b) *Ventilator weaning services performed in the* pediatric subacute care unit shall be covered separately for the purpose of decreasing or eliminating dependence on mechanical ventilation, subject to the following criteria:

(1) The pediatric subacute care patient shall be evaluated and deemed appropriate for a weaning trial by a physician with knowledge of and experience in pediatric mechanical ventilation care and who documents, at a minimum, the history of ventilator dependence, previous weaning attempts, an a description of the weaning plan of treatment specifying measurable functional goals within specified time frames and post–weaning stabilization care intensity and duration.

(2) The appropriate health care professional, as the result of a comprehensive patient assessment, shall develop a plan of treatment which shall be integrated into an individualized comprehensive plan of care consistent with an interdisciplinary team approach in meeting the child's needs. A plan of treatment specifying measurable functional goals within specified time frames shall include but not be limited to:

(A) A respiratory care practitioner's plan of treatment that provides documentation of needed respiratory care practitioner time greater than the three hours in a day, as required by Section 51215.8(t).

(B) A nursing plan of treatment that documents the need for registered nurse assessments and subsequent skilled nursing care interventions at specified intervals, but in any case, more than three times in every 24 hours.

(c) Ventilator weaning services shall be covered separately from the pediatric subacute care services authorized in accordance with Section 51335.6(c).

(d) Ventilator weaning requests shall be subject to the standards of medical necessity as set forth in Sections 51303(a) and 51340(e). Authorization requests shall be initiated by the facility.

(1) For the initial request for ventilator weaning, a treatment authorization request (TAR) shall be submitted within 10 working days of the development of the patient's plan of treatment accompanied by the documentation in (b) of this section as appropriate.

(2) For reauthorization or requests for continuation of ventilator weaning, a TAR shall be accompanied by a statement describing the pediatric subacute care patient's progress and decreased ventilator dependence achieved and the information required in (b)(1) of this section updated to document continued medical necessity of these services.

(3) Pediatric subacute care patients for whom ventilator weaning is authorized shall remain eligible for pediatric subacute care services authorized in accordance with Section 51335.6(c) for the duration of authorization period for ventilator weaning.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14132.25, Welfare and Institutions Code.

HISTORY

1. New section filed 6–30–97 as an emergency; operative 6–30–97 (Register 97, No. 27). A Certificate of Compliance must be transmitted to OAL by 10–28–97 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6–30–97 order transmitted to OAL 10–22–97 and filed 11–26–97 (Register 97, No. 48).

§ 51216. Transfer of Ownership.

In the case of a transfer of the ownership of an institutional provider of service (includes hospital, skilled nursing facility, intermediate care facility, and home health agency), the new owner shall not be considered as an eligible provider earlier than thirty days following notice of a change of ownership or proposed change of ownership. The notice shall be in writing and shall be submitted to the Department. If the interests of the state are adequately protected, the Department may authorize shortening the 30–day period or waiving the notice requirement.

NOTE: Authority cited: Section 14030, Welfare and Institutions Code. Reference: Section 14030, Welfare and Institutions Code.

HISTORY

1. New section filed 1–13–69; effective thirtieth day thereafter (Register 69, No. 3).
2. Amendment filed 3–30–72 as an emergency; effective upon filing (Register 72, No. 15).
3. Certificate of Compliance filed 7–27–72 (Register 72, No. 31).
4. Amendment filed 8–8–78; effective thirtieth day thereafter (Register 78, No. 32).
5. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51217. Home Health Agency.

A home health agency shall:

(a) Be licensed by the Department according to applicable laws and regulations and,

(b) Meet the standards for Medicare participation in Title 42 Code of Federal Regulations, Part 405 Subpart L or be certified under Title XVIII or XIX of the federal Social Security Act.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code; and Section 208, Health and Safety Code. Reference: Section 14132, Welfare and Institutions Code; and Section 1727, Health and Safety Code.

HISTORY

1. Amendment of subsection (a) filed 12–28–73 as an emergency; designated effective 1–1–74. Certificate of Compliance included (Register 73, No. 52). For prior history, see Register 72, No. 40.
2. Amendment filed 7–7–86; effective thirtieth day thereafter (Register 86, No. 28).

§ 51218. Renal Dialysis Centers, Community Hemodialysis Units and Renal Homotransplantation Centers.

Renal dialysis centers, community hemodialysis units and renal transplantation centers shall:

(a) Be certified for and participate in the Medicare program.

(b) Meet standards established by the Department and be certified by the Department to participate in the Medi–Cal program.

(c) Be recommended for certification by the areawide comprehensive health planning agency on the basis of community need.

NOTE: Authority cited: Sections 14100, 14105 and 14106, Welfare and Institutions Code. Reference: Sections 14019.5, 14053, 14059 and 14103, Welfare and Institutions Code.

HISTORY

1. Amendment filed 1–30–73; effective thirtieth day thereafter (Register 73, No. 5). For prior history, see Register 72, No. 40.
2. Amendment filed 12–28–73 as an emergency; designated effective 1–1–74. Certificate of Compliance included (Register 73, No. 52).

§ 51219. Audiologist.

An audiologist shall be licensed by the Speech Pathology and Audiology Examining Committee of the State Board of Medical Quality Assurance or similarly licensed by a comparable agency in the State in which he practices.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14059 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40). For history of prior section, see Register 72, No. 5.
2. Amendment filed 11–4–76; effective thirtieth day thereafter (Register 76, No. 45).
3. Change without regulatory effect adding NOTE (Regiser 86, No. 49).

§ 51220. Chiropractor.

A chiropractor shall be licensed to practice by the California Board of Chiropractic Examiners or similarly licensed by a comparable agency in the state in which he practices.

NOTE: Authority cited: Sections 10725, 14015 and 14124.5, Welfare and Institutions Code. Reference: Sections 14059 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).
2. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51220.5. Acupuncturist.

An acupuncturist shall be certified to practice acupuncture in California by the Division of Allied Health Professions of the California Board of Medical Quality Assurance or be similarly certified by a comparable agency of the state in which the acupuncturist practices.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14053 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 4–30–81; effective thirtieth day thereafter (Register 81, No. 18).

§ 51221. Christian Science Facilities.

A Christian Science facility shall annually provide the Department with evidence that they are currently certified by the First Church of Christ Scientist, Boston, Massachusetts.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14019.5, 14059 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40). For history of prior section, see Register 67, No. 15.
2. Change without regulatory effect adding NOTE (Register 86, o. 49).

§ 51222. Christian Science Practitioner.

A Christian Science practitioner shall:

(a) Be listed in the Christian Science Journal, published by the First Church of Christ Scientist, Boston, Massachusetts, as a practitioner;

(b) Meet the requirements of the First Church of Christ Scientist relating to billing the Medi–Cal Program for services rendered.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14019.5, 14059 and 14132, Welfare and Institutions Code.

HISTORY

1. New sections 51222 through 51233 filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).
2. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51223. Dentist.

(a) A dentist shall be licensed to practice dentistry by the California Board of Dental Examiners or similarly licensed by a comparable agency in the state in which he practices.

(b) A qualified oral surgeon shall be a dentist who meets the requirements of (1) and either (2) or (3).

(1) Confines his practice to the specialty of oral surgery.

(2) Has successfully completed a course of advanced study in oral surgery of three years or more in programs recognized by the Council on Dental Education of the American Dental Association.

(3) Has completed advanced training in oral surgery and meets both of the following requirements:

(A) Has had advanced study and hospital experience in performing oral surgery in maxillofacial deformities and temporomandibular joint dysfunction.

(B) Is listed in the Directory of the American Dental Association with the Specialty Code of 10, as defined in the 1977 issue.

(c) A qualified orthodontist shall be a dentist who meets the requirements of (1) and either (2) or (3).

(1) Confines his practice to the specialty of orthodontics.

(2) Has successfully completed a course of advanced study in orthodontics of two years or more in programs recognized by the Council on Dental Education of the American Dental Association.

(3) Has completed advanced training in orthodontics prior to July 1, 1969 and is a member of or eligible for membership in the American Association of Orthodontists.

(d) A qualified maxillofacial prosthodontist shall be a dentist who meets the requirements of (1) and either (2) or (3).

(1) Provides maxillofacial prosthetic services to the general public as an integral part of his practice.

(2) Is a Fellow or an Associate Fellow of the American Academy of Maxillofacial Prosthetics.

(3) Is a member of or eligible for membership in the American Board of Prosthodontics.

(e) A qualified practitioner in temporomandibular joint dysfunction management shall be a dentist who:

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(1) Provides temporomandibular joint pain diagnosis and treatment services to the general public as an integral part of his practice.

(2) Has had advanced training in providing temporomandibular joint pain diagnosis and treatment.

NOTE: Authority cited: Sections 14105, 14124.5 and 14132, Welfare and Institutions Code. Reference: Section 14132(h), Welfare and Institutions Code.

HISTORY

1. Amendment filed 12–9–77; effective thirtieth day thereafter (Register 77, No. 50).

§ 51224. Dental School Clinic.

A dental school clinic shall be under the direction of a dental school which has been approved by the California Board of Dental Examiners.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14131 and 14132, Welfare and Institutions Code.

HISTORY

1. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51224.5. Durable Medical Equipment and Medical Supply Providers.

(a) As a condition for enrollment, or continued enrollment, in the Medi–Cal program, an applicant or provider of durable medical equipment and medical supplies shall:

(1) Maintain a business address, as defined in Section 51000.3, that is accessible to the general public. Each provider shall keep, maintain, and have readily retrievable at their business address those records specified in Section 51476.

(2) Maintain a business telephone, as defined in Section 51000.4, at the business address. The business telephone number shall be listed under the name of the business and in the business portion of the local telephone company directory.

(3) Maintain comprehensive liability insurance that covers both the applicant's or provider's place of business and any and all customers and employees of the applicant or provider.

(4) Fill orders from its inventory or by contracting with other companies for the purchase of items necessary to fill the order. Items may be fabricated or fitted for sale only from supplies purchased under contract.

(5) Obtain and maintain all state and local licenses and permits necessary to provide the services, goods, supplies, or merchandise being provided, including but not limited to, the licenses specified below:

(A) One or more of the licenses issued by the Bureau of Home Furnishings and Thermal Insulation of the Department of Consumer Affairs, as applicable to the applicant's or provider's business activity:

1. If the applicant or provider intends to rent or currently rents beds, a Sanitizer's License, a Furniture and Bedding Manufacturer's License, a Custom Upholsterer's License, a Retail Furniture and Bedding Dealer's License, or a Retail Bedding License.

2. If the applicant or provider intends to sell, or currently sells beds, a Retail Bedding Dealer's License, an Importer's License, a Furniture and Bedding Manufacturer's License, a Wholesale Furniture and Bedding Dealer's License, or a Retail Furniture and Bedding Dealer's License.

3. If the applicant or provider intends to sell, or currently sells wheelchairs, a Retail Furniture Dealer's License, an Importer's License, a Furniture and Bedding Manufacturer's License, a Wholesale Furniture and Bedding Dealer's License, a Custom Upholsterer's License, or a Retail Furniture and Bedding Dealer's License.

(B) Licenses issued by the Board of Pharmacy entitled "Medical Device Retailer Original Certificate," and "Medical Device Retailer Original Exemptee Certificate," if the applicant or provider intends to provide, or currently provides, ostomy supplies, oxygen equipment and supplies, urinary catheters, bags, and related supplies.

(6) Have written policies and/or procedures that ensures all the following:

(A) Beneficiaries shall be advised that:

1. Medi–Cal may approve rental or purchase of durable medical equipment on behalf of the beneficiary.

2. Except for life support equipment, such as ventilators, when previously paid rental charges equal the maximum allowable purchase price of the rented item, the item is considered to have been purchased and no further reimbursement to the provider shall be made for the beneficiary's use of the item, unless repair and maintenance is separately authorized.

(B) All warranties, expressed and implied, shall be honored and neither the beneficiary nor the Medi–Cal program shall be charged for the repair or replacement of Medi–Cal covered items or for services covered under warranty.

(C) Beneficiaries shall be provided with necessary information and instructions on how to use items safely and effectively.

(D) Questions or complaints from beneficiaries about items that are sold or rented shall be responded to within 10 calendar days of the date the beneficiary contacts the provider.

(E) Maintenance and/or repair or items shall be provided directly, or through a service contract with another company.

(F) Returns of substandard or unsuitable items shall be accepted from beneficiaries. Substandard or unsuitable items shall be replaced by the provider at no additional cost to the beneficiary or the Medi–Cal program. For the purposes of this section only, the following shall apply:

1. A "substandard item" shall have the same meaning specified in Section 14043.1, Welfare and Institutions (W&I) Code.

2. An "unsuitable item" is an item that, when in actual use, does not meet the medical needs of the beneficiary when the beneficiary's medical condition has not significantly changed since the item was fitted or sold.

(G) In addition to the written polices and procedures specified in (A) through (F), above, a durable medical equipment and medical supply applicant or provider who holds a license as a medical device retailer, or a medical device retailer exemptee, and provides dangerous drugs or dangerous devices, as defined in Section 4022, Business and Professions (B&P) Code, shall meet the standards specified in Section 4131, B&P Code, and have written policies and procedures that meet the requirements of Section 4132, B&P Code.

(b) Consumer information, such as copies of warranties and product information, a copy of the written policies and/or procedures required by subsection (a)(6), above, and a copy of the participation standards specified in this Section shall be provided to each beneficiary to whom a Medi–Cal reimbursed item is provided.

(c) Applicants and enrolled providers shall be subject to an onsite inspection, as permitted by Section 14043.37, W&I Code, or an unannounced visit, as permitted by Section 14043.7, W&I Code, to ensure the requirements of this section have been met.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code; and Section 78, Chapter 146, Statutes of 1999. Reference: Sections 4022, 4130, 4131, 4132, 19051, 19055 and 19059.5, Business and Professions Code; and Sections 14043.37, 14043.7, 14043.75, 14059 and 14132(m), Welfare and Institutions Code.

HISTORY

1. New section filed 10–24–2000 as an emergency and submitted to OAL for printing only pursuant to Section 78, Chapter 146, Statutes of 1999; operative 10–24–2000 (Register 2000, No. 43). A Certificate of Compliance must be transmitted to OAL by 4–23–2001 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of HISTORY 1 (Register 2001, No. 14).
3. New section refiled 4–4–2001 as an emergency and submitted to OAL for printing only pursuant to Section 78, Chapter 146, Statutes of 1999; operative 4–4–2001 (Register 2001, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–2–2001 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–4–2001 order transmitted to OAL 7–31–2001 and filed 9–5–2001 (Register 2001, No. 36).

§ 51225. Orthotist.

An orthotist shall be certified in orthotics by either the American Board for Certification in Orthotics and Prosthetics or the Board for Orthotist/Prosthetist Certification.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14132.63, Welfare and Institutions Code. Reference: Sections 14059, 14132(k) and 14132.63, Welfare and Institutions Code.

HISTORY

1. Change without regulatory effect adding NOTE (Register 86, No. 49).

2. Amendment of section and NOTE filed 4–20–98; operative 5–20–98 (Register 98, No. 17).

§ 51225.5. Respiratory Care Practitioner.

(a) A respiratory care practitioner shall:

(1) be licensed by the Respiratory Care Board of California or similarly certified by a comparable agency in the state in which he or she practices, and

(2) have a Registered Respiratory Therapist credential from the National Board of Respiratory Care.

(b) In addition to the requirements under subsection (a), a respiratory care practitioner who performs cardio–pulmonary resuscitation (CPR) shall have successfully completed a cognitive and skills examination in accordance with the curriculum of the American Red Cross or the American Heart Association, every two (2) years, and shall have available for review a valid CPR certification.

(c) In addition to the requirements under subsection (a), a respiratory care practitioner who performs electrocardiograph (EKG) procedures shall have available for review by the Department a letter from a supervising physician certifying that he or she has received training and is competent to perform EKG procedures.

(d) Respiratory care practitioners shall abide by the "Ethical Performance of Respiratory Home Care", effective April 1983 and the "Statement of Principles on Fraud and Abuse in Home Care", effective July, 1991 of the American Association of Respiratory Care (AARC), as stated in the AARC Position Statements published in 1995.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14509 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 6–23–97; operative 7–23–97 (Register 97, No. 26).

§ 51226. Pharmacy.

A pharmacy shall have a valid permit issued by the California Board of Pharmacy pursuant to Sections 4035 and 4035.1 of the Business and Professions Code or have a similar permit issued by the state in which it is located.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14059 and 14132, Welfare and Institutions Code.

HISTORY

1. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51227. Pharmacist.

A pharmacist shall hold a valid certificate issued by the California Board of Pharmacy pursuant to Section 4085 of the Business and Professions Code, or hold a similar valid certificate issued by the State in which he practices.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14059 and 14132, Welfare and Institutions Code.

HISTORY

1. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51228. Physician.

A physician shall be licensed as a physician and surgeon by the California Board of Medical Quality Assurance or the California Board of Osteopathic Examiners or similarly licensed by a comparable agency of the state in which he practices.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14059 and 14132, Welfare and Institutions Code.

HISTORY

1. Amendment filed 8–8–78; effective thirtieth day thereafter (Register 78, No. 32).
2. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51229. Podiatrist.

A podiatrist shall be licensed to practice podiatry by the California Board of Medical Quality Assurance, or shall be similarly licensed by a comparable agency of the state in which he practices.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14059 and 14132, Welfare and Institutions Code.

HISTORY

1. Amendment filed 8–8–78; effective thirtieth day thereafter (Register 78, No. 32).
2. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51230. Prosthetist.

A prosthetist shall be certified in prosthetics by either the American Board for Certification in Orthotics and Prosthetics or the Board for Orthotist/Prosthetist Certification.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14132.63, Welfare and Institutions Code. Reference: Sections 14059, 14132 and 14132.63, Welfare and Institutions Code.

HISTORY

1. Change without regulatory effect adding NOTE (Register 86, No. 49).
2. Amendment of section and NOTE filed 4–20–98; operative 5–20–98 (Register 98, No. 17).

§ 51231. Ambulance Requirements.

(a) Ambulances shall be licensed, operated and equipped in accordance with applicable federal, state and local statutes, ordinances and regulations.

(b) Ambulances operated in other states shall comply with applicable federal, state and local statutes, ordinances and regulations.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

HISTORY

1. Amendment filed 5–22–80; effective thirtieth day thereafter (Register 80, No. 21). For prior history see 73, No. 5.

§ 51231.1. Litter Van Requirements.

(a) Litter vans shall be operated by a certified driver and an attendant.

(1) These persons shall:

(A) Possess a current California driver's license or a current California Ambulance Driver Certificate issued by the State Department of Motor Vehicles.

(B) Be at least 18 years of age.

(C) Possess at least a current American Red Cross Standard First Aid and Personal Safety Certificate or equivalent.

(D) Have passed a physical examination within the past two years and possess a current Department of Motor Vehicle form DL–51, Medical Examination Report, which is specifically incorporated herein by reference.

(E) Not act in the capacity of a driver or attendant when such person:

1. Is required by law to register as a sex offender for any offense involving force, duress, threat or intimidation.

2. Habitually or excessively uses or is addicted to narcotics or dangerous drugs, or has been convicted during the preceding seven years of any felony offense relating to the use, sale, possession or transportation of narcotics, addictive or dangerous drugs or alcohol.

3. Habitually or excessively uses intoxicating beverages.

(b) Litter vans shall be equipped with at least the following:

(1) Loading entrance large enough to accommodate a patient comfortably lying on a standard–sized gurney.

(2) Emergency exit, other than loading entrance, that can accommodate a standard–sized gurney.

(3) Locking devices for all doors and all door latches which shall be operable from inside and outside on all vehicles manufactured and first registered after January 1, 1980.

(4) Approved seat belt assemblies for the driver and attendant.

(5) Fasteners to secure the gurney to the vehicle which must be of sufficient strength to prevent the gurney from rolling or sliding, to prevent the gurney from leaving the floor in case of sudden movement and to support the gurney and patient in the event the vehicle is overturned.

(6) One interior light.

(7) Portable, battery operated light.

(8) Controlled heating and air conditioning system in the passenger compartment.

(9) Seats covered with washable vinyl or similar impermeable material which shall be in sanitary and functional condition.

(10) Spare wheel, jack and tire tools necessary to make minor repairs except when operating where service and repair cars are immediately available.

(11) Current maps of the streets in the area where service is provided.

(12) Fire extinguisher, type 4–B:C dry powder or carbon dioxide. Vaporizing liquid extinguishers shall not be used.

(13) Identification display of the name under which the litter van is doing business or providing service, on both sides and the rear of each litter van in letters that contrast sharply with the background. Lettering for upper case letters shall be not less than four inches in height, or proportionate width, and of a color readily visible during daylight. Lower case letters shall be no less than three–fourths of the upper case height. All litter vans operated under a single license shall display the same identification. A litter van shall not display identification as an ambulance.

(14) One two–man gurney with mattress and upper and lower restraining straps.

(15) Cot fastener, floor or wall type.

(16) Attendant seat in patient compartment.

(c) Litter vans may be used as wheelchair vans if the litter van meets all the requirements for a wheelchair van as listed in Section 51231.2.

(d) Litter van providers shall be licensed, operated and equipped in accordance with applicable federal, state and local statutes, ordinances and regulations.

(e) Litter van providers in other states shall comply with applicable federal, state and local statutes, ordinances and regulations.

(f) All litter van patients shall be secured to gurney by restraining belts while being loaded, unloaded and transported.

(g) The driver or attendant shall not smoke in the litter van while transporting a patient.

(h) Litter van providers shall furnish the following information to the local Medi–Cal Field Office on an annual basis:

(1) Statement of hours of operation and geographic area served.

(2) Standard brake and light certificate issued by the Department of Consumer Affairs within 45 days following the annual renewal date.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 5–22–80; effective thirtieth day thereafter (Register 80, No. 21).

§ 51231.2. Wheelchair Van Requirements.

(a) Wheelchair vans shall be operated by a certified driver and, where applicable, an attendant.

(1) These persons shall:

(A) Possess a current California driver license or a current California Ambulance Driver Certificate issued by the State Department of Motor Vehicles.

(B) Be at least 18 years of age.

(C) Possess at least a current American Red Cross Standard First Aid and Personal Safety Certificate or equivalent.

(D) Have passed a physical examination within the past two years and possess a current Department of Motor Vehicle form DL–51, Medical Examination Report, which is specifically incorporated herein by reference.

(E) Not act in the capacity of a driver or attendant when such person:

1. Is required by law to register as a sex offender for any offense involving force, duress, threat or intimidation.

2. Habitually or excessively uses or is addicted to narcotics or dangerous drugs, or has been convicted during the preceding seven years of any felony offense relating to the use, sale, possession or transportation of narcotics, addictive or dangerous drugs or alcohol.

3. Habitually or excessively uses intoxicating beverages.

(b) Wheelchair vans shall be equipped with at least the following:

(1) One standard–sized wheelchair.

(2) Loading entrance large enough to accommodate a patient comfortably seated in a standard–sized wheelchair.

(3) Emergency exit, other than loading entrance, that can accommodate a standard–sized wheelchair.

(4) Locking devices for all doors and all door latches which shall be operable from inside and outside on all vehicles manufactured and first registered after January 1, 1980.

(5) Seating capacity to accommodate at least two patients seated in standard–sized wheelchairs.

(6) Approved seat belt assemblies for the driver and any front seat passengers.

(7) Fasteners to secure the wheelchair to the vehicle which must be of sufficient strength to prevent the chairs from rotating, to prevent the chair wheels from leaving the floor in case of sudden movement and to support the chairs and patients in the event the vehicle is overturned.

(8) Lift or ramp with a load capacity of at least 450 pounds which can be secured to the vehicle.

(9) Foot stool or extra step for loading.

(10) One interior light.

(11) Portable, battery–operated light.

(12) Controlled heating and air conditioning system in the patient compartment.

(13) Seats covered with washable vinyl, or similar impermeable material which shall be in sanitary and functional condition.

(14) Spare wheel, jack and tire tools necessary to make minor repairs except when operating where service and repair cars are immediately available.

(15) Current maps of the streets in the area where service is provided.

(16) Fire extinguisher, type 4–B:C dry powder or carbon dioxide. Vaporizing liquid extinguishers shall not be used.

(17) Identification display of the name under which the wheelchair van is doing business or providing service, on both sides and rear of each wheelchair van in letters that contrast sharply with the background. Lettering for upper case letters shall be not less than four inches in height, or proportionate width, and of color readily visible during daylight. Lower case letters shall be no less than three–fourths of the upper case height. All wheelchair vans operated under a single license shall display the same identification.

(c) Wheelchair van providers shall be licensed, operated and equipped in accordance with applicable federal, state and local statutes, ordinances and regulations.

(d) Wheelchair van providers in other states shall comply with applicable federal, state and local statutes, ordinances and regulations.

(e) All wheelchair passengers must be secured to wheelchairs while being loaded, unloaded or transported.

(f) Neither driver nor attendant shall smoke in the wheelchair van.

(g) Wheelchair van providers shall furnish the following information to the local Medi–Cal Field Office on an annual basis:

(1) Statement of hours and geographic area served.

(2) Standard brake and light certificate issued by the Department of Consumer Affairs within 45 days following the annual renewal date.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 5–22–80; effective thirtieth day thereafter (Register 80, No. 21).

§ 51232. Psychologist.

A psychologist shall be licensed by the Psychology Examining Committee of the State Board of Medical Quality Assurance or be similarly licensed by a comparable agency in the State in which he practices.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14059 and 14132, Welfare and Institutions Code.

HISTORY

1. Amendment filed 11–4–76; effective thirtieth day thereafter (Register 76, No. 45).
2. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51233. Optometrist.

An optometrist shall be licensed by the California Board of Optometry to practice optometry, or be similarly licensed by a comparable agency of the state in which he practices.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14131 and 14132, Welfare and Institutions Code.

HISTORY

1. Change without regulatory effect adding NOTE (Register 86, No. 49).

[The next page is 433.]

§ 51234. Psychiatric Technician.

HISTORY

1. New section filed 1–30–73; effective thirtieth day thereafter (Register 73, No. 5).
2. Repealer filed 6–22–87; operative 7–22–87 (Register 87, No. 27).

§ 51235. Dietitian.

HISTORY

1. New section filed 1–30–73; effective thirtieth day thereafter (Register 73, No. 5).
2. Repealer filed 6–22–87; operative 7–22–87 (Register 87, No. 27).

§ 51236. Radiological and Radioisotope Services.

Diagnostic and therapeutic radiological and radioisotope services shall only be provided pursuant to the registration or licensing provisions of Chapter 5, subchapters 4, and 4.5 of Title 17, California Administrative Code, or with similar registration or licensing provisions of a similar agency of the state in which the service is rendered.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14019.5, 14059 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 5–2–73; effective thirtieth day thereafter (Register 73, No. 18).
2. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51237. Nurse Anesthetist.

A nurse anesthetist shall be licensed as a registered nurse by the California Board of Registered Nursing, or similarly registered or licensed by a comparable agency in the state in which he practices, and certified by the American Association of Nurse Anesthetists.

NOTE: Authority cited: Sections 14105, 14115.3 and 14124.5, Welfare and Institutions Code. Reference Section 14115.3, Welfare and Institutions Code.

HISTORY

1. New section filed 5–1–75 as an emergency; effective upon filing (Register 75, No. 18).
2. Certificate of Compliance filed 8–19–75 (Register 75, No. 34).
3. Amendment filed 2–5–88; operative 3–6–88 (Register 88, No. 8).

§ 51238. Short–Doyle Medi–Cal Provider.

A Short–Doyle Medi–Cal provider shall be approved by the Department to participate in the Short–Doyle Medi–Cal program.

NOTE: Authority cited: Sections 14124.5 and 14131, Welfare and Institutions Code. Reference: Section 14131, Welfare and Institutions Code.

HISTORY

1. New section filed 9–29–75 as an emergency; effective upon filing (Register 75, No. 40).
2. Certificate of Compliance filed 1–8–76 (Register 76, No. 2).
3. Change without regulatory effect of NOTE (Register 86, No. 49).

§ 51239. Outpatient Heroin Detoxification Provider.

(a) Outpatient heroin detoxification services shall be provided only by or through one of the following:

(1) Persons or facilities approved to provide such treatment under the provisions of Subchapter 6, Title 9, California Administrative Code.

(2) Persons or facilities approved to conduct research programs under the provisions of Section 11481, Health and Safety Code, and Subsection 4351 (a), Welfare and Institutions Code.

(3) Organized outpatient clinics appropriately licensed under the provisions of Section 400, Title 17, California Administrative Code.

(4) Hospital outpatient departments appropriately licensed under the provision of Section 70103, Title 22, California Administrative Code.

(5) Physicians providing office heroin detoxification services.

(b) Providers of heroin detoxification services shall comply with the requirements of the appropriate State of California Codes, including but not limited to the following, as a condition for reimbursement when using a drug for heroin detoxification purposes which is covered by any of these codes:

(1) Chapter 6, Title 9, California Administrative Code.

(2) Section 11481, Subsection 4351, Health and Safety Code.

(3) Sections 26670, 26678 or 26679, Health and Safety Code.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14019.5, 14059 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 6–23–77; effective thirtieth day thereafter (Register 77, No. 26).
2. Change without regulatory effect of NOTE (Register 86, No. 49).

§ 51240. Utilization of Nonphysician Medical Practitioners.

(a) Each primary care physician, organized outpatient clinic or hospital outpatient department which utilizes a qualified nonphysician medical practitioner shall complete a "Medi–Cal Nonphysician Medical Practitioner and Licensed Midwife Application," DHS 6248 (Rev. 07/05) for enrollment in the Medi–Cal program pursuant to Section 51000.30.

(b) The number of nonphysician medical practitioners who may be supervised by a single primary care physician shall be limited to the full–time equivalent of one of the following:

(1) Four nurse practitioners.

(2) Three nurse midwives.

(3) Two physician's assistants.

(4) Four of the above individuals in any combination which does not exceed the limit stated in either subparagraph (2) or (3).

(c) A primary care physician, an organized outpatient clinic or a hospital outpatient department shall not utilize more nonphysician medical practitioners than can be supervised within the limits stated in (b).

(d) Each primary care physician organized outpatient clinic or hospital outpatient department which utilizes a nonphysician medical practitioner shall develop a Physician–Practitioner Interface specifically establishing the scope and limits of services to be rendered by, and related to the functions of, each nonphysician medical practitioner.

(1) A Physician–Practitioner Interface includes the following:

(A) In the case of registered nurses, standardized procedures, as required by Title 16, Article 7, Division 14, California Code of Regulations, commencing with Section 1470.

(B) In the case of physician assistants, a written delegation of medical services and written supervisory guidelines, as required by Section 1399.540 and Section 1399.545(e), Title 16, California Code of Regulations.

(C) All written protocols issued by collaboration between the physician and the nonphysician medical practitioner.

(D) All written standing orders of the physician.

(E) All written special orders given by the physician.

(2) Agreements reached in developing the Physician–Practitioner Interface shall be retained on file at the provider's office, readily available for review by the Department.

(e) Each nurse practitioner shall have completed a clinical and didactic educational program of at least six months duration, which shall be:

(1) Of a length of time and focus appropriate to the scope and functions of the area of practice.

(2) Offered in one of the following:

(A) A college or university that offers a baccalaureate or higher degree.

(B) A health care agency that has an academic affiliation with a college or university as specified in (A).

NOTE: Authority cited: Sections 14053, 14105, 14124.5 and 14132, Welfare and Institutions Code. Reference: Article 12.5 of Chapter 5, Articles 2 and 2.5 of Chapter 6, and Chapter 7.7, Business and Professions Code.

HISTORY

1. New section filed 8–1–78 as an emergency; effective upon filing (Register 78, No. 31).
2. Certificate of Compliance filed 8–9–78 (Register 78, No. 31).
3. Change without regulatory effect amending subsection (f)(1)(B) filed 7–7–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 27).
4. Editorial correction of subsection (d) (Register 95, No. 45).
5. Amendment filed 11–10–2005; operative 11–10–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 45).

§ 51241. Physician Relationship to Nonphysician Medical Practitioners.

(a) The relationship between the physician and the nonphysician medical practitioner shall be that of a shared and continuing responsibility to follow the progress of the patient in a manner which assures the nonphysician medical practitioner's adherence to the limits of the specific professional practice established by law and regulations, while maximizing patient safety, health and well-being.

(b) The supervising physician shall be available to the nonphysician medical practitioners in person or through electronic means to provide supervision to the extent required by California professional licensing laws, necessary instruction in patient management, consultation and referral to appropriate care and services by specialist physicians or other licensed health care professionals, as may be required in each case.

(c) In cases of emergencies as defined in Section 51056, the nonphysician medical practitioner, to the extent permitted by the laws relating to license or certificate involved, may render emergency services to a patient pending establishment of contact with the physician.

(d) In all cases, the nonphysician medical practitioner shall be responsible to maintain reasonable communication with the physician, to keep the physician informed, to follow instructions and, in any case of doubt, to seek assistance or additional instructions.

NOTE: Authority cited: Sections 14053, 14105, 14124.5 and 14132, Welfare and Institutions Code. Reference: Article 12.5 of Chapter 5, Articles 2 and 2.5 of Chapter 6, and Chapter 7.7, Business and Professions Code.

HISTORY

1. New section filed 8-1-78 as an emergency; effective upon filing (Register 78, No. 31).
2. Certificate of Compliance filed 8-9-78 (Register 78, No. 31).

§ 51242. EPSDT Diagnosis and Treatment Provider and EPSDT Supplemental Services Provider.

(a) An EPSDT diagnosis and treatment provider shall meet the requirements for participation in the Medi-Cal program as specified in this chapter, excepting the requirements specified in subsection (b).

(b) A provider seeking to provide EPSDT supplemental services, who is not enrolled as a provider pursuant to subsection (a), shall first submit a provider enrollment application to the department to become an EPSDT supplemental services provider. The application shall be accompanied by a request for prior authorization, pursuant to Section 51340(c), for the initial service the provider seeks to provide.

(c) An EPSDT case manager, defined in Section 51184(h)(4), seeking to provide EPSDT case management services shall be considered to be an EPSDT supplemental services provider and shall comply with the requirements of this section.

(d) In order to be approved as an EPSDT supplemental services provider for the particular service sought, the provider shall supply documentation or other evidence which the Department determines establishes that both of the following conditions are met:

(1) The services to be provided meet the standard of medical necessity set forth in Section 51340(e).

(2) The provider is licensed, certified, or otherwise recognized or authorized under state law governing the healing arts to provide the service pursuant to Division 2 (commencing with section 500) of the Business and Professions Code or is a licensed pediatric day health and respite care facility pursuant to Section 1760 of the Health and Safety Code, and meets any applicable requirements in federal Medicaid law to provide the particular service requested.

(e) Notwithstanding the provisions of paragraph (d)(1), an entity or individual seeking to provide EPSDT case management services pursuant to Section 51340(j)(3) shall supply documentation enabling the Department to determine that both of the following requirements are met:

(1) The criteria specified in Section 51340(f) are met.

(2) The entity or individual is qualified by education, training, or experience to provide EPSDT case management services to the beneficiary.

(f) The Department shall not approve an application pursuant to subsection (b) or (c) of this section if the Department determines that the service to be provided is accessible and available in an appropriate and timely manner through existing Medi-Cal certified provider types or other Medi-Cal programs.

(g) Once enrolled as an EPSDT supplemental services provider, the provider shall remain enrolled only for the purpose of providing subsequent EPSDT supplemental services within his or her scope of practice, or within the scope of the facility's license, unless disenrolled by provider choice or the Department's administrative action, pursuant to Chapter 3, Division 3, Title 22, California Code of Regulations.

(h) A provider who is currently enrolled as a Medi-Cal services provider shall not be required to enroll as an EPSDT supplemental services provider.

(i) Notwithstanding subsections (a) and (d), a local health department as defined in Section 101185 of the Health and Safety Code or a comprehensive environmental agency as referenced in Section 101275 of the Health and Safety Code may provide onsite investigations to detect the source of lead contamination as an EPSDT supplemental service, as specified in 51340.1(d). To be eligible for payment, the service must be rendered by an individual who is a Registered Environmental Health Specialist registered in accordance with Article 1 of Chapter 4 of Part 1 of Division 104 of the California Health and Safety Code (commencing with Section 106600) and who has been certified in accordance with Section 35005 of Title 17 of the California Code of Regulations as a Certified Lead Inspector/Assessor of the Department.

NOTE: Authority cited: Sections 10725, 14124.5 and 14195, Welfare and Institutions Code. Reference: Sections 14059, 14132 and 14132.10, Welfare and Institutions Code.

HISTORY

1. New section filed 4-4-94 as an emergency; operative 4-4-94 (Register 94, No. 14). A Certificate of Compliance must be transmitted to OAL by 8-2-94 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 8-1-94 as an emergency; operative 8-1-94 (Register 94, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-29-94 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 10-24-94 as an emergency; operative 10-24-94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2-21-95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 2-22-95; operative 2-22-95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-22-95 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 2-22-95 order including amendment of section heading and section transmitted to OAL 3-16-95 and filed 4-27-95 (Register 95, No. 17).
6. New subsection (i) and amendment of NOTE filed 4-13-99 as an emergency; operative 4-13-99 (Register 99, No. 16). A Certificate of Compliance must be transmitted to OAL by 8-11-99 or emergency language will be repealed by operation of law on the following day.
7. New subsection (i) and amendment of NOTE refiled 8-5-99 as an emergency; operative 8-5-99 (Register 99, No. 32). A Certificate of Compliance must be transmitted to OAL by 12-3-99 or emergency language will be repealed by operation of law on the following day.
8. Amendment of subsections (d)(1), (d)(2) and (g) and amendment of NOTE filed 11-10-99 as an emergency; operative 11-10-99 (Register 99, No. 46). A Certificate of Compliance must be transmitted to OAL by 3-9-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 8-5-99 order transmitted to OAL 12-1-99 and filed 1-12-2000 (Register 2000, No. 2).
10. Certificate of Compliance as to 11-10-99 order transmitted to OAL 3-8-2000 and filed 4-19-2000 (Register 2000, No. 16).

§ 51242.1. EPSDT Supplemental Services Provider—Pediatric Day Health Care Facility.

(a) A pediatric day health care facility, as defined in Section 51184(k)(2), seeking to provide pediatric day health care EPSDT services shall be considered to be an EPSDT supplemental services provider and shall comply with the provisions specified in this section and in Section 51242, except the provisions of subsections (a), (c) and (e). In addition, the pediatric day health care facility shall maintain documentation

available for Department review substantiating compliance with all of the provisions of this section.

(b) The pediatric day health care facility shall provide the required EPSDT services specified in Section 1760.6 of the Health and Safety Code, with the exception of Section 1760.6(b)(5).

(c) The pediatric day health care facility shall comply with the personnel requirements specified in Section 1267.13 of the Health and Safety Code. Such personnel, as required to provide the services pursuant to paragraph (b) of this section, shall be:

(1) Licensed, certified or credentialed health professionals acting within their scope of practice who meet the experience requirements specified in this section; and

(2) Present in the facility in sufficient numbers, as determined under the patient classification system defined in Title 22, California Code of Regulations, Section 70053.2, during all hours of facility operation to provide services as prescribed by the attending physician and documented in the individual plan of treatment and to address projected admissions, terminations and emergencies.

(d) In complying with the provisions of paragraph (c) of this section, the following requirements shall apply:

(1) Registered nurse personnel shall upon hire provide to the employer evidence of all of the following:

(A) Current California licensure as a registered nurse, and a minimum of two years of experience within the last five years which includes the provision of nursing services to children with the types of medical conditions for which the facility provides care. For those registered nurses serving in a supervisory capacity, such experience shall include nursing supervision; and

(B) Within one year of his or her date of hire, proof of completion of at least thirty (30) continuing education units specific to the physical and psychosocial assessment of, and provision of nursing services to, children with the types of medical conditions for which the facility provides care.

(2) Licensed nurse personnel, other than registered nurses, shall provide to the employer evidence, upon hire, of a minimum of six months' experience within the past two years providing care to children with the types of medical conditions for which the facility provides care; or an acquired competency, to be documented in the licensed nurse's personnel records, including:

(A) Proof of completion, within one year of his/her date of hire, of at least 15 continuing education units specific to the provision of care to children with the types of medical conditions for which the facility provides care, and

(B) Proof of completion, within two months of employment, of at least 40 hours of direct employee specific preceptorship, provided by a registered nurse meeting the qualifications specified in subsection (1). For purposes of this section "preceptorship" means the pairing of the newly hired nurse with a registered nurse who has met the experience and education qualifications specified in subsection (1), for the purpose of promoting the clinical competency of the newly hired nurse in providing nursing services to the types of patients for whom the facility provides care. Such a preceptorship may be provided during the licensed nurses' normal working tour of duty.

(3) If the facility provides care to a child who is dependent on mechanical ventilation, the facility shall employ a licensed respiratory care practitioner, or a licensed nurse with documented education, preparation and expertise specific to the assessment and treatment of the ventilator dependent child. Such personnel shall be present in the facility during all hours in which the ventilator dependent child is present in the facility.

(4) If the facility utilizes nonlicensed nursing personnel pursuant to Section 1337 of the Health and Safety Code, such personnel shall, upon hire, provide evidence of a minimum of six months' experience within the past year providing care to children with the types of medical conditions for which the facility provides care.

(5) All medical personnel shall:

(A) Have upon hire, and subsequently maintain, pediatric cardiopulmonary resuscitation certification, or

(B) Prior to the completion of the orientation period described in Title 22, California Code of Regulations, Section 72517(d), obtain, and subsequently maintain, pediatric cardiopulmonary resuscitation certification.

(e) The facility shall collaborate with and involve the child's parent, foster parent or legal guardian in the decision making process for all care planning and provision of interventions and treatment at the facility and in the child's home. Such collaboration shall be provided by the director or personnel delegated by the director, and shall involve, at a minimum:

(1) A conference with the child's parent, foster parent or legal guardian to be held quarterly, or more frequently as indicated by the needs of the child or parent, foster parent or legal guardian, to provide, at a minimum:

(A) A written status report on the plan of treatment of the child at the facility.

(B) Information on the interventions and treatments specified in the child's plan of treatment.

(2) A written report of the day's events provided to the parent, foster parent or legal guardian at the conclusion of each day of attendance specifying information including but not limited to:

(A) Treatments provided and when they were provided.

(B) Medications administered, including amount, time and route of dosage.

(C) Nutritional intake, including amount, time and route of intake.

(D) Developmental activities.

(E) Contact with the attending physician.

(f) The facility shall work in conjunction with the Regional Center, as defined in Title 17, Section 54302(a)(49), or the Local Education Agency Provider, as defined in Title 22, Section 51190.2, in the development and implementation of an age appropriate Individualized Family Service Plan (IFSP), Individualized Education Plan (IEP) and/or Individualized Health and Support Plan (IHSP) as specified in Government Code Section 95020, for each child. The facility shall incorporate those identified activities in the IFSP, IEP, and/or IHSP as appropriate, into the individual plan of treatment. To facilitate continuity of services, the facility shall obtain instruction for its personnel from the Regional Center or Local Education Agency Provider in performing activities identified in the IFSP, IEP, and/or IHSP.

(g) During any work shift, personnel employed by the facility shall not be simultaneously assigned duties at a licensed health care facility, including but not limited to, a skilled nursing facility or a congregate living health facility as defined in Division 2, Chapter 2, commencing with Section 1250 of the Health and Safety Code.

(h) The facility shall accept and retain only those beneficiaries for whom it can provide adequate, safe, therapeutic and effective care as determined by the attending physician and documented in the child's individualized plan of treatment.

(i) Pharmaceutical services, as required by paragraph (b) of this section, shall be:

(1) Supplied to the licensed nursing personnel of the facility by the child's parent, foster parent or legal guardian in the original dispensing container which specifies administration instructions, except when a verbal order is obtained from the attending physician and the medication is delivered to the facility by a pharmacy. In such a case, the facility shall provide the container with the new medication to the child's parent, foster parent or legal guardian the same day the medication was delivered to the facility. Administered only upon written and signed orders of the child's attending physician.

(2) All physician orders shall be current and maintained in the child's medical record at the facility. Verbal orders from the attending physician for services to be rendered at the facility may be received and recorded by licensed nursing personnel in the child's medical record at the facility and shall be signed by the attending physician within thirty (30) working days.

(3) Administered by facility personnel acting within the scope of their practice.

(j) Nutrition services, as required by paragraph (b) of this section, shall include a minimum of one meal per day, between meal nourishment, and consultation services by the facility's dietitian. Therapeutic diets, as defined in Title 22, Section 72115, and between meal nourishment shall be provided and served as prescribed by the attending physician. The child's parent, foster parent or legal guardian shall supply the facility with baby food, baby formula, enteral formula, and any other food or snack items not included in the facility's fixed meal menu. The administration of all food shall be supervised by licensed or certified personnel functioning within their scope of practice and documented in the plan of treatment.

(k) Each pediatric day health care facility shall provide readily available emergency health services as follows:

(1) The facility shall obtain a written agreement from the child's parent, foster parent or legal guardian granting the facility permission to transfer the child to a hospital or other health facility in case of an emergency.

(2) The facility shall maintain written agreements for the provision of emergency medical care which shall include:

(A) An on-call physician.

(B) Hospital or emergency room care.

(C) Medical transportation.

(3) First aid services shall be available at the facility. All personnel shall receive in-service training in first aid. Training in cardiopulmonary resuscitation shall be in accordance with Sections 51242.1(d)(5)(A) and (B).

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14132.10, Welfare and Institutions Code.

HISTORY

1. New section filed 11-10-99 as an emergency; operative 11-10-99 (Register 99, No. 46). A Certificate of Compliance must be transmitted to OAL by 3-9-2000 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 11-10-99 order, including amendment of subsections (d)(1)(A) and (d)(2), new subsections (d)(2)(A)-(B) and amendment of subsections (i)(2) and (j), transmitted to OAL 3-8-2000 and filed 4-19-2000 (Register 2000, No. 16).

§ 51243. Intermediate Care Facility for the Developmentally Disabled.

An intermediate care facility for the developmentally disabled as defined in Section 51164 shall meet each of the following requirements:

(a) Be licensed by the Department of Health Services as any of the following:

(1) A hospital pursuant to the provisions of Sections 70101 through 70137 of Title 22 of the California Administrative Code.

(2) A psychiatric hospital pursuant to the provisions of Sections 71101 through 71135 of Title 22 of the California Administrative Code.

(3) A skilled nursing facility pursuant to the provisions of Sections 72201 through 72241 of Title 22 of the California Administrative Code.

(4) An intermediate care facility pursuant to the provisions of Sections 73201 through 73241 of Title 22 of the California Administrative Code.

(b) Meet the standards and be certified to participate in the Medi-Cal program under:

(1) Section 51215, Skilled Nursing Facility.

(2) Section 51212, Intermediate Care Facility.

(3) Section 51207, Hospitals.

(c) Be certified by the department as meeting the standards specified in 42 Code of Federal Regulations, Sections 442.400 through 442.516 and applicable standards in Sections 442.250 through 442.254 or be pro-

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visionally certified as meeting these standards with a federal or state approved plan of correction.

(d) Be licensed and approved to provide intermediate care facility services to the developmentally disabled pursuant to the provisions of Sections 76000 through 76725 of Title 22 of the California Administrative Code.

NOTE: Authority cited: Section 14124.5, Welfare and Institutions Code; and Section 208.4, Health and Safety Code. Reference: Section 14132, Welfare and Institutions Code; and Section 1250, Health and Safety Code.

HISTORY

1. Amendment filed 3–29–84 as an emergency; designated effective 4–1–84 (Register 84, No. 15). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–30–84. For prior history, see Registers 84, No. 2; 82, No. 31 and 79, No. 9.
2. Emergency language filed 3–29–84 repealed by operation of Government Code Section 11346.1(f) (Register 85, No. 19).
3. Amendment filed by the Department of Health Services with the Secretary of State on 8–1–84 as an emergency; effective upon filing. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 85, No. 19).
4. Certificate of Compliance including amendment filed by the Department of Health Services with the Secretary of State on 11–28–84. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 85, No. 25).

§ 51243.1. Intermediate Care Facility for the Developmentally Disabled Habilitative.

(a) An intermediate care facility for the developmentally disabled habilitative as defined in Section 51164.1 shall:

(1) Be licensed by the Department as an intermediate care facility for the developmentally disabled habilitative pursuant to the provisions of Sections 76800 through 76962 of Title 22 of the California Administrative Code.

(2) Be certified by the Department as meeting the standards and conditions specified in Title 42, Code of Federal Regulations, Sections 440.150, 442.100 through 442.115, and 442.400 through 442.516.

(b) Each facility shall cooperate with the State Medical Review Team and keep on file the following items:

(1) A description of procedures to be used for taking needed corrective action following a state review.

(2) Records and reports sent to the facility by the State Medical Review Team.

NOTE: Authority cited: Section 14124.5, Welfare and Institutions Code; and Sections 208.3, 208.4 and 1267.7, Health and Safety Code. Reference: Section 14132, Welfare and Institutions Code; and Section 1250, Health and Safety Code.

HISTORY

1. New section filed by the Department of Health Services with the Secretary of State on 8–1–84 as an emergency; effective upon filing. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 85, No. 19).
2. Certificate of Compliance filed by the Department of Health Services with the Secretary of State on 11–28–84. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 85, No. 25).

§ 51243.2. Intermediate Care Facility for the Developmentally Disabled–Nursing.

(a) An intermediate care facility for the developmentally disabled–nursing as defined in Section 51164.2 shall:

(1) Be licensed by the Department as an intermediate care facility for the developmentally disabled–nursing pursuant to the provisions of Sections 73846 through 73855, Title 22, California Code of Regulations.

(2) Be certified by the Department as meeting the applicable standards and conditions specified in Title 42, Code of Federal Regulations, Sections 440.150, 442.100 through422.112 and Part 483, Support D.

(b) Each facility shall cooperate with the State Medi–Cal Utilization Review Team and keep on file the following items:

(1) Policies and procedures to be used for taking needed corrective action of identified deficiencies following a state review.

(2) Records and reports sent to the facility by the State Medi–Cal Utilization Review Team.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Sections 208, 1250.1 and 1275.3, Health and Safety Code. Reference: Sections 1250, 1250.1, and 1275.3, Health and Safety Code.

HISTORY

1. New Section refiled by the Department of Health Services with the Secretary of State on 5–30–89 as an emergency pursuant to Health and Safety Code Section 1275.3; operative 5–30–89. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 89, No. 23). For prior history, see Register 89, No. 1.
2. Certificate of Compliance as to 5–30–89 order including amendment of subsections (a) (2) and (b) transmitted to OAL 9–27–89 and filed 10–26–89 (Register 89, No. 44).

§ 51244. In–Home Medical Care Waiver Services Provider and Nursing Facility Waiver Services Provider.

(a) An in–home medical care waiver services provider and a nursing facility waiver services provider shall:

(1) Be licensed in accordance with appropriate state or local laws; and

(2) Be certified in accordance with the standards set forth in the applicable federal waiver and in a written agreement between the Department and the provider of services necessary to implement the in–home medical care waiver services program component or the Nursing Facility Waiver Services program component. In the event the specific standards for participation are not set forth in the waiver and agreement and the services to be provided are the same as otherwise set forth in Article 2 of this chapter (excluding Section 51173.1 and Section 51176), the provider shall adhere to the provider standards applicable to the service to be provided, as otherwise set forth in Article 3 of this chapter, commencing with Section 51200; and

(3) Be certified to participate in the Medi–Cal program by meeting the standards for participation as a provider under the Medi–Cal program, being in compliance, where applicable, with the Medicare and Medicaid requirements of Titles XVIII and XIX of the Social Security Act.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 57(c), Chapter 328, Statutes of 1982. Reference: Sections 14114 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 9–1–82 as an emergency; effective upon filing (Register 82, No. 37). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12–30–82.
2. Certificate of Compliance transmitted to OAL 12–30–82 and filed 2–2–83 (Register 83, No. 6).
3. Amendment of section heading, text and NOTE filed 10–20–94; operative 10–20–94 (Register 94, No. 42).
4. Editorial correction of HISTORY 3 (Register 95, No. 14).

§ 51245. Nurse Midwife.

A nurse midwife shall be licensed as a registered nurse and currently certified as a nurse midwife by the California Board of Registered Nursing.

NOTE: Authority cited: Section 14124.5, Welfare and Institutions Code. Reference: Section 14132.4, Welfare and Institutions Code.

HISTORY

1. New section filed 12–21–83; effective thirtieth day thereafter (Register 83, No. 52).

§ 51246. Home and Community–Based Waiver Services Providers.

(a) A home and community–based waiver services provider shall:

(1) Be licensed in accordance with the appropriate state laws; and

(2) Be certified in accordance with the standards set forth in the applicable federal waiver approved by the Department of Health and Human Services; or

(3) In the event specific standards for participation are not set forth in the waiver and the services to be provided are the same as otherwise set forth in Article 2 of this chapter (excluding Section 51176) as a Medi–Cal covered benefit in the absence of a waiver, the provider shall adhere to the provider standards applicable to the service to be provided, as otherwise set forth in Article 3 of this chapter, commencing with Section 51200.

NOTE: Authority cited: Section 14124.5, Welfare and Institutions Code; and Statutes of 1982, Chapter 1594, Section 87. Reference: Sections 14114 and 14132(s), Welfare and Institutions Code.

HISTORY

1. New section filed 2–25–83 as an emergency; effective upon filing (Register 83, No. 10). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6–25–83.
2. Certificate of Compliance including editorial correction transmitted to OAL 6–22–83 and filed 7–27–83 (Register 83, No. 31).
3. Amendment of section heading, subsection (a) and NOTE filed 10–20–94; operative 10–20–94 (Register 94, No. 42).
4. Editorial correction of HISTORY 3 (Register 95, No. 14).

§ 51247. Swing Bed Facility.

(a) Swing bed facilities as defined in Section 51178 shall:

(1) Meet the standards for hospitals specified in Section 51207.

(2) Be certified as a special hospital provider of long–term services under Title XVIII of the Federal Social Security Act.

(3) Be approved by the Department as a primary health service hospital in accordance with Division 2, Article 10 of the Health and Safety Code commencing with Section 1339.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code; and Section 208, Health and Safety Code. Reference: Sections 1339.7, 1339.9 and 1339.15, Health and Safety Code.

HISTORY

1. New section filed 1–17–86; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 86, No. 3).

§ 51248. Ocularist.

An ocularist shall be certified by the American Anaplastology Association, or by the National Examining Board of Ocularists, or shall be a graduate of at least a two year course in ocular prostheses sponsored by a school or college of medicine or optometry, and whose degrees are accepted by the applicable board, or shall be a California licensed physician and surgeon, optometrist, or optician.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 7–23–87; operative 8–22–87 (Register 87, No. 31).

§ 51249. Application Process for Comprehensive Perinatal Providers.

(a) Except where a capitated health system contract entered into by the Department provides otherwise, to become a comprehensive perinatal provider as defined in Section 51179.1, the Medi–Cal enrolled provider shall complete and submit a Department approved application form entitled Application for Certification As A Comprehensive Perinatal Provider Under Medi–Cal to the local health department or designated State agent for review. The designated agent may include counties or other non–profit organizations as designated by the Director of the Department. Applications shall be available from the local Comprehensive Perinatal Services Program Coordinator or the State Maternal and Child Health Branch, 714 P Street, Sacramento, CA 95814.

(b) The Department shall utilize the following criteria in evaluating applications:

(1) Provider's ability to provide the services specified in Section 51348 through the provider's own service or through subcontractors.

(2) Training and experience of providers rendering services specified in Section 51348.

(3) Quality of care rendered by providers as evidenced by history of:

(A) Revocations, suspensions, or restrictions by a licensing authority.

(B) The extent of training received in the provision of comprehensive perinatal care which has been approved by the State.

(c) The Department shall have responsibility for the final decision and for notifying the provider of acceptance or rejection of the application.

(d) The Department shall:

(1) Within 60 calendar days from receipt of the application, inform the applicant in writing that the application is complete and acceptable or that the application is deficient and what specific information or clarification is necessary.

(2) Within 60 calendar days from receipt of an application which is complete upon initial submission, reach a decision to approve or deny the applicant for participation as a comprehensive perinatal provider.

(3) Within 60 calendar days from receipt of any information or clarification necessary to make an application complete, reach a decision to approve or deny the applicant for participation as a comprehensive perinatal provider.

(4) Send written notification to the applicant upon approval or denial for participation as a comprehensive perinatal provider. The written notification of the denial shall contain the basis for the denial.

(e) An applicant whose application has been denied shall have 30 calendar days from the date of the receipt of written notification of the denial to submit a written appeal to the Department. This written appeal shall contain factual statements as to why the applicant meets the criteria which have been cited as the basis for the denial of the application. The Department shall issue a written decision within 60 calendar days of receipt of the applicant's appeal.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14053, 14132 and 14134.5, Welfare and Institutions Code; and Section 15376(a) and (b), Government Code.

HISTORY

1. New section filed 2–17–87 as an emergency; effective upon filing (Register 87, No. 8). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6–17–87.
2. New section refiled 6–5–87 as an emergency; operative 6–17–87 (Register 87, No. 25). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–15–87.
3. Certificate of Compliance including amendment of subsection (a) filed 9–17–87 (Register 87, No. 38).

§ 51250. Hospice.

A hospice shall:

(a) Be certified and continue to meet the conditions for participation as a hospice under Title XVIII of the Social Security Act, Section 1861 (dd), (42 U.S.C. 1395x(dd)).

(b) Make available and provide core services and other services, and utilize volunteers as specified in 42 Code of Federal Regulations, Part 418, Subpart C, in accordance with the conditions specified. Reference to Medicare beneficiaries shall apply equally to Medi–Cal beneficiaries.

(c) Not discontinue or diminish care provided to a Medi–Cal beneficiary based on expiration of the beneficiary's final election period.

(d) Make available to the Department complete, accurate medical and fiscal records, signed and dated by appropriate staff, to fully substantiate all claims for hospice services submitted to the Department, and shall permit access to all records and facilities for the purpose of claims audit, program monitoring and utilization review.

(e) Notify the Department of Health Services by mail postmarked within two working days of approval of hospice benefits for an individual by a Medi–Cal Consultant.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference Sections 14053 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 10–27–87 as an emergency; operative 10–27–87 (Register 87, No. 44). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–24–88.
2. Certificate of Compliance including amendment of subsections (b) and (e) transmitted to OAL 2–24–88 and filed 3–22–88 (Register 88, No. 15).

§ 51251. Medical Device Retailer.

Any Medi–Cal provider who dispenses dangerous medical devices, as defined in Business and Professions Code section 4034.5, shall have a valid pharmacy license or medical device retailer permit issued by the Board of Pharmacy pursuant to Business and Professions Code section 4034.5 and 4081.

NOTE: Authority cited: Section 208, Health and Safety Code; and Section 14124.5, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 2–15–91; operative 3–17–91 (Register 91, No. 11).

§ 51255. Licensed Midwife.

(a) In order to participate in the Medi–Cal Program, a licensed midwife shall enroll as a Medi–Cal Provider, pursuant to Article 1 of Chapter 3 commencing with Section 51000.

(b) A licensed midwife shall comply with the provisions of the Licensed Midwifery Practice Act of 1993, as set forth in Business and Professions Code Section 2505 et seq.

(c) A licensed midwife shall be supervised by a licensed physician and surgeon who has current practice or training in obstetrics and who shall:

(1) Have current, unrevoked, unsuspended hospital privileges in obstetrics;

(2) Be a current Medi–Cal provider; and

(3) Supervise no more than four individual licensed midwives at once, so as not to exceed a ratio of four individual licensed midwives to one individual supervising licensed physician and surgeon.

(d) The supervision required in (c) of this section shall not be construed to require the physical presence of the supervising licensed physician and surgeon.

NOTE: Authority cited: Sections 14124.5, Welfare and Institutions Code. Reference: Section 14132.39, Welfare and Institutions Code; and Sections 2505–2521, Business and Professions Code.

HISTORY

1. New section filed 9–3–2004; operative 10–3–2004 (Register 2004, No. 36).

§ 51260. Certified Nurse Practitioner.

A Certified Nurse Practitioner shall meet the standards prescribed by the Board of Registered Nursing within the State of California.

NOTE: Authority cited: Sections 14105, 14124.5 and 14132.41, Welfare and Institutions Code. Reference: Sections 14132 and 14132.41, Welfare and Institutions Code; and Sections 2834, 2835, 2835.5 and 2836, Business and Professions Code.

HISTORY

1. New section filed 5–3–93 as an emergency; operative 5–3–93 (Register 93, No. 19). A Certificate of Compliance must be transmitted to OAL 8–31–93 or emergency language will be repealed by operation of law on the following day.
2. Emergency adoption of section filed 5–3–93 repealed by operation of Government Code section 11346.1(g) (Register 93, No. 44).
3. New section refiled 10–27–93 as an emergency; operative 10–27–93 (Register 93, No. 44). A Certificate of Compliance must be transmitted to OAL by 2–25–94 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–27–93 order including amendment of NOTE transmitted to OAL 10–18–93 and filed 12–2–93 (Register 93, No. 49).

§ 51270. Local Educational Agency (LEA) Provider.

(a) A Local Educational Agency (LEA) Provider, as defined in Section 51190.2, shall be certified by the Department of Education as meeting all of the following conditions for participation:

(1) The LEA Provider meets the definition of an LEA as stated in Education Code, Section 33509(e), and

(2) The LEA Provider has signed a contract with the Department of Health Services.

(b) As a condition for participation, LEA Providers shall comply with the following requirements:

(1) Any federal funds received by an LEA Provider for LEA Services shall be reinvested by the LEA Provider in services, as identified in Education Code Section 8804(g), for school children and their families,

(2) LEA Providers shall consult with a local school–linked services collaborative group, such as defined in Education Code, Section 8806, regarding decisions on reinvestment of federal funds referred to in (b)(1) above,

(3) LEA Providers shall submit annually, on or before October 10th, a certification of the specific amount available in non–federal matchable funds to draw down federal Medicaid funds for the specific fiscal year.

(4) LEA Providers shall adhere to and comply with all federal and state third party liability requirements prior to billing Medi–Cal, including but not limited to policy directives issued by the federal Department of Health and Human Services and Health Care Financing Administration and those standards found in 42 United State Code Section 1396a(a)(25); 42 Code of Federal Regulations Section 433.139; Welfare and Institutions Code, Sections 14005, 14023.7, 14124.90; and Title 22, California Code of Regulations, section 51005 and Article 15 commencing with Section 50761.

(5) LEA Providers shall comply with confidentiality requirements as specified in 42 United States Code Section 1320c–9; 42 Code of Federal Regulations, Section 431.300; Welfare and Institutions Code, Section 14100.2; California Code of Regulations, Title 22, Section 51009; and Education Code, Sections 49060 and 49073 through 49079.

(6) LEA Providers shall submit an Annual Report which shall include, but is not limited to, the following:

(A) Identification of who participates in the community collaborative;

(B) Concise summary financial statement identifying funds received as a result of claiming for LEA Services and identifying both, how funds will be reinvested and how funds were reinvested in the previous year; and

(C) Identification of anticipated services priorities for the future.

(c) LEA Providers shall maintain records as necessary to fully disclose the type and extent of services provided to a Medi–Cal beneficiary.

(d) LEA Providers shall maintain records showing that all LEA Practitioners, which it employs or with which it contracts, meet and shall continue to meet all appropriate licensing and certification requirements.

(e) LEA Providers shall review each publication of the "suspended and ineligible list" of Medi–Cal providers periodically published and distributed by the Department. LEA Providers may not bill for services rendered by any practitioners found on this list during the suspended or ineligible period.

(f) LEA Providers shall adhere to and comply with all federal Health and Human Services and Health Care Financing Administration requirements with respect to billing for services provided by other health care professionals under contract with the LEA.

(g) The LEA Provider shall ensure that its practitioners provide only those services which are within their appropriate scope of practice.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005, 14023.7, 14053, 14059, 14100.2, 14124.5, 14124.90, 14131 and 14132, Welfare and Institutions Code; Sections 8804(g), 8806, 33509(e), 49060 and 49073 through 49079, Education Code; 42 United States Code Sections 1320c–9 and 1396a(a)(25); and 42 Code of Federal Regulations Sections 431.300 and 433.139.

HISTORY

1. New section filed 12–22–93 as an emergency; operative 12–22–93 (Register 93, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–22–94 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12–22–93 order transmitted to OAL 4–20–94 and filed 6–2–94 (Register 94, No. 22).

§ 51271. Targeted Case Management Services Provider Qualifications.

(a) A targeted case management provider of services shall be a local governmental agency and shall:

(1) Contract with the department to provide targeted case management services as a condition of enrollment as a targeted case management provider in the Medi–Cal program, and

(2) Provide and certify the non–federal match, and

(3) Have an established fee mechanism effective January 1, 1995, specific to targeted case management services provided, which may include a sliding fee schedule based on income and vary by program, and

(4) Have an established procedure for performance monitoring that assures the participating units are complying with state and federal requirements, and

(5) Make available to the department a performance monitoring plan, including protocols and procedures, establishing a countywide system to assure non–duplication of services and to ensure coordination and continuity of care among providers of targeted case management services provided to beneficiaries who are eligible to receive case management services from two or more programs.

(6) Have an administrative capacity to ensure quality of services in accordance with state and federal requirements.

(7) Have a financial management capacity and system that provides documentation of services and costs.

(8) Have a capacity to document and maintain individual case records in accordance with state and federal requirements.

(9) Have a demonstrated ability to meet all requirements of state and federal law governing the participation of providers in the state Medicaid

program, including but not limited to, the ability to meet federal and state requirements for documentation, billing and audits.

(10) Have a minimum of five years of experience in providing case management services to the target population.

(b) In addition to the requirements specified in subsection (a), targeted case management service providers shall meet the following supplemental requirements:

(1) For the purpose of providing targeted case management services to high–risk persons identified in Section 51185(b) the targeted case management services provider shall:

(A) Designate a public health agency employing staff with case manager qualifications as specified in Section 51272.

(B) Have the ability to evaluate the effectiveness, accessibility and quality of targeted case management services on a community–wide basis.

(C) Have established referral systems and demonstrated linkages and referral ability with essential social and health services agencies.

(2) For the purpose of providing service to the target population specified in Section 50262.7(a)(2) the targeted case management services provider shall:

(A) Designate a public health agency employing staff with case manager qualifications as specified in Section 51272.

(B) Ensure 24–hour availability of case management services and continuity of those services.

(C) Have the capacity to communicate with persons who have little or no proficiency in the English language.

(3) For the purpose of providing service to the target population specified in Section 50262.7(a)(3)(A) the targeted case management services provider shall:

(A) Ensure 24–hour availability of case management services and continuity of those services.

(B) Have established referral systems and demonstrated linkages and referral ability with essential social and health service agencies.

(4) For the purpose of providing service to the target population specified in Section 50262.7(a)(3)(B), (C) or (D), the targeted case management services provider shall:

(A) Designate an agency employing staff with case manager qualifications as specified in Section 51272.

(B) Ensure 24–hour availability of case management services and continuity of those services.

(C) Have established referral systems and demonstrated linkages and referral ability with essential social and health services agencies.

(5) For the purpose of providing service to the target population specified in Section 50262.7(a)(3)(E) the targeted case management services provider shall:

(A) Demonstrate programmatic and administrative experience in providing services which prevent institutionalization and have the ability to increase their service capability to provide services to adults of all ages.

(B) Demonstrate they have an advisory group which includes representatives of the target group.

(C) Have established referral systems and demonstrated linkages and referral ability with essential social and health services agencies.

(c) A local education agency may not enroll as a targeted case management services provider.

(d) To qualify as a provider of targeted case management services, local governmental agencies shall:

(1) Notify the department in writing of the intent to claim targeted case management for a specific targeted group. Such notice shall be received by the department no later than September 1 of each year, and

(2) Demonstrate participation in a time survey as scheduled by the department, and

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14132.44, Welfare and Institutions Code. Reference: Section 14132.44, Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–96; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 6, Chapter 305, Statutes of 1995 (Register 96, No. 27).
2. New section refiled 10–29–96 as an emergency; operative 10–29–96 (Register 96, No. 44). Submitted to OAL for printing only pursuant to Section 6, Chapter 305, Statutes of 1995. A Certificate of Compliance must be transmitted to OAL by 2–26–97 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of HISTORY 2 (Register 97, No. 15).
4. Repealed by operation of Government Code section 11346.1(g) (Register 97, No. 15).
5. New section filed 4–10–97; operative 4–10–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

§ 51272. Targeted Case Manager.

(a) Case managers employed by a targeted case management services provider shall meet the following minimum requirements for education, training and experience:

(1) For the targeted population specified in Section 51185(b), be certified as a Public Health Nurse or a Registered Nurse, or a Licensed Vocational Nurse under the direct supervision of a skilled professional medical person, or an individual who possesses the education and/or experience specified in (3) below and who is under the direct supervision of a skilled professional medical person.

(2) For the targeted populations specified in Sections 50262.7(a)(2), and 50262.7(a)(3)(E), be a Registered Nurse; or possess the education and/or experience specified in subsection (a)(3) below, under the direct supervision of a skilled professional medical person.

(3) For the target populations specified in Sections 50262.7(a)(3)(A), (B), (C) and (D), have education or relevant case management experience consisting of a Bachelor's degree in a health or human services field; an Associate of Arts degree with two years experience performing case management duties in a health and human services field; or four years experience performing case management duties in a health or human services field.

(4) All individuals providing case management services pursuant to this section, except Public Health Nurses and Registered Nurses, shall have completed agency–approved case management training.

(b) Targeted case management case managers shall not perform contract management, program planning and policy development, coordination of targeted case management data systems and claiming, and targeted case management quality assurance and/or performance monitoring.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14132.44, Welfare and Institutions Code. Reference: Section 14132.44, Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–96; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 6, Chapter 305, Statutes of 1995 (Register 96, No. 27).
2. New section refiled 10–29–96 as an emergency; operative 10–29–96 (Register 96, No. 44). Submitted to OAL for printing only pursuant to Section 6, Chapter 305, Statutes of 1995. A Certificate of Compliance must be transmitted to OAL by 2–26–97 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of HISTORY 2 (Register 97, No. 15).
4. Repealed by operation of Government Code section 11346.1(g) (Register 97, No. 15).
5. New section filed 4–10–97; operative 4–10–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

§ 51273. Targeted Case Management Advisory Committee.

NOTE: Authority cited: Sections 14105, 14124.5 and 14132.44, Welfare and Institutions Code. Reference: Section 14132.44, Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–96; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 6, Chapter 305, Statutes of 1995 (Register 96, No. 27).
2. New section refiled 10–29–96 as an emergency; operative 10–29–96 (Register 96, No. 44). Submitted to OAL for printing only pursuant to Section 6, Chapter 305, Statutes of 1995. A Certificate of Compliance must be transmitted to OAL by 2–26–97 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of HISTORY 2 (Register 97, No. 15).
4. Repealer filed 4–10–97; operative 4–10–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

§ 51276. Directly Observed Therapy (DOT) Provider Qualifications.

(a) Each provider of Directly Observed Therapy (DOT) shall:

(1) Have a manager responsible for the tuberculosis (TB) DOT program who supervises and monitors DOT staff activities and ensures appropriate documentation of TB patient records.

(2) Ensure all staff providing DOT have provider–approved DOT training.

(3) Have policies and protocols for the provision of DOT to ensure the following:

(A) Assessment of individual barriers to DOT, such as a TB patient's need for transportation.

(B) Appropriate selection of either field–based or clinic–based DOT based upon potential patient barriers to completion of DOT.

1. Field–based DOT means DOT provided to a TB patient at his/her place of residence, work site, shelter, or any other location agreed upon between DOT staff an the TB patient.

2. Clinic–based DOT means DOT provided to a TB patient at the site of the provider agency.

(C) Patients receive and ingest the prescribed medications and insuring renewals of and/or changes to medications are promptly obtained.

(D) Patient ingestion of medications is recorded in the patient's case record.

(E) Documentation in patient case files include all activities related to the provision of DOT.

[The next page is 436.3.]

(F) Reporting to both the local health department and the treating physician when there is failure to make contact with a TB patient at any time during the course of treatment.

(G) Reporting to the treating physician all side effects or other patient problems.

(H) Confidentiality of patient records.

(4) Have the capacity to provide TB DOT in a manner that is linguistically and culturally appropriate to the population being served.

(5) Initiate active outreach to locate a patient after a patient's missed appointment with DOT staff. Active outreach shall include, but is not limited to, the following:

(A) Reviewing patient information and evaluating locating information.

(B) Developing a strategy for locating the patient.

(C) Promptly dispatching DOT staff to physically search for the patient at the last known place of residence, work site, shelter, or other location. DOT staff shall attempt to locate the patient on at least three separate occasions.

NOTE: Authority cited: Sections 10725, 14005.20 and 14124.5, Welfare and Institutions Code. Reference: Sections 14059 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 9–11–96; operative 9–11–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 37).

Article 4. Scope and Duration of Benefits

§ 51301. Schedule of Benefits.

The benefits covered by Medi–Cal are limited to those set forth in this article and in Chapter 5, Article 4.

NOTE: Authority cited: Sections 10721, 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14021, 14053, 14131–14145.9, 14550 and 14551, Welfare and Institutions Code.

HISTORY

1. Amendment filed 5–14–76 as an emergency; effective upon filing (Register 76, No. 20). For prior history, see Register 72, No. 5.
2. Certificate of Compliance filed 9–8–76 (Register 76, No. 37).
3. Amendment filed 6–28–78 as an emergency; designated effective 7–1–78 (Register 78, No. 26).
4. Change without regulatory effect of NOTE (Register 86, No. 49).

§ 51303. General Provisions.

(a) Health care services set forth in this article and in Chapter 5, Article 4 (commencing with Section 54301 of this title), which are reasonable and necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain through the diagnosis or treatment of disease, illness or injury are covered by the Medi–Cal program, subject to utilization controls, to the extent specified in this Chapter, Chapter 5, and Chapter 11. Such utilization controls shall take into account those diseases, illnesses, or injuries which require preventive health services or treatment to prevent serious deterioration of health. Nothing in this section shall preclude payment for family planning services, or for early, periodic screening, diagnosis and treatment services (EPSDT), provided under the Child Health and Disability Prevention (CHDP) Program. Authorization may only be granted when fully documented medical justification is provided that the services are medically necessary. Services not requiring prior authorization are subject to other utilization controls, as specified in this chapter.

(b) Limitations specified in this article do not apply to Medicare/Medi–Cal program covered services (crossover services).

(c) Except as set forth in (b) above, if the Medi–Cal Program is to pay any portion of a charge for services for which other coverage is available, the limitations and controls specified in this article apply.

(d) Inpatient services in hospitals are covered only when provided on the signed order of the physician, dentist or podiatrist responsible for the care of the patient.

(e) Inpatient services in skilled nursing facilities and intermediate care facilities are covered only when provided on the signed order of the physician responsible for the care of the patient.

(f) Outpatient services are covered subject to the limitations and controls set forth in this chapter.

(g) Experimental services are not covered.

(h) Investigational services are not covered except when it is clearly documented that all of the following apply:

(1) Conventional therapy will not adequately treat the intended patient's condition;

(2) Conventional therapy will not prevent progressive disability or premature death;

(3) The provider of the proposed service has a record of safety and success with it equivalent or superior to that of other providers of the investigational service;

(4) The investigational service is the lowest cost item or service that meets the patient's medical needs and is less costly than all conventional alternatives;

(5) The service is not being performed as a part of a research study protocol;

(6) There is a reasonable expectation that the investigational service will significantly prolong the intended patient's life or will maintain or restore a range of physical and social function suited to activities of daily living.

All investigational services require prior authorization. Payment will not be authorized for investigational services that do not meet the above criteria, or for associated inpatient care when a beneficiary needs to be in the hospital primarily because she/he is receiving such nonapproved investigational services.

(i) Services and supplies not primarily medical in purpose or which are common household items are not covered.

(j) Services set forth in this article must be provided by providers who meet, where applicable, the standards set forth in Article 3 of this chapter.

(k) Services prescribed or ordered by a provider suspended from participation in the Medi–Cal program shall not be covered by the program while the suspension is in effect, providing that at least 15 days written notice is given to all affected providers.

NOTE: Authority cited: Chapter 1066, Statutes of 1977; Section 57(c), Chapter 328, Statutes of 1982; and Sections 14059.5, 14105, 14105.44 and 14124.5, Welfare and Institutions Code. Reference: Sections 14053, 14059.5, 14105.44, 14124.5, 14132 and 14133.3, Welfare and Institutions Code.

HISTORY

1. Amendment filed 6–28–78 as an emergency; designated effective 7–1–78 (Register 78, No. 26). For prior history, see Register 76, No. 37.
2. Amendment filed 8–16–78 as an emergency; designated effective 8–16–78 (Register 78, No. 32).
3. Certificate of Compliance filed 12–12–78 (Register 78, No. 50). For prior history, see Register 78, No. 32.
4. Amendment of subsection (a) filed 9–1–82 as an emergency; effective upon filing (Register 82, No. 37).
5. Certificate of Compliance as to 9–1–82 order transmitted to OAL 12–28–82 and filed 1–21–83 (Register 83, No. 4).
6. Amendment of subsection (a) filed 7–7–86 as an emergency; effective upon filing (Register 86, No. 28). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–4–86.
7. Certificate of Compliance transmitted to OAL 10–30–86 and filed 11–25–86 (Register 86, No. 48).
8. Amendment of subsections (g)–(k) filed 12–18–87 as an emergency; operative 12–18–87 (Register 88, No. 1). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–18–88.
9. Certificate of Compliance including amendment of subsection (h) (3) transmitted to OAL 4–14–88 and filed 5–16–88 (Register 88, No. 21).
10. Amendment of subsection (b) filed 5–25–89; operative 6–24–89 (Register 89, No. 21).

§ 51304. Benefit Limitations.

(a) Program coverage of services specified in Sections 51308, 51308.5, 51309, 51310, 51312, and 51331(a)(3) through (9), unless

noted otherwise, is limited to a maximum of two services from among those services set forth in those sections in any one calendar month.

(b) For purposes of this section, "services" means all care, treatment, or procedures provided a beneficiary by an individual practitioner on one occasion.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14053, 14132, 14133 and 14133.1, Welfare and Institutions Code; and Section 690, Business and Professions Code.

HISTORY

1. Amendment filed 5–14–76 as an emergency; effective upon filing (Register 76, No. 20). For prior history, see Register 75, No. 9.
2. Certificate of Compliance filed 9–8–76 (Register 76, No. 37).
3. Amendment of subsection (a) filed 3–9–79; effective thirtieth day thereafter (Register 79, No. 10).
4. Amendment of subsection (a) filed 4–30–81; effective thirtieth day thereafter (Register 81, No. 18).
5. Repealer of subsection (c) and amendment of NOTE filed 4–4–94 as an emergency; operative 4–4–94 (Register 94, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–2–94 or emergency language will be repealed by operation of law on the following day.
6. Repealer of subsection (c) and amendment of NOTE refiled 8–1–94 as an emergency; operative 8–1–94 (Register 94, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–29–94 or emergency language will be repealed by operation of law on the following day.
7. Repealer of subsection (c) and amendment of NOTE refiled 10–24–94 as an emergency; operative 10–24–94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–21–95 or emergency language will be repealed by operation of law on the following day.
8. Repealer of subsection (c) and amendment of NOTE refiled 2–22–95; operative 2–22–95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–22–95 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 2–22–95 order transmitted to OAL 3–16–95 and filed 4–27–95 (Register 95, No. 17).

§ 51305. Physician Services.

(a) Outpatient physician services are covered if they are medically necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain, subject to the limitations specified below.

(b) Outpatient surgical procedures, other than those needed for diagnostic purposes or those rendered as emergency services pursuant to Section 51056; procedures considered to be elective; and specified outpatient medical procedures, including but not limited to, Hyperbaric Oxygen Therapy, Pheresis, Psoriasis Day Care and Cardiac Catheterization, require prior authorization. Authorization may be granted only when fully documented medical justification is provided that the services are medically necessary. Services not requiring prior authorization are subject to other utilization controls, as specified in this chapter. Utilization controls shall be imposed on medical/surgical procedures in accordance with the standards set forth in Section 51159. Identification of those procedures requiring prior authorization shall be transmitted to all affected providers of service in bulletins authorized by the Department.

(c) Surgical procedures typically performed on an inpatient basis which can be performed safely on an outpatient or ambulatory basis will not be reimbursed in an inpatient setting. Exceptions may be authorized by a field office medical consultant if there is adequate documentation of the medical need for inpatient care. In selecting procedures which should normally be performed in an outpatient setting, the Department shall consider patient safety, quality of medical care, common practice in the medical community, and cost of the procedure. Lists of surgical procedures identified by the Department for performance on an outpatient or ambulatory basis will be transmitted to all interested providers of service in bulletins authorized by the Department.

(d) A maximum of eight psychiatry services and eight injections for allergy desensitization, hyposensitization, or immunotherapy by injection of an antigen to stimulate production of protective antibodies may be provided in any 120–day period without prior authorization. Prior authorization shall be required when more than eight psychiatry or eight of the above allergy injections are provided in a 120–day period except those provided on an emergency basis.

(1) Services rendered on an emergency basis are exempt from authorization. The emergency services shall meet the definition in Section 51056 and the provider shall comply with the requirements of that section.

(2) A total treatment plan shall be developed for psychiatry and allergy services which require prior authorization. The treatment plan may be authorized for a period up to 120 days and shall include the following:

(A) The principal diagnosis and significant associated diagnosis.

(B) Clinical information adequate to describe the physiological and functional limitations, including the date of onset of the illness(es).

(C) Prognosis.

(D) Specific services to be rendered.

(E) The therapeutic goals to be achieved and the anticipated time needed to attain those goals.

(F) Drug regimen.

(e) Physician services provided to hospital, skilled nursing facility or intermediate care facility inpatients are covered only during periods of hospital, skilled nursing facility or intermediate care facility stays covered by the program.

(f) Psychiatry, psychology, physical therapy, occupational therapy, audiology, speech therapy, optometry and podiatry services are not covered as physicians' services when performed by persons other than physicians.

(g) Respiratory care is covered as a physician service. Respiratory care is subject to prior authorization except when personally rendered by the physician. Authorization requests shall include clinical justification for the services and the nature, frequency and expected duration of the respiratory care.

(h) Orthoptics and pleoptics are not covered.

(i) Procedures for the treatment of defects for cosmetic purposes only are covered subject to prior authorization. Authorization may be granted only for the correction of serious disfigurement eligible for coverage by California Children Services. These patients shall be referred to that program as provided in Section 51013.

(j) A second eye examination with refraction within twenty–four months is covered only when a sign or symptom indicates a need for this service. The provider of services shall make a reasonable effort to ascertain the date of any prior eye examination with refraction.

(k) Primary care physician services rendered by nonphysician medical practitioners are covered as physician's services to the extent permitted by applicable professional licensing statutes and regulations, and as set forth in the Physician–Practitioner Interface as described in Section 51240.

(1) Services and entries in the patient's health record by non–physician medical practitioners shall be reviewed by the primary care physician within seven calendar days of the date of service.

(2) Patients shall be informed or notified in writing, prior to being served, that medical services may be rendered by nonphysician medical practitioners. In cases of emergencies as defined in Section 51056, the nonphysician medical practitioner may render emergency services to a patient without such prior notification.

(3) Reimbursement for services rendered by nonphysician medical practitioners shall be made in accordance with Section 51503.1.

(4) Reimbursement shall not be made for service rendered by a nonphysician medical practitioner to a person eligible for Medicare benefits unless Medicare makes reimbursement for that service by that practitioner.

(5) Out–of–State services of nonphysician medical practitioners are covered in accordance with each of the following:

(A) The Medicaid law and program for that location.

(B) Local laws applicable to such practitioners.

(C) The provisions of Section 51006.

(*l*) External mammary prostheses made of silicone or other similar materials, prosthetic mammary implants, and reconstructive mammoplasty shall be deemed medically necessary incident to mastectomy and shall be covered. "Mastectomy" means the surgical procedures as described

in the latest edition of the Physicians' Current Procedural Terminology for the removal of all or part of the breast for medically necessary reasons, as determined by a licensed physician and surgeon who is a Department Medi-Cal consultant.

(m) One early discharge follow up visit is covered without prior authorization when the requirements of Section 51327(b) are met.

NOTE: Authority cited: Sections 10725, 14059.5, 14124.5 and 14132.6, Welfare and Institutions Code. Reference: Sections 14053, 14059.5,14060, 14132, 14132.42, 14133(a) and (b), 14132.6, 14132.42, 14133.25 and 14133.3, Welfare and Institutions Code; Section 690. Business and Professions Code; and Section 433.123, Title 42, Code of Federal Regulations.

HISTORY

1. New subsection (l) filed 7-18-85 as an emergency; effective upon filing (Register 85, No. 29). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11-15-85. For prior history, see Register 83, No. 27.
2. Certificate of Compliance transmitted to OAL 10-30-85 and filed 12-2-85 (Register 85, No. 49).
3. Amendment of subsection (a) filed 7-7-86 as an emergency; effective upon filing (Register 86, No. 28). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11-4-86.
4. Certificate of Compliance transmitted to OAL 10-30-86 and filed 11-25-86 (Register 86, No. 48).
5. Amendment of subsection (g) filed 6-22-87; operative 7-22-87 (Register 87, No. 27).
6. Amendment of subsection (l) filed 10-1-87; operative 10-31-87 (Register 87, No. 41).
7. New subsection (m) and amendment of NOTE filed 3-13-2000 as an emergency; operative 3-13-2000 (Register 2000, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-11-2000 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 3-13-2000 order transmitted to OAL 7-5-2000 and filed 8-14-2000 (Register 2000, No. 33).

§ 51305.1. Criteria for the Performance of Sterilization.

(a) A sterilization shall be performed only if the following conditions are met:

(1) The individual is at least 21 years old at the time consent is obtained.

(2) The individual is not a mentally incompetent individual.

(3) The individual is able to understand the content and nature of the informed consent process as specified in 51305.3.

(4) The individual is not an institutionalized individual.

(5) The individual has voluntarily given informed consent in accordance with all the requirements prescribed in Section 51305.1 through 51305.4.

(6) At least 30 days, but not more than 180 days, have passed between the date of written informed consent and the date of the sterilization, except in the following instances:

(A) Sterilization may be performed at the time of emergency abdominal surgery if the following requirements are met:

1. The written informed consent to be sterilized was given at least 30 days before the individual intended to be sterilized.

2. At least 72 hours have passed after written informed consent to be sterilized was given.

(B) Sterilization may be performed at the time of premature delivery if the following requirements are met:

1. The written informed consent was given at least 30 days before the expected date of the delivery.

2. At least 72 hours have passed after written informed consent to be sterilized was given.

(b) For the purposes of this section the following definitions apply:

(1) Mentally incompetent individual means an individual who has been declared mentally incompetent by a federal, State or local court of competent jurisdiction for any purpose, unless the individual has been declared competent for purposes which include the ability to consent to sterilization.

(2) Institutionalized individual means an individual who is:

(A) Involuntarily confined or detained, under a civil or criminal statute, in a correctional or rehabilitative facility, including a mental hospital or other facility for the care and treatment of mental illness.

(B) Confined, under a voluntary commitment, in a mental hospital or other facility for the care and treatment of mental illness.

NOTE: Authority cited: Sections 14105, 14124.5 and 14191, Welfare and Institutions Code. Reference: Sections 14053, 14059, 14133, 14133.25, 14133.3 and 14191, Welfare and Institutions Code.

HISTORY

1. Repealer and new section filed 6-24-80; designated effective 10-15-80 (Register 80, No. 26).
2. Change without regulatory effect of NOTE (Register 86, No. 49).

§ 51305.2. Requirements for Sterilization Other Than Emergency Sterilization.

NOTE: Authority cited: Chapter 220, Statutes of 1975. Reference: Sections 14053, 14053.6, 14059, 14105, 14124.5, 14132 and 14184, Welfare and Institutions Code.

HISTORY

1. New section filed 5-27-77; effective thirtieth day thereafter (Register 77, No. 22).
2. Repealer filed 6-24-80; designated effective 10-15-80 (Register 80, No. 26).

§ 51305.3. Informed Consent Process for Sterilization.

(a) An individual has given informed consent only if:

(1) The person who obtained consent for the sterilization procedure:

(A) Offered to answer any questions the individual to be sterilized may have concerning the procedure.

(B) Provided the individual with a copy of the consent form and the booklet on sterilization published by the Department.

(C) Provided orally all of the following to the individual to be sterilized:

1. Advice that the individual is free to withhold or withdraw consent to the procedure at any time before the sterilization without affecting the right to future care or treatment and without loss or withdrawal of any federally funded program benefits to which the individual might be otherwise entitled.

2. A full description of available alternative methods of family planning and birth control.

3. Advice that the sterilization procedure is considered to be irreversible.

4. A thorough explanation of the specific sterilization procedure to be performed.

5. A full description of the discomforts and risks that may accompany or follow the performing of the procedure, including an explanation of the type and possible effects of any anesthetic to be used.

6. A full description of the benefits or advantages that may be expected as a result of the sterilization.

7. Approximate length of hospital stay.

8. Approximate length of time for recovery.

9. Financial cost to the patient.

10. Information that the procedure is established or new.

11. Advice that the sterilization will not be performed for at least 30 days, except under the circumstances specified in Section 51305.1.

12. The name of the physician performing the procedure. If another physician is to be substituted, the patient shall be notified, prior to administering pre-anesthetic medication, of the physician's name and the reason for the change in physician.

(2) Suitable arrangements were made to ensure that the information specified in (a)(1) was effectively communicated to any individual who is blind, deaf, or otherwise handicapped.

(3) An interpreter was provided if the individual to be sterilized did not understand the language used on the consent form or the language used by the person obtaining consent.

(4) The individual to be sterilized was permitted to have a witness of the individual's choice present when consent was obtained.

(5) The sterilization operation was requested without fraud, duress, or undue influence.

(6) The consent form requirements of Section 51305.4 were met.

(b) Informed consent may not be obtained while the individual to be sterilized is:

(1) In labor or within 24 hours postpartum or postabortion.

(2) Seeking to obtain or obtaining an abortion.

(A) Seeking to obtain means that period of time during which the abortion decision and the arrangements for the abortion are being made.

(B) Obtaining an abortion means that period of time during which an individual is undergoing the abortion procedure, including any period during which preoperative medication is administered.

(3) Under the influence of alcohol or other substances that affect the individual's state of awareness.

(c) The informed consent process may be conducted either by a physician or by the physician's designee.

(d) A copy of the signed consent form shall be:

(1) Provided to the patient.

(2) Retained by the physician and the hospital in the patient's medical records.

(3) Attached to the physician's billing form.

NOTE: Authority cited: Sections 14105, 14124.5 and 14191, Welfare and Institutions Code. Reference: Sections 14053, 14053.6, 14059, 14105, 14124.5, 14132, 14184 and 14191, Welfare and Institutions Code.

HISTORY

1. New section filed 5–27–77; effective thirtieth day thereafter (Register 77, No. 22).
2. Repealer and new section filed 6–24–80; designated effective 10–15–80 (Register 80, No. 26).
3. Amendment of subsection (b) filed 12–13–85; effective thirtieth day thereafter (Register 85, No. 52).

§ 51305.4. Certification of Informed Consent for Sterilization.

(a) The Consent Form, provided by the Department in English and Spanish, shall be the only approved form and shall be signed and dated by the:

(1) Individual to be sterilized.

(2) Interpreter, if one is provided.

(3) Person who obtained the consent.

(4) Physician who performed the sterilization procedure.

(b) The person securing consent shall certify, by signing the Consent Form, to have personally:

(1) Advised the individual to be sterilized, before the individual to be sterilized signed the Consent Form, that no federal benefits may be withdrawn because of the decision not to be sterilized.

(2) Explained orally the requirements for informed consent to the individual to be sterilized as set forth on the Consent Form and in Section 51305.3.

(3) Determined, to the best of his or her knowledge and belief, that the individual to be sterilized appeared mentally competent and knowingly and voluntarily consented to be sterilized.

(c) The physician performing the sterilization shall certify, by signing the Consent Form, that:

(1) The physician, shortly before the performance of the sterilization, advised the individual to be sterilized that federal benefits shall not be withheld or withdrawn because of a decision not to be sterilized.

(2) The physician explained orally the requirements for informed consent as set forth on the Consent Form.

(3) To the best of the physician's knowledge and belief, the individual to be sterilized appeared mentally competent and knowingly and voluntarily consented to be sterilized.

(4) At least 30 days have passed between the date of the individual's signature on the Consent Form and the date upon which the sterilization was performed, except in the following instances:

(A) Sterilization may be performed at the time of emergency abdominal surgery if the physician:

1. Certifies that the written informed consent to be sterilized was given at least 30 days before the individual intended to be sterilized.

2. Certifies that at least 72 hours have passed after written informed consent to be sterilized was given.

3. Describes the emergency on the Consent Form.

(B) Sterilization may be performed at the time of premature delivery if the physician certifies that:

1. The written informed consent was given at least 30 days before the expected date of the delivery. The physician shall state the expected date of delivery on the Consent Form.

2. At least 72 hours have passed after written informed consent to be sterilized was given.

(d) The interpreter, if one is provided, shall certify that the interpreter:

(1) Transmitted the information and advice presented orally to the individual to be sterilized.

(2) Read the Consent Form and explained its contents to the individual to be sterilized.

(3) Determined, to the best of the interpreter's knowledge and belief, that the individual to be sterilized understood what the interpreter told the individual.

(e) The person who obtains consent shall provide the individual to be sterilized with a copy of the booklet on sterilization, provided by the Department in English and Spanish, before obtaining consent.

(f) For the purposes of this section, shortly before means a period within 72 hours prior to the time the patient receives any preoperative medication.

NOTE: Authority cited: Chapter 220, Statutes of 1975, Sections 14105, 14124.5 and 14191, Welfare and Institutions Code. Reference: Sections 14053, 14053.6, 14059, 14105, 14124.5, 14131, 14132, 14184 and 14191, Welfare and Institutions Code.

HISTORY

1. New section filed 5–27–77; effective thirtieth day thereafter (Register 77, No. 22).
2. Repealer and new section filed 6–24–80 designated effective 10–15–80 (Register 80, No. 26).
3. Change without regulatory effect of NOTE (Register 86, No. 49).

§ 51305.5. Additional Requirements for Informed Consent Process for Elective Sterilization.

NOTE: Authority cited: Chapter 220, Statutes of 1975. Reference: Sections 14053, 14053.6, 14059, 14105, 14124.5, 14132 and 14184, Welfare and Institutions Code.

HISTORY

1. New section filed 5–27–77; effective thirtieth day thereafter (Register 77, No. 22).
2. Repealer of section filed 6–24–80; designated effective 10–15–80 (Register 80, No. 26).

§ 51305.6. Hysterectomy.

(a) A hysterectomy shall not be covered if:

(1) Performed solely for the purpose of rendering an individual permanently sterile.

(2) There is more than one purpose to the procedure, and the hysterectomy would not be performed except for the purpose of rendering the individual permanently sterile.

(b) Except for previously sterile women, a nonemergency hysterectomy may be covered only if:

(1) The person who secures the authorization to perform the hysterectomy has informed the individual and the individual's representatives, if any, orally and in writing, that the hysterectomy will render the individual permanently sterile.

(2) The individual and the individual's representative, if any, has signed a written acknowledgment of the receipt of the information in (1).

(3) The individual has been informed of the rights to consultation by a second physician.

(c) A copy of the signed statement shall be:

(1) Provided to the patient.

(2) Retained by the physician and the hospital in the patient's medical records.

(3) Attached to the physician's billing form.

(d) For previously sterile women, hysterectomy may be covered if the physician certifies the individual was previously sterile and states the cause of sterility on the claim form or an attachment.

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(e) An emergency hysterectomy may be covered only if the physician certifies on the claim form or an attachment that the hysterectomy was performed because of a life-threatening emergency situation in which the physician determined that prior acknowledgement was not possible and includes a description of the nature of the emergency.

NOTE: Authority cited: Sections 14105, 14124.5 and 14191, Welfare and Institutions Code. Reference: Sections 14053, 14053.6, 14059, 14105, 14124.5, 14132, 14184 and 14191, Welfare and Institutions Code.

HISTORY

1. New section filed 5-27-77; effective thirtieth day thereafter (Register 77, No. 22).
2. Repealer an new section filed 6-24-80; designated effective 10-15-80 (Register 80, No. 26).
3. Amendment of subsection (b) and new subsections (d) and (e) filed 7-15-83; effective thirtieth day thereafter (Register 83, No. 29).

§ 51305.7. Noncompliance.

(a) Noncompliance with Sections 51305.1 through 51305.6 shall result in nonpayment for sterilization services.

(b) Noncompliance with Sections 51305.1 through 51305.6 shall result in a referral to the Board of Medical Quality Assurance.

NOTE: Authority cited: Sections 14191 and 14193, Welfare and Institutions Code. Reference: Sections 14053, 14059 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 5-27-77; effective thirtieth day thereafter (Register 77, No. 22).
2. Change without regulatory effect of NOTE (Register 86, No. 49).

§ 51305.8. Effective Date.

NOTE: Authority cited: Chapter 220, Statutes of 1975. Reference: Chapter 220, Statutes of 1975.

HISTORY

1. New section filed 6-27-77 as an emergency; effective upon filing (Register 77, No. 27).
2. Amendment filed 8-3-77 as an emergency; effective upon filing (Register 77, No. 32).
3. Certificate of Compliance filed 11-30-77 (Register 77, No. 49).
4. Repealer filed 6-24-80; designated effective 10-15-80 (Register 80, No. 26).

§ 51305.9. Interim Coverage of Intermediate and Comprehensive Ophthalmological Services for Nonaphakic Beneficiaries.

NOTE: Authority cited: Section 14124.5, Welfare and Institutions Code. Reference: Sections 14132, 14133 and 14133.1, Welfare and Institutions Code; and Section 149, Chapter 323, Statutes of 1983.

HISTORY

1. New section filed 91-82 as an emergency; effective upon filing (Register 82, No. 37). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-30-82.
2. Certificate of Compliance transmitted to OAL 12-30-82 and withdrawn 1-28-83 (Register 83, No. 10).
3. New section refiled 1-28-83 as an emergency; effective upon filing (Register 83, No. 10). (Corrected copy of 1-28-83 emergency order refiled 1-31-83.) A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5-28-83.
4. Emergency language repealed by operation of Government Code Section 11346.1(f) (Register 83, No. 26).
5. New section filed 6-24-83 as an emergency; effective upon filing (Register 83, No. 26). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10-22-83.
6. Certificate of Compliance transmitted to OAL 10-21-83 and filed 11-23-83 (Register 83, No. 48).
7. Editorial correction of NOTE filed 12-20-83 (Register 83, No. 52).
8. Repealer filed 9-30-85 as an emergency; effective upon filing (Register 85, No. 40). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1-28-86.
9. Certificate of Compliance transmitted to OAL 1-8-86 and filed 2-6-86 (Register 86, No. 6).

§ 51306. Optometry Services.

(a) Services provided by optometrists acting within the scope of their practice as authorized by California law are covered, except as otherwise limited by these regulations.

(b) Orthoptics and pleoptics are not covered.

(c) A second eye examination with refraction within twenty-four months is covered only when a sign or symptom indicates a need for this service. The provider of services shall make a reasonable effort to ascertain the date of any prior eye examination with refraction.

NOTE: Authority cited: Section 14124.5, Welfare and Institutions Code. Reference: Sections 14053, 14060, 14132(a) and (k), and 14133(a) and (b), Welfare and Institutions Code; and Sections 690 and 3041, Business and Professions Code.

HISTORY

1. New section filed 9-30-71 as an emergency; designated effective 10-1-71 (Register 71, No. 40).
2. Certificate of Compliance—Section 11422.1, Gov. Code, filed 1-25-72 (Register 72, No. 5).
3. Amendment filed 10-3-78; designated effective 11-15-78 (Register 78, No. 40).
4. Change without regulatory effect of NOTE (Register 86, No. 49).

§ 51306.1. Interim Coverage of Optometric Services for Nonaphakic Beneficiaries over 21.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 57(c), Chapter 328, Statutes of 1982. Reference: Sections 14132, 14133 and 14133.1, Welfare and Institutions Code; and Section 53, Chapter 328, Statutes of 1982.

HISTORY

1. New section filed 9-1-82 as an emergency; effective upon filing (Register 82, No. 37). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-30-82.
2. Certificate of Compliance transmitted to OAL 12-30-82 and withdrawn 1-28-83 (Register 83, No. 10).
3. New section refiled 1-28-83 as an emergency; effective upon filing (Register 83, No. 10). (Corrected copy of 1-28-83 emergency order refiled 1-31-83.) A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5-28-83.
4. Emergency language repealed by operation of Government Code Section 11346.1(f) (Register 83, No. 26).
5. New section filed 6-24-83 as an emergency; effective upon filing (Register 83, No. 26). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10-22-83.
6. Certificate of Compliance transmitted to OAL 10-21-83 and filed 11-23-83 (Register 83, No. 48).
7. Repealer filed 9-30-85 as an emergency; effective upon filing (Register 85. No. 40). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1-28-86.
8. Certificate of Compliance transmitted to OAL 1-8-86 and filed 2-6-86 (Register 86, No. 6).
9. Editorial correction of HISTORY 6 (Register 95, No. 45).

§ 51307. Dental Services. [Repealed]

NOTE: Authority cited: Sections 14105, 14124.5, 14132 and 14133.3, Welfare and Institutions Code; and Section 69, Chapter 69, Statutes of 1993. Reference: Sections 14053, 14059.5, 14132 and 14133, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (b)(9) and new subsection (d)(11) filed 12-9-77; effective thirtieth day thereafter (Register 77, No. 50). For prior history, see Register 75, No. 14.
2. Amendment of subsection (b)(1) and new subsection (d)(12) filed 4-19-78; effective thirtieth day thereafter (Register 78, No. 16).
3. Amendment of subsection (e) filed 8-8-78; effective thirtieth day thereafter (Register 78, No. 32).
4. Amendment filed 11-30-78; designated effective 1-1-79 (Register 78, No. 48).
5. Amendment of subsection (b)(3) filed 1-24-79; effective thirtieth day thereafter (Register 79, No. 4).
6. Amendment of subsection (e)(7) filed 5-15-79 as an emergency; designated effective 5-15-79 (Register 79, No. 20).
7. Certificate of Compliance filed 9-12-79 (Register 79, No. 37).
8. Amendment of subsection (b)(2)(A) filed 1-29-80; effective thirtieth day thereafter (Register 80, No. 5).
9. Amendment of subsections (d) and (e) filed 4-6-90 as an emergency; operative 4-6-90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 8-6-90.
10. Amendment of subsections (d) and (e) filed 8-2-90 as an emergency readoption of 4-6-90 order; operative 8-2-90 (Register 90, No. 41). A Certificate of Compliance must be transmitted to OAL by 11-30-90 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 8-2-90 order transmitted to OAL 10-16-90 and filed 11-15-90 (Register 91, No. 6).
12. Amendment of subsections (d) and (e) filed 2-11-91 as an emergency; operative 2-11-91 (Register 91, No. 12). A Certificate of Compliance must be transmitted to OAL by 6-11-91 or emergency language will be repealed by operation of law on the following day.
13. Request to readopt 2-11-91 order pursuant to Government Code section 11346.1 granted and filed 5-15-91 as an emergency; operative 6-11-91 (Register 91, No. 26). A Certificate of Compliance must be transmitted to OAL by

10–9–91 or emergency language will be repealed by operation of law on the following day.

14. Request to readopt 5–15–91 order and 8–29–91 order pursuant to Government Code section 11346.1, and merging 5–15–91 order and 8–29–91 order together, granted and filed 10–4–91 as an emergency; operative 10–4–91 (Register 91, No. 52). A Certificate of Compliance must be transmitted to OAL 2–1–92 or emergency language will be repealed by operation of law on the following day.
15. Amendment of subsections (b) and (e) filed 8–29–91 as an emergency; operative 8–29–91 (Register 92, No. 10). A Certificate of Compliance must be transmitted to OAL 12–27–91 or emergency language will be repealed by operation of law on the following day.
16. Amendment of subsections (b) and (e) refiled 12–23–91 as an emergency; operative 12–23–91 (Register 92, No. 18). A Certificate of Compliance must be transmitted to OAL 4–21–92 or emergency language will be repealed by operation of law on the following day.
17. Certificate of Compliance as to 12–23–91 order transmitted to OAL 4–1–92 and filed 5–5–92 (Register 92, No. 21).
18. Editorial correction to HISTORY 17 (Register 92, No. 24).
19. Request to readopt 10–4–91 order pursuant to Government Code section 11346.1(h) granted and filed 1–28–92 as an emergency; operative 2–4–92 (Register 92, No. 24). A Certificate of Compliance must be transmitted to OAL 6–3–92 or emergency language will be repealed by operation of law on the following day.
20. Request to readopt 1–28–92 order pursuant to Government Code section 11346.1(h) granted and filed 6–8–92 as an emergency; operative 6–3–92 (Register 92, No. 24). A Certificate of Compliance must be transmitted to OAL 10–7–92 or emergency language will be repealed by operation of law on the following day.
21. Request to readopt 6–8–92 order pursuant to Government Code section 11346.1(h) granted and filed 10–6–92 as an emergency; operative 10–7–92 (Register 92, No. 41). A Certificate of Compliance must be transmitted to OAL 2–4–93 or emergency language will be repealed by operation of law on the following day.
22. Editorial correction of HISTORY 20 (Register 92, No. 41).
23. Reinstatement of subsections (d) and (e) and NOTE as they existed prior to emergency amendment filed 2–11–91 by operation of Government Code section 11346.1(f) (Register 93, No. 15).
24. New subsections (b)(2)(D)–(D)(2) and (e)(11) and amendment of NOTE filed 6–29–93 as an emergency; operative 6–29–93 (Register 93, No. 27). A Certificate of Compliance must be transmitted to OAL by 10–27–93 or emergency language will be repealed by operation of law on the following day.
25. Amendment of subsections (d)(9), (e)(4)–(5), (e)(8) and NOTE and new subsections (g)–(g)(5) filed 9–20–93 as an emergency; operative 9–20–93 (Register 93, No. 39). Submitted for printing only. A Certificate of Compliance must be transmitted to OAL by 1–18–94 or emergency language will be repealed by operation of law on the following day.
26. Certificate of Compliance as to 6–29–93 order including amendment of subsection (b)(2)(D) transmitted to OAL 10–22–93 and filed 12–7–93 (Register 93, No. 50).
27. Editorial correction of printing error amending subsection (d)(1), adding subsection (d)(5)(D), repealing subsection (d)(8), and renumbering subsequent subsections (Register 93, No. 53).
28. Repealer of subsection (g), and reinstatement of subsections (d) and (e) and NOTE as they existed prior to 9–20–93 emergency order by operation of Government Code section 11346.1(f), operative 1–19–94. Readoption of 9–20–93 emergency order filed as an emergency and exempt from OAL review pursuant to chapter 69, section 69, Statutes of 1993 (Senate Bill 35) 2–14–94; operative 2–14–94 (Register 94, No. 7). A Certificate of Compliance must be transmitted to OAL by 6–14–94 or emergency language will be repealed by operation of law on the following day.
29. Certificate of Compliance as to 9–16–93 order including amendment of NOTE transmitted to OAL 1–13–94 and filed 2–28–94 (Register 94, No. 8).
30. Certificate of Compliance as to 2–14–94 order transmitted to OAL 5–5–94 with amendment of subsections (e), (g)(4) and (5) and repealer of subsections (g)(4)(A)–(B) and filed 6–9–94 (Register 94, No. 23).
31. Editorial correction of HISTORY 25 (Register 95, No. 25).
32. Repealer of subsection (b)(8), subsection renumbering, and amendment of subsections (e)(5) and (g)(2) filed 7–19–95 as an emergency; operative 7–19–95 (Register 95, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–16–95 or emergency language will be repealed by operation of law on the following day.
33. Repealer of subsection (b)(8), subsection renumbering, and amendment of subsections (e)(5) and (g)(2) refiled 11–20–95 as an emergency; operative 11–20–95 (Register 95, No. 47). A Certificate of Compliance must be transmitted to OAL by 3–19–96 or emergency language will be repealed by operation of law on the following day.
34. Certificate of Compliance as to 7–19–95 order, including further amendment of subsection (g)(2), transmitted to OAL 3–19–96 and filed 4–24–96 (Register 96, No. 17).
35. Amendment of subsections (b)(2)(D)–(b)(2)(D)2. and repealer of subsection (e)(11) filed 4–10–98 as an emergency; operative 4–10–98 (Register 98, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–10–98 or emergency language will be repealed by operation of law on the following day.
36. Certificate of Compliance as to 4–10–98 order transmitted to OAL 7–27–98 and filed 9–4–98 (Register 98, No. 36).
37. Repealer filed 11–6–2007; operative 12–6–2007 (Register 2007, No. 45).

§ 51308. Chiropractic Services.

Services provided by chiropractors, acting within the scope of their practice as authorized by California law, are covered, except that such services shall be limited to treatment of the spine by means of manual manipulation and subject to the limitations set forth in Section 51304(a).

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14132, 14133 and 14133.1, Welfare and Institutions Code.

HISTORY

1. New section filed 9–30–71 as an emergency; designated effective 10–1–71 (Register 71, No. 40).
2. Certificate of Compliance—Section 11422.1, Gov. Code, filed 1–25–72 (Register 72, No. 5).
3. Amendment filed 6–29–73 as an emergency; designated effective 7–1–73. Certificate of Compliance included (Register 73, No. 26).
4. Amendment filed 2–27–74 as an emergency; effective upon filing (Register 74, No. 9).
5. Certificate of Compliance filed 4–12–74 (Register 74, No. 15).
6. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51308.5. Acupuncture Services.

(a) Acupuncture services are covered, subject to the limitations set forth below and in Section 51304(a), when provided by one of the following:

(1) A physician, dentist or podiatrist.

(2) An acupuncturist.

(b) Acupuncture services shall be limited to treatment performed to prevent, modify or alleviate the perception of severe, persistent chronic pain resulting from a generally recognized medical condition.

(c) Acupuncture is covered either with or without electric stimulation of the needles.

(d) Acupuncture is covered only when used to treat a condition for which treatment by other modalities is also covered.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14053, 14132, 14133 and 14133.1, Welfare and Institutions Code.

HISTORY

1. New section filed 4–30–81; effective thirtieth day thereafter (Register 81, No. 18).
2. Change without regulatory effect of NOTE (Register 86, No. 49).

§ 51309. Psychology, Physical Therapy, Occupational Therapy, Speech Pathology and Audiological Services.

(a) Psychology, physical therapy, occupational therapy, speech pathology and audiological services are covered when provided by persons who meet the appropriate requirements specified in Article 2 and Article 3 of this Chapter.

The written prescription of a physician, dentist or podiatrist is required for physical therapy and occupational therapy services. Speech pathology and audiological services shall be provided only upon the written referral of a physician or dentist.

(b) Physical therapy services shall include physical therapy evaluation, treatment planning, treatment, instruction, consultative services, and application of topical medications. Services do not include the use of Roentgen rays or radioactive materials or the use of electricity for surgical purposes including cauterization. Services are limited to treatment immediately necessary to prevent or to reduce anticipated hospitalization or to continue a necessary plan of treatment after discharge from the hospital.

(c) Occupational therapy services shall include occupational therapy evaluation, treatment planning, treatment, instruction and consultative services.

(d) Such services, except physical therapy, are subject to the limitations set forth in Section 51304(a). Physical therapy services may be provided after prior authorization and approval of a treatment plan is obtained from the Medi–Cal consultant.

(1) The authorization request shall include diagnosis, modalities, frequency, therapeutic goals, duration of treatment and date of progress review where applicable. The physician's, dentist's or podiatrist's prescription shall be attached to the authorization request.

(2) Authorization for physical therapy services shall be contingent upon compliance with the following requirements:

(A) There is direct and specific relationship of the services to written treatment plan prescribed by the physician, dentist or podiatrist after consultation with a qualified physical therapist.

(B) The complexity and sophistication of the level of service or condition of the beneficiary requires the judgment, knowledge and skills of a physical therapist.

(C) Provision of the services is with the expectation that the beneficiary will improve significantly in a reasonable and generally predictable period of time or to establish an effective maintenance program in connection with a specific disease state.

(D) Service is to be performed by a qualified physical therapist who meets the standards set forth in Section 51201.1 of this chapter.

(E) The service is considered, under accepted standards of medical practice, to be a specific and effective treatment for the beneficiary's condition.

(F) The service is reasonable and medically necessary for the treatment of the beneficiary's condition.

(3) Professional physical therapy necessary to establish or periodically reevaluate a palliative or maintenance therapy program may be authorized. Services which do not require the skills of a physical therapist shall not be covered or authorized.

(4) Prior authorization shall not be granted for more than 30 treatments at any one time. Authorizations shall be valid for up to 120 days. A request for reauthorization shall include a statement describing the beneficiary's progress toward achieving the therapeutic goals included in the treatment plan.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code; and Section 57(c), Chapter 328, Statutes of 1982. Reference: Section 14132, Welfare and Institutions Code; and Section 52, Chapter 328, Statutes of 1982.

HISTORY

1. Amendment filed 5–14–76 as an emergency; effective upon filing (Register 76, No. 20). For prior history, see Register 72, No. 5.
2. Certificate of Compliance filed 9–8–76 (Register 76, No. 37).
3. Amendment filed 9–4–80; effective thirtieth day thereafter (Register 80, No. 36).
4. Amendment of subsections (b) and (d) filed 9–1–82 as an emergency; effective upon filing (Register 82, No. 37). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12–30–82.
5. Certificate of Compliance transmitted to OAL 12–30–82 (the portion pertaining to subsection (b) was withdrawn 1–28–83) and filed 2–7–83 (Register 83, No. 7).
6. Amendment of subsection (b) refiled 1–28–83 as an emergency; effective upon filing (Register 83, No. 7). (Corrected copy of 1–28–83 emergency order refiled 2–16–83.) A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5–28–83.
7. Editorial correction of HISTORY No. 6 (Register 83, No. 11).
8. Emergency language repealed by operation of Government Code Section 11346.1(f) (Register 83, No. 27).
9. Amendment of subsection (b) filed 6–29–83 as an emergency; effective upon filing (Register 83, No. 27). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–27–83.
10. Certificate of Compliance as to 6–29–83 order filed 8–11–83 (Register 83, No. 33).
11. Amendment of subsections (b) and (d) filed 6–22–87; operative 7–22–87 (Register 87, No. 27).

§ 51309.5. Scope of Sign Language Interpreter Services.

(a) Sign language interpreter services, as set forth in Section 51098.5, are covered as part of the Medi–Cal enrolled provider service subject to the limitation specified in subsection (b). Sign language interpreter services may be utilized for medically necessary health care services and related services such as, or similar to:

(1) Obtaining medical history.

(2) Obtaining informed consent and permission for treatment.

(3) Explaining diagnoses, treatment and prognoses of an illness.

(4) Communicating prior to, during or after medical procedures.

(5) Providing instructions regarding medication.

(6) Explaining instructions for self–care and/or therapy activities, upon discharge from a health care facility to an unsupervised home setting.

(7) Providing mental health assessment, therapy or counseling.

(8) Obtaining or providing case management information.

(b) Reimbursement shall be limited to Medi–Cal enrolled providers employing fewer than fifteen employees.

(c) Sign language interpreter services shall not be covered for a beneficiary who is receiving services in a health care facility that is required by federal regulation 45 Code of Federal Regulations Section 84.52 to provide such services.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725 and 14105, Welfare and Institutions Code. Reference: Section 54.1, Civil Code; Section 14000, Welfare and Institutions Code; 42 USC Sections 12101 et seq.; 28 CFR Section 36.303; and 45 CFR Section 84.52(d).

HISTORY

1. New section filed 8–21–2000 as an emergency; operative 8–21–2000 (Register 2000, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–2000 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 8–21–2000 order transmitted to OAL 12–19–2000 and filed 2–2–2001 (Register 2001, No. 5).
3. Amendment of section heading, section and NOTE filed 8–7–2008; operative 9–6–2008 (Register 2008, No. 32).

§ 51310. Podiatry Services.

(a) Services provided by podiatrists, acting within the scope of their practice as authorized by California law, are covered subject to the following:

(1) Podiatric office visits described by procedure codes 99201–99203 and 99211–99213 in the latest edition of the Physicians' Current Procedural Terminology are covered as medically necessary. All other outpatient podiatry services are subject to prior authorization and are limited to medical and surgical services necessary to treat disorders of the feet, ankles, or tendons that insert into the foot, secondary to or complicating chronic medical diseases, or which significantly impair the ability to walk.

EDITORIAL NOTE: For full incorporation by reference of the Physicians' Current Procedural Terminology Codes, see CCR, Title 22, section 51050.

(2) Podiatry services rendered on an emergency basis are exempt from prior authorization. Emergency services shall conform to and be in compliance with the provisions of section 51056.

(3) Podiatry services rendered to hospital, skilled nursing facility or intermediate care facility inpatients are covered only when provided pursuant to an order on the patient's chart, signed by the physician or podiatrist who admitted the patient, specifying the care to be given. Services to skilled nursing facility and intermediate care facility inpatients are further subject to prior authorization.

(4) Hospitalization of patients by podiatrists is subject to the procedures set forth in section 51327. Podiatry services provided to hospital inpatients are covered only to the extent that the period of hospitalization is covered by the program.

(b) Routine nail trimming is not covered.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code; and Section 57(c), Chapter 328, Statutes of 1982. Reference: Sections 14131, 14132, 14133, 14133.1 and 14133.25, Welfare and Institutions Code; Section 2472, Business and Professions Code; Section 52, Chapter 328, Statutes of 1982; and Section 433.123, Title 42 of the Code of Federal Regulations.

HISTORY

1. Amendment filed 12–28–73 as an emergency; designated effective 1–1–74. Certificate of Compliance included (Register 73, No. 52). For prior history, see Register 72, No. 31.
2. Amendment filed 5–14–76 as an emergency; effective upon filing (Register 76, No. 20).
3. Certificate of Compliance filed 9–8–76 (Register 76, No. 37).
4. Amendment of subsection (a) (1) filed 9–1–82 as an emergency; effective upon filing (Register 82, No. 37). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12–30–82.
5. Certificate of Compliance as to 9–1–83 order transmitted to OAL 12–30–82 (the portion pertaining to subsection (a) (1) was withdrawn 1–28–83) and filed 2–7–83 (Register 83, No. 10).
6. Amendment of subsection (a) (1) refiled 1–28–83 as an emergency; effective upon filing (Register 83, No. 10). (Corrected copy of 1–28–83 emergency order refiled 2–16–83.) A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5–28–83.
7. Emergency language repealed by operation of Government Code section 11346.1(f) (Register 83, No. 27).
8. Amendment of subsection (a)(1) filed 6–29–83 as an emergency; effective upon filing (Register 83, No. 27). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–27–83.
9. Certificate of Compliance, including editorial correction of subsection (a)(1), as to 6–29–83 order filed 8–11–83 (Register 83, No. 33).
10. Editorial correction of EDITORIAL NOTE of subsection (a)(1) filed 4–11–84 (Register 84, No. 15).
11. Change without regulatory effect of NOTE (Register 86, No. 49).
12. Amendment of subsection (a)(1) filed 10–1–87; operative 10–31–87 (Register 87, No. 41).
13. Amendment of subsection (a)(1) filed 4–9–90; operative 4–9–90 (Register 90, No. 17).
14. Amendment of subsection (a)(1) and NOTE filed 3–9–93; operative 3–9–93 (Register 93, No. 11).

§ 51311. Laboratory, Radiological and Radioisotope Services.

(a) Examinations, tests, and therapeutic services ordered by a licensed practitioner, within his scope of practice as defined by California law, for the purpose of providing information for diagnosis, prevention, or treatment of any disease, injury or impairment of, or the assessment of the health of, human beings, or used as an aid in the prevention, prognosis, monitoring, or treatment of a physiological or pathological condition or illness in a human being are covered except that laboratory services provided for chronic outpatient hemodialysis in renal dialysis centers and community hemodialysis units are payable only when billed by the renal dialysis center or community hemodialysis unit.

(b) Services rendered by portable X–ray providers are covered subject to prior authorization except that services rendered in skilled nursing and intermediate care facilities shall not require prior authorization. Emergency services performed in locations other than skilled nursing and intermediate care facilities are covered without prior authorization subject to the submission of a written statement with the claim for services to support the emergency. The following procedures and examinations are covered as portable X–ray services:

(1) Diagnostic radiological procedures.

(2) Diagnostic ultrasonic procedures.

(3) Noninvasive cardiovascular studies.

(c) Procedures and examinations which are not covered as portable X–ray services include:

(1) Procedures involving fluoroscopy;

(2) Procedures involving the use of contrast media;

(3) Procedures requiring the administration of a substance to the patient or injection of a substance into the patient and/or special manipulation of the patient;

(4) Procedures which require special medical skill or knowledge possessed by a physician, dentist or podiatrist or which require that medical judgment be exercised;

(5) Routine screening procedures;

(6) Procedures which are not of a diagnostic nature.

(7) Procedures which for safety, and effectiveness to permit clear interpretation of the film by a radiologist, need to be performed in a radiologic facility and because there is a necessity for any of the following:

(A) Immobilization of the patient.

(B) Avoidance of excessive radiation due to the number of views required.

(C) Special techniques to deal with complex radiologic problems.

(D) Special equipment and supplies.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code; and Section 5, Chapter 1156, Statutes of 1983. Reference: Section 1206, Business and Professions Code; Sections 14132, 14133 and 14133.1, Welfare and Institutions Code; and Section 149.1, Chapter 323, Statutes of 1993.

HISTORY

1. Amendment of subsection (b) and new subsection (c)(7) filed 12–30–83 as an emergency; effective upon filing (Register 84, No. 1). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–29–84. For prior history, see Register 83, No. 6.
2. New subsection (c)(7) refiled 4–23–84 as an emergency; designated effective 4–30–84 (Register 84, No. 21). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–21–84.
3. Certificate of Compliance as to 12–30–83 order (subsection (b) only) transmitted to OAL 4–27–84 and filed 5–22–84 (Register 84, No. 21).
4. Amendment of subsection (b) filed 5–22–84; effective thirtieth day thereafter (Register 84, No. 21).
5. Certificate of Compliance as to 4–23–84 order transmitted to OAL 8–15–84 and filed 9–12–84 (Register 84, No. 37).
6. Amendment of subsection (c)(7) filed 9–12–84; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 84, No. 37).
7. Amendment of subsection (a) and NOTE filed 8–28–97 as an emergency; operative 8–28–97 (Register 97, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–26–97 or emergency language will be repealed by operation of law on the following day.
8. Editorial correction of NOTE (Register 98, No. 7).
9. Certificate of Compliance as to 8–28–98 order transmitted to OAL 12–24–97 and filed 2–9–98 (Register 98, No. 7).

§ 51312. Prayer or Spiritual Healing.

Prayer or spiritual healing services covered are limited to those allowed under Title XVIII of the Social Security Act. Such services are subject to the limitation set forth in Section 51304(a).

NOTE: Authority cited: Section 14124.5, Welfare and Institutions Code. Reference: Sections 14132, 14133 and 14133.1, Welfare and Institutions Code.

HISTORY

1. New section filed 9–30–71 as an emergency; designated effective 10–1–71 (Register 71, No. 40).
2. Certificate of Compliance—Section 11422.1, Gov. Code, filed 1–25–72 (Register 72, No. 5).
3. Amendment filed 8–8–78; effective thirtieth day thereafter (Register 78, No. 32).
4. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51313. Pharmaceutical Services and Prescribed Drugs.

(a) Drugs on the Medi–Cal List of Contract Drugs are covered, subject to limitations specified in this Section and Section 51313.3 when prescribed by a licensed practitioner within the scope of the practitioner's practice as defined by California law.

(b) Drugs shall be furnished in quantities not to exceed a 100 calendar day supply except for sodium fluoride tablets, drops and solutions or when necessary to comply with minimum quantities specified in section 51513.

(c) Drugs not on the Medi–Cal List of Contract Drugs and not excluded in Section 51313.3 are covered subject to prior authorization in accordance with Section 51003.

(1) Authorization may be granted when:

(A) The clinical condition of the patient requires the use of an unlisted drug and listed drugs have been adequately considered or tried and do not meet the medical needs of the patient.

(B) The use of an unlisted drug results in a less expensive treatment than would otherwise occur.

(2) Authorization for prescribed drugs shall be granted for a specific quantity of medication and number of refills, if any, in accordance with the beneficiary's medical need and the chronicity of the condition.

(3) Prescribed drugs dispensed on an emergency basis are exempt from prior authorization. However, any such emergency service shall conform to the definition in section 51056(a) and the provider shall comply with the provisions of section 51056(b).

(4) Authorization for unlabeled use of drugs shall not be granted unless the requested unlabeled use represents reasonable and current prescribing practices. The determination of reasonable and current prescribing practices shall be based on:

(A) Reference to current medical literature.

(B) Consultation with provider organizations, academic and professional specialists.

(d) Drugs listed under Sections 51510(c), 51510.1(b), 51510.2(b)(4), .3(b)(4) and 51511(c) are covered for the treatment of skilled nursing facility or intermediate care facility inpatients (including developmentally disabled, developmentally disabled/habilitative, and developmentally disabled/nursing), subject to the requirements of subdivisions (a), (b) and (c) except for drugs which are included in the daily facility rate as specified in Sections 51510, 51510.1, 51510.2, 51510.3 and 51511.

(e) Drugs for the treatment of hospital cute care or hospital extended care inpatients, including discharge medications, are covered as encompassed in the formulary of the hospital and are not subject to the limitations of (a) through (c) above.

(1) The quantities furnished as discharge medications shall not exceed a 10 days supply.

(2) The charges shall be incorporated in the hospital's claim for inpatient services.

(f) Drugs administered for chronic outpatient hemodialysis in renal dialysis centers and community hemodialysis units are covered, but are payable only when included in the all-inclusive rate set forth in section 51509.2.

(g) Drugs included under Prudent Purchase of Drug contracts, as set forth in section 51513.6 are covered subject to the conditions set forth in section 51513.6 and the other provisions of this section.

NOTE: Authority cited: Sections 10725, 14105, 14105.44 and 14124.5, Welfare and Institutions Code; Chapter 328, Section 57, and Chapter 1594, Section 87, Statutes of 1982. Reference: Sections 14053, 14105.3, 14105.35, 14105.44, 14132, 14133 and 14133.1, Welfare and Institutions Code.

HISTORY

1. Amendment of subsections (a) and (c) filed 9-16-85 as an emergency; effective upon filing (Register 85, No. 39). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1-14-86. For prior history, see Register 83, No. 44.
2. Certificate of Compliance including amendment of subsections (a) and (c)(2) transmitted to OAL 1-2-86 and filed 2-3-86 (Register 86, No. 7).
3. Change without regulatory effect of NOTE (Register 86, No. 49).
4. Certificate of Compliance including new subsection (c)(4) transmitted to OAL 4-14-88 and filed 5-16-88 (Register 88, No. 21).
5. Amendment of subsection (d) filed 5-8-91; operative 5-8-91 (Register 91, No. 24).
6. Amendment of subsections (a), (c) and (d) and new subsection (h) filed 5-22-91 as an emergency pursuant to Statutes of 1990, chapter 456, section 36, p. 1658-1659; operative 5-22-91 (Register 91, No. 27). A Certificate of Compliance must be transmitted to OAL by 9-19-91 or emergency language will be repealed by operation of law on the following day.
7. Amendment of subsections (a), (c) and (d) and new subsection (h) refiled 9-19-91 as an emergency; operative 9-20-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 1-20-92 or emergency language will be repealed by operation of law on the following day.
8. Amendment of subsections (a), (c) and (d) refiled 1-23-92 as an emergency; operative 1-17-92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL 5-22-92 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 1-23-92 order including amendment of NOTE transmitted to OAL 5-22-92 and filed 7-6-92 (Register 92, No. 28).
10. Repealer of subsection (h) and amendment of NOTE filed 1-9-95; operative 3-1-95 (Register 95, No. 2).
11. Editorial correction of subsection (g) (Register 95, No. 25).

§ 51313.3. Limitations on Coverage of Drugs on the Medi-Cal List of Contract Drugs.

(a) Drugs on the Medi-Cal List of Contract Drugs shall have the limitations specified in (b) through (g) below.

(b) Code 1 drugs on the List of Contract Drugs marked "*", require prior authorization in accordance with Section 51003 unless used under the conditions specified on the Medi-Cal List of Contract Drugs, and are subject to the prescription documentation requirements of Section 51476(c).

(c) Where drugs are listed by specific dosage forms, their use is limited to such method of administration (e.g., ophthalmic ointments are limited to ophthalmic use) unless prior authorization is obtained.

(d) When a manufactured dosage form or strength is specifically listed, only those dosage forms or strengths listed are allowable for payment, unless prior authorization is obtained. A listed drug, except intravenous solutions, when prepared by the provider in an unlisted dosage form or strength, does not require prior authorization. Long-acting dosage preparations require prior authorization unless specifically listed. Long-acting dosage preparations are drug products physically constructed to give slow-release therapeutic effect.

(e) Common household remedies and the following items are not covered:

(1) Nonlegend drug preparations;

A. Benzoic and Salicylic Acid Ointment (precompounded)

B. Salicylic Acid Cream or Ointment

C. Salicylic Acid Liquid

D. Sodium Chloride Tablets 1Gm

E. Sodium Chloride Tablets 2.5Gm

F. Zinc Oxide Paste

G. Nonlegend Analgesics except for those in part 2 of the Medi-Cal List of Contract Drugs.

(2) Enteral nutritional supplements or replacements, except that these items may be covered, subject to prior authorization, if used as a therapeutic regimen to prevent serious disability or death in patients with medically diagnosed conditions that preclude the full use of regular food.

(3) Vitamin combinations for person over 5 years of age, except for prenatal vitamin-mineral combination products included in part 2 of the Medi-Cal List of Contract Drugs or legend prenatal vitamin-mineral combination products, subject to prior authorization, for use during pregnancy.

(f) Only nonlegend cough and cold drug products which meet the requirements of part 3 of the Medi-Cal List of Contract Drugs are covered. Time-release products are not covered under part 3 of the Medi-Cal List of Contract Drugs.

(g) This section does not apply to items administered or dispensed as part of a physician's, dentist's, or podiatrist's service.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14105, 14105.35, 14105.39 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 5-22-91 as an emergency pursuant to Statutes of 1990, chapter 456, section 36, p. 1658-1659; operative 5-22-91 (Register 91, No. 27). A Certificate of Compliance must be transmitted to OAL by 9-19-91 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 9-19-91 as an emergency; operative 9-20-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 1-20-92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 1-23-92 as an emergency; operative 1-17-92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL 5-22-92 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 1-23-92 order transmitted to OAL 5-22-92 and filed 7-6-92 (Register 92, No. 28).
5. Amendment of subsection (e)(3) filed 1-9-95; operative 3-1-95 (Register 95, No. 2).

§ 51313.6. Drug Evaluation Criteria.

(a) The Director shall use the following criteria when evaluating drugs to add to and to delete from the Medi-Cal List of Contract Drugs. The

Director may restrict usage of any drug or therapeutic category of drugs on the Medi–Cal List of Contract Drugs.

The Director's decision shall be made upon consideration of all of the five criteria specified below in items (1) through (5), without regard to the order in which the criteria are presented. The examples recited under each criterion shall not be exhaustive of those factors which may be considered.

(1) Cost. For the purpose of this Section, cost means the potential fiscal impact of the proposed change on the Medi–Cal drug program or the Medi–Cal program. Evaluation of cost may involve a single drug or comparison between two or more drugs, and may take into account, but is not limited to, differences of unit cost as defined in Section 51513(a)(13), differences of cost of total treatment, or cost of alternative methods of treatment.

(2) Efficacy. For the purposes of this section, efficacy means the speed, duration, and extent to which a drug will alleviate, control or cure a medical condition. Evaluation of efficacy may involve a single drug or comparisons between two or more drugs, and may take into account such factors as efficacy of alternative methods of treatment.

(3) Essential Need. For the purpose of this section, essential need means that the availability of a drug through the Medi–Cal List of Contract Drugs is necessary to protect life or to prevent significant disability. Evaluation of essential need may involve a single drug or comparisons between two or more drugs, and may take into account such facts as the availability of alternative methods of treatment, the incidence, severity and prognosis of the medical conditions for which a drug is indicated; whether a drug is a lifesaving agent or palliative in effect; or whether a drug may provide treatment for a medical condition not adequately treated by any marketed drug.

(4) Misuse Potential. For the purpose of this section, misuse potential means the opportunity for unjustified, inappropriate, irresponsible, or improper use of a drug. Evaluation of unjustified, inappropriate, or irresponsible use may involve a single drug or comparisons between two or more drugs, and may take into account such factors as utilization of a drug where there is insufficient medical necessity for its use; continued utilization of a drug despite loss of effectiveness; utilization of a drug where more efficacious or more safe drugs are available; utilization of a drug where the drug is a mixture and less than the total number of active ingredients may suffice; or utilization of a drug where a less costly but equally safe and efficacious drug may be used. Evaluation of improper use may involve a single drug or comparisons between two or more drugs, and may take into account such factors as utilization of a drug in a manner that deviates from approved medical, legal, or social standards.

(5) Safety. For the purpose of this section, safety means relative freedom from side effects and is determined by reviewing the contraindications, precautions, warnings, adverse effects, and drug interactions associated with the use of a drug. Evaluation of safety may involve a single drug or comparisons between two or more drugs, and may take into account such factors as safety of alternative methods of treatment, or the relationship of safety of a drug to the severity of prognosis of the medical conditions for which the drug is indicated.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14105, 14105.39 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 5–22–91 as an emergency pursuant to Statutes of 1990, chapter 456, section 36, p. 1658–1659; operative 5–22–91 (Register 91, No. 27). A Certificate of Compliance must be transmitted to OAL by 9–19–91 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 9–19–91 as an emergency; operative 9–20–91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 1–20–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 1–23–92 as an emergency; operative 1–17–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL 5–22–92 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 1–23–92 order transmitted to OAL 5–22–92 and filed 7–6–92 (Register 92, No. 28).

§ 51314. Rehabilitation Center Outpatient Services.

Outpatient physical therapy, occupational therapy, speech therapy and audiology services provided in a rehabilitation center approved as meeting the standards set forth in Section 51213 are covered as specified below:

(a) One visit in a six–month period, for evaluation of the patient and preparation of an extended treatment plan, is covered without prior authorization. Additional services in a six–month period require prior authorization. The request for prior authorization shall be accompanied by an extended treatment plan signed by a physician. The extended treatment plan shall include all of the following:

(1) The principal and significant associated diagnosis.

(2) Prognosis.

(3) Date of onset of illness or injury.

(4) Specific type, number, and frequency of services to be rendered by each discipline.

(5) Therapeutic goals to be achieved by each discipline and the anticipated time required for achievement of these goals.

(6) The extent to which physical therapy, occupational therapy, speech therapy or audiology services have been previously provided, and benefits or improvements demonstrated by such prior care.

(b) Authorization may be granted for rehabilitation center outpatient services when such services are medically necessary as set forth in Section 51303(a) and are reasonably expected to develop or restore functions related to basic activities of daily living. Therapeutic goals may seek to:

(1) Develop or restore intelligible speech,

(2) Provide necessary training in the use of prosthetic or orthotic devices,

(3) Provide capability for self care to include feeding, toilet activities, and ambulation.

(c) A maximum of 30 visits may be authorized at any one time. Authorizations shall be valid for up to 120 days. A request for reauthorization shall include a statement describing the patient's progress toward achieving the therapeutic goals included in the extended treatment plan.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code; and Section 57(c), Chapter 328, Statutes of 1982. Reference: Sections 14132, 14133 and 14133.3, Welfare and Institutions Code.

HISTORY

1. New section filed 12–24–71, as an emergency; effective upon filing (Register 71, No. 52).
2. Certificate of Compliance filed 4–19–72 (Register 72, No. 18).
3. Repealer of subsection (d) filed 8–8–78; effective thirtieth day thereafter (Register 78, No. 32).
4. Amendment of subsection (b) filed 9–1–82 as an emergency; effective upon filing (Register 82, No. 37). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12–30–82.
5. Certificate of Compliance transmitted to OAL 12–30–82 and withdrawn 1–28–83 (Register 83, No. 7).
6. Amendment of subsection (b) refiled 1–28–83 as an emergency; effective upon filing (Register 83, No. 7). (Corrected copy of 1–28–83 emergency order refiled 2–16–83.) A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5–28–83 (Register 83, No. 7).
7. Editorial correction of HISTORY No. 6 (Register 83, No. 11).
8. Emergency language repealed by operation of Government Code Section 11346.1(f) (Register 83, No. 27).
9. Amendment of subsection (b) filed 6–29–83 as an emergency; effective upon filing (Register 83, No. 27). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–27–83.
10. Certificate of Compliance as to 6–29–83 order filed 8–11–83 (Register 83, No. 33).

§ 51315. Prosthetic and Orthotic Appliances.

(a) All prosthetic and orthotic appliances necessary for the restoration of function or replacement of body parts as prescribed by a licensed physician, podiatrist or dentist, within the scope of their license, are covered when provided by a prosthetist, orthotist or the licensed practitioner, respectively. A written prescription signed by a physician, podiatrist, or dentist is always required. In addition, this written, signed prescription shall accompany any request for prior authorization, which is required under the following circumstances:

(1) For orthotic appliances (procedure codes L0100–L4999) each time the cumulative costs of purchase, replacement, and repair exceed $250.00 per beneficiary, per provider, per 90–day period. This 90–day period of time begins on the date of payment of the first claim after the close of the previous 90–day period of time during which a claim, if any, was paid.

(2) For prosthetic appliances (procedure codes L5000–L8499) each time the cumulative costs of purchase, replacement, and repair exceed $500.00 per beneficiary, per provider, per 90–day period. This 90–day period of time begins on the date of payment of the first claim after the close of the previous 90–day period of time during which a claim, if any, was paid.

(3) For all unlisted, By Report, and By Invoice prosthetic and orthotic appliances.

(b) The authorization request shall specify the type of appliance and include the medical diagnosis, prognosis, and an explanation of the purpose that the appliance will serve.

(c) Authorization for repairs shall not be granted when the cost of repairs is equal to, or more than, the cost of purchasing a new appliance.

(d) Stock conventional and stock orthopedic shoes are covered when provided by a prosthetist or orthotist on the prescription of a physician or podiatrist and when at least one of the shoes will be attached to a prosthesis or brace.

(1) Modification of stock conventional or orthopedic shoes is covered when medically indicated.

(2) Custom–made orthopedic shoes may be authorized when there is a clearly established medical need that cannot be satisfied by the modification of stock conventional or stock orthopedic shoes.

(e) The only provider types authorized to furnish and bill for prosthetic and orthotic appliances are orthotists, as defined in Sections 51101 and 51225, prosthetists, as defined in Sections 51103 and 51230, physicians, as defined in Section 51053, dentists, as defined in Sections 51027 and 51223, and podiatrists, as defined in Section 51075, acting within the scope of their practice. Prosthetic and orthotic appliance codes are listed in the Medi–Cal provider manual, pursuant to Welfare and Institutions Code section 14105.21. Appliances listed in the provider manual and designated by double asterisks (**) may be furnished and billed by pharmacists.

(f) Reimbursement for prosthetic and orthotic appliances:

(1) Shall not exceed 80 percent of the lowest maximum allowance for California established by the federal Medicare program for the same or similar appliances.

(2) When there is no comparable Medicare–reimbursed appliance, reimbursement shall not exceed an amount that is the lesser of:

(A) The usual charges made to the general public for the provision of the same or similar appliances, or

(B) The maximum reimbursement rates listed in the Medi–Cal provider manual.

(3) Maximum reimbursement rates are for the basic appliances and for any component parts that may be added to these basic appliances. When applicable, billings shall include both the basic appliance and the component parts necessary to complete the prescribed appliance.

(4) No separate reimbursement for fitting, measuring, or delivery of appliances shall be made.

NOTE: Authority cited: Sections 14043.75, 14105, 14124.5, 14132, 14132.76, 14132.765 and 14133, Welfare and Institutions Code; Chapter 328, Statutes of 1982; Chapter 1381, Statutes of 1990; and Section 78, Chapter 146, Statutes of 1999. Reference: Sections 14053, 14105.21, 14132(k), 14132.76, 14132.765, 14133 and 14133.1(c), Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (a) filed 5–30–78; designated effective 7–1–78 (Register 78, No. 22). For prior history, see Register 77, No. 50.
2. Amendment of subsection (d) filed 1–16–80; effective thirtieth day thereafter (Register 80, No. 3).
3. Amendment of subsection (a) filed 11–7–86; effective thirtieth day thereafter (Register 86, No. 45).
4. Change without regulatory effect of NOTE (Register 86, No. 49).
5. Amendment of subsection (a) filed 5–25–89; operative 6–24–89 (Register 89, No. 21.)
6. Amendment of subsection (a) and NOTE, designation and amendment of subsections (a)(1)(A) and (B), and new subsections (a)(1) and (a)(2)–(a)(2)(B) filed 9–14–92; operative 10–14–92 (Register 92, No. 38).
7. Amendment of subsections (a)(2)–(a)(2)(B) filed 3–24–93; operative 4–23–93 (Register 93, No. 13).
8. Change without regulatory effect amending subsection (a)(2) and NOTE filed 3–8–94 pursuant to title 1, section 100, California Code of Regulations (Register 94, No. 10).
9. Editorial correction reinstating inadvertently omitted subsections (b)–(d)(2) (Register 97, No. 37).
10. Amendment of subsection (a), repealer of subsections (a)(1)–(2), redesignation and amendment of former subsections (a)(2)(A)–(B) as new subsections (a)(1)–(2), new subsection (a)(3) and amendment of NOTE filed 7–17–2003 as an emergency; operative 7–17–2003 (Register 2003, No. 29). A Certificate of Compliance must be transmitted to OAL by 1–13–2004 or emergency language will be repealed by operation of law on the following day.
11. Editorial correction of HISTORY 10 (Register 2003, No. 33).
12. Amendment of subsection (a), repealer of subsections (a)(1)–(2), redesignation and amendment of former subsections (a)(2)(A)–(B) as new subsections (a)(1)–(2), new subsection (a)(3) and amendment of NOTE filed 1–14–2004 as an emergency; operative 1–14–2004 (Register 2004, No. 3). A Certificate of Compliance must be transmitted to OAL by 7–12–2004 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 1–14–2004 order, including further amendment of subsections (a)–(a)(2), new subsections (e)–(f)(4) and amendment of NOTE, transmitted to OAL 7–12–2004 and filed 8–12–2004 (Register 2004, No. 33).

§ 51316. Respiratory Care Services.

(a) Respiratory care services provided by respiratory care practitioners acting within their scope of practice, upon the written prescription of a physician or surgeon, are covered as Medi–Cal benefits subject to the following:

(1) The respiratory care service is within accepted respiratory treatment modalities and considered to be specific and effective treatment for the beneficiary's condition; and

(2) The respiratory care service is shown to be medically necessary for the treatment of the beneficiary's condition pursuant to Section 51303.

(b) Reimbursement will not be made for:

(1) respiratory care procedures which are included within other procedure codes;

(2) training in the use of durable medical equipment or devices related to respiratory care reimbursed to any other provider; or

(3) teaching or training of patients or care givers to administer intermittent positive pressure breathing (IPPB).

(c) Except as otherwise noted, respiratory care services are subject to prior authorization.

(d) One respiratory care evaluation (code number X4700) of a patient with an acute respiratory illness, or respiratory problem in a six (6) month period, is covered without prior authorization unless reimbursement for a comparable examination has been made to the patient's physician within six months. Additional evaluations within a six (6) month period require medical justification and are subject to prior authorization. A respiratory care evaluation or reevaluation includes but is not limited to:

(1) review of the effectiveness of current and past medical treatment including services, items, or equipment related to the patient's respiratory condition;

(2) development, in conjunction with a physician, of a treatment plan to address the patient's respiratory condition, or to prevent or substantially shorten an anticipated hospital stay; and

(3) any other appropriate assessments or measurements of the patient's respiratory system not already covered under other service codes which are within the respiratory care practitioner's scope of practice and are related to the patient's current treatment plan.

(e) Participation in an organized respiratory care case conference (code number X4702) with other health team members immediately involved in the care or recovery of the patient is reimbursable only when the following criteria are met:

(1) The respiratory care case conference must be documented as medically necessary pursuant to Section 51303.

(2) Documentation in the patient's medical record must include the status or progress of the patient as well as the proposed treatment plan agreed upon in the respiratory care case conference.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14509 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 6–23–97; operative 7–23–97 (Register 97, No. 26).

§ 51317. Eyeglasses, Contact Lenses, Low Vision Aids, Prosthetic Eyes and Other Eye Appliances.

(a) Eye appliances are covered on the written prescription of a physician or optometrist, subject to the provisions of this section.

(1) Providers shall make a reasonable effort to ascertain and record the age, source and characteristics of the beneficiary's most recent ophthalmic correction. A review of the provider's prior records and questioning the beneficiary concerning prior ophthalmic corrections will satisfy this requirement.

(2) Lost, broken or significantly damaged eye appliances may not be replaced unless the beneficiary or beneficiary's representative supplies the provider with a signed statement outlining the circumstances of the loss or destruction and the steps taken to recover the lost item, and certifying that the loss, breakage or damage was beyond the beneficiary's control. Providers shall not be held responsible for inaccurate statements by beneficiaries. A provider may certify that specific items require replacement due to normal wear and tear or aging and that no abuse is evident.

(3) Repair or replacement of ophthalmic frames for lenses that do not conflict with the criteria in (c)(1), (2), (4)(A) and (B) is covered without a prescription.

(4) The following are not covered:

(A) Eyeglasses used primarily for protective, cosmetic, occupational or avocational purposes.

(B) Eyeglasses prescribed for other than the correction of refractive errors or binocularity anomalies.

(C) Double segment bifocal or no–line multifocal lenses.

(D) Multifocal contact lenses.

(b) Eye appliances to supplement an existing eye appliance, regardless of the source of the existing appliance, are limited to the following:

(1) Two pairs of single vision eyeglasses, one for distance vision and one for near vision, in lieu of multifocal eyeglasses when there are indications that multifocal lenses cannot be worn satisfactorily. When two pairs of single vision lenses are thus supplied, both shall meet the requirements of (c)(1) and, when applicable, (c)(3) and (c)(4). Except for those that qualify as a low vision aid, single vision eyeglasses to supplement multifocals are not a program benefit.

(2) Low vision aids, including single vision eyeglasses prescribed as a low vision aid.

(3) Ptosis crutches, occluders, bandage contact lenses, prosthetic eyes and prostheic scleral shells.

(4) Overcorrection single vision or bifocal eyeglasses for concurrent use with contact lenses. Prescription eyeglasses for alternative use by a person who has and is able to wear contact lenses are not covered. Contact lenses shall not subsequently be covered after a patient has been provided prescription eyeglasses because the patient could not wear contact lenses.

(c) Prescription eyeglass lenses conforming to American National Standard Requirements for First Quality Prescription Lenses Z80.11972 are covered if the prescription is for:

(1) Single vision lenses and specifies at least one of the following:

(A) Power in at least one meridian of either lens of 0.75 diopters or more.

(B) Astigmatic correction of either eye of 0.75 diopters or more.

(C) Total differential prismatic correction of 3/4 or more prism diopters in the vertical meridian.

(D) Total differential prismatic correction of one and one–half or more prism diopters in the horizontal meridian.

(E) Power in any meridian that differs from the corresponding meridian of the lens for the other eye by 0.75 diopters or more.

(2) Multifocal lenses with an add of at least 0.75 diopters.

(3) Replacement lenses which meet the criteria in (1) or (2) and also one or more of the following:

(A) The power is changed at least 0.50 diopters in any corresponding meridian.

(B) The cylinder axis is changed 20 or more degrees for a 0.50–0.62 diopter cylinder in the old or new correction, 15 or more degrees for a 0.75–0.87 diopter cylinder, 10 or more degrees for a 1.00–1.87 diopter cylinder or 5 or more degrees for a 2.00 diopter or stronger cylinder. Change in axis in cylinders of 0.12–0.37 diopters, as the sole reason for change, is not covered.

(C) The prismatic differential correction is changed at least 3/4 prism diopters in the vertical meridian or at least one and one–half prism diopters in the horizontal meridian.

(D) The previous lens is lost, broken or marred to a degree significantly interfering with vision or eye safety. A certificate or statement as specified in paragraph (a)(2) is required.

(E) The frame must be replaced because a different size or shape is necessary.

(4) Absorptive lenses which reduce the amount of light energy reaching the eye, or selectively restrict the passage of specific parts of the light spectrum, meet the criteria for coverage under (1), (2), or (3), and are provided under any of the following conditions:

(A) when eye pathology that is aggravated by exposure to this light exists,

(B) when the normal eye protective system that guards against this light is compromised, or

(C) when chronic pathological conditions that are intensified by exposure to this light energy are present.

All absorptive lenses provided under the program shall be identified by manufacturer and by trade name, and be represented by established and published transmission charts that confirm the eye protection objective of the lens.

(5) Trifocal lenses which meet the criteria in (1), (2) or (3), but only for beneficiaries who are currently wearing trifocals.

(6) A balance lens, when the corrected acuity for the poorer eye is not better than 0.10 decimal notation, 20/200 Snellen or equivalent at specified distances. Coverage for the poorer eye is limited to a single vision balance lens unless a prescription lens is medically justified. Multifocal balance lenses are not covered.

(d) Eyeglass frames conforming to American National Standard Requirements for Dress Ophthalmic Frames Z80.5—1979 are covered when the beneficiary does not possess a frame suitable for continued use. Replacement eyeglass frames are not covered if a previous frame can be made suitable for continued use by adjustment, repair or replacement of a broken front or temples. Repairs and parts replacement are covered.

(1) Replacement of frames lost, stolen or destroyed in circumstances beyond the beneficiary's control is covered. A certificate or statement as specified in paragraph (a)(2) is required. Replacement of frames deliberately destroyed, abused or discarded by the beneficiary is not covered. Replacement of frames for reasons other than lost, theft or destruction in circumstances beyond the beneficiary's control may be covered when the provider submits a statement as specified in paragraph (a)(2) explaining why the prior frame cannot continue in use.

(2) Replacement of frames within two years is limited to the same model whenever feasible.

(3) Frames are not covered for use with lenses weaker than the minimums specified for an original prescription, as defined in (c)(1) and (2) in this section.

(4) Frames shall be sturdy and of good quality with the manufacturer's or American distributor's name or identification clearly stamped on the frame. Only frames which the provider also supplies to the general public shall be provided to Medi–Cal patients. Discontinued or closeout frames

are not covered. The provider shall allow the patient to try on and choose from an adequate selection of frame styles, colors and sizes.

(e) Contact lenses, limited to lenses for which the federal Food and Drug Administration has given approval of the lenses and the applications and hard lenses conforming to American National Standard Requirements for First Quality Contact Lenses Z80.2—1972 are covered as follows:

(1) Following prior authorization for:

(A) Extended wear contact lenses which require more professional postdispensing monitoring than lenses designed for daily removal and disposable prescription contact lenses designed for short–term wear and frequent replacement. Authorization may be granted upon verification that other lenses cannot be used and there is reasonable assurance the patient can use the specialized lenses.

(B) Contact lenses when chronic pathology or deformity of the nose, skin or ears precludes the wearing of eyeglasses.

(C) Contact lenses for a diagnosis of aniseikonia when supported by clinical data.

(2) Without prior authorization for:

(A) A diagnosis of aphakia or keratoconus when contact lenses other than extended wear contact lenses are fitted. If extended wear contact lenses are to be provided, prior authorization is required.

(B) When eyeglasses are contraindicated due to chronic corneal or conjunctival pathology or deformity other than corneal astigmatism; when contact lenses other than extended wear contact lenses are fitted. If extended wear contact lenses are to be provided, prior authorization is required.

(C) Therapeutic bandage lenses prescribed by a physician for a diagnosis approved by the federal Food and Drug Administration for those

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lenses, when fitted by a physician or by either a dispensing optician or an optometrist under the direct supervision of a physician.

(f) Low vision optical aids, excluding electronic devices, are covered when visual function is markedly enhanced and all the following conditions are satisfied:

(1) Visual acuity in the better eye when optimal correction with a prescription eyeglass lens or contact lens is equal to or poorer than 0.30 decimal notation, 20/60 Snellen, or equivalent at specified distances, or either visual field is limited to 10 degrees or less from the point of fixation in any direction.

(2) The condition causing the subnormal vision is chronic and cannot be relieved by medical or surgical intervention.

(3) The physical and mental condition of the patient is such that there is a reasonable expectation that the aid will be used to enhance the everyday functioning of the beneficiary.

(4) The aid prescribed or provided is the least costly type that will meet the needs of the patient.

(5) Prior authorization, when the amount claimed for payment of an aid is $100.00 or more, has been obtained from:

(A) The California Children Services, in accordance with Section 51013, when the beneficiary is under, or who is a candidate for, case management by that program.

(B) The Medi-Cal consultant for:

1. Low vision aids recommended by the Department of Rehabilitation in accordance with Section 51014.

2. All others.

(6) TARs for low vision aids shall include:

(A) The etiology, current status and prognosis of the visual defect.

(B) The visual acuity at far and at near, measured monocularly and binocularly with optimum spectacle or contact lens correction.

(C) The visual acuities using the aid.

(D) A copy of the detailed field study when the aid is designed to compensate for a field defect.

(E) A description of the aid, including cost, model number and name of distributor or manufacturer.

(F) A statement of the amount of professional time expended in fitting the aid, excluding diagnostic and follow-up time associated with the fitting and postfitting supervision of the patient by a medical or optometric provider.

(g) Prosthetic Eyes. A written prescription by a physician or optometrist is required for the provision of prosthetic eyes.

(1) The claim for reimbursement shall include the following:

(A) Explanation of the need for a prosthetic eye.

(B) Prior prosthetic eye history.

(C) Description of and justification for other than a precast prosthesis.

(2) Prosthetic eyes may be replaced:

(A) To accommodate changes resulting from orbital development in persons under 18 years of age.

(B) When necessary to prevent a significant disability.

(C) When the prior prosthesis was lost or destroyed due to circumstances beyond the beneficiary's control.

(D) When the prior prosthesis can no longer be rehabilitated.

(3) Repair of a prosthetic eye may be covered as an unlisted eye appliance procedure.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14110.5, 14132, 14133 and 14133.1, Welfare and Institutions Code; and Statutes of 1985, Chapter 111, Item 4260-101-001, Provision 21.

HISTORY

1. Amendment of subsections (c)(2) and (c)(4) filed 6-24-83 as an emergency; effective upon filing (Register 83, No. 26). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10-22-83. For prior history, see Register 83, No. 26.
2. Repealer and new section filed 7-8-83; effective thirtieth day thereafter (Register 83, No. 30).
3. Certificate of Compliance as to 6-24-83 order transmitted to OAL 10-21-83 and filed 11-23-83 (Register 83, No. 48).
4. Amendment of subsection (g) filed 8-23-85; effective thirtieth day thereafter (Register 85, No. 36).
5. Amendment of subsections (c)(1)(D), (c)(3)(C) and (c)(4)(A) filed 9-30-85 as an emergency; effective upon filing (Register 85, No. 40). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1-28-86.
6. Certificate of Compliance transmitted to OAL 1-8-86 and filed 2-6-86 (Register 86, No. 6).
7. Amendment of subsections (c)(4) and (d)(3) filed 11-14-86; effective thirtieth day thereafter (Register 86, No. 46).

§ 51317.1. Interim Coverage of Eyeglass Lenses.

NOTE: Authority cited: Section 14124.5, Welfare and Institutions Code. Reference: Sections 14110.5, 14132, 14133 and 14133.1, Welfare and Institutions Code; and Section 149, Chapter 323, Statutes of 1983.

HISTORY

1. New section filed 9-1-82 as an emergency; effective upon filing (Register 82, No. 37). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-30-82.
2. Certificate of Compliance transmitted to OAL 12-30-82 and withdrawn 1-28-83 (Register 83, No. 10).
3. New section refiled 1-28-83 as an emergency; effective upon filing (Register 83, No. 10). (Corrected copy of 1-28-83 emergency order refiled 1-31-83.) A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5-28-83.
4. Emergency language repealed by operation of Government Code Section 11346.1(f) (Register 83, No. 26).
5. New section filed 6-24-83 as an emergency; effective upon filing (Register 83, No. 26). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10-22-83.
6. Certificate of Compliance transmitted to OAL 10-21-83 and filed 11-23-83 (Register 83, No. 48).
7. Editorial correction of NOTE filed 12-20-83 (Register 83, No. 52).
8. Repealer filed 9-30-85 as an emergency; effective upon filing (Register 85, No. 40). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1-28-86.
9. Certificate of Compliance transmitted to OAL 1-8-86 and filed 2-6-86 (Register 86, No. 6).

§ 51319. Hearing Aids.

(a) Hearing aids are covered only when supplied by a hearing aid dispenser on prescription of an otolaryngologist, or the attending physician where there is no otolaryngologist available in the community, plus an audiological evaluation including a hearing aid evaluation which must be performed by or under the supervision of the above physician or by a licensed audiologist.

(b) Prior to prescribing a hearing aid, the otolaryngologist or attending physician shall perform a complete ear, nose and throat examination.

(c) Prior authorization is required for the purchase or trial period rental of hearing aids, and for hearing aid repairs which exceed a cost of $25.00 per repair service. Claims for individual repair services shall not be cumulative for the purposes of determining the need for prior authorization.

(1) Ear molds are covered without prior authorization.

(2) Prior authorization is required for all supplies and accessories necessary for the operation of a hearing aid, except as provided in (1) above.

(3) Binaural hearing aids may be authorized under any of the following conditions:

(A) The hearing loss is associated with legal blindness.

(B) For beneficiaries 20 years of age or under, tests of each ear reveal a hearing loss level of 30 dB or greater, American National Standards Institute (ANSI), 1969, for 500, 1,000, and 2,000 Hertz (Hz) by pure tone air conduction. Cases shall be referred to California Children Services for evaluation, consultation, or case management for patients eligible for such coverage by California Children Services.

(C) For beneficiaries over 18 years of age, tests of each ear reveal a hearing loss level of 35 dB or greater, ANSI, 1969 for 500, 1,000, and 2,000 Hertz (Hz) by pure tone air conduction. Where the provision of a binaural hearing aid is the basis for employment, beneficiaries with the above hearing loss shall be referred to the California Department of Rehabilitation for evaluation, consultation, and case management as provided in Section 51014.

(d) Requests for authorization for hearing aids must include the results of the following tests:

(1) Pure tone air conduction threshold and bone conduction tests of each ear at 500, 1,000, 2,000, 3,000 and 4,000 Hertz (Hz) with effective masking as indicated.

(2) Speech tests, aided and unaided, shall include the following:

(A) Speech Reception Threshold (SRT) using Spondee words.

(B) A Word Discrimination Score (WDS) derived from testing at 40 decibels (dB) above the SRT or at the Most Comfortable Loudness (MCL) using standard discrimination word lists (such as PB or W22) utilizing either recorded or live voice.

(C) Sound Field Aided and Unaided, Speech Scores (SRT and WDS) shall be established.

(e) Test results shall be presented in a format acceptable to the Medi-Cal consultant and shall include proposed hearing aid specifications.

(f) Authorization for hearing aids may be granted only when:

(1) Tests of the better ear, after treatment of any condition contributing to the hearing loss, reveal an average hearing loss level of 35 dB or greater, ANSI, 1969, for 500, 1000, and 2000 Hertz (Hz) by pure tone air conduction, or:

(2) The difference between the level of 1000 Hertz (Hz) and 2000 Hrtz (Hz) is 20 dB or more, the average of the air conduction threshold at 500, 1000, and 2,000 Hertz (Hz) need only be 30 dB hearing level, (ANSI, 1969), and

(3) Speech communication is effectively improved or auditory contact is necessary for sound awareness (personal safety) in the environment in which the beneficiary exists.

(g) Replacement of a hearing aid may be authorized only if:

(1) The prior hearing aid has been lost, stolen, or irreparably damaged due to circumstances beyond the beneficiary's control. The Treatment Authorization Request shall include each of the following:

(A) A statement describing the circumstances of the loss, theft, or destruction of the hearing aid, signed by the beneficiary and the otolaryngologist or the attending physician if there is no otolaryngologist available in the community.

(B) An audiological evaluation, if other than a duplicate of the prior hearing aid is required.

(2) The hearing impairment of the beneficiary requires amplification or correction not within the capabilities of the beneficiary's present hearing aid. The new aid shall be prescribed in accordance with (a) above.

(h) Eyeglass hearing aids are covered when the requirements of this section and Section 51317 are met at the same time.

(i) Initial hearing aid batteries supplied with the hearing aid are covered when supplied with a hearing aid that has been prior authorized. Replacement hearing aid batteries are not covered.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code; and Section 57(c), Chapter 328, Statutes of 1982. Reference: Sections 14053, 14132 and 14133, Welfare and Institutions Code; and Section 53, Chapter 328, Statutes of 1982.

HISTORY

1. New subsection (g) filed 1-18-74; effective thirtieth day thereafter (Register 74, No. 3). For prior history, see Register 72, No. 40.
2. Amendment of subsection (f) filed 5-15-79 as an emergency; designated effective 5-15-79 (Register 79, No. 20).
3. Editorial correction (Register 79, No. 26).
4. Certificate of Compliance filed 9-12-79 (Register 79, No. 37).
5. Amendment filed 9-4-80; effective thirtieth day thereafter (Register 80, No. 36).
6. Editorial correction of subsection (f)(2) (Register 80, No. 40).
7. Amendment of subsection (c)(1) and new subsection (h) filed 9-1-82 as an emergency; effective upon filing (Register 82, No. 37). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-30-82.
8. Certificate of Compliance transmitted to OAL 12-28-82 and filed 1-21-83 (Register 83, No. 4).
9. Amendment of subsection (h) filed 3-1-84; effective thirtieth day thereafter (Register 84, No. 9).
10. Amendment filed 6-22-87; operative 7-22-87 (Register 87, No. 27).
11. Amendment of subsection (c)(1), new subsection (c)(2) and subsection renumbering filed 4-4-2003 as an emergency; operative 4-4-2003 (Register 2003, No. 14). A Certificate of Compliance must be transmitted to OAL by 8-4-2003 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 4-4-2003 order transmitted to OAL 7-28-2003 and filed 9-4-2003 (Register 2003, No. 36).

§ 51320. Medical Supplies.

(a) Medical supplies are covered when prescribed by a licensed practitioner within the scope of his practice as defined by California laws, subject to the requirements in Section 59998.

(b) Common household items and articles of clothing are not covered.

(c) Medical supplies for chronic outpatient hemodialysis provided in renal dialysis centers and community hemodialysis units or for home dialysis are covered, but are payable only when included in the all inclusive facility rate set forth in Section 51509.2.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14105, 14124.5, 14132, and 14133, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (a) filed 5-14-76 as an emergency; effective upon filing (Register 76, No. 20). For prior history, see Register 73, No. 5.
2. Certificate of Compliance filed 9-8-76 (Register 76, No. 37).
3. Amendment filed 4-24-81; designated effective 7-1-81 (Register 81, No. 17).

§ 51321. Durable Medical Equipment.

(a) Durable medical equipment, as defined in Section 51160, is covered in accordance with the standards set forth in section 51303(a) and when provided on the written prescription of licensed practitioners within the scope of their practice as established in California law. Alterations or improvements of real property are not covered except to the extent authorized for the provision of home dialysis services. In addition to the prescribing practitioner's signature, all of the following specific information, at a minimum, shall be clearly provided on, or with the prescription form, or as an attachment to the Treatment Authorization Request:

(1) Full name and telephone number of the prescribing practitioner.

(2) Date of prescription.

(3) Specific item(s) being prescribed.

(4) Patient's medical condition/diagnosis necessitating each item. This documentation shall include:

(A) The patient's medical status and functional limitation(s) and

(B) A description of the manner in which the specific item being requested is expected to improve the medical status or functional ability of the patient, stabilize the patient's condition, or prevent additional deterioration of the medical status or functional ability of the patient.

(5) Estimated length of time the item is determined to be medically necessary.

(b) Prior authorization is required:

(1) For the purchase of durable medical equipment listed in Section 51521 when the cumulative cost within the calendar month of purchasing items within a group exceeds $100.00.

(2) For the repair or maintenance of durable medical equipment when the cumulative cost within the calendar month exceeds $250.00 for the repair and maintenance of items within a group, and when the cumulative cost of renting items within a group exceeds $50.00 within a fifteen month period. The cost of repairs shall not exceed the replacement value of the item being repaired.

(3) For the provision of oxygen, Procedure Code E0441, when more than the equivalent of two H tanks (which equals 10 "E" tanks or 500 cu. ft.) are provided during one calendar month.

(4) For the purchase, rental, repair or maintenance of any unlisted devices or equipment, regardless of the dollar amount.

(c) All authorization requests shall, at a minimum, include all of the following:

(1) Identification of patient; name and patient Medi-Cal identification or Social Security number.

(2) Date of request.

(3) Medical justification relevant to the item being requested.

(4) Location where patient resides.

(5) Description of item, including:

(A) Manufacturer's name and/or model type/serial number, as applicable.

(B) Procedure Code.

(C) Estimated length of need, whether rental or purchase of the item is requested, and associated charges. Except for life support equipment, such as ventilators, and other equipment that requires ongoing service or maintenance, when previously paid rental charges equal the maximum allowable purchase price of the rented item, as specified in Section 51521(i), the item is considered to have been purchased and no further reimbursement to the provider shall be made unless repair or maintenance of the item is separately authorized. When the Department deter-

mines it is medically necessary to purchase an unlisted item of durable medical equipment that had been rented for a Medi–Cal patient, the Department and the provider shall determine the purchase price and the amount of the rental charges that may be applied to the purchase price.

(6) Rendering provider identification, including name, address, telephone number, contact name, contact telephone number, and Medi–Cal provider I.D. number.

(d) In addition to the documentation requirements specified in (c) above, authorization requests for unlisted durable medical equipment/devices also require copies of catalog pages and medical justification to substantiate why a listed item is insufficient to meet the patient's medical needs.

(e) The following items are not covered by the program:

(1) Modification of automobiles/or other highway motor vehicles

(2) Books or other items of a primarily educational nature

(3) Air conditioners, air filters, or heaters

(4) Food blenders

(5) Reading lamps, or other lighting devices

(6) Bicycles, tricycles, or exercise equipment, except as otherwise specified in this Chapter

(7) Television sets

(8) Orthopedic mattresses, recliners, rockers, seat lift chairs, or other furniture items

(9) Waterbeds

(10) Household items

(11) Other items not generally used primarily for health care and which are regularly and primarily used by persons who do not have a specific medical need for them.

(f) Authorization shall not be granted for medical equipment when a household or furniture item will adequately serve the patient's medical needs.

(g) Authorization for durable medical equipment shall be limited to the lowest cost item that meets the patient's medical needs.

(h) Authorization for durable medical equipment for skilled nursing facility/Level B or intermediate care facility/Level A inpatients may be approved as follows:

(1) The equipment is necessary for the continuous care of the patient to meet the unusual medical needs of that patient. A patient may be considered to have unusual medical needs when a disease or medical condition is exacerbated by physical characteristics such as height, weight, and body build. Physical characteristics, in and of themselves, shall not constitute an unusual medical condition.

(2) Canes, crutches, wheelchairs, wheelchair cushions, and walkers may be authorized only when the item must be custom made or modified to meet the unusual medical needs of the patient and the need is expected to be permanent. A custom wheelchair, either manual or power, is one which has been uniquely constructed or assembled to address a particular patient's individual medical needs for positioning, support and mobility.

(3) Suction and positive pressure apparatus may be authorized only when the item will be continuously used by the patient or must be immediately available to the patient for one month or more.

(i) Beneficiaries shall be responsible for appropriate use and care of durable medical equipment purchased for their use under the Medi–Cal program.

(j) Rendering providers of durable medical equipment shall ensure that all devices and equipment are appropriate to meet the beneficiary's medical needs. If a piece of equipment or a device, when in actual use, fails to meet the beneficiary's needs, and the beneficiary's medical condition has not significantly changed since the device/equipment was dispensed, the rendering provider shall adjust or modify the equipment, as necessary, to meet the beneficiary's needs. Any equipment or device that cannot be adjusted or modified, shall be replaced by the rendering provider at no cost to the Medi–Cal program.

(k) In addition to the requirements specified in subsections (a) through (j) above, authorization of the following shall be made in accordance with the criteria contained in the applicable chapter of the Manual of Criteria for Medi–Cal Authorization:

(1) Antidecubitus Care (ADC) Support Surfaces—Chapter 13.1.

(2) Osteogenesis Stimulator Devices to Accelerate the Healing of Selected Bone Fractures—Chapter 13.2.

NOTE: Authority cited: Sections 14105, 14124.5 and 14126.23, Welfare and Institutions Code; Section 100275, Health and Safety Code; Section 57(c), Chapter 328, Statutes of 1982; and Section 3, Chapter 1381, Statutes of 1990. Reference: Sections 14053, 14132, 14133, 14133.1(c) and 14133.3, Welfare and Institutions Code; Section 447.15, Title 42, Code of Federal Regulations; and *Vera Blue, et al., v. Bonta'* (2002) 99 Cal. App. 4th 980.

HISTORY

1. Amendment of subsections (b) and (c) filed 11–4–76; effective thirtieth day thereafter (Register 76, No. 45). For prior history, see Register 72, No. 31.
2. Amendment of subsection (b) filed 5–25–77; effective thirtieth day thereafter (Register 77, No. 22).
3. Amendment of subsection (h) filed 8–8–78; effective thirtieth day thereafter (Register 78, No. 32).
4. Amendment of subsection (a) filed 9–1–82 as an emergency; effective upon filing (Register 82, No. 37). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12–30–82.
5. Certificate of Compliance transmitted to OAL 12–28–82 and filed 1–21–83 (Register 83, No. 4).
6. Amendment of subsections (b) and (c) filed 11–7–86; effective thirtieth day thereafter (Register 86, No. 45).
7. Change without regulatory effect of NOTE (Register 86, No. 49).
8. Amendment filed 5–25–89; operative 6–24–89 (Register 89, No. 21).
9. Amendment filed 12–10–90 as an emergency; operative 12–10–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 4–9–91 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 12–10–90 order transmitted to OAL 4–8–91 and filed 5–8–91 (Register 91, No. 24).
11. Amendment of subsection (b) filed 9–25–92 as an emergency; operative 10–1–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL 1–25–93 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 9–25–92 order transmitted to OAL 1–22–93 and filed 3–9–93 (Register 93, No. 11).
13. Amendment of subsection (b) and NOTE filed 5–18–94; operative 6–17–94 (Register 94, No. 20).
14. Amendment of subsection (b) filed 8–2–95 as an emergency; operative 8–2–95 (Register 95, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–30–95 or emergency language will be repealed by operation of law on the following day.
15. Certificate of Compliance as to 8–2–95 order transmitted to OAL 11–22–95 and filed 1–3–96 (Register 96, No. 1).
16. Amendment of subsection (g) and NOTE filed 4–1–96 as an emergency; operative 4–1–96 (Register 96, No. 14). A Certificate of Compliance must be transmitted to OAL by 9–30–96 pursuant to Welfare and Institutions Code section 14132.22 or emergency language will be repealed by operation of law on the following day.
17. Editorial correction of HISTORY 16 (Register 96, No. 35).
18. Amendment of subsection (g) and NOTE refiled 8–28–96 as an emergency; operative 9–30–96 (Register 96, No. 35). A Certificate of Compliance must be transmitted to OAL by 1–28–97 or emergency language will be repealed by operation of law on the following day.
19. Certificate of Compliance as to 8–28–96 order transmitted to OAL 1–23–97 and filed 3–10–97 (Register 97, No. 11).
20. Amendment filed 6–5–2000 as an emergency; operative 6–5–2000 (Register 2000, No. 23). A Certificate of Compliance must be transmitted to OAL by 10–3–2000 or emergency language will be repealed by operation of law on the following day.
21. Amendment refiled 8–21–2000 as an emergency; operative 10–3–2000 (Register 2000, No. 34). A Certificate of Compliance must be transmitted to OAL by 1–31–2001 or emergency language will be repealed by operation of law on the following day.
22. Amendment of subsection (k) and new subsections (k)(1)–(2) filed 9–22–2000 as an emergency; operative 9–22–2000 (Register 2000, No. 38). A Certificate of Compliance must be transmitted to OAL by 1–22–2001 or emergency language will be repealed by operation of law on the following day.
23. Amendment of subsection (k) and new subsections (k)(1)–(2) refiled 1–23–2001 as an emergency; operative 1–23–2001 (Register 2001, No. 4). A Certificate of Compliance must be transmitted to OAL by 5–23–2001 or emergency language will be repealed by operation of law on the following day.
24. Certificate of Compliance as to 8–21–2000 order, including further amendment of subsections (a), (a)(4)(B), (b)(2), (c)(5)(C), (e)(1) and (h)(2), transmitted to OAL 1–3–2001 and filed 2–5–2001 (Register 2001, No. 6).
25. Certificate of Compliance as to 1–23–2001 order, including amendment of NOTE, transmitted to OAL 2–7–2001 and filed 3–16–2001 (Register 2001, No. 11).
26. Change without regulatory effect repealing and adopting new subsection (e)(11), repealing subsection (e)(12) and amending NOTE filed 5–13–2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 20).

27. Change without regulatory effect amending section and NOTE filed 6–12–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 24).

§ 51323. Medical Transportation Services.

(a) Ambulance, litter van and wheelchair van medical transportation services are covered when the beneficiary's medical and physical condition is such that transport by ordinary means of public or private conveyance is medically contraindicated, and transportation is required for the purpose of obtaining needed medical care.

(1) Ambulance services are covered when the patient's medical condition contraindicates the use of other forms of medical transportation.

(2) Litter van services are covered when the patient's medical and physical condition:

(A) Requires that the patient be transported in a prone or supine position, because the patient is incapable of sitting for the period of time needed to transport.

(B) Requires specialized safety equipment over and above that normally available in passenger cars, taxicabs or other forms of public conveyance.

(C) Does not require the specialized services, equipment and personnel provided in an ambulance because the patient is in stable condition and does not need constant observation.

(3) Wheelchair van services are covered when the patient's medical and physical condition:

(A) Renders the patient incapable of sitting in a private vehicle, taxi or other form of public transportation for the period of time needed to transport.

(B) Requires that the patient be transported in a wheelchair or assisted to and from residence, vehicle and place of treatment because of a disabling physical or mental limitation.

(C) Requires specialized safety equipment over and above that normally available in passenger cars, taxicabs or other forms of public conveyance.

(D) Does not require the specialized services, equipment and personnel provided in an ambulance, because the patient is in stable condition and does not need constant observation.

(b) Authorization shall be granted or Medi–Cal reimbursement shall be approved only for the lowest cost type of medical transportation that is adequate for the patient's medical needs, and is available at the time transportation is required.

(1) Emergency medical transportation is covered, without prior authorization, to the nearest facility capable of meeting the medical needs of the patient. Each claim for program reimbursement of emergency medical transportation shall be accompanied by a written statement which will support a finding that an emergency existed. Notwithstanding Section 51056 (b), the statement may be made by the provider of the emergency transportation, describing the circumstances necessitating the emergency service. The statement shall include the name of the person or agency requesting the service, the nature and time of the emergency, the facility to which the patient was transported, relevant clinical information about the patient's condition, why the emergency services rendered were considered to be immediately necessary and the name of the physician accepting responsibility for the patient at the facility.

(2) All nonemergency medical transportation, necessary to obtain program covered services, requires a physician's, dentist's or podiatrist's prescription and prior authorization except as provided in (C).

(A) When the service needed is of such an urgent nature that written authorization could not have reasonably been submitted beforehand, the medical transportation provider may request prior authorization by telephone. Such telephone authorization shall be valid only if confirmed by a written request for authorization.

(B) Transportation shall be authorized only to the nearest facility capable of meeting the patient's medical needs.

(C) Nonemergency transportation services are exempt from prior authorization when provided to a patient being transferred from an acute care hospital immediately following a stay as an inpatient at the acute level of care to a skilled nursing facility or an intermediate care facility licensed pursuant to Section 1250 of the Health and Safety Code.

(c) Medical transportation by air is covered under the following conditions:

(1) For emergencies, only when such transportation is medically necessary as demonstrated by compliance with paragraph (b) (1) and either of the following apply:

(A) The medical condition of the patient precludes other means of medical transportation as indicated in the statement submitted in accordance with paragraph (b) (1).

(B) The patient or the nearest hospital capable of meeting the medical needs of the patient is inaccessible to ground medical transportation, as indicated in the statement submitted in accordance with paragraph (b) (1).

(2) For nonemergencies, only when transportation by air is necessary because of the medical condition of the patient or practical considerations render ground transportation not feasible. The necessity for transportation by air shall be substantiated by content of a written order of a physician, podiatrist or dentist.

NOTE: Authority cited: Section 14124.5, Welfare and Institutions Code. Reference: Sections 14132 and 14136.3, Welfare and Institutions Code.

HISTORY

1. New subsection (d) filed 7–6–82 as an emergency; effective upon filing (Register 82, No. 28). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–3–82. For prior history, see Register 82, No. 18.
2. Certificate of Compliance as to 7–6–82 order transmitted to OAL 11–3–82 and filed 12–3–82 (Register 82, No. 49).
3. Amendment of subsection (b) filed 4–11–84; effective thirtieth day thereafter (Register 84, No. 15).
4. Repealer of subsection (d) filed 8–9–85; effective thirtieth day thereafter (Register 85, No. 32).
5. Amendment of subsection (b)(2)(C), designation of portion of subsection (b)(2)(C) as new subsection (b)(2)(C)1. and amendment thereof, new subsections (b)(2)(C)2.–3., and amendment of NOTE filed 4–1–96 as an emergency; operative 4–1–96 (Register 96, No. 14). A Certificate of Compliance must be transmitted to OAL by 9–30–96 pursuant to Welfare and Institutions Code section 14132.22 or emergency language will be repealed by operation of law on the following day.
6. Editorial correction of HISTORY 5 (Register 96, No. 35).
7. Amendment of subsection (b)(2)(C), designation of portion of subsection (b)(2)(C) as new subsection (b)(2)(C)1. and amendment thereof, new subsections (b)(2)(C)2.–3., and amendment of NOTE refiled 8–28–96 as an emergency; operative 9–30–96 (Register 96, No. 35). A Certificate of Compliance must be transmitted to OAL by 1–28–97 or emergency language will be repealed by operation of law on the following day.
8. Editorial correction of subsection (b)(2)(C)3. (Register 97, No. 11).
9. Certificate of Compliance as to 8–28–96 order transmitted to OAL 1–23–97 and filed 3–10–97 (Register 97, No. 11).
10. Change without regulatory effect amending subsection (b)(2)(C), repealing subsections (b)(2)(C)1.–3. and amending NOTE filed 6–12–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 24).

§ 51325. Blood and Blood Derivatives.

Blood is covered as ordered by a physician or dentist and only upon certification of the blood bank supplying the blood, or the facility where the transfusion is given, that voluntary blood donations cannot be obtained. Blood derivatives are covered as prescribed by a physician or dentist when appropriate to the diagnosis and condition of the beneficiary.

NOTE: Authority cited: Section 14124.5, Welfare and Institutions Code. Reference: Sections 14132(g) and 14133.3, Welfare and Institutions Code.

HISTORY

1. Amendment filed 6–23–66 as an emergency; effective upon filing; Certificate of Compliance included (Register 66, No. 19).
2. Amendment filed 9–30–71 as an emergency; designated effective 10–1–71 (Register 71, No. 40).
3. Certificate of Compliance—Section 11422.1, Gov. Code, filed 1–25–72 (Register 72, No. 5).
4. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51326. Nurse Anesthetist Services.

Nurse anesthetist services are covered when provided by a nurse anesthetist within the scope of his or her licensure.

NOTE: Authority cited: Sections 14105, 14115.3 and 14124.5, Welfare and Institutions Code. Reference: Section 14115.3, Welfare and Institutions Code.

HISTORY

1. New section filed 5–1–75 as an emergency; effective upon filing (Register 75, No. 18).
2. Certificate of Compliance filed 8–19–75 (Register 75, No. 34).

3. Amendment filed 2–5–88; operative 3–6–88 (Register 88, No. 8).

§ 51327. Inpatient Hospital Services.

(a) Inpatient hospital services are covered as specified below:

(1) Hospital care for newborns and hospitalization for delivery services are covered as follows:

(A) Inpatient delivery services in hospitals designated as contract hospitals in closed areas or contract/non–contract hospitals in open areas are covered without authorization up to a maximum of two consecutive days prior to delivery, beginning at midnight at the beginning of the day the mother is admitted, if delivery occurs within that two–day period, and without authorization up to a maximum of two consecutive days following vaginal delivery, or four consecutive days following delivery by Cesarean section, beginning at midnight at the end of the day the mother delivers. Continued medically necessary hospitalization beyond two days prior to delivery, beyond two days following vaginal delivery, or beyond four days following delivery by Cesarean section, requires timely submission of a request for authorization, as defined in Section 51003(b)(3), for Medi–Cal field office review. Authorization is required for all days of hospitalization when delivery does not occur within two consecutive days of admission. Hospitals under the onsite authorization procedure shall obtain authorizations not later than the first regularly scheduled review day following admission. Authorizations may be granted for up to a maximum of 30 days. For the purposes of this section, the following definitions shall apply:

1. "Closed areas" means areas in which the proportion of bed capacity under contract between the Department and the contracting hospitals exceeds the hospital bed needs of the Medi–Cal population in that area.

2. "Open areas" means areas in which the proportion of bed capacity under contract between the Department and the contracting hospitals does not exceed the hospital bed needs of the Medi–Cal population in that area.

(B) Hospital care for newborns is covered, subject to the following:

1. Nursery care for well newborns during the same hospital admission associated with the delivery is not separately reimbursable.

2. Nursery care for sick newborns, who do not require neonatal intensive care, but who require an acute level of care during the same hospital admission associated with the delivery, is separately reimbursable under the following circumstances:

a. For contract hospitals reimbursed on a per diem basis, timely submission of a request for authorization for Medi–Cal field office review, as specified in subsection (a)(1)(A), is required for services provided to the newborn beginning with the day of the mother's discharge, or as dictated by the terms of the hospital's contract.

b. For non–contract hospitals, a separate authorization is required commencing with the onset of the newborn's illness, whether or not the mother has been discharged.

3. Nursery care for a newborn whose mother is ineligible for Medi–Cal and has no other medical insurance, or whose mother's health coverage does not include coverage for the newborn, or whose mother is incarcerated, is covered subject to timely submission of a request for authorization for Medi–Cal field office review, as specified in Section 51003(b)(3). Authorization is required for each day of the newborn's hospital stay.

4. Neonatal intensive care is covered, commencing with the onset of the newborn's illness and admission to the Neonatal Intensive Care Unit (NICU), subject to timely submission of a request for authorization for Medi–Cal field office review, as specified in Section 51003(b)(3), or as dictated by the terms of the hospital's contract.

(C) When delivery occurs prior to admission of the mother to the hospital, inpatient care for both the mother and newborn is covered without authorization up to a maximum of 48 hours beginning at midnight at the end of the day the mother delivered. The actual time of vaginal delivery shall be established based upon the mother's statement, records of auxiliary personnel involved in the care/transport of the mother, and clinical assessment by the attending physician.

(D) Emergency inpatient services in hospitals designated as noncontract hospitals in closed areas are covered as specified in section 51327(a)(2).

(2) Emergency hospital services shall not require authorization prior to admission, if hospitalization is for services that meet the definition of emergency services as defined in section 51541(c)(6)(A) and are justified as required in section 51056(c). However, all hospitalization resulting from emergency admissions requires approval by the Medi–Cal Consultant. Approval shall be obtained by the hospital on the day of admission or, when the day of admission is not a State working day, the first State working day thereafter. For those hospitals under the onsite authorization procedure, the first State working day shall mean the first regularly scheduled review day. Authorizations may be granted for up to a maximum of 30 days.

(A) A Medi–Cal beneficiary who is admitted to a noncontract hospital in a closed area for emergency inpatient delivery services shall be transported when stable to a contracting facility for all, or the remainder of, the post–delivery inpatient length of stay specified in subsection (a)(1)(A), unless:

1. A contract facility is unable to accept the transfer.

2. The mother's condition fails to meet the Stable for Transport Guidelines in Section 5.4 of the Manual of Criteria for Medi–Cal Authorization. If the mother's condition does not stabilize during the two consecutive days following vaginal delivery, or four consecutive days following delivery by Cesarean section, the post delivery length of stay at the noncontract hospital shall be covered, without authorization.

3. A decision for early discharge is made by the treating physician, in consultation with the mother, as specified in subsection (b).

(3) All other hospitalization is covered only if prior authorization is obtained from the Medi–Cal Consultant before the hospital admission is effected. The Medi–Cal Consultant's authorization shall be for a specified number of days of hospital care for the diagnosis specified or the operative procedure contemplated in the authorization request. Nonemergency services for other unrelated diagnoses or operative procedures shall not be covered without additional prior authorization by a Medi–Cal Consultant. Continued necessary hospitalization beyond the specified number of days shall be covered after approval by the Medi–Cal Consultant has been obtained by the hospital on or before the last day of the previously approved period of hospitalization. Hospitals under the onsite authorization procedure shall obtain authorization not later than the first regularly scheduled review day thereafter. Days not prior authorized for admission or for extension of stay are not covered unless otherwise provided for in these regulations.

(A) As a minimum, the authorization request shall contain the admitting diagnosis or operative procedure contemplated and acceptable justification of the hospital admission and the estimated length of hospital stay. The beneficiary's physician, podiatrist or dentist shall certify to the Department at the time of admission, and recertify not less often than every two calendar months where such services are furnished over a period of time, that the beneficiary requires inpatient hospital services.

(B) If a request is approved, the number of days of hospitalization shall be authorized as determined by the Medi–Cal Consultant on the basis of medical information submitted.

(C) Under no circumstances shall any one request for authorization of extensions be approved for more than one month for acute or one year for long–term care.

(D) Claims for nonemergency hospitalization shall be accompanied by an approved preadmission authorization request and an approved extension of hospital stay if the stay extends beyond the period previously authorized.

(4) For long–term care, the attending physician must recertify, at 30, 60, and 90 days after initial certification and every 60 days thereafter, the patient's need for continued care in accordance with the procedures specified by the Director.

(5) Inpatient hospital services, in an institution for mental illness or in the psychiatric service of a general hospital, are covered for persons 65 years of age and over and for persons under 21 years of age. If the person was receiving such services prior to his twenty–first birthday and he continues without interruption to require and receive such services, the services are covered to his twenty–second birthday. Such inpatient services are subject to the limitations specified in (2) and (3) above.

(6) Inpatient hospital services, in an institution for tuberculosis or in the tuberculosis service of a general hospital, are covered for persons 65 years of age or older.

(7) Inpatient general hospital services for persons under 65 years of age with a primary diagnosis of mental illness or tuberculosis are covered. Such inpatient services are subject to the limitations specified in (2), 3, 5 and (6) above.

(b) Following delivery, an early discharge follow up visit for the mother and newborn, within 48 hours of discharge, is covered without authorization when the decision to discharge the mother and newborn before the time periods specified in subsection (a)(1)(A) is made by the treating physician in consultation with the mother. When discussing early discharge with the mother, the treating physician shall disclose the availability of an early discharge follow up visit. If early discharge is determined appropriate, the treating physician and mother shall determine, based on factors such as the transportation needs of the family and environmental and social risks, whether the postdischarge visit shall occur at home, in the treating physician's office, or the plan's facility. The early discharge follow up visit shall:

(1) Be prescribed by the treating physician.

(2) Be with licensed health care providers whose scopes of practice include postpartum care and/or newborn care.

(3) Include, at a minimum, parent education, assistance and training in breast or bottle feeding, and the performance of any necessary maternal or neonatal physical assessments.

(c) The following inpatient hospital services are not covered:

(1) Services in an institution for mental illness for persons 21 through 64 years of age except as specified in (a)(5) above.

(2) Services in an institution for tuberculosis for persons under 65 years of age.

(3) Inpatient hospital services provided by a hospital which has been designated as noncontracting in accordance with section 51541(c) except for the following:

(A) Emergency services and subsequent inpatient services, in accordance with section 51541 (c)(6)(A), until the patient's condition meets the definition of stable for transport, as defined in section 51110(c).

(B) Services to a beneficiary who is an inpatient and whose condition meets the definition of stable for transport as defined in section 51110(c) providing the following conditions are met:

1. A hospital designated as contracting with capacity to provide the necessary care is unavailable and this finding has been appropriately justified, and

2.The patient, whose condition is stable, continues to require acute level of care, and

3. Discharge of the patient, whose condition is stable, from acute level of care would be life threatening or could result in permanent impairment.

(C) Services to a beneficiary who is eligible for Medicare benefits providing the conditions of section 51005 have been met.

(D) Services to a Medicare Part A crossover patient subsequent to the exhaustion of Medicare inpatient benefits as along as the beneficiary is in a life threatening or emergency situation which could result in permanent impairment, until the patient's condition meets the definition of stable for transport, as defined in section 51110(c).

(E) Services to beneficiaries where the travel time from a beneficiary's home to a contract hospital, exceeds the normal practice for the community or 30 minutes, whichever is greater, and the noncontracting hospital providing services is closer to the beneficiary's home than a contracting hospital.

(F) Services to a beneficiary when retroactive authorization has been granted in accordance with section 51003(b).

(d) There shall also be a periodic medical review (not less than annually) of all beneficiaries in mental hospitals by a Medical Review Team as defined in section 50009.2.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code; Section 57(c), Chapter 328, and Section 87(c), Chapter 1594, Statutes of 1982. Reference: Sections 14019, 14081, 14087, 14132, 14132.42, 14133 and 14133.3, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (a) filed 7–1–75 as an emergency; effective upon filing (Register 75, No. 27). For prior history, see Register 74, No. 3.
2. Certificate of Compliance filed 10–24–75 (Register 75, No. 43).
3. Amendment of subsection (a) filed 10–24–75; effective thirtieth day thereafter (Register 75, No. 43).
4. Amendment filed 5–22–80; effective thirtieth day thereafter (Register 80, No. 21).
5. Amendment of subsections (a)(1) and (a)(2) filed 3–30–81; effective thirtieth day thereafter (Register 81, No. 14).
6. Amendment of subsection (a) filed 9–11–81; effective thirtieth day thereafter (Register 81, No. 37).
7. Amendment of subsection (a)(1) and (2), and new subsection (b)(3) filed 2–3–83 as an emergency; effective upon filing (Register 83, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6–3–83.
8. Certificate of Compliance transmitted to OAL 6–3–83 and filed 7–6–83 (Register No. 28).
9. Amendment filed 6–26–87; operative 7–26–87 (Register 87, No. 27).
10. Amendment of subsection (a)(1)(A) filed 7–12–89; operative 8–11–89 (Register 89, No. 28).
11. Amendment of subsection (a)(1)(A) filed 8–1–91; operative 9–2–91 (Register 91, No. 48).
12. Amendment of section and NOTE filed 3–13–2000 as an emergency; operative 3–13–2000 (Register 2000, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–11–2000 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 3–13–2000 order transmitted to OAL 7–5–2000 and filed 8–14–2000 (Register 2000, No. 33).

§ 51328. Outpatient Heroin Detoxification Services.

(a) Routine elective heroin detoxification services are covered, subject to prior authorization, only as an outpatient service. Outpatient services are limited to a maximum period of 21 days. Inpatient hospital services shall be limited to patients with serious medical complications of addiction or to patients with associated medical problems which require inpatient treatment. Hospital admission is subject to the provisions of 51327 (a).

(b) A new course of outpatient heroin detoxification treatment shall not be covered until at least 28 days have elapsed since the completion of an immediately preceding course of treatment. New courses of outpatient heroin detoxification treatment by the same provider which are started in the period between the 29th through the 90th days following completion of an immediately preceding course of treatment shall be reimbursed at the rates listed under Section 51533 (a) (2) and (3). The daily rate listed under Section 51533 (a) (1) shall not be billed by the same provider or separately by a physician employee of that provider until 90 days have elapsed. The patient may be considered a new patient for reimbursement purposes after 90 days following the completion of the immediately preceding course of heroin detoxification.

(c) The patient may be considered a new patient for reimbursement purposes by a new provider for heroin detoxification services started in the period between the 29th through the 90th days following completion of an immediately preceding course of heroin detoxification services only if the fact of the preceding course is denied or misrepresented by the patient. Otherwise reimbursement shall be according to Section (b).

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code; and Section 57(c), Chapter 328, Statutes of 1982. Reference: Sections 14131, 14132, 14133 and 14133.25, Welfare and Institutions Code.

HISTORY

1. New section filed 6–23–77; effective thirtieth day thereafter (Register 77, No. 26).
2. Amendment of subsection (a) filed 9–1–82 as an emergency; effective upon filing (Register 82, No. 37). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12–30–82.
3. Certificate of Compliance transmitted to OAL 12–28–82 and withdrawn 1–27–83 (Register 83, No. 5).
4. Amendment of subsection (a) refiled 1–27–83 as an emergency; effective upon filing (Register 83, No. 5). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5–27–83.
5. Certificate of Compliance transmitted to OAL 5–26–83 and filed 6–30–83 (Register 83, No. 27).
6. Change without regulatory effect of NOTE (Register 86, No. 49).

§ 51329. Rehabilitation Center Services.

HISTORY

1. Amendment filed 3–20–70; designated effective 4–20–70 (Register 70, No. 21). For prior history, see Register 68, No. 21.
2. Amendment filed 1–22–71; designated effective 3–1–71 (Register 71, No. 4).
3. Repealer filed 12–24–71, as an emergency; effective upon filing (Register 71, No. 52).
4. Certificate of Compliance filed 4–19–72 (Register 72, No. 18).

§ 51330. Chronic Hemodialysis.

(a) Chronic hemodialysis is covered only as an outpatient service. Prior authorization may be granted for dialysis, physician services, medical supplies, equipment and drugs required for dialysis services, when provided by renal dialysis centers or community hemodialysis units.

(b) Authorization for outpatient chronic hemodialysis may be granted for up to 12 months at any one time.

(c) The following information shall be provided on or attached to the authorization request form for home dialysis or training:

(1) Evidence that the beneficiary, the beneficiary's spouse, or other co–learner is suitable for training in home dialysis.

(2) Evidence establishing the suitability of the home facilities for dialysis.

(3) Evidence that the overall installation costs in the home are reasonable and in no event exceed $750.00.

(4) Evidence that the water supply in the home is suitable for renal dialysis.

(5) Evidence of the availability of a qualified local physician to be responsible for the ongoing medical supervision of the beneficiary.

(6) The plan for continuing case management.

(7) A budget for all expenses related to home dialysis, including supplies prorated on a monthly cost basis.

(d) Reauthorization for a patient on chronic hemodialysis is required at least every 12 months. Reauthorization requests shall be submitted at least one month prior to expiration of the current authorization period.

(e) Inpatient hospitalization for persons undergoing chronic hemodialysis shall be in accordance with the provisions of Section 51327.

NOTE: Authority cited: Section 14124.5, Welfare and Institutions Code. Reference: Sections 14133, 14133.1 and 14133.3, Welfare and Institutions Code.

HISTORY

1. Amendment of subsections (a) and (b) and new subsection (e) filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40). For prior history, see Register 72, No. 5.
2. Amendment of subsection (e) filed 8–8–78; effective thirtieth day thereafter (Register 78, No. 32).
3. Amendment of subsections (b) and (c) filed 8–31–79; effective thirtieth day thereafter (Register 79, No. 35).
4. Change without regulatory effect of NOTE (Register 86, No. 49).

§ 51330.1. Renal Homotransplantation.

Renal homotransplantation is covered only when performed in a hospital which meets the standards established by the Department for renal homotransplantation centers.

NOTE: Authority cited: Section 14124.5, Welfare and Institutions Code. Reference: Sections 14133 and 14133.1, Welfare and Institutions Code.

HISTORY

1. New section filed 9–30–71 as an emergency; designated effective 10–1–71 (Register 71, No. 40).
2. Certificate of Compliance—Section 11422.1, Gov. Code, filed 1–25–72 (Register 72, No. 5).
3. Amendment filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).
4. Amendment filed 1–18–74; effective thirtieth day thereafter (Register 74, No. 3).
5. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51331. Hospital Outpatient Department Services and Organized Outpatient Clinic Services.

(a) Hospital outpatient department services and organized outpatient clinic services are covered to the extent listed:

(1) Physician
(2) Optometric
(3) Psychology
(4) Podiatric
(5) Physical therapy
(6) Occupational therapy
(7) Speech pathology
(8) Audiology
(9) Acupuncture
(10) Dental
(11) Laboratory and X–ray
(12) Blood and blood derivatives
(13) Chronic hemodialysis
(14) Hearing aids
(15) Prosthetic and orthotic appliances
(16) Durable medical equipment
(17) Medical supplies
(18) Prescribed drugs
(19) Use of an emergency, examining, or treatment room or other hospital facilities included in Section 51509(g), when required for the provision of a covered physician's service.
(20) Adult Day Health Care

(b) Physician services in a hospital outpatient department or clinic are subject to the requirements of Sections 51305 through 51305.7. Services indicated in (3) and (6) through (8) above are subject to the limitations specified in Section 51304(a). Podiatry services, except as otherwise specified in Section 51310(a)(1), and physical therapy services are covered only if prior authorization is obtained from the Medi–Cal consultant. The services set forth above are subject to the same limitations that apply when such services are provided in a nonhospital or nonclinic setting.

(c) Organized outpatient clinic services shall be covered only for services provided to outpatients at the clinic site. Medical staff of organized outpatient clinics who wish to provide and be reimbursed for ongoing care to a clinic patient who has been admitted to a health facility, or who is confined to his or her residence must obtain and use individual or group physician provider numbers. They must also separately bill the program for these out–of–clinic services utilizing their individual provider numbers with the appropriate place of service indicated.

(d) Drugs dispensed by a licensed nonprofit community or free clinic for use at home shall be covered only if the clinic has obtained a permit pursuant to Business and Professions Code Section 4063 et seq. All drugs dispensed to Medi–Cal patients by clinics with special permits shall be subject to the provisions of Sections 51313 and 51313.3 as applicable.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code; Section 57(c), Chapter 328, Statutes of 1982; and Section 208, Health and Safety Code. Reference: Sections 14053, 14131, 14132, 14133, 14133.1, 14133.3 and 14133.25, Welfare and Institutions Code; Section 52, Chapter 328, Statutes of 1982; Section 149, Chapter 323, Statutes of 1983; and Section 4063, Business and Professions Code.

HISTORY

1. Amendment filed 5–14–76 as an emergency; effective upon filing (Register 76, No. 20). For prior history, see Register 72, No. 18.
2. Certificate of Compliance filed 9–8–76 (Register 76, No. 37).
3. New subsection (a)(19) filed 6–28–78 as an emergency; designated effective 7–1–78 (Register 78, No. 26).
4. Amendment filed 9–4–80; effective thirtieth day thereafter (Register 80, No. 36).
5. Amendment of subsection (a) filed 4–30–81; effective thirtieth day thereafter (Register 81, No. 18).
6. Amendment of subsection (b) filed 9–1–82 as an emergency; effective upon filing (Register 82, No. 37). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12–30–82.
7. Certificate of Compliance transmitted to OAL 12–30–82 and filed 2–2–83 (Register 83, No. 6).
8. New subsection (c) filed 9–10–86; effective thirtieth day thereafter (Register 86, No. 37).
9. Change without regulatory effect of NOTE (Register 86, No. 49).
10. New subsection (d) and amendment of NOTE filed 1–6–94; operative 2–7–94 (Register 94, No. 1).

§ 51331.5. Rural Health Clinic Services.

The following services are covered as rural health clinic services when provided by a rural health clinic in accordance with the requirements of this chapter:

(a) Physicians services.

(b) Primary care services when provided by a nonphysician medical practitioner.

(c) Services and supplies incident to the services provided under (a) and (b).

(d) Home nursing services, in those areas designated by the Secretary, Department of Health and Human Services as having a shortage of Home Health Agencies when provided in accordance with the following:

(1) The services are furnished by a registered nurse or licensed vocational nurse who is compensated by the clinic.

(2) The services are furnished to a homebound patient.

(3) The services are furnished in accordance with a written treatment plan established by a physician or nonphysician medical practitioner.

(4) The treatment plan is approved and subsequently reviewed at least every 60 days by the supervising physician employed by the clinic.

(5) The services do not include the preparation of meals, housecleaning, or other nonmedical services not covered by this chapter.

(6) The services are documented in accordance with standards specified in Title 22, California Administrative Code, Sections 75054 and 75056 regarding clinical and administrative record keeping.

(7) The services are provided on a part–time or intermittent basis unless provided to patients who are approved in advance by the Department for in–home medical care which is described in Section 14132(t) of the Welfare and Institutions Code. If patients are approved for in–home medical care, services can be provided on any Department approved basis.

(e) Any other outpatient services, supplies, equipment and drugs.

NOTE: Authority cited: Sections 10725, 14100.1, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14100.1, 14105, 14124.5 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 8–1–78 as an emergency; effective upon filing (Register 78, No. 31).
2. Certificate of Compliance transmitted to OAH 11–28–78 and filed 11–29–78 (Register 78, No. 48).
3. Amendment filed 7–7–86; effective thirtieth day thereafter (Register 86, No. 28).

§ 51332. Organized Outpatient Clinic Services.

HISTORY

1. New section filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).
2. Repealer filed 5–14–76 as an emergency; effective upon filing (Register 76, No. 20).
3. Certificate of Compliance filed 9–8–76 (Register 76, No. 37).

§ 51333. Other Organized Outpatient Services.

HISTORY

1. Repealer filed 9–30–71 as an emergency; designated effective 10–1–71 (Register 71, No. 40). For prior history, see Register 67, No. 52.
2. Certificate of Compliance—Section 11422.5, Gov. Code, filed 1–25–72 (Register 72, No. 5).

§ 51334. Intermediate Care Services.

Intermediate care services are covered subject to the following:

(a) Intermediate care services are covered only after prior authorization has been obtained from the designated Medi–Cal consultant for the district where the facility is located. The authorization request shall be initiated by the facility. The attending physician shall sign the authorization request and shall certify to the Department that the beneficiary requires this level of care.

(1) An initial treatment authorization request shall be processed for each admission.

(2) An initial authorization may be granted for up to one year from the date of admission.

(b) The request for reauthorization must be received by the appropriate Medi–Cal consultant on or before the first working day following the expiration of a current authorization. When the request is received by the Medi–Cal consultant later than the first working day after the previously authorized period has expired, one day of authorization shall be denied for each day the reauthorization request is late. Reauthorizations may be granted for up to six months.

(c) The Medi–Cal consultant shall deny any authorization request, reauthorization request, or shall cancel any authorization in effect when services or placement are not appropriate to the health needs of the patient. In the case of denial of a reauthorization request or cancellation of authorization, the beneficiary shall be notified in writing of the Department's decision, to deny ongoing services; the provider will be notified simultaneously. If the beneficiary does not agree with the Department's decision, the beneficiary has the right to request a fair hearing pursuant to section 51014.1 herein. If the beneficiary requests a fair hearing within ten days of the date of the notice, the Department will institute aid paid pending the hearing decision pursuant to section 51014.2 herein.

(d) The attending physician must recertify, at least every 60 days, the patient's need for continued care in accordance with the procedures specified by the Director. The attending physician must comply with this requirement prior to the 60–day period for which the patient is being recertified. The facility must present proof of this recertification at the time of billing for services rendered.

(e) Prior to the transfer of a beneficiary between facilities, a new initial Treatment Authorization Request shall be initiated by the receiving facility and signed by the attending physician. No transfer shall be made unless approved in advance by the Medi–Cal consultant for the district where the receiving facility is located.

(f) Medi–Cal beneficiaries in the facility shall be visited by their attending physicians no less often than every 60 days. An alternative schedule of visits may be proposed subject to approval by the Medi–Cal consultant. At no time, however, shall an alternative schedule of visits result in more than three months elapsing between physician visits.

(g) There shall be a periodic medical review, not less often than annually, of all beneficiaries receiving intermediate care services by a Medical Review Team as defined in section 50028.2.

(h) Leave of absence from intermediate care facilities is reimbursed in accordance with section 51535 and is covered for the maximum number of days per calendar year as indicated below:

(1) Developmentally disabled patients: 73 days.

(2) Patients in a certified special treatment program for mentally disordered persons, or patients in a mental health therapeutic and rehabilitative program approved and certified by a local mental health director: 30 days.

(3) All other patients: 18 days. Up to 12 additional days of leave per year may be approved in increments of no more than three consecutive days when the following conditions are met:

(A) The request for additional days of leave shall be in accordance with the individual patient care plan and appropriate to the physical and mental well–being of the patient.

(B) At least five days inpatient care must be provided between each approved leave of absence.

(i) Special program services for the mentally disordered (as defined in chapter 4, division 5, title 22 of the California Administrative Code) provided in intermediate care facilities are covered when prior authorization has been granted by the Department for such services. Payment for these services shall be made in accordance with section 51511.1.

(j) A need for a special services program for the mentally disordered is not sufficient justification for a beneficiary to be placed in an intermediate care facility. All beneficiaries admitted to intermediate care facilities must meet the criteria found in paragraph (k) of this section.

(k) A need for a special services program for the developmentally disabled or mentally disordered is not sufficient justification for a beneficiary to be placed in an intermediate care facility. All beneficiaries admitted to intermediate care facilities must meet the criteria found in paragraph (l) of this section.

(*l*) In order to qualify for intermediate care services, a patient shall have a medical condition which needs an out–of–home protective living

arrangement with 24–hour supervision and skilled nursing care or observation on an ongoing intermittent basis to abate health deterioration. Intermediate care services emphasize care aimed at preventing or delaying acute episodes of physical or mental illness and encouragement of individual patient independence to the extent of his ability. As a guide in determining the need for intermediate care services, the following factors may assist in determining appropriate placement:

(1) The complexity of the patient's medical problems is such that he requires skilled nursing care or observation on an ongoing intermittent basis and 24–hour supervision to meet his health needs.

(2) Medications may be mainly supportive or stabilizing but still require professional nurse observation for response and effect on an intermittent basis. Patients on daily injectable medications or regular doses of PRN narcotics may not qualify.

(3) Diet may be of a special type, but patient needs little or no assistance in feeding himself.

(4) The patient may require minor assistance or supervision in personal care, such as in bathing or dressing.

(5) The patient may need encouragement in restorative measures for increasing and strengthening his functional capacity to work toward greater independence.

(6) The patient may have some degree of vision, hearing or sensory loss.

(7) The patient may have some limitation in movement, but must be ambulatory with or without an assistive device such as a cane, walker, crutches, prosthesis, wheelchair, etc.

(8) The patient may need some supervision or assistance in transferring to a wheelchair, but must be able to ambulate the chair independently.

(9) The patient may be occasionally incontinent of urine; however, patient who is incontinent of bowels or totally incontinent of urine may qualify for intermediate care service when the patient has been taught and can care for himself.

(10) The patient may exhibit some mild confusion or depression; however, his behavior must be stabilized to such an extent that it poses no threat to himself or others.

NOTE: Authority cited: Sections 10725, 14105, 14108, 14108.1 and 14124.5, Welfare and Institutions Code. Reference: Sections 10725, 14105, 14108, 14108.1, 14108.2, 14124.5 and 14132, Welfare and Institutions Code.

HISTORY

1. Amendment filed 11–19–76 as an emergency; effective upon filing (Register 76, No. 47). For prior history, see Register 75, No. 46.
2. Certificate of Compliance filed 3–8–77 (Register 77, No. 11).
3. Amendment of subsections (i) and (j) filed 3–2–79; effective thirtieth day thereafter (Register 79, No. 9).
4. Amendment of subsection (h) filed 9–20–79 as an emergency; designated effective 9–20–79 (Register 79, No. 38). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 1–18–80.
5. Certificate of Compliance filed 11–29–79 (Register 79, No. 48).
6. Amendment of subsection (h) filed 4–7–83; effective thirtieth day thereafter (Register 83, No. 15).
7. Amendment of subsection (h)(3) filed 2–9–84; designated effective 3–1–84 pursuant to Government Code section 11346.2(d) (Register 84, No. 6).
8. Amendment of subsection (c) filed 10–26–90 as an emergency; operative 10–26–90 (Register 90, No. 50). A Certificate of Compliance must be transmitted to OAL by 2–25–91 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 10–26–90 order transmitted to OAL 2–22–91 and filed 3–25–91 (Register 91, No. 15).

§ 51335. Skilled Nursing Facility Services.

Skilled nursing facility services necessary for the treatment of illness or injury, are covered subject to the following:

(a) Skilled nursing facility services are covered only after prior authorization has been obtained from the designated Medi–Cal consultant for the district where the skilled nursing facility is located. The authorization request shall be initiated by the facility and shall be signed by the attending physician.

(b) An initial Treatment Authorization Request shall be required for each admission.

(1) An initial authorization may be granted for periods up to one year from the date of admission.

(2) An approved initial Treatment Authorization Request shall be required prior to the transfer of a beneficiary between skilled nursing facilities.

(3) For Medicare/Medi–Cal covered services (crossover services) a request for authorization shall be received by the Medi–Cal consultant's office on or before the 20th calendar day of skilled nursing facility care. Medi–Cal shall not pay coinsurance for skilled nursing facility care unless an authorization request has been approved covering the 21st and subsequent days of skilled nursing facility care. When the authorization request is received by the Medi–Cal consultant's office after the 20th day of skilled nursing facility care, one day of coinsurance authorization shall be denied for each day the request is late.

(c) A request for reauthorization must be received by the appropriate Medi–Cal consultant on or before the first working day following the expiration of a current authorization. When the request is received by the Medi–Cal consultant later than the first working day after the previously authorized period, one day of authorization shall be denied for each day the request is late.

(1) Reauthorizations may be granted for periods up to one year.

(d) The Medi–Cal consultant shall deny an authorization request or reauthorization request or shall cancel any authorization or reauthorization in effect when services or placement are not appropriate to the needs of the patient (beneficiary).

(1) Where the reauthorization request is denied or an existing authorization is cancelled, the beneficiary shall be notified in writing of the Department's decision to deny ongoing services; the provider will be notified simultaneously. If the beneficiary does not agree with the Department's decision, the beneficiary has the right to request a fair hearing pursuant to section 51014.1 herein. If the beneficiary requests a fair hearing within ten days of the date of the notice, the Department will institute aid paid pending the hearing decision pursuant to section 51014.2 herein.

(2) Medi–Cal consultants shall deny any initial authorization request if the skilled nursing facility is not participating in Medicare as a skilled nursing facility and the patient is qualified for skilled nursing facility care. Medicare benefits shall be utilized to their fullest extent; failure to utilize such benefits shall result in denial of Medi–Cal benefits under this section for the same period of time Medicare benefits would have been available. Exception to this rule may be made:

(A) When skilled nursing facility benefits are known to have been exhausted.

(B) When Medicare rejects skilled nursing facility level of care and the Medi–Cal consultant determines the medical necessity for skilled nursing facility care.

(C) When it can be determined that there are no skilled nursing facility care beds available in or near the community.

(e) The attending physician must recertify, at least every 60 days, the patient's need for continued care in accordance with the procedures specified by the Director. The attending physician must comply with this requirement prior to the start of the 60–day period of stay for which the patient is being recertified. The facility must present proof of this recertification at the time of billing for services rendered.

(f) Medi–Cal beneficiaries in the facility shall be visited by their attending physician no less often than once every 30 days for the first 90 days following admission. Subsequent to the 90th day, an alternative schedule of visits may be proposed, subject to approval by the Medi–Cal consultant. At no time, however, shall an alternative schedule of visits result in more than 60 days elapsing between physician visits.

(g) Services are not covered unless provided on the signed order of the physician responsible for the care of the patient.

(h) There shall be a periodic medical review, not less often than annually, of all beneficiaries receiving skilled nursing facility services by a medical review team as defined in section 50028.2.

(i) Leave of absence from skilled nursing facilities is reimbursed in accordance with section 51535 and is covered for the maximum number of days per calendar year as indicated below:

(1) Developmentally disabled patients: 73 days.

(2) Patients in a certified special treatment program for mentally disordered persons, or patients in a mental health therapeutic program approved and certified by a local mental health director: 30 days.

(3) All other patients: 18 days. Up to 12 additional days of leave per year may be approved in increments of no more than two consecutive days when the following conditions are met:

(A) The request for additional days of leave shall be in accordance with the individual patient care plan and appropriate to the physical and mental well-being of the patient.

(B) At least five days inpatient care must be provided between each approved leave of absence.

(j) In order to qualify for skilled nursing facility services, a patient shall have a medical condition which needs visits by a physician at least every 60 days and constantly available skilled nursing services. The following criteria together with the provisions of section 51124, will assist in determining appropriate placement:

(1) Need for patient observation, evaluation of treatment plans, and updating of medical orders by the responsible physician;

(2) Need for constantly available skilled nursing services. A patient may qualify for nursing home services if the patient has one or more of the following conditions:

(A) A condition which needs therapeutic procedures. A condition such as the following may weigh in favor of nursing home placement.

1. Dressing of postsurgical wounds, decubiti, leg ulcers, etc. The severity of the lesions and the frequency of dressings will be determining factors in evaluating whether they require nursing home care.

2. Tracheostomy care, nasal catheter maintenance.

3. Indwelling catheter in conjunction with other conditions. Its presence without a requirement for other skilled nursing care is not a sufficient criterion for nursing home placement.

4. Gastrostomy feeding or other tube feeding.

5. Colostomy care for initial or debilitated patients. Facilities shall be required to instruct in self-care, where such is feasible for the patient. Colostomy care alone should not be a reason for continuing nursing home placement.

6. Bladder and bowel training for incontinent patients.

(B) A condition which needs patient skilled nursing observation. Patients whose medical condition requires continuous skilled nursing observation of the following may be in a nursing home dependent on the severity of the condition. Observation must, however, be needed at frequent intervals throughout the 24 hours to warrant care in a nursing home:

1. Regular observation of blood pressure, pulse, and respiration is indicated by the diagnosis or medication and ordered by the attending physician.

2. Regular observation of skin for conditions such as decubiti, edema, color, and turgor.

3. Careful measurement of intake and output is indicated by the diagnosis or medication and ordered by the attending physician.

(C) The patient needs medications which cannot be self-administered and requires skilled nursing services for administration of the medications. Nursing home placement may be necessary for reasons such as the following:

1. Injections administered during more than one nursing shift. If this is the only reason for nursing home placement, consideration should be given to other therapeutic approaches, or the possibility of teaching the patient or a family member to give the injections.

2. Medications prescribed on an as needed basis. This will depend on the nature of the drug and the condition being treated and frequency of need as documented. Many medications are now self-administered on an PRN basis in residential care facilities.

3. Use of restricted or dangerous drugs, if required more than during the daytime, requiring close nursing supervision.

4. Use of new medications requiring close observation during initial stabilization for selected patients. Depending upon the circumstances, such patients may also be candidates for intermediate care facilities.

(D) A physical or mental functional limitation.

1. Physical limitations. The physical functional incapacity of certain patients may exceed the patient care capability of intermediate care facilities.

a. Bedfast patients.

b. Quadriplegics, or other severe paralysis cases. Severe quadriplegics may require such demanding attention (skin care, personal assistance, respiratory embarrassment) as to justify placement in nursing homes.

c. Patients who are unable to feed themselves.

2. Mental limitations. Persons with a primary diagnosis of mental illness (including mental retardation), when such patients are severely incapacitated by mental illness or mental retardation.

The following criteria are used when considering the type of facility most suitable for the mentally ill and mentally retarded person where care is related to his mental condition.

a. The severity of unpredictability of the patient's behavior or emotional state.

b. The intensity of the care, treatment, services, or skilled observation that his condition requires and,

c. The physical environment of the facility, its equipment, and the qualifications of staff and,

d. The impact of the particular patient on other patients under care in the facility.

(3) The general criteria identified above are not intended to be either all-inclusive or mutually exclusive. In practice, they should be applied as a total package in evaluation of an approved admission.

(k) Special program services for the mentally disordered (as defined in chapter 3, division 5, title 22) provided in skilled nursing facilities are covered when prior authorization has been granted by the Department for such services. Payment for these services will be made in accordance with Section 51511.1.

(*l*) A need for a special services program for the mentally disordered is not sufficient justification for a beneficiary to be placed in a skilled nursing facility. All beneficiaries admitted to skilled nursing facilities must meet the criteria found in paragraph (i) of this section.

(m) A need for a special services program for the developmentally disabled or mentally disordered is not sufficient justification for a beneficiary to be placed in a skilled nursing facility. All beneficiaries admitted to skilled nursing facilities must meet the criteria found in paragraph (j) of this section.

(n) The placement criteria established in Section 14091.21 of the Welfare and Institutions Code must be met except in either of the following circumstances:

(1) The beneficiary's physician and the discharge planner determine that the beneficiary requires short-term nursing facility care for postsurgical, rehabilitation, or therapy services which are curative rather than palliative in nature; or

(2) The beneficiary's attending physician certifies in the medical record that transfer to a freestanding nursing facility would cause specific physical or psychological harm to the beneficiary.

NOTE: Authority cited: Sections 10725, 14105, 14108, 14108.1 and 14124.5, Welfare and Institutions Code. Reference: Sections 10725, 14091.21, 14105, 14108, 14108.1, 14108.2, 14124.5 and 14132, Welfare and Institutions Code; *Hudman v Kizer*, Sacramento County Superior Court Case No. 362172, and *Laguna Honda Hospital and Rehabilitation Center of the City and County of San Francisco v Kizer*, U.S. District Court, EDCA, No. CIV-S90-1239 MLS EM.

HISTORY

1. Amendment filed 11-19-76 as an emergency; effective upon filing (Register 76, No. 47). For prior history, see Register 75, No. 46.
2. Certificate of Compliance filed 3-8-77 (Register 77, No. 11).

3. Amendment of subsections (k) and (*l*) filed 3–2–79; effective thirtieth day thereafter (Register 79, No. 9).
4. Amendment of subsection (i) filed 9–20–79 as an emergency; designated effective 9–20–79 (Register 79, No. 38). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 1–18–80.
5. Certificate of Compliance filed 11–29–79 (Register 79, No. 48).
6. Amendment of subsection (i) filed 4–7–83; effective thirtieth day thereafter (Register 83, No. 15).
7. Amendment of subsection (i)(3) filed 2–9–84; designated effective 3–1–84 (Register 84, No. 6).
8. Amendment of subsection (d)(1) filed 10–26–90 as an emergency; operative 10–26–90 (Register 90, No. 50). A Certificate of Compliance must be transmitted to OAL by 2–25–91 or emergency language will be repealed by operation of law on the following day.
9. Amendment of subsection (a) and (b) filed 11–26–90 as an emergency; operative 11–26–90 (Register 91, No. 3). A Certificate of Compliance must be transmitted to OAL by 3–26–91 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 10–26–90 order transmitted to OAL 2–22–91 and filed 3–25–91 (Register 91, No. 15).
11. Amendment filed 4–2–91 as an emergency; operative 4–2–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–31–91 or emergency language will be repealed by operation of law on the following day.
12. Amendment refiled 8–8–91 as an emergency; operative 8–8–91 (Register 92, No. 6). A Certificate of Compliance must be transmitted to OAL 12–6–91 or emergency language will be repealed by operation of law on the following day.
13. Amendment refiled 12–2–91 as an emergency; operative 12–6–91 (Register 92, No. 10). A Certificate of Compliance must be transmitted to OAL 4–6–92 or emergency language will be repealed by operation of law on the following day.
14. Amendment refiled 4–13–92 as an emergency; operative 4–13–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 8–12–92 or emergency language will be repealed by operation of law on the following day.
15. Editorial correction of printing error restoring inadvertently omitted subsection (a)(2) (Register 92, No. 28).
16. Amendments, including additional amendments to subsections (a)(3)(C)(2) and (a)(5), refiled 7–2–92 as an emergency; operative 8–11–92 (Register 92, No. 28). A Certificate of Compliance must be transmitted to OAL by 10–30–92 or emergency language will be repealed by operation of law on the following day.
17. Reinstatement of section as it existed prior to emergency amendment filed 4–2–91 by operation of Government Code section 11346.1(g) (Register 93, No. 4).
18. Editorial correction of printing error restoring inadvertently omitted NOTE (Register 93, No. 33).
19. Amendment of subsection (d) and NOTE and new subsections (n)–(n)(2) filed 6–9–94 as an emergency; operative 6–9–94. Exempt from OAL review, approval and repeal and shall remain in effect until revised or replaced per Statutes of 1992, Chapter 722, Section 147 (Register 94, No. 23).

§ 51335.1. Transitional Inpatient Care Services.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14105.981 and 14132.22, Welfare and Institutions Code.

HISTORY

1. New section filed 4–1–96 as an emergency; operative 4–1–96 (Register 96, No. 14). A Certificate of Compliance must be transmitted to OAL by 9–30–96 pursuant to Welfare and Institutions Code section 14132.22 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of subsection (c), NOTE, and HISTORY 1 (Register 96, No. 35).
3. New section refiled 8–28–96 as an emergency; operative 9–30–96 (Register 96, No. 35). A Certificate of Compliance must be transmitted to OAL by 1–28–97 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 8–28–96 order, including amendment of section, transmitted to OAL 1–23–97 and filed 3–10–97 (Register 97, No. 11).
5. Change without regulatory effect repealing section filed 6–12–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 24).

§ 51335.5. Subacute Care Services.

(a) Subacute care services are a type of skilled nursing facility service which is provided by a subacute care unit which meets the requirements of Sections 51215.5 and 51215.6.

(b) Subacute care services provided in the subacute care unit are covered pursuant to the requirements specified in Sections 51124.5 and 51335(a) through (e) except for (b)(1) and (c)(1).

(c) A Treatment Authorization Request shall be required for each admission to a subacute unit caring for adult patients, and may be granted for a period of up to six months and reauthorized for a period of up to six months.

(d) Medi–Cal beneficiaries at the subacute level of care in the facility shall be visited by their attending physician as provided for in the Manual of Criteria for Medi–Cal Authorization—Subacute Level of Care Criteria, referenced in Title 22, California Code of Regulations, Section 51003(e).

(e) Services to subacute patients shall be covered only on the signed order of the physician responsible for the care of the patient.

(f) Subacute bedhold will be authorized during acute hospitalization of a Medi–Cal beneficiary in accordance with Section 51535.1.

(g) Leave of absence for a Medi–Cal beneficiary at the subacute level of care will be authorized in accordance with Section 51535.

(h) A medical review of all beneficiaries receiving subacute care services shall be performed by a medical review team.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14114 and 14132.25, Welfare and Institutions Code.

HISTORY

1. New section filed 6–3–86 as an emergency; effective upon filing (Register 86, No. 23). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–1–86.
2. Section refiled 11–3–86 as an emergency; effective 10–1–86 (Register 86, No. 45). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1–29–87.
3. Certificate of Compliance including amendment filed 1–20–87 (Register 87, No. 4).
4. Amendment of subsection (e), repealer of subsection (i) and relettering of former subsection (j) to subsection (i) filed 10–27–88 as an emergency; operative 10–27–88 (Register 88, No. 45). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–24–89.
5. Certificate of Compliance transmitted to OAL 2–24–89 and filed 3–27–89 (Register 89, No. 13).
6. Amendment of subsections (c), (d), (h) and NOTE filed 4–13–94; operative 4–1–94. Emergency amendment submitted to OAL for printing only pursuant to section 4, AB 36 (chapter 1030, Statutes of 1993) (Register 94, No. 15).
7. Certificate of Compliance as to 4–13–94 order including amendment of section transmitted to OAL 9–26–94 and filed 10–20–94 (Register 94, No. 42).
8. Editorial correction of HISTORY 6 and 7 (Register 95, No. 14).

§ 51335.6. Pediatric Subacute Care Services.

(a) Pediatric subacute care services are a type of skilled nursing facility service, provided in a pediatric subacute care unit which meets the requirements of Sections 51215.6, 51215.8, 51215.9, 51215.10 and 51215.11.

(b) Pediatric subacute care services provided in a pediatric subacute unit in a licensed skilled nursing facility are covered pursuant to the requirements specified in Sections 51124.6 and 51335(a) through (e) and (g) excepting (b)(1), (c)(1), (f), (h), (j), (k), (*l*), and (m).

(c) A Treatment Authorization Request shall be required for each admission to a subacute unit caring for pediatric patients, and may be granted for a period of up to six months and reauthorized for a period of up to six months. A separate Treatment Authorization Request shall be required for supplemental rehabilitation therapy services as provided for in Section 51215.10(i) through (m), and for ventilator weaning, as provided for in Section 51215.11. Authorization requests shall be initiated by the facility.

(d) Pediatric subacute bedhold days will be authorized in accordance with Section 51535.1.

(e) Leave of absence for a Medi–Cal beneficiary in the pediatric subacute unit will be authorized in accordance with Section 51535.

(f) Pediatric subacute services shall be covered only when care is provided in the pediatric subacute unit of the nursing facility.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132.25, Welfare and Institutions Code.

HISTORY

1. New section filed 4–13–94 as an emergency; operative 4–1–94. Emergency adoption submitted to OAL for printing only pursuant to section 4, AB 36 (chapter 1030, Statutes of 1993) (Register 94, No. 15).
2. Certificate of Compliance as to 4–13–94 order including amendment of section transmitted to OAL 9–26–94 and filed 10–20–94 (Register 94, No. 42).
3. Editorial correction of HISTORY 1 and 2 (Register 95, No. 14).
4. Amendment of subsections (a) and (c) and NOTE filed 6–30–97 as an emergency; operative 6–30–97 (Register 97, No. 27). A Certificate of Compliance must be transmitted to OAL by 10–28–97 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 6–30–97 order transmitted to OAL 10–22–97 and filed 11–26–97 (Register 97, No. 48).

§ 51336. Specialized Rehabilitative Services in Skilled Nursing Facilities and Intermediate Care Facilities.

(a) Specialized rehabilitative services shall be covered in accordance with the standards of medical necessity as set forth in Section 51303(a). Such service shall include the medically necessary continuation of treatment services initiated in the hospital or short term intensive therapy expected to produce recovery of function leading to either (1) a sustained higher level of self care and discharge to home or (2) a lower level of care. Specialized rehabilitation service shall be covered contingent upon compliance with the following requirements:

(1) The services shall be ordered by the beneficiary's attending physician. The physician's signed order, specifying the care to be given, shall be on the beneficiary's chart. A copy of the order shall be made available for departmental review upon request;

(2) The services require prior authorization by the Medi–Cal consultant for the district in which the facility is located. The authorization request may be initiated by the therapist;

(3) The authorization request shall be accompanied by a treatment plan, signed by the attending physician, which shall include the following:

(A) Principal and significant diagnoses;

(B) Prognosis;

(C) Date of onset of illness or injury;

(D) Specific type, number, and frequency of services to be performed by each discipline;

(E) Therapeutic goals of the service provided by each discipline and anticipated duration of treatment;

(F) Extent of and benefits or improvements demonstrated by any previous provision of physical therapy, occupational therapy, speech pathology or audiology services;

(4) Authorization for rehabilitative services shall be contingent upon compliance with the following requirements:

(A) The direct and specific relationship of the services to the written treatment plan prescribed by the physician after necessary consultation with the qualified physical therapist, occupational therapist, speech pathologist or audiologist;

(B) Complexity and sophistication of the level of service, or condition of the beneficiary which requires the judgement, knowledge and skills of a therapist;

(C) Provision of the services with the expectation that the beneficiary will improve significantly in a reasonable, and generally predictable, period of time; or in order to establish an effective maintenance program for a specific disease state;

(D) Performance of the services by the qualified therapist specified in (a)(4)(A) above;

(E) Consideration of the services, under accepted standards of medical practice, to be a specific and effective treatment for beneficiary's condition;

(F) Reasonableness and necessity of the services for treatment of the beneficiary's condition.

(5) Professional therapy necessary to establish or periodically reevaluate a palliative or maintenance program may be authorized. Services under treatment programs not requiring the skills of a qualified therapist shall not be separately payable or authorized.

(6) No more than 30 treatments shall be authorized at any one time. Authorizations shall be valid for up to 120 days. A request for reauthorization shall include a statement describing the beneficiary's progress toward achieving the therapeutic goals included in the treatment plan.

NOTE: Authority cited: Sections 14105, 14124.5 and 14132, Welfare and Institutions Code; and Section 57(c), Chapter 328, Statutes of 1982. Reference: Sections 14053, 14132, and 14133.3, Welfare and Institutions Code.

HISTORY

1. New section filed 9–12–75 as an emergency; effective upon filing (Register 75, No. 37).
2. Certificate of Compliance filed 1–8–76 (Register 76, No. 2).

[The next page is 455.]

3. Amendment of subsection (a)(5) filed 1–16–76; effective thirtieth day thereafter (Register 76, No. 3).
4. Amendment of subsection (a) filed 8–8–78; effective thirtieth day thereafter (Register 78, No. 32).
6. Certificate of Compliance transmitted to OAL 12–30–82 and filed 2–7–83 (Register 83, No. 7).
7. Amendment filed 6–22–87; operative 7–22–87 (Register 87, No. 27).

§ 51337. Home Health Agency Services.

(a) Home health agency services are covered as specified below when prescribed by a physician and provided at the home of the beneficiary in accordance with a written treatment plan which the physician reviews every 60 days. The plan shall indicate a need for one or more of the following:

(1) Part–time or intermittent skilled nursing services by licensed nursing personnel.

(2) In–home medical care services as provided in Section 14132(t) of the Welfare and Institutions Code.

(3) Physical, occupational, or speech therapy.

(4) Medical social services.

(5) The services of a home health aide.

(6) Provision of medical supplies, other than drugs and biologicals.

(7) The use of medical appliances, provided for under an approved treatment plan.

(b) One visit in a six–month period for evaluation of the patient is covered without prior authorization. More than one visit in a six–month period is subject to prior authorization. The request for prior authorization for additional visits shall be accompanied by a written treatment plan approved and signed by the physician. This shall include the following:

(1) The principal diagnosis and significant associated diagnoses.

(2) Prognosis.

(3) Date of onset of the illness.

(4) Specific types of services to be rendered by each discipline.

(5) The therapeutic goals to be achieved by each discipline, and anticipated time for achievement of goals.

(6) The extent to which home health agency care has been previously provided, and benefits or improvements demonstrated by prior care.

(7) A description of the home situation, to include whether assistance is available from household members, homemakers, attendants, or others.

(8) A reauthorization request shall include a statement describing the patient's progress toward achieving the therapeutic goals.

(c) One early discharge visit is covered without prior authorization when the requirements of Section 51327(b) are met.

(d) Authorizations may be granted for home health agency services only when the beneficiary's medical condition requires either home nursing care or other covered service, exclusive of physician services.

(e) A maximum of 30 visits may be authorized at any one time and authorizations shall be valid for up to 120 days. When the Department contracts with an agency to provide in–home medical services, the scope, duration, and cost of services will be defined in a written agreement between the provider agency and the Department of Health Services.

(f) In areas serviced by a home health agency, all home health agency services shall be limited to those provided by approved home health agencies as defined in Sections 51125, 51145 and 51217.

(g) In areas determined by the Director not to be serviced by a home health agency, part–time or intermittent skilled nursing care may be furnished by any qualified provider using the services of a registered nurse. These services shall be subject to the same limitations as described in this section and to the same requirements for prior authorization and reimbursement as home health agency services.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code; and Section 100275, Health and Safety Code. Reference: Sections 14132 and 14132.42, Welfare and Institutions Code; and Section 1727, Health and Safety Code.

HISTORY

1. Repealer of subsection (f) filed 8–8–78; effective thirtieth day thereafter (Register 78, No. 32). For prior history, see Register 72, No. 18.
2. Amendment filed 7–24–79 as an emergency; effective upon filing (Register 79,No. 30).
3. Certificate of Compliance transmitted to OAH 11–20–79 and filed 11–29–79 (Register 79, No. 48).
4. Amendment filed 7–7–86; effective thirtieth day thereafter (Register 86, No. 28).
5. Editorial correction of subsection (c) (Register 95, No. 45).
6. New subsection (c), subsection relettering and amendment of NOTE filed 3–13–2000 as an emergency; operative 3–13–2000 (Register 2000, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–11–2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 3–13–2000 order transmitted to OAL 7–5–2000 and filed 8–14–2000 (Register 2000, No. 33).

§ 51338. Home Health Aide Services.

HISTORY

1. New section filed 6–5–67 as an emergency; effective upon filing. Certificate of Compliance filed 6–9–67 (Register 67, No. 23).
2. Amendment filed 5–31–68; effective thirtieth day thereafter (Register 68, No. 21).
3. Amendment filed 11–15–68; effective thirtieth day thereafter (Register 68, No. 43).
4. Repealer filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).

§ 51339. Special Duty Nursing.

HISTORY

1. Amendment filed 5–8–69; effective thirtieth day thereafter (Register 69, No. 19). For prior history, see Register 67, No. 52.
2. Repealer filed 9–30–71 as an emergency; designated effective 10–1–71 (Register 71, No. 40).
3. Certificate of Compliance—Sec. 11422.1, Gov. Code, filed 1–25–72 (Register 72, No. 5).
4. Editorial correction of HISTORY 1 and 3 (Register 95, No. 45).

§ 51340. Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services and EPSDT Supplemental Services.

(a) EPSDT screening services as defined in Section 51184(a)(1) are a program benefit when provided through the Child Health and Disability Prevention program in accordance with Title 17, California Code of Regulations, Sections 6800 et seq. EPSDT screening services as defined in Sections 51184(a)(2) and (a)(3) are covered when provided by a certified Medi–Cal provider meeting the requirements of this chapter, if such services are otherwise reimbursable under the program.

(b) EPSDT diagnosis and treatment services as defined in Section 51184(b) are covered subject to the provisions of this chapter.

(c) Unless otherwise specified in this Chapter, EPSDT supplemental services are covered subject to prior authorization if the requirements of subsections (e) or (f), as appropriate, are met. The Department shall review requests for services resulting from EPSDT screening services for compliance with this section whether the screen was performed by a Medi–Cal provider or a non–Medi–Cal provider.

(d) Requests for prior authorization for EPSDT supplemental services pursuant to subsection (c) shall state explicitly that the request is for EPSDT supplemental services, and shall be accompanied by the following information:

(1) The principal diagnosis and significant associated diagnoses.

(2) Prognosis.

(3) Date of onset of the illness or condition, and etiology if known.

(4) Clinical significance or functional impairment caused by the illness or condition.

(5) Specific types of services to be rendered by each discipline with physician's prescription where applicable.

(6) The therapeutic goals to be achieved by each discipline, and anticipated time for achievement of goals.

(7) The extent to which health care services have been previously provided to address the illness or condition, and results demonstrated by prior care.

(8) Any other documentation available which may assist the Department in making the determinations required by this section.

(e) EPSDT supplemental services must meet one of the following standards, as determined by the Department:

(1) The standards and requirements set forth in Sections 51003 and 51303, and any specific requirements applicable to a specific service that are based on the standards and requirements of those sections other than the service–specific requirements set forth in Section 51340.1.

(2) The service–specific requirements applicable to EPSDT Supplemental Services set forth in Section 51340.1.

(3) When the standards set forth in paragraph (e)(1) or (e)(2) are not applicable to the services being requested, all of the following criteria, where applicable:

(A) The services are necessary to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services as defined in subsection (a) of this section.

(B) The supplies, items, or equipment to be provided are medical in nature.

(C) The services are not requested solely for the convenience of the beneficiary, family, physician or another provider of services.

(D) The services are not unsafe for the individual EPSDT–eligible beneficiary, and are not experimental.

(E) The services are neither primarily cosmetic in nature nor primarily for the purpose of improving the beneficiary's appearance. The correction of severe or disabling disfigurement shall not be considered to be primarily cosmetic nor primarily for the purpose of improving the beneficiary's appearance.

(F) Where alternative medically accepted modes of treatment are available, the services are the most cost–effective.

(G) The services to be provided:

1. Are generally accepted by the professional medical and dental community as effective and proven treatments for the conditions for which they are proposed to be used. Such acceptance shall be demonstrated by scientific evidence, consisting of well designed and well conducted investigations published in peer–review journals, and, when available, opinions and evaluations published by national medical and dental organizations, consensus panels, and other technology evaluation bodies. Such evidence shall demonstrate that the services can correct or ameliorate the conditions for which they are prescribed.

2. Are within the authorized scope of practice of the provider, and are an appropriate mode of treatment for the health condition of the beneficiary.

(H) The predicted beneficial outcome of the services outweighs potential harmful effects.

(I) Available scientific evidence, as described in paragraph (e)(3)(G)1., demonstrates that the services improve the overall health outcomes as much as, or more than, established alternatives.

(f)(1) Notwithstanding subsection (e), EPSDT case management services as specified in paragraph (j)(3) may be covered for the EPSDT–eligible beneficiary when accompanied by the information described in subsection (d) if the Department determines that both of the following criteria are met:

(A) The service to which access is to be gained through case management is medically necessary for the EPSDT–eligible beneficiary. For purposes of this subsection, medical necessity is established if the service meets the criteria set forth in subsection (e)(1), (e)(2), or (e)(3).

(B) The EPSDT–eligible beneficiary has a medical or mental health condition or diagnosis.

(2) Requests for EPSDT case management services shall not be approved if the Department determines that EPSDT case management services appropriate to the EPSDT–eligible beneficiary's needs can reasonably be obtained through the use of family, agency, or institutional assistance that is typically used by the general public in assuring that children obtain necessary medical, social, educational, or other services. In making the determination described in this paragraph, the Department may take into account the following factors:

(A) Whether or not the beneficiary has a complicated medical condition, including a history of multiple or complex medical or mental health diagnoses, frequent recent hospitalizations, use of emergency rooms, or other indicators of medical or mental health conditions resulting in significant impairment.

(B) Whether or not the beneficiary has a history of one or more environmental risk factors, including:

1. parent, guardian, or primary care–giver mental retardation or mental illness, physical or sensory disability, substance abuse, under age 18 years, prolonged absence, or

2. other environmental stressors, which may result in neglect, abuse, lack of stable housing, or otherwise compromise the parent's, guardian's, or primary caregiver's ability to assist the beneficiary in gaining access to the necessary medical, social, educational, and other services.

(g) If reimbursement is being sought on a "by report" basis, a description of the service, the proposed unit of service, and the requested dollar amount shall be included with the request for authorization. A "by report" service or item is any service for which a maximum allowance has not been established because the item is rarely billed to the Medi–Cal program or because the service is unusual, variable or new.

(h) EPSDT supplemental services requested as a result of EPSDT screening services are exempt from the benefit limitations in Section 51304, and may be covered subject to prior authorization as defined in Section 51003 if the requirements of subsection (e) of this section are met.

(i) Regardless of the source of the referral for the service, requests for EPSDT diagnostic and treatment services and EPSDT supplemental services pursuant to the requirements of this chapter shall be reviewed pursuant to this section.

(j)(1) Requests for EPSDT case management services shall not be authorized where the Department has determined that appropriate case management services may be obtained through a targeted case management (TCM) provider under contract with a participating local governmental agency that has elected to provide case management services pursuant to Section 14132.44 of the Welfare and Institutions Code, or where TCM services are available pursuant to Section 14132.48 of the Welfare and Institutions Code.

(2) Where the Department determines that EPSDT case management services are not provided or available pursuant to paragraph (j)(1), requests for EPSDT case management services may be referred to the unit within the Department designated by the Director.

(3) Where the Department determines that EPSDT case management services are not provided or available pursuant to paragraph (j)(1) or (j)(2), the Department may authorize EPSDT case management services through an EPSDT case manager described in Section 51184(h)(4).

(k) For members of Medi–Cal managed care plans, the Medi–Cal managed care plan shall determine whether EPSDT case management services are medically necessary based on subsection (f). If the plan determines EPSDT case management services are medically necessary, the plan shall refer the members to an appropriate EPSDT case manager described in paragraph (h)(1) or (h)(2) of Section 51184. Services shall first be sought pursuant to paragraph (j)(1). If services are not available pursuant to paragraph (j)(1), the plan shall provide, or arrange and pay for, the EPSDT case management services. For purposes of this subsection, Medi–Cal managed care plan means any entity that has entered into a contract with the Department to provide, or arrange for, comprehensive health care to enrolled Medi–Cal beneficiaries pursuant to Chapter 8 or Articles 2.7, 2.8, 2.9 and 2.91 of Chapter 7 of Part 3, Division 9, of the Welfare and Institutions Code.

(*l*) The Department shall not approve an EPSDT supplemental service pursuant to this section if the Department determines that the service to be provided is accessible and available in an appropriate and timely manner as an EPSDT diagnostic and treatment service.

(m) The Department shall not approve a request for EPSDT diagnostic and treatment services or EPSDT supplemental services in home and community–based settings if the Department determines that the total cost incurred by the Medi–Cal program for providing such services to the beneficiary is greater than the total costs incurred by the Medi–Cal pro-

gram in providing medically equivalent services at the beneficiary's otherwise appropriate institutional level of care, where medically equivalent services at the appropriate level are available in a timely manner.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14059 and 14132, Welfare and Institutions Code; Sections 306–309, Health and Safety Code; and 42 U.S.C. 1396d(r).

HISTORY

1. New section filed 2–27–75; effective thirtieth day thereafter (Register 75, No. 9).
2. Change without regulatory effect of NOTE (Register 86, No. 49).
3. Amendment of section heading, text, and NOTE filed 4–4–94 as an emergency; operative 4–4–94 (Register 94, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–2–94 or emergency language will be repealed by operation of law on the following day.
4. Amendment of section heading, text and NOTE refiled 8–1–94 as an emergency; operative 8–1–94 (Register 94, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–29–94 or emergency language will be repealed by operation of law on the following day.
5. Editorial correction of printing errors in subsections (d)(1), (e) and (i) (Register 94, No. 31).
6. Amendment of section heading, text and NOTE refiled 10–24–94 as an emergency; operative 10–24–94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–21–95 or emergency language will be repealed by operation of law on the following day.
7. Amendment of section heading, text and NOTE refiled 2–22–95; operative 2–22–95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–22–95 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 2–22–95 order including amendment of section heading and section transmitted to OAL 3–16–95 and filed 4–27–95 (Register 95, No. 17).
9. Amendment of subsection (c) and amendment of NOTE filed 4–13–99 as an emergency; operative 4–13–99 (Register 99, No. 16). A Certificate of Compliance must be transmitted to OAL by 8–11–99 or emergency language will be repealed by operation of law on the following day.
10. Amendment of subsection (c) and amendment of NOTE refiled 8–5–99 as an emergency; operative 8–5–99 (Register 99, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–3–99 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 8–5–99 order transmitted to OAL 12–1–99 and filed 1–12–2000 (Register 2000, No. 2).

§ 51340.1. Requirements Applicable to EPSDT Supplemental Services.

(a) When the particular EPSDT Supplemental Services identified in this section are requested, the request for service shall be approved only when the criteria and requirements set forth in this section are met. Requests for all other EPSDT Supplemental Services shall be approved only when the requirements set forth in Section 51340(e)(1) or (e)(3) are met.

(b) Dental Services

(1) Dental services, other than orthodontic services

Requests for dental services, as EPSDT Supplemental Services, including but not limited to services necessary for the relief of pain and infections, restoration of teeth or maintenance of dental health, shall be evaluated under Section 51340(e)(1) or (e)(3), as applicable.

(2) Orthodontic services

Orthodontic services are covered only:

(A) When medically necessary pursuant to the criteria set forth in the Medi–Cal "Manual of Criteria for Medi–Cal Authorization," Chapter 8.1, as incorporated by reference in Section 51003(e) or

(B) When medically necessary for the relief of pain and infections, restoration of teeth, maintenance of dental health, or the treatment of other conditions or defects, pursuant to the criteria set forth in Section 51340(e)(1) or (e)(3), as applicable.

(c) Hearing Services

(1) Requests for hearing services, as EPSDT Supplemental Services, including but not limited to services necessary for the diagnosis and treatment for defects in hearing, including hearing aids, shall be evaluated under Section 51340(e)(1) or (e)(3), as applicable.

(2) When a hearing aid is approved under the standards of Section 51340(e)(3), one package of six hearing aid batteries, size 675, 13, 312 or 10A, may be furnished on a quarterly basis without prior authorization. Batteries in sizes other than those listed, and hearing aid batteries provided at more frequent intervals, shall be subject to prior authorization.

(d) Onsite Investigations to Detect the Source of Lead Contamination

(1) Onsite investigations to detect the source of lead contamination are covered as an EPSDT supplement service only when:

(A) The results of two consecutive laboratory tests performed on a blood specimen collected from a child at least 30 days apart document that the child has a venous blood lead level equal to or greater than 15 micrograms per deciliter (ug/dL); or

(B) The results of one laboratory test establishes that the child has a venous blood lead level equal to or greater than 20 micrograms per deciliter (ug/dL); and

(C) The onsite investigation has been recommended as a medically necessary part of the management and treatment of the child by the physician who ordered the laboratory tests specified in this section and who has received notification that the child has been found to have an elevated blood lead level, as specified in (A) or (B) above; and

(D) The onsite investigation is conducted by an individual who meets the criteria specified in Section 51242(i).

(2) A second onsite investigation is covered only when the child's home or primary residence changes and the child's blood lead level increases above the last level recorded prior to the child's change of residence.

(3) The onsite investigation shall be limited to the home or primary residence of the child with the elevated blood lead level. For the purposes of this subsection only, the following shall apply:

(A) "Onsite investigation" means an interview with the family of the child to gather basic information about the habits of the child and an assessment of the environment using a portable X–ray fluorescence (XRF) analyzer or equivalent device.

(B) "Home or primary residence" means all the interior rooms in the residential unit within the main structure/building in which the child resides, including window panes and frames, doors, walls, baseboards and handrails, water pipes, furniture, utensils, toys and dust; and the exterior including the garage, porch, storage rooms, detached structures, patio, backyard, abandoned cars, trailers and appliances, front lawn, fences and any other objects or structures on the property which are accessible to the child.

(4) Onsite investigations do not include:

(A) Removal of lead sources;

(B) Provision of alternate housing;

(C) Collection or laboratory analysis of environmental samples.

(5) Onsite investigations of public housing, publicly–assisted housing or federally assisted housing are not covered.

(6) Onsite investigations conducted at the same address for several children in the same family shall be considered one investigation.

(7) Notwithstanding the requirements of Section 51340(c), onsite investigations shall not be subject to prior authorization or the documentation requirements of Section 51340(d) if all the requirements of this subsection are met.

(e) Pediatric day health care services

(1) Pediatric day health care services provided to a beneficiary shall be covered only after prior authorization has been obtained from the designated Medi–Cal consultant, as set forth in Section 50009, before services are initiated in the EPSDT pediatric day health care facility. The hours of attendance in the pediatric day health care facility shall be authorized by the designated Medi–Cal consultant. The total number of hours authorized for the pediatric day health care facility may be substituted for a portion of the authorized in–home nursing care services but at no time shall exceed the number of hours allowed under Section 51340(m). Prior authorization and reauthorization requests shall be initiated by the facility.

(2) In determining the need for pediatric day health care services, the plan of treatment developed by the facility shall document the need for:

(A) Skilled nursing services during each day of attendance by licensed nursing personnel. The need for skilled nursing services may be demonstrated by, but not be limited to, one or more of the following:

1. Skilled nursing assessment.
2. Mechanical ventilation.

3. Tracheotomy care and suctioning.

4. Respiratory treatment, which may involve oxygen administration or suctioning.

5. Medication administration, either oral, enteral, parenteral or inhalation.

6. Enteral or parenteral nutrition, or intravenous fluid administration.

(B) A developmental program of activities structured to promote or maintain the beneficiary's optimal functional potential, and the probable benefit from therapeutic intervention. The need for physical therapy, occupational therapy, speech therapy or medical nutrition therapy must be documented by specific assessments and individualized recommendations to include measurable goals and the expected benefits from the therapeutic interventions.

(C) Therapy services that shall be provided as follows:

1. The pediatric day health care facility shall provide occupational therapy, physical therapy, speech therapy and medical nutrition therapy in accordance with the plan of treatment. Such therapy shall be provided by licensed or registered therapists. Authorization for occupational therapy, physical therapy and speech therapy shall be in accordance with Section 51309. Authorization for medical nutrition therapy shall be in accordance with Section 51340.

2. Interventions specified in the individual plan of treatment that do not require the judgment, knowledge and skills of a licensed or registered therapist shall be provided by appropriately trained nursing personnel. These interventions shall be considered part of the nursing services and developmental activities.

(3) The initial request for prior authorization shall be accompanied by the individual plan of care approved and signed by the attending physician. Initial authorization requests may be granted for up to three months. In addition to the information specified in paragraph (e)(2) of this section, the plan of treatment shall include the following:

(A) Primary diagnosis and significant associated diagnoses.

(B) Clinical summary of the beneficiary's medical condition, including history, a physical examination documented as rendered within the last three months, functional status, and treatment services received prior to admission to the pediatric day health care facility.

(C) Specific types and frequency of interventions to be rendered by each discipline, and medical necessity for these services to be rendered in the facility.

(D) Medications to be administered, including method of administration, dosage and frequency.

(E) Diet, including type, method of administration and frequency.

(F) For technology dependent beneficiaries, as defined in Section 1760.2 of the Health and Safety Code, a plan for treatment and monitoring of the medical equipment to be used.

(G) Scheduled day(s) and hours of attendance.

(H) Signed consent of parent, foster parent or legal guardian granting the facility permission to transfer the child to the hospital or other health facility in case of an emergency.

(4) Reauthorization requests for continuation of pediatric day health care EPSDT services may be granted for up to six months, and shall be:

(A) Accompanied by an updated individual plan of treatment describing the beneficiary's progress toward achieving therapeutic goals.

(B) Received by the designated Medi-Cal consultant on or before the expiration of a current authorization. If the request is received by the designated Medi-Cal consultant after the previously authorized period has expired, the request shall be effective on the date when it is received by the Medi-Cal consultant.

(5) The pediatric day health care facility shall assist the beneficiary's parent, foster parent or legal guardian in arranging for or obtaining medically necessary services outside the scope of the pediatric day health care EPSDT services. However, the parent, foster parent or legal guardian shall maintain primary responsibility for obtaining these other medically necessary services.

(6) Pediatric day health care facilities shall not provide EPSDT services for inpatients of the following health facilities which are licensed pursuant to Division 2, Chapter 2, commencing with Section 1250 of the Health and Safety Code:

(A) General acute care hospital.

(B) Skilled nursing facility.

(C) Intermediate care facility.

(D) Intermediate care facility for the developmentally disabled.

(E) Intermediate care facility for the developmentally disabled–habilitative.

(F) Intermediate care facility for the developmentally disabled–nursing.

(G) Congregate living health facility, including a congregate living health facility which is certified as a nursing facility.

NOTE: Authority cited: Sections 10725, 14124.5 and 14195, Welfare and Institutions Code. Reference: Sections 14059, 14132 and 14132.10, Welfare and Institutions Code; Sections 100275, 125000 and 125100, Health and Safety Code; and 42 U.S.C. 1396d(r).

HISTORY

1. New section filed 4–27–95; operative 4–27–95 (Register 95, No. 17).
2. Amendment and redesignation of first paragraph as subsection (a), subsection relettering, new subsections (d)–(d)(7) and amendment of NOTE filed 4–13–99 as an emergency; operative 4–13–99 (Register 99, No. 16). A Certificate of Compliance must be transmitted to OAL by 8–11–99 or emergency language will be repealed by operation of law on the following day.
3. Amendment and redesignation of first paragraph as subsection (a), subsection relettering, new subsections (d)–(d)(7) and amendment of NOTE refiled 8–5–99 as an emergency; operative 8–5–99 (Register 99, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–3–99 or emergency language will be repealed by operation of law on the following day.
4. New subsections (e)–(e)(6)(G) and amendment of NOTE filed 11–10–99 as an emergency; operative 11–10–99 (Register 99, No. 46). A Certificate of Compliance must be transmitted to OAL by 3–9–2000 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–5–99 order, including further amendment of subsection (d)(1)(A), transmitted to OAL 12–1–99 and filed 1–12–2000 (Register 2000, No. 2).
6. Certificate of Compliance as to 11–10–99 order, including further amendment of subsections (e)(2)(B) and (e)(2)(C)1., transmitted to OAL 3–8–2000 and filed 4–19–2000 (Register 2000, No. 16).

§ 51341. Short–Doyle Mental Health Medi–Cal Program Services.

(a) Community mental health services, as defined in this section, provided by Short–Doyle Medi–Cal providers to Medi–Cal beneficiaries are covered by the Medi–Cal program.

(b) Community Mental Health Services.

[The next page is 457.]

(1) Acute inpatient hospital service means those services provided by a hospital, including bed and board, to a Medi–Cal beneficiary who needs intense diagnosis and/or treatment of an acute psychiatric condition on a continuous 24–hour a day basis.

(2) Psychiatric health facility services means therapeutic and/or rehabilitation services provided in a non–hospital 24 hour inpatient setting, on either a voluntary or involuntary basis. Services are provided to individuals experiencing an acute psychiatric episode or crisis, whose physical health needs can be met in an affiliated hospital or in outpatient settings.

(3) Mental health service means interventions designed to provide the maximum reduction of mental disability and restoration or maintenance of functioning consistent with the requirements for learning, development, independent living and enhanced self–sufficiency. Services shall be directed toward achieving the individual's goals/desired results/personal milestones.

(4) Medication support service means prescribing, administering, dispensing and monitoring of psychiatric medications necessary to alleviate the symptoms of mental illness which are provided by a staff person within the scope of practice of his/her profession.

(5) Day treatment intensive service means services provided by an organized and structured multi–disciplinary treatment program as an alternative to hospitalization, to avoid placement in a more restrictive setting, or to maintain the individual in a community setting. These services are provided to a distinct group of individuals and occur in a therapeutic, organized and structured setting. Day treatment intensive is a packaged program with service available at least three hours and less than 24 hours each day the program is open.

(6) Day rehabilitation service means evaluation, rehabilitation and therapy to maintain or restore personal independence and functioning consistent with requirements for learning and development. It is an organized and structured program which provides services to a distinct group of individuals. Day rehabilitation is a packaged program with service available at least three hours and less than 24 hours each day the program is open.

(7) Adult residential treatment service means rehabilitation services provided in a non–institutional residential setting where individuals are supported in their efforts to restore, maintain and apply interpersonal and independent living skills, and access community support systems. Programs shall provide a therapeutic community including a range of activities and services for individuals who would be at risk of hospitalization or other institutional placement if they were not in the residential treatment program. This is a structured package program with services available day and night, seven days a week.

(8) Crisis residential treatment services means therapeutic and/or rehabilitation services provided in a 24–hour residential treatment program for individuals experiencing an acute psychiatric episode or crisis, and who do not present medical complications requiring nursing care. Individuals are supported in their efforts to restore, maintain and apply interpersonal and independent living skills, and access community support systems. Interventions which focus on symptom reduction shall also be available. This is a structured, packaged program with services available day and night, seven days a week.

(9) Crisis intervention means quick emergency response service enabling the individual to cope with a crisis, while maintaining his/her status as a functioning community member to the greatest extent possible. A crisis is an unplanned event that results in the individual's need for immediate service intervention. Crisis intervention services are limited to stabilization of the presenting emergency.

(10) Crisis Stabilization — Emergency Room means an immediate face–to–face response lasting less than 24 hours, to or on behalf of an individual exhibiting acute psychiatric symptoms, provided in a 24–hour health facility or hospital based outpatient program. The goal is to avoid the need for inpatient services by alleviating problems which, if not treated, present an imminent threat to the individual or other's safety or substantially increase the risk of the individual becoming gravely disabled.

(11) Crisis Stabilization — Urgent Care means an immediate face–to–face response lasting less than 24 hours, to or on behalf of an individual exhibiting acute psychiatric symptoms, provided at a certified Mental Health Rehabilitation provider site. The goal is to avoid the need for inpatient services by alleviating problems and symptoms which, if not treated, present an imminent threat to the individual or other's safety or substantially increase the risk of the individual becoming gravely disabled. Services provided to individuals in a Crisis stabilization — Urgent Care program are not based in 24–hour health care facilities or hospital based outpatient programs. Services shall be available 24 hours per day.

(12) Case management brokerage means activities provided by program staff to access medical, educational, social, prevocational, vocational, rehabilitative, or other needed community services for eligible individuals.

NOTE: Authority cited: Sections 10725, 14021.3, 14021.5 and 14124.5, Welfare and Institutions Code. Reference: Sections 14021, 14021.3 and 14021.5, Welfare and Institutions Code.

HISTORY

1. Amendment filed 6–29–84 as an emergency; designated effective 7–1–84 (Register 84, No. 28). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–30–84. For prior history, see Registers 76, No. 2 and 75, No. 40.
2. Order of Repeal of 6–29–84 emergency language filed 11–26–84 by OAL pursuant to Government Code Section 11349.6(b) (Register 84, No. 48).
3. Amendment filed 1–31–85 as an emergency; designated effective 2–1–85 (Register 85, No. 7). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6–3–85.
4. Certificate of Compliance transmitted to OAL 5–17–85 and filed 6–14–85 (Register 85, No. 24).
5. New subsections (b)(10) and (c)(3)–(4) and amendment of NOTE filed 10–5–93 as an emergency; operative 10–5–93 (Register 93, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–2–94 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 10–5–93 order transmitted to OAL 2–2–94 and filed 3–15–94 (Register 94, No. 11).
7. Repealer and new subsections (b)(2)–(10) and new subsections (b)(11)–(12) filed 10–2–95 as an emergency; operative 10–2–95 (Register 95, No. 40). A Certificate of Compliance must be transmitted to OAL by 1–30–96 or emergency language will be repealed by operation of law on the following day.
8. Amendment of section heading, subsection (a) and repealer of subsections (c)–(c)(4) filed 12–14–95 as an emergency; operative 12–14–95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–12–96 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 10–2–95 order including amendment of subsection (b)(4) transmitted to OAL 1–26–96 and filed 3–7–96 (Register 96, No. 10).
10. Reinstatement of subsections as they existed prior to emergency amendment filed 12–14–95 by operation of Government Code section 11346.1 (Register 96, No. 16).
11. Amendment of section heading, subsection (a) and repealer of subsections (c)–(c)(4) filed 4–16–96 as an emergency; operative 4–16–96 (Register 96, No. 16). A Certificate of Compliance must be transmitted to OAL by 8–14–96 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 4–16–96 order transmitted to OAL 8–13–96 and filed 9–25–96 (Register 96, No. 39).

§ 51341.1. Drug Medi–Cal Substance Abuse Services.

(a) Substance abuse services, as defined in this section, provided to Medi–Cal beneficiaries, are covered by the Medi–Cal program when determined medically necessary in accordance with Section 51303. Services shall be prescribed by a physician, and are subject to utilization controls, as set forth in Section 51159.

(b) For the purposes of this Section, the following definitions and requirements shall apply:

(1) "Admission to treatment date" means the date of the first face–to–face treatment service, as described in Subsection (d) of this regulation, rendered by the provider to the beneficiary.

(2) "ADP" means the State of California Department of Alcohol and Drug Programs which is authorized to administer Drug Medi–Cal substance abuse services through an interagency agreement with the State of California Department of Health Services. Whenever ADP contracts for

Drug Medi–Cal substance abuse services directly with a provider, ADP shall also assume the role and responsibilities assigned to the county under this section.

(3) "Collateral services" means face–to–face sessions with therapists or counselors and significant persons in the life of a beneficiary, focusing on the treatment needs of the beneficiary in terms of supporting the achievement of the beneficiary's treatment goals. Significant persons are individuals that have a personal, not official or professional, relationship with the beneficiary.

(4) "County" means the department authorized by the county board of supervisors to administer alcohol and substance abuse programs, including Drug Medi–Cal substance abuse services.

(5) "Crisis intervention" means a face–to–face contact between a therapist or counselor and a beneficiary in crisis. Services shall focus on alleviating crisis problems. "Crisis" means an actual relapse or an unforeseen event or circumstance which presents to the beneficiary an imminent threat of relapse. Crisis intervention services shall be limited to stabilization of the beneficiary's emergency situation.

(6) "Day care habilitative services" means outpatient counseling and rehabilitation services provided at least three (3) hours per day, three (3) days per week to persons with substance abuse diagnoses, who are pregnant or in the postpartum period, and/or to Early and Periodic Screening Diagnosis, and Treatment (EPSDT)–eligible beneficiaries, as otherwise authorized in this Chapter.

(7) "DHS" means the State of California Department of Health Services.

(8) "Group counseling" means face–to–face contacts in which one or more therapists or counselors treat two or more clients at the same time, focusing on the needs of the individuals served. For outpatient drug free treatment services and narcotic treatment programs, group counseling shall be conducted with no less than four and no more than 10 clients at the same time, only one of whom needs to be a Medi–Cal beneficiary.

(9) "Individual counseling" means face–to–face contacts between a beneficiary and a therapist or counselor. Telephone contacts, home visits, and hospital visits shall not qualify as Medi–Cal reimbursable units of service.

(10) "Intake" means the process of admitting a beneficiary into a substance abuse treatment program. Intake includes the evaluation or analysis of the cause or nature of mental, emotional, psychological, behavioral, and substance abuse disorders; the diagnosis of substance abuse disorders utilizing the Diagnostic and Statistical Manual of Mental Disorders Third Edition–Revised or Fourth Edition, published by the American Psychiatric Association; and the assessment of treatment needs to provide medically necessary treatment services by a physician licensed to practice medicine in the State of California. Intake may include a physical examination and laboratory testing (e.g., body specimen screening) necessary for substance abuse treatment and evaluation conducted by staff lawfully authorized to provide such services and/or order laboratory testing within the scope of their practice or licensure.

(11) "Medical psychotherapy" is a type of counseling service that has the same meaning as defined in Section 10345 of Title 9, CCR.

(12) "Medication Services" means the prescription or administration of medication related to substance abuse treatment services, or the assessment of the side effects or results of that medication conducted by staff lawfully authorized to provide such services and/or order laboratory testing within the scope of their practice or licensure.

(13) "Naltrexone treatment services" means an outpatient treatment service directed at serving detoxified opiate addicts who have substance abuse diagnosis by using the drug Naltrexone, which blocks the euphoric effects of opiates and helps prevent relapse to opiate addiction.

(14) "Narcotic treatment program" means an outpatient service using methadone and/or levoalphacetylmethadol (LAAM), directed at stabilization and rehabilitation of persons who are opiate addicted and have a substance abuse diagnoses. For the purposes of this section, "narcotic treatment program" does not include detoxification treatment.

(15) "Outpatient drug free treatment services" means an outpatient service directed at stabilizing and rehabilitating persons with substance abuse diagnoses.

(16) "Perinatal certified substance abuse program" means a Medi–Cal certified program which provides substance abuse services, as specified in Subsection (c)(4) of this regulation, to pregnant and postpartum women with substance abuse diagnoses.

(17) "Perinatal residential substance abuse services program" means a non–institutional, non–medical, residential program which provides rehabilitation services to pregnant and postpartum women with substance abuse diagnoses. Each beneficiary shall live on the premises and shall be supported in her efforts to restore, maintain, and apply interpersonal and independent living skills and access community support systems. Programs shall provide a range of activities and services for pregnant and postpartum women. Supervision and treatment services shall be available day and night, seven days a week.

(18) "Postpartum" means individuals who meet the criteria specified in Sections 50260 or 50262.3(a).

(19) "Postservice postpayment utilization review" has the same meaning as Section 51159(c).

(20) "Provider" means the legal entity certified pursuant to Section 51200 to provide Drug Medi–Cal substance abuse services to eligible beneficiaries at its certified location(s).

(21) "Substance abuse diagnoses" are those set forth in the Diagnostic and Statistical Manual of Mental Disorders Third Edition–Revised or Fourth Edition, published by the American Psychiatric Association.

(22) "Unit of service" means:

(A) For outpatient drug free, day care habilitative, perinatal residential, and Naltrexone treatment services, a face–to–face contact on a calendar day.

(B) For narcotic treatment program services, a calendar month of treatment services provided pursuant to this section and Chapter 4 commencing with Section 10000 of Title 9, CCR.

(c) Drug Medi–Cal substance abuse services for pregnant and postpartum women:

(1) Any of the substance abuse services listed in subsection (d) of this regulation shall be reimbursed at enhanced perinatal rates pursuant to Section 51516.1(a)(3) only when delivered by providers who have been certified pursuant to Section 51200 to provide perinatal Medi–Cal services to pregnant and postpartum women.

(2) Only pregnant and postpartum women are eligible to receive residential substance abuse services.

(3) Perinatal services shall address treatment and recovery issues specific to pregnant and postpartum women, such as relationships, sexual and physical abuse, and development of parenting skills.

(4) Perinatal services shall include:

(A) Mother/child habilitative and rehabilitative services (i.e., development of parenting skills, training in child development, which may include the provision of cooperative child care pursuant to Health and Safety Code Section 1596.792);

(B) Service access (i.e., provision of or arrangement for transportation to and from medically necessary treatment);

(C) Education to reduce harmful effects of alcohol and drugs on the mother and fetus or the mother and infant; and

(D) Coordination of ancillary services (i.e., assistance in accessing and completing dental services, social services, community services, educational/vocational training and other services which are medically necessary to prevent risk to fetus or infant).

(d) Drug Medi–Cal substance abuse services shall include:

(1) Narcotic treatment program services, utilizing methadone and/or levoalphacetylmethadol (LAAM) as narcotic replacement drugs, including intake, treatment planning, medical direction, body specimen screening, physician and nursing services related to substance abuse, medical psychotherapy, individual and/or group counseling, admission physical examinations and laboratory tests, medication services, and the provision

of methadone and/or LAAM, as prescribed by a physician to alleviate the symptoms of withdrawal from opiates, rendered in accordance with the requirements set forth in Chapter 4 commencing with Section 10000 of Title 9, CCR

(2) Outpatient drug free treatment services including admission physical examinations, intake, medical direction, medication services, body specimen screens, treatment and discharge planning, crisis intervention, collateral services, group counseling, and individual counseling, provided by staff that are lawfully authorized to provide, prescribe and/or order these services within the scope of their practice or licensure, subject to the following:

(A) Group counseling sessions shall focus on short–term personal, family, job/school, and other problems and their relationship to substance abuse or a return to substance abuse. Services shall be provided by appointment. Each beneficiary shall receive at least two group counseling sessions per month.

(B) Individual counseling shall be limited to intake crisis intervention, collateral services, and treatment and discharge planning.

(3) Day care habilitative services including intake, admission physical examinations, medical direction, treatment planning, individual and group counseling, body specimen screens, medication services, collateral services, and crisis intervention, provided by staff that are lawfully authorized to provide, prescribe and/or order these services within the scope of their practice or licensure. Day care habilitative services shall be provided only to pregnant and postpartum women and/or to EPSDT–eligible beneficiaries as otherwise authorized in this Chapter. The service shall consist of regularly assigned, structured, and supervised treatment.

(4) Perinatal residential substance abuse services including intake, admission physical examinations and laboratory tests, medical direction, treatment planning, individual and group counseling services, parenting education, body specimen screens, medication services, collateral services, and crisis intervention services, provided by staff that are lawfully authorized to provide and/or order these services within the scope of their practice or licensure.

(A) Perinatal residential substance abuse services shall be provided in a residential facility licensed by ADP pursuant to Chapter 5 (commencing with Section 10500), Division 4, Title 9, CCR.

(B) Perinatal residential substance abuse services shall be reimbursed through the Medi–Cal program only when provided in a facility with a treatment capacity of 16 beds or less, not including beds occupied by children of residents [In accordance with 42 USC Section 1396d(a)(25)(B) and Section 1396(i) and 42 CFR Section 435.1009, Medicaid reimbursement is not allowed for individuals in facilities with a treatment capacity of more than 16 beds].

(C) Room and board shall not be reimbursable through the Medi–Cal program.

(5) Naltrexone treatment services including intake, admission physical examinations, treatment planning, provision of medication services, medical direction, physician and nursing services related to substance abuse, body specimen screens, individual and group counseling, collateral services, and crisis intervention services, provided by staff that are lawfully authorized to provide, prescribe and/or order these services within the scope of their practice or licensure. Naltrexone treatment services shall only be provided to a beneficiary who:

(A) Has a confirmed, documented history of opiate addiction;

(B) Is at least (18) years of age;

(C) Is opiate free; and

(D) Is not pregnant.

(e) ADP shall:

(1) Provide administrative and fiscal oversight, monitoring, and auditing for the provision of statewide Drug Medi–Cal substance services;

(2) Ensure that utilization review is maintained through on–site post-service postpayment utilization review; and

(3) Demand recovery of payment in accordance with the provisions of Subsection (m) of this regulation.

(f) The county shall:

(1) Implement and maintain a system of fiscal disbursement and controls over the Drug Medi–Cal substance abuse services rendered by providers delivering services within its jurisdiction pursuant to an executed provider agreement;

(2) Monitor to ensure that billing for reimbursement is within the rates established for services; and

(3) Process claims for reimbursement.

(g) In addition to the requirements of Section 51476 and the regulations set forth in this chapter, the provider shall:

(1) Establish, maintain, and update as necessary, an individual patient record for each beneficiary admitted to treatment and receiving services. For purposes of this regulation, "an individual patient record" means a file for each beneficiary which shall contain, but not be limited to, information specifying the beneficiary's identifier (i.e., name, number), date of beneficiary's birth, the beneficiary's sex, race and/or ethnic background, beneficiary's address and telephone number, beneficiary's next of kin or emergency contact, and all documentation relating to the beneficiary gathered during the treatment episode, including all intake and admission data, all treatment plans, progress notes, continuing services justifications, laboratory test orders and results, referrals, counseling notes, discharge summary and any other information relating to the treatment services rendered to the beneficiary.

(2) Maintain group counseling sign–in sheets which indicate the date and duration of the session;

(3) Provide services; and

(4) Submit claims for reimbursement and maintain documentation specified in Section 51008.5 supporting good cause claims where the good cause results from provider– related delays.

(h) For a provider to receive reimbursement for Drug Medi–Cal substance abuse services, those services shall be provided by or under the direction of a physician and the following requirements shall apply:

(1) Admission criteria and procedures

(A) For outpatient drug free, Naltrexone treatment, day care habilitative, and perinatal residential treatment services, the provider shall perform all of the following:

(i) Develop and use criteria and procedures for the admission of beneficiaries to treatment.

(ii) Complete a personal, medical, and substance abuse history for each beneficiary upon admission to treatment.

(iii) Complete an assessment of the physical condition of the beneficiary within thirty (30) calendar days of the admission to treatment date. The assessment shall be completed by either:

(a) A physical examination of the beneficiary by a physician, registered nurse practitioner, or physician assistant authorized by state law to perform the prescribed procedures; or

(b) A review of the beneficiary's medical history, substance abuse history, and/or the most recent physical examination documentation. If the assessment is made without benefit of a physical examination, the physician shall complete a waiver which specifies the basis for not requiring a physical examination.

(B) In addition to the requirements of Subsection (h)(1)(A) of this regulation, for Naltrexone treatment services, the following shall apply:

(i) The provider shall confirm that the beneficiary:

(a) Has a documented history of opiate addiction;

(b) Is at least eighteen (18) years of age;

(c) Has been opiate free for a period of time to be determined by a physician based on the physician's clinical judgment. The provider shall administer a body specimen test to confirm the opiate free status of the beneficiary; and

(d) Is not pregnant and is discharged from the treatment if she becomes pregnant.

(ii) The physician shall certify beneficiary's fitness for treatment based upon the beneficiary's physical examination, medical history, and laboratory results; and

(iii) The physician shall advise beneficiaries of the overdose risk should they return to opiate use while taking Naltrexone and the ineffectiveness of opiate pain relievers while on Naltrexone.

(C) For narcotic treatment programs, the provider shall adhere to the admission criteria specified in Section 10270, Title 9, CCR.

(D) For each beneficiary, the provider shall:

(i) Establish medical necessity consistent with Section 51303. For purposes of these regulations, medical necessity is established by the physician's admission of each beneficiary pursuant to Subsection (h)(1) of this regulation, the physician's review and signature of each beneficiary's treatment plan and updates pursuant to Subsection (h)(2) of this regulation, and the physician's determination to continue services pursuant to Subsection (h)(5) of this regulation; and

(ii) Identify the applicable Diagnostic and Statistical Manual of Mental Disorders Third Edition–Revised or Fourth Edition diagnostic code.

(2) Treatment plan for each beneficiary

(A) For a beneficiary admitted to outpatient drug free, day care habilitative, perinatal residential, and Naltrexone treatment services the provider shall prepare an individualized written treatment plan, based upon the information obtained in the intake and assessment process.

(i) The initial treatment plan shall include:

(a) A statement of problems to be addressed;

(b) Goals to be reached which address each problem;

(c) Action steps which will be taken by the provider, and/or beneficiary to accomplish identified goals;

(d) Target dates for the accomplishment of action steps and goals;

(e) A description of the services, including the type of counseling, to be provided and the frequency thereof; and

(f) The assignment of a primary counselor.

(ii) The provider shall ensure that the initial treatment plan meets the following requirements:

(a) The counselor shall complete and sign within thirty (30) calendar days of the admission to treatment date, and

(b) The physician shall review, approve, and sign within fifteen (15) calendar days of signature by the counselor.

(iii) The provider shall ensure that the treatment plan is reviewed and updated as described below:

(a) The counselor shall review and sign the updated treatment plan no later than ninety (90) calendar days after signing the initial treatment plan, and no later than every ninety (90) calendar days thereafter, or when a change in problem identification or focus of treatment occurs, whichever comes first.

(b) Within fifteen (15) calendar days of signature by the counselor, the physician shall review, approve, and sign all updated treatment plans. If the physician has not prescribed medication, a psychologist licensed by the State of California Board of Psychology may sign an updated treatment plan.

(B) For narcotic treatment programs, providers shall complete treatment plans in accordance with the requirements specified in Section 10305, Title 9, CCR.

(3) Progress notes shall be legible and completed as follows:

(A) For outpatient drug free or Naltrexone treatment services, the counselor shall record a progress note for each beneficiary participating in an individual or group counseling session. Progress notes are individual narrative summaries and shall include:

(i) A description of the beneficiary's progress on the treatment plan problems, goals, actions steps, objectives, and/or referrals; and

(ii) Information on a beneficiary's attendance including the date (month, day, year) and duration in minutes of individual or group counseling sessions.

(B) For day care habilitative and perinatal residential treatment services, the counselor shall record a progress note, at a minimum, once a week. The progress notes are individual narrative summaries and shall include:

(i) The time period covered by the summary. The period shall be no more than seven (7) days.

(ii) A description of the beneficiary's progress on the treatment plan problems, goals, actions steps, objectives, and/or referrals; and

(iii) A record of the beneficiary's attendance at each counseling session including the date (month, day, year) and duration of the counseling session.

(C) For narcotic treatment programs, he counselor shall record progress notes in accordance with the requirements of Section 10345, Title 9, CCR.

(4) Minimum provider and beneficiary contact

(A) For outpatient drug free, day care habilitative, perinatal residential, or Naltrexone treatment services, a beneficiary shall be provided a minimum of two (2) counseling sessions per thirty (30) day period except when the provider determines that:

(i) Fewer beneficiary contacts are clinically appropriate; and

(ii) The beneficiary is progressing toward treatment plan goals.

(B) Narcotic treatment program providers shall provide counseling in accordance with Section 10345, Title 9, CCR. A beneficiary shall receive a minimum of fifty (50) minutes of counseling per calendar month. Waivers of this requirement shall be in accordance with Section 10345, Title 9, CCR.

(5) Continuing services shall be justified as shown below:

(A) For outpatient drug free, day care habilitative, perinatal residential, and Naltrexone treatment services:

(i) No sooner than five (5) months and no later than six (6) months the beneficiary's admission to treatment date or the date of completion of the most recent justification for continuing services, the counselor shall review the progress and eligibility of the beneficiary to continue to receive treatment services.

(ii) If the counselor recommends that the beneficiary requires further treatment, the physician shall determine the need to continue services based on the following factors:

(a) The medical necessity of continuing treatment;

(b) The prognosis; and

(c) The counselor's recommendation for the beneficiary to continue receiving services.

(iii) The provider shall discharge the beneficiary if the physician determines there is no medical necessity to continue treatment.

(B) For narcotic treatment program services, the review to determine continuing need for services shall be performed in accordance with Section 10410, Title 9, CCR.

(6) Discharge of a beneficiary from treatment may occur on a voluntary or involuntary basis. In addition to the requirements of this subsection, an involuntary discharge is subject to the requirements set forth in Subsection (p) of this regulation. The provider shall complete a discharge summary for each beneficiary in accordance with the following requirements:

(A) For outpatient drug free, day care habilitative, perinatal residential, and Naltrexone treatment services, the provider shall complete the discharge summary within thirty (30) calendar days of the date of the last face–to–face treatment contact with the beneficiary. The discharge summary shall include:

(i) The duration of the beneficiary's treatment as determined by the dates of admission to and discharge from treatment;

(ii) The reason for discharge;

(iii) A narrative summary of the treatment episode; and

(iv) The beneficiary's prognosis.

(B) For narcotic treatment program services, the discharge summary shall meet the requirements of Section 10415, Title 9, CCR.

(7) Except where share of cost, as defined in Section 50090, is applicable, providers shall accept proof of eligibility for Drug Medi–Cal as payment in full for treatment services rendered. Providers shall not charge fees to beneficiaries for access to Drug Medi–Cal substance abuse services or for admission to a Drug Medi–Cal treatment slot.

(i) Providers shall maintain the following documentation in the individual patient record established pursuant to subsection (g)(1) for each beneficiary for a minimum of three (3) years from the date of the last fa-

ce–to–face contact. If an audit takes place during the three year period, the provider shall maintain records until the audit is completed.

(1) Evidence that the beneficiary met the admission criteria specified listed in Subsection (h)(1) of this regulation;

(2) Treatment plan(s) as described in Subsection (h)(2) of this regulation;

(3) Progress notes as described in Subsection (h)(3) of this regulation;

(4) Evidence that the beneficiary received counseling as described in Subsection (h)(4) of this regulation with exceptions of waivers noted, signed, and dated by the physician in the beneficiary's treatment plan;

(5) Justification for continuing services as described in Subsection (h)(5) of this regulation;

(6) Discharge summary as described in Subsection (h)(6) of this regulation;

(7) Evidence of compliance with requirements for the specific treatment service as described in Subsection (d) of this regulation;

(8) Evidence that the beneficiary met the requirements for good cause specified in Section 51008.5 where the good cause results from beneficiary–related delays; and

(9) Evidence that the provider complied with the multiple billing requirements specified in Section 51490.1(d).

(j) Reimbursement for Drug Medi–Cal Substance Abuse Services

(1) ADP shall not reimburse a provider for services not rendered or received by a beneficiary.

(2) In order to receive and retain reimbursement for services provided to a beneficiary, the provider shall comply with the requirements listed in Subsection (i) of this regulation.

(3) When a beneficiary receives services from more than one provider, ADP shall reimburse only one provider for a single unit of service provided at a single certified location on a calendar day.

(4) For outpatient drug free, day care habilitative, and Naltrexone treatment services, ADP may reimburse the provider for an additional unit of service on a calendar day under the circumstances listed below. The additional unit of service shall be reimbursed pursuant to Section 51490.1(d) and shall be documented in the individual patient record as a separate unit of service in accordance with Subsection (h)(3) of this regulation.

(A) Outpatient drug free and Naltrexone for crisis intervention or collateral services; or

(B) Day care habilitative for crisis intervention.

(5) ADP shall reimburse a narcotic treatment program for services based on Section 51516.1. If the beneficiary receives less than a full month of services, ADP shall prorate reimbursement to the daily rate per beneficiary, based on the annual rate per beneficiary and a 365–day year pursuant to Section 11758.42(g) of the Health and Safety Code.

(k) ADP shall conduct a postservice postpayment utilization review of Drug Medi–Cal substance abuse services. The review shall:

(1) Verify that the documentation requirements of Subsection (i) of this regulation are met;

(2) Verify that each beneficiary meets the admission criteria, including the use of an appropriate Diagnostic and Statistical Manual of Mental Disorders Third Edition–Revised or Fourth Edition diagnostic code, and medical necessity for services is established pursuant to Subsection (h)(1)(D) of this regulation;

(3) Verify that a treatment plan exists for each beneficiary and that the provider rendered services claimed for reimbursement in accordance with the requirements set forth in Subsection (h) of this regulation; and

(4) Establish the basis for recovery of payments in accordance with Subsection (m) of this regulation.

(*l*) In determining compliance and demand for recovery of payment actions, ADP shall base its findings on a sampling of beneficiary records and other records of the provider.

(m) In addition to the provisions of Section 51458.1(a), ADP shall recover overpayments to providers for any of the following reasons:

(1) For all providers who:

(A) Claimed reimbursement for a service not rendered.

(B) Claimed reimbursement for a service at an uncertified location.

(C) Failed to meet the requirements of Subsection (h)(1)(D) of this regulation.

(D) Used erroneous, incorrect, or fraudulent good cause codes and procedures specified in Sections 51008 and 51008.5.

(E) Used erroneous, incorrect, or fraudulent multiple billing codes and certification processes specified in Section 51490.1(d).

(2) For outpatient drug free, day care habilitative, perinatal residential, and Naltrexone treatment services:

(A) The provider failed to meet the time frames of Subsections (h)(1)(A)(iii), (h)(2)(A)(ii), (h)(2)(A)(iii), or (h)(5)(A) of this regulation.

(B) The provider received reimbursement in excess of the limits set forth in Section 51516.1(a).

(3) For narcotic treatment programs, because the provider failed to meet:

(A) The admission criteria time frames specified in Section 10270, Title 9, CCR.

(B) The time frames for treatment plan completion and for review specified in Section 10305, Title 9, CCR.

(C) The continuing treatment time frames specified in Section 10410, Title 9, CCR.

(4) The provider received reimbursement for an ineligible narcotic treatment program individual or group counseling session. For purposes of this subsection, "ineligible narcotic treatment program individual or group counseling session" means:

(A) The counseling session does not meet the minimum requirements set forth in Section 10345, Title 9, CCR;

(B) The counseling session is not the type specified in the treatment plan required by Section 10305, Title 9, CCR; or

(C) The frequency of counseling exceeds that specified in the treatment plan required by Section 10305, Title 9, CCR.

(5) The provider received reimbursement for an ineligible individual counseling session. For purposes of this subsection "ineligible individual counseling session" means an individual counseling session which does not meet the requirements specified in Subsection (b)(9) and, for outpatient drug free treatment services, Subsection (d)(2)(B) of this regulation.

(6) The provider received reimbursement for an ineligible group counseling session. For purposes of this subsection, "ineligible group counseling session" means a group counseling session which does not meet the requirements specified in Subsection (b)(8) of this regulation.

(7) The provider received reimbursement for an ineligible day care habilitative unit of service. For purposes of this subsection, "ineligible day care habilitative unit of service" means a unit of service that was less than three hours of service on the calendar day billed or provided to a non–pregnant, non–postpartum or non–EPSDT eligible beneficiary.

(n) ADP shall utilize the procedures contained in Section 51458.2 to determine the amount of the demand for recovery of payment.

(o) Provider noncompliance with other requirements set forth in this section shall be noted as programmatic deficiencies. ADP shall issue a report to the provider documenting any demand for recovery of payment and/or programmatic deficiencies and the provider shall submit a corrective action plan within sixty (60) calendar days of the date of the report. The plan shall:

(1) Address each demand for recovery of payment and/or programmatic deficiency;

(2) Provide a specific description of how the deficiency shall be corrected; and

(3) Specify the date of implementation of the corrective action.

(p) Providers shall inform all beneficiaries of their right to a fair hearing related to denial, involuntary discharge, or reduction in Drug Medi–Cal substance abuse services as it relates to their eligibility or benefits, pursuant to Section 50951.

(1) Providers shall advise beneficiaries in writing at least ten (10) calendar days prior to the effective date of the intended action to terminate or reduce services. The written notice shall include:

(A) A statement of the action the provider intends to take;

(B) The reason for the intended action;

(C) A citation of the specific regulation(s) supporting the intended action;

(D) An explanation of the beneficiary's right to a fair hearing for the purpose of appealing the intended action;

(E) An explanation that the beneficiary may request a fair hearing by submitting a written request to:

DEPARTMENT OF SOCIAL SERVICES
STATE HEARINGS DIVISION
P.O. BOX 944243, MS 19-37
SACRAMENTO, CA 94244-2430
1 (800) 925-5253
TDD 1(800) 952-8349

(F) An explanation that the provider shall continue treatment services pending a fair hearing decision only if the beneficiary appeals in writing to ADP for a hearing within ten (10) calendar days of the mailing or personal delivery of the notice of intended action.

(2) All fair hearings shall be conducted in accordance with Section 50953.

(q) County and Provider Administrative Appeals

A provider and/or county may appeal Drug Medi-Cal dispositions concerning demands for recovery of payment and/or programmatic deficiencies of specific claims. Such appeals shall be handled pursuant to Section 51015 in accordance with the Interagency Agreement between ADP and DHS.

(1) Requests for first-level appeals, grievances, and complaints will be managed as follows:

(A) The provider and/or county shall initiate action by submitting a letter to:

DEPUTY DIRECTOR
PROGRAM OPERATIONS DIVISION
DEPARTMENT OF ALCOHOL AND DRUG PROGRAMS
1700 K STREET
SACRAMENTO, CA 95814-4037

(i) The provider and/or county shall submit the letter on the official stationery of the provider and/or county and it shall be signed by an authorized representative of the provider and/or county.

(ii) The letter shall specify that it is being submitted in accordance with Section 51015.

(iii) The letter shall identify the specific claim(s) involved and describe the disputed (in)action regarding the claim.

(B) The letter shall be submitted to the address listed in Subsection (q)(1)(A) of this regulation within ninety (90) calendar days from the date the provider and/or county received written notification of the decision to disallow claims.

(C) ADP shall acknowledge the letter within fifteen (15) calendar days of its receipt.

(D) ADP shall inform the provider and/or county of ADP's decision and the basis for the decision within fifteen (15) calendar days after ADP's acknowledgement notification. ADP shall have the option of extending the decision response time if additional information is required from the provider and/or county. The provider and/or county will be notified if ADP extends the response time limit.

(2) A provider and/or county may initiate a second level appeal, grievance or complaint to DHS.

(A) The second level process may be pursued only after complying with first-level procedures and only when:

(i) ADP has failed to acknowledge the grievance or complaint within fifteen (15) calendar days of its receipt, or

(ii) The provider and/or county is dissatisfied with the action taken by ADP where the conclusion is based on ADP's evaluation of the merits.

The second-level appeal shall be submitted to DHS within thirty (30) calendar days from the date ADP failed to acknowledge the first-level appeal or from the date of the ADP first-level appeal decision.

(B) All second-level appeals made in accordance with this section shall be directed to:

CHIEF
MEDI-CAL POLICY DIVISION
DEPARTMENT OF HEALTH SERVICES
714 P STREET, ROOM 1561
SACRAMENTO, CA 95814

(C) In referring an appeal, grievance, or complaint to DHS, the provider and/or county shall submit:

(i) A copy of the original written grievance or complaint sent to ADP;

(ii) A copy of ADP's report to which the appeal, grievance, or complaint applies; and

(iii) If received by the provider and/or county, a copy of ADP's specific finding(s), and conclusion(s) regarding the appeal, grievance, or complaint with which the provider and/or county is dissatisfied.

NOTE: Authority cited: Sections 10725, 14021.3, 14021.5, 14021.6, 14124.1 and 14124.5, Welfare and Institutions Code; Section 11758.41, Health and Safety Code; and Statutes of 1996, Chapter 1027. Reference: Sections 14021, 14021.3, 14021.5, 14021.6, 14124.1, 14132.90 and 14133, Welfare and Institutions Code; Sections 11758.42, 11758.46 and 11758.47, Health and Safety Code; Sections 436.122, 456.21, 456.22 and 456.23, Title 42, Code of Federal Regulations; Statutes of 1996, Chapter 162, Items 4200-101-0001 and 4200-102-0001; and Statutes of 1996, Chapter 1027.

HISTORY

1. New section filed 12-14-95 as an emergency; operative 12-14-95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4-12-96 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1 (Register 96, No. 16).
3. New section filed 4-16-96 as an emergency; operative 4-16-96 (Register 96, No. 16). A Certificate of Compliance must be transmitted to OAL by 8-14-96 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4-16-96 order transmitted to OAL 8-13-96 and filed 9-25-96 (Register 96, No. 39).
5. Amendment of section and NOTE filed 5-12-97 as an emergency; operative 5-12-97 (Register 97, No. 20). A Certificate of Compliance must be transmitted to OAL by 9-9-97 or emergency language will be repealed by operation of law on the following day.
6. Amendment of section heading, section and NOTE filed 6-30-97 as an emergency; operative 7-1-97 (Register 97, No. 27). A Certificate of Compliance must be transmitted to OAL by 10-29-97 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 5-12-97 order transmitted to OAL 8-13-97 and filed 9-23-97 (Register 97, No. 39).
8. Amendment of section heading, section and NOTE refiled 10-6-97 as an emergency; operative 10-29-97 (Register 97, No. 41). A Certificate of Compliance must be transmitted to OAL by 2-26-98 or emergency language will be repealed by operation of law on the following day.
9. Amendment of section heading, section and NOTE refiled 1-14-98 as an emergency; operative 2-26-98 (Register 98, No. 3). A Certificate of Compliance must be transmitted to OAL by 6-26-98 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 1-14-98 order, including further amendment of section heading, section and NOTE, transmitted to OAL 6-11-98 and filed 6-29-98 (Register 98, No. 27).
11. Change without regulatory effect amending subsection (p)(1)(E) filed 5-17-2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 20).

§ 51342. Acute Administrative Days.

(a) Acute administrative days are covered, when authorized by a Medi-Cal consultant pursuant to Section 51003, subject to the following:

(1) The acute inpatient facility has made appropriate and timely discharge planning.

(2) All other coverage has been utilized.

(3) The acute inpatient facility meets the requirements contained in the Manual of Criteria for Medi-Cal Authorization.

(b) Ancillary services provided during acute administrative days are subject to the Medi-Cal program requirements and controls applicable to ancillary services provided to patients authorized to receive services in acute inpatient facilities.

NOTE: Authority cited: Section 14105(a), Welfare and Institutions Code. Reference: Sections 14110.1 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 4-28-82; designated effective 6-1-82 (Register 82, No. 18).
2. Change without regulatory effect of NOTE (Register 86, No. 49).

§ 51343. Intermediate Care Facility Services for the Developmentally Disabled.

(a) Intermediate care facility services for the developmentally disabled are covered subject to prior authorization by the Department. Authorizations may be granted for up to six months. The authorization request shall be initiated by the facility. The attending physician shall sign the authorization request and shall certify to the Department that the beneficiary requires this level of care.

Each authorization request and reauthorization request submitted shall have attached certification documentation as required by the Department of Developmental Services. Such documentation shall be completed by regional center personnel.

(b) The request for reauthorization shall be received by the appropriate Medi–Cal consultant on or before the first working day following the expiration of a current authorization. When the request is received by the Medi–Cal consultant later than the first working day after the previously authorized period has expired, one day of authorization shall be denied for each day the reauthorization request is late.

(c) The Medi–Cal consultant shall deny any authorization request, reauthorization request, or shall cancel any authorization in effect when services or placement are not appropriate to the health needs of the patient. In the case of denial of a reauthorization request or cancellation of authorization, the facility shall be notified by the most expeditious means and payment may be made for up to 15 days following the date of giving notice.

(d) The attending physician shall recertify, at least every 60 days, the patient's need for continued care in accordance with the procedures specified by the Director. The attending physician shall comply with this requirement prior to the 60–day period for which the patient is being recertified. The facility shall present proof of this recertification at the time of billing for services rendered.

(e) Prior to the transfer of a beneficiary between facilities, a new initial Treatment Authorization Request shall be initiated by the receiving facility and signed by the attending physician. No transfer shall be made unless approved in advance by the Medi–Cal consultant for the district where the receiving facility is located.

(f) Medi–Cal beneficiaries in the facility shall be visited by their attending physicians no less often than every 60 days. An alternative schedule of visits may be proposed subject to approval by the Medi–Cal consultant. An alternative schedule of visits shall not result in more than three months elapsing between physician visits.

(g) There shall be a written plan of care for each beneficiary. The plan of care shall be reviewed and evaluated by a physician and other personnel involved in the care of the individual every 90 days. The plan of care shall meet the requirements of 42 CFR 456.380.

(h) Each beneficiary shall receive a comprehensive medical, social and psychological evaluation prior to admission. Psychological evaluations shall be performed within a time period not exceeding three months before admission and shall meet the requirements of 42 CFR 456.370 (a) (1) (i).

(i) Each beneficiary shall receive a complete dental examination within one month following admission unless such an examination was done within six months of admission, and the results are received and reviewed by the facilities and are entered into the resident's record. Each beneficiary shall be reexamined at specific intervals in accordance with his or her needs.

(j) Each beneficiary shall receive an annual physical examination that includes:

(1) Examination of vision and hearing.

(2) Routine screening laboratory examinations as determined necessary by the physician and special studies when the index of suspicion is high.

(k) There shall be a periodic medical review, not less often than annually, of all beneficiaries receiving intermediate care facility services for the developmentally disabled by an independent professional review team which meets the requirements of 42 CFR 456.602 through 456.604.

(*l*) Services shall be covered only for developmentally disabled persons as defined in Section 51164. Intermediate care services for the developmentally disabled are limited to those persons who require and will benefit from services provided pursuant to the provisions of Sections 76301 through 76413 of Title 22 of the California Administrative Code. The "Manual of Criteria for Medi–Cal Authorization," published by the Department, shall be the basis for the professional judgments of Medi–Cal consultants in their decision on authorization for services provided pursuant to this section. In determining the need for intermediate care facility services in institutions for the developmentally disabled, the following factors shall be considered:

(1) The extent of psychosocial and developmental service needs.

(2) The need for specialized developmental and training services which are not available through other levels of care.

(3) The extent to which provisions of specialized developmental and training services can reasonably be expected to result in a higher level of patient functioning and a lessening dependence on others in carrying out daily living activities.

(4) The individual's score on an assessment form approved by the Department of Developmental Services for the determination of intermediate care facility/developmentally disabled eligibility.

(5) Whether the patient has a qualifying developmental deficit in either a self–help area or social–emotional area as follows:

(A) A qualifying developmental deficit shall be determined in the self–help skill area if the patient has two moderate or severe skill task impairments in eating, toileting, bladder control or dressing skill task; or

(B) A qualifying developmental deficit shall be determined in the social–emotional area if the patient exhibits two moderate or severe impairments from a combination of the following assessment items:

1. Social behavior,
2. Aggression,
3. Self–injurious behavior,
4. Smearing,
5. Destruction of property,
6. Running or wandering away,
7. Temper tantrums, or emotional outbursts.

(m) Services shall be provided at a level determined appropriate to the number and types of functional characteristics of the individual and the number of hours of direct staff time needed for each individual.

(n) Payment for services shall be made in accordance with Section 51510.1.

(o) Leave of absence from intermediate care facilities for the developmentally disabled is covered up to a maximum of 73 days in a calendar year for developmentally disabled Medi–Cal inpatients. Payment shall be made in accordance with Section 51535.

NOTE: Authority cited: Sections 14105, 14108 and 14124.5, Welfare and Institutions Code; and Section 208.4, Health and Safety Code. Reference: Sections 14108 and 14132, Welfare and Institutions Code.

HISTORY

1. Amendment filed 3–29–84 as an emergency; designated effective 4–1–84 (Register 84, No. 15). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–30–84. For prior history, see Registers 84, No. 2; 82, No. 31; 79, Nos. 48, 38 and 9.
2. Emergency language filed 3–29–84 repealed by operation of Government Code Section 11346.1(f) (Register 85, No. 19).
3. Amendment filed by the Department of Health Services with the Secretary of State on 8–1–84 as an emergency; effective upon filing. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 85, No. 19).
4. Certificate of Compliance including amendment of subsection (l) filed by the Department of Health Services with the Secretary of State on 11–28–84. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 85, No. 25).
5. Editorial correction of 11–28–84 order filed by the Department of Health Services with the Secretary of State on 6–27–85. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 85, No. 32).

§ 51343.1. Intermediate Care Facility Services for the Developmentally Disabled Habilitative.

(a) Intermediate care facility services for the developmentally disabled habilitative (ICF–DDH) are covered subject to prior authorization

by the Department of Health Services for the ICF–DDH level of care. Authorizations may be granted for up to six months. Requests for prior authorization of admission to an ICF–DDH or for continuation of services shall be initiated by the facility on forms designated by the Department. Certification documentation required by the Department of Developmental Services must be completed by regional center personnel and submitted with the Treatment Authorization Request form. The attending physician shall sign the Treatment Authorization Request form and shall certify to the Department that the beneficiary requires this level of care.

(b) The request for reauthorization shall be received by the appropriate Medi–Cal consultant on or before the first working day following the expiration of a current authorization. Certification shall be redetermined and a new certification form shall be completed by regional center personnel and shall be attached to the request for authorization. One day of authorization shall be denied for each day the reauthorization request is late.

(c) The Medi–Cal consultant shall deny any authorization request or reauthorization request, or shall cancel any authorization in effect when services or placement are not appropriate to the health and developmental needs of the beneficiary. Where the reauthorization request is denied, or an existing authorization is cancelled, the facility shall be notified by the most expeditious means. A copy of the denial letter and the denied Treatment of Authorization Request shall serve as the official notice of action and shall be returned to the provider. Payment will be made up to 15 days following the postmark date of the denial letter.

(d) Prior to the transfer of a beneficiary between facilities, the receiving facility shall originate an initial Treatment Authorization Request signed by the attending physician. This Treatment Authorization Request must be approved by a DHS Medi–Cal consultant prior to admission except in cases of emergency as specified in Section 51056.

(e) Covered services shall be limited to individuals who are defined as developmentally disabled in Welfare and Institutions Code, Section 4512. In determining the need for intermediate care facility services for the developmentally disabled habilitative, the following criteria shall be considered:

(1) The complexity of the beneficiary's medical problems is such that skilled nursing care on an ongoing but intermittent basis is needed. Individuals shall be placed in an ICF–DDH only if their predominant skilled nursing needs are predictable and advance arrangements can be made for licensed nurses to provide needed services at prescribed intervals. Individuals who require skilled nursing procedures on an "as needed basis" are not candidates for placement in an ICF–DDH.

(2) Medication may be mainly supportive or stabilizing but still requires professional nurse evaluation on an intermittent basis.

(3) The beneficiary needs specialized developmental, training and habilitative program services which are not available through other levels of care.

(4) The extent to which provision of specialized developmental, training and habilitative program services can be expected to result in a higher level of beneficiary functioning and a lessening dependence on others in carrying out daily living activities or in the prevention of regression.

(5) The beneficiary must have two or more developmental deficits as measured on standardized evaluation forms prescribed and furnished by the Department of Developmental Services in any one of the following two domains:

(A) Self–help domain:

1. Eating
2. Toileting
3. Bladder Control
4. Dressing

(B) Social–emotional domain:

1. Aggression—has had one or more violent episodes causing minor physical injury within the past year or has resorted to verbal abuse and threats but has not caused physical injury within the past year.
2. Self–injurious behavior—behavior exists but result only in minor injuries which require first aid.
3. Smearing feces—smears once a week or more but less than once a day.
4. Destruction of property.
5. Running or wandering away.

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6. Temper tantrums, or emotional outbursts.

7. Unacceptable social behavior—positive social participation is impossible unless closely supervised or redirected.

(6) Beneficiaries shall not have any of the following extreme developmental deficits in the socio–emotional area:

(A) Aggression—has had violent episodes which have caused serious physical injury in the past year.

(B) Self–injurious behavior—causes severe injury which requires physician attention at least once per year.

(C) Smearing—smears at every opportunity.

(7) Beneficiaries shall not be admitted to or approved for service in an intermediate care facility for the developmentally disabled habilitative if those beneficiaries have a decubitis ulcer.

(8) Beneficiaries shall not be admitted with clinical evidence of an active communicable disease that is required to be reported in accordance with Section 2500 of Title 17 of he California Administrative Code.

(9) Beneficiaries shall not be admitted to an ICF/DDH for purposes of respite care with the exception of clients enrolled in a federally approved home and community–based care program under Section 1915(c) of the Social Security Act.

(f) There shall be a written plan of care for each beneficiary, which shall be established by a physician prior to the beneficiary's admission to the facility and reviewed and evaluated at least every 90 days by all personnel involved in the care of the individual. The plan of care shall meet the requirements of 42 Code of Federal Regulations 456.380 and shall be signed and dated by the physician at least every 90 days.

(g) Each beneficiary shall have received a comprehensive medical and social evaluation within 12 months prior to admission. A psychological evaluation must have been completed within three months prior to admission. Medical, psychological and social evaluations shall meet the requirements of 42 Code of Federal Regulations 456.370.

(h) Each beneficiary shall receive a complete dental examination within one month following admission unless such an examination was done within six months prior to admission. In either case, a comprehensive report prepared by the dentist shall be completed and entered into the beneficiary's record. Each beneficiary shall be reexamined as needed but at least annually.

(i) There shall be a periodic review, no less often than annually, of all care and services provided to beneficiaries receiving intermediate care facility services for the developmentally disabled habilitative by the State Medical Review Team in accordance with the requirements of 42 Code of Regulations 456.602 through 456.604.

(j) Each beneficiary shall receive preventive health services that includes physical examinations, immunizations and tuberculosis control in accordance with 42 Code of Regulations 442.477.

(k) Regardless of frequency of contact, the attending physician shall recertify, at least every 60 days, the beneficiary's need for continued care in accordance with the procedures specified by the Director. The facility shall attach a physician's signed statement at the time of billing as proof of this recertification. This statement shall be completed in the format specified by the Department.

(*l*) Medi–Cal beneficiaries in the facility shall be seen by their attending physicians no less often than every 60 days. An alternative schedule of not more than 90 days elapsed time may be proposed subject to approval by the Medi–Cal consultant.

(m) Services shall be provided at a level consistent with that described in the beneficiary's individual service plan.

(n) Payment for service shall be made in accordance with Section 51510.2.

(o) Leave of absence from intermediate care facilities for developmentally disabled habilitative residents is covered up to a maximum of 73 days in a calendar year. Payment shall be made in accordance with Section 51535.

NOTE: *Authority cited:* Sections 14105, 14108 and 14124.5, Welfare and Institutions Code; and Sections 208.3, 208.4 and 1267.7, Health and Safety Code. Reference: Sections 14108 and 14132, Welfare and Institutions Code; and Section 1250, Health and Safety Code.

HISTORY

1. New section filed by the Department of Health Services with the Secretary of State on 8–1–84 as an emergency; effective upon filing. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 85, No. 19).
2. Certificate of Compliance including amendment filed by the Department of Health Services with the Secretary of State on 11–28–84. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 85, No. 25).
3. Editorial correction of subsection (e)(2) (Register 95, No. 45).

§ 51343.2. Intermediate Care Facility Services for the Developmentally Disabled–Nursing.

(a) Intermediate care facility services for the developmentally disabled–nursing (ICF/DD–N) are covered subject to prior authorization by the Department for the ICF/DD–N level of care. Authorizations may be granted for up to six months. Requests for prior authorization of admission to an ICF/DD–N or for continuation of services shall be initiated by the facility on Certification for Special Treatment Program Services forms (HS 231). Certification documentation required by the Department of Developmental Services shall be completed by regional center personnel and submitted with the Treatment Authorization Request form. The attending physician shall sign the Treatment Authorization Request form and shall certify to the Department that the beneficiary requires this level of care.

(b) The request for reauthorization shall be received by the appropriate Medi–Cal consultant on or before the first working day following expiration of a current authorization. Certification shall be redetermined and a new certification form shall be completed by regional center personnel and shall be attached to the request for authorization. One day of authorization shall be denied for each day the reauthorization request is late.

(c) The Medi–Cal consultant shall deny any authorization request or reauthorization request, or shall cancel any authorization in effect when services or placement are not appropriate to the health and developmental needs of the beneficiary. When the reauthorization request is denied, or an existing authorization is cancelled, the facility shall be notified by the most expeditious means and a timely notice of action shall be sent to the beneficiary in accordance with Title 22, California Code of Regulations, Section 51014.1.

(d) Prior to the transfer of a beneficiary between facilities, the receiving facility shall originate an initial Treatment Authorization Request signed by the attending physician. This Treatment Authorization Request shall be approved by a Department Medi–Cal consultant prior to admission except in cases of emergency as specified in Section 51056, Title 22, California Code of Regulations.

(e) The beneficiary's medical condition shall be determined on an individual basis by the Department's Medi–Cal consultant. However, in determining the need for ICF/DD–N services the following conditions shall be met:

(1) A regional center has diagnosed the beneficiary as being developmentally disabled, or has determined that the beneficiary demonstrates significant developmental delay that may lead to a developmental disability if not treated.

(2) The beneficiary's medical condition is such that 24–hour nursing supervision, in accordance with Title 22, California Code of Regulations, Section 73839(a) personal care, and developmental services are required. The stability of the beneficiary's medical condition and frequency of required skilled nursing services shall be the determining factors in evaluating whether beneficiaries are appropriate for ICF/DD–N placements.

(3) Each beneficiary shall have a physician's certification that continuous skilled nursing care is not required and that the beneficiary's medical condition is stable. Beneficiaries convalescing from surgical procedures shall be stable enough that only intermittent nursing care is needed.

(4) The beneficiary needs a level of developmental, training and habilitative program services and recurring but intermittent skilled nursing

services which are not available through other small (4–15 bed) community–based health facilities.

(5) The beneficiary's condition is such that there is a need for the provision of active treatment services as described at Section 73801, thereby leading to a higher level of beneficiary functioning and a lessening dependence on others in carrying out daily living activities or in the prevention of regression or in ameliorating developmental delay.

(6) The beneficiary shall have two or more developmental deficits as measured on the Client Developmental Evaluation Report prescribed by the Department of Developmental Services in any one or combination of the following three domains:

(A) Self–help domain:

1. Eating
2. Toileting
3. Bladder control
4. Dressing

(B) Motor domain:

1. Ambulation
2. Crawling and standing
3. Wheelchair mobility
4. Rolling and sitting

(C) Social emotional domain:

1. Aggression—has had one or more violent episodes causing minor physical injury within the past year or has resorted to verbal abuse and threats but has not caused physical injury within the past year.
2. Self–injurious behavior—behavior exists but results only in minor injuries which require first aid.
3. Smearing feces—smears once a week or more but less than once a day.
4. Destruction of property.
5. Running or wandering away.
6. Temper tantrums, or emotional outburst.
7. Unacceptable social behavior—positive social participation is impossible unless closely supervised or redirected.

(f) The beneficiary must have a need for active treatment, defined at Section 73801, Title 22, California Code of Regulations, and intermittent skilled nursing services such as:

(1) Apnea monitoring
(2) Colostomy care
(3) Gastrostomy feeding and care
(4) Naso–gastric feeding
(5) Tracheostomy care and suctioning
(6) Oxygen therapy
(7) Intermittent positive–pressure breathing
(8) Licensed nurse evaluation on an intermittent basis
(9) Catheterization
(10) Wound irrigation and dressing
(11) The beneficiary needs special feeding assistance.
(12) The beneficiary needs repositioning to avoid skin breakdown which would lead to decubitus ulcers and contractures.

(g) Conditions which would exclude beneficiaries from placement in an ICF/DD–N are as follows:

(1) Beneficiaries shall not have any of the following extreme developmental deficits in the social–emotional area:

(A) Aggression—has had violent episodes which have caused serious physical injury in the past year.

(B) Self–injurious behavior—causes severe injury which requires physician treatment at least once per year.

(C) Smearing—smears at every opportunity.

(2) Beneficiaries shall not be admitted to or approved for service in an intermediate care facility for the developmentally disabled–nursing if those beneficiaries have a decubitus ulcer at the third or fourth stage of development as defined in Title 22, California Code of Regulations, Section 73811.

(3) Beneficiaries shall not be admitted with clinical evidence of an active communicable disease that is required to be reported in accordance with Section 2500, Title 17, California Code of Regulations.

(h) There shall be a written individual program plan of care for each beneficiary, which shall be established by a physician prior to the beneficiary's admission to the facility and reviewed and evaluated at least every 90 days by all members of the interdisciplinary staff/team involved in the care of the individual. The plan of care shall include the following:

(1) Diagnoses, symptoms, complaints, and complications indicating the need for admission;

(2) A description of the functional level of the individual;

(3) Objectives;

(4) Any orders for:

(A) Medications;

(B) Treatments;

(C) Restorative and rehabilitative services;

(D) Activities;

(E) Therapies;

(F) Social services;

(G) Diet; and

(H) Special procedures designed to meet the objectives of the plan of care;

(5) Plans for continuing care, including review and modification of the plan of care;

(6) Plans for discharge.

(i) Each beneficiary shall have received a comprehensive medical evaluation within three months and a comprehensive social evaluation within six months prior to admission. A psychological evaluation (developmental evaluation for clients under 18 months of age) must have been completed within three months prior to admission. Subsequent medical, psychological and social evaluations shall be completed at least annually by staff involved in carrying out the beneficiary's plan of care. Each evaluation must include:

(1) Diagnoses;

(2) Summary of present medical, social, and where appropriate, developmental findings;

(3) Medical and social family history;

(4) Mental and physical functional capacity;

(5) Prognoses;

(6) Kinds of services needed;

(7) Evaluation by placement worker of the resources available to the beneficiary in the home, family and community; and

(8) A recommendation concerning:

(A) Admission to the ICF/DD–N, or

(B) Continued care in the ICF/DD–N for individuals who apply for Medi–Cal while in the ICF/DD–N.

(j) Each beneficiary shall receive a complete dental examination within one month following admission unless such an examination was done within six months prior to admission. In either case, a comprehensive report prepared by the dentist shall be completed and entered into the beneficiary's record. Each beneficiary shall be reexamined as needed, but at least annually.

(k) There shall be a periodic review, no less often than annually, of all care and services provided to beneficiaries receiving intermediate care facility services for the developmentally disabled–nursing by the State Medi–Cal Utilization Review Team in accordance with the requirements of Title 42, Code of Federal Regulations, Sections 456.602 through 456.604.

(*l*) Each beneficiary shall receive preventive health services as follows:

(1) Annual physical examinations that include examination of vision and hearing, routine screening laboratory examinations as determined necessary by the physician, and special studies when needed.

(2) Immunizations, using as a guide the most current recommendations of the Public Health Service Advisory Committee on Immunization Practices or the Committee on the Control of Infectious Diseases of the American Academy of Pediatrics.

(3) Tuberculosis control, appropriate to the ICF/DD–N population, in accordance with the most current recommendations of the American College of Chest Physicians or the section on diseases of the chest of the American Academy of Pediatrics or both.

(m) Regardless of frequency of contact, the attending physician shall recertify in writing, at least every 60 days, the beneficiary's need for continued care in the ICF/DD–N.

(n) Medi–Cal beneficiaries in the facility shall be seen by their attending physicians no less often than every 60 days.

(o) Services shall be provided at a level consistent with that described in the beneficiary's individual service plan.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code; and Sections 208 and 1275.3, Health and Safety Code. Reference: Sections 1250.1 and 1275.3, Health and Safety Code.

HISTORY

1. New section refiled by the Department of Health Services with the Secretary of State on 5–30–89 as an emergency pursuant to Healthand Safety Code Section 1275.3; operative 5–30–89. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 89, No. 23). For prior history, see Register 89, No. 1.
2. Certificate of Compliance as to 5–30–89 order including amendment transmitted to OAL 9–27–89 and filed 10–26–89 (Register 89, No. 44).

§ 51344. In–Home Medical Care Waiver Services and Nursing Facility Waiver Services.

(a) In–home medical care waiver services and nursing facility waiver services are covered when prescribed by a physician and provided at the beneficiary's place of residence in accordance with a written treatment plan indicating the need for in–home medical care waiver services or nursing facility waiver services and in accordance with a written agreement between the Department and the provider of service.

(b) All in–home medical care waiver services are subject to prior authorization. Authorization will be granted only:

(1) If the beneficiary for whom in–home medical care waiver services are requested would otherwise require care in an inpatient acute care hospital for at least 90 consecutive days; and

(2) If the total cost incurred by the Medi–Cal program of providing in–home medical care waiver services and other medically necessary Medi–Cal services to the beneficiary is less than the total cost incurred by the Medi–Cal program in providing all medically necessary services to the beneficiary in an inpatient acute care hospital and;

(3) If the beneficiary under 21 years of age for whom prior authorization for provision of in–home medical care waiver services in the beneficiary's home is requested has a relative, foster parent, or related or non–related legal guardian, or other responsible adult who is willing to become and remain involved in the care of the child, and become and remain proficient in performing the tasks necessary to care for the child. This requirement shall not be interpreted to mean that such person must provide any particular number of daily hours of care to the child. Notwithstanding this requirement, there shall be a responsible adult who is able to learn and perform the tasks necessary to care for the child. This person shall demonstrate his/her proficiency by performing these tasks as average of four hours per week (minimum of 16 hours each month) in order to maintain the skills necessary to take care of the child at home.

(4) If the beneficiary for whom in–home medical care waiver services are requested has, or will be placed in, a residence which meets the following criteria, as determined by the Department;

(A) The residence is large enough to accommodate the medical equipment and supplies required to maintain the patient in the residence; and

(B) The residence includes those physical adaptations which are necessary to ensure the health and safety of the waiver beneficiary; and

(C) The residence is clean and free of insects or pests.

(c) All nursing facility waiver services are subject to prior authorization. Prior authorization will be granted only:

(1) If the beneficiary for whom nursing facility waiver services are requested would otherwise require care in an inpatient nursing facility providing Medi–Cal nursing facility Level A services, pursuant to Section 51120, or nursing facility Level B services, pursuant to Section 51123, subacute services, pursuant to Section 51124.5, or pediatric care services, pursuant to Section 51124.6, for at least 90 consecutive days; and

(2) If the total cost incurred by the Medi–Cal program of providing nursing facility waiver services and other medically necessary Medi–Cal services to the beneficiary is less than the total cost incurred by the Medi–Cal program in providing care to the beneficiary in a nursing facility providing all medically necessary services at the level of Medi–Cal nursing facility service appropriate to the beneficiary's medical needs; and

(3) If the beneficiary under 21 years of age for whom prior authorization for provision of nursing facility waiver services in the beneficiary's home is requested has a relative, foster parent, or related or non–related legal guardian, or other responsible adult who is willing to become and remain involved in the care of the child, and become and remain proficient in performing the tasks necessary to care for the child. This requirement shall not be interpreted to mean that such person must provide any particular number of daily hours of care to the child. Notwithstanding this requirement, there shall be a responsible adult who is able to learn and perform the tasks necessary to care for the child. This person shall demonstrate his/her proficiency by performing these tasks an average of 4 hours per week (minimum of 16 hours each month) in order to maintain the skills necessary to take care of the child at home.

(4) If the beneficiary for whom nursing facility waiver services are requested has, or will be placed in, a residence which meets the following criteria, as determined by the Department:

(A) The residence is large enough to accommodate the medical equipment and supplies required to maintain the patient in the residence; and

(B) The residence includes those physical adaptations which are necessary to ensure the health and safety of the waiver beneficiary; and

(C) The residence is clean and free of insects or pests.

NOTE: Authority cited: Section 10725, Welfare and Institutions Code; and Section 57(c), Chapter 328, Statutes of 1982. Reference: Sections 14114 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 9–1–82 as an emergency; effective upon filing (Register 82, No. 37). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12–30–82.
2. Certificate of Compliance transmitted to OAL 12–30–82 and filed 2–2–83 (Register 83, No. 6).
3. Amendment of section heading and subsections (a)–(b)(2), new subsections (a)(3)–(c)(4)(C) and amendment of NOTE filed 10–20–94; operative 10–20–94 (Register 94, No. 42).
4. Editorial correction of HISTORY 3 (Register 95, No. 14).

§ 51345. Nurse Midwife Services.

(a) Nurse midwife services permitted under state law are covered when provided by a certified nurse midwife.

(b) Services are limited to:

(1) The care of mothers and newborns through the maternity cycle of pregnancy, labor, birth, and the immediate postpartum period, not to exceed six weeks.

(2) Primary care as defined in Section 51170.5.

NOTE: Authority cited: Section 14124.5, Welfare and Institutions Code. Reference: Section 14132.4, Welfare and Institutions Code.

HISTORY

1. New section filed 12–21–83; effective thirtieth day thereafter (Register 83, No. 52.).

§ 51345.1. Certified Family Nurse Practitioner and Certified Pediatric Nurse Practitioner Services.

(a) Services provided by certified family nurse practitioners and certified pediatric nurse practitioners within the scope of their practice as authorized by California law are covered except as provided in (b).

(b) Services rendered to a person eligible for Medicare benefits, which are reimbursable by Medicare when performed by a physician shall be covered only when Medicare makes reimbursement for those services by that nurse practitioner.

(c) Services shall be subject to the requirements specified in Section 51305, to the extent that such requirements are applicable.

NOTE: Authority cited: Sections 14105, 14124.5 and 14132.41, Welfare and Institutions Code. Reference: Sections 14115.6 and 14132.41, Welfare and Institutions Code; and Sections 2834, 2835, 2835.5 and 2836, Business and Professions Code.

HISTORY

1. New section filed 8–13–86; effective upon filing (Register 86, No. 33).
2. Amendment of section heading, text and NOTE filed 5–3–93 as an emergency; operative 5–3–93 (Register 93, No. 19). A Certificate of Compliance must be transmitted to OAL 8–31–93 or emergency language will be repealed by operation of law on the following day.
3. Reinstatement of section as it existed prior to emergency amendment filed 5–3–93 by operation of Government Code section 11346.1(f) (Register 93, No. 44).
4. Amendment of section heading, text and NOTE refiled 10–27–93 as an emergency; operative 10–27–93 (Register 93, No. 44). A Certificate of Compliance must be transmitted to OAL by 2–25–94 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 10–27–93 order including amendment of NOTE transmitted to OAL 10–18–93 and filed 12–2–93 (Register 93, No. 49).

§ 51346. Home and Community–Based Waiver Services.

(a) Home and community–based waiver services shall be provided and reimbursed as Medi–Cal covered benefits only:

(1) For the duration of the applicable federally approved waiver;

(2) To the extent the services are set forth in the applicable waiver approved by the Department of Health and Human Services; and

(3) To the extent the Department can claim and be reimbursed federal funds for these services.

(b) In the event a home and community–based waiver service is the same as a service otherwise set forth in this article, commencing with Section 51301, and the scope and duration of the home and community–based waiver services are not specifically set forth in the waiver, then the scope and duration of benefits as set forth in this article shall apply.

NOTE: Authority cited: Section 14124.5, Welfare and Institutions Code; and Statutes of 1982, Chapter 1594, Section 87. Reference: Sections 14114 and 14132(s), Welfare and Institutions Code.

HISTORY

1. New section filed 2–25–83 as an emergency; effective upon filing (Register 83, No. 10). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed 6–25–83.
2. Certificate of Compliance including editorial correction transmitted to OAL 6–22–83 and filed 7–27–83 (Register 83, No. 31).
3. Amendment of section heading, subsections (a) and (b) and NOTE filed 10–20–94; operative 10–20–94 (Register 94, No. 42).
4. Editorial correction of HISTORY 3 (Register 95, No. 14).

§ 51347. Swing Bed Services.

Swing bed services are covered pursuant to the requirements specified in Section 51335.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 1339.5, 1339.7 and 1339.9, Health and Safety Code.

HISTORY

1. New section filed 1–17–86; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 86, No. 3).
2. Editorial correction of NOTE (Register 97, No. 37).

§ 51348. Comprehensive Perinatal Services.

(a) Comprehensive perinatal services, as defined in Section 51179, are covered to the extent specified in this section. Prior authorization is required for nutrition, psychosocial and health education services which exceed the Maximum Frequency amounts as set forth in Section 51504.

(b) Except where a capitated health system contract entered into by the Department provides otherwise, obstetrical services in addition to all necessary medical care shall include, but are not limited to:

(1) A written assessment of each patient's obstetrical status.

(2) Preparation of the individualized care plan obstetrical component.

(c) Except where a capitated health system contract entered into by the Department provides otherwise, nutrition services shall include but are not limited to:

(1) Written assessments of each patient's nutritional status.

(A) A complete initial nutrition assessment shall be performed at the initial visit or within four weeks thereafter and shall include: anthropometric data, biochemical data, clinical data, and dietary data.

(B) A nutrition reassessment using updated information shall be offered to each client at least once every trimester and the individualized care plan revised accordingly.

(2) Preparation of the individualized care plan nutritional component that addresses:

(A) The prevention and/or resolution of nutrition problems.

(B) The support and maintenance of strengths and habits oriented toward optimal nutritional status, and;

(C) The goals to be achieved via nutrition interventions.

(3) Dispensing, as medically necessary, prenatal vitamin/mineral supplement to each client.

(4) Treatment and intervention directed toward helping the patient understand the importance of, and maintain good nutrition during pregnancy and lactation, with referrals as appropriate.

(5) Postpartum reassessment, development of a care plan, and interventions.

(d) Except where a capitated health system contract entered into by the Department provides otherwise, health education services shall include, but are not limited to:

(1) Client orientation including, but not limited to provision of detailed information regarding the services to be provided, what to do in case of an emergency, and;

(2) Written assessments of each patient's health education status.

(A) A complete initial education assessment shall be performed at the initial visit or within four weeks thereafter and shall include an evaluation of: current health practices; past experience with health care delivery systems; prior experience with and knowledge about pregnancy, prenatal care, delivery, postpartum self–care, infant care, and safety; client's expressed learning needs; formal education and reading level; learning methods most effective for the client; educational needs related to diagnostic impressions, problems, and/or risk factors identified by staff; languages spoken and written; mental, emotional, or physical disabilities that affect learning; mobility/residency; religious/cultural influences that impact upon perinatal health; and client and family or support person's motivation to participate in the educational plan.

(B) An education reassessment using updated information shall be offered to each client every trimester and the individualized care plan revised accordingly.

(3) Preparation of the individualized care plan health education component that addresses:

(A) Health education strengths.

(B) The prevention and/or resolution of health education problems and/or needs and medical conditions and health promotion/risk reduction behaviors which can be ameliorated and/or resolved through education.

(C) The goals to be achieved via health education interventions.

(D) Health education interventions based on the patient's identified needs, interests, and capabilities, and particularly directed toward assisting the patient to make appropriate, well–informed decisions about her pregnancy, delivery, and parenting, with referrals, as appropriate.

(4) Postpartum assessment, development of care plan, and interventions.

(e) Except where a capitated health system contract entered into by the Department provides otherwise, psychosocial services shall include, but are not limited to:

(1) Written assessments of each patient's psychosocial status.

(A) A complete initial assessment of psychosocial functioning shall be performed at the initial visit or within four weeks thereafter and shall include review of: current status including social support system; personal adjustment to pregnancy; history of previous pregnancies; patient's goals for herself in this pregnancy; general emotional status and history; wanted or unwanted pregnancy, acceptance of the pregnancy; substance

use and abuse; housing/household; education/employment; and financial/material resources.

(B) A psychosocial reassessment using updated information shall be offered to each client every trimester, and the individualized care plan revised accordingly.

(2) Preparation of the individualized care plan psychosocial component that addresses:

(A) The prevention and/or resolution of psychosocial problems.

(B) The support and maintenance of strengths in psychosocial functioning, and;

(C) The goals to be achieved via psychosocial interventions.

(3) Treatment and intervention directed toward helping the patient understand and deal effectively with the biological, emotional, and social stresses of pregnancy with referrals, as appropriate.

(4) Postpartum reassessment, development of a care plan, and interventions.

(f) Review and revisions of the care plan shall occur during the antenatal, intrapartum, and postpartum periods on a regular basis and will be based on repeated and ongoing assessments and evaluation of the client's status.

(g) Nutrition, psychosocial, and health education services as defined in Sections 51179.2, 51179.3, and 51179.4 shall be provided by a comprehensive perinatal practitioner as defined under Section 51179.7.

(h) Each Comprehensive Perinatal Provider shall perform the duties of, or shall have on staff or employ or contract with one or more comprehensive perinatal practitioners as defined in Section 51179.7, to provide interdisciplinary services.

(i) Each Comprehensive Perinatal Provider shall inform the beneficiary what services will be provided, who will provide these services, where to obtain the services, when the services will be delivered, and procedures to follow in case of emergency.

(j) The Comprehensive Perinatal Provider shall refer patients, as appropriate, to services not specifically made part of comprehensive perinatal services, as defined in Section 51179. These services shall include, but are not limited to, those provided by the following programs: Women, Infants, and Children Supplemental Foods, Child Health and Disability Prevention, Family Planning, Genetic Disease, and Dental.

(k) The Comprehensive Perinatal Provider shall complete and forward to the Department, upon request, a Perinatal Data Form in a format prescribed by the Department for each patient served.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14053, 14132 and 14134.5, Welfare and Institutions Code.

HISTORY

1. New section filed 2–17–87 as an emergency; effective upon filing (Register 87, No. 8). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6–17–87.
2. New section refiled 6–5–87 as an emergency; operative 6–17–87 (Register 87, No. 25). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–15–87.
3. Certificate of Compliance including amendment filed 9–17–87 (Register 87, No. 38).
4. Editorial correction of subsection (i) (Register 95, No. 45).

§ 51348.1. Comprehensive Perinatal Standards of Care.

(a) Services shall be provided in conformance with:

(1) "Standards for Obstetric–Gynecologic Services, Sixth Edition," herein incorporated by reference in its entirety and available from the American College of Obstetricians and Gynecologists, 600 Maryland Avenue, South West, Suite 300 East, Washington D.C., 20024–2588.

(2) Newborn Screening Regulations as set forth in Title 17, California Administrative Code, Section 6500 et seq.

(3) Hemolytic Disease of the Newborn Requirements as set forth in Title 17, California Administrative Code, Section 6510 et seq.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14053, 14132 and 14134.5, Welfare and Institutions Code.

HISTORY

1. New section filed 2–17–87 as an emergency; effective upon filing (Register 87, No. 8). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6–1787.
2. New section refiled 6–5–87 as an emergency; operative 6–17–87 (Register 87, No. 25). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–15–87.
3. Certificate of Compliance filed 9–17–87 (Register 87, No. 38).

§ 51348.2. Patient Rights.

(a) Patient participation in the comprehensive perinatal services program shall be voluntary. Each eligible patient shall be informed about the services available in the program, the potential risks and benefits of participation, and alternative obstetrical care if she chooses not to participate in the program.

(b) Prior to the administration of any assessment, drug, procedure, or treatment, the patient shall be informed of potential risks or hazards which may adversely affect her or her unborn infant during pregnancy, labor, birth, or postpartum and the alternative therapies available to her. The patient has a right to consent or refuse the administration of any assessment, drug, procedure or treatment.

(c) The patient has the right to be treated with dignity and respect, to have her privacy and confidentiality maintained, to review her medical treatment and record with her physician or practitioner, to be provided explanations about tests and clinic procedures, to have her questions answered about procedures, to have her questions answered about her care, and to participate in the planning and decisions about her management during pregnancy, labor and delivery.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14053, 14132 and 14134.5, Welfare and Institutions Code.

HISTORY

1. New section filed 2–17–87 as an emergency; effective upon filing (Register 87, No. 8). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6–17–87.
2. New section refiled 6–5–87 as an emergency; operative 6–17–87 (Register 87, No. 25). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–15–87.
3. Certificate of Compliance filed 9–17–87 (Register 87, No. 38).

§ 51349. Hospice Care.

(a) Hospice care, as defined in Section 51180 is covered to the extent specified in this section.

(b) Of the four levels of care described in subsection (j), only general inpatient care is subject to prior authorization. Authorization for general inpatient care shall be granted only when all applicable requirements, as set forth in the Criteria for Authorization of Hospice Care section of the Department's Manual of Criteria for Medi–Cal Authorization, are met.

(c) Services shall be limited to individuals who have been certified as terminally ill in accordance with the procedures specified in Title 42, Code of Federal Regulations, Part 418, Subpart B, and who directly or through their representative voluntarily elect to receive such benefits in lieu of other care as specified.

(d) An individual who elects to receive hospice care, or that individual's representative as defined in Section 51180.3 must file an election statement with the hospice providing the care. The election statement shall include:

(1) Identification of the hospice.

(2) The individual's or representative's acknowledgement that:

(A) He or she has full understanding that the hospice care given as it relates to the individual's terminal illness will be palliative rather than curative in nature.

(B) Certain Medi–Cal benefits as specified in subsection (f) are waived by the election.

(3) The effective date of the election.

(4) The signature of the individual or representative.

(e) Elections may be made for up to two periods of 90 days each, one subsequent period of 30 days, and one 180–day extension of the 30–day period. Hospice services shall not be covered beyond 390 days.

(1) Payment shall be made for hospice care on behalf of an individual who voluntarily elects such care only during the two periods of 90 days

each and one subsequent period of 30 days and any subsequent extension during the individual's lifetime.

(2) An election period shall be considered to continue through the initial election period and through subsequent election periods as long as the hospice provider agrees to renew the election and as long as the individual:

(A) Remains in the care of the hospice; and

(B) Does not revoke the election.

(3) An individual's voluntary election may be revoked or modified at any time. To revoke the election of hospice care, the individual or representative must file a statement with the hospice that includes the following information:

(A) A signed statement that the individual or representative revokes the individual election for Medi–Cal coverage for the remainder of the election period.

(B) The effective date, which may not be earlier than the date the revocation is made.

(4) Revocation shall constitute a waiver of the right to hospice care during the remainder of the current 90 or 30–day election period plus any extension.

(5) An individual may at any time after revocation execute a new election for any remaining entitled election period.

(6) An individual may once in each election period elect to receive services through a hospice program different than the hospice with which the election was made. Such change shall not be considered a revocation pursuant to subparagraph (A). Such change shall be made in accordance with the procedure specified in 42 Code of Federal Regulations, Part 418, Subpart B.

(f) An individual who voluntarily elects hospice care under subsection (c) shall waive the right to payment on his or her behalf for all Medi–Cal services related to the terminal condition for which hospice care was elected, except for:

(1) Services provided by the designated hospice.

(2) Services provided by another hospice through arrangement made by the designated hospice.

(3) Services provided by the individual's attending physician if that physician is not employed by the designated hospice or receiving compensation from the hospice for those services.

(g) A plan of care shall be established by the hospice for each individual before services are provided. Services must be consistent with the plan of care. The plan of care shall conform to the standards specified in 42 Code of Federal Regulations, Part 418, Subpart C.

(h) The following services, when reasonable and necessary for the palliation or management of a terminal illness and related conditions are covered when provided by qualified personnel:

(1) Nursing services when provided by or under the supervision of a registered nurse.

(2) Physician services when provided by any Medi–Cal enrolled physician except that the services of the hospice medical director or the physician member of the interdisciplinary group, as required under 42 Code of Federal Regulations, Part 418, Subpart C shall be performed by a doctor of medicine or osteopathy.

(3) Medical social services when provided by a social worker with at least a Bachelor's degree in social work, from a school approved or accredited by the council on Social Work Education, under the direction of a physician.

(4) Counseling services when provided to the terminally ill individual and the family member or other persons caring for the individual at home. Counseling shall, as appropriate, be provided for the purpose of training the individual's family or other care giver to provide care and to help the individual and those caring for him or her to adjust to the individual's approaching death and to cope with feelings of grief and loss.

(5) Short–term inpatient care when provided in a hospice inpatient unit or in a hospital or a skilled nursing facility/Level B, that meets the standards specified in 42 Code of Federal Regulations, Part 418, Subpart E regarding staffing and patient areas.

(6) Drugs and Biologicals when used primarily for the relief of pain and symptom control related to the individual's terminal illness.

(7) Medical supplies and appliances.

(8) Home health aide services and homemaker services when provided under the general supervision of a registered nurse. Services may include personal care services and such household services as may be necessary to maintain a safe and sanitary environment in the areas of the home used by the patient.

(9) Physical therapy, occupational therapy and speech–language pathology when provided for the purpose of symptom control, or to enable the patient to maintain activities of daily living and basic functional skills.

(i) Bereavement counseling as necessary shall be made available to the patient's immediate family or significant other for up to one year after death, however bereavement counseling is not reimbursable through the Medi–Cal program.

(j) Reimbursement for covered services, with the exception of physician services, shall be made at one of the four levels specified below and in Section 51544. Coinsurance on behalf of Medicare eligible beneficiaries and room and board for residents of skilled nursing/Level B or intermediate care facilities/Level A shall be paid to the hospice as specified in Section 51544.

(1) Routine home care shall be covered for each day the recipient is at home and is not receiving continuous care.

(2) Continuous home care shall be covered only during periods of crisis when skilled nursing care is necessary on a continuous basis to achieve palliation or management of the patient's pain or symptoms in order to maintain the recipient in his/her residence. Continuous care may include homemaker and/or home health aide services but must be predominantly nursing in nature.

(3) Respite care shall be covered only when provided in an inpatient facility, on an occasional, intermittent and nonroutine basis and only when necessary to relieve family members or other persons caring for the terminally ill individual.

(4) General inpatient care shall be covered only when the patient requires and receives general inpatient care in an inpatient facility for pain control or chronic symptom management which cannot be managed in the patient's residence.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14053, 14132 and 14133.85, Welfare and Institutions Code.

HISTORY

1. New section filed 10–27–87 as an emergency; operative 10–27–87 (Register 87, No. 44). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency will be repealed on 2–24–88.
2. Certificate of Compliance transmitted to OAL 2–24–88 and filed –22–88 (Register 88, No. 15).
3. Amendment of section and NOTE filed 3–27–2000 as an emergency; operative 3–30–2000 (Register 2000, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–28–2000 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 3–27–2000 order transmitted to OAL 7–17–2000 and filed 8–28–2000 (Register 2000, No. 35).

§ 51350. Personal Care Services.

(a) Personal care services as specified in section 51183 are provided when authorized by the staff of a designated county department based on the state approved Uniformity Assessment tool. To the extent not inconsistent with statutes and regulations governing the Medi–Cal program, the needs assessment process shall be governed by the Department of Social Services' Manual of Policies and Procedures Sections 30–760, 30–761, and 30–763.

(b) Personal care services may be provided only to a categorically needy beneficiary as defined in Welfare and Institutions Code, Section 14050.1, who has a chronic, disabling condition that causes functional impairment that is expected to last at least 12 consecutive months or that is expected to result in death within 12 months and who is unable to remain safely at home without the services. The services shall be provided in the beneficiary's home or other locations as may be authorized by the

Director subject to federal approval. Personal care services authorized shall not exceed 283 hours in a calendar month.

(c) Personal care services will be prescribed by a physician. The beneficiary's medical necessity for personal care shall be certified by a licensed physician. Physician certification shall be done annually.

(d) Registered nurse supervision consists of review of the service plan and provision of supportive intervention. The nurse shall review each case record at least every twelve months. The nurse shall make home visits to evaluate the beneficiary's condition and the effectiveness of personal care services based on review of the case record or whenever determined as necessary by staff of a designated county department. If appropriate, the nurse shall arrange for medical follow-up. All nurse supervision activities shall be documented and signed in the case record of the beneficiary.

(e) Paramedical services when included in the personal care plan of treatment must be ordered by a licensed health care professional lawfully authorized by the State. The order shall include a statement of informed consent saying that the beneficiary has been informed of the potential risks arising from receipt of such services. The statement of informed consent shall be signed and dated by the beneficiary, the personal representative of the beneficiary, or in the case of a minor, the legal parent or guardian.

(f) Grooming shall exclude cutting with scissors or clipping toenails.

(g) Menstrual care is limited to external application of sanitary napkin and cleaning. Catheter insertion, ostomy irrigation and bowel program are not bowel or bladder care but paramedical.

(h) Repositioning, transfer skin care, and range of motion exercises have the following limitations:

(1) Includes moving from one sitting or lying position to another sitting or lying position; e.g., from bed to or from a wheelchair, or sofa, coming to a standing position and/or rubbing skin and repositioning to promote circulation and prevent skin breakdown. However, if decubiti have developed, the need for skin and wound care is a paramedical service.

(2) Range of motion exercises shall be limited to the general supervision of exercises which have been taught to the beneficiary by a licensed therapist or other health care professional to restore mobility restricted because of the injury, disuse or disease. Range of motion exercises shall be limited to maintenance therapy when the specialized knowledge or judgment of a qualified therapist is not required and the exercises are consistent with the beneficiary's capacity and tolerance. Such exercises shall include the carrying out of maintenance programs. i.e., the performance of the repetitive exercises required to maintain function, improve gait, maintain strength or endurance; passive exercises to maintain range of motion in paralyzed extremities; and assistive walking.

NOTE: Authority cited: Section 14132.95, Welfare and Institutions Code; Section 8, Chapter 939, Statutes of 1922; Section 3, Chapter 7, Statutes of 1993. Reference: Section 14132.95, Welfare and Institutions Code; Section 1396d(a)(7) of Title 42, of the United States Code; Article 7 (commencing with Section 12300) of Part 3 of Division 9 of the Welfare and Institutions Code; Section 440.170(f) of Title 42 of the Code of Federal Regulations.

HISTORY

1. New section filed 4–14–93 as an emergency; operative 4–14–93. Submitted to OAL for printing only pursuant to section 8, AB 1773 (Chapter 939, Statutes of 1992) (Register 93, No. 16).

§ 51351. Targeted Case Management Services.

(a) Targeted case management services shall include at least one of the following service components:

(1) A documented assessment identifying the beneficiary's needs. The assessment shall support the selection of services and assistance necessary to meet the assessed needs and shall include the following, as relevant to each beneficiary:

(A) Medical/mental condition.

(B) Physical needs, such as food and clothing.

(C) Social/emotional status.

(D) Housing/physical environment.

(E) Familial/social support system.

(F) Training needs for community living.

(G) Educational/vocational needs.

(2) Development of a comprehensive, written, individual service plan, based upon the assessment specified in subsection (a)(1) above. The plan shall be developed in consultation with the beneficiary and/or developed in consultation with the beneficiary's family or other social support system. The plan shall be in writing and, as relevant to each beneficiary, document the following:

(A) The nature, frequency, and duration of the services and assistance required to meet identified needs.

(B) The programs, persons and/or agencies to which the beneficiary will be referred.

(C) Specific strategies to achieve specific beneficiary outcomes.

(D) Case manager's supervisor's signature.

(3) Implementation of the service plan includes linkage and consultation with and referral to providers of service. The case manager shall follow-up with the beneficiary and/or provider of service to determine whether services were received and whether the services met the needs of the beneficiary. The follow-up shall occur as quickly as indicated by the assessed need, but shall not exceed thirty (30) days from the scheduled service.

(4) Assistance with accessing the services identified in the service plan includes the following:

(A) Arranging appointments and/or transportation to medical, social, educational and other services.

(B) Arranging translation services to facilitate communication between the beneficiary and the case manager, or the beneficiary and other agencies or providers of service.

(5) Crisis assistance planning to coordinate and arrange immediate service or treatment needed in those situations that appear to be emergent in nature or which require immediate attention or resolution in order to avoid, eliminate or reduce a crisis situation for a specific beneficiary.

(A) For the target populations defined in Section 50262.7(a)(2), crisis assistance planning shall be restricted to non-medical situations.

(6) Periodic review of the beneficiary's progress toward achieving the service outcomes identified in the service plan to determine whether current services should be continued, modified or discontinued. The review or reinvestigation shall be:

(A) Completed at least every six months,

(B) Conducted by the case manager in consultation with the beneficiary and/or in consultation with the beneficiary's family or social support system, and

(C) Approved by the case manager's supervisor.

(7) Any modifications to the plan of service shall be made in writing and become an addendum to the plan of service.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14132.44, Welfare and Institutions Code. Reference: Section 14132.44, Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–96; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 6, Chapter 305, Statutes of 1995 (Register 96, No. 27).
2. New section refiled 10–29–96 as an emergency; operative 10–29–96 (Register 96, No. 44). Submitted to OAL for printing only pursuant to Section 6, Chapter 305, Statutes of 1995. A Certificate of Compliance must be transmitted to OAL by 2–26–97 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of HISTORY 2 (Register 97, No. 15).
4. Repealed by operation of Government Code section 11346.1(g) (Register 97, No. 15).
5. New section filed 4–10–97; operative 4–10–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

§ 51351.1. Targeted Case Management Provider Contracts.

(a) A targeted case management services provider may contract with a nongovernmental entity or the University of California, or both, to provide targeted case management services on its behalf, when the following conditions exist:

(1) The targeted case management services provider employs at least one case manager who provides all of the service components that constitute a targeted case management service, as described in Section 51351.

(2) The nongovernmental entity shall not be a local educational agency.

(b) If the targeted case management services provider has contracted with the same nongovernmental entity or the University of California, or both, to provide targeted case management services and perform and claim the costs of administrative activities pursuant to Welfare and Institutions Code, Section 14132.47, the following shall apply:

(1) The subcontract amount for targeted case management and the subcontract amount for administrative activities shall be separately identified in the agreement between the targeted case management service provider and the nongovernmental entity or the University of California, or both.

(2) Individual staff employed by the subcontractor shall only perform and claim the costs of targeted case management services or administrative activities, not both.

(3) Local governmental agency subcontractors shall not perform contract management, program planning and policy development, coordination of targeted case management data systems and claiming, targeted case management quality assurance and/or performance monitoring.

(c) All contracts between the targeted case management services provider and the nongovernmental entity or the University of California, or both, for the provision of targeted case management services under this section, shall be subject to the same terms and conditions as the contract between the department and the targeted case management services provider. The targeted case management services provider is liable for the acts and omissions of a subcontractor.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14132.44, Welfare and Institutions Code. Reference: Section 14132.44, Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–96; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 6, Chapter 305, Statutes of 1995 (Register 96, No. 27).
2. New section refiled 10–29–96 as an emergency; operative 10–29–96 (Register 96, No. 44). Submitted to OAL for printing only pursuant to Section 6, Chapter 305, Statutes of 1995. A Certificate of Compliance must be transmitted to OAL by 2–26–97 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of HISTORY 2 (Register 97, No. 15).
4. Repealed by operation of Government Code section 11346.1(g) (Register 97, No. 15).
5. New section filed 4–10–97; operative 4–10–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

§ 51355. Tuberculosis (TB) Related Services.

(a) The following outpatient services shall be covered as Tuberculosis (TB) Related Services as defined in Section 51187.1 when provided in accordance with the requirements of this chapter:

(1) Physician Services as specified in Section 51305.

(2) Laboratory Services as specified in Section 51311.

(3) Radiologic Services as specified in Section 51311.

(4) Anti–Tuberculosis Medications.

(5) Directly Observed Therapy as defined in Section 51187.1.

(6) Targeted Case Management Services as specified in Section 14132.44, Welfare and Institutions Code.

NOTE: Authority cited: Sections 10725, 14005.20, 14124.5 and 14132.44, Welfare and Institutions Code. Reference: Sections 14059 and 14132.44, Welfare and Institutions Code.

HISTORY

1. New section filed 8–16–95 as an emergency; operative 8–16–95 (Register 95, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–14–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 12–14–95 as an emergency; operative 12–14–95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–12–96 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–8–96 as an emergency; operative 4–8–96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–6–96 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–8–96 order, including new subsections (a)(4)–(6), repealer of subsection (b) and amendment of NOTE, transmitted to OAL 7–30–96 and filed 9–11–96 (Register 96, No. 37).

§ 51356. Licensed Midwife Services.

(a) The following services shall be covered as licensed midwife services under the Medi–Cal Program when provided by a licensed midwife supervised by a licensed physician and surgeon as specified in Section 51255:

(1) Attendance at cases of normal childbirth and

(2) The provision of prenatal, intrapartum, and postpartum care, including family planning care, for the mother, and immediate care for the newborn.

(b) All complications that arise during childbirth that may prevent a vaginal delivery or place the unborn child or mother at risk shall be immediately referred to the supervising licensed physician and surgeon as described in Section 51255.

(c) As used in this section, "supervision" shall not be construed to require the physical presence of the supervising licensed physician and surgeon.

(d) In the event of home birth attended by a licensed midwife, the midwife shall provide information and instructional materials on shaken baby syndrome to the parents or guardians of the newborn, pursuant to Health and Safety Code Section 24522.

(e) A licensed midwife shall provide newborn screening information to parents or guardians in accordance with the requirements of California Code of Regulations Title 17 Section 6504.

NOTE: Authority cited: Section 14124.5, Welfare and Institutions Code. Reference: Section 14132.39, Welfare and Institutions Code; Sections 550–558 and 2505–2521, Business and Professions Code; and Section 24522, Health and Safety Code.

HISTORY

1. New section filed 9–3–2004; operative 10–3–2004 (Register 2004, No. 36).

§ 51360. Local Educational Agency (LEA) Services.

(a) Local Educational Agency (LEA) Services, as defined in Section 1190.4, are covered to the extent specified in this section. Frequency limitations are set forth in Section 51535.5.

(b) LEA Services shall include (1) through (8) below:

(1) LEA health and mental health evaluation and health and mental health education services, which include any or all of the following:

(A) Nutritional assessment and nutrition education, consisting of assessments and non–classroom nutrition education delivered to the LEA eligible beneficiary based on the outcome of the nutritional health assessment (diet, feeding, laboratory values, and growth).

(B) Vision assessment, consisting of examination of visual acuity at the far point conducted by means of the Snellen Test.

(C) Hearing assessment, consisting of testing for auditory impairment using at–risk criteria and appropriate screening techniques as defined in Title 17, California Code of Regulations, Sections 2951(c).

(D) Developmental assessment, consisting of examination of the developmental level by review of developmental achievement in comparison with expected norms for age and background.

(E) Assessment of psychosocial status, consisting of appraisal of cognitive, emotional, social, and behavioral functioning and self–concept through tests, interviews, and behavioral evaluations.

(F) Health education and anticipatory guidance appropriate to age and health status, consisting of non–classroom health education and anticipatory guidance based on age and developmentally appropriate health education.

(2) LEA physical therapy, which consists of physical therapy services as set out in Section 51309(b) when provided by an LEA practitioner to an LEA eligible beneficiary.

(3) LEA occupational therapy, which consists of physical therapy services as set out in Section 51309(c) when provided by an LEA practitioner to an LEA eligible beneficiary.

(4) LEA speech pathology and audiology services, which consist of: speech pathology services as defined in Section 51096, and audiology

services as defined in Section 51098 when provided by an LEA practitioner to an LEA eligible beneficiary.

(5) LEA psychology and counseling services, consisting of diagnosis and psychological counseling of LEA eligible beneficiaries with identified mental health, substance abuse, behavioral adjustment, or social problems.

(6) LEA nursing services, consisting of preventive and medically necessary nursing services rendered at the school site. Services for accompanying the LEA eligible beneficiary off–campus for delivery of health services are also reimbursable if specified as medically necessary in the Individualized Education Plan (IEP), as defined in Education Code, Section 56340 et seq.; Individualized Family Service Plan (IFSP), as set forth in Government Code, Section 95020; or Individualized Health and Support Plan (IHSP), as set forth in Section 51535.5(f)(2)(C).

(7) LEA school health aide services, consisting of the direct provision of specialized physical health care services rendered at the school site. Services for accompanying the LEA eligible beneficiary off–campus for delivery of health services are also reimbursable if specified as medically necessary in the child's IEP, as set forth in Education Code, Section 56340 et seq.; IFSP, as set forth in Government Code, Section 95020; or IHSP, as set forth in Section 51535.5(f)(2)(C).

(8) LEA medical transportation, which consists of medical transportation as described in Section 51323(a), and the associated mileage.

(A) For beneficiaries without an IEP or IFSP, services are limited to trips between the school site and a location at which health services are rendered.

(B) For beneficiaries with an IEP or IFSP, LEA medical transportation may include trips to and from the residence, school site or other sites of service when all of the following conditions are met on the day of service:

1. The beneficiary receives a Medicaid covered service other than medical transportation at the site being transported to; and

2. Both, the Medicaid covered service and medical transportation are included in the beneficiary's IEP or IFSP.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14124.5, 14131, 14132, 14132.15, 14133, 14133.1, 14133.3, 14133.6 and 14133.9, Welfare and Institutions Code; Section 56340 et seq., Education Code; and Section 95020, Government Code.

HISTORY

1. New section filed 12–22–93 as an emergency; operative 12–22–93 (Register 93, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–22–94 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12–22–93 order including amendment of subsections (b)(7)–(8) and new subsections (b)(8)(A)–(B)2 transmitted to OAL 4–20–94 and filed 6–2–94 (Register 94, No. 22).

§ 51365. Targeted Case Management Services Program.

(a) Persons who are eligible to receive targeted case management services shall consist of the following Medi–Cal beneficiary groups:

(1) High–risk persons as defined in Section 51185.

(2) Persons who have language or other comprehension barriers and:

(A) Are unable to access or appropriately utilize services themselves,

(B) Have demonstrated noncompliance with their medical regimen;

(C) Are unable to understand medical directions because of language or other comprehension barriers; or

(D) Have no community support system to assist in follow–up care at home.

(3) Persons who are 18 years of age and older and who:

(A) Are on probation and have a medical and/or mental condition; or

(B) Have exhibited an inability to handle personal, medical, or other affairs; or

(C) Are under public conservatorship of person and/or estate; or

(D) Have a representative payee; or

(E) Are in frail health and in need of assistance to access services in order to prevent institutionalization.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14132.44, Welfare and Institutions Code. Reference: Section 14132.44, Welfare and Institutions Code.

HISTORY

1. Change without regulatory effect renumbering former section 50262.7 to new section 51365 filed 6–9–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 24).

Article 5. Scope and Duration of Supplemental Schedule of Benefits

§ 51401. Medically Needy Benefits.

HISTORY

1. Amendment filed 7–1–70; designated effective 8–1–70 (Register 70, No. 27). For prior history, see Register 69, No. 19.
2. Repealer filed 9–30–71 as an emergency; designated effective 10–1–71 (Register 71, No. 40).
3. Certificate of Compliance—Section 11422.1, Gov. Code, filed 1–25–72 (Register 72, No. 5).

§ 51403. General Provisions.

HISTORY

1. Repealer filed 5–14–76 as an emergency; effective upon filing (Register 76, No. 20). For prior history, see Register 72, No. 40.
2. Certificate of Compliance filed 9–8–76 (Register 76, No. 37).

§ 51405. Physicians' Services.

HISTORY

1. Repealer filed 5–14–76 as an emergency; effective upon filing (Register 76, No. 20). For prior history, see Register 75, No. 43.
2. Certificate of Compliance filed 9–8–76 (Register 76, No. 37).

§ 51406. Nursing Home and Convalescent Home Services.

HISTORY

1. Repealer filed 7–1–70; designated effective 8–1–70 (Register 70, No. 27). For prior history, see Register 69, No. 19.

§ 51407. Blood and Blood Derivatives.

HISTORY

1. Repealer filed 7–1–70; designated effective 8–1–70 (Register 70, No. 27). For prior history, see Register 67, No. 52.

§ 51409. Physical Therapy Services.

NOTE: Authority cited: Section 14133, Welfare and Institutions Code.

HISTORY

1. Repealer filed 5–14–76 as an emergency; effective upon filing (Register 76, No. 20). For prior history, see Register 75, No. 34.
2. Certificate of Compliance filed 9–8–76 (Register 76, No. 37).

§ 51410. Podiatrists' Services.

NOTE: Authority cited: Sections 10553.1, 10554, 10554.1, 11004, 11050, 11100, 14005.1, 14005.2, 14005.4, 14005.6, 14005.7, 14016, 14017, 14023, 14051, 14053, 14100.1, 14105, 14124.5 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 12–28–73 as an emergency; designated effective 1–1–74. Certificate of Compliance included (Register 73, No. 52).
2. Repealer filed 5–14–76 as an emergency; effective upon filing (Register 76, No. 20).
3. Certificate of Compliance filed 9–8–76 (Register 76, No. 37).

§ 51413. Prescribed Drugs.

HISTORY

1. Amendment filed 7–1–75 as an emergency; designated effective 7–1–75 (Register 75, No. 27). For prior history, see Register 72, No. 43.
2. Certificate of Compliance filed 10–24–75 (Register 75, No. 43).
3. Repealer filed 12–23–75 as an emergency; effective upon filing (Register 75, No. 52).
4. Certificate of Compliance filed 3–19–76 (Register 76, No. 12).

§ 51427. Inpatient Hospital Services.

HISTORY

1. Repealer filed 5–14–76 as an emergency; effective upon filing (Register 76, No. 20). For prior history, see Register 75, No. 43.
2. Certificate of Compliance filed 9–8–76 (Register 76, No. 37).

Article 6. Eligibility for Payment

§ 51451. Inclusions, Exclusions and Suspensions.

All individuals, partnerships, clinics, groups, associations, corporations or institutions meeting the requirements specified in the Definitions

(Article 2 of Chapter 3 of these Regulations) and Standards for Participation (Article 3 of Chapter 3 of these Regulations) may participate in the California Medical Assistance Program except where such individuals, partnerships, clinics, groups, associations, corporations or institutions have been suspended or have had their provider number(s) deactivated.

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code. Reference: Sections 14043.26, 14043.36, 14043.62, 14043.7 and 14123, Welfare and Institutions Code.

HISTORY

1. Amendment filed 6–23–66 as an emergency; effective upon filing; Certificate of Compliance included (Register 66, No. 19).
2. Amendment filed 11–15–68; effective thirtieth day thereafter (Register 68, No. 43).
3. Amendment filed 2–25–70; designated effective 4–1–70 (Register 70, No. 9).
4. Amendment filed 7–15–85; effective thirtieth day thereafter (Register 85, No. 29).
5. Amendment of section and NOTE filed 2–3–2003 as an emergency; operative 2–3–2003 (Register 2003, No. 6). Emergency amendments exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75. Amendments to remain in effect for 180 days pursuant to section 78, chapter 146, Statutes of 1999 (AB 1107). A Certificate of Compliance must be transmitted to OAL by 8–4–2003 or emergency language will be repealed by operation of law on the following day.
6. Amendment of section and NOTE refiled 8–5–2003 as an emergency; operative 8–5–2003 (Register 2003, No. 32). Emergency amendments exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75. Amendments to remain in effect for 180 days pursuant to section 78, chapter 146, Statutes of 1999 (AB 1107). A Certificate of Compliance must be transmitted to OAL by 2–2–2004 or emergency language will be repealed by operation of law on the following day.
7. Amendment of section and NOTE refiled 2–3–2004 as an emergency; operative 2–3–2004 (Register 2004, No. 6). Emergency amendments exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75. A Certificate of Compliance must be transmitted to OAL by 6–2–2004 or emergency language will be repealed by operation of law on the following day.
8. Reinstatement of section and NOTE as they existed prior to 2–3–2004 emergency amendment by operation of Government Code section 11346.1(f) (Register 2004, No. 24).
9. Amendment of section and NOTE refiled 6–8–2004 as an emergency; operative 6–8–2004 (Register 2004, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–6–2004 or emergency language will be repealed by operation of law on the following day.
10. Reinstatement of section as it existed prior to 6–8–2004 emergency amendment by operation of Government Code section 11346.1(f) (Register 2004, No. 41).
11. Amendment of section and NOTE filed 9–29–2004 as an emergency; operative 10–7–2004 (Register 2004, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–4–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL pursuant to Welfare and Institutions Code section 14043.75.
12. Amendment of section and NOTE refiled 1–27–2005 as an emergency; operative 2–5–2005 (Register 2005, No. 4). A Certificate of Compliance must be transmitted to OAL by 6–6–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.
13. Amendment of section and NOTE refiled 6–2–2005 as an emergency; operative 6–7–2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 10–5–2005 or emergency language will be repealed by operation of law on the following day. Deemed emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14043.75.
14. Certificate of Compliance as to 6–2–2005 order transmitted to OAL 9–29–2005 and filed 11–10–2005 (Register 2005, No. 45).

§ 51452. Violation of Regulations, Administrative Sanctions.

(a) Violation of any Medi–Cal statute, rule or regulation relating to the provision of health care services under the California Medical Assistance Program by an individual, partnership, clinic, group, association, corporation, or institution, or any officer, director, agent or employee, shall be deemed contrary to public health, safety, welfare, morals, and to said program, and to constitute grounds for issuing a reprimand; placing the provider on probationary status; or suspension from participation in said program.

(b) The type and degree of the sanction shall be governed by the severity of the violation. Mitigating circumstances shall be considered in reaching a final determination on whether administrative sanctions will be imposed and the extent and degree of their severity.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14123, Welfare and Institutions Code.

HISTORY

1. New section filed 2–25–70; designated effective 4–1–70 (Register 70, No. 9).
2. Amendment filed 4–9–80; effective thirtieth day thereafter (Register 80, No. 15).
3. Editorial correction of NOTE filed 12–14–84 (Register 84, No. 50).

§ 51453. Recommendation for Suspension.

The Director may commence proceedings under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code leading to the suspension of any individual, partnership, clinic, group, association, corporation or institution from participation in the California Medical Assistance Program, upon the recommendation of a county, a fiscal intermediary, any state or federal department, agency, board or commission, a person or group of persons, or upon his own motion; however, only the Director or other personnel employed by the Department shall be authorized to sign an accusation to commence the proceedings referred to herein.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14123, Welfare and Insitutions Code.

HISTORY

1. Amendment filed 11–15–68; effective thirtieth day thereafter (Register 68, No. 43). For prior history, see Register 67, No. 52.
2. Amendment filed 2–25–70; designated effective 4–1–70 (Register 70, No. 9).
3. Amendment filed 1–18–74; effective thirtieth day thereafter (Register 74, No. 3).
4. New NOTE filed 12–14–84 (Register 84, No. 50).

§ 51454. Provider Defined.

As used in this article, "provider" shall have the same meaning as in Section 51051.

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code; and Section 78, Chapter 146, Statutes of 1999. Reference: Sections 14043, 14043.1 and 14123, Welfare and Institutions Code.

HISTORY

1. New section filed 2–25–70; designated effective 4–1–70 (Register 70, No. 9).
2. New NOTE filed 12–14–84 (Register 84, No. 50).
3. Amendment of section and NOTE filed 9–28–99 as an emergency; operative 9–28–99 (Register 99, No. 40). A Certificate of Compliance must be transmitted to OAL by 3–27–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
4. Amendment of section and NOTE refiled 11–24–99 as an emergency; operative 11–24–99 (Register 99, No. 48). A Certificate of Compliance must be transmitted to OAL by 5–22–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
5. Amendment of section and NOTE refiled 5–5–2000 as an emergency; operative 5–22–2000 (Register 2000, No. 18). A Certificate of Compliance must be transmitted to OAL by 9–19–2000 or emergency language will be repealed by operation of law on the following day.
6. Amendment of section and NOTE refiled 8–28–2000 as an emergency; operative 9–6–2000 (Register 2000, No. 35). A Certificate of Compliance must be transmitted to OAL by 1–4–2001 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 8–28–2000 order transmitted to OAL 12–26–2000 and filed 2–8–2001 (Register 2001, No. 6).

§ 51454.1. Provider of Personal Care Services Defined.

For purposes of this article, providers of personal care services are defined in Section 51181.

NOTE: Authority cited: Section 14132.95, Welfare and Institutions Code; Section 8, Chapter 939, Statutes of 1922; Section 3, Chapter 7, Statutes of 1993. Reference: Section 14132.95, Welfare and Institutions Code; Section 1396d(a)(7) of Title 42, of the United States Code; Article 7 (commencing with Section 12300) of Part 3 of Division 9 of the Welfare and Institutions Code; Section 440.170(f) of Title 42 of the Code of Federal Regulations.

HISTORY

1. New section filed 4–14–93 as an emergency; operative 4–14–93. Submitted to OAL for printing only pursuant to section 8, AB 1773 (Chapter 939, Statutes of 1992) (Register 93, No. 16).

§ 51455. Prior Authorization.

(a) Any provider may be subjected to a requirement of prior authorization for all or certain specified services to be rendered under the Califor-

nia Medical Assistance Program, by written notice served on such provider from the Director or a carrier. The requirement for prior authorization may be imposed on such provider by the Director upon a determination that the provider has been rendering unnecessary services to a Medi–Cal beneficiary.

(b) As used in this regulation, "unnecessary services" includes but is not limited to any of the following which exceed customary and usual practices in terms of frequency, quantity, propriety, or length of treatment:

(1) Office, home or inpatient visits.

(2) Furnishing, prescribing or ordering drugs, appliances, services, hospital, skilled nursing facility or intermediate care facility admissions.

(c) The written notice of requirement for prior authorization shall state the nature, type, and extent of the services determined by the director to have been unnecessary, and shall also state which services shall be subject to prior authorization and the duration that such prior authorization shall remain in force.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14103.6 and 14133, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (b) filed 8–8–78; effective thirtieth day thereafter (Register 78, No. 32). For prior history, see Register 70, No. 9.
2. Amendment of subsection (a) filed 8–16–78 as an emergency; designated effective 8–16–78 (Register 78, No. 32).
3. Certificate of Compliance filed 12–12–78 (Register 78, No. 50).
4. New NOTE filed 12–14–84 (Register 84, No. 50).

§ 51456. Signing Treatment Authorization Requests.

Any provider who prescribes a service shall not sign a Treatment Authorization Request (TAR) until the patient has been examined and all of the following information appears on the TAR:

(a) Beneficiary identification;

(b) Provider identification;

(c) Diagnosis and other pertinent medical information;

(d) Service or item requested.

All signatures shall constitute certification that the information submitted is current, accurate and complete and that the services or items requested on the Treatment Authorization Request are medically indicated and necessary.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14103.6, 14133 and 14133.1, Welfare and Institutions Code.

HISTORY

1. New section filed 11–4–74; effective thirtieth day thereafter (Register 74, No. 45).
2. Editorial correction of NOTE filed 12–14–84 (Register 84, No. 50).

§ 51457. Administrative Action.

HISTORY

1. Repealer filed 2–25–70; designated effective 4–1–70 (Register 70, No. 9). For prior history, see Register 68, No. 43.

§ 51458. Cause for Suspension.

(a) The conviction of a provider of either (1) a felony, or (2) any offense, misdemeanor or felony, involving moral turpitude shall be grounds for suspension from participation in the California Medical Assistance Program. The record of such conviction shall be conclusive evidence of the fact that the conviction occurred. The Department may inquire into the circumstances surrounding the commission of the crime in order to determine if such conviction was of an offense involving moral turpitude and suspension is warranted. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of a felony, or any offense involving moral turpitude, shall be deemed to be a conviction within the meaning of this section.

(b) The Department may suspend a provider from the program based upon a judgment of conviction regardless of whether the provider obtains a subsequent order under the provisions of section 1203.4 of the Penal Code allowing him to withdraw his plea of guilty, and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the information or indictment.

(c) Suspension of a provider of service from participation in the Medicare program shall be grounds for suspension of that provider from participation in the Medi–Cal Program.

(d) The suspension or revocation of a provider's license, certification, permit or registration or the failure to obtain such license, certification permit or registration shall be grounds for suspension from participation in the California Medical Assistance program, when such license, certification, permit or registration is required for program participation in accordance with article 3.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code; and Section 208, Health and Safety Code. Reference: Section 14123, Welfare and Institutions Code.

HISTORY

1. New section filed 1–22–71; designated effective 3–1–71 (Register 71, No. 4).
2. New subsection (c) filed 12–28–73 as an emergency; designated effective 1–1–74. Certificate of Compliance included (Register 73, No. 52).
3. New subsection (d) filed 2–23–79; effective thirtieth day thereafter (Register 79, No. 8).
4. Amendment filed 9–28–79; effective thirtieth day thereafter (Register 79, No. 39).
5. Editorial correction of NOTE filed 12–14–84 (Register 84, No. 50).
6. Amendment of subsection (d) filed 2–15–91; operative 3–17–91 (Register 91, No. 11).

§ 51458.1. Cause for Recovery of Provider Overpayments.

(a) The Department shall recover overpayments to providers including, but not limited to, payments determined to be:

(1) In excess of program payment ceilings or allowable costs.

(2) In excess of the amounts usually charged by a provider.

(3) For services not documented in the provider's records, or for services where the provider's documentation justifies only a lower level of payment.

(4) Based upon false or incorrect claims or cost reports from providers.

(5) For services deemed to have been excessive, medically unnecessary or inappropriate.

(6) For services prescribed, ordered or rendered by persons who did not meet the standards for participation in the Medi–Cal program at the time the services were prescribed, ordered or rendered.

(7) For services not covered by the program.

(8) For services to persons not eligible for program coverage when the services were provided.

(9) For Medi–Cal covered services already paid for by the beneficiary, but not yet refunded, or for services already reimbursed by the Department or other coverage.

(10) For services that should have been billed to other coverage.

(11) For services not ordered or prescribed, when an order or prescription is required.

(12) For services not authorized, when a treatment authorization request is required.

(13) In violation of any other Medi–Cal regulation where overpayment has occurred.

(b) The provisions of Sections 51488 and 51488.1 shall prevail in circumstances that conflict with this section.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005, 14005.1, 14005.4, 14005.8, 14018, 14019, 14021, 14024, 14026, 14103.2, 14103.6, 14105, 14107, 14110.1, 14117, 14123, 14124.1, 14124.2, 14124.5, 14131, 14132, 14133, 14133.1, 14170, 14176 and 1477, Welfare and Institutions Code.

HISTORY

1. New section filed 12–31–80; effective thirtieth day thereafter (Register 81, No. 1).
2. Editorial correction of NOTE (Register 84, No. 35).
3. Editorial correction of subsection (a)(9) (Register 95, No. 45).

§ 51458.2. Statistical Extrapolation of Medi–Cal Provider Reviews.

(a) The Department shall make a demand to recover an amount due from a Medi–Cal provider (as specified in Section 51458.1) using probability sampling to extrapolate the recoverable amount when the extrapo-

lated recovery amount exceeds the cost to the Department of doing the audit.

(b) Probability sampling shall be done in conformance with generally accepted statistical standards and procedures described in any textbook on statistical sampling methods.

(c) Whenever the results of a probability sample are used to extrapolate the amount to be recovered, the demand for recovery shall be accompanied by a clear description of:

(1) The universe from which the sample was drawn,

(2) The sample size and method used to select the sample,

(3) The formulas and calculation procedures used to determine the amount to be recovered, and

(4) The confidence level used to calculate the precision of the extrapolated overpayment.

(d) As used in this section, the following definitions shall apply:

(1) "Probability sampling" means the standard statistical methodology in which a sample is selected based on the theory of probability (a mathematical theory used to study the occurrence of random events).

(2) "Extrapolation" means the methodology whereby an unknown value can be estimated byprojecting the results of a probability sample to the universe from which the sample was drawn with a calculated precision (margin of error).

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14170 and 14133, Welfare and Institutions Code.

HISTORY

1. New section filed 4–13–88; operative 5–13–88 (Register 88, No. 17).

§ 51459. Reinstatement.

A provider whose participation in the California Medical Assistance Program has been suspended may petition the Department for reinstatement or reduction of term of suspension after a period of not less than one year has elapsed from the effective date of the decision, or from the date of the denial of a similar petition. The Department shall give notice to the Attorney General of the filing of the petition, and the Attorney General and the petitioner shall be afforded an opportunity to present written argument to the Department. The Department shall decide the petition, and the decision shall include the reasons therefor.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14124.6, Welfare and Institutions Code.

HISTORY

1. Amendment filed 6–23–66 as an emergency; effective upon filing; Certificate of Compliance included (Register 66, No. 19).
2. Amendment filed 11–15–68; effective thirtieth day thereafter (Register 68, No. 43).
3. Repealer and new section filed 2–25–70; designated effective 4–1–70 (Register 70, No. 9).
4. New NOTE filed 12–14–84 (Register 84, No. 50).

§ 51460. Special Claims Review.

(a) The Department may place any provider on special claims review for specific or all services provided. The special claims review may be performed by the Department, or by the fiscal intermediary under direction of the Department. Special claims review may be imposed on a provider upon a determination that the provider has submitted improper claims, including claims which incorrectly identify or code services provided.

(b) A provider, while on special claims review, shall furnish any material requested by the Department in order to substantiate specific or all claims subject to special claims review.

(c) The Department shall provide written notice to any provider placed on special claims review. The written notice shall include the following:

(1) Services determined to have been improperly billed by the provider.

(2) Services subject to special claims review.

(3) Documentation to be submitted with all claims subject to special claims review.

(4) Instructions for submission of claims subject to special claims review.

NOTE: Authority cited: Sections 14105, 14124.5, and 14133(b), Welfare and Institutions Code. Reference: Sections 14104.5 and 14133(b), Welfare and Institutions Code.

HISTORY

1. New section filed 12–20–78; effective thirtieth day thereafter (Register 78, No. 51).

§ 51461. Orders for Suspension or Placement on Prior Authorization.

HISTORY

1. Repealer filed 2–25–70; designated effective 4–1–70 (Register 70, No. 9). For prior history, see Register 68, No. 21.

§ 51463. Requests for Hearing.

HISTORY

1. Amendment filed 11–15–68; effective thirtieth day thereafter (Register 68, No. 43).
2. Repealer filed 2–25–70; designated effective 4–1–70 (Register 70, No. 9).

§ 51464. When Hearing Not Requested.

HISTORY

1. New section filed 5–31–68; effective thirtieth day thereafter (Register 68, No. 21).
2. Repealer filed 2–25–70; designated effective 4–1–70 (Register 70, No. 9).

§ 51465. Review by the Director.

HISTORY

1. Amendment filed 11–15–68; effective thirtieth day thereafter (Register 68, No. 43). For prior history, see Register 68, No. 21.
2. Repealer filed 2–25–70; designated effective 4–1–70 (Register 70, No. 9).

§ 51466. Disclosure of Significant Beneficial Interest.

(a) A provider shall not bill or submit a claim for service involving the referral of a beneficiary to or from another provider unless each provider has disclosed any significant beneficial interest existing between the providers. Disclosure shall be accomplished by completing and submitting a Medi–Cal Personal Disclosure Statement of Significant Beneficial Interest form as provided by the Department.

(b) A provider that fails to comply with (a) or that submits a false or incorrect disclosure shall be subject to suspension from participation or payment under the Medi–Cal program.

(c) For the purpose of this section:

(1) "Significant beneficial interest" means any financial interest held by a provider, or a member of the provider's immediate family, in another provider that is equal to or greater than the lesser of the following:

(A) Five per cent of the whole.

(B) $25,000.00.

(2) "Immediate family" means spouse, son, daughter, father, mother, father–in–law, mother–in–law, son–in–law or daughter–in–law.

(d) Interests held by a provider and members of that provider's immediate family shall be combined and valued as a single interest.

(1) The extent of financial interest shall be determined as follows:

(A) Full ownership shall be considered as 100 percent financial interest and control regardless of mortgages or other incumbrances.

(B) Interest in a partnership shall be determined on the basis of the percentage of ownership specified in either a written or verbal partnership agreement.

(C) Interest in a corporation shall be determined by computing the percentage of stock or bonds owned of the total outstanding shares or bonds of the corporation as of the last working day of the month preceding compliance with (a).

(D) All other financial arrangements shall require establishment of a fair and reasonable dollar value for both the interest and the whole. The percentage interest shall be computed as the percentage the dollar value of the interest represents of the whole.

(2) The dollar value of the following types of interests shall be determined as follows:

(A) Bonds, over–the–counter stocks and stocks listed on the major stock exchanges shall be valued at the closing selling price on the last working day of the month preceding compliance with (a).

(B) Stocks in a closely held corporation shall be valued at the original purchase price, par value, or current market value, whichever is greater.

(C) Partnership interests shall be valued at the total dollar amount invested in organizing the partnership. A fair and reasonable dollar equivalent shall be determined if investment is not in form of monies.

(D) All other financial arrangements shall be valued at the actual dollar investment or a fair and reasonable dollar equivalent for investments not in the form of monies.

NOTE: Authority cited: Sections 14022 and 14124.5, Welfare and Institutions Code. Reference: Sections 14022 and 14124.5, Welfare and Institutions Code.

HISTORY

1. New section filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).
2. Amendment filed 4–25–80; effective thirtieth day thereafter (Register 80, No. 17).

§ 51466.1. Significant Beneficial Interest.

NOTE: Authority cited: Sections 14022 and 14124.5, Welfare and Institutions Code. Reference: Sections 14022 and 14124.5, Welfare and Institutions Code.

HISTORY

1. New section filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).
2. Repealer filed 4–25–80; effective thirtieth day thereafter (Register 80, No. 17).

§ 51467. Advertising.

NOTE: Authority cited: Section 14124.5, Welfare and Institutions Code. Reference: Chapter 905, Statutes of 1978.

HISTORY

1. New section filed 6–23–66 as an emergency; effective upon filing; Certificate of Compliance included (Register 66, No. 19).
2. Amendment filed 4–17–67; effective thirtieth day thereafter (Register 67, No. 16).
3. Repealer filed 7–25–79; effective thirtieth day thereafter (Register 79, No. 30).

§ 51469. Decertification.

HISTORY

1. New section filed 11–15–68; effective thirtieth day thereafter (Register 68, No. 43).
2. Repealer filed 2–25–70; designated effective 4–1–70 (Register 70, No. 9).

§ 51470. Billing for Benefits Provided.

(a) A provider shall not bill or submit a claim to the Department or a fiscal intermediary for Medi–Cal benefits not provided to a Medi–Cal beneficiary.

(b) A dental prosthesis, custom–made eye appliance, custom–made prosthetic applicance, or custom–made orthotic appliance shall be deemed provided after diligent attempts to effect delivery have proved unsuccessful or delivery is impossible due to circumstances beyond the control of the provider. Payment for undelivered appliances shall be limited to 80% of the amount which would have been payable had delivery been accomplished. Undelivered appliances for which claims are submitted and paid shall be retained by the provider for a period not less than one year from the date it was ordered from the fabricating laboratory for purposes of delivery to the beneficiary or the Department on demand. If delivery is made to the patient or a representative of the Department on demand within one year of the date of service, the payment on the original claim can be adjusted to provide a total compensation equal to that which would have been forthcoming had delivery been made on the date of service.

(c) Services provided by a selected substitute provider shall be considered to have been provided by the billing provider if all of the following conditions are met:

(1) Services are provided during the temporary absence of the billing provider.

(2) The substitute provider is also a qualified Medi–Cal provider.

(3) The substitute provider has an agreement with the billing provider to provide services in the absence of the billing provider and not to independently bill for the same service.

(4) The claim clearly identifies the substitute provider by name and provider number.

(d) A provider shall not bill or submit a claim to the Department or a fiscal intermediary for Medi–Cal covered benefits provided to a Medi–Cal beneficiary:

[The next page is 466.3.]

(1) For which the provider has received and retained payment.

(2) Which do not meet the requirements of Department regulations.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14105, Welfare and Institutions Code.

HISTORY

1. New section filed 2–25–70; designated effective 4–1–70 (Register 70, No. 9).
2. Amendment filed 8–31–79; effective thirtieth day thereafter (Register 79, No. 35).
3. Amendment filed 11–29–79; effective thirtieth day thereafter (Register 79, No. 48).
4. Amendment of subsection (c)(3) filed 1–16–80; effective thirtieth day thereafter (Register 80, No. 3).
5. Editorial correction of NOTE filed 12–14–84 (Register 84, No. 50).

§ 51471. Seeking Reimbursement from Beneficiaries.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14019.3, 14019.4, 14105 and 14134, Welfare and Institutions Code.

HISTORY

1. New section filed 8–6–70; designated effective 9–7–70 (Register 70, No. 32).
2. Amendment filed 9–30–71 as an emergency; designated effective 10–1–71 (Register 71, No. 40).
3. Certificate of Compliance—Section 11422.1, Gov. Code, filed 1–25–72 (Register 72, No. 5).
4. Amendment filed 8–8–78; effective thirtieth day thereafter (Register 78, No. 32).
5. New subsection (a)(3) filed 11–17–81 as an emergency; effective upon filing (Register 81, No. 47). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3–17–82.
6. Certificate of Compliance transmitted to OAL 3–16–82 and filed 4–16–82 (Register 82, No. 16).
7. Editorial correction of NOTE filed 12–14–84 (Register 84, No. 50).
8. Repealer filed 6–28–89; operative 7–28–89 (Register 89, No. 26).

§ 51471.1. Reimbursements for Program Underpayments.

Providers shall cooperate with the Department in making reimbursements to beneficiaries for Medi–Cal program underpayments. Providers shall provide such beneficiaries with documentation of claims for reimbursement on forms provided by the Department. Providers shall accept an underpayment adjustment from the Medi–Cal program for such beneficiaries and reimburse such beneficiaries the full amount of that adjustment, up to the amount actually received in payment from the beneficiary for the medical services in question.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.7, 14017 and 14018, Welfare and Institutions Code.

HISTORY

1. New section filed 3–21–77 as an emergency; effective upon filing (Register 77, No. 13). For prior history, see Register 77, No. 13.
2. Certificate of Compliance filed 5–20–77 (Register 77, No. 21).
3. Editorial correction of first sentence (Register 95, No. 45).

§ 51472. Sub–Standard Services.

No provider shall render to a Medi–Cal beneficiary health care services which are below or less than the standard of acceptable quality.

HISTORY

1. New sections 51472 through 51478 filed 2–25–70; designated effective 4–1–70 (Register 70, No. 9).

§ 51473. Excessive Services.

No provider shall render to any Medi–Cal beneficiary, or submit a claim for reimbursement for, any health care service or services clearly in excess of accepted standards of practice.

HISTORY

1. New section filed 2–25–70; designated effective 4–1–70 (Register 70, No. 9). * For technical reasons, History Note printed in Register 80, No. 13.

§ 51473.1. Referral for Excessive Services.

(a) A provider shall not refer any Medi–Cal beneficiary for any health care service which is clearly in excess of accepted standards of practice.

(b) A provider shall not prescribe drugs for any beneficiary that are clearly beyond the beneficiary's legitimate medical needs.

NOTE: Authority cited: Section 14124.5, Welfare and Institutions Code. Reference: Sections 14103.6, 14103.75 and 14133, Welfare and Institutions Code.

HISTORY

1. Amendment filed 8–16–78 as an emergency; designated effective 8–16–78 (Register 78, No. 32). For prior history, see Register 72, No. 40.
2. Certificate of Compliance filed 12–12–78 (Register 78, No. 50). For prior history, see Register 78, No. 32.
3. Editorial correction of NOTE filed 12–14–84 (Register 84, No. 50).

§ 51473.2. Services to Children.

(a) A provider may render Medi–Cal program services to a child without parental consent only under those conditions specified by the California Civil Code, Division First, Part 1.

(b) Claims for reimbursement shall be submitted and paid for only those health care services provided in accordance with (a) above.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14008, 14008.5 and 14010, Welfare and Institutions Code.

HISTORY

1. New section filed 10–31–78 as an emergency; designated effective 11–1–78 (Register 78, No. 44).
2. Certificate of Compliance filed 2–6–79 (Register 79, No. 6).
3. Editorial Correction of NOTE filed 12–13–84 (Register 84, No. 50).
4. Amendment of subsection (a) filed 7–15–85; effective thirtieth day thereafter (Register 85, No. 29).

§ 51474. False Advertising.

NOTE: Authority cited: Section 14124.5, Welfare and Institutions Code. Reference: Section 14124.5, Welfare and Institutions Code.

HISTORY

1. New section filed 2–25–70; designated effective 4–1–70 (Register 70, No. 9). * For technical reasons, History Note printed in Register 80, No. 13.
2. Repealer filed 7–15–85; effective thirtieth day thereafter (Register 85, No. 29).

§ 51475. Refusal to Render Services.

NOTE: Authority cited: Section 14124.5, Welfare and Institutions Code. Reference: Section 14124.5, Welfare and Institutions Code.

HISTORY

1. New section filed 2–25–70; designated effective 4–1–70 (Register 80, No. 13). * For technical reasons, History Note printed in Register 80, No. 13.
2. Repealer filed 7–15–85; effective thirtieth day thereafter (Register 85, No. 29).

§ 51476. Keeping and Availability of Records.

(a) Each provider shall keep, maintain, and have readily retrievable, such records as are necessary to fully disclose the type and extent of services provided to a Medi–Cal beneficiary. Required records shall be made at or near the time at which the service is rendered. Such records shall include, but not be limited to the following:

(1) Billings.

(2) Treatment authorization requests.

(3) All medical records, service reports, and orders prescribing treatment plans.

(4) Records of medications, drugs, assistive devices, or appliances prescribed, ordered for, or furnished to beneficiaries.

(5) Copies of original purchase invoices for medication, appliances, assistive devices, written requests for laboratory testing and all reports of test results, and drugs ordered for or supplied to beneficiaries.

(6) Copies of all remittance advices which accompany reimbursement to providers for services or supplies provided to beneficiaries.

(7) Identification of the person rendering services. Records of each service rendered by nonphysician medical practitioners (as defined in Title 22, CAC, Section 51170) shall include the signature of the nonphysician medical practitioner and the countersignature of the supervising physician.

(b) Records of institutional providers shall include, in addition, the following:

(1) Records of receipts and disbursements of personal funds of beneficiaries being held in trust by the provider.

(2) Employment records including shifts, schedules and payroll records of employees.

(3) Book records of receipts and disbursements by the provider.

(4) Individual ledger accounts reflecting credit and debit balances for each beneficiary to whom services are provided.

(c) Records of providers shall document the meeting of Code I restrictions for medical supplies listed in Section 59998 and for drugs listed in the Medi–Cal List of Contract Drugs as follows:

(1) The practitioner who issues a prescription for a Code I supply or drug shall document, in the patient's chart, the patient's diagnostic or clinical condition that fulfills the Code I restriction.

(2) The dispenser shall maintain readily retrievable documentation of the patient's diagnostic or clinical condition information that fulfills the Code I restriction. If this Code I diagnostic or clinical condition information is transmitted to the dispenser other than by personal handwritten order from the prescriber, the dispenser shall document the transmittal date and the name of prescriber or the employee or agent who is legally authorized to transmit such information. The documentation shall be personally signed by the dispenser.

(d) Every practitioner who issues prescriptions for Medi–Cal beneficiaries shall maintain, as part of the patient's chart, records which contain the following for each prescription:

(1) Name of the patient.

(2) Date prescribed.

(3) Name, strength and quantity of the item prescribed.

(4) Directions for use.

(e) Records of medical transportation providers shall include, in addition to (a):

(1) Time and date of service for each beneficiary.

(2) Odometer readings at each pick–up and delivery location.

(3) The provider assigned vehicle identification code and name of the operator providing the service.

(4) Names of beneficiaries transported in total or partial group runs.

(f) Records of providers of psychiatric and psychological services shall include in addition to (a):

(1) Patient logs, appointment books or similar documents showing the date and time allotted for appointment of each patient or group of patients, and the time actually spent with such patients.

(g) A provider shall make available, during regular business hours, all pertinent financial books and all records concerning the provision of health care services to a Medi–Cal beneficiary, and all records required to be made and retained by this section, to any duly authorized representative of the Department acting in the scope and course of employment including, but not limited to, employees of the Attorney General, Medi–Cal Fraud Unit duly authorized and acting within the scope and course of their employment. Failure to produce records may result in sanctions, audit adjustments, or recovery of overpayments, in accordance with Section 51458.1 of this title.

NOTE: Authority cited: Sections 14105, 14105.35 and 14124.5, Welfare and Institutions Code. Reference: Sections 14107, 14124.1, 14124.2, 14133, 14133.3 and 14170, Welfare and Institutions Code.

HISTORY

1. Amendment filed 8–10–84; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 84, No. 32). For prior history, see Register 81, No. 48.
2. Amendment of subsection (c) and NOTE filed 1–9–95; operative 3–1–95 (Register 95, No. 2).

§ 51476.1. Pharmacy and Clinic with Special Permit Records of Pharmaceutical Services.

(a) Pharmacy records or records of drugs dispensed by a clinic that has obtained a special permit pursuant to Business and Professions Code Section 4063 et seq. shall be maintained and readily retrievable. Original written prescription orders presented to the pharmacist or clinic shall be retained. Oral prescription orders shall be reduced to writing, by hand or machine, and retained. The records describing the provision of a pharmaceutical service or a clinic dispensed drug to a Medi–Cal beneficiary, shall include, but not be limited to the following:

(1) Full beneficiary name.

(2) Name, category of professional licensure and license number of the prescriber.

(3) Name, strength, and quantity of the drug or medical supply dispensed, as applicable.

(4) Directions for use of the drug or medical supply.

(5) Name of the principal labeler of any multi–source drug or medical supply dispensed when not specifically identified by the brand name of the drug dispensed.

(6) Date of service.

(7) Name or initials of the pharmacist or clinic dispenser that provided the service.

(8) A unique number to identify each pharmaceutical service or drug billed to the program. This number shall be the "prescription number" required on the claim form.

(b) Pharmacy records shall include documentation of compliance with Code I restrictions for medical supplies and drugs in accordance with Section 51476(c).

(c) Records of clinics with special permits shall include documentation of compliance with Code I restrictions for drugs in accordance with Section 51476(c).

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code; and Section 208, Health and Safety Code. Reference: Sections 14124.1, 14124.2 and 14132, Welfare and Institutions Code; and Section 4063, Business and Professions Code.

HISTORY

1. New section filed 4–9–80; effective thirtieth day thereafter (Register 80, No. 15).
2. New subsection (b) filed 6–16–81; designated effective 8–1–81 (Register 81, No. 25).
3. Amendment of section heading, text and NOTE filed 1–6–94; operative 2–7–94 (Register 94, No. 1).

§ 51476.2. Personal Care Services Records.

Each county shall keep, maintain, and have readily retrievable, such records as are necessary to fully disclose the type and extent of personal care services provided to a Medi–Cal beneficiary. Records shall be made at or near the time the service is rendered or the assessment or other activity is performed. Such records shall include, but not be limited to the following:

(a) Timesheets

(b) Assessment forms and notes

(c) All service records, care plans, and orders/prescriptions ordering personal care.

NOTE: Authority cited: Section 14132.95, Welfare and Institutions Code; Section 8, Chapter 939, Statutes of 1922; Section 3, Chapter 7, Statutes of 1993. Reference: Section 14132.95, Welfare and Institutions Code; Section 1396d(a)(7) of Title 42, of the United States Code; Article 7 (commencing with Section 12300) of Part 3 of Division 9 of the Welfare and Institutions Code; Section 440.170(f) of Title 42 of the Code of Federal Regulations.

HISTORY

1. New section filed 4–14–93 as an emergency; operative 4–14–93. Submitted to OAL for printing only pursuant to section 8, AB 1773 (Chapter 939, Statutes of 1992) (Register 93, No. 16).

§ 51477. Confidential Beneficiary Information.

NOTE: Authority cited: Section 14124.5, Welfare and Institutions Code. Reference: Section 14124.5, Welfare and Institutions Code.

HISTORY

1. New section filed 2–25–70; designated effective 4–1–70 (Register 70, No. 9). * For technical reasons, History Note printed in Register 80, No. 13).
2. Repealer filed 7–15–85; effective thirtieth day thereafter (Register 85, No. 29).

§ 51478. Prohibition of Rebate, Refund, or Discount.

No provider shall offer, give, furnish, or deliver any rebate, refund, commission preference, patronage dividend, discount, or any other gratuitous consideration, in connection with the rendering of health care service to any Medi–Cal beneficiary. No provider shall solicit, request, accept, or receive, any rebate, refund, commission, preference, patronage dividend, discount, or any other gratuitous consideration, in connection with the rendering of health care service to any Medi–Cal beneficiary.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14105, Welfare and Institutions Code.

HISTORY

1. New section filed 2–25–70; designated effective 4–1–70 (Register 70, No. 25). * For technical reasons, History Note printed in Register 80, No. 13).
2. Amendment filed 10–23–86; effective thirtieth day thereafter (Register 86, No. 43).

§ 51479. Change of Order or Prescription.

No provider shall dispense prescription drugs or devices in an amount different from that prescribed without the prescriber's authorization, except for prescriptions refilled in accordance with:

(1) Business and Professions Code Section 4229.5.

(2) Health and Safety Code Section 11201.

NOTE: Authority cited: Sections 14019.5, 14105, 14105.7 and 14124.5, Welfare and Institutions Code. Reference: Sections 14053, 14105, 14105.7 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 1–22–71; designated effective 3–1–71 (Register 71, No. 4).
2. Amendment filed 2–21–79; designated effective sixtieth day after filing (Register 79, No. 8).
3. Editorial correction of NOTE filed 12–14–84 (Register 84, No. 50).

§ 51480. Discriminatory Billings.

(a) No provider shall bill or submit a claim for reimbursement for the rendering of health care services to a Medi–Cal beneficiary in any amount greater or higher than the usual fee charged by the provider to the general public for the same service.

(b) Notwithstanding (a) above, if an organized outpatient clinic renders services without charge to the general public under programs other than Titles XVIII or XIX financed by federal or state funds, Medi–Cal may be considered a third party payor and be billed for Medi–Cal covered services when rendered to Medi–Cal beneficiaries, provided that:

(1) The clinic has an established fee schedule; and

(2) It ascertains from all individuals served whether they have any third party coverage for medical care or services, and, where such coverage is available, that third party coverage is billed and diligent efforts made to collect such claimed amounts; and

(3) Medi–Cal is not the only third party payor from which the clinic seeks payment.

HISTORY

1. New sections 51480 through 51484 filed 2–25–70; designated effective 4–1–70 (Register 70, No. 9).
2. Amendment filed 7–13–73; effective thirtieth day thereafter (Register 73, No. 28).
3. Amendment filed 4–1–74; effective thirtieth day thereafter (Register 74, No. 14).

§ 51481. Forbidden Conduct.

No provider shall engage in conduct inimical to the public health, morals, welfare and safety of any Medi–Cal beneficiary.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14123, Welfare and Institutions Code.

HISTORY

1. New NOTE filed 12–14–84 (Register 84, No. 50).

§ 51482. Unwarranted Inpatient Discharge.

No provider shall order or cause the discharge of a Medi–Cal beneficiary inpatient from any facility without a valid medical–social reason which warrants discharge.

NOTE: Authority cited: Sections 10725, 14105, and 14124.5, Welfare and Institutions Code. Reference: Section 14105, Welfare and Institutions Code.

HISTORY

1. New NOTE filed 12–14–84 (Register 84, No. 50).

§ 51483. Provider Requirements.

No provider who fails to meet and comply with the requirements specified in the Definitions (Article 2 of Chapter 3 of these Regulations) and Standards (Article 3 of Chapter 3 of these Regulations), and no provider who fails to continue to meet and comply with the requirements specified in said Definitions and Standards, shall participate in the California Medical Assistance Program.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14123, Welfare and Institutions Code.

HISTORY

1. Change without regulatory effect adding NOTE (Register 86, No. 49).

§ 51483.1. Personal Care Provider Requirements.

All providers of personal care program services must be approved by Department of Health Services and shall sign the "Personal Care Program Provider/Enrollment Agreement" form [SOC 426(1/93)] designated by the Department agreeing to comply with all applicable laws and regulations governing Medi–Cal and personal care service. Beneficiaries shall be given a choice of service provider.

NOTE: Authority cited: Section 14132.95, Welfare and Institutions Code; Section 8, Chapter 939, Statutes of 1922; Section 3, Chapter 7, Statutes of 1993. Reference: Section 14132.95, Welfare and Institutions Code; Section 1396d(a)(7) of Title 42, of the United States Code; Article 7 (commencing with Section 12300) of Part 3 of Division 9 of the Welfare and Institutions Code; Section 440.170(f) of Title 42 of the Code of Federal Regulations.

HISTORY

1. New section filed 4–14–93 as an emergency; operative 4–14–93. Submitted to OAL for printing only pursuant to section 8, AB 1773 (Chapter 939, Statutes of 1992) (Register 93, No. 16).

§ 51484. Billing for Suspended Provider.

No provider shall bill or submit a claim for or on behalf of any provider who has been suspended from participation in the California Medical Assistance Program, for any services rendered in whole or in part by any such suspended provider during the term of such suspension.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14123, Welfare and Institutions Code.

HISTORY

1. New NOTE filed 5–9–84 (Register 84, No. 19).

§ 51485. Submission of False Information.

No provider shall submit or cause to be submitted any false or misleading statement of material fact when complying with departmental regulations, or in connection with any claim for reimbursement, or any request for authorization of services.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14107, Welfare and Institutions Code.

HISTORY

1. New section filed 1–22–71; designated effective 3–1–71 (Register 71, No. 4).
2. Amendment filed 8–31–79; effective thirtieth day thereafter (Register 79, No. 35).
3. Editorial correction of NOTE filed 12–14–84 (Register 84, No. 50).

§ 51485.1. Civil Money Penalties.

(a) The Director may assess civil money penalties against a person or provider ("provider") pursuant to Welfare and Institutions Code Section 14123.2 after a determination that the provider knows or has reason to know that items or services:

(1) Were not provided as claimed,

(2) Are not reimbursable under the Medi–Cal Program as provided in subsection (d), or

(3) Were claimed in violation of an agreement with the State.

(b) The Director's determination of whether a provider "knows or has reason to know" that items or services were not provided, are not reimbursable, or were claimed in violation of an agreement with the State (hereafter "improperly claimed"), shall be based on the following standards:

(1) Knows: The provider is aware of a high probability of the existence of the fact that items or services were improperly claimed, or

(2) Has reason to know: The provider has information from which a reasonable person in that position would infer that items or services were improperly claimed.

(c) The Director's determination of whether the provider knows or has reason to know that items or services were "not provided as claimed" shall be based on information available pursuant to Section 51476.

(d) The Director shall determine whether or not the provider knows or has reason to know that claimed items or services are "not reimbursable under the Med–Cal Program" in the following instances:

(1) The provider has been suspended from participation in the Program,

(2) The claimed items or services are substantially in excess of patient needs as defined in Section 51303(a),

(3) The items or services are deficient in quality compared with professionally recognized standards of health care (See Section 51472),

(4) The provider has demonstrated a pattern of abusive overbilling to the Medi–Cal Program. Evidence of such overbilling shall include, but not be limited to:

(A) Identical audit adjustments repeated in two or more fiscal years except if there is a pending appeal where these adjustments are still at issue,

(B) Repeated submission of improperly coded or identified claims.

Evidence of such overbilling shall not include repeated submission of claims which have been denied payment previously, even though such payment denial was not contested.

(e) The Director's determination of whether the provider knows or has reason to know that items or services were "claimed in violation of an agreement with the State" shall be based on the terms of the written agreement, and on other relevant evidence as that term is defined in Section 51037(e)(1). The Director shall consider only material violations which go to the merits of the agreement as distinguished from those which affect only form.

(f) A civil money penalty shall be no more than three times the amount claimed by the provider for each item or service. It shall be within the Director's discretion to assess a lower penalty. In setting the amount of the penalty, the Director may consider evidence of mitigating circumstances submitted by the provider. Examples of such evidence include, but are not limited to:

(1) Clerical error.

(2) Good faith mistake.

(3) Reliance on official publications.

(4) Prior record of properly submitted claims.

(g) An assessment of civil money penalties shall be effective upon the 60th calendar day after the date that the Department serves notice to the provider of the determination. Such notice shall be in writing, and shall include grounds for the determination.

(h) A provider shall have the right to appeal the determination by filing a request for hearing pursuant to Section 51022. The effective date of the assessment shall be deferred until this request is rejected or a final administrative decision is adopted.

(i) Upon the effective date of assessment, the Director shall collect the civil money penalty in accordance with the procedures set forth in Sections 14115.5 and 14172 of the Welfare and Institutions Code and Section 51047.

(j) Interest shall accrue on any unpaid balance of a civil money penalty from the effective date of assessment, at the rate specified in Section 14172(a) of the Welfare and Institutions Code.

(k) Civil money penalty appeal hearings shall be conducted pursuant to the procedural guidelines set forth in Section 51016 et seq. (Title 22, CAC, Article 1.5).

(*l*) Assessment of civil money penalties pursuant to Welfare and Institutions Code Section 14123.2 shall not operate to bar imposition of any other applicable penalty provisions, such as those contained in Welfare and Institutions Code Section 14171.5.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14123.2, Welfare and Institutions Code.

HISTORY

1. New section filed 8–7–86; effective thirtieth day thereafter (Register 86, No. 32).
2. Editorial correction of subsection (f) (Register 95, No. 45).

§ 51486. Medi–Cal Card Labels.

(a) No provider shall remove more labels from a Medi–Cal card than are necessary to submit a claim for reimbursement for each service, drug, or item provided.

(b) No provider shall remove any label from a Medi–Cal card to bill for any service provided to any person other than the beneficiary identified on such card.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14105 and 14107, Welfare and Institutions Code.

HISTORY

1. New section filed 9–30–71 as an emergency; designated effective 10–1–71 (Register 71, No. 40).
2. Certificate of Compliance—Section 11422.1, Gov. Code, filed 1–25–72 (Register 72, No. 50).
3. Amendment of subsection (a) filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).
4. New NOTE filed 5–9–84 (Register 84, No. 19).

§ 51487. Examinations of Beneficiaries.

No provider shall prohibit or interfere with the examination of Medi–Cal Program beneficiaries by any duly authorized representative of the Department acting in the scope and course of his employment.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14100.1, 14104, 14105 and 14133, Welfare and Institutions Code.

HISTORY

1. New section filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).
2. New NOTE filed 12–13–84 (Register 84, No. 50).

§ 51488. Pharmaceutical Postservice—Postpayment On–Site Reviews Including Clinics with Special Permits.

(a) The Department, during on–site reviews of pharmaceutical providers, including clinics with special permits, may review the records of the provider related to the provision of Medi–Cal services to determine compliance with Medi–Cal statutes and regulations. The Department may consider the following in deciding that a provider has received an overpayment:

[The next page is 467.]

(1) The drug was ordered or authorized by a licensed prescriber ineligible to participate in the Medi–Cal program.

(2) The dispensed drug, strength and quantity were not the same as the drug, strength and quantity that were ordered or authorized.

(3) The drug dispensed was not a covered benefit.

(4) The Medi–Cal program was inappropriately charged.

(5) The recipient was ineligible to receive Medi–Cal benefits.

(6) The drug was dispensed contrary to the provisions of Section 51513.6.

(b) The Department shall determine whether a service was provided in compliance with Medi–Cal statutes and regulations. Apparent violations of non–Medi–Cal statutes or regulations shall be referred to appropriate agencies.

(c) The Department shall have the burden of demonstrating that noncompliance with Medi–Cal statutes or regulations has occurred. This burden shall be met if the determination is based upon information appearing on records maintained by the provider pursuant to Section 51476 and 51476.1 of these regulations or evidence from other sources. The Department shall consider evidence supplied by the provider from other sources in arriving at its determination.

(d) The results of the on–site review should serve the additional purpose of directing the provider to the Departmental policies and requirements as they apply to audit issues identified.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code; and Chapter 328, Section 57, and Chapter 1594, Section 87, Statutes of 1982. Reference: Sections 14053, 14105.3, 14107, 14124.1, 14132, 14133 and 14184, Welfare and Institutions Code; and Sections 4063 and 4063.7, Business and Professions Code.

HISTORY

1. New section filed 4–9–80; effective thirtieth day thereafter (Register 80, No. 15).
2. New subsection (a)(6) filed 6–1–83 as an emergency; effective upon filing (Register 83, No. 24). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9–29–83.
3. Certificate of Compliance as to 6–1–83 order transmitted to OAL 9–29–83; corrected Certificate of Compliance transmitted to OAL 10–31–83 and filed 10–31–83 and refiled 11–1–83 with original Certificate of Compliance (Register 83, No. 44).
4. Amendment of section heading, subsection (a) and NOTE filed 1–6–94; operative 2–7–94 (Register 94, No. 1).

§ 51488.1. Pharmaceutical Recovery Standards Including Clinics with Special Permits.

(a) The Department shall recover the following pharmaceutical overpayments from pharmaceutical providers, including clinics with special permits, at their respective recovery rates:

(1) Services not rendered. 100% of the ingredient cost and professional fee, if any, paid shall be recovered where:

(A) The services billed were not provided.

(2) Noncovered services. 100% of the ingredient cost and professional fee, if any, paid shall be recovered where:

(A) The drug dispensed was different from the drug prescribed or authorized, or was dispensed contrary to the provisions of Section 51513.6.

(B) The service billed was rendered to a person ineligible for Medi–Cal.

(C) The service billed was not the same as the service rendered and the service rendered was not a covered benefit.

(D) The service billed was not a covered benefit.

(3) Prescription Splitting. Where the pharmacist, without authorization from the prescriber, dispensed a smaller quantity than prescribed or subsequently authorized which resulted in dispensing one or more refills to provide the beneficiary with an equivalent or nearly equivalent quantity as originally prescribed or subsequently authorized, 100% of the professional fee paid for each such refill shall be recovered. The provisions of this subsection are not applicable to prescriptions reduced to the extent necessary to comply with Section 51313(b).

(4) Excessive refills. Where the refills dispensed exceed the directions for use of the original prescription, 100% of the ingredient cost and professional fee, if any, paid for each refill shall be recovered.

(5) Duplicate billings. 100% of the ingredient cost and professional fee, if any, shall be recovered where the provider bills or submits a claim to the Department for which the provider has received and retained payment from the Department, the beneficiary, or from another person on behalf of the beneficiary, subject to the exceptions found in Section 51471.

(6) Discriminatory Billing. Where the provider bills or submits a claim for services in any amount in excess of the charge for the same service to the general public, the difference between the amount paid and the charge to the general public shall be recovered, subject to the exceptions found in Section 51480(b).

(7) False and Misleading Information. 100% of the ingredient cost and professional fee, if any, paid shall be recovered where the provider submits or causes to be submitted any false or misleading statement of material fact on or in connection with any claim which results in reimbursement for ingredient costs and professional fees, if any, not allowed under the regulations of this division.

(8) Drug Discrepancy.

(A) 100% of the ingredient cost and professional fee, if any, paid shall be recovered where the drug dispensed is not a covered program benefit.

(B) Where the pharmacy or clinic with a special permit dispensed a drug on Medi–Cal List of Contract Drugs, but billed the Department for a different and more costly drug on the Medi–Cal List of Contract Drugs, the difference in ingredient cost between the two drugs shall be recovered.

(C) 100% of the ingredient cost shall be recovered, for those drug products subject to the provisions of Section 51513.6, where the pharmacy or clinic with a special permit dispensed a drug product other than the State–designated brand without prior authorization as provided in Section 51003 of this Title.

(9) Quantity discrepancy. Where the quantity of drug billed is larger than the quantity of drug dispensed, the difference in the allowable cost between the quantity paid and quantity dispensed shall be recovered.

(10) Strength discrepancy. Where the strength of the drug billed is greater than the strength of the drug prescribed or dispensed, the difference in the allowable cost between the strength paid and that prescribed or dispensed shall be recovered as long as both strengths are covered benefits.

(11) Manufacturer discrepancy. Where the brand of drug billed is more expensive than the brand of drug dispensed, the difference in the allowable cost between the brand billed and the brand dispensed shall be recovered; except when the brand billed was not stocked by the provider; 100% of the ingredient cost and professional fee, if any, paid shall be recovered.

(12) Lowest Cost Drug Discrepancy. Where the brand of generic drug billed was not the least costly brand of that generic drug stocked in the pharmacy or clinic with a special permit at the time of dispensing the difference in the allowable costs between the brand paid and the least costly brand stocked shall be recovered. No recovery will be sought where a prescriber prohibits substitution as provided in Section 4047.6 of the Business and Professions Code and as provided in Section 51513(a)(14) of these regulations.

(13) Dosage Form Discrepancy.

(A) Unless prior authorization was obtained, 100% of the ingredient cost and professional fee, if any, paid shall be recovered where the directions for use of the dosage form billed do not call for utilization of the drug in the manner designated for that dosage form in the Medi–Cal List of Contract Drugs.

(B) Where the dosage form billed is different from the dosage form dispensed, the difference in allowable cost between the item paid and that dispensed shall be recovered, as long as both dosage forms are covered benefits.

(C) Where the drug quantity dispensed is not in compliance with the Medi–Cal minimum quantity requirements, 100% of the professional

fee, if any, plus the difference in cost between the two quantities paid shall be recovered.

(14) Prior Authorization Requirements. 100% of the ingredient cost and professional fee, if any, shall be recovered under any of the following circumstances:

(A) The drug dispensed was not listed in the Medi-Cal List of Contract Drugs and was dispensed without prior authorization.

(B) The drug was dispensed contrary to the provisions of Section 51513.6.

(C) The drug was dispensed in any manner different from that which was authorized.

(15) Code I prescriptions. Unless prior authorization was obtained, 100% of the ingredient cost and professional fee, if any, paid shall be recovered where the drug dispensed is not in compliance with the Code I restrictions in Medi-Cal regulations.

(b) Audit Findings. Notwithstanding the provisions of paragraph (a) where a service has been rendered, mitigating or ameliorating facts and circumstances will be considered in determining the audit findings.

(c) Recovery shall be made for services not in conformance with new program requirements only when there has been notice of such requirements in Department bulletins or fiscal intermediary mailings. All previously published Department bulletins and fiscal intermediary mailings, mailed to providers prior to the operative date of this section shall remain in effect until amended or withdrawn by the Department.

NOTE: Authority cited: Sections 14105, 14105.35 and 14124.5, Welfare and Institutions Code; and Section 208, Health and Safety Code. Reference: Sections 14053, 14105.3, 14107, 14124.1, 14132, 14133, 14176, 14177 and 14184, Welfare and Institutions Code; and Sections 4063 and 4063.7, Business and Professions Code.

HISTORY

1. New section filed 4-9-80; effective thirtieth day thereafter (Register 80, No. 15).
2. Amendment of subsections (a)(2)(A), (a)(8)(C) and (a)(14) filed 6-1-83 as an emergency; effective upon filing (Register 83, No. 24). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-29-83.
3. Amendment of subsection (a)(8)(C) filed 9-29-83 as an emergency; designated effective 9-29-83 (Register 83, No. 44). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1-27-84.
4. Certificate of Compliance as to 6-1-83 order (subsections (a)(2)(A) and (a)(14) only) transmitted to OAL 9-29-83; corrected Certificate of Compliance transmitted to OAL 10-31-83 and filed 10-31-83 and refiled 11-1-83 with original Certificate of Compliance (Register 83, No. 44).
5. Reinstatement of subsection (a)(8)(C) as it existed prior to emergency amendment filed 9-29-83 by operation of Government Code Section 11346.1(f) (Register 84, No. 13).
6. Amendment of subsection (a)(8)(C) filed 6-29-84; effective thirtieth day thereafter (Register 84, No. 26).
7. Editorial correction of NOTE filed 12-14-84 (Register 84, No. 50).
8. Amendment of section heading, text and NOTE filed 1-6-94; operative 2-7-94 (Register 94, No. 1).
9. Amendment of subsection (a)(14)(A) and NOTE filed 1-9-95; operative 3-1-95 (Register 95, No. 2).

§ 51488.2. Statistical Extrapolation for Medi-Cal Pharmacy Reviews.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14103.6, 14107, 14123, 14124.1, 14124.2, 14133, 14133.1, 14170, 14176 and 14177, Welfare and Institutions Code.

HISTORY

1. New section filed 4-9-80; effective thirtieth day thereafter (Register 80, No. 15).
2. Editorial correction of NOTE filed 12-14-84 (Register 84, No. 50).
3. Repealer filed 4-13-88; operative 5-13-88 (Register 88, No. 17).

§ 51488.3. Underpayment Adjustments to Medi-Cal Reviews of Pharmacies and Clinics with Special Permits.

(a) For the purpose of determining underpayment adjustments to a Medi-Cal recovery action, underpayment shall mean a payment amount within the audit period identified by the pharmacy or clinic with a special permit as being deficient. The underpayment may be due to a billing error made by the pharmacy or clinic with a special permit or an incorrect payment made by the fiscal intermediary for claims submitted within the billing time limits as specified in Section 51008.

(b) The pharmacy or clinic with a special permit shall submit a written statement of findings of underpayment to the Department of Health Services prior to issuance of a demand for payment of identified underpayments. This written statement shall provide specific documentation pursuant to Section 51476 to support the contention of the pharmacy or clinic with a special permit that an underpayment occurred.

(c) Should a probability sample be used in auditing a pharmacy or a clinic with a special permit having qualified underpaid amounts in the sample, both the overpayments and underpayments shall be extrapolated to the audit period universe in determining the recoverable amount due.

(d) No review may be reopened to provide for underpayments in which a final decision has been reached pursuant to Section 14171 of the Welfare and Institutions Code.

(e) For the purpose of this section, a valid claim shall mean any claim, for service dates within the audit period, that meets all of the requirements for billing established under Articles 1, 6, and 7 of this Chapter.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 208, Health and Safety Code. Reference: Sections 10722, 14115, 14132, 14170, 14170.1, 14171 and 14172, Welfare and Institutions Code; and Section 4063, Business and Professions Code.

HISTORY

1. New section filed 12-2-85; effective thirtieth day thereafter (Register 85, No. 49).
2. Amendment of section heading, text and NOTE filed 1-6-94; operative 2-7-94 (Register 94, No. 1).

§ 51488.4. Adjustments to Medi-Cal Pharmacy and Clinic with a Special Permit Reviews for Unsubmitted Claims.

(a) Valid claims as defined in Section 51488.3(e), which have inadvertently not been submitted for payment, shall be submitted to the fiscal intermediary for adjudication and shall be credited toward the amount of any overpayment due the Department of Health Services as a result of an onsite review.

(b) The pharmacy or clinic with a special permit shall submit specific written documentation pursuant to Section 51476 to support the contention that the previously unsubmitted claim is a valid claim. The documentation shall be submitted to the Department of Health Services prior to issuance of a demand for payment of identified overpayments.

(c) No review may be reopened to provide for underpayments in which a final decision has been reached pursuant to Section 14171 of the Welfare and Institutions Code.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 208, Health and Safety Code. Reference: Sections 10722, 14115, 14132, 14170, 14170.1, 14171 and 14172, Welfare and Institutions Code; and section 4063, Business and Professions Code.

HISTORY

1. New section filed 12-2-85; effective thirtieth day thereafter (Register 85, No. 49).
2. Amendment of section heading, subsection (b) and NOTE filed 1-6-94; operative 2-7-94 (Register 94, No. 1).

§ 51489. Eligibility for Payment for Paramedic Ambulance Services.

NOTE: Authority cited: Section 14124.5, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 4-20-82 as an emergency; effective upon filing (Register 82, No. 18).
2. Order of Repeal of 4-20-82 emergency order filed 4-29-82 by OAL pursuant to Government Code Section 11349.6 (Register 82, No. 18).
3. New section filed 7-6-82 as an emergency; effective upon filing (Register 82, No. 28). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11-3-82.
4. Certificate of Compliance as to 7-6-82 order transmitted to OAL 11-3-82 and filed 12-3-82 (Register 82, No. 49).
5. Repealer filed 8-9-85; effective thirtieth day thereafter (Register 85, No. 32).

§ 51490. Claim Submission Requirements for Short-Doyle Medi-Cal Providers.

(a) All claims for community mental health and drug abuse services provided to Medi-Cal beneficiaries by a Short-Doyle Medi-Cal provider shall be submitted through the Short-Doyle Medi-Cal system.

(b) Except for good cause, as specified in Section 51008 and approved by the Department, claims for Short-Doyle Medi-Cal services shall be presented to the Department of Mental Health no later than two months after the month of service. The Department of Mental Health shall present such claims to the Department no later than three months after the month of service.

(c) The State Department of Mental Health shall resubmit a claim, which has been returned by the Department for correction or additional information, no later than three months after the month in which the claim was sent by the Department.

NOTE: Authority cited: Sections 10725, 14021.5 and 14124.5, Welfare and Institutions Code. Reference: Section 14021.5, Welfare and Institutions Code.

HISTORY

1. New section filed 1-31-85 as an emergency; designated effective 2-1-85 (Register 85, No. 7). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6-3-85. For prior history, see Register 84, No. 48.
2. Certificate of Compliance including amendment transmitted to OAL 5-17-85 and filed 6-14-85 (Register 85, No. 24).
3. Amendment of subsections (b) and (c) filed 12-14-95 as an emergency; operative 12-14-95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4-12-96 or emergency language will be repealed by operation of law on the following day.
4. Reinstatement of subsections as they existed prior to emergency amendment filed 12-14-95 by operation of Government Code section 11346.1 (Register 96, No. 16).
5. Amendment of subsections (b) and (c) filed 4-16-96 as an emergency; operative 4-16-96 (Register 96, No. 16). A Certificate of Compliance must be transmitted to OAL by 8-14-96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 4-16-96 order transmitted to OAL 8-13-96 and filed 9-25-96 (Register 96, No. 39).

§ 51490.1. Claim Submission Requirements for Counties and Providers of Drug Medi-Cal Substance Abuse Services.

(a) Claims from counties and providers for reimbursement of outpatient drug free, day care habilitative, narcotic treatment program, Naltrexone treatment, and perinatal residential treatment services shall be presented to ADP no later than thirty (30) calendar days after the month of service, unless the county or provider has good cause, as specified in Sections 51008 and 51008.5. The county or provider shall produce, upon request by ADP for audit or monitoring purposes, documentation to substantiate the good cause.

(b) ADP shall present such claims to DHS no later than sixty (60) calendar days after the month of service, or thirty (30) calendar days after the date ADP receives such claims, if the requirements of Subsection (a) of this regulation have been met.

(c) ADP shall resubmit claims, which have been returned by DHS for correction or additional information, within 97 calendar days from the current date (i.e., computer run date) shown on the Error Correction Reports from DHS.

(d) An additional unit of service, or a multiple service billing, provided to a beneficiary on the same day may be claimed up to the maximum amount allowable if the beneficiary's return visit is to the same provider and the return visit service is not a duplicate to, or the same as, the service previously provided to the beneficiary on the same day.

"Multiple billing" means a claim is being made for a return, face-to-face visit, which is for an additional service to a previously provided service on that same day. Documentation shall include a "Multiple billing override code". "Multiple billing override code" means the code, designated by the prefix "Y", that is entered on the Drug Medi-Cal Eligibility Worksheet (Form ADP 1584, revised June 6, 1996) or an error correction report from DHS, to indicate that a valid return visit was provided. The county and/or provider shall prepare and retain, in the beneficiary's patient record, a Multiple Billing Override Certification (Form ADP 7700, Revised 5/97), certifying that a review of the client's record substantiated the multiple service. The form shall be signed by the person authorized to represent the county and/or provider.

(1) For outpatient drug free and Naltrexone treatment services:

(A) The return visit shall not create a hardship on the beneficiary; and

(B) The return visit shall be clearly documented in the beneficiary's progress notes with the time of day each visit was made. The progress notes shall clearly reflect that an effort was made to provide all necessary services during one visit and the return visit was unavoidable; or,

(C) The return visit shall be a crisis or collateral service. Collateral services shall be documented in the beneficiary's treatment plan in accordance with the beneficiary's short/long-term goals. The beneficiary's progress notes shall specifically reflect the steps taken to meet the goals defined in the beneficiary's treatment plan.

(2) For day care habilitative services, the return visit shall be a crisis service. Crisis services shall be documented in the progress notes.

(3) The county and/or provider shall prepare and keep on file a statement which documents the reason the beneficiary required a return visit. This statement shall be produced upon request by ADP for audit or monitoring purposes.

NOTE: Authority cited: Sections 10725, 14021.5 and 14124.5, Welfare and Institutions Code; Section 11758.41, Health and Safety Code; and Statutes of 1996, Chapter 1027. Reference: Section 14021.5, Welfare and Institutions Code; Sections 11758.42 and 11758.46, Health and Safety Code; and Statutes of 1996, Chapter 1027.

HISTORY

1. New section filed 12-14-95 as an emergency; operative 12-14-95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4-12-96 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1 (Register 96, No. 16).
3. New section filed 4-16-96 as an emergency; operative 4-16-96 (Register 96, No. 16). A Certificate of Compliance must be transmitted to OAL by 8-14-96 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4-16-96 order, including amendment of subsection (a) and new subsections (a)(1)-(a)(2)(B), transmitted to OAL 8-13-96 and filed 9-25-96 (Register 96, No. 39).
5. Amendment of section heading and section filed 5-12-97 as an emergency; operative 5-12-97 (Register 97, No. 20). A Certificate of Compliance must be transmitted to OAL by 9-9-97 or emergency language will be repealed by operation of law on the following day.
6. Amendment of section heading, section and NOTE filed 6-30-97 as an emergency; operative 7-1-97 (Register 97, No. 27). A Certificate of Compliance must be transmitted to OAL by 10-29-97 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 5-12-97 order transmitted to OAL 8-13-97 and filed 9-23-97 (Register 97, No. 39).
8. Amendment of section heading, section and NOTE refiled 10-6-97 as an emergency; operative 10-29-97 (Register 97, No. 41). A Certificate of Compliance must be transmitted to OAL by 2-26-98 or emergency language will be repealed by operation of law on the following day.
9. Amendment of section heading, section and NOTE refiled 1-14-98 as an emergency; operative 2-26-98 (Register 98, No. 3). A Certificate of Compliance must be transmitted to OAL by 6-26-98 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 1-14-98 order, including further amendment of section heading, section and NOTE, transmitted to OAL 6-11-98 and filed 6-29-98 (Register 98, No. 27).
11. Change without regulatory effect relocating forms ADP 7700 and ADP 1584 from section 51516.1 to section 51490.1 filed 4-4-2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 14).

State of California - Health and Welfare Agency Department of Alcohol and Drug Programs

MULTIPLE BILLING OVERRIDE CERTIFICATION

COUNTY: _____

[ ] DUPLICATE ERROR CORRECTION DATE: _____ [ ] ADP 1584 FORMS

CLAIM FOR MONTH/YEAR _____ FISCAL YEAR: _____ PROGRAM CODE: _____

Please complete this certification form (for override code "Y") for multiple services provided to a client for the same day.

PROV CODE	CLAIM ID AND LINE NUMBER	BATCH NUMBER	CLIENT NAME (last, first initial)	TYPE OF SERVICE PROVIDED	SERVICE DATE	UNITS BILLED	REASON

OVERRIDE REASON:

1. The client could not receive all necessary services at one time. The client record clearly documents the date and time of day each visit was made and that the return visit was not a hardship on the client.
2. Crisis visit. Services are documented in client record.
3. Collateral services. Services are documented in client record.
4. This service has been erroneously billed and has been reported to the Department of Alcohol and Drug Programs, by the provider, on disallowance form ADP 5035B. (A copy of the disallowance form must be attached)
5. This is a duplicate claim due to a key entry error by the state (a copy of the original claim and the error correction report must be attached).

I hereby certify that I am authorized to represent the county. I recognize that the services specified above have been identified by the automated Short-Doyle/Medi-Cal claim processing system as those which are potentially duplicative or otherwise inappropriate. I further certify that I have reviewed the client record specified above and have determined that the services billed were necessary and appropriate.

Signature: _____ Date: _____

Title: _____

RETAIN THE ORIGINAL CERTIFICATION ALONG WITH THE MONTHLY CLAIM OR THE ERROR CORRECTION REPORT NOTED ABOVE. THIS DOCUMENT MUST BE PRODUCED ON DEMAND FOR AUDIT OR SITE VISIT BY ADP.

ADP 7700 (Revised 5/97) g:\groups3\fm\123data\mcforms\7700.wk1

State of California—Health and Welfare Agency

Department of Alcohol and Drug Programs

DRUG/MEDI-CAL ELIGIBILITY WORKSHEET

CONFIDENTIAL CLIENT INFORMATION
42 CFR Part 2 Sections 2.12 and 2.13

ALCOHOL/DRUG AND PERINATAL SERVICES

D— 0305403

Page _____ of _____

PROVIDER NAME | PROVIDER CODE | CLAIM FOR MO YR | PROGRAM CODE | MODE OF SERVICE

LINE NO	CLIENT NAME	CLIENT RECORD NO	WELFARE IDENTIFICATION OR SSN: CO	AID	CASE NO	FBU	PERS NO	YEAR OF BIRTH	SEX	RACE ETHN	DSM III / DSM IV DIAGNOSTIC CODE	MO/YR OF SERVICE	TREATMENT DATES: FIRST	LAST	DISCHARGED	SVS FUNCT. CODE	UNITS OF SERVICE	DOLLARS CLAIMED: Dollars	Cents	GOOD CAUSE	DUPLICATE OVERRIDE	LINE NO
01																						01
02																						02
03																						03
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The services listed on this form have been personally provided to the patient by the provider or under his direction by another person eligible under the Medi-Cal Program to provide such services, and such person(s) are designated on this form. The services were, to the best of the provider's knowledge, medically indicated and necessary to the health of the patient. The provider understands that payment of this claim will be from Federal and/or State funds, and that any falsification, or concealment of a material fact, may be prosecuted under Federal and/or State laws. The provider agrees to keep for a minimum period of three years from the date of service all records which are necessary to disclose fully the extent of services furnished to the patient. The provider agrees to furnish these records and any information regarding payments claimed for providing the services, on request, to California Department of Health Services; Medi-Cal Fraud Unit, California Department of Justice; Medi-Cal Audits Project, Office of State Controller; U.S. Department of Health and Human Services, or their duly authorized representatives.

Medical care services are offered and provided without discrimination based on race, religion, color, national or ethnic origin, sex, age, or physical or mental disability.

Signature _____ Phone ( ) _____ Date _____

ADP 1584 (Rev. 06/96)

Distribution Instructions: WHITE–State Copy YELLOW–County Copy PINK–Provider File Copy

(Instructions on reverse side of provider file copy)

COMPLETION INSTRUCTIONS
DRUG/MEDI-CAL ELIGIBILITY WORKSHEET—ADP 1584
(FOR SUBMISSION OF FEDERAL DRUG/MEDI-CAL CLAIMS ONLY)
(Revised 6/96)
ALCOHOL/DRUG AND PERINATAL

HEADING INSTRUCTIONS

A. Enter the provider name (do not mix providers on one worksheet)

B. Enter the four-digit provider code assigned by the Department of Alcohol and Drug Programs.

C. Enter the month and year the worksheet is submitted for as a four-digit numerical code (i.e., May, 1993 — 0593)

D. Enter one of the following two-digit codes to indicate the program code:
20 — Regular Medi-Cal Services 25 — Perinatal Medi-Cal Services

E. Enter one of the following two-digit codes to indicate Mode of Service provided

12 — Outpatient Hospital Services
17 — Clinic Services

F. Enter page number and total pages submitted by provider, by program code, by service function code.

LINE INSTRUCTIONS

A. In alphabetical order enter the surname of the eligible Drug/Medi-Cal client first, then enter only the initial of the first name.

B. Enter the client's record number (chart # at program)

C. Enter the Welfare identification number in its complete form as shown on the Medi-Cal card. For Title XIX, beneficiaries with Welfare Identification Numbers listed as (99-60-1234567/890), the number is to be in the following format:

County Code	Aid Code	Case Number	FBU	Pers. No
99	60	1234567	8	90

or enter the client's Social Security Number (SSN) using only the first nine fields using the following format:

999999999 the last five fields are left blank
(The SSN is left justified in the Welfare ID/SSN fields)

or enter the client's Client Index Number (CIN) using only the first nine fields as in the format for the SSN above.

D. Enter as a three-digit code, the client's year of birth (e.g., 1948=948).

E. Enter the appropriate letter code to denote the client's sex
M — Male F — Female U — Unknown

F. Enter the appropriate numeric code to denote the client's race/ethnicity
1 — White 4 — Asian/Pacific 7 — Filipino
2 — Hispanic 5 — American Indian or 8 — Other
3 — Black Alaskan Native

G. Enter the client's diagnostic code. Refer to the American Psychiatric Diagnostic Service Manual III/IV for the proper diagnostic code.

H. Mo/Yr of Service—Enter as a four-digit code, the month and year that service(s) were provided (i.e., January 1993 — 0193)

NOTE: DO NOT REPORT SERVICES PROVIDED IN PRIOR FISCAL YEARS.

I. Treatment Dates:
Complete the first and last treatment date for all clients

Clients receiving OUTPATIENT DRUG FREE or DAY CARE HABILITATIVE services use the following format:

First day—Enter a two-digit code for the first day the client received treatment from this provider.

Last day—Enter a two-digit code using the same day as entered in the "first day" field.

The "first" and "last" treatment date must always be the same (i.e., June 10 — 1010)

Treatment Dates (continued)

METHADONE MAINTENANCE—Enter a two-digit code in the "first" field. Multiple (consecutive) days of service MUST be claimed on one line (i.e., April 1, 1993 through April 15, 1993 MUST be claimed as 0115). If there is a break in service, a new line MUST be used with the same date format.

J. Enter a 1 if the client was discharged during this month of service, otherwise leave blank.

K. Service Function Code (SFC)—Enter one of the following two-digit Service Function Code numbers:

Methadone Maintenance	20 – 29	
Day Care Habilitative	30 – 39	
Perinatal Residential	40 – 49	
Naltrexone	50 – 59	
Outpatient Drug Free	Individ. 80 – 84	Group 85 – 89

NOTE: DO NOT INTERMINGLE DIFFERENT SFCs ON THE SAME ADP 1584!

L. Units of Service—Enter units of service. One unit of service for each visit for each client with acceptable federal aid codes. A separate visit may be claimed if a client leaves the facility and returns for a second visit on the same day.

M. Total Amount—Enter the total cost for each client including cents.

N. Good Cause Code—If applicable, enter the alpha code to indicate the "Good Cause" for any claim lines qualifying for exemption to the submission deadlines. Refer to the instructions regarding "Good Cause" in ADP letter to Drug/Medi-Cal County Program Administrators dated 8-5-88.

O. Duplicate Override—Enter the alpha code "Y" if this is a duplicate service. Include a Multiple Billing Override Certification form ADP 7700 with the claim.

P. Total the columns for units of service and dollars claimed for this page and enter the totals in the appropriate spaces at the bottom of each column.

Q. On the last page of each provider's set of worksheets, enter the grand totals for Units of Service and Total Dollars Claimed.

R. The signature, phone number, and date is required on each page of each mode of service and/or service function code.

SUBMISSION INSTRUCTIONS

A. Retain the last page (pink copy) for your records and submit the original and one (yellow) copy to the county fiscal office for processing.

B. The County Mental Health fiscal office shall forward

1. ADP 1584 -- One original (white); and
2. ADP 1592 -- One original with original signatures and 3 copies for Regular or Perinatal Drug/Medi-Cal

NOTE: All providers must be listed on the same ADP 1592.

Department of Alcohol and Drug Programs
Drug/Medi-Cal Section, 4th Floor
1700 K Street
Sacramento, CA 95814-4037

ADP 1584 (File Name: D1584BK) 96 05/04

§ 51491. Local Educational Agency (LEA) Eligibility for Payment.

Reimbursement for LEA Services shall be limited to those services provided to an LEA Eligible Beneficiary, by an LEA Practitioner, through an LEA Provider.

(a) LEA health and mental health evaluation and health and mental health education services shall be reimbursable only if those services are provided by an LEA Practitioner who:

(1) If licensed or certified under the Business and Professions Code, Healing Arts Division, Section 500 et seq., furnishes LEA Services within the scope of practice of the practitioner as defined in that code;

(2) If not licensed or certified under the Business and Professions Code, Healing Arts Division, furnishes LEA Services within the following limitations:

(A) A credentialed school psychologist meeting the qualifications defined in Education Code, Section 49422, may provide psychosocial assessments, and health education and anticipatory guidance only;

(B) A credentialed school social worker meeting the qualifications defined in Education Code, Section 44874, may provide psychosocial assessments and health education and anticipatory guidance only;

(C) A credentialed school counselor meeting the qualifications defined in Education Code, Section 49600, may provide psychosocial assessments only;

(D) A registered school audiometrist registered pursuant to Health and Safety Code, Sections 1685 and 1686 may provide hearing assessments only;

(E) A registered credentialed school nurse meeting the qualifications defined in Education Code, Sections 49426 and 44877, may provide vision, hearing, developmental, and psychological assessments, health education and anticipatory guidance, and nutritional assessments and nutrition education. Registered credentialed school nurses may provide hearing assessments only if they are a registered school audiometrist.

(F) A credentialed language, speech and hearing specialist meeting the qualifications defined in Education Code, Sections 44225(b)(4) and 44268 may perform hearing assessments and developmental assessments related to language only.

(b) LEA physical therapy services shall be reimbursable only if those services are rendered by a licensed physical therapist who meets the standards of Section 51201.1.

(c) LEA occupational therapy services shall be reimbursable only if those services are rendered by a registered occupational therapist who meets the standards of Section 51203.1.

(d) LEA speech pathology or audiology services shall be reimbursable only if those services are rendered by a licensed speech therapist who meets the standards of Section 51202; or a licensed audiologist who meets the standards of Section 51219.

(e) LEA psychology and counseling services shall be reimbursable only if those services are rendered by a licensed psychiatrist, licensed psychologist, or licensed clinical social worker who meets applicable State licensure requirements; or a licensed marriage, family, and child counselor meeting the qualifications defined in Business and Professions Code, Sections 4980 through 4981.

(f) LEA nursing services shall be reimbursable only if those services are rendered by a licensed registered nurse, certified nurse practitioner, certified public health nurse, or registered credentialed school nurse meeting the requirements of Education Code, Section 49426; or a licensed physician's assistant or licensed vocational nurse meeting State licensure requirements, including supervision requirements.

(g) LEA school health aide services shall be reimbursable only if those services are rendered by a trained health care aide as specified in Education Code, Section 49423.5 under the supervision of one of the following:

(1) A licensed physician and surgeon,

(2) A registered credentialed school nurse, or

(3) A certified public health nurse;

(h) LEA medical transportation services and LEA mileage, shall be reimbursable only if all vehicles, drivers and attendants meet the standards specified in Sections 51231, 51231.1 and 51231.2.

(i) LEA Services shall be reimbursable only when provided at one of the following sites:

(1) At a school site within the LEA Provider's domain in accordance with Section 51270;

(2) In the office or normal place of business of an LEA Practitioner; or

(3) For authorized LEA medical transportation services and LEA mileage, between a school site and a location at which health services are rendered to the beneficiary except as provided in Section 51360(b)(8).

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14000, 14018.2, 14053, 14059, 14100.2, 14105, 14124.1, 14124.5, 14132, 14133, 14136.5 and 14170, Welfare and Institutions Code; Sections 500 et seq., 4980 and 4981, Business and Professions Code; Sections 44225(b)(4), 44268, 44874, 44877, 49600, 49422, 49423.5 and 49426, Education Code; and Sections 1685 and 1686, Health and Safety Code.

HISTORY

1. New section filed 12–22–93 as an emergency; operative 12–22–93 (Register 93, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–22–94 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12–22–93 order including new opening statement and amendment of subsections (g)–(g)(3) and (i)(1) and (3) transmitted to OAL 4–20–94 and filed 6–2–94 (Register 94, No. 22).

§ 51492. Claim Submission Requirements for Targeted Case Management Providers.

(a) Only local governmental agencies meeting the eligibility criteria specified in Section 51271 shall submit targeted case management service claims to the department.

(b) All claims for targeted case management services provided to Medi–Cal beneficiaries by a targeted case management services provider pursuant to Welfare and Institutions Code, Section 14132.44, shall be submitted electronically to the department. The electronic submission may be magnetic tape or diskette.

(c) Each electronically submitted claim shall be accompanied by a corresponding invoice.

(d) Claims for targeted case management services may be submitted monthly, but not more than six months after the month in which the targeted case management service is rendered pursuant to Welfare and Institutions Code, Section 14115.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14132.44, Welfare and Institutions Code. Reference: Section 14132.44, Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–96; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 6, Chapter 305, Statutes of 1995 (Register 96, No. 27).
2. New section refiled 10–29–96 as an emergency; operative 10–29–96 (Register 96, No. 44). Submitted to OAL for printing only pursuant to Section 6, Chapter 305, Statutes of 1995. A Certificate of Compliance must be transmitted to OAL by 2–26–97 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of HISTORY 2 (Register 97, No. 15).
4. Repealed by operation of Government Code section 11346.1(g) (Register 97, No. 15).
5. New section filed 4–10–97; operative 4–10–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

§ 51492.1. Host County Contractual Responsibilities in the Targeted Case Management Program.

NOTE: Authority cited: Sections 14105, 14124.5 and 14132.44, Welfare and Institutions Code. Reference: Section 14132.44, Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–96; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 6, Chapter 305, Statutes of 1995 (Register 96, No. 27).
2. New section refiled 10–29–96 as an emergency; operative 10–29–96 (Register 96, No. 44). Submitted to OAL for printing only pursuant to Section 6, Chapter 305, Statutes of 1995. A Certificate of Compliance must be transmitted to OAL by 2–26–97 or emergency language will be repealed by operation of law on the following day.

3. Editorial correction of HISTORY 2 (Register 97, No. 15).

4. Repealer filed 4–10–97; operative 4–10–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

§ 51492.2. Participation Fee Requirements in the Targeted Case Management Program.

(a) The department shall perform administrative activities, including technical support, processing claims, and program monitoring for local governmental agencies participating in the targeted case management program, pursuant to Welfare and Institutions Code, Section 14132.44.

(b) Local governmental agencies shall pay the department's costs of performing administrative activities described in subsection (a).

(c) Local governmental agencies shall designate a host county as defined in Section 51185(c). Each participating local governmental agency shall deposit with the host county an annual participation fee, for that local governmental agency's portion of the costs described in subsection (b), through a mechanism agreed to by the department and local governmental agencies.

NOTE: Authority cited: Sections 14105, 14124.5 and 14132.44, Welfare and Institutions Code. Reference: Section 14132.44, Welfare and Institutions Code.

[The next page is 471.]

HISTORY
1. New section filed 7–1–96; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 6, Chapter 305, Statutes of 1995 (Register 96, No. 27).
2. New section refiled 10–29–96 as an emergency; operative 10–29–96 (Register 96, No. 44). Submitted to OAL for printing only pursuant to Section 6, Chapter 305, Statutes of 1995. A Certificate of Compliance must be transmitted to OAL by 2–26–97 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of HISTORY 2 (Register 97, No. 15).
4. Repealed by operation of Government Code section 11346.1(g) (Register 97, No. 15).
5. New section filed 4–10–97; operative 4–10–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

Article 7. Payment for Services and Supplies

§ 51501. General.

(a) Notwithstanding any other provisions of these regulations, no provider shall charge for any service or any article more than would have been charged for the same service or article to other purchasers of comparable services or articles under comparable circumstances. However, if an organized outpatient clinic renders services without charge to the general public under programs, other than Title XVIII or XIX, financed by federal or state funds, Medi–Cal may be considered a third party payor and be billed for Medi–Cal covered services when rendered to Medi–Cal beneficiaries if:

(1) The clinic has an established fee schedule; and

(2) The clinic ascertains from all individuals served whether they have a third party coverage for medical care or services, and if such coverage is available that third party coverage is billed and a diligent effort made to collect such claimed amounts; and

(3) Medi–Cal is not the only third party pay or from which the clinic seeks payment.

(b) Payments for benefits under the Medi–Cal Program can be made only to providers who meet the Standards for Participation specified in Article 3 (commencing with Section 51200), and the requirements for payment in Article 7 of this chapter.

(c) Payment by the Medi–Cal Program for each outpatient visit which involves copayment, emergency room service which involves copayment and each prescribed drug which involves copayment shall not be reduced by the amount of copayment required by these regulations.

(d) No provider shall submit claims to the Medi–Cal Program using any provider number other than that issued to the provider by the Department.

(e) Fees shall not be paid to any provider for professional services rendered in a hospital or other facility when such provider is compensated on a salary or contract basis, for performing the same or similar services, by that hospital or facility if the funds used to pay such salary or to discharge the obligation of such contract are subject to reimbursement in whole or in part from the General Fund of the State of California or from taxes or assessments paid to any of its subdivisions.

(f) A negotiated rate of payment between a Medi–Cal provider and any contractor contracting with the Department on an at–risk basis pursuant to Chapter 7 or Chapter 8, Part 3, Division 9, Welfare and Institutions Code shall not be the basis for finding a violation of (a) above or Section 51480 and shall not be the basis for otherwise reducing the provider's reimbursement pursuant to the payment regulations of this article.

NOTE: Authority cited: Sections 14105, 14124.5 and 14312, Welfare and Institutions Code; Section 133.5, Chapter 102, Statutes of 1981; Section 2, Chapter 237, Statutes of 1981; and Section 78, Chapter 146, Statutes of 1999. Reference: Sections 14000, 14053, 14088.16, 14105, 14106 and 14134, Welfare and Institutions Code.

HISTORY
1. Amendment of subsection (a) filed 4–1–74; effective thirtieth day thereafter (Register 74, No. 14). For prior history, see Register 72, No. 40.
2. New subsection (e) filed 3–5–76 as an emergency; effective upon filing (Register 76, No. 10).
3. Certificate of Compliance filed 7–1–76 (Register 76, No. 27).
4. New subsection (f) filed 12–10–79; effective thirtieth day thereafter (Register 79, No. 50).
5. Amendment of subsection (c) filed 11–17–81 as an emergency; effective upon filing (Register 81, No. 47). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3–17–82.
6. Certificate of Compliance transmitted to OAL 3–16–82 and filed 4–16–82 (Register 82, No. 16).
7. Editorial correction restoring subsections (a)(A)–(f) inadvertently deleted during printing of Register 84, No. 50, and redesignation of subsections (a)(A)–(C) to subsections (a)(1)–(3) (Register 85, No. 12).
8. Amendment of subsection (f) filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 7–9–90.
9. Amendment refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
10. Request to readopt amendment on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
12. Amendment of subsection (f) filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 3–25–91 order transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).
14. Amendment of subsection (b) and NOTE filed 9–28–99 as an emergency; operative 9–28–99 (Register 99, No. 40). A Certificate of Compliance must be transmitted to OAL by 3–27–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
15. Amendment of subsection (b) and NOTE refiled 11–24–99 as an emergency; operative 11–24–99 (Register 99, No. 48). A Certificate of Compliance must be transmitted to OAL by 5–22–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
16. Amendment of subsection (b) and NOTE refiled 5–5–2000 as an emergency; operative 5–22–2000 (Register 2000, No. 18). A Certificate of Compliance must be transmitted to OAL by 9–19–2000 or emergency language will be repealed by operation of law on the following day.
17. Amendment of subsection (b) and NOTE refiled 8–28–2000 as an emergency; operative 9–6–2000 (Register 2000, No. 35). A Certificate of Compliance must be transmitted to OAL by 1–4–2001 or emergency language will be repealed by operation of law on the following day.
18. Certificate of Compliance as to 8–28–2000 order transmitted to OAL 12–26–2000 and filed 2–8–2001 (Register 2001, No. 6).

§ 51502. Billing Requirements.

(a) All charges submitted for payment shall be on billing forms approved by the Director. Unless otherwise prescribed by the Director, the following shall be included on or attached to each billing form:

(1) The name, address, and Medi–Cal provider number of the provider submitting the billing.

(2) The name, address and Medi–Cal identification number for the beneficiary receiving the services billed, MEDI labels for services requiring this documentation and such other information as the Director may prescribe to ensure correct payment of the claim.

(3) A coded description of each diagnosis, in a form prescribed by the Director.

(4) A coded description of each procedure for each service rendered to the beneficiary in a form prescribed by the Director. The billing form for all clinical laboratory tests or examinations shall include the diagnostic information specified in Section 51200(e).

(5) The Medi–Cal provider number or license number, when different than the billing provider, for the following:

(A) The admitting, attending and operating physician, dentist or podiatrist who provides hospital inpatient services.

(B) The referring physician, dentist, podiatrist and rendering practitioner who provides outpatient institutional services, physician services and other provider services.

(C) The attending physician who renders services to a patient in a long–term care facility.

(D) The ordering or prescribing physician, dentist or podiatrist, when the service claimed by the provider requires an order or prescription by a licensed practitioner as defined by California law.

(E) The facility where physician services or allied services were rendered if other than home or office.

(6) The Medi–Cal provider number or California laboratory identification number of the laboratory where services were rendered for outpatient institutional services, physician services and allied services.

(7) The total amount billed to Medicare and the amount paid by Medicare for Medicare/Medi–Cal crossover claims for long–term care services, hospital inpatient services, outpatient institutional services, optometric services, physician services and allied services.

(8) The number of pints of blood and the Medicare blood deductible amount for Medicare/Medi–Cal crossover claims for hospital inpatient services, outpatient and institutional services, physician services and allied services.

(9) The Medicare deductible and coinsurance amounts for Medicare/Medi–Cal crossover claims for long–term care services, hospital inpatient services, outpatient institutional services, optometric services, physician services and allied services.

(10) The charge for each service.

(11) The provider's signature certifying that all information included on or attached to the billing form is true, accurate and complete.

(b) Notwithstanding any other provisions of these regulations, payment for any service rendered includes the payment for completion of the required authorization or billing forms. No provider shall submit charges or receive additional payment for the completion of required authorization or billing forms.

(c) All claims for services rendered in an organized outpatient clinic shall be submitted by the clinic, except that claims for surgical procedures provided in licensed surgical clinics may be submitted separately by physicians and by clinics for services provided by each provider.

(d) The Department may require additional documentation to determine the medical necessity of services before paying benefits under the Medi–Cal program.

NOTE: Authority cited: Sections 14105, 14115 and 14124.5, Welfare and Institutions Code; and Section 78, Chapter 146, Statutes of 1999. Reference: Sections 14018.2, 14043.75, 14059, 14115, 14124.5, 14132 and 14133, Welfare and Institutions Code.

HISTORY

1. New section filed 9–30–71 as an emergency; designated effective 10–1–71 (Register 71, No. 40). Certificate of Compliance—Section 11422.1, Gov. Code, filed 1–25–72 (Register 72, No. 5).
2. Amendment filed 8–6–76; effective thirtieth day thereafter (Register 76, No. 32).
3. Amendment of subsection (c) filed 12–30–77; designated effective 2–1–78 (Register 77, No. 53).
4. Amendment of subsection (a) filed 10–24–79; effective thirtieth day thereafter (Register 79, No. 42).
5. Amendment of subsection (a) filed 2–1–80; effective thirtieth day thereafter (Register 80, No. 5).
6. New subsection (d) filed 3–30–81; effective thirtieth day thereafter (Register 81, No. 14).
7. Amendment of subsections (a)(2) and (c) filed 3–6–85; effective thirtieth day thereafter (Register 85, No. 10).
8. Amendment of subsection (a)(4) and amendment of NOTE filed 10–24–2000 as an emergency and submitted to OAL for printing only pursuant to Section 78, Chapter 146, Statutes of 1999; operative 10–24–2000 (Register 2000, No. 43). A Certificate of Compliance must be transmitted to OAL by 4–23–2001 or emergency language will be repealed by operation of law on the following day.
9. Editorial correction of HISTORY 8 (Register 2001, No. 14).
10. Amendment of subsection (a)(4) and amendment of NOTE refiled 4–4–2001 as an emergency and submitted to OAL for printing only pursuant to Section 78, Chapter 146, Statutes of 1999; operative 4–4–2001 (Register 2001, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–2–2001 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 4–4–2001 order, including further amendment of subsection (a)(4), transmitted to OAL 7–31–2001 and filed 9–5–2001 (Register 2001, No. 36).

§ 51502.1. Requirements for Electronic Claims Submission.

(a) As used in this section, the following definitions shall apply:

(1) "Biller" includes any employee, officer, agent or director of the entity which will bill on behalf of a provider pursuant to a contractual relationship with the provider which does not include payment to billers on the basis of a percentage of amount billed or collected from Medi–Cal.

(2) "Source Documents" include every document or record on which the provider or the biller relies to submit a claim, as described in Title 22, Section 51476. Source documents shall also include all printed representations of information transmitted as a claim to the biller or the fiscal intermediary, whether transmitted by the provider or biller.

(3) "Provider" shall have the same meaning as in Section 51051 of these regulations.

(4) "Electronic claims submission" means that submission of Medi–Cal claims for service on magnetic tape, computer–to–computer via telephone or other electronic means which are approved by the Director as being compatible with and acceptable for processing by the State claims processing system.

(b) Any enrolled provider may request of the Department authorization to transmit claims to the fiscal intermediary electronically. The Director shall provide written acknowledgement of provider's request for electronic claims submission participation within 30 days of receipt of the request. This acknowledgement shall identify additional information, if any, needed. The Director shall notify the provider in writing of approval or denial within six months of receipt of the request. In the event that the request is denied, the written notice shall specifically set forth the reasons for the denial.

(c) The Director shall authorize such billing unless the Director determines that the requesting provider is ineligible for electronic claims submission. In determining eligibility, the Director shall consider the provider's history of Medi–Cal provider participation, for the three years preceding provider request for participation. A provider shall be determined ineligible for electronic claims submission if during the three years one of the following criteria is met. The provider has:

(1) Been convicted of any felony, crime or misdemeanor involving fraud or abuse of the Medi–Cal, Medicaid or Medicare programs.

(2) Been convicted of any crime involving dishonesty, corruption, theft, fraud, kickbacks, rebates or bribes.

(3) Been found liable or convicted in any civil or criminal legal action involving misuse of electronic communication mechanisms.

(4) Been the subject of any civil or criminal proceedings by any private or public entity administering Medi–Cal, Medicaid or private insurance, which result in one of the following: suspension from the Medi–Cal program in accordance with Title 22, CAC, Section 51458, placement on special claims review in accordance with Section 51460, placement on prior Authorization in accordance with Title 22, CAC, Section 51455, recovery of overpayments in excess of 10 percent of total provider annual Medi–Cal payments for the most recent full fiscal year in accordance with Title 22, CAC, Section 51458.1 or the filing of criminal charges for fraudulent billing of the Medi–Cal program in accordance with Sections 14107 of the Welfare and Institutions Code and 72 of the Penal Code.

(5) Failed or refused to provide the Department, its duly authorized agents or agents of other state or federal agencies charged with the review of state or federal expenditures with patient records, source documents or other documentation required by statute or regulation.

(6) Made any false or misleading statement in patient records, substantiation of claims, requests for prior authorization, Departmental application or other documentation in violation of statute or regulation.

(d) Any provider determined by the Director to be eligible for electronic claims submission may employ a biller certified by the Director as eligible to perform such billing. The Director shall provide written acknowledgement of biller request to perform such billing for an eligible provider within 30 days of application date. This acknowledgement shall identify additional information, if any, needed. The Director shall notify biller in writing of approval or denial within six months of request receipt. In the event such a request is denied the written notice shall specify reasons for denial. In determining the eligibility of a biller, the Director shall consider the biller's history of Medi–Cal participation or overall business activities for the three years preceding participation request receipt. A biller shall be determined to be ineligible for electronic claim submission if one of the following criteria is met during the three years preceding receipt of request for participation. The biller has:

(1) Been convicted of any crime involving dishonesty, corruption, fraud, computer fraud, embezzlement, larceny, forgery, falsification of documents, kickbacks, rebates or bribes.

(2) Been found liable or convicted in any civil, criminal or administrative actions involving illegal use of electronic communication mechanisms.

(3) Submitted claims for services not claimed by a provider or for a greater dollar amount than claimed by a provider under the Medi–Cal, Medicaid, Medicare programs or any other health insurance carrier.

(4) Entered an agreement for compensation with any provider based upon percentage or other variable related to the amount billed or collected from the Medi–Cal, Medicaid, or Medicare programs in violation of state or federal law.

(5) Failed or refused to produce source documents for the Department, its duly authorized agents or agents of other state or federal agencies charged with review of state or federal expenditures as provided in statute or regulation.

(6) Failed to demonstrate it employs adequate precautions to protect the confidentiality of Medi–Cal beneficiary records and claims submission methods in accordance with statute or regulation.

(e) The agreement between a provider and a biller shall be in writing and shall be readily retrievable and available on request to the Department or any duly authorized agency for Departmental review to ensure compliance with state and federal standards. Said agreement must in no case contain an agreement for compensation of the biller based on a formula which has as a factor the percentage of the amount billed or collected from the Medi–Cal, Medicaid or Medicare programs in violation of state or federal law.

(f) Any provider or biller eligible for electronic claims submission shall, prior to engaging in any such billing, enter into an agreement with the Department specifying the conditions of participation in such billing methods. This agreement shall be drafted by the Department. The provider and biller shall agree to conditions which shall include, but not be limited to, the following:

(1) Any and all source documents used in documenting, preparing or submitting claims shall be retained in a manner readily retrievable and shall be made available to agents of the Department or any other duly authorized agency on request during normal business hours. Out–of–state providers may be required to produce source documents at a location designated by the Department within the State of California.

(2) All source documents shall be maintained for a period of at least three years from the date received by the FI for payment, as specified by Title 22, CAC, Section 51476.

(3) Source documents, originals or on microfilm/microfiche, shall show the identification of the person or persons who actually rendered the service claimed. All providers shall have on file a printed representation of all information transmitted electronically as a claim by the provider to the biller or the fiscal intermediary. All billers shall produce a printed representation of all information transmitted electronically as a claim by the provider to the biller on demand of the Department or any other authorized agency.

(4) Any instructions between a provider and a biller related to the submission of Medi–Cal claims shall be in writing and available for inspection.

(5) Claims shall not be processed until such time as the Department's fiscal intermediary receives, verifies and posts a Claims Certification Statement and Control Sheet, which shall include all of the following:

(A) A certification of the truth and accuracy of each claim.

(B) The number and total dollar amount of claims submitted.

(C) Such beneficiary identification as the Department may require.

(D) The signature of the provider or the provider's agent.

(6) The Department shall be promptly notified by the provider of any changes in a provider's or biller's status which might affect such person's ability to participate in electronic billing methods.

(7) The provider shall be responsible for ensuring that all remittances and paid claims information are reviewed and that corrections for any overpayments are promptly pursued through the Department's Fiscal Intermediary within the applicable limits of Section 51008(d) of Title 22, CAC.

(8) The provider shall bill those services requiring submission of a MEDI label or other attachment with the claim in accordance with Department billing instructions including instructions regarding structuring the remarks section in a format compatible with electronic data submission.

(g) No provider or potential biller shall submit claims electronically without first securing the approval of the Department for the system to be used for claims submission. In reviewing a proposed billing system, the Department may request submission of a test billing and consider the:

(1) Compatibility with and acceptability for processing by the State claims processing system.

(2) Provider's or potential biller's system for maintaining adequate documentation to support the services, claims and medical necessity thereof.

(h) The test billing and signed provider/biller agreements shall constitute formal request for participation in the electronic claims submission program.

(i) Ongoing approval of the billing system is contingent upon maintenance of the system as approved by the Department under subsection (g). Failure to do so shall be considered grounds for the Department to disapprove the provider or biller for the submission of claims electronically.

(j) Failure or refusal of a provider or a biller to continue to comply with the standards of participation set forth in subsections (c) through (g) shall subject a provider or biller to immediate suspension from participation in the electronic claims submission program. For purposes of applying the standards set forth in those subsections (c) and (d), suspension will occur if one of the events set forth in those subsections has occurred during the three year period prior to the proposed suspension. Notification of the suspension shall be in writing. The provider or biller has the right to appeal the suspension in writing within 30 days of the date of notification. The Department shall review the appeal and any supporting documents in accordance with the time frames and procedures specified in Section 51015(d) of these regulations.

NOTE: Authority cited: Sections 10725, 14040, 14105 and 14124.5, Welfare and Institutions Code; and Section 78, Chapter 146, Statutes of 1999. Reference: Sections 14040, 14100.2, 14107, 14115, 14124.1, 14124.2 and 14170, Welfare and Institutions Code.

HISTORY

1. New section filed 6–29–84 as an emergency; designated effective 7–1–84 (Register 84, No. 28). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–30–84.
2. Order of Repeal of 6–29–84 emergency language filed 11–28–84 by OAL pursuant to Government Code Section 11349.6(b) (Register 84, No. 48).
3. New section filed 3–18–85 as an emergency; effective upon filing (Register 85, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–16–85.
4. Certificate of Compliance including amendment of subsection (c)(4) filed 7–15–85 (Register 85, No. 29).
5. Amendment of subsection (f)(2) and new subsection (j) filed 4–24–87; operative 5–24–87 (Register 87, No. 17).
6. Amendment of subsection (a)(3) and NOTE filed 9–28–99 as an emergency; operative 9–28–99 (Register 99, No. 40). A Certificate of Compliance must be transmitted to OAL by 3–27–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
7. Amendment of subsection (a)(3) and NOTE refiled 11–24–99 as an emergency; operative 11–24–99 (Register 99, No. 48). A Certificate of Compliance must be transmitted to OAL by 5–22–2000 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to section 78, AB 1107 (Chapter 146, Statutes of 1999).
8. Amendment of subsection (a)(3) and NOTE refiled 5–5–2000 as an emergency; operative 5–22–2000 (Register 2000, No. 18). A Certificate of Compliance must be transmitted to OAL by 9–19–2000 or emergency language will be repealed by operation of law on the following day.
9. Amendment of subsection (a)(3) and NOTE refiled 8–28–2000 as an emergency; operative 9–6–2000 (Register 2000, No. 35). A Certificate of Compliance must be transmitted to OAL by 1–4–2001 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 8–28–2000 order transmitted to OAL 12–26–2000 and filed 2–8–2001 (Register 2001, No. 6).

§ 51503. Physician Services.

(a) Except as otherwise provided, reimbursement for physician services shall be the usual charges made to the general public not to exceed the maximum reimbursement rates listed in this section for each procedure performed by a physician.

(b) Except as set forth in (d), (e), (h), (k) and (*l*), the maximum reimbursement rates for physician services shall be the rates set forth in the "Schedule of Medi–Cal Physician Rates", published by the Department of Health Services, June 2002, herein incorporated by reference in its entirety.

(c) As used in (b), a given procedure listed in the "Schedule of Medi–Cal Physician Rates" means those procedures which are a benefit of the Medi–Cal program as determined by the Department.

(d) The maximum reimbursement for "By Report" procedures, and procedures not listed in the "Schedule of Medi–Cal Physician Rates" shall be based upon a review of such procedures to determine their relationship to other procedures for which reimbursement rates are established.

(e) The maximum reimbursement rate for professional services for immunizations shall be $9.00. The maximum reimbursement rate for professional services for other injections shall be $4.46.

(f) Maximum reimbursement rates for anesthesia services shall be determined in accordance with this Section, except anesthesia services performed by a nurse anesthetist and billed by a physician shall be reimbursed in accordance with Section 51505.2. Physicians billing for anesthesia services performed by a nurse anesthetist shall indicate on the claim that such services were performed by a nurse anesthetist.

(g) Reimbursement for services rendered on or after November 1, 1976 by physicians which were provided in hospital outpatient emergency, examining, and treatment rooms shall be reduced to 80 percent of the maximum reimbursement rates as set forth in (b) unless:

(1) The physician is called from outside the outpatient department setting to provide emergency services.

(2) The physician or group of physicians contract with a hospital and assume total financial responsibility for such outpatient services.

(3) Specified medical procedures, as determined by the Department, when performed in a hospital outpatient setting may be reimbursed at the rates set forth in (b).

(h) Pathology tests that are not listed in (b) shall be reimbursed in accordance with the provisions of section 51529.

(i) In compliance with section 51501 and notwithstanding any provision of Title XVIII of the Social Security Act, Medi–Cal payments for a physician's services to outpatient dialysis patients shall be made only to providers of service.

(j) The Medi–Cal program, through its intermediary, will pay allowable Medi–Cal rates for direct patient care services in a teaching setting when directly provided by teaching physicians only when such services are provided and billed in accordance with program policies and regulations of the Department of Health Services and when:

(1) They are performed for necessary treatment of the patient;

(2) They are not an exercise of teaching supervision without direct patient care services being provided;

(3) They do not duplicate any medical services billed by any other provider; and

(4) The teaching physician is not on salary or contract to the hospital for the direct patient care services provided.

No professional fees are payable for services provided independently by residents or students in a teaching setting.

(k) Reimbursement for an early discharge follow up visit provided to a mother and her newborn shall be made when the conditions specified in Section 51327(b) are met. Each early discharge follow up visit shall be separately reimbursed when the physician providing service to the mother is different from the physician providing service to the newborn. Services provided to the mother and her newborn shall be billed using Evaluation and Management Code 99499 with the modifier "ZW."

(*l*) Physician services provided under the California Children's Services program shall be reimbursed at rates which are 39.7 percent greater than the Medi–Cal rate which would otherwise be applicable.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14077, 14105, 14132.42 and 14148.4, Welfare and Institutions Code; Statutes of 1982, Chapter 1594, Section 77; Statutes of 1983, Chapter 323, Section 149; Statutes of 1984, Chapter 268, Section 66; Statutes of 1986, Chapter 186, Items 4260–106–001 and 890; Statutes of 1992, Chapter 722, Section 88, Statutes of 1998, Chapter 324, Items 4260–101–0001 and 0890; Statutes of 1999, Chapter 50, Items 4260–101–0001 and 4260–101–0890; Section 433.123, Title 42, Code of Federal Regulations; and Statutes of 2000, Chapter 52, Items 4260–101–0001 and 0890.

HISTORY

1. Amendment of subsection (b), relettering of former subsections (f)–(k) to subsections (g)–(l) and new subsection (f) filed 1–19–90 as an emergency; operative 1–19–90 (Register 90, No. 5). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 5–21–90. For prior history, see Register 89, No. 21.
2. Certificate of Compliance as to 1–19–90 order including amendment of subsection (f) transmitted to OAL 5–18–90 and filed 6–15–90 (Register 90, No. 32).
3. Amendment of subsections (a), table in subsection (b), subsection (h) and NOTE filed 10–1–92 with Secretary of State by Department of Health Services; operative 10–1–92. Submitted to OAL for printing only pursuant to section 147(c), SB 485, (Chapter 722, Statutes of 1992) (Register 92, No. 40).
4. Certificate of Compliance as to 10–1–92 order transmitted to OAL 1–2–93 and filed 3–12–93 (Register 93, No. 11).
5. Amendment of subsection (g) and NOTE filed 4–11–96 as an emergency pursuant to section 14105 of the Welfare and Institutions Code; operative 1–18–96 pursuant to stats. 1995, ch. 303, item 4260–101–001, sec. 5 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–9–96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 4–11–96 order transmitted to OAL 8–7–96 and filed 9–13–96 (Register 96, No. 37).
7. Repealer of subsection (h), new subsections (h)–(h)(3), and amendment of NOTE filed 12–30–97; operative 5–1–98 (Register 98, No. 1).
8. Amendment of subsections (b), (f) and (g) and amendment of NOTE filed 3–1–99 as an emergency; operative 3–1–99 (Register 99, No. 10). A Certificate of Compliance must be transmitted to OAL by 6–29–99 or emergency language will be repealed by operation of law on the following day.
9. Reinstatement of section as it existed prior to 3–1–99 emergency amendment by operation of Government Code section 11346.1(f) (Register 99, No. 33).
10. Amendment of subsections (b), (f) and (g) and amendment of NOTE filed 8–10–99 as an emergency; operative 8–10–99 (Register 99, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–8–99 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 8–10–99 order transmitted to OAL 12–2–99 and filed 1–13–2000 (Register 2000, No. 2).
12. New subsection (m) and amendment of NOTE filed 3–13–2000 as an emergency; operative 3–13–2000 (Register 2000, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–11–2000 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 3–13–2000 order transmitted to OAL 7–5–2000 and filed 8–14–2000 (Register 2000, No. 33).
14. Amendment of subsections (b), (f) and (h)(2), new subsection (n) and amendment of NOTE filed 11–13–2000 as an emergency; operative 11–13–2000 (Register 2000, No. 46). A Certificate of Compliance must be transmitted to OAL by 3–13–2001 or emergency language will be repealed by operation of law on the following day.
15. Certificate of Compliance as to 11–13–2000 order transmitted to OAL 3–13–2001 and filed 4–4–2001 (Register 2001, No. 14).
16. Amendment of section and NOTE filed 7–16–2002; operative rates for services provided on or after 8–1–2000 pursuant to Stats. 2000, c. 52, Items 4260–101–0001 and 0890 (Register 2002, No. 29).
17. Certificate of Compliance as to 7–16–2002 order, including repealer of subsection (m), transmitted to OAL 11–12–2002 and filed 12–24–2002 (Register 2002, No. 52).

§ 51503.1. Reimbursement for Services Rendered by a Nonphysician Medical Practitioner.

(a) Except as provided in (b), reimbursement for services rendered by a nonphysician medical practitioner shall be made directly to the physician, organized outpatient clinic or hospital outpatient department utilizing the nonphysician medical practitioner.

(b) Reimbursement for services rendered by a nurse midwife, a certified family nurse practitioner, or a certified pediatric nurse practitioner shall be made in accordance with Section 51503.2.

(c) Reimbursement shall be the lesser of the billed amount or the rates established pursuant to Section 51503.

(d) All claims for payment for nonphysician medical practitioner services rendered pursuant to (a) shall include:

(1) The name and license or certificate number of the nonphysician medical practitioner rendering the service.

(2) The location at which the service was rendered.

(3) The name of the supervising physician or the attending physician.

(e) Reimbursement for services rendered by nonphysician medical practitioners shall be limited to those which are:

(1) Defined by statutes and regulations as Medi-Cal reimbursable services.

(2) Within the scope of services permitted by the statutes and regulations governing the activities of licensed physician's assistants, nurse midwives, and nurse practitioners.

(3) Within the scope of the Physician–Practitioner Interface as defined in Section 51171.

NOTE: Authority cited: Sections 14053, 14105, 14124.5, 14132 and 14132.41, Welfare and Institutions Code. Reference: Articles 2 and 2.5 of Chapter 6, and Chapter 7.7, Business and Professions Code; and Sections 14115.6 and 14132.41, Welfare and Institutions Code.

HISTORY

1. New section filed 8–1–78 as an emergency; effective upon filing (Register 78, No. 31).
2. Certificate of Compliance filed 8–9–78 (Register 78, No. 31).
3. Amendment filed 8–13–86; effective upon filing (Register 86, No. 33).
4. Amendment of section and NOTE filed 5–3–93 as an emergency; operative 5–3–93 (Register 93, No. 19). A Certificate of Compliance must be transmitted to OAL 8–31–93 or emergency language will be repealed by operation of law on the following day.
5. Reinstatement of section as it existed prior to emergency amendment filed 5–3–93 by operation of Government Code section 11346.1(f) (Register 93, No. 44).
6. Amendment of section and NOTE refiled 10–27–93 as an emergency; operative 10–27–93 (Register 93, No. 44). A Certificate of Compliance must be transmitted to OAL by 2–25–94 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 10–27–93 order including amendment of NOTE transmitted to OAL 10–18–93 and filed 12–2–93 (Register 93, No. 49).

§ 51503.2. Reimbursement for Services Rendered by a Nurse Midwife, a Certified Family Nurse Practitioner, or a Certified Pediatric Nurse Practitioner.

(a) Reimbursement for services rendered by a nurse midwife, a certified family nurse practitioner, or a certified pediatric nurse practitioner shall be the usual charges made to the general public not to exceed the maximum reimbursement rates established in Section 51503 for the same service.

(b) Reimbursement may be made either:

(1) Directly to the nurse midwife, a certified family nurse practitioner, or certified pediatric nurse practitioner as an independent provider of service.

(2) To the physician, organized outpatient clinic, or hospital outpatient department which employs or utilizes the nurse midwife, a certified family nurse practitioner, or certified pediatric nurse practitioner as a nonphysician medical practitioner in accordance with Section 51503.1.

NOTE: Authority cited: Sections 14105 and 14132.41, Welfare and Institutions Code. Reference: Sections 14132.4 and 14132.41, Welfare and Institutions Code; and Statutes of 2000, Chapter 52, Items 4260–101–0001 and 0890.

HISTORY

1. New section filed 12–21–83; effective thirtieth day thereafter (Register 83, No. 52).
2. Amendment of section heading, text and NOTE filed 5–3–93 as an emergency; operative 5–3–93 (Register 93, No. 19). A Certificate of Compliance must be transmitted to OAL 8–31–93 or emergency language will be repealed by operation of law on the following day.
3. Reinstatement of section as it existed prior to emergency amendment filed 5–3–93 by operation of Government Code section 11346.1(f) (Register 93, No. 44).
4. Amendment of section heading, text and NOTE refiled 10–27–93 as an emergency; operative 10–27–93 (Register 93, No. 44). A Certificate of Compliance must be transmitted to OAL by 2–25–94 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 10–27–93 order including amendment of NOTE transmitted to OAL 10–18–93 and filed 12–2–93 (Register 93, No. 49).
6. Amendment of subsection (a), new subsection (c) and amendment of NOTE filed 7–16–2002; operative rates for services provided on or after 8–1–2000 pursuant to Stats. 2000, c. 52, Items 4260–101–0001 and 0890 (Register 2002, No. 29).
7. Certificate of Compliance as to 7–16–2002 order, including repealer of subsection (c), transmitted to OAL 11–12–2002 and filed 12–24–2002 (Register 2002, No. 52).

§ 51503.3. Reimbursement for Sign Language Interpreter Services.

(a) Reimbursement for the provision of sign language interpreter services utilized in accordance with Section 51309.5, rendered by non–certified or certified interpreters shall be made to Medi–Cal enrolled providers employing fewer than fifteen employees in accordance with the maximum reimbursement rates set forth in this section. However, in no case shall the services billed exceed charges made to the general public for provision of similar services.

(b) Reimbursement for sign language interpreter services shall be as follows:

Procedure Code	*Description*	*Rate*
Z0324	Certified Sign Language Interpreter	$64.55
Z0326	Non–Certified Sign Language Interpreter	$38.73

Each procedure code represents a minimum of two hours of service, which includes travel time.

(c) Additional sign language interpreter services may be billed in 15–minute increments as follows:

Z0328	Certified Sign Language Interpreter	$6.36
Z0329	Non–Certified Sign Language Interpreter	$3.82

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725 and 14105, Welfare and Institutions Code. Reference: Section 54.1, Civil Code; Section 14000, Welfare and Institutions Code; 42 USC Sections 12101 et seq.; 28 CFR Section 36.303; and 45 CFR Section 84.22(c).

HISTORY

1. New section filed 8–21–2000 as an emergency; operative 8–21–2000 (Register 2000, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–2000 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 8–21–2000 order transmitted to OAL 12–19–2000 and filed 2–2–2001 (Register 2001, No. 5).
3. Amendment of subsection (a) and NOTE filed 8–7–2008; operative 9–6–2008 (Register 2008, No. 32).

§ 51504. Comprehensive Perinatal Services.

(a) Except where a capitated health system contract entered into by the Department provides otherwise, reimbursement for comprehensive perinatal obstetric, nutrition, psychosocial, and health education services shall be made only to comprehensive perinatal providers defined in Section 51179.1.

(b) Except where a capitated health system contract entered into by the Department provides otherwise, reimbursement for comprehensive perinatal obstetric services shall not exceed the maximum allowances for similar services established in Sections 51503, 51509 or 51509.1, whichever is applicable, plus the following amounts.

(1) An additional $50.00 shall be allowed for the initial comprehensive medical office visit when provided within 16 weeks of the last menstrual period.

(2) An additional $100.00 in total shall be allowed for the tenth and all subsequent prenatal office visits.

(c) Except where a capitated health system contract entered into by the Department provides otherwise, reimbursement for pathology services shall not exceed the maximum allowances established in Section 51529.

(d) Except where a capitated health system contract entered into by the Department provides otherwise, reimbursement for comprehensive perinatal nutrition, psychosocial, and health education services shall not exceed the maximum allowances listed in this section. Reimbursement shall be claimed only for time spent rendering covered patient care services while in direct personal contact with the patient. Reimbursement shall not be claimed for similar services provided under the Maternal and Child Health program.

(e) Reimbursement for the combined perinatal assessment procedure listed in subsection (1) shall be allowed only when all three indicated assessments and the initial comprehensive medical examination have been performed.

(1) Maximum allowances for comprehensive perinatal nutrition, psychosocial, and health education assessment:

Procedure Code		*Maximum Allowance*
Z6500	Initial comprehensive nutrition, psychosocial, and health education assessments and development of care plan, first 30 minutes each assessment (total of 90 minutes), including ongoing coordination of care.	$135.83

(2) Maximum allowances for comprehensive perinatal nutrition services:

Z6200	Initial nutrition assessment and development of care plan, first 30 minutes	$16.83
Z6202	Initial nutrition assessment and development of care plan, each subsequent 15 minutes (Maximum of 1 1/2 hours)	8.41
Z6204	Follow-up antepartum nutrition assessment, treatment and/or intervention, individual, each 15 minutes (Maximum of 2 hours)	8.41
Z6206	Follow-up antepartum, nutrition assessment, treatment, and/or intervention, group, per patient, each 15 minutes (Maximum of 3 hours)	2.81
Z6208	Postpartum nutrition assessment, treatment, and/or intervention, including development of care plan, individual, each 15 minutes (Maximum of 1 hour)	8.41
Z6210	Prenatal vitamin-mineral supplement, 300-day supply	39.96

(3) Maximum allowances for comprehensive perinatal psychosocial services:

(4) Maximum allowances for comprehensive perinatal health education services:

Procedure Code		*Maximum Allowance*
Z6300	Initial psychosocial assessment and development of care plan, first 30 minutes	$16.83
Z6302	Initial psychosocial assessment and development of care plan, each subsequent 15 minutes (Maximum of 1 1/2 hours)	8.41
Z6304	Follow-up antepartum psychosocial assessment, treatment and/or intervention, individual, each 15 minutes (Maximum of 3 hours)	8.41
Z6306	Follow-up antepartum psychosocial assessment, treatment and/or intervention, group, per patient, each 15 minutes (Maximum of 4 hours)	2.81
Z6308	Postpartum psychosocial assessment, treatment, and/or intervention, including development of care plan, individual, each 15 minutes (Maximum of 1 1/2 hours)	8.41
Z6400	Client orientation, each 15 minutes (Maximum of 2 hours)	8.41
Z6402	Initial health education assessment and development of care plan, first 30 minutes	16.83
Z6404	Initial health education assessment and development of care plan, each subsequent 15 minutes (Maximum of 2 hours)	8.41
Z6406	Follow-up antepartum health education assessment, treatment, and/or intervention, individual, each 15 minutes (Maximum of 2 hours)	8.41
Z6408	Follow-up antepartum health education assessment, treatment, and/or intervention, group, per patient, each 15 minutes (Maximum of 2 hours)	2.81
Z6410	Perinatal education, individual, each 15 minutes (Maximum of 4 hours)	8.41
Z6412	Perinatal education, group, per patient, each 15 minutes (Maximum of 18 hours)	2.81
Z6414	Post partum health education assessment, treatment, and/or intervention, including development of care plan, individual, each 15 minutes (Maximum of 1 hour)	8.41

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14075, 14077, 14105 and 14134.5, Welfare and Institutions Code; Statutes of 2000, Chapter 52, Items 4260-101-0001 and 0890.

HISTORY

1. New section filed 2-17-87 as an emergency; effective upon filing (Register 87, No. 8). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6-17-87.
2. New section refiled 6-5-87 as an emergency; operative 6-17-87 (Register 87, No. 25). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10-15-87.
3. Certificate of Compliance including amendment of subsection (d) filed 9-17-87 (Register 87, No. 38).
4. Amendment of subsection (b) filed 5-9-88 as an emergency; operative 5-15-88 (Register 88, No. 20). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-12-88.
5. Certificate of Compliance including amendment of subsection (b)(2) transmitted to OAL 9-1-88 and filed 10-3-88 (Register 88, No. 42).
6. Amendment of subsections (e)(1)-(e)(4) filed 9-25-92 as an emergency; operative 10-1-92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL 1-25-93 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 9-25-92 order transmitted to OAL 1-22-93 and filed 3-9-93 (Register 93, No. 11).
8. Amendment of subsections (e)(1)-(2) and (e)(4), new subsection (f) and amendment of NOTE filed 7-16-2002; operative rates for services provided on or after 8-1-2000 pursuant to Stats. 2000, c. 52, Items 4260-101-0001 and 0890 (Register 2002, No. 29).
9. Certificate of Compliance as to 7-16-2002 order, including repealer of subsection (f), transmitted to OAL 11-12-2002 and filed 12-24-2002 (Register 2002, No. 52).

§ 51504.1. Reimbursement for Services Rendered by a Licensed Midwife.

(a) Reimbursement for services rendered by a licensed midwife shall be the usual charges made to the general public not to exceed the maximum reimbursement rates listed in Section 51503 for the same service.

(b) Reimbursement shall be made directly to the licensed physician and surgeon, clinic licensed pursuant to Sections 1204 or 1204.3 of the Health and Safety Code, or a clinic exempt from licensure under Section 1206 of the Health and Safety Code that utilizes the licensed midwife's services.

(c) Each claim for licensed midwife services shall be submitted by the licensed physician and surgeon, clinic licensed pursuant to Sections 1204 or 1204.3 of the Health and Safety Codes, or a clinic exempt from licensure under Section 1206 of the Health and Safety Codes, and shall include the name and Medi-Cal provider number of each licensed midwife and licensed physician and surgeon who supervised the provision of services for which reimbursement is being claimed.

NOTE: Authority cited: Section 14105, Welfare and Institutions Code. Reference: Section 14132.39, Welfare and Institutions Code.

HISTORY

1. New section filed 9-3-2004; operative 10-3-2004 (Register 2004, No. 36).

§ 51505. Other Professional Services.

HISTORY

1. Amendment filed 11-1-76 as an emergency; effective upon filing (Register 76, No. 45). For prior history, see Register 75, No. 32.
2. Amendment of subsection (b) filed 12-14-76; effective thirtieth day thereafter (Register 76, No. 51).
3. Certificate of Compliance filed 1-28-77 (Register 77, No. 5).
4. Repealer filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

§ 51505.1. Podiatry Services.

(a) Reimbursement for podiatry services shall be the usual charges made to the general public not to exceed the maximum reimbursement rates listed in this section for each procedure performed by a podiatrist.

(b) Except as provided in subsections (d), (e), (f), and (g), of this section, the maximum reimbursement rates for podiatry services shall be the amount listed for podiatry services in the "Schedule of Medi-Cal Physician Rates," incorporated by reference in its entirety in Section 51503(b).

(c) As used in (b), a given procedure listed in the "Schedule of Medi-Cal Physician Rates" means those procedures which are a benefit of the Medi-Cal program as determined by the Department.

(d) The maximum reimbursement for "By Report" or procedures not listed in the "Schedule of Medi-Cal Physician Rates" shall be based upon a review of such procedures to determine their relationship to other procedures for which unit reimbursement rates are established.

(e) The maximum reimbursement rate for professional services for injections shall be determined in accordance with 51503(e).

(f) Pathology tests shall be reimbursed in accordance with the provisions of Section 51529.

(g) Podiatry services provided under the California Children's Services program shall be reimbursed at rates which are 39.7 percent greater than the Medi-Cal rate which would otherwise be applicable.

NOTE: Authority cited: Sections 10725, 14105 and 14125, Welfare and Institutions Code. Reference: Sections 14105 and 14132, Welfare and Institutions Code; Statutes of 1982, Chapter 1594, Section 77; Statutes of 1983, Chapter 323, Section 149; Statutes of 1984, Chapter 258, Items 4260-106-001 and 890; Statutes of 1984, Chapter 268, Section 66; Statutes of 1985, Chapter 111, Items

4260–106–001 and 890; Statutes of 1992, Chapter 722, Section 88; Statutes of 1998, Chapter 324, Items 4260–101–001 and 0890; Statutes of 1999, Chapter 50, Items 4260–101–0001 and 4260–101–0890; and Section 433.123, Title 42, Code of Federal Regulations; and Statutes of 2000, Chapter 50, Items 4260–101–0001 and 0890.

HISTORY

1. Amendment of subsection (b) and new subsection (g) filed 7–30–82 as an emergency; designated effective 8–1–82 (Register 82, No. 33). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–29–82. For prior history, see Register 81, No. 52.
2. Amendment of subsection (b) filed 12–21–82 as an emergency; effective upon filing (Register 82, No. 52). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–20–83.
3. Certificate of Compliance as to 7–30–82 order transmitted to OAL 11–26–82 and filed 12–27–82 (Register 82, No. 52).
4. Certificate of Compliance as to 12–21–82 order transmitted to OAL 4–19–83 and filed 5–24–83 (Register 83, No. 22).
5. Amendment of subsections (b) and (f) filed 8–1–84 as an emergency; effective upon filing (Register 84, No. 31). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–29–84.
6. Certificate of Compliance transmitted to OAL 11–27–84 and filed 12–27–84 (Register 84, No. 52).
7. Amendment of subsections (b) and (f) filed 8–1–85 as an emergency; effective on filing (Register 85, No. 32). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–29–85.
8. Certificate of Compliance transmitted to OAL 11–20–85 and filed 12–27–85 (Register 85, No. 52).
9. Amendment of subsection (f) filed 10–1–87; operative 10–31–87 (Register 87, No. 41).
10. Amendment of table in subsection (b) and NOTE filed 10–1–92 with Secretary of State by Department of Health Services; operative 10–1–92. Submitted to OAL for printing only pursuant to section 147(c), SB 485, (Chapter 722, Statutes of 1992) (Register 92, No. 40).
11. Certificate of Compliance as to 10–1–92 order transmitted to OAL 1–2–93 and filed 3–12–93 (Register 93, No. 11).
12. Amendment of subsection (b), new subsection (h), and amendment of NOTE filed 12–30–97; operative 5–1–98 (Register 98, No. 1).
13. Amendment of subsections (b) and (f), new subsection (i), and amendment of NOTE filed 3–1–99 as an emergency; operative 3–1–99 (Register 99, No. 10). A Certificate of Compliance must be transmitted to OAL by 6–29–99 or emergency language will be repealed by operation of law on the following day.
14. Reinstatement of section as it existed prior to 3–1–99 emergency amendment by operation of Government Code section 11346.1(f) (Register 99, No. 33).
15. Amendment of subsections (b) and (f), new subsection (i) and amendment of NOTE filed 8–10–99 as an emergency; operative 8–10–99 (Register 99, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–8–99 or emergency language will be repealed by operation of law on the following day.
16. Certificate of Compliance as to 8–10–99 order transmitted to OAL 12–2–99 and filed 1–13–2000 (Register 2000, No. 2).
17. Amendment of subsections (b) and (f), new subsection (j) and amendment of NOTE filed 11–13–2000 as an emergency; operative 11–13–2000 (Register 2000, No. 46). A Certificate of Compliance must be transmitted to OAL by 3–13–2001 or emergency language will be repealed by operation of law on the following day.
18. Certificate of Compliance as to 11–13–2000 order transmitted to OAL 3–13–2001 and filed 4–4–2001 (Register 2001, No. 14).
19. Amendment of section and NOTE filed 7–16–2002; operative rates for services provided on or after 8–1–2000 pursuant to Stats. 2000, c. 52, Items 4260–101–0001 and 0890 (Register 2002, No. 29).
20. Certificate of Compliance as to 7–16–2002 order, including repealer of subsection (h), transmitted to OAL 11–12–2002 and filed 12–24–2002 (Register 2002, No. 52).

§ 51505.2. Nurse Anesthetist Services.

(a) Reimbursement for nurse anesthetist services shall be the usual charges made to the general public not to exceed the maximum reimbursement rates listed in this section for each occasion of anesthesia service provided by a nurse anesthetist.

(b) No fees shall be paid to nurse anesthetists for anesthesia services when such nurse anesthetists are compensated on a salary or other contract basis for performing the same or similar services by any provider listed in Section 51051 of this Title.

(c) The maximum reimbursement rates for nurse anesthetist services shall be determined in accordance with the "Schedule of Medi–Cal Physician Rates", incorporated by reference in Section 51503(b).

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14105, Welfare and Institutions Code; Statutes of 1984, Chapter 258, Items 4260–106–001 and 890; Statutes of 1985, Chapter 111, Items 4260–106–001 and 890; Statutes of 1999, Chapter 50, Items 4260–101–0001 and 4260–101–0890; and Statutes of 2000, Chapter 52, Items 4260–101–0001 and 0890.

HISTORY

1. Amendment of subsection (c) filed 12–28–79 as an emergency; designated effective 1–1–80 (Register 79, No. 52). For prior history, see Registers 75, No. 18; 75, No. 34; 76, No. 45; and 77, No. 5. A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 5–1–80.
2. Amendment of subsection (c) filed 2–29–80 as an emergency; designated effective 3–1–80 (Register 80, No. 9). A Certificate of Compliance must be filed by 6–29–80 or emergency language will be repealed.
3. Certificate of Compliance as to 12–28–79 order filed 3–27–80 (Register 80, No. 13).
4. Certificate of Compliance as to 2–29–80 order filed 6–28–80 (Register 80, No. 26).
5. Amendment of subsection (c) filed 8–1–80 as an emergency; effective upon filing (Register 80, No. 31). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 11–29–80).
6. Certificate of Compliance transmitted to OAL 11–28–80 and filed 12–24–80 (Register 80, No. 52).
7. Amendment of subsection (c) filed 7–31–81 as an emergency; designated effective 8–1–81 (Register 81, No. 33). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–29–81.
8. Certificate of Compliance as to 7–31–81 order transmitted to OAL 11–6–81 and filed 12–23–81 (Register 81, No. 52).
9. Amendment of subsection (c) filed 8–1–84 as an emergency; effective upon filing (Register 84, No. 31). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–29–84.
10. Certificate of Compliance transmitted to OAL 11–27–84 and filed 12–27–84 (Register 84, No. 52).
11. Amendment of subsection (c) filed 8–1–85 as an emergency; effective on filing (Register 85, No. 32). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–29–85.
12. Certificate of Compliance transmitted to OAL and filed 12–27–85 (Register 85, No. 52).
13. Amendment of subsection (c) and NOTE filed 10–1–92 with Secretary of State by Department of Health Services; operative 10–1–92. Submitted to OAL for printing only pursuant to section 147(c), SB 485, (Chapter 722, Statutes of 1992) (Register 92, No. 40).
14. Certificate of Compliance as to 10–1–92 order transmitted to OAL 1–2–93 and filed 3–12–93 (Register 93, No. 11).
15. Amendment of subsection (c), new subsections (c)(1) and (c)(2), repealer and new subsection (d), and amendment of NOTE filed 12–30–97; operative 5–1–98 (Register 98, No. 1).
16. Amendment of subsections (c)(1)–(2) and amendment of NOTE filed 11–13–2000 as an emergency; operative 11–13–2000 (Register 2000, No. 46). A Certificate of Compliance must be transmitted to OAL by 3–13–2001 or emergency language will be repealed by operation of law on the following day.
17. Certificate of Compliance as to 11–13–2000 order transmitted to OAL 3–13–2001 and filed 4–4–2001 (Register 2001, No. 14).
18. Amendment of subsection (c), repealer of subsections (c)(1)–(d), new subsection (d) and amendment of NOTE filed 7–16–2002; operative rates for services provided on or after 8–1–2000 pursuant to Stats. 2000, c. 52, Items 4260–101–0001 and 0890 (Register 2002, No. 29).
19. Certificate of Compliance as to 7–16–2002 order, including repealer of subsection (d), transmitted to OAL 11–12–2002 and filed 12–24–2002 (Register 2002, No. 52).

§ 51505.3. Psychology Services.

(a) Reimbursement for psychology services shall be the usual charges made to the general public not to exceed the maximum reimbursement allowances listed in this section.

(b) Group therapy shall be counseling at least two but not more than eight persons at any session. Group therapy reimbursement shall not be made for sessions which are less than one and one–half hours.

(c) Family therapy shall include at least two members of the immediate family, as defined by subsection (c) of Section 51466. The oldest family member in attendance shall be billed under procedure codes X9508 or X9510. All other family members in attendance shall be billed under procedure code X9512. For Medi–Cal clients:

(1) A MEDI label and Medi–Cal claim form shall be submitted for each Medi–Cal eligible family member in attendance at the family therapy session.

(2) At least two Medi–Cal eligible family members shall be in attendance at the family therapy session.

(3) At least one Medi–Cal eligible family member shall be billed under procedure code X9512 for each family therapy session.

(d) Psychodiagnostic services shall be provided and billed as follows:

(1) Psychodiagnostic services shall include test administration, scoring, and, when required, a written test report summarizing the performance and behavior results. Test administration shall include any pretest interview, pretest instruction and test materials. Test administration shall be concluded within seven consecutive work days. Psychodiagnostic time allowances shall only apply to the psychologist's actual time involved in rendering a given service.

(2) Group psychodiagnostic testing shall include two but not more than eight persons at any session.

(3) Atypical test sessions, where the time allowance for test administration exceeds three hours, shall be fully explained.

(4) The psychodiagnostic tests performed shall be reported on the billing form.

(5) Partial hour allowances shall be used whenever a procedure involves a fraction of an hour.

(6) A computer scored test shall be billed using the computer firm's charge for the service. A computer scored test shall be reimbursed at the computer firm's usual charge up to the maximum allowance listed under procedure code X9536. Additional time required to administer the test or to evaluate the computerized report may be billed as a part of test administration or test scoring, respectively.

(e) Case conference allowances shall be limited to conferences with persons immediately involved in the care or recovery of the client. Case conferences shall be limited to one per patient per month.

(f) The maximum allowance for out–of–office call is payable only for visits to the first client receiving services at any given location on the same day. It shall not apply to services rendered by a hospital outpatient department nor an organized outpatient clinic.

(g) Maximum Allowances shall be as follows:

Procedure Code		*Maximum Allowance*
	PSYCHOTHERAPY	
X9500	Individual, one–half hour	$18.98
X9502	Individual, one hour	38.01
X9504	Individual, one and one–half hour (maximum)	56.98
X9506	Group Therapy, per person, per session	14.48
X9508	Family Therapy, one hour, oldest family member	50.87
X9510	Family Therapy, one and one–half hours (maximum)	76.32
X9512	Family Therapy, each additional family member	1.68
	PSYCHODIAGNOSTIC SERVICES	
X9514	Test Administration, includes pretest interview one complete hour	$38.01
X9516	two complete hours	75.96
X9518	three complete hours	114.00
X9520	four complete hours	152.01
X9522	five complete hours	189.96
X9524	six complete hours (maximum)	227.98
X9526	partial hour, each 15 minutes	9.49
X9528	Group Test Administration, per person over one, add	14.48
X9530	Test Scoring, one complete hour	38.01
X9532	two complete hours (maximum)	75.96
X9534	partial hours—each 15 minutes	9.49
X9536	Computer Scored Test, per test, at computer firm's usual charge up to a maximum of	18.98
X9538	Written Test Report, when required, one complete hour	38.01
X9540	two complete hours (maximum)	75.96
X9542	partial hour—each 15 minutes	9.49
	RELATED PSYCHOLOGY SERVICES	
X9544	Case conference, one–half hour	$18.98
X9546	one complete hour (maximum)	38.01
X9548	Out–of–Office call	9.49
X9550	Unlisted Services	By Report

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14105 and 14132, Welfare and Institutions Code; Statutes of 1982, Chapter 1594, Section 77; Statutes of 1983, Chapter 323, Section 149; Statutes of 1984, Chapter 258, Items 4260–106–001 and 890; Statutes of 1984, Chapter 268, Section 66; Statutes of 1985, Chapter 111, Items 4260–106–001 and 890; and Statutes of 2000, Chapter 52, Items 4260–101–0001 and 0890.

HISTORY

1. Amendment of subsection (g) filed 8–1–84 as an emergency; effective upon filing (Register 84, No. 31). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–29–84. For prior history, see Register 83, No. 22.
2. Certificate of Compliance transmitted to OAL 11–27–84 and filed 12–27–84 (Register 84, No. 52).
3. Amendment of subsection (g) filed 8–1–85 as an emergency; effective upon filing (Register 85, No. 32). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–29–85.
4. Editorial correction of HISTORY 3. (Register 85, No. 52).
5. Certificate of Compliance as to 8–1–85 order transmitted to OAL 11–20–85 and filed 12–27–85 (Register 85, No. 52).
6. Amendment of subsections (c), (c)(3), (d)(6) and (g) filed 9–25–92 as an emergency; operative 10–1–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL 1–25–93 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 9–25–92 order transmitted to OAL 1–22–93 and filed 3–9–93 (Register 93, No. 11).
8. Amendment of subsection (g), new subsection (h) and amendment of NOTE filed 7–16–2002; operative rates for services provided on or after 8–1–2000 pursuant to Stats. 2000, c. 52, Items 4260–101–0001 and 0890 (Register 2002, No. 29).
9. Certificate of Compliance as to 7–16–2002 order, including repealer of subsection (h), transmitted to OAL 11–12–2002 and filed 12–24–2002 (Register 2002, No. 52).

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§ 51506. Dental Services.

(a) The reimbursement for dental services shall be in accordance with the maximum reimbursement rates listed below. Billing shall not exceed charges made to the general public.

(1) Maximum reimbursement rates include preparation of necessary forms to cover dental services and appliances as prescribed.

(2) A treatment plan authorized for a beneficiary 17 years of age or younger shall be effective until completion if there is both continuing eligibility and dental necessity, regardless of change in age status.

(3) The maximum reimbursement for By Report (B/R) procedures shall be based upon a review of such procedures to determine their relationship to other procedures for which a maximum reimbursement rate has been established.

(b) Charges for dental service shall be reimbursed in accordance with the Department of Health Services maximum reimbursement rates as follows for the periods indicated.

VISITS—DIAGNOSTIC
(9000–9199)

Procedure Number	*Maximum Allowances*		
	Jan. 1, 1994	*July 1, 1995*	*April 10, 1998*
9010 Complete examination, initial episode of treatment only	$24.48	25.00	
9015 Examination, periodic (annual)	9.35		
9020 Office visit during regular office hours for treatment and for observation of injuries to the teeth and supporting structures	11.68		
9030 Professional visit after regular office hours, or to bedside	17.50		
9035 Hospital care	35.02		
9040 Specialist consultation	17.50		
9045 Pit and Fissure Dental Sealants for Permanent First Molars, to age twenty–one (21)			15.00
9046 Pit and Fissure Dental Sealants for Permanent Second Molars, to age twenty–one (21)			15.00
9049 Prophylaxis—beneficiaries through age 12	36.95	30.00	
9050 Prophylaxis—beneficiaries age 13 years and older	42.90	40.00	
9061 Prophylaxis, including topical application of fluoride—beneficiaries age five and under	43.21	30.00	
9062 Prophylaxis, including topical application of fluoride—beneficiaries age 6 through 17	45.92	40.00	
9080 Emergency treatment, palliative	47.87	45.00	
9110 Intraoral periapical, single, first film	13.98	10.00	
9111 Intraoral periapical, each additional film	6.38	3.00	
9112 Intraoral, complete series consisting of at least 14 periapical films plus bite–wings	46.64	45.00	
9113 Intraoral, occlusal, each film	7.00		
9114 Extraoral single head or lateral jaw	20.19		
9115 Extraoral each additional head or lateral jaw	4.07		
9116 Bite–wings, two films	20.35	10.00	
9117 Bite–wings, four films	26.77	18.00	
9118 Bite–wing, one film	1.50		
9119 Photograph or slide, first	6.85		
9120 Photograph or slide, each additional (maximum five)	1.50		
9125 Panographic–type film, single film	11.94		
9150 Biopsy of oral tissue	29.18		
9160 Gross and microscopic histopathological report	23.34		

ORAL SURGERY
(9200–9299)

9200 Removal of erupted tooth, uncomplicated, first tooth	$49.23	45.00	
9201 Removal of erupted tooth, uncomplicated, each additional tooth	46.41	38.00	
9202 Removal of erupted tooth, surgical	89.25	85.00	
9203 Removal of root or root tip, completely covered by bone	40.83		
9204 Removal of root or root tip, not completely covered by bone	29.18		
9220 Postoperative visit, complications (e.g., osteitis)	7.00		
9230 Removal of impacted tooth—soft tissue	113.97	100.00	
9231 Removal of impacted tooth—partial bony	158.73	135.00	
9232 Removal of impacted tooth—complete bony	197.45	165.00	
9250 Alveoloplasty per quadrant, edentulous	40.86		
9252 Alveoloplasty per quadrant, in conjunction with extractions	23.34		
9255 Vestibuloplasty, submucosal resection (not to include grafts)	312.76		
9256 Alveoloplasty with ridge extension secondary epithelialization (per arch)	58.37		
9257 Removal of palatal exostosis (torus)	58.37		

Procedure Number	*Jan. 1, 1994*	*Maximum Allowances July 1, 1995*	*April 10, 1998*
9258 Removal of mandibular exostosis (torus)—per quadrant	49.04		
9259 Excision of hyperplastic tissue (per arch)	46.70		
9260 Incision and drainage of abscess, intraoral	17.50		
9261 Incision and drainage of abscess, extraoral	29.18		
9262 Excision pericoronal gingiva, operculectomy	17.50		
9263 Sialolithotomy—intraoral	58.37		
9264 Sialolithotomy—extraoral	233.47		
9265 Closure of salivary fistula	87.55		
9266 Dilation of salivary duct	29.18		
9267 Reduction of tuberosity, unilateral	29.18		
9269 Excision of benign tumor, up to 1.25 cm	29.18		
9270 Excision of benign tumor, larger than 1.25 cm	58.37		
9271 Excision of malignant tumor	116.73		
9273 Reimplantation and/or stabilization of accidentally avulsed or displaced permanent tooth and/or alveolus	140.08		
9275 Transplantation of tooth or tooth bud	116.73		
9276 Removal of foreign body from bone—independent procedure	52.52		
9277 Radical resection of bone for tumor with bone graft	904.97		
9278 Maxillary sinusotomy for removal of tooth fragment or foreign body	116.73		
9279 Oral–antral fistula closure	99.23		
9280 Excision of cyst, up to 1.25 cm	40.86		
9281 Excision of cyst over 1.25 cm	87.55		
9282 Sequestrectomy	46.70		
9285 Condylectomy of mandible, unilateral	703.71		
9289 Meniscectomy of temporomandibular joint, unilateral	703.71		
9290 Excision of foreign body from soft tissue	23.34		
9291 Frenectomy, or frenotomy, separate procedure	40.86		
9292 Suture of soft tissue wound or injury	24.52		
9294 Injection of sclerosing agent into temporomandibular joint	35.02		
9295 Injection of trigeminal nerve branches for destruction	58.37		
9296 Surgical exposure of impacted or unerupted tooth to aid eruption, soft tissues	23.34		
9297 Surgical exposure of impacted or unerupted tooth to aid eruption, partial bony	35.02		
9298 Surgical exposure of impacted or unerupted tooth to aid eruption, complete bony or ectopic eruption	52.52		
9299 Unlisted surgical service or procedure	By Report		
DRUGS AND ANESTHESIA (9300–9449)			
9300 Injectable drugs	$5.83		
9301 Conscious sedation relative analgesia, Nitrous oxide (N_2O_2, oxygen), per visit	11.68		
9400 General anesthesia	33.16		
PERIODONTICS (9450–9499)			
9451 Emergency treatment: (periodontal abscess, acute periodontitis, etc.)	$57.18	55.00	
9452 Subgingival curettage and root planing per treatment	189.98	200.00	
9453 Occlusal adjustment (limited), per quadrant (minor spot grinding)	23.34		
9472 Gingivectomy or gingivoplasty, per quadrant	81.70		
9473 Osseous and mucogingival surgery, per quadrant	99.23		
9474 Gingivectomy or gingivoplasty treatment, per tooth (fewer than six teeth)	17.50		

Procedure Number	*Jan. 1, 1994*	*Maximum Allowances July 1, 1995*	*April 10, 1998*
ENDODONTICS (9500–9599)			
9501 Therapeutic pulpotomy	$17.50		
9502 Vital pulpotomy	17.50		
9503 Recalcification, includes temporary restoration, per tooth	16.34		
9511 Anterior root canal therapy	217.26	215.00	
9512 Bicuspid root canal therapy	263.94	260.00	
9513 Molar root canal therapy	333.58	330.00	
9530 Apicoectomy—surgical procedure in conjunction with root canal filling	134.25		
9531 Apicoectomy (separate surgical procedure), per tooth	72.38		
9534 Apexification (therapeutic apical closure), per treatment.	13.65		
RESTORATIVE DENTISTRY (9600–9699)			
Amalgam Restorations			
9600 One surface, primary tooth	$37.95	33.00	
9601 Two surfaces, primary tooth	46.49	41.00	
9602 Three surfaces, primary tooth	56.00	48.00	
9603 Four or more surfaces, primary tooth (maximum)	63.68	55.00	
9611 One surface, permanent tooth	43.86	39.00	
9612 Two surfaces, permanent tooth	53.15	48.00	
9613 Three surfaces, permanent tooth	62.77	57.00	
9614 Four or more surfaces, permanent tooth (maximum)	73.53	60.00	
Silicate, Composite, Plastic Restorations			
9640 Silicate cement restoration	$51.28	0.00	
9641 Silicate restorations, two or more in a single tooth (maximum)	79.05	0.00	
9645 Composite or plastic restoration	62.58	55.00	
9646 Composite or plastic restorations, two or more in a single tooth (maximum)	98.77	80.00	
9648 Pin retention, (per pin) maximum three pins per tooth	31.06	31.00	
Crowns			
9650 Crown, plastic (laboratory processed)	$105.06		
9651 Crown, plastic with metal	134.25		
9652 Crown, porcelain	140.08		
9653 Crown, porcelain fused to metal	397.53	330.00	
9660 Crown, cast, full	388.49	340.00	
9663 Crown, cast, three–fourths	116.73		
9670 Crown, stainless steel, primary	87.87	75.00	
9671 Crown, stainless steel, permanent	104.84	90.00	
9672 Cast metal dowel post	103.35	75.00	
PROSTHETICS (9680–9799)			
Pontics			
9680 Fixed bridge pontic, cast metal	$105.06		
9681 Fixed bridge pontic, slotted facing	105.06		
9682 Fixed bridge pontic, slotted pontic	110.90		
9692 Fixed bridge pontic, porcelain fused to metal	157.58		
9693 Fixed bridge pontic, plastic processed to metal	122.57		
Recementing			
9685 Recement inlay, facing, pontic	$42.83	30.00	
9686 Recement crown	39.29	30.00	
9687 Recement bridge	52.34	50.00	
Repairs, Crown And Bridge			
9690 Repair fixed bridges	By Report		
9694 Replace broken tru–pontic	$17.50		
9695 Replace broken facing, post intact	14.01		
9696 Replace broken facing, post backing broken	23.34		

Procedure Number	*Maximum Allowances* Jan. 1, 1994	July 1, 1995	April 10, 1998
Removable Prosthodontics			
9700 Complete maxillary denture	484.77	400.00	
9701 Complete mandibular denture	484.77	400.00	
9702 Partial upper or lower denture with two assembled chrome cobalt wrought or cast chrome cobalt clasps with occlusal rests and necessary teeth, acrylic base	191.28		
9703 Partial upper or lower denture with cast chrome cobalt skeleton, two cast clasps, and necessary teeth	493.93	400.00	
9704 Clasps, third and each additional clasp for procedure 9703	48.27	35.00	
9705 Stress breakers, extra	29.18		
9706 Partial upper or lower stayplate, acrylic (base fee, teeth and clasps extra)	191.10	150.00	
9708 Partial upper or lower denture, all acrylic, with two assembled chrome cobalt wrought clasps having two clasp arms, but no rests, and necessary teeth	175.11		
9709 Clasp third and each additional for Procedure 9708	14.01		
9712 Clasp third and each additional for Procedure 9702	17.50		
9716 Clasp or teeth, each for Procedure 9706	29.68	23.00	
9720 Denture adjustment, per visit	11.68		
9721 Reline—office, cold cure	44.28		
9722 Reline—laboratory processed	158.70	140.00	
9723 Tissue conditioning, per denture	35.02		
9724 Denture duplication ("jump," "reconstruction") denture base including necessary tooth replacement, per denture	268.19	150.00	
Repairs, Dentures, Acrylic			
9750 Repair broken denture base only (complete or partial)	62.78	45.00	
9751 Repair broken denture and replace one broken denture tooth	74.71	65.00	
9752 Each additional denture tooth replaced on 9751 repair (maximum two)	18.95	15.00	
9753 Replace one broken denture tooth only (complete or partial)	57.09	50.00	
9754 Each additional denture tooth replaced on 9753 repair (maximum two)	18.95	15.00	
9755 Adding first tooth to partial denture to replace newly extracted natural tooth	45.66		
9756 Each additional natural tooth replaced on 9755 repair (maximum two)	15.17		
9757 Add a new or replace a broken chrome cobalt assembled wrought clasp with two clasp arms and rest to an existing 9702 partial denture	48.38		
9758 Each additional new or replacement clasp for repair 9757 (maximum two)	48.38		
9759 Add a new or replace a broken chrome cobalt assembled wrought clasp with two clasp arms and no rest to an existing 9708 partial denture	38.36		
9760 Each additional new or replacement clasp for repair 9759 (maximum two)	38.36		
9761 Reattaching clasp on partial denture, clasp intact, each (maximum two)	29.18		
9762 Add a new or replace a broken cast chrome cobalt clasp with two clasp arms and rest to an existing 9703 partial denture	52.52		
9763 Each additional new or replacement clasp for repair 9762 (maximum two)	52.52		
SPACE MAINTAINERS (9800–9899)			
9800 Fixed, unilateral band type (including band)	58.37		
9801 Removable plastic with two stainless steel round wire clasps or rests	64.20		
9802 Each additional clasp or rest (for 9801 only)	11.68		
9811 Fixed, unilateral stainless steel crown type (including crown, Procedure 9670 or 9671)	81.70		
9812 Fixed, bilateral lingual or palatal bar type	145.93		
9832 Fixed or removable appliance to control harmful habit	70.05		

Procedure Number	Maximum Allowances Jan. 1, 1994	July 1, 1995	April 10, 1998
FRACTURES AND DISLOCATIONS			
(9900–9999)			
(Includes Usual Follow–up Care)			
9900 Maxilla, open reduction, simple	$469.14		
9901 Maxilla, closed reduction, simple	273.66		
9902 Mandible, open reduction, simple	625.53		
9903 Mandible, closed reduction, simple	312.76		
9904 Maxilla, closed reduction, compound	371.40		
9905 Maxilla, open reduction, compound	625.53		
9906 Mandible, closed reduction, compound	371.40		
9907 Mandible, open reduction, compound	625.53		
9913 Reduction of dislocation of temporomandibular joint	62.55		
9915 Treatment of malar fracture, simple, closed reduction	195.18		
9916 Treatment of malar fracture, simple or compound depressed, open reduction	371.40		
UNLISTED PROCEDURES			
9999 Fees to be determined	By Report		

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code; *Clark v. Kizer (Coye)* (October 15, 1992) S871700 [nonpub. opn.]; Order Modifying Judgment, *Clark v. Kizer (Coye)* (October 15, 1992) S871700 [non pub. opn.], filed on June 21, 1995. Reference: Section 14105, Welfare and Institutions Code; Statutes of 1989, Chapter 93, Items 4260–106–001 and 890; and 42 U.S.C., Section 1396a(a)(30)(A).

HISTORY

1. Amendment filed 8–7–89 as an emergency; operative 8–7–89 (Register 89, No. 32). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12–5–89. For prior history, see Register 85, No. 52.
2. Certificate of Compliance transmitted to OAL 12–1–89 and filed 1–2–90 (Register 90, No. 2).
4. Amendment of subsection (b) refiled 12–26–91 as an emergency; operative 12–26–91 (Register 92, No. 12). A Certificate of Compliance must be transmitted to OAL 4–24–92 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsection (b) refiled and amendment of NOTE filed 4–24–92 as an emergency; operative 4–24–92 (Register 92, No. 18). A Certificate of Compliance must be transmitted to OAL 8–24–92 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 4–24–92 order including amendment of subsection (b) [9760] transmitted to OAL 8–21–92 and filed 10–5–92 (Register 92, No. 41).
7. Amendment of subsection (b) filed 12–24–92 as an emergency; operative 12–24–92 (Register 92, No. 52). A Certificate of Compliance must be transmitted to OAL 4–23–93 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 12–24–92 order transmitted to OAL 4–19–93 and filed 5–18–93 (Register 93, No. 21).
9. Amendment of subsection (b) filed 6–29–93 as an emergency; operative 6–29–93 (Register 93, No. 27). A Certificate of Compliance must be transmitted to OAL by 10–27–93 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 6–29–93 order transmitted to OAL 10–22–93 and filed 12–7–93 (Register 93, No. 50).
11. Amendment of subsection (b) and NOTE filed 10–27–95 as an emergency; operative 10–27–95 (Register 95, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–24–96 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 10–27–95 order including editorial corrections to subsection (b) transmitted to OAL 2–6–96 and filed 3–13–96 (Register 96, No. 11).
13. Amendment of subsection (b) (amending Procedure Numbers 9045 and 9046 and repealing Procedure Number 9047) filed 4–10–98 as an emergency; operative 4–10–98 (Register 98, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–10–98 or emergency language will be repealed by operation of law on the following day.
14. Editorial correction of subsection (b) (Register 98, No. 16).
15. Certificate of Compliance as to 4–10–98 order transmitted to OAL 7–27–98 and filed 9–4–98 (Register 98, No. 36).

§ 51506.1. Maxillofacial Dental Services.

(a) Reimbursement for maxillofacial dental services shall be the usual charge to the general public, not to exceed the maximum reimbursement rates listed in this section.

(b) Maximum Allowances

Code		Maximum Allowances
	DIAGNOSTIC SERVICES	
9950	Clinical Examination and Consultation, Including Study Models	$51.99
9952	Prosthetic Evaluation and Treatment Plan, Including Study Models	74.33
9955	TMJ Series radiographs	81.34
9956	Cephalometric Head Film, single, first film, Including tracing	22.48
9957	Cephalometric Head Film, Each Additional film, Including tracing	4.56
	MAXILLOFACIAL PROSTHETIC SERVICES	
9960	Speech appliance transitional with or without pharyngeal extension	$593.76
9962	Speech appliance, permanent, edentulous, with or without pharyngeal extension	1,115.78
9964	Speech appliance, permanent, partially edentulous, cast framework, with or without pharyngeal extension	1,190.11
9966	Palatal lift, interim	595.07
9968	Palatal lift, permanent, cast framework	1,115.78
9970	Obturator immediate surgical, routine	669.52
9971	Obturator immediate surgical, complex	892.66
9972	Obturator permanent, complex	1,190.11
9973	Resection prosthesis, permanent edentulous, complex	1,190.11
9974	Resection prosthesis, permanent edentulous, routine	1,041.46
9975	Resection prosthesis, permanent, partially edentulous, complex	1,338.92
9976	Repositioner, mandibular, two piece	1,785.33
9977	Removal facial prosthesis	By Report
9978	Splints and stents	By Report
9979	Radiation therapy fluoride carrier	59.00
9980	Repairs, maxillofacial prosthesis	By Report
9981	Rebase laboratory processed, maxillofacial prosthesis	By Report
9982	Balancing (opposing) maxillofacial prosthesis	By Report

Code		Maximum Allowances
	MAXILLOFACIAL SURGICAL PROCEDURES	
9985	Maxillofacial surgical procedures	By Report
	TEMPOROMANDIBULAR JOINT DYSFUNCTION MANAGEMENT	
9990	Occlusal analysis, including report and/or models	$89.81
9992	Occlusal adjustments, limited centric and excursive adjustments including records and/or models	44.96
9994	Occlusal balancing, altering centric relation, including records and/or models	238.59
9995	Orthopedic stabilizing appliance, disocclusion splint	210.49
9996	Postoperative visits, symptomatic care and counseling	36.52
9998	Unlisted therapeutic service	By Report

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14105, Welfare and Institutions Code; and Statutes of 1989, Chapter 93, Items 4260-106-001 and 890.

HISTORY

1. Amendment filed 8-7-89 as an emergency; operative 8-7-89 (Register 89, No. 32). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-5-89. For prior history, see Register 85, No. 52.
2. Certificate of Compliance transmitted to OAL 12-1-89 and filed 1-2-90 (Register 90, No. 2).

§ 51506.2. Orthodontic Dental Services. [Repealed]

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14132, Welfare and Institutions Code. Reference: Section 14105, Welfare and Institutions Code; and Statutes of 1989, Chapter 93, Items 4260-106-001 and 890.

HISTORY

1. Amendment filed 8-7-89 as an emergency; operative 8-7-89 (Register 89, No. 32). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-5-89. For prior history, see Register 85, No. 52.
2. Certificate of Compliance transmitted to OAL 12-1-89 and filed 1-2-90 (Register 90, No. 2).
3. Amendment of subsections (a) and (b) filed 2-11-91 as an emergency; operative 2-11-91 (Register 91, No. 12). A Certificate of Compliance must be transmitted to OAL by 6-11-91 or emergency language will be repealed by operation of law on the following day.
4. Request to readopt 2-11-91 order pursuant to Government Code section 11346.1 granted and filed 5-15-91 as an emergency; operative 6-11-91 (Register 91, No. 26). A Certificate of Compliance must be transmitted to OAL by 10-9-91 or emergency language will be repealed by operation of law on the following day.
5. Request to readopt 5-15-91 order filed 10-4-91 as an emergency; operative 10-4-91 (Register 91, No. 52). A Certificate of Compliance must be transmitted to OAL 2-1-92 or emergency language will be repealed by operation of law on the following day.
6. Request to readopt 10-4-91 order pursuant to Government Code section 11346.1(h) granted and filed 1-28-92 as an emergency; operative 2-4-92 (Register 92, No. 24). A Certificate of Compliance must be transmitted to OAL 6-3-92 or emergency language will be repealed by operation of law on the following day.
7. Request to readopt 1-28-92 order pursuant to Government Code section 11346.1(h) granted and filed 6-8-92 as an emergency; operative 6-3-92 (Register 92, No. 24). A Certificate of Compliance must be transmitted to OAL 10-7-92 or emergency language will be repealed by operation of law on the following day.
8. Request to readopt 6-8-92 order pursuant to Government Code section 11346.1(h) granted and filed 10-6-92 as an emergency; operative 10-7-92 (Register 92, No. 41). A Certificate of Compliance must be transmitted to OAL 2-4-93 or emergency language will be repealed by operation of law on the following day.
9. Reinstatement of section as it existed prior to emergency amendment filed 2-11-91 by operation of Government Code section 11346.1(f) (Register 93, No. 15).
10. Amendment of section and NOTE filed 9-16-93 as an emergency; operative 9-16-93 (Register 93, No. 38). A Certificate of Compliance must be transmitted to OAL by 1-14-94 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 9-16-93 order transmitted to OAL 1-13-94 and filed 2-28-94 (Register 94, No. 8).
12. Amendment of subsection (c) — MALOCCLUSION CASES filed 9-22-97 as an emergency; operative 9-22-97 (Register 97, No. 39). A Certificate of Compliance must be transmitted to OAL by 1-20-98 or emergency language will be repealed by operation of law on the following day.
13. Amendment of subsection (c)—MALOCCLUSION CASES refiled 1-12-98; operative 1-21-98 (Register 98, No. 3). A Certificate of Compliance must be transmitted to OAL by 5-21-98 or emergency language will be repealed by operation of law on the following day.
14. Amendment of subsection (c)—MALOCCLUSION CASES refiled 5-21-98; operative 5-21-98 (Register 98, No. 20). A Certificate of Compliance must be transmitted to OAL by 9-18-98 or emergency language will be repealed by operation of law on the following day.
15. Certificate of Compliance as to 5-21-98 order, including further amendment of subsection (c)—MALOCCLUSION CASES transmitted to OAL 9-16-98 and filed 10-27-98 (Register 98, No. 44).
16. Repealer filed 11-6-2007; operative 12-6-2007 (Register 2007, No. 45).

§ 51507. Physical Therapy.

(a) Reimbursement for physical therapy services shall be the usual charges made to the general public not to exceed the maximum reimbursement rates listed in this section.

(b) The following definitions shall apply to the reimbursement of physical therapy services under this section.

(1) Modality means any physical therapy treatment, unless listed separately which does not require the continuous attention of the therapist. Examples are:

a. Hot or cold packs
b. Traction, mechanical
c. Electrical stimulation (unattended)
d. Vasopneumatic devices
e. Paraffin bath
f. Microwave
g. Whirlpool
h. Diathermy
i. Infrared
j. Ultraviolet
k. Ultrasound

(2) Procedure means any physical therapy treatment, unless listed separately which requires the continuous attention of the therapist. Examples are:

a. Therapeutic exercise
b. Neuromuscular reeducation
c. Rehabilitation services
d. Functional activities
e. Gait training
f. Orthotics training
g. Prosthetics training
h. Electrical stimulation (motor point)
i. Ionotophoresis
j. Traction, manual
k. Massage
l. Contrast baths

(3) Tests and measurements mean individually administered, observed and recorded procedures and include a written report of the tests and measurements involved. Examples are:

a. Orthotic "check out"
b. Prosthetic "check out"
c. Activities of daily living "check out"

(4) Case Conference means participation in organized conference with other health team members, who are immediately involved in the care or recovery of the patient, concerning status, or progress, of the patient under treatment and includes required charting entries. Case conferences shall be limited to one per patient per month.

(5) Additional 15-minute period means any 15-minute period or major portion thereof, 7 minutes or more, immediately following the initial 30 minutes.

(6) The maximum allowance for home or long-term care facility visit is payable only for visits to the first patient receiving services at any given location on the same day.

(c) Maximum reimbursement rates for physical therapy services shall be as follows:

Procedure Code		Maximum Allowance
X3900	Single modality to one area—initial 30 minutes	$17.04
X3902	Single modality to one area—each additional 15 minutes	3.63
X3904	Single procedure to one area—initial 30 minutes	21.19
X3906	Single procedure to one area—each additional 15 minutes	6.86
X3908	Treatment including a combination of any modalities and procedures (one or more areas)—initial 30 minutes	21.19
X3910	Treatment including a combination of any modalities and procedures (one or more areas)—each additional 15 minutes	6.86
X3912	Hubbard Tank—initial 30 minutes	34.84
X3914	Hubbard Tank—each additional 15 minutes	6.86
X3916	Hubbard Tank or pool therapy with therapeutic exercise—initial 30 minutes	41.69
X3918	Hubbard Tank or pool therapy with therapeutic exercise—each additional 15 minutes	6.86

Procedure Code		Maximum Allowance
X3920	Any of the tests and measurements—initial 30 minutes, plus report	34.84
X3922	Any of the tests and measurements—each additional 15 minutes, plus report	17.04
X3924	Physical therapy preliminary evaluation in a rehabilitation center, SNF, ICF, or subacute care facility	34.84
X3926	Case conference and report—initial 30 minutes	21.19
X3928	Case consultation and report	21.19
X3930	Case conference and report—each additional 15 minutes	6.86
X3932	Home or long-term care facility visit—add	6.57
X3934	Mileage, per mile one-way beyond ten-mile radius of point of origin (office or home)	1.77
X3936	Unlisted Services	By Report

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14105, Welfare and Institutions Code; Statutes of 1984, Chapter 258, Items 4260-106-001 and 890; Statutes of 1985, Chapter 111, Items 4260-106-001 and 890; and Statutes of 2000, Chapter 52, Items 4260-101-0001 and 0890.

HISTORY

1. Amendment of subsection (c) filed 8-1-84 as an emergency; effective upon filing (Register 84, No. 31). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11-29-84. For prior history, see Register 81, No. 52.
2. Certificate of Compliance transmitted to OAL 11-27-84 and filed 12-27-84 (Register 84, No. 52).
3. Amendment of subsection (c) filed 8-1-85 as an emergency; effective upon filing (Register 85, No. 32). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11-29-85.
4. Certificate of Compliance transmitted to OAL 11-20-85 and filed 12-27-85 (Register 85, No. 52).
5. Amendment of subsection (c) filed 9-25-92 as an emergency; operative 10-1-92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL 1-25-93 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 9-25-92 order transmitted to OAL 1-22-93 and filed 3-9-93 (Register 93, No. 11).
7. Amendment of subsection (c), new subsection (d) and amendment of NOTE filed 7-16-2002; operative rates for services provided on or after 8-1-2000 pursuant to Stats. 2000, c. 52, Items 4260-101-0001 and 0890 (Register 2002, No. 29).
8. Certificate of Compliance as to 7-16-2002 order, including repealer of subsection (d), transmitted to OAL 11-12-2002 and filed 12-24-2002 (Register 2002, No. 52).

§ 51507.1. Occupational Therapy.

(a) Reimbursement for occupational therapy services shall be the usual charges made to the general public not to exceed the maximum reimbursement rates listed in this section.

(b) The following definitions shall apply to the reimbursement of occupational services under this section:

(1) Treatment means therapeutic procedures which require the personal attention or direct supervision of the therapist.

(2) Evaluation means initial or subsequent evaluation using tests, measurements, and observation of the patient's performance, progress, and behavior, and includes written reports thereof.

(3) Case conference means participation in organized conference with other health team members, who are immediately involved in the care or recovery of the patient, concerning status or progress of the patient under treatment and includes required charting entries. Case conferences shall be limited to one per patient per month.

(4) Additional 15-minute periods means any 15-minute period or a major portion thereof, 7 minutes or more, following the initial 30-minute period.

(5) The maximum allowance for home or long-term care facility visit is payable only for visits to the first patient receiving services at any given location on the same day.

(c) The maximum reimbursement rates for occupational therapy services shall be as follows:

Procedure Code		Maximum Allowance
X4100	Evaluation—initial 30 minutes, plus report	$34.84
X4102	Evaluation—each additional 15 minutes, plus report	17.04
X4104	Case conference and report—initial 30 minutes	21.19
X4106	Case conference and report—each additional 15 minutes	6.86
X4120	Case consultation and report	21.19
X4108	Occupational therapy preliminary evaluation in a rehabilitation center, SNF, ICF, or subacute care facility	34.84
X4110	Treatment—initial 30 minutes	21.19
X4112	Treatment—each additional 15 minutes	6.86
X4114	Home or long-term care facility visit—add	6.57
X4116	Mileage per mile, one way, beyond a ten-mile radius of office or usual hospital base	1.77
X4118	Unlisted services	By Report

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14105, Welfare and Institutions Code; Statutes of 1984, Chapter 258, Items 4260-106-001 and 890; Statutes of 1985, Chapter 111, Items 4260-106-001 and 890; and Statutes of 2000, Chapter 52, Items 4260-101-0001 and 0890.

HISTORY

1. Amendment of subsection (c) filed 8-1-84 as an emergency; effective upon filing (Register 84, No. 31). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11-29-84. For prior history, see Register 81, No. 52.
2. Certificate of Compliance transmitted to OAL 11-27-84 and filed 12-27-84 (Register 84, No. 52).
3. Amendment of subsection (c) filed 8-1-85 as an emergency; effective on filing (Register 85, No. 32). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11-29-85.
4. Certificate of Compliance transmitted to OAL 11-20-85 and filed 12-27-85 (Register 85, No. 52).
5. Amendment of subsection (c) filed 9-25-92 as an emergency; operative 10-1-92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL 1-25-93 or emergency language will be repealed by operation of law on the following day.
6. Amendment of subsection (c) adding X4120 filed 8-2-95 as an emergency; operative 8-2-95 (Register 95, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-30-95 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 8-2-95 order transmitted to OAL 11-22-95 and filed 1-3-96 (Register 96, No. 1).
8. Amendment of subsection (c), new subsection (d) and amendment of NOTE filed 7-16-2002; operative rates for services provided on or after 8-1-2000 pursuant to Stats. 2000, c. 52, Items 4260-101-0001 and 0890 (Register 2002, No. 29).
9. Certificate of Compliance as to 7-16-2002 order, including repealer of subsection (d), transmitted to OAL 11-12-2002 and filed 12-24-2002 (Register 2002, No. 52).

§ 51507.2. Speech Therapy and Audiology.

Reimbursement for speech therapy and audiology services shall be the usual charges made to the general public not to exceed the following maximum reimbursement rates.

AUDIOLOGY

Basic Procedures

Procedure Code		Maximum Allowance
X4500	Diagnostic audiological evaluation, including pure tone audiometry, speech reception threshold and discrimination	$66.05
X4501	Pure tone audiometry (with complete audiogram)	35.79
X4502	Audiological preliminary evaluation in a rehabilitation center, SNF, ICF, or subacute care facility	33.03
V5008	Hearing screening	18.07
X4504	Audiometry during surgery	By Report

Pediatric Evaluation (0-7 Years)

X4506	First Visit	77.05
X4508	First diagnostic follow-up	42.15
X4510	Second diagnostic follow-up	42.15

Evaluation for Site of Lesion (Following Procedure X4500)

X4512	Bekesy audiometry	37.64
X4514	Short Increment Sensitivity Index (S.I.S.I.)	15.05
X4516	Loudness balance test	15.05
X4518	Tone decay test	15.05

Other Audiological Services
(Following Audiological Evaluation Procedures)

Procedure Code		*Maximum Allowance*
X4520	Visual evoked potential response test, medical diagnosis	$160.10
X4522	Evoked response audiometry test, physician evaluation	160.10
X4524	Somatosensory evoked response test 1/more nerves, physician evaluation	160.10
X4526	Hearing therapy (individual) per hour	45.40
X4528	Hearing therapy (group), each patient	26.57
X4530	Impedance audiometry (bilateral)	33.14
V5010	Assessment for hearing aid (following procedures X4500, X4506, X4508, or X4510)	52.70
X4532	Electroacoustic analysis of hearing aid as a monaural procedure	23.32
V5264	Ear mold/insert, not disposable, any type	27.52
V5265	Ear mold/insert, disposable, any type	By Report
X4534	Out-of-office call (Payable only for visits to the first patient receiving services at any given location on the same day)	8.27
X4536	Weber test	7.53
X4538	Impedance audiometry (unilateral)	15.21
X4540	Tympanometry	22.94
X4542	Electroacoustic analysis of hearing aid as a binaural procedure	42.81
X4544	Diagnostic evaluation for severely physically/mentally handicapped person over seven years of age	84.75
X4546	Electronystagmography	89.83
X4535	Unlisted audiological services	By Report

SPEECH—LANGUAGE SERVICES

X4300	Language evaluation	$66.05
X4301	Speech evaluation	66.05
X4302	Speech—Language therapy (group) each patient	26.57
X4303	Speech—Language therapy (individual) per one hour (following procedures X4300 or X4301)	45.24
X4304	Speech—language therapy, individual, per half hour	22.63
X4306	Out-of-office call (Payable only for visits to the first patient receiving services at any given location on the same day)	8.27
X4308	Speech therapy preliminary evaluation in a rehabilitation center, SNF, ICF, or subacute care facility	33.03
X4310	Augmentative and Alternative Communication (AAC) related bundled speech therapy services, per visit	45.24
X4312	AAC recipient assessment	By Report
X4320	Unlisted speech therapy services	By Report

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14105, Welfare and Institutions Code; Statutes of 1984, Chapter 258, Items 4260-106-001 and 890; Statutes of 1985, Chapter 111, Items 4260-106-001 and 890; and Statutes of 2000, Chapter 52, Items 4260-101-0001 and 0890.

HISTORY

1. Amendment filed 8-1-84 as an emergency; effective upon filing (Register 84, No. 31). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11-29-84. For prior history, see Register 81, No. 52.
2. Certificate of Compliance transmitted to OAL 11-27-84 and filed 12-27-84 (Register 84, No. 52).
3. Amendment filed 8-1-85 as an emergency; effective upon filing (Register 85, No. 32). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11-29-85.
4. Certificate of Compliance transmitted to OAL 11-20-85 and filed 12-27-85 (Register 85, No. 52).
5. Editorial correction replacing text dropped in 4-1-90 printing (Register 91, No. 14).
6. Repealer and new section filed 9-25-92 as an emergency; operative 10-1-92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL 1-25-93 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 9-25-92 order transmitted to OAL 1-22-93 and filed 3-9-93 (Register 93, No. 11).
8. Amendment of procedure codes X4506 and V5010, and new procedure codes X4310 and X4312 filed 7-28-97 as an emergency; operative 7-28-97 (Register 97, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-25-97 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-28-97 order transmitted to OAL 11-19-97 and filed 1-6-98 (Register 98, No. 2).
10. Redesignation and amendment of section as subsection (a), new subsection (b) and amendment of NOTE filed 7-16-2002; operative rates for services provided on or after 8-1-2000 pursuant to Stats. 2000, c. 52, Items 4260-101-0001 and 0890 (Register 2002, No. 29).

11. Certificate of Compliance as to 7–16–2002 order, including repealer of subsection (a) designator and subsection (b), transmitted to OAL 11–12–2002 and filed 12–24–2002 (Register 2002, No. 52).
12. Amendment filed 4–4–2003 as an emergency; operative 4–4–2003 (Register 2003, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–4–2003 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 4–4–2003 order transmitted to OAL 7–28–2003 and filed 9–4–2003 (Register 2003, No. 36).

§ 51507.3. Respiratory Care Practitioner.

(a) Reimbursement for respiratory care services shall be the usual charges made to the general public not to exceed the maximum reimbursement rates authorized by this section.

(b) Reimbursement for all equipment used in respiratory care practitioner services shall be made only to durable medical equipment dealers in accordance with Section 51521. No separate reimbursement shall be made to a respiratory care practitioner for installation, setup, or instruction in the use of equipment.

(c) Maximum reimbursement rates for respiratory care practitioner services shall be as established in Section 51503, except that:

(1) No reimbursement shall be allowed to respiratory care practitioners for physician interpretation or evaluation services, and;

(2) The maximum reimbursement rates for a respiratory care evaluation and a respiratory care case conference shall be as follows:

Code Number		*Maximum Allowances*
X4700	Evaluation	$29.48
X4702	Case conference	17.93

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14105 and 14132, Welfare and Institutions Code; and Statutes of 2000, Chapter 52, Items 4260–101–0001 and 0890.

HISTORY

1. New section filed 6–23–97; operative 7–23–97 (Register 97, No. 26).
2. Amendment of subsection (c)(2), new subsection (d) and amendment of NOTE filed 7–16–2002; operative rates for services provided on or after 8–1–2000 pursuant to Stats. 2000, c. 52, Items 4260–101–0001 and 0890 (Register 2002, No. 29).
3. Certificate of Compliance as to 7–16–2002 order, including repealer of subsection (d), transmitted to OAL 11–12–2002 and filed 12–24–2002 (Register 2002, No. 52).

§ 51508. Hospital Inpatient Services Reimbursement.

NOTE: Authority cited: Sections 14100.1, 14105 and 14106, Welfare and Institutions Code. Reference: Sections 14105 and 14106, Welfare and Institutions Code.

HISTORY

1. Amendment filed 9–1–77; effective thirtieth day thereafter (Register 77, No. 36). For prior history, see Register 76, No. 38.
2. Amendment of subsections (a)(1) and (a)(3) filed 2–5–79; effective thirtieth day thereafter (Register 79, No. 6).
3. Amendment of subsections (a)(1) and (a)(3) filed 8–1–79; effective thirtieth day thereafter (Register 79, No. 31).
4. Repealer filed 5–30–80; designated effective 1–1–80 (Register 80, No. 29).

§ 51508.1. Extraordinary Administrative Adjustments.

NOTE: Authority cited: Sections 14100, 14100.1, 14105 and 14106, Welfare and Institutions Code. Reference: Sections 14100, 14105 and 14106, Welfare and Institutions Code.

HISTORY

1. New section filed 6–2–76 as an emergency; effective upon filing. Certificate of Compliance included (Register 76, No. 23).
2. Repealer filed 5–30–80; designated effective 1–1–80 (Register 80, No. 29).

§ 51508.2. Definitions.

NOTE: Authority cited: Sections 14100, 14100.1, 14105 and 14106, Welfare and Institutions Code. Reference: Sections 14100, 14105 and 14106, Welfare and Institutions Code.

HISTORY

1. New section filed 6–2–76 as an emergency; effective upon filing. Certificate of Compliance included (Register 76, No. 23).
2. Repealer filed 5–30–80; designated effective 1–1–80 (Register 80, No. 29).

§ 51508.3. Application.

NOTE: Authority cited: Sections 14100, 14100.1, 14105 and 14106, Welfare and Institutions Code. Reference: Sections 14100, 14105 and 14106, Welfare and Institutions Code.

HISTORY

1. New section filed 6–2–76 as an emergency; effective upon filing. Certificate of Compliance included (Register 76, No. 23).
2. Repealer filed 5–30–80; designated effective 1–1–80 (Register 80, No. 29).

§ 51508.4. Review of Application.

NOTE: Authority cited: Sections 14100, 14100.1, 14105 and 14106, Welfare and Institutions Code. Reference: Sections 14100, 14105 and 14106, Welfare and Institutions Code.

HISTORY

1. New section filed 6–2–76 as an emergency; effective upon filing. Certificate of Compliance included (Register 76, No. 23).
2. Repealer filed 5–30–80; designated effective 7–1–80 (Register 80, No. 29).

§ 51508.5. Criteria for Review.

NOTE: Authority cited: Sections 14100, 14100.1, 14105 and 14106, Welfare and Institutions Code. Reference: Sections 14100, 14105 and 14106, Welfare and Institutions Code.

HISTORY

1. New section filed 6–2–76 as an emergency; effective upon filing. Certificate of Compliance included (Register 76, No. 23).
2. Amendment of subsection (a)(2) filed 5–20–77; effective thirtieth day thereafter (Register 77, No. 21).
3. New subsection (a)(2)(C) filed 2–8–78; effective thirtieth day thereafter (Register 78, No. 6).
4. New subsection (a)(2)(D) filed 2–5–79; effective thirtieth day thereafter (Register 79, No. 6).
5. New subsection (a)(2)(E) filed 8–1–79; effective thirtieth day thereafter (Register 79, No. 31).
6. Repealer filed 5–30–80; designated effective 7–1–80 (Register 80, No. 29).

§ 51508.6. Recommendation.

NOTE: Authority cited: Sections 14100, 14100.1, 14105 and 14106, Welfare and Institutions Code. Reference: Sections 14100, 14105 and 14106, Welfare and Institutions Code.

HISTORY

1. New section filed 6–2–76 as an emergency; effective upon filing. Certificate of Compliance included (Register 76, No. 23).
2. Repealer filed 5–30–80; designated effective 7–1–80 (Register 80, No. 29).
3. Editorial correction of NOTE (Register 97, No. 31).

§ 51508.7. Action by the Director.

NOTE: Authority cited: Sections 14100, 14100.1, 14105 and 14106, Welfare and Institutions Code. Reference: Sections 14100, 14105 and 14106, Welfare and Institutions Code.

HISTORY

1. New section filed 6–2–76 as an emergency; effective upon filing. Certificate of Compliance included (Register 76, No. 23).
2. Repealer filed 5–30–80; designated effective 7–1–80 (Register 80, No. 29).

§ 51508.8. Conditional Administrative Adjustments.

NOTE: Authority cited: Sections 14100, 14100.1, 14105 and 14106, Welfare and Institutions Code. Reference: Sections 14100, 14105 and 14106, Welfare and Institutions Code.

HISTORY

1. New section filed 6–2–76 as an emergency; effective upon filing. Certificate of Compliance included (Register 76, No. 23).
2. Repealer filed 5–30–80; designated effective 7–1–80 (Register 80, No. 29).

§ 51508.9. Medi–Cal Hospital Payment Rate Exception.

NOTE: Authority cited: Sections 14100.1, 14105, 14106 and 14161, Welfare and Institutions Code. Reference: Sections 14105, 14106 and 14161, Welfare and Institutions Code.

HISTORY

1. New section filed 5–20–77; effective thirtieth day thereafter (Register 77, No. 21).
2. Repealer filed 5–30–80; designated effective 7–1–80 (Register 80, No. 29).

§ 51509. Hospital Outpatient Departments.

(a) Billing shall not exceed a provider's usual charge made to the general public. Reimbursement for hospital outpatient departments shall be the provider's usual charge to the general public not to exceed the maximum rates authorized by this section.

(1) Maximum reimbursement rates, as shown in the following schedules, include overhead and professional components, except as otherwise indicated in (g) below. When these segments are billed separately, the total may not exceed the amounts listed.

(2) Notwithstanding any other provisions of this section, the Director may negotiate with individual hospital facilities an all-inclusive per visit rate for hospital outpatient services, provided that such negotiated rates do not increase overall program costs.

(b) Occupational therapy reimbursement shall be made in accordance with Section 51507.1, except that payment shall not be made for procedure codes X4114 or X4116.

(c) Speech therapy and audiology reimbursement shall be made in accordance with Section 51507.2, except that payment shall not be made for procedure code X4306.

(d) Psychology: Reimbursement for psychology shall be made in accordance with Section 51505.3, except no payment shall be made for procedure code X9548.

(e) Laboratory: Reimbursement for laboratory services shall be made in accordance with Section 51529.

(f) Physical therapy reimbursement shall be made in accordance with Section 51507, except that payment shall not be made for procedure codes X3932 or X3934.

(g) Physician Services.

(1) Hospital Outpatient Departments.

(A) Services by interns, residents or hospital compensated physicians.

1. Reimbursement for services shall be made directly to the hospital.

2. Reimbursement shall not exceed the amounts payable in accordance with Section 51503(g) plus the amounts payable under (2).

(B) Services by physicians not compensated by the hospital.

1. Payment for services may be made separately to the physician and to the hospital for services provided by each provider.

2. Reimbursement for hospital services shall not exceed the amounts payable in (2).

3. Reimbursement for physician services shall be made in accordance with Section 51503(g), Title 22, California Code of Regulations.

(2) Maximum reimbursement rates for hospital facilities shall be as follows:

Procedure Code		*Maximum Allowance*
Z7500	Use of hospital examining or treatment room	$23.77
Z7502	Use of emergency room (Bill only when used for the treatment of emergency conditions; for nonemergency conditions the examining room fee is payable.)	34.58
Z7504	Use of cast room	34.58
Z7506	Use of operating room or cystoscopic room—first hour	101.90
Z7508	first subsequent half hour	40.76
Z7510	second subsequent half hour	40.76
	maximum reimbursement	224.19
Z7512	Use of recovery room	18.22
Z7514	Payment for room and board and general nursing care for stays of less than 24 hours, including ordinary medication	40.76
Z7612	Unlisted services	By Report

(h) Pharmaceutical Services: Billings for drugs and medical supplies dispensed to outpatients shall be in accordance with sections 51513, and 51520.

(i) Radiology Services: Reimbursement for radiology services will not exceed amounts payable by Medi-Cal for the same services when rendered by physicians in nonhospital settings. If the hospital and professional components are billed separately, the total payment will not exceed the amount otherwise payable.

(j) Other Outpatient Services: Payment shall not exceed the maximum payment under the program for the same services by individual providers.

(k) Reimbursement rates payable to hospital outpatient departments qualifying for outpatient disproportionate share reimbursement shall be the maximum reimbursement rates authorized in subsections (a) through (j) of this section augmented by the hospital's disproportionate reimbursement factor, as described below:

(1) The Department shall develop annually a disproportionate provider factor for each hospital outpatient department located within the State and actively participating in the Medi-Cal program, using, to the extent available, the most recent annual financial disclosure data administered by the Office of Statewide Health Planning and Development.

(2) The disproportionate provider factor shall be the ratio of total Medi-Cal outpatient gross revenue, including "other" outpatient deductions from revenues, and revenue-offsetting subsidies, including medically indigent services program funds, as those deductions are described in the Office of Statewide Health Planning and Development Quarterly and Financial Disclosure Report, to total outpatient revenue. For hospitals unable to report the outpatient component of their "other" deductions from revenue, the Department shall estimate this amount by multiplying the ratio of other outpatient gross revenues to other total gross revenues by the total of other deductions from revenue. The calculation of a hospital's outpatient disproportionate provider factor shall not take into account any funds received by the hospital pursuant to Part 4.7, commencing with Section 16900, of the Welfare and Institutions Code, and shall exclude Medicare and Medi-Cal contractual allowances.

(3) Notwithstanding Section 51509(k)(2), the outpatient disproportionate provider factor for each qualifying children's hospital shall be no less than the amount that would have been established had the formula specified in Section 51509(k)(2) excluded revenue-offsetting subsidies, including medically indigent services program funds.

(4) Hospital outpatient departments with disproportionate provider factors exceeding the mean factor for all hospital outpatient departments specified in Section 51509 (k)(1) shall qualify for outpatient disproportionate share reimbursement. In calculating the mean disproportionate provider factor, equal weight will be given to each separately located outpatient department.

(5) Any reimbursement generated by the disproportionate provider factor of a qualifying hospital outpatient department shall be directly proportioned to that hospital's disproportionate provider factor, as defined in Section 51509 (k)(2). The disproportionate provider factors for all qualifying hospital outpatient departments shall be set at levels which ensure that the estimated aggregate payments to be made under this Section to all qualifying hospitals do not exceed the funding available for this purpose.

(6) The maximum reimbursement payable to each qualifying hospital outpatient department under this section, including any reimbursement attributable to a disproportionate provider factor developed pursuant to this Section, shall not exceed the charges billed by that hospital for any services or items provided to eligible Medi-Cal beneficiaries.

(*l*) The maximum reimbursement rates payable to hospital outpatient departments qualifying for small and rural hospital outpatient rate increases shall be the reimbursement rates authorized in subsections (a) through (k) of this section, augmented by the hospital's rate increase factor as described below:

(1) The Department shall establish and annually update two separate percentage rate increase factors for hospital outpatient department services provided by small and rural hospitals, as defined in Section 1188.855 of the Health and Safety Code, in order to allocate to each eligible hospital its share of the total funding appropriated for rate increases under this subsection. One rate increase factor shall be computed for all minimum floor hospitals, and one rate increase factor shall be computed for all nonminimum floor hospitals.

(2) The percentage rate increase factors specified in Section 51509(l)(1) shall be based on the ratio of Medi-Cal's outpatient expenditures for each small and rural hospital to the total of Medi-Cal's outpatient expenditures for all small and rural hospitals during the preceding calendar year, provided that:

(A) The rate increase for minimum floor hospitals shall be 125 percent of the rate increase for nonminimum floor hospitals.

(B) Estimated expenditures attributable to the combined rate increases for minimum floor and nonminimum floor hospitals shall not exceed the funds appropriated for this purpose in the annual Budget Act or in any other specific appropriation measure.

(3) If any eligible hospital had less than a full year of operation upon which to determine the ratio of Medi-Cal expenditures as specified in Section 51509(l)(2), the Department shall extrapolate the Medi-Cal paid claims expenditures for that hospital to estimate a full year's expenditures.

(4) For purposes of this subsection, "minimum floor hospital" means a hospital for which:

(A) Medi-Cal's expenditures for outpatient services during the preceding calendar year were less than one-half percent of Medi-Cal's expenditures for outpatient services rendered by all small and rural hospitals during that period; and,

(B) Total gross patient revenue from all sources during the preceding calendar year was less than $2,500,000.

(5) For purposes of this subsection, "nonminimum floor hospital" means a hospital for which:

(A) Medi-Cal's expenditures for outpatient services during the preceding calendar year were equal to or greater than one-half percent of Medi-Cal's total expenditures for outpatient services rendered by all small and rural hospitals during that period, or;

(B) Total gross patient revenue from all sources during the preceding calendar year was equal to or greater than $2,500,000.

(6) The maximum reimbursement rates payable to each hospital outpatient department under this section, including rates attributable to small and rural hospital outpatient reimbursement, shall not exceed the charges billed by that hospital for the services and items rendered.

(m) Except as provided in subsection (n), the maximum reimbursement rates paid to hospitals for hospital outpatient services under this section shall be the rates in effect on June 30, 2001, increased by the following percentages, when the hospital submits a bill in accordance with applicable requirements of section 51502 using a currently active hospital outpatient department provider number with respect to services in which the hospital uses Medi-Cal authorized billing codes:

(1) 30 percent for services provided on or after July 1, 2001.

(2) 34.33 percent for services provided on or after July 1, 2002.

(3) 38.81 percent for services provided on or after July 1, 2003.

(4) 43.44 percent for services provided on or after July 1, 2004.

(n) The increases provided for in subsection (m) are subject to the following exceptions:

(1) The increases shall not apply to reimbursement for drugs dispensed to outpatients and paid in accordance with section 51513.

(2) The increases shall not apply to reimbursement for medical supplies dispensed to outpatients and paid in accordance with section 51520.

(3) The increases shall not apply to reimbursement for services that are paid on a cost-basis, which for the purpose of this paragraph includes, but is not limited to, the following:

(A) Federally qualified health center services,

(B) Medical items and equipment that are paid a rate equal to or greater than the provider's acquisition cost,

(C) Medical items and equipment that are paid a rate equal to or greater than the manufacturer's suggested retail price.

(4) The increases for a clinical diagnostic laboratory test shall not exceed the difference between the rate payable on June 30, 2001 and the payment rate recognized under title 42 United States Code, section 1395*l*(h) for such test under Part B of the Medicare Program.

NOTE: Authority cited: Section 1188.877, Health and Safety Code; and Sections 10725, 14105, 14105.97 and 14124.5, Welfare and Institutions Code. Reference: Section 1188.877, Health and Safety Code; Sections 14087.3 and 14132, Welfare and Institutions Code; Statutes of 1982, Chapter 1594, Section 77; Statutes of 1983, Chapter 323, Section 149; Statutes of 1984, Chapter 258, Items 4260-106-001 and 890; Statutes of 1984, Chapter 268, Section 66; Statutes of 1985, Chapter 111, Items 4260-106-001 and 890; Section 14105.97, Welfare and Institutions Code; Statutes of 1998, Chapter 324, Items 4260-101-0001 and 0890; and Statutes of 2000, Chapter 52, Items 4260-101-0001.

HISTORY

1. New subsection (k) filed 5-24-89 as an emergency exempt from OAL review pursuant to Welfare and Institutions Code section 14105.97; operative 5-24-89 (Register 89, No. 21). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-21-89. For prior history, see Register 85, No. 52.
2. Certificate of Compliance as to 5-24-89 order disapproved and new subsection (k) filed 9-29-89 as an emergency; operative 9-29-89 (Register 89, No. 41). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1-2-90.
3. Certificate of Compliance as to 9-29-89 order including amendment of subsection (k)(2) filed 10-30-89 (Register 89, No. 45).
4. New subsection (*l*) filed 6-18-90 as an emergency; operative 6-18-90 (Register 90, No. 32). A Certificate of Compliance must be transmitted to OAL by 10-16-90 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 6-18-90 order transmitted to OAL 10-3-90 and filed 10-23-90 (Register 90, No. 49).
6. Amendment of subsections (k) and (k)(2)-(6) and NOTE filed 7-16-92 as an emergency; operative 7-16-92 (Register 92, No. 29). A Certificate of Compliance must be transmitted to OAL 11-13-92 or emergency language will be repealed by operation of law on the following day.
7. Amendment filed 9-25-92 as an emergency; operative 10-1-92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL 1-25-93 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 7-16-92 order transmitted to OAL 11-10-92 and filed 12-22-92 (Register 92, No. 52).
9. Certificate of Compliance as to 9-25-92 order transmitted to OAL 1-22-93 and filed 3-9-93 (Register 93, No. 11).
10. Editorial correction adding HISTORY 9 (Register 95, No. 25).
11. Amendment of subsections (g)(1)(A)2. and (g)(1)(B)3. filed 7-21-98 as an emergency; operative 7-27-98 (Register 98, No. 30). A Certificate of Compliance must be transmitted to OAL by 11-24-98 or emergency language will be repealed by operation of law on the following day.
12. Editorial correction of HISTORY 11 (Register 99, No. 2).
13. Certificate of Compliance as to 7-21-98 order transmitted to OAL 11-23-98 and filed 1-7-99 (Register 99, No. 2).
14. Amendment of subsection (g)(2) and amendment of NOTE filed 3-1-99 as an emergency; operative 3-1-99 (Register 99, No. 10). A Certificate of Compliance must be transmitted to OAL by 6-29-99 or emergency language will be repealed by operation of law on the following day.
15. Reinstatement of section as it existed prior to 3-1-99 emergency amendment by operation of Government Code section 11346.1(f) (Register 99, No. 33).
16. Amendment of subsection (g)(2) and amendment of NOTE filed 8-10-99 as an emergency; operative 8-10-99 (Register 99, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-8-99 or emergency language will be repealed by operation of law on the following day.
17. Certificate of Compliance as to 8-10-99 order transmitted to OAL 12-2-99 and filed 1-13-2000 (Register 2000, No. 2).
18. Amendment of subsections (g)(1)(A)2. and (g)(1)(B)3., new subsection (m) and amendment of NOTE filed 7-16-2002; operative rates for services provided on or after 8-1-2000 pursuant to Stats. 2000, c. 52, Items 4260-101-0001 and 0890 (Register 2002, No. 29).
19. Certificate of Compliance as to 7-16-2002 order, including repealer of subsection (m), transmitted to OAL 11-12-2002 and filed 12-24-2002 (Register 2002, No. 52).
20. Amendment of subsection (a) and new subsections (m)-(n)(4) filed 4-10-2003 as an emergency; operative 4-10-2003 (Register 2003, No. 15). A Certificate of Compliance must be transmitted to OAL by 8-8-2003 or emergency language will be repealed by operation of law on the following day.
21. Certificate of Compliance as to 4-10-2003 order transmitted to OAL 8-7-2003 and filed 9-15-2003 (Register 2003, No. 38).

§ 51509.1. Organized Outpatient Clinics.

(a) Reimbursement for organized outpatient clinic services shall be the usual charges made to the general public not to exceed the maximum reimbursement rates listed in this section.

(b) Organized outpatient clinics with surgical facilities, as defined in Health and Safety Code Section 1204(b), shall be reimbursed as follows.

(1) Payment for surgical procedures may be made either directly to the clinic or separately to the clinic, physician or dentist for the services provided by each provider.

(A) Reimbursement for clinic services shall not exceed the amounts listed in (3).

(B) Reimbursement for physician or dental services, normally provided in an office setting as determined by the Department, shall not exceed 80 percent of the maximum allowed under Section 51509.1(e), or Section 51506, as appropriate.

(C) Reimbursement for physician or dental services, not normally provided in an office setting as determined by the Department, shall not exceed the full amount allowed under Section 51509.1(e), or Section 51506, as appropriate.

(2) Payment for nonsurgical procedures shall:

(A) Be made directly to the clinic.

(B) Not exceed the amounts payable in accordance with Section 51509.1(e).

(3) Maximum reimbursement rates for clinic services, when surgery is provided, shall be as follows:

Procedure Code		*Maximum Allowance*
Z7500	Use of examining or treatment room	$21.66
Z7504	Use of cast room	31.49
Z7506	Use of operating room or cystoscopic room—first hour	92.83
Z7508	first subsequent half hour	37.13
Z7510	second subsequent half hour	37.13
	maximum charges	185.65
Z7512	Use of recovery room	16.59
Z7514	Payment for room and board and general nursing care for stays of less than 24 hours, including ordinary medication	37.13
Z7612	Unlisted services	By Report

(c) Community clinics and free clinics, as defined in Health and Safety Code Section 1204(a), and county operated organized outpatient clinics not subject to reimbursement as a hospital outpatient department under Section 51509, shall be reimbursed directly.

(1) Reimbursement for physician services and the services of nonphysician medical practitioners shall be made in accordance with the provisions of Section 51503.

(2) Maximum reimbursement rates for other services shall not exceed the maximum payment under the program for the same services by individual providers.

(3) Reimbursement for take-home drugs dispensed by clinics that have obtained permits pursuant to Business and Professions Code Section 4063 et seq. shall not exceed the amounts payable for drug ingredient cost under Section 51513. No dispensing fee or markup shall be paid.

(d) Rural health clinics, as defined in Section 51115.5, shall maintain adequate financial and statistical records to allow determination of the cost of covered services furnished to Medi-Cal beneficiaries.

(1) Reimbursement for rural health clinic services provided by a rural health clinic that is an integral part of a hospital and is operating under common licensure with other departments of the hospital shall be on the basis of reasonable cost, as specified in Section 450.30(a)(10)(i), Title 42, Code of Federal Regulations.

(2) Reimbursement for rural health clinic services provided by all other rural health clinics shall be on the basis of an interim cost-reimbursement rate per clinic visit established for the clinic under the principles established in Title 42, Code of Federal Regulations, Section 450.30 (a) (10) (ii) or (iii) (A). These interim reimbursements shall be subjected to reconciliation to reasonable cost and any screening guidelines or tests of reasonableness established by the Health Care Financing Administration.

(e) Organized outpatient clinics, not qualifying under (b), (c) or (d), shall be reimbursed directly.

(1) Reimbursement for physician services and the services of nonphysician medical practitioners shall be made in accordance with the provisions of Section 51503.

(2) Maximum reimbursement rates for other services shall not exceed the maximum payment under the program for the same services by individual providers.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code; and Section 208, Health and Safety Code. Reference: Sections 14105, 14132 and 14132.1, Welfare and Institutions Code; Statutes of 1985, Chapter 111, Items 4260-106-001 and 890; Statutes of 1998, Chapter 324, Items 4260-101-0001 and 0890; Statutes of 1999, Chapter 50, Items 4260-101-0001 and 4260-101-0890; Section 4063.7, Business and Professions Code; and Statutes of 2000, Chapter 52, Items 4260-101-0001 and 0890.

HISTORY

1. Amendment of subsections (b)(3) and (c)(1) filed 8-1-84 as an emergency; effective upon filing (Register 84, No. 31). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11-29-84. For prior history, see Register 81, No. 52.
2. Certificate of Compliance transmitted to OAL 11-27-84 and filed 12-27-84 (Register 84, No. 52).
3. Amendment of subsections (b)(3) and (c)(1) filed 8-1-85 as an emergency; effective on filing (Register 85, No. 32). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11-29-85.
4. Certificate of Compliance transmitted to OAL 11-20-85 and filed 12-27-85 (Register 85, No. 52).
5. Amendment of subsection (c)(1) filed 5-9-88 as an emergency; operative 5-15-88 (Register 88, No. 20). Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-12-88.
6. Certificate of Compliance transmitted to OAL 9-1-88 and filed 10-3-88 (Register 88, No. 42).
7. Amendment of subsection (b)(3) filed 9-25-92 as an emergency; operative 10-1-92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL 1-25-93 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 9-25-92 order transmitted to OAL 1-22-93 and filed 3-9-93 (Register 93, No. 11).
9. New subsection (c)(3) and amendment of NOTE filed 1-6-94; operative 2-7-94 (Register 94, No. 1).
10. Amendment of subsection (b)(1)(B) filed 7-21-98 as an emergency; operative 7-27-98 (Register 98, No. 30). A Certificate of Compliance must be transmitted to OAL by 11-24-98 or emergency language will be repealed by operation of law on the following day.
11. Editorial correction of HISTORY 10 (Register 99, No. 2).
12. Certificate of Compliance as to 7-21-98 order transmitted to OAL 11-23-98 and filed 1-7-99 (Register 99, No. 2).
13. Amendment of section and NOTE filed 3-1-99 as an emergency; operative 3-1-99 (Register 99, No. 10). A Certificate of Compliance must be transmitted to OAL by 6-29-99 or emergency language will be repealed by operation of law on the following day.
14. Reinstatement of section as it existed prior to 3-1-99 emergency amendment by operation of Government Code section 11346.1(f) (Register 99, No. 33).
15. Amendment of section and NOTE filed 8-10-99 as an emergency; operative 8-10-99 (Register 99, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-8-99 or emergency language will be repealed by operation of law on the following day.
16. Certificate of Compliance as to 8-10-99 order transmitted to OAL 12-2-99 and filed 1-13-2000 (Register 2000, No. 2).
17. Amendment of subsection (e)(1) and amendment of NOTE filed 11-13-2000 as an emergency; operative 11-13-2000 (Register 2000, No. 46). A Certificate of Compliance must be transmitted to OAL by 3-13-2001 or emergency language will be repealed by operation of law on the following day.
18. Certificate of Compliance as to 11-13-2000 order transmitted to OAL 3-13-2001 and filed 4-4-2001 (Register 2001, No. 14).
19. Amendment of subsections (c)(1) and (e)(1), new subsection (f) and amendment of NOTE filed 7-16-2002; operative rates for services provided on or after 8-1-2000 pursuant to Stats. 2000, c. 52, Items 4260-101-0001 and 0890 (Register 2002, No. 29).
20. Certificate of Compliance as to 7-16-2002 order, including repealer of subsection (f), transmitted to OAL 11-12-2002 and filed 12-24-2002 (Register 2002, No. 52).

§ 51509.2. Chronic Hemodialysis Services.

(a) Renal dialysis centers and community hemodialysis units shall be reimbursed the lesser of customary charges or reasonable costs for services provided in accordance with Section 51330.

(b) The Department shall use the "Health Insurance Regulations Manual" (HIRM-1), Intermediary Letters and other payment guidelines issued through March 31, 1976 by the U.S. Department of Health, Education, and Welfare for the administration of Title XVIII of the Social Security Act:

(1) In ascertaining whether or not costs are reasonable for these services.

(2) As a guide for computation of interim payments and reasonable costs at final settlement.

(c) Charges for dialysis equipment and supplies are payable by the Medi-Cal program only when billed by the facility.

HISTORY

1. New section filed 2-25-70; designated effective 4-1-70 (Register 70, No. 9).
2. Amendment filed 1-30-73; effective thirtieth day thereafter (Register 73, No. 5).
3. Amendment filed 11-1-76 as an emergency; effective upon filing (Register 76, No. 45).
4. Certificate of Compliance filed 1-28-77 (Register 77, No. 5).

§ 51509.3. Rural Health Clinic Reimbursement.

NOTE: Authority cited: Sections 14100.1, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14100.1, 14105 and 14124.5, Welfare and Institutions Code.

HISTORY

1. New section filed 8-1-78 as an emergency; effective upon filing (Register 78, No. 31).
2. Editorial correction to reprint subsection (c) and history notes which were erroneously deleted by Register 78, No. 32 (Register 78, No. 39).
3. Repealer filed 11-2-78 as an emergency; effective upon filing (Register 78, No. 44).
4. Certificate of Compliance as to 8-1-78 emergency transmitted to OAH 11-28-78 and filed 11-29-78 (Register 78, No. 48).
5. Amendment of title of section filed 2-5-79; effective thirtieth day thereafter (Register 79, No. 6).

6. Certificate of Compliance as to 11–2–78 emergency filed 2–5–79 (Register 79, No. 6).

§ 51510. Nursing Facility Level A Services.

(a) Payment to nursing facilities, hospitals, or public institutions providing level A services in accordance with section 51120 shall be as set forth in this section and Section 51535. As used in this section, the term "nursing facility level A services" is defined as a nursing facility services provided in accordance with section 51120.

(b) Each provider of nursing facility level A services shall furnish all equipment, drugs, supplies, and services necessary to provide level A services except as provided in subsection (c). Such equipment supplies, and services are, at a minimum, those which are required by law, including those required by federal Medicaid regulations and state licensing regulations.

(c) Not included in the payment rate and to be billed separately by the provider thereof, subject to the utilization controls and limitations of Medi–Cal regulations covering such services and supplies, are as follows:

1. Allied health services ordered by the attending physician.
2. Alternating pressure mattresses/pads with motor.
3. Atmospheric oxygen concentrators and enrichers and accessories.
4. Blood, plasma and substitutes.
5. Dental services.
6. Durable medical equipment as specified in section 51321(g).
7. Insulin.
8. Intermittent positive pressure breathing equipment.
9. Intravenous trays, tubing and blood infusion sets.
10. Laboratory services.
11. Legend drugs.
12. Liquid oxygen system.
13. MacLaren or Pogon Buggy.
14. Medical supplies as specified in section 59998.
15. Nasal cannula.
16. Osteogenesis stimulator device.
17. Oxygen (except emergency).
18. Parts and labor for repairs of durable medical equipment if originally separately payable or owned by the beneficiary.
19. Physician services.
20. Portable aspirator.
21. Portable gas oxygen system and accessories.
22. Precontoured structures (VASCO–PASS, cut out foam).
23. Prescribed prosthetic and orthotic devices for exclusive use of patient.
24. Reagent testing sets.
25. Therapeutic air/fluid support systems/beds.
26. Traction equipment and accessories.
27. Variable height beds.
28. X–rays.

(d) Not included in the payment rate nor in the Medi–Cal schedules of benefits are personal items such as cosmetics, tobacco products and accessories, dry cleaning, beauty shop services (other than shaves or shampoos performed by the facility staff as part of patient care and periodic hair trims) and television rental.

(e) Payment to nursing facilities or public institutions providing Level A services in accordance with Section 51120 shall be as follows:

(1) For facilities with licensed bed capacities and located by county as follows:

Bedsize	*Los Angeles County*	*Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo Santa Clara & Sonoma Counties*	*All Other Counties*
1–99	$80.62	$80.62	$67.94
100+	$89.54	$89.54	$89.54

(2) Reduced for leave of absence provided pursuant to Section 51535.

(3) Reduced for bed hold provided pursuant to Section 51535.1.

(f) Nothing in this section shall prohibit the Director from negotiating all–inclusive rates which provide for additional Medi–Cal covered services that are medically indicated provided that such negotiated rates are less than the cost of the covered services if billed separately.

(g) Each facility shall certify on the form provided by the Department that nurse assistants who receive certificates pursuant to section 1439.3, Health and Safety Code, will receive a twenty cents per hour pay increase commencing with the next payroll period following certification.

(1) The Department shall inspect relevant payroll and personnel records of facilities which are reimbursed for care of Medi–Cal patients under this section to insure that the nurse assistants who have received certificates pursuant to section 1439.3, Health and Safety Code, have received the twenty cents per hour pay increase.

(2) Any facility which the Department finds has not paid the required twenty cents per hour increase for certified nurse assistants shall be liable to the State for the amount of funds reimbursed to the facility as a result of the anticipated wage increase. Recovery shall be for the entire period during which wages did not meet the requirements of this regulation. In addition, the facility shall be subject to suspension from participation in the Medi–Cal program pursuant to the provisions of section 14123, Welfare and Institutions Code. The facility shall also be subject to the provisions of section 14107, Welfare and Institutions Code.

(h) Facilities shall be exempted, upon request, from the provisions of subsection (g) if each of the following apply:

(1) The facility has an ongoing nurse assistant training program which:

(A) Has been in effect continuously and prior to February 1, 1978.

(B) The Department finds to be in continuous and substantial compliance with the requirements of section 72322.

(2) Effective October 31, 1977, the facility is currently paying nurse assistants an entry wage level of $3.50 per hour or higher.

(i) Each facility shall certify on the form provided by the Department that an additional $1.84 per patient day for the period of March 1, 1978 through June 30, 1978, was expended for increased nonadministrative employee wages and benefits. Facilities will be exempted from this certification requirement if the entry wage level of the lowest paid nonadministrative employee exceeded $3.97 an hour on March 1, 1978. Facilities exceeding the $3.97 hourly wage shall certify that the additional funds received were used to ensure the continued delivery of quality care in such facility.

(1) The Department shall inspect relevant payroll and personnel records of facilities which are reimbursed for care of Medi–Cal patients under this section to insure that the wage increases provided for in the March 1, 1978, rate increases have been implemented. Any facility which has not made the wage and benefit increases required by this subsection shall be liable to the State for the amount of funds paid to such facilities for these wage increases, but not distributed to employees, plus a penalty of ten percent of the funds not distributed. The facility shall also be subject to the provisions of section 14107, Welfare and Institutions Code.

(2) For purposes of this section, the base from which employee wages and benefits shall be increased shall be the payroll for nonadministrative employees for the month of December, 1977 and shall include only non-overtime hours worked by covered employees. The amount of funds to be distributed per month for the period March 1, 1978 to and including June 30, 1978 for nonadministrative employee wages and benefits shall equal the total Medi–Cal patient days for the month of December, 1977 multiplied by $1.84 plus any amount expended pursuant to section 1439.7 of the Health and Safety Code for purposes of wage increases during the March 1, 1978 through June 30, 1978 effective period.

(j) By July 1, 1978, and annually thereafter, each facility shall certify on the form provided by the Department that:

(1) All nonadministrative employees of the facility employed less than three months shall receive a minimum wage level equivalent to the federal minimum wage plus fifty percent of the facility's average hourly wage

increase established for the period March through June 1978 pursuant to subsection (i).

(2) All nonadministrative employees of the facility employed for three months or more shall receive a minimum wage level equivalent to the federal minimum wage plus the facility's total average hourly wage increase established for the period March through June 1978 pursuant to subsection (i).

(3) Any employee who was employed by the facility for the period March through June 1978 shall not receive a lower wage than the wage received by that employee pursuant to subsection (i) for the March through June 1978 period.

(4) Any wage increase for certified nurse assistants required by subsection (g) shall be in addition to any of the average wages certified to in this subsection.

NOTE: Authority cited: Sections 10725, 14105, 14108, 14108.1, 14110.6, 14110.7, 14124.5 and 14126.23, Welfare and Institutions Code. Reference: Sections 14108, 14108.1, 14108.2, 14109.5, 14110.1, 14110.4, 14110.6, 14110.7 and 14132, Welfare and Institutions Code; and Statutes of 2002, Chapter 379, Items 4260-101-0001 and 4260-101-0890.

HISTORY

1. Amendment filed 8-7-89 as an emergency; operative 8-7-89 (Register 89, No. 32). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-5-89. For prior history, see Register 89, No. 1.
2. Certificate of Compliance transmitted to OAL 12-1-89 and filed 1-2-90 (Register 90, No. 1).
3. Amendment filed 12-10-90 as an emergency; operative 12-10-90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 4-9-91 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsections (a) and (e), heading and NOTE filed as an emergency 3-14-91; operative 3-14-91 (Register 91, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-12-91 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 12-10-90 order including amendment of subsection (b) transmitted to OAL 4-8-91 and filed 5-8-91 (Register 91, No. 24).
6. Certificate of Compliance as to 3-14-91 order, including amendment of subsections (a), (b), and (e), transmitted to OAL 7-11-91 and filed 8-9-91 (Register 91, No. 50).
7. Amendment of subsection (e) and NOTE filed 8-12-91 as an emergency; operative 8-12-91 (Register 92, No. 6). A Certificate of Compliance must be transmitted to OAL 12-10-91 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 8-12-91 order transmitted to OAL 12-9-91 and filed 1-2-92 (Register 92, No. 18).
9. Amendment of subsection (e) and table in subsection (e)(1) and NOTE filed 12-3-92 as an emergency; operative 12-3-92 (Register 92, No. 49). A Certificate of Compliance must be transmitted to OAL 4-2-93 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 12-3-92 order transmitted to OAL 4-2-93 and filed 5-14-93 (Register 93, No. 20).
11. Editorial correction of printing error restoring subsection (b) (Register 93, No. 20).
12. Amendment of subsection (e)(1) and NOTE filed 8-24-93 as an emergency; operative 8-24-93 (Register 93, No. 35). A Certificate of Compliance must be transmitted to OAL by 12-22-93 or emergency language will be repealed by operation of law on the following day.
13. Amendment of subsection (e)(1) and NOTE refiled 12-20-93 as an emergency; operative 12-20-93 (Register 93, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-21-94 or emergency language will be repealed by operation of law on the following day.
14. Certificate of Compliance as to 12-20-93 order transmitted to OAL 3-22-94 and filed 4-28-94 (Register 94, No. 17).
15. Amendment of subsection (e)(1) and NOTE filed 8-31-94 as an emergency; operative 8-31-94 (Register 94, No. 35). A Certificate of Compliance must be transmitted to OAL by 12-29-94 or emergency language will be repealed by operation of law on the following day.
16. Amendment of subsection (e)(1) and NOTE refiled 1-3-95 as an emergency; operative 1-3-95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL 5-3-95 or emergency language will be repealed by operation of law on the following day.
17. Editorial correction of HISTORY 6 (Register 95, No. 23).
18. Certificate of Compliance as to 1-3-95 order transmitted to OAL 4-27-95 and filed 6-9-95 (Register 95, No. 23).
19. Amendment of subsection (e)(1) and NOTE filed 9-19-96 as an emergency; operative 9-19-96 (Register 96, No. 38). A Certificate of Compliance must be transmitted to OAL by 1-17-97 or emergency language will be repealed by operation of law on the following day.
20. Certificate of Compliance as to 9-19-96 order transmitted to OAL 1-17-97 and filed 3-3-97 (Register 97, No. 10).
21. Amendment of subsection (e)(1) filed 5-15-97 as an emergency; operative 5-15-97 (Register 97, No. 20). A Certificate of Compliance must be transmitted to OAL by 9-12-97 or emergency language will be repealed by operation of law on the following day.
22. Certificate of Compliance as to 5-15-97 order transmitted to OAL 9-10-97 and filed 9-30-97 (Register 97, No. 40).
23. Amendment of subsection (e)(1) and NOTE filed 12-31-97 as an emergency; operative 12-31-97 (Register 98, No. 1). A Certificate of Compliance must be transmitted to OAL by 4-30-98 or emergency language will be repealed by operation of law on the following day.
24. Editorial correction of HISTORY 23 (Register 98, No. 24).
25. Certificate of Compliance as to 12-31-97 order transmitted to OAL 4-27-98 and filed 6-9-98 (Register 98, No. 24).
26. Amendment of subsection (e)(1) and NOTE filed 10-29-98 as an emergency; operative 10-29-98 (Register 98, No. 44). A Certificate of Compliance must be transmitted to OAL by 2-26-99 or emergency language will be repealed by operation of law on the following day.
27. Certificate of Compliance as to 10-29-98 order transmitted to OAL 2-26-99 and filed 4-8-99 (Register 99, No. 15).
28. Amendment of subsection (e)(1) and NOTE filed 11-3-99 as an emergency; operative 11-3-99 (Register 99, No. 45). A Certificate of Compliance must be transmitted to OAL by 3-2-2000 or emergency language will be repealed by operation of law on the following day.
29. Certificate of Compliance as to 11-3-99 order transmitted to OAL 3-1-2000 and filed 4-6-2000 (Register 2000, No. 14).
30. Amendment of subsection (e)(1) and NOTE filed 11-17-2000 as an emergency; operative 11-17-2000 (Register 2000, No. 46). A Certificate of Compliance must be transmitted to OAL by 3-19-2001 or emergency language will be repealed by operation of law on the following day.
31. Certificate of Compliance as to 11-17-2000 order transmitted to OAL 3-8-2001 and filed 4-19-2001 (Register 2001, No. 16).
32. Amendment of subsection (e)(1) and amendment of NOTE filed 1-27-2003 as an emergency; operative 8-1-2001 pursuant to Statutes of 2002, Chapter 16, Items 4260-101-0001 and 4260-101-0890 (Register 2003, No. 5). A Certificate of Compliance must be transmitted to OAL by 5-27-2003 or emergency language will be repealed by operation of law on the following day.
33. Amendment of subsection (e)(1) and amendment of NOTE refiled 5-22-2003 as an emergency; operative 5-22-2003 (Register 2003, No. 21). A Certificate of Compliance must be transmitted to OAL by 9-19-2003 or emergency language will be repealed by operation of law on the following day.
34. Certificate of Compliance as to 5-22-2003 order transmitted to OAL 9-18-2003 and filed 10-16-2003 (Register 2003, No. 42).
35. Amendment of subsection (e)(1) and amendment of NOTE filed 8-24-2005 as a deemed emergency pursuant to Welfare and Institutions Code section 14105(a); operative 8-24-2005 for dates of service 8-1-2002 through 7-31-2003 pursuant to Statutes of 2002, Chapter 379, Items 4260-101-0001 and 4260-101-0890 (Register 2005, No. 34). A Certificate of Compliance must be transmitted to OAL by 12-23-2005 or emergency language will be repealed by operation of law on the following day.
36. Certificate of Compliance as to 8-24-2005 order transmitted to OAL 12-22-2005 and filed 1-23-2006 (Register 2006, No. 4).

§ 51510.1. Intermediate Care Services for the Developmentally Disabled.

(a) Each provider of intermediate care services for the developmentally disabled shall furnish all equipment, drugs, services and supplies necessary to provide intermediate care services for the developmentally disabled except as provided in subsection (b). Such equipment, drugs, supplies, and services are, at a minimum, those which are required by law, including those required by federal Medicaid regulations and state licensing regulations.

(b) Not included in the payment rate and to be billed separately by the provider thereof, subject to the utilization controls and limitations of Medi-Cal regulations covering such services and supplies, are as follows:

(1) Allied health services ordered by the attending physician.
(2) Alternating pressure mattresses/pads with motor.
(3) Atmospheric oxygen concentrators and enrichers and accessories.
(4) Blood, plasma and substitutes.
(5) Dental services.
(6) Durable medical equipment as specified in section 51321(g).
(7) Insulin.
(8) Intermittent positive pressure breathing equipment.

(9) Intravenous trays, tubing and blood infusion sets.
(10) Laboratory services.
(11) Legend drugs.
(12) Liquid oxygen system.
(13) MacLaren or Pogon Buggy.
(14) Medical supplies as specified in section 59998.
(15) Nasal cannula.
(16) Osteogenesis stimulator device.
(17) Oxygen (except emergency).
(18) Parts and labor for repairs of durable medical equipment if originally separately payable or owned by the beneficiary.
(19) Physician services.
(20) Portable aspirator.
(21) Portable gas oxygen system and accessories.
(22) Precontoured structures (VASCO–PASS, cut out foam).
(23) Prescribed prosthetic and orthotic devices for exclusive use of patient.
(24) Reagent testing sets.
(25) Therapeutic air/fluid support systems/beds.
(26) Traction equipment and accessories.
(27) Variable height beds.
(28) X–rays.

(c) Not included in the payment rate nor in the Medi–Cal schedule of benefits are costs for personal items of beneficiaries such as cosmetics, tobacco products and accessories, dry cleaning, beauty shop services (other than shaves or shampoos performed by the facility staff as part of patient care and periodic trims) and television rental.

(d) Skilled nursing facilities and intermediate care facilities with the licensed bed capacities shown below meeting the standards and criteria established for intermediate care facility services for the developmentally disabled, as defined in Sections 76301 through 76413, Article 3, Chapter 8, Division 5, Title 22, California Code of Regulations, shall be entitled to payment for services as indicated below.

Total Licensed Beds		
1–59	*60+*	*60+ w/ Distinct Part*
$128.86	$110.15	$110.15

(1) Reduced for leave of absence for all patients receiving intermediate care facility services for the developmentally disabled in accordance with section 51535.

(2) Reduced for bed hold for acute hospitalization for all patients receiving intermediate care facility services for the developmentally disabled in accordance with section 51535.1.

(e) Effective October 1, 1990, state operated facilities shall be entitled to payment for services at actual allowable cost.

NOTE: Authority cited: Sections 10725, 14105, 14108, 14110.6, 14110.7, 14124.5 and 14126.23, Welfare and Institutions Code. Reference: Sections 14087.3, 14108, 14109.5, 14110.4, 14110.6, 14110.7 and 14132, Welfare and Institutions Code; Section 1250, Health and Safety Code; and Statutes of 2002, Chapter 379, Items 4260–101–0001 and 4260–101–0890.

HISTORY

1. Amendment filed 8–7–89 as an emergency; operative 8–7–89 (Register 89, No. 32). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12–5–89. For prior history, see Register 89, No. 1.
2. Certificate of Compliance transmitted to OAL 12–1–89 and filed 1–2–90 (Register 90, No. 2).
3. Amendment filed 12–10–90 as an emergency; operative 12–10–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 4–9–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 12–10–90 order including amendment of subsection (a) transmitted to OAL 4–8–91 and filed 5–8–91 (Register 91, No. 24).
5. Amendment of subsections (d), (f) and NOTE filed 8–12–91 as an emergency; operative 8–12–91 (Register 92, No. 6). A Certificate of Compliance must be transmitted to OAL 12–10–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance, including editorial correction of table in subsection (f), as to 8–12–91 order transmitted to OAL 12–9–91 and filed 1–2–92 (Register 92, No. 18).
7. Amendment of subsections (d) and (f) and NOTE filed 12–3–92 as an emergency; operative 12–3–92 (Register 92, No. 49). A Certificate of Compliance must be transmitted to OAL 4–2–93 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 12–3–92 order transmitted to OAL 4–2–93 and filed 5–14–93 (Register 93, No. 20).
9. Amendment of subsections (d) and (f) and NOTE filed 8–24–93 as an emergency; operative 8–24–93 (Register 93, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–22–93 or emergency language will be repealed by operation of law on the following day.
10. Amendment of subsections (d) and (f) and NOTE refiled 12–20–93 as an emergency; operative 12–20–93 (Register 93, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–21–94 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 12–20–93 order transmitted to OAL 3–22–94 and filed 4–28–94 (Register 94, No. 17).
12. Amendment of subsections (d) and (f) and NOTE filed 8–31–94 as an emergency; operative 8–31–94 (Register 94, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–29–94 or emergency language will be repealed by operation of law on the following day.
13. Amendment of subsections (d) and (f) and NOTE refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL 5–3–95 or emergency language will be repealed by operation of law on the following day.
14. Certificate of Compliance as to 1–3–95 order transmitted to OAL 4–27–95 and filed 6–9–95 (Register 95, No. 23).
15. Amendment of subsections (d) and (f) and NOTE filed 9–19–96 as an emergency; operative 9–19–96 (Register 96, No. 38). A Certificate of Compliance must be transmitted to OAL by 1–17–97 or emergency language will be repealed by operation of law on the following day.
16. Certificate of Compliance as to 9–19–96 order transmitted to OAL 1–17–97 and filed 3–3–97 (Register 97, No. 10).
17. Amendment of subsections (d) and (f) filed 5–15–97 as an emergency; operative 5–15–97 (Register 97, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–12–97 or emergency language will be repealed by operation of law on the following day.
18. Certificate of Compliance as to 5–15–97 order transmitted to OAL 9–10–97 and filed 9–30–97 (Register 97, No. 40).
19. Amendment of subsections (d) and (f) and amendment of NOTE filed 12–31–97 as an emergency; operative 12–31–97 (Register 98, No. 1). A Certificate of Compliance must be transmitted to OAL by 4–30–98 or emergency language will be repealed by operation of law on the following day.
20. Editorial correction of HISTORY 19 (Register 98, No. 24).
21. Certificate of Compliance as to 12–31–97 order transmitted to OAL 4–27–98 and filed 6–9–98 (Register 98, No. 24).
22. Amendment of subsection (d) and NOTE filed 10–29–98 as an emergency; operative 10–29–98 (Register 98, No. 44). A Certificate of Compliance must be transmitted to OAL by 2–26–99 or emergency language will be repealed by operation of law on the following day.
23. Certificate of Compliance as to 10–29–98 order transmitted to OAL 2–26–99 and filed 4–8–99 (Register 99, No. 15).
24. Amendment of subsection (d) and NOTE filed 11–3–99 as an emergency; operative 11–3–99 (Register 99, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–2–2000 or emergency language will be repealed by operation of law on the following day.
25. Certificate of Compliance as to 11–3–99 order transmitted to OAL 3–1–2000 and filed 4–6–2000 (Register 2000, No. 14).
26. Amendment of subsection (d) filed 6–29–2000 as an emergency; operative 7–1–2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 10–30–2000 or emergency language will be repealed by operation of law on the following day.
27. Certificate of Compliance as to 6–29–2000 order transmitted to OAL 9–29–2000 and filed 11–1–2000 (Register 2000, No. 44).
28. Amendment of subsection (d) and NOTE filed 11–17–2000 as an emergency; operative 11–17–2000 (Register 2000, No. 46). A Certificate of Compliance must be transmitted to OAL by 3–19–2001 or emergency language will be repealed by operation of law on the following day.
29. Certificate of Compliance as to 11–17–2000 order transmitted to OAL 3–8–2001 and filed 4–19–2001 (Register 2001, No. 16).
30. Amendment of subsection (d) and amendment of NOTE filed 1–27–2003 as an emergency; operative 8–1–2001 pursuant to Statutes of 2002, Chapter 16, Items 4260–101–0001 and 4260–101–0890 (Register 2003, No. 5). A Certificate of Compliance must be transmitted to OAL by 5–27–2003 or emergency language will be repealed by operation of law on the following day.
31. Amendment of subsection (d) and amendment of NOTE refiled 5–22–2003 as an emergency; operative 5–22–2003 (Register 2003, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–19–2003 or emergency language will be repealed by operation of law on the following day.
32. Editorial correction of HISTORY 31 (Register 2003, No. 25).

33. Certificate of Compliance as to 5–22–2003 order transmitted to OAL 9–18–2003 and filed 10–16–2003 (Register 2003, No. 42).

34. Amendment of subsection (d) and amendment of NOTE filed 8–24–2005 as a deemed emergency pursuant to Welfare and Institutions Code section 14105(a); operative 8–24–2005 for dates of service 8–1–2002 through 7–31–2003 pursuant to Statutes of 2002, Chapter 379, Items 4260–101–0001 and 4260–101–0890 (Register 2005, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–23–2005 or emergency language will be repealed by operation of law on the following day.

35. Certificate of Compliance as to 8–24–2005 order transmitted to OAL 12–22–2005 and filed 1–23–2006 (Register 2006, No. 4).

§ 51510.2. Intermediate Care Services for the Developmentally Disabled–Habilitative.

(a) Daily Reimbursement Rate—Intermediate care facilities meeting licensing and Medi–Cal standards and criteria for providing services to the developmentally disabled–habilitative as contained or referred to in Sections 51164.1 through 51343.1 and Sections 76801 through 76962, Divisions 3 and 5 of Title 22, California Code of Regulations, shall be entitled to payment according to the following daily rates:

Total Licensed Beds	
4–6	*7–15*
$149.17	$148.17

(1) Each provider of intermediate care, developmentally disabled/habilitative services shall furnish:

(A) Services of the facility's direct care staff in accordance with section 76872 of title 22 of California Code of Regulations.

(B) Services of the facility's interdisciplinary professional staff/team and qualified mental retardation professional staff as follows:

1. Case conference review of client's developmental needs;

2. Joint development of individual service plans;

3. In–service training of direct care staff and follow–up to ensure proper implementation of individual service plan.

4. Advising on the need for provision of various types of intervention or specialized equipment beyond the capabilities of the facility or staff;

(C) Administrative services in accordance with sections 76907 through 76931 of Title 22 of California Code of Regulations.

(D) Health support, food and nutritional and pharmaceutical services as required in sections 76874 through 76906 of title 22 of California Code of Regulations.

(E) Transportation services when necessary for round trips to attending physicians in accordance with section 51343.1(f), (g), and (*l*).

(F) Social services required in 42 Code of Federal Regulation 442.494 and 442.495.

(G) All services, drugs, equipment and supplies required to provide intermediate care, developmentally disabled/habilitative services except as provided in subsection (b). Such equipment, drugs, supplies, and services are, at a minimum, those which are required by law, including those required by federal Medicaid regulations and state licensing regulations.

(2) The daily reimbursement rate shall be adjusted for purposes of leave of absence or acute hospitalization in accordance with sections 51535 and 51535.1, title 22, California Code of Regulations.

(b) Services and supplies not covered by the payment rate but which are recommended by the interdisciplinary staff and ordered by the attending physician and which the facility's direct care staff are not qualified to provide may be billed separately, subject to the utilization controls and limitations of Medi–Cal regulations covering such services and supplies. These include:

(1) Medical and Dental Services.

(A) Costs of medical or dental services.

(B) Costs of a physician's medical evaluation for purposes of subsection 51343.1(h). If a physician's evaluation has been completed for purposes of subsection 51343.1(h), the costs of an additional evaluation will not be reimbursed until 12 months thereafter.

(2) Psychological Services.

(A) Costs of psychological therapy services.

(B) The cost of a psychological evaluation provided during the first 3 months after admission is not reimbursable.

(3) Cost of incontinence medical supplies for beneficiaries five years of age or more whose developmental deficits are such that bowel and bladder control cannot be attained. Prior authorization is required in accordance with Section 51003, Title 22, California Code of Regulations.

(4) The following services, items and supplies;

(A) Allied health services ordered by the attending physician.

(B) Alternating pressure mattresses/pads with motor.

(C) Atmospheric oxygen concentrators and enrichers and accessories.

(D) Blood, plasma and substitutes.

(E) Dental services.

(F) Durable medical equipment as specified in section 51321(g).

(G) Insulin.

(H) Intermittent positive pressure breathing equipment.

(I) Intravenous trays, tubing and blood infusion sets.

(J) Laboratory services.

(K) Legend drugs.

(L) Liquid oxygen system.

(M) MacLaren or Pogon Buggy.

(N) Medical supplies as specified in section 59998.

(O) Nasal cannula.

(P) Osteogenesis stimulator device.

(Q) Oxygen (except emergency).

(R) Parts and labor for repairs of durable medical equipment if originally separately payable or owned by the beneficiary.

(S) Physician services.

(T) Portable aspirator.

(U) Portable gas oxygen system and accessories.

(V) Precontoured structures (VASCO–PASS, cut out foam).

(W) Prescribed prosthetic and orthotic devices for exclusive use of patient.

(X) Reagent testing sets.

(Y) Therapeutic air/fluid support systems/beds.

(Z) Traction equipment and accessories.

(AA) Variable height beds.

(BB) X–rays.

(c) All services and supplies billed separately are subject to the general provisions and billing limitations set forth in sections 51303, 51304, and 59998, title 22, California Code of Regulations.

(d) Not included in the payment rate nor in the Medi–Cal schedule of benefits are costs for personal items of beneficiaries such as cosmetics, tobacco products and accessories, dry cleaning, beauty shop services (other than shaves or shampoos performed by the facility staff as part of patient care and periodic hair trims) and television rental.

NOTE: Authority cited: Sections 10725, 14105, 14108, 14108.2, 14110.6, 14110.7, 14124.5 and 14126.23, Welfare and Institutions Code; and Section 1267.7, Health and Safety Code. Reference: Sections 14108, 14108.2, 14109.5, 14110.4, 14110.6 and 14132, Welfare and Institutions Code; Sections 1250 and 1267.7, Health and Safety Code; and Statutes of 2001, Chapter 106, Items 4260–101–0001 and 4260–101–0890.

HISTORY

1. Amendment filed 8–7–89 as an emergency; operative 8–7–89 (Register 89, No. 32). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12–5–89. For prior history, see Register 89, No. 1.

2. Certificate of Compliance transmitted to OAL 12–1–89 and filed 1–2–90 (Register 90, No. 2).

3. Amendment filed 12–10–90 as an emergency; operative 12–10–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 4–9–91 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 12–10–90 order including amendment of subsection (a) transmitted to OAL 4–8–91 and filed 5–8–91 (Register 91, No. 24).

5. Amendment of subsection (a) and NOTE filed 8–12–91 as an emergency; operative 8–12–91 (Register 92, No. 6). A Certificate of Compliance must be transmitted to OAL 12–10–91 or emergency language will be repealed by operation of law on the following day.

6. Certificate of Compliance as to 8–12–91 order transmitted to OAL 12–9–91 and filed 1–2–92 (Register 92, No. 18).

7. Amendment of subsection (a) and NOTE filed 12–3–92 as an emergency; operative 12–3–92 (Register 92, No. 49). A Certificate of Compliance must be transmitted to OAL 4–2–93 or emergency language will be repealed by operation of law on the following day.

8. Certificate of Compliance as to 12–3–92 order transmitted to OAL 4–2–93 and filed 5–14–93 (Register 93, No. 20).
9. Amendment of subsection (a) and NOTE filed 8–24–93 as an emergency; operative 8–24–93 (Register 93, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–22–93 or emergency language will be repealed by operation of law on the following day.
10. Amendment of subsection (a) and NOTE refiled 12–20–93 as an emergency; operative 12–20–93 (Register 93, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–21–94 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 12–20–93 order transmitted to OAL 3–22–94 and filed 4–28–94 (Register 94, No. 17).
12. Amendment of subsection (a) and NOTE filed 8–31–94 as an emergency; operative 8–31–94 (Register 94, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–29–94 or emergency language will be repealed by operation of law on the following day.
13. Amendment of subsection (a) and NOTE refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL 5–3–95 or emergency language will be repealed by operation of law on the following day.
14. Certificate of Compliance as to 1–3–95 order including amendment of subsection (a) transmitted to OAL 4–27–95 and filed 6–9–95 (Register 95, No. 23).
15. Amendment of subsection (b)(3) filed 12–21–95; operative 1–20–96 (Register 95, No. 51).
16. Amendment of subsection (a) and NOTE filed 9–19–96 as an emergency; operative 9–19–96 (Register 96, No. 38). A Certificate of Compliance must be transmitted to OAL by 1–17–97 or emergency language will be repealed by operation of law on the following day.
17. Certificate of Compliance as to 9–19–96 order transmitted to OAL 1–17–97 and filed 3–3–97 (Register 97, No. 10).
18. Amendment of subsection (a) filed 5–15–97 as an emergency; operative 5–15–97 (Register 97, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–12–97 or emergency language will be repealed by operation of law on the following day.
19. Certificate of Compliance as to 5–15–97 order transmitted to OAL 9–10–97 and filed 9–30–97 (Register 97, No. 40).
20. Amendment of section heading, subsection (a) and NOTE filed 10–29–98 as an emergency; operative 10–29–98 (Register 98, No. 44). A Certificate of Compliance must be transmitted to OAL by 2–26–99 or emergency language will be repealed by operation of law on the following day.
21. Certificate of Compliance as to 10–29–98 order transmitted to OAL 2–26–99 and filed 4–8–99 (Register 99, No. 15).
22. Amendment of subsection (a) and NOTE filed 11–17–2000 as an emergency; operative 11–17–2000 (Register 2000, No. 46). A Certificate of Compliance must be transmitted to OAL by 3–19–2001 or emergency language will be repealed by operation of law on the following day.
23. Certificate of Compliance as to 11–17–2000 order transmitted to OAL 3–8–2001 and filed 4–19–2001 (Register 2001, No. 16).
24. Amendment of subsection (a) and amendment of NOTE filed 1–27–2003 as an emergency; operative 8–1–2001 pursuant to Statutes of 2002, Chapter 16, Items 4260–101–0001 and 4260–101–0890 (Register 2003, No. 5). A Certificate of Compliance must be transmitted to OAL by 5–27–2003 or emergency language will be repealed by operation of law on the following day.
25. Amendment of subsection (a) and amendment of NOTE refiled 5–22–2003 as an emergency; operative 5–22–2003 (Register 2003, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–19–2003 or emergency language will be repealed by operation of law on the following day.
26. Certificate of Compliance as to 5–22–2003 order transmitted to OAL 9–18–2003 and filed 10–16–2003 (Register 2003, No. 42).

§ 51510.3. Intermediate Care Services for the Developmentally Disabled–Nursing.

(a) Daily Reimbursement Rate—Intermediate care facilities meeting licensing and Medi–Cal standards and criteria for providing services to the developmentally disabled–nursing as contained or referred to in Sections 51164.2 through 51343.2, Division 3, and Sections 73800 through 73956, Division 5, Title 22, California Code of Regulations, shall be entitled to payment according to the following daily rates:

Total Licensed Beds

4–6	*7–15*
$182.79	$162.09

(1) Each provider of intermediate care, developmentally disabled–nursing services shall furnish:

(A) Services of the facility's direct care staff in accordance with section 73873, title 22, California Code of Regulations.

(B) Services of the facility's interdisciplinary professional staff/team and qualified mental retardation professional as follows:

1. Case conference review of beneficiary's medical/nursing and developmental needs.

2. Joint development of individual service plans.

3. In–service training of direct care staff and follow–up to ensure proper implementation of individual service plans.

4. Advising on the need for provision of various types of intervention beyond the capabilities of the direct care staff and specialized equipment beyond the resources of the facility.

(C) Administrative services in accordance with sections 73908 through 73932, title 22, California Code of Regulations.

(D) Health support, food and nutritional, and pharmaceutical services as required in sections 73875 through 73907, title 22, California Code of Regulations.

(E) Transportation services when necessary for round trips to attending physicians in accordance with section 51343.2(i), (j) and (o), title 22, California Code of Regulations.

(F) Social services required in section 73856(c), title 22, California Code of Regulations.

(G) All services, drugs, equipment and supplies required to provide intermediate care, developmentally disabled–nursing services except as provided in subsection (b). Such equipment, drugs, supplies, and services are, at a minimum, those which are required by law, including those required by federal Medicaid regulations and state licensing regulations.

(2) The daily reimbursement rate shall be adjusted for purposes of leave of absence or acute hospitalization in accordance with sections 51535 and 51535.1, title 22, California Code of Regulations.

(b) Services and supplies not covered by the payment rate but which are recommended by the interdisciplinary staff and ordered by the authorized health practitioners and which the facility's direct care staff are not qualified to provide may be billed separately, subject to the utilization controls and limitations of Medi–Cal regulations covering such services and supplies. These include:

(1) Medical and dental services.

(A) Costs of medical or dental services.

(B) Cost of a physician's medical evaluation for purposes of subsection 51343.2(i), title 22, California Code of Regulations. If a physician's evaluation has been completed for purposes of that subsection, the costs of an additional evaluation will not be reimbursed until 12 months thereafter.

(2) Psychological services provided by a licensed psychologist. These services shall be reimbursed in accordance with title 22, California Code of Regulations, section 51505.3.

(3) Cost of incontinence medical supplies for beneficiaries five years of age or more whose developmental deficits are such that bowel and bladder control cannot be attained. Prior authorization is required in accordance with Section 51003, Title 22, California Code of Regulations.

(4) The following services, items and supplies:

(A) Allied health services ordered by the attending physician.

(B) Alternating pressure mattresses/pads with motor.

(C) Atmospheric oxygen concentrators and enrichers and accessories.

(D) Blood, plasma and substitutes.

(E) Dental services.

(F) Durable medical equipment as specified in section 51321(g).

(G) Insulin.

(H) Intermittent positive pressure breathing equipment.

(I) Intravenous trays, tubing and blood infusion sets.

(J) Laboratory services.

(K) Legend drugs.

(L) Liquid oxygen system.

(M) MacLaren or Pogon Buggy.

(N) Medical supplies as specified in section 59998.

(O) Nasal cannula.

(P) Osteogenesis stimulator device.

(Q) Oxygen (except emergency).

(R) Parts and labor for repairs of durable medical equipment if originally separately payable or owned by the beneficiary.

(S) Physician services.

(T) Portable aspirator.

(U) Portable gas oxygen system and accessories.

(V) Precontoured structures (VASCO–PASS, cut out foam).

(W) Prescribed prosthetic and orthotic devices for exclusive use of patient.

(X) Reagent testing sets.

(Y) Therapeutic air/fluid support systems/beds.

(Z) Traction equipment and accessories.

(AA) Variable height beds.

(BB) X–rays.

(c) All services and supplies billed separately are subject to the general provisions and billing limitations set forth in sections 51303, 51304, and 59998, title 22, California Code of Regulations.

(d) Payment shall not be provided for purposes of respite care except for beneficiaries who are enrolled in a federally approved home and community–based care program under section 1915(c) of the Social Security Act. Whenever respite care is provided to Medi–Cal beneficiaries through other funding sources, all Medi–Cal admission requirements shall be met.

(e) Not included in the payment rate nor in the Medi–Cal schedule of benefits are costs of beneficiaries' personal items such as cosmetics, tobacco products and accessories, dry cleaning, beauty shop services (other than shaves or shampoos performed by the facility staff as part of patient care and periodic hair trims), television rental, and costs associated with recreational activities not otherwise provided for in the daily reimbursement rate.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14126.23, Welfare and Institutions Code; and Section 1275.3, Health and Safety Code. Reference: Sections 14105, 14108 and 14132, Welfare and Institutions Code; Sections 1250.1 and 1275.3, Health and Safety Code; and Statutes of 2001, Chapter 106, Items 4260–101–0001 and 4260–101–0890.

HISTORY

1. New section refiled by the Department of Health Services with the Secretary of State on 5–30–89 as an emergency pursuant to Health and Safety Code section 1275.3; operative 5–30–89. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 89, No. 23). For prior history, see Register 89, No. 1.
2. Amendment filed 8–7–89 as an emergency; operative 8–7–89 (Register 89, No. 32). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12–5–89.
3. Certificate of Compliance as to 5–30–89 order including amendment transmitted to OAL 9–27–89 and filed 10–26–89 (Register 89, No. 44).
4. Certificate of Compliance as to 8–7–89 order transmitted to OAL 12–1–89 and filed 1–2–90 (Register 90, No. 2).
5. Amendment filed 12–10–90 as an emergency; operative 12–10–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 4–9–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 12–10–90 order including amendment of subsection (a) transmitted to OAL 4–8–91 and filed 5–8–91 (Register 91, No. 24).
7. Amendment of subsection (a) and NOTE filed 8–12–91 as an emergency; operative 8–12–91 (Register 92, No. 6). A Certificate of Compliance must be transmitted to OAL 12–10–91 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 8–12–91 order transmitted to OAL 12–9–91 and filed 1–2–92 (Register 92, No. 18).
9. Amendment of subsection (a) and NOTE filed 12–3–92 as an emergency; operative 12–3–92 (Register 92, No. 49). A Certificate of Compliance must be transmitted to OAL 4–2–93 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 12–3–92 order transmitted to OAL 4–2–93 and filed 5–14–93 (Register 93, No. 20).
11. Amendment of subsection (a) and NOTE filed 8–24–93 as an emergency; operative 8–24–93 (Register 93, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–22–93 or emergency language will be repealed by operation of law on the following day.
12. Amendment of subsection (a) and NOTE refiled 12–20–93 as an emergency; operative 12–20–93 (Register 93, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–21–94 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 12–20–93 order transmitted with amendments to OAL 3–22–94 and filed 4–28–94 (Register 94, No. 17).
14. Amendment of subsection (a) and NOTE filed 8–31–94 as an emergency; operative 8–31–94 (Register 94, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–29–94 or emergency language will be repealed by operation of law on the following day.
15. Amendment of subsection (a) and NOTE refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL 5–3–95 or emergency language will be repealed by operation of law on the following day.
16. Certificate of Compliance as to 1–3–95 order transmitted to OAL 4–27–95 and filed 6–9–95 (Register 95, No. 23).
17. Amendment of subsection (a) and NOTE filed 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.
18. Amendment of subsection (b)(3) filed 12–21–95; operative 1–20–96 (Register 95, No. 51).
19. Amendment of subsection (a) and NOTE refiled 2–5–96 as an emergency; operative 2–5–96 (Register 96, No. 6). A Certificate of Compliance must be transmitted to OAL by 6–6–96 or emergency language will be repealed by operation of law on the following day.
20. Certificate of Compliance as to 2–5–96 order transmitted to OAL 6–4–96 and filed 7–12–96 (Register 96, No. 28).
21. Amendment of subsection (a) and NOTE filed 9–19–96 as an emergency; operative 9–19–96 (Register 96, No. 38). A Certificate of Compliance must be transmitted to OAL by 1–17–97 or emergency language will be repealed by operation of law on the following day.
22. Certificate of Compliance as to 9–19–96 order transmitted to OAL 1–17–97 and filed 3–3–97 (Register 97, No. 10).
23. Amendment of subsection (a) filed 5–15–97 as an emergency; operative 5–15–97 (Register 97, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–12–97 or emergency language will be repealed by operation of law on the following day.
24. Certificate of Compliance as to 5–15–97 order transmitted to OAL 9–10–97 and filed 9–30–97 (Register 97, No. 40).
25. Amendment of subsection (a) and NOTE filed 12–31–97 as an emergency; operative 12–31–97 (Register 98, No. 1). A Certificate of Compliance must be transmitted to OAL by 4–30–98 or emergency language will be repealed by operation of law on the following day.
26. Editorial correction of HISTORY 25 (Register 98, No. 24).
27. Certificate of Compliance as to 12–31–97 order transmitted to OAL 4–27–98 and filed 6–9–98 (Register 98, No. 24).
28. Amendment of subsection (a) and NOTE filed 10–29–98 as an emergency; operative 10–29–98 (Register 98, No. 44). A Certificate of Compliance must be transmitted to OAL by 2–26–99 or emergency language will be repealed by operation of law on the following day.
29. Certificate of Compliance as to 10–29–98 order transmitted to OAL 2–26–99 and filed 4–8–99 (Register 99, No. 15).
30. Amendment of subsection (a) and NOTE filed 11–3–99 as an emergency; operative 11–3–99 (Register 99, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–2–2000 or emergency language will be repealed by operation of law on the following day.
31. Certificate of Compliance as to 11–3–99 order transmitted to OAL 3–1–2000 and filed 4–6–2000 (Register 2000, No. 14).
32. Amendment of subsection (a) filed 6–29–2000 as an emergency; operative 7–1–2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 10–30–2000 or emergency language will be repealed by operation of law on the following day.
33. Certificate of Compliance as to 6–29–2000 order transmitted to OAL 9–29–2000 and filed 11–1–2000 (Register 2000, No. 44).
34. Amendment of subsection (a) and NOTE filed 11–17–2000 as an emergency; operative 11–17–2000 (Register 2000, No. 46). A Certificate of Compliance must be transmitted to OAL by 3–19–2001 or emergency language will be repealed by operation of law on the following day.
35. Certificate of Compliance as to 11–17–2000 order transmitted to OAL 3–8–2001 and filed 4–19–2001 (Register 2001, No. 16).
36. Amendment of subsection (a) and amendment of NOTE filed 1–27–2003 as an emergency; operative 8–1–2001 pursuant to Statutes of 2002, Chapter 16, Items 4260–101–0001 and 4260–101–0890 (Register 2003, No. 5). A Certificate of Compliance must be transmitted to OAL by 5–27–2003 or emergency language will be repealed by operation of law on the following day.
37. Amendment of subsection (a) and amendment of NOTE refiled 5–22–2003 as an emergency; operative 5–22–2003 (Register 2003, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–19–2003 or emergency language will be repealed by operation of law on the following day.
38. Certificate of Compliance as to 5–22–2003 order transmitted to OAL 9–18–2003 and filed 10–16–2003 (Register 2003, No. 42).

§ 51511. Nursing Facility Level B Services.

(a) Payment to nursing facilities, hospitals, or public institutions providing Level B services in accordance with Section 51123 shall be as set forth in this section. As used in this section, the term "nursing facility

Level B services" is defined as nursing facility services provided in accordance with Section 51123. Payment shall be as follows:

(1) For facilities with licensed bed capacities and located by county as follows:

Bedsize	Los Angeles County	Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo Santa Clara & Sonoma Counties	All Other Counties
1–59	$104.39	$129.96	$113.98
60+	$103.54	$131.08	$115.21

(2) For nursing facilities that are distinct parts of acute care hospitals, if such facilities are not state operated, the per diem reimbursement rate shall be the lesser of the facility's costs, as projected by the Department, or $236.38.

(A) For purposes of this section, the rate year is August 1, 2002, through July 31, 2003.

(B) The facility's projected costs shall be based on the audit report findings of cost reports with fiscal periods ending January 1, 2000, through December 31, 2000. In the event the provider appeals the audit, pursuant to Welfare and Institutions Code Section 14171, and the provider notifies the Department by June 1, 2002, that the audit report findings have been modified by an appeal decision or an agreement between the hospital and the Department, the facility's projected costs shall be based on the modified audit findings.

(C) If the audit of a cost report is not issued by July 1, 2002, the Department shall establish an interim projected reimbursement rate based on the cost report with a fiscal period ending January 1, 2000 through December 31, 2000, adjusted by an audit disallowance factor of .95451.

(D) The Department will use the facility's interim projected reimbursement rate in the computation of the prospective class median rate. Facilities that did not provide Nursing Facility Level B services to Medi–Cal patients during the cost report period and/or facilities with less than a full year's reported cost shall not be used to establish the prospective class median rate. In addition, facilities with Medi–Cal patient days representing less than 20 percent of their total patient days will be excluded from the median determination.

(E) If the facility has an interim reimbursement rate as specified in (C), when the audit report is issued or when the cost report is deemed true and correct under Welfare and Institutions Code Section 14170(a)(1), the Department shall adjust the facility's projected reimbursement rate retroactively to August 1, 2002 to reflect the cost determined pursuant to such audit, or to reflect the cost in the cost report in the event that cost report is deemed true and correct. The Department shall notify the provider of the revised rates within 45 days of issuance of the audit report.

(F) Interest will accrue from August 1, 2002 and be payable on any such underpayment or overpayment at a rate equal to the monthly average received on investment in the Surplus Money Investment Fund (as referenced in Welfare and Institutions Code Section 14171) during the month the audit report is issued.

(G) If a provider appeals an audit pursuant to Welfare & Institutions Code Section 14171, and there is a determination that the audit findings inaccurately reflect the audited facility's projected costs, the provider shall be entitled to seek a retroactive adjustment in its reimbursement rate, but the resulting reimbursement rate shall not exceed the prospective median rate as provided in subdivision (a)(2)(A).

(H) Payment under subsection (a)(2) shall only be made for services authorized pursuant to conditions set forth in Section 51335 for patients determined to need Level B services for other than post–surgical rehabilitation or therapy services.

(3) Reimbursement to any state–operated facility shall be based on its actual allowable costs.

(4) For facilities that are designated as swing bed facilities, the rate is $226.59.

(5) Reduced for leave of absence provided pursuant to Section 51535.

(6) Reduced for bed hold provided pursuant to Section 51535.

(b) Each provider of nursing facility level B services shall furnish all equipment, drugs, supplies, and services necessary to provide level B services except as provided in subsection (c). Such equipment, drugs, supplies, and services are, a minimum, those which are required by law, including those required by federal Medicaid regulations and state licensing regulations.

(c) Not included in the payment rate and to be billed separately by the provider thereof, subject to the utilization controls and limitations of Medi–Cal regulations covering such services and supplies, are:

(1) Allied health services ordered by the attending physician, excluding respiratory therapy.

(2) Alternating pressure mattresses/pads with motor.

(3) Atmospheric oxygen concentrators and enrichers and accessories.

(4) Blood, plasma and substitutes.

(5) Dental services.

(6) Durable medical equipment as specified in section 51321(g).

(7) Insulin.

(8) Intermittent positive pressure breathing equipment.

(9) Intravenous trays, tubing and blood infusion sets.

(10) Laboratory services.

(11) Legend drugs.

(12) Liquid oxygen system.

(13) MacLaren or Pogon Buggy.

(14) Medical supplies as specified in section 59998.

(15) Nasal cannula.

(16) Osteogenesis stimulator device.

(17) Oxygen (except emergency).

(18) Parts and labor for repairs of durable medical equipment if originally separately payable or owned by the beneficiary.

(19) Physician services.

(20) Portable aspirator.

(21) Portable gas oxygen system and accessories.

(22) Precontoured structures (VASCO–PASS, cut out foam).

(23) Prescribed prosthetic and orthotic devices for exclusive use of patient.

(24) Reagent testing sets.

(25) Therapeutic air/fluid support systems/beds.

(26) Traction equipment and accessories.

(27) Variable height beds.

(28) X–rays.

(d) Not included in the payment rate nor in the Medi–Cal schedules of benefits are personal items such as cosmetics, tobacco products and accessories, dry cleaning, beauty shop services (other than shaves or shampoos performed by the facility staff as part of patient care and periodic hair trims) and television rental.

(e) Nothing in this section shall prohibit the Director from negotiating all–inclusive rates which provide for additional Medi–Cal covered services that are medically indicated provided that such negotiated rates are less than the cost of the covered services if billed separately.

(f) Each facility shall certify on the form provided by the Department that nurse assistants who receive certificates pursuant to section 1439.3, Health and Safety Code, will receive a twenty cents per hour pay increase commencing with the next payroll period following certification.

(1) The Department shall inspect relevant payroll and personnel records of facilities which are reimbursed for care of Medi–Cal patients under this section, to insure that the nurse assistants who have received certificates pursuant to section 1439.3, Health and Safety Code, have received the twenty cents per hour pay increase.

(2) Any facility which the Department finds has not paid the required twenty cents per hour increase for certified nurse assistants shall be liable to the State for the amount of funds reimbursed to the facility as a result of the anticipated wage increase. Recovery shall be for the entire period during which wages did not meet the requirements of this regulation. In addition, the facility shall be subject to suspension from participation in the Medi–Cal program pursuant to the provisions of section 14123, Welfare and Institutions Code. The facility shall also be subject to the provisions of section 14107, Welfare and Institutions Code.

(g) Facilities shall be exempted, upon request, from the provisions of subsection (f) if each of the following apply:

(1) The facility has an ongoing nurse assistant training program which:

(A) Has been in effect continuously and prior to February 1, 1978.

(B) The Department finds to be in continuous and substantial compliance with the requirements of section 72322.

(2) Effective October 31, 1977, the facility is currently paying nurse assistants an entry wage level of $3.50 per hour or higher.

(h) Each facility shall certify on the form provided by the Department that an additional $2.28 per patient day for the period of March 1, 1978 through June 30, 1978, was expended for increased nonadministrative employee wages and benefits. Facilities will be exempted from this certification requirement if the entry wage level of the lowest paid nonadministrative employee exceeded $3.97 an hour on March 1, 1978. Facilities exceeding the $3.97 hourly wage shall certify that the additional funds received were used to ensure the continued delivery of quality care in such facility.

(1) The Department shall inspect relevant payroll and personnel records of facilities which are reimbursed for care of Medi–Cal patients under this section to insure that the wage increases provided for in the March 1, 1978, rate increases have been implemented. Any facility which has not made the wage and benefit increases, required by this subsection, shall be liable to the State for the amount of funds paid to such facilities for these wage increases, but not distributed to employees, plus a penalty of ten percent of the funds not distributed. The facility shall also be subject to the provisions of section 14107, Welfare and Institutions Code.

(2) For purposes of this section, the base from which employee wages and benefits shall be increased shall be the payroll for nonadministrative employees for the month of December, 1977 and shall include only non-overtime hours worked by covered employees. The amount of funds to be distributed per month, for the period March 1, 1978 to and including June 30, 1978 for nonadministrative employee wages and benefits, shall equal the total Medi–Cal patient days for the month of December, 1977 multiplied by $2.28 plus any amount expended pursuant to section 1439.7 of the Health and Safety Code for purposes of wage increases during the March 1, 1978 through June 30, 1978 effective period.

(i) By July 1, 1978, and annually thereafter, each facility shall certify on the form provided by the Department that:

(1) All nonadministrative employees of the facility employed less than three months shall receive a minimum wage level equivalent to the federal minimum wage plus fifty percent of the facility's average hourly wage increase established for the period March through June 1978 pursuant to subsection (h).

(2) All nonadministrative employees of the facility employed for three months or more shall receive a minimum wage level equivalent to the federal minimum wage plus the facility's total average hourly wage increase established for the period March through June 1978 pursuant to subsection (h).

(3) Any employee who was employed by the facility for the period March through June 1978 shall not receive a lower wage than the wage received by that employee pursuant to subsection (h) for the March through June 1978 period.

(4) Any wage increase for certified nurse assistants required by subsection (f) shall be in addition to any of the average wages certified to in this subsection.

(j) Notwithstanding any other provisions of these regulations, payment for out–of–state skilled nursing facility services shall be the lesser of the facility's charge, the other state's Medicaid rate or the highest Medi–Cal rate applicable to services provided in comparable facilities.

NOTE: Authority cited: Sections 10725, 14105, 14108, 14108.1, 14108.2, 14110.6, 14110.7, 14124.5 and 14126.23, Welfare and Institutions Code. Reference: Sections 14105, 14108, 14108.1, 14108.2, 14109.5, 14110.1, 14110.4, 14110.6, 14110.7, 14132 and 14171, Welfare and Institutions Code; and Statutes of 2002, Chapter 379, Items 4260–101–0001 and 4260–101–0890; and Sections 447.15 and 483.1, et seq., Title 42, Code of Federal Regulations.

HISTORY

1. Amendment filed 8–7–89 as an emergency; operative 8–7–89 (Register 89, No. 32). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12–5–89. For prior history, see Register 89, No. 1.
2. Certificate of Compliance transmitted to OAL 12–1–89 and filed 1–2–90 (Register 90, No. 2).
3. Change without regulatory effect regarding printing error of subsection (a)(1) pursuant to section 100, title 1, California Code of Regulations filed 4–25–90 (Register 90, No. 22).
4. Amendment filed 12–10–90 as an emergency; operative 12–10–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 4–9–91 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsection (a), heading and NOTE filed as an emergency 3–14–91; operative 3–14–91 (Register 91, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–12–91 or emergency language will be repealed by operation of law on the following day.
6. Amendment filed 4–2–91 as an emergency; operative 4–2–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–31–91 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance order as to 12–10–90 order including amendment of subsection (b) transmitted to OAL 4–8–91 and filed 5–8–91 (Register 91, No. 24).
8. Certificate of Compliance as to 3–14–91 order transmitted to OAL 7–11–91 and filed 8–9–11 (Register 91, No. 50).
9. Amendment of subsection (a)(1), (a)(2), (a)(3) and NOTE filed 8–8–91 as an emergency; operative 8–8–91 (Register 92, No. 6). A Certificate of Compliance must be transmitted to OAL 12–6–91 or emergency language will be repealed by operation of law on the following day.
10. Amendment refiled 12–2–91 as an emergency; operative 12–6–91 (Register 92, No. 10). A Certificate of Compliance must be transmitted to OAL 4–6–92 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 12–2–91 order transmitted to OAL 12–9–91 and filed 1–2–92 (Register 92, No. 18).
12. Amendment of subsection (a)(2) filed 4–13–92 as an emergency; operative 4–13–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 8–12–92 or emergency language will be repealed by operation of law on the following day.
13. Editorial correction of printing error (Register 92, No. 28).
14. Amendment of subsection (a)(2) refiled 7–2–92 as an emergency; operative 8–11–92 (Register 92, No. 28). A Certificate of Compliance must be transmitted to OAL by 10–30–92 or emergency language will be repealed by operation of law on the following day.
15. Amendment of subsections (a)–(a)(3) and NOTE filed 12–3–92 as an emergency; operative 12–3–92 (Register 92, No. 49). A Certificate of Compliance must be transmitted to OAL 4–2–93 or emergency language will be repealed by operation of law on the following day.
16. Repealer of subsection (a)(2), new subsections (a)(2)–(a)(3) and subsection renumbering filed 2–1–93 as an emergency; operative 2–1–93 (Register 93, No. 6). A Certificate of Compliance must be transmitted to OAL 6–1–93 or emergency language will be repealed by operation of law on the following day.
17. Certificate of Compliance as to 12–3–92 order transmitted to OAL 4–2–93 and filed 5–14–93 (Register 93, No. 20).
18. Certificate of Compliance as to 2–1–93 order, including amendment of subsection (a)(2)(C) and NOTE transmitted to OAL 5–28–93 and filed 7–13–93 (Register 93, No. 29).
19. Amendment of subsections (a)–(a)(1), (a)(2)(A), (a)(5)–(6) and NOTE filed 8–24–93 as an emergency; operative 8–24–93 (Register 93, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–22–93 or emergency language will be repealed by operation of law on the following day.
20. Amendment of subsections (a), (a)(1), (a)(2)(A), (a)(5)–(6) and NOTE refiled 12–20–93 as an emergency; operative 12–20–93 (Register 93, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–21–94 or emergency language will be repealed by operation of law on the following day.
21. Certificate of Compliance as to 12–20–93 order transmitted to OAL 3–22–94 and filed 4–28–94 (Register 94, No. 17).
22. Amendment of subsections (a)(1), (a)(2)(A), (a)(4) and NOTE filed 8–31–94 as an emergency; operative 8–31–94 (Register 94, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–29–94 or emergency language will be repealed by operation of law on the following day.
23. Amendment of subsections (a)(1), (a)(1)(A), (a)(4) and NOTE refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL 5–3–95 or emergency language will be repealed by operation of law on the following day.
24. Certificate of Compliance as to 1–3–95 order transmitted to OAL 4–27–95 and filed 6–9–95 (Register 95, No. 23).
25. Amendment of subsections (a)(2)–(a)(2)(B), repealer of subsections (a)(2)(B)1. and (a)(2)(B)3., new subsections (a)(2)(C)–(F), subsection relettering, and amendment of NOTE filed 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.
26. Amendment of subsection (a)(2)–(a)(2)(B), repealer of subsections (a)(2)(B)1. and (a)(2)(B)3., new subsections (a)(2)(C)–(F), subsection relettering, and amendment of NOTE refiled 2–5–96 as an emergency; operative 2–5–96 (Register 96, No. 6). A Certificate of Compliance must be transmitted to OAL by 6–6–96 or emergency language will be repealed by operation of law on the following day.

27. Certificate of Compliance as to 2–5–96 order transmitted to OAL 6–4–96 and filed 7–12–96 (Register 96, No. 28).
28. Amendment of subsections (a)(1), (a)(2)(A)–(C) and (a)(2)(E)–(F) and NOTE filed 9–19–96 as an emergency; operative 9–19–96 (Register 96, No. 38). A Certificate of Compliance must be transmitted to OAL by 1–17–97 or emergency language will be repealed by operation of law on the following day.
29. Certificate of Compliance as to 9–19–96 order transmitted to OAL 1–17–97 and filed 3–3–97 (Register 97, No. 10).
30. Amendment of subsection (a)(1) filed 5–15–97 as an emergency; operative 5–15–97 (Register 97, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–12–97 or emergency language will be repealed by operation of law on the following day.
31. Certificate of Compliance as to 5–15–97 order transmitted to OAL 9–10–97 and filed 9–30–97 (Register 97, No. 40).
32. Amendment of subsections (a)(1), (a)(2)(A)–(C) and (a)(2)(E)–(F) and amendment of NOTE filed 12–31–97 as an emergency; operative 12–31–97 (Register 98, No. 1). A Certificate of Compliance must be transmitted to OAL by 4–30–98 or emergency language will be repealed by operation of law on the following day.
33. Editorial correction of HISTORY 32 (Register 98, No. 24).
34. Certificate of Compliance as to 12–31–97 order transmitted to OAL 4–27–98 and filed 6–9–98 (Register 98, No. 24).
35. Amendment of subsections (a)(1)–(a)(2)(G) and amendment of NOTE filed 10–29–98 as an emergency; operative 10–29–98 (Register 98, No. 44). A Certificate of Compliance must be transmitted to OAL by 2–26–99 or emergency language will be repealed by operation of law on the following day.
36. Certificate of Compliance as to 10–29–98 order transmitted to OAL 2–26–99 and filed 4–8–99 (Register 99, No. 15).
37. Amendment of subsections (a)(1)–(a)(2)(C), (a)(2)(E)–(F) and (a)(4) and amendment of NOTE filed 11–3–99 as an emergency; operative 11–3–99 (Register 99, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–2–2000 or emergency language will be repealed by operation of law on the following day.
38. Amendment of subsections (a)(1), (a)(2) and (a)(4) filed 2–28–2000 as an emergency; operative 2–28–2000 (Register 2000, No. 9). A Certificate of Compliance must be transmitted to OAL by 6–27–2000 or emergency language will be repealed by operation of law on the following day.
39. Certificate of Compliance as to 11–3–99 order transmitted to OAL 3–1–2000 and filed 4–6–2000 (Register 2000, No. 14).
40. Amendment of subsections (a)(1), (a)(2) and (a)(4) refiled 6–19–2000 as an emergency; operative 6–19–2000 (Register 2000, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–2000 or emergency language will be repealed by operation of law on the following day.
41. Certificate of Compliance as to 6–19–2000 order transmitted to OAL 9–22–2000 and filed 10–16–2000 (Register 2000, No. 42).
42. Amendment of subsections (a)(1)–(a)(2)(C), (a)(2)(E)–(F) and (a)(4) and amendment of NOTE filed 11–17–2000 as an emergency; operative 11–17–2000 (Register 2000, No. 46). A Certificate of Compliance must be transmitted to OAL by 3–19–2001 or emergency language will be repealed by operation of law on the following day.
43. Certificate of Compliance as to 11–17–2000 order, with further amendments, transmitted to OAL 3–8–2001 and filed 4–19–2001 (Register 2001, No. 16).
44. Amendment of subsections (a)(1)–(a)(1)(C), (a)(1)(E)–(F) and (a)(1)(H)(4) and amendment of NOTE filed 1–27–2003 as an emergency; operative 8–1–2001 pursuant to Statutes of 2002, Chapter 16, Items 4260–101–0001 and 4260–101–0890 (Register 2003, No. 5). A Certificate of Compliance must be transmitted to OAL by 5–27–2003 or emergency language will be repealed by operation of law on the following day.
45. Amendment of subsections (a)(1)–(a)(1)(C), (a)(1)(E)–(F) and (a)(1)(H)(4) and amendment of NOTE refiled 5–22–2003 as an emergency; operative 5–22–2003 (Register 2003, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–19–2003 or emergency language will be repealed by operation of law on the following day.
46. Certificate of Compliance as to 5–22–2003 order transmitted to OAL 9–18–2003 and filed 10–16–2003 (Register 2003, No. 42).
47. Amendment of subsections (a)(1)–(a)(2)(C), (a)(2)(E)–(F) and (a)(4) and amendment of NOTE filed 8–24–2005 as a deemed emergency pursuant to Welfare and Institutions Code section 14105(a); operative 8–24–2005 for dates of service 8–1–2002 through 7–31–2003 pursuant to Statutes of 2002, Chapter 379, Items 4260–101–0001 and 4260–101–0890 (Register 2005, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–23–2005 or emergency language will be repealed by operation of law on the following day.
48. Certificate of Compliance as to 8–24–2005 order transmitted to OAL 12–22–2005 and filed 1–23–2006 (Register 2006, No. 4).

§ 51511.1. Special Program Services for the Mentally Disordered.

(a) Supplemental payment for special program services for the mentally disordered shall be limited to the amounts specified in (b).

(b) Skilled nursing facilities and intermediate care facilities meeting the standards and criteria established for special program services to the mentally disordered as defined in Sections 72443 through 72475 or Section 73417 through 73423, Division 5, Title 22, California Administrative Code, shall be entitled to a supplemental payment of $5.72 per patient day.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14105 and 14132, Welfare and Institutions Code; Items 426–106–001 and 890, Budget Act of 1981; Item 4260–101–001, Budget Act of 1982.

HISTORY

1. Amendment of subsection (b) filed 1–31–85 as an emergency; designated effective 2–1–85 (Register 85, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6–1–85. For prior history, see Register 83, No. 1.
2. Certificate of Compliance as to 1–31–85 order transmitted to OAL 5–23–85 and filed 6–24–85 (Register 85, No. 25).

§ 51511.2. Uniform Accounting and Cost Reporting System for Skilled Nursing Facilities and Intermediate Care Facilities.

(a) For fiscal years commencing on or after January 1, 1977, all skilled nursing and intermediate care facilities participating in the Medi–Cal program shall maintain a uniform accounting system as specified by the California Health Facilities Commission pursuant to Part 1.7, Division 1, Health and Safety Code.

(b) Annual cost reports shall be submitted to the Department of Benefit Payments by each facility no later than three months after the close of the facility's fiscal year. The report shall be submitted in the format prescribed by the State.

(c) Each facility shall maintain, for a period of three years following the submission of annual cost reports, financial and statistical records of the period covered by such cost reports, which are accurate and in sufficient detail to substantiate the cost data reported. These records shall be made available to State or federal representatives upon request.

NOTE: Authority cited: Sections 14105, 14106 and 14161, Welfare and Institutions Code. Reference: Sections 14105, 14106 and 14161, Welfare and Institutions Code.

HISTORY

1. New section filed 5–20–77; effective thirtieth day thereafter (Register 77, No. 21).

§ 51511.3. Transitional Inpatient Care Services Reimbursement.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14105.981 and 14132.22, Welfare and Institutions Code; and Statutes of 2000, Chapter 52, Items 4260–101–0001 and 4260–101–0890.

HISTORY

1. New section filed 4–1–96 as an emergency; operative 4–1–96 (Register 96, No. 14). A Certificate of Compliance must be transmitted to OAL by 9–30–96 pursuant to Welfare and Institutions Code section 14132.22 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of subsection (b), table, subsection (f), and HISTORY 1 (Register 96, No. 35).
3. New section refiled 8–28–96 as an emergency; operative 9–30–96 (Register 96, No. 35). A Certificate of Compliance must be transmitted to OAL by 1–28–97 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 8–28–96 order, including amendment of section, transmitted to OAL 1–23–97 and filed 3–10–97 (Register 97, No. 11).
5. Amendment of subsections (a)–(b), (b)(3), (b)(4) and (c)(2) and amendment of NOTE filed 12–31–97 as an emergency; operative 12–31–97 (Register 98, No. 1). A Certificate of Compliance must be transmitted to OAL by 4–30–98 or emergency language will be repealed by operation of law on the following day.
6. Editorial correction of subsection (a) designator and HISTORY 5 (Register 98, No. 24).
7. Certificate of Compliance as to 12–31–97 order transmitted to OAL 4–27–98 and filed 6–9–98 (Register 98, No. 24).
8. Amendment of subsection (a) and NOTE filed 10–29–98 as an emergency; operative 10–29–98 (Register 98, No. 44). A Certificate of Compliance must be transmitted to OAL by 2–26–99 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 10–29–98 order transmitted to OAL 2–26–99 and filed 4–8–99 (Register 99, No. 15).
10. Amendment of subsections (a), (b), (b)(3), (b)(4) and (c)(2) and amendment of NOTE filed 11–3–99 as an emergency; operative 11–3–99 (Register 99, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–2–2000 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 11–3–99 order transmitted to OAL 3–1–2000 and filed 4–6–2000 (Register 2000, No. 14).
12. Amendment of subsections (a), (b), (b)(3), (b)(4) and (c)(2) and amendment of NOTE filed 11–17–2000 as an emergency; operative 11–17–2000 (Register

2000, No. 46). A Certificate of Compliance must be transmitted to OAL by 3–19–2001 or emergency language will be repealed by operation of law on the following day.

13. Certificate of Compliance as to 11–17–2000 order transmitted to OAL 3–8–2001 and filed 4–19–2001 (Register 2001, No. 16).

14. Change without regulatory effect repealing section filed 6–12–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 24).

§ 51511.5. Nursing Facility Services—Subacute Care Reimbursement.

(a)(1) For the 2002–03 rate year, the prospective rates of reimbursement, which shall be the all–inclusive per diem rates of reimbursement for subacute services as defined in Section 51335.5(a), shall be the lesser of the facility's costs as projected by the Department or the rate based on the class median rates continued from the prior year, as set forth below:

Type of Licensure	*Type of Patient*	*Class Median–Based Rate*
Hospital–based	Ventilator dependent	$580.07
Freestanding	Ventilator dependent	$397.71
Hospital–based	Non–ventilator dependent	$553.15
Freestanding	Non–ventilator dependent	$371.44

(2)(A) For the 2002–03 rate year, a facility that experienced a reduction in projected facility costs, which would result in a reduced subacute reimbursement rate for the 2002–03 rate year pursuant to subsection (a)(1), shall have its subacute prospective reimbursement rate for 2002–03 set at its 2001–02 rate.

(B) Subacute facilities that do not have historical costs shall receive an interim reimbursement rate. This interim rate shall be based on the subacute facility's projection of their total patient days and costs, as approved by the Department. When actual subacute audit report data becomes available, interim rates shall be retroactively adjusted to the subacute facility's final prospective rate. Final rates may be less than the interim rate, in which case the Department shall recover any overpayment. Only subacute facilities participating in the program as of June 1st shall be in included in the rate study.

(b) Payments to nursing facilities with subacute care units for patients on bedhold receiving acute services shall be in accordance with section 51535.1(d).

(c) The provisions of section 51511 shall apply to subacute care units except for section 51511(a). Section 51511(c) shall apply to subacute providers with the exception of items included within the subacute rate pursuant to section 51511.5(d).

(d) Included within the subacute care per diem rate are all services, equipment and supplies necessary for the administration of the treatment procedures listed in the patient care criteria including but not limited to:

(1) Oxygen and all equipment necessary for administration including positive pressure apparatus.

(2) Ventilators, including calibration and maintenance.

(3) Feeding pumps and equipment necessary for tube feedings, including formula.

(4) Speech therapy.

(5) Occupational therapy.

(6) Physical therapy.

(7) Equipment and supplies necessary for the care of a tracheostomy.

(8) Lab, X–ray and transportation services.

(9) Equipment and supplies for continuous IV therapy.

(10) Equipment and supplies necessary for debridement, packing and medicated irrigation with or without whirlpool treatment.

(e) For purposes of this section, the rate year is August 1, 2002 through July 31, 2003.

(f)(1) The facility's projected costs for purposes of section (a) shall be based on the audit report findings of cost reports with fiscal periods ending January 1, 1999 through December 31, 1999. In the event that a facility's audit report findings do not include subacute ancillary costs, the facility's projected ancillary costs will be based on the median of the subacute ancillary costs of facilities that had audited ancillary costs.

(2) If the audit of a cost report as described in subsection (f)(1) is not issued by July 1, 2002, the Department shall establish the facility's interim costs based on the cost report with a fiscal period ending January 1, 1999 through December 31, 1999, adjusted by an audit disallowance factor of .95451.

(3) The Department will use the facility's interim costs as the facility's projected costs for purposes of subsection (a). In addition, facilities that did not provide subacute care services to Medi–Cal patients during the cost report period, facilities that combine subacute and DP/NF costs, and/or facilities with less than a full year's reported cost shall not be included for purposes of establishing the projected class median costs.

(4) If the facility's interim costs, as specified in subsection (f)(2), are established for a facility when the audit report is issued or when the cost report is deemed true and correct under Welfare and Institutions Code Section 14170(a)(1), the Department shall adjust the facility's reimbursement rate retroactively to August 1, 2002 to reflect the facility's costs determined pursuant to such an audit, or to reflect the costs in the cost report in the event that the cost report is deemed true and correct.

(5) Interest will accrue from August 1, 2002 and be payable on any underpayment or overpayment resulting from the application of subsection (f)(4) at a rate equal to the monthly average received on investment in the Surplus Money Investment Fund (as referenced in Welfare and Institutions Code Section 14171) during the month the audit report is issued.

(6) If a provider appeals an audit adjustment pursuant to Welfare & Institutions Code Section 14171, and there is a determination that the audit findings inaccurately reflect the audited facility's projected costs, the provider shall be entitled to seek a retroactive adjustment in its reimbursement rate but the resulting reimbursement rate shall not exceed the prospective rate of reimbursement as provided in subdivision (a).

(g) Payment under subsection (a) shall only be made for services authorized pursuant to conditions set forth in Section 51355.5 for patients determined to need subacute care services.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132.25, Welfare and Institutions Code; and Statutes of 2002, Chapter 379, Items 4260–101–0001 and 4260–101–0890.

HISTORY

1. Certificate of Compliance as to 10–27–88 order including amendment of subsection (d) transmitted to OAL 2–24–89 and filed 3–27–89 (Register 89, No. 13). For prior history, see Register 89, No. 1.
2. Amendment filed 8–7–89 as an emergency; operative 8–7–89 (Register 89, No. 32). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12–5–89.
3. Certificate of Compliance transmitted to OAL 12–1–89 and filed 1–2–90 (Register 90, No. 2).
4. Amendment filed 12–10–90 as an emergency; operative 12–10–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 4–9–91 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsection (a) and heading filed as an emergency 3–14–91; operative 3–14–91 (Register 91, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–12–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 12–10–90 order transmitted to OAL 4–8–91 and filed 5–8–91 (Register 91, No. 24).
7. Amendment of subsection (c) and repealer of subsections (e) and (f) filed 5–21–91 as an emergency pursuant to Statutes of 1990, chapter 456, section 36, p. 1658–1659; operative 5–22–91 (Register 91, No. 27). A Certificate of Compliance must be transmitted to OAL by 9–19–91 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 3–14–91 order transmitted to OAL 7–11–91 and filed 8–9–91 (Register 91, No. 50).
9. Amendment of subsection (a) and NOTE filed 8–12–91 as an emergency; operative 8–12–91 (Register 92, No. 6). A Certificate of Compliance must be transmitted to OAL 12–10–91 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 8–12–91 order transmitted to OAL 12–9–91 and filed 1–2–92 (Register 92, No. 18).
11. Amendment of subsection (c) refiled 1–23–92 as an emergency; operative 1–17–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL 5–22–92 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 1–23–92 order transmitted to OAL 5–22–92 and filed 7–6–92 (Register 92, No. 28).
13. Amendment of subsection (a) and NOTE filed 12–3–92 as an emergency; operative 12–3–92 (Register 92, No. 49). A Certificate of Compliance must be

transmitted to OAL 4–2–93 or emergency language will be repealed by operation of law on the following day.

14. Certificate of Compliance as to 12–3–92 order transmitted to OAL 4–2–93 and filed 5–14–93 (Register 93, No. 20).
15. Amendment of subsection (a) and NOTE filed 8–24–93 as an emergency; operative 8–24–93 (Register 93, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–22–93 or emergency language will be repealed by operation of law on the following day.
16. Amendment of subsection (a) and NOTE refiled 12–20–93 as an emergency; operative 12–20–93 (Register 93, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–21–94 or emergency language will be repealed by operation of law on the following day.
17. Certificate of Compliance as to 12–20–93 order transmitted to OAL 3–22–94 and filed 4–28–94 (Register 94, No. 17).
18. Amendment of subsection (a), new subsections (e)–(*l*) and amendment of NOTE filed 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.
19. Editorial correction of HISTORY 18 (Register 96, No. 6).
20. Amendment of subsection (a), new subsections (e)–(*l*) and amendment of NOTE refiled 2–5–96 as an emergency; operative 2–5–96 (Register 96, No. 6). A Certificate of Compliance must be transmitted to OAL by 6–6–96 or emergency language will be repealed by operation of law on the following day.
21. Certificate of Compliance as to 2–5–96 order transmitted to OAL 6–4–96 and filed 7–12–96 (Register 96, No. 28).
22. Amendment of subsections (a), (e)–(g) and (i)–(j) and NOTE filed 9–19–96 as an emergency; operative 9–19–96 (Register 96, No. 38). A Certificate of Compliance must be transmitted to OAL by 1–17–97 or emergency language will be repealed by operation of law on the following day.
23. Certificate of Compliance as to 9–19–96 order transmitted to OAL 1–17–97 and filed 3–3–97 (Register 97, No. 10).
24. Amendment of subsections (a), (f)–(g) and (i)–(j) and amendment of NOTE filed 12–31–97 as an emergency; operative 12–31–97 (Register 98, No. 1). A Certificate of Compliance must be transmitted to OAL by 4–30–98 or emergency language will be repealed by operation of law on the following day.
25. Editorial correction of subsection (f) designator and HISTORY 24 (Register 98, No. 24).
26. Certificate of Compliance as to 12–31–97 order transmitted to OAL 4–27–98 and filed 6–9–98 (Register 98, No. 24).
27. Amendment of subsections (a), (e), (g) and (i)–(k) and amendment of NOTE filed 10–29–98 as an emergency; operative 10–29–98 (Register 98, No. 44). A Certificate of Compliance must be transmitted to OAL by 2–26–99 or emergency language will be repealed by operation of law on the following day.
28. Certificate of Compliance as to 10–29–98 order transmitted to OAL 2–26–99 and filed 4–8–99 (Register 99, No. 15).
29. Amendment of subsections (a), (e), (g), (i) and (j) and amendment of NOTE filed 11–3–99 as an emergency; operative 11–3–99 (Register 99, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–2–2000 or emergency language will be repealed by operation of law on the following day.
30. Certificate of Compliance as to 11–3–99 order transmitted to OAL 3–1–2000 and filed 4–6–2000 (Register 2000, No. 14).
31. Amendment of subsections (a), (e), (f)–(g), (i) and (j) and amendment of NOTE filed 11–17–2000 as an emergency; operative 11–17–2000 (Register 2000, No. 46). A Certificate of Compliance must be transmitted to OAL by 3–19–2001 or emergency language will be repealed by operation of law on the following day.
32. Certificate of Compliance as to 11–17–2000 order, including further amendments, transmitted to OAL 3–8–2001 and filed 4–19–2001 (Register 2001, No. 16).
33. Amendment of subsections (a), (e)–(g), (i) and (j) and amendment of NOTE filed 1–27–2003 as an emergency; operative 8–1–2001 pursuant to Statutes of 2002, Chapter 16, Items 4260–101–0001 and 4260–101–0890 (Register 2003, No. 5). A Certificate of Compliance must be transmitted to OAL by 5–27–2003 or emergency language will be repealed by operation of law on the following day.
34. Amendment of subsections (a), (e)–(g), (i) and (j) and amendment of NOTE refiled 5–22–2003 as an emergency; operative 5–22–2003 (Register 2003, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–19–2003 or emergency language will be repealed by operation of law on the following day.
35. Certificate of Compliance as to 5–22–2003 order transmitted to OAL 9–18–2003 and filed 10–16–2003 (Register 2003, No. 42).
36. Amendment of section and NOTE filed 8–24–2005 as a deemed emergency pursuant to Welfare and Institutions Code section 14105(a); operative 8–24–2005 for dates of service 8–1–2002 through 7–31–2003 pursuant to Statutes of 2002, Chapter 379, Items 4260–101–0001 and 4260–101–0890 (Register 2005, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–23–2005 or emergency language will be repealed by operation of law on the following day.
37. Certificate of Compliance as to 8–24–2005 order transmitted to OAL 12–22–2005 and filed 1–23–2006 (Register 2006, No. 4).

§ 51511.6. Nursing Facility Services—Pediatric Subacute Care Reimbursement.

(a) The per diem rates of reimbursement for pediatric subacute services as defined in Section 51335.6(a) shall be as follows:

Licensure	*Type of Patient*	*Rate of Reimbursement*
Hospital–Based	Ventilator Dependent	$705.30
Hospital–Based	Non–Ventilator Dependent	$647.62
Freestanding	Ventilator Dependent	$659.73
Freestanding	Non–Ventilator Dependent	$602.05

(b) The per diem rate of reimbursement for supplemental rehabilitation therapy services shall be $42.40. This rate shall include payment for physical therapy, occupational therapy and speech therapy services provided in accordance with Section 51215.10(i) through (m).

(c) The per diem rate of reimbursement for ventilator weaning services shall be $39.53. This rate shall include respiratory care practitioner and nursing care services provided in accordance with Section 51215.11.

(d) Payment to nursing facilities with pediatric subacute units for patients on bedhold receiving acute services shall be in accordance with Section 51535.1(d).

(e) The provisions of Section 51511 shall apply to pediatric subacute units except for Section 51511(a). Section 51511(c) shall apply to pediatric subacute units except as provided for in 51511.6(f).

(f) The pediatric subacute per diem rate includes the following:

(1) Equipment and supplies necessary for continuous intravenous therapy;

(2) Oxygen and all equipment necessary for administration including positive pressure apparatus;

(3) Ventilators, including calibration and maintenance;

(4) Registered Dietician consultant services;

(5) Respiratory therapy services;

(6) Physical, occupational and speech therapy services, as specified in Section 51215.10(h);

(7) Developmental services;

(8) Service Coordinator activities.

(9) Portable x–ray services when provided by freestanding providers.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132.25, Welfare and Institutions Code; and Statutes of 2002, Chapter 379, Items 4260–101–0001 and 4260–101–0890.

HISTORY

1. New section filed 4–13–94 as an emergency; operative 4–1–94. Emergency adoption submitted to OAL for printing only pursuant to section 4, AB 36 (chapter 1030, Statutes of 1993) (Register 94, No. 15).
2. Certificate of Compliance as to 4–13–94 order including amendment of section transmitted to OAL 9–26–94 and filed 10–20–94 (Register 94, No. 42).
3. Editorial correction of subsection (d)(3) and HISTORY 1 and 2 (Register 95, No. 14).
4. Amendment of subsection (a) and NOTE filed 9–19–96 as an emergency; operative 9–19–96 (Register 96, No. 38). A Certificate of Compliance must be transmitted to OAL by 1–17–97 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 9–19–96 order transmitted to OAL 1–17–97 and filed 3–3–97 (Register 97, No. 10).
6. Amendment of section and NOTE filed 6–30–97 as an emergency; operative 6–30–97 (Register 97, No. 27). A Certificate of Compliance must be transmitted to OAL by 10–28–97 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 6–30–97 order transmitted to OAL 10–22–97 and filed 11–26–97 (Register 97, No. 48).
8. Amendment of subsections (a)–(c) and amendment of NOTE filed 12–31–97 as an emergency; operative 12–31–97 (Register 98, No. 1). A Certificate of Compliance must be transmitted to OAL by 4–30–98 or emergency language will be repealed by operation of law on the following day.
9. Editorial correction of HISTORY 8 (Register 98, No. 24).
10. Certificate of Compliance as to 12–31–97 order transmitted to OAL 4–27–98 and filed 6–9–98 (Register 98, No. 24).
11. Amendment of subsections (a)–(c) and amendment of NOTE filed 10–29–98 as an emergency; operative 10–29–98 (Register 98, No. 44). A Certificate of Compliance must be transmitted to OAL by 2–26–99 or emergency language will be repealed by operation of law on the following day.

12. Certificate of Compliance as to 10–29–98 order transmitted to OAL 2–26–99 and filed 4–8–99 (Register 99, No. 15).

13. Amendment of subsections (a)–(c) and amendment of NOTE filed 11–3–99 as an emergency; operative 11–3–99 (Register 99, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–2–2000 or emergency language will be repealed by operation of law on the following day.

14. Certificate of Compliance as to 11–3–99 order transmitted to OAL 3–1–2000 and filed 4–6–2000 (Register 2000, No. 14).

15. Amendment of subsections (a)–(c) and amendment of NOTE filed 11–17–2000 as an emergency; operative 11–17–2000 (Register 2000, No. 46). A Certificate of Compliance must be transmitted to OAL by 3–19–2001 or emergency language will be repealed by operation of law on the following day.

16. Certificate of Compliance as to 11–17–2000 order transmitted to OAL 3–8–2001 and filed 4–19–2001 (Register 2001, No. 16).

17. Amendment of subsections (a)–(c), new subsection (f)(9) and amendment of NOTE filed 1–27–2003 as an emergency; operative 8–1–2001 pursuant to Statutes of 2002, Chapter 16, Items 4260–101–0001 and 4260–101–0890 (Register 2003, No. 5). A Certificate of Compliance must be transmitted to OAL by 5–27–2003 or emergency language will be repealed by operation of law on the following day.

18. Amendment of subsections (a)–(c), new subsection (f)(9) and amendment of NOTE refiled 5–22–2003 as an emergency; operative 5–22–2003 (Register 2003, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–19–2003 or emergency language will be repealed by operation of law on the following day.

19. Certificate of Compliance as to 5–22–2003 order transmitted to OAL 9–18–2003 and filed 10–16–2003 (Register 2003, No. 42).

20. Amendment of subsections (a)–(c) and amendment of NOTE filed 8–24–2005 as a deemed emergency pursuant to Welfare and Institutions Code section 14105(a); operative 8–24–2005 for dates of service 8–1–2002 through 7–31–2003 pursuant to Statutes of 2002, Chapter 379, Items 4260–101–0001 and 4260–101–0890 (Register 2005, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–23–2005 or emergency language will be repealed by operation of law on the following day.

21. Certificate of Compliance as to 8–24–2005 order transmitted to OAL 12–22–2005 and filed 1–23–2006 (Register 2006, No. 4).

§ 51512. Certified Outpatient Rehabilitation Centers.

Reimbursement for services rendered by certified outpatient rehabilitation centers is limited to the maximum allowances and other provisions contained in Section 51509.

HISTORY

1. New section filed 1–22–71; designated effective 3–1–71 (Register 71, No. 4).

§ 51513. Pharmaceutical Services and Prescribed Drugs.

(a) Definitions. The following definitions are applicable to Sections 51513, 51513.2, 51513.5, 51520.1, and 59998.

[The next page is 491.]

(1) Generic Drug means the chemical or generic name, as determined by the United States Adopted Names Council (USANC) and accepted by the Federal Food and Drug Administration (FDA), of those drug products having the same active ingredients.

(2) Generic Drug Type means the dosage form, strength, and package size, where applicable, of a specific generic drug. Legend Generic Drug Type means any drug whose labeling states "Caution: Federal law prohibits dispensing without prescription" or words of similar import.

(3) Drug Product means a brand or trade name of a generic drug type manufactured, packaged, or distributed by a specific pharmaceutical company which is the principal labeler.

(4) Medical Supply Type means the particular kind of a medical supply product.

(5) Medical Supply Product means a brand or trade name of a medical supply type manufactured, packaged, or distributed by a specific company which is the principal labeler.

(6) Estimated Acquisition Cost (EAC) for a medical supply product means the Average Wholesale Price or such other price as the Department determines to be the price generally and currently paid by providers for a standard package. EAC for a drug product means the Department's best estimate of the price generally and currently paid by providers for a drug product sold by a particular manufacturer or principal labeler in a standard package. The EAC for a drug product shall be:

(A) The Direct Price as determined pursuant to section 51513.5; or

(B) The Average Wholesale Price minus 5 percent (AWP–5%) for all other drug products.

(7) Average Wholesale Price (AWP), excepting temporary updates as provided in subdivision (a)(13), means the price for a drug product or a medical supply product listed for a standard package in the Department's primary price reference source, or for products not listed in the Department's primary price reference source, the price listed for a standard package in the secondary price reference source; and, if not listed in the secondary price source, the principal labeler's catalogue. The selection of the primary price reference source and the secondary price reference source shall be based upon an evaluation of the various price reference sources available in relation to the following criteria:

(A) Accuracy and currentness of prices.

(B) Comprehensiveness of data base.

(C) Capability to meet the needs of the Department's fiscal intermediary.

The primary price reference source will be the price reference source that, in the judgment of the Director, best meets the criteria specified above. The secondary price reference source will be the price reference source that, in the judgment of the Director when evaluated against the criteria listed above, is inferior to the primary price reference source but superior to all others evaluated.

(8) A Standard Package means 100s, pints or pounds, if commercially available; or the commercially available size that is next above 100s, pints or pounds; or, in the case of larger quantities, that size which is closest to the quantity dispensed; or, in the case of conventional dispensing units, the unit dispensed; or, in those cases in which the only commercially available sizes are less than 100s, pints or pounds, the package closest to the amount dispensed. Where the most frequently purchased size differs from the above limits, a standard package shall mean that package size determined by the Director to be the size most frequently purchased by providers, and designated with a "++" on the Medi–Cal List of Contract Drugs. The National Drug Code (NDC) of the Package from which the drug is dispensed shall be used when billing Medi–Cal. Payment for the drug dispensed is based on a standard package as defined in this subsection.

(9) Maximum Allowable Ingredient Cost (MAIC) means the price established by the Director for a generic drug type, and Maximum Allowable Product Cost (MAPC) means the price established by the Director for a medical supply type.

(10) Federal Allowable Cost (FAC) means the price established for a generic drug type by the United States Department of Health and Human Services in accordance with sections 447.331 and 447.332, Title 42, Code of Federal Regulations for which drug product(s) are available to pharmacies from a regional California drug wholesaler with AWP at or below such price.

(11) Cost of the Drug Product or Medical Supply Product, except in cases of prior authorization as provided in subsection (a)(14), means the lowest of the Estimated Acquisition Cost (EAC), the Federal Allowable Cost (FAC), or the Maximum Allowable Ingredient Cost (MAIC)/Maximum Allowable Product Cost (MAPC) for the Standard Package size. The EAC, the FAC and the MAIC/MAPC shall be updated by the Director no less often than every 60 days for medical supply products and no less often than every 30 days for drug products. In order to reflect the most current price information available, the Director may temporarily update the EAC, or the MAIC/MAPC, to reflect the price listed for a standard package in the principal labeler's catalog or catalog supplements, until the most recent change in price is reflected in the price listed in the Department's primary price reference source, or for products not listed in the Department's primary price reference source, the secondary price reference source.

(12) Cost of the drug product or medical supply product for which Prior Authorization has been granted in accordance with section 51003, for a drug product or medical supply product having a higher cost than the established FAC or MAIC/MAPC, means the EAC of the drug product or medical supply product authorized by the Medi–Cal consultant. Such prior authorization requests shall be made by the prescriber or pharmacist, and shall contain adequate information to justify the medical necessity for the higher cost drug product or medical supply product. For mail–in prior authorization requests, the justifying information shall be either handwritten and signed by the prescriber or pharmacist, or typewritten on the prescribers office letterhead or prescription blank and signed by the prescriber. Telephone prior authorization requests shall be transmitted exclusively by the prescriber or pharmacist.

(13) Principal Labeler means the specific supplier of a product under whose brand, trademark, trade name or other trade symbol a generic drug type or medical supply type is placed into its final commercially available package. The principal labeler does not include any person who affixes supplemental labeling to an existing commercially available package of a drug or medical supply.

(14) Final commercially available package means that original processed and labeled drug or medical supply package which requires no further processing or labeling to be lawfully sold to a provider of services.

(b) Payment for Legend Generic Drug Types.

(1) Payment for legend generic drug types dispensed by licensed pharmacists in compliance with Section 51313 shall consist of the cost of the legend generic drug type dispensed, plus a professional fee for services. Payments for legend generic drug types dispensed by a clinic with a special permit pursuant to Business and Professions Code, Section 4063, and provided in compliance with Section 51313 shall consist of the cost of the legend generic drug type dispensed.

(A) The price charged to the program shall not exceed that charged to the general public.

(B) The pharmacist or the clinic with a special permit, to the extent permitted by law, shall dispense the lowest cost drug product within the generic drug type that the pharmacy or clinic with a special permit has in stock which meets the medical needs of the beneficiary.

(2) Payment to a pharmacy for both the professional fee component and the ingredient cost component for legend generic drug types listed in Part 1 of the Medi–Cal List of Contract Drugs and preceded by "#" shall be limited to drugs dispensed in minimum quantities of 100 dosage units. Payment to a pharmacy for less than 100 dosage units for legend generic drug types listed in Part 1 of the Medi–Cal List of Contract Drugs and preceded by "#" shall be for the ingredient cost only. One hundred

dosage units means 100 tablets or capsules. Exceptions to this requirement shall be:

(A) The initial prescription for the legend generic drug type for the beneficiary.

(B) Those prescriptions for which prior authorization is obtained from a Medi–Cal consultant.

(C) Those prescriptions for skilled nursing facility or intermediate care facility inpatients; however, such prescriptions shall be subject to the requirements of subparagraph (b)(3) of this section.

(3) Payment to a pharmacy for both the professional fee component and the ingredient cost component of claims for dispensing legend generic drug types listed in Part 1 of the Medi–Cal List of Contract Drugs and preceded by "+" shall be limited to a maximum of three such payments in any 75–day period when the same legend generic drug type is provided to the same beneficiary. Payment to a pharmacy for more than three such claims in any 75–day period shall be limited to the ingredient cost only. Exceptions to this requirement shall be:

(A) The initial prescription for the legend generic drug type for the beneficiary.

(B) Those prescriptions for which prior authorization is obtained from a Medi–Cal consultant.

(C) Any drug dispensed in a quantity of 180 or more tablets or capsules.

(4) Payment to a pharmacy for oral contraceptive legend generic drug types listed in Part 1 of the Medi–Cal List of Contract Drugs shall be limited to a minimum quantity of three cycles. Payment to a pharmacy for less than a quantity of three cycles shall be for the ingredient cost only. Exceptions to this requirement shall be:

(A) The initial prescription for the legend generic drug type for the beneficiary.

(B) Those prescriptions for which prior authorization is obtained from a Medi–Cal consultant.

(5) Payment to a pharmacy for both the professional fee component and the ingredient cost component for theophylline liquid or for liquid potassium supplement legend generic drug types listed in Part 1 of the Medi–Cal List of Contract Drugs shall be limited to a minimum quantity of 480 cc. Payment to a pharmacy for less than a quantity of 480 cc shall be for the ingredient cost only. Exceptions to this requirement shall be:

(A) The initial prescription for the legend generic drug type for the beneficiary.

(B) Those prescriptions for which prior authorization is obtained from a Medi–Cal consultant.

(c) Payment for Nonlegend Generic Drug Types Excluding Nonlegend Cough and Cold Drugs. Payment for nonlegend generic drug types provided in compliance with Section 51313 shall consist of the cost of the generic drug type dispensed plus 50 percent of cost, except that payments to clinics with special permits shall consist of the cost of the generic drug type dispensed. The price charged to the program shall not exceed that charged to the general public. The pharmacist or the clinic, to the extent permitted by law, shall dispense the lowest cost drug product within the generic drug type that the pharmacy or clinic has in stock which meets the medical needs of the beneficiary.

(d) Payment for Nonlegend Cough and Cold Drug Products.

(1) Subject to the requirements of paragraph 2, payment for nonlegend cough and cold drug products listed in Part 3 of the Medi–Cal List of Contract Drugs provided in compliance with Sections 51313 and 51313.3 shall be cost of the drug product supplied plus 50 percent of cost, except that payment to clinics with special permits shall be only the cost of the drug product. The price charged to the program shall not exceed that charged to the general public ("shelf price"). The pharmacist or the clinic, to the extent permitted by law, shall dispense the lowest cost drug product within the classification specified in Part 3 of the Medi–Cal List of Contract Drugs, that the pharmacy or clinic has in stock which meets the medical needs of the beneficiary.

(2) Nonlegend cough and cold drug products listed in Part 3 of the Medi–Cal List of Contract Drugs are payable when supplied to beneficiaries in manufacturers' original trade packages, and in the package sizes specified in Part 3 of the Medi–Cal List of Contract Drugs; an equivalent to these original trade package sizes is also payable, if the drug product supplied is that of the same manufacturer who produces the original trade package sizes specified. Additional fee for professional prescription labeling with individual directions for use is not payable. A record of the drug product supplied may be kept separate from the prescription file. This record shall contain all the information required on the pharmacy claim form used as the payment claim to the program for the drug product supplied.

(e) Fee for Service. The maximum professional fee component for services shall be $4.05. Additional charges for extemporaneously compounded prescriptions shall be allowed according to the following schedule:

Capsules and Papers	
6–36	$1.98
37–100	3.95
Ointments	
up to 180 Gm	1.64
180 Gm and over	3.29
Suppositories	
up to 24	3.29
24 and over	5.76
Sterile Eye Preparations	
All	2.04
Nose and Ear Preparations	
All	0.81
Emulsions	
up to 240cc	0.81
240cc and over	1.64
Liquids other than simple pouring or reconstituting	
All	0.99

(f) Fee for Partial Prescription Refills. The fee for a partial prescription refilled in accordance with Business and Professions Code section 4229.5 or Health and Safety Code section 11201 shall be the fee amount allowed for refill of the full prescription quantity multiplied by the percent of the full prescription quantity finally refilled. The total of the fees for partial refills of such prescription shall not exceed the fee for the same prescription when refilled as a routine service. The claim for the completed service, signed by the provider, shall reflect such fee determination.

(g) Drugs Administered for Chronic Outpatient Hemodialysis. Drugs administered for chronic outpatient hemodialysis in renal dialysis centers and community hemodialysis units are payable only when included in the all inclusive rate set forth in section 51509.2.

NOTE: Authority cited: Sections 10725, 14105, 14105.7 and 14124.5, Welfare and Institutions Code; and Section 208, Health and Safety Code. Reference: Section 4211, Business and Professions Code; Sections 14105, 14105.7, 14105.35, 14132, 14133 and 14133.1, Welfare and Institutions Code; Fiscal Year 1989–90 Budget Act (Chapter 93, Statutes of 1989); 42 U.S.C. Section 1396a(a)(30)(A); and 42 C.F.R. Sections 447.301, 447.302, 447.304, 447.331, 447.332, 447.333 and 447.334.

HISTORY

1. Amendment of subsection (d) filed 8–1–84 as an emergency; effective upon filing (Register 84, No. 31). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–29–84. For prior history, see Registers 83, No. 34; and 82, No. 49.
2. Amendment of subsections (a), (a)(10), (a)(12) and (a)(13) filed 10–3–84; effective thirtieth day thereafter (Register 84, No. 40).
3. Certificate of Compliance as to 8–1–84 order transmitted to OAL 11–27–84 and filed 12–27–84 (Register 84, No. 52).
4. Amendment of subsection (d) filed 1–31–85 as an emergency; designated effective 2–1–85 (Register 85, No. 5). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6–1–85.
5. Certificate of Compliance transmitted to OAL 5–23–85 and filed 6–24–85 (Register 85, No. 26).
6. Amendment of subsection (d) filed 8–1–85 as an emergency; effective upon filing (Register 85, No. 32). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–29–85.

7. Relettering of subsections (d)–(f) to subsections (e)–(g) and new subsection (d) filed 9–16–85 as an emergency; effective upon filing (Register 85, No. 39). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1–14–86.
8. Certificate of Compliance as to 8–1–85 order transmitted to OAL 11–20–85 and filed 12–27–85 (Register 85, No. 52).
9. Certificate of Compliance as to 9–16–85 order transmitted to OAL 1–2–86 and filed 2–3–86 (Register 86, No. 7).
10. Amendment of subsections (a)(9), (a)(13), (b)(4) and (b)(5) filed 7–28–86; designated effective 9–1–86 (Register 86, No. 31).
11. Amendment of subsection (a)(13) filed 6–10–87; operative 7–10–87 (Register 87, No. 25).
12. Amendment of subsections (a)(12)–(14) filed 10–27–87 as an emergency; operative 10–29–87 (Register 87, No. 44). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–26–88.
13. Certificate of Compliance transmitted to OAL 2–24–88 and filed 3–25–88 (Register 88, No. 14).
14. Amendment of subsection (a)(8) filed 9–14–89 as an emergency; operative 10–16–89 (Register 89, No. 38). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–13–90.
15. Amendment of subsection (a)(8) refiled 2–13–90 as an emergency; operative 2–13–90 (Register 90, No. 9). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6–13–90.
16. Certificate of Compliance as to 2–13–90 order transmitted to OAL 6–8–90 and disapproved 7–9–90 (Register 90, No. 34).
17. Amendment of subsection (a)(8) refiled 7–12–90 as an emergency; operative 7–12–90 (Register 90, No. 34). A Certificate of Compliance must be transmitted to OAL by 11–9–90 or emergency language will be repealed by operation of law on the following day.
18. Amendment of subsection (a)(8) refiled 11–16–90 as an emergency; operative 11–16–90 (Register 90, No. 52). A Certificate of Compliance must be transmitted to OAL by 3–18–91 or emergency language will be repealed by operation of law on the following day.
19. Amendment of subsections (a) and (e), and NOTE filed 3–22–91; operative 4–21–91 (Register 91, No. 15).
20. Certificate of Compliance as to 11–16–90 order including amendment of NOTE transmitted to OAL 3–12–91 and filed 4–11–91 (Register 91, No. 17).
21. Amendment of subsections (a), (b), (c) and (d) and repealer of subsections (e) and (f) filed 5–22–91 as an emergency pursuant to Statutes of 1990, chapter 456, section 36, p. 1658–1659; operative 5–22–91 (Register 91, No. 27). A Certificate of Compliance must be transmitted to OAL by 9–19–91 or emergency language will be repealed by operation of law on the following day.
22. Amendment of subsections (a), (b), (c) and (d) refiled 9–19–91 as an emergency; operative 9–20–91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 1–20–92 or emergency language will be repealed by operation of law on the following day.
23. Amendment of subsections (a), (b), (c) and (d) refiled 1–23–92 as an emergency; operative 1–17–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL 5–22–92 or emergency language will be repealed by operation of law on the following day.
24. Certificate of Compliance as to 1–23–92 order including amendment of subsections (a)(2), (a)(10)–(11), (a)(13)–(14) and (d)(2) and NOTE transmitted to OAL 5–22–92 and filed 7–6–92 (Register 92, No. 28).
25. Amendment of subsections (b)(1), (b)(1)(B), (c) and (d)(1) and NOTE filed 1–6–94; operative 2–7–94 (Register 94, No. 1).
26. Amendment of subsections (a)(1)–(3), (a)(5), (a)(10)–(12), (b)–(b)(1), (b)(1)(B)–(b)(2)(A), (b)(3)–(b)(3)(A), (b)(4)–(b)(4)(A), (b)(5)–(b)(5)(A) and (c), repealer of subsections (a)(6)–(7) and (a)(17) filed 1–9–95; operative 3–1–95 (Register 95, No. 2).
27. Change without regulatory effect renumbering subsections filed 4–26–95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 17).

§ 51513.1. Average Wholesale Price (AWP).

HISTORY

1. Repealer and new section filed 8–1–73 as an emergency; designated effective 8–10–73 (Register 73, No. 31). For prior history, see Register 72, No. 5.
2. Repealer filed 12–6–73 as an emergency; designated effective 12–6–73 (Register 73, No. 49).
3. Certificate of Compliance filed 4–3–74 (Register 74, No. 14).

§ 51513.2. Establishment of Maximum Allowable Ingredient Cost.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14053, 14105.7, 14107, 14124.1, 14132, 14133, and 14184, Welfare and Institutions Code.

HISTORY

1. Amendment of subsections (e) and (f) filed 2–4–77; effective thirtieth day thereafter (Register 77, No. 6). For prior history, see Register 74, No. 18.
2. Amendment of subsection (e) filed 8–31–79; effective thirtieth day thereafter (Register 79, No. 35).
3. New subsection (j) filed 10–3–84; effective thirtieth day thereafter (Register 84, No. 40).
4. Repealer filed 5–22–91 as an emergency pursuant to Statutes of 1990, chapter 456, section 36, p. 1658–1659; operative 5–22–91 (Register 91, No. 27). A Certificate of Compliance must be transmitted to OAL by 9–19–91 or emergency language will be repealed by operation of law on the following day.
5. Repealer of section refiled 9–19–91 as an emergency; operative 9–20–91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 1–20–92 or emergency language will be repealed on the following day.
6. Repealer of section refiled 1–23–92 as an emergency; operative 1–17–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL 5–22–92 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 1–23–92 order transmitted to OAL 5–22–92 and filed 7–6–92 (Register 92, No. 28).
8. Editorial correction of printing error in HISTORY 6. (Register 92, No. 28).

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§ 51513.3. Maximum Allowable Ingredient Cost.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code; and Section 57(c), Chapter 328, Statutes of 1982. Reference: Sections 14053, 14105, 14105.7, 14132 and 14133, Welfare and Institutions Code; and Section 57(c), Chapter 328, Statutes of 1982.

HISTORY

1. Amendment of subsection (b) filed 9–5–89; operative 10–1–89 (Register 89, No. 36). For prior history, see Register 88, No. 49.
2. Amendment of subsection (b) filed 11–29–89 as an emergency; operative 11–29–89 (Register 89, No. 48). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3–29–90.
3. Certificate of Compliance as to 11–29–89 order deleting Triamterene with hydrochlorothiazide capsules transmitted to OAL 3–21–90 and filed 3–22–90 (Register 90, No. 16).
4. Repealer filed 5–22–91; operative 5–22–91 (Register 91, No. 27). This repealer is not subject to the Administrative Procedure Act and is exempt from review by OAL pursuant to Welfare and Institutions Code section 14105.45 (Stats. 1990, ch. 457, section 17, p. 1670–1671).
5. Repealer of section refiled 9–19–91 as an emergency; operative 9–20–91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 1–20–92 or emergency language will be repealed on the following day.
6. Repealer of section refiled 1–23–92 as an emergency; operative 1–17–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL 5–22–92 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 1–23–92 order transmitted to OAL 5–22–92 and filed 7–6–92 (Register 92, No. 28).
8. Editorial correction of printing error in HISTORY 6. (Register 92, No. 28).

§ 51513.4. Maximum Allowable Cost.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14053, 14105, and 14132, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (b) filed 7–10–81; effective thirtieth day thereafter (Register 81, No. 28). For prior history, see Register 81, No. 18.
2. Amendment of subsection (b) filed 12–31–81 as an emergency; designated effective 1–1–82 (Register 82, No. 1). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5–1–82.
3. Amendment of subsection (b) filed 1–22–82; designated effective 3–1–82 (Register 82, No. 4).
4. Repealer filed 2–2–82; effective thirtieth day thereafter (Register 82, No. 6).
5. Certificate of Compliance as to 12–31–81 order filed 4–23–82 (Register 82, No. 17).

§ 51513.5. Estimated Acquisition Cost.

(a) The estimated acquisition cost for all of the drug products manufactured or distributed by a pharmaceutical company listed in paragraph (b) shall be the direct price listed for a standard package in the Department's primary reference source; or for products not listed in the Department's primary price reference source, the direct price listed for a standard package in the secondary price reference source; or, if not listed in the secondary price source, the principal labeler's catalogue.

(b) Pharmaceutical Company List:

Billing Code	*Pharmaceutical Company*
AB	Abbott Laoratories
AY	Ayerst Laboratories
LE	Lederle Laboratories
MS	Merck, Sharpe and Dohme
PD	Parke Davis and Company
PF	Pfizer Laboratories
RR	Roerig, J. B. and Company
RS	Ross Laboratories
SQ	Squibb, E. R. and Sons
UP	Upjohn Company, The
WY	Wyeth Laboratories

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14053, 14105, 14107, 14124.1, 14132, and 14133, Welfare and Institutions Code.

HISTORY

1. New section filed 2–4–77; effective thirtieth day thereafter (Register 77, No. 6).
2. Amendment filed 8–7–78; effective thirtieth day thereafter (Register 78, No. 32).
3. Amendment filed 8–31–79; effective thirtieth day thereafter (Register 79, No. 35).
4. Amendment of subsection (b) filed 4–25–80; effective thirtieth day thereafter (Register 80, No. 17).
5. Certificate of Compliance transmitted to OAL 11–28–80 and filed 12–24–80 (Register 80, No. 52).
6. Amendment of subsections (a) and (b), and Note filed 3–22–91; operative 4–21–91 (Register 91, No. 15).
7. Editorial correction adding subsection (b) identifier (Register 91, No. 23).

§ 51513.6. Prudent Purchase of Drugs Program.

(a) Prudent Purchase of Drugs is the designated name of the mechanism through which the Department shall solicit competitive bids or negotiate prices and enter into contracts with principal labelers for generic drug type codes in order to obtain refunds, rebates, guaranteed prices or any other form of preferential price under the Medi–Cal program. The acceptance of a bid or the mutual agreement on a negotiated price followed by the awarding and approval of a contract with a principal labeler to supply a specific drug product shall constitute the identification of a State–designated drug product under the provisions of this Section.

(b) Under the Prudent Purchase of Drugs Program, the Department may:

(1) Review all generic drug type codes marketed, at least annually.

(2) Select those generic drug type codes which represent substantial drug product usage or expenditures under the Medi–Cal program.

(3) For each generic drug type code selected for inclusion under a rebate, discount or guaranteed price contract, (1) negotiate a contract or (2) solicit competitive price bids for multisource drugs in conformance with terms and conditions established by the Invitation for Bid. Prior to accepting any bid or negotiated price, the Department will seek information from the Federal Food and Drug Administration regarding potential drug product bioequivalency, supply or other related problems.

(A) Negotiated contracts may be entered into for drug products marketed under an existing and valid U.S. patent or in those instances where the Department has received an insufficient number of acceptable bidders.

(4) Award a contract to one or more principal labeler(s) to supply the State–designated drug product based on negotiations or on the lowest bid(s) which meet(s) the terms and conditions of the State's solicitation for bid. Terms and conditions for either negotiated or competitively bid contracts shall include, but not be limited to the following:

(A) Acceptable quality, which means:

1. All drug products offered shall be manufactured or compounded, processed, packaged, labeled, and handled in accordance with the provisions of applicable federal and state law.

2. All drug products offered shall conform to standards, where applicable, of the current United States Pharmacopoeia (USP) or National Formulary (NF), including supplements or revisions.

3. The drug product shall be pharmaceutically elegant, i.e., neatly labeled, free of chips, pittings, dye spots, foreign matter, and other defects.

4. All United States Drug Enforcement Agency (DEA) Schedule II–IV products shall comply with the Health and Safety Code Section 11919.

5. All multisource drugs products (except those drugs introduced to the U.S. market prior to 1938 or for which the United States Food and Drug Administration has not chosen to issue ratings) shall have an "AA" or "AB" bioequivalency rating for solid oral dosage forms, or an "A" rating for all other dosage forms, from the FDA in its most recent edition of Approved Prescription Drug Products.

(B) Availability, which means that the State–designated drug product shall be available throughout the State to outpatient pharmacies through usual and customary distribution channels in sufficient quantities to meet the needs of the Medi–Cal program.

(C) Conformity with usual and customary distribution channels, which means the use of drug wholesalers or direct orders from principal labelers or any comparable combination or arrangement thereof.

(D) Product liability insurance, the terms of which shall indemnify the State of California, its officers, agents and employees for any liability arising out of a claim when such drug product is dispensed under the

Medi-Cal program in accordance with California pharmacy laws, rules and regulations and current professional standards and practices.

(E) An initial contract term of not less than 12 months, subject to the Department's right to terminate the contract. Subsequent contracts may be awarded through solicitation of competitive bids, an extension of the initial competitively bid contract not to exceed 6 months or a renegotiation of contracts for drug products under a U.S. patent.

(c) At least 90 days prior to the implementation date of the contract, the Department shall notify prescribers, dispensers, and drug wholesale organizations through provider bulletins or other means of the establishment of a State-designated drug type code, of the principal labelers with whom the Department has contracted for supply of same, and of the implementation date.

(d) (Reserved)

(e) (Reserved)

(f) The pharmacist or clinic with a special permit shall:

(1) To the extent required by law, dispense the State-designated product. Payment to a pharmacy or clinic with a special permit for other than the State-designated product shall only be for those prescriptions for which prior authorization is obtained from a Medi-Cal consultant pursuant to Section 51003 of this Title and subsection (g), below.

(2) Maintain prescriptions and invoices for purchases of State-designated drug products in accordance with Section 51476 for the purposes of audit by the Department.

(3) Provide the Department upon its request, information on the quantities of each State-designated drug product on hand in the pharmacy or clinic with a special permit as of the effective date of implementation of the contract for such product(s) within 10 calendar days of such date. The Department shall provide forms upon which this information shall be reported.

(g) Prior authorization shall be granted by the Department only in the following situations:

(1) Where the clinical condition of the beneficiary requires the use of a drug product other than the State-designated drug product, only upon fully documented evidence of medical necessity from the provider.

(2) Upon the request of a pharmacy or a clinic with a special permit, when the pharmacy or clinic with a special permit has ordered the State-designated drug product from the principal labeler(s) or from all drug wholesalers serving the area of the pharmacy or clinic with a special permit, as determined by the Department, and is unable to obtain the drug product within 48 hours excluding Saturdays, Sundays and holidays.

(h) The Department may assess penalties against a contractor for failure to meet the terms and conditions set forth in the contract. These penalties may include but are not limited to:

(1) Termination of the contract;

(2) Forfeiture of the performance bond;

(3) Other fines and penalties as set forth in the contract.

(i) The Department shall conduct onsite survey reviews of pharmacy and clinic with special permit records to determine the accuracy of data reported to the Department concerning drugs dispensed that are subject to the Prudent Purchase of Drugs program. The Department shall determine from such records whether prescription data submitted to the Department supports the utilization figures used in the preparation of invoices submitted to contractors under the Prudent Purchase of Drugs program. When discrepancies are identified, the Department shall determine the extent to which prior invoices need to be adjusted in order to depict the amount due to the State by the contractors more accurately. Any adjustment calculated in compliance with this requirement shall be applied as an offset to the next scheduled invoices to the contractor(s).

(j) The Department may use a probability sample in auditing pharmacies or clinics with special permits to determine the potential amount of overcharges received by the Department from contractors under the Prudent Purchase of Drugs program. When a probability sample is used to determine the amount of overcharge for the universe from which the sample was drawn, an appropriate and commonly accepted statistical procedure, such as the ratio of means estimator, shall be used to calculate the audit findings. If a probability sample is used to determine the amount of potential overcharges, failure to execute the probability sampling according to accepted statistical procedures will invalidate expansion to the universe sampled.

(1) Whenever a probability sampling method is used to determine the amount of potential overcharge received by the Department, the invoice adjustments to contractors under the Prudent Purchase of Drug program shall be accompanied by a clear statement of:

(A) The specification of the universe that was sampled.

(B) The sample size and method of selecting the sample.

(C) The formulas and calculation procedures used to determine the overcharged amount(s).

(D) The confidence level used to evaluate the precision of the audit findings.

NOTE: Authority cited: Section 14124.5, Welfare and Institutions Code; and Section 208, Health and Safety Code. Reference: Sections 14105.3 and 14132, Welfare and Institutions Code; and Section 4063, Business and Professions Code.

HISTORY

1. New section filed 6-1-83 as an emergency; effective upon filing (Register 83, No. 24). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-29-83.
2. Amendment of subsection (b), renumbering and amendment of subsection (e) to subsection (f), renumbering of subsections (f) and (g) to subsections (g) and (h), and new subsections (e), (i) and (j) filed 9-29-83 as an emergency; designated effective 9-29-83 (Register 83, No. 44). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1-27-84.
3. Certificate of Compliance as to 6-1-83 order transmitted to OAL 9-29-83; corrected Certificate of Compliance (subsections (a), (c) and (d) only) transmitted to OAL 10-31-83 and filed 10-31-83 and refiled 11-1-83 with original Certificate of Compliance (Register 83, No. 44).
4. Order of Repeal of 6-1-83 emergency order (subsection (d) only) filed 10-31-83 by OAL pursuant to Government Code Section 11349.6 (Register 83, No. 44).
5. Reinstatement of section as it existed prior to emergency amendment filed 9-29-83 by operation of Government Code Section 11346.1(f) (Register 84, No. 13).
6. Amendment filed 6-29-84; effective thirtieth day thereafter (Register 84, No. 26).
7. Amendment of subsections (f), (f)(3), (g)(2), (i) and (j) and NOTE filed 1-6-94; operative 2-7-94 (Register 94, No. 1).

§ 51514. Chiropractic Services.

Reimbursement for chiropractic services shall be the usual charges made to the general public not to exceed the following maximum reimbursement rates:

Procedure Code		*Maximum Allowance*
98940	Manipulation of spine by chiropractor, one to two regions	$16.72
98941	Manipulation of spine by chiropractor, three to four regions	$16.72
98942	Manipulation of spine by chiropractor, five regions	$16.72
X1200	Home visits (where required and made between 11 p.m. and 8 a.m.) — add	10.53

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14105, Welfare and Institutions Code; Statutes of 1982, Chapter 1594, Section 77; Statutes of 1983, Chapter 323, Section 149; Statutes of 1984, Chapter 258, Items 4260-106-001 and 890; Statutes of 1984, Chapter 268, Section 66; Statutes of 1985, Chapter 111, Items 4260-106-001 and 890; and Statutes of 2000, Chapter 52, Items 4260-101-0001 and 0890.

HISTORY

1. Amendment of subsection (a) filed 7-30-82 as an emergency; designated effective 8-1-82 (Register 82, No. 33). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11-29-82. For prior history, see Register 81, No. 52.
2. Certificate of Compliance as to 7-30-82 order transmitted to OAL 11-26-82 and filed 12-27-82 (Register 82, No. 52).
3. Amendment of subsection (a) filed 8-1-84 as an emergency; effective upon filing (Register 84, No. 31). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11-29-84.
4. Certificate of Compliance transmitted to OAL 11-27-84 and filed 12-27-84 (Register 84, No. 52).
5. Amendment filed 8-1-85 as an emergency; effective upon filing (Register 85, No. 32). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11-29-85.

6. Certificate of Compliance transmitted to OAL 11–20–85 and filed 12–27–85 (Register 85, No. 52).
7. Amendment filed 9–25–92 as an emergency; operative 10–1–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL 1–25–93 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 9–25–92 order including amendment of section transmitted to OAL 1–22–93 and filed 3–9–93 (Register 93, No. 11).
9. Editorial correction of printing error in Procedure Code X1200 (Register 94, No. 24).
10. Amendment filed 7–21–98 as an emergency; operative 7–27–98 (Register 98, No. 30). A Certificate of Compliance must be transmitted to OAL by 11–24–98 or emergency language will be repealed by operation of law on the following day.
11. Editorial correction of HISTORY 10 (Register 99, No. 2).
12. Certificate of Compliance as to 7–21–98 order transmitted to OAL 11–23–98 and filed 1–7–99 (Register 99, No. 2).
13. Amendment filed 7–6–2000; operative 7–6–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 27).
14. Redesignation and amendment of section as subsection (a), new subsection (b) and amendment of NOTE filed 7–16–2002; operative rates for services provided on or after 8–1–2000 pursuant to Stats. 2000, c. 52, Items 4260–101–0001 and 0890 (Register 2002, No. 29).
15. Certificate of Compliance as to 7–16–2002 order, including repealer of subsection (a) designator and subsection (b), transmitted to OAL 11–12–2002 and filed 12–24–2002 (Register 2002, No. 52).

§ 51514.5. Acupuncture Services.

Reimbursement for acupuncture services shall be the usual charges made to the general public not to exceed the maximum reimbursement rates listed in this section.

Procedure Code		*Maximum Allowance*
Z4800	First Visit	$27.03
Z4802	Subsequent Visits	$16.22

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14105, Welfare and Institutions Code; Statutes of 1982, Chapter 1594, Section 77; Statutes of 1983, Chapter 323, Section 149; Statutes of 1984, Chapter 258, Items 4260–106–001 and 890; Statutes of 1984, Chapter 268, Section 66; and Statutes of 1985, Chapter 111, Items 4260–106–001 and 890.

HISTORY

1. Amendment filed 8–1–84 as an emergency; effective upon filing (Register 84, No. 31). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–29–84. For prior history, see Register 82, No. 52.
2. Certificate of Compliance transmitted to OAL 11–27–84 and filed 12–27–84 (Register 84, No. 52).
3. Amendment filed 8–1–85 as an emergency; effective upon filing (Register 85, No. 32). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–29–85.
4. Certificate of Compliance transmitted to OAL 11–20–85 and filed 12–27–85 (Register 85, No. 52).
5. Amendment of section and NOTE filed 9–25–92 as an emergency; operative 10–1–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL 1–25–93 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 9–25–92 order transmitted to OAL 1–22–93 and filed 3–9–93 (Register 93, No. 11).

§ 51515. Reimbursement for Prosthetic and Orthotic Appliances and Repairs.

NOTE: Authority cited: Sections 10725, 14021.3, 14021.5, 14043.75, 14105, 14105.2, 14105.21 and 14124.5, Welfare and Institutions Code; and Section 78, Chapter 146, Statutes of 1999. Reference: Sections 14103.7, 14105 and 14105.2, Welfare and Institutions Code; Statutes of 1984, Chapter 258, Items 4260–106–001 and 890; and Statutes of 1985, Chapter 111, Items 4260–106–001 and 890.

HISTORY

1. Amendment of subsections (c) and (e) filed 8–1–84 as an emergency; effective upon filing (Register 84, No. 31). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–29–84. For prior history, see Register 83, No. 15.
2. Certificate of Compliance including amendment of subsections (c) and (e) transmitted to OAL 11–27–84 and filed 12–27–84 (Register 84, No. 52).
3. Amendment of subsections (c) and (e) filed 8–1–85 as an emergency; effective upon filing (Register 85, No. 32). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–29–85.
4. Certificate of Compliance including amendment of subsection (c) transmitted to OAL 11–20–85 and filed 12–27–85 (Register 85, No. 52).
5. Amendment of subsections (b), (c)(1), (c)(3), (c)(6), (d)(6) and (e) filed 7–2–87; operative 8–1–87 (Register 87, No. 28).
6. Repealer and new section filed 9–25–92 as an emergency; operative 10–1–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL 1–25–93 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 9–25–92 order including amendment of subsections (c) and (e) transmitted to OAL 1–22–93 and filed 3–9–93 (Register 93, No. 11).
8. New subsection (c)(2) L1844 filed 9–29–93 as an emergency; operative 9–29–93 (Register 93, No. 40). A Certificate of Compliance must be transmitted to OAL 1–27–94 or emergency language will be repealed by operation of law on the following day.
9. Editorial correction amending HISTORY 8 (Register 93, No. 46).
10. Certificate of Compliance as to 9–29–93 order transmitted to OAL 10–29–93 and filed 11–8–93 (Register 93, No. 46).
11. Amendment of subsections (c) and (e) filed 11–28–94 as an emergency; operative 11–28–94 (Register 94, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–28–95 or emergency language will be repealed by operation of law on the following day.
12. Editorial correction of HISTORY 11 (Register 95, No. 18).
13. Certificate of Compliance as to 11–28–94 order transmitted to OAL 3–23–95 and filed 5–4–95; effective 5–4–95 except for L1685 which was disapproved and no longer in effect as of 5–4–95 (Register 95, No. 18).
14. Amendment of subsection (e)(2) adding L1685 filed 5–5–95 as an emergency; operative 5–5–95 (Register 95, No. 18). A Certificate of Compliance must be transmitted to OAL by 9–4–95 or emergency language will be repealed by operation of law on the following day.
15. Certificate of Compliance as to 5–5–95 order transmitted to OAL 5–31–95 and filed 6–30–95 (Register 95, No. 26).
16. Amendment of subsections (c)(2)–(4), (e)(1), and (e)(4)–(5) filed 8–2–95 as an emergency; operative 8–2–95 (Register 95, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–30–95 or emergency language will be repealed by operation of law on the following day.
17. Certificate of Compliance as to 8–2–95 order transmitted to OAL 11–22–95 and filed 1–3–96 (Register 96, No. 1).
18. Amendment of subsections (c)(1) [L0210, L0500, L0510 and L1000], (c)(2) [L1885, L1902, L2850 and L2860], (c)(4) [L3660, L3890 and L3985], (e)(1) [L5500–L5590, L5600, L5617, L5654, L5845–L5846, L5930, L5985] and (e)(6) [L8614–L8619] filed 7–29–96 as an emergency; operative 7–29–96 (Register 96, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–96 or emergency language will be repealed by operation of law on the following day.
19. Certificate of Compliance as to 7–29–96 order transmitted to OAL 11–7–96 and filed 12–23–96 (Register 96, No. 52).
20. Amendment filed 7–28–97 as an emergency; operative 7–28–97 (Register 97, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–25–97 or emergency language will be repealed by operation of law on the following day.
21. Certificate of Compliance as to 7–28–97 order transmitted to OAL 11–19–97 and filed 1–6–98 (Register 98, No. 2).
22. Amendment of subsection (d)(4), repealer of subsections (d)(5)–(d)(5)(B) and amendment of subsection (e)(3) filed 3–9–98; operative 4–8–98 (Register 98, No. 11).
23. Amendment of subsections (c)(1)–(4) and (e)(1)–(4) filed 7–21–98 as an emergency; operative 7–27–98 (Register 98, No. 30). A Certificate of Compliance must be transmitted to OAL by 11–24–98 or emergency language will be repealed by operation of law on the following day.
24. Editorial correction of HISTORY 23 (Register 99, No. 2).
25. Certificate of Compliance as to 7–21–98 order transmitted to OAL 11–23–98 and filed 1–7–99 (Register 99, No. 2).
26. Amendment of subsections (c)(2)–(4), (c)(6) and (e)(1)–(4) filed 8–27–99 as an emergency; operative 8–30–99 (Register 99, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–28–99 or emergency language will be repealed by operation of law on the following day.
27. Amendment of subsections (c)(2)–(4), (c)(6) and (e)(1)–(4) refiled 12–27–99 as an emergency; operative 12–28–99 (Register 99, No. 53). A Certificate of Compliance must be transmitted to OAL by 4–26–2000 or emergency language will be repealed by operation of law on the following day.
28. Amendment of subsections (c)(2)–(4), (c)(6) and (e)(1)–(4) refiled 4–24–2000 as an emergency; operative 4–26–2000 (Register 2000, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–2000 or emergency language will be repealed by operation of law on the following day.
29. Certificate of Compliance as to 4–24–2000 order transmitted to OAL 5–24–2000 and filed 7–6–2000 (Register 2000, No. 27).
30. Amendment of subsections (c)(4), (c)(6), (e)(1) and (e)(6) filed 10–31–2000 as an emergency; operative 10–31–2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 2–28–2001 or emergency language will be repealed by operation of law on the following day.
31. Certificate of Compliance as to 10–31–2000 order transmitted to OAL 2–22–2001 and filed 4–4–2001 (Register 2001, No. 14).
32. Amendment of subsections (c)(2), (c)(4), (c)(6) and (e)(1) filed 12–19–2001 as an emergency; operative 12–19–2001 (Register 2001, No. 51). A Certificate of Compliance must be transmitted to OAL by 4–18–2002 or emergency language will be repealed by operation of law on the following day.
33. Certificate of Compliance as to 12–19–2001 order transmitted to OAL 4–9–2002 and filed 4–30–2002 (Register 2002, No. 18).
34. Amendment of subsection (a)(1), new subsections (a)(1)(A)–(B), amendment of subsections (a)(2) and (b)(3)(A)–(B), new subsection (b)(4) and amendment of NOTE filed 2–27–2003 as an emergency; operative 3–1–2003 (Register 2003,

No. 9). Pursuant to statutes of 1999, chapter 146, section 78, a Certificate of Compliance must be transmitted to OAL by 8–28–2003 or emergency language will be repealed by operation of law on the following day.

35. Amendment of subsections (c)(1), (c)(2), (c)(4)–(6), (e)(1)–(4) and (e)(6) filed 4–4–2003 as an emergency; operative 4–4–2003 (Register 2003, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–4–2003 or emergency language will be repealed by operation of law on the following day.
36. Editorial correction of HISTORY 34 (Register 2003, No. 20).
37. Amendment of section heading and section filed 7–17–2003 as an emergency; operative 7–17–2003 (Register 2003, No. 29). A Certificate of Compliance must be transmitted to OAL by 1–13–2004 or emergency language will be repealed by operation of law on the following day.
38. Editorial correction of HISTORY 37 (Register 2003, No. 33).
39. Amendment of subsection (a)(1), new subsections (a)(1)(A)–(B), amendment of subsections (a)(2) and (b)(3)(A)–(B), new subsection (b)(4) and amendment of NOTE refiled 8–28–2003 as an emergency; operative 8–28–2003 (Register 2003, No. 35). Pursuant to statutes of 1999, chapter 146, section 78, a Certificate of Compliance must be transmitted to OAL by 2–24–2004 or emergency language will be repealed by operation of law on the following day.
40. Certificate of Compliance as to 4–4–2003 order transmitted to OAL 7–28–2003 and filed 9–4–2003 (Register 2003, No. 36).
41. Repealer of section and amendment of NOTE filed 1–14–2004. Submitted to OAL for printing only (Register 2004, No. 3).
42. Order of 8–28–2003 repealed by operation of law (Register 2004, No. 9).

§ 51516. Reimbursement for Short–Doyle/Medi–Cal Services.

(a) The federal Medicaid share of reimbursement for Short–Doyle Medi–Cal mental health services shall be based on the lowest of the following.

(1) The provider's usual and customary charge to the general public for the same or similar services, unless the provider is a nominal charge provider pursuant to Medicare rules at 42 CFR 413.13.

(2) The provider's reasonable and allowable cost of rendering the services, based on year–end cost reports and Medicare principles of reimbursement pursuant to 42 CFR Part 413 and as described in HCFA Publication 15–1, for providers not contracting on a negotiated rate basis.

(3) The negotiated rates as approved by the Department of Mental Health for Short–Doyle/Medi–Cal providers contracting on a negotiated rate basis pursuant to section 5705.2 of the Welfare and Institutions Code.

(4) The following maximum allowances are effective for fiscal year 1998–1999:

Service Function	*Maximum Allowance*
Hospital inpatient services, per day	$724.16
Psychiatric Health Facilities, per day	414.13
Adult crisis residential services, per day	233.53
Adult residential services, per day	113.89
Day treatment intensive, half day	110.51
Day treatment intensive, full day	155.22
Day rehabilitative services, half day	64.47
Day rehabilitative services, full day	100.63
Mental health services, per minute	1.99
Medication support services, per minute	3.70
Crisis intervention services, per minute	2.98
Crisis stabilization - emergency room, per hour	72.50
Crisis stabilization - urgent care, per hour	72.50
Case management, brokerage, per minute	1.55

(b) Negotiated rates, as defined in section 5705.2 of the Welfare and Institutions Code, shall be established by the standard service function categories and reimbursement principles delineated in (a)(4) above. Reimbursement based on negotiated rates shall be subject to retrospective cost settlement which shares equally with the federal government the portion of the federal reimbursement that exceeds actual costs in the aggregate by legal entity. In no case will payments exceed the established maximum allowances.

NOTE: Authority cited: Sections 10725, 14021.3, 14021.5, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 5705, 5718, 5720 and 5724, Welfare and Institutions Code; and Statutes of 1998, Chapter 324, Item 4260–101–0001.

HISTORY

1. Amendment filed 8–7–89; operative 8–7–89 as an emergency (Register 89, No. 32). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12–5–89. For prior history, see Register 89, No. 1.
2. Certificate of Compliance transmitted to OAL 12–1–89 and filed 1–2–90 (Register 90, No. 2).
3. Amendment filed 12–10–90 as an emergency; operative 12–10–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 4–9–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 12–10–90 order transmitted to OAL 4–8–91 and filed 5–8–91 (Register 91, No. 24).
5. Amendment filed 6–17–92 as an emergency; operative 6–17–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL 10–15–92 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 6–17–92 order including amendment of NOTE transmitted to OAL 10–7–92 and filed 11–17–92 (Register 92, No. 47).
7. Amendment of subsections (a)(4), (c)(3) and NOTE filed 10–5–93 as an emergency; operative 10–5–93 (Register 93, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–2–94 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 10–5–93 order transmitted to OAL 2–2–94 and filed 3–15–94 (Register 94, No. 11).
9. Amendment of section and NOTE filed 10–2–95 as an emergency; operative 10–2–95 (Register 95, No. 40). A Certificate of Compliance must be transmitted to OAL by 1–30–96 or emergency language will be repealed by operation of law on the following day.
10. Amendment of subsection (a)(4) and NOTE filed 11–3–95 as an emergency; operative 11–3–95 (Register 95, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–2–96 or emergency language will be repealed by operation of law on the following day.
11. Repealer of subsections (c)–(d) filed 12–14–95 as an emergency; operative 12–14–95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–12–96 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 10–2–95 order transmitted to OAL 1–26–96 and filed 3–7–96 (Register 96, No. 10).
13. Certificate of Compliance as to 11–3–95 order transmitted to OAL 2–22–96 and filed 3–19–96 (Register 96, No. 12).
14. Reinstatement of subsections as they existed prior to emergency amendment filed 12–14–95 by operation of Government Code section 11346.1 (Register 96, No. 16).
15. Repealer of subsections (c) and (d) filed 4–16–96 as an emergency; operative 4–16–96 (Register 96, No. 16). A Certificate of Compliance must be transmitted to OAL by 8–14–96 or emergency language will be repealed by operation of law on the following day.
16. Certificate of Compliance as to 4–16–96 order transmitted to OAL 8–13–96 and filed 9–25–96 (Register 96, No. 39).
17. Amendment of subsection (a)(4) and NOTE filed 2–3–97 as an emergency; operative 2–3–97 (Register 97, No. 6). A Certificate of Compliance must be transmitted to OAL by 6–3–97 or emergency language will be repealed by operation of law on the following day.
18. Certificate of Compliance as to 2–3–97 order transmitted to OAL 5–20–97 and filed 6–30–97 (Register 97, No. 27).
19. Amendment of subsection (a)(4) and NOTE filed 3–3–98 as an emergency; operative 3–3–98 (Register 98, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–1–98 or emergency language will be repealed by operation of law on the following day.
20. Certificate of Compliance as to 3–3–98 order transmitted to OAL 6–1–98 and filed 7–10–98 (Register 98, No. 28).
21. Amendment of subsection (a)(4) and amendment of NOTE filed 8–27–99 as an emergency; operative 8–27–99 (Register 99, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–27–99 or emergency language will be repealed by operation of law on the following day.
22. Certificate of Compliance as to 8–27–99 order transmitted to OAL 11–22–99 and filed 12–22–99 (Register 99, No. 52).

§ 51516.1. Reimbursement Rates for Drug Medi–Cal Substance Abuse Program Services.

(a) Reimbursement for Naltrexone treatment, outpatient drug free treatment, day care habilitative, and perinatal residential treatment services shall be based on the lowest of the following:

(1) The provider's usual and customary charge to the general public for the same or similar services;

(2) The provider's allowable cost of rendering the services, as defined in Section 11987.5 of the Health and Safety Code; or

(3) The statewide maximum allowances (SMAs) for Fiscal Year 2002–2003 which ADP shall establish in accordance with Section 14021.6 of the Welfare and Institutions Code. The SMAs for the following Drug Medi–Cal substance abuse program services for Fiscal Year 2002–2003 are:

Service Function	*Maximum Allowance Non–Perinatal Unit of Service*	*Maximum Allowance Perinatal Unit of Service*
Naltrexone services, per face–to–face visit	$21.19	N/A
Outpatient drug free treatment services, face–to–face individual counseling session, per person	$63.90	$106.08
Outpatient drug free treatment services, face–to–face group counseling session, per person	$30.60	$46.97
Day care habilitative, per face–to–face visit	$67.93	$75.99
Perinatal residential treatment services, per day	N/A	$76.18

(A) The SMA for counseling sessions for outpatient drug free services shall be prorated annually as follows:

1. The SMA for an individual counseling session shall be prorated annually using the percentage computed by dividing the total actual time for all counseling sessions by the total time which would have been spent if all counseling sessions were 50 minutes in duration. This percentage (not to exceed 100 percent) shall be applied to the SMA to determine the maximum reimbursement rate.

Example: Total Session Time/(50 minutes x Number of Sessions) x SMA = Prorated SMA.

2. The SMA for a group counseling session shall be prorated annually using the percentage computed by dividing the total actual time for all counseling sessions by the total time which would have been spent if all counseling sessions were 90 minutes in duration. This percentage (not to exceed 100 percent) shall be applied to the SMA per person to determine the maximum reimbursement rate.

Example: Total Session Time/(90 minutes x Number of Sessions) x SMA = Prorated SMA.

3. To qualify as a group counseling session there shall be at least one Medi–Cal beneficiary in a group of no less than four and no more than ten individuals.

(b) Reimbursement for narcotic treatment program services shall be limited to the lower of the following:

(1) A uniform statewide monthly reimbursement (USMR) rate; or

(2) The provider's usual and customary charge to the general public for the same or similar service.

(c) The USMR rate for narcotic treatment program services shall be based on the following:

(1) A per capita rate for each beneficiary receiving narcotic replacement therapy dosing, core, and lab work services:

(A) The narcotic replacement therapy dosing fee for methadone or LAAM shall include ingredient costs for an average daily dose of methadone or an average dose of LAAM dispensed to Medi–Cal beneficiaries;

(B) Where available, core and lab work services shall be based on and not exceed, for individual services or in the aggregate, outpatient rates for the same or similar service under the Medi–Cal fee–for–service program.

(d) The USMR rate for narcotic treatment program services shall be prorated to a daily rate per beneficiary if the beneficiary receives less than a full month of services. The daily rate shall be based on:

(1) The annual rate per beneficiary; and

(2) A 365–day year.

(e) Reimbursement for narcotic treatment program services shall not be provided for services not rendered to or received by a beneficiary.

(f) For narcotic treatment program services, the USMR rate shall consist of the following service components:

(1) Core; laboratory work; and dosing which are described below:

(A) Core consists of a physical exam, a test/analysis for drug determination, intake assessment, initial treatment plan, and physician supervision.

(B) Laboratory work consists of a tuberculin skin test, a serological test for syphilis, drug screening (urinalysis), and pregnancy tests for female LAAM beneficiaries.

(C) Dosing consists of an ingredient and dosing fee.

(2) Counseling services.

(g) For narcotic treatment program services, the USMR rate for each service component shall be as follows:

Rates for USMR Components by Types of Medication with Administrative Costs in Parentheses

Narcotic Treatment Service Components	*Methadone Non–Perinatal*		*Methadone Perinatal*		*LAAM Non–Perinatal*	
	Daily	*Monthly*	*Daily*	*Monthly*	*Dose*	*Monthly*
Core, Laboratory Work, and Dosing	$9.39 $.86	$285.61	$10.75 ($.98)	$326.98	$22.33 ($2.04)	$290.29
Narcotic Treatment Counseling	*Narcotic Treatment Counseling is delivered in 10 minute increments*					
Individual		$12.78 ($1.17)		$21.22 ($1.94)		$12.78 ($1.17)
Group		$3.40 ($.31)		$5.22 ($.48)		$3.40 ($.31)

The USMR rates include administrative costs for the county or ADP when ADP assumes the role of the county as described in Section 51341.1(f). Provider reimbursement shall be adjusted to reimburse the county or ADP for administrative costs.

(h) For narcotic treatment program services, counseling sessions shall meet the requirements specified in Section 10345, Title 9, CCR, and

(1) A minimum of fifty (50) minutes of counseling per calendar month shall be provided to each beneficiary. Counseling shall be individual and/or group counseling which meets the requirements of Section 51341.1(b)(8) and/or (b)(9). Any waiver of the fifty (50) minute minimum for counseling shall be in accordance with Section 10345, Title 9, CCR.

(2) ADP shall reimburse a provider for up to a maximum of 200 minutes of counseling per calendar month, per beneficiary. Counseling shall be individual and/or group counseling which meets the requirements of Section 51341.1(b)(8) and (b)(9).

(3) A provider shall claim reimbursement for counseling in 10–minute increments.

NOTE: Authority cited: Sections 10725, 14021.3, 14021.5, 14021.6, 14105 and 14124.5, Welfare and Institutions Code; and Section 11758.41, Health and Safety Code. Reference: Sections 5705, 5715, 14021.5, 14021.6 and 14132.90, Welfare and Institutions Code; and Sections 11758.42 and 11758.46, Health and Safety Code.

HISTORY

1. New section filed 12–14–95 as an emergency; operative 12–14–95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–12–96 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1 (Register 96, No. 16).

3. New section filed 4–16–96 as an emergency; operative 4–16–96 (Register 96, No. 16). A Certificate of Compliance must be transmitted to OAL by 8–14–96 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–16–96 order transmitted to OAL 8–13–96 and filed 9–25–96 (Register 96, No. 39).
5. Amendment of section and NOTE filed 5–12–97 as an emergency; operative 5–12–97 (Register 97, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–9–97 or emergency language will be repealed by operation of law on the following day.
6. Amendment of section heading, section and NOTE, new forms ADP–6065, ADP–7700 and ADP–1584 filed 6–30–97 as an emergency; operative 7–1–97 (Register 97, No. 27). A Certificate of Compliance must be transmitted to OAL by 10–29–97 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 5–12–97 order transmitted to OAL 8–13–97 and filed 9–23–97 (Register 97, No. 39).
8. Amendment of section heading, section and NOTE, and new forms ADP–6065, ADP–7700 and ADP–1584 refiled 10–6–97 as an emergency; operative 10–29–97 (Register 97, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–26–98 or emergency language will be repealed by operation of law on the following day.
9. Amendment of section heading, section and NOTE and new forms ADP–6065, ADP–7700 and ADP1584 refiled 1–14–98 as an emergency; operative 2–26–98 (Register 98, No. 3). A Certificate of Compliance must be transmitted to OAL by 6–26–98 or emergency language will be repealed by operation of law on the following day.
10. Amendment of subsections (a)(3), (c)(1)(A), (f) and (f)(1), new subsections (f)(1)(A)–(C), repealer of subsections (f)(2)–(3), subsection renumbering, amendment of newly designated subsection (f)(2) and subsection (g), and amendment of NOTE filed 6–29–98 as an emergency; operative 7–1–98 (Register 98, No. 27). A Certificate of Compliance must be transmitted to OAL by 10–29–98 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1–14–98 order, including further amendment of section heading and subsections (c)(1)–(c)(1)(B), transmitted to OAL 6–11–98 and filed 6–29–98 (Register 98, No. 27).
12. Amendment of section and NOTE refiled 10–20–98 as an emergency; operative 10–30–98 (Register 98, No. 43). A Certificate of Compliance must be transmitted to OAL by 3–1–99 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 10–20–98 order, including amendment of chart in subsection (g), transmitted to OAL 2–1–99 and filed 3–15–99 (Register 99, No. 12).
14. Amendment of subsections (a)(3)–(a)(3)(A), redesignation of subsections (a)(3)(A)(i)–(iii) as (a)(3)(A)1.–3., amendment of newly designated subsections (a)(3)(A)1.–2., and amendment of subsection (g) and NOTE filed 8–20–99 as an emergency; operative 8–20–99 (Register 99, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–20–99 or emergency language will be repealed by operation of law on the following day. Pursuant to Welfare and Institutions Code section 14021.5(e), reimbursement rates for FY 1999–2000 Drug Medi–Cal Substance Abuse Program Services are retroactive to 7–1–99.
15. Certificate of Compliance as to 8–20–99 order transmitted to OAL 12–1–99 and filed 1–12–2000 (Register 2000, No. 2).
16. Change without regulatory effect relocating forms ADP 7700 and ADP 1584 from section 51516.1 to section 51490.1 filed 4–4–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 14).
17. Amendment of subsections (a), (a)(3) and (g) filed 3–21–2001 as an emergency; operative 3–21–2001 (Register 2001, No. 12). A Certificate of Compliance must be transmitted to OAL by 7–19–2001 or emergency language will be repealed by operation of law on the following day.
18. Certificate of Compliance as to 3–21–2001 order transmitted to OAL 7–12–2001 and filed 8–15–2001 (Register 2001, No. 33).
19. Amendment of subsections (a)(3) and (g) filed 1–21–2003 as an emergency; operative 1–21–2003 (Register 2003, No. 4). A Certificate of Compliance must be transmitted to OAL by 5–21–2003 or emergency language will be repealed by operation of law on the following day.
20. Certificate of Compliance as to 1–21–2003 order transmitted to OAL 5–15–2003 and filed 6–17–2003 (Register 2003, No. 25).
21. Amendment of subsections (a)(3) and (g) filed 4–22–2004 as an emergency; operative 4–22–2004 (Register 2004, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–20–2004 or emergency language will be repealed by operation of law on the following day.
22. Certificate of Compliance as to 4–22–2004 order transmitted to OAL 8–19–2004 and filed 9–29–2004 (Register 2004, No. 40).

STATE OF CALIFORNIA – HEALTH AND WELFARE AGENCY DEPARTMENT OF ALCOHOL AND DRUG PROGRAMS

GOOD CAUSE CERTIFICATION

COUNTY USE ONLY

_____ County requests a waiver of the two month Drug/Medi-Cal billing limitations for the late claim entries on the attached:

[ ] ADP 1584 forms [ ] Error Correction Reports for the run date of _____

Enter the seven digit claim I.D. # (the number preceded by the letter 'D' for manual claims or 'A' for tape submissions) and the line # of the claim to be affixed with a good cause code in the spaces below

CLAIM I.D. No.	LINE No.	CLAIM FOR MO/YR	CLAIM I.D. No.	LINE No.	CLAIM FOR MO/YR

The boxes checked below (with corresponding alphabetical letter written in the GOOD CAUSE COLUMN of ADP 1584) are the applicable good cause reason(s) as specified in Title 22, Section 51008, for each late claim.

[ ] A. Patient or legal representative's failure to present Medi-Cal identification
[ ] B. Billing involving other coverage, including/not limited to Medi-Care, Kaiser, Ross-Loos, or Champus
[ ] C. Circumstances beyond the control of the county/provider regarding delay or error in the certification of Medi-Cal eligibility of the beneficiary by the state or county
[ ] E. Special circumstances that cause a billing delay such as a court decision or fair hearing decision
[ ] F. Initiation of legal proceedings to obtain payment of a liable third party pursuant to Section 14115 of the Welfare and Institution Code

Signature of County Representative	Phone Number	Date
	( )	

STATE USE ONLY

[ ] D. Circumstances beyond the control of the county/provider regarding delays caused by natural disaster and willful acts by an employee, delays in provider certification, or other circumstances that have been reported to the appropriate law enforcement or fire agency when applicable

I HAVE CHECKED BOX "D" ABOVE AND HEREBY APPROVE THE ATTACHED COUNTY/PROVIDER'S SUBSTANTIATING DOCUMENTATION FOR GOOD CAUSE REASON D

Signature – Fiscal Unit	Date

ADP 6065 (Rev. 6/91)

§ 51517. Hearing Aids.

(a) Reimbursement for hearing aids, accessories, and related services shall be the usual charges made to the general public not to exceed the maximum reimbursement rates listed in this section.

(b) The following conditions shall apply to the reimbursement of hearing aid services and equipment under this section.

(1) All hearing aids shall be guaranteed for at least one year exclusive of ear piece, cord and batteries. The guarantee shall cover the repair or replacement of any or all defective parts and labor on a new aid. Out of guarantee repairs shall have a minimum guarantee for at least six months. A separate charge may be payable for handling and postage during the guarantee period.

(2) Hearing aid maximum allowances listed in this section are for new instruments and include up to six post–sale visits for training, adjustments and fitting, an initial standard package of batteries, a cord, receiver, and such other components normally required for use of the instrument.

(3) Dealer charges on repairs, subsequent to the guarantee period, may be reimbursed. Repair facility reports shall be available for review upon request.

(4) Retail sales tax is payable in addition to the allowances listed in (c). Tax shall be itemized separately using the appropriate code.

(5) Hearing aid provider billings shall include the provider's usual and customary charges for services provided.

(6) Items V5170, V5180, V5190, V5210, V5220, and V5230, when included with the purchase of a hearing aid, shall be paid at manufacturer's wholesale cost and shall be billed separately. Items V5170, V5180, V5190, V5210, V5220, and V5230, when not included with the purchase of a hearing aid, shall be paid using the same payment formula applied to Item V5267.

(c) The maximum reimbursement rates for hearing aids, accessories, and related services shall be as follows:

Procedure Code		*Maximum Allowance*
Z3604	Postage and handling for repairs during the guarantee period	2.27
V5014	Repairs, subsequent to the guarantee period	The lesser of: (1) The invoice cost to the dealer plus a 100% markup. (2) $37.81 plus invoice cost. (3) The factory retail price for the repair service. (4) The billed amount.
Z3606	Hearing aid rental, any type per day	1.53
	All Monaural hearing aids (see codes V5030–V5080 below)	The lesser of: (1) $883.80. (2) The one–unit wholesale cost plus $256.37. (3) The billed amount.
V5030	Hearing aid, monaural, body worn, air conduction	
V5040	Hearing aid, monaural, body worn, bone conduction	
V5050	Hearing aid, monaural, in the ear	
V5060	Hearing aid, monaural, behind the ear	
V5070	Glasses, air conduction	
V5080	Glasses, bone conduction	
	All Binaural hearing aids (see codes V5120–V5150 below)	The lesser of: (1) $1,480.32. (2) The one–unit wholesale cost plus $326.08. (3) The billed amount.
V5120	Binaural, body	
V5130	Binaural, in the ear	
V5140	Binaural, behind the ear	
V5150	Binaural, glasses	
	CROS/BICROS (see codes V5170–V5190 and V5210–V5230 below)	See Section 51517(b)(6)
V5170	Hearing aid, CROS, in the ear	
V5180	Hearing aid, CROS, behind the ear	
V5190	Hearing aid, CROS, glasses	
V5210	Hearing aid, BICROS, in the ear	
V5220	Hearing aid, BICROS, behind the ear	
V5230	Hearing aid, BICROS, glasses	
V5264	Ear mold/insert, not disposable, any type	$27.52
V5265	Ear mold/insert, disposable, any type	By Report
V5267	Hearing aid supplies/accessories	The lesser of: (1) Retail price. (2) Dealer wholesale cost plus 60%. (3) The billed amount.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14105, Welfare and Institutions Code; Statutes of 1982, Chapter 1594, Section 77; Statutes of 1983, Chapter 323, Section 149; Statutes of 1984, Chapter 258, Items 4260–106–001 and 890; Statutes of 1984, Chapter 268, Section 66; Statutes of 1985, Chapter 111, Items 4260–106–001 and 890; and Statutes of 2000, Chapter 52, Items 4260–101–0001 and 0890.

HISTORY

1. Certificate of Compliance as to 9–1–82 order transmitted to OAL 12–28–82 and filed 1–21–83 (Register 83, No. 4). For prior history, see Register 82, No. 52.
2. Amendment of subsections (b)(2), (c) and repealer of subsection (d) filed 6–20–83 as an emergency; effective upon filing (Register 83, No. 26). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–18–83.
3. Certificate of Compliance as to 6–20–83 order transmitted to OAL 10–6–83 and filed 11–4–83 (Register 83, No. 45).
4. Editorial correction of NOTE filed 11–4–83 (Register 83, No. 45).
5. Amendment of subsection (c) filed 8–1–84 as an emergency; effective upon filing (Register 84, No. 31). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–29–84.
6. Editorial correction of subsection (b)(2) filed 8–30–84 (Register 84, No. 35).
7. Certificate of Compliance as to 8–1–84 order including amendment of subsection (c) transmitted to OAL 11–27–84 and filed 12–27–84 (Register 84, No. 52).
8. Amendment of subsection (c) filed 8–1–85 as an emergency; effective upon filing (Register 85, No. 32). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–29–85.
9. Certificate of Compliance transmitted to OAL 11–20–85 and filed 12–27–85 (Register 85, No. 52).
10. Repealer and new section filed 9–25–92 as an emergency; operative 10–1–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL 1–25–93 or emergency language will be repealed by operation of law on the following day.
11. Editorial correction of printing error (Register 93, No. 11).
12. Certificate of Compliance as to 9–25–92 order transmitted to OAL 1–22–93 and filed 3–9–93 (Register 93, No. 11).
13. Amendment of subsection (c), new subsection (d) and amendment of NOTE filed 7–16–2002; operative rates for services provided on or after 8–1–2000 pursuant to Stats. 2000, c. 52, Items 4260–101–0001 and 0890 (Register 2002, No. 29).
14. Certificate of Compliance as to 7–16–2002 order, including repealer of subsection (d), transmitted to OAL 11–12–2002 and filed 12–24–2002 (Register 2002, No. 52).
15. Amendment of subsections (b)(6) and (c) filed 4–4–2003 as an emergency; operative 4–4–2003 (Register 2003, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–4–2003 or emergency language will be repealed by operation of law on the following day.
16. Certificate of Compliance as to 4–4–2003 order transmitted to OAL 7–28–2003 and filed 9–4–2003 (Register 2003, No. 36).

§ 51518. Optometry Services.

(a) General Provisions.

(1) The reimbursement for optometric services shall be in accordance with the maximum reimbursement rates listed below; however, billing shall not exceed charges made to the general public.

(2) Additional routine tests that may be needed shall be considered a part of the basic examination. Extensive treatment programs or difficult tests not included in the list below may be billed as unlisted items.

(3) Maximum allowances include preparation of necessary forms when an eye appliance is prescribed.

(4) Procedure Codes 92004, 92012 and 92014 are from the "Physicians' Current Procedural Terminology" Fourth Edition, 1990, (CPT–4), which is hereby incorporated by reference. Providers shall use all related guidelines and criteria listed in the 1990 CPT–4, as adopted by the Department, to bill for these CPT–4 procedure codes.

(b) Maximum reimbursement allowances for optometry services shall be as follows:

(1) Diagnostic and Ancillary Procedures.

Procedure Code		*Maximum Rate*
92002	Optometric service; medical examination and evaluation with initiation of diagnostic and treatment program, intermediate, new patient	$32.80
92004	Optometric service; comprehensive, new patient, one or more visits. (To include case history, visual acuity testing, opthalmoscopy, ocular motility testing, testing for neurological integrity, refraction at far and near points, phorometric tests, confrontation fields and tonometry)	47.45
92012	Optometric service, medical examination and evaluation, with initiation or continuation of diagnostic and treatment program; intermediate, established patient (seen within six months of the comprehensive examination)	22.59
92014	Optometric service; comprehensive, established patient, one or more visits. (To include case history, visual acuity testing, ophthalmoscopy, ocular motility testing, testing for neurological integrity, refraction at far and near points, phorometric tests, confrontation fields and tonometry)	47.45
92020	Gonioscopy (separate procedure)	16.40
92081	Visual field examination, unilateral or bilateral, with interpretation and report; limited examination (eg, tangent screen, Autoplot, arc perimeter, or single stimulus level automated test, such as Octopus 3 or 7 or equivalent)	16.40
92082	Visual field examination, unilateral or bilateral, with interpretation and report; intermediate examination (eg, at least 2 isopters on Goldman perimeter, or semiquantitative, automated suprathreshold screening program, Humphrey suprathreshold automatic diagnostic test, Octopus program 33)	22.14
92083	Visual field examination, unilateral or bilateral, with interpretation and report; extended examination, (eg, Goldmann visual fields with at least 3 isopters plotted and static determination within the central 30°, or quantitative, automated threshold perimetry, Octopus program G–1, 32 or 42, Humphrey visual field analyzer full threshold programs 30–2, 24–2, or 30/60–2)	22.14
92100	Serial tonometry (separate procedure) with multiple measurements of intraocular pressure over an extended time period with interpretation and report, same day (eg, diurnal curve or medical treatment of acute elevation of intraocular pressure)	28.93
92225	Ophthalmoscopy, extended, with retinal drawing (eg, for retinal detachment, melanoma), with interpretation and report, initial	41.00
92250	Fundus photography with interpretation and report	42.13
99201	Office or other outpatient visit for the evaluation and management of a new patient, which requires these three key components: a problem focused history; a problem focused examination; and straightforward medical decision making	11.41
99202	Office or other outpatient visit for the evaluation and management of a new patient, which requires these three key components: an expanded problem focused history; an expanded problem focused examination; and straightforward medical decision making	34.30
99203	Office or other outpatient visit for the evaluation and management of a new patient, which requires these three key components: a detailed history; a detailed examination; and medical decision making of low complexity	57.20
99204	Office or other outpatient visit for the evaluation and management of a new patient, which requires these three key components: a comprehensive history; a comprehensive examination; and medical decision making of moderate complexity	68.90
99205	Office or other outpatient visit for the evaluation and management of a new patient, which requires these three key components: a comprehensive history; a comprehensive examination; and medical decision making of high complexity	82.70
99211	Office or other outpatient visit for the evaluation and management of an established patient, that may not require the presence of a physician	12.00
99212	Office or other outpatient visit for the evaluation and management of an established patient, which requires at least two of these three key components: a problem focused history; a problem focused examination; and straightforward medical decision making	11.41
99213	Office or other outpatient visit for the evaluation and management of an established patient, which requires at least two of these three key components: an expanded problem focused history; an expanded problem focused examination; medical decision making of low complexity	24.00
99214	Office or other outpatient visit for the evaluation and management of an established patient, which requires at least two of these three key components: a detailed history; a detailed examination; medical decision making of moderate complexity	37.50
99215	Office or other outpatient visit for the evaluation and management of an established patient, which requires at least two of these three key components: a comprehensive history; a comprehensive examination; medical decision making of high complexity	57.20
99241	Office consultation for a new or established patient, which requires these three key components: a problem focused history; a problem focused examination; and straightforward medical decision making	30.60
99242	Office consultation for a new or established patient, which requires these three key components: an expanded problem focused history; an expanded problem focused examination; and straightforward medical decision making	47.20
99243	Office consultation for a new or established patient, which requires these three key components: detailed history; a detailed examination; and medical decision making of low complexity	59.50

(2) Supplemental Procedures

65205	Removal of foreign body, external eye; conjunctival superficial	$ 6.74
65210	Removal of foreign body, external eye; conjunctival embeddeed (includes concretions), subconjunctival, or scleral nonperforating	117.27
65220	Removal of foreign body, external eye; corneal, without slit lamp	13.48
65222	Removal of foreign body, external eye; corneal, with slit lamp	20.21
67820	Correction of trichiasis; epilation, by forceps only	13.48
67938	Removal of embedded foreign body, eyelid	273.27
68761	Closure of the lacrimal punctum; by plug, each	125.47
68801	Dilation of lacrimal punctum, with or without irrigation	136.63
Z2700	Low vision patient. To include professional evaluation, fitting and subsequent supervision, including six months' follow–up care	75.11
Z2704	Detailed biomicroscopy/slit lamp evaluation	9.88
Z2706	Contact lens examination (in addition to basic examination) to include multiple ophthalmometry, measurement of tear flow, measurement of ocular adnexa, initial tolerance evaluation, and other tests as necessary	33.05
Z2708	Out–of–office call (add to procedure allowance)	7.50
Z2710	Mileage—per mile one way beyond a ten–mile radius from point of origin	1.36
Z2712	Diagnostic closure of the lacrimal punctum; by absorbable plug, 1 or more closures; includes office visits	48.84
92499	Unlisted procedure	By Report

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14105, Welfare and Institutions Code; Statutes of 1999, Chapter 50, Items 4260-101-0001 and 0890; and Sections 11024, 11026, 11150 and 11210, Health and Safety Code.

HISTORY

1. Amendment of subsection (b) filed 8-1-84 as an emergency; effective upon filing (Register 84, No. 31). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11-29-84. For prior history, see Register 81, No. 52.
2. Certificate of Compliance transmitted to OAL 11-27-84 and filed 12-27-84 (Register 84, No. 52).
3. Amendment of subsection (b) filed 8-1-85 as an emergency; effective upon filing (Register 85, No. 32). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed upon 11-29-85.

[The next page is 513.]

4. Certificate of Compliance transmitted to OAL 11–20–85 and filed 12–27–85 (Register 85, No. 52).

5. Amendment of subsection (b)(2) filed 10–20–86; effective thirtieth day thereafter. Statutes of 1984, Chapter 258, Items 4260–106–001 and 890, and Statutes of 1985, Chapter III, Items 4260–106–001 and 890 (Register 86, No. 43).

6. Repealer and new section filed 9–25–92 as an emergency; operative 10–1–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL 1–25–93 or emergency language will be repealed by operation of law on the following day.

7. Certificate of Compliance as to 9–25–92 order transmitted to OAL 1–22–93 and filed 3–9–93 (Register 93, No. 11).

8. Amendment of subsections (b)(1) and (b)(2) filed 7–21–98; operative 7–27–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 30).

9. Amendment of subsection (a)(4) filed 7–21–98 as an emergency; operative 7–27–98 (Register 98, No. 30). A Certificate of Compliance must be transmitted to OAL by 11–24–98 or emergency language will be repealed by operation of law on the following day.

10. Editorial correction of HISTORY 9 (Register 99, No. 2).

11. Certificate of Compliance as to 7–21–98 order transmitted to OAL 11–23–98 and filed 1–7–99 (Register 99, No. 2).

12. Amendment of subsection (b)(1) and amendment of NOTE filed 11–13–2000 as an emergency; operative 11–13–2000 (Register 2000, No. 46). A Certificate of Compliance must be transmitted to OAL by 3–13–2001 or emergency language will be repealed by operation of law on the following day.

13. Certificate of Compliance as to 11–13–2000 order transmitted to OAL 3–13–2001 and filed 4–4–2001 (Register 2001, No. 14).

14. Amendment of subsections (b)(1)–(2) and amendment of NOTE filed 12–19–2001 as an emergency; operative 12–19–2001 (Register 2001, No. 51). A Certificate of Compliance must be transmitted to OAL by 4–18–2002 or emergency language will be repealed by operation of law on the following day.

15. Certificate of Compliance as to 12–19–2001 order transmitted to OAL 4–9–2002 and filed 4–30–2002 (Register 2002, No. 18).

§ 51519. Eye Appliances.

(a) General Provisions.

(1) The reimbursement for eye appliances shall be in accordance with maximum reimbursement rates listed below; however, billing shall not exceed charges made to the general public.

(2) The listed allowances include impact resistance and testing, oversize lenses, special beveling, drilling, mounting, fitting and adjusting, loaners for postcataract cases, sales taxes paid by the provider, and follow–up services for a period of six months after date of service.

(3) "Diopters" refers to the power of the strongest meridian of the major portion of the lens, the maximum cylindrical power, or the power of the segment addition, as appropriate.

(4) When a Medi–Cal beneficiary resides in a geographic area where a fabricating optical laboratory has entered into an exclusive area negotiated contract with the Department, the lens dispensing fees listed in Section 51519.1(b) shall be used instead of HCPCS codes V2100 through V2430, and V2700 through V2755 listed in (b) below. When a fabricating optical laboratory, which has entered into an exclusive area negotiated contract with the Department, also supplies the frames, the frame dispensing fee listed in Section 51519.1(b) shall be used instead of HCPCS codes V2020 and Z2910 through Z2916 listed in (b) below.

(b) Maximum reimbursement rates for eye appliances shall be as follows:

Procedure Code		*Section Maximum Allowance per Lens*
	(1) Spectacle Lenses	
	SINGLE VISION GLASS OR PLASTIC	
V2100	Sphere, single vision, plano to plus or minus 4.00, per lens	$18.30
V2101	Sphere, single vision, plus or minus 4.12 to plus or minus 7.00D, per lens	21.69
V2102	Sphere, single vision, plus or minus 7.12 to plus or minus 20.00D, per lens	25.75
V2103	Spherocylinder, single vision, plano to plus or minus 4.00D sphere, .12 to 2.00D cylinder, per lens	18.48
V2104	Spherocylinder, single vision, plano to plus or minus 4.00D sphere 2.12 to 4.00D cylinder, per lens	18.62
V2105	Spherocylinder, single vision, plano to plus or minus 4.00D sphere, 4.25 to 6.00D cylinder, per lens	29.39
V2106	Spherocylinder, single vision, plano to plus or minus 4.00D sphere, over 6.00D cylinder, per lens	31.14
V2107	Spherocylinder, single vision, plus or minus 4.25 to plus or minus 7.00D sphere, .12 to 2.00D cylinder, per lens	21.89
V2108	Spherocylinder, single vision, plus or minus 4.25 to plus or minus 7.00D sphere, 2.12 up to 4.00D cylinder, per lens	22.18
V2109	Spherocylinder, single vision, plus or minus 4.25 to plus or minus 7.00D sphere, 4.25 to 6.00D cylinder, per lens	33.01
V2110	Spherocylinder, single vision, plus or minus 4.25 to plus or minus 7.00D sphere, over 6.00D cylinder, per lens	37.34
V2111	Spherocylinder, single vision, plus or minus 7.25 to plus or minus 12.00D sphere, .25 to 2.25D cylinder, per lens	25.74
V2112	Spherocylinder, single vision, plus or minus 7.25 to plus or minus 12.00D sphere, 2.25D to 4.00D cylinder, per lens	25.74
V2113	Spherocylinder, single vision, plus or minus 7.25 to plus or minus 12.00D sphere, 4.25 to 6.00D cylinder, per lens	37.40
V2114	Spherocylinder, single vision, sphere over plus or minus 12.00D, per lens	29.90
V2115	Lenticular (myodisc), per lens, single vision	77.05
V2116	Lenticular lens, nonaspheric, per lens, single vision	51.17
V2117	Lenticular, aspheric, per lens, single vision	57.00
V2410	Variable asphericity lens, single vision, full field, glass or plastic, per lens	57.05
	BIFOCAL GLASS OR PLASTIC	
V2200	Sphere, bifocal, plano to plus or minus 4.00D, per lens	$29.39
V2201	Sphere, bifocal, plus or minus 4.12 to plus or minus 7.00D, per lens	36.38
V2202	Sphere, bifocal, plus or minus 7.12 to plus or minus 20.00D, per lens	42.60
V2203	Spherocylinder, bifocal, plano to plus or minus 4.00D sphere, .12 to 2.00D cylinder, per lens	29.76
V2204	Spherocylinder, bifocal, plano to plus or minus 4.00D sphere, 2.12 to 4.00D cylinder, per lens	29.77
V2205	Spherocylinder, bifocal, plano to plus or minus 4.00D sphere, 4.25 to 6.00D cylinder, per lens	43.91
V2206	Spherocylinder, bifocal, plano to plus or minus 4.00D sphere, over 6.00D cylinder, per lens	44.17
V2207	Spherocylinder, bifocal, plus or minus 4.25 to plus or minus 7.00 sphere, .12 to 2.00D cylinder, per lens	36.41
V2208	Spherocylinder, bifocal, plus or minus 4.25 to plus or minus 7.00D sphere, 2.12 to 4.00D cylinder, per lens	38.48
V2209	Spherocylinder, bifocal, plus or minus 4.25 to plus or minus 7.00D sphere, 4.25 to 6.00D cylinder, per lens	49.81
V2210	Spherocylinder, bifocal, plus or minus 4.25 to plus or minus 7.00D sphere, over 6.00D cylinder, per lens	51.64
V2211	Spherocylinder, bifocal, plus or minus 7.25 to plus or minus 12.00D sphere, .25 to 2.25D cylinder, per lens	42.31
V2212	Spherocylinder, bifocal, plus or minus 7.25 to plus or minus 12.00D sphere, 2.25 to 4.00D cylinder, per lens	42.60
V2213	Spherocylinder, bifocal, plus or minus 7.25 to plus or minus 12.00D sphere, 4.25 to 6.00D cylinder, per lens	52.37
V2214	Spherocylinder, bifocal, sphere over plus or minus 12.00D, per lens	44.87
V2215	Lenticular, (myodisc), per lens, bifocal	95.89
V2216	Lenticular, nonaspheric, per lens, bifocal	87.40
V2217	Lenticular, aspheric lens, bifocal	97.71
V2220	Bifocal add over 3.25D	14.31

Procedure Code		Section Maximum Allowance per Lens
V2430	Variable asphericity lens, bifocal, full field, glass or plastic, per lens	97.71
	TRIFOCAL GLASS OR PLASTIC	
V2300	Sphere, trifocal, plano to plus or minus 4.00D, per lens	$ 42.35
V2301	Sphere, trifocal, plus or minus 4.12 to plus or minus 7.00D, per lens	46.42
V2302	Sphere, trifocal, plus or minus 7.12 to plus or minus 20.00D, per lens	54.33
V2303	Spherocylinder, trifocal, plano to plus or minus 4.00D sphere, 12–2.00D cylinder, per lens	42.59
V2304	Spherocylinder, trifocal, plano to plus or minus 4.00D sphere, 2.25–4.00D cylinder, per lens	50.21
V2305	Spherocylinder, trifocal, plano to plus or minus 4.00D sphere, 4.25–6.00D cylinder, per lens	55.10
V2306	Spherocylinder, trifocal, plano to plus or minus 4.00D sphere, over 6.00D cylinder, per lens	55.36
V2307	Spherocylinder, trifocal, plus or minus 4.25 to plus or minus 7.00D sphere, .12 to 2.00D cylinder, per lens	47.60
V2308	Spherocylinder, trifocal, plus or minus 4.25 to plus or minus 7.00D sphere, 2.12 to 4.00D cylinder, per lens	47.60
V2309	Spherocylinder, trifocal, plus or minus 4.25 to plus or minus 7.00D sphere, 4.25 to 6.00D cylinder, per lens	61.83
V2310	Spherocylinder, trifocal, plus or minus 4.25 to plus or minus 7.00D sphere, over 6.00D cylinder, per lens	62.09
V2311	Spherocylinder, trifocal, plus or minus 7.25 to plus or minus 12.00D sphere, .25 to 2.25D cylinder, per lens	54.33
V2312	Spherocylinder, trifocal, plus or minus 7.25 to plus or minus 12.00D sphere, 2.25 to 4.00D cylinder, per lens	54.59
V2313	Spherocylinder, trifocal, plus or minus 7.25 to plus or minus 12.00D sphere, 4.25 to 6.00D cylinder, per lens	62.09
V2314	Spherocylinder, trifocal, sphere over plus or minus 12.00D, per lens	54.33
V2315	Lenticular (myodisc), per lens, trifocal	By Report
V2316	Lenticular, nonaspheric lens, trifocal	By Report
V2317	Lenticular, aspheric lens, trifocal	By Report
V2320	Trifocal add over 3.25D	14.31
	(2) Corneal Lenses	
V2500	Contact lens, PMMA, spherical, per lens	$ 65.94
V2501	Contact lens, PMMA, toric or prism ballast, per lens	103.69
Z2900	Contact lens, PMMA or gas permeable, replacement, per lens	71.32
V2510	Contact lens, gas permeable, spherical, per lens	88.64
V2511	Contact lens, gas permeable, toric or prism ballast, per lens	143.27
V2513	Contact lens, gas permeable, extended wear, per lens	152.59
V2520	Contact lens, hydrophilic, spherical, per lens	78.21
V2521	Contact lens, hydrophilic, toric or prism ballast, per lens	136.15
Z2902	Contact lens, hydrophilic, replacement	71.32
V2523	Contact lens, hydrophilic, extended wear, per lens	112.92
Z2908	Contact lens, extended wear, replacemement	97.59
Z2904	Thermal hydrophilic lens care kit	37.59
Z2906	Bandage contact lenses	56.77
	(3) Miscellaneous Lens Items	
V2700	Balance lens, per lens	50 percent of of allowance for comparable single vision lens
V2710	Slab off prism, glass or plastic, per lens	40.00
V2715	Prism, per lens	8.17
V2718	Press-on lens, Fresnell prism, per lens	15.78
V2740	Tint, plastic, rose 1 or 2, per lens	By Report
V2741	Tint, plastic, other than rose 1 or 2, per lens	By Report
V2742	Tint, glass, rose 1 or 2, per lens	By Report
V2743	Tint, glass, other than rose 1 or 2, per lens	By Report
V2744	Tint, photochromatic, per lens	By Report
V2755	U–V lens, per lens	By Report
	(4) Frames	
V2020	Frames, purchase	21.31
Z2910	Arm with adjustable pad	5.91
Z2912	Front—zyl (replace or repair)	11.18
Z2914	Front—combination or metal (replace or repair)	12.66
Z2916	Temple—all types (replace)	6.70
	(5) Low Vision Aids	
V2600	Hand held low vision aids and other non-spectacle mounted aids	By Report
V2610	Single lens spectacle mounted low vision aids	By Report
V2615	Telescopic and other compound lens system, including distance vision telescopic, near vision telescopes and compound microscopic lens system	By Report
	(6) Prosthetic Eyes	
V2623	Prosthetic eye, plastic, custom	By Report
V2624	Polishing and resurfacing of ocular prosthesis	$31.96
V2625	Enlargement of ocular prosthesis	By Report
V2626	Reduction of ocular prosthesis	By Report
V2627	Scleral cover shell	By Report
V2628	Fabrication and fitting of ocular conformer	By Report
V2629	Prosthetic eye, other type	By Report
	(7) Miscellaneous Nonlens Items	
Z2918	Occluder, clip patch style	6.70
Z2920	Occluder, cup	7.83
Z2926	Headband	2.84
Z2928	Nosepads, nosepad covers, temple covers	2.27
V2799	Not otherwise classified	By Report

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code; and Section 87, Chapter 1594, Statutes of 1982. Reference: Sections 14105 and 14105.3, Welfare and Institutions Code; Statutes of 1984, Chapter 258, Items 4260–106–001 and 890; and Statutes of 1985, Chapter 111, Items 4260–106–001 and 890.

HISTORY

1. Amendment filed 11–28–88 as an emergency; operative 11–28–88 (Register 89, No. 11). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3–28–89. For prior history, see Register 86, No. 46.
2. Certificate of Compliance as to 11–28–88 order transmitted to OAL 3–27–89 and filed 4–26–89 (Register 89, No. 18).
3. Repealer and new section filed 9–25–92 as an emergency; operative 10–1–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL 1–25–93 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 9–25–92 order transmitted to OAL 1–22–93 and filed 3–9–93 (Register 93, No. 11).
5. Amendment of subsection (b)(6) filed 9–29–93 as an emergency; operative 9–29–93 (Register 93, No. 40). A Certificate of Compliance must be transmitted to OAL 1–27–94 or emergency language will be repealed by operation of law on the following day.
6. Editorial correction amending HISTORY 5 (Register 93, No. 46).
7. Certificate of Compliance as to 9–23–93 order transmitted to OAL 10–29–93 and filed 11–8–93 (Register 93, No. 46).
8. Amendment of subsections (b)(2) and (b)(6) filed 8–27–99 as an emergency; operative 8–30–99 (Register 99, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–28–99 or emergency language will be repealed by operation of law on the following day.
9. Amendment of subsections (b)(2) and (b)(6) refiled 12–27–99 as an emergency; operative 12–28–99 (Register 99, No. 53). A Certificate of Compliance must be transmitted to OAL by 4–26–2000 or emergency language will be repealed by operation of law on the following day.
10. Amendment of subsections (b)(2) and (b)(6) refiled 4–24–2000 as an emergency; operative 4–26–2000 (Register 2000, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–2000 or emergency language will be repealed by operation of law on the following day.

11. Certificate of Compliance as to 4–24–2000 order transmitted to OAL 5–24–2000 and filed 7–6–2000 (Register 2000, No. 27).

§ 51519.1. Dispensing Fees for Ophthalmic Appliances Supplied by a Fabricating Optical Laboratory Under an Exclusive Area Negotiated Contract.

(a) General Provisions.

(2) Dispensing Fees include ordering, fitting and adjusting eye appliances and follow–up services for a period of six months after date of service.

(b) Maximum reimbursement for dispensing fees shall be as follows:

Procedure Code		*Maximum Allowance for Dispensing Fee per Lens and Frame*
Z2930	Single vision lens	$10.77
Z2932	Bifocal lens	15.90
Z2934	Trifocal lens	21.88
Z2936	Frame	6.21

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 87, Chapter 1594, Statutes of 1982. Reference: Sections 14105.3 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 11–28–88 as an emergency; operative 11–28–88 (Register 89, No. 11). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3–28–89.
2. Certificate of Compliance as to 11–28–88 order transmitted to OAL 3–27–89 and filed 4–26–89 (Register 89, No. 18).
3. Amendment of subsection (b) filed 9–25–92 as an emergency; operative 10–1–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL 1–25–93 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 9–25–92 order transmitted to OAL 1–22–93 and filed 3–9–93 (Register 93, No. 11).

§ 51519.2. Reimbursement Rates for Ophthalmic Appliances Supplied by a Fabricating Optical Laboratory Under an Exclusive Area Negotiated Contract.

(a) General Provisions.

(1) Reimbursement rates listed in (b) below include lens grinding, cutting, edging, impact resistance and testing, oversize lenses, special beveling, drilling and mounting.

(2) "Diopters" refers to the power of the strongest meridian of the major portion of the lens, the maximum cylindrical power, or the power of the segment addition, as appropriate.

(b) Maximum reimbursement rates payable under an exclusive area negotiated contract for eye appliances shall be as follows:

(1) Spectacle Lenses.

Procedure Code		*Maximum Reimbursement Rates per Lens*
	SINGLE VISION GLASS	
Z3100	0.00–4.00 diopters	$ 7.34
Z3102	4.12–7.00 diopters	7.68
Z3104	7.12–20.00 diopters	19.79
Z3106	Lenticular	28.44
	BIFOCAL GLASS	
Z3108	0.00–4.00 diopters	$10.95
Z3110	4.12–7.00 diopters	12.60
Z3112	7.12–20.00 diopters	21.60
Z3114	Lenticular	40.14
	TRIFOCAL GLASS	
Z3116	0.00–4.00 diopters	$15.65
Z3118	4.12–7.00 diopters	16.94
	SINGLE VISION PLASTIC	
Z3120	0.00–4.00 diopters	$8.32
Z3122	4.12–6.00 diopters	9.56
Z3124	6.12–10.00 diopters	12.43
Z3126	10.12–14.00 diopters	15.00
Z3128	14.12–18.00 diopters	15.00
Z3130	Aspheric (lenticular or full field)	28.60
Z3132	Lenticular, nonaspheric, plus	26.65
Z3134	Lenticular, nonaspheric, minus	32.30
	BIFOCAL PLASTIC	
Z3136	0.00–4.00 diopters	$13.04
Z3138	4.12–6.00 diopters	15.32
Z3140	6.12–10.00 diopters	18.01
Z3142	10.12–14.00 diopters	28.92
Z3144	14.12–18.00 diopters	28.92
Z3146	Aspheric (lenticular or full field)	46.15
Z3148	Lenticular, nonaspheric, plus	31.20
Z3150	Lenticular, nonaspheric, minus	35.42
	TRIFOCAL PLASTIC	
Z3152	0.00–4.00 diopters	$20.15
Z3154	4.12–7.75 diopters	22.17
Z3156	8.00–14.00 diopters	32.18

(2) Miscellaneous Lens Items.

Z3158	Balance lens	50 percent of allowance for comparable single vision lens
Z3160	4.00–6.00 diopter, cylinder	$1.81
Z3162	Prism (if available from stock blank)	4.22
Z3164	Bifocal—adds 4.00 diopter or higher	13.00
Z3166	Absorptive characteristics	By Report
Z3168	Higher powers than listed (per diopter)	2.48
Z3170	Slab–off	26.00
Z3172	Fresnel prism	11.05

(3) Frames.

Z3174	Frame—zyl	$9.50
Z3176	Frame—(metal only)	16.20
Z3178	Arm with adjustable pad	3.75
Z3180	Front—zyl (replace supplied frames)	4.80
Z3182	Front—metal only (replace supplied frames)	10.40
Z3184	Temple—(replace supplied frames)	2.35

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 87, Chapter 1594, Statutes of 1982. Reference: Sections 14105.3 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 11–28–88 as an emergency; operative 11–28–88 (Register 89, No. 11). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3–28–89.
2. Certificate of Compliance as to 11–28–88 order transmitted to OAL 3–27–89 and filed 4–26–89 (Register 89, No. 18).
3. Amendment of section heading and subsections (b)(1)–(b)(3) filed 9–25–92 as an emergency; operative 10–1–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL 1–25–93 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 9–25–92 order including amendment of subsection (b)(3) transmitted to OAL 1–22–93 and filed 3–9–93 (Register 93, No. 11).
5. Amendment of subsections (a) and (b) and new NOTE filed 10–1–92 with Secretary of State by Department of Health Services; operative 10–1–92. Submitted to OAL for printing only pursuant to section 147(c), SB 485, (Chapter 722, Statutes of 1992) (Register 92, No. 40).

§ 51520. Medical Supplies.

(a) Reimbursement for medical supplies provided in compliance with Section 51320 shall be the amount billed in accordance with Section 51008.1, not to exceed the cost of the item plus 23 percent of cost, as set forth in Section 51513.

(b) Reimbursement for incontinence medical supplies shall be the amount billed in accordance with Section 51008.1, not to exceed the amount provided in Welfare and Institutions Code, Section 14125.

(c) Sales tax, when appropriate, shall be added to the charge to the program.

NOTE: Authority cited: Sections 10725, 14043.75, 14105, 14105.2 and 14124.5, Welfare and Institutions Code; and Section 78, Chapter 146, Statutes of 1999. Reference: Sections 14105.2, 14125 and 14125.1, Welfare and Institutions Code; and Statutes of 1992, Chapter 722, Sections 90 and 111.

HISTORY

1. New section filed 9–30–71 as an emergency; designated effective 10–1–71 (Register 71, No. 40).
2. Certificate of Compliance—section 11422.1, Gov. Code, filed 1–25–72 (Register 72, No. 5).
3. Amendment of subsection (b) filed 9–27–72; designated effective 11–1–72 (Register 72, No. 40).

4. New subsection (d) filed 1–30–73; effective thirtieth day thereafter (Register 73, No. 5).
5. Amendment of subsections (a) and (b) and new NOTE filed 10–1–92 with Secretary of State by Department of Health Services; operative 10–1–92. Submitted to OAL for printing only pursuant to section 147(c), SB 485, (Chapter 722, Statutes of 1992) (Register 92, No. 40).
6. Certificate of Compliance as to 10–1–92 order transmitted to OAL 1–2–93 and filed 3–12–93 (Register 93, No. 11).
7. Amendment of section and NOTE filed 2–27–2003 as an emergency; operative 3–1–2003 (Register 2003, No. 9). Pursuant to statutes of 1999, chapter 146, section 78, a Certificate of Compliance must be transmitted to OAL by 8–28–2003 or emergency language will be repealed by operation of law on the following day.
8. Editorial correction of HISTORY 7 (Register 2003, No. 20).
9. Amendment of section and NOTE refiled 8–28–2003 as an emergency; operative 8–28–2003 (Register 2003, No. 35). Pursuant to statutes of 1999, chapter 146, section 78, a Certificate of Compliance must be transmitted to OAL by 2–24–2004 or emergency language will be repealed by operation of law on the following day.
10. Order of 8–28–2003 repealed by operation of law (Register 2004, No. 9).
11. Amendment of section and NOTE filed 2–24–2004; operative 2–25–2004 (Register 2004, No. 9). Pursuant to section 14043.75(a) of the Welfare and Institutions Code, this filing is deemed an emergency and exempt from review by OAL. A Certificate of Compliance must be transmitted to OAL by 6–24–2004 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 2–24–2004 order transmitted to OAL 3–12–2004 and filed 4–26–2004 (Register 2004, No. 18).

§ 51520.1. Establishment of Maximum Allowable Product Cost for Medical Supplies.

(a) In establishing the MAPC, the Director shall assure that eligible persons shall secure medical supply products in the same manner employed by the public generally, and without discrimination or segregation based purely on their economic disability. The Director shall make available medical supply services at least equivalent to the level provided in 1970–71 in accordance with Sections 14000 and 14000.1 of Welfare and Institutions Code.

The Director's determination shall be based upon the record of the public hearing provided herein and shall include a finding that the MAPCs adopted assure that eligible persons will receive medical supply products which are available to the public generally without discrimination or segregation based purely on their economic disability.

(b) Medical supply type usage data for the past fiscal year shall be arrayed by dollar volume in medical supply type numbers.

(c) All medical supply types shall be reviewed at least annually:

(1) In priority of dollar volume purchased, or

(2) By changes in market conditions, as identified by the Director, affecting supply and/or cost.

(d) Upon the selection of a medical supply type for review, all related medical supply types within that particular medical supply type shall be reviewed by the Director.

(e) Companies supplying the medical supply products within the reviewed medical supply type shall have their medical supply products arrayed by Estimated Acquisition Cost in ascending order.

(f) The evidence which the Director intends to rely on at the public hearing for the establishment of the MAPC shall be available to any member of the interested public for copying and inspection at reasonable times and places, and the notice of the effective date of the MAPC shall so state and announce. The hearing officer shall grant a continuance of no more than thirty (30) days for further hearing upon request of any interested party for the rebuttal of any such evidence which was not made so available at least forty–five (45) days prior to the hearing.

(g) Proceedings before the Director for the establishment of MAPCs shall be undertaken at public hearing and in accordance with the following procedures and all other procedures required by law:

(1) At least forty–five (45) days prior notice shall be given to all interested parties of the time and place of the public hearing. Upon request, the Department shall furnish any interested party a copy of the proposed MAPCs regulation and the name or names of the manufacturers of the medical products used to establish the MAPCs.

(2) Oral evidence shall be taken only on oath or affirmation administered by the Director or his duly authorized representative.

(3) The Director shall consider all relevant matter presented to him before establishing the MAPC, and his decision shall be based solely on that evidence.

(4) During the establishment of the MAPC course of the public hearing, any interested party shall be given an opportunity to examine any witness and to present relevant evidence.

(5) The hearing need not be conducted according to technical rules relating to evidence and witnesses.

(6) Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Irrelevant or unduly repetitious evidence may be excluded.

(7) If the hearing is presided over by a person other than the Director, such person shall be present during consideration of the establishment of the MAPCs by the Director, and shall assist and advise the Director.

(8) Where good cause is shown, the hearing officer may hold the hearing record open for a period of up to thirty (30) days in order to receive additional relevant evidence.

(9) Any interested party may, in accordance with the Administrative Procedure Act, petition the Department to request the repeal of a regulation or a portion of a regulation fixing MAPCs for medical supplies. Such petition shall state clearly and concisely the substance or nature of the repeal requested and the reason for the request. The Department shall within thirty (30) days accept or deny the petition in writing or schedule the matter for public hearing pursuant to the provision of the Administrative Procedure Act.

(10) The Director may order a reconsideration of all or part of the MAPC decision case on his own motion. The establishment of the MAPC may be reconsidered by the Director on all the pertinent parts of the record and such additional evidence and argument as is presented.

(11) Judicial review of any finding, determination, rule, ruling, decision or order prescribing an MAPC may be had pursuant to the provisions of Section 1094.5 of the Code of Civil Procedure or any other appropriate remedy.

In reviewing regulations prescribing MAPCs for medical supplies, the superior court may exercise its independent judgement on the evidence considered by the Director in adopting any MAPC.

(h) The price for the reference medical supply product upon which an established MAPC is based shall be automatically updated in accordance with Section 51513(a)(13) and shall not be subject to the requirements of Subsections (a) through (g) of this Section.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14053, 14105.7, 14124.1, 14132 and 14133, Welfare and Institutions Code.

HISTORY

1. New section filed 5–22–91 as an emergency pursuant to Statutes of 1990, chapter 456, section 36, p. 1658–1659; operative 5–22–91 (Register 91, No. 27). A Certificate of Compliance must be transmitted to OAL by 9–19–91 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 9–19–91 as an emergency; operative 9–20–91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 1–20–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 1–23–92 as an emergency; operative 1–17–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL 5–22–92 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 1–23–92 order including amendment of section heading, subsections (a), (f)–(h) and NOTE transmitted to OAL 5–22–92 and filed 7–6–92 (Register 92, No. 28).
5. Amendment of subsections (b)–(d) filed 1–9–95; operative 3–1–95 (Register 95, No. 2).
6. Editorial correction restoring current version of section and adding HISTORY NOTE 5 (Register 95, No. 8).

§ 51520.2. List of Generic Medical Supply Types.

(a) Subdivision (b) is an alphabetical list of generic medical supply types covered under Sections 51513 and 51520 for which a Maximum

Allowable Product Cost has been established for which payment shall be made in accordance with Sections 51513 and 51520.

(b) Maximum Allowable Product Cost List.

Generic Medical Supply Type	*Strength and/or Size*
Catheters, urinary (Foley)	5cc
	30cc
Condoms	
Fountain Syringe	
Limit One	
Hot Water Bottle	
Limit One	
Thermometer	
Vaporizer	

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code; and Section 57(c), Chapter 328, Statutes of 1982. Reference: Sections 14053, 14105, 14105.7, 14132 and 14133, Welfare and Institutions Code; and Section 57(c), Chapter 328, Statutes of 1982.

HISTORY

1. New section filed 5–22–91 as an emergency pursuant to Statutes of 1990, chapter 456, section 36, p. 1658–1659; operative 5–22–91 (Register 91, No. 27). A Certificate of Compliance must be transmitted to OAL by 9–19–91 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 9–19–91 as an emergency; operative 9–20–91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 1–20–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 1–23–92 as an emergency; operative 1–17–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL 5–22–92 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 1–23–92 order including amendment of section transmitted to OAL 5–22–92 and filed 7–6–92 (Register 92, No. 28).
5. Amendment of subsection (b) and NOTE filed 1–9–95; operative 3–1–95 (Register 95, No. 2).
6. Editorial correction restoring current version of section and adding HISTORY NOTE 5 (Register 95, No. 8).

§ 51521. Durable Medical Equipment.

(a) Reimbursement for the rental or purchase of durable medical equipment shall not exceed an amount that is the lesser of:

(1) The amount billed in accordance with Section 51008.1,

(2) The maximum reimbursement rates listed below,

(3) Reasonable maximums for equipment reimbursed "By Report," or

(4) When applicable, the Lowest Charge Levels established pursuant to federal regulation.

(b) In addition to other required information, billings for equipment reimbursed "By Report," whether listed or unlisted, shall include or be accompanied by a description of the equipment indicating:

(1) The manufacturer's name and suggested retail price for the equipment.

(2) Description of and justification for any special features of the equipment such as custom modifications or special accessories.

(3) If an unlisted item, the reason a listed item cannot be used.

(c) Billings for wheelchairs, whether listed or unlisted, shall include or be accompanied by a description of the equipment indicating the manufacturer's name, model designation and suggested retail price.

(d) Maximum allowances for wheelchairs contained herein are for basic and custom fitted wheelchairs and for modifications and accessories that may be added to these items. If a particular modification or accessory is not listed, only that modification or accessory may be billed under X3162 "Unlisted Wheelchair Modifications and Accessories."

(e) "Repair–Maintenance of Equipment" shall be billed under X2996 "Replacement Parts" and X2998 "Labor." In addition to other required information, billings for repair and maintenance shall include or be accompanied by a written description of the service indicating:

(1) The reason or justification for repair and the services provided.

(2) The labor time involved (may be rounded to the nearest half hour for the total repair job) and the hourly charge for labor.

(3) The manufacturer's name and catalogue numbers of parts used.

(f) Maximum reimbursement rates established by the Department include payment for the following services. No additional reimbursement shall be allowed for these services except as provided below.

(1) Freight, delivery or transportation, except as necessary to cover the additional costs of required, atypical services not otherwise covered in the maximum reimbursement rates.

(2) Installation, setup or instruction in the use of equipment.

(3) Repair, maintenance or routine servicing of rental equipment.

(g) Purchased equipment shall be guaranteed for a period of at least six months from the date of purchase. Out–of–guarantee repairs shall be guaranteed for a period of at least three months from the date of such repair. No reimbursement shall be allowed for parts or labor during a guarantee period if the need for repair is due to a defect in materials or workmanship.

(h) Monthly rental rates shall apply to calendar month periods, or their equivalent.

(i) Maximum reimbursement rates for durable medical equipment shall be as follows:

Item Code		*Monthly Rental*	*Purchase*
Group (1) Ambulation Devices.			
	CANES AND CRUTCHES		
E0100	Cane, includes canes of all materials, adjustable or fixed, with tip	$5.67	$16.20
E0105	Cane, quad or three prong, includes canes of all materials, adjustable or fixed, with tips	8.45	38.00
X2926	Cane, ortho	8.79	26.36
E0111	Crutch, forearm, includes crutches of various materials, adjustable or fixed, each, with tip and handgrips	8.04	42.39
E0113	Crutch, underarm, wood, adjustable or fixed, each, with pad, tip and handgrip	4.39	17.13
E0116	Crutch, underarm, other than wood, adjustable or fixed, each, with pad, tip and handgrip	4.39	19.13
A4635	Underarm pad, crutch, replacement, each	—	4.15
A4636	Replacement handgrip, cane, crutch or walker, each	—	3.41
A4637	Replacement tip, cane, crutch or walker, each	—	1.73
	WALKERS		
E0130	Rigid (pickup), adjustable or fixed height	$ 15.91	$ 56.94
E0135	Folding (pickup), adjustable or fixed height	16.46	67.97
E0142	Rigid, wheeled, with seat	25.21	139.43
E0144	Enclosed, frame folding walker, wheeled, with posterior seat	31.70	316.88
E0146	Folding walker, wheeled, with seat	18.16	217.92
E0147	Heavy duty, multiple braking system, variable wheel resistance walker	28.41	279.69
E0148	Heavy duty, without wheels, rigid or folding, any type, each	12.99	129.79
E0149	Heavy duty, wheeled, rigid or folding, any type, each	22.80	228.01
E0155	Wheel attachment, rigid pick–up walker, per pair	6.24	51.18
E0159	Brake attachment for wheeled walker, replacement, each	1.72	17.05
Group (2) Bathroom Equipment.			
X2916	Commode chair, standard bedside style	$20.26	$ 75.68
X2918	Commode chair, mobile with bedpan	29.09	188.72
X3220	Wheeled shower/commode chair, all types except rehabilitative or heavy duty	—	107.52
E0168	Commode chair, extra wide and/or heavy duty, stationary or mobile, with or without arms, any type, each	—	154.18
E0243	Toilet rail, each	—	42.76
E0244	Raised toilet seat	—	46.04
E0245	Tub stool or bench	—	55.07
E0246	Transfer tub rail attachment	—	37.08
X3168	Transfer bench, molded, all types	—	74.13
X3170	Transfer bench, padded, all types	—	107.99
X3174	Hand–held shower device	—	22.80
X3182	Grab bar – 12″	—	12.41
X3184	Grab bar – 16″	—	13.00
X3186	Grab bar – 18″	—	13.86
X3188	Grab bar – 24″	—	15.26
X3190	Grab bar – 32″	—	20.04
E0275	Bed pan, standard, metal or plastic	—	12.41
E0276	Bed pan, fracture, metal or plastic	—	10.79
E0325	Urinal; male, jug–type, any material	—	8.19
E0326	Urinal; female, jug–type, any material	—	9.96

Group (3) Antidecubitus Care (ADC) Support Surfaces, Equipment, and Supplies.

Item Code		Monthly Rental	Purchase
E0180	Pressure pad, alternating with pump	$19.72	$236.64
E0181	Pressure pad, alternating with pump, heavy duty	21.86	262.32
E0184	Dry pressure mattresses	19.92	157.85
E0185	Gel or gel-like pressure pad for mattress, standard mattress length and width	36.43	259.33
E0186	Air pressure mattress	16.46	204.00
E0187	Water pressure mattress	18.82	225.83
E0193	Powered air flotation bed (low air loss therapy) (daily rental)	50.00	—
E0194	Air fluidized bed (daily rental)	55.00	—
E0196	Gel pressure mattress	26.34	316.10
E0197	Air pressure pad for mattress, standard mattress length and width	24.79	179.65
E0198	Water pressure pad for mattress, standard mattress length and width	18.61	179.65
E0199	Dry pressure pad for mattress, standard mattress length and width	2.59	30.57
E0210	Electric heat pad, standard	2.49	26.46
E0371	Nonpowered advanced pressure reducing overlay for mattress, standard mattress length and width, (daily rental)	10.62	—
E0372	Powered air overlay for mattress, standard mattress length and width (daily rental)	16.11	—
E0373	Nonpowered advanced pressure reducing mattress (daily rental)	14.76	—
X2982	Dynamic mattress replacement system (daily rental)	37.00	—
X2990	Unlisted antidecubitus pads, cushions, and mattresses	By Report	By Report
	Group (4) Hospital Beds and Accessories.		
X2900	Hospital bed, fixed height, excluding mattress, with manual gatch spring	$40.62	$362.54
X2902	Hospital bed, fixed height, excluding mattress, with power gatch spring	79.83	869.02
X2904	Hospital bed, crank variable height, excluding mattress, with manual gatch spring	46.42	486.46
X2906	Hospital bed, crank variable height, excluding mattress, with power gatch spring	85.65	897.74
X2908	Hospital bed, power variable height, excluding mattress, with manual gatch spring	By Report	By Report
X2910	Hospital bed, power variable height, excluding mattress, with power gatch spring	By Report	By Report
E0271	Mattress, innerspring	18.70	154.83
E0272	Mattress, foam rubber	18.56	164.08
E0274	Over-bed table	16.40	109.84
E0280	Bed cradle, any type	3.92	32.92
K0549	Hospital bed, heavy duty, extra wide with weight capacity greater than 350 pounds, but less than or equal to 600 pounds, with any type side rails, with mattress	288.73	2,887.30
K0550	Hospital bed, extra heavy duty, extra wide, with weight capacity greater than 600 pounds, with any type side rails, with mattress	766.85	7,668.50
E0305	Bed side rails, half length	16.97	173.09
E0350	Control unit for electronic bowel irrigation/evacuation system	544.28	5,442.80
E0352	Disposable pack for use with the electronic bowel irrigation/evacuation system	—	36.43
E0310	Bed side rails, full length	18.62	154.41
	Group (5) Traction and Trapeze Equipment.		
E0860	Traction equipment, overdoor, cervical	$ 5.28	$ 31.75
E0870	Traction frame, attached to footboard, extremity traction, (e.g., Buck's)	12.78	80.16
E0910	Trapeze bars, A/K/A patient helper, attached to bed, with grab bar	16.82	171.56
E0920	Fracture frame, attached to bed, includes weights	37.41	381.58
E0930	Fracture frame, free standing, includes weights	39.30	400.86
E0940	Trapeze bar, free standing, complete with grab bar	32.31	329.56
E0942	Cervical head harness/halter	1.90	18.93
E0944	Pelvic belt/harness/boot	3.17	31.62
X2936	Traction stand with accessories, excluding garment	22.84	—
	Group (6) Oxygen and Oxygen Therapy Equipment.		
A7005	Administration set, with small volume nonfiltered pneumatic nebulizer, non-disposable	$ —	$ 30.67
E0441	Oxygen contents, gaseous, per unit (for use with owned gaseous stationary systems or when both a stationary and portable gaseous system are owned; 1 unit = 50 cubic ft.)	—	4.33
E0442	Oxygen contents, liquid, per unit (for use with owned liquid stationary systems or when both a stationary and portable liquid system are owned; 1 unit = 10 lbs)	—	9.91
X2956	Oxygen H or K cylinder	3.71	—
X2958	Oxygen E cylinder	3.71	92.83
X2960	Small oxygen cylinder stand	3.84	11.44
X2962	Large oxygen cylinder stand	5.13	38.37
X2964	Small oxygen cylinder cart	6.13	46.17
X2966	Large oxygen cylinder cart	14.67	109.84
X2968	Oxygen humidifier	8.72	25.86
E1353	Regulator	18.88	97.98
X2970	Oxygen mask or nasal cannula	—	4.83
E0500	IPPB machine, all types, with built-in nebulization; manual or automatic valves; internal or external power source	89.00	1,068.04
X3196	Stationary compressed gaseous oxygen system, rental; includes regulator, flowmeter, humidifier, stand, cannula or mask, and tubing	24.20	—
E0425	Stationary compressed gas system, purchase; includes regulator, flowmeter, humidifier, nebulizer, cannula or mask, and tubing	—	116.54
E0430	Portable gaseous oxygen system, purchase; includes regulator, flowmeter, humidifier, cannula or mask, and tubing	—	214.61
E0431	Portable gaseous oxygen system, rental; includes portable container, regulator, flowmeter, humidifier, cannula or mask, and tubing	38.53	—
E0434	Portable liquid oxygen system, rental; includes portable container, supply reservoir, humidifier, flowmeter, refill adapter, contents gauge, cannula or mask, and tubing	38.53	—
E0435	Portable liquid oxygen system, purchase; includes portable container, supply reservoir, flowmeter, humidifier, contents gauge, cannula or mask, tubing and refill adapter	—	By Report
E0450	Volume ventilator, stationary or portable, with backup rate feature, used with invasive interface (e.g., tracheostomy tube)	657.79	6,577.90
E0460	Negative pressure ventilator, portable or stationary	By Report	By Report
E0481	Intrapulmonary percussive ventilation system and related accessories	By Report	By Report
E0550	Humidifier, durable for extensive supplemental humidification during IPPB treatments or oxygen delivery	40.64	406.39
E0570	Nebulizer, with compressor	18.82	191.96
E0600	Respiratory suction pump, home model, portable or stationary, electric	42.48	445.43
E0601	Continuous airway pressure (CPAP) device	By Report	By Report
E0608	Apnea monitor	211.61	By Report
E1390	Oxygen concentrator, capable of delivering 85 percent or greater oxygen concentration at the prescribed flow rate (includes accessories and set up)	245.16	By Report
X2978	Oxygen conserving device, disposable	—	9.00
X2980	Portable volume ventilator Life Care (PVV)	295.00	3,990.00
X3206	ThAIRapy Vest, custom fitted	—	By Report
X3212	ThAIRapy air-pulse delivery system	By Report	—
X3192	Inhalation machine	By Report	By Report
X3214	FLUTTER Device	—	45.00

Item Code		Monthly Rental	Purchase
Group (7) Wheelchairs, Modifications, and Accessories.			
BASIC WHEELCHAIRS			
(Factory modifications to basic frame not available)			
X3002	Standard adult, narrow adult, nonfolding or folding, with fixed arms, standard fixed footrests and 8″ casters	$31.28	$281.14
X3004	Adult/narrow adult, nonfolding or folding, with fixed full-length arms, swinging detachable footrests and 8″ casters	45.48	413.48
E1091	Youth wheelchair, any type	67.59	811.10
E1250	Lightweight wheelchair, fixed full length arms, swing away detachable footrest	57.03	628.52
BASIC WHEELCHAIR ACCESSORIES			
(Accessories that may be added to X3002, X3004, E1091 and E1250 Basic Wheelchairs)			
X3006	Arms, detachable, desk or full-length, pair	$18.38	$167.11
X3008	Arms, adjustable height, detachable, desk or full-length pair	25.28	229.78
E0990	Elevating leg rest, each	10.72	88.71
E1065	Power attachment (to convert any wheelchair to motorized wheelchair, E.G., Solo)	238.02	2,193.99
X3010	Back, semi-reclining	20.38	185.32
X3012	Back, full-reclining	27.70	251.73
CUSTOM FITTED WHEELCHAIRS			
(These wheelchairs are available with numerous factory modifications to the basic wheelchair frame, i.e., special seat depth, special seat height, special arm height, etc.)			
X3016	Custom modified standard weight wheelchair	—	$734.31
X3018	Custom modified lightweight wheelchair	—	876.24
CUSTOM FITTED WHEELCHAIR MODIFICATIONS AND ACCESSORIES			
(Factory modifications that may be added during construction to X3016 and X3018 Custom Fitted Wheelchairs. Items designated by an asterisk (*) may be added to the X3002, X3004, E1091 and E1250 Basic Wheelchairs)			
Arm of Chair			
X3020	Offset, non-detachable, desk or full-length, pair	$ —	$206.21
X3022	Detachable, desk or full-length, pair	—	109.67
X3024	Adjustable height, detachable, desk or full-length, pair	—	235.66
X3026	Wrap around arms, detachable, desk or full-length, pair	—	190.67
X3028	Wrap around arms, adjustable height, detachable, desk or full-length, pair	—	248.52
E1227	Special arms height	19.13	191.24
X3032	Armrest pads, narrow, pair	—	50.89
X3034	Special skirtguard height, pair	—	36.42
Back of Chair			
E1225	Semi-reclining	$ 31.14	$373.73
E1226	Full-reclining	38.70	376.02
X3040	Sectional height back, for active-duty lightweight custom fitted wheelchairs	—	114.62
X3042	Sectional height back, for all other custom fitted wheelchairs	—	152.65
E1228	Special back height	19.44	233.27
X3046	Flared back	—	133.37
*X3048	Back upholstery, zippered	7.89	71.77
*X3050	Back upholstery, detachable, with swivel-type fasteners	—	93.74
*X3052	Back upholstery, reinforced	2.59	23.57
*X3054	Back upholstery, slackback	—	22.50
*X3056	Naugahyde cap, at top of back upholstery	2.36	21.42
*X3058	Rivnuts, for back upholstery, set	2.83	25.71
*X3060	Crutch/cane holder, each	2.36	21.42
*E0971	Anti-tipping device	5.19	52.02
*X3062	Solid back insert, with foam padding, each	6.24	56.77
*X3064	Wedge taper, built into solid back insert, each	5.90	53.56
*X3066	Armsling—Rancho, adjustable height and angle, each	10.84	98.55
*X3068	Armsling—standard, nonadjustable, each	7.30	66.41
*E0978	Belt, safety with airplane buckle	3.30	30.84
*E0979	Belt, safety with velcro closure	2.38	23.77
Seat of Chair			
E1296	Special wheelchair seat height from floor	$ 37.50	$374.93
E1297	Special wheelchair seat depth, by upholstery	9.42	72.09
E1298	Special wheelchair seat depth and/or width, by construction	32.56	325.53
X3070	Special seat width, narrowed by upholstery	—	34.28
X3072	Seat widths, 19″ and 20″ construction altered accordingly	—	194.96
X3074	Raise seat height, 2″ limit, by crossbraces only, arms and back height not raised	—	36.42
*X3076	Seat assembly, solid folding	6.48	58.92
*X3078	Wheelchair cushions	By Report	By Report
*E0975	Reinforced seat upholstery	3.58	35.89
*E0977	Wedge cushion	4.34	45.08
*E0992	Solid seat insert	7.50	77.14
Footrests and Legrests			
X3080	Legrests, swinging, detachable, elevating, pair	$ —	$128.54
X3082	Footrest/legrest extension, minimum, pair	—	101.76
X3084	Footrest/legrest extension, maximum, pair	—	88.38
X3086	Footplates, fixed angle, parallel to floor or seat, pair	—	81.41
*X3088	Footplate angle adjustment attachment, pair	9.90	89.98
*X3090	Growing hangers, pair	8.25	74.98
*E0970	No. 2 Footplates, except for elevating leg rest	4.10	39.63
*X3092	Footplates, plastic coated, pair	2.94	26.78
*X3094	Footboard, one piece, mounted on swinging detachable footrests	7.89	71.77
*X3096	Footboard, one piece, extended to rear, reversed inward	11.38	103.38
*X3098	Footboard, one piece, belt-on	6.36	57.84
*X3100	Legrest panel, all types, each	4.13	37.49
*X3102	H-straps, all types, each	3.65	33.21
*X3104	Leg strap, single, all types	2.09	19.01
*X3106	Toe loops, with buckle or velcro, pair	2.36	21.42
*X3108	Heel loops, with ankle straps, pair	3.54	32.14
*X3110	Roller bumpers, pair	1.77	16.07
Wheels and Casters			
*X3112	Casters, pneumatic, 8″, pair	$ 5.06	$ 46.06
*X3114	Casters, semi-pneumatic, 8″ by 2″, pair	2.36	21.42
*X3116	Casters, 5″, with adapter, in lieu of 8″, pair	10.08	91.59
*X3118	Caster pin locks, pair	5.77	52.49
*X3120	Rear wheelchair tires, treaded pneumatic, pair	—	12.85
*X3122	Handrims, plastic coated, pair	2.59	23.57
*X3124	Handrims, with 8 oblique projections, pair	10.48	95.34
*E0967	Handrims with 8 vertical rubber tipped projections, pair	10.99	107.13
*X3126	Handrims, with 12 vertical or oblique projections, pair	11.78	107.12
*X3128	Handrims, with 16 vertical or oblique projections, pair	14.14	128.54
*X3130	Tire tubes, thorn resistant, pair	1.65	15.00
*X3132	Rear wheels, with extra heavy duty .120 Gauge spokes	4.77	43.39
*X3134	Rear wheels, with pneumatic tires, treaded or nontreaded, pair	5.77	52.49
*X3136	Handrim spacers, extra wide, set	1.41	12.85
*E0958	Attachment to convert any wheelchair to one arm drive	35.94	392.19
E0959	Amputee adapter	7.20	71.69
*E0961	Brake extension	2.52	24.11
*E0974	"Grade-aid" (device to prevent rolling back on an incline) for wheelchair.	7.93	75.36
Power Drive Units and Accessories			
X3138	Solid state proportional control, transistorized, 12/24-volt system, battery charger, with v-belt drive	$ —	$3,064.70
X3140	Solid state proportional control, transistorized, 12/24-volt system, battery charger, with friction or gear drive	—	2,163.82
X3142	Proportional control, transistorized, 12/24-volt system, battery charger, any type drive	—	1,468.62
X3144	Micro-switch selective control, battery charger, any type drive	—	1,468.62

Item Code		Monthly Rental	Purchase
*X3146	Chin/mouth control assembly, with accessible on/off switch, each	36.88	335.29
*X3148	Joystick mount, swing-away, each	7.07	64.27
X3150	Battery, wet lead acid, deep cycle, 12-volt, group size 22NF, each	—	79.35
X3152	Battery, wet lead acid, deep cycle, 12-volt, group size, U-1, each	—	66.90
X3154	Battery, wet lead acid, deep cycle, 12-volt, group size 24, each	—	86.27
X3156	Battery, lead acid, heavy-duty, 6-volt, group size 1, each	—	73.81
X3158	Battery, lead acid, heavy-duty, 6-volt, group size 2N, each	—	81.05
X3230	Battery, sealed lead acid, (gel or AGM), deep cycle, 12-volt, group size U-1, each	—	74.88
X3232	Battery, sealed lead acid, (gel or AGM), deep cycle, 12-volt, group size 22NF, each	—	108.01
X3234	Battery, sealed lead acid, (gel or AGM), deep cycle, 12-volt, group size 24, each	—	136.01
	UNLISTED WHEELCHAIRS, MODIFICATIONS AND ACCESSORIES		
X3160	Unlisted wheelchairs	By Report	By Report
X3162	Unlisted wheelchair modifications and accessories	By Report	By Report
	Group (8) Infusion Equipment and Supplies.		
B9000	Enteral infusion pump — without alarm	$ 103.10	$1,121.97
B9002	Enteral infusion pump — with alarm	108.66	1,121.97
E0776	IV pole	17.58	106.21
E0781	Ambulatory infusion pump, single or multiple channels, electric or battery operated, with administrative equipment, worn by patient (daily rental)	8.30	By Report
E0784	External ambulatory infusion pump, insulin	265.90	By Report
E0791	Parenteral infusion pump, stationary, single or multichannel	314.64	3,146.40
A4230	Infusion set for external insulin pump, non-needle cannula type	—	10.07
A4231	Infusion set for external insulin pump, needle type	—	5.10
A4232	Syringe with needle for external insulin pump, sterile, 3 cc	—	3.39
E0779	Ambulatory infusion pump, mechanical, reusable, for infusion 8 hours or greater	15.89	139.93
E0780	Ambulatory infusion pump, mechanical, reusable, for infusion less than 8 hours	—	9.89
	Group (9) Miscellaneous.		
A4556	Electrodes (e.g., Apnea monitor), per pair	$ —	$10.27
A4557	Lead wires (e.g., Apnea monitor), per pair	—	17.85
A4595	TENS supplies, 2 lead, per month	—	28.21
A4640	Replacement pad for use with medically necessary alternating pressure pad owned by patient	5.46	56.21
A9900	Miscellaneous DME supply, accessory and/or service component of another HCPCS code	By Report	By Report
E0602	Breast pump, manual, any type	—	30.95
E0603	Breast pump, electric (AC and/or DC), any type	—	93.15
E0604	Breast pump, heavy duty, hospital grade, piston operated, pulsatile vacuum suction/release cycles, vacuum regulator, supplies, transformer, electric (AC and/or DC) (daily rental)	2.72	—
E0607	Home blood glucose monitor	—	60.00
E0630	Patient lift, hydraulic, with seat or sling	71.99	863.84
E0710	Restraints, any type (body, chest, wrist or ankle)	—	By Report
E0720	Transcutaneous electrical nerve stimulator (TENS), two lead, localized stimulation	41.17	274.60
E0730	Transcutaneous electrical nerve stimulator (TENS), four lead, larger area/multiple nerve stimulation	41.53	276.82
E0747	Osteogenesis stimulator, electrical, non-invasive, other than spinal applications	241.55	2,430.75
E0760	Osteogenesis stimulator, low intensity ultrasound, non-invasive	—	3,000.00
X2948	MacLaren or Pogon Buggy	By Report	By Report
X2996	Replacement parts	—	By Report
X2998	Labor	—	By Report
X3000	Custom manufacturer appliance materials and labor	—	By Report
E1399	Miscellaneous	By Report	By Report
E1902	Communication board, non-electronic augmentative or alternative communication device	By Report	By Report
K0541	Speech generating device, digitized speech, using pre-recorded messages, less than or equal to eight minutes recording time	By Report	By Report
K0542	Speech generating device, digitized speech, using pre-recorded messages, greater than 8 minutes recording time	By Report	By Report
K0543	Speech generating device, synthesized speech, requiring message formulation by spelling and access by physical contact with the device	By Report	By Report
K0544	Speech generating device, synthesized speech, permitting multiple methods of message formulation and multiple methods of device access	By Report	By Report
K0545	Speech generating software program, for personal computer or personal digital assistant	By Report	By Report
K0546	Accessory for speech generating device, mounting system	By Report	By Report
K0547	Accessory for speech generating device, not otherwise classified	By Report	By Report
X3266	SSAC device services	By Report	By Report
X3268	SSAC device repairs	By Report	By Report
X3270	SSAC device modifications or replacement	By Report	By Report
E2100	Blood glucose monitor with integrated voice synthesizer	54.40	544.01
E2101	Blood glucose monitor with integrated lancing/blood sample	18.76	187.63

NOTE: Authority cited: Sections 10725, 14043.75, 14105, 14105.2 and 14124.5, Welfare and Institutions Code; and Section 78, Chapter 146, Statutes of 1999. Reference: Sections 14103.7, 14105 and 14105.2, Welfare and Institutions Code; Statutes of 1984, Chapter 258, Items 4260-106-001 and 890; Statutes of 1985, Chapter 111, Items 4260-106-001 and 890; and Statutes of 2000, Chapter 52, Items 4260-101-0001 and 0890.

HISTORY

1. Amendment filed 2-25-83 as an emergency; designated effective 3-1-83 (Register 83, No. 9). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6-29-83. For prior history, see Register 81, No. 52).
2. Certificate of Compliance as to 2-25-83 order transmitted to OAL 6-27-83 and filed 7-28-83 (Register 83, No. 31).
3. Amendment filed 2-15-84 (approved by OAL with Certificate of Compliance filed 7-28-83; designated effective 8-27-83 (Register 84, No. 7).
4. Amendment of subsection (i) filed 8-1-84 as an emergency; effective upon filing (Register 84, No. 31). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11-29-84.
5. Certificate of Compliance transmitted to OAL 11-27-84 and filed 12-27-84 (Register 84, No. 52).
6. Amendment of subsection (i) filed 8-1-85 as an emergency; effective upon filing (Register 85, No. 32). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11-29-85.
7. Certificate of Compliance transmitted to OAL 11-20-85 and filed 12-27-85 (Register 85, No. 52).
8. Repealer and new section filed 9-25-92 as an emergency; operative 10-1-92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL 1-25-93 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 9-25-92 order including amendment of subsections (i)(6) and (i)(7) transmitted to OAL 1-22-93 and filed 3-9-93 (Register 93, No. 11).
10. Amendment of subsection (i)(6) filed 9-29-93 as an emergency; operative 9-29-93 (Register 93, No. 40). A Certificate of Compliance must be transmitted to OAL 1-27-94 or emergency language will be repealed by operation of law on the following day.
11. Editorial correction amending subsection (i)(6) and HISTORY 10 (Register 93, No. 46).
12. Certificate of Compliance as to 9-29-93 order transmitted to OAL 10-29-93 and filed 11-8-93 (Register 93, No. 46).
13. Editorial correction of printing errors in subsections (i)(6) and (7) (Register 94, No. 7).
14. Amendment of subsections (i)(1), (5) and (8) filed 11-28-94 as an emergency; operative 11-28-94 (Register 94, No. 48). A Certificate of Compliance must be

transmitted to OAL by 3–28–95 or emergency language will be repealed by operation of law on the following day.
15. Editorial correction of HISTORY 14 (Register 95, No. 18).
16. Certificate of Compliance as to 11–28–94 order transmitted to OAL 3–23–95 and filed 5–4–95 (Register 95, No. 18).
17. Editorial correction of subsection (i)(2) inserting inadvertently omitted text (Register 95, No. 29).
18. Amendment of subsection (i)(6) filed 8–2–95 as an emergency; operative 8–2–95 (Register 95, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–30–95 or emergency language will be repealed by operation of law on the following day.
19. Certificate of Compliance as to 8–2–95 order including amendment of subsection (i)(6) transmitted to OAL 11–22–95 and filed 1–3–96 (Register 96, No. 1).
20. Editorial correction of subsections (i)(3) and (i)(7) (Register 96, No. 11).
21. Amendment of subsections (i)(3) [X2981 and X2982] and (i)(8) [E0600, E0747 and E0781–X2948] filed 7–29–96 as an emergency; operative 7–29–96 (Register 96, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–96 or emergency language will be repealed by operation of law on the following day.
22. Certificate of Compliance as to 7–29–96 order transmitted to OAL 11–7–96 and filed 12–23–96 (Register 96, No. 52).
23. Amendment of subsection (i) filed 7–28–97 as an emergency; operative 7–28–97 (Register 97, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–25–97 or emergency language will be repealed by operation of law on the following day.
24. Certificate of Compliance as to 7–28–97 order transmitted to OAL 11–19–97 and filed 1–6–98 (Register 98, No. 2)
25. Amendment of subsections (i)(1)–(7), new subsection (i)(8), subsection renumbering, and amendment of newly designated subsection (i)(9) filed 7–21–98 as an emergency; operative 7–27–98 (Register 98, No. 30). A Certificate of Compliance must be transmitted to OAL by 11–24–98 or emergency language will be repealed by operation of law on the following day.
26. Editorial correction of HISTORY 25 (Register 99, No. 2).
27. Certificate of Compliance as to 7–21–98 order, including further amendment of subsections (i)(3) and (i)(6)–(i)(9), transmitted to OAL 11–23–98 and filed 1–7–99 (Register 99, No. 2).
28. Amendment of subsections (i)(2)–(3) and (i)(6)–(7) filed 8–27–99 as an emergency; operative 8–30–99 (Register 99, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–28–99 or emergency language will be repealed by operation of law on the following day.
29. Amendment of subsections (i)(2)–(3) and (i)(6)–(7) refiled 12–27–99 as an emergency, including further amendment of subsections (i)(3) and (i)(6)–(7); operative 12–28–99 (Register 99, No. 53). A Certificate of Compliance must be transmitted to OAL by 4–26–2000 or emergency language will be repealed by operation of law on the following day.
30. Amendment of subsections (i)(2)–(3) and (i)(6)–(7) refiled 4–24–2000 as an emergency; operative 4–26–2000 (Register 2000, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–2000 or emergency language will be repealed by operation of law on the following day.
31. Amendment of subsections (i)(1)–(9) filed 6–5–2000 as an emergency; operative 6–5–2000 (Register 2000, No. 23). A Certificate of Compliance must be transmitted to OAL by 10–3–2000 or emergency language will be repealed by operation of law on the following day.
32. Certificate of Compliance as to 4–24–2000 order transmitted to OAL 5–24–2000 and filed 7–6–2000 (Register 2000, No. 27).
33. Amendment of subsections (i)(1)–(9) refiled 8–21–2000 as an emergency; operative 10–3–2000 (Register 2000, No. 34). A Certificate of Compliance must be transmitted to OAL by 1–31–2001 or emergency language will be repealed by operation of law on the following day.
34. Amendment of subsections (i)(1), (i)(6), (i)(8) and (i)(9) filed 10–31–2000 as an emergency; operative 10–31–2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 2–28–2001 or emergency language will be repealed by operation of law on the following day.
35. Certificate of Compliance as to 8–21–2000 order transmitted to OAL 1–3–2001 and filed 2–5–2001 (Register 2001, No. 6).
36. Certificate of Compliance as to 10–31–2000 order transmitted to OAL 2–22–2001 and filed 4–4–2001 (Register 2001, No. 14).
37. Amendment of subsection (i)(1) — groups 1, 2, 4 and 6 filed 12–19–2001 as an emergency; operative 12–19–2001 (Register 2001, No. 51). A Certificate of Compliance must be transmitted to OAL by 4–18–2002 or emergency language will be repealed by operation of law on the following day.
38. Certificate of Compliance as to 12–19–2001 order transmitted to OAL 4–9–2002 and filed 4–30–2002 (Register 2002, No. 18).
39. Amendment of subsection (i), new subsection (j) and amendment of NOTE filed 7–16–2002; operative rates for services provided on or after 8–1–2000 pursuant to Stats. 2000, c. 52, Items 4260–101–0001 and 0890 (Register 2002, No. 29).
40. Certificate of Compliance as to 7–16–2002 order, including repealer of subsection (j), transmitted to OAL 11–12–2002 and filed 12–24–2002 (Register 2002, No. 52).
41. Amendment of subsection (a), repealer and new subsection (a)(1), new subsection (a)(2), subsection renumbering, amendment of newly designated subsection (a)(3) and amendment of NOTE filed 2–27–2003 as an emergency; operative 3–1–2003 (Register 2003, No. 9). Pursuant to statutes of 1999, chapter 146, section 78, a Certificate of Compliance must be transmitted to OAL by 8–28–2003 or emergency language will be repealed by operation of law on the following day.
42. Amendment of subsection (i) filed 4–4–2003 as an emergency; operative 4–4–2003 (Register 2003, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–4–2003 or emergency language will be repealed by operation of law on the following day.
43. Editorial correction of HISTORY 41 (Register 2003, No. 20).
44. Amendment of subsection (a), repealer and new subsection (a)(1), new subsection (a)(2), subsection renumbering, amendment of newly designated subsection (a)(3) and amendment of NOTE refiled 8–28–2003 as an emergency; operative 8–28–2003 (Register 2003, No. 35). Pursuant to statutes of 1999, chapter 146, section 78, a Certificate of Compliance must be transmitted to OAL by 2–24–2004 or emergency language will be repealed by operation of law on the following day.
45. Certificate of Compliance as to 4–4–2003 order transmitted to OAL 7–28–2003 and filed 9–4–2003 (Register 2003, No. 36).
46. Order of 8–28–2003 repealed by operation of law (Register 2004, No. 9).
47. Amendment of subsection (a), repealer and new subsection (a)(1), new subsection (a)(2), subsection renumbering, amendment of newly designated subsection (a)(3) and amendment of NOTE filed 2–24–2004; operative 2–25–2004 (Register 2004, No. 9). Pursuant to section 14043.75(a) of the Welfare and Institutions Code, this filing is deemed an emergency and exempt from review by OAL. A Certificate of Compliance must be transmitted to OAL by 6–24–2004 or emergency language will be repealed by operation of law on the following day.
48. Certificate of Compliance as to 2–24–2004 order transmitted to OAL 3–12–2004 and filed 4–26–2004 (Register 2004, No. 18).

§ 51522. Hearing and Speech Centers.

HISTORY

1. New section filed 2–23–67 as an emergency; effective upon filling (Register 67, No. 8).
2. Certificate of Compliance—Section 11422.1, Government Code—filed 4–12–67 (Register 67, No. 15).
3. Repealer filed 4–17–67; effective thirtieth day thereafter (Register 67, No. 16).

§ 51523. Home Health Agency Services.

(a) An approved home health agency shall be reimbursed in accordance with the maximum rates as shown below. However, in no case shall the service billed exceed charges made to the general public for the provision of similar services.

Procedure Code	*Per Visit Allowance*	*Maximum Rates*
Z6900	Skilled Nursing Services	$74.86
Z6902	Home Health Aide Services	$45.75
Z6904	Physical Therapy Services	$68.84
Z6906	Occupational Therapy Services	$71.36
Z6908	Speech Therapy Services	$78.43
Z6910	Medical Social Services	$96.22
Z6914	Case Evaluation and Initial Treatment Plan	$30.13
Z6916	Monthly Case Evaluation Extension of Treatment Plan	$15.19
Z6918	Unlisted Services	By Report
Z6920	Early Discharge Visit	$74.86

(b) Each "Per Visit Allowance" billed shall represent a minimum of one hour's service provided to the patient, with the exception of "Home Health Aide Services," which shall represent a minimum of two hours of service provided to the patient.

(c) "Unlisted Services" (Procedure Code Z6918) are payable only upon prior authorization of the Department and shall include:

(1) Services which are provided by the Home Health Agency staff but which are not shown in these rates, except that services rendered by interns or residents–in–training are not separately payable.

(2) Unusual transportation costs may be billed "By Report." All other travel expenses are included in the "Per Visit Allowance" rates.

(d) "Case Evaluation and Initial Treatment Plan" (Procedure Code Z6914) is for the purpose of evaluating and developing a patient's proposed treatment plan for approval by the patient's attending physician; and shall be billed one time only for each individual case. No service rendered prior to the development and signed approval by the attending physician of the "Case Evaluation and Initial Treatment Plan" is payable.

(e) A "Monthly Case Evaluation—Extension of Treatment Plan" (Procedure Code Z6916) may be allowed after "Case Evaluation and Initial Treatment Plan," provided such service is rendered no sooner than one full calendar month following the date of the attending physician's approval of the initial treatment plan, and no more frequently than monthly thereafter.

(f) Services provided during the Early Discharge Visit (Procedure code Z6920) shall be provided to both the mother and her newborn in accordance with Section 51327(b).

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14105 and 14132.42, Welfare and Institutions Code; Statutes of 2000, Chapter 52, Items 4260-101-001 and 4260-101-0890; Section 433.123, Title 42, Code of Federal Regulations; and *Coalition of Visiting Nurse Associations v. Department of Health Services*, Los Angeles County Superior Court (Case No. BC 22501).

HISTORY

1. Amendment of subsection (a) filed 8-1-84 as an emergency; effective upon filing (Register 84, No. 31). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11-29-84. For prior history, see Register 81, No. 52.
2. Certificate of Compliance transmitted to OAL 11-27-84 and filed 12-27-84 (Register 84, No. 52).
3. Amendment of subsection (a) filed 8-1-85 as an emergency; effective upon filing (Register 85, No. 32). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11-29-85.
4. Certificate of Compliance transmitted to OAL 11-20-85 and filed 12-27-85 (Register 85, No. 52).
5. Amendment filed 10-1-87; operative 10-31-87 (Register 87, No. 41).
6. Amendment of subsection (a) filed 5-9-88 as an emergency; operative 5-15-88 (Register 88, No. 20). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-12-88.
7. Certificate of Compliance transmitted to OAL 9-1-88 and filed 10-3-88 (Register 88, No. 42).
8. Amendment of subsections (a), (c), (d) and (e) filed 9-25-92 as an emergency; operative 10-1-92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL 1-25-93 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 9-25-92 order including amendment of subsection (a) transmitted to OAL 1-22-93 and filed 3-9-93 (Register 93, No. 11).
10. Amendment of subsection (a) and NOTE filed 12-22-94 as an emergency; operative 12-22-94 pursuant to Welfare and Institutions Code section 14105(a) (Register 94, No. 51). A Certificate of Compliance must be transmitted to OAL 4-21-95 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 12-22-94 order transmitted to OAL 4-21-95 and filed 6-1-95 (Register 95, No. 22).
12. Amendment of subsection (a) and NOTE refiled 10-16-95 as an emergency; operative 10-16-95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2-13-96 or emergency language will be repealed by operation of law on the following day.
13. Amendment of subsection (a) and NOTE refiled 2-5-96 as an emergency; operative 2-5-96 (Register 96, No. 6). A Certificate of Compliance must be transmitted to OAL by 6-6-96 or emergency language will be repealed by operation of law on the following day.
14. Certificate of Compliance as to 2-5-96 order transmitted to OAL 6-4-96 and filed 7-12-96 (Register 96, No. 28).
15. Amendment of subsection (a), new subsection (f) and amendment of NOTE filed 3-13-2000 as an emergency; operative 3-13-2000 (Register 2000, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-11-2000 or emergency language will be repealed by operation of law on the following day.
16. Certificate of Compliance as to 3-13-2000 order transmitted to OAL 7-5-2000 and filed 8-14-2000 (Register 2000, No. 33).
17. Amendment of subsection (a) and amendment of NOTE filed 11-17-2000 as an emergency; operative 11-17-2000 (Register 2000, No. 46). A Certificate of Compliance must be transmitted to OAL by 3-19-2001 or emergency language will be repealed by operation of law on the following day.
18. Certificate of Compliance as to 11-17-2000 order transmitted to OAL 3-8-2001 and filed 4-19-2001 (Register 2001, No. 16).

§ 51524. In-Home Medical Care Waiver Services and Nursing Facility Waiver Services.

(a) The method and rate of reimbursement for in-home medical care waiver services and nursing facility waiver services shall be set forth in a written agreement between the provider of services and the Department and may be set on an individual case by case basis.

(b) For beneficiaries receiving in-home care waiver services, the total reimbursement for all Medi-Cal services provided to a beneficiary shall be less than the total cost of services that would be incurred by the Medi-Cal program for the beneficiary in an acute hospital.

(c) For beneficiaries receiving nursing facility waiver services, the total reimbursement for all Medi-Cal services provided each recipient shall be less than the total cost of services that would be incurred by the Medi-Cal program for the beneficiary in the level of Medi-Cal nursing facility care appropriate to that beneficiary's medical needs.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14105, 14114 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 9-1-82 as an emergency; effective upon filing (Register 82, No. 37). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-30-82.
2. Certificate of Compliance transmitted to OAL 12-30-82 and filed 2-2-83 (Register 83, No. 6).
3. Editorial correction of NOTE filed 1-15-85 (Register 85, No. 4).
4. Amendment of section heading, text and NOTE filed 10-20-94; operative 10-20-94 (Register 94, No. 42).
5. Editorial correction of HISTORY 4 (Register 95, No. 14).

§ 51525. Blood and Blood Derivatives.

Payment will be made for reasonable costs subject to maximums which may be established by the Director.

NOTE: Authority cited: Sections 10725 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14105, Welfare and Institutions Code.

HISTORY

1. Amendment filed 6-5-67 as an emergency; effective upon filing. Certificate of Compliance filed 6-9-67 (Register 67, No. 23).
2. Amendment filed 9-27-72; designated effective 11-1-72 (Register 72, No. 40).
3. New NOTE filed 1-15-85 (Register 85, No. 4).

§ 51526. Incontinence Medical Supplies.

(a) Manufacturers and principal labelers shall report to the Department, at least annually, their median prices charged for all their Medi-Cal covered products.

(b) The Department shall update the median prices charged within sixty (60) days after receipt from the manufacturer or principal labeler subject to the Department's verification of the accuracy of the median price charged data.

(c) For purposes of reporting the median price charged and calculating the maximum estimated acquisition cost for Incontinence Medical Supplies, the major product categories are:

(1) Disposable Diapers and Briefs
(A) Economy
(1) Infant, large
(2) Infant, extra large
(3) Youth, small
(4) Youth, medium
(5) Youth, large
(6) Adult, small
(7) Adult, medium
(8) Adult, large
(9) Adult, extra large
(B) Premium
(1) Infant, large
(2) Infant, extra large
(3) Youth, small
(4) Youth, medium
(5) Youth, large
(6) Adult, small
(7) Adult, medium
(8) Adult, large
(9) Adult, extra large
(2) Underpads
(A) Economy
(1) Small
(2) Medium
(3) Large
(4) Tuckable
(B) Premium
(1) Small
(2) Medium
(3) Large
(4) Tuckable
(3) Undergarments
(A) Economy
(B) Premium
(4) Liners and Pads
(A) Small
(B) Medium
(C) Large

(5) Adult pant systems
(A) Mesh
(B) Pants
(6) Barrier Creams for the skin
(7) Incontinence washes

(d) The major product categories defined in this section may be, but are not required to be, the same categories used for negotiating contract prices for incontinence medical supplies. The Department may contract for products in all or any portion of these categories or in other categories as it decides are necessary.

(e) Notwithstanding the listing of major product categories in subsection (c), the establishment of a major product category or the inclusion of a product within a major product category does not mean the product or the category are a Medi–Cal program benefit.

NOTE: Authority cited: Sections 14105, 14125.1(c), 14125.4, 14125.5 and 14125.9, Welfare and Institutions Code; and Section 36, Chapter 456, Statutes of 1990. Reference: Section 14132, Welfare and Institutions Code; and Section 33, Chapter 456, Statutes of 1990.

HISTORY

1. New section filed 5–24–91 as an emergency; operative 5–24–91 (Register 91, No. 26). A Certificate of Compliance must be transmitted to OAL by 9–23–91 or emergency language will be repealed by operation of law on the following day.
2. Amendment of subsection (b) filed 8–1–84 as an emergency; effective upon filing (Register 84, No. 31). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–29–84.

§ 51527. Medical Transportation Services.

(a) General Provision.

(1) The reimbursement for medical transportation services shall be in accordance with maximum reimbursement rates as follows: however, billing shall not exceed charges made to the general public.

(b) Maximum reimbursement rates for medical transportation services shall be as follows:

Procedure Code		*Maximum Allowance*
	(1) Ambulance Transportation	
X0030	Ambulance service, basic life support (BLS) base rate, emergency transport, one way (includes allowance for emergency run)	$118.20
X0032	Non–emergency transportation, ambulance, base rate one way	107.16
X0002	Response to call, 2 patients, each patient (does not include an allowance for emergency run)	37.02
X0034	Ambulance service, (BLS) per mile, transport one way	3.55
X0004	Night call—7:00 p.m. to 7:00 a.m.	9.88
X0006	Emergency run	9.88
X0036	Ambulance service, oxygen, administration and supplies, life sustaining situation	9.88
X0008	Neonatal intensive care incubator	51.49
X0010	Waiting time over 15 min.—each 15 min.	9.88
X0012	Compressed air for infant respirator	10.23
	Extra attendant—RN, EMT, or equivalent; (in addition to normal crew of two):	
X0014	First hour	16.44
X0016	Second and third hour, each hour	11.51
X0018	Each additional hour	5.25
X0020	Cost of IV fluids (invoice must be attached)	By Report
X0022	ECG in ambulance	16.07
A0999	Unlisted	By Report
	(2) Air Ambulance Transportation	
A0430	Ambulance service, conventional air services, transport, one way (fixed wing)	$ 1,275.00
A0431	Ambulance service, conventional air services, transport, one way (rotary wing)	1,800.00
X0500	Patient on board miles, helicopter, per mile	22.10
X0502	Patient on board miles, fixed–wing, per mile	14.25
X0504	Night call, 7:00 p.m. to 7:00 a.m.	100.00
X0506	Waiting time over 15 minutes, each 15 minutes	25.00
X0508	Federal excise tax for fixed–wing aircraft over 6,000 pounds	10% of loaded mileage charge
X0510	Oxygen—per tank	9.88
X0512	Neonatal intensive care incubator	51.49
X0514	Compressed air for infant respirator	10.23
X0516	Administration of IV solution, 1000cc, including tubing and other supplies	13.00

[The next page is 516.4(c).]

Procedure Code		Maximum Allowance
X0518	Administration of IV solution, 500cc, including tubing and other supplies	7.00
X0522	Unlisted air transportation	By Report

(3) Wheelchair Van and Litter Van Transportation

X0200	Response to call, nonlitter patient: 1 patient	$17.65
X0202	2 patients, each patient	14.10
X0204	3 patients, each patient	11.71
X0206	4, or more patients, each patient	10.01
X0208	Wheelchair use	0.89
X0210	Response to call, litter patient in litter van	26.29
X0212	Attendant	5.52
X0214	Waiting time over 15 min.—each 15 min.	5.65
X0216	Mileage one way—per mile	1.30
X0218	Night call—7:00 p.m. to 7:00 a.m.	6.13
X0220	Oxygen—per tank	11.86
X0222	Unlisted	By Report

(4) Patient transfer from discharging acute care hospital to a receiving skilled nursing facility or intermediate care facility.

X0400	Response to call, ambulance	$107.16
X0402	Ambulance mileage, one way—per mile	3.55
X0404	Response to call, litter patient in litter van	26.29
X0406	Response to call, non–litter patient	17.65
X0408	Litter van and wheelchair van mileage, one way—per mile	1.30
X0410	Wheelchair use	0.89
X0412	Oxygen—per tank	11.86
X0414	Attendant	5.52
X0416	Unlisted	By Report

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14105 and 14136.5, Welfare and Institutions Code; Statutes of 1984, Chapter 258, Items 4260–106–001 and 890; Statutes of 1985, Chapter 111, Items 4260–106–001 and 890; Statutes of 1998, Chapter 324, Items 4260–101–0001 and 0890; Statutes of 1999, Chapter 50, Items 4260–101–0001 and 0890; and Statutes of 2000, Chapter 52, Items 4260–101–0001 and 0890.

HISTORY

1. New subsection (b)(3) filed 4–11–84; effective thirtieth day thereafter (Register 84, No. 15). For prior history, see Register 81, No. 52.
2. Amendment of subsection (b) filed 8–1–84 as an emergency; effective upon filing (Register 84, No. 31). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–29–84.
3. Certificate of Compliance transmitted to OAL 11–27–84 and filed 12–27–84 (Register 84, No. 52).
4. Amendment of subsection (b) filed 8–1–85 as an emergency; effective upon filing (Register 85, No. 32). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–29–85.
5. Certificate of Compliance transmitted to OAL 11–20–85 and filed 12–27–85 (Register 85, No. 52).
6. Editorial correction of printing error in subsection (b)(2) and HISTORY 4. (Register 91, No. 30).
7. Amendment of subsection (b)(1), new subsection (b)(2) and amendment and redesignation of subsections (b)(3)–(b)(4) filed 9–25–92 as an emergency; operative 10–1–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL 1–25–93 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 9–25–92 order transmitted to OAL 1–22–93 and filed 3–9–93 (Register 93, No. 11).
9. Amendment of subsection (b)(1) filed 8–2–95 as an emergency; operative 8–2–95 (Register 95, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–30–95 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 8–2–95 order transmitted to OAL 11–22–95 and filed 1–3–96 (Register 96, No. 1).
11. Amendment of subsections (b)(1) and (b)(4) amendment of NOTE filed 3–1–99 as an emergency; operative 3–1–99 (Register 99, No. 10). A Certificate of Compliance must be transmitted to OAL by 6–29–99 or emergency language will be repealed by operation of law on the following day.
12. Reinstatement of section as it existed prior to 3–1–99 emergency amendment by operation of Government Code section 11346.1(f) (Register 99, No. 33).
13. Amendment of subsections (b)(1) and (b)(4) and amendment of NOTE filed 8–10–99 as an emergency; operative 8–10–99 (Register 99, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–8–99 or emergency language will be repealed by operation of law on the following day.
14. Certificate of Compliance as to 8–10–99 order transmitted to OAL 12–2–99 and filed 1–13–2000 (Register 2000, No. 2).
15. Amendment of subsections (b)(1) and (b)(4) and amendment of NOTE filed 11–13–2000 as an emergency; operative 11–13–2000 (Register 2000, No. 46). A Certificate of Compliance must be transmitted to OAL by 3–13–2001 or emergency language will be repealed by operation of law on the following day.
16. Certificate of Compliance as to 11–13–2000 order transmitted to OAL 3–13–2001 and filed 4–4–2001 (Register 2001, No. 14).
17. Amendment of subsection (b)(2) filed 12–19–2001 as an emergency; operative 12–19–2001 (Register 2001, No. 51). A Certificate of Compliance must be transmitted to OAL by 4–18–2002 or emergency language will be repealed by operation of law on the following day.
18. Certificate of Compliance as to 12–19–2001 order transmitted to OAL 4–9–2002 and filed 4–30–2002 (Register 2002, No. 18).
19. Amendment of subsections (b)(3)–(4), new subsection (c) and amendment of NOTE filed 7–16–2002; operative rates for services provided on or after 8–1–2000 pursuant to Stats. 2000, c. 52, Items 4260–101–0001 and 0890 (Register 2002, No. 29).
20. Certificate of Compliance as to 7–16–2002 order, including repealer of subsection (c), transmitted to OAL 11–12–2002 and filed 12–24–2002 (Register 2002, No. 52).

§ 51528. Paramedic Ambulance Services.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14105 and 14136.5, Welfare and Institutions Code; Statutes of 1984, Chapter 258, Items 4260–106–001 and 890; and Statutes of 1985, Chapter 111, Items 4260–106–001 and 890.

HISTORY

1. New section filed 4–20–82 as an emergency; effective upon filing (Register 82, No. 18).
2. Order of Repeal of 4–20–82 emergency order filed 4–29–82 by OAL pursuant to Government Code Section 11349.6 (Register 82, No. 18).
3. New section filed 7–6–82 as an emergency; effective upon filing (Register 82, No. 28). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–3–82.
4. Certificate of Compliance as to 7–6–82 order transmitted to OAL 11–3–82 and filed 12–3–82 (Register 82, No. 49).
5. Amendment of subsection (a) filed 8–1–84 as an emergency; effective upon filing (Register 84, No. 31). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–29–84.
6. Certificate of Compliance transmitted to OAL 11–27–84 and filed 12–27–84 (Register 84, No. 52).
7. Amendment of subsection (a) filed 8–1–85 as an emergency; effective upon filing (Register 85, No. 32). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–29–85.
8. Repealer filed 8–9–85; effective thirtieth day thereafter (Register 85, No. 32).
9. Certificate of Compliance as to 8–1–85 order transmitted to OAL 11–20–85 and filed 12–27–85 (Register 85, No. 52).

§ 51529. Pathology Services.

(a) This section applies to all laboratory services excluding those performed for hospital inpatients and billed as part of the hospital cost reimbursement billing, and excluding those tests with rates incorporated in section 51503(b).

(1) Payment shall be made only for tests performed by standard procedures and techniques commonly employed by clinical laboratories. No payment shall be made to any provider for a laboratory test performed by a laboratory that is not qualified for reimbursement under the Medicare program (Title XVIII) for that test.

(2) Reimbursement for laboratory tests shall be the least of the following:

(A) The amount billed.

(B) The charge to the general public.

(C) Medicare's maximum allowance.

(D) The maximum allowance allowed by (b) or (c).

(3) Reimbursements pursuant to this section shall be made only to a provider who actually performed the pathology services. No provider shall bill the Medi–Cal program for pathology services, including collection and handling services, the provider did not actually perform. For purposes of this section, services shall be deemed to have been performed by the provider if the services are performed by the provider personally, or by an employee of the provider.

(4) Reimbursement for collection and handling of specimens is payable only in accordance with the following:

(A) The specimen is a blood sample.

(B) The specimen is forwarded to an outside laboratory.

(C) One of the following codes is billed:

Z5218–Collection and handling of blood specimen forwarded to an outside laboratory when this is the only service provided and billed for.

Z5220–Collection and handling of blood specimen forwarded to an outside laboratory when other physician services are provided at the same time.

Codes Z5218 and Z5220 include any or all of the following: Single or multiple venipuncture, capillary puncture or arterial puncture with one or more tubes, centrifugation and serum separation, freezing, refrigeration, preparation for air transportation or other special handling procedures, supplies, registration of patient or specimen, and third party billing.

(D) Reimbursement shall be made for only one collection and handling procedure per day per provider for each beneficiary.

(E) Reimbursement shall be the least of the billed amount, the charge to the general public, Medicare's maximum allowance, or $3.63.

(5) Laboratory services necessary for chronic outpatient hemodialysis in renal dialysis centers and community hemodialysis units are payable only when billed by the renal dialysis center or community hemodialysis units.

(b) Any two or more of the panel or profile tests listed in the latest edition of the Physicians' Current Procedural Terminology (codes 80002–80019) may be reimbursed as individual tests, in accordance with (c), only when the physician ordering the tests justifies and certifies that individual tests and prompt reporting are required for urgent medical reasons. Otherwise, reimbursement for these tests shall be made in accordance with the following maximum allowances.

Procedure Code	*Procedure*	*Maximum Allowance*
80002	2 tests	$10.59
80003	3 tests	15.88
80004	4 tests	15.88
80005	5 tests	15.88
80006	6 tests	15.88
80007	7 tests	20.06
80008	8 tests	20.06
80009	9 tests	20.06
80010	10 tests	20.06
80011	11 tests	20.06
80012	12 tests	20.06
80016	13–16 tests	20.06
80018	17–18 tests	20.06
80019	19 tests	20.06

(c) The maximum allowances for individual tests shall be the dollar amount derived by multiplying the unit value assigned to a given procedure in the Pathology Section of the 1974 California Relative Value Studies, published by the California Medical Association, by a conversion factor of $0.76. Unit values for individual procedures may be adjusted to reflect changes in technology based upon appropriate relative value studies. "Individual tests" as used in this regulation means those procedures which are a benefit of the Medi–Cal program as determined by the Department.

(d) Newborn screening for heritable disorders mandated by law and prenatal screening for birth defects shall be reimbursed at the rate as established by the Department of Health Services pursuant to regulations as provided in sections 6508 and 6529, title 17, California Code of Regulations.

(e) Any combination of two or more tests, in addition to those specified in (b), which are performed together on automated laboratory equipment shall be billed and reimbursed as an automated test.

(f) No reimbursement shall be made by the Medi–Cal program for any service which comes within the definition of laboratory services or clinical laboratory services unless the provider of service and all other persons or entities performing, supervising, consulting on, or directing the laboratory or clinical laboratory services for which reimbursement is sought from the Medi–Cal program are in compliance with the requirements of section 51211.2.

(g) If the department determines that a provider of service no longer substantially meets the requirements for participation because one or more condition level deficiencies, as defined in 17 CCR 1029.55, exist; or immediate jeopardy, as defined in 17 CCR 1029.95, exists; or the license, registration or approval has been temporarily suspended, as defined in 17 CCR 1029.173, the department may in lieu of, or in addition to, any other available sanction, and prior to hearing, temporarily suspend a provider of service from the Medi–Cal program and not pay all or part of the Medi–Cal and Medicaid reimbursements to which the provider would otherwise be entitled, provided that in the opinion of the director such action is necessary to protect the public welfare or the interests of the Medi–Cal program. The department shall follow the procedures identified in 17 CCR 1067.15 in taking such action. If it is determined upon judicial review that immediate jeopardy did not exist or if an adjudicatory hearing results in a final decision that condition level deficiencies did not exist, the provider of service may submit claims for the period of time for which the provider of service was temporarily suspended. Reimbursement of such claims shall be made to the same extent it would have been made if the provider of service had not been temporarily suspended and the claim had been submitted timely.

NOTE: Authority cited: Section 309(b), Health and Safety Code; Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 101150–101165, 124980, 124985, 124990 and 124995, Health and Safety Code; Sections 14105, 14115.4, 14123 and 14134.2, Welfare and Institutions Code; Sections 1206, 1220, 1272 and 1272.6, Business and Professions Code; Statutes of 1982, Chapter 1594, Sections 77 and 79; Statutes of 1983, Chapter 323, Section 149; Statutes of 1984, Chapter 258, Items 4260–106–001 and 890; Statutes of 1984, Chapter 268, Section 66; Statutes of 1985, Chapter 111, Items 4260–106–001 and 890; Section 433.123, Title 42, Code of Federal Regulations; Title 42 United States Code, Section 263a; 42 USC, Section 1395x(s) [Section 1861(s) of the Social Security Act]; 42 United States Code, Section 1395w–2 [Section 1846 of the federal Social Security Act]; 42 United States Code, Section 1396a(a)(9)(C) [Section 1902(a)(9)(C) of the federal Social Security Act]; 42 United States Code, Section 1396a(a)(30) [Section 1902(a)(30) of the federal Social Security Act]; 42 USC Section 1396a(p) [Section 1902(p) of the Social Security Act]; 42 CFR Sections 1001.201 through 1001.1701 and 1002.2; and Statutes of 2000, Chapter 52, Items 4260–101–0001 and 0890.

HISTORY

1. Certificate of Compliance as to 12–21–82 order transmitted to OAL 4–19–83 and filed 5–24–83 (Register 83, No. 22). For prior history, see Register 82, No. 52.
2. Amendment of subsections (a)(4)(E), (b), and (c) filed 8–1–84 as an emergency; effective upon filing (Register 84, No. 31). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–29–84.
3. Certificate of Compliance including amendment of subsections (a)(2) and (a)(4) transmitted to OAL 11–27–84 and filed 12–27–84 (Register 84, No. 52).
4. Amendment of subsections (a)(4)(E), (b) and (c) filed 8–1–85 as an emergency; effective upon filing (Register 85, No. 32). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–29–85.
5. Certificate of Compliance transmitted to OAL 11–20–85 and filed 12–27–85 (Register 85, No. 52).
6. Change without regulatory effect of subsection (d) (Register 87, No. 25).
7. Amendment of subsections (b)–(d) filed 10–1–87; operative 10–31–87 (Register 87, No. 41).
8. Amendment of subsection (d) filed 12–6–90 as an emergency by the Department of Health Services with the Secretary of State; operative 12–6–90. Submitted to OAL for printing only pursuant to Health and Safety Code 309(g) (Register 91, No. 14).
9. Certificate of Compliance as to 12–6–90 order transmitted to OAL 3–19–91; exempted from OAL review pursuant to Health and Safety Code section 309(h); filed with the Secretary of State 4–18–91 (Register 91, No. 20).
10. Editorial correction of printing error in subsection (d) (Register 91, No. 32).
11. New subsection (f) and amendment of NOTE filed 1–20–94 as an emergency; operative 1–20–94 (Register 94, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–20–94 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 1–20–94 order transmitted to OAL 5–19–94 and filed 7–1–94 (Register 94, No. 26).
13. Amendment of subsections (a)(4)(C), (b) and (e) filed 7–28–97 as an emergency; operative 7–28–97 (Register 97, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–25–97 or emergency language will be repealed by operation of law on the following day.
14. Amendment of subsection (f), new subsection (g) and amendment of NOTE filed 8–28–97 as an emergency; operative 8–28–97 (Register 97, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–26–97 or emergency language will be repealed by operation of law on the following day.
15. Certificate of Compliance as to 7–28–97 order transmitted to OAL 11–19–97 and filed 1–6–98 (Register 98, No. 2).
16. Certificate of Compliance as to 8–28–98 order transmitted to OAL 12–24–97 and filed 2–9–98 (Register 98, No. 7).
17. Change without regulatory effect amending subsection (g) filed 5–14–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 20).
18. Amendment of subsection (a), new subsection (h) and amendment of NOTE filed 7–16–2002; operative rates for services provided on or after 8–1–2000 pursuant to Stats. 2000, c. 52, Items 4260–101–0001 and 0890 (Register 2002, No. 29).
19. Certificate of Compliance as to 7–16–2002 order, including repealer of subsection (h), transmitted to OAL 11–12–2002 and filed 12–24–2002 (Register 2002, No. 52).

§ 51531. X-Ray Services.

(a) Payment for X-ray services, when provided at home, in residential care facilities, in intermediate care facilities or in skilled nursing facilities, and done by or under the direction of a physician, may be made when billed by the physician, except when these services are included in the cost payment formula of a skilled nursing facility.

(b) Payment for X-ray services performed by portable X-ray services as set forth in Section 51311(b), when provided at home, in residential care facilities, in intermediate care facilities or in skilled nursing facilities may be made in accordance with the following:

(1) Payment for X-ray services shall be reasonable charges not to exceed the charge in the locality for similar services with consideration for customary charges. Services shall be billed by either the physician (Radiologist) or the portable X-ray service. In no event shall the charge exceed the charge made to the general public.

(2) Payment for portable X-ray transportation shall include transportation of portable X-ray equipment and personnel to the home or skilled nursing facility. Maximum reimbursement rates shall be established pursuant to Welfare and Institutions Code Section 14105.23.

(c) Claims for services rendered by portable X-ray services shall include the name and address of the practitioner ordering the service, tentative diagnosis and a brief statement stating why portable X-ray service was necessary.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code; and Section 20, Health and Safety Code. Reference: Section 14105, Welfare and Institutions Code; Statutes of 1982, Chapter 1594, Section 77; Statutes of 1983, Chapter 323, Section 149; Statutes of 1984, Chapter 268, Section 66; and Statutes of 1985, Chapter 111, Items 4260-106-001 and 890.

HISTORY

1. Amendment of subsection (b)(2) filed 8-1-84 as an emergency; effective upon filing (Register 84, No. 31). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11-29-84. For prior history, see Register 82, No. 52.
2. Certificate of Compliance transmitted to OAL 11-27-84 and filed 12-27-84 (Register 84, No. 52).
3. Amendment of subsection (b)(2) filed 8-1-85 as an emergency; effective on filing (Register 85, No. 32). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11-29-85.
4. Certificate of Compliance transmitted to OAL 11-20-85 and filed 12-27-85 (Register 85, No. 52).
5. Amendment of subsection (b)(2) filed 5-9-88 as an emergency; operative 5-15-88 (Register 88, No. 20). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-12-88.
6. Certificate of Compliance transmitted to OAL 9-1-88 and filed 10-3-88 (Register 88, No. 42).
7. Amendment of subsection (b)(2) filed 9-25-92 as an emergency; operative 10-1-92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL 1-25-93 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 9-25-92 order transmitted to OAL 1-22-93 and filed 3-9-93 (Register 93, No. 11).
9. Change without regulatory effect amending subsection (b)(2) and NOTE filed 11-29-2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 48).

§ 51532. Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services.

(a) Reimbursement for early and periodic screening services under the Child Health and Disability Prevention program shall be made in accordance with the provisions of Title 17, California Code of Regulations, Sections 6800 et seq.

(b) EPSDT screening services not provided through CHDP providers shall be reimbursed up to the maximum allowance for services set forth in this article.

(c) EPSDT diagnosis and treatment services, and services authorized as EPSDT Supplemental Services in excess of the maximum number of services specified in Section 51304, shall be reimbursed up to the maximum allowance for services set forth in this article. Reimbursement for EPSDT supplemental services not set forth in this article shall be based upon a review of such services to determine their relationship to other services for which maximum allowances are set forth.

(d) Reimbursement for EPSDT case management services provided by entities or individuals serving EPSDT-eligible beneficiaries pursuant to Section 51340(j)(3) shall not duplicate reimbursement provided under other publicly funded programs.

(e) Reimbursement for EPSDT case management services provided pursuant to Section 51340(k) shall be in accordance with the provisions of the contract between the Department and the Medi-Cal managed care plan.

NOTE: Authority cited: Sections 208 and 320-324.5, Health and Safety Code; and Sections 14105 and 14125.4, Welfare and Institutions Code. Reference: Sections 320-324.5, Health and Safety Code; Sections 14105 and 14125.4, Welfare and Institutions Code; Item 265—Budget Act of 1979; and Item 291—Budget Act of 1980.

HISTORY

1. New section filed 2-27-75; effective thirtieth day thereafter (Register 75, No. 9).
2. Amendment filed 8-1-80 as an emergency; effective upon filing (Register 80, No. 31). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 11-29-80.
3. Certificate of Compliance transmitted to OAL 11-28-80 and filed 12-24-80 (Register 80, No. 52).
4. Amendment of section heading, text, and NOTE filed 4-4-94 as an emergency; operative 4-4-94 (Register 94, No. 14). A Certificate of Compliance must be transmitted to OAL by 8-2-94 or emergency language will be repealed by operation of law on the following day.
5. Amendment of section heading, text, and NOTE refiled 8-1-94 as an emergency; operative 8-1-94 (Register 94, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-29-94 or emergency language will be repealed by operation of law on the following day.
6. Amendment of section heading, text and NOTE refiled 10-24-94 as an emergency; operative 10-24-94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2-21-95 or emergency language will be repealed by operation of law on the following day.
7. Amendment of section heading, text and NOTE refiled 2-22-95; operative 2-22-95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-22-95 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 2-22-95 order including amendment of subsection (c) and new subsections (d)-(e) transmitted to OAL 3-16-95 and filed 4-27-95 (Register 95, No. 17).

§ 51532.1. Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Supplemental Services Provided by Registered Nurses, Licensed Vocational Nurses and Certified Home Health Aides.

(a) Reimbursement for EPSDT supplemental services defined in Section 51184, provided in the home by Registered Nurses, Licensed Vocational Nurses and certified Home Health Aides shall be in accordance with the maximum reimbursement rates set forth in this section. However, in no case shall the services billed exceed charges made to the general public for the provision of similar services. For the purposes of this section, "in the home" means the beneficiary's residence, or foster care placement pursuant to Section 17731, Welfare and Institutions Code. "In the home" does not include a licensed health facility.

(b) Reimbursement for EPSDT supplemental nursing services and home health aide services provided by a home health agency shall be as follows:

Procedure Code	*Description*	*Hourly Rate*
Z5832	Registered Nurse	$40.57
Z5834	Licensed Vocational Nurse	$29.41
Z5836	Registered Nurse providing supervision	$45.43
Z5838	Home Health Aide	$18.90

(c) Reimbursement for EPSDT supplemental nursing services provided by licensed registered nurses and licensed vocational nurses enrolled as EPSDT supplemental services providers acting within the scope of their practice, under the written order and direction of the patient's treating physician pursuant to Section 51242, shall be as follows:

Procedure Code	*Description*	*Hourly Rate*
Z5804	Registered Nurse	$31.94
Z5806	Licensed Vocational Nurse	$24.42
Z5840	Registered Nurse providing supervision	$35.77

(d) The name of the treating physician shall be included with each Treatment Authorization Request submitted pursuant to this section.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code; Section 100275, Health and Safety Code. Reference: Sections 14059 and 14132, Welfare and Institutions Code; 42 United States Code, Section 1396d(r); and Statutes of 2000, Chapter 52, Items 4260-101-0001 and 4260-101-0890.

HISTORY

1. New section filed 8–10–99 as an emergency; operative 8–10–99 (Register 99, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–8–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 8–10–99 order transmitted to OAL 12–7–99 and filed 1–14–2000 (Register 2000, No. 2).
3. Amendment of subsections (b)–(c) and amendment of NOTE filed 11–17–2000 as an emergency; operative 11–17–2000 (Register 2000, No. 46). A Certificate of Compliance must be transmitted to OAL by 3–19–2001 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–17–2000 order transmitted to OAL 3–8–2001 and filed 4–19–2001 (Register 2001, No. 16).

§ 51532.2. Early and Periodic, Screening, Diagnosis, and Treatment (EPSDT) Supplemental Services: Onsite Investigation to Detect the Source of Lead Contamination.

(a) Reimbursement for EPSDT supplemental services identified in Sections 51184 and 51340 shall be in accordance with the maximum reimbursement rates set forth in this section. However, in no case shall the service billed exceed charges made to the general public for the provision of similar services.

(b) Reimbursement for EPSDT supplemental services for an onsite investigation to detect the source of lead contamination in the home environment of a child diagnosed with high blood lead levels provided in accordance with subsection (d) of Section 51340.1 shall be:

Procedure Code	*Description*	*Rate*
Z5830	Onsite investigation to detect the source of lead contamination in the home.	$270.00 per investigation

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14059 and 14132(v), Welfare and Institutions Code; and 42 U.S.C. 1396d(r).

HISTORY

1. New section filed 4–13–99 as an emergency; operative 4–13–99 (Register 99, No. 16). A Certificate of Compliance must be transmitted to OAL by 8–11–99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 8–5–99 as an emergency; operative 8–5–99 (Register 99, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–3–99 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 8–5–99 order transmitted to OAL 12–1–99 and filed 1–12–2000 (Register 2000, No. 2).

§ 51532.3. EPSDT Supplemental Services Provider—Pediatric Day Health Care Facility Reimbursement.

(a) The hourly rate of reimbursement for pediatric day health care EPSDT services shall be $29.41.

(b) Payment for pediatric day health care services shall be limited to:

(1) Labor costs for nursing services and developmental programs authorized in Section 51340.1(e)(2)(B), and

(2) Equipment, medications and supplies for emergency purposes.

(c) Not included in the payment rate for pediatric day health care services are those items listed in Sections 51242.1(k)(2)(A), (B) and (C), and any equipment or supplies specified in, or otherwise necessary to implement, the child's plan of treatment.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14132.10, Welfare and Institutions Code; and Statutes of 2000, Chapter 52, Items 4260–101–0001 and 4260–101–0890.

HISTORY

1. New section filed 11–10–99 as an emergency; operative 11–10–99 (Register 99, No. 46). A Certificate of Compliance must be transmitted to OAL by 3–9–2000 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 11–10–99 order transmitted to OAL 3–8–2000 and filed 4–19–2000 (Register 2000, No. 16).
3. Amendment of subsection (a) and amendment of NOTE filed 1–27–2003 as an emergency; operative 8–1–2001 pursuant to Statutes of 2002, Chapter 16, Items 4260–101–0001 and 4260–101–0890 (Register 2003, No. 5). A Certificate of Compliance must be transmitted to OAL by 5–27–2003 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsection (a) and amendment of NOTE refiled 5–22–2003 as an emergency; operative 5–22–2003 (Register 2003, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–19–2003 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 5–22–2003 order transmitted to OAL 9–18–2003 and filed 10–16–2003 (Register 2003, No. 42).

§ 51533. Outpatient Heroin Detoxification Services.

(a) Daily treatment of patients shall be reimbursed in accordance with the schedule shown below:

Procedure Code		*Per Visit Allowance*
Z6600	(1) Services rendered during the first seven days, per visit .... Services shall include: taking of the initial history; physical examination by a physician; other physician services necessary to the heroin detoxification services; necessary urine screening tests and related specimen handling; daily visits to the clinic for medication or reexamination; any other procedures related to outpatient heroin detoxification services.	$14.60
Z6602	(2) Services rendered from the 8th through the 21st day, per visit ..... Services shall include administering medication and other procedures related to outpatient heroin detoxification services.	$9.29
Z6604	(3) Reexamination by a physician between 8th and 21st days, maximum of one per week, per visit ..... Reexamination by a physician shall be provided only as a substitute for visits under (a) (2) and payment shall include all other services specified under (a) (2).	$18.01

(b) Additional charges may be billed by appropriately licensed facilities or by physicians or other Medi–Cal providers for services medically necessary to diagnose and treat diseases which, in the individual patient, the physician believes are concurrent with but not part of the outpatient heroin detoxification services as defined in Section 51116. Fees for additional physician services provided for the diagnosis and treatment of concurrent diseases or illness shall be reduced to reflect any fees already paid in the daily outpatient heroin detoxification service.

(c) A new course of outpatient heroin detoxification treatment shall not be covered until at least 28 days have elapsed since the completion of an immediately preceding course. New courses of outpatient heroin detoxification treatment by the same provider which are started in the period between the 29th and through the 90th days following the completion of an immediately preceding course of treatment shall be reimbursed at the rates listed under (a) (2) and (3). The daily rate listed under (a) (1) shall not be billed by the same provider or separately billed by a physician employee of that provider until 90 days have elapsed. The patient may be considered a new patient for reimbursement purposes after 90 days following the completion of the immediately preceding course of heroin detoxification.

(d) The patient may be considered a new patient for reimbursement purposes by a new provider for heroin detoxification services started in the period between the 29th through the 90th days following completion of an immediately preceding course of heroin detoxification services only if the fact of the preceding course is denied or misrepresented by the patient. Otherwise reimbursement shall be according to Section (c).

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14105, Welfare and Institutions Code; Statutes of 1984, Chapter 258, Items 4260–106–001 and 890; and Statutes of 1985, Chapter 111, Items 4260–106–001 and 890.

HISTORY

1. Amendment of subsection (a) filed 8–1–84 as an emergency; effective upon filing (Register 84, No. 31.) A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–29–84. For prior history, see Register 81, No. 52.
2. Certificate of Compliance transmitted to OAL 11–27–84 and filed 12–27–84 (Register 84, No. 52).
3. Amendment of subsection (a) filed 8–1–85 as an emergency; effective upon filing (Register 85, No. 32). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–29–85.
4. Certificate of Compliance transmitted to OAL 11–20–85 and filed 12–27–85 (Register 85, No. 52).
5. Amendment of subsection (a) filed 9–25–92 as an emergency; operative 10–1–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL 1–25–93 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 9–25–92 order transmitted to OAL 1–22–93 and filed 3–9–93 (Register 93, No. 11).
7. Editorial correction of subsection (c) (Register 95, No. 45).

§ 51534. Home and Community–Based Services.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14132(u), Welfare and Institutions Code. Reference: Sections 14105, 14132(u) and 14149, Welfare and Institutions Code.

HISTORY

1. New section filed 2–25–83 as an emergency; effective upon filing (Register 83, No. 10). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6–25–83.
2. Certificate of Compliance including editorial correction transmitted to OAL 6–22–83 and filed 7–27–83 (Register 83, No. 31).
3. Editorial correction of NOTE filed 1–15–85 (Register 85, No. 4).
4. Repealer filed 10–20–94; operative 10–20–94 (Register 94, No. 42).
5. Editorial correction of HISTORY 4 (Register 95, No. 14).

§ 51535. Leave of Absence.

(a) Payment may be made to skilled nursing facilities, swing bed facilities, intermediate care facilities, intermediate care facilities for the developmentally disabled, intermediate care facilities for the developmentally disabled/habilitative and intermediate care facilities for the developmentally disabled–nursing, for patients who are on approved leave of absence. Payment for leave of absence shall not exceed the maximum number of days per calendar year indicated below:

(1) Developmentally disabled, developmentally disabled habilitative and developmentally disabled–nursing beneficiaries: 73 days.

(2) Patients in a certified special treatment program for mentally disordered persons, or patients in a mental health therapeutic and rehabilitative program approved and certified by a local mental health director: 30 days.

(3) All other patients: 18 days. Up to 12 additional days of leave per year may be approved when the request for additional days of leave is in accordance with the individual patient care plan and appropriate to the physical and mental well–being of the patient.

(b) Leave of absence may be approved for:

(1) A visit with relatives or friends.

(2) Participation by developmentally disabled, developmentally disabled habilitative and developmentally disabled–nursing beneficiaries in an organized summer camp for developmentally disabled persons.

(c) All of the following requirements shall be met:

(1) Written approval and instructions for leave of absence shall be provided as follows:

(A) In the individual program plan for developmentally disabled patients in intermediate care facilities for the developmentally disabled, developmentally disabled habilitative and developmentally disabled–nursing.

(B) In the individual patient care plan for patients in a certified special treatment program for mentally disordered persons, or patients in a mental health therapeutic and rehabilitative program approved and certified by a local mental health officer.

(C) By the patient's attending physician for all other patients and in the individual patient care plan for those leaves involving the up to 12 additional days described in (a)(3).

(2) The facility shall hold the bed vacant during leave.

(3) The day of departure shall be counted as one day of leave and the day of return shall be counted as one day of inpatient care.

(4) Leave shall be terminated on the day of the death of the patient. Leave shall be terminated if the patient is admitted as an inpatient to any other facility, or if the patient exceeds the approved period of leave of absence and is determined to be absent without leave.

(5) Payment shall not be made for the last day of leave if the patient dies or fails to return from leave within the period of approved leave.

(6) Payment shall not be made for the period of leave of absence if the patient is discharged within 24 hours of return from leave, or if the patient is discharged while on leave of absence, except as provided in (c)(5).

(7) Failure to return from leave of absence within the approved period shall not invalidate an approved treatment authorization request. There shall be no requirement to file a new treatment authorization request if the patient fails to return from leave within the approved period.

(8) Facility claims shall identify the inclusive dates of leave.

(9) The patient's records maintained in the skilled nursing facility, intermediate care facility, intermediate care facility for the developmentally disabled, intermediate care facility for the developmentally disabled habilitative, or intermediate care facility for the developmentally disabled–nursing shall show the address of the intended leave destination and the inclusive dates of leave.

(d) Payment to skilled nursing facilities, swing bed facilities, intermediate care facilities, intermediate care facilities for the developmentally disabled, intermediate care facilities for the developmentally disabled–habilitative, and intermediate care facilities for the developmentally disabled–nursing for patients who are on approved leave of absence shall be at the appropriate facility daily rate less $4.95 for raw food costs, except for state operated institutions.

NOTE: Authority cited: Sections 10725, 14105, 14108, 14108.1, 14108.2 and 14124.5, Welfare and Institutions Code; and Section 1275.3, Health and Safety Code. Reference: Sections 14108, 14108.1, 14108.2, 14109.5 and 14110.1, Welfare and Institutions Code; Section 1275.3, Health and Safety Code; and Statutes of 2002, Chapter 379, Items 4260–101–0001 and 4260–101–0890.

HISTORY

1. Amendment refiled by the Department of Health Services with the Secretary of State on 5–30–89 as an emergency pursuant to Health and Safety Code section 1275.3; operative 5–30–89. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 89, No. 23). For prior history, see Register 89, No. 1.
2. Amendment filed 8–7–89 as an emergency; operative 8–7–89 (Register 89, No. 32). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12–5–89.
3. Certificate of Compliance as to 5–30–89 order including amendment of subsections (a)(1) and (b)(2) transmitted to OAL 9–27–89 and filed 10–26–89 (Register 89, No. 44).
4. Certificate of Compliance as to 8–7–89 transmitted to OAL 12–1–89 and filed 1–2–90 (Register 90, No. 2).
5. Amendment filed 12–10–90 as an emergency; operative 12–10–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 4–9–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 12–10–90 order transmitted to OAL 4–8–91 and filed 5–8–91 (Register 91, No. 24).
7. Amendment of subsection (d) and NOTE filed 8–12–91 as an emergency; operative 8–12–91 (Register 92, No. 6). A Certificate of Compliance must be transmitted to OAL 12–10–91 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 8–12–91 order transmitted to OAL 12–9–91 and filed 1–2–92 (Register 92, No. 18).
9. Amendment of subsection (d) and NOTE filed 12–3–92 as an emergency; operative 12–3–92 (Register 92, No. 49). A Certificate of Compliance must be transmitted to OAL 4–2–93 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 12–3–92 order transmitted to OAL 4–2–93 and filed 5–14–93 (Register 93, No. 20).
11. Amendment of subsection (d) and NOTE filed 8–24–93 as an emergency; operative 8–24–93 (Register 93, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–22–93 or emergency language will be repealed by operation of law on the following day.
12. Amendment of subsection (d) and NOTE refiled 12–20–93 as an emergency; operative 12–20–93 (Register 93, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–21–94 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 12–20–93 order transmitted to OAL 3–22–94 and filed 4–28–94 (Register 94, No. 17).
14. Amendment of subsection (d) and NOTE filed 8–31–94 as an emergency; operative 8–31–94 (Register 94, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–29–94 or emergency language will be repealed by operation of law on the following day.
15. Amendment of subsection (d) and NOTE refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL 5–3–95 or emergency language will be repealed by operation of law on the following day.
16. Certificate of Compliance as to 1–3–95 order transmitted to OAL 4–27–95 and filed 6–9–95 (Register 95, No. 23).
17. Amendment of subsection (d) and NOTE filed 9–19–96 as an emergency; operative 9–19–96 (Register 96, No. 38). A Certificate of Compliance must be transmitted to OAL by 1–17–97 or emergency language will be repealed by operation of law on the following day.
18. Certificate of Compliance as to 9–19–96 order transmitted to OAL 1–17–97 and filed 3–3–97 (Register 97, No. 10).
19. Amendment of subsection (d) and NOTE filed 12–31–97 as an emergency; operative 12–31–97 (Register 98, No. 1). A Certificate of Compliance must be transmitted to OAL by 4–30–98 or emergency language will be repealed by operation of law on the following day.
20. Editorial correction of HISTORY 19 (Register 98, No. 24).
21. Certificate of Compliance as to 12–31–97 order transmitted to OAL 4–27–98 and filed 6–9–98 (Register 98, No. 24).
22. Amendment of subsection (d) and NOTE filed 10–29–98 as an emergency; operative 10–29–98 (Register 98, No. 44). A Certificate of Compliance must be

transmitted to OAL by 2-26-99 or emergency language will be repealed by operation of law on the following day.
23. Certificate of Compliance as to 10-29-98 order transmitted to OAL 2-26-99 and filed 4-8-99 (Register 99, No. 15).
24. Amendment of subsection (d) and amendment of NOTE filed 11-3-99 as an emergency; operative 11-3-99 (Register 99, No. 45). A Certificate of Compliance must be transmitted to OAL by 3-2-2000 or emergency language will be repealed by operation of law on the following day.
25. Certificate of Compliance as to 11-3-99 order transmitted to OAL 3-1-2000 and filed 4-6-2000 (Register 2000, No. 14).
26. Amendment of subsection (d) and amendment of NOTE filed 11-17-2000 as an emergency; operative 11-17-2000 (Register 2000, No. 46). A Certificate of Compliance must be transmitted to OAL by 3-19-2001 or emergency language will be repealed by operation of law on the following day.
27. Certificate of Compliance as to 11-17-2000 order transmitted to OAL 3-8-2001 and filed 4-19-2001 (Register 2001, No. 16).
28. Amendment of subsection (d) and amendment of NOTE filed 1-27-2003 as an emergency; operative 8-1-2001 pursuant to Statutes of 2002, Chapter 16, Items 4260-101-0001 and 4260-101-0890 (Register 2003, No. 5). A Certificate of Compliance must be transmitted to OAL by 5-27-2003 or emergency language will be repealed by operation of law on the following day.
29. Amendment of subsection (d) and amendment of NOTE refiled 5-22-2003 as an emergency; operative 5-22-2003 (Register 2003, No. 21). A Certificate of Compliance must be transmitted to OAL by 9-19-2003 or emergency language will be repealed by operation of law on the following day.
30. Certificate of Compliance as to 5-22-2003 order transmitted to OAL 9-18-2003 and filed 10-16-2003 (Register 2003, No. 42).
31. Amendment of subsection (d) and amendment of NOTE filed 8-24-2005 as a deemed emergency pursuant to Welfare and Institutions Code section 14105(a); operative 8-24-2005 for dates of service 8-1-2002 through 7-31-2003 pursuant to Statutes of 2002, Chapter 379, Items 4260-101-0001 and 4260-101-0890 (Register 2005, No. 34). A Certificate of Compliance must be transmitted to OAL by 12-23-2005 or emergency language will be repealed by operation of law on the following day.
32. Certificate of Compliance as to 8-24-2005 order transmitted to OAL 12-22-2005 and filed 1-23-2006 (Register 2006, No. 4).

§ 51535.1. Bed Hold for Acute Hospitalization.

(a) Payment shall be made to skilled nursing facilities, swing bed facilities, intermediate care facilities, intermediate care facilities for the developmentally disabled, intermediate care facilities for the developmentally disabled habilitative, and intermediate care facilities for the developmentally disabled-nursing for bed hold days for any beneficiary who exercises the bed hold option provided by Title 22, California Code of Regulations, Sections 72520, 73504, 76506 and 76909.1.

(b) Payment for bed hold days shall be limited to a maximum of seven days for each period of acute hospitalization.

(c) The following requirements shall be met:

(1) Acute hospitalization for the beneficiary shall be ordered by the attending physician.

(2) The facility shall hold a bed vacant during the entire bed hold period except when notified, in writing by the attending physician that the patient requires more than seven days of hospitalization. If so notified, the facility is no longer required to hold the bed available and shall not bill Medi-Cal for any remaining days of bed hold.

(3) The day of departure shall be counted as one day of bed hold and the day of return shall be counted as one day of inpatient care.

(4) Bed hold shall be terminated and payment shall not be made on the day of death of the beneficiary.

(5) Facility claims shall identify the inclusive dates of bed hold.

(6) A new treatment authorization request shall be required, as specified in section 51335(b)(3), for Medicare-eligible beneficiaries who have returned from a Medicare-qualifying stay in an acute care hospital.

(7) The beneficiary's records maintained in the facility shall show the name and address of the acute care hospital to which the beneficiary has been admitted.

(d) Payment to skilled nursing facilities, swing bed facilities, intermediate care facilities for the developmentally disabled, intermediate care facilities for the developmentally disabled-habilitative, and intermediate care facilities for the developmentally disabled-nursing for beneficiaries who are on bed hold for acute hospitalization shall be at the appropriate facility daily rate less $4.95 for raw food costs, except for state operated institutions.

NOTE: Authority cited: Sections 10725, 14105, 14108, 14108.1, 14108.2, 14109.5 and 14124.5, Welfare and Institutions Code; and Section 1275.3, Health and Safety Code. Reference: Sections 14087.3, 14108, 14108.1, 14108.2, 14110.1 and 14132, Welfare and Institutions Code; Section 1275.3, Health and Safety Code; and Statutes of 2002, Chapter 379, Items 4260-101-0001 and 4260-101-0890.

HISTORY

1. Amendment refiled by the Department of Health Services with the Secretary of State on 5-30-89 as an emergency pursuant to Health and Safety Code section 1275.3; operative 5-30-89. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 89, No. 23). For prior history, see Register 89, No. 1.
2. Amendment filed 8-7-89 as an emergency; operative 8-7-89 (Register 89, No. 32). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-5-89.
3. Certificate of Compliance as to 5-30-89 order transmitted to OAL 9-27-89 and filed 10-26-89 (Register 89, No. 44).
4. Certificate of Compliance as to 8-7-89 transmitted to OAL 12-1-89 and filed 1-2-90 (Register 90, No. 2).
5. Amendment filed 12-10-90 as an emergency; operative 12-10-90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 4-9-91, or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 12-10-90 order transmitted to OAL 4-8-91 and filed 5-8-91 (Register 91, No. 24).
7. Amendment of subsection (d) and NOTE filed 8-12-91 as an emergency; operative 8-12-91 (Register 92, No. 6). A Certificate of Compliance must be transmitted to OAL 12-10-91 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 8-12-91 order transmitted to OAL 12-9-91 and filed 1-2-92 (Register 92, No. 18).
9. Amendment of subsection (d) and NOTE filed 12-3-92 as an emergency; operative 12-3-92 (Register 92, No. 49). A Certificate of Compliance must be transmitted to OAL 4-2-93 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 12-3-92 order transmitted to OAL 4-2-93 and filed 5-14-93 (Register 93, No. 20).
11. Amendment of subsection (d) and NOTE filed 8-24-93 as an emergency; operative 8-24-93 (Register 93, No. 35). A Certificate of Compliance must be transmitted to OAL by 12-22-93 or emergency language will be repealed by operation of law on the following day.
12. Amendment of subsection (d) and NOTE refiled 12-20-93 as an emergency; operative 12-20-93 (Register 93, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-21-94 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 12-20-93 order transmitted to OAL 3-22-94 and filed 4-28-94 (Register 94, No. 17).
14. Amendment of subsection (d) and NOTE filed 8-31-94 as an emergency; operative 8-31-94 (Register 94, No. 35). A Certificate of Compliance must be transmitted to OAL by 12-29-94 or emergency language will be repealed by operation of law on the following day.
15. Amendment of subsection (d) and NOTE refiled 1-3-95 as an emergency; operative 1-3-95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL 5-3-95 or emergency language will be repealed by operation of law on the following day.
16. Certificate of Compliance as to 1-3-95 order transmitted to OAL 4-27-95 and filed 6-9-95 (Register 95, No. 23).
17. Amendment of section heading, subsections (b), (b)(1)-(2), (b)(7) and (d), new subsection (e) and amendment of NOTE filed 4-1-96 as an emergency; operative 4-1-96 (Register 96, No. 14). A Certificate of Compliance must be transmitted to OAL by 9-30-96 pursuant to Welfare and Institutions Code section 14132.22 or emergency language will be repealed by operation of law on the following day.
18. Editorial correction of HISTORY 17 (Register 96, No. 35).
19. Amendment of section heading, subsections (b), (b)(1)-(2), (b)(7) and (d), new subsection (e) and amendment of NOTE refiled 8-28-96 as an emergency; operative 9-30-96 (Register 96, No. 35). A Certificate of Compliance must be transmitted to OAL by 1-28-97 or emergency language will be repealed by operation of law on the following day.
20. Amendment of subsection (d) and NOTE filed 9-19-96 as an emergency; operative 9-19-96 (Register 96, No. 38). A Certificate of Compliance must be transmitted to OAL by 1-17-97 or emergency language will be repealed by operation of law on the following day.
21. Certificate of Compliance as to 9-19-96 order transmitted to OAL 1-17-97 and filed 3-3-97 (Register 97, No. 10).
22. Certificate of Compliance as to 8-28-96 order transmitted to OAL 1-23-97 and filed 3-10-97 (Register 97, No. 11).
23. Amendment of subsection (d) and NOTE filed 12-31-97 as an emergency; operative 12-31-97 (Register 98, No. 1). A Certificate of Compliance must be transmitted to OAL by 4-30-98 or emergency language will be repealed by operation of law on the following day.
24. Editorial correction of HISTORY 23 (Register 98, No. 24).
25. Certificate of Compliance as to 12-31-97 order transmitted to OAL 4-27-98 and filed 6-9-98 (Register 98, No. 24).
26. Amendment of subsection (d) and NOTE filed 10-29-98 as an emergency; operative 10-29-98 (Register 98, No. 44). A Certificate of Compliance must be transmitted to OAL by 2-26-99 or emergency language will be repealed by operation of law on the following day.

27. Certificate of Compliance as to 10–29–98 order transmitted to OAL 2–26–99 and filed 4–8–99 (Register 99, No. 15).
28. Amendment of subsection (d) and amendment of NOTE filed 11–3–99 as an emergency; operative 11–3–99 (Register 99, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–2–2000 or emergency language will be repealed by operation of law on the following day.
29. Certificate of Compliance as to 11–3–99 order transmitted to OAL 3–1–2000 and filed 4–6–2000 (Register 2000, No. 14).
30. Amendment of subsection (d) and amendment of NOTE filed 11–17–2000 as an emergency; operative 11–17–2000 (Register 2000, No. 46). A Certificate of Compliance must be transmitted to OAL by 3–19–2001 or emergency language will be repealed by operation of law on the following day.
31. Certificate of Compliance as to 11–17–2000 order transmitted to OAL 3–8–2001 and filed 4–19–2001 (Register 2001, No. 16).
32. Amendment of section heading, subsection (d) and NOTE filed 1–27–2003 as an emergency; operative 8–1–2001 pursuant to Statutes of 2002, Chapter 16, Items 4260–101–0001 and 4260–101–0890 (Register 2003, No. 5). A Certificate of Compliance must be transmitted to OAL by 5–27–2003 or emergency language will be repealed by operation of law on the following day.
33. Amendment of section heading, subsection (d) and NOTE refiled 5–22–2003 as an emergency; operative 5–22–2003 (Register 2003, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–19–2003 or emergency language will be repealed by operation of law on the following day.
34. Certificate of Compliance as to 5–22–2003 order transmitted to OAL 9–18–2003 and filed 10–16–2003 (Register 2003, No. 42).
35. Amendment of subsection (d) and amendment of NOTE filed 8–24–2005 as a deemed emergency pursuant to Welfare and Institutions Code section 14105(a); operative 8–24–2005 for dates of service 8–1–2002 through 7–31–2003 pursuant to Statutes of 2002, Chapter 379, Items 4260–101–0001 and 4260–101–0890 (Register 2005, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–23–2005 or emergency language will be repealed by operation of law on the following day.
36. Certificate of Compliance as to 8–24–2005 order transmitted to OAL 12–22–2005 and filed 1–23–2006 (Register 2006, No. 4).
37. Change without regulatory effect amending subsections (a), (b), (c)(1)–(2) and (c)(7), repealing subsection (e) and amending NOTE filed 6–12–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 24).

§ 51535.2. Reimbursement Rates for Personal Care Services Program.

(a) For the individual provider mode for providing personal care services, the reimbursement rate shall be a maximum of $5.50 per hour of service; provided, however, that the reimbursement rate in each county shall not exceed the rate in each county for the individual provider mode of service in the IHSS program pursuant to Article 7 (commencing with Section 12300) of Part 3 of Division 9 of the Welfare and Institutions Code, as it existed on September 28, 1992.

(b) For the contract mode for providing personal care services pursuant to Welfare and Institutions Code Sections 12302 and 12302.1, the reimbursement rates shall be those specified in the contract between the county and the agency contractor not to exceed the following maximum rates for services provided through State fiscal year 1993–94 as follows:

(1) Butte	$ 9.65
(2) Nevada	$10.34
(3) Riverside	$12.29
(4) San Diego	$10.49
(5) San Francisco	$12.28
(6) San Joaquin	$ 9.50
(7) San Mateo	$12.65
(8) Santa Barbara	$11.76
(9) Santa Clara	$11.11
(10) Santa Cruz	$13.61
(11) Stanislaus	$10.51
(12) Tehama	$11.30
(13) Ventura	$11.04

(c) Nothing in this section is intended to be a limitation on the rights of providers and beneficiaries or on the duties of the Department of Social Services, pursuant to Welfare and Institutions Code Section 12302.2 subdivision (a). Contributions, premiums and taxes paid pursuant to Welfare and Institutions Code Section 12302.2, subdivision (a) shall be in addition to the hourly rates specified in subdivision (a) of this section.

NOTE: Authority cited: Section 14132.95, Welfare and Institutions Code; Section 8, Chapter 939, Statutes of 1922; Section 3, Chapter 7, Statutes of 1993. Reference: Section 14132.95, Welfare and Institutions Code; Section 1396d(a)(7) of Title 42, of the United States Code; Article 7 (commencing with Section 12300) of Part 3 of Division 9 of the Welfare and Institutions Code; Section 440.170(f) of Title 42 of the Code of Federal Regulations.

HISTORY

1. New section filed 4–14–93 as an emergency; operative 4–14–93. Submitted to OAL for printing only pursuant to section 8, AB 1773 (Chapter 939, Statutes of 1992) (Register 93, No. 16).

§ 51535.5. Local Educational Agency (LEA) Services.

(a) Reimbursement to LEA Providers is limited to the specified set of LEA Services defined in Section 51190.4 and set forth in Section 51360.

(b) LEA Services shall be reimbursable only when provided to an LEA eligible beneficiary, as defined in Section 51190.1; by an LEA Practitioner, as defined in Section 51190.3; and subject to the limitations of this section.

(c) When a beneficiary is covered by a managed care plan contract the following applies:

(1) If the beneficiary does not have an IEP or an IFSP, the LEA Provider may be reimbursed for LEA Services for which the plan is not capitated under the managed care plan contract;

(2) If the beneficiary has an IEP or an IFSP, the LEA Provider may be reimbursed for LEA Services rendered according to the IEP or IFSP as well as LEA Services for which the plan is not capitated under the managed care plan contract.

(d) Any claims for LEA services, as defined in Section 51190.4, rendered by an LEA Practitioner shall conform with the standards set forth in Welfare and Institutions Code, Section 14115.

(e) LEA Providers shall adhere to and comply with all federal and state third party liability requirements prior to billing Medi–Cal, including but not limited to policy directives issued by the federal Department of Health and Human Services and Health Care Financing Administration and those standards found in 42 United States Code Section 1396a(a)(25); 42 Code of Federal Regulations Section 433.139; Welfare and Institutions Code, Sections 14005, 14023.7, 14124.90; and Title 22, California Code of Regulations, Section 51005 and Article 15 commencing with Section 50761.

(f) LEA Services are reimbursable subject to the following limitations:

(1) Notwithstanding Section 51304, reimbursable LEA Services, as set forth in Section 51360(b)(1) through (8) are limited to medically necessary services up to a maximum of twenty–four (24) services per twelve– (12) month period for an LEA eligible beneficiary by one LEA Provider.

(2) Any LEA Services beyond limits in (1) above shall be provided only as authorized and documented as medically necessary in one of the following:

(A) The Individualized Education Plan (IEP), as set forth in Education Code, Section 56340 et seq., for special education students documents the need for additional services, and is maintained in the school's records; or

(B) The Individualized Family Service Plan (IFSP), as set forth in Government Code, Section 95020, for special education students documents the need for additional services, and is maintained in the school's records; or (C) The Individualized Health and Support Plan (IHSP), meaning a plan for assessment and treatment of students with disabilities or disorders other than those who have been diagnosed as eligible for special education and are therefore treated under an IEP. The IHSP documents the need for additional services, and is maintained in the school's records.

(g) Reimbursement for LEA Services shall not exceed the maximum allowances listed in this section.

(1) Additional 15 minute period means any complete 15 minute period immediately following the maximum minutes allowed for the initial service unit.

(h) Maximum allowances for LEA Services are as follows:

Procedure Code		*Maximum Allowance*
X4900	LEA health and mental health evaluation and health and mental health education	$19.13
X4905	LEA physical therapy—initial service unit (20–90 minute range)	36.66
X4910	LEA physical therapy—each additional 15 minutes	7.20
X4915	LEA occupational therapy—initial service unit (20–90 minute range)	36.66
X4920	LEA occupational therapy—each additional 15 minutes	7.20
X4925	LEA speech pathology and audiology services—initial service unit (15–45 minute range)	23.76
X4930	LEA speech pathology and audiology services—each additional 15 minutes	11.88
X4935	LEA psychology and counseling services—initial service unit (15–90 minute range)	39.91
X4940	LEA psychology and counseling services—each additional 15 minutes	9.97
X4945	LEA nursing services—initial service unit (15–90 minute range)	32.34
X4950	LEA nursing services each additional 15 minutes	8.09
X4955	LEA school health aide services (15–90 minute range)	6.06
X4960	LEA medical transportation (per trip)	18.54
X4965	LEA mileage (per mile)	1.30
X4970	LEA case management—low cost (per 15 minute increments)	12.38
X4975	LEA case management—moderate cost (per 15 minute increments)	14.40
X4980	LEA case management—high cost (per 15 minute increments)	16.42

(i) The amount payable to the LEA Provider shall be the lesser of either:

(1) the billed amount of charges or

(2) The above listed maximum allowance multiplied by the federal medical assistance percentage (FMAP) for California that is effective on the date of payment.

(j) The amount payable in (i) above shall be reduced by any or all of the following:

(1) Any processing charges withheld by the State as stated in the contract between Department of Health Services and the LEA Provider; or

(2) Any third–party collections.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14000, 14005, 14018.2, 14023.7, 14053, 14059, 14077, 14088.16, 14100.2, 14105, 14106, 14115, 14124.1, 14124.5, 14124.90, 14132, 14133, 14133.1, 14134, 14136.5 and 14170, Welfare and Institutions Code; Section 56340 et seq., Education Code; Section 95020, Government Code; 42 United States Code Section 1396a(a)(25); 42 Code of Federal Regulations Section 433.139; and Statutes of 2000, Chapter 52, Items 4260–101–0001 and 0890.

HISTORY

1. New section filed 12–22–93 as an emergency; operative 12–22–93 (Register 93, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–22–94 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12–22–93 order transmitted to OAL 4–20–94 and filed 6–2–94 (Register 94, No. 22).
3. Amendment of subsections (h) and (i)(2), repealer and new subsection (k) and amendment of NOTE filed 7–16–2002; operative rates for services provided on or after 8–1–2000 pursuant to Stats. 2000, c. 52, Items 4260–101–0001 and 0890 (Register 2002, No. 29).
4. Certificate of Compliance as to 7–16–2002 order, including repealer of subsection (k), transmitted to OAL 11–12–2002 and filed 12–24–2002 (Register 2002, No. 52).
5. Editorial correction restoring inadvertently deleted first line of subsection (h) (Register 2006, No. 47).

§ 51535.6. Reimbursement for Directly Observed Therapy (DOT).

Reimbursement for providing directly observed therapy (DOT), as defined in Section 51187.1, shall not exceed $19.23 per encounter. An encounter shall consist of direct visual observation by DOT staff of a patient's ingestion of anti–tuberculosis medications. Delivering medications without visual confirmation of ingestion does not constitute an encounter.

NOTE: Authority cited: Sections 10725, 14005.20 and 14124.5, Welfare and Institutions Code. Reference: Sections 14059 and 14132, Welfare and Institutions Code.

HISTORY

1. New section filed 9–11–96; operative 9–11–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 37).

§ 51535.7. Targeted Case Management Services Reimbursement.

(a) Each targeted case management provider of service pursuant to Welfare and Institutions Code, Section 14132.44, shall complete and submit to the department, by November 1 of each year, a cost report of the prior year costs of each local program providing targeted case management services in a format specified by the department. Only one cost report shall be submitted for targeted case management services provided to target populations specified in subsections 50262.7(a)(1); 50262.7(a)(2); 50262.7(a)(3)(A); 50262.7(a)(3)(B), (C) or (D); or 50262.7(a)(3)(E).

(b) The cost report shall certify all of the following:

(1) The availability and expenditure of one–hundred (100) percent of the nonfederal share of the cost of providing targeted case management services from the provider's general fund or from any other federally approved source.

(2) The amount of funds expended on allowable targeted case management services.

(3) Targeted case management program expenditures represent costs that are eligible for federal financial participation.

(4) The costs reflected in the annual cost reports used to determine targeted case management rates are developed pursuant to Welfare and Institutions Code, Section 14132.44(f)(1)(D).

(5) That targeted case management services provided in accordance with Section 1396n(g) of Title 42 of the United States Code will not duplicate case management services provided under any home– and community–based services waiver.

(6) That claims for providing case management services pursuant to Welfare and Institutions Code, Section 14132.44 will not duplicate claims made to public agencies or private entitles under other program authorities for the same purposes.

(7) That the provider has complied with all the requirements of Section 51271.

(c) The cost report shall reflect only the allowable direct and indirect costs of providing targeted case management services. Allowable costs include the following:

(1) Salaries and benefits;

(2) Services and supplies, including costs of contracted targeted case management services;

(3) Operating expenses including leases, bond servicing costs and county (city)–wide overhead costs as reflected in the approved cost allocation plan;

(4) Amortized capital expenditures;

(5) Documented cost increases, such as contractual increases for salaries, benefits or operating costs.

(d) The information in the cost report shall be used to determine the annual, program specific, per encounter reimbursement rate for the current fiscal year using actual allowable costs and encounter data from the prior fiscal year.

(e) Effective July 1, 1996, and each year thereafter, the reimbursement rate shall be calculated by dividing the allowable case management costs of providing targeted case management services by the total number of all encounters in the prior fiscal year, including encounters with persons who are not Medi–Cal beneficiaries.

(f) Effective July 1, 1996, and each year thereafter, the total dollar amount that may be claimed in the current year by the local governmental agency for targeted case management services provided pursuant to this section shall not exceed the product of:

(1) The projected number of Medicaid encounters for the current year, times the current year billable rate per encounter.

(g) Any costs associated with providing targeted case management services in the current year in excess of the total dollar amount specified in subsection (f), shall be recognized in the annual cost report and become part of the calculation to determine the billable rate per encounter for the subsequent year.

(h) All claims scheduled for payment for targeted case management services provided prior to July 1, 1995, are not subject to revision unless the department requests a revised claim from the local governmental agency.

NOTE: Authority cited: Sections 14105, 14124.5 and 14132.44, Welfare and Institutions Code. Reference: Section 14132.44, Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–96; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 6, Chapter 305, Statutes of 1995 (Register 96, No. 27).
2. New section refiled 10–29–96 as an emergency; operative 10–29–96 (Register 96, No. 44). Submitted to OAL for printing only pursuant to Section 6, Chapter 305, Statutes of 1995. A Certificate of Compliance must be transmitted to OAL by 2–26–97 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of HISTORY 2 (Register 97, No. 15).
4. Repealed by operation of Government Code section 11346.1(g) (Register 97, No. 15).
5. New section filed 4–10–97; operative 4–10–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

Article 7.5. Hospital Inpatient Services Reimbursement Section

§ 51536. Hospital Inpatient Services Reimbursement.

(a) Reimbursement for hospital inpatient services provided to Medi–Cal program beneficiaries shall be the lesser of the following for each hospital:

(1) Customary charges.

(2) Allowable costs determined in accordance with applicable Medicare standards and principles of reimbursement.

(3) All–inclusive rate per discharge.

(b) The following definitions are applicable to this section:

(1) Base year means the most recent hospital accounting year ending before the effective date of this regulation.

(2) Prior year means the hospital accounting year immediately preceding the year for which final settlement is being concluded.

(3) Final settlement year means the hospital accounting year for which final settlement is being concluded.

(4) Allowable cost means the hospital's allowable Medi–Cal cost permitted by applicable Medicare standards and principles of reimbursement, 42 CFR, Part 405 and HIM–15.

(5) Reimbursable cost means the lesser of each hospital's customary charges, allowable cost, or all–inclusive rate per discharge multiplied by the number of Medi–Cal discharges.

(6) Rate per discharge means the hospital specific, all–inclusive rate per Medi–Cal discharge which, when multiplied by the number of Medi–Cal discharges, including deaths but excluding newborns, in the hospital's accounting year, determines the total dollar limit on reimbursable cost for that accounting year. The Department shall adjust the base year cost per discharge from the midpoint of the hospital's fiscal year to the implementation date of these regulations to ensure uniform application of the reimbursement system. This rate shall become the rate per discharge for the base year.

(7) Pass–through categories means those hospital cost categories which, for purposes of final settlement, are not subject to the hospital cost index. Pass–through categories are limited to:

(A) Depreciation.

(B) Rents and leases.

(C) Interest.

(D) Property taxes and license fees.

(E) Electricity, natural gas and water.

(F) Hospital malpractice insurance.

(G) Medicare allowable return on equity capital for proprietary facilities.

(8) Service intensity means the necessary changes in the character of the services provided to each patient, including changes in applicable technology, qualitative changes in personnel, quantitative changes in personnel, qualitative changes in supplies, drugs, and other materials, and quantitative changes in supplies, drugs, and other materials. Service intensity does not include changes in the types of patients and illnesses treated.

(9) Tentative Settlement means the Department's determination of liabilities owed, resulting from an all–inclusive rate per discharge calculation using data which has not been audited by the Department provided by a hospital for the hospital's accounting year.

(10) Final Settlement means a Department determination of liabilities owed resulting from an all–inclusive rate per discharge calculation based upon data audited and edited by the Department and/or upon data provided by the Office of Statewide Health Planning and Development as being true and correct for the final settlement year.

[The next page is 516.4(e).]

(c) The methods of payment for inpatient hospital services shall include the following:

(1) An all–inclusive rate per discharge that shall be retrospectively established for each hospital's tentative and final settlement. The rate per discharge shall:

(A) Apply to all covered services provided by the hospital during its final settlement year.

(B) Be updated annually to reflect reimbursable changes in factor input prices, service intensity, patient volume, and other items allowed through the administrative adjustment process and the appeals process.

(2) An interim payment based upon a cost to charge ratio, as set forth in federal regulations.

(d) Interim rate adjustments and the recovery of overpayments to hospitals shall be made at tentative or final settlement based upon the application of this section. Such overpayments shall be collected and such interim rates shall be adjusted whether or not appeals of any audit or examination for the current or any prior fiscal year have been filed by the hospital. This subsection shall apply:

(1) to overpayments determined and interim rate adjustments made as a result of tentative or final settlements for cost reporting periods for services provided on or after April 13, 1990, except for the period commencing on September 10, 1990 until October 15, 1990.

(2) to overpayments determined and interim rate adjustments made as a result of any final settlement performed for which an administrative appeal has not been filed and the time for filing such filing such appeal has expired.

(e) For overpayments determined as a result of tentative or final settlements (except final settlements referred to in (d)(2)) issued after April 13, 1990 (except for the period commencing on September 10, 1990, until October 15, 1990) which are for cost reporting periods for services provided prior to April 13, 1990, the following provisions shall apply:

(1) Pending the exhaustion of the Department's appeal rights in Fountain Valley Community Hospital v. State Department of Health Services, the Department shall not recoup overpayments made to hospitals and owed by hospitals to the Department.

(2) If a Federal Court of Appeals or the United States Supreme Court finds that subsection (d) may be applied to the overpayments identified but not collected in this subsection, the Department shall recoup such overpayments, including interest.

(f) A hospital cost index shall be established for each hospital. This index shall consist of an input price index and an allowance for changes in service intensity.

(1) The hospital cost index shall be calculated to account for actual changes in the input price index after the close of each hospital's accounting year.

(2) The hospital cost index shall be applied on a cumulative basis to the hospital's rate per discharge for the base year to determine its rate per discharge for the final settlement year.

(g) An input price index shall be established to compute the reimbursable change in the prices of goods and services purchased by hospitals. The input price index shall consist of a market basket classification of goods and services purchased by hospitals, a corresponding set of market basket weights derived from each hospital's own mix of purchased goods and services, and a related series of price indicators.

(1) Weights corresponding to market basket categories shall be derived and annually updated for each hospital. These weights shall be computed using the latest available information from each hospital's Medi–Cal cost report, financial disclosure report, or other direct report of expenses. If information from these sources is not sufficient to establish a hospital specific weight for a particular market basket category, the Department shall assign a representative weight based on information from the United States National Hospital Input Price Index published by the Department of Health and Human Services, or other available sources.

(2) The input price index shall be calculated after the close of each hospital's accounting year, to account for actual changes in the:

(A) Hospital specific wage and benefit rates and market basket weights.

(B) Price indicators and market basket weights for other nonpass–through categories.

(C) Allowable cost for pass–through categories.

(3) The market basket categories and price indicators to be used in developing each hospital's input price index are shown in the following table.

MARKET BASKET CLASSIFICATION

MARKET BASKET CATEGORIES	*PRICE INDICATORS*	
	VARIABLE	*SOURCE*
(1) Professional Fees:		
(a) Physicians' Salaries, Wages, Fees and Benefits	Physicians' service component	Consumer Price Index, Urban Consumers
(b) Other Professional Fees	Hourly earnings, production or nonsupervisory, private nonagricultural employees	U.S. Department of Labor, Bureau of Labor Statistics
(2) Food	Average of processed foods and feeds component of PPI and food and beverages component of CPI	Producer Price Index Consumer Price Index, All Urban Consumers
(3) Drugs	Pharmaceuticals and ethicals component	Producer Price Index
(4) Other Costs:		
(a) Chemicals	Chemicals and allied products component	Producer Price Index
(b) Medical Instruments and Appliances	Special industry machinery and equipment component	Producer Price Index
(c) Rubber and Plastics	Rubber and plastics component	Producer Price Index
(d) Travel	Transportation component	Consumer Price Index, All Urban Consumers
(e) Apparel and Textiles	Textile products and apparel component	Producer Price Index
(f) Business Services	Services component	Consumer Price Index, All Urban Consumers
(g) All Other	All items	Consumer Price Index, All Urban Consumers

(h) An annual service intensity allowance of one percent for reimbursable increase in service intensity shall be added to each hospital's input price index. This allowance shall be in addition to reimbursement for pass–through categories and approved administrative adjustments and appeals.

(i) A volume adjustment shall be made to the hospital's rate per discharge for the final settlement year if the number of total hospital discharges in the hospital's final settlement year differs from the number of discharges in its prior year.

(1) The volume adjustment shall be calculated using the following formula, which adjusts the rate per discharge for estimated changes in average costs resulting from changes in volume.

VOLUME ADJUSTMENT FORMULA

$$ACR = HCI \quad \frac{DIS_P + VC\,(DIS_F - DIS_P)}{DIS_F}$$

Where:

ACR = Allowable change in the rate per discharge after volume adjustment, expressed as a proportion of the prior year rate per discharge.

HCI = Hospital Cost Index before any volume adjustments, expressed as a proportion of the prior year rate.

DIS_P = Total hospital discharges in the prior year.

VC = Variable cost as a proportion of total cost.

DIS_F = Total hospital discharges in the final settlement year.

(2) Each hospital's total cost shall be divided into the fixed and variable components shown in the following table. Data from the hospital's financial disclosure report or other direct report of expenses shall be used to estimate the percentage of a hospital's cost which varies with volume.

A fixed to variable cost ratio of 50:50 shall be used when sufficient data from the hospital are not available.

(3) A hospital may submit additional data on the classification of fixed and variable costs for review by the Department. If these classifications and data are accepted by the Department, the hospital shall continue to:

(A) Utilize these accepted classifications of fixed and variable costs in subsequent years, unless a significant change in operations occurs.

(B) Submit any required data on fixed and variable costs to the Department in subsequent years, unless a significant change in operations occurs.

(j) A hospital may request an administrative adjustment to the all–inclusive reimbursement rates established for that hospital if the hospital's allowable cost exceeds or is expected to exceed reimbursement based on those rates.

(1) The following items are not subject to an administrative adjustment under the procedures in section 51536(h)(3):

(A) The use of Medicare standards and principles of reimbursement.

(B) The method for determining the input price index.

(C) The use of all–inclusive reimbursement rates.

(D) The use of a volume adjustment formula.

(2) Issues involving the following items may be resolved through an administrative adjustment under the procedures in section 51536(h)(3):

(A) The addition of new and necessary services.

(B) Changes in case mix.

(C) Inappropriate calculation of fixed and variable costs.

(D) The use of incorrect data or an error in calculations.

(E) Other items affecting hospital costs.

(3) The procedures for requesting an administrative adjustment of an all–inclusive rate shall be as follows:

(A) A request for an administrative adjustment of the all–inclusive rate per discharge shall be submitted within 60 days after notification of that rate.

(B) The request for an administrative adjustment shall be submitted in writing to the Department and shall specifically and clearly identify the issue and the total dollar amounts involved, separately for services provided prior to April 13, 1990, and for services provided on or after April 13, 1990. Failure to comply fully with this subsection shall result in the denial of the request for an administrative adjustment. The hospital shall demonstrate at least one of the following:

CLASSIFICATION OF FIXED AND VARIABLE COSTS

FIXED COST	*VARIABLE COSTS*
SALARIES AND WAGES	SALARIES AND WAGES
Management and supervision	Registered nurses
Technician and specialist	Licensed vocational nurses
Clerical and other administrative	Aides and orderlies
Physicians	Environmental and food services
Nonphysician medical practitioners	Other salaries and wages
EMPLOYEE BENEFITS—Distributed proportionately according to salaries and wages	EMPLOYEE BENEFITS—Distributed proportionately according to salaries and wages
FICA	FICA
Unemployment insurance	Unemployment insurance
Vacation, holiday, and sick leave	Vacation, holiday, and sick leave
Group insurance	Group insurance
Pension and retirement	Pension and retirement
Workers' compensation	Workers' compensation
Other employee benefits	Other employee benefits
OTHER DIRECT EXPENSES	PROFESSIONAL FEES
Depreciation and amortization	Medical
Utilities	Consulting and management
Insurance	Legal
Licenses and taxes (other than income)	Audit
	Other professional fees
Other direct expenses	
	SUPPLIES
	Food
	Surgical supplies
	Pharmaceuticals
	Medical care materials
	Minor equipment
	Nonmedical supplies

1. Costs for which additional reimbursement is being requested are necessary, proper, and consistent with efficient and economical delivery of covered patient care services.

2. Incorrect data were used.

3. An error was made in the rate calculation.

4. More appropriate data are available.

(C) The hospital shall be notified of the Department's decision in writing within 45 days of receipt of the hospital's written request administrative adjustment, or within 45 days of receipt of any additional documentation or clarification which may be required, whichever is later. The request for an administrative adjustment shall be deemed denied if no decision is issued.

(D) Administrative adjustments for changes in case mix shall be resolved in the following manner:

1. The case mix adjustment allowance shall be determined using the following steps:

a. Calculate the summation of the Medi–Cal cost per day in the prior year times the percentage of Medi–Cal days in the final settlement year for each routine, nursery, and special care unit.

b. Calculate the summation of the Medi–Cal cost per day in the prior year times the percentage of Medi–Cal days in the prior year routine, nursery, and special care unit.

c. Divide the result in a. above by the result in b. above.

d. Subtract 1.0 from the quotient determined in c. above.

2. Each hospital's cost index, before volume adjustment, shall be multiplied by the case mix adjustment allowance.

3. The Medi–Cal days and costs per day shall be applied to routine services, nursery services and special care services, as specified Medi–Cal cost report.

4. A hospital may submit additional data on routine, nursery or special care costs and days for review by the Department. If these data are accepted by the Department for case mix calculations, the hospital shall continue to submit those data to the Department in subsequent years, unless a significant operations occurs.

(k) A hospital may appeal the Department's decision on the administrative adjustment. The appeal shall be filed in accordance with the applicable procedural requirements of article 1.5.

(1) The appeal shall be submitted within 60 days after notification of the Department's decision on the administrative adjustment.

(2) Items that are not subject to an administrative adjustment, as specified in section 51536(h)(1), shall not be subject to appeal.

(3) The hospital shall be paid at the reimbursable cost initially determined by the Department pending determination of an appeal.

(4) Any underpayments, identified in the appeal decision, shall be paid to the hospital, together with interest computed at the legal rate of seven percent per annum beginning 60 days after issuance of the audit or examination findings.

(*l*) New hospitals shall be exempt from the provisions of this section relating to the use of all–inclusive rates per discharge. A new hospital is one that has operated under present and previous ownership for less than three years. A new hospital shall be reimbursed in accordance with applicable Medicare and principles of reimbursement.

(m) Each hospital shall be notified of the rate per discharge at the time of tentative and final settlement.

(n) A change in reimbursable costs shall result in a redetermination of all–inclusive rates per discharge.

(o) Payment for skilled nursing facility services shall be made in accordance with section 51511.

(o) For hospital fiscal periods beginning on or after the effective date of Sections 51545 through 51557, reimbursement for hospital inpatient services shall be in accordance with Sections 51545 through 51557. Section 51536 will cease to be effective for fiscal periods subject to Sections 51545 through 51557.

(p) Payment for intermediate care facility services shall be made in accordance with section 51510.

NOTE: Authority cited: Sections 14100.1, 14105 and 14106, Welfare and Institutions Code. Reference: Sections 14105, 14105.15 and 14106, Welfare and Institutions Code.

HISTORY

1. New section filed 5–30–80; designated effective 7–1–80 (Register 80, No. 29).
2. Amendment adding paragraphs 9 and 10 to subsection (b), amending subsection (c), adopt new subsection (d) and relettering (d)–(n) to (e)–(o) filed 4–13–90 as an emergency; operative 4–13–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL by 8–13–90 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsections (b) and (c), new subsection (d), and relettering of subsections (d)–(n) to subsections (e)–(o) filed 10–15–90 as an emergency; operative 10–15–90 (Register 90, No. 47). A Certificate of Compliance must be transmitted to OAL by 2–13–91 or emergency language will be repealed by operation of law on the following day.
4. Editorial correction of HISTORY 2, new HISTORY 3, and renumber former HISTORY 3 to HISTORY 4 (Register 91, No. 12).
5. Certificate of Compliance as to 4–13–90 order transmitted to OAL 8–9–90 and disapproved by OAL 9–10–90 (Register 91, No. 12).
6. Amendment of subsections (b), (c) and (d), new subsection (e), and relettering of subsections (e)–(o) to (f)–(p) filed 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 12). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance including amendments transmitted to OAL 6–12–91 and filed 7–12–91 (Register 91, No. 43).
8. New article heading filed 4–23–92; operative 5–25–92 (Register 92, No. 20).
9. New subsection (o) filed 4–23–92; operative 5–25–92 (Register 92, No. 20).
10. Editorial correction of subsection (j)(3)(B) (Register 98, No. 22).

§ 51537. Maximum Allowable Reimbursement Level for Inpatient Hospital Services.

HISTORY

1. New section filed 8–27–81; effective thirtieth day thereafter (Register 81, No. 35).
2. Repealer filed 4–23–92; operative 5–25–92 (Register 92, No. 20).

§ 51538. Maximum Allowable Rate of Increase for Inpatient Hospital Services.

HISTORY

1. New section filed 10–1–81 as an emergency; designated effective 10–1–81 (Register 81, No. 42).
2. Certificate of Compliance transmitted to OAL 1–28–82 and filed 2–26–82 (Register 82, No. 9).
3. Repealer filed 4–23–92; operative 5–25–92 (Register 92, No. 20).

§ 51539. Hospital Reimbursement for Inpatient Hospital Services.

(a) Reimbursement to hospitals for inpatient hospital services rendered to Medi–Cal program beneficiaries shall be determined in accordance with Sections 51536 and 51537, except as modified by this section.

(b) Hospital reimbursement shall, unless exempted from or modified by the provisions of this section, be payable at no more than the 60th percentile rate per discharge of the peer group to which the hospital is assigned by the Department. The peer groups shall be based on a classification of hospitals that combines individual hospitals in a unit on the basis of similar or common characteristics.

(1) The following peer group classifications adapted from the California Health Facilities Commission's report "Hospital Peer Grouping for Efficiency Comparison" (1982) will be used:

(A) University Teaching Hospitals
(B) Large (Non–university) Teaching Hospitals
(C) Large Complex Hospitals
(D) Moderate Sized Hospitals
(E) Small Urban Hospitals
(F) Rural Hospitals
(G) Urban, Skilled Nursing Emphasis Hospitals
(H) Rural, Skilled Nursing Emphasis Hospitals
(I) Alcohol—Drug Rehabilitation Hospitals
(J) Moderate Psychiatric Emphasis Hospitals
(K) Acute Psychiatric Hospitals
(L) Miscellaneous Long–term Psychiatric Hospitals
(M) Miscellaneous Large Skilled Nursing Hospitals
(N) Miscellaneous Large Prepaid Health Plans
(O) Miscellaneous Student Health Centers
(P) Miscellaneous Children's Specialty Hospitals
(Q) Miscellaneous Rehabilitation Hospitals
(R) Miscellaneous Large Rehabilitation Emphasis Hospitals
(S) Miscellaneous Respiratory Specialty Hospitals

(2) The Department shall review the peer grouping system and the placement of individual hospitals as a basis for Medi–Cal reimbursement at least annually.

(3) Hospitals exempted from this section shall consist of new hospitals, rural hospitals, sole community hospitals, children's hospitals, charitable research hospitals, and hospitals in peer groups with less than five hospitals with adequate data to compute percentiles.

(c) In addition to the reimbursement pursuant to (b), disproportionate share hospitals, whose all inclusive rate per discharge exceeds the peer group 60th percentile rate per discharge, shall be reimbursed a percent of the difference between the peer group 60th percentile rate per discharge and the hospital's all inclusive rate per discharge.

(1) A hospital is defined as having a disproportionate share of low income patients with special needs if its proportion of low income patient revenue is greater than 31 percent of the total gross revenues reported by that hospital to the California Health Facilities Commission.

(2) Low income patients with special needs are defined and measured for this purpose by using Medi–Cal gross revenues as reported to the California Health Facilities Commission. Consideration will also be given to public revenue from sources other than Medi–Cal. Medicare revenue is specifically excluded from such consideration.

(3) Additional reimbursement for disproportionate share hospitals with rates per discharge above the peer group 60th percentile will be determined as follows:

If the disproportionate share is:	The additional reimbursement % applied to the amount above the 60th percentile is:
95% – 100%	50%
88% – 94%	45%
81% – 87%	40%
74% – 80%	35%
67% – 73%	30%
60% – 66%	25%
53% – 59%	20%
46% – 52%	15%
39% – 45%	10%
32% – 38%	5%

(d) (1) A hospital may request an administrative adjustment of the reimbursement limits specified in this section at the time of tentative settlement. The request shall be made within 60 days after notification of the reimbursement limits on tentative settlement and shall be made in accordance with the procedures specified in Section 51536(h).

(2) The following items will not be subject to an administrative adjustment:

(A) The use of hospital peer groups.

(B) The use of the 60th percentiles and the methods used to compute them.

(3) A hospital may appeal the Department's decision on the administrative adjustment in accordance with Section 51536 (i). On appeal, a hospital with costs in excess of the limits established in this section shall be granted additional reimbursement for costs which it must incur to efficiently and economically provide covered services in conformity with applicable state and federal law, regulations, and quality and safety standards. Factors relevant to determining whether additional reimbursement shall be granted include, but are not limited to:

(A) Differences in case mix between the hospital and other hospitals in its peer group;

(B) Differences in labor costs, caused by factors such as differences in location, between the hospital and other hospitals in its peer group;

(C) Differences in capital costs between the hospital and other hospitals in its peer group. Approval by the Office of Statewide Health Planning and Development of a capital expenditure shall be evidence of the

need for the capital expenditure; however, such approval shall not, per se, compel additional reimbursement;

(D) Differences in the type, nature or scope of items or services furnished between the hospital and other hospitals in its peer group;

(E) Differences in costs between the hospital and other hospitals in its peer group due to extraordinary circumstances beyond the hospital's control such as strikes, fire, earthquake, flood, or similar unusual occurrences with substantial cost effects;

(F) The addition of new and necessary services to the hospital;

(G) Changes in the case mix of the hospital; or

(H) Other items or circumstances affecting hospital costs. Any additional reimbursement granted pursuant to this section shall not result in a recalculation of the 60th percentile limit under (b).

(e) (1) The Department shall take one or more of the following actions if it has reason to believe that a hospital's rate per discharge will exceed the peer 60th percentile:

(A) Reduce the hospital's interim payment percentage.

(B) Prohibit increases in the accommodation rates charged by the hospital.

(2) Actions taken by the Department under (1) shall not be subject to administrative adjustment or administrative appeal.

(3) The Department shall notify the hospital of any action taken under (1) and give the hospital an opportunity to submit written evidence that the hospital's rate per discharge is unlikely to exceed the peer group 60th percentile. The Department may reconsider its action on the basis of the written evidence.

(f) For hospital fiscal periods beginning on or after the effective date of Sections 51545 through 51557, reimbursement for hospital inpatient services shall be in accordance with Sections 51545 through 51557. Section 51539 will cease to be effective for fiscal periods subject to Sections 51545 through 51557.

NOTE: Authority cited: Sections 14105, 14105.1 and 14124.5, Welfare and Institutions Code; and Chapter 1594, Statutes of 1982, Section 87 (SB 2012). Reference: Sections 14105.1 and 14106, Welfare and Institutions Code.

HISTORY

1. New section filed 11-1-82 as an emergency; effective upon filing (Register 82, No. 45). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed 3-1-83.
2. Certificate of Compliance including amendments transmitted to OAL 3-1-83 and filed 4-1-83 (Register 83, No. 14)
3. Amendment filed 1-17-84 as an emergency; effective on filing (Register 84, No. 5). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5-18-84.
4. Certificate of Compliance as to 1-17-84 order transmitted to OAL 5-4-84 and filed 6-1-84 (Register 84, No. 22).
5. New subsection (f) filed 4-23-92; operative 5-25-92 (Register 92, No. 20).

§ 51540. Hospitals with a Disproportionate Share of Low Income Patients.

HISTORY

1. New section filed 1-27-82 as an emergency; effective upon filing (Register 82, No. 5). A Certificate of Compliance must be received within 120 days or emergency language will be repealed on 5-27-82.
2. Certificate of Compliance transmitted to OAL 5-26-82 and filed 6-29-82 (Register 82, No. 27).
3. Repealer filed 4-23-92; operative 5-25-92 (Register 92, No. 20).

§ 51541. Hospital Inpatient Services Reimbursement.

(a) Except as provided in Welfare and Institutions Code, Division 9, Part 3, Chapter 8 regarding Prepaid Plans, reimbursement for hospital inpatient services provided to Medi-Cal beneficiaries shall be based on either of the following two reimbursement methodologies:

(1) Negotiated contract reimbursement. "Negotiated contract reimbursement" means that method of reimbursement as specified in an executed contract resulting from negotiations, competitive bidding or any other method the special hospital negotiator, as defined in Welfare and Institutions Code Section 14082, or, on or after July 1, 1983, the California Medical Assistance Commission, as defined in Welfare and Institutions Code Sections 14165 and 14165.5 deems appropriate.

(2) Hospital reimbursement as otherwise described in this article.

(b) Hospital reimbursement as otherwise described in this article shall be used to reimburse hospitals for hospital inpatient services prior to implementation of negotiated contract reimbursement.

(c) Contracting Process. The process used for negotiated contract reimbursement will contain the following steps:

(1) All acute care hospitals in Health Facilities Planning Areas (HFPA) selected by the special hospital negotiator in the State of California will be notified by the special hospital negotiator or, on or after July 1, 1983, the California Medical Assistance Commission, of the opportunity to contract for the provision of inpatient services to Medi-Cal beneficiaries. State hospitals and hospitals owned by the U.S. Government will not be included in the notification process.

(2) Hospitals which indicate an interest in contracting with the Medi-Cal Program will be asked to present their proposal to the special hospital negotiator or, on or after July 1, 1983, the California Medical Assistance Commission.

(3) The special hospital negotiator or, on or after July 1, 1983, the California Medical Assistance Commission will contract with a sufficient number of hospitals to assure accessibility of inpatient hospital services, to Medi-Cal beneficiaries within normal community travel time or 30 minutes whichever is greater.

(4) The special hospital negotiator will first evaluate the amount of inpatient hospital services historically rendered to Medi-Cal patients in each HFPA and will determine the Medi-Cal patients' needs. Projections of service needs for patients within each HFPA will then be established. Projected needs will be met by negotiated contract reimbursement or hospital reimbursement as otherwise described in this article. Hospital reimbursement, as otherwise described in this article, will be used for those services and beneficiaries exempt from the Selective Provider Contracting Program. Hospital capacity projected to be needed in one HFPA may be contracted for in another HFPA so long as the normal community travel practices are considered and provided for.

(5) All affected acute care hospitals in each HFPA will be notified when projected needs have been met in accordance with paragraphs (3) and (4). Affected hospitals will be designated as contracting or non-contracting and Medi-Cal physicians and beneficiaries will be notified that inpatient services, except as provided for in subsection (6) below, will only be provided in contracting hospitals. Affected hospitals will not include state hospitals, children's and charitable research hospitals as defined in Welfare and Institutions Code Section 14087.2, hospitals owned or operated by the U.S. Government, and out-of-state hospitals.

(6) Hospitals designated as non-contracting will no longer be eligible to receive reimbursement for services provided to Medi-Cal beneficiaries except under any one of the following circumstances:

(A) Provision of inpatient hospital services as defined in Welfare and Institutions Code Section 14087.

(B) Provision of inpatient hospital services to a Medi-Cal beneficiary where the travel time from a beneficiary's home to a contract hospital, exceeds the normal practice for the community or 30 minutes, whichever is greater, and the non-contracting hospital providing services is closer to the beneficiary's home than a contracting hospital.

(C) Provision of inpatient hospital services to a Medicare Part A crossover patient by a non-contracting hospital, subsequent to the exhaustion of Medicare inpatient benefits and, as long as the beneficiary is in a life threatening or emergency situation which could result in permanent impairment.

(7) Once designation has occurred in accordance with paragraph (5), the special hospital negotiator is exempt from the provisions of paragraphs (1) and (2).

NOTE: Authority cited: Sections 14124.5 and 14082, Welfare and Institutions Code; Section 52, Chapter 328, Statutes of 1982; and Section 87, Chapter 1594, Statutes of 1982. Reference: Sections 14081, 14082, 14082.5, 14086, 14087, 14087.2, 14165 and 14165.5, Welfare and Institutions Code.

HISTORY

1. New section filed 10-8-82 as an emergency; effective upon filing (Register 82, No 41). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2-5-83.

2. Certificate of Compliance transmitted to OAL 12–30–82 and withdrawn 1–28–83 (Register 83, No. 10).
3. New section refiled 1–28–83 as an emergency; effective upon filing (Register 83, No. 10). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5–28–83.
4. Certificate of Compliance transmitted to OAL 5–26–83 and filed 6–30–83 (Register 83, No. 27).

§ 51542. Acute Administrative Days.

(a) Reimbursement for acute administrative days shall be as follows:

(1) On the same basis as specified in section 51511(a)(2) for nursing facilities that are distinct parts of acute care hospitals.

(2) For all other acute administrative days, on the same basis as for nursing facilities that are distinct parts of acute care hospitals and offer Level B services.

(3) Not include payment for ancillary items listed in section 51511(c). These items and services shall be reimbursed according to the Medi–Cal levels of reimbursement for similar items and services provided to acute care inpatients of the hospital.

(4) Include payment for items as specified in section 51511(b).

NOTE: Authority cited: Sections 10725, 14105(a), 14110.1 and 14124.5, Welfare and Institutions Code. Reference: Sections 14105 and 14110.1, Welfare and Institutions Code.

HISTORY

1. New section filed 4–28–82; designated effective 6–1–82 (Register 82, No. 18).
2. Editorial correction of NOTE filed 1–15–85 (Register 85, No. 4).
3. Change without regulatory effect of subsection (a)(1) pursuant to section 100, title 1, California Code of Regulations filed 4–26–90 (Register 90, No. 22).
4. Amendment filed 12–10–90 as an emergency; operative 12–10–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 4–9–91 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsection (a) filed as an emergency 3–14–91; operative 3–14–91 (Register 91, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–12–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 12–10–90 order transmitted to OAL 4–8–91 and filed 5–8–91 (Register 91, No. 24).
7. Certificate of Compliance as to 3–14–91 order transmitted to OAL 7–11–91 and filed 8–9–91 (Register 91, No. 50).
8. Amendment of subsection (a)(2) filed 12–3–92 as an emergency; operative 12–3–92 (Register 92, No. 49). A Certificate of Compliance must be transmitted to OAL 4–2–93 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 12–3–92 order transmitted to OAL 4–2–93 and filed 5–14–93 (Register 93, No. 20).
10. Amendment of section heading, new subsections (b)–(b)(2) and amendment of NOTE filed 4–1–96 as an emergency; operative 4–1–96 (Register 96, No. 14). A Certificate of Compliance must be transmitted to OAL by 9–30–96 pursuant to Welfare and Institutions Code section 14132.22 or emergency language will be repealed by operation of law on the following day.
11. Editorial correction of HISTORY 10 (Register 96, No. 35).
12. Amendment of section heading, new subsections (b)–(b)(2), and amendment of NOTE refiled 8–28–96 as an emergency; operative 9–30–96 (Register 96, No. 35). A Certificate of Compliance must be transmitted to OAL by 1–28–97 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 8–28–96 order transmitted to OAL 1–23–97 and filed 3–10–97 (Register 97, No. 11).
14. Change without regulatory effect amending section heading, section and NOTE filed 6–12–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 24).

§ 51543. Out–of–State Hospital Inpatient Services Reimbursement.

(a) Out–of–state inpatient hospital services which have been certified for payment at the acute level and which are either of an emergency nature or for which prior Medi–Cal authorization has been obtained, shall be reimbursed at an amount not to exceed the current statewide average of contract rates for acute inpatient hospital services negotiated by the California Medical Assistance Commission or the actual billed charges, whichever is less.

(b) Hospitals may request an administrative adjustment to the rate within 60 days of notice of payment. The request, which must be in writing, to the Department of Health Services, Hospital Reimbursement Unit, 714 P Street, P.O. Box 942732, Sacramento, CA 94234–7320. The decision on the administrative adjustment shall be final and not subject to further appeal.

NOTE: Authority cited: Sections 14105, 14105.15 and 14124.5, Welfare and Institutions Code. Reference: Sections 14086, 14105 and 14105.15, Welfare and Institutions Code; Statutes of 1992, Chapter 722, Section 89.

HISTORY

1. New section filed 9–11–87; operative 10–11–87 (Register 87, No. 37).
2. Amendment filed 10–1–92 with Secretary of State by Department of Health Services; operative 10–1–92. Submitted to OAL for printing only pursuant to section 147(c), SB 485, (Chapter 722, Statutes of 1992) (Register 92, No. 40).
3. Certificate of Compliance as to 10–1–92 order transmitted to OAL 1–2–93 and filed 3–12–93 (Register 93, No. 11).

§ 51544. Hospice Care.

(a) Hospices shall be reimbursed the lesser of the amount billed or the amounts established under title XVIII of the Social Security Act pursuant to section 1902(a)(13), (42 USC 1396a(a)(13)) of such Act, for all covered services, as specified in section 51349.

(b) With the exception of physician services, as specified in subsection (f), room and board payments as specified in subsection (h) and coinsurance for individuals entitled to Title XVIII hospice benefits as specified in subsection (i), reimbursement for hospice care shall be made at one of four rates for each day a recipient is under the care of the hospice regardless of the amount of services furnished:

(1) Reimbursement for routine home care as defined in Section 51180.3, Billing Code number Z7100, shall be made for each day the recipient is at home and not receiving continuous home care.

(2) Reimbursement for continuous home care, as defined in Section 51180.4, Billing Code number Z7102, shall be made on an hourly rate basis for each day, or portion thereof, a recipient qualifies for and receives such care. A minimum of eight hours of care must be provided in a 24–hour period in order to qualify for the continuous home care rate.

(3) Reimbursement for respite care as defined in Section 51180.5, Billing Code number Z7104, shall be made for each day a recipient qualifies and receives such care. Reimbursement for respite care shall be limited to no more than five consecutive days. Payment for the sixth and consecutive days shall be made at the routine home care rate.

(4) Reimbursement for general inpatient care as defined in Section 51180.6, Billing Code number Z7106, shall be made for each day a recipient qualifies and receives such care.

(c) Inpatient rates (general or respite) shall be paid for the date of admission and all subsequent inpatient days except the day on which the patient is discharged. For the day of discharge, the appropriate home care rate shall be paid unless the patient dies as an inpatient. If the patient dies while an inpatient, the inpatient rate (general or respite) shall be paid for the discharge day.

(d) Overall payments to a hospice, excluding payments for room and board as specified in subsection (h) and coinsurance and deductibles as specified in subsection (i), are subject to the same limitations which apply to Medicare payments specified in 42 CFR, part 418, Subpart G.

(1) Payment for inpatient care days (general and respite) shall be limited to 20% of the total days provided by a hospice to all Medi–Cal beneficiaries in the Medicare cap period, November 1st through October 31st of the following year.

(2) Total Medi–Cal payments to any one hospice shall not exceed the Medicare cap amount multiplied by the number of Medi–Cal beneficiaries who elected to receive hospice care from that hospice during the cap period.

(e) The following physician services are included in the four payment rates described in subsection (b).

(1) General supervisory services of the medical director.

(2) Participation in the establishment of plans of care, supervision of care and services, periodic review and updating of plans of care, and establishment of governing policies by the physician member of the interdisciplinary group.

(f) Reimbursement for physician services not described in (e) which are provided to hospice patients by physicians employed by or under arrangement made by the hospice (Code number Z7108), shall be made to the hospice in accordance with Section 51503, 51509 or 51509.1, whichever is applicable. Reimbursement for these physician services shall be

included in the amount subject to the hospice cap amount described in subsection (d)(2).

(g) Services of the patient's attending physician, if he or she is not an employee of the hospice or providing services under arrangement with the hospice, are not considered hospice services and are not subject to the hospice cap described in subsection (d)(2). Reimbursement for these services shall not exceed the maximum allowances established in section 51503, 51509 or 51509.1, whichever is applicable.

(h) Payment shall be made to a hospice provider for services rendered to an individual who is a resident of a Level A or Level B nursing facility at one or more of the levels of hospice care described in subsection (b), with the exception of respite care, and for physician services provided by the hospice which are not included in one of the levels of care. In addition, payment, not to exceed the following, shall be made to the hospice for room and board furnished by the nursing facility for each day the individual resides in the facility.

(1) Operative August 1, 2002 to January 31, 2003, payment shall be:

	Procedure Code	*Statewide Rate*
Level B Nursing Facility	Z7110	$108.04
Level A Nursing Facility	Z7112	$73.62

(2) Operative February 1, 2003, payment shall be 95 percent of the facility's Medi-Cal per diem rate where the patient resides.

(i) Coinsurance payments shall be made to a hospice provider on behalf of individuals entitled to title XVIII hospice benefits as follows:

(1) A coinsurance payment shall be made for each palliative drug and for each biological prescription furnished by the hospice while the individual is not an inpatient. The amount of coinsurance for each prescription shall approximate five percent of the cost of the drug or biological to the hospice, not to exceed $5.

(2) A coinsurance payment shall be made for each day of respite care provided, not to exceed five percent of the respite care daily rate. However, the total amount of coinsurance payments for respite care shall not exceed the Medicare inpatient hospital deductible amount applicable in the year in which hospice care is elected.

(3) Coinsurance may not be billed for Medi-Cal patients unless the hospice also bills and collects coinsurance from Medicare only patients.

(j) A hospice provider shall submit claims for payment for hospice care furnished in an individual's home only on the basis of the geographic location at which the service is furnished. The hospice provider shall identify on the claim the geographic location of the home in which the hospice care is furnished.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14053 and 14132, Welfare and Institutions Code; Statutes of 2002, Chapter 379, Items 4260-101-0001 and 4260-101-0890; and 42 United States Code Section 1396a(a)(13)(B) [Section 1902(a)(13)(B) of the federal Social Security Act].

HISTORY

1. New section filed 10-27-87 as an emergency; operative 10-27-87 (Register 87, No. 44). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2-24-88.
2. Certificate of Compliance including amendment of subsections (b)(3) and (h) transmitted to OAL 2-24-88 and filed 3-22-88 (Register 88, No. 15).
3. Amendment filed 12-10-90 as an emergency; operative 12-10-90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 4-9-91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 12-10-90 order transmitted to OAL 4-8-91 and filed 5-8-91 (Register 91, No. 24).
5. Amendment of subsection (h) filed 8-12-91 as an emergency; operative 8-12-91 (Register 92, No. 6). A Certificate of Compliance must be transmitted to OAL 12-10-91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 8-12-91 order transmitted to OAL 12-9-91 and filed 1-2-92 (Register 92, No. 18).
7. Amendment of subsections (b)(1)-(b)(4), (f) and (h) filed 9-25-92 as an emergency; operative 10-1-92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL 1-25-93 or emergency language will be repealed by operation of law on the following day.
8. Amendment of table in subsection (h) filed 12-3-92 as an emergency; operative 12-3-92 (Register 92, No. 49). A Certificate of Compliance must be transmitted to OAL 4-2-93 or emergency language will be repealed by operation of law on the following day.
11. Amendment of subsection (h) filed 8-24-93 as an emergency; operative 8-24-93 (Register 93, No. 35). A Certificate of Compliance must be transmitted to OAL by 12-22-93 or emergency language will be repealed by operation of law on the following day.
12. Amendment of subsection (h) refiled 12-20-93 as an emergency; operative 12-20-93 (Register 93, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-21-94 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 12-20-93 order transmitted to OAL 3-22-94 and filed 4-28-94 (Register 94, No. 17).
14. Amendment of subsection (h) and NOTE filed 8-31-94 as an emergency; operative 8-31-94 (Register 94, No. 35). A Certificate of Compliance must be transmitted to OAL by 12-29-94 or emergency language will be repealed by operation of law on the following day.
15. Amendment of subsection (h) and NOTE refiled 1-3-95 as an emergency; operative 1-3-95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL 5-3-95 or emergency language will be repealed by operation of law on the following day.
16. Certificate of Compliance as to 1-3-95 order transmitted to OAL 4-27-95 and filed 6-9-95 (Register 95, No. 23).
17. Amendment of subsection (h) and NOTE filed 9-19-96 as an emergency; operative 9-19-96 (Register 96, No. 38). A Certificate of Compliance must be transmitted to OAL by 1-17-97 or emergency language will be repealed by operation of law on the following day.
18. Certificate of Compliance as to 9-19-96 order transmitted to OAL 1-17-97 and filed 3-3-97 (Register 97, No. 10).
19. Amendment of subsection (h) and NOTE filed 12-31-97 as an emergency; operative 12-31-97 (Register 98, No. 1). A Certificate of Compliance must be transmitted to OAL by 4-30-98 or emergency language will be repealed by operation of law on the following day.
20. Editorial correction of HISTORY 19 (Register 98, No. 24).
21. Certificate of Compliance as to 12-31-97 order transmitted to OAL 4-27-98 and filed 6-9-98 (Register 98, No. 24).
22. Amendment of subsection (h) and NOTE filed 10-29-98 as an emergency; operative 10-29-98 (Register 98, No. 44). A Certificate of Compliance must be transmitted to OAL by 2-26-99 or emergency language will be repealed by operation of law on the following day.
23. Certificate of Compliance as to 10-29-98 order transmitted to OAL 2-26-99 and filed 4-8-99 (Register 99, No. 15).
24. Amendment of subsection (h) and amendment of NOTE filed 11-3-99 as an emergency; operative 11-3-99 (Register 99, No. 45). A Certificate of Compliance must be transmitted to OAL by 3-2-2000 or emergency language will be repealed by operation of law on the following day.
25. Amendment of subsection (h) filed 2-28-2000 as an emergency; operative 2-28-2000 (Register 2000, No. 9). A Certificate of Compliance must be transmitted to OAL by 6-27-2000 or emergency language will be repealed by operation of law on the following day.
26. Amendment of subsection (d) and new subsection (j) filed 3-27-2000 as an emergency; operative 3-30-2000 (Register 2000, No. 13). A Certificate of Compliance must be transmitted to OAL by 7-28-2000 or emergency language will be repealed by operation of law on the following day.
27. Certificate of Compliance as to 11-3-99 order transmitted to OAL 3-1-2000 and filed 4-6-2000 (Register 2000, No. 14).
28. Amendment of subsection (h) refiled 6-19-2000 as an emergency; operative 6-19-2000 (Register 2000, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-17-2000 or emergency language will be repealed by operation of law on the following day.
29. Certificate of Compliance as to 3-27-2000 order transmitted to OAL 7-17-2000 and filed 8-28-2000 (Register 2000, No. 35).
30. Certificate of Compliance as to 6-19-2000 order transmitted to OAL 9-22-2000 and filed 10-16-2000 (Register 2000, No. 42).
31. Amendment of subsection (h) and amendment of NOTE filed 11-17-2000 as an emergency; operative 11-17-2000 (Register 2000, No. 46). A Certificate of Compliance must be transmitted to OAL by 3-19-2001 or emergency language will be repealed by operation of law on the following day.
32. Certificate of Compliance as to 11-17-2000 order, including further amendment of subsection (h), transmitted to OAL 3-8-2001 and filed 4-19-2001 (Register 2001, No. 16).
33. Amendment of subsection (h) and amendment of NOTE filed 1-27-2003 as an emergency; operative 8-1-2001 pursuant to Statutes of 2002, Chapter 16, Items 4260-101-0001 and 4260-101-0890 (Register 2003, No. 5). A Certificate of Compliance must be transmitted to OAL by 5-27-2003 or emergency language will be repealed by operation of law on the following day.
34. Amendment of subsection (h) and amendment of NOTE refiled 5-22-2003 as an emergency; operative 5-22-2003 (Register 2003, No. 21). A Certificate of Compliance must be transmitted to OAL by 9-19-2003 or emergency language will be repealed by operation of law on the following day.
35. Certificate of Compliance as to 5-22-2003 order transmitted to OAL 9-18-2003 and filed 10-16-2003 (Register 2003, No. 42).
36. Redesignation and amendment of portion of subsection (h) as new subsection (h)(1), new subsection (h)(2) and amendment of NOTE filed 8-24-2005 as a deemed emergency pursuant to Welfare and Institutions Code section 14105(a); operative 8-24-2005 for dates of service 8-1-2002 through 7-31-2003 pursuant to Statutes of 2002, Chapter 379, Items 4260-101-0001 and

4260–101–0890 (Register 2005, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–23–2005 or emergency language will be repealed by operation of law on the following day.

37. Certificate of Compliance as to 8–24–2005 order transmitted to OAL 12–22–2005 and filed 1–23–2006 (Register 2006, No. 4).

§ 51545. Definitions.

(a) The following definitions are applicable to Article 7.5 only unless otherwise specified in another section:

(1) Administrative Adjustment (AA) means the adjustment to a provider's PIRL in response to a provider's administrative adjustment request (AAR).

(2) Administrative Adjustment Request (AAR) means the provider's request for changes to the PIRL, which includes both the all–inclusive rate per discharge limitation (ARPDL) and peer grouping rate per discharge limitation (PGRPDL).

(3) Aligned ARPDs means the modified ARPDs which have been adjusted to estimate their value as of a common fiscal period ending for the purpose of computing the 60th percentile for the PGRPDL.

(4) All–Inclusive Rate Per Discharge (ARPD) means the per discharge dollar limit on Medi–Cal reimbursable costs prior to the application of the peer grouping inpatient reimbursement limitation (PIRL). The ARPD excludes return on owner's equity, disproportionate share payments and reductions for third–party liability (TPL), as referenced in applicable parts of 42 CFR, Part 413 and HCFA Publication 15–1.

(5) All–Inclusive Rate Per Discharge Limitation (ARPDL) means a Medi–Cal inpatient reimbursement limit (MIRL) which is the all–inclusive rate per discharge (ARPD) multiplied by the number of Medi–Cal discharges. The ARPDL excludes return on owner's equity, disproportionate share payments and reductions for TPL, as referenced in applicable parts of 42 CFR, Part 413 and HCFA Publication 15–1.

(6) Allowable Rate Per Discharge (ARPD) means all–inclusive rate per discharge (ARPD).

(7) Atypical Case means Cost Outliers or Day Outliers.

(8) Base Period shall be for fiscal periods which begin on or after the effective date of Sections 51545 through 51557, the FPE immediately prior to the settlement period.

(9) Base Year means Base Period.

(10) Burden of Going Forward means the responsibility of a party to be the first one to present its evidence with respect to a particular issue.

(11) Burden of Proof means the responsibility of proving, by a preponderance of the evidence, the existence or nonexistence of each fact which is essential to demonstrate that a party's position regarding a disputed issue is correct.

(12) Case Mix means the mix in terms of the diagnosis related groups (DRGs) of the Medi–Cal patients served by the provider.

(13) Case Mix Index means an index that measures the average level of health care needed by a provider's Medi–Cal patients.

(14) Charitable Research Hospital means a provider which accepts catastrophically ill patients by referral only, has over 33 percent of their Gross Operating Expense (GOE) as charity care, over 1 percent of their GOE for research and has no obstetrics or nursery.

(15) Children's Hospital means in accordance with Section 14087.2 of the W&I Code, those hospitals where 30 percent of the infants and children served by the single institution qualify for Medi–Cal payment systems and the institution serves primarily children.

(16) Contract Services Costs means costs related to services provided that are covered by a contract with the Department for care of Medi–Cal inpatients, per W&I Code Section 14081.

(17) Contract Hospital means a provider that contracts with the Department, based on negotiations with the California Medical Assistance Commission (CMAC) in accordance with W&I Code Section 14081.

(18) Cost Outliers means those patients who have extraordinarily higher inpatient costs as identified by the cost outlier formulas in Section 51551.

(19) Cost Report means a report required by the Department and completed by the provider to determine the Medi–Cal Program's share of the provider's reasonable costs in accordance with applicable parts of 42 CFR, Part 413 and HCFA Publication 15–1.

(20) County Appropriations means the amount appropriated to the provider from the county general fund or other county sources for operating deficits or other operating needs. If a county hospital repays the county any portion of the appropriations, the repayment must be abated against current fiscal period appropriations.

(21) Customary Charges, as specified in applicable parts of 42 CFR, Part 413 and HCFA Publication 15–1, means those uniform charges allowed by Medi–Cal which are listed in a provider's established charge schedule which is in effect and applied consistently to most patients and recognized for program reimbursement.

(22) Crossover Patients means hospital inpatients who are eligible for both Medi–Cal and Medicare.

(23) Current Fiscal Settlement Period means the provider's accounting year for which a peer group inpatient reimbursement limitation (PIRL) is being determined.

(24) Day Outliers means those patients whose stay in the hospital is extraordinarily longer as identified by the day outlier formulas in Section 51551.

(25) Department means the California State Department of Health Services.

(26) Depreciation and Amortization means those amounts which represent portions of the depreciable or amortizable asset's cost or other basis which is allocable to a period of operation.

(27) Diagnosis Related Group (DRG) means a group identified by certain clinically coherent types of patients who should have similar resource consumption within each of the universe of DRGs used in the Medicare Prospective Payment System (PPS), in accordance with applicable parts of 42 CFR, Part 413 and HCFA Publication 15–1.

(28) Discharge means the termination of lodging and a formal release of an inpatient by a provider. Deaths are counted as inpatient discharges. See Medi–Cal Discharge.

(29) Disproportionate Share Hospital means a provider whose Medicaid inpatient utilization rate (as defined in Section 1923(b)(2) of the Social Security Act) is at least one standard deviation above the mean Medicaid inpatient utilization rate for providers receiving Medicaid payments in the State, or where the providers's low income utilization rate (as defined in Section 1923(b)(3) of the Social Security Act) exceeds 25 percent.

(30) Economically and Efficiently Operated Providers means providers whose costs do not exceed the PIRL except for those costs that are otherwise found allowable by an AA or Formal Appeal process.

(31) Employee Benefits means the direct operating costs related to employee benefits consisting of FICA; State Unemployment Insurance (SUI) and Federal Unemployment Insurance (FUI); vacation, holiday, and sick leave; group health insurance; group life insurance; pension and retirement; workers' compensation insurance; other payroll related employee benefits; and, other non–payroll related employee benefits.

(32) Employee Benefits Index means the factor resulting from the adjusted comparison of settlement period employee benefits expense to prior period employee benefits expense.

(33) Exempt Reimbursement means reimbursement not included in, or subject to limitation by the PIRL. These costs are limited to return on owner's equity and disproportionate share payments.

(34) Extraordinary and Unusual Events means an event of a sudden, unexpected, or unusual nature; e.g., avalanche, floods, earthquakes or other similar events whose circumstances are unavoidable regardless of the level of prudence exercised by the provider.

(35) Factor Input Price means the same as the Input Price Index.

(36) Final Peer Group Inpatient Reimbursement Limitation (PIRL) Settlement means a Departmental determination of liabilities owed resulting from a PIRL calculation based upon data audited or otherwise considered true and correct by the Department for the final settlement fiscal period, pursuant to the W & I Code Section 14170.

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(37) Fiscal Period Ending (FPE) means the last day of a provider's fiscal period. A fiscal period is an accounting period established by the provider. The fiscal period is generally a twelve (12) consecutive month period; however, in some instances may be less than or exceed twelve (12) months.

(38) Fixed Costs means an operating expense or a class of operating expenses as a class, that does not vary with patient volume. Fixed costs are not fixed in the sense that they do not fluctuate or vary, but fluctuate or vary from causes independent of patient volume.

(39) Food Service Expense means those expenses for services and supplies related to the food service categories of: kitchen, dietary, and cafeteria.

(40) Formal Appeal means the provider's appeal of the Department's decision on an AAR concerning a final PIRL calculation.

(41) Formula Relief means changes in the ARPD that will carry forward into the next fiscal period's ARPD calculation.

(42) Gross Operating Expense (GOE) means the total operating expenses of the provider. This includes all expenses incurred in conducting the ordinary major activities of the provider inclusive of daily hospital services, ancillary services, research, education, general services, fiscal services and administrative services, including the physician professional component.

(43) Initial Base Period means the last fiscal period for each provider ending prior to the effective date of Sections 51545 through 51557.

(44) Input Price Index (IPI) means the weighted computation resulting in the reimbursable change in the prices of goods and services purchased by the providers (except for pass–throughs). The IPI shall consist of a market basket classification of goods and services purchased by providers, a corresponding set of market basket weights derived from each provider's own mix of purchased goods and services, and a related series of price indicators.

(45) Interim Payment Rate means the rate paid to a provider, expressed as a percentage, derived by the PIRL divided by provider's charges.

(46) Interest on Working Capital means a cost representing all interest incurred on borrowings for working capital purposes or interest on an unpaid tax liability.

(47) Interest, All Other means a cost representing all interest incurred for borrowings other than interest on working capital.

(48) Leases and Rents Costs means costs representing lease and rental expenses relating to occupying or using buildings, leasehold improvements and fixed assets not owned by the provider and not directly assignable to another cost center.

(49) Length of Stay Outliers means Day Outliers.

(50) Licenses and Taxes Costs means costs representing all license expenses and all taxes (other than tax on income).

(51) Malpractice Insurance (Hospital and Professional) Costs means costs representing liability insurance expenses, including premiums paid for physicians, the deductibles paid on claims, or the actuarially determined cost of self–insurance.

(52) Maximum Inpatient Reimbursement Limitation (MIRL) means the lowest of the following:

(A) Customary charges.

(B) Allowable costs determined by the Department, in accordance with applicable Medicare standards and principles of cost based reimbursement, as specified in applicable parts of 42 CFR, Part 413 and HCFA Publication 15–1.

(C) ARPD limitation.

(53) Medi–Cal Discharges means those discharges where the inpatient services provided were covered by Medi–Cal for a Medi–Cal eligible beneficiary. This includes deaths, and eligible beneficiaries whose Medi–Cal covered services were paid in full or in part by third parties, if Medi–Cal was also billed for the services. Late paid claims where the patients' statistics were not included in the cost or audit report used to derive the PIRL and well newborns shall not be counted as Medi–Cal discharges. However, a well newborn whose mother is not eligible for Medi–Cal shall be counted as a discharge if the newborn is eligible for Medi–Cal. Medicare crossover patients are not counted as Medi–Cal discharges if Medi–Cal paid only for any applicable deductibles and co–payments.

(54) MIRL Reimbursement Rate Per Discharge means the per discharge reimbursement amount under the MIRL, which has not been reduced for third–party liability, excluding any one–time relief, return on owner's equity and any disproportionate share payments. It is calculated by dividing the MIRL by the number of Medi–Cal discharges.

(55) New Hospital means any hospital:

(A) Which has a complete new physical plant that is less than three years of age and is not on the same or an adjacent property as the old physical plant; or

(B) Under new ownership, or resuming operations for the first time after a 12–month period (i.e. was closed for at least 12 months prior to being reopened under new ownership); or

(C) Which has operated under present and all previous ownerships for less than three years.

(56) New Service means an additional service developed and implemented by a Medi–Cal provider, to furnish and maintain quality inpatient hospital care to a patient population inclusive of Medi–Cal recipients.

(57) Newborn means an infant born in the hospital or delivered outside the hospital and admitted to the hospital shortly after birth.

(58) Noncontract Hospital means a provider that does not have a negotiated contract with the Department to provide medical care for Medi–Cal beneficiaries, pursuant to W & I Code Section 14081.

(59) Noncontract Service Costs means costs related to services provided to Medi–Cal inpatients, which are excluded from the provider's contract with the Department.

(60) Non–Pass–Through Costs means costs which are subject to the hospital cost index, as found in Section 51549.

(61) OSHPD means the Office of Statewide Health Planning and Development.

(62) One–Time Relief means changes in the ARPDL which only affect the settlement period and are not carried forward into the next settlement period ARPDL.

(63) OSHPD Accounting and Disclosure System means a uniform accounting and disclosure system designed by OSHPD.

(64) Outliers means Cost Outliers and Day Outliers.

(65) Partial Period Contracting Hospital means a contract hospital with a contract which covers only a partial fiscal period.

(66) Partially Contracting Hospital means a contract hospital with a contract that does not include all Medi–Cal covered services.

(67) Pass–Through Costs means cost categories for purposes of the ARPDL that are not subject to the hospital cost index. The categories are limited to: depreciation, rents, leases, interest, property tax, license fees, utilities and malpractice insurance, as defined in Section 51549.

(68) Per Diem means a daily rate paid for hospital services provided to Medi–Cal beneficiaries.

(69) Peer Group means a group of hospitals with similar characteristics that are grouped together for purposes of determining reimbursement limitations.

(70) Peer Grouping Inpatient Reimbursement Limitation (PIRL) means the lowest of the following:

(A) Customary charges.

(B) Allowable costs determined by the Department, in accordance with applicable Medicare standards and principles of cost based reimbursement, as specified in applicable parts of 42 CFR, Part 413 and HCFA Publication 15–1.

(C) ARPDL.

(D) PGRPDL.

If a provider is exempt from the peer group limits, the Medi– Cal reimbursement limitation will be the lowest of (A), (B) or (C), identified above. All references to PIRL include MIRL.

(71) Peer Grouping Rate Per Discharge Limitation (PGRPDL) means a Medi–Cal inpatient reimbursement limit. The PGRPDL excludes re-

turn on owner's equity, disproportionate share payments and reductions for third–party liability. The PGRPDL is the 60th percentile ARPD of each provider's peer group multiplied by the provider's number of Medi–Cal discharges.

(72) Pharmacy Expense means those expenses for services and supplies related to the pharmacy. The cost of drugs dispensed to inpatients are also included in this category.

(73) Primary Health Service Hospital means a provider that is either (1) located outside of a standard metropolitan statistical area, and located at least 15 miles from another licensed acute care hospital, and has 60 or fewer acute care beds; or (2) is located at least 20 miles from any other licensed acute care hospital, and has 60 or fewer acute care beds; or (3) be the only licensed acute care hospital in the county, and has fewer than 100 acute care beds as defined by Health and Safety Code Section 1339.9.

(74) Prior Fiscal Period means the most recent fiscal period ending prior to the period in which a PIRL is being determined.

(75) Productive Hours means the total paid hours less hours not on the job. Hours not on the job include: vacation time; sick time; holidays; and other paid time off.

(76) Productive Salaries means the total direct payroll costs for productive hours related to a given classification.

(77) Professional Fees means fees for professional services consisting of medical (therapist and others); consulting and management fees; legal; audits; registry nurses and contracted services.

(78) Provider means an institution in California that furnishes inpatient hospital services to Medi–Cal beneficiaries.

(79) Purchased Services means costs related to services purchased from outside contractors.

(80) Rate Per Discharge means ARPD.

(81) Reasonable Costs means reimbursable costs as defined by 42 CFR, Part 413 and HCFA Publication 15–1.

(82) Recalculated Final PIRL Settlement means a final PIRL settlement which has been recalculated.

(83) Reimbursable Costs means those costs that are reimbursed as determined by the PIRL.

(84) Replacement Service means a newly implemented service which replaces another service in whole or in part.

(85) Rural Hospitals means consistent with Section 1188.855 of the Health and Safety Code, an acute care hospital which meets the criteria within peer group six (rural hospitals) as defined in the report entitled, "Hospital Peer Grouping for Efficiency Comparison" dated December 20, 1982.

(86) Salaries and Wages means the direct operating costs related to salaries and wages, consisting of: management and supervision; technicians and specialists; registered nurses; licensed vocational nurses; aides and orderlies; clerical and other administrative; environmental and food services; non–physician medical practitioners; and other salaries and wages. Those salaries and wages related to students from the medical education centers as well as physicians are not included here.

(87) Salary and Wage Index means the factor which is defined as part of the calculations in Section 51549(b)(2)(A)1.

(88) Second Level Appeal means Formal Appeal.

(89) Service Intensity means changes in the character of the services provided to each patient including but not limited to: changes in applicable technology; qualitative and quantitative changes in: personnel; supplies; drugs; and other materials. Service intensity does not include changes in the types of patients and illnesses treated.

(90) Settlement Fiscal Period means the provider's accounting period for which a PIRL settlement is being or has been conducted.

(91) Sixtieth Percentile means the point at which sixty percent (60%) will be below in any given group arrayed in order.

(92) Sixtieth Percentile ARPD means the maximum reimbursement per discharge under the PGRPDL system. It is the sixtieth percentile rate per discharge for each peer group.

(93) Sole Community Hospital is defined in 42 USC, Section 1395ww(d)(5)(C)(iii).

(94) Student and Physician Professional Fees means fees charged for the professional services provided to patients by hospital–based physicians and students. These do not include those fees related to the education, research and administrative duties performed by the hospital–based physicians.

(95) Student and Physician Salaries and Wages means the compensation (exclusive of in–service education), of students in teaching programs and physicians including such items as research, education program activities, general hospital administration, patient care and supervision.

(96) Tentative PIRL Settlement means the Department's determination of liabilities owed, resulting from a PIRL or MIRL calculation using unaudited cost report data provided by a provider.

(97) Third–Party Liability (TPL) means amount owed for hospital inpatient services on behalf of a Medi–Cal eligible beneficiary by any payor other than Medi–Cal.

(98) Total Hospital Gross Revenue means the amount of total charges for services rendered to all patients.

(99) Total Medi–Cal Gross Revenue means the amount of charges to Medi–Cal for services rendered to Medi–Cal eligible patients.

(100) Total Paid Hours means the sum of the productive hours and the vacation time, sick time, holidays, and other paid time off for all employee classes related to daily hospital services, ancillary services, general services; fiscal services; and administrative services.

(101) Utilities means the direct expenses, excluding telephone and telegraph expenses, incurred in the operation of the hospital plant and equipment, such as, but not limited to: electricity, gas and water.

(102) Variable Costs means operating costs that vary or fluctuate with changes in patient volume.

(103) Volume Adjustment means the adjustment for changes in patient volume that applies to the provider specific all–inclusive rate per discharge for a given fiscal period.

(104) Well Newborn means those newborns who have no major medical problems who are not counted as Medi–Cal discharges. This includes newborns classified in Medicare PPS DRGs 372 and 373.

(105) Working Capital means the difference between total current assets and total current liabilities.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14081, 14105, 14108, 14124.5 and 14170, Welfare and Institutions Code; and Section 1339.9, Health and Safety Code.

HISTORY

1. New section filed 4–23–92; operative 5–25–92 (Register 92, No. 20).
2. Certificate of Compliance as to 8–28–96 order, including new subsections (i) and (j) and amendment of NOTE, transmitted to OAL 1–23–97 and filed 3–10–97 (Register 97, No. 11).
3. Change without regulatory effect amending subsections (a)(4), (a)(19), (a)(21), (a)(27), (a)(58), (a)(73), (a)(93) and (a)(104) filed 8–5–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 32).

§ 51546. Reimbursement Limits.

(a) For provider fiscal periods beginning on or after the effective date of this Section, reimbursement for in–state hospital inpatient services provided to Medi–Cal program beneficiaries not fully covered by a negotiated contract as allowed in W&I Code Section 14081, shall be the least of the following four items except as stated in (b), (d), (f), (g), and (h) for each provider:

(1) Customary charges.

(2) Allowable costs determined by the Department, in accordance with applicable Medicare standards and principles of cost based reimbursement, as specified in applicable parts of 42 Code of Federal Regulations (CFR), Part 413 and HCFA Publication 15–1.

(3) All–inclusive rate per discharge limitation (ARPDL).

(4) The peer grouping rate per discharge limitation (PGRPDL).

(b) The following adjustment shall be made to items (1) and (4) above:

(1) Providers shall also be reimbursed for disproportionate share payments if applicable.

(2) The least of the four items listed in (a)(1)–(4) above shall be reduced by the amount of third–party liability.

(c) Amounts determined under (a)(3) or (a)(4) above may be increased only by an AA or appeal.

(d) New hospitals and rural hospitals shall be exempt from the provisions of this Article relating to the MIRL and PIRL. New and rural hospitals shall be reimbursed in accordance with the lesser of subsections (a)(1) or (a)(2) above, and subject to any limitations provided for under federal law and/or regulation.

(e) Each provider shall be notified of the ARPDL and PGRPDL at the time of tentative and/or final PIRL settlements. If only a final PIRL settlement is issued, it shall take the place of both the tentative and final PIRL settlement.

(f) Payments for Medicare covered services provided to Medicare/Medi-Cal crossover patients shall not be subject to the limitations specified in this Section. These services shall be reimbursed only for the Medicare deductibles and co-insurance amounts. The deductibles and co-insurance amounts shall not exceed the state reimbursement maximums. State reimbursement maximums shall be the interim rate times charges after consideration of the Medicare payment.

(g) Payment for skilled nursing facility services shall be made in accordance with Section 51511.

(h) Payment for intermediate care facility services shall be made in accordance with Section 51510.

NOTE: Authority cited: Sections 10725, 14100.1, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14105 and 14106, Welfare and Institutions Code.

HISTORY

1. New section filed 4-23-92; operative 5-25-92 (Register 92, No. 20).
2. Certificate of Compliance as to 8-28-96 order, including new subsections (i) and (j) and amendment of NOTE, transmitted to OAL 1-23-97 and filed 3-10-97 (Register 97, No. 11).
3. Change without regulatory effect amending subsection (c), repealing subsections(i)-(j) and amending NOTE filed 6-12-2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 24).

§ 51547. Methods of Payment.

(a) The methods of payment for inpatient hospital services under the MIRL shall include the following:

(1) An ARPD that shall be retrospectively established for each provider's tentative and final settlement fiscal period. The ARPD shall:

(A) Apply to all non-contract Medi-Cal inpatient covered services provided by the provider during its settlement fiscal period. It shall be based upon the statistics included in the providers Medi-Cal cost or audit report.

(B) Be updated annually to reflect reimbursable changes in factor input prices, service intensity, technology, productivity, patient volume, and other items as allowed through the AA and appeals process.

(2) An interim payment rate based upon an actual or projected reimbursable cost to charge ratio.

(A) The current interim payment rate shall be based on the lower of the following:

1. The latest tentative settlement fiscal period for which a final settlement has not been issued.

2. The latest final (which also includes recalculated finals) settlement fiscal period.

(B) Interim payment rates calculated under (A) may use data from settlements that have been previously issued if needed to determine the lower of 1. and 2. above.

(C) When newly-established providers do not have cost experience on which to base a determination of an interim rate of payment. In such cases, the Department will use the following methods to determine an appropriate rate:

1. If there is a provider or providers comparable in substantially all relevant factors to the provider for which the rate is needed, the Department will base an interim rate of payment on the reimbursable costs and customary charges of the comparable provider.

2. If there are no substantially comparable providers from whom data are available, the Department will determine an interim rate of payment based on the budgeted or projected reimbursable costs and customary charges of the provider.

3. Under either method, the Department will review the provider's cost and charge experience and adjust the interim rate of payment in line with the provider's cost and charge experience.

4. The Department may prohibit increases in the accommodation rates, as defined in applicable parts of 42 CFR, Part 413 and HCFA Publication 15-1, charged by the provider if the Department projects that such increases would cause their interim payments to exceed the PIRL.

5. Newly established providers may appeal their interim rate if it is based upon the criteria in (a)(2)(C)1. through 4., in accordance with the AAR procedures specified in Section 51550.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14105, 14105.15 and 14106, Welfare and Institutions Code.

HISTORY

1. New section filed 4-23-92; operative 5-25-92 (Register 92, No. 20).
2. Change without regulatory effect amending subsection (a)(2)(C)4. filed 8-5-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 32).

§ 51548. Overpayments.

(a) Interim payment rate adjustments and recovery of overpayments to providers shall be made at tentative or final settlement based upon the application of this Article.

(1) Such overpayments shall be collected and such interim payment rates shall be adjusted whether or not appeals of any audit, MIRL or PIRL for the current or any prior fiscal period have been filed by the provider.

(2) Interim payment rates calculated after the effective date of Article 7.5, Sections 51545 through 51557, and applied to services provided after the effective date of this regulation, shall comply with Sections 51547 and 51548 even if the actual settlement upon which the new interim rate is based, is not subject to this regulation.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14105 and 14105.15, Welfare and Institutions Code.

HISTORY

1. New section filed 4-23-92; operative 5-25-92 (Register 92, No. 20).

§ 51549. Reimbursement Formula.

(a) A hospital cost index (HCI) shall be established for each provider. This index shall consist of an input price index (IPI) and shall contain an allowance for changes in scientific and technological advancement, service intensity and productivity. The allowance shall be called the Service Intensity, Productivity, Scientific and Technological Advancement Factor (SIPTF).

(1) The HCI shall be calculated to account for actual changes in the IPI after the close of each provider's accounting period.

(2) The HCI shall be multiplied by the non-pass-through portion of the provider's MIRL reimbursement rate per discharge (tentative or final) for the prior fiscal period to determine the non-pass-through portion of its ARPD for the settlement fiscal period.

(A) The prior period shall always be the base period for each settlement.

(B) For the initial base period only, the non-pass-through portion of the ARPD shall be calculated as follows:

1. Step 1, add the amount of TPL for the initial base period to the MIRL (lowest of 51536(a)(1)-(3)) which includes amounts reimbursed under the AA and appeals process for the initial base period.

2. Step 2, recalculate Medi-Cal discharges for any initial base period in accordance with the definition of Medi-Cal discharges contained in Section 51545.

a. The Department shall notify the provider of the revised count of Medi-Cal discharges for the initial base period.

b. The provider may file an AAR on the count of Medi-Cal discharges for the initial base period only and only as it is used in the settlement period MIRL. The AAR must be filed within 60 days of notification of the number of Medi-Cal discharges for the initial base period.

c. The provider may file an appeal on the Department's response to the AAR in accordance with Section 51552.

3. Step 3, divide the result of step 1 by the result of step 2.

4. Step 4, multiply the percentage of non–pass–through costs for the initial base period by the result of step 3.

5. Use the result of step 4 in place of the PNPARPD in the ARPD formula in subsection (3) below.

(3) The ARPD shall be calculated as follows:

ARPD = PASPD + NPARPD.

= PASPD + (PNPARPD * HCI)

= (TPTC/THD) + (PNPARPD * ((AIPI * CMAF) + SIPTF))

Where ARPD = All–inclusive Rate Per Discharge.

PASPD = Pass through per discharge = TPTC/THD

TPTC = Total pass through costs in the settlement fiscal period

THD = Total hospital discharges in the settlement fiscal period.

NPARPD = Non–Pass–through All–inclusive Rate Per Discharge.

NPARPD = PNPARPD * HCI

PNPARPD = Prior year Non–Pass–through portion of the MIRL reimbursement rate per discharge which is,

((PMIRL – (PMCDIS * (PTPTC/PTHD)))/PMCDIS)

Where:

PMIRL = Prior fiscal period MIRL.

PMCDIS = Prior fiscal period number of Medi–Cal discharges.

PTPTC = Prior fiscal period total pass through costs.

PTHD = Prior fiscal period total hospital discharges

HCI = Hospital Cost Index =

((AIPI) ** (Days/730))* CMAF) + (SIPTF. **(days/730))

If the prior or settlement fiscal period is long (over 370 days) or short (under 360 days). If both fiscal periods are over 359 days and under 371 days HCI = (AIPI * CMAF) + SIPTF.

Where:

AIPI = Adjusted Input Price Index.

SIPTF = Allowance for Service Intensity, Productivity, and Scientific and Technological advancement Factor.

Days = Sum of days in the current and prior fiscal periods.

CMAF = Case mix adjustment factor.

* = Multiplication.

** = Exponentiation.

(4) An annual allowance for service intensity, productivity and scientific and technological advancement shall be added to the allowable increase in the non–pass–through portion of the ARPD, as detailed in the formulas in this section. This allowance shall be in addition to reimbursement for pass–through categories and shall be the net amount of changes for scientific and technological advancement, productivity improvement and service intensity, if any (excluding case mix), as recommended annually by the prospective payment assessment commission for the Medicare PPS for all FPEs during the PPS effective dates of the recommended allowance.

(5) The pass–through categories are those hospital cost categories which, for purposes of tentative and final settlement, are not subject to the HCI.

(6) Each pass–through category is listed below:

(A) Depreciation.

(B) Rents and Leases.

(C) Interest.

(D) Property Taxes and License Fees.

(E) Utility Expenses.

(F) Malpractice Insurance.

(b) An IPI shall be established to compute the reimbursable change in the prices of goods and services purchased by the providers (except for pass–throughs). The IPI shall consist of a market basket classification of goods and services purchased by providers, a corresponding set of market basket weights derived from each provider's own mix of purchased goods and services, and a related series of price indicators.

(1) Weights corresponding to market basket categories shall be derived and updated for each settlement fiscal period. These weights shall be computed using the latest available information from each provider's Medi–Cal cost report. If information from this source is not sufficient to establish a hospital specific weight for a particular market basket category, the Department shall assign a weight based on information from the United States National Hospital Input Price Index published by the Department of Health and Human Services, or other available sources.

(2) The IPI shall be calculated after the close of each hospital's FPE, to account for actual and/or estimated changes in the:

(A) Hospital specific wage and benefit rates.

1. The index for allowable changes in wages shall be computed as follows:

Salary and Wage Index (SWI) = CLSA/ACSA.

Where:

CLSA = Summation of (PYHx * CYHRx) for all x.

ACSA = Summation of all Actual Prior Fiscal Period Salaries for all x categories.

x = The following categories:

a. Technicians and Specialists.

b. Registered Nurses.

c. LVNs.

d. Aides and orderlies.

e. Clerical and other administrative.

f. Environmental and food service.

PYHx = Prior Fiscal Period Productive Hours.

CYHRx = Current (Settlement) Fiscal Period Hourly Rate = CYSx/CYHx.

CYSx = Current (Settlement) Fiscal Period salary Expense for each category.

CYHx = Current (Settlement) Fiscal Period productive Hours.

2. The Employee Benefits Index (EBI) shall be computed as follows:

EBI = (PYHT * CYBR)/PYB.

Where:

PYHT = Prior Year (Prior Fiscal Period) Paid Labor Hours for All Labor Categories.

CYBR = Current Year (Settlement Fiscal Period) Benefit Rate = CYB/CYHT.

PYB = Prior Year (Prior Fiscal Period) Benefits Costs.

CYB = Current Year (Settlement Fiscal Period) Benefits costs.

CYHT = Current Year (Settlement Fiscal Period) Labor Hours for All Labor Categories.

3. The SWI and EBI shall be annualized for any provider which has a short or long (under 360 or over 370 days) prior or current fiscal period.

(a) The SWI shall be adjusted using the following formula:

ASWI = SWI ** (730/Days).

ASWI = Adjusted SWI.

Where Days = Total days in the current and prior fiscal periods.

(b) The EBI shall be adjusted using the following formula:

AEBI = EBI ** (730/Days).

Where:

AEBI = Adjusted EBI.

Days = Total days in the current and prior fiscal periods.

(c) If the SWI and EBI are not annualized, then the ASWI = SWI and AEBI = EBI.

(B) Price indicators for other non–pass–through categories.

(C) Market basket weights for the following categories:

1. Salary and wages.
2. Benefits.
3. Professional fees, medical.
4. Professional fees, other.
5. Food.
6. Drugs.
7. All other non–pass–through costs.

(D) The non–pass–through costs "all other" category shall be weighted using the following weights for purposes of calculating the price indicator:

Category	*Weight*
Chemicals	12.16%
Surgical and Medical Instruments and Supplies	10.59%
Rubber and Miscellaneous Plastics	9.02%
Business Travel and Motor Freight	4.71%
Apparel and Textiles	4.31%
Business Services	14.90%
All other miscellaneous	44.31%

(E) The weights for the seven market basket categories shall be the percentage of costs for each category as calculated from the Medi–Cal cost report.

(F) Each market basket weight shall be multiplied by the corresponding price indicator. The results will be summed to obtain the unadjusted non–pass–through price index.

(G) The price indicators for items under (C) (3 through 7) will be established for the end of each calendar quarter (March 31, June 30, September 30 and December 31). Any FPE other than on a calendar quarter shall use the price indicators under (C) above for the quarter in which the provider's FPEs.

1. The following five market basket categories and price indicators to be used in developing each provider's IPI are shown in the following table.

Non–Pass–Through Market Basket Classification
(Excluding Wages and Benefits)

Market Basket Categories	*Price Indicators*	
	Variable	*Source*
(1) Professional Fees for Physicians	Physicians' service component	Consumer Price Index, All Urban Consumers
(2) Other Professional Fees	Hourly earnings, production or non supervisory, private nonagricultural employees	U.S. Department of Labor Bureau of Labor Statistic
(3) Food	Average of processed foods and feeds component of PPI and food and beverages component of CPI	Producer Price Index Consumer Price Index, All Urban Consumer
(4) Drugs	Pharmaceuticals and ethical component	Producer Price Index
(5) Other Costs:		
(a) Chemicals	Chemicals and allied products component	Producer Price Index
(b) Surgical and Medical Instruments and Supplies	Special industry machinery and equipment component	Producer Price Index
(c) Rubber and Plastics	Rubber and plastics	Producer Price Index
(d) Travel	Transportation component	Consumer Price Index, All Urban Consumers
(e) Apparel and Textiles	Textile products and apparel component	Producer Price Index
(f) Business Services	Services component	Consumer Price Index, All Urban Consumers
(g) All Other	All items	Consumer Price Index, All Urban Consumers

2. The price index shall be 1.0 + the percentage increase in each service category as measured by the price indicator, expressed as a proportion.

(3) The formula for the hospital IPI shall be:

IPI = (PX1 * PGE1) + (PX2 * PGE2) + (PX3 * PGE3) + (PX4 * PGE4) + (ASWI * PGE5) + (AEBI * PGE6) + (PXO * PGE7)

Where:

IPI = Input Price Index.

PX1 = Price Index for Medical Professional Fees.

PX2 = Price Index for Other Professional Fees.

PX3 = Price Index for Food Costs.

PX4 = Price Index for Drug Costs.

ASWI = Adjusted Salary and Wage Index.

AEBI = Adjusted Employee Benefit Index.

PXO = Price Index for Other Costs.

PGE1 = Proportion of non–pass–through GOE which is for Medical Professional Fees for the prior fiscal period.

PGE2 = Proportion of non–pass–through GOE which is for Other Professional Fees for the prior fiscal period.

PGE3 = Proportion of non–pass–through GOE which is for Food Costs for the prior fiscal period.

PGE4 = Proportion of non–pass–through GOE which is for Drug Costs for the prior fiscal period.

PGE5 = Proportion of non–pass–through GOE which is for Salary and Wages for the prior fiscal period.

PGE6 = Proportion of non–pass–through GOE which is for Employee Benefits for the prior fiscal period.

PGE7 = Proportion of non–pass–through GOE which is for Other Costs for the prior fiscal period.

non–pass–through GOE = GOE minus total of all pass–through costs for the prior fiscal period.

(4) Providers that do not supply the data needed to calculate the IPI, shall have an IPI equal to the hospital market basket increase as calculated by HCFA, for the closest corresponding time period. For hospitals with short FPEs, the closest corresponding time period shall be the one with the closest mid–point.

(c) A volume adjustment shall be made to the provider's non–pass–through portion of the ARPD for the settlement fiscal period if the number of annualized total hospital discharges in the provider's settlement fiscal period differs from the number of annualized total hospital discharges in its prior fiscal period. The volume adjustment is used to allocate fixed costs on a per discharge basis. Provider fiscal periods (both settlement and prior) under 360 or over 370 days shall be annualized to a 365 day period based on the following formula:

ATHD = (365/DFP) * THD.
Where:
ATHD = Annualized total hospital discharges.
DFP = Days in fiscal period.
THD = Total hospital discharges.

(1) The volume adjustment shall be calculated using the following formula which adjusts the rate per discharge for estimated changes in average costs resulting from changes in volume.

VOLUME ADJUSTMENT FORMULA

AIPI = IPI * VAF
Where:
AIPI = Allowable change in the prior year non–pass–through portion of the ARPD after volume adjustment, expressed as a proportion. This is the adjusted IPI, which has not been annualized and does not include any CMAF or SIPTF.
IPI = Hospital Input Price Index.

$$VAF = \frac{DIS_P + (VC^* (DIS_F - DIS_p))}{DIS_F}$$

VAF = Volume Adjustment Factor
DIS_P = Total hospital discharges in the prior fiscal period (annualized if needed).
VC = Variable cost as a proportion of total cost for the prior fiscal period.
* = Multiplication.
DIS_F = Total hospital discharges in the settlement fiscal period (annualized if needed).

(2) Each provider's total costs, except for pass–through costs, shall be divided into the fixed and variable components shown in the following table. Data from the provider's Medi–Cal cost report or in the event it is unavailable, other direct report of expenses, shall be used to estimate the percentage of a provider's cost which varies with volume. A fixed to variable cost ratio of 50:50 shall be used when sufficient data from the provider are not available.

CLASSIFICATION OF FIXED AND VARIABLE COSTS

Fixed Costs	*Variable Costs*
Salaries and Wages	*Salaries And Wages*
Management and supervision	Registered nurses
Technician and specialist	Licensed vocational nurses
Clerical and other administrative	Aides and orderlies
Physicians	Environmental and food Services
Nonphysician medical practitioners	Other salaries and wages
Employee Benefits–Distributed proportionately according to salaries and wages	*Employee Benefits*–Distributed proportionately according to salaries and wages
FICA	FICA
Unemployment insurance	Unemployment insurance
Vacation, holiday, and sick leave	Vacation, holiday, and sick leave
Group insurance	Group insurance
Pension and retirement	Pension and retirement
Workers' compensation	Workers' compensation
Other employee benefits	Other employee benefits
Other Direct Expenses	*Professional Fees*
Insurance	Medical
Other direct expenses	Consulting and management
	Legal
	Audits
	Other professional fees
	Supplies
	Food
	Surgical supplies
	Pharmaceuticals
	Medical care materials
	Minor equipment
	Nonmedical supplies
	Purchased Services
	Medical
	Repairs and maintenance
	Management services
	Other purchased services

(3) A provider may submit additional data on the classification of fixed and variable costs for review by the Department with the AAR. If these alternative classifications and/or data are accepted by the Department, the provider shall continue to:

(A) Utilize these accepted classifications of fixed and variable costs in all FPEs.

(B) Submit to the Department, along with their filed cost report, any required data on fixed and variable costs necessary to do the alternative calculations for all subsequent FPEs. If the provider fails to supply the data with the cost report, they shall have their interim payments reduced by 20 percent. If the data has not still been supplied 60 days after the 20 percent reduction in interim payments begins, the provider shall have their interim payments reduced by 100 percent until the data are supplied. The provider shall be given 30 days advance notice to supply the required data before any reductions in interim payments are applied under this subsection.

(4) All providers must supply the data items for each FPE necessary to do the PIRL calculations. The data must be supplied as part of each provider's Medi–Cal cost report.

(d) Summary of ARPDL formula for provider with full settlement and full prior fiscal periods:

(1) ARPDL = MCDIS *
(2) (((RENTS + LIC + PTAX + DEP + LEAS + INT + UTL + MPI) / THD) +
(3) (((PMIRL – (PMCDIS * (TPTCPP / PTHD))) / PMCDIS) *
(4) (((((PX1 * (MPFP / (GOEPP – TPTCPP))) +
(5) (PX2 * (OPFP / (GOEPP – TPTCPP))) +
(6) (PX3 * (FOODP / (GOEPP – TPTCPP))) +
(7) (PX4 * (DRUGP / (GOEPP – TPTCPP))) +
(8) $((\sum_{k=1}^{6}(PYH_k * CYHR_k)/\sum_{k=1}^{6}(PYH_k * PYHR_k)) *$
(9) (SWP / (GOEPP – TPTCPP))) +
(10) (((PYHT * CYBR) / PYB) *
(11) (PYB / (GOEPP – TPTCPP))) +
(12) (PXO * (OTCP / (GOEPP – TPTCPP)))) *
(13) $((DIS_p + (VC * (DIS_f - DIS_p)))/DIS_f)) *$
(14) $(((\sum_{i=1}^{n}DRGC_i)/MCDIS)/((\sum_{j=1}^{m}DRGP_j)/PMCDIS))) +$
(15) (STA + PI + SI))))

Where:
ARPDL = All–Inclusive Rate Per Discharge Limitation.
MCDIS = Medi–Cal discharges in the settlement fiscal period.
RENTS = Rental costs for the settlement fiscal period.
LIC = License fees for the settlement fiscal period.
PTAX = Property Tax expenses for the settlement fiscal period.

DEP = Total allowable depreciation expenses for the settlement fiscal period.

LEAS = Lease expenses for the settlement fiscal period.

INT = Allowable Interest expense for the settlement fiscal period.

UTL = Allowable utility expenses for the settlement fiscal period.

MPI = Total Malpractice Insurance costs for the settlement fiscal period.

THD = Total hospital discharges for the settlement fiscal period.

PMIRL = MIRL (Lowest of rate, costs and charges) for the prior fiscal period.

PMCDIS = Medi–Cal discharges in the prior fiscal period.

TPTCPP = Total allowable pass–through costs for the prior fiscal period.

PTHD = Total hospital discharges for the prior fiscal period.

PX1 = Price index for medical professional fees.

MPFP = Allowable Medical Professional Fees for the prior fiscal period.

GOEPP = Gross Operating Expenses (GOE) for the prior fiscal period.

PX2 = Price index for Other Professional Fees.

OPFP = Allowable Other Professional Fees for the prior fiscal period.

PX3 = Price Index for Food costs.

FOODP = Allowable food costs for the prior fiscal period.

PX4 = Price Index for Drug costs.

DRUGP = Allowable costs for Drugs for the prior fiscal period.

PYH_k = Prior fiscal period hours paid for employee classification k.

$CYHR_k$ = Settlement Fiscal Period Hourly Wage rate for employee classification k.

$PYHR_k$ = Prior fiscal period Hourly Wage Rate for employee classification k.

SWP = Allowable costs for salaries and wages for the prior fiscal period.

PYHT = Prior fiscal period paid hours.

CYBR = Settlement fiscal period hourly benefits rate.

PYB = Prior fiscal period benefits.

PXO = Price Index for Other Costs.

OTCP = Other allowable costs for the prior fiscal period.

DIS_p = Total hospital discharges for the prior fiscal period.

VC = Variable cost proportion for the prior fiscal period.

DIS_f = Total hospital discharges for the settlement fiscal period.

$DRGC_i$ = DRG weight for patient i in the settlement fiscal period.

n = Number of DRG weights in the settlement fiscal period.

$DRGP_j$ = DRG weight for patient j in the prior fiscal period.

m = Number of DRG weights in the prior fiscal period.

MCDISP = Medi–Cal discharges in the prior fiscal period.

STA = Adjustment factor for Scientific and Technological Advancement.

PI = Adjustment factor for Productivity Improvement.

SI = Adjustment factor for Service Intensity.

Lines 2 through 15 are the ARPD = All–Inclusive Rate Per Discharge.

Line 2 is the PASPD = Pass–through cost per discharge.

Line 3 is the PNPARPD = Prior fiscal period Non–pass through MIRL Reimbursement Rate Per Discharge.

Lines 4 through 12 are the IPI = Input Price Index.

Lines 4 through 13 are the AIPI – Adjusted Input Price Index.

Lines 4 through 15 are the HCI = Hospital Cost Index.

Line 8 is the SWI = Salary and Wage Index.

Line 10 is the EBI = Employee Benefits Index.

Line 13 is the VAF = Volume Adjustment Factor.

Line 14 is the CMAF = Case Mix Adjustment Factor.

Line 15 is the SIPTF = Allowance for Service Intensity, Productivity, and Scientific and Technological Advancement Factor.

NOTE: Authority cited: Sections 10725, 14105, 14106 and 14124.5, Welfare and Institutions Code. Reference: Sections 14105, 14105.15, 14106 and 14171, Welfare and Institutions Code.

HISTORY

1. New section filed 4–23–92; operative 5–25–92 (Register 92, No. 20).

2. Change without regulatory effect amending section filed 8–5–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 32).

§ 51550. Administrative Adjustment Process.

(a) A provider may request an AA to the ARPDL or PGRPDL established for that provider if the provider's cost based allowable reimbursement for the settlement fiscal period as defined by the lower of Sections 51546(a)(1) and (a)(2), exceeds or are expected to exceed the PIRL by over $100. Expected to exceed only refers to the settlement period being issued and not any future settlement fiscal periods. The burden shall be on the provider to estimate, using the PIRL settlement information provided by the Department and any other information they may have, if they will expect to exceed the PIRL by over $100.

(b) Items that are not subject to an AA or appeal include the following:

(1) The use of Medicare standards and principles of reimbursement.

(2) The reimbursement amounts determined in Section 51546(a)(1) and (a)(2).

(3) The method for determining the IPI.

(4) The use of all–inclusive reimbursement rates.

(5) The use of a volume adjustment formula.

(6) Disproportionate share payments (these are not reduced by application of the PIRL).

(7) Data reported on the cost report which has been audited or reviewed by the Department are considered true and correct pursuant to W&I Code Section 14170. Data that was incorrectly transferred from the providers' Medi–Cal cost or audit report and used to calculate the MIRL is subject to appeal.

(8) The methodology used to calculate the interim rate.

(9) Any prior fiscal period issues.

(10) Higher costs due to low occupancy.

(11) Items not reimbursed as part of the Medi–Cal cost report process as determined in Section 51546(a)(1) and (a)(2).

(12) Increased costs. Only the cause for the increased costs may be appealable, and then only if it is otherwise an appealable item.

(13) Any issue raised in a previous formal appeal for which a decision was made by the Department for the same provider. The only exception is to incorporate into the settlement fiscal period PIRL the prior decision in the same manner as it was previously decided by the Department. These only include decisions made for FPEs affected by Sections 51545 through 51557. This does not include issues withdrawn by the provider and thus not determined on their merits in the formal decision.

(14) Increases in average length of stay.

(15) Changes in the Cost–Based Reimbursement System as determined under Section 51546(a)(1) and (a)(2).

(16) Increased costs incurred by entering into a contract which did not contain reasonable cost increase limitations.

(17) Increases due to increased costs or charges of a related party.

(18) Any issues involving labor cost increases except for those allowed in Section 51551(b).

(19) New services.

(c) Issues involving the following MIRL (or ARPDL but not PGRPDL) items may be resolved through an AA under the procedures in Section 51551:

(1) Changes in Medi–Cal case mix and outliers.

(2) Inappropriate calculation of fixed and variable costs.

(3) An error in the calculations.

(4) Determination of whether or not a provider is exempt from the ARPDL.

(5) Extraordinary and unusual events.

(6) Labor costs as allowed under Section 51551(b).

(7) Other causes of cost increases for costs which were economically and efficiently incurred for the necessary care of Medi–Cal inpatients, that are an increase on a per–discharge basis over the prior fiscal period and are not listed under (b) as not being subject to an AAR.

(8) The interim rate as it may be affected by changes resulting from items appealed under (1) through (7) above.

(d) If a provider's cost based reimbursement (lower of Section 51546(a)(1) and (a)(2)) exceeds both the ARPDL and the PGRPDL, the providers' AAR and any subsequent appeal of the AA, must address both limitations in order to obtain relief for both limitations. If only the ARPDL is appealed, no further appeal rights will exist for the PGRPDL at any later date, except for an AAR on a tentative PIRL settlement that is issued later as a final PIRL settlement.

(e) The procedures for requesting an AA of an ARPDL shall be as follows:

(1) A request for an AA of the ARPDL or PGRPDL, which the Department deems acceptable, shall be submitted within 90 days after notification of that limitation. These AARs must be postmarked or hand delivered on or before the 90th day after the postmark on the settlement notification letter. No extensions shall be granted. If a settlement letter from the Department contains settlements for more than one fiscal period, 120 days shall be allowed to file the AAR.

(2) The AAR shall be submitted in writing to the Department and shall specifically and clearly identify each issue, the total dollar amount involved for each issue and the dollar amount of overlap among each issue. If the Department determines that additional data are needed, the provider shall have 60 days after notification of the Department's request to supply it to the Department. No extension shall be granted.

(3) The AAR need not be formal, but it shall be in writing and specific as to each issue in dispute, setting forth the provider's specific contentions as to those issues and the estimated amount each issue involves. If the Department determines that the request for any issue fails to state the specific grounds upon which objection to the specific issue is based, including the estimated dollar amount involved, the provider shall be notified that is does not comply with the requirements of this regulation and the issue cannot be accepted. If an issue is not accepted on this basis, the provider may not submit this issue as a formal appeal.

(4) All AARs must be signed by an employee of the provider authorized by the provider to do so or by an authorized representative.

(A) If the AAR is signed by an authorized representative, a signed statement of such authorization for each FPE must accompany the AAR signed by an appropriate employee of the provider.

(B) Each AAR must have a declaration attesting to the validity of all statements contained in the AAR. The declaration shall be signed by an appropriate employee of the provider or an authorized representative.

(5) For each issue other than those covered by one of the specific formulas in this section the provider must demonstrate either (A), (B) or all parts of (C) below:

(A) Data that was incorrectly transferred as specified in Section 51550 (b)(7).

(B) An error was made in the rate calculation.

(C) All costs for which additional reimbursement are being requested were:

1. Economically and efficiently provided for the necessary care of Medi-Cal inpatients.

2. Not already included in the ARPDL and/or PGRPDL, whichever limitation(s) is being appealed.

3. Not overlapped with any other AAR issue, or if there were, all such overlap must be used to reduce any additional reimbursement which would otherwise have been granted.

(6) The request shall contain all the appropriate data to allow the Department to determine if relief is needed and to do the relief calculation.

(A) This may include, but is not limited to:

1. All internal/external reports concerning each issue;

2. All material presented to the hospitals' Governing Board concerning this issue;

3. Medical records for Medi-Cal patients;

4. Bank statements and canceled checks;

5. All financial statements;

6. Copies of contracts.

7. Copies of proposed and/or actual budgets.

8. The provider's suggested calculation for relief (for each issue specifically listed under Section 51551 below, the formula in regulation must be used).

(B) All data submitted must be accompanied by one or more statements attesting that the data are true and correct signed by an individual with knowledge of the submitted data. More than one statement may be required if more than one data source is utilized.

(C) All data submitted may be audited by the Department.

(7) One-time relief may be granted for extraordinary and unusual events.

(A) The criteria for one-time relief is any item which occurred in one FPE and is not normally expected to apply to all future FPEs and therefore the ARPDL is not adjusted each future FPE for this issue.

(B) Formula relief shall only be granted for issues which are expected to carry on to every FPE.

(C) Relief for allowable increases in employee hours per discharge shall be one-time relief for the first two FPEs and then formula relief during the third FPE.

(8) The following steps are required by the Department for calculating relief:

(A) The provider shall clearly identify each issue and the estimated dollar amount of relief for each issue.

(B) The provider shall identify the specific cause of the increased costs.

(C) The provider shall calculate what reimbursement is already included in the ARPDL due to this issue (such as pass-throughs) and/or overlap from other AAR issues.

(D) The Department shall review the providers' figures on (A) and make any necessary corrections.

(E) The Department shall determine whether to grant one-time or formula relief.

(9) If data or other items requested by the Department for evaluation of an AAR are not supplied within 60 days, the Department shall suspend further consideration of this issue. If the requested data are not supplied within 120 days, the Department shall deem the AAR rejected for all issues for which the Department requested data or other items, and the provider shall be precluded from raising the issue(s) in a formal appeal.

(10) The provider shall be notified of the Department's decision in writing within 90 days of receipt of the provider's written request for an AA, or within 60 days of receipt of any additional documentation or clarification which was required by the Department, whichever is later. The request for an AA shall be deemed denied if no decision is issued within these time frames. The Department shall notify providers of such denials.

(11) A change in cost based reimbursable costs as defined in Section 51546(a)(1) and (a)(2), whether or not as a result of an audit appeals process, shall result in a redetermination of the PIRL, and shall not give rise to any additional appeal rights.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14105, 14105.15, 14106 and 14171, Welfare and Institutions Code.

HISTORY

1. New section filed 4-23-92; operative 5-25-92 (Register 92, No. 20).
2. Change without regulatory effect amending subsection (a) filed 8-5-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 32).

§ 51551. Specific Administrative Adjustment Issues.

(a) AAs for year-to-year changes in case mix and/or outliers under the ARPD (not the PGRPD) shall be resolved in the following manner:

(1) The case mix adjustment factor (CMAF) shall be calculated using the following steps:

(A) The provider shall supply a listing for every Medi-Cal discharge that occurred during both the settlement fiscal period and the prior fiscal period, sorted in admission date order, and shall include as a minimum:

1. The patient's last name and first initial.

2. Medi-Cal I.D. Number.

3. The admission date.

4. The discharge date.
5. The principal diagnosis code.
6. The total amount of billed charges.
7. The DRG number.
8. The DRG weight. The same set of DRG groups and weights must be used for both settlement fiscal period and prior fiscal period data. If charges for a newborn were billed together with its mother, the newborn(s) and the mother must be listed separately on this listing, each with their own DRG and weight.
9. The sum of the cost weights and the number of Medi–Cal DRG discharges on the list. The number of Medi–Cal DRG discharges on the list must equal or exceed the number of audited Medi–Cal discharges. The listing must include all Medi–Cal patients, which includes newborns that are not counted as Medi–Cal discharges.

(B) The sum of the cost weights for each FPE shall be divided by their respective number of Medi–Cal discharges (not the number of patients in the listing) to obtain the average DRG weight for each fiscal period.

(C) The settlement fiscal period average DRG weight shall be divided by the prior fiscal period average DRG weight to obtain the CMAF.

(D) DRG cost weights used in this Section may be any set used by Medicare during any part of either the settlement or prior fiscal period.

The Department may also publish a set of Medi–Cal or California specific DRG cost weights, day outlier cutoffs and classifications as an option for the providers to use.

(E) Once a case mix adjustment index is granted, each subsequent fiscal period ARPDL shall include a CMAF (even if the adjustment is negative) and the provider shall supply all required data necessary to do the CMAF calculation to the Department within 9 months after the end of each subsequent FPE. Failure to do so will result in a 20 percent reduction to the provider's current interim payments. If the data is not received within 12 months of the end of the FPE, the interim payment reduction shall be increased to 100 percent, resulting in an interim payment rate of zero percent. If a provider does not supply the data prior to the issuance of the final settlement, the CMAF shall be calculated so as to remove the affect of all previous CMAFs by compounding the previous CMAFs and applying the result to decrease the settlement fiscal periods ARPD. The provider shall not be eligible for a CMAF for any fiscal period. However, if the tentative PIRL settlement is issued within 6 months of the end of the FPE and the case mix data has not yet been supplied, then a CMAF of 1.0 shall be used for the tentative PIRL settlement only.

(F) For noncontract hospitals, the DRG weights shall be modified by one of the following two methods:

1. All DRG weights for all patients transferred to other acute care hospitals after being stabilized will be multiplied by 0.4 (a 60 percent reduction).
2. All DRG weights for patients transferred to other acute care hospitals after being stabilized shall be adjusted as follows:

a. For each patient transferred list the charges from the hospital they were transferred to.

b. Divide each patient's charges at the provider's hospital by the patient's total charges (which includes charges from both the hospital they were transferred to and the hospital they were transferred from).

c. Multiply the result of (b) for each patient by their DRG weight to obtain a new weight to use in the CMAF calculation.

3. The provider shall choose which option it will use. If the provider fails to specify an option in their AAR, the Department shall use option 1.
4. Outlier calculations for these providers shall be adjusted by using the costs and days for the patients while they are at both providers, and using the same allocation formula 1–3 above.

(2) Additional reimbursement shall be granted to approximate a hospital's increases, on a per discharge basis, in the marginal cost of care beyond specified thresholds that are already reimbursed for in the ARPDL, *including the CMAF.* AARs for additional reimbursement due to outliers (both cost and day outliers) shall be determined as follows:

(A) If the provider has received a CMAF for the settlement fiscal period, then the outlier relief shall be calculated by:

1. The hospital shall also include on the listing required under (a)(1)(A) above the following additional items:

a. The length of stay for each patient.

b. The outlier cutoffs, in terms of both days and costs, as determined in accordance with Medicare prospective payment rules and regulations for the applicable time period of each individual patient. However, whenever the Medicare formula uses a cost–to–charge ratio, the hospital specific cost–to–charge ratio shall be used. If the provider elects to use an alternative set of DRG weights published by the Department to calculate their CMAF, then the corresponding set of alternative outlier cutoffs must be used for each patient.

c. If a patient qualifies as a day outlier under the Medicare prospective payment definitions, or using the alternative cutoff when the alternative DRG weights are used, then the amount of allowable outlier payments shall also be listed. This amount shall be the MIRL divided by the number of Medi–Cal patient days, times 80 percent, multiplied by the number of days over the day outlier threshold for each patient.

d. For patients that do not qualify as a day outlier, but do qualify as a cost outlier, the amount of costs over the threshold shall be listed and shall be calculated as follows:

(1) The outlier cost cutoff shall be the greater of:

(A) A fixed dollar amount (adjusted for area wage levels) as defined in 42 CFR, Part 412.80(a)(ii)(A) for the appropriate service period.

(B) 1.5 multiplied by the ARPD multiplied by the DRG weight for the patient.

(2) The total costs for each patient shall be the overall Medi–Cal cost to charge ratio calculated from the cost report multiplied by the charges for each patient.

(3) The amount over the cost outlier thresholds, which is step (2) minus step (1), shall be multiplied by 0.80.

e. The cost to charge ratio is determined from the cost report for both the settlement and prior fiscal period.

2. If a patient qualifies as both a day and cost outlier, they shall be treated only as a day outlier.
3. Sum the amounts calculated in (2)(A)1.c. and d. above and divide by the respective number of Medi–Cal discharges for each FPE.
4. Relief shall be calculated by subtracting the prior fiscal period result of 3. from the settlement fiscal period result of 3.
5. Once an outlier adjustment, in conjunction with a CMAF, has been granted, it shall be included in all subsequent settlements even if it is a negative adjustment. Data necessary to do the outlier calculation shall be submitted each FPE within 9 months of the end of the FPE or current interim payments shall be reduced by 20 percent. If the data is not received within 12 months of the end of the FPE, the interim payments reduction shall be increased to 100 percent, resulting in an interim payment rate of zero percent.

(B) If a provider has not elected a case mix adjustment index, then relief for outliers shall be calculated as follows:

1. Providers shall provide lists containing the number of patients for every length of stay for both the settlement fiscal period and the prior fiscal period. For newborns not counted as separate Medi–Cal discharges, their days shall be added to their mother's.
2. The settlement fiscal period and prior fiscal period mean lengths of stay for all Medi–Cal patients shall be calculated by dividing total Medi–Cal patient days (including nursery days) by Medi–Cal discharges for each respective fiscal period.
3. Calculate the standard deviation of the length of stay for all patients in the prior fiscal period.
4. Compute 1.94 standard deviations of the mean length of stay in the prior fiscal period and add the result to the mean length of stay in the prior fiscal period.

5. Round the result in 4. above down to the next whole number to establish the outlier threshold to be used for both prior and settlement fiscal periods.

6. List the patients who exceeded the result of 5. above in either the settlement or prior fiscal period. Include in the list the patient's name, admission date, discharge date, length of stay and charges.

7. Calculate the amount of day outlier payments by:

a. Subtracting the result of 5. above from the length of stay of each patient whose stay exceeded the outlier threshold each FPE.

b. Sum the total days calculated in a. above for each FPE.

c. Divide the number from b. above by the number of Medi–Cal discharges in each respective FPE.

d. Subtract the prior fiscal period result of c. above from the settlement fiscal period result of c.

e. Multiply the result of d. above by the number of settlement fiscal period Medi–Cal discharges.

f. Calculate a per diem rate by dividing the settlement fiscal period MIRL by the total number of patient days (including newborn days).

g. Relief is calculated by multiplying the result of 7.e. above by the result of 7.f. above.

8. For patients who do not qualify as a day outlier, additional relief shall be provided as a cost outlier as follows:

a. For both the prior fiscal period and settlement fiscal period, the provider shall provide a listing of the number of patients by charge category (in either $100 or $200 increments) in order to calculate the mean and standard deviation.

b. Calculate the mean charge per discharge and standard deviation for both FPEs.

c. Convert the means and standard deviations to costs per discharge, by using the allowable cost to charge ratio from the cost report for each respective FPE.

d. Calculate the increase in the cost per discharge by dividing the settlement fiscal period mean cost per discharge by the prior fiscal period mean cost per discharge.

e. Calculate the prior fiscal period cost outlier cutoff by adding 1.94 standard deviations to the mean cost per discharge.

f. The prior fiscal period charge cutoff shall be the result of step e. above divided by the prior fiscal period allowable cost to charge ratio from the cost report.

g. Calculate the settlement fiscal period charge outlier cutoff by multiplying the results of d. above by the result of f.

h. For each FPE, list the following items for each Medi–Cal patient, in admission date order, over the charge threshold as calculated in g. above:

(1) Last name and first initial.

(2) Admission date.

(3) Length of stay.

(4) Charges.

(5) Amount of charges over the threshold.

(6) Costs over the threshold, which is (5) multiplied times the cost to charge ratio from the cost report. Enter zero in this column for any patient who is a day outlier.

i. Sum the items under (6) above for both the prior and settlement fiscal periods (separately).

j. Adjust prior fiscal period costs to settlement fiscal period costs by multiplying the prior fiscal period item i. above result times the result of d. above.

k. Divide the results of prior fiscal period j. above and settlement fiscal period j. above by the respective number of Medi–Cal discharges each FPE.

l. Subtract the prior fiscal period result of k. above from the settlement fiscal period result of k. above.

m. Multiply the result of *l.* above (minimum of zero) by the settlement fiscal period number of Medi–Cal discharges.

n. Add the result of m. above to the MIRL and divide by the settlement fiscal period net cost of covered services.

o. Multiply the lesser of the result of d. above or 1.0 by the result of n. above to calculate the additional amount of relief for cost outliers who do not qualify as day outliers. This cannot exceed the amount of the MIRL liability.

(b) AAs for changes in labor costs shall be resolved in the following manner:

(1) Relief from the SWI and EBI can be granted if, and only if, the basis is due to labor/benefit cost increases per discharge resulting from either the new adherence to existing requirements imposed by government regulations, rules, and/or statutes or the adherence to new requirements imposed by government regulations, rules, and/or statues. This includes new rules and new adherence to rules imposed by the Joint Commission on Accreditation of Health Organizations. The adherence to the regulations, rules, and/or statutes must be necessary to legally render the provided services to Medi–Cal recipients.

(2) The Department will be authorized to grant relief if the provider meets the criteria for relief. Any relief granted shall be based upon an analysis of labor costs both prior and subsequent to the effective date of adherence to the requirements. Any request for relief will require the following:

(A) A summation of the governmental requirements necessitating the increase in labor costs;

(B) Additional hours and staff required to adhere to the governmental requirements. The request will specify:

1. The exact title(s) of the added staff;

2. The appropriate employee cost category; and

3. The number of hours and hourly rates for each added or deleted staff member.

(C) Source of the additional support, e.g., new hire or transferred from another employee classification; and

(D) The appropriate pages of the Medi–Cal cost report reflecting the additional costs associated with the increased hours.

(3) A separate request shall be rendered for each affected cost center. The cost centers for appeal purposes shall be the exact same cost centers as disclosed in the provider's Medi–Cal cost report as audited by the Department. Relief may be granted only for those cost centers that incurred the expenses as the result of governmental requirements.

(4) The Department shall evaluate the submitted data to determine any changes in the following areas for each affected cost center:

(A) Labor hours per discharge;

(B) Labor costs per discharge;

(C) Changes made in other employee classifications that resulted in labor cost increases or decreases.

(5) The unit measure of change shall be the ARPD. Any relief granted shall be on a per discharge basis by adjusting the ARPD to incorporate the increased, if any, labor costs per discharge which were not reimbursed in the ARPD and which do not overlap with any other issues. Any adjustments necessitated by the application of relief shall impact the base rate per discharge and will be carried forward into future settlements.

(6) The only basis for relief under Subsection (b) of 51551 shall be:

(A) Increased employee hours per discharge; or

(B) The requirement to employ more expensive labor, e.g., replace Aides with Registered Nurses.

(7) Requests for relief on the basis of increased patient acuity will be deferred to Section 51551(a). Patient acuity or service intensity shall not be entertained under Section 51551(b).

(8) Relief sought on the basis of labor disputes shall not be granted. Labor disputes are inclusive of, but not limited to, strikes, arbitration, and/or labor issues where employees in an organized, collective, or unified movement refrained from physically reporting to perform their routine duties or physically reported but refrained from performing their routine duties.

(9) Relief shall not be granted under 51551(b) as the result of circumstances created when the provider switched to or from nursing services instead of salaried personnel.

(c) The following steps will be used for calculating relief for any ARPDL issues not otherwise specified in this regulation:

(1) The provider shall clearly identify the issue and estimated dollar amount of relief.

(2) The provider shall determine what is the specific underlying cause of the increased costs. If the underlying cause of the increased costs is not clearly stated, the AAR shall not be accepted by the Department.

(3) The provider shall calculate what reimbursement, if any, is already included in the ARPDL due to this issue (such as pass–throughs or case mix covering a new service) and shall also calculate any overlap between this and other AA issues.

(4) The Department shall review and correct if necessary, the provider's calculations in steps 1 through 3 above.

(5) The Department shall subtract any overlap with other issues from the amount determined in steps 1 through 3 above.

(6) The Department shall determine if relief is "one–time" or "formula."

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14105, 14105.15, 14106 and 14171, Welfare and Institutions Code; Part 412.80(a)(ii)(A), 42 Code of Federal Regulations.

HISTORY

1. New section filed 4–23–92; operative 5–25–92 (Register 92, No. 20).
2. Change without regulatory effect amending section filed 8–5–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 32).

§ 51552. AA Formal Appeals Process.

(a) A provider may appeal the Department's decision on the AAR for a final PIRL settlement only. There shall be no appeal on an AAR for a tentative PIRL settlement. The appeal shall be filed and conducted in accordance with the applicable procedural requirements of Article 1.5, except as modified by this section, including the following:

(1) The appeal shall be submitted within 30 days after notification of the Department's decision on the AAR.

(2) The provider shall present its issues and evidence first at the hearing, as they shall have the burden of going forward.

(3) The provider has the burden of proof of demonstrating by a preponderance of the evidence, that the provider's position regarding disputed issues is correct.

(4) In order to demonstrate that it is entitled to relief from the PIRL and that the AA decision should be overturned, the provider has the burden of demonstrating by a preponderance of the evidence that the Department's AA decision is inconsistent with the applicable regulatory provisions and that the provider's alternative is consistent with the applicable regulatory provisions.

(5) If the Department's AA decision is proved, by a preponderance of evidence, inconsistent with the applicable regulatory provisions, and the provider has not proved by a preponderance of the evidence that its position is consistent with the applicable regulatory provisions, then the Administrative Law Judge (ALJ) may fashion whatever relief is necessary to obtain consistency with the applicable regulatory provisions.

(6) Items that are not subject to an AA, as specified in Section 51551, shall not be subject to appeal.

(7) The provider shall be paid at the PIRL initially determined by the Department pending determination of a formal appeal.

(8) Any underpayments, identified in the appeal decision, shall be repaid to the provider, together with interest computed at the legal rate of interest beginning the later of the date the payment is received by the Department or the date the appeal is formally accepted by the Department.

(9) The evidence to be submitted by the provider at a formal appeal hearing that was not provided to the Department nor specifically and individually identified as available to the Department, during the AA process excluding oral testimony, must be submitted to the Department 30 days before the scheduled date of the hearing. The only exception, is when a hearing is scheduled within 45 days from the date notice is given. In this latter case, evidence must be submitted 15 days before the scheduled date of the hearing. Failure to submit this information within the specified time frames shall result in its exclusion from the formal appeal hearing and record.

(10) Recalculation of the PIRL due to an appeal decision shall not give rise to any further appeal rights.

(11) If results of an audit appeal of the cost report or any prior fiscal period PIRL, AA or appeal, change data used in the settlement fiscal period PIRL, the PIRL shall be recalculated. The recalculation shall not give rise to further appeal rights.

(12) If an issue in an AAR is not accepted pursuant to Section 51550(e)(2) and (e)(3), the ALJ may only consider the evidence that was presented in the AAR and not any additional information or testimony. If the ALJ determines that the issue should have been accepted, the issue shall be remanded for a response to the merits.

(13) Only those issues that were clearly identified in a timely filed AAR, including an estimated dollar amount for each issue may be accepted as issues on a formal appeal.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14105, 14105.15, 14106 and 14171, Welfare and Institutions Code.

HISTORY

1. New section filed 4–23–92; operative 5–25–92 (Register 92, No. 20).
2. Change without regulatory effect amending subsection (a)(12) filed 8–5–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 32).

§ 51553. Peer Grouping.

(a) Hospital reimbursement shall, unless exempted from or modified by the provisions of this section, be payable at no more than the 60th percentile aligned ARPD of the peer group to which the hospital is assigned by the Department. This limit is the Peer Group Rate Per Discharge Limitation (PGRPDL). The peer groups shall be based on a classification of hospitals as determined in the 1991 Hospital Peer Grouping Report published by the Department, that combines individual hospitals in a unit on the basis of similar or common characteristics. The following peer group classifications will be used:

(1) University Teaching Hospitals.
(2) Major (non–university) Teaching Hospitals.
(3) Large Teaching Emphasis Hospitals.
(4) Medium/Small Teaching Emphasis Hospitals.
(5) Extremely Large Sized Hospital.
(6) Large Sized Hospitals.
(7) Moderately Sized Hospitals.
(8) Medium Sized Hospitals.
(9) Moderately Small Sized Hospitals.
(10) Very Small Sized Hospitals.
(11) Acute Psychiatric Hospitals.
(12) Alcohol–Drug Rehabilitation Hospitals.
(13) Combination Psychiatric/Alcohol/Drug Rehabilitation Hospitals.
(14) Psychiatric Health Facilities.
(15) Psychiatric Teachering Hospitals.
(16) Psychiatric Children's Hospitals.
(17) Moderate Alcohol–Drug Rehabilitation Emphasis Hospitals.
(18) Moderate Psychiatric Emphasis Hospitals.
(19) State Hospital–Veterans Home.
(20) State Hospital–Mental Health.
(21) State Hospital–Developmental Services.
(22) Children's Hospitals.
(23) Crippled Children's Hospitals.
(24) Rehabilitation Hospitals.
(25) Large Rehabilitation Emphasis Hospitals.
(26) Respiratory Specialty Hospitals.
(27) Student Health Centers.
(28) Charitable Research Hospitals.
(29) Rural Hospitals.

(30) Specialty Teaching Hospitals.
(31) Prepaid Health Plan Hospitals.
(32) Prepaid Health Plan–Psychiatric/Alcohol–Drug Rehabilitation Hospitals.
(33) Prepaid Health Plan–Teaching Emphasis.
(34) Eye Hospitals.
(35) Women Hospitals.
(36) Dental/Outpatient Hospitals.

(b) The Department may review and change the number and definitions of peer groups and the peer group placement of individual providers.

(1) Providers shall be notified of all such reviews and resultant changes to the peer groups.

(2) For purposes of peer group placement, license beds shall be average licensed beds excluding any beds in suspense, in accordance with Section 1271.1 of the Health and Safety Code.

(3) All peer group assignments will be for all FPEs between July 1st and June 30th for each fiscal year.

(c) Providers exempted from application of the PGRPDL shall consist of new hospitals, rural hospitals, sole community hospitals, children's hospitals, crippled children's hospitals, charitable research hospitals, primary health service hospitals and hospitals in peer groups with less than five Medi–Cal providers.

(d) Providers with less than 15 Medi–Cal discharges in any FPE that covers over 360 days, shall be exempt from the PGRPDL for that FPE only.

(e) The peer group 60th percentile ARPD for each July 1–June 30 FPE shall be calculated by:

(1) Obtaining the ARPD for each provider for the FPE during the state's fiscal period (or use the latest available if one is not yet available for the selected time period).

(2) Using actual or estimated rates of inflation, align the ARPD for each hospital to a July 1 to June 30 FPE.

(3) Locating the 60th percentile, by multiplying 0.6 times one more than the number of ARPDs in the peer group.

(4) Starting from the bottom of a list of ARPDs, ordered from the lowest ARPD at the bottom, up to the highest ARPD at the top, count up the number of ARPDs using the result of (3) above.

(5) Interpolate if necessary.

(f) The 60th percentile ARPD shall be updated quarterly.

(g) Once a final PIRL settlement is issued for a provider, the 60th percentile ARPD established in that provider's FPE shall not change, even though the final PIRL settlement may be reissued as a "recalculated final PIRL settlement" as a result of any appeal as well as other reasons for recalculation.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14105, 14105.15, 14106 and 14171, Welfare and Institutions Code; and Section 1271.1, Health and Safety Code.

HISTORY

1. New section filed 4–23–92; operative 5–25–92 (Register 92, No. 20).
2. Change without regulatory effect amending subsection (a)(31) and amending subsection (e)(4) filed 8–5–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 32).

§ 51554. Peer Group Administrative Adjustments.

(a) A provider may request an AA of the reimbursement limits specified in this section and their peer group placement at the time of tentative and final PIRL settlement.

(1) The request shall be made within 90 days after notification of the reimbursement limits and shall be made in accordance with the procedures specified in Section 51550.

(2) The burden of proof shall be on the provider to prove that the additional reimbursement sought meets all of the requirements under Section 51550 and that except where a specific formula in Section 51555 exists, the provider's cost per discharge of the item being appealed, exceeds the 60th percentile cost per discharge of the item being appealed.

(3) In addition to the items listed under Section 51550(b), the following items shall not be subject to an AA of the PGRPDL:

(A) The use of hospital peer groups.
(B) The use of 60th percentiles and the methods used to compute them.
(C) Changes in case mix.
(D) Costs associated with strikes, other labor stoppages or slow downs.
(E) The addition of new services.
(F) Costs due to low occupancy.
(G) Difference in the type, nature, or scope of items or services available whether or not provided, between the provider and other providers in its peer group since differences in the actual services needed to be rendered are accounted for in the CMA as specified in Section 51555.
(H) Any other issue that is not a difference between the provider and other providers in their peer group.

(4) A provider may appeal the Department's decision on the AA for final PIRL settlements only. The appeal shall be in accordance with Section 51552.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14105, 14105.15, 14106 and 14171, Welfare and Institutions Code.

HISTORY

1. New section filed 4–23–92; operative 5–25–92 (Register 92, No. 20).

§ 51555. Peer Group Specific Administrative Adjustment Issue.

(a) Differences in case mix (including outliers) between the provider and other providers in its peer group shall be determined for the PGRPDL using the following formula, but subject to reduction for overlapping issues as specified in Section (d) below:

MARD=PGL * CMA

Where: MARD=Maximum Allowable Rate per Discharge under the PGRPDL.

CMA=Case Mix Adjustment, which is the providers case mix index divided by the peer group 60th percentile case mix index.

PGL=Peer Grouping reimbursement Limit per discharge (60th percentile ARPD for the peer group if no adjustments have been made).

(1) Case mix indexes shall be based on DRGs and shall be computed using OSHPD patient discharge data for providers. Providers with an ARPD CMAF shall use data they are required to supply for the ARPD CMAF. However, the set of DRG weights used must be consistent for all providers in the peer group and shall be determined by the Department for each FPE.

(2) Providers shall be allowed to submit more accurate patient discharge data for their hospital. Any such patient discharge data must be submitted with the AAR. The data cannot be used until it is verified by the Department. The Department shall not accept data that it determines may not accurately reflect the provider's Medi–Cal patients.

(3) If OSHPD patient discharge data does not correspond with all provider's FPE, the closest FPE shall be used. Indices will be developed for a calendar year and for a July 1 – June 30 FPE. The period which most closely corresponds to the providers FPE shall be used. Calendar year data shall be used for FPEs from October 1 through March 31 inclusive. July 1 through June 30 fiscal period data shall be used for all other FPEs.

(4) CMAs may be applied to any provider with a case mix index greater than the 60th percentile case mix index of its peer group.

(5) In addition to case mix relief, a provider shall be granted relief for outliers if the provider's outlier relief per discharge is greater than the computed 60th percentile outlier relief per discharge for all providers in the provider's peer group. The methodology used shall be as follows:

(A) Using OSHPD patient discharge data, and Medicare criteria for DRG outlier relief as specified in 42 CFR, Part 412, compute the total outlier relief for all providers in each peer group (using the same formula as listed in Section 51551–ARPD case mix and outliers). However, the cost outlier cutoff shall not vary within any one FPE worth of data.

(B) Convert the results under (1) above to outlier relief per– Medi–Cal discharge.

(C) Align the results of (B) above, in order from lowest at the bottom up to the highest at the top, and by counting up from the bottom to the n + 1 provider (n = # of providers in the peer group), compute the 60th percentile outlier relief per discharge for each peer group.

(D) If the requesting providers's outlier relief per discharge is greater than the 60th percentile outlier relief per discharge, the provider's MARD shall be increased by the difference of the two figures.

(6) These formulas shall be subject to the following limitations:

(A) Only those providers with 30 or more Medi–Cal discharges shall be included in the calculation of the 60th percentile outlier and case mix index per discharge. However, providers with under 30 Medi–Cal discharges may still receive relief using the formulas in this Section.

(B) Providers whose Medi–Cal discharge count per their OSHPD patient discharge data has more than a 50 percent variance from the appropriate Medi–Cal discharge figure from the cost report, after adjusting for well newborns who are included in the OSHPD patient discharge data but not counted as Medi–Cal discharges, shall be excluded from the 60th percentile calculation. Cost report figures shall be adjusted to estimate the calendar or fiscal period OSHPD data.

(C) If the provider requesting outlier relief has more than a 10 percent variance in Medi–Cal discharge figures (OSHPD patient discharge data vs. Medi–Cal cost report), or under 30 Medi–Cal discharges, the provider shall be required to submit its own data for use in the calculation. Such data must be for all Medi–Cal patients and include the patient's last name, ICD–9 primary diagnosis code, admission data, discharge date, DRG number, charges, patient's age, and OSHPD disposition code. The list shall be in admission date order.

(D) Providers may submit additional data to replace the OSHPD data. Any such data must be supplied with the AAR. Providers must supply a list in admission date order, containing each Medi–Cal patient's last name, ICD–9 code, admission date, discharge date, DRG number, charges, patient's age, and OSHPD disposition code.

(7) For noncontracting hospitals that do not keep a patient for the full episode of care, the CMA formula will be modified by one of the following formulas:

(A) Use only 40 percent of the appropriate DRG case mix weight for patients treated by noncontract hospitals, or

(B) 1. Track each patient's record to the contract hospital they were transferred to, and

2. Sum the charges from both providers, and

3. Apply the percent of total charges from the noncontract hospital to the DRG weight.

(b) Differences in labor costs, caused by factors such as differences in location, between the provider and other providers in its peer group shall be calculated using the following formula, subject to reduction for overlapping issues as specified in Section (d) below:

MARD = (LRCAF * WRR * PGL) + ((1–WRR) * PGL)

Where:

MARD = Maximum Allowable Rate Per Discharge under PGRPDL

LRCAF = Labor Related Cost Adjustment Factor, which is the minimum of (WI / PGWI), (HWR / PGWR) and (HWD / PGWD).

WRR = Wage Related Reimbursement Proportion of PGRPD (and ARPD) Reimbursement limitation for this hospital, which is: (TWRC / GOE) * (36LIMIT – %PASS * NETCOST)) / (36LIMIT * %NON).

PGL = Peer group limit, which is the 60th percentile ARPD.

WI = The wage and benefit index for the area in which the hospital is located.

PGWI = Peer group 60th percentile WI.

HWR = Hospital aligned wage and benefit rate per hour.

PGWR – Peer group 60th percentile HWR.

HWD = Hospital aligned wage related items per discharge.

PGWD = Peer Group 60th percentile HWD.

TWRC = Total wage related costs (sum of wages, benefits, and professional fees).

GOE = Gross operating expenses.

36LIMIT = Maximum reimbursement under MIRL (lesser of costs, charges, and the ARPD multiplied by the number of Medi–Cal discharges).

%PASS = Proportion of GOE which are pass throughs from Report E, Part II, Line 3.

NETCOST = The lesser of net cost of covered services and charges.

%NON = 1 – %PASS, which is the proportion of GOE which are not–pass–through costs.

NOTE: * = Multiplication

(1) The labor adjustment formula starts by determining the portion of the MIRL that was allowed for Wage Related Reimbursement (WRR). Only this amount is adjusted by the minimum of:

(A) A ratio based on an area (Metropolitan Statistical Area (MSA)) index developed by the Department of Health and Human Services, calculated using aligned average hourly rates for all hospital employees. The provider's area index is divided by the peer group 60th percentile wage index.

(B) A ratio based on comparing the provider's aligned hourly rate to the 60th percentile aligned hourly rate of the peer group.

(C) A ratio based on comparing the providers's aligned wage related items per discharge to the 60th percentile aligned wage related items per discharge for the peer group.

(2) The first ratio is calculated as follows:

(A) Use Medi–Cal cost report data to determine the statewide average employee composition among all employee classifications.

(B) Adjust the wage and benefit rates for each provider to the adjusted rate using the statewide distribution of employees.

(C) Align the adjusted wage and benefit rates for each provider using OSHPD disclosure data. The alignment factors shall be a Department estimate of increases in salary levels.

(D) Sum the adjusted wages and benefits for each MSA and statewide.

(E) Sum productive hours by MSA and statewide.

(F) Divide the sum of wages and benefits by the sum of productive hours for each MSA and the statewide totals.

(G) Divide each MSA average hourly wage rate (Step 4.) by the statewide average to obtain an MSA index.

(H) Assign the index for each MSA to all hospitals in the MSA.

(I) Determine the 60th percentile index for each Peer Group.

(J) Divide the hospital's area index by the 60th percentile index of its peer group.

(3) The second ratio (in (A)2. above) is calculated by:

(A) Total the wages and benefits for all employees for each provider.

(B) Divide (A) above by the corresponding total productive hours for each provider.

(C) The Department shall estimate increases in employee hourly wage and benefit costs, and align the data in (B) above to a common FPE for all providers.

(D) Align all of the results of (C) above ordered from lowest at the bottom to the highest at the top for each peer group.

(E) Count (0.6 * (n + 1)) places up from the bottom of the list in each peer group to find the 60th percentile.

1. N is the number of hourly rates in the peer group.

2. Interpolation will be used whenever (0.6 * (N + 1)) is not a whole number.

(4) The last ratio is calculated by:

(A) Total the wages and benefits for all employees for each provider.

(B) Using Department estimates of rates of increase in employee hourly wages and benefit costs, align the data in (A) above to a common FPE for all providers.

(C) Divide the result of (B) above by the number of total hospital discharges.

(D) For each peer group, order from lowest at the bottom to the highest at the top the results of (C) above.

(E) Count (.6 * (n + 1)) places up from the bottom of the list in each group to find the 60th percentile.

1. N is the number of wage and benefit rates per discharge in the peer group.

2. Interpolation will be used whenever (.6 * (n + 1)) is not a whole number.

(c) Differences in capital costs between the provider and other providers in its peer group shall be resolved using the method specified in this subsection. Approval by the OSHPD of a capital expenditure shall be evidence of the need for the capital expenditure; however, such approval shall not, per se, compel additional reimbursement. The following methods shall be used to calculate relief under this issue:

(1) Using data from the Medi–Cal cost report, compute relief by:

(A) Removing the 60th percentile capital cost per discharge from the 60th percentile allowable rate per discharge.

(B) Computing the allowable provider Medi–Cal capital expense per discharge subject to the limitations in (E) below, and

(C) Adding the result of (A) above the result of (B) above.

(D) The resulting figure from (C) above will be used in place of the 60th percentile rate per discharge, but to avoid overlap with any other issue, this adjustment shall be made last.

(E) The result of (1)(B) above shall be subject to the following adjustments:

1. A hospital which has had a change of ownership (CHOW) on or after July 18, 1984 must submit data showing what its capital costs would have been had the CHOW not occurred except for any additional costs allowed under the Deficit Reduction Act of 1984. This capital cost amount shall be used when computing the provider's capital per discharge figure above.

2. If a provider has had its capital costs reduced by Medicare, the provider's capital expense per discharge (CEPD) shall be reduced by the Medicare capital cost reduction percentage.

The formula for relief would then be:

MPGRPD = (PGRPD – 60th percentile CEPD) + (X * hospital CEPD)

Where: X = 1 minus the Medicare payment reduction percentage

3. If a provider's capital expense per discharge is above the 60th percentile, it shall not be entitled to automatic relief. The provider must still prove that the capital expenses are necessary for the care of Medi–Cal patients.

(d) Providers which are eligible for any multiple adjustments under Sections 51554 through 51555 shall have relief computed using the following methodologies:

(1) For providers which are eligible for case mix, labor and capital adjustments, relief shall be computed as follows:

MPGRPD = MAX(CMA,LRCAF,MIN ((CMA*(WI/PGWI), (HWD/PGWD))) * WRR * PGRPD) + (CMA * (1 – CRC – WRR) * PGRPD) + CEPD

Where: CRC = Capital related cost percentage (CEPD/GOE)

MIN= Minimum of the items in parentheses

MAX= Maximum of the items in parentheses

If the provider's CEPD has been modified per Section 51555(c)(2), that revised figure shall be substituted into the formula above.

(2) For providers which are entitled to a CMA but whose capital and/or labor costs per discharge are below the 60th percentile, those cost components shall not be adjusted by the CMAF. The formula for relief shall be:

MPGRPD = ((PGRPD – 60th percentile CEPD – 60th percentile labor per discharge) * CMA) + hospital CEPD + hospital labor per discharge

(A) This formula shall be modified to remove only those costs (labor and/or capital) which are below the 60th percentile limit.

(B) A provider's reimbursement, pursuant to the above, shall not be adjusted below the 60th percentile rate per discharge.

(3) All other multiple adjustments shall have their overlapping relief calculated using the basic PGARPDL principles.

(e) Differences in costs between the provider and other providers in its peer group due to extraordinary events beyond the provider's control such as fire, earthquake, flood, or similar unusual occurrences with substantial cost effects shall be an appealable item;

(f) Differences in costs between the provider and other providers in its peer group caused by other items or circumstances affecting provider costs which meet all of the following criteria:

(1) The item is a difference, on a per discharge basis, between the hospital and the 60th percentile of the peer group.

(2) The item can be measured or estimated for all providers in the peer group.

(3) The costs were necessary for the provision of quality medical care to Medi–Cal beneficiaries.

(4) There is no overlap with other issues or the overlap can be measured.

(g) Relief for any issue shall be reduced for any overlap between issues.

(h) Any additional reimbursement granted pursuant to this section shall not result in a recalculation of the 60th percentile limit under Section 51553.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14105, 14105.15, 14106 and 14171, Welfare and Institutions Code.

HISTORY

1. New section filed 4–23–92; operative 5–25–92 (Register 92, No. 20).

2. Change without regulatory effect amending subsections (a) and (a)(5) filed 8–5–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 32).

§ 51556. Contracts.

(a)(1) The reimbursement limitation for the noncontract service costs of contracting hospitals which had a valid contract during the entire settlement fiscal period shall be determined by the following method:

Noncontract Reduction = NMCN – TCL

Where:

NMCN = Noncontract Medi–Cal net cost of covered services including third–party liability amounts

TCL = PYNCPD * PDL * SYND

PYNCPD = PYNC/PYND

TCL = Total cost limit exclusive of any reductions for third–party liability

PYNCPD = Prior fiscal period noncontract cost per day

PYNC = Prior fiscal period noncontract costs

PYND = Prior fiscal period noncontract days

PDL = Per diem limit increase which shall be the target as specified in federal regulation CFR 42, Section 413.40(c)(3).

SYND = Settlement fiscal period noncontract days

(2) All AA and appeal issues must pertain to the reason for the increase in the average noncontract costs per day from the prior fiscal period to the settlement fiscal period.

(3) Contracting hospitals with noncontract service costs will also have an ARPDL calculation performed each FPE. The calculation will be used to determine the base period for the next FPE in the event the provider discontinues the contracting program.

(b) The noncontract reimbursement reduction, if any, for partial FPE contracting hospitals, those hospitals which have gone on or off contracting during their settlement fiscal period, shall be determined as follows:

Noncontract Reduction = PRNC * FYR

Where:

PRNC = NMCN/TMCN

PRNC = Proportion of reimbursement not under contract

FYR = Full fiscal period all services reimbursement reduction as determined by the PIRL.

NMCN = Noncontracting Medi–Cal net cost of covered services

TMCN = Total Medi–Cal net cost of covered services for the entire fiscal period for all services.

NOTE: Authority cited: Sections 10725, 14100.1, 14105, 14105.1, 14106 and 14124.5, Welfare and Institutions Code; and Chapter 1594, Statutes of 1982, Section 87 (SB 2012). Reference: Sections 14105 and 14106, Welfare and Institutions Code.

HISTORY
1. New section filed 4–23–92; operative 5–25–92 (Register 92, No. 20).
2. Change without regulatory effect amending subsection (b) filed 8–5–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 32).

§ 51557. Disproportionate Share.

Disproportionate share payments shall be paid in accordance with the provisions of the State Plan.

NOTE: Authority cited: Sections 10725, 14100.1, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14100.1 and 14105, Welfare and Institutions Code; and Chapter 976, Statutes of 1988 (AB 2563).

HISTORY
1. New section filed 4–23–92; operative 5–25–92 (Register 92, No. 20).

Article 8. Conflict of Interest

§ 51600. Definitions.

(a) The following definitions shall govern the interpretation of this article unless the context or subject matter otherwise requires:

(1) "State or local officer or employee who is responsible for the expenditure of substantial amounts of funds under Medi–Cal" means a person holding any of the following positions, or the functional equivalents thereof, on or after September 26, 1980:

(A) Governor's Office
1. Special Hospital Negotiator

(B) Department of Health Services
1. Director.
2. Assistant Director.
3. Chief Deputy Director, Medical Care Services.
4. Deputy Director, Audits and Investigations Division.
5. Deputy Director, Health Care Policy and Standards Division.
6. Deputy Director, Medi–Cal Division.
7. Deputy Director, Organized Health Systems Division.

(C) California Medical Assistance Commission
1. Executive Director.
2. Commissioners.

(2) "Substantial amount of funds" means the amount defined by the federal Department of Health and Human Services pursuant to Section 1902 (a) (4) (c) of the federal Social Security Act as amended by Public Law 95–559.

(3) "Judicial, quasi–judicial or other proceeding" means any proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in any court or state administrative agency, including but not limited to any proceeding governed by Chapter 5, Part 1, Division 3, Title 2, Government Code.

(4) "Fiscal intermediary management employee":

(A) Means any appointive or civil service employee, who had responsibilities related to development, contract negotiation, contract management, supervision, technical assistance or audit of a Medi–Cal fiscal intermediary in the:
1. Governor's Office.
2. Health and Welfare Agency.
3. Department of Health Services.
4. Controller's Office.
5. Attorney General.
6. Legislature.

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(B) Does not mean any employee performing in a purely clerical, secretarial or ministerial capacity.

NOTE: Authority cited: Sections 14030 and 14124.5, Welfare and Institutions Code; and Section 5, Ch. 1129, Statutes of 1980. Reference: Sections 14030, 14032 and 14104.6, Welfare and Institutions Code.

HISTORY

1. New Article 8 (Sections 51600–51602) filed 1–9–81 as an emergency; effective upon filing (Register 81, No. 2). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5–8–81. For prior history, see Register 77, No. 10.
2. Certificate of Compliance as to 1–9–81 order transmitted to OAL 5–6–81 and filed 6–5–81 (Register 81, No. 23).
3. Amendment of subsection (a)(1) filed 9–1–82 as an emergency; effective upon filing (Register 82, No. 37). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12–30–82.
4. Certificate of Compliance as to 9–1–82 order transmitted to OAL 12–2–82 and filed 12–30–82 (Register 83, No.1).
5. Amendment of subsection (a)(1) filed 6–27–83 as an emergency; designated effective 7–1–83 (Register 83, No.27). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–29–83.
6. Certificate of Compliance as to 6–27–83 order transmitted to OAL 10–14–83 and filed 11–10–83 (Register 83, No. 46).
7. Editorial correction of NOTE filed 12–13–84 (Register 84, No. 50).

§ 51601. Exclusion from Proceedings.

(a) Any act prohibited under the provisions of Sections 207 or 208, Title 18, United States Code, shall also be prohibited under this Article when committed in connection with Medi–Cal by a:

(1) Current or former State or local officer or employee responsible for expenditure of substantial amounts of Medi–Cal funds.

(2) Partner of a person in (1).

(b) A person found to have committed an act in violation of (a) shall be subject to exclusion in accordance with (c).

(c) Any interested person or party may petition the court or presiding officer or any other officer in a judicial, quasi–judicial or other proceeding to exclude any person found to be in violation of this article. Presiding officer includes, but is not limited to, a hearing officer serving pursuant to Section 11512, Government Code.

(d) Exclusion from proceedings shall be ordered only following notice and opportunity for a hearing in accordance with Section 87404, Government Code.

NOTE: Authority cited: Section 14124.5 Welfare and Institutions Code; Section 5, Ch. 1129, Stats. 1980. Reference: Sections 14030, 14032, Welfare and Institutions Code.

§ 51602. Prohibition Against Contracting.

(a) The Department shall not approve, renew, or continue a fiscal intermediary contract if any current employee of the contractor, or a subcontractor to the contractor, was all of the following:

(1) In State employment on or after September 26, 1980.

(2) A fiscal intermediary management employee within two years prior to terminating State employment.

(3) Employed by the contractor, or a subcontractor to the contractor, within one year after terminating State employment.

NOTE: Authority cited: Section 14124.5 Welfare and Institutions Code. Section 5, Ch. 1129, Stats. 1980. Reference: Section 14104.6, Welfare and Institutions Code.

Article 10. Early and Periodic Screening, Diagnosis, and Treatment Program

NOTE: Authority cited for Article 10: Sections 14105, 14106 and 14124.5, Welfare and Institutions Code.

HISTORY

1. New Article 10 (Sections 52000–52014) filed 1–30–73; effective thirtieth day thereafter (Reg. 73, No. 5). For history of former Article 10, see Register 72, Nos. 40 and 43.
2. Repealer of Article 10 (Sections 52000–52014) filed 2–27–75; effective thirtieth day thereafter (Register 75, No. 9). For prior history of Article 10, see Register 73, Nos. 15, 26 and 28.

Chapter 3.5. Pilot and Demonstration Projects

NOTE: Authority cited: Sections 14124.5, 14132.5 and 14132.6, Welfare and Institutions Code. Reference: Sections 14124.5, 14132.5 and 14132.6, Welfare and Institutions Code.

HISTORY

1. New Chapter 3.5 (Sections 52001–52011, not consecutive) filed 3–1–79; designated effective 4–1–79 (Register 79, No. 9).
2. Amendment of subsection (b) filed 1–30–80; effective thirtieth day thereafter (Register 80, No. 5).
3. Repealer of Chapter 3.5 (Article 1, Sections 52001–52011, not consecutive) filed 11–24–82; effective thirtieth day thereafter (Register 82, No. 48).

Chapter 4. Prepaid Health Plans

Article 1. General Provisions

§ 53000. General.

(a) Health care services to eligible Medi–Cal beneficiaries may be provided through prepaid health plans. These plans shall:

(1) Contract with the Department to provide, to the maximum extent feasible, the full scope of Medi–Cal program benefits to Medi–Cal beneficiaries voluntarily electing to obtain their health care services from the plan.

(2) Share in the risk of providing health care services.

(3) Provide readily available health care services and utilize preventive health care programs to improve the health status of their members.

(4) Be encouraged to utilize new and innovative approaches in the delivery of health care services to assure that care is provided in the most cost–effective manner possible.

NOTE: Authority cited: Sections 14301, 14304.5, 14312, and 14450, Welfare and Institutions Code. Reference: Sections 14000, 14053, 14200.1, 14251, 14253, 14254, 14258, 14261, 14263, 14265, 14300, 14301, 14302, 14302.6, 14303, 14304, 14304.5, 14305, 14306, 14308, 14400, 14402, 14403, 14405, 14406, 14407, 14408, 14409, 14412, 14413, 14450, 14451, 14452, 14452.3, 14452.4, 14454, 14455, 14456, 14457, 14458, 14459, and 14460, Welfare and Institutions Code.

HISTORY

1. New Chapter 4 (Sections 53000–53600, not consecutive) filed 3–4–77; effective thirtieth day thereafter (Register 97, No. 10).

Article 2. Definitions

§ 53100. Acceptable Medical Care.

Acceptable medical care means medical care of a quality which equals or exceeds the standards for medical practice developed by the plan and approved by the Department pursuant to the provisions of Section 53280.

§ 53101. Actuarial Equivalence.

Actuarial equivalence means the per capita costs for Medi–Cal fee–for–service beneficiaries adjusted by age, sex, aid category, scope of services and other appropriate factors, as determined by the Department, in order to be comparable with the costs for Medi–Cal beneficiaries who are members of prepaid health plans.

NOTE: Authority cited: Sections 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14201, 14251, 14256, 14261, 14262 (a) (b) (c), 14300, 14301, 14302, 14303, 14303.1, 14303.2, 14304, 14308, 14312, 14402, 14405, 14406 (a) (b), 14408 (d), 14409 (a) (b), 14410, 14411 (a) (b), 14412, 14413, 14450, 14451, 14451.5 (a) (b), 14452, 14452.5, 14454, 14455, 14456, 14459, 14460, 14475, 14476, 14477, 14478, 14479, 14480, 14481 and 14482, Welfare and Institutions Code.

HISTORY

1. New section filed 7–5–78; effective thirtieth day thereafter (Register 78, No. 27).

§ 53101.1. Actuarial Method.

Actuarial method means any reasonable and adequate method of determining prospective per capita rates of payment for plan members that is based on recent comparable data from each prepaid health plan and other prepaid populations, as determined by the Department, where data is available including:

(a) Experience data to determine the expected costs of services and other requirements for which the rates will serve as payment.

(b) Experience data to determine the expected utilization of each service and other requirements for which the rates will serve as payment by the aid category, age and sex of the Medi-Cal members.

(c) Projected inflation in the costs of the services and other requirements during the period to be covered by the rates.

(d) Costs of any new services or requirements that will be required during the year for which the rates are determined but which were not required during the previous year.

NOTE: Authority cited: Sections 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14201, 14251, 14256, 14261, 14262 (a) (b) (c), 14300, 14301, 14302, 14303, 14303.1, 14303.2, 14304, 14308, 14312, 14402, 14405, 14406 (a) (b), 14408 (d), 14409 (a) (b), 14410, 14411 (a) (b), 14412, 14413, 14450, 14451, 14451.5 (a) (b), 14452, 14452.5, 14454, 14455, 14456, 14459, 14460, 14475, 14476, 14477 14478, 14479, 14480, 14481 and 14482, Welfare and Institutions Code.

HISTORY

1. New section filed 7-5-78; effective thirtieth day thereafter (Register 78, No. 27).

§ 53102. Affiliate.

Affiliate means an organization or person that, directly or indirectly through one or more intermediaries, controls, or is controlled by or is under common control with, a plan and that provides services to or received services from a plan.

HISTORY

1. Amendment filed 7-5-78; effective thirtieth day thereafter (Register 78, No. 27).

§ 53104. Carrier.

HISTORY

1. Repealer filed 7-5-78; effective thirtieth day thereafter (Register 78, No. 27).

§ 53106. Catastrophic Coverage Limitation.

HISTORY

1. Repealer filed 10-11-85; effective thirtieth day thereafter (Register 85, No. 41).

§ 53108. Contract.

Contract means the written agreement entered into between a health care service plan, as defined in Section 1345, Health and Safety Code, and the Department and approved by appropriate state agencies to provide health care services to members under the provisions of the Waxman-Duffy Prepaid Health Plan Act, Section 14200, et seq., Welfare and Institutions Code.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Section 14204, Welfare and Institutions Code.

HISTORY

1. Amendment filed 12-10-79; effective thirtieth day thereafter (Register 79, No. 50).

§ 53110. Control.

Control means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a plan. Such power may be exercised through one or more intermediary companies, or alone, or in conjunction with, or pursuant to an agreement. Such power may be established through a majority or minority ownership or voting of securities, common directors, officers or stockholders, voting trusts, holding trusts, affiliates, contract or any other direct or indirect means.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Section 14482, Welfare and Institutions Code.

HISTORY

1. Amendment filed 12-10-79; effective thirtieth day thereafter (Register 79, No. 50).

§ 53111. Department.

NOTE: Authority cited: Sections 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14201, 14251, 14256, 14261, 14262 (a) (b) (c), 14300, 14301, 14302, 14303, 14303.1, 14303.2, 14304, 14308, 14312, 14402, 14405, 14406 (a) (b), 14408 (d), 14409 (a) (b), 14410, 14411 (a) (b), 14412, 14413, 14450, 14451, 14451.5 (a) (b), 14452, 14452.5, 14454, 14455, 14456, 14459, 14460, 14475, 14476, 14477, 14478, 14479, 14480, 14481 and 14482, Welfare and Institutions Code.

HISTORY

1. Repealer and new section filed 7-5-78; effective thirtieth day thereafter (Register 78, No. 27).
2. Repealer filed 10-11-85; effective thirtieth day thereafter (Register 85, No. 41).

§ 53112. Director.

NOTE: Authority cited: Sections 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14201, 14251, 14256, 14261, 14262 (a) (b) (c), 14300, 14301, 14302, 14303, 14303.1, 14303.2, 14304, 14308, 14312, 14402, 14405, 14406 (a) (b), 14408 (d), 14409 (a) (b), 14410, 14411 (a) (b), 14412, 14413, 14450, 14451, 14451.5 (a) (b), 14452, 14452.5, 14454, 14455, 14456, 14459, 14460, 14475, 14476, 14477, 14478, 14479, 14480, 14481 and 14482, Welfare and Institutions Code.

HISTORY

1. Repealer and new section filed 7-5-78; effective thirtieth day thereafter (Register 78, No. 27).
2. Repealer filed 10-11-85; effective thirtieth day thereafter (Register 85, No. 41).

§ 53114. Disenrollment.

Disenrollment means the process by which a member's entitlement to receive services from a plan is terminated.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Sections 14412 and 14413, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 2-2-83 (Register 83, No. 6).

§ 53115. Door-to-Door Marketing.

Door-to-door marketing means the use of any marketing presentation at the residence of an individual who has not requested such a presentation.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Section 14408(d), Welfare and Institutions Code.

HISTORY

1. New section filed 7-5-78; effective thirtieth day thereafter (Register 78, No. 27).
2. Editorial correction of NOTE filed 2-2-83 (Register 83, No. 6).

§ 53115.5. Effective Date of Enrollment.

Effective date of enrollment means the first day of the first month in which a Medi-Cal beneficiary's name appears on the approved list of members furnished to the plan by the Department as a result of the completion of an application for enrollment in the prepaid health plan.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Section 14406 (a), Welfare and Institutions Code.

HISTORY

1. New section filed 12-10-79; effective thirtieth day thereafter (Register 79, No. 50).

§ 53116. Enrollment.

Enrollment means the process by which a Medi-Cal beneficiary becomes a member of a plan.

§ 53116.5. Experience Data.

Experience data means cost and utilization data from the Medi-Cal fee-for-service program, prepaid health plans or other prepaid populations which is determined by the Director to be sufficient in quantity and extent to provide credibility.

NOTE: Authority cited: Sections 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14201, 14251, 14256, 14261, 14262 (a) (b) (c), 14300, 14301, 14302, 14303, 14303.1, 14303.2, 14304, 14308, 14312, 14402, 14405, 14406 (a) (b), 14408 (d), 14409 (a) (b), 14410, 14411 (a) (b), 14412, 14413, 14450, 14451, 14451.5 (a) (b), 14452, 14452.5, 14454, 14455, 4456, 14459, 14460, 14475, 14476, 14477, 14478, 14479, 14480, 14481 and 14482, Welfare and Institutions Code.

HISTORY

1. New section filed 7-5-78; effective thirtieth day thereafter (Register 78, No. 27).

2. Amendment filed 12–10–79; effective thirtieth day thereafter (Register 79, No. 50).

§ 53117. Facility.

(a) Facility means any premises:

(1) Owned, leased, used or operated directly or indirectly by or for the benefit of a plan or its affiliates for purposes related to a contract between the plan and the Department.

(2) Maintained by a provider to provide services on behalf of a plan.

NOTE: Authority cited: Sections 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14201, 14251, 14256, 14261, 14262 (a) (b) (c), 14300, 14301, 14302, 14303, 14303.1, 14303.2, 14304, 14308, 14312, 14402, 14405, 14406 (a) (b), 14408 (d), 14409 (a) (b), 14410, 14411 (a) (b), 14412, 14413, 14450, 14451, 14451.5 (a) (b), 14452, 14452.5, 14454, 14455, 14456, 14459, 14460, 14475, 14476, 14477, 14478, 14479, 14480, 14481 and14482, Welfare and Institutions Code.

HISTORY

1. New section filed 7–5–78; effective thirtieth day thereafter (Register 78, No. 27).

§ 53117.3. Formal Grievance.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Section 14450, Welfare and Institutions Code.

HISTORY

1. Amendment filed 12–10–79; effective thirtieth day thereafter (Register 79, No. 50). For prior history, see Register 78, No. 27.
2. Repealer filed 9–22–82; effective thirtieth day thereafter (Register 82, No. 39).

§ 53117.7. Immediate Family.

NOTE: Authority cited: Sections 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14201, 14251, 14256, 14261, 14262 (a) (b) (c), 14300, 14301, 14302, 14303, 14303.1, 14303.2, 14304, 14308, 14312, 14402, 14405, 14406 (a) (b), 14408(d), 14409 (a) (b), 14410, 14411 (a) (b), 14412, 14413, 14450, 14451, 14451.5(a) (b), 14452, 14452.5, 14454, 14455, 14456, 14459, 14460, 14475, 14476, 14477, 14478, 14479, 14480, 14481 and 14482, Welfare and Institutions Code.

HISTORY

1. New section filed 7–5–78; effective thirtieth day thereafter (Register 78, No. 27).
2. Repealer filed 10–11–85; effective thirtieth day thereafter (Register 85, No. 41).

§ 53117.9. Informal Grievance.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Section 14450 (n), Welfare and Institutions Code.

HISTORY

1. New section filed 12–10–79; effective thirtieth day thereafter (Register 79, No. 50).
2. Repealer filed 9–22–82; effective thirtieth day thereafter (Register 82, No. 39).
3. Editorial correction of repealer filed 9–22–82 and inadvertently left in print in Register 82, No. 39 (Register 82, No. 52).

§ 53118. Marketing.

(a) Marketing means:

(1) Any activity conducted by, or on behalf of, a plan in which information regarding the services offered is disseminated in order to persuade Medi–Cal beneficiaries to enroll or accept an application for enrollment in that plan.

(2) Any presentation made by, or on behalf of, a plan to any individual or organization to procure written or other public endorsement of that plan.

§ 53120. Marketing Representative.

Marketing representative means any person engaged in marketing activities on behalf of a plan.

§ 53121. Medi–Cal Beneficiary.

NOTE: Authority cited: Sections 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14201, 14251, 14256, 14261, 14262 (a) (b) (c), 14300, 14301, 14302, 14303, 14303.1, 14303.2, 14304, 14308, 14312, 14402, 14405, 14406 (a) (b), 14408 (d), 14409 (a) (b), 14410, 14411 (a) (b), 14412, 14413, 14450, 14451, 14451.5 (a) (b), 14452, 14452.5, 14454, 14455, 14456, 14459, 14460, 14475, 14476, 14477, 14478, 14479, 14480, 14481 and 14482, Welfare and Institutions Code.

HISTORY

1. New section filed 7–5–78; effective thirtieth day thereafter (Register 78, No. 27).
2. Repealer filed 10–11–85; effective thirtieth day thereafter (Register 85, No. 41).

§ 53122. Member.

Member means any Medi–Cal beneficiary who has enrolled in a plan pursuant to Section 53420.

HISTORY

1. Amendment filed 7–5–78; effective thirtieth day thereafter (Register 78, No. 27).

§ 53124. Prepaid Health Plan.

NOTE: Authority cited: Sections 14124.5 and 14312, Welfare and Institutions Code. Reference: Section 14251, Welfare and Institutions Code.

HISTORY

1. Repealer and new section filed 7–5–78; effective thirtieth day thereafter (Register 78, No. 27).
2. Repealer filed 10–26–84; effective thirtieth day thereafter (Register 84, No. 43).

§ 53126. Prepaid Patient Population.

Prepaid patient population means the entire patient population both Medi–Cal and non–Medi–Cal, that is entitled to receive medical care from a plan in consideration for a predetermined, periodic, fixed subscription premium.

§ 53128. Preventive Health Care.

HISTORY

1. Repealer filed 10–11–85; effective thirtieth day thereafter (Register 85, No. 41).

§ 53130. Primary Care Physician.

HISTORY

1. Repealer filed 10–11–85; effective thirtieth day thereafter (Register 85, No. 41).

§ 53132. Public Hearing.

HISTORY

1. Repealer filed 10–11–85; effective thirtieth day thereafter (Register 85, No. 41).

§ 53133. Risk Limit.

Risk limit means the per member dollar amount in excess of which the plan assumes no financial liability for the cost of services rendered to any member.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Section 14451.5, Welfare and Institutions Code.

HISTORY

1. New section filed 9–22–82; effective thirtieth day thereafter (Register 82, No. 39).

§ 53134. Service Area.

Service area means the geographical area designated by the Department within which a plan shall provide, directly or through subcontract, health care services to its members who reside therein.

§ 53136. Service Location.

Service location means any plan location at which a member obtains any health care service.

§ 53138. Service Site.

Service site means the location designated by a plan at which members shall receive primary care physician services.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Sections 14406 and 14450, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 2–2–83 (Register 83, No. 6).

§ 53140. State Employee.

(a) "State employee" pursuant to Welfare and Institutions Code includes:

(1) The Director of the Department of Health Services, and

(2) The following appointive and civil service employees of the Department:

(A) Chief deputy directors;
(B) Deputy directors;
(C) Chief counsel;
(D) Division chiefs;
(E) Branch chiefs;
(F) Section chiefs;
(G) Office, unit, bureau, project and program chiefs.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Section 14477(b), Welfare and Institutions Code.

HISTORY

1. Repealer and new section filed 7–5–78; effective thirtieth day thereafter (Register 78, No. 27).
2. Amendment filed 10–11–85; effective thirtieth day thereafter (Register 85, No. 41).

§ 53142. State Officer.

HISTORY

1. Amendment filed 7–5–78; effective thirtieth day thereafter (Register 78, No. 27).
2. Repealer filed 10–11–85; effective thirtieth day thereafter (Register 85, No. 41).

§ 53144. Subcontract.

(a) Subcontract means an agreement between a plan and any of the following:

(1) A provider of health care services who agrees to furnish such services to plan members, except for providers of unusual or seldom–used health care services.

(2) A marketing organization.

(3) Any other person or organization who agrees to perform any administrative function or service for the operation of the plan specifically related to securing or fulfilling its contractual obligations with the Department.

§ 53144.5. Sub–Subcontract.

Sub–subcontract means any agreement, descending from and subordinate to a subcontract, which is entered into for the purpose of providing any goods or services connected with a prepaid health plan's obligations under a contract entered into pursuant to this Chapter.

NOTE: Authority cited: Sections 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14201, 14251, 14256, 14261, 14262 (a) (b) (c), 14300, 14301, 14302, 14303, 14303.1, 14303.2, 14304, 14308, 14312, 14402, 14405, 14406 (a) (b), 14408 (d), 14409 (a) (b), 14410, 14411 (a) (b), 14412, 14413, 14450, 14451, 14451.5 (a) (b), 14452, 14452.5, 14454, 14455, 14456, 14459, 14460, 14475, 14476, 14477, 14478, 14479, 14480, 14481 and 14482, Welfare and Institutions Code.

HISTORY

1. New section filed 7–5–78; effective thirtieth day thereafter (Register 78, No. 27).

§ 53145. Substantial Financial Interest.

NOTE: Authority cited: Sections 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14201, 14251, 14256, 14261, 14262 (a) (b) (c), 14300, 14301, 14302, 14303, 14303.1, 14303.2, 14304, 14308, 14312, 14402, 14405, 14406 (a) (b), 14408 (d), 14409 (a) (b), 14410, 14411 (a) (b), 14412, 14413, 14450, 14451, 14451.5 (a) (b), 14452, 14452.5, 14454, 14455, 14456, 14459, 14460, 14475, 14476, 14477, 14478, 14479, 14480, 14481 and 14482, Welfare and Institutions Code.

HISTORY

1. New section filed 7–5–78; effective thirtieth day thereafter (Register 78, No. 27).
2. Repealer filed 10–11–85; effective thirtieth day thereafter (Register 85, No. 41).

§ 53150. Unit Medical Record.

NOTE: Authority cited: Sections 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14201, 14251, 14256, 14261, 14262 (a) (b) (c), 14300, 14301, 14302, 14303, 14303.1, 14303.2, 14304, 14308, 14312, 14402, 14405, 14406 (a) (b), 14408 (d), 14409 (a) (b), 14410, 14411 (a) (b), 14412, 14413, 14450, 14451, 14451.5 (a) (b), 14452, 14452.5, 14454, 14455, 14456, 14459, 14460, 14475, 14476, 14477, 14478, 14479, 14480, 14481 and 14482, Welfare and Institutions Code.

HISTORY

1. New section filed 7–5–78; effective thirtieth day thereafter (Register 78, No. 27).
2. Repealer filed 12–30–81; effective thirtieth day thereafter (Register 82, No. 1).

§ 53152. Vendor.

Vendor means any person who provides services or supplies to a prepaid health plan or subcontractor of a prepaid health plan and who does not have a subcontract with the prepaid health plan or plan subcontractors.

NOTE: Authority cited: Sections 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14201, 14251, 14256, 14261, 14262 (a) (b) (c), 14300, 14301, 14302, 14303, 14303.1, 14303.2, 14304, 14308, 14312, 14402, 14405, 14406 (a) (b), 14408 (d), 14409 (a) (b), 14410, 14411 (a) (b), 14412, 14413, 14450, 14451, 14451.5 (a) (b), 14452, 14452.5, 14454, 14455, 14456, 14459, 14460, 14475, 14476, 14477, 14478, 14479, 14480, 14481 and 14482, Welfare and Institutions Code.

HISTORY

1. New section filed 7–5–78; effective thirtieth day thereafter (Register 78, No. 27).

Article 3. Operational Requirements

§ 53200. Organization and Administration.

(a) Each plan shall have the organizational and administrative ability to carry out its contractual obligations, including but not limited to the following:

(1) An unrestricted Knox–Keene license or pending application therefor.

(2) A medical director as specified in Section 53246.

(3) A grievance procedure as specified in Section 53260.

(4) Member and enrollment reporting systems which fulfill the plan's contractual obligations.

(5) A data–reporting system which provides reports required under the contract to the Department on a timely basis.

(6) Financial records and books of account fully disclosing the disposition of all Medi–Cal program funds received. Such records and books shall be maintained on the accrual basis in accordance with generally accepted accounting principles.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Sections 14251, 14308, 14450, and 14459, Welfare and Institutions Code.

HISTORY

1. Amendment filed 12–30–81; effective thirtieth day thereafter (Register 82, No. 1).

§ 53210. Scope of Services.

(a) Except as provided in Section 14257 of the Welfare and Institutions Code, each plan shall provide the following health care services:

(1) Physician services.

(2) Hospital outpatient department services.

(3) Laboratory and X–ray services.

(4) Pharmaceutical services and prescribed drugs.

(5) Hospital inpatient care.

(6) Skilled nursing facility care.

(7) A continuing program of preventive health care services, appropriate to the needs of the projected plan population, which:

(A) Satisfies the requirements of Title 10, California Administrative Code, Section 1300.67(f).

(B) Includes the provision of Child Health and Disability Prevention Program services to members under the age of 21 in accordance with the provisions of Title 17, California Administrative Code, Sections 6800–6874.

(b) In addition to the health care services specified in (a), above, each plan shall provide the full scope of services set forth in this subdivision in Chapter 3, Article 4, beginning with Section 51301, and in Chapter 11, beginning with Section 59998, unless certain services are specifically excluded under the terms of the contract.

(c) The Director shall establish the scope and duration of services to be covered by any plan contract.

(d) A plan may elect to provide services which are not included in Section 14053, Welfare and Institutions Code. A plan shall obtain the prior approval of the Director if such services are provided at a cost to mem-

bers. Each member shall be notified of the scope of such additional services offered by the plan and the charges therefor:

(1) During the enrollment process.

(2) Any time the scope of such services is changed.

(3) Prior to rendering such services.

(e) Each plan shall meet the requirements of Sections 51163 and 51305.1 through 51305.7 of this subdivision, in providing needed human reproductive sterilization services.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Sections 14304.5 and 14256, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (d) filed 12–10–79; effective thirtieth day thereafter (Register 79, No. 50). For prior history, see Register 78, No. 27.
2. Amendment filed 12–30–81; effective thirtieth day thereafter (Register 82, No. 1).

§ 53212. Availability of Services.

(a) The Director shall determine the availability of services to be provided under the plan contract.

(b) Each plan shall obtain departmental approval prior to making any substantial change in availability or location of services to be provided under the contract, except in the case of unforeseen circumstances. A proposal to change the location of services or reduce their availability shall be given to the Department at least 30 days prior to the proposed effective date.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Sections 14450, 14452.3, 14452.4 and 14452.5, Welfare and Institutions Code.

HISTORY

1. Amendment filed 7–5–78; effective thirtieth day thereafter (Register 78, No. 27).
2. Amendment of subsection (h) filed 12–10–79; effective thirtieth day thereafter (Register 79, No. 50).
3. Repealer of subsections (c)–(h) filed 12–30–81; effective thirtieth day thereafter (Register 82, No. 1).

§ 53214. Pharmaceutical Services and Prescribed Drugs.

(a) Each plan shall provide, either directly or through subcontracts, the services of pharmacies and pharmacists. Such pharmaceutical services shall be available to members during reasonable hours as specified in the contract.

(b) Prescribed drugs shall be provided to members in accordance with all applicable laws and regulations.

(c) Pharmaceutical services shall include as a minimum the following functions:

(1) Supervising the efficient distribution of drugs.

(2) Providing pharmaceutical consultative services when appropriate, which are:

(A) Consultation with members concerning drug therapy in which the pharmacist asks the member if he is currently taking any drugs, and informs him on what is being taken, how to take it, what to expect, what special precautions should be observed and how the medication is to be properly stored. The purpose of this consultation is to assure that the member understands the proper use of the drug and that the prescriber's intentions will materialize in a drug regimen of optimal effectiveness, safety and duration.

(B) Professional consultation with prescribers, or other members of the health care team, in which the pharmacist discusses drug effects, dosage regimens, interactions, side effects, toxicities, antidotes, drugs of choice for disease conditions and in all other ways acts as the drug information specialist to the health care team.

(3) Participating in in–service training programs for plan staff to provide current information about pharmaceuticals and their proper use in member treatment.

(4) Participating in drug utilization review. This shall include a review of:

(A) Member medical records to determine the range and types of drugs taken by members, and

(B) Drug utilization patterns of the plan in general.

(5) Participating in professional review activities relating to the use of pharmaceuticals.

HISTORY

1. Amendment of subsection (c) filed 7–5–78; effective thirtieth day thereafter (Register 78, No. 27).

§ 53216. Care Under Emergency Circumstances.

(a) Each plan shall provide, directly or by subcontract, at least one physician and a nurse on duty 24 hours a day, 7 days a week, at each location designated as a location where members can obtain medical services in the event of emergency circumstances, as defined in Section 51056.

(b) Written procedures shall be developed and applied by the plan regarding care under emergency circumstances provided by nonplan providers in and outside the service area. These procedures shall include but not be limited to the following:

(1) Verification of membership.

(2) Transfer of the medical management of the member to a plan provider.

(3) Payment within 60 days of receipt of properly documented bills for the services rendered to the member. Bills for services rendered to the member shall be submitted not later than the second month following the month of service, except for good cause.

(4) Written notice of action within 60 days of receipt of bills which are denied or reduced for any reason by the plan. The notice shall include a statement, subject to prior approval by the Department, of the provider's right to:

(A) Dispute the plan's rejection or reduction of the bill.

(B) Submit the dispute to the Department pursuant to Article 7.

(c) The plan shall provide or pay for medical transportation, as defined in Sections 51151 and 51323, to members needing care when such transportation is necessary due to the medical condition of the member.

(d) Each provider who agrees with a plan to provide emergency medical services shall furnish, when the course of treatment of a plan member under emergency circumstances requires the use of drugs, a sufficient quantity of such drugs to last until the member can reasonably be expected to have a prescription filled.

NOTE: Authority cited: Sections 14312 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

HISTORY

1. Amendment filed 7–5–78; effective thirtieth day thereafter (Register 78, No. 27).
2. Amendment of subsection (b) filed 6–12–79; effective thirtieth day thereafter (Register 79, No. 24).

§ 53218. Preventive Health Care Services.

NOTE: Authority cited: Sections 14132 and 14308, Welfare and Institutions Code. Reference: Sections 14304.5 and 14308, Welfare and Institutions Code.

HISTORY

1. Amendment filed 12–10–79; effective thirtieth day thereafter (Register 79, No. 50). For prior history, see Register 78, No. 27.
2. Repealer filed 12–30–81; effective thirtieth day thereafter (Register 82, No. 1).

§ 53220. Member Billing.

(a) A prepaid health plan, affiliate, vendor, subcontractor or sub–subcontractor shall not submit a claim to, demand or otherwise collect reimbursement from, a member or persons acting on behalf of a member for any services provided under this Chapter except to collect:

(1) Third–party payment in accordance with Section 53222 (a).

(2) Payment for services provided pursuant to Section 53210 (d).

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Section 14452.6, Welfare and Institutions Code.

HISTORY

1. New section filed 12–10–79; effective thirtieth day thereafter (Register 79, No. 50).

§ 53222. Recovery from Other Sources.

(a) Plans may recover and retain the cost of covered services rendered to a member under the terms of this Chapter, to the extent that such member is covered for such services, under any other state or federal medical care program or under other contractual or legal entitlement, including but not limited to, a private group or individual indemnification program.

(b) Plans shall not attempt recovery in circumstances involving casualty insurance, tort liability or worker's compensation. Circumstances which may result in casualty insurance payments, tort liability payments, or workers' compensation awards shall be reported to the Department within ten days after discovery by the plan.

NOTE: Authority cited: Section 14124.71, Welfare and Institutions Code. Reference: Section 14452.6, Welfare and Institutions Code.

HISTORY

1. New section filed 12–10–79; effective thirtieth day thereafter (Register 79, No. 50).
2. Amendment of subsection (b) filed 9–22–82; effective thirtieth day thereafter (Register 82, No. 39).

§ 53230. Facilities, Service Locations and Equipment.

(a) Each plan shall have available within the service area sufficient facilities, service sites and service locations to meet its contractual obligations.

(b) Each facility shall meet the following requirements:

(1) Licensing, and accreditation where applicable, by the appropriate agencies.

(2) Continued compliance with licensing standards.

(3) Compliance with all applicable local, state and federal standards including those for fire and safety.

(c) Each plan shall assure proper sterilization and disinfection of equipment. Plan providers shall make necessary provisions for proper sterilization of dressings, utensils, instruments and solutions used in the facility. Autoclaves and sterilizers shall be used and maintained in operating condition by qualified personnel.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Section 14450, Welfare and Institutions Code.

HISTORY

1. Amendment of subsections (c), (d), (f), (g) and new subsection (i) filed 7–5–78; effective thirtieth day thereafter (Register 78, No. 27).
2. Repealer of subsections (c)–(h) and relettering of subsection (i) to subsection (c) filed 12–30–81; effective thirtieth day thereafter (Register 82, No. 1).

§ 53240. Personnel Resources.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Sections 14450, 14456, and 14460, Welfare and Institutions Code.

HISTORY

1. Amendment of subsections (b), (f) and new subsection (g) filed 7–5–78; effective thirtieth day thereafter (Register 78, No. 27).
2. Repealer filed 12–30–81; effective thirtieth day thereafter (Register 82, No. 1).

§ 53242. Providers.

(a) A provider of services employed by or under subcontract to a plan shall meet those standards for participation as a provider of health care services under the Medi–Cal program set forth in this subdivision in Chapter 3, Article 3, beginning with Section 51200.

(b) The Department may require that a plan identify all:

(1) Physicians, by specialty.

(2) Providers furnishing any services, by type of service provided.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Section 14450, Welfare and Institutions Code.

HISTORY

1. Amendment filed 12–30–81; effective thirtieth day thereafter (Register 82, No. 1).

§ 53244. Allied Health Personnel.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Sections 14450 and 14456, Welfare and Institutions Code.

HISTORY

1. New subsection (d) filed 7–5–78; effective thirtieth day thereafter (Register 78, No. 27).
2. Repealer filed 12–30–81; effective thirtieth day thereafter (Register 82, No. 1).

§ 53246. Medical Director.

(a) Each plan shall appoint a physician as medical director. His responsibilities shall include, but not be limited to:

(1) Ensuring that medical decisions are rendered by qualified medical personnel, unhindered by fiscal or administrative management.

(2) Ensuring that the medical care provided meets the standards for acceptable medical care.

(3) Ensuring that medical protocols and rules of conduct for plan medical personnel are followed.

(4) Developing and implementing medical policy.

(5) Resolving medically related grievances. The medical director shall refer nonmedical grievances, and other grievances which he determines may be appropriately resolved through the grievance procedure, to the grievance coordinator.

(6) Actively participating in the functioning of the plan grievance procedures.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Section 14450, Welfare and Institutions Code.

HISTORY

1. Editorial correction of NOTE filed 2–2–83 (Register 83, No. 6).

§ 53250. Subcontracts.

(a) A provider or management subcontract entered into by a plan which is not a qualified HMO shall become effective upon approval by the Department in writing, or by operation of law where the Department has acknowledged receipt of the proposed subcontract and has failed to approve or disapprove the proposed subcontract within 60 days of receipt. Subcontract amendments shall be submitted to the Department, for prior approval, at least 30 days before the effective date of any proposed changes governing compensation, services or term. Proposed changes, which are neither approved nor disapproved by the Department, shall become effective by operation of law 30 days after the Department has acknowledged receipt, or upon the date specified in the subcontract amendment, whichever is later.

(b) A subcontractor providing any basic health care service to members shall meet all of the requirements of Chapters 3 and 4 of this subdivision, related to the services the subcontractor is required to perform.

(c) Each subcontract submitted for Department approval pursuant to subsection (a), above, shall contain at least the elements required by subsection (e) and the following:

(1) Specification of the services to be provided.

(2) Specification that the subcontract shall be governed by and construed in accordance with all laws, regulations and contractual obligations incumbent upon the plan.

(3) Specification that the subcontract or subcontract amendments shall become effective only as set forth in subsection (a).

(4) Specification of the term of the subcontract, including the beginning and ending dates, as well as methods of extension, renegotiation and termination.

(5) Subcontractor's agreement to submit reports as required by the Contractor.

(d) Subcontracts entered into by a plan which is a qualified HMO shall be exempt from prior approval by the Department.

(e) Each subcontract shall contain:

(1) The subcontractor's agreement to make all of its books and records, pertaining to the goods and services furnished under the terms of the subcontract, available for inspection, examination or copying:

(A) By the Department, the United States Department of Health and Human Services and the Department of Corporations.

(B) At all reasonable times at the subcontractor's place of business, or at such other mutually agreeable location in California.

(C) In a form maintained in accordance with the general standards applicable to such book or record keeping.

(D) For a term of a least five years from the close of the fiscal year in which the subcontract was in effect.

(2) Full disclosure of the method and amount of compensation or other consideration to be received by the subcontractor from the plan.

(3) Subcontractor's agreement to maintain and make available to the Department, upon request, copies of all sub–subcontracts and to ensure that all sub–subcontracts are in writing and require that the subcontractor:

(A) Make all applicable books and records available at all reasonable times for inspection, examination or copying by the Department.

(B) Retain such books and records for a term of at least five years from the close of the fiscal year in which the sub–subcontract is in effect.

(4) Subcontractor's agreement to notify the Department in the event the agreement with the Contractor is amended or terminated. Notice to the Department is considered given when properly addressed and deposited in the United States Postal Service as first–class registered mail, postage attached.

(5) Subcontractor's agreement that assignment or delegation of the subcontract shall be void unless prior written approval is obtained from the Department in those instances where prior approval by the Department is required.

(6) Subcontractor's agreement to hold harmless both the State and plan members in the event the plan cannot or will not pay for services performed by the subcontractor pursuant to the subcontract.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Section 14452, Welfare and Institutions Code.

HISTORY

1. Repealer and new section filed 7–5–78; effective thirtieth day thereafter (Register 78, No. 27).
2. Amendment of subsection (g)(16) and new subsection (g)(17) filed 10–20–78; effective thirtieth day thereafter (Register 78, No. 42).
3. Amendment filed 12–30–81; effective thirtieth day thereafter (Register 82, No. 1).

§ 53251. Assumption of Financial Risk.

(a) Plans shall be responsible for the total costs, except as otherwise provided in this Chapter, of care rendered to members under the provisions of this Chapter.

(b) The Department shall bear the costs of providing medically necessary covered services to a member when such costs, based on Medi–Cal schedules of reimbursement and exclusive of third–party recoveries, exceed the risk limit in the aggregate during the 12–month period specified in the contract. The risk limit shall be determined annually, at the same time and using the same data base as used in the determination of new annual rates, as provided by Section 53321, and shall be stated in the contract. The Department shall bear such costs only for the period of time between the date on which the aggregate amount exceeds the risk limit, and the end of the 12–month period specified in the contract. The Department shall determine that services and the amounts payable therefor are reasonable and medically necessary, prior to payment, and within 90 days after submittal of the documentation required in subsection (b)(2).

(1) Members whose cost of care exceeds the risk limit in the 12–month period shall not be disenrolled by the plan solely for that reason. The plan shall remain responsible for arranging and initially paying for the member's medically necessary care, at Medi–Cal reimbursement levels, when the cost for such care exceeds the risk limit in the 12–month period.

(2) Plans shall submit to the Department documentation of accumulated costs which result in reaching the risk limit and of all costs in excess of the limit. Documentation shall be submitted in a format prescribed by the Department.

(c) A plan shall not enter into a subcontract which would remove the contractor's obligation to bear a significant portion of the overall risk assumed in providing services under this Chapter.

(d) A plan shall designate one of the methods described in subsection (e) as its operating definition of significant risk, if the plan enters into subcontracts to fulfill its contractual obligations, unless the plan can demonstrate to the Department that significant risk is retained by some other method. Combinations of methods shall not be permitted. All subcontract approvals by the Department shall be contingent upon the retention of significant risk, as designated by the method selected by the contractor.

(e) Significant risk shall be the financial responsibility for either of the following:

(1) All expenditures which exceed 115 percent of the estimated specified total expenditures made under each subcontract.

(2) All inpatient hospitalization expenditures, including expenditures for services connected with the period of hospitalization, as determined by the Department.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Section 14451.5, Welfare and Institutions Code.

HISTORY

1. Amendment filed 12–10–79; effective thirtieth day thereafter (Register 79, No. 50). For prior history, see Register 78, No. 27.
2. Amendment filed 9–22–82; effective thirtieth day thereafter (Register 82, No. 39).

§ 53252. Reinsurance.

(a) The provisions of Section 53251 notwithstanding, the prepaid health plan may obtain reinsurance for the cost of providing covered services, subject to the following conditions:

(1) Reinsurance shall not reduce plan liability below $5,000 per member for any one 12–month period.

(2) Reinsurance may cover both of the following:

(A) The total cost of services provided to members under emergency circumstances by nonplan providers, including the cost of inpatient care in a nonplan facility until such time as the member may be safely transported to a plan facility.

(B) Up to 90 percent of all expenditures related to the contract exceeding 115 percent of the plan's gross income from capitation payments and third–party recoveries under the terms of the contract during any plan fiscal year.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Section 14451.5(b), Welfare and Institutions Code.

HISTORY

1. New section filed 7–5–78; effective thirtieth day thereafter (Register 78, No. 27).
2. Amendment filed 12–10–79; effective thirtieth day thereafter (Register 79, No. 50).

§ 53260. Grievance Procedures.

(a) Each plan shall establish and maintain a procedure for submittal, processing and resolution of all member complaints. Such procedure shall be approved by the Department and shall provide for the processing of disenrollment requests through the grievance procedure in sufficient time to submit requests to the Department in accordance with the provision of Section 53440.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Sections 14303.1, 14303.2, 14409, 14412, 14413 and 14450, Welfare and Institutions Code.

HISTORY

1. Amendment filed 12–10–79; effective thirtieth day thereafter (Register 79, No. 50). For prior history, see Register 78, No. 27.
2. Amendment of subsection (a) and repealer of subsections (b)–(h) filed 9–22–82; effective thirtieth day thereafter (Register 82, No. 39).

§ 53261. Notice to Members of Plan Action to Deny, Defer or Modify a Request for Medical Services.

(a) The plan shall provide members with a notice of an action taken by the plan to deny a request by a provider for any medical service. Notice in response to an initial request from a provider shall be provided in accordance with this section. Notice in response to a request for continuation of a medical service shall be provided in accordance with section 51014.1. Notice of denial shall not be required in the following situations:

(1) The denial is a denial of a request for prior authorization for coverage for treatment that has already been provided to the member.

(2) The denial is a non–binding verbal description to a provider of the services which may be approved by the plan.

(3) The denial is a denial of a request for drugs, and a drug identical in chemical composition, dosage, and bioequivalence may be obtained through prior authorization from the plan or from the list, established by the plan, of drugs available without prior authorization from the plan.

(b) The plan shall provide members with a notice of deferral of a request by a provider for a medical service. Notice of the deferral shall be delayed for 30 days to allow the provider of the medical services time to submit the additional information requested by the plan and to allow time

for the plan to make a decision. If, after 30 days from the plan's receipt of the request for prior authorization, the provider has not complied with the plan's request for additional information, the plan shall provide the member notice of denial pursuant to subdivision (a). If, within that 30 day period, the provider does comply, the plan shall take appropriate action on the request for prior authorization as supplemented by the additional information, including providing any notice to the member.

(c) The plan shall provide members notice of modification of a request by a provider for prior authorization. Notice in response to an initial request from a provider shall be provided in accordance with this subdivision. Notice in response to a request for continuation of a medical service shall be provided in accordance with section 51014.1. Notice of modification pursuant to this subdivision shall not be required in the following situations:

(1) The plan may modify a request for durable equipment without notice, as long as the substituted equipment is capable of performing all medically significant functions that would have been performed by the requested equipment.

(2) The plan may modify the duration of any approved therapy or the length of stay in an acute hospital inpatient facility without notice as long as the plan provides an opportunity for the provider to request additional therapy or inpatient days before the end of the approved duration of the therapy or length of stay.

(d) The written notice of action issued pursuant to subdivision (a), (b), or (c) shall be deposited with the United States postal service in time for pick–up no later than the third working day after the action and shall specify:

(1) The action taken by the plan.

(2) The reason for the action taken.

(3) A citation of the specific regulations or plan authorization procedures supporting the action.

(4) The member's right to a fair hearing, including:

(A) The method by which a hearing may be obtained.

(B) That the member may be either:

1. Self represented.

2. Represented by an authorized third party such as legal counsel, relative, friend or any other person.

(C) The time limit for requesting fair hearing.

(e) For the purposes of this section, medical services means those services that are subject to prior authorization under the plan's authorization procedures.

(f) The provisions of this section apply only for medical services that are covered in the contract between the Department and the plan.

(g) The provisions of this section do not apply to the decisions of providers serving plan members when prior authorization of the service by the plan's authorization procedures is not a condition of payment to the provider for the medical service.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Section 14450, Welfare and Institutions Code.

HISTORY

1. New section filed 10–17–95; operative 11–16–95 (Register 95, No. 42).

§ 53270. Consumer Participation in Policy Making.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Section 14450, Welfare and Institutions Code.

HISTORY

1. Repealer filed 12–30–81; effective thirtieth day thereafter (Register 82, No. 1).

§ 53280. Quality of Care.

(a) Each plan shall meet the standards for acceptable medical care as defined in Section 53100 of this Title, and use effective professional review in assessing the care provided to its members in accordance with the standards for health care service plans set forth in Title 10, California Administrative Code,Chapter 3, Subchapter 5.5, beginning with Section 1300.43.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Sections 14450 and 14458, Welfare and Institutions Code.

HISTORY

1. Amendment of subsections (c), (d) and (e) filed 7–5–78; effective thirtieth day thereafter (Register 78, No.27).

2. Amendment filed 12–30–81; effective thirtieth day thereafter (Register 82, No. 1).

§ 53282. Medical Record System.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Section 14455, Welfare and Institutions Code.

HISTORY

1. Amendment filed 7–5–78; effective thirtieth day thereafter (Register 78, No. 27).

2. Repealer filed 12–30–81; effective thirtieth day thereafter (Register 82, No. 1).

§ 53284. Medical Record Service.

(a) Each plan shall maintain a medical record service in accordance with the requirements of Title 10, California Administrative Code, Sections 1300.70 and 1300.80.

(b) Confidentiality of medical records shall be maintained in accordance with the provisions of Section 51009.

(c) Fifteen days prior to ceasing operation each plan shall provide the Department with a plan for preserving medical records.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Section 14455, Welfare and Institutions Code.

HISTORY

1. Amendment filed 7–5–78; effective thirtieth day thereafter (Register 78, No. 27).

2. Amendment filed 12–30–81; effective thirtieth day thereafter (Register 82, No. 1).

§ 53286. Continuity of Care.

(a) Each plan shall establish and operate a system to assure continuity of care in accordance with the requirements of Title 10, California Administrative Code, Section 1300.67.1.

(b) Each plan shall make a primary care physician available to supervise and coordinate each member's health care. Any member dissatisfied with the primary care physician shall be allowed to select another. Any plan physician dissatisfied with the professional relationship with any plan member may request that another primary care physician be substituted to supervise the member's care.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Section 14450, Welfare and Institutions Code.

HISTORY

1. Amendment filed 7–5–78; effective thirtieth day thereafter (Register 78, No. 27).

2. Amendment filed 12–30–81; effective thirtieth day thereafter (Register 82, No. 1).

§ 53288. Shared Responsibility for Members' Health Care.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Section 14450, Welfare and Institutions Code.

HISTORY

1. Repealer filed 12–30–81; effective thirtieth day thereafter (Register 82, No. 1).

§ 53290. Medical Review.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Section 14456, Welfare and Institutions Code.

HISTORY

1. Amendment filed 7–5–78; effective thirtieth day thereafter (Register 78, No. 27).

2. Repealer filed 12–30–81; effective thirtieth day thereafter (Register 82, No. 1).

§ 53291. General Reviews.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Section 14457, Welfare and Institutions Code.

HISTORY

1. New section filed 7–5–78; effective thirtieth day thereafter (Register 78, No. 27).

2. Repealer filed 12–30–81; effective thirtieth day thereafter (Register 82, No. 1).

§ 53310. Records.

(a) Each plan shall maintain or cause to be maintained all records necessary to verify the information and reports required by statute, regulation or contractual obligation for four years from the date of submission

of such information or reports. Such records and documents shall include but not be limited to:

(1) Working papers used in the preparation of reports to the Department.

(2) Reports to the Department.

(3) Financial documents.

(4) Medical records.

(5) Prescription files.

§ 53312. Reporting.

(a) Each plan, except those that are excluded under Section 14308(c), Welfare and Institutions Code, shall submit reports to the Department as specified below.

(b) Annual reports shall include:

(1) The financial audit required by Section 53340. This report shall be submitted to the Department no later than 90 days after the close of the plan's fiscal year.

(2) An update of the provider listing required in Section 53242(b).

(3) Disclosure statements in compliance with Section 53601.

(c) Quarterly reports shall include:

(1) Utilization and statistical data in compliance with Section 53314.

(2) Financial reports pursuant to Section 53324(c).

(3) Child Health and Disability Prevention Program reporting disclosing services rendered in accordance with Section 53210(a)(7)(B).

(d) Other reports which shall be submitted to the Department include the following:

(1) Information requested by the Department to conduct medical reviews or contract monitoring in accordance with Section 14457, Welfare and Institutions Code.

(2) Financial reports relevant to affiliates as specified in Section 53330.

(3) Copies of any financial reports submitted to other public or private organizations as specified in Section 53324(d).

(4) Notification of possible third–party tort liability situations. This information shall be submitted within ten days of discovery.

(5) Information necessary for the evaluation of compliance with Section 53402.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Sections 14308, 14457 and 14459, Welfare and Institutions Code.

HISTORY

1. Amendment of subsections (c) and (d) filed 12–10–79; effective thirtieth day thereafter (Register 79, No. 50). For prior history, see Register 78, No. 27.
2. Amendment filed 12–30–81; effective thirtieth day thereafter (Register 82, No. 1).

§ 53314. Statistical Data.

(a) Each plan shall supply statistical data and information, reported no less frequently than quarterly by dates specified by the Department, including:

(1) Statistical information concerning:

(A) Utilization of services to and benefits of members.

(B) Distribution of members by age intervals and sex.

(C) Costs of health care.

(D) Administrative expenses.

(E) Quality of care rendered.

(2) Other utilization and financial information required by the Department for auditing purposes or computations of capitation rates.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Section 14308, Welfare and Institutions Code.

HISTORY

1. New section filed 7–5–78; effective thirtieth day thereafter (Register 78, No. 27).
2. Amendment filed 12–30–81; effective thirtieth day thereafter (Register 82, No. 1).

§ 53320. Capitation Payment.

(a) Payment to each plan shall be on a monthly capitation payment basis. Each plan shall be at risk for services provided. The capitation payment shall:

(1) Constitute payment in full by the State for health care and administration services rendered under the contract.

(2) Be based upon a count of eligible members furnished to the plan monthly by the Department.

(b) The capitation payment shall not include payment for recoupment of any losses incurred by the plan under any prior contractual obligations with the State.

(c) Capitation payment shall not be made for members enrolled in excess of the enrollment maximums specified in the plan contract.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Section 14301, Welfare and Institutions Code.

HISTORY

1. Editorial correction of NOTE filed 2–2–83 (Register 83, No. 6).

§ 53321. Capitation Payment Rates Determination.

(a) The Department shall determine capitation payment rates annually by actuarial methods with assistance from an actuary or consulting actuary.

(b) The rates shall not exceed actuarially equivalent Medi–Cal fee–for–service costs. These costs shall be determined by viewing the total services and requirements, including administration, provided under this Chapter by a prepaid health plan as though such same services and requirements, including administration, were reimbursable under Chapter 3. For purposes of this section:

(1) Costs of administration include, but are not limited to:

(A) Salaries, bonuses or benefits paid or incurred with respect to the officers, directors, partners, trustees or other principal management of the plan, minus, to the extent that such persons also are providers of health care services, the minimum reasonable cost of obtaining such health care services from other persons.

(B) Cost of soliciting, enrolling and verifying enrollment of members.

(C) Legal and accounting fees and expenses.

(D) Costs associated with the establishment and maintenance of agreements with providers of health care services, excluding the cost of reviewing quality and utilization of such services and the cost of reviewing utilization of health care services on a referral basis.

(E) Premium on required fidelity and surety bonds and any insurance maintained pursuant to Section 1377, Health and Safety Code, and any insurance or other expense incurred for the purpose of complying with Section 1375.1, Health and Safety Code. Malpractice insurance is not included within this subsection.

(F) Costs of preparing reports required by this Chapter.

(G) Costs of maintaining facilities for administrative services.

(2) Cost of administration shall not include:

(A) Bad debt write–off.

(B) Donations.

(C) Out–of–state and out–of–country travel.

(D) Expenditures for commercial market development.

(E) Stock losses.

(F) Good will.

(c) The rates shall be effective for one year beginning the first day of July each year. In the event that payment of the new rates is delayed beyond the first day of July, continued payment of the rate in effect shall be interim payment only. Final payment shall be:

(1) Adjusted by increase or decrease to the level of the new rates.

(2) Effective as of the first day of July.

(d) Notwithstanding subsection (c), payment of the new annual rates shall commence no later than September 1, provided that a contract amendment providing for the new annual rates has been prior approved by DHHS, and signed by the Department and the plan, but has not yet received the approval of all required control agencies and departments.

(e) Contract amendments providing for the new annual rates shall provide that:

(1) The plan stipulates to a confession of judgment, for any amounts received in excess of the final approved rate, by accepting payment of the new annual rates prior to final approval.

(f) Any underpayment by the State, if the final approved rates differ from the rates set forth in an amendment providing for new annual rates, shall be paid by the Department to the plan within 30 days after final approval of such rate amendment.

(g) Any overpayment by the State shall be recovered by Department withhold of the amount due from the plan's next capitation payment, not to exceed 25 percent of the capitation payment. If the overpayment is more than 25 percent, amounts up to 25 percent shall be withheld from each successive capitation payment until such deficiencies are recovered by the Department.

(h) The contract between the State and a prepaid health plan shall include:

(1) The monthly capitation rates.

(2) A description of the actuarial method, assumptions, cost information and utilization rates used in determining the rates.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Section 14301, Welfare and Institutions Code.

HISTORY

1. Amendment filed 12–10–79; effective thirtieth day thereafter (Register 79, No. 50). For prior history see Register 78, No. 27.
2. Amendment filed 9–22–82; effective thirtieth day thereafter (Register 82, No. 39).

§ 53322. Capitation Rate Redetermination.

(a) Capitation rates shall be redetermined during the rate year only when all of the following conditions are met:

(1) A change occurs in the obligations of the plan which results in increased or decreased costs of performing under the contract.

(2) The change in subsection (1) is the result of either of the following:

(A) A change in federal or state law or regulation.

(B) A change in the Department's interpretation or implementation of federal or state law or regulation.

(3) The projected difference in plan costs associated with either of the conditions set forth in subsection (a)(2) exceeds one percent of the statewide average capitation rate for the affected categories of members.

(b) The redetermination of capitation rates shall be subject to the approval of the Secretary, United States Department of Health and Human Services, the State Department of General Services and the State Department of Finance.

(c) Rates redetermined pursuant to subsection (a) shall be effective on the first day of the month in which the change in the obligations of a plan becomes effective. During the period of rate redetermination, continued payment of the rate in effect shall be interim payment only. Final payment shall be:

(1) Subject to increase or decrease to the level of the redetermined rates.

(2) Retroactive to the first day of the month in which the change in the obligations of a plan became effective.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Section 14301, Welfare and Institutions Code.

HISTORY

1. Amendment filed 12–10–79; effective thirtieth day thereafter (Register 79, No. 50). For prior history, see Register 78, No. 27.
2. Amendment filed 12–30–81; effective thirtieth day thereafter (Register 82, No. 1).

§ 53323. Cost Reimbursement.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Section 14301(b), Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (a) filed 12–10–79; effective thirtieth day thereafter (Register 79, No. 50). For prior history, see Register 78, No. 27.
2. Repealer filed 10–11–85; effective thirtieth day thereafter (Register 85, No. 41).

§ 53324. Financial Resources.

(a) Each plan shall maintain adequate financial resources to carry out its contractual obligations. The level of such resources shall be determined for each plan by the Department and shall include, but not necessarily be limited to, the following:

(1) Tangible net equity as defined in Title 10, California Administrative Code, Section 1300.76.

(2) Working capital trends.

(3) Profit and loss trends.

(4) Enrollment growth.

(b) Administrative costs incurred by a plan and its affiliates shall not exceed the limits established by Title 10, California Administrative Code, Section 1300.78.

(c) Each plan shall submit to the Department, within 45 days after the close of each fiscal quarter, a quarterly financial report in the format prescribed by Title 10, California Administrative Code, Section 1300.84.2. The Department may at its discretion waive this reporting requirement.

(d) Each plan shall submit to the Department a copy of any financial report submitted to any other public or private organization, if such report differs in content from any financial report already submitted to the Department.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Section 14450, Welfare and Institutions Code.

HISTORY

1. Amendment filed 7–5–78; effective thirtieth day thereafter (Register 78, No. 27).
2. Editorial correction adding NOTE filed 2–2–83 (Register 83, No. 6).

§ 53326. Financial Security.

(a) Each plan shall provide evidence of and maintain financial security.

(b) Financial security may be in the form of, but is not limited to, one of the following:

(1) A guarantee bond.

(2) A letter of credit.

(3) A time certificate of deposit.

(4) A trust agreement.

(c) The Department shall approve the form and amount of financial security required for each plan contract.

(d) The Department may waive the requirement for financial security for a plan which is qualified as an HMO under Title XIII, Public Health Service Act.

(e) The Department shall take possession of financial security sufficient to indemnify the Department in the event that the plan defaults on any contractual obligation to the Department.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Section 14450, Welfare and Institutions Code.

HISTORY

1. Relettering of subsection (d) to subsection (e) and new subsection (d) filed 12–30–81; effective thirtieth day thereafter (Register 82, No. 1).

§ 53330. Affiliate.

(a) Every affiliate shall:

(1) Furnish, upon request, to the plan and to the Department financial reports relevant to the disposition of funds paid to the affiliate by the plan. Reports shall be prepared according to generally accepted accounting principles and shall provide all financial data required by the plan to fulfill its obligations to the Department for financial reporting.

(2) Make all books and records, which are pertinent to plan contracts with the Department, available for inspection by the Department and HEW. These books and records shall be retained for at least four years from the close of each fiscal year in which the contract is in effect.

HISTORY

1. Amendment filed 7–5–78; effective thirtieth day thereafter (Register 78, No. 27).

§ 53340. Financial Audit.

(a) Each plan shall have an audit performed at least annually by an independent certified public accountant who is independent according to the provisions of Accounting Series Release Number 126 (July 5, 1972) issued by the Securities Exchange Commission. A plan operated by a public entity shall have an annual audit performed in a manner approved by the Department. Additional audits may be required by the Director after a determination of good cause. All certified financial statements shall be filed with the Department not later than 90 days after the close of the plan's fiscal year. Combined financial statements shall be prepared in accordance with the rules set forth in Section 1300.84, Title 10, California Administrative Code, in order to demonstrate the financial position of the overall related health care delivery system when delivery of health care or other services is dependent upon affiliates. Financial statements shall be presented in a form that clearly shows the financial position of the individual plan separately from the combined totals. Interentity transactions and profits shall be eliminated when combined statements are prepared.

(b) The plan shall authorize the independent accountant to allow representatives of the Department, upon written request, to inspect any and all working papers relating to the preparation of the audit report. The inspection shall:

(1) Be conducted at the accountant's place of business in California during normal business hours.

(2) Be conducted at the Department of Health Services' headquarters in Sacramento, California, if the accountant's place of business is outside the State of California.

(3) Include notes, computations, work sheets and rough drafts.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Section 14459, Welfare and Institutions Code.

HISTORY

1. Repealer and new section filed 7–5–78; effective thirtieth day thereafter (Register 78, No. 27).
2. Amendment of subsection (a) filed 12–30–81; effective thirtieth day thereafter (Register 82, No. 1).
3. Amendment filed 9–22–82; effective thirtieth day thereafter (Register 82, No. 39).

§ 53350. Civil Penalties.

(a) The Director may, except as provided in Section 53352 subsection (a), impose one or more of the civil penalties specified in (b) upon a plan which fails to comply with the provisions of Chapter 8, Part 3, Division 9, Welfare and Institutions Code, the provisions of this Chapter, or the terms of the plan contract.

(b) Civil penalties imposed by the Director shall be in the amounts specified below with respect to violation of any provision of:

(1) Article 3 excluding Sections 53312 and 53314.

(A) First violation: $500.

(B) Second violation: $1,000.

(C) Third and each subsequent violation: $5,000.

(2) Article 4.

(A) First violation: $1,000.

(B) Second and each subsequent violation: $5,000.

(3) Article 5.

(A) First violation: $1,000.

(B) Second and each subsequent violation: $1,000.

(4) Sections 53312 and 53314 of this Chapter.

(A) First violation: $500, plus $25 per day for each day that the item to be submitted is late.

(B) Second and each subsequent violation: $500, plus $25 per day for each day that the item to be submitted is late.

(5) The contract which is not specifically governed by regulation in this Chapter.

(A) First violation: $500.

(B) Second and subsequent violations: $1,000.

(6) Chapter 8, Part 3, Division 9 of the Welfare and Institutions Code which is not specifically addressed by regulations in this Chapter.

(A) First violation: $1,000.

(B) Second and subsequent violations: $1,000.

(c) The counting of violations for the purposes of Welfare and Institutions Code Section 14304(b)(3) shall:

(1) Be done without regard to contract term.

(2) Commence with violations occurring on or after the effective date of this section.

(d) Imposition of penalties, under the provisions of subsection (a) shall follow administrative proceedings held in accordance with the provisions of Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2, Government Code.

(e) The Department shall issue a letter of noncompliance to a plan found by the administrative proceedings addressed in subsection (d) to be in violation of any provision of law, regulation or the contract. The letter of noncompliance shall include the violation, sanctions to be imposed and corrective action to be taken within stated time limits. Failure to comply with corrective actions within the time limits given shall be deemed to be a subsequent violation for the purposes of subsection (c).

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Sections 14304 and 14409, Welfare and Institutions Code.

HISTORY

1. Amendment filed 7–5–78; effective thirtieth day thereafter (Register 78, No. 27).
2. Amendment filed 10–11–85; effective thirtieth day thereafter (Register 85, No. 41).

§ 53352. Contract Termination.

(a) The Director shall terminate a contract with a prepaid health plan which the Secretary, HEW, has determined does not meet the requirements for participation in the Medicaid program, Title XIX of the Social Security Act.

(b) The Director shall, except as provided in subsection 53350 (b), terminate a plan contract for reasons including, but not limited to:

(1) Noncompliance with the requirements of law or regulations or terms of the contract.

(2) Failure to pay valid accrued claims within 120 days after receipt by the plan, or failure to ensure that future claims will be paid.

(c) The Director shall give reasonable notice of intention to terminate a plan's contract.

(1) The notice shall be provided to:

(A) The prepaid health plan.

(B) Members of the plan.

(C) Others who may be directly interested.

(D) Other persons and organizations as the Director may deem necessary.

(2) The notice shall include:

(A) The reason for the termination.

(B) The effective date.

(d) The plan may request that a public hearing be held by the Office of Administrative Hearings to allow the Department to show good cause for the termination. The public hearing shall be held 30 days after receipt, by the plan, of the notice of intention to terminate the contract. In order to give the Office of Administrative Hearings sufficient time to arrange for a hearing, the plan request for a hearing shall be submitted no later than five days after receipt of the notice of intention to terminate, by making its request to the Office of Administrative Hearings directly.

(e) The Office of Administrative Hearings shall provide written recommendations concerning the termination of the contract to the Department and to the plan within 30 days after conclusion of the hearing.

(f) Notwithstanding subdivision (d), a plan contract shall be immediately terminated if the Director finds that there is an immediate threat to the health of Medi–Cal beneficiaries enrolled in the plan.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Section 14304, Welfare and Institutions Code.

HISTORY

1. New section filed 7–5–78; effective thirtieth day thereafter (Register 78, No. 27).
2. New subsections (d)–(f) filed 9–22–82; effective thirtieth day thereafter (Register 82, No. 39).

Article 4. Marketing, Enrollment and Disenrollment

§ 53400. Marketing.

(a) Each plan shall be responsible for the conduct of all marketing activities. (Next page is 1300.54.5)

(b) Each plan shall be responsible for complying with all statutory, regulatory and contractual provisions relating to member enrollment and marketing activities.

(c) Each plan shall engage in marketing activities only after receipt of written authorization from the Department.

(d) All marketing methods and presentations shall have written authorization by the Department prior to use.

(e) All printed or illustrated material shall be approved by the Department prior to distribution to members or prospective members.

(f) All marketing orientation and training programs shall have written authorization by the Department prior to use.

(g) A prepaid health plan or marketing representative shall not adopt or utilize any procedure to identify prospective members who have medical or psychiatric problems, other than those specifically excluded from coverage by the contract, in order to exclude such prospective members from enrollment in the plan.

HISTORY

1. New subsection (g) filed 7–5–78; effective thirtieth day thereafter (Register 78, No. 27).

§ 53401. Marketing on County Premises.

(a) Counties may allow marketing of prospective PHP members on county premises by a county employee under any one of the following conditions:

(1) Marketing is performed under the terms of a demonstration project approved by the Department provided the demonstration project meets the requirements of Section 14411, Welfare and Institutions Code.

(2) The county operates the prepaid health plan for which marketing is performed.

(3) The county and the prepaid health plan, for which marketing is to be performed, enter into a written agreement. Prepaid health plans shall obtain written departmental approval to enter into such agreements prior to negotiating agreements with a county.

(A) Agreements entered into pursuant to (a) (3) shall:

1. Not exceed two years.

2. Describe the relationship between marketing activities and the eligibility process.

3. Be submitted to the Department for approval at least 30 days prior to the proposed effective date of the agreement.

(B) Changes to the terms of the agreements, approved by the Department, shall be submitted by the plan to the Department for approval at least 30 days prior to the proposed effective date of the change.

(b) Counties may allow marketing of prospective prepaid health plan members on county premises by a state employee or a prepaid health plan marketing representative under either of the following conditions:

(1) Such marketing is performed under the terms of a demonstration project approved by the Department provided the demonstration project meets the requirements of Section 14411, Welfare and Institutions Code.

(2) The Department, the county and the prepaid health plan for which marketing is to be performed enter into a written agreement. Such agreement shall be for a period not to exceed two years.

(c) All marketing materials and presentations to be used shall be submitted for approval by the Department in accordance with Section 53400.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Section 14411, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (b) filed 12–10–79; effective thirtieth day thereafter (Register 79, No. 50). For prior history, see Register 78, No. 27.

§ 53401.1. Marketing on State Premises.

(a) The State may permit marketing of prospective members on state premises provided the following conditions are met:

(1) Marketing shall be performed by state employees or prepaid health plan marketing representatives.

(2) Marketing is performed under the terms of a written agreement between the Department, the State Department of General Services and the prepaid health plan for which marketing is to be performed. Such agreements shall be for a period not to exceed two years.

(b) All marketing materials and presentations used pursuant to this section require the approval of the Department as specified in Section 53400.

NOTE: Authority cited: Sections 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14201, 14251, 14256, 14261, 14262 (a) (b) (c), 14300, 14301, 14302, 14303, 14303., 14303.2, 14304, 14308, 14312, 14402, 14405, 14406 (a) (b), 14408 (d), 14409 (a) (b), 14410, 14411 (a) (b), 14412, 14413, 14450, 14451, 14451.5 (a) (b), 14452, 14452.5, 14454, 14455, 14456, 14459, 14460, 14475, 14476, 14477, 14478, 14479, 14480, 14481 and 14482, Welfare and Institutions Code.

HISTORY

1. New section filed 7–5–78; effective thirtieth day thereafter (Register 78, No. 27).

§ 53402. Marketing Representatives.

(a) Plan marketing representatives shall be responsible for the enrollment of members.

(b) Each plan shall establish an educational program which assures that its marketing representatives have sufficient knowledge about the plan to thoroughly explain how it operates to prospective and new members.

(c) A marketing representative shall not provide marketing services on behalf of more than one plan.

(d) All marketing representatives shall satisfactorily complete the plan's marketing orientation and training program and the Department's examination for marketing representatives prior to engaging in marketing activities on behalf of any plan.

(e) Marketing representatives shall neither offer nor give any form of compensation or reward to induce or procure Medi–Cal beneficiary enrollment.

§ 53404. Marketing Presentation.

(a) All marketing presentations shall fully disclose the availability of and restrictions upon the services provided by the plan. Such presentations shall, as a minimum, specify:

(1) The scope, access to and availability of services.

(2) The nature of the membership identification which will authorize the member to obtain services.

(3) That members shall obtain all covered health care services rendered in nonemergency situations through the plan's providers.

(4) That medical services required in an emergency may be obtained at all times from specified plan providers or from nonplan providers, if necessary.

(5) That enrollment is voluntary.

(6) That enrollment is subject to a verification and processing period from 15 to 45 days in length.

(7) That disenrollment is possible only under the conditions specified in Section 53440 and only after action by the Department.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Sections 14402 and 14408, Welfare and Institutions Code.

HISTORY

1. Amendment filed 7–5–78; effective thirtieth day thereafter (Register 78, No. 27).

2. Editorial correction adding NOTE filed 2–2–83 (Register 83, No. 6).

§ 53406. Misrepresentation.

(a) Marketing representatives shall not misrepresent themselves, the plan or the Medi–Cal program through false advertising, false statements or in any other manner in order to induce Medi–Cal beneficiaries to enroll in the plan.

(b) Violations of this section shall include, but are not limited to, false or misleading claims, inferences or representations that:

(1) Marketing representatives are employees or representatives of the State or county or anyone other than the plan or the marketing organization by which they are reimbursed.

(2) The plan is recommended or endorsed by any state agency or county agency or any other organization which has not certified its endorsement in writing to the plan.

(3) The State or county recommends that a Medi–Cal beneficiary enroll in a plan.

(4) A Medi–Cal beneficiary will lose benefits under the Medi–Cal program or any other health or welfare benefits to which he is legally entitled if the beneficiary does not enroll in a plan.

HISTORY

1. Amendment of subsection (b) filed 7–5–78; effective thirtieth day thereafter (Register 78, No. 27).

§ 53407. Door–to–Door Marketing.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Section 14408, Welfare and Institutions Code.

HISTORY

1. New section filed 7–5–78; effective thirtieth day thereafter (Register 78, No. 27).
2. Repealer filed 12–30–81; effective thirtieth day thereafter (Register 82, No. 1).

§ 53408. Prepaid Patient Population.

HISTORY

1. Repealer filed 7–5–78; effective thirtieth day thereafter (Register 78, No. 27).

§ 53420. Member Enrollment.

(a) A Medi–Cal beneficiary is enrolled upon completion of all of the following events:

(1) The voluntary signing and dating by the Medi–Cal beneficiary of an enrollment application.

(2) Departmental validation of the beneficiary's application for enrollment.

(3) Departmental verification of the beneficiary's Medi–Cal eligibility.

(4) Addition of the beneficiary's name to the approved list of members, furnished to the plan, which is effective at the first of any given month.

(b) Enrollment shall be voluntary.

(c) Enrollment shall be limited to Medi–Cal beneficiaries who reside within the plan's service area.

(d) A Medi–Cal beneficiary shall not be enrolled in more than one plan at any one time.

(e) Dependent minor children or persons legally judged incapable of acting on their own behalf may be enrolled in a plan by their parents or legal guardians.

§ 53422. Enrollment Application.

HISTORY

1. Repealer filed 10–11–85; effective thirtieth day thereafter (Register 85, No. 41).

§ 53424. Enrollment Application Processing.

(a) Each plan shall accept and submit to the Department enrollment applications from all eligible Medi–Cal beneficiaries in the order in which the applications were made to the plan.

(b) Unless otherwise provided in writing by the Department, each plan shall accept enrollment applications from eligible Medi–Cal beneficiaries to the enrollment maximums specified in the plan contract.

(c) Each plan shall accept enrollment applications regardless of the member's race, religion, age, sex, national origin, or ancestry, and without reference to preexisting medical conditions other than those specifically excluded from coverage under the plan contract.

(d) Each plan shall verify the accuracy of each marketing presentation according to procedures established by the Department prior to submitting an enrollment application to the Department for processing.

(e) Each plan shall submit all enrollment applications to the Department within 15 days of the Medi–Cal beneficiary's signing of the application.

§ 53426. Term of Membership.

Except as provided in Section 53440, membership shall continue indefinitely after enrollment. Membership shall be contingent upon the member's retention of Medi–Cal eligibility as well as eligibility for enrollment in the plan under the terms of the plan contract.

HISTORY

1. Amendment filed 7–5–78; effective thirtieth day thereafter (Register 78, No. 27).

§ 53440. Disenrollment of Members.

(a) Requests for disenrollment made under the following circumstances shall not be processed through the plan's grievance procedure and shall be submitted to the Department for processing within 5 working days after the member signs the disenrollment request:

(1) The member's eligibility as a Medi–Cal beneficiary for enrollment in the plan is terminated.

(2) The enrollment is in violation of Sections 53400, 53401, 53401.1, 53402, 53404 or 53406.

(3) The request for disenrollment is pursuant to Sections 53508 and 53510.

(4) Change of a member's place of residence outside the plan's service area.

(b) The Department shall, on an annual basis, provide in writing to each plan a schedule of the last calendar dates in each month by which requests for disenrollment must be submitted to the Department by the plans to assure that disenrollment occurs in compliance with Section 14413 of the Welfare and Institutions Code. The Department may revise the schedule, as necessary, to assure that the requirements of Section 14413 are met. The Department shall provide reasonable notice to plans of revisions to the schedule.

(c) All requests for disenrollment, except those made pursuant to subsection (a), shall be submitted to the Department no later than the calendar date set forth in the schedule described under subsection (b) for the month following the month in which the member requests disenrollment.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Sections 14303.1, 14303.2, 14409, 14412, 14413 and 14450, Welfare and Institutions Code.

HISTORY

1. Amendment filed 12–10–79; effective thirtieth day thereafter (Register 79, No. 50). For prior history, see Register 78, No. 27.
2. Amendment filed 9–22–82; effective thirtieth day thereafter (Register 82, No. 39).
3. Amendment filed 9–21–84; effective thirtieth day thereafter (Register 84, No. 38).

§ 53442. Disenrollment Requests.

(a) Members desiring disenrollment shall make their requests to an authorized representative of the plan, on forms prescribed by the Department, or to the Department.

(b) Plans shall furnish disenrollment request forms to members immediately upon request by the member. Disenrollment request forms shall be mailed to a member if requested.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Sections 14303.1, 14303.2, 14409, 14412, 14413 and 14450, Welfare and Institutions Code.

HISTORY

1. Amendment filed 7–5–78; effective thirtieth day thereafter (Register 78, No. 27).
2. Amendment filed 9–22–82; effective thirtieth day thereafter (Register 82, No. 39).

§ 53450. Information to New Enrollees.

(a) Each Medi–Cal beneficiary signing an enrollment application shall be informed in writing of the following:

(1) A 15 to 45–day processing period is necessary between the date of application and receipt by the plan of written notice from the Department that the applicant has been enrolled.

(2) Enrollment is not effective until such processing is completed.

(3) The applicant has the right to receive health care services under his/her current arrangement during the processing period, so long as he/she retains Medi-Cal eligibility.

(4) The applicant has the right to request disenrollment without cause at any time.

NOTE: Authority cited: Sections 14203 and 14312, Welfare and Institutions Code. Reference: Sections 14412 and 14413, Welfare and Institutions Code.

HISTORY

1. Amendment filed 10-11-85; effective thirtieth day thereafter (Register 85, No. 41).
2. Amendment filed 11-19-85; effective thirtieth day thereafter (Register 85, No. 47).

§ 53452. Information to New Members.

Each plan shall provide, in writing, in addition to those items of information required by Section 14406, Welfare and Institutions Code, the following to each member within seven days after the effective date of enrollment:

(a) The effective date of enrollment and the term of enrollment.

(b) A description of all available services and an explanation of any service limitations, exclusions from coverage or charges for services when applicable.

(c) The name, telephone number and service site address of the primary care physician chosen by or otherwise made available to the member.

(d) The appropriate use of health care services and the contributions the member can make toward the maintenance of the member's own health.

(e) Information concerning transportation arrangements offered by the plan.

(f) An explanation of the member's right to request a fair hearing under Welfare and Institutions Code Section 10950, et seq. for unresolved grievances and to request a fair hearing without going through the plan's grievance procedures when a health care service requested by the member or a provider has not been provided.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Sections 10950, 14406 and 14450, Welfare and Institutions Code.

HISTORY

1. Amendment filed 7-5-78; effective thirtieth day thereafter (Register 78, No. 27).
2. Amendment filed 12-30-81; effective thirtieth day thereafter (Register 82, No. 1).
3. Repealer of subsection (a) designator, subsection relettering, new subsection (f) and amendment of NOTE filed 10-17-95; operative 11-16-95 (Register 95, No. 42).

§ 53454. Annual Information to Members.

Each plan shall revise, if necessary, and distribute the information specified in Section 53452(b) to each member or the member's family unit at least once every 12 months.

HISTORY

1. Amendment filed 7-5-78; effective thirtieth day thereafter (Register 78, No. 27).

§ 53456. Notification of Changes in Services.

Each plan shall revise and distribute the information specified in Section 53452(b) at least 14 days prior to any changes which the plan makes in services provided or in the locations at which services may be obtained to each member affected by such change. Notification shall be provided as soon as possible in cases of unforeseen circumstances.

HISTORY

1. Amendment filed 7-5-78; effective thirtieth day thereafter (Register 78, No. 27).

§ 53458. Information for Departmental Dissemination.

Each plan shall furnish the Department, upon request, the information required in Section 53452(b) for dissemination to prospective members.

HISTORY

1. Amendment filed 7-5-78; effective thirtieth day thereafter (Register 78, No. 27).

Article 5. Applications, Contracts and Public Hearings

§ 53500. Application Information.

(a) Each organization applying to establish a plan, and each plan applying to renew its contract with the State,shall submit to the Department a package containing the following information:

(1) A brief history and general description of its organization.

(2) A description of its proposed or existing administrative structure, including:

(A) The functions and responsibilities of all principals, policymakers, administrator, medical director and other executive officers.

(B) An organization chart and functional description of each organizational unit.

(3) A list of all principals, policymakers, executive officers, providers of health care services and other key personnel, including the following information:

(A) Full name.

(B) Business address.

(C) Date and place of birth.

(D) Internal Revenue Service employer number, when applicable.

(E) License number, medical specialty and Medi-Cal provider number, when applicable.

(4) Evidence of a current Knox-Keene license or a license application with related correspondence or a license as a nonprofit hospital service plan issued pursuant to Section 11493(e) and Sections 11501 to 11505 of the Insurance Code.

(5) Financial information including:

(A) A detailed cash flow budget, including all written assumptions, estimates and projections, demonstrating the availability and sources of funds to meet the obligations under the contract, for the prospective contract period. Supporting budgets for such affiliates must be provided when the contractor relies upon affiliates to provide services under the contract (see Section 53102 for the definition of "affiliate").

(B) A projected calculation of tangible net equity.

(C) Certified financial statements, presented on a combined basis with all affiliates, as of the contractor's fiscal or calendar year end. No additional disclosures are required when the contractor's submission is within 90 days after the end of the contractor's fiscal year. Unaudited financial statements to the most current quarter end shall also be submitted if the contractor's submission occurs prior to or more than 90 days after the close of the contractor's fiscal year. Unaudited statements shall be prepared on a combined basis.

(D) A listing of all subcontracts between the plan and affiliates.

(E) Proof of adequate professional liability insurance coverage.

(6) A description of the proposed or existing health care delivery system, including information concerning the following:

(A) The scope and availability of services to be provided under the proposed contract.

(B) The ratios of physicians to the prepaid patient population and primary care physicians to the prepaid patient population.

(C) Location and description of all service sites, hospitals, pharmacies, laboratory and X-ray facilities and skilled nursing facilities, with information about the service availability at each location.

(D) The availability of services in emergency circumstances.

(E) The preventive health care programs offered.

(F) The medical record and medical record service system to be used by the plan.

(G) A description of the proposed or existing system to set standards for acceptable medical care, evaluate the quality of care provided, including procedures for the establishment and continuous professional review of the standards for acceptable medical care, review of the performance of medical personnel and review of the effectiveness of controls upon the utilization and costs of services.

(7) A delineation of the zip codes of the proposed or existing contract service area and the location of the Medi–Cal beneficiary target population within the service area.

(8) A description of proposed marketing efforts, with realistic enrollment and marketing cost projections, for both Medi–Cal and private target population enrollment.

(9) Copies of all proposed or existing subcontracts related to securing health care services, administrative and management services or any other services necessary to fulfill its contractual obligations, unless the Department already has a current copy of the subcontract on file.

(10) A description of the proposed or existing system for promptly reimbursing nonplan providers for emergency services rendered to members.

(11) Certification of willingness and ability to enroll members regardless of their race, creed, color, religion, age, sex, national origin, sexual orientation, marital status or ancestry; and without reference to preexisting medical conditions other than those specifically excluded from coverage under the contract.

(12) A description of the proposed or existing procedures by which grievances submitted by members are to be promptly processed and resolved.

(13) Any other information required by the Department for proper evaluation of the application.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Sections 14204 and 14450, Welfare and Institutions Code.

HISTORY

1. Amendment filed 7–5–78; effective thirtieth day thereafter (Register 78, No. 27).
2. Amendment filed 12–30–81; effective thirtieth day thereafter (Register 82, No. 1).
3. Amendment of subsection (a)(5) filed 9–22–82; effective thirtieth day thereafter (Register 82, No. 39).
4. Amendment filed 10–26–84; effective thirtieth day thereafter (Register 84, No. 43).

§ 53502. Rejection of Contract Applications.

(a) The Director may reject applications for the establishment of a plan contract for any reason, including but not limited to:

(1) Failure of the organization to submit, to the satisfaction of the Department, any of the information required by Section 53500.

(2) Failure of the organization to satisfactorily demonstrate to the Department its intent and ability to comply with the terms and conditions of the contract and with all applicable laws and regulations.

(3) Presentation of evidence at a public hearing held in accordance with Section 14300, Welfare and Institutions Code, that the organization has not complied with, or will not be able to comply with, its contractual obligations.

(4) Evidence that the contract should not be entered into or renewed pursuant to Section 53600.

(b) The Director shall have final authority and sole discretion to enter into plan contracts or reject plan contract applications.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Section 14300, Welfare and Institutions Code.

HISTORY

1. New subsection (a)(4) filed 7–5–78; effective thirtieth day thereafter (Register 78, No. 27).
2. Amendment of subsections (a)(2) and (a)(3) filed 9–22–82; effective thirtieth day thereafter (Register 82, No. 39).
3. Amendment of subsection (a) filed 10–26–84; effective thirtieth day thereafter (Register 84, No. 43).

§ 53504. Effect and Term of Contracts.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Sections 14251 and 14302, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (c) filed 7–5–78; effective thirtieth day thereafter (Register 78, No. 27).
2. Repealer filed 12–20–81; effective thirtieth day thereafter (Register 82, No. 1).

§ 53506. Contract Renewals.

(a) A plan contract shall be renewed unless good cause is shown for nonrenewal. Good cause for nonrenewal shall include, but not be limited to, the following:

(1) Failure of the plan to comply with all terms and conditions of the contract and with all applicable laws and regulations.

(2) Failure of the plan to comply with the provisions of a renewed contract and all applicable laws and regulations.

(3) The Department's finding of fact, based upon the plan's past performance under its contract, that it does not have the ability to fulfill the terms of a renewed contract with the State.

(b) The Director shall have final discretionary authority in the renewal of any plan contract.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Section 14303.3, Welfare and Institutions Code.

HISTORY

1. Amendment filed 9–22–82; effective thirtieth day thereafter (Register 82, No. 39).

§ 53508. Mergers or Reorganizations.

(a) The Department may approve plan contract amendments relating to mergers or reorganizations if, in addition to satisfying the conditions

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of Section 14303.1 or 14303.2, Welfare and Institutions Code as applicable, the following conditions are satisfied:

(1) The surviving organization meets the requirements of Section 53124.

(2) The information required by Section 53500 is submitted for the surviving organization.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Sections 14300, 14303.1 and 14303.2, Welfare and Institutions Code.

HISTORY

1. Amendment filed 12–10–79; effective thirtieth day thereafter (Register 79, No. 50). For prior history, see Register 78, No. 27.
2. Amendment of subsection (a)(6) filed 9–22–82; effective thirtieth day thereafter (Register 82, No. 39).
3. Amendment filed 10–26–84; effective thirtieth day thereafter (Register 84, No. 43).

§ 53510. Reorganizations and Intraplan Mergers.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Sections 14300 and 14303.2, Welfare and Institutions Code.

HISTORY

1. Amendment filed 12–10–79; effective thirtieth day thereafter (Register 79, No. 50). For prior history, see Register 78, No. 27.
2. Amendment filed 9–22–82; effective thirtieth day thereafter (Register 82, No. 39).
3. Repealer filed 10–26–84; effective thirtieth day thereafter (Register 84, No. 43).

§ 53518. Prehearing Requirements.

(a) Each prepaid health plan submitting a proposal for an initial contract and each plan wishing to renew its contract or merge with another plan shall submit a formal proposal pursuant to Section 53500 to the Department at least 150 days prior to the date of the initial contract, renewal or merger.

(b) The Department shall complete its review of the proposal within 30 days after its receipt. The Department shall notify the plan within 30 days after receipt of the proposal of any deficiencies in the proposal. The plan shall supply any additional information requested by the Department in the deficiency notification within 15 days after notification of deficiencies by the Department.

(c) The Department shall publish a public notice in accordance with the provisions of Section 53520.

(d) At least five working days prior to the date of a public hearing, the Department shall make available to the plan and to the public all information which it intends to present at the hearing. This information shall be provided directly to the plan. In addition, information shall be made available to the public by making one or more copies available for public inspection in a public building within the service area of the plan. The location of such public building and the availability of such information shall be included in the notice of public hearing sent to plan members and to interested members of the general public.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Section 14300, Welfare and Institutions Code.

HISTORY

1. Amendment filed 9–22–82; effective thirtieth day thereafter (Register 82, No. 39).

§ 53520. Public Notice and Public Hearings.

(a) The Department shall publish a public notice at least 120 days prior to:

(1) Entering into an initial or renewed contract.

(2) Amending an existing contract for the purpose of:

(A) Reducing the scope or availability of services provided by the prepaid health plan.

(B) Enlarging the service area of the prepaid health plan.

(C) Increasing the maximum enrollment permitted under the contract.

(D) Making any other change in the plan's organization, operation or delivery of services which, in the Department's estimation, will have a substantial impact on the ability of enrollees to obtain health care services.

(b) The public notice shall appear in at least two major newspapers of general distribution in the service area of the prepaid health plan.

(c) Any person may request that a public hearing be held. The written request shall be:

(1) Received by the Department no later than 30 calendar days after publication of the notice of intent to contract; and

(2) Accompanied by an explanation of the reason for the request and a description of problems or questions regarding the plan's ability to meet its contractual obligations.

(d) The Director shall determine whether the request for hearing is reasonable and shall notify the person requesting a hearing of the determination. A request shall be considered reasonable if, in the Department's estimation, the request raises previously unaddressed problems or poses previously unaddressed questions regarding the plan's ability to meet its contractual obligations.

(e) A public hearing shall be held by the Department if it determines that the request for hearing is reasonable and warrants a full public hearing.

(f) Public hearings held pursuant to Section 14300, Welfare and Institutions Code, shall be conducted within the service area of the plan.

(g) Notification of the time, date and place of the public hearing shall be placed in at least one general circulation newspaper distributed within the service area of the plan at least 15 calendar days prior to the hearing. The Department shall mail a notification of the time, date and place of the hearing to the following:

(1) The organization applying for a contract, contract renewal or merger.

(2) Members of the plan on which the hearing is being held.

(3) Any interested party who requests notification of such public hearings.

(4) Those public interest groups, consumer advocate groups or professional associations within the service area which may be affected by the contract and for which the Department has the name and address of the organization or a responsible party therefrom.

(5) The person requesting the hearing.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Sections 14300 and 14303, Welfare and Institutions Code.

HISTORY

1. Amendment of subsections (b), (d), (e) and (f) filed 7–5–78; effective thirtieth day thereafter (Register 78, No. 27).
2. Repealer and new section filed 9–22–82; effective thirtieth day thereafter (Register 82, No. 39).

§ 53522. Public Hearing Process.

(a) The Department shall prepare the agenda for the hearing and an informational attachment to the agenda, translated into languages appropriate to the plan's actual or potential membership. The informational summary shall serve to provide the public hearing audience with background material on the plan.

(b) Each public hearing shall be presided over by a duly authorized hearing officer.

(c) The hearing officer shall present an oral statement designed to inform the public of the authority and purpose for holding the hearing, to explain how the hearing will be conducted, to provide the public with directions on presenting testimony and to solicit testimony from the public.

(d) Departmental management, fiscal and medical audit information on the plan shall be introduced at the hearing. A representative from the Department shall introduce and summarize all of the documents to be entered into the public hearing record by the Department.

(e) The plan's representative shall introduce and summarize any documentation which it desires to have entered into the public hearing record. All charts and other presentation material shall be in a size or format specified by the Department.

(f) Public input from the audience shall be made on the basis of the order in which an identification card for persons wishing to make a presentation is received by the hearing officer. All persons wishing to testify or ask questions shall be afforded that opportunity. The plan and the Depart-

ment shall have a sufficiently broad representation of personnel in attendance to answer questions asked by interested parties.

(g) Witnesses at the hearing shall not be subject to questioning except under the following conditions:

(1) Representatives of the plan shall be subject to questioning by representatives of the Department. In addition, members of the public may direct questions to representatives of the plan under such conditions and pursuant to such procedures as may be determined by the hearing officer.

(2) Representatives of the Department shall be subject to questioning by representatives of the plan. In addition, members of the public may direct questions to representatives of the Department under such conditions and pursuant to such procedures as may be determined by the hearing officer.

(3) Expert witnesses giving testimony either favorable or unfavorable to the plan may be subject to questioning under such conditions and pursuant to such procedures as may be determined by the hearing officer.

(4) The hearing officer may ask questions of any person giving testimony.

(h) Testimony at the hearing shall not be given under oath.

(i) The hearing officer shall close the public hearing when there are no more requests to present oral statements or questions. In the event that there is relevant evidence, which in the exercise of reasonable diligence could not have been produced at the public hearing, the hearing officer may in his discretion continue the hearing for the submission of such evidence or may provide for the submission of such evidence pursuant to such procedures as he deems appropriate.

(j) The hearing officer shall make a proposed finding of fact, based only upon such evidence as is contained in the public hearing record, regarding the plan's compliance with its previous contract obligations, when applicable, and its ability to comply with its proposed contract obligations.

(k) The proposed finding of fact by the hearing officer shall be utilized by the Department in its decision process for contract approval or denial.

NOTE: Authority cited: Section 14312, Welfare and Institutions Code. Reference: Section 14300, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 2–2–83 (Register 83, No. 6).

Article 6. Conflict of Interest

§ 53600. Prohibitions Against Contracting.

(a) A plan contract shall not be approved or renewed by the Department if any state officer or state employee or his spouse or his minor children has a substantial financial interest in (1), (2) or (3). For the purposes of this subsection, state employee includes any Department employee in an analyst, auditor or medical personnel classification who has direct responsibility for the negotiation, development or management of a prepaid health plan contract.

(1) The contract or the contracting organization.

(2) Any contract with the contracting organization.

(3) Procurement of a contract for the contracting organization.

(b) A prepaid health plan contract shall not be approved or renewed if a state officer or state employee provides legal or management services to the contracting organization. A state officer or state employee shall not share in the income or any remuneration derived from the provision of legal or management services to a contracting organization.

(c) A prepaid health plan contract shall not be approved or renewed if any state officer or state employee receives anything of value for the purpose of influencing or attempting to influence the negotiations for approval or renewal of the contract.

(d) A plan shall not contract with any subcontractor if any of the following persons connected with the plan have a substantial financial interest in the subcontractor:

(1) Any person also having a substantial financial interest in the plan.

(2) Any director, officer, partner, trustee or employee of the plan.

(3) Any member of the immediate family of any person designated in (1) or (2).

(e) The prohibition in subsection (d) shall not apply to the plan's subsidiary corporation, its parent corporation, another subsidiary of its parent corporation or with an affiliate of the plan if combined or consolidated financial statements including these entities are prepared at the time of the annual audit required in Section 53340 and at the time of filing quarterly reports required by Section 53324.

(f) A prepaid health plan contract shall not be approved, renewed or continued by the Department if a state officer or state employee is employed in a management or consultant position by the contractor or subcontractor within one year after the state officer or state employee terminated state employment.

(1) For purposes of this subsection, state employee means any appointive or civil service employee of the Department or the Health and Welfare Agency at the unit chief level or higher who, within two years prior to leaving state employment, was employed in the Alternative Health Systems Program.

(2) Employees of the Department who are assigned as auditors or analysts which are not directly responsible for the development, negotiations, contract management or direct supervision of prepaid health plans shall not be subject to the provisions of this section.

(3) Employees of the Department who are assigned as contract managers shall not be subject to the provisions of this subsection unless they are employed by a prepaid health plan or a contractor of the prepaid health plan for which, within two years prior to leaving state employment, they were responsible for development, negotiations, contract management or direct supervision of that prepaid health plan contract.

(4) This subsection shall not apply to any employee, appointee or person on contract with the Department who is employed, appointed or contracted with by the Department to fulfill:

(A) The purposes of a federal grant provided that such person does not supervise, develop, manage or negotiate a prepaid health plan contract.

(B) A specific function for the Department, on a temporary basis not to exceed 120 days, which does not include supervising, developing, managing or negotiating a prepaid health plan contract.

HISTORY

1. Amendment filed 7–5–78; effective thirtieth day thereafter (Register 78, No. 27).

§ 53601. Disclosure Statements.

NOTE: Authority cited: Sections 14124.5 and 1431, Welfare and Institutions Code. Reference: Sections 14201, 14251, 14256, 14261, 14262 (a) (b) (c), 14300, 14301, 14302, 14303, 14303.1, 14303.2, 14304, 14308, 14312, 14402, 14405, 14406 (a) (b), 14408 (d), 14409 (a) (b), 14410, 14411 (a) (b), 14412, 14413, 14450, 14451, 14451.5 (a) (b), 14452, 14452.5, 14454, 14455, 14456, 14459, 14460, 14475, 14476, 14477, 14478, 14479, 14480, 14481 and 14482, Welfare and Institutions Code.

HISTORY

1. New section filed 7–5–78; effective thirtieth day thereafter (Register 78, No. 27).

2. Repealer filed 10–11–85; effective thirtieth day thereafter (Register 85, No. 41).

Article 7. Emergency Services Claims Disputes

§ 53620. General Provisions.

(a) The provisions of this article shall establish the procedures for Department resolution of disputes concerning payment for emergency services rendered by non–plan providers to prepaid health plan members who are Medi–Cal beneficiaries.

(b) The procedures established in this article may be used to resolve disputes which meet all of the following requirements:

(1) Arise out of services rendered after September 28, 1977.

(2) Have not previously been resolved and are not presently the subject of litigation or arbitration.

(3) Involve plans with current, active contracts with the Department.

(c) Nothing in this article shall be construed to give rise to any right of action or other claim against the Department.

(d) Prepaid health plans and nonplan providers shall not bill prepaid health plan members for services which are or have been the subject of review pursuant to this article.

NOTE: Authority cited: Sections 14312 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

HISTORY

1. New Article 7 (Sections 53620–53702, not consecutive) filed 6–12–79; effective thirtieth day thereafter (Register 79, No. 24).
2. Amendment filed 9–3–82; effective thirtieth day thereafter (Register 82, No. 36).

§ 53622. Definitions.

(a) The following definitions shall govern the construction of this article unless the context or subject matter otherwise requires:

(1) "Day" means a calendar day.

(2) "Dispute" means a dispute concerning payment for care under emergency circumstances provided to plan members by nonplan providers.

(3) "Emergency services" or "care under emergency circumstances" means those health care services required for alleviation of severe pain or immediate diagnosis and treatment of unforeseen medical conditions which if not immediately diagnosed and treated would lead to disability or death. Such emergency is deemed to continue until:

(A) In reasonable medical judgment, the patient's condition has stabilized sufficiently so as to permit either:

(1) Discharge, or

(2) Referral and transfer of the patient, in accordance with instructions from the patient's plan, to such level of treatment or care as may be appropriate, and

(B) A reasonable time within which to complete such discharge, or referral and transfer.

(4) "Party" means the provider, the plan or any person, other than an officer or employee of the Department acting in an official capacity, who has been allowed to appear in the proceeding.

(5) "Provider" means a nonplan provider who files a claim against a plan for emergency services in accordance with this article.

NOTE: Authority cited: Sections 14312 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (a)(3) filed 9–3–82; effective thirtieth day thereafter (Register 82, No. 36).

§ 53624. Claims Filing.

(a) A provider may submit a dispute to the Department by filing a claim accompanied by a copy of the proof of service of the claim on the plan.

(b) A claim and proof of service shall be filed within 120 days after the dispute arose.

(c) For the purposes of this article, a dispute is deemed to arise upon the occurrence of the earlier of the following events:

(1) A plan sends notice of rejection or reduction of a demand for payment for care under emergency circumstances. In this case, the dispute arises on receipt of the notice by the provider.

(2) A plan fails to pay a demand for payment for care under emergency circumstances within 60 days after the demand was properly mailed to the plan.

(d) No claim shall be filed or prosecuted by an assignee of the claim.

(e) A claim shall not be accepted for filing concerning any dispute in which the demand for payment was made more than two years after the termination of the provider's services.

NOTE: Authority cited: Sections 14312 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

HISTORY

1. Amendment filed 9–3–82; effective thirtieth day thereafter (Register 82, No. 35).
2. Editorial correction of subsection (c)(1) (Register 2006, No. 20).

§ 53626. Filing and Service.

(a) All papers shall be filed at the State Department of Health Services, Office of Legal Services, 714 P Street, Sacramento, CA 95814, and shall be deemed filed as of the postmark date, or receipt by the Department, if no legible postmark is provided.

(b) Service may be accomplished and proved by:

(1) Ordinary mail, postage fully prepaid, and the execution of a declaration of service by mail, made under penalty of perjury.

(2) Any means authorized by law for use in civil actions.

(c) Proof of service shall include the following information stated under penalty of perjury to be true:

(1) The name of the patient to which the served document pertains.

(2) Specific identification of each document served.

(3) The identity of the person or party served, the date of service and address to which service was tendered.

(d) Except as may otherwise be provided in this article, all documents and papers filed by a provider hereunder shall be properly served on the plan. Each plan shall keep its State contract officers apprised of the identity and address of the person authorized to accept such service on behalf of the plan. A plan shall also provide this information in writing upon request to provider representatives.

NOTE: Authority cited: Sections 14312 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

HISTORY

1. Amendment filed 9–3–82; effective thirtieth day thereafter (Register 82, No. 36).

§ 53628. Claim Content.

(a) The claim shall be entitled "Emergency Services Claim" and shall contain the following information:

(1) The full name of the patient and whether such patient was a Medi–Cal beneficiary during the period of service.

(2) The title, name, and address of both the provider and the provider's authorized representative if any.

(3) The name and address of the prepaid health plan of which the patient was a member during the period of treatment, together with the present name and address of the plan.

(4) The period of treatment for which payment is requested.

(5) The date the dispute arose and the facts establishing such date pursuant to Section 53624.

(6) The total amount claimed for the services provided.

(7) A statement that a demand upon the plan for payment for such services has been made by the provider, and the date and method of transmission of such demand.

(8) A statement setting forth all facts supporting the contention that the treatment given was an emergency service within the meaning of Section 53622. A mere statement that an emergency existed is not sufficient.

(9) A statement of facts showing that the patient could not have been transferred to the care of the prepaid health plan during the period claimed.

(10) A statement that the dispute has not previously been resolved, is not the subject of pending litigation, arbitration, or billing to Medi–Cal.

(11) A statement that the provider has supplied to the plan copies of all medical records or other supporting documents on which the provider relies, in accordance with paragraph (d).

(b) Legible copies of the following documents shall, if in provider's possession or under provider's control, be submitted as attachments to the claim:

(1) A copy of any document from the prepaid health plan rejecting or reducing the provider's demand;

(2) A copy of the provider's demand for payment itemizing the services provided.

(3) A copy of the proof of service required by Section 53624.

(c) The claim shall:

(1) Be dated and signed by the provider or the provider's authorized representative.

(2) Designate an individual and an address for the service of any and all papers relating to proceedings conducted under this article.

(d) The provider shall attach copies of all medical records, or other supporting documents on which the provider relies, to the copy of the claim which the provider serves upon the plan in accordance with Section 53624.

NOTE: Authority cited: Sections 14312 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

HISTORY

1. Amendment filed 9–3–82; effective thirtieth day thereafter (Register 82, No. 36).

§ 53630. Dismissal After Notice of Defective Claim.

(a) The hearing officer shall notify the provider of any defects if the hearing officer finds that the claim fails to conform with the requirements of Sections 53620, 53624, and 53628. The provider shall have 60 days from the date of mailing of the notice within which to file and serve a corrected claim. The claim shall be dismissed upon the provider's failure to file a timely corrected claim with proof of service.

(b) A claim shall not be dismissed for the late filing or service if, prior to the issuance of a decision in the matter:

(1) The provider shows good cause for the late filing or service.

(2) The parties have stipulated in writing that the time may be extended.

NOTE: Authority cited: Section 14312 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

HISTORY

1. Amendment filed 9–3–82; effective thirtieth day thereafter (Register 82, No. 36).

§ 53632. Notice of Defense.

(a) The plan shall file a response entitled, "Notice of Defense" which shall:

(1) Admit or deny, in whole or in part, each numbered portion of the claim. Matters not denied are deemed admitted. Denials may be based on a lack of information sufficient to identify the transaction or prepare a defense.

(2) Introduce new information in defense of the plan's position, if any.

(3) State the reasons for rejecting the claim.

(b) The Notice of Defense shall include copies of all supporting documents, if any.

(c) The Notice of Defense shall state any limitation of liability asserted by the plan according to Section 53698.

(d) The Notice of Defense shall:

(1) Be signed by or on behalf of the plan and shall contain the plan's address.

(2) Designate an individual and an address for the service of any and all papers relating to proceedings conducted under this article.

(3) State the name and address of the plan's authorized representative, if any.

(e) The plan, within 60 days after receiving service of a claim, shall:

(1) Serve a copy of the Notice of Defense on the provider.

(2) File the Notice of Defense and a copy of the proof of service with the Department.

NOTE: Authority cited: Sections 14312 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

HISTORY

1. Amendment filed 9–3–82; effective thirtieth day thereafter (Register 82, No. 36).

§ 53634. Defaults.

(a) Failure to file a timely Notice of Defense and to serve a copy on the provider or failure to appear at a hearing shall be deemed a default and a waiver of the defaulting party's right to a hearing unless, prior to decision in the matter:

(1) The party shows good cause for the failure.

(2) All parties have stipulated in writing that the failure shall not be deemed a default.

(b) The hearing officer may, following a default:

(1) Render a decision based upon the defaulting party's express admissions, or upon other evidence.

(2) Receive affidavits as evidence without notice to the defaulting party.

(3) Render a decision against the defaulting party without receiving evidence or argument if the burden of proof is on the defaulting party.

NOTE: Authority cited: Sections 14312 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (a) and repealer of subsection (c) filed 9–3–82; effective thirtieth day thereafter (Register 82, No. 36).

§ 53636. Amended or Supplemental Claims.

(a) The provider may file and serve an amended or supplemental claim within 90 days of the original filing date, except where dismissal has been entered pursuant to Section 53630.

(b) The plan shall be given 45 days to file a response to any amended or supplemental claim.

NOTE: Authority cited: Sections 14312 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

HISTORY

1. Amendment filed 9–3–82; effective thirtieth day thereafter (Register 82, No. 36).

§ 53638. Consolidation of Claims.

(a) The hearing officer may consolidate claims for hearing and decision involving the same parties upon notice to all parties, if parties agree or if no substantial right of any party will be prejudiced.

(b) When claims have been consolidated:

(1) A consolidated hearing may be held.

(2) A single record of the proceedings shall be made.

(3) Evidence introduced in one claim may be considered as introduced in the others.

(4) Separate or consolidated decisions shall be made, as appropriate.

NOTE: Authority cited: Sections 14312 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (a) filed 9–3–82; effective thirtieth day thereafter (Register 82, No. 36).

§ 53640. Additional Parties.

The hearing officer may join other persons, upon their consent, as parties to the proceeding in order to resolve the issues and to render a decision. The hearing may be continued as necessary.

NOTE: Authority cited: Sections 14312 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

§ 53642. Withdrawal or Settlement of Claim.

(a) The provider may, by written request, withdraw a claim at any time prior to issuance of a decision. The hearing officer shall then issue a notice to the parties dismissing the claim.

(b) The parties may enter into a stipulated agreement settling the claim at any time prior to issuance of a decision. The stipulated agreement, signed by the parties, shall be submitted in writing to the hearing officer, who shall issue a decision and order, in accordance with Section 53691.

(c) Relief, in accordance with Section 53696, from a decision or order of settlement or dismissal, shall result in the reinstatement of a previously withdrawn or settled claim.

NOTE: Authority cited: Sections 14312 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

HISTORY

1. Amendment filed 9–3–82; effective thirtieth day thereafter (Register 82, No. 36).

§ 53644. Discovery.

NOTE: Authority cited: Sections 14312 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

HISTORY

1. Repealer filed 9–3–82; effective thirtieth day thereafter (Register 82, No. 36).

§ 53646. Submissions.

NOTE: Authority cited: Sections 14312 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

HISTORY

1. Repealer filed 9–3–82; effective thirtieth day thereafter (Register 82, No. 36).

§ 53648. Nondisclosure.

NOTE: Authority cited: Sections 14312 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

HISTORY

1. Repealer filed 9–3–82; effective thirtieth day thereafter (Register 82, No. 36).

§ 53650. Expedited or Deferred Proceedings.

NOTE: Authority cited: Sections 14312 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

HISTORY

1. Repealer filed 9–3–82; effective thirtieth day thereafter (Register 82, No. 36).

§ 53651. Small Claims Procedure.

NOTE: Authority cited: Sections 14312 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

HISTORY

1. Repealer filed 9–3–82; effective thirtieth day thereafter (Register 82, No. 36).

§ 53652. Request for Hearing.

(a) Within 20 days after the filing of a Notice of Defense, any party may file a request for a hearing. Each party may appear before the hearing officer, personally or by representative, and participate in the hearing if any party files a timely request for hearing.

(b) Each party shall be deemed to have waived the right to a hearing if a timely request for a hearing is not filed. The hearing officer may proceed to render a decision upon the written record, as provided in Section 53654.

(c) Where a hearing has not been requested, one may still be held upon a proper showing of good cause or at the discretion of the hearing officer.

NOTE: Authority cited: Sections 14312 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

HISTORY

1. Amendment filed 9–3–82; effective thirtieth day thereafter (Register 82, No. 36).

§ 53654. Decision on Written Record.

(a) The hearing officer may render a proposed decision based on the record if all of the parties have waived their right to oral hearing.

(b) The hearing officer shall make a record of the relevant written evidence and argument. The parties, within the time limit specified by the hearing officer, may submit additional written argument and evidence.

(c) Such written evidence shall be considered as all of the evidence in the proceeding, and the decision shall be based thereon subject to the procedure set forth in Section 53692.

NOTE: Authority cited: Sections 14312 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

HISTORY

1. Amendment filed 9–3–82; effective thirtieth day thereafter (Register 82, No. 36).

§ 53656. Prehearing and Posthearing Conferences.

(a) The hearing officer may order the holding of prehearing or posthearing conferences for the purpose of facilitating the disposition of the proceeding. Attendance may be by telephone conference call.

(b) The hearing officer may preside at the conference or may assign responsibility for the conduct of the conference to the medical consultant assigned to the hearing. Agreements and actions resulting from the conference shall become part of the hearing record and be binding upon all parties.

NOTE: Authority cited: Sections 14312 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

§ 53658. Notice of Hearing.

(a) The hearing officer shall schedule the matter for hearing upon the timely application of any party, or upon the hearing officer's own motion. Notice of hearing shall be served upon all parties at least 15 days prior to the date of the hearing unless the parties:

(1) Consent to shorter notice.

(2) Waive notice.

NOTE: Authority cited: Sections 14312 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

HISTORY

1. Repealer of subsection (b) filed 9–3–82; effective thirtieth day thereafter (Register 82, No. 36).

§ 53660. Time and Place of Hearing.

(a) The Department shall determine the time and place of hearing. The scheduling of time and place of hearing shall be subject to the availability of Department staff.

(b) The hearing shall be held as soon as reasonably possible after any request for hearing, in accordance with Section 53652.

NOTE: Authority cited: Sections 14312 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

HISTORY

1. Amendment filed 10–11–85; effective thirtieth day thereafter (Register 85, No. 41).

§ 53662. Witnesses and Subpoenas.

Each party shall arrange for the appearance of the witnesses called by that party. Subpoenas and subpoenas duces tecum shall be issued by the hearing officer in accordance with Section 11510, Government Code.

NOTE: Authority cited: Sections 14312 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

HISTORY

1. Amendment filed 10–11–85; effective thirtieth day thereafter (Register 85, No. 41).

§ 53664. Depositions.

(a) The hearing officer, on application of any party, may order the deposition of a witness to be taken for use as evidence, but not for discovery, if:

(1) The witness cannot be compelled to attend the hearing.

(2) Other circumstances warrant such action.

(b) The deposition shall be taken in the manner prescribed by law for the taking of depositions in civil actions. The party who applies for the taking of the deposition of a person residing outside the State shall obtain the necessary order of the superior court, in the manner prescribed by law for like depositions in civil actions.

NOTE: Authority cited: Sections 14312 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

§ 53666. Hearing Officer.

(a) The hearing officer, designated by the Director, shall conduct proceedings on emergency claims disputes governed by this article.

(b) The hearing officer may:

(1) Administer oaths and affirmations.

(2) Issue subpoenas and subpoenas duces tecum authorized by this article.

(3) Determine the order in which evidence shall be received.

(4) Control the taking of evidence as appropriate to ascertain the facts and safeguard the rights of the parties.

(5) Rule on offers of proof.

(6) Question any witness and call and examine additional witnesses in order to fully develop the hearing record.

(7) Dispose of procedural requests or similar matters.

(8) Take other action authorized by law.

(c) The hearing officer shall voluntarily withdraw and be disqualified from any proceedings in which the hearing officer:

(1) Cannot give a fair or impartial hearing.

(2) Has an interest.

(d) Any party may request the disqualification of a hearing officer by filing an affidavit stating in detail the grounds for disqualification. The Department's Chief Counsel shall investigate the allegations and render a written decision, copies of which shall be mailed to all parties. The Chief Counsel need not investigate or respond to the allegations if the Director designates another hearing officer.

NOTE: Authority cited: Sections 14312 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

HISTORY

1. Amendment filed 10–11–85; effective thirtieth day thereafter (Register 85, No. 41).

§ 53668. Medical Consultant.

(a) The hearing officer may be assisted by a medical consultant employed by the Department. The medical consultant shall have expertise or qualifications appropriate to the subject matter of the dispute, when possible.

(b) The medical consultant shall:

(1) Investigate and review the subject matter of the dispute, as directed by the hearing officer.

(2) Submit a written report of the resulting opinions, findings or conclusions. A copy of the report shall be:

(A) Entered in the hearing record.

(B) Provided to each party.

(c) The medical consultant may:

(1) Question any witness, during the hearing, in order to fully develop the hearing record.

(2) Be called and examined as the witness of the hearing officer.

(3) Be called by any party and examined, as if on cross–examination, if the medical consultant does not otherwise testify.

(d) The medical consultant may submit additional reports, as may be appropriate, if the hearing record is held open for the introduction of additional evidence. The parties shall have the opportunity for rebuttal in accordance with Section 53670.

NOTE: Authority cited: Sections 14312 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (d) filed 9–3–82; effective thirtieth day thereafter (Register 82, No. 36).

§ 53670. Evidence Rules.

(a) Oral evidence shall be taken only on oath or affirmation.

(b) Each party shall have the right to:

(1) Call and examine witnesses.

(2) Introduce exhibits.

(3) Cross–examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination.

(4) Impeach any witness regardless of which party first called the witness to testify.

(5) Rebut any evidence.

(c) The hearing need not be conducted according to technical rules relating to evidence and the witnesses. Evidence shall be admitted if it is relevant and of the nature which responsible persons are accustomed to rely upon in the conduct of serious affairs. Evidence may be admitted regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. The hearing officer shall determine the weight to be accorded any admissible evidence.

(d) Hearsay evidence that is admitted may be used for the purpose of supplementing and explaining other evidence. Hearsay evidence shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

(e) Unduly repetitious evidence may be excluded.

(f) The rules of privilege shall be effective to the extent required by law.

NOTE: Authority cited: Sections 14312 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

HISTORY

1. Repealer and new section filed 9–3–82; effective thirtieth day thereafter (Register 82, No. 36).

§ 53672. Affidavits As Evidence.

An affidavit shall have the same effect as oral testimony if the party wishing to introduce the affidavit complies with Section 11514, Government Code.

NOTE: Authority cited: Sections 14312 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

§ 53674. Official Notice.

The hearing officer may take official notice of generally accepted technical or scientific matter within the Department's special field or facts which may be judicially noticed by the courts of this State, in accordance with Section 11515, Government Code.

NOTE: Authority cited: Sections 14312 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

§ 53676. Hearing Procedure.

(a) The hearing shall be open to the parties and to such other persons as the hearing officer may deem necessary and proper.

(b) Oral testimony shall be taken only on oath or affirmation.

(c) Each party shall have the right to:

(1) Be represented by counsel.

(2) Call and examine witnesses.

(3) Introduce exhibits.

(4) Cross–examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination.

(5) Impeach any witness regardless of which party first called the witness.

(6) Rebut any evidence presented.

(d) The hearing officer shall preside over and regulate the conduct of the hearing.

(e) The hearing shall be conducted in the English language.

(1) Proponents of any testimony to be offered by a witness who does not speak proficient English shall provide an interpreter.

(2) The interpreter must be accepted by the hearing officer as proficient in the English language and the language of the witness.

(3) The party providing the interpreter shall pay the costs of the interpreter.

NOTE: Authority cited: Sections 14312 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

HISTORY

1. Amendment of subsections (d) and (e) filed 10–11–85; effective thirtieth day thereafter (Register 85, No. 41).

§ 53678. Record of Hearing.

A complete record of the proceedings at the hearing shall be made by electronic recording. The parties may obtain copies of the recording or any transcript, at cost and on reasonable notice.

NOTE: Authority cited: Sections 14312 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

HISTORY

1. Amendment filed 9–3–82; effective thirtieth day thereafter (Register 82, No. 36).

§ 53680. Joint Hearings.

NOTE: Authority cited: Sections 14312 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

HISTORY

1. Repealer filed 9–3–82; effective thirtieth day thereafter (Register 82, No. 36).

§ 53682. Severance of Issues.

NOTE: Authority cited: Sections 1412 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

HISTORY

1. Repealer filed 9–3–82; effective thirtieth day thereafter (Register 82, No. 36).

§ 53684. Oral and Written Argument.

(a) The hearing officer shall permit oral argument, at the request of any party, and determine the manner and duration of argument. Written argument may be permitted at the request of any party. The parties shall be advised concerning the time and manner for filing written arguments.

(b) The hearing officer may, at any time, direct the parties to file written briefs or memoranda discussing any or all issues raised by the proceedings.

NOTE: Authority cited: Sections 14312 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (b) filed 9–3–82; effective thirtieth day thereafter (Register 82, No. 36).

§ 53686. Continued Hearings.

(a) The hearing officer, prior to issuance of a proposed decision in the matter, may continue or reopen a hearing:

(1) On the hearing officer's own initiative.

(2) At the request of any party only upon a showing of good cause.

(b) Notice of the time and place of the continued hearing:

(1) May be oral if the continuance is ordered during a hearing session.

(2) Shall be in writing to all parties, in accordance with this article, if ordered outside a hearing session.

NOTE: Authority cited: Sections 14312 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (a) filed 9–3–82; effective thirtieth day thereafter (Register 82, No. 36).

§ 53688. Additional Evidence.

NOTE: Authority cited: Sections 14312 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

HISTORY

1. Repealer filed 9–3–82; effective thirtieth day thereafter (Register 82, No. 36).

§ 53690. Burden of Proof.

(a) The provider shall bear the burden of proving, by a preponderance of the evidence, all facts supporting entitlement to relief.

(b) The plan shall bear the burden of proving, by a preponderance of the evidence, all facts presented in defense against the claim.

(c) The party bearing the burden of proof of a particular fact shall initially bear the burden of producing evidence of that fact.

NOTE: Authority cited: Sections 14312 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

§ 53691. Decisions by the Hearing Officer.

(a) The hearing officer may issue a decision or order in accordance with paragraph (b) which shall be final. The hearing officer shall be deemed to act for and on behalf of the Director. The decision shall recite the Director's name as the signatory of such decision, in the following form: "(Name of Director), Director of Health Services, by (signature of hearing officer), Hearing Officer."

(b) Decisions by the hearing officer may be issued pursuant to this section, if:

(1) The hearing officer finds that the claim should be dismissed, pursuant to Section 53630.

(2) A claim has been withdrawn or settled, pursuant to Section 53642.

(3) Either party defaults in accordance with the provisions of Section 53634.

(c) Relief from any decision or other final action of a hearing officer pursuant to this section may be had in accordance with the provisions of Section 53696.

NOTE: Authority cited: Sections 14312 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

HISTORY

1. New section filed 9–3–82; effective thirtieth day thereafter (Register 82, No. 36).

§ 53692. Decision.

(a) The hearing officer shall submit a proposed decision to the Director in writing within 60 days after the record has been closed. The proposed decision shall contain findings of fact, a determination of the issues presented, and an order.

(b) The Director may take any of the following actions within 30 days after submission of the hearing officer's proposed decision:

(1) Adopt the proposed decision.

(2) Reject the proposed decision and order that a new proposed decision be prepared based upon the record.

(3) Direct the hearing officer to reopen the hearing for the taking of further evidence and the preparation of a new proposed decision.

(c) The decision adopted by the Director shall:

(1) Be delivered to each party personally or sent to them by certified or registered mail.

(2) Become effective 30 days after it is delivered or mailed to the parties, unless a reconsideration is ordered within that time.

NOTE: Authority cited: Sections 14312 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

HISTORY

1. Amendment filed 9–3–82; effective thirtieth day thereafter (Register 82, No. 36).

§ 53694. Reconsideration.

(a) Reconsideration of all or part of a decision, may be ordered by the Director within 30 days after the delivery or mailing of a decision to the parties.

(b) Reconsideration may be ordered on the Director's own motion or on the petition of any party to the action. The petition shall be deemed denied if no action is taken within 30 days.

(c) Reconsideration of a case by the Director may be on all pertinent parts of the record, and such additional evidence and argument as may be permitted.

(1) As an alternative, the case may be assigned to a hearing officer designated by the Director.

(2) A reconsideration assigned to a hearing officer shall be subject to the procedure provided in Section 53692.

NOTE: Authority cited: Sections 14312 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

HISTORY

1. Amendment filed 10–11–85; effective thirtieth day thereafter (Register 85, No. 41).

§ 53696. Relief from Decision or Order.

(a) The Director, upon written application, may relieve a party from a decision, order or other proceeding for any of the following:

(1) Fraud, misrepresentation or other misconduct on the part of any party or the Department.

(2) Newly discovered evidence which could not have been discovered earlier.

(3) Circumstances beyond the control of the party.

(4) Any other good cause.

(b) The written application shall be filed with the Department and served upon any other party involved, within 15 days following discovery of the grounds for relief, and not later than 180 days after the decision, order or other proceeding was issued or taken.

(c) Opposing parties may file a response to the application for relief within 15 days following receipt of service.

(d) The Director shall, in writing and to all parties:

(1) Acknowledge receipt of the application, and set the date for any hearing deemed necessary, within 10 days following receipt of the application.

(2) Provide a decision on the application within 30 days following receipt of the application or upon completion of any hearing held.

(e) The Director may assign the decision on the application to a hearing officer designated by the Director, subject to the procedure provided in Section 53692.

(f) The decision of the Director shall be final and shall not be subject to further administrative appeal.

NOTE: Authority cited: Sections 14312 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

§ 53697. Judicial Review.

Any party to an administrative adjudication covered by Article 7 may obtain judicial review of the Director's decision by seeking a writ of mandate, in accordance with Section 11523, Government Code.

NOTE: Authority cited: Sections 14312 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

HISTORY

1. Amendment filed 10–11–85; effective thirtieth day thereafter (Register 85, No. 41).

§ 53698. Standard of Liability.

(a) The plan's financial liability to the provider, if any, shall not exceed the lower of the following rates applicable at the time the services were rendered by the provider:

(1) The usual charges made to the general public by the provider.

(2) The fee–for–service rates for similar services under the Medi–Cal program. Upon determination of the plan's liability, if no final rate has been established for a provider for the period and type of services in question, then the applicable interim rate shall be used for final determination of plan liability.

(b) The amount demanded shall be presumed to be correct, and the provider shall be entitled to the full amount demanded in its claim should it prevail, unless the plan files a Notice of Defense, pursuant to Section 53632, which places the amount of the provider's demand for payment in issue.

NOTE: Authority cited: Sections 14312 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

HISTORY

1. Amendment filed 9–3–82; effective thirtieth day thereafter (Register 82, No. 36).

§ 53700. Liquidation of Liability.

(a) A plan determined to be financially liable to the provider, shall within 30 days of the effective date of the decision:

(1) Reimburse the provider for the full amount of the determined liability.

(2) Provide proof of reimbursement in such form as the Director may require.

(b) Any amount of liability for which proof of reimbursement is not provided within the 30–day period shall be deemed unpaid. The Director shall arrange to offset any unpaid liability, in accordance with Section 53702.

NOTE: Authority cited: Sections 14312 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

§ 53702. Liability Offset.

(a) The Director shall consult with the plan in developing a schedule for offset of any unpaid liability against future capitation payments.

(b) The schedule shall be developed to minimize the impact of offset on the plan's cash flow. An individual claim shall not be liquidated by offset against fewer than two nor more than six of the next monthly capitation payments.

(c) The offset from each capitation payment shall be immediately forwarded to the appropriate provider.

NOTE: Authority cited: Sections 14312 and 14454, Welfare and Institutions Code. Reference: Section 14454, Welfare and Institutions Code.

HISTORY

1. Amendment filed 9–3–82; effective thirtieth day thereafter (Register 82, No. 36).

Chapter 4.1. Two–Plan Model Managed Care Program

Article 1. General Provisions

§ 53800. General Provisions.

(a) In regions designated by the department, health care services to eligible Medi–Cal beneficiaries shall be provided through no more than two prepaid health plans.

(b) The two prepaid health plans in the designated regions shall be selected as follows:

(1) The department shall award one contract through a competitive bid process.

(2) The department shall award one contract to a prepaid health plan which is:

(A) Organized by the county government(s) or by stakeholders of a region designated by the director under the Two–Plan Model, or

(B) Designated by the county government(s) or by stakeholders of a region designated by the director under the Two–Plan Model, and approved by the department at the department's sole discretion.

(C) As a condition of contract award, the prepaid health plan shall agree:

(1) To include in its health care delivery system under the contract any safety net provider as defined in subsection 53810(hh) physically located and operating within the designated region, as defined in subsection 53810(m), that is willing to agree to provide services under the same terms and conditions that the plan requires of any other similar provider to be included in the health care delivery system under the contract, and

(2) To establish participation standards for any provider of medical or hospital services, physically located and operating within the region, that will ensure the opportunity for substantial participation of traditional Medi–Cal providers, as defined in subsection 53810(jj), in the health care delivery system under the contract. Nothing in this subsection shall be construed to prevent federally qualified health centers from requesting cost–based reimbursement consistent with federal law in seeking to enter into a subcontracting relationship with a plan in a designated region.

(3) If no health care service plan is willing or able to contract with the department pursuant to subsection (2), the department may award two contracts pursuant to subsection (1). The two prepaid health plans shall agree to offer subcontracts to safety net providers physically located and operating within the designated region in accordance with policies developed by each prepaid health plan and approved by the department prior to commencement of plan operation.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14087.3, 14087.4 and 14201, Welfare and Institutions Code.

HISTORY

1. New article 8 (sections 53800–53830) and section filed 5–14–93 as an emergency; operative 5–14–93. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 93, No. 20).
2. Repealer of article 8 heading, new chapter 4.1 and article 1 headings, and amendment of subsections (a) and (b)(3) filed 7–1–96 as an emergency; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).
3. Amendment filed 10–30–96 as an emergency; operative 10–30–96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 46).
4. Repealer of section and NOTE and new section and NOTE filed 3–4–97; operative 3–4–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).
5. Amendment of subsection (b)(2)(C)(1) filed 10–1–97 as an emergency; operative 10–1–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 40).

Article 2. Definitions

§ 53810. Definitions.

The following definitions shall be used throughout this chapter unless the context requires otherwise.

(a) Affiliate means an organization or person that, directly or indirectly through one or more intermediaries, controls, or is controlled by or is under common control with, a plan, and that provides services to, or receives services from, a plan.

(b) American Indian means any person who is eligible under federal law to receive health services provided directly by the United States Department of Health and Human Services, Indian Health Service (IHS) or by a tribal or urban Indian health program funded by IHS to provide health services to eligible individuals either directly or by contract. The definition includes members of an American Indian's household.

(c) Assignment means the actions taken by the Health Care Options Program to enroll an eligible beneficiary into a plan, in the absence of a selection made by the beneficiary. Assignment also means action by a plan to assign a member to a primary care physician in the absence of a selection made by the member.

(d) Capitated service means a medical service for which a plan is compensated in its fixed monthly per member rate.

(e) Caseload means the number of Medi–Cal beneficiaries in mandatory aid categories in a given month.

(f) Case Management means services provided by a primary care provider/physician to ensure the coordination of medically necessary health care services, assuring the provision of preventive services in accordance with established standards and periodicity schedules and ensuring continuity of care for Medi–Cal members. It includes health risk assessment, treatment planning, coordination, referral, follow–up, and monitoring of appropriate services and resources required to meet an individual's health care needs.

(g) Commercial plan means the prepaid health plan in a designated region awarded a contract by the department pursuant to section 53800(b)(1).

(h) Commercial plan enrollment maximum means the enrollment level established by the department pursuant to section 53820(b).

(i) Contract means the written agreement entered into between a prepaid health plan and the department to provide health care services to plan members in a designated region.

(j) Contract maximum means the maximum enrollment level established by the terms of a prepaid health plan or PCCM plan contract.

(k) Contracted capacity means the number of Medi–Cal beneficiaries in the mandatory aid categories a prepaid health plan has either contracted with the department to enroll and serve in a region, or has committed to enter a prepaid health plan contract with the department to enroll and serve in a region.

(*l*) Department means the Department of Health Services.

(m) Designated region means that geographic area designated by the director within which a plan is approved by the department to provide services to Medi–Cal beneficiaries pursuant to a contract authorized by Welfare and Institutions Code Section 14087.3. The designated regions shall be within, between, or among the counties of Alameda, Contra Costa, Fresno, Kern, Los Angeles, Riverside, San Bernardino, San Francisco, San Joaquin, Santa Clara, Stanislaus, Tulare, and any other county, with the approval of the Director, which may elect to participate in accordance with the provisions of this regulation.

(n) Disproportionate share hospital (DSH) means any hospital receiving payments as provided in Welfare and Institutions Code Section 14105.98.

(o) Eligible beneficiary means a person who resides in an area covered by the Two–Plan Model Managed Care Program, who has been determined eligible to receive Medi–Cal services, whose scope of Medi–Cal benefits is not limited, and meets the enrollment criteria as specified in section 53845.

(p) Enrollment level means the number of Medi–Cal beneficiaries enrolled in a plan.

(q) Fair hearing means an administrative hearing conducted by the State relating to Medi–Cal eligibility or benefits, pursuant to sections 50951 through 50955, 51014.1, 51014.2, and 53894.

(r) Federally qualified health means centers means an entity which:

(1) Is receiving a grant under section 330 of the Public Health Service Act; or

(2) Is receiving funding from such a grant under a contract with the recipient of such a grant, and meets the requirements to receive a grant under section 330 of such Act; or

(3) Based on the recommendation of the Health Resources and Services Administration within the Public Health Service, is determined by the Secretary of Health and Human Services to meet the requirements for receiving such a grant; or

(4) Was treated by the Secretary, for purposes of Part B of title XVIII, as a comprehensive federally funded health center as of January 1, 1990; and

(5) May be an outpatient health program or facility operated by a tribe or tribal organization under the Indian Self–Determination Act (Public Law 93–638) or by an urban Indian organization receiving funds under title V of the Indian Health Care Improvement Act for the provision of primary health services.

(s) Health Care Options Program means the entity providing Medi–Cal managed care and fee–for–service options presentations, managed care plan enrollment and disenrollment activities, and managed care related problem resolution functions in designated regions.

(t) Indian Health Service facility means a tribal or urban Indian organization operating health care programs or facilities with funds from the Department of Health and Human Services, IHS, appropriated pursuant to the Indian Health Care Improvement Act (25 U.S.C. section 1601) or the Snyder Act (25 U.S.C. section 13).

(u) Initial health assessment means an assessment conducted by the plan of a member's medical health status.

(v) Local initiative means the prepaid health plan which is organized by a county government or by county governments of a region designated by the director, or organized by stakeholders of the designated region, and awarded a contract by the department pursuant to section 53800(b)(2).

(w) Local initiative enrollment minimum means the total number of Medi–Cal beneficiaries in the mandatory aid categories in the designated geographic area less the maximum enrollment level established pursuant to section 53820.

(x) Mandatory aid categories means the Medi–Cal aid categories of Public Assistance–Aid to Families with Dependent Children, as described in section 1931 of the Social Security Act (42 United States Code, section 1396) as added by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Medically Needy–Family (Aid to Families with Dependent Children) with No Share of Cost, as described in section 1931 of the Social Security Act (42 United States Code, section 1396) as added by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and Medically Indigent Children with No Share of Cost, which will be required to enroll in a prepaid health plan under the two–plan model.

(y) Maximum enrollment means the maximum commercial plan enrollment level at which the commercial plan ceases to receive default assignment enrollments as provided under this Chapter.

(z) Member means an eligible beneficiary who is enrolled in a plan.

(aa) Nondesignated region means any geographic region of California other than a designated region or the counties of Orange, Sacramento, San Mateo, Santa Barbara, Santa Cruz, or Solano. Unless other geographic boundaries are established by the department, region shall mean a single county.

(bb) Ombudsman means the individual within the department who investigates and resolves complaints about managed care made by, or on behalf of, Medi–Cal beneficiaries.

(cc) Plan means a prepaid health plan that has entered into a contract with the department.

(dd) Prepaid Health Plan (PHP) means a health care service plan licensed pursuant to the Knox–Keene Health Care Service Plan Act of 1975, which has entered into a contract with the department on a capitated rate basis to arranger for the provision of health services to eligible beneficiaries in a designated region.

(ee) Primary Care Case Management (PCCM) plan means a primary care provider or other entity who has entered into a contract to provide health care services under the provisions of article 2.9 commencing with section 14088, Welfare and Institutions Code.

(ff) Primary care physician means a physician who has the responsibility for providing, or for supervising nonphysician medical practitioners providing integrated services addressing a large majority of personal health care needs sustained over time; for maintaining and coordinating the continuity of member care, and for initiating referrals for specialist care. A primary care physician is a physician in general practice or is a board certified or board eligible internist, pediatrician, obstetrician/gynecologist, or family practitioner.

(gg) Primary care provider means a person responsible for coordinating and providing primary care to members, within the scope of their license to practice, for initiating referrals and for maintaining continuity of care. A primary care provider may be a primary care physician or nonphysician medical practitioner including a nurse practitioner, certified nurse midwife or physician assistant.

(hh) Safety net provider means any provider of comprehensive primary care or acute hospital inpatient services that provides these services to a significant total number of Medi–Cal and charity and/or medically indigent patients in relation to the total number of patients served by the provider.

(ii) Service site means the location designated by a plan at which a member receives primary care physician services.

(jj) Traditional provider means any physician who has delivered services to Medi–Cal beneficiaries within the last six months; this notwithstanding, local initiatives or commercial plans may establish their own policies and participation standards for the inclusion of traditional providers in their provider networks. Policies and participation standards established pursuant to this subsection shall be consistent with those required under section 1915(b)(4) of the Social Security Act.

(kk) Transition period means, for each designated region, the period beginning April 1, 1993 through the date the two–plan model becomes operational in the region.

(*ll*) Two–plan model means the health care delivery system described in section 53800, which will consist, in most cases, of a commercial plan and a local initiative.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14087.3, 14087.4, 14105.98, 14201 and 17000, Welfare and Institutions Code.

HISTORY

1. New section filed 5–14–93 as an emergency; operative 5–14–93. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 93, No. 20).
2. New article 2 heading and amendment of section and NOTE filed 7–1–96 as an emergency; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).
3. Amendment of subsections (j), (s) and (bb) and repealer of subsections (bb)(1)–(4) filed 10–30–96 as an emergency; operative 10–30–96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 46).
4. Repealer of section and NOTE and new section and NOTE filed 3–4–97; operative 3–4–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).

Article 3. Maximum Enrollment Levels

§ 53820. Maximum Enrollment Levels.

(a) The department shall implement the two–plan model in regions designated by the department, pursuant to section 53800.

(b) For each designated region, the department shall establish a maximum enrollment level of Medi–Cal beneficiaries in the mandatory aid categories for the commercial plan under the two–plan model, which will consider the following factors:

(1) The number of inpatient days qualifying for DSH supplemental payments as the surrogate measure for services provided by all safety net providers in the region.

(2) The impact of the enrollment of Medi–Cal beneficiaries in the commercial plan on supplemental DSH payments, to the extent that inpatient days provided to members of the commercial plan will be diverted from safety net providers.

(3) The number of acute inpatient hospital days attributable to the Medi–Cal beneficiaries not enrolled in prepaid health plans or PCCM plans.

(4) The acute inpatient hospital utilization rate for Medi–Cal beneficiaries in the mandatory aid categories.

(5) The enrollment levels of both plans of the two–plan model necessary to ensure true beneficiary choice between plans and among providers within the two plans.

(6) The hospital inpatient care contracts the commercial plan may have with disproportionate share hospitals.

(7) An agreement between a local initiative and commercial plan in a designated region regarding local initiative minimum and commercial plan maximum enrollment levels.

(c) The process for setting the maximum enrollment level for the commercial plan in any region shall include the following:

(1) The department shall notify the Board(s) of Supervisors of each county included within the region of the proposed maximum enrollment level and the rationale for the proposed level.

(2) The Board(s) of Supervisors shall have 30 days to submit written comments to the department on the proposed maximum enrollment level.

(3) The department shall review and consider any written comments received from the Board(s) of Supervisors within the 30 day comment period and may adjust the maximum enrollment level, if the department determines that an adjustment is warranted, or may set the maximum enrollment level as originally proposed.

(d) The department shall reevaluate the maximum enrollment level at least every two years and revise the level, if appropriate.

(e) If the number of enrollees and the utilization patterns of the commercial plan have significantly reduced or will significantly reduce DSH supplemental payments in the region, the department shall require the commercial plan to contract with disproportionate share hospitals for inpatient care for members.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14087.3, 14087.4, 14105.98 and 14201, Welfare and Institutions Code.

HISTORY

1. New section filed 5–14–93 as an emergency; operative 5–14–93. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 93, No. 20).
2. New article 3 heading, amendment of subsections (a), (b), (b)(2), (b)(6) and (c), and new subsection (e) filed 7–1–96 as an emergency; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).
3. Repealer of article 3 heading, section heading, section and NOTE and new article 3 heading, section heading, section and NOTE filed 3–4–97; operative 3–4–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).
4. New subsection (b)(7) filed 10–1–97 as an emergency; operative 10–1–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 40).

Article 4. Prepaid Health Plan and Primary Care Case Management Plan Enrollment Growth During the Transition Period

§ 53830. Prepaid Health Plan and Primary Care Case Management Plan Enrollment Growth During the Transition Period.

(a) Until the implementation of the two–plan model in a designated region, the aggregate enrollment level of all prepaid health plans and PCCM plans affiliated with either the local initiative or the commercial plan operating in the region shall not exceed the maximum enrollment level for the commercial plan established by the department under section 53820(b) unless an exemption has been granted by the department pursuant to subsection (e). If the maximum enrollment level for the commercial plan in the region is exceeded and if the sum of the prepaid health plan contract maximums in the region is greater than the maximum enrollment level for the commercial plan in the region, the department shall negotiate amendments to the prepaid health plan contracts to set contract maximums specified to the region that will assist in bringing the total enrollment level in conformance with the maximum enrollment level for the commercial plan.

(b) Until the implementation of the Two–Plan Model in a designated region, the total allowable enrollment growth for PCCM plans in a designated region shall be the maximum enrollment level for the commercial plan set by the department for the region in accordance with section

53820(b) less the aggregate contracted capacity of all prepaid health plans operating in the region and less the total enrollment level of all PCCM plans operating in the region, unless an exemption has been granted by the department pursuant to subsection (e).

(1) If there is allowable enrollment growth in the region for PCCM plans, a PCCM plan's enrollment growth in a region shall not exceed the percentage growth in the caseload in the region, which shall be determined as follows:

(A) In June of each year, the department shall establish an aggregate caseload growth percentage factor for the subsequent six–month period in each region. The department shall recalculate and apply this factor in December of each year.

(B) Each PCCM plan's enrollment level in each region as of July 1 in each year shall be multiplied by the caseload growth percentage factor calculated in June for that region. The product of this calculation shall be the PCCM plan's maximum enrollment growth for the six–month period ending December 31 of that year. Each PCCM plan's maximum enrollment growth for the six–month period ending June 30 in each year shall be calculated in the same manner by the department, using the PCCM plan's enrollment level in each region as of January 1.

(C) Once a PCCM plan achieves its six–month maximum enrollment growth in a region, enrollments in that region shall not be accepted by the department for the remainder of the six–month period except as necessary to allow the PCCM plan to maintain its maximum enrollment level by replacing beneficiaries who disenroll from the PCCM plan.

(D) In calculating the aggregate caseload factor for each subsequent six–month period, the department may adjust this factor for any documented over– or underestimate of caseload growth in a region for the preceding caseload growth in a region for the preceding six–month period. Based on this adjustment, the department may further limit or increase PCCM maximum enrollment growth in the region for the succeeding six–month period.

(2) If the total allowable enrollment growth in the region is insufficient to allow all PCCM plans operating in a region to increase enrollment as provided in subsection (b)(1), the allowable increase shall be distributed equally among plans falling within the following priority categories, except that no plan may increase above the level provided by subsection (b)(1):

(A) Among PCCM plans whose most recent annual medical review by the department found no or only minor deficiencies in quality of care:

(i) First, PCCM plans whose most recent annual medical review by the department found a compliance level of 80 percent or better in the provision of Child Health and Disability Prevention services;

(ii) Second, PCCM plans whose most recent annual medical review by the department found a compliance level of 80 percent or better in the provision of adult preventive screens;

(iii) Third, all other PCCM plans whose most recent annual medical review by the department found no or only minor deficiencies in the quality of care; and then,

(B) All other PCCM plans in the region.

(c) If there is no allowable enrollment growth PCCM plans in a designated region, a PCCM plan's maximum enrollment level in that region shall be limited to its enrollment level as of the first month following the month in which the PCCM plan is notified to this effect.

(d) Until the department has established the commercial plan maximum enrollment level in a designated region as provided under section 53820(b), the maximum enrollment level for each PCCM plan in the designated region shall be capped at the plan's enrollment level as of July 1, 1993, unless an exemption has been granted by the department pursuant to subsection (e).

(e) The department may grant exemptions to the maximum enrollment level established for a PCCM plan pursuant to subsections (b) or (d) if special circumstances are established by the department. Special circumstances may specifically include, but are not limited to, a county Board of Supervisors, with the stated intention of including the PCCM plan or plans or the additional enrollment in the provider network of the local initiative, requesting the department to allow a PCCM plan or PCCM plans to enroll Medi–Cal beneficiaries above the maximum enrollment level established pursuant to subsections (b) or (d).

(f) PCCM plan enrollment growth in nondesignated regions shall be limited to caseload growth as described in subsection (b)(1) unless special circumstances are established by the department. Special circumstances may include:

(1) A county board of Supervisors asks the department to allow a PCCM plan or PCCM plans operating in the county to enroll Medi–Cal beneficiaries at a rate greater than caseload growth.

(2) The department identifies a problem with access to care in a region that can be met by PCCM plans enrolling Medi–Cal beneficiaries at a rate greater than caseload growth.

(3) A county Board of Supervisors proposes to develop a health care delivery system both for Medi–Cal beneficiaries and for medically indigent persons covered by the county's responsibilities under 17000 of the Welfare and Institutions Code, and intends to use a PCCM plan or PCCM plans in this system.

(g) PCCM plans shall be permitted to open new service sites, enlarge existing service areas, and add new service areas in nondesignated regions to the extent that the plans do not exceed the enrollment level authorized by this section.

(h) The department shall publish a public notice of its intent to approve a new service area or enlargement of a service area for a PCCM plan in nondesignated regions at least 60 days prior to the action. The notice shall appear in at least two major newspapers of general distribution in the proposed service area and shall provide instruction for submission of comments.

(i) Nothing in this section precludes the department from applying appropriate sanctions as provided in section 56350 or 56408 against PCCM plans.

(j) Nothing in this section authorizes a PCCM plan to enroll embers in excess of the plan's capacity to provide services to members under the terms of the plan's contract and all applicable laws and regulations.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14087.3, 14087.4, 14088, 14088.16, 14088.25 and 17000, Welfare and Institutions Code.

HISTORY

1. New section filed 5–14–93 as an emergency; operative 5–14–93. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 93, No. 20).
2. Amendment of subsections (a)–(b) and (d), new subsection (e), subsection redesignation and amendment of subsections (g)–(h) filed 7–1–94; operative 7–1–94. Submitted to OAL for printing only pursuant to section 147, SB 485 (Chapter 722, Statutes of 1992) (Register 94, No. 31).
3. New article 4 heading and amendment of subsection (a), (b) and (d) filed 7–1–96 as an emergency; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).
4. Editorial correction deleting erroneous second HISTORY 2 (Register 96, No. 46).
5. Repealer of section and NOTE and new section and NOTE filed 3–4–97; operative 3–4–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).

Article 5. Two–Plan Model Requirements

§ 53840. Two–Plan Model Requirements.

Each plan in a designated region shall:

(a) Obtain or maintain a license to operate as a Knox–Keene health care service plan, and meet all requirements set forth in Chapter 2.2 (commencing with Section 1340 of the Health and Safety Code) and related applicable regulatory requirements throughout the term of the contract between the plan and the department.

(b) Comply with all applicable federal and state statutory, regulatory, and administrative requirements, including, but not limited to, those organizational and administrative requirements contained in the Social Security Act and the Code of Federal Regulations.

(c) Comply with all standards, requirements and responsibilities stipulated and agreed to in the contract between the plan and the department including but not limited to:

(1) Organization.

(2) Legal Capacity.

(3) Administration/Staffing.

(4) Management Information System.

(5) Reporting Requirements.

(6) Quality Improvement System.

(7) Provider Network and Geographic Access, including a documented system for monitoring access to care.

(8) Scope of Services including preventive services for adults and all required CHDP and EPSDT services.

(9) Medical Standards/Health Education.

(10) Marketing and Enrollment.

(11) Member Services/Grievance System.

(12) Cultural and Linguistic Services Requirements.

(13) Financial Solvency.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14087.3 and 14087.4, Welfare and Institutions Code.

HISTORY

1. New article 5 (sections 53840 and 53845) and section filed 7–1–96 as an emergency; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).
2. Repealer of section and NOTE and new section and NOTE filed 3–4–97; operative 3–4–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).

§ 53845. Enrollment Criteria.

(a) Enrollment in plans shall be mandatory for eligible beneficiaries who meet all of the following criteria:

(1) Are eligible to receive Medi–Cal services that are not limited in scope;

(2) Have been determined to have a share of cost equal to zero;

(3) Do not meet the criteria for exemption from plan enrollment, specified in section 53887;

(4) Have been determined by their county welfare department to be eligible for one of the following programs:

(A) The section 1931(b) Program, which consists of the services described in Welfare and Institutions Code section 14005.30, including persons whose Medi–Cal eligibility is based upon their receipt of benefits under the California Work Opportunity and Responsibility to Kids (CalWORKS) Program.

(B) The Medically Indigent program for children under age 21, as specified in section 50251(a).

(C) The Medically Needy Program for families and caretaker relatives, specified in sections 50203(a)(2) and (3).

(D) The Other Public Assistance Program as specified in section 50237, but excluding those in the In–Home Supportive Services category, section 50245.

(E) The Special Zero Share of Cost Program for infants, as specified in section 50262; for children of age one to age six, as specified in section 50262.5; and for children of age six to age nineteen, as specified in section 50262.6.

(F) The Transitional Medi–Cal Program as established in accordance with Section 1931 of the federal Social Security Act (Title 42, United States Code, section 1396 u–1) and described in Welfare and Institutions Code sections 14005.8 and 14005.81.

(b) Enrollment in a plan shall be voluntary for eligible beneficiaries who meet all of the following criteria:

(1) Are eligible to receive Medi–Cal services that are not limited in scope;

(2) Have been determined to have a share of cost equal to zero; and

(3) Have been determined by their county welfare department to be eligible for one of the following programs:

(A) The federal Supplemental Security Income for the Aged, Blind, and Disabled Program (Title 42, United States Code, section 1382 et seq.) or who are deemed by the county welfare department to be Supplemental Security Income recipients in accordance with section 4913 of the federal Balanced Budget Act of 1997.

(B) The Medically Indigent Program for pregnant women, as specified in section 50251(b)(3).

(C) Foster Care Program as described in Article 5 (commencing with section 11400) Chapter 2, Part 3, Division 9 of the Welfare and Institutions Code.

(D) Adoption Assistance Program as described in Chapter 2.1 (commencing with section 16115) Part 4, Division 9 of the Welfare and Institutions Code.

(E) The Medically Needy Program for aged, blind and disabled beneficiaries, specified in section 50203(a)(1).

(F) The receipt of health care services through an Indian Health Service facility as defined in section 55100(j).

(G) The In–Home Supportive Services category, as specified in section 50245.

(c) Children receiving services under either the Foster Care or Adoptions Assistance Programs may be enrolled voluntarily if:

(1) The county Director of Social Services, or his or her delegated representative, determines that it is in the best interest of the child;

(2) The child's caretaker agrees to the enrollment; or

(3) The probation officer in the case of a foster child who is a ward of the court approves the enrollment.

(d) Where the department determines that it is feasible, and the conditions of subsection (c) are met, a child receiving services under the Foster Care or Adoptions Assistance Programs who physically resides in a designated region, but whose county of residence for the purpose of determining eligibility for the Medi–Cal program is part of another designated or nondesignated region, may be permitted to enroll in either of the two plans in the designated region in which the child physically resides.

(e) Beneficiaries enrolled in one of the following form of other health coverage shall not be enrolled in a Medi–Cal managed care plan:

(1) Medicare HMO,

(2) CHAMPUS Prime HMO,

(3) Kaiser HMO or

(4) Any other HMO or prepaid health plan in which the enrollee is limited to a prescribed panel of providers for comprehensive services.

(f) Beneficiaries with other coverage in an HMO, as specified in (e)(1), (3) or (4) above, may be enrolled in the Medi–Cal plan, as specified in section 53889, if:

(1) The Medi–Cal plan in which the eligible beneficiary is enrolling is the same as the HMO in which the beneficiary is enrolled, and

(2) Such enrollment is allowed in the contract between the plan and the department.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14087.3 and 14087.4, Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–96 as an emergency; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).
2. Repealer of section and NOTE and new section and NOTE filed 3–4–97; operative 3–4–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).
3. Amendment of section and NOTE filed 12–19–2000 as an emergency; operative 12–19–2000. Submitted to OAL for printing only pursuant to section 147, SB 485 (Ch. 722/92) (Register 2000, No. 51).

§ 53850. Organization and Administration.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14087.3 and 14087.4, Welfare and Institutions Code.

HISTORY

1. New article 6 (sections 53850–53876) and section filed 7–1–96 as an emergency; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).
2. Editorial correction of section heading (Register 96, No. 46).
3. Repealer filed 3–4–97; operative 3–4–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).

Article 6. Operational Requirements

§ 53851. Scope of Services.

(a) Each plan in a designated region shall provide or arrange for the provision of all Medi-Cal covered services to be delivered, unless excluded under the contract, in accordance with the terms and conditions of the contract between the plan and the department.

(b) The scope of services available to Medi-Cal members shall include:

(1) An initial health assessment, unless the member's primary care physician determines that the member's medical record contains complete information, updated within the previous 12 months, consistent with the assessment requirements stated below, and with the requirements of section 53840(c)(7). The assessment, at a minimum shall include, a history of the member's physical and mental health, an identification of risks, an assessment of need for preventive screens or services and health education, and the diagnosis and plan for treatment of any diseases. The plan shall ensure that care for pregnant women is initiated at the earliest time possible.

(2) Health education.

(3) Preventive services.

(4) Primary and specialty care.

(5) Case management and coordination of care as defined in section 53810(f).

(6) Emergency care.

(c) Each plan shall refer and coordinate care for those services that are excluded under the contract, whether or not covered under the Medi-Cal program, pursuant to the requirements of the contract between the plan and the department.

(d) No plan shall withhold medically necessary Medi-Cal covered services not specifically excluded under the contract, due to a dispute with the department over capitation rates, service costs or any other reason. The plan shall pursue a remedy in accordance with the provisions of the contract.

(e) Each plan shall ensure that information, services or presentations required under this section, shall be provided in: language that is easy to understand, the preferred language of the beneficiary, a culturally appropriate manner, and a way that is fully accessible to beneficiaries with disabilities.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14087.3 and 14087.4, Welfare and Institutions Code.

HISTORY

1. New section filed 7-1-96 as an emergency; operative 7-1-96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).
2. Repealer of section and NOTE and new section and NOTE filed 3-4-97; operative 3-4-97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).

§ 53852. Availability of Services.

Each plan in a designated region shall obtain written departmental approval prior to making any substantial change in the availability or location of services to be provided under the contract, except in the case of a natural disaster or emergency circumstances. A proposal to change the physical location at which covered services are provided, or to reduce or change the hours, days or location at which the services are available, shall be given to the department at least sixty days prior to the proposed effective date. The department's denial of the proposal shall prohibit implementation of the proposed changes. The plan's proposal shall allow for timely notice to beneficiaries to allow them to change plans if desired.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14087.3 and 14087.4, Welfare and Institutions Code.

HISTORY

1. New section filed 7-1-96 as an emergency; operative 7-1-96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).
2. Repealer of section and NOTE and new section and NOTE filed 3-4-97; operative 3-4-97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).

§ 53853. Accessibility of Services.

(a) Each plan in a designated region shall retain sufficient professional medical staff, including adequate numbers of specialists and subspecialists, to provide access to preventive and managed health care services to its members. Access to physicians or physician extenders shall be as follows:

(1) Each plan shall ensure its provider network satisfies a ratio of at least one full-time equivalent primary care physician for every 2,000 members.

(2) Each plan shall ensure its provider network satisfies a ratio of at least one full-time equivalent physician for every 1,200 plan members.

(3) Plans that utilize nonphysician medical practitioners shall not allow a full-time equivalent nonphysician medical practitioner to maintain a caseload of more than 1,000 plan members. The plan shall ensure compliance with title 22, CCR, sections 51240 and 51241.

(4) If utilized by a plan, members may select a nonphysician practitioner as their primary care provider. Nonphysician practitioners including certified nurse midwives, nurse practitioners and physicians assistants, shall meet the requirements of existing practice and licensure standards for mid-level practitioners, as specified in section 1399.541 and 1470, Title 16, CCR.

(b) Each plan in a region shall ensure that each member of the plan has a primary care physician to supervise and coordinate each member's health care, by either allowing members to select their primary care physicians or assigning members to primary care physicians, pursuant to section 53890.

(c) Each plan shall ensure that members have 24-hour access to interpreter services.

(d) Each plan shall ensure that other appropriate linguistic services are available to members pursuant to the contract between the plan and the department.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14087.3 and 14087.4, Welfare and Institutions Code.

HISTORY

1. New section filed 7-1-96 as an emergency; operative 7-1-96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).
2. Repealer of section and NOTE and new section and NOTE filed 3-4-97; operative 3-4-97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).

§ 53854. Pharmaceutical Services and Prescribed Drugs.

(a) Each plan in a designated region shall at a minimum, make available to members during the hours of operation of each member's primary care service site, either directly or through subcontracts, the services of pharmacies and pharmacists in accordance with title 22, CCR, section 53214.

(1) Pharmaceutical services shall, at a minimum, be available to members during established service site hours.

(2) When the course of treatment provided to a member by a contracting provider under emergency circumstances requires the use of drugs, a sufficient quantity of such drugs will be provided to the member to last until the member can reasonably be expected to have a prescription filled.

(3) Plans shall establish and document the availability of after hours nonemergency pharmacy services. Plans shall make available by telephone information regarding the availability, location and hours of operation of pharmacies providing such services.

(b) Prescribed drugs shall be provided to members by licensed pharmacies and shall be reimbursed by the plan in which the member is enrolled. Professional standards reflected by reasonable and current prescribing practices, based on reference to current medical literature and consultation with provider organizations, academic and professional specialists, shall be met, including but not limited to Title 16, sections 1707.1, 1707.2, and 1707.3.

(c) Prescribed drugs may include the provision of pre–packaged drugs ordered by a physician and dispensed by a pharmacist or other appropriately licensed individuals affiliated with the plan after the plan has obtained written approval from the department to operate in this manner.

(d) Except for drugs specifically excluded from the contract, any drug covered by the Medi–Cal Program shall be available from the plan when medically necessary. This shall not be construed to require a plan to include in its formulary every drug listed on the Medi–Cal formulary, or to prevent a plan from performing appropriate utilization review to determine the most suitable drug therapy for a particular medical condition. . The plan shall not refuse to dispense or pay for Medi–Cal covered drugs, while pursuing the resolution of a dispute with the department over the plan's reimbursement for drugs, coverage of drugs, or for any other issue relating to covered drugs.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14087.3, 14087.4, 14132, 14133 and 14133.1, Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–96 as an emergency; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).
2. Repealer of section and NOTE and new section and NOTE filed 3–4–97; operative 3–4–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).
3. Amendment of subsections (a)(1) and (d) filed 10–1–97 as an emergency; operative 10–1–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 40).

§ 53855. Care Under Emergency Circumstances.

(a) Each plan in a designated region shall cover emergency medical services without prior authorization pursuant to title 10, CCR, section 1300.67(g) and title 22, CCR, section 53216. Each plan shall reimburse, without prior authorization, hospital emergency departments or emergency physicians for medical screening examinations necessary to determine the presence or absence of an emergency medical condition and, if an emergency medical condition exists, for all services medically necessary to stabilize the plan member. If the medical screening examination indicates that the patient's condition does not constitute an emergency as defined in section 51056, hospital emergency departments or emergency physicians shall obtain prior authorization from the plan to render treatment. The plan may deny reimbursement for any services rendered to the member beyond the medical screening examination if the hospital emergency department or emergency physician fails to obtain prior authorization. Upon receipt of a request for such authorization from an emergency services provider, a plan shall render a decision upon the request within 30 minutes, or the request shall be deemed to be approved.

(b) Each plan shall maintain a 24–hour multilingual telephone contact number for handling emergencies. Each plan shall ensure that a physician is available 24 hours a day to: coordinate the transfer to a plan provider of a member whose condition is stabilized; or authorize medically necessary post–stabilization services. Each plan shall have a system to ensure continuity of care and follow–up care for all plan members for whom the plan has denied authorization for emergency services.

(c) A plan may subject all hospital emergency department and emergency physician claims to post–service, prepayment review for post–stabilization services; however claims for medical screening examinations shall not be denied without review. Each plan shall pay emergency services claims at the appropriate level based on the documentation submitted. All properly documented claims for medical screening examinations and emergency services rendered by noncontracted providers shall be paid by the plan within 45 days of receipt of a valid invoice. Each plan shall pay for all claims involving medically necessary services to diagnose and treat nonemergency conditions that the plan has prior authorized.

(d) Each plan shall arrange and make payment for emergency department, emergency physician and emergency transportation services, at the lesser of:

(1) The usual charges made to the general public by the emergency services provider,

(2) The maximum Medi–Cal fee–for–service rate, as specified in sections 51503 and 51509, or

(3) The rate negotiated between the plan and the provider of services for emergency services as defined in section 51056.

(e) For emergency inpatient hospital services, payment shall be made in accordance with the provisions in the contract between the plan and the department.

(f) If disputes arise over claims submitted by providers seeking reimbursement for the provision of emergency services to plan members, the parties shall adhere to the procedures and requirements prescribed in section 53875 for the resolution of such disputes.

(g) In the event the provision of emergency services to plan members is delegated to an entity, such entity, and any further delegatees, shall assume all obligations and responsibilities required under this section. The contractor shall assure compliance with the requirements of this section regardless of the entity providing the emergency services.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14087.3, 14087.4 and 14454, Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–96 as an emergency; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).
2. Repealer of section and NOTE and new section and NOTE filed 3–4–97; operative 3–4–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).
3. Amendment of subsections (a), (d)(1) and (g) filed 10–1–97 as an emergency; operative 10–1–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 40).

§ 53856. Facilities, Service Locations, and Equipment.

Each plan in a designated region shall comply with the requirements contained in section 53230, and shall assure proper sterilization and disinfection of equipment, in accordance with California Occupational Safety and Health Administration (CAL/OSHA) standards, pursuant to California Labor Code, section 6305 or any other applicable federal, state or local standard.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14087.3 and 14087.4, Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–96 as an emergency; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).
2. Repealer of section and NOTE and new section and NOTE filed 3–4–97; operative 3–4–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).

§ 53857. Medical Director.

(a) Each plan in a designated region shall appoint a physician as medical director whose responsibilities shall include, but not be limited to, the following:

(1) Ensuring that medical decisions are:

(A) Rendered by qualified medical personnel.

(B) Are not influenced by fiscal or administrative management considerations.

(2) Ensuring that the medical care provided meets the standards for acceptable medical care.

(3) Ensuring that medical protocols and rules of conduct for plan medical personnel are followed.

(4) Developing and implementing medical policy.

(5) Resolving grievances related to medical quality of care.

(6) Actively participating in the functioning of the plan grievance procedures.

(7) Actively participating in the functioning of the plan quality improvement program.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14087.3, 14087.4, 14450 and 14495, Welfare and Institutions Code; and Section 1367, Health and Safety Code.

HISTORY

1. New section filed 7–1–96 as an emergency; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).
2. Repealer of section and NOTE and new section and NOTE filed 3–4–97; operative 3–4–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).

§ 53858. Member Grievance Procedures.

(a) Each plan in a designated region shall establish and maintain written procedures for the submittal, processing, and resolution of all member grievances and complaints. The grievance system shall include the handling of complaints and shall:

(1) Operate according to the written procedures, which shall be approved in writing by the department prior to use. Amendments shall be approved in writing by the department prior to implementation of the revised procedure.

(2) Be described in information sent to each member within 7 days of the date of enrollment in the plan and annually thereafter, pursuant to sections 53893 and 53894. The description shall include:

(A) An explanation of the plan's system for processing and resolving grievances, and how a member is to use it.

(B) A statement that grievance forms are available in the office of each primary care provider, or in each member services department of the plan, in the case of a plan in which all primary care providers are the exclusive providers of that plan and are contiguously located.

(C) A statement that grievances may be filed in writing or verbally directly with the plan in which the member is enrolled or at any office of the plan's providers.

(D) The local or toll–free telephone number a member may call to obtain information, request grievance forms, and register a verbal grievance.

(E) A written statement explaining the member's right to request a fair hearing, provided pursuant to sections 50951, 51014.1, 51014.2, and 53894.

(F) An explanation of the state's Medi–Cal Managed Care Ombudsman program and the program's voice and TDD telephone numbers.

(b) Each plan shall make local or toll–free telephone service available to members during normal business hours for requesting grievance forms, filing verbal grievances, and requesting information.

(c) Each plan shall provide upon request a grievance form, either directly or by mail if mailing is requested to any member requesting the form.

(d) Each plan shall provide assistance to any member requesting assistance in completing the grievance form.

(e) The member grievance procedures shall at a minimum provide for:

(1) The recording in a grievance log of each grievance received by the plan, either verbally or in writing. The grievance log shall include the following information:

(A) The date and time the grievance is filed with the plan or provider.

(B) The name of the member filing the grievance.

(C) The name of the plan provider or staff person receiving the grievance.

(D) A description of the complaint or problem.

(E) A description of the action taken by the plan or provider to investigate and resolve the grievance.

(F) The proposed resolution by the plan or provider.

(G) The name of the plan provider or staff person responsible for resolving the grievance.

(H) The date of notification of the member of the proposed resolution.

(2) The immediate submittal of all medical quality of care grievances to the medical director for action.

(3) The submittal, at least quarterly, of all member grievances to the plan's quality assurance committee or review and appropriate action. For purposes of this subsection, member grievances shall include but not be limited to those related to access to care, quality of care, and denial of services.

(4) The review and analysis, on at least a quarterly basis, of all recorded grievances related to access to care, quality of care and denial of services, and take appropriate action to remedy any problems identified in such reviews.

(5) The mailing of a written notice of the proposed resolution to the member. Each notice shall include information about the member's right to request a fair hearing pursuant to sections 50951, 51014.1, 51014.2, and 53894.

(6) A system for addressing any cultural or linguistic requirements related to the processing of member grievances prescribed in the contract between the plan and the department.

(7) A procedure for the expedited review and disposition of grievances in the event of a serious or imminent health threat to a member, in accordance with Health and Safety Code section 1368 and 1368.02.

(f) Grievance forms shall be available in the offices of each of the plan's primary care providers, or in each member services department of the plan, in the case of a plan in which all primary care providers are the exclusive providers of that plan and are contiguously located.

(g) Each plan shall adhere to the following requirements and time frames in processing member grievances:

(1) Member grievances shall be resolved within thirty days of the member's submittal of a written grievance or if the grievance is made verbally, it shall be resolved within 30 days of the written record of the grievance.

(2) In the event resolution is not reached within thirty days, the member shall be notified in writing by the plan of the status of the grievance and shall be provided with an estimated completion date of resolution.

(3) Such notice shall include a statement notifying the member they may exercise their right to request a fair hearing in accordance with sections 50951, 51014.1, 51014.2, and 53894.

(h) Each plan shall maintain in its files copies of all grievances, the responses to them, and logs recording them for a period of five years from the date the grievance was filed.

(i) Any member whose grievance is resolved or unresolved shall have the right to request a fair hearing. Submission of a grievance shall not be construed as a waiver of the member's right to request a fair hearing in accordance with sections 50951, 51014.1, 51014.2, and 53894.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 10950 through 10965, 14087.3, 14087.4 and 14450, Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–96 as an emergency; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).
2. Repealer of section and NOTE and new section and NOTE filed 3–4–97; operative 3–4–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).

§ 53859. Provider Grievances and Complaints.

Each plan shall have a formal process to resolve provider grievances and complaints. A provider of medical services may submit to a plan in a designated region a grievance or complaint concerning the authorization or denial of a service or the processing of a payment or nonpayment of a claim by that plan.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14087.3 and 14087.4, Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–96 as an emergency; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).
2. Repealer of section and NOTE and new section and NOTE filed 3–4–97; operative 3–4–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).

§ 53860. Quality of Care.

(a) Each plan shall monitor, evaluate, and take effective action to address any needed improvements in the quality of care delivered by all practitioners providing services on its behalf in all types of settings, including, but not limited to, ambulatory, inpatient and home settings.

(b) Each plan shall implement an effective quality improvement program in accordance with the standards in Title 10, section 1300.70.

(c) In addition to subsection (b), each plan shall implement and maintain a quality improvement program including at a minimum the following elements:

(1) A system of accountability which includes the participation of the plan's governing body, the designation of a quality improvement committee with oversight and performance responsibility, the supervision of activities by the plan's medical director, and the inclusion of contracted physicians and other health care providers in the process of quality improvement program development and performance review.

(2) Objective and systematic monitoring and evaluation of the quality and appropriateness of care and services rendered on an ongoing basis, including conducting quality of care studies that address the quality of clinical care as well as the quality of health services delivery.

(3) A utilization management program, including, but not limited to procedures for monitoring under and over–utilization of services, procedures to evaluate medical necessity, prior authorization policies and procedures, and criteria used for approval, referral and denial of services, pursuant to Health and Safety Code, section 1363.5.

(d) The department shall arrange for, at least annually, an external quality of care review of each plan from an entity qualified to conduct such reviews in accordance with Title 42 USC, Section 1396a (30)(C). In addition, as a component of its contract compliance monitoring activities, the department shall conduct annual medical reviews which shall include but not be limited to an appraisal of plan performance in areas such as access to care, continuity of care, quality of care, provision of health education and preventive services, and authorization and denial of services. The department's annual medical reviews shall not duplicate the external quality of care review, except to the extent that such duplication is necessary to verify the plan's compliance with any corrective actions arising out of the external quality of care review. Each plan shall cooperate with and assist both the external quality review organization and the department in the conduct of these reviews.

(e) The department shall issue medical review reports to the plan detailing findings, recommendations, corrective actions and sanctions, as appropriate. Each plan shall comply in full with any corrective action plan issued by the department. Failure to comply may result in the imposition of sanctions as appropriate.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14087.3, 14087.4, 14309 and 14458, Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–96 as an emergency; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).
2. Repealer of section and NOTE and new section and NOTE filed 3–4–97; operative 3–4–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).

§ 53861. Records.

(a) Each plan in a designated region shall maintain or cause to be maintained all records necessary to verify information and reports required by statute, regulation or contractual obligation for five years from the end of the fiscal year in which the plan contract expires or is terminated. Each plan shall make such records available for inspection or examination to the department, the United States Department of Health and Human Services, the States Department of Justice, or the Comptroller General of the United States or their duly authorized representatives upon request. Records and documents shall include but not be limited to:

(1) Working papers used in the preparation of reports to the department.

(2) Reports to the department, specified in section 53872.

(3) Financial documents.

(4) Medical records.

(5) Quality assurance and improvement records.

(6) Prescription files.

(b) Each plan shall retain or cause to be retained all records pertaining to pending litigation or litigation in progress until the litigation is final.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14087.3, 14087.4, 14308 and 14458, Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–96 as an emergency; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).
2. Repealer of section and NOTE and new section and NOTE filed 3–4–97; operative 3–4–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).

§ 53862. Reporting.

Each plan in a designated region shall submit to the department:

(a) Annual reports which shall include:

(1) The financial audit required by section 53340. In addition to the annual audited financial statements, the plan shall include the annual report required under section 1300.84.06, Title 10. The plan's annual report shall have a supplemental income statement, prepared in a format consistent with the annual report, reflecting the plan's various Medi–Cal contracts each as a separate line of business by designated region which come included.

(2) An update of the provider listing required in section 53242(b).

(b) Quarterly reports which shall include:

(1) Each plan shall submit to the department, within 45 days after the close of each fiscal quarter, a quarterly financial report in the format prescribed by Title 10, section 1300.84.2. The required financial reports shall have a supplemental income statement, reflecting the plan's various Medi–Cal contracts as separate business operations of the plan by designated region, which combines and correlates to the submitted income statement for the plan.

(c) Other reports which shall be submitted to the department shall include the following:

(1) Utilization and statistical data, including detailed encounter level data, in compliance with the requirements of the contract between the plan and the department.

(2) Pediatric preventive services provided in accordance with the Child Health and Disability Prevention Program reports disclosing services rendered in accordance with Health and Safety Code section 320, et seq., and Title 17, CCR, sections 6840 through 6850 as required by the contract between the plan and the department.

(3) Information requested by the department to conduct medical reviews or contract monitoring in accordance with section 14457, Welfare and Institutions Code.

(4) Financial reports relevant to affiliates as specified in section 53330. These reports will include at a minimum financial statements of affiliates and, if publicly traded, copies of the quarterly Form 10–Q and annual Form 10–K as required by the Securities and Exchange Commission.

(5) Copies of any financial reports submitted to other public or private organizations as specified in section 53324(d).

(6) Upon request, monthly financial statements.

(7) Notification of possible third–party tort liability or estate recovery situations. This information shall be submitted within ten days of discovery.

(8) Reports specified in the contract between the plan and the department.

(9) On a monthly basis, an updated listing of the plan's provider network, by specialty.

(d) Each plan shall submit to public health authorities reports required by state law.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14087.3, 14087.4 and 14308, Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–96 as an emergency; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).

2. Repealer of section and NOTE and new section and NOTE filed 3–4–97; operative 3–4–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).

§ 53863. Assumption of Financial Risk.

Each plan shall comply with the assumption of financial risk requirements in section 53251.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14087.3, 14087.4 and 14451.5 Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–96 as an emergency; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).
2. Repealer of section and NOTE and new section and NOTE filed 3–4–97; operative 3–4–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).

§ 53864. Financial Standards/Resources.

(a) Each plan shall demonstrate fiscal soundness and maintain adequate financial resources to carry out its contractual obligations. Such resources shall be determined by the department and shall include, but not necessarily be limited to, the following:

(1) Tangible net equity as defined in Title 10, section 1300.76

(2) Working capital and current ratio of one of the following:

(A) A current ration of at least 1:1, or

(B) Prior demonstration to the department that the contractor is now meeting financial obligations on a timely basis and has been doing so for at least the preceding two years, or

(C) Evidence that sufficient noncurrent assets, which are readily convertible to cash, are available to achieve an equivalent working capital ratio of 1:1, if the noncurrent assets are considered current.

(3) Demonstration through its history of plan operations that the plan's arrangements for health care are financially sound, and provide for the achievement and maintenance of a positive cash flow, including provisions for retirement of existing and proposed indebtedness.

(4) Enrollment growth.

(b) Administrative costs incurred by a plan and its affiliates shall comply with the requirements of the Knox–Keene Act as set forth in Title 10, section 1300.78. Plans which compensate their subcontractors on a capitated basis shall comply with title 10, CCR, section 1300.78 regarding administrative costs, considering the combined administrative cost of the plan and its capitated subcontractors for Medi–Cal business.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14087.3, 14087.4 and 14450, Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–96 as an emergency; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).
2. Repealer of section and NOTE and new section and NOTE filed 3–4–97; operative 3–4–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).

§ 53865. Financial Performance Guarantee.

(a) Each plan shall provide evidence of and maintain an acceptable financial performance guarantee to the department as specified below.

(b) The department shall approve the form and amount of financial performance guarantee required for each plan contract.

(c) The department may waive the requirement for a financial performance guarantee for a plan which is qualified as an HMO under Title XIII, Public Health Service Act (42 U.S.C. Section 300e et seq.).

(d) The department shall take possession of the financial performance guarantee sufficient to indemnify the department in the event that the plan defaults on any contractual obligation to the department.

(e) A financial performance guarantee is required, and shall be equal to at least one month's capitation as determined by the department and may be in the form of, but not limited to, one of the following options cited below. The department may extend the time periods for compliance if the department determines that such extension or phase–in will not present a significant financial risk to the State, and if it will not cause the plan to be operated in a manner that may be hazardous to its members.

(1) Guarantee/Performance Bond, or

(2) A guaranteed letter of credit, or

(3) A time certificate of deposit.

A plan electing the time certificate of deposit option may fulfill this requirement by making a deposit with the department, or at the discretion of the department, with any bank authorized to do business in this State and insured by the Federal Deposit Insurance Corporation, or savings and loan association doing business in this State and insured by the Savings Association Insurance Fund. Cash, investment certificates, accounts, or any combination of these shall be assigned to the department, upon those terms as the department may prescribe, until released by the department. The deposit required shall be an allowable asset of the plan in the determination of tangible net equity and all income from the deposit shall be an asset of the plan. A plan that has made a deposit pursuant to this option may withdraw that deposit or any part thereof, after making a substitute deposit of cash, investment certificates, accounts or any combination of these. Any substitute deposit shall be approved by the department before being deposited or substituted.

(4) A trust agreement under a Financial Security Agreement with an approved financial institution.

(5) Withhold from capitation by the department an amount equal to the required amount and retained by the department until completion of the contractual obligations associated with the contract.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14087.3, 14087.4 and 14450, Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–96 as an emergency; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).
2. Repealer of section and NOTE and new section and NOTE filed 3–4–97; operative 3–4–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).

§ 53866. Member Billing and Recovery from Other Sources.

Each plan in a designated region may bill plan members or third–party payers for services provided as long as such member billings or recovery efforts from third–parties are conducted in accordance with the requirements of sections 53220 and 53222.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14087.3 and 14087.4 , Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–96 as an emergency; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).
2. Repealer of section and NOTE and new section and NOTE filed 3–4–97; operative 3–4–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).

§ 53867. Subcontracts.

Procedures and requirements for the processing and approval of subcontracts for each plan in a designated region shall conform to those specified in section 53250. Subcontracts with federally qualified health centers shall be exempt from the 60–day automatic approval provisions specified in section 53250, unless the department has previously approved, in writing, the plan's proposed reimbursement methodology and rates of payment for federally qualified health centers. Delegation of any obligation or requirement to a subcontractor by a plan shall not release the plan from the responsibility to discharge any obligation or comply with any requirement contained in the contract between the plan and the department.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14087.3 and 14087.4, Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–96 as an emergency; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).

2. Repealer of section and NOTE and new section and NOTE filed 3–4–97; operative 3–4–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).

§ 53868. Reinsurance.

Each plan in a designated region may purchase reinsurance to provide indemnification against unanticipated financial liabilities provided that such coverage is purchased in accordance with the specification and requirements of section 53252.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14087.3 and 14087.4, Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–96 as an emergency; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).
2. Repealer of section and NOTE and new section and NOTE filed 3–4–97; operative 3–4–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).

§ 53869. Capitation Payment, Payment Rate Determination/Redetermination.

(a) In making capitation payments, the department shall adhere to the requirements specified in section 53320. Per capita rates of payment, by the department, for services provided to beneficiaries enrolled in each plan in a designated region shall be payable effective the date a beneficiary's enrollment takes effect. Capitation payments by a plan to a primary care provider or clinic contracting with a plan on a capitation basis shall be payable effective the date of the beneficiary's enrollment where the beneficiary's assignment to or selection of a plan has been confirmed by the plan. However, capitation payments by a plan to a primary care provider for a beneficiary whose assignment to or selection of a primary care provider was not confirmed by the plan on the date of the beneficiary's enrollment, but is later confirmed by the plan, shall be payable no later than 30 days after the beneficiary's enrollment.

(b) The department shall determine capitation payment rates annually by actuarial methods with assistance from an actuary or consulting actuary, except that the department reserves the right to redetermine rates on an actuarial basis or move to a negotiated rate for each rate year.

(c) The rates shall not exceed actuarially equivalent Medi–Cal fee–for–service costs. These costs shall be determined by viewing the total services and requirements, including administration, provided under this Chapter by a local initiative or commercial plan, as though such services and requirements were reimbursable under Chapter 3. For the purposes of this section:

(1) Costs of administration include, but are not limited to:

(A) Salaries, bonuses or benefits paid or incurred with respect to the officers, directors, partners, trustees or other principal management of the plan, minus, to the extent that such persons also are providers of health care services, the minimum reasonable cost of obtaining such health care services from other persons.

(B) Cost of marketing.

(C) Legal and accounting fees and expenses.

(D) Costs associated with the establishment and maintenance of agreements with providers of health care services, excluding the cost of reviewing quality and utilization of such services and cost of reviewing utilization of health care services on a referral basis.

(E) Premium on required fidelity and surety bonds and any insurance maintained pursuant to Health and Safety Code, section 1377, and any insurance or other expense incurred for the purpose of complying with Health and Safety Code, section 1375.1.

(F) Costs of preparing reports required by this Chapter.

(G) Costs of maintaining facilities for administrative services.

(2) Costs of administration shall not include:

(A) Bad debt write–off.

(B) Donations.

(C) Out–of–state and out–of country travel.

(D) Expenditures for commercial market development.

(E) Stock losses.

(F) Good will.

(G) Malpractice insurance.

(d) Capitation rates shall be effective for one year beginning the first day of October each year. In the event that payment of the new rates is delayed beyond the first day of October, continued payment of the rate in effect shall be interim payment only. Final payment shall be:

(1) Adjusted by any increase or decrease to the level of the new rates.

(2) Effective as of the first day of October.

(e) Notwithstanding subsection (d), payment of the new annual rates shall commence no later than December 1, provided that a contract amendment providing for the new annual rates has been prior approved by the United States Department of Health and Human Services, and signed by the department and the plan, but has not yet received the approval of all required control agencies and departments.

(f) Contract amendments providing for the new annual rates shall provide that:

(1) The plan stipulates to a confession of judgment, for any amounts received in excess of the final approved rate, by accepting payment of the new annual rates prior to final approval.

(g) Any underpayment by the State, if the final approved rates differ from the rates set forth in an amendment providing for new annual rates, shall be paid by the department to the plan within 30 days after final approval of such rate amendment.

(h) Any overpayment by the department shall be recovered by withhold of the amount due from the plan's next capitation payment, not to exceed 25 percent of the capitation payment. If the overpayment is more than 25 percent, amounts up to 25 percent shall be withheld from each successive capitation payment until such deficiencies are recovered by the department. Upon termination the department may recover all amounts outstanding from the last capitation payment.

(i) The contract between the department and a local initiative or commercial plan shall include:

(1) The monthly capitation rates.

(2) A description of the actuarial method, assumptions, cost information and utilization rates used in determining the rates.

(j) In redetermining capitation rates, the department shall follow to the requirements specified in section 53322.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14087.3, 14087.4 and 14301, Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–96 as an emergency; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).
2. Repealer of section and NOTE and new section and NOTE filed 3–4–97; operative 3–4–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).

§ 53870. Affiliated Organizations and Persons.

(a) Every affiliate of a plan in each designated region shall:

(1) Furnish, upon request, to the plan and to the department financial reports relevant to the disposition of funds paid to the affiliate by the plan. Reports shall be prepared according to generally accepted accounting principals and shall provide all financial data required by the plan to fulfill its obligations to the department for financial reporting.

(2) Make all books and records, which are pertinent to plan contracts with the department available for inspection by the department and the United States Department of Health and Human Services. These books and records shall be retained for at least five years from the close of each fiscal year in which the contract is in effect.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14087.3 and 14087.4, Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–96 as an emergency; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).
2. Repealer of section heading, section and NOTE and new section heading, section and NOTE filed 3–4–97; operative 3–4–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).

§ 53871. Financial Audit.

Each plan in a designated region shall have an annual audit performed by an independent certified public accountant in accordance with the provisions of section 53340, except that this audit shall be received by the department no later than 120 days after the close of the plan's fiscal year, or 180 days for public entities whose audits are conducted by a county grand jury.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14087.3 and 14087.4, Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–96 as an emergency; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).
2. Repealer of section and NOTE and new section and NOTE filed 3–4–97; operative 3–4–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).

§ 53872. Civil Penalties.

(a) The Director may, except as provided in section 53873, impose one or more of the civil penalties specified in (b) upon a plan which fails to comply with the provisions of Article 2.7 of Chapter 7, Part 3, of Division 9 of the Welfare and Institutions Code, the provisions of this Chapter, or the terms of the plan contract.

(b) Civil penalties imposed by the Director shall be in the amounts specified below with respect to violation of any provision of:

(1) Article 2, excluding section 53862.

(A) First violation: $1,000.

(B) Second violation: $5,000.

(C) Third and each subsequent violation: $10,000.

(2) Article 3.

(A) First violation: $5,000.

(B) Second and each subsequent violation: $10,000.

(3) Section 53862.

(A) First violation: $1,000, plus $500 per day for each day that the item to be submitted is late, not to exceed $10,000 total for each violation.

(B) Second and each subsequent violation: $5,000, plus $500 per day for each day that the item to be submitted is late, not to exceed $10,000 total for each violation.

(4) The contract, which is not specifically governed by regulation in this Chapter.

(A) First violation: $5,000.

(B) Second and each subsequent violation: $10,000.

(5) Article 2.7, Chapter 7, Part 3, Division 9 of the Welfare and Institutions Code, which is not specifically addressed by regulations in this Chapter.

(A) First violation: $5,000.

(B) Second and each subsequent violation: $10,000.

(c) The counting of violations for the purposes of this section shall:

(1) Be done without regard to contract term.

(2) Commence with violations occurring on or after the effective date of this section.

(d) Imposition of penalties, under the provisions of subsection (a) shall follow administrative proceedings held in accordance with the provisions of Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2, Government Code.

(e) The department shall issue a letter of noncompliance to a plan found by the administrative proceedings addressed in subsection (d) to be in violation of any provision of law, regulation or the contract. The letter of noncompliance shall include the violation, sanctions to be imposed and corrective action to be taken within stated time limits. Failure to comply with corrective actions within the time limits given shall be deemed to be subsequent violation for the purposes of subsection (c).

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14087.3, 14087.4 and 14304, Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–96 as an emergency; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).
2. Repealer of section and NOTE and new section and NOTE filed 3–4–97; operative 3–4–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).

§ 53873. Contract Termination.

In terminating a contract with a plan in a designated region, the department shall adhere to the procedures and requirements prescribed in section 53352, except for subsection (d) and (e).

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14087.3, 14087.4 and 14304, Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–96 as an emergency; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).
2. Repealer of section and NOTE and new section and NOTE filed 3–4–97; operative 3–4–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).

§ 53874. Conflict of Interest.

In entering into contracts or subcontracts, each plan in a designated region shall comply with the prohibitions against contracting relating to conflict of interest set forth in section 53600 except as otherwise provided in Welfare and Institutions Code, sections 14087.31(k), 14087.35(p)(1), 14087.36(v)(1), 14087.38(h), and 14087.969.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14087.3 and 14087.4, Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–96 as an emergency; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).
2. Repealer of section and NOTE and new section and NOTE filed 3–4–97; operative 3–4–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).

§ 53875. Emergency Services Claims Disputes.

In resolving disputes over claims for reimbursement for emergency services provided to plan members by nonplan providers, the involved parties and the department shall adhere to the procedures and requirements set forth in Article 7 of Chapter 4, commencing with section 53620 except subsection (e) of section 53676.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14087.3 and 14087.4, Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–96 as an emergency; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).
2. Repealer of section and NOTE and new section and NOTE filed 3–4–97; operative 3–4–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).

§ 53876. Cultural and Linguistic Requirements.

(a) Each plan in a designated region shall implement and adhere to the cultural and linguistic services requirements of the contract between the plan and the department. The contract at a minimum shall include requirements for:

(1) Interpreters.

(2) Translated signage.

(3) Translated written materials.

(4) Referrals to culturally and linguistically appropriate community services programs.

(b) In consultation with representatives from contracting plans and community–based diverse cultural and linguistic groups, the department shall develop, and update as appropriate, a set of comprehensive cultural and linguistic requirements which shall be incorporated into the contract between the department and each plan in a designated region.

(c) The plan shall establish and maintain a community advisory committee, and meet periodically with the committee concerning the devel-

opment and implementation of its cultural and linguistic accessibility standards and procedures.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14087.3 and 14087.4, Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–96 as an emergency; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).
2. Editorial correction adding inadvertently omitted HISTORY 1 (Register 97, No. 10).
3. Repealer of section and NOTE and new section and NOTE filed 3–4–97; operative 3–4–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).

Article 7. Marketing, Enrollment, Assignment, and Disenrollment

§ 53880. Marketing.

(a) Each plan in a designated region shall limit its marketing activities to printed, illustrated, or video taped materials, and media advertising. Plans may participate in an organized community or neighborhood health fair in a public place for marketing purposes.

(1) Printed and illustrated materials may be available to members or prospective members, as follows:

(A) By mail. Printing, postage, and any related costs of material mailed to prospective members shall be paid by the plan. The department shall conduct all mailings to ensure the confidentiality of Medi–Cal beneficiaries is protected.

(B) By posting materials in public places.

(C) At health care options presentations, which shall be conducted pursuant to section 53886.

(b) Prior to engaging in marketing activities, each plan shall submit a marketing plan which shall be approved in writing by the department prior to its implementation.

(c) All marketing materials, including but not limited to, all printed materials, illustrated materials, video taped and media scripts shall be approved in writing by the department prior to distribution to members or prospective members.

(d) No representative of a plan shall contact prospective members for the purposes of marketing, except in cases where the contact is initiated by the prospective member, unless that contact is approved in writing by and coordinated through the department, pursuant to (a)(1)(A), above. However, physicians, mid–level practitioners, nurses, or office staff may discuss plan membership with their patients. Each plan shall be responsible for informing all network providers they may not distribute unauthorized or unapproved material to Medi–Cal beneficiaries.

(e) All marketing materials, presentations and displays shall conform to the cultural and linguistic requirements prescribed in the contract between the plan and the department.

(f) A plan shall not engage in door–to–door marketing for the purpose of enrolling members, or any other purpose.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14087.3, 14087.4, 14263, 14408 and 14450, Welfare and Institutions Code.

HISTORY

1. New article 7 (sections 53880–53896) and section filed 7–1–96 as an emergency; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).
2. Repealer of section and NOTE and new section and NOTE filed 3–4–97; operative 3–4–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).

§ 53881. Marketing and Member Materials.

(a) The Evidence of Coverage, disclosure form, and any marketing brochure developed by or for a plan in a designated region and distributed to prospective members shall meet the requirements contained in Health and Safety Code, section 1363.1, and Title 10, section 1300.63(a), as to print size, readability, and understandability of text.

(b) Evidence of coverage and disclosure forms or member services guides distributed to eligible beneficiaries by a plan shall fully disclose the availability of and restrictions upon the services provided by the plan, and any exclusions from coverage. These materials shall, at a minimum, specify:

(1) The scope, access to, and availability of services, including service site locations and telephone numbers, and the service area authorized in that plan's contract.

(2) A description of the membership identification card issued by the plan, if applicable, and an explanation as to its use in authorizing or assisting members to obtain services.

(3) That members shall obtain all Medi–Cal health care services covered by the plan's contract through the plan's providers.

(4) That medical services required in an emergency may be obtained from specified plan providers or from non–plan providers, if necessary.

(5) The disenrollment process, and an explanation that disenrollment is possible only under the conditions specified in section 53891 and is effective only after the disenrollment transaction is completed by the Health Care Options Program as specified in section 53889.

(6) The plan's grievance process, including instructions on how to use it.

(7) That members have the right to a fair hearing, including instructions on how to request one.

(8) The interpreter, linguistic, and cultural services available through plan personnel.

(9) Any transportation services to service sites that are available through the plan or under the Medi–Cal program. This shall include a description of both medical and non–medical transportation services, and the conditions under which non–medical transportation is available to members.

(10) Information on the availability of and procedures for obtaining services at Federally Qualified Health Centers and Indian Health Service facilities.

(11) Information on the member's right to seek family planning services from any qualified provider eligible to provide family planning services under the Medi–Cal program, including providers outside the plan's provider network, how to access these services, and a description of the limitations on the services that beneficiaries may seek outside the plan.

(12) Information on the availability and procedures for obtaining nurse midwife and nurse practitioner services.

(13) Information concerning the availability of services covered under the State's California Children Services (CCS) program from providers outside the plan's provider network and how to access these services.

(14) An explanation of the disenrollment process for members qualifying for expedited disenrollment as specified in section 53889.

(15) Information on how to obtain minor consent services through the plan, and an explanation of those services.

(16) An explanation of an American Indian beneficiary's right to not enroll in a plan, not be restricted in their right to access Indian Health Facilities by a plan, and their right to disenroll from a plan without cause.

(17) The information specified in section 53895(b).

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14087.3, 14087.4 and 14408, Welfare and Institutions Code; and Sections 1363 and 1364, Health and Safety Code.

HISTORY

1. New section filed 7–1–96 as an emergency; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).
2. Repealer of section and NOTE and new section and NOTE filed 3–4–97; operative 3–4–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).
3. Amendment of subsections (b), (b)(5), (b)(8), (b)(10)–(12) and (b)(14), new subsection (b)(17) and amendment of NOTE filed 12–19–2000 as an emergency;

operative 12–19–2000. Submitted to OAL for printing only pursuant to section 147, SB 485 (Ch. 722/92) (Register 2000, No. 51).

§ 53882. Member Enrollment.

(a) Enrollment in a plan in a designated region shall be mandatory for those eligible beneficiaries specified in section 53845(a), and voluntary for those specified in section 53845(b).

(b) Enrollment shall be limited to eligible beneficiaries who reside within the designated region, except as provided in section 53845(d).

(c) The department or the Health Care Options Program shall mail an enrollment form and plan information to each eligible beneficiary described in section 53845(a) who does not attend a health care options presentation as described in section 53886. The mailing shall include health care options information and instructions to enroll in a plan within thirty days of the postmark date on the mailing envelope. At a minimum, the mailing shall include instructions on how to enroll, how to request an exemption from mandatory enrollment for medical or nonmedical reasons, and how to request a medical exemption certification form.

(d) Each eligible beneficiary described in section 53845(a) shall select a plan within thirty days of receipt of an enrollment form unless requesting an exemption to plan enrollment is submitted to the Health Care Options Program within 30 days of receipt as prescribed in section 53887(b), or within thirty days of the postmark date of the health care options information if mailed, with instructions from the department or the Health Care Options Program to select a plan.

(1) In the event an eligible beneficiary described in section 53845(a) does not select a plan within thirty days, the Health Care Options Program shall assign the eligible beneficiary to a plan, in accordance with section 53883.

(2) For purposes of selecting a plan:

(A) In the case of a family group, eligible beneficiary means the individual or entity with legal authority to make a choice on behalf of dependent family members.

(e) An eligible beneficiary shall not be enrolled in more than one plan at any one time.

(f) The Health Care Options Program shall process all enrollments.

(g) An eligible beneficiary is enrolled upon completion of all of the following events:

(1) Either of the following enrollment activities:

(A) The voluntary signing and dating by the eligible beneficiary of an enrollment form, except as provided under section 53845(c), and departmental validation of the beneficiary's enrollment form; or

(B) The assignment, as specified in section 53883, of an eligible beneficiary to a plan.

(2) Departmental verification of the beneficiary's Medi–Cal eligibility.

(3) Addition of the beneficiary's name to the approved list of members, which is effective the first day of any given month and which is furnished monthly to the plan by the department.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14087.3 and 14087.4, Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–96 as an emergency; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).
2. Repealer of section and NOTE and new section and NOTE filed 3–4–97; operative 3–4–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).

§ 53883. Assignment of Eligible Beneficiaries to Plans.

(a) The Health Care Options Program shall assign an eligible beneficiary described in section 53845(a) to a plan within a designated region, from which to receive health care services, in the following situations:

(1) In the event the eligible beneficiary does not select a plan within thirty days of receiving an enrollment form pursuant to section 53882(d).

(2) In the event a member requests and is granted disenrollment from either plan within that region, pursuant to section 53891, but does not enroll in the competing plan, unless that member was granted approval by the department or its designee to receive health care services through the fee–for–service Medi–Cal program, pursuant to section 53887.

(3) In the event the competing plan is at capacity, the fee–for–service Medi–Cal option shall be made available.

(b) In carrying out (a), the Health Care Options Program shall comply with the assignment requirements contained in section 53884.

NOTE: Authority cited: Sections 10725, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14087.3 and 14087.4, Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–96 as an emergency; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).
2. Repealer of section and NOTE and new section and NOTE filed 3–4–97; operative 3–4–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).

§ 53884. Assignment System.

(a) The Health Care Options Program shall implement a system within each designated region approved by the department to assign an eligible beneficiary described in section 53845(a), to a plan, in the event the beneficiary does not select a plan pursuant to section 53882(d).

(b) In assigning an eligible beneficiary to a plan, the Health Care Options Program's system shall, at a minimum, consider the following:

(1) Zip code of eligible beneficiary matched to zip codes served by the plan in accordance with the provisions of section 50185.5(f).

(2) Enrollment capacity and availability of the plan.

(3) Plan's ability to render linguistically appropriate services and the eligible beneficiary's need for those services, if made known to the Health Care Options Program.

(4) Assignment of family members to the same plan to the extent possible.

(5)(A) Assignments between plans shall be distributed in accordance with an agreement, approved by the Department, between a local initiative and a commercial plan in a designated region; or

(B) in the absence of an approved agreement, the Department shall determine how assignments shall be distributed in a designated region.

(6) In approving an agreement between a local initiative and a commercial plan, or when the Department determines how assignments shall be distributed, the Department may consider the following factors:

1. The potential for a high level of informed beneficiary choice of plans and providers.

2. The potential for the local initiative to achieve an enrollment level that reasonably allows it to spread financial risk and a reasonable opportunity for it to attain financial viability.

3. Maintaining the level of disproportionate share hospital days and safety net providers in the region so that neither is adversely affected by the mandatory enrollment of Medi–Cal beneficiaries in managed care, when compared to Medi–Cal program levels prior to implementing the two–plan model in the region.

4. The need to assure that a commercial plan is not precluded from receiving default assignments, other than during a limited time period immediately preceding and following local initiative start–up.

5. The ability of the department's enrollment contractor to accurately and timely perform the selected assignment distribution methodology.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14087.3 and 14087.4, Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–96 as an emergency; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).
2. Repealer of section heading, section and NOTE and new section heading, section and NOTE filed 3–4–97; operative 3–4–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).
3. Repealer of subsection (b)(5)(A), redesignation and amendment of former subsection (b)(5) to new subsection (b)(5)(A), repealer and new subsection (b)(5)(B) and new subsections (b)(6)–(b)(6)5. filed 10–1–97 as an emergency; operative 10–1–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 40).

§ 53885. Travel Distance Standards.

(a) Each plan shall ensure that primary health care services provided through the plan are no more than 30 minutes travel time or ten (10) miles travel distance from each member's place of residence, unless the department has approved an alternative time and distance standard.

(b) An eligible beneficiary may voluntarily choose to receive services from a plan service site with a travel time or distance that exceeds the requirements in subsection (a).

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: 14087.3 and 14087.4, Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–96 as an emergency; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).
2. Repealer of section and NOTE and new section and NOTE filed 3–4–97; operative 3–4–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).

§ 53886. Health Care Options Presentation.

(a) The Health Care Options Program shall provide, in each designated region, a presentation of plan options to each new and continuing eligible beneficiary who meets the mandatory enrollment criteria specified in section 53845 and to any eligible beneficiary who meets the voluntary enrollment criteria specified in section 53845 and requests a presentation. For non–English or limited English speaking beneficiaries, presentations shall be made in the beneficiary's preferred language. Reasonable accommodations shall be made for persons who are blind, deaf or hearing impaired. At the department's discretion, the presentation may be in person or by mail. The department shall ensure that any eligible beneficiary requesting a face–to–face presentation is provided the opportunity to have such presentation at the earliest possible time and in the most convenient location possible, or is given the opportunity to speak with a telephone representative provided by the Health Care Options Program for assistance in making a plan selection.

(b) The health care options presentation shall include, at a minimum, the following information:

(1) The names of each plan.

(2) Each plan's service area.

(3) The name, address, telephone number, and specialty, if any, of each primary and specialty care provider or clinic participating in each plan. Providers participating in each plan will be listed alphabetically by last name and grouped by geographic area.

(4) The process for selecting or changing a primary care provider and an explanation that beneficiaries have the right to select a primary care clinic as their primary care provider and to change their primary care provider at any time.

(5) Services covered by each plan.

(6) Procedures for accessing and receiving health care services from each plan.

(7) Hospitals used by each plan.

(8) Any features or additional services, including cultural and linguistic services, provided by each plan, pursuant to the contract.

(9) An explanation that a beneficary eligible for voluntary enrollment may submit a request for disenrollment from the plan at any time, in accordance with the provisions of section 53891.

(c) For eligible beneficiaries for whom plan enrollment is mandatory, the following additional information shall be provided:

(1) An explanation that an exemption from plan enrollment exists for American Indians, members of American Indian households, and others eligible to receive health care services through an Indian Health Service facility, as specified in section 53887(a)(1).

(2) An explanation that an exemption from plan enrollment may be obtained for individuals with complex medical conditions, as specified in section 53887(a)(2), and how to request such an exemption.

(3) An explanation that if beneficiaries do not select a plan within 30 days, they will be assigned to a plan.

(4) An explanation that beneficiaries have the right to disenroll from a plan and reenroll in the competing plan at any time, in accordance with section 53891.

(d) The Health Care Options Program shall provide assistance to eligible beneficiaries in enrollment/disenrollment, as needed.

(e) Prior to either requesting enrollment by signing a written request or being assigned to a plan in a designated region in accordance with section 53883, each eligible beneficiary shall be informed in writing by the department or the Health Care Options Program of at least the following:

(1) There will be a 15 to 45 day processing time between the date of application or assignment and the effective date of enrollment in a plan.

(2) Until plan enrollment is effective, the beneficiary may receive Medi–Cal covered health care services from any Medi–Cal provider licensed to provide the services.

(3) An explanation of the process for requesting exemption from plan enrollment for the reasons specified in section 53887.

(f) In the event disenrollment from a plan is restricted pursuant to section 53891(b) during the second through sixth month of enrollment, the Health Care Options Program shall inform beneficiaries of the conditions of disenrollment.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14016.5, 14087.3, 14087.305 and 14087.4, Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–96 as an emergency; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).
2. Repealer of section and NOTE and new section and NOTE filed 3–4–97; operative 3–4–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).
3. Amendment of section and NOTE filed 12–19–2000 as an emergency; operative 12–19–2000. Submitted to OAL for printing only pursuant to section 147, SB 485 (Ch. 722/92) (Register 2000, No. 51).

§ 53887. Exemption from Plan Enrollment.

(a) An eligible beneficiary meeting the criteria specified in section 53845(a), who satisfies the requirements in (1) or (2) below, may request fee–for–service Medi–Cal for up to 12 months as an alternative to plan enrollment by submitting a request for exemption from plan enrollment to the Health Care Options Program as specified in (b) below.

(1) An eligible beneficiary who is an American Indian as specified in section 55100(i), a member of an American Indian household, or chooses to receive health care services through an Indian Health Service facility and has written acceptance from an Indian Health Service facility for care on a fee–for–service basis.

(2) An eligible beneficiary who is receiving fee–for–service Medi–Cal treatment or services for a complex medical condition, from a physician, a certified nurse midwife, or a licensed midwife who is participating in the Medi–Cal program but is not a contracting provider of either plan in the eligible beneficiary's county of residence, may request a medical exemption to continue fee–for–service Medi–Cal for purposes of continuity of care.

(A) For purposes of this section, conditions meeting the criteria for a complex medical condition include, and are similar to, the following:

1. An eligible beneficiary is pregnant.
2. An eligible beneficiary is under evaluation for the need for an organ transplant; has been approved for and is awaiting an organ transplant; or has received a transplant and is currently either immediately post–operative or exhibiting significant medical problems related to the transplant. Beneficiaries who are medically stable on post–transplant therapy are not eligible for exemption under this section.
3. An eligible beneficiary is receiving chronic renal dialysis treatment.
4. An eligible beneficiary has tested positive for HIV or has received a diagnosis of acquired immune deficiency syndrome (AIDS).
5. An eligible beneficiary has been diagnosed with cancer and is currently receiving chemotherapy or radiation therapy or another course of accepted therapy for cancer that will continue for up to 12 months or has been approved for such therapy.

6. An eligible beneficiary has been approved for a major surgical procedure by the Medi–Cal fee–for–service program and is awaiting surgery or is immediately post–operative.

7. An eligible beneficiary has a complex neurological disorder, such as multiple sclerosis, a complex hematological disorder, such as hemophilia or sickle cell diseases, or a complex and/or progressive disorder not covered in 1. through 6. above, such as cardiomyopathy or amyotrophic lateral sclerosis, that requires ongoing medical supervision and/or has been approved for or is receiving complex medical treatment for the disorder, the administration of which cannot be interrupted.

8. An eligible beneficiary is enrolled in a Medi–Cal waiver program that allows the individual to receive sub–acute, acute, intermediate or skilled nursing care at home rather than in a sub–acute care facility, an acute care hospital, an intermediate care facility or a skilled nursing facility.

9. An eligible beneficiary is participating in a pilot project organized and operated pursuant to sections 14087.3, 14094.3, or 14490 of the Welfare and Institutions Code.

(B) A request for exemption from plan enrollment based on complex medical conditions shall not be approved for an eligible beneficiary who has:

1. Been a member of either plan on a combined basis for more than 90 calendar days,

2. A current Medi–Cal provider who is contracting with either plan, or

3. Begun or was scheduled to begin treatment after the date of plan enrollment.

(3) Except for pregnancy, any eligible beneficiary granted a medical exemption from plan enrollment shall remain with the fee–for–service provider only until the medical condition has stabilized to a level that would enable the individual to change physicians and begin receiving care from a plan provider without deleterious medical effects, as determined by a beneficiary's treating physician in the Medi–Cal fee–for–service program, up to 12 months from the date the medical exemption is first approved by the Health Care Options Program. A beneficiary granted a medical exemption due to pregnancy may remain with the fee–for–service Medi–Cal provider through delivery and the end of the month in which 90 days post–partum occurs.

(4) Any extension to the 12–month medical exemption time limit shall be requested through the Health Care Options Program no earlier than 11 months after the starting date of the exemption currently in effect. The Health Care Options Program will notify the beneficiary 45 days before the expiration of an approved medical exemption and will inform the beneficiary how to request an extension. An extension to the medical exemption shall be approved if the eligible beneficiary continues to meet the requirements of subsection (a)(2).

(b) Exemption from plan enrollment or extension of an approved exemption due to a complex medical condition, as specified in (a)(2)(A), shall be requested on the "Request for Medical Exemption from Plan Enrollment" form (HCO Form 7101, June 2000), hereby incorporated by reference, which is available from the Health Care Options Program. Exemption from plan enrollment or extension of an approved exemption due to a beneficiary's enrollment in a Medi–Cal waiver program, as specified in (a)(2)(A)8, or a beneficiary's acceptance for care at an Indian Health Service facility, as specified in (a)(1), shall be requested on the "Request for Non–Medical Exemption from Plan Enrollment" form (HCO Form 7102, October 2000), hereby incorporated by reference, which is available from the Health Care Options Program. The completed request for exemption shall be submitted to the Health Care Options Program by the Medi–Cal fee–for–service provider or the Indian Health Service facility treating the beneficiary and shall be submitted by mail or facsimile. Request for exemption from plan enrollment or extension of an approved exemption shall not be submitted by the plan.

(c) The Health Care Options Program, as authorized by the department, shall approve each request for exemption from plan enrollment that meets the requirements of this section. At any time, the department may, at its discretion, verify the complexity, validity, and status of the medical condition and treatment plan and verify that the provider is not contracted or otherwise affiliated with a plan. The Health Care Options Program, as authorized by the department, or the department may deny a request for exemption from plan enrollment or revoke an approved request for exemption if a provider fails to fully cooperate with this verification.

(d) Approval of requests for exemption from plan enrollment is subject to the same processing times and effective dates specified in section 53889 for the processing of enrollment and disenrollment requests.

(e) The Health Care Options Program, as authorized by the department, or the department may revoke an approved request for exemption from plan enrollment at any time if the department determines that the approval was based on false or misleading information, the medical condition was not complex, treatment has been completed, or the requesting provider is not or has not been providing services to the beneficiary. The department shall provide written notice to the beneficiary that the approved request for exemption from plan enrollment has been revoked and shall advise the beneficiary that they must enroll in a Medi–Cal plan and how that enrollment will occur, as specified in section 53882. The revocation of an approved request for exemption from plan enrollment shall not otherwise affect an eligible beneficiary's eligibility or ability to receive covered services as a plan member.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14087.3 and 14087.4, Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–96 as an emergency; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).
2. Repealer of section and NOTE and new section and NOTE filed 3–4–97; operative 3–4–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).
3. Amendment of subsections (b), (b)(4) and (c) filed 10–1–97 as an emergency; operative 10–1–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 40).
4. Repealer and new section heading, section and NOTE filed 12–19–2000 as an emergency; operative 12–19–2000. Submitted to OAL for printing only pursuant to section 147, SB 485 (Ch. 722/92) (Register 2000, No. 51).

§ 53888. Enrollment/Disenrollment Form.

(a) The Health Care Options Program shall make the enrollment/disenrollment form available in the Health Care Options information packets mailed to mandatory eligible beneficiaries, at the Health Care Options presentations, and at department–approved Health Care Options Program sites. The Health Care Options Program shall mail the enrollment/disenrollment form to a beneficiary within three working days of receiving a telephone or written request for a form.

(b) Plans shall make the enrollment/disenrollment form available at the member services departments and shall mail the form to a beneficiary within three working days of receiving a telephone or written request for a form.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14087.3 and 14087.4, Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–96 as an emergency; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).
2. Repealer of section and NOTE and new section and NOTE filed 3–4–97; operative 3–4–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).
3. Repealer and new section and NOTE filed 12–19–2000 as an emergency; operative 12–19–2000. Submitted to OAL for printing only pursuant to section 147, SB 485 (Ch. 722/92) (Register 2000, No. 51).

§ 53889. Enrollment/Disenrollment Processing.

(a) An eligible beneficiary shall submit an enrollment or disenrollment request on an original, signed enrollment/disenrollment form to the Health Care Options Program by mail or in person at department–approved Health Care Options Program sites. Expedited disenrollment requests may also be submitted by facsimile. An eligible beneficiary also may request expedited disenrollment over the telephone from the Health Care Options Program.

(b) An eligible beneficiary shall provide the following information on the enrollment/disenrollment form when requesting enrollment or disenrollment: first and last name of the beneficiary; sex; date of birth; Social Security Number; Medi–Cal number; complete mailing address; telephone number, if available; plan choice, if requesting enrollment; name and address of doctor or clinic beneficiary is choosing as primary care provider; language of the beneficiary; and the reason for disenrolling, if requesting disenrollment. If the beneficiary is requesting enrollment or disenrollment for any other eligible family member, the same information shall be provided for the other eligible beneficiaries on the same form where indicated. The beneficiary or authorized representative, as specified in (h), shall sign and date the enrollment/disenrollment form.

(c) The Health Care Options Program shall assist with, accept and process enrollment and disenrollment requests regardless of the beneficiary's race, creed, color, religion, age, sex, national origin, ancestry, marital status, sexual orientation, physical or mental disability, or pre–existing medical conditions.

(d) The Health Care Options Program shall ensure that beneficiaries are informed of their right to request a fair hearing in accordance with sections 50951, 51014.1, 51014.2, and 53894.

(e) The Health Care Options Program shall accept and process all completed enrollment and disenrollment requests, including expedited disenrollment requests, from eligible beneficiaries within two working days of receipt if such requests meet the conditions for plan disenrollment specified in section 53891.

(f) Approval of enrollment and disenrollment requests is conditioned upon receipt of a fully completed enrollment/disenrollment form and all required supporting documentation.

(g) The Health Care Option Program shall notify beneficiaries in writing of the approval or disapproval of enrollment and disenrollment requests, including expedited disenrollment requests, within seven working days of receipt of the request. This notice shall include the effective date of the enrollment and/or disenrollment, as specified in (h) below.

(h) Enrollment and disenrollment requests may be submitted by the beneficiary or other authorized individuals listed in (1) through (7) below:

(1) Persons with legal authority to act on the beneficiary's behalf. Such persons include, but are not limited to, parents, legal guardians, publicly appointed guardians, and other legally designated representatives.

(2) Department staff responsible for the administration of the Two–Plan Model Program and Health Care Options Program staff.

(3) County staff, including but not limited to, social workers, probation officers, caseworkers, and other local government personnel responsible for supervision or case management of the beneficiary.

(4) Foster parents or parents adopting a child in the Adoption Assistance Program.

(5) Medi–Cal managed care Two–Plan Model Program contractors.

(6) Case managers, physicians or medical staff of the Medi–Cal home and community–based services waiver programs.

(7) Care coordinators at Regional Centers for the Developmentally Disabled.

(i) The effective date of enrollment or disenrollment is determined as follows:

(1) Enrollment requests and non–expedited disenrollment requests processed *before* the monthly update to the Medi–Cal Eligibility Data System shall be effective on the first day of the month following the month in which the request is processed.

(2) Enrollment requests and non–expedited disenrollment requests processed *after* the monthly update to the Medi–Cal Eligibility Data System shall be effective on the first day of the second month following the month in which the request is processed.

(3) Expedited disenrollment requests shall be effective on the first day of the month in which the request is processed, whether submitted before or after the monthly update to the Medi–Cal Eligibility Data System.

(j) The Health Care Options Program shall process all completed disenrollment requests meeting the requirements of section 53891 as expedited disenrollments if they also meet the criteria in (1) and (2) below. Approved expedited disenrollments are effective as specified in (i)(3) in this section.

(1) The beneficiary has not used services for which the plan is contractually obligated to pay during the month for which disenrollment is requested, and

(2) Disenrollment is requested for one of the following reasons, and all required supporting documentation is provided:

(A) The beneficiary is an American Indian, a member of an American Indian household, or chooses to receive health care services through an Indian Health Service facility and has written acceptance from the Indian Health Service facility for care on a fee–for–service basis.

(B) The beneficiary is receiving services under the Foster Care or Adoption Assistance Program or has been placed in the care of Child Protective Services. The disenrollment request must be submitted by the authorized foster parent, the authorized adoptive parent, or the licensed agency providing protective services.

(C) The beneficiary has a complex medical condition, specified in section 53887(a)(2)(A), and the disenrollment request is submitted with verification of the medical condition, treatment plan, and duration of treatment by the Medi–Cal fee–for–service physician.

(D) The beneficiary is enrolled in a Medi–Cal waiver program that allows the individual to receive sub–acute, acute, intermediate or skilled nursing care at home rather than in a sub–acute care facility, acute care hospital, intermediate care facility or skilled nursing facility. Verification of participation in the waiver program must be submitted with the disenrollment request by the beneficiary or the beneficiary's authorized representative as specified in (h).

(E) The beneficiary is participating in a pilot project organized and operated pursuant to sections 14087.3, 14094.3, or 14490 of the Welfare and Institutions Code. Verification of participation in the pilot program must be submitted with the disenrollment request by the beneficiary or the beneficiary's authorized representative as specified in (h).

(F) The Health Care Options Program incorrectly enrolled or assigned the eligible beneficiary to a plan not chosen by the beneficiary, as determined by the Health Care Options Program, the beneficiary or the plan and verified by the Health Care Options Program. An explanation of the incorrect enrollment or assignment must be submitted with the disenrollment request by the beneficiary or the beneficiary's authorized representative as specified in (h).

(G) The beneficiary submitted a non–expedited disenrollment request that meets the requirements for disenrollment or a request for exemption from plan enrollment based upon a qualifying complex medical condition that was not timely processed by the Health Care Options Program. An explanation of the lack of timely processing must be submitted with the disenrollment request by the beneficiary or the beneficiary's authorized representative as specified in (h).

(H) The beneficiary has moved or been placed outside of the plan service area and has notified his or her caseworker of the new address. If the beneficiary's new address is not yet shown in the Medi–Cal Eligibility Data System, the beneficiary is responsible for requesting that the caseworker provide verification of the new address to the Health Care Options Program by telephone, facsimile, or in writing.

(I) The beneficiary or plan has experienced an irreconcilable breakdown in the patient–physician relationship, has used the plan's problem resolution process, and the department has approved the disenrollment. Documentation of the irreconcilable breakdown in the patient–physician relationship, including the use of the plan's problem resolution process, must be submitted with the disenrollment request by the beneficiary, the beneficiary's authorized representative as specified in (h), or the plan. Use of the plan's problem resolution process shall not be required in situations where a beneficiary's behavior presents physical risk to plan staff, a provider, or staff at a provider site, and the plan or provider has filed a police report regarding the physical risk.

(J) The beneficiary was enrolled in the plan due to incorrect information provided by the Health Care Options Program or due to prohibited

marketing practices by the plan, as determined by the Health Care Options Program, the beneficiary or the plan and verified by the Health Care Options Program. Explanation of the incorrect information or the prohibited marketing practices must be submitted with the disenrollment request by the beneficiary or the beneficiary's authorized representative, as specified in (h).

(K) The beneficiary requires nursing facility services, other than members requesting hospice services, has been admitted to a long-term care facility and will remain in long-term care for more than two consecutive months. The name of the long-term care facility and the date of admission must be submitted with the disenrollment request by the beneficiary or the beneficiary's authorized representative as specified in (h).

(L) The beneficiary is deceased, and the death is not yet reflected in the Medi-Cal Eligibility Data System. A copy of the death certificate must be submitted with the disenrollment request by the beneficiary's authorized representative as specified in (h).

(k) The Health Care Options Program shall notify the plan of enrollment and disenrollment on a weekly basis. However, enrollment and disenrollment is effective only when confirmed by the department's eligibility information contained in the Medi-Cal Eligibility Data System update that is provided monthly to plans.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14087.3, 14087.4 and 14495, Welfare and Institutions Code.

HISTORY

1. New section filed 7-1-96 as an emergency; operative 7-1-96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).
2. Repealer of section and NOTE and new section and NOTE filed 3-4-97; operative 3-4-97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).
3. Repealer and new section heading, section and NOTE filed 12-19-2000 as an emergency; operative 12-19-2000. Submitted to OAL for printing only pursuant to section 147, SB 485 (Ch. 722/92) (Register 2000, No. 51).

§ 53890. Assignment of Primary Care Physician.

(a) Each plan in a designated region shall have a mechanism in place and approved in writing by the department to ensure that each member is assigned to a primary care physician, by either:

(1) Allowing each member to select a primary care physician from the plan's network of affiliated physicians, if the member chooses to do so; or

(2) Assigning a primary care physician to each member within forty days from the effective date of enrollment, if the member does not select one within the first thirty days of the effective date of enrollment in the plan. This assignment shall meet the conditions of both:

(A) The member shall be assigned to a primary care physician within the maximum travel distances specified in section 53885.

(B) The member shall be assigned to a primary care physician who is or has office staff who are linguistically and culturally competent to communicate with the member or have the ability to interpret in the provision of health care services and related activities during the member's office visits or contacts, if the language or cultural needs of the member are known to the plan.

(b) The plan shall provide the member written notice of their assignment to a primary care physician within 10 days of their assignment, and informing the member of their right to choose another primary care physician from the plan's list of approved primary care physicians.

(c) Any member dissatisfied with the primary care physician selected or assigned shall be allowed to select or be assigned to another primary care physician. Each plan shall assist its members in changing primary care physicians if that change is requested by the member. Any request by a member to change primary care physicians shall be processed by the plan within 30 days of the date the request is received by the plan.

(d) Any plan physician dissatisfied with the physician/patient relationship with any member may request that the member select or be assigned to another primary care provider.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14087.3 and 14087.4, Welfare and Institutions Code.

HISTORY

1. New section filed 7-1-96 as an emergency; operative 7-1-96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).
2. Repealer of section heading, section and NOTE and new section heading, section and NOTE filed 3-4-97; operative 3-4-97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).

§ 53890.5. Assignment of a Primary Care Provider.

(a) If the plan utilizes nonphysician practitioners, members may select, be assigned to, or change such providers in accordance with the provisions of section 53890.

(b) In all cases where a nonphysician practitioner is a member's primary care provider, the plan shall ensure that a primary care physician is responsible for the overall coordination of the member's health care, consistent with applicable state and federal laws and regulations.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14087.3 and 14087.4, Welfare and Institutions Code.

HISTORY

1. New section filed 3-4-97; operative 3-4-97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).

§ 53891. Disenrollment of Members.

(a) The Health Care Options Program shall disenroll any member from a plan when one of the following conditions is met:

(1) A member's eligibility for enrollment as a Medi-Cal beneficiary is terminated.

(2) The Health Care Options Program incorrectly enrolled or assigned a member to a plan not of his/her choosing, as indicated on the enrollment request form completed by beneficiary.

(3) A member was enrolled in the plan due to incorrect information provided by the Health Care Options Program or due to prohibited marketing practices by the plan as specified in sections 53880 or 53881.

(4) A member's request for disenrollment is due to plan merger or reorganization.

(5) There is a change of a member's place of residence to outside the plan's service area.

(6) A member requests the disenrollment for any reason and the request is not made during any restricted disenrollment period for that member.

(7) The member or the plan requests disenrollment for good cause, as specified below, when the request is made during any restricted disenrollment period for the member. For the purposes of this subsection, good cause for disenrollment means one of the following:

(A) The member requires Medi-Cal services that are excluded under the terms of the plan's contract and which can be obtained only if the member disenrolls from the plan.

(B) The plan requests disenrollment because the member uses or permits to be used fraudulently the member's Medi-Cal coverage under the plan, as defined in Welfare and Institutions Code section 14043.1(d). Fraudulent use includes allowing others to use the member's plan membership card to receive services from the plan or to submit claims for services which were not provided to the member.

(C) The plan or member requests the disenrollment because of an irreconcilable breakdown in the physician-patient relationship, specified in section 53889(j)(2)(I).

(D) The member or plan requests the disenrollment for any other reasons determined by the department to constitute good cause.

(8) The member requests disenrollment for one of the reasons specified for exemption from plan enrollment in section 53887 and meets the criteria specified in that section.

(9) The member meets the criteria for expedited disenrollment in accordance with section 53889(j).

(10) The member becomes enrolled in one of the following forms of other health coverage, except when dual enrollment is permitted as specified in Section 53845(f):

(A) Medicare HMO
(B) CHAMPUS Prime HMO
(C) Kaiser HMO
(D) Any other HMO/Prepaid Health Plan in which the enrollee is limited to a prescribed panel of providers for comprehensive service.

(b) The department may restrict disenrollment from a plan during the second through sixth month of a member's initial enrollment in the plan when all of the following apply:

(1) Both plans in a designated area are operational.

(2) Both plans have requested restricted disenrollment.

(3) The department's federal waiver or State Plan amendment authorizing operation of the Two–Plan Model Program authorizes restricted disenrollment.

(c) Each disenrollment request shall be accompanied by an enrollment request for enrollment in the competing plan unless the member has moved out of the plan's service area, meets the criteria in section 53887 for exemption from plan enrollment, will be incarcerated for more than one month, or is eligible for voluntary enrollment. Any member who does not select the competing plan shall be assigned, in accordance with section 53883. If the competing plan is at enrollment capacity, fee–for–service Medi–Cal shall be made available to the eligible beneficiary.

(d) Disenrollment requests shall be processed in accordance with the provisions of section 53889.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14087.3, 14087.4, 14407.6 and 14407.8, Welfare and Institutions Code.

HISTORY

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2. Repealer of section and NOTE and new section and NOTE filed 3–4–97; operative 3–4–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).
3. Amendment of section and NOTE filed 12–19–2000 as an emergency; operative 12–19–2000. Submitted to OAL for printing only pursuant to section 147, SB 485 (Ch. 722/92) (Register 2000, No. 51).

§ 53892. Problem Resolution Process for Members.

(a) Any member of a plan may request assistance by telephone, facsimile, in writing, or in person from the Health Care Options Program in resolving problems associated with mandatory or voluntary enrollment or disenrollment in the Two–Plan Model Program or assignment to a plan.

(b) If the Health Care Options Program is not able to resolve the problem through the procedures for processing enrollment and disenrollment specified in section 53889, then the Health Care Options Program shall first direct the beneficiary to the plan in which the beneficiary is a member, unless the beneficiary has already been to the plan to attempt to resolve problems resulting from plan enrollment or disenrollment. If the beneficiary wishes to disenroll from the plan, the Health Care Options Program shall advise the beneficiary of the options to:

(1) Be referred to the plan's problem resolution process.

(2) Be referred to the department's Medi–Cal Managed Care Ombudsman and the Department of Managed Health Care's Office of the Patient Advocate.

(c) If the beneficiary is referred to a plan's problem resolution process, the Ombudsman or the Department of Managed Health Care's Office of the Patient Advocate, the Health Care Options Program shall provide an estimated time frame within which the member shall be contacted by the plan, the Ombudsman or the Department of Managed Health Care's Office of the Patient Advocate.

(d) If the beneficiary still wishes to disenroll, the Health Care Options Program shall process the disenrollment request as specified in sections 53889 and 53891.

(e) If the member and the plan have been unsuccessful in resolving the problem to the member's satisfaction, but the member does not want to disenroll, the plan shall forward the problem to the department's Ombudsman by the next working day following the day on which the member indicates he/she does not want to disenroll.

(1) The plan shall tell the beneficiary when the beneficiary may expect to be contacted by the Ombudsman.

(f) In addressing issues under the problem resolution process, the Health Care Options Program, the department's Ombudsman, and the plan shall perform these functions in a manner consistent with cultural and linguistic requirements prescribed by the contract between the plan and the department.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 10950, 14087.3, 14087.4 and 14450, Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–96 as an emergency; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).
2. Repealer of section and NOTE and new section and NOTE filed 3–4–97; operative 3–4–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).
3. Amendment of section and NOTE filed 12–19–2000 as an emergency; operative 12–19–2000. Submitted to OAL for printing only pursuant to section 147, SB 485 (Ch. 722/92) (Register 2000, No. 51).

§ 53893. Medi–Cal Managed Care Ombudsman.

(a) The department may designate a Medi–Cal Managed Care Ombudsman. The Ombudsman shall provide Medi–Cal beneficiaries access to a service which investigates and resolves complaints about managed care plans by, or on behalf of, Medi–Cal beneficiaries.

(b) The duties of the Ombudsman shall include, but not be limited to the following:

(1) Encouraging beneficiaries to avail themselves of the opportunity to obtain health care through Medi–Cal managed care plans.

(2) Assisting beneficiaries by removing inappropriate barriers to accessing care.

(3) Educating and informing managed care plans of the specific needs of Medi–Cal beneficiaries.

(4) Educating beneficiaries on how to use the managed care system effectively.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 10950 through 10965, 14087.3, 14087.4 and 14450, Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–96 as an emergency; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).
2. Repealer of section heading, section and NOTE and new section heading, section and NOTE filed 3–4–97; operative 3–4–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).

§ 53894. Notice to Members of Plan Action to Deny, Defer or Modify a Request for Medical Services.

(a) Each plan shall provide members with a notice of an action taken by the plan to deny a request by a provider for any medical service. Notice in response to an initial request from a provider shall be provided in accordance with this section. Notice in response to a request for continuation of a medical service shall be provided in accordance with section 51014.1. Notice of denial of a medical service shall not be required in the following situations:

(1) The denial is a denial of a request for prior authorization for coverage for treatment that has already been provided to the member.

(2) The denial is a non–binding verbal description to a provider of the services which may be approved by the plan.

(3) The denial is a denial of a request for drugs, and a drug identical in chemical composition, dosage, and bioequivalence may be obtained through prior authorization from the plan or from the list, established by the plan, of drugs available without prior authorization from the plan.

(b) Each plan shall provide members with a notice of deferral of a request by a provider for a medical service. Notice of the deferral shall be delayed for 30 days to allow the provider of the medical services time to submit the additional information requested by the plan and to allow time for the plan to make a decision. If, after 30 days from the plan's receipt

of the request for prior authorization, the provider has not complied with the plan's request for additional information, the plan shall provide the member notice of denial pursuant to subdivision (a). If, within that 30 day period, the provider does comply, the plan shall take appropriate action on the request for prior authorization as supplemented by the additional information, including providing any notice to the member.

(c) Each plan shall provide members notice of modification of a request by a provider for prior authorization. Notice in response to an initial request from a provider shall be provided in accordance with this subdivision. Notice in response to a request for continuation of a medical service shall be provided in accordance with section 51014.1. Notice of modification pursuant to this subdivision shall not be required in the following situations:

(1) Each plan may modify a request for durable equipment without notice, as long as the substituted equipment is capable of performing all medically significant functions that would have been performed by the requested equipment.

(2) Each plan may modify the duration of any approved therapy or the length of stay in an acute hospital inpatient facility without notice as long as the plan provides an opportunity for the provider to request additional therapy or inpatient days before the end of the approved duration of the therapy or length of stay.

(d) The written notice of action issued pursuant to subdivisions (a), (b), or (c) shall be deposited with the United States postal service in time for pick–up no later than the third working day after the action and shall specify:

(1) The action taken by the plan.

(2) The reason for the action taken.

(3) A citation of the specific regulations or plan authorization procedures supporting the action.

(4) The member's right to a fair hearing, including:

(A) The method by which a hearing may be obtained.

(B) That the member may be either:

1. Self represented.

2. Represented by an authorized third party such as legal counsel, relative, friend or any other person.

(C) The time limit for requesting a fair hearing.

(e) For the purposes of this section, medical services means those services that are subject to prior authorization under the plan's authorization procedures.

(f) The provisions of this section apply only to medical services that are covered in the contract between the Department and the plan.

(g) The provisions of this section do not apply to the decisions of providers serving plan members when prior authorization of the service by the plan's authorization procedures is not a condition of payment to the provider for the medical service.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 10950 through 10965, 14087.3, 14087.4 and 14450, Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–96 as an emergency; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).

2. Repealer of section heading, section and NOTE and new section heading, section and NOTE filed 3–4–97; operative 3–4–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).

§ 53895. Information to New Members.

(a) The plan shall send information to new members, as described below, by the seventh day of the first month of enrollment in the plan by the new member and annually thereafter.

(b) Each plan shall provide to each member in writing, in addition to those items of information contained in the Welfare and Institutions Code, section 14406, the following information, as approved by the department:

(1) The plan name and the address and telephone number within the plan's service area where member services are available.

(2) The effective date of enrollment.

(3) A description of all available services and an explanation of any service limitations, exclusions from coverage or charges for services, when applicable.

(4) An explanation of how to use the fee–for–service system when Medi–Cal covered services are excluded or limited under the plan and how to obtain additional information.

(5) Information on the availability of transitional Medi–Cal eligibility and how the member may apply for this program.

(6) The name, telephone number, and service site address of the primary care provider selected by the member or instructions to select a primary care provider within thirty days and that failure to timely select a primary care physician will result in the member being assigned a primary care provider by the plan, in accordance with section 53890. The plan shall notify the primary care provider of selection by or assignment of the eligible beneficiary within ten days of selection or assignment.

(7) Procedures for changing the member's primary care provider and an explanation that the member can make this change at any time.

(8) Information concerning any non–medical transportation services available to the member from the plan and through the local EPSDT and CHDP programs, and how to obtain such services.

(9) The appropriate use of health care services in a managed care system and the contributions the member can make toward the maintenance of the member's own health, including the value of scheduling an initial health assessment appointment.

(10) An explanation of the member's right to request a fair hearing under Welfare and Institutions Code section 10950, et seq. without going through the plan's grievance procedures when a health care service requested by the member or a provider has not been provided.

(11) Information on the availability of and procedures for obtaining services at Federally Qualified Health Centers and Indian Health Services facilities.

(12) Information on the member's right to seek family planning services from any provider eligible to provide family planning services under the Medi–Cal program, including providers outside the plan's provider network, and a description of those services.

(13) Information on the member's eligibility for nurse midwife and nurse practitioner services and how to obtain these services.

(14) Information concerning the provision and availability of services covered under the CCS program from providers outside the plan's provider network and how to access these services.

(15) An explanation of the expedited disenrollment process for members meeting the criteria in section 53889(j).

(16) Information on how to obtain minor consent services through the plan, and an explanation of those services.

(17) A description of the Medi–Cal Managed Care Ombudsman Program and the Department of Managed Health Care's Office of Patient Advocate, including the toll–free telephone numbers for each.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14087.3 and 14406, Welfare and Institutions Code.

HISTORY

1. New section filed 7–1–96 as an emergency; operative 7–1–96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).

2. Repealer of section heading, section and NOTE and new section heading, section and NOTE filed 3–4–97; operative 3–4–97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).

3. Amendment of section and NOTE filed 12–19–2000 as an emergency; operative 12–19–2000. Submitted to OAL for printing only pursuant to section 147, SB 485 (Ch. 722/92) (Register 2000, No. 51).

§ 53896. Annual Information to Members.

Each plan in a designated region shall revise, if necessary, and distribute the information specified in section 53895(a) to each member or the member's family unit at least once every twelve months.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14087.3, 14087.4 and 14406, Welfare and Institutions Code.

HISTORY

1. New section filed 7-1-96 as an emergency; operative 7-1-96. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 96, No. 28).
2. Repealer of section heading, section and NOTE and new section heading, section and NOTE filed 3-4-97; operative 3-4-97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).

§ 53897. Notification of Changes in Services.

Each plan in a designated region shall revise, obtain the approval of the department, and distribute the information specified in section 53895(a) at least thirty days prior to any changes which the plan makes in services provided or in the locations at which services may be obtained, to each member affected by that change. Notification shall be provided at least fourteen days prior to any changes in cases of unforeseeable circumstances.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14087.3, 14087.4 and 14406, Welfare and Institutions Code.

HISTORY

1. New section filed 3-4-97; operative 3-4-97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).

§ 53898. Information for Departmental Dissemination.

Each plan in a designated region shall furnish the department and the Health Care Options Program the information required in section 53895(a), as it changes and upon request, for dissemination to prospective members.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14087.3 and 14087.4, Welfare and Institutions Code.

HISTORY

1. New section filed 3-4-97; operative 3-4-97. Submitted to OAL for printing only pursuant to Section 147, SB 485 (Ch. 722/92) (Register 97, No. 10).

Chapter 4.5. Geographic Managed Care Program

Article 1. General Provisions

§ 53900. General.

(a) In defined geographic areas designated by the department, health care services shall be provided to eligible beneficiaries as follows:

(1) Medical services shall be provided through Prepaid Health Plans (PHPs) and Primary Care Case Management (PCCM) plans.

(2) Dental services shall be provided through dental-only Knox-Keene licensed PHPs.

(b) PHPs, PCCM plans, and dental plans participating in the Geographic Managed Care (GMC) program shall meet the requirements contained in this chapter and the PHP and PCCM plan requirements contained in chapters 4 and 6, respectively, of this subdivision. If the requirements in this chapter and those in chapters 4 and 6 conflict, this chapter shall take precedence.

NOTE: Authority cited: Sections 10725, 14089.7, 14105, 14124.5, 14203 and 14312, Welfare and Institutions Code. Reference: Section 14089, Welfare and Institutions Code.

HISTORY

1. New chapter 4.5, article 1 and section filed 3-11-94; operative 3-11-94; Submitted to OAL for printing only pursuant to section 147, SB 485 (Chapter 722, Statutes of 1992) (Register 94, No. 15).

§ 53902. Definitions.

The following definitions shall control the construction of this chapter, unless the context requires otherwise.

(a) Assignment. Assignment means the actions taken by the GMC enrollment contractor to enroll an eligible beneficiary into a GMC plan, in the absence of a selection made by the beneficiary. Assignment also means action by a GMC plan to assign a member to a primary care provider, in the absence of a selection made by the member.

(b) Capitated Service. Capitated service means a medical or dental service for which a GMC plan is compensated in its fixed monthly per member rate.

(c) Dental Plan. Dental plan means a specialized health care service plan, which provides only dental services and is licensed under the Knox-Keene Health Care Services Plan Act of 1975.

(d) Eligible Beneficiary. Eligible beneficiary means a person who resides in an area covered by the GMC program, who has been determined eligible to receive Medi-Cal services, whose scope of Medi-Cal benefits is not limited, and who has been determined to have a share of cost equal to zero, as specified in Section 53906.

(e) Fair Hearing. Fair hearing means an administrative hearing conducted by the state relating to Medi-Cal eligibility or benefits, pursuant to Sections 50951 through 50955.

(f) Federally Qualified Health Maintenance Organization (HMO). Federally qualified HMO means a PHP that has been determined by the federal Health Care Financing Administration to be a qualified HMO under Section 1310(d) of the Public Health Service Act.

(g) Geographic Managed Care (GMC) Program. GMC Program means the program authorized by Section 14089 et seq. of the Welfare and Institutions Code.

(h) GMC Contract. GMC contract means the written agreement entered into between a prepaid health plan, primary care case management

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plan, or dental plan and the department to provide health care services to GMC plan members.

(i) GMC Enrollment Contractor. GMC enrollment contractor means the entity contracting with the department to provide GMC options presentations, enrollment and disenrollment activities, and problem resolution functions.

(j) GMC Plan. GMC plan means a PHP, PCCM plan, or dental plan that has entered into a GMC contract with the department.

(k) Indian. Indian means any Indian who is eligible under federal law to receive health services provided directly by the United States Indian Health Services (IHS) or by a tribal or urban contractor through contract with IHS.

(l) Indian Health Service Program Facility. Indian Health Service program facility means a tribal or urban Indian Health Service (IHS) organization operating health care programs or facilities with funds from the IHS under the Indian Self-Determination Act and the Indian Health Care Improvement Act, through which services are provided, directly or by contract, to the eligible Indian population within a defined geographic area.

(m) Initial Health Assessment. Initial health assessment means an assessment conducted by the GMC plan of a member's medical or dental health status.

(n) Member. Member means an eligible beneficiary who is enrolled in a GMC plan.

(o) Prepaid Health Plan (PHP). PHP means a health care service plan licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975, which has entered into a contract with the department on a capitated rate basis to furnish health services to eligible beneficiaries.

(p) Primary Care Case Management (PCCM) Plan. PCCM plan means a primary care provider that has contracted with the department pursuant to Article 2.9, commencing with Section 14088, Welfare and Institutions Code.

(q) Primary Care Provider. Primary care provider means a physician or dentist who has the responsibility for providing initial and primary care to members, for maintaining the continuity of member care, and for initiating referrals for specialist care.

(r) Service Site. Service site means the location designated by a GMC plan at which a member received primary care physician or dentist services.

NOTE: Authority cited: Sections 10725, 14089.7, 14105, 14124.5, 14203 and 14312, Welfare and Institutions Code. Reference: Sections 10950-10965, 14088, 14088.05, 14089, 14251 and 14252, Welfare and Institutions Code.

HISTORY

1. New section filed 3-11-94; operative 3-11-94; Submitted to OAL for printing only pursuant to section 147, SB 485 (Chapter 722, Statutes of 1992) (Register 94, No. 15).

§ 53904. GMC Plan Requirements.

(a) Each GMC plan shall:

(1) Agree to provide or arrange for the provision of, to the extent allowed by state and federal law, the scope of Medi-Cal program benefits set forth by GMC contract to eligible beneficiaries who either select or are assigned to that GMC plan.

(2) Share in the risk of providing health care services.

(3) Provide readily available and accessible health care services and utilize preventive health care programs to improve the health status of its members.

(4) Case manage members' utilization of health care services.

(5) Inform eligible beneficiaries about non-medical transportation services that may be available to them under the Medi-Cal program, including the conditions under which non-medical transportation services will be provided to members by the GMC plan and how a member is to request those services, if the plan opts to provide them.

NOTE: Authority cited: Sections 10725, 14089.7, 14105, 14124.5, 14203 and 14312, Welfare and Institutions Code. Reference: Sections 14089 and 14089.4, Welfare and Institutions Code.

HISTORY

1. New section filed 3-11-94; operative 3-11-94; Submitted to OAL for printing only pursuant to section 147, SB 485 (Chapter 722, Statutes of 1992) (Register 94, No. 15).

§ 53906. Eligible Beneficiaries.

(a) Enrollment in GMC plans shall be mandatory for eligible beneficiaries who meet all of the following criteria:

(1) Are eligible to received Medi-Cal services that are not limited in scope;

(2) Have been determined to have a share of cost equal to zero;

(3) Do not meet the criteria for selecting an alternative to GMC plan enrollment, specified in Section 53923.5;

(4) Are eligible for any of the following:

(A) Programs linked to the Aid to Families with Dependent Children (AFDC) program, as defined in Section 50019;

(B) The Medically Indigent program for children under age 21, as defined in Section 50251(a); or

(C) Foster Children program.

(b) Enrollment in GMC plans shall be voluntary for eligible beneficiaries who meet all of the following criteria:

(1) Are eligible to receive Medi-Cal services that are not limited in scope;

(2) Have been determined to have a share of cost equal to zero; and

(3) Are eligible for either of the following:

(A) The federal Supplemental Security Income for the Aged, Blind, and Disabled program set forth commencing with Section 1382, Title 42, United States Code.

(B) The Medically Indigent program for pregnant women, as defined in Section 50251(b)(3).

NOTE: Authority cited: Sections 10725, 14089.7, 14105, 14124.5, 14203 and 14312, Welfare and Institutions Code. Reference: Section 14089, Welfare and Institutions Code.

HISTORY

1. New section filed 3-11-94; operative 3-11-94; Submitted to OAL for printing only pursuant to section 147, SB 485 (Chapter 722, Statutes of 1992) (Register 94, No. 15).

Article 2. Operational Requirements

§ 53910. Organization and Administration.

(a) Each GMC plan shall have the organizational and administrative ability to carry out its contractual obligations, including but not limited to the following:

(1) Each PHP and dental plan shall meet the organizational and administrative requirements contained in Section 53200.

(2) Each PCCM plan shall meet the organizational and administrative requirements contained in Section 56200.

NOTE: Authority cited: Sections 10725, 14089.7, 14105, 14124.5, 14203 and 14312, Welfare and Institutions Code. Reference: Section 14089, Welfare and Institutions Code.

HISTORY

1. New article 2 and section filed 3-11-94; operative 3-11-94; Submitted to OAL for printing only pursuant to section 147, SB 485 (Chapter 722, Statutes of 1992) (Register 94, No. 15).

§ 53910.5. Scope of Services.

(a) Each GMC plan shall provide or arrange for the provision of Medi-Cal services in accordance with the requirements for PHPs and PCCM plans, as set forth in Chapters 4 and 6, beginning with Sections 53210 and 56210, respectively, unless services are specifically included or excluded under the terms of the GMC contract, and the following:

(1) Initial medical or dental health assessments. An initial health assessment shall include a history of the member's medical or dental health, an identification of risks, an assessment of need for preventive screens or services and health education, and the diagnosis and plan for treatment of any diseases.

(2) Health education.

(3) Preventive services.

(4) Identification and treatment of disease.

(5) Primary and urgent care.

NOTE: Authority cited: Sections 10725, 14089.7, 14105, 14124.5, 14203 and 14312, Welfare and Institutions Code. Reference: Section 14089, Welfare and Institutions Code.

HISTORY

1. New section filed 3–11–94; operative 3–11–94; Submitted to OAL for printing only pursuant to section 147, SB 485 (Chapter 722, Statutes of 1992) (Register 94, No. 15).

§ 53911. Availability of Services.

Each GMC plan shall obtain written departmental approval prior to making any substantial change in the availability or location of services to be provided under the GMC contract, except in the case of a natural disaster or emergency circumstances. A proposal to change the location for the provision of covered services or to reduce their availability shall be given to the department at least sixty days prior to the proposed effective date. The department's denial of the proposal shall prohibit implementation of the proposed changes.

NOTE: Authority cited: Sections 10725, 14089.7, 14105, 14124.5, 14203 and 14312, Welfare and Institutions Code. Reference: Section 14089, Welfare and Institutions Code.

HISTORY

1. New section filed 3–11–94; operative 3–11–94; Submitted to OAL for printing only pursuant to section 147, SB 485 (Chapter 722, Statutews of 1992) (Register 94, No. 15).

§ 53911.5. Accessibility to Physicians and Dentists.

(a) Each GMC plan that is a PHP or PCCM plan shall retain sufficient professional medical staff to provide access to preventive and managed health care services to its members. Access to physicians shall be as follows:

(1) Each PHP and PCCM plan shall provide at least one full–time equivalent primary care physician for every 2,000 patients, or have in place an alternative mechanism for ensuring access, approved in writing by the department.

(2) Each PHP and PCCM plan shall provide at least one full–time equivalent physician for every 1,200 plan members, or have in place an alternative mechanism for ensuring access, approved in writing by the department.

(3) If utilized by a PHP or PCCM plan, mid–level practitioners, such as nurse practitioners and physicians assistants, shall meet the requirements of existing practice and licensure standards for mid–level practitioners, as specified in Sections 1399.541 and 1470, Title 16, CCR, including physician supervision, as specified in Section 2746.5, Business and Professions Code.

(b) Each dental plan shall establish and implement a mechanism for ensuring access, including but not limited to a maximum ratio of dentists to patients, approved in writing by the department.

(c) Each GMC plan shall ensure that each member of the plan has a primary care provider to supervise and coordinate each member's health care, by either allowing members to select their primary care providers or assigning members to primary care providers, pursuant to Section 53925.

NOTE: Authority cited: Sections 10725, 14089.7, 14105, 14124.5, 14203 and 14312, Welfare and Institutions Code. Reference: Sections 14089, Welfare and Institutions Code; and Section 2746.5, Business and Professions Code.

HISTORY

1. New section filed 3–11–94; operative 3–11–94; Submitted to OAL for printing only pursuant to section 147, SB 485 (Chapter 722, Statutes of 1992) (Register 94, No. 15).

§ 53912. Pharmaceutical Services and Prescribed Drugs.

(a) Each PHP and PCCM plan shall provide, either directly or through subcontracts, the services of pharmacies and pharmacists. Pharmaceutical services shall be available to members during service site hours.

(b) Prescribed drugs shall be provided to members by licensed pharmacies and shall be reimbursed by the PHP or PCCM plan in which the member is enrolled. Professional standards reflected by reasonable and current prescribing practices, based on reference to current medical literature and consultation with provider organizations, academic and professional specialists, shall be met, including but not limited to Title 16, Sections 1707.1, 1707.2, and 1707.3.

(c) Prescribed drugs may include the provision of pre–packaged drugs dispensed under the direct supervision of the professionally licensed personnel of the PHP or PCCM plan after the plan has written approval granted by the department.

(d) Each dental plan shall provide written prescriptions to members as necessary, and shall instruct each member to fill any prescriptions at a pharmacy used by the PHP or PCCM plan in which the member is enrolled. The PHP or PCCM plan in which the member is enrolled shall reimburse the pharmacy for each prescription filled.

NOTE: Authority cited: Sections 10725, 14089.7, 14105, 14124.5, 14203 and 14312, Welfare and Institutions Code. Reference: Sections 14089, 14132, 14133 and 14133.1, Welfare and Institutions Code.

HISTORY

1. New section filed 3–11–94; operative 3–11–94; Submitted to OAL for printing only pursuant to section 147, SB 485 (Chapter 722, Statutes of 1992) (Register 94, No. 15).

§ 53912.5. Care Under Emergency Circumstances.

(a) Each GMC plan shall meet the requirements specified in Section 53216.

(b) Each GMC plan shall arrange for and make payment, at the lowest of the Medi–Cal fee–for–service rate or the plan negotiated rate, for emergency services as defined in Section 51056.

(c) Each GMC plan shall make payment, at the lowest of the Medi–Cal fee–for–service rate or the plan negotiated rate, for the diagnostic portion of any emergency room or urgent care visit. Specifically, each plan shall reimburse and shall not require prior authorization for the following:

(1) Emergency room services required to determine whether a member's condition requires emergency services.

(2) All other capitated services, such as radiology or pathology, necessary to diagnose the possible emergency condition.

(d) A GMC plan may authorize and reimburse services provided beyond those required to determine whether the condition is an emergency.

NOTE: Authority cited: Sections 10725, 14089.7, 14105, 14124.5, 14203 and 14312, Welfare and Institutions Code. Reference: Sections 14088.4, 14089 and 14454, Welfare and Institutions Code.

HISTORY

1. New section filed 3–11–94; operative 3–11–94; Submitted to OAL for printing only pursuant to section 147, SB 485 (Chapter 722, Statutes of 1992) (Register 94, No. 15).

§ 53913. Facilities, Service Locations and Equipment.

(a) Each GMC plan shall comply with the requirements contained in Section 53230, and shall assure proper sterilization and disinfection of equipment, in accordance with California Occupational Safety and Health Administration (Cal/OSHA) standards, pursuant to California Labor Code, Section 6305.

NOTE: Authority cited: Sections 10725, 14089.7, 14105, 14124.5, 14203 and 14312, Welfare and Institutions Code. Reference: Section 14089, Welfare and Institutions Code.

HISTORY

1. New section filed 3–11–94; operative 3–11–94; Submitted to OAL for printing only pursuant to section 147, SB 485 (Chapter 722, Statutes of 1992) (Register 94, No. 15).

§ 53913.5. Medical Director and Dental Director.

(a) Each PHP and PCCM plan shall appoint a physician as medical director and each dental plan shall appoint a dentist as dental director, whose responsibilities shall include, but not be limited to, the following:

(1) Ensuring that medical or dental decisions are rendered by qualified medical or dental personnel, unhindered by fiscal or administrative management.

(2) Ensuring that the medical or dental care provided meets the standards for acceptable medical and dental care.

(3) Ensuring that medical or dental protocols and rules of conduct for plan medical or dental personnel are followed.

(4) Developing and implementing medical or dental policy.

(5) Resolving medical or dental quality of care related grievances. The medical or dental director shall refer non–medical or non–dental related grievances, and other grievances that are determined to be appropriately resolved through the grievance procedure, to the grievance coordinator.

(6) Actively participating in the functioning of the plan grievance procedures.

NOTE: Authority cited: Sections 10725, 14089.7, 14105, 14124.5, 14203 and 14312, Welfare and Institutions Code. Reference: Sections 14088, 14089, 14089.2, 14450 and 14495, Welfare and Institutions Code; and Section 1367, Health and Safety Code.

HISTORY

1. New section filed 3–11–94; operative 3–11–94; Submitted to OAL for printing only pursuant to section 147, SB 485 (Chapter 722, Statutes of 1992) (Register 94, No. 15).

§ 53914. Member Grievance Procedures.

(a) Each GMC plan shall establish and maintain written procedures for the submittal, processing, and resolution of all member grievances and complaints. The grievance system shall include the handling of complaints and shall:

(1) Operate according to the written procedures, which shall be approved in writing by the department prior to use. Amendments shall be approved in writing by the department prior to implementation of the revised procedure.

(2) Be described in information sent to each member upon enrollment in the GMC plan and annually thereafter, pursuant to Sections 53926.5 and 53927. The description shall include:

(A) An explanation of the GMC plan's system for processing and resolving grievances, and how a member is to use it.

(B) A statement that grievance forms are available in the office of each primary care provider, or in each member services department of the GMC plan, in the case of a GMC plan in which all primary care providers are the exclusive providers of that plan and are contiguously located.

(C) A statement that grievances may be filed in writing or verbally directly with the GMC plan in which the member is enrolled or at any office of the GMC plan's providers.

(D) The telephone number a member may call to obtain information, request grievance forms, and register a verbal grievance.

(E) A statement that a member has a right to request a fair hearing, pursuant to Section 50951.

(b) Each GMC plan shall make local or toll–free telephone service available to members during normal business hours for requesting grievance forms, filing verbal grievances, and requesting information.

(c) Each GMC plan shall provide upon request a grievance form, either directly or by mail if mailing is requested to any member requesting the form.

(d) Each GMC plan shall provide assistance to any member requesting assistance in completing the grievance form.

(e) The member grievance procedures shall at a minimum provide for:

(1) The recording in a grievance log of each grievance received by the GMC plan, either verbally or in writing. The grievance log shall include the following information:

(A) The date and time the grievance is filed with the GMC plan or provider.

(B) The name of the member filing the grievance.

(C) The name of the GMC plan provider or staff person receiving the grievance.

(D) A description of the complaint or problem.

(E) A description of the action taken by the GMC plan or provider to investigate and resolve the grievance.

(F) The proposed resolution by the GMC plan or provider.

(G) The name of the GMC plan provider or staff person responsible for resolving the grievance.

(H) The date of notification of the member of the proposed resolution.

(2) The immediate submittal of all medical or dental quality of care grievances to the medical or dental director for action.

(3) The submittal, at least quarterly, of all quality of care grievances to the GMC plan's quality assurance committee for review and appropriate action.

(4) The mailing of a written notice of the proposed resolution to the member. Each notice shall include information about the member's right to request a fair hearing pursuant to Section 50951.

(f) Grievance forms and a grievance log shall be available in the offices of each of the GMC plan's primary care providers, or in each member services department of the GMC plan, in the case of a GMC plan in which all primary care providers are the exclusive providers of that plan and are contiguously located.

(g) Each GMC plan shall adhere to the following requirements and time frames in processing member grievances:

(1) Member grievances shall be resolved within thirty days of the member's filing the grievance.

(2) In the event resolution is not reached within thirty days, the member shall be notified in writing by the GMC plan of the status of the grievance and shall be provided with an estimated completion date of resolution.

(h) Each GMC plan shall maintain in its files copies of all grievances, the responses to them, and logs recording them for a period fo five years from the date the grievance was filed.

(i) Any member whose grievance is resolved or unresolved shall have the right to request a fair hearing, in accordance with Sections 50951 through 50955.

NOTE: Authority cited: Sections 10725, 14089.7, 14105, 14124.5, 14203 and 14312, Welfare and Institutions Code. Reference: Sections 10950 through 10965, 14089, 14089.2 and 14450, Welfare and Institutions Code.

HISTORY

1. New section filed 3–11–94; operative 3–11–94; Submitted to OAL for printing only pursuant to section 147, SB 485 (Chapter 722, Statutes of 1992) (Register 94, No. 15).

§ 53914.5. Provider Grievances and Complaints.

(a) A provider of medical or dental services may submit to a GMC plan a grievance or compliant concerning the authorization or denial of a service or the processing payment or nonpayment of a claim by that GMC plan. Each GMC plan shall comply with the provider grievance and complaint requirements specified in Section 56262. These requirements shall apply to PHPs, PCCM plans, and dental plans in the GMC program.

NOTE: Authority cited: Sections 10725, 14089.7, 14105, 14124.5, 14203 and 14312, Welfare and Institutions Code. Reference: Section 14089, Welfare and Institutions Code.

HISTORY

1. New section filed 3–11–94; operative 3–11–94; Submitted to OAL for printing only pursuant to section 147, SB 485 (Chapter 722, Statutes of 1992) (Register 94, No. 15).

§ 53915. Quality of Care.

(a) Each GMC plan shall provide care which meets or exceeds the standards for medical or dental practice developed by the GMC plan and approved in writing by the department. Each GMC plan shall use effective professional review in assessing the care provided to its members in accordance with state standards, including but not limited to Title 10, Section 1300.70.

NOTE: Authority cited: Sections 10725, 14089.7, 14105, 14124.5, 14203 and 14312, Welfare and Institutions Code. Reference: Sections 14088.25, 14089, 14309 and 14458, Welfare and Institutions Code.

HISTORY

1. New section filed 3–11–94; operative 3–11–94; Submitted to OAL for printing only pursuant to section 147, SB 485 (Chapter 722, Statutes of 1992) (Register 94, No. 15).

§ 53915.5. Records.

(a) Each GMC plan shall maintain or cause to be maintained all records necessary to verify information and reports required by statute, regulation or contractual obligation for five years from the date of submission of the information or reports. Records and documents shall include but not be limited to:

(1) Working papers used in the preparation of reports to the department.

(2) Reports to the department, specified in Section 53916.

(3) Financial documents.

(4) Medical or dental records.

(5) Prescription files.

(b) Each GMC plan shall retain or cause to be retained all records pertaining to pending litigation or litigation in progress until the litigation is final.

NOTE: Authority cited: Sections 10725, 14089.7, 14105, 14124.5, 14203 and 14312, Welfare and Institutions Code. Reference: Sections 14089, 14308 and 14458, Welfare and Institutions Code.

HISTORY

1. New section filed 3–11–94; operative 3–11–94; Submitted to OAL for printing only pursuant to section 147, SB 485 (Chapter 722, Statutes of 1992) (Register 94, No. 15).

§ 53916. Reporting.

(a) Each GMC plan shall submit to the department:

(1) Reports required in Section 53312.

(2) Reports specified in the GMC contract.

(3) As frequently as it changes, an updated listing of the GMC plan's provider network, by specialty.

(b) Each GMC plan shall submit to the local health department, reports specified in the GMC contract.

NOTE: Authority cited: Sections 10725, 14089.7, 14105, 14124.5, 14203 and 14312, Welfare and Institutions Code. Reference: Sections 14089 and 14308, Welfare and Institutions Code.

HISTORY

1. New section filed 3–11–94; operative 3–11–94; Submitted to OAL for printing only pursuant to section 147, SB 485 (Chapter 722, Statutes of 1992) (Register 94, No. 15).

Article 3. Marketing, Enrollment, Assignment, and Disenrollment

§ 53920. Marketing.

(a) Each GMC plan shall limit its marketing activities to printed and illustrated materials, and media advertising.

(1) Printed and illustrated materials may be made available to members or prospective members, as follows:

(A) By mail. Printing, postage, and any related costs of material mailed to prospective members shall be paid by the GMC plan. Mailings shall be coordinated with the department so that the confidentiality of Medi–Cal beneficiaries is protected.

(B) By posting materials in public places.

(C) At GMC options presentations, which shall be conducted by the GMC enrollment contractor, pursuant to Section 53923.

(b) All printed and illustrated materials and media scripts shall be approved in writing by the department prior to distribution to members or prospective members.

(c) No representative of a GMC plan shall contact prospective members for the purposes of marketing, unless that contact is approved in writing by a coordinated through the department, pursuant to (a)(1)(A), above. However, physicians, dentists, mid–level practitioners, nurses, office staff may discuss GMC plan membership with their patients.

NOTE: Authority cited: Sections 10725, 14089.7, 14105, 14124.5, 14203 and 14312, Welfare and Institutions Code. Reference: Sections 14088.15, 14088.22, 14089, 14263, 14408 and 14450, Welfare and Institutions Code.

HISTORY

1. New article 3 and section filed 3–11–94; operative 3–11–94; Submitted to OAL for printing only pursuant to section 147, SB 485 (Chapter 722, Statutes of 1992) (Register 94, No. 15).

§ 53920.5. Marketing and Member Materials.

(a) The Evidence of Coverage, disclosure form, and any marketing brochure developed by or for a GMC plan and distributed to prospective members shall meet the requirements contained in Section 1300.63(a), Title 10, as to print size, readability, and understandability of text.

(b) All marketing materials distributed to eligible beneficiaries by a GMC plan shall fully disclose the availability of and restrictions upon the services provided by the GMC plan, and any exclusions from coverage. Marketing materials shall, at a minimum, specify:

(1) The scope, access to, and availability of services, including service site locations and telephone numbers, and the service area authorized in that GMC plan's GMC contract.

(2) A description of the membership identification card issued by the GMC plan, if applicable, and an explanation as to its use in authorizing or assisting members to obtain services.

(3) That members shall obtain all Medi–Cal covered nonemergency health care services through the GMC plan's providers.

(4) That medical or dental services required in an emergency may be obtained from specified GMC plan providers or from non–plan providers, if necessary.

(5) The disenrollment process, and an explanation that disenrollment is possible only under the conditions specified in Section 53925.5 and is effective only after the disenrollment transaction is completed by the department.

(6) The GMC plan's grievance process, including instructions on how to use it.

(7) That members have the right to a fair hearing, including instructions on how to request one.

(8) The interpretive, linguistic, and cultural services available through plan personnel.

(9) Any transportation services to service sites that are available through the GMC plan or under the Medi–Cal program. This shall include a description of both medical and non–medical transportation services, and the conditions under which non–medical transportation is available to members, if available.

NOTE: Authority cited: Sections 10725, 14089.7, 14105, 14124.5, 14203 and 14312, Welfare and Institutions Code. Reference: Sections 14088.15, 14088.22, 14089 and 14408, Welfare and Institutions Code; and Sections 1363 and 1364, Health and Safety Code.

HISTORY

1. New section filed 3–11–94; operative 3–11–94; Submitted to OAL for printing only pursuant to section 147, SB 485 (Chapter 722, Statutes of 1992) (Register 94, No. 15).

§ 53921. Member Enrollment.

(a) Enrollment in GMC plans shall be mandatory for those eligible beneficiaries specified in Section 53906(a), and voluntary for those specified in Section 53906(b).

(b) Enrollment shall be limited to eligible beneficiaries who reside within the GMC program area.

(c) The department or the GMC enrollment contractor shall mail an enrollment form and GMC plan information to each eligible beneficiary described in Section 53906(a). The mailing shall include GMC options presentation information and instructions to enroll in GMC plans within thirty days of the postmark date on the mailing envelope.

(d) Each eligible beneficiary described in Section 53906(a) shall enroll in GMC plans within thirty days of receipt of an enrollment from with instructions from the department or the GMC enrollment contractor to select GMC plans.

(1) In the event an eligible beneficiary described in Section 53906(a) does not enroll in GMC plans within thirty days, the GMC enrollment contractor shall assign the eligible beneficiary to GMC plans, in accordance with Section 53921.5.

(2) For purposes of selection of GMC plans:

(A) In the case of a family group, eligible beneficiary means the individual or entity with legal authority to make a choice on behalf of dependent family members.

(B) In the case of a foster care child, eligible beneficiary means the entity with legal authority to make a choice on behalf of the child.

(e) Each eligible beneficiary enrolling in a GMC plan shall enroll in a dental plan and either a PHP or PCCM plan. An eligible beneficiary shall not be enrolled in more than one PHP or PCCM plan and one dental plan at any one time.

(f) The GMC enrollment contractor shall process all enrollments.

(g) An eligible beneficiary is enrolled upon completion of all of the following events:

(1) Either of the following enrollment activities:

(A) The voluntary signing and dating by the eligible beneficiary of an enrollment form and departmental validation of the beneficiary's enrollment form; or

(B) The assignment, as specified in Section 53921.5, of an eligible beneficiary to a PHP or PCCM plan and a dental plan.

(2) Departmental verification of the beneficiary's Medi–Cal eligibility.

(3) Addition of the beneficiary's name to the approved list of members, which is effective the first day of any given month and which is furnished monthly to the GMC plan by the department.

NOTE: Authority cited: Sections 10725, 14089.7, 14105, 14124.5, 14203 and 14312, Welfare and Institutions Code. Reference: Section 14089, Welfare and Institutions Code.

HISTORY

1. New section filed 3–11–94; operative 3–11–94; Submitted to OAL for printing only pursuant to section 147, SB 485 (Chapter 722, Statutes of 1992) (Register 94, No. 15).

§ 53921.5. Assignment of Eligible Beneficiaries to GMC Plans.

(a) The GMC enrollment contractor shall assign an eligible beneficiary described in Section 53906(a) to a GMC plan, from which to receive health care services, in the following situations:

(1) In the event the eligible beneficiary does not select a PHP or PCCM plan and a dental plan within thirty days of receiving an enrollment form pursuant to Section 53921(c).

(2) In the event a member requests and is granted disenrollment from a GMC plan, pursuant to Section 53925.5, but does not select a different GMC plan in which to enroll, unless that member was granted approval by the GMC enrollment contractor to receive health care services through the fee–for–service Medi–Cal program, pursuant to Section 53923.5.

(b) In carrying out (a), the GMC enrollment contractor shall comply with the equitable distribution requirements contained in Section 53922.

NOTE: Authority cited: Sections 10725, 14089.7, 14124.5, 14203 and 14312, Welfare and Institutions Code. Reference: Section 14089, Welfare and Institutions Code.

HISTORY

1. New section filed 3–11–94; operative 3–11–94; Submitted to OAL for printing only pursuant to section 147, SB 485 (Chapter 722, Statutes of 1992) (Register 94, No. 15).

§ 53922. Equitable Distribution.

(a) The GMC enrollment contractor shall implement a system approved by the department to assign an eligible beneficiary described in Section 53906(a), to GMC plans, in the event the beneficiary does not select GMC plans pursuant to Section 53921(d).

(b) The assignment shall ensure the equitable distribution of eligible beneficiaries among GMC plans and include but not be limited to the following considerations:

(1) Zip code of eligible beneficiary matched to zip codes served by the GMC plan.

(2) Enrollment capacity and availability of the GMC plan.

(3) GMC plan's ability to render linguistically appropriate services and the eligible beneficiary's need for those services, if made known to the GMC enrollment contractor.

(4) Rotation of assignments among all GMC plans.

NOTE: Authority cited: Sections 10725, 14089.7, 14105, 14124.5, 14203 and 14312, Welfare and Institutions Code. Reference: Section 14089, Welfare and Institutions Code.

HISTORY

1. New section filed 3–11–94; operative 3–11–94; Submitted to OAL for printing only pursuant to section 147, SB 485 (Chapter 722, Statutes of 1992) (Register 94, No. 15).

§ 53922.5. Travel Distance Standards.

(a) No member who is assigned to GMC plans pursuant to Section 53921.5 shall be denied a request for disenrollment if all primary health care services through that assigned GMC plan are more than ten (10) miles from the eligible beneficiary's place of residence.

(b) An eligible beneficiary may voluntarily choose to receive services from a GMC plan with service sites exceeding the maximum distance specified in (a).

NOTE: Authority cited: Sections 10725, 14089.7, 14105, 14124.5, 14203 and 14312, Welfare and Institutions Code.

HISTORY

1. New section filed 3–11–94; operative 3–11–94; Submitted to OAL for printing only pursuant to section 147, SB 485 (Chapter 722, Statutes of 1992) (Register 94, No. 15).

§ 53923. Options Presentation.

(a) The GMC enrollment contractor shall provide a presentation of GMC plan options to each new and continuing eligible beneficiary who requests a presentation.

(b) The GMC options presentation shall include, at a minimum, the following information:

(1) The names of each GMC plan.

(2) Each GMC plan's service area.

(3) The locations of each GMC plan's service sites.

(4) Services covered by GMC plans.

(5) Procedures for accessing and receiving health care services from GMC plans.

(6) Hospitals used by each PHP and PCCM plan.

(7) Any features or additional services provided by each GMC plan that are beyond those that must be covered by GMC plans, pursuant to the GMC contract, such as non–medical transportation services, languages spoken, health promotion, risk reduction, health education and counseling services.

(8) An explanation that an alternative to GMC plan enrollment exists for Indians, members of Indian households, and others eligible to receive health care services through an Indian Health Service program facility, and for individuals with complex medical conditions, as specified in Section 53923.5(b).

(9) Assistance to eligible beneficiaries in completing the enrollment form, as needed.

NOTE: Authority cited: Sections 10725, 14089.7, 14105, 14124.5, 14203 and 14312, Welfare and Institutions Code. Reference: Section 14089, Welfare and Institutions Code.

HISTORY

1. New section filed 3–11–94; operative 3–11–94; Submitted to OAL for printing only pursuant to section 147, SB 485 (Chapter 722, Statutes of 1992) (Register 94, No. 15).

§ 53923.5. Alternative to GMC Plan Enrollment.

An eligible beneficiary specified in Section 53906(a) who meets the requirements of (a) or (b) may request from the GMC enrollment contractor an alternative to GMC plan enrollment.

(a) An eligible beneficiary who is an Indian, is a member of an Indian household, or has written acceptance from an Indian Health Service program facility to receive health care services through that facility, may, as an alternative to GMC plan enrollment and upon request, choose to receive health care services through an Indian Health Service program facility. Any request for this alternative shall be made to the GMC enrollment contractor at the GMC options presentation or through the problem resolution process specified in Section 53926.

(b) On or before March 31, 1995, an eligible beneficiary who is receiving treatment or services for a complex medical situation from a physician who is participating in the Medi–Cal program, but is not a contracted provider of any GMC plan, may request through the problem resolution process specified in Section 53926, continued fee–for–service Medi–Cal for the purposes of continuity of care. The department shall review on a case–by–case basis and make a determination on each request presenting a complex medical situation. The department may approve continued treatment under the fee–for–service Medi–Cal program for any eligible beneficiary whose diagnosis or treatment needs are verified in writing by the beneficiary's Medi–Cal provider and meet one of the criteria below in 1 through 3 for continued fee–for–service Medi–Cal.

(1) The eligible beneficiary is under the care of a physician specialist:

(A) For treatment of a condition that is within the specialist's scope of practice, pursuant to the Business and Professions Code;

(B) That specialty is not practiced by any physician within the available providers of any GMC plan; and

(C) That specialist is a participating Medi-Cal provider, but is not a contracted provider of any GMC plan.

(2) The eligible beneficiary is in a complex, high risk medical treatment plan:

(A) Under the supervision of a physician who is a participating Medi-Cal provider, but is not a contracted provider of any GMC plan; and

(B) May experience deleterious medical effects if that treatment were to be disrupted by leaving the care of that physician to begin receiving care from a GMC plan physician.

(3) The eligible beneficiary is a woman who is pregnant and under the care of a physician who is a participating Medi-Cal provider, but is not a contracted provider of any GMC plan.

(c) Any eligible beneficiary granted continued fee-for-service Medi-Cal under (b)(1) or (2) may remain with that fee-for-service physician only until the medical condition has stabilized to a level that would enable the eligible beneficiary to change physicians and begin receiving care from a GMC plan physician without deleterious medical effects. An eligible beneficiary granted continued fee-for-service Medi-Cal under (b)(3) may remain with that physician through delivery and the end of the month in which ninety days post-partum occurs.

(d) The department may verify the medical conditions and treatment plans presented by an eligible beneficiary, pursuant to (b), to confirm their complexity, validity, and status.

NOTE: Authority cited: Sections 10725, 14089.7, 14105, 14124.5, 14203 and 14312, Welfare and Institutions Code. Reference: Section 14089, Welfare and Institutions Code.

HISTORY

1. New section filed 3-11-94; operative 3-11-94; Submitted to OAL for printing only pursuant to section 147, SB 485 (Chapter 722, Statutes of 1992) (Register 94, No. 15).

§ 53924. Enrollment/Disenrollment Form.

(a) The department shall develop a combined enrollment/disenrollment form and shall provide it to GMC plans and the GMC enrollment contractor.

(b) Each GMC plan shall send an enrollment/disenrollment form to each member, as specified in Section 53926.5.

(c) Each GMC plan shall make enrollment/disenrollment forms available during business hours:

(1) At each service site. In the case of a GMC plan in which all primary care providers are the exclusive providers of that plan and are contiguously located, enrollment/disenrollment forms shall be available, at a minimum, in the member services department of the plan.

(2) At each member services department.

(d) Each GMC plan shall provide an enrollment/disenrollment form to a member immediately if requested in person, or by mail if requested by telephone or in writing. The GMC plan shall mail the form within three working days of receiving the request.

(e) The GMC enrollment contractor shall make enrollment/disenrollment forms available at the GMC options presentation. The GMC enrollment contractor shall mail a form to a member within three working days of receiving a telephone or written request for a form.

NOTE: Authority cited: Sections 10725, 14089.7, 14105, 14124.5, 14203 and 14312, Welfare and Institutions Code. Reference: Section 14089, Welfare and Institutions Code.

HISTORY

1. New section filed 3-11-94; operative 3-11-94; Submitted to OAL for printing only pursuant to section 147, SB 485 (Chapter 722, Statutes of 1992) (Register 94, No. 15).

§ 53924.5. Enrollment/Disenrollment Form Processing.

(a) Members shall submit enrollment/disenrollment forms to the GMC enrollment contractor for processing.

(b) Unless otherwise notified in writing by the department, the GMC enrollment contractor shall accept and process all requests for enrollment from eligible beneficiaries up to the maximum enrollment levels specified in each plan's GMC contract.

(c) The GMC enrollment contractor shall transmit all completed enrollment/disenrollment forms to the department within two working days of the date the GMC enrollment contractor receives the completed form.

(d) Each request for disenrollment shall be accompanied by a request for enrollment in another GMC plan. If the member requesting disenrollment does not make an enrollment selection, the member shall be assigned to a plan in accordance with Section 53921.5.

(e) The GMC enrollment contractor shall accept enrollment/disenrollment forms regardless of the prospective member's race, creed, color, religion, age, sex, national origin, ancestry, marital status, sexual orientation, or physical or mental disability, and without reference to pre-existing medical or dental conditions.

NOTE: Authority cited: Sections 10725, 14089.7, 14105, 14124.5, 14203 and 14312, Welfare and Institutions Code. Reference: Sections 14088.5, 14089, 14413 and 14495, Welfare and Institutions Code.

HISTORY

1. New section filed 3-11-94; operative 3-11-94; Submitted to OAL for printing only pursuant to section 147, SB 485 (Chapter 722, Statutes of 1992) (Register 94, No. 15).

§ 53925. Assignment of Primary Care Provider.

(a) Each GMC plan shall have a mechanism in place and approved in writing by the department to ensure that each member is assigned to a primary care provider, by either:

(1) Allowing each member to select a primary care provider from the GMC plan's network of affiliated providers, if the member chooses to do so; or

(2) Assigning a primary care provider to each member within forty days from the effective date of enrollment, if the member does not select one within the first thirty days of the effective date of enrollment in the GMC plan.

(A) Assignment conducted pursuant to (a)(2) shall meet both 1 and 2:

1. The member shall be assigned to a primary care provider within the maximum travel distances specified in Section 53922.5.

2. If available within the GMC plan, the member shall be assigned to a primary care provider who is or has office staff who are linguistically and culturally competent to communicate with the member or have the ability to interpret in the provision of health care services and related activities during the member's office visits or contacts, if the language or cultural needs of the member are known to the GMC plan.

(b) Any member dissatisfied with the primary care provider selected or assigned shall be allowed to select or be assigned to another primary care provider. Each GMC plan shall assist its members in changing primary care providers if that change is requested by the member. Any GMC plan physician or dentist dissatisfied with the professional relationship with any member may request that the member select or be assigned to another primary care provider.

NOTE: Authority cited: Sections 10725, 14089.7, 14105, 14124.5, 14203 and 14312, Welfare and Institutions Code. Reference: Section 14089, Welfare and Institutions Code.

HISTORY

1. New section filed 3-11-94; operative 3-11-94; Submitted to OAL for printing only pursuant to section 147, SB 485 (Chapter 722, Statutes of 1992) (Register 94, No. 15).

§ 53925.5. Disenrollment of Members.

(a) The GMC enrollment contractor shall disenroll any member who requests disenrollment when one of the following conditions and (c) are met:

(1) A member requests disenrollment during the first thirty days of enrollment.

(2) A member requests disenrollment during the second through sixth month of enrollment in a PHP that is a federally qualified Health Mainte-

nance Organization, a PCCM plan, or a dental plan, for good cause, as follows:

(A) To comply with any of the criteria specified in Section 14407.8(b), Welfare and Institutions Code;

(B) To accommodate the needs of a foster care child;

(C) To comply with travel distance standards specified in Section 53922.5; or

(D) To grant an alternative to GMC plan enrollment as specified in Section 53923.5, if the process for obtaining that alternative was initiated prior to the effective date of enrollment in a GMC plan.

(3) A member requests disenrollment after having met the six–month minimum enrollment period applicable to enrollment in any PHP that is a federally qualified Health Maintenance Organization, a PCCM plan, or a dental plan.

(4) Any member of a PHP that is not a federally qualified Health Maintenance Organization shall be granted disenrollment from that PHP at any time.

(b) The GMC enrollment contractor shall determine whether to grant a request for disenrollment made by a member during the second through sixth month of enrollment. A disenrollment request from a member enrolled in a PHP that is a federally qualified Health Maintenance Organization, a PCCM plan, or a dental plan, shall be granted by the GMC enrollment contractor if one of the criteria specified in (a)(2) is met.

(c) Each disenrollment request shall be accompanied by an enrollment request for enrollment in a different GMC plan. Any member who does not select another GMC plan shall be assigned to one, in accordance with Section 53921.5.

(d) A member who requests and is denied disenrollment during the second through sixth month of enrollment shall have the right to request assistance from the GMC enrollment contractor in accordance with Section 53926.

NOTE: Authority citeed: Sections 10725, 14089.7, 14105, 14124.5, 14203 and 14312, Welfare and Institutions Code. Reference: Sections 14089, 14407.6 and 14407.8, Welfare and Institutions Code.

HISTORY

1. New section filed 3–11–94; operative 3–11–94; Submitted to OAL for printing only pursuant to section 147, SB 485 (Chapter 722, Statutes of 1992) (Register 94, No. 15).

§ 53926. Problem Resolution Process for Members.

(a) Any member may request assistance from the GMC enrollment contractor in resolving problems associated with mandatory participation in the GMC program, assignment to a GMC plan, enrollment, or disenrollment.

(b) The request for assistance from the GMC enrollment contractor shall be in writing and shall state the nature of a problem.

(c) The GMC enrollment contractor shall prepare a written response and mail it to the member within ten days of receipt of a member's written request for problem resolution.

(d) In the event a member is dissatisfied with the response of the GMC enrollment contractor to a request for problem resolution, the member may file an appeal with the department.

(1) The member shall submit to the department the information specified in (b) and the written response of the GMC enrollment contractor.

(2) The department shall prepare a written decision and mail it to the member within ten days of receipt of a member's appeal.

(e) Each member has the right to request a fair hearing, in accordance with Section 50951.

NOTE: Authority cited: Sections 10725, 14089.7, 14105, 14124.5, 14203 and 14312, Welfare and Institutions Code. Reference: Sections 10950, 14089, 14089.2 and 14450, Welfare and Institutions Code.

HISTORY

1. New section filed 3–11–94; operative 3–11–94; Submitted to OAL for printing only pursuant to section 147, SB 485 (Chapter 722, Statutes of 1992) (Register 94, No. 15).

§ 53926.5. Information to New Members.

(a) Each eligible beneficiary, prior to or upon either signing an enrollment application or being assigned to GMC plans in accordance with Section 53921.5, shall be informed in writing by the department or the GMC enrollment contractor of at least the following:

(1) There will be a 15 to 45 day processing time between the date of application and the effective date of enrollment in GMC plans.

(2) Until GMC plan enrollment is effective, the beneficiary may receive Medi–Cal covered health care services from any Medi–Cal provider licensed to provide the services.

(3) An alternative to GMC plan enrollment exists.

(4) Disenrollment from certain GMC plans, specified in Section 53925.5, is restricted during the second through sixth month of enrollment.

(b) Each GMC plan shall provide in writing, in addition to those items of information required by Section 14406, Welfare and Institutions Code, the following to each member within seven days after the effective date of enrollment in the plan:

(1) The effective date of enrollment.

(2) A description of all available services and an explanation of any service limitations, exclusions from coverage or charges for services, when applicable.

(3) The name, telephone number and service site address of the primary care provider selected by the member or instructions to select a primary care provider within thirty days or be assigned to one, in accordance with Section 53925.

(4) An enrollment/disenrollment form and an explanation that it must be used to disenroll from the GMC plan, in the event disenrollment is requested by the member.

(5) Information concerning non–medical transportation available to them under the Medi–Cal program, or offered by the GMC plan, if applicable, and how to receive it.

NOTE: Authority cited: Sections 10725, 14089.7, 14105, 14124.5, 14203 and 14312, Welfare and Institutions Code. Reference: Sections 14089, 14406 and 14407.6, Welfare and Institutions Code.

HISTORY

1. New section filed 3–11–94; operative 3–11–94; Submitted to OAL for printing only pursuant to section 147, SB 485 (Chapter 722, Statutes of 1992) (Register 94, No. 15).

§ 53927. Annual Information to Members.

(a) Each GMC plan shall revise, if necessary, and distribute the information specified in Section 53926.5(b)(2) to each member or the member's family unit at least once every twelve months.

NOTE: Authority cited: Sections 10725, 14089.7, 14105, 14124.5, 14203 and 14312, Welfare and Institutions Code. Reference: Sections 14089 and 14406, Welfare and Institutions Code.

HISTORY

1. New section filed 3–11–94; operative 3–11–94; Submitted to OAL for printing only pursuant to section 147, SB 485 (Chapter 722, Statutes of 1992) (Register 94, No. 15).

§ 53927.5. Notification of Changes in Services.

(a) Each GMC plan shall revise and distribute the information specified in Section 53926.5(b)(2) at least thirty days prior to any changes which the GMC plan makes in services provided or in the locations at which services may be obtained, to each member affected by that change. Notification shall be provided at least fourteen days prior to any changes in cases of unforeseeable circumstances.

NOTE: Authority cited: Sections 10725, 14089.7, 14105, 14124.5, 14203 and 14312, Welfare and Institutions Code Reference: Sections 14089 and 14406, Welfare and Institutions Code.

HISTORY

1. New section filed 3–11–94; operative 3–11–94; Submitted to OAL for printing only pursuant to section 147, SB 485 (Chapter 722, Statutes of 1992) (Register 94, No. 15).

§ 53928. Information for Departmental Dissemination.

(a) Each GMC plan shall furnish the department and the GMC enrollment contractor the information required in Section 53926.5(b)(2)

and (5), as it changes and upon request, for dissemination to prospective members.

NOTE: Authority cited: Sections 10725, 14089.7, 14105, 14124.5, 14203 and 14312, Welfare and Institutions Code. Reference: Section 14089, Welfare and Institutions Code.

HISTORY

1. New section filed 3–11–94; operative 3–11–94; Submitted to OAL for printing only pursuant to section 147, SB 485 (Chapter 722, Statutes of 1992) (Register 94, No. 15).

Chapter 5. Adult Day Health Care

Article 1. General Provisions

§ 54001. General.

(a) Adult day health care services may be provided to eligible Medi–Cal beneficiaries by adult day health care providers which meet the requirements of this Chapter. Adult day health care providers shall:

(1) Sign an adult day health care provider agreement with the Department to provide the services described under this Chapter to Medi–Cal beneficiaries who are eligible for and voluntarily elect to participate in an adult day health care program.

(2) Promote the social, emotional and physical well–being of impaired individuals living in the community, alone or with others, in order to maintain them at or restore them to their optimal functional potential and to help them remain at or return to their homes.

(3) Share with families and other persons the burden of providing substantial care to impaired elderly individuals by offering respite for one or several days during the week.

(4) Supplement the diagnostic evaluation conducted by other health professionals by means of a sustained functional assessment.

(5) Provide diagnostic and treatment services to persons who would otherwise require admission to or continued stay in a hospital or other health care facility.

NOTE: Authority cited: Chapter 1066, Statutes of 1977. Reference: Chapter 1066, Statutes of 1977.

HISTORY

1. Renumbering of Chapter 5 (Sections 59998–59999) to Chapter 11 (Sections 59998–59999) and new Chapter 5 (Sections 54001–54507, not consecutive) filed 6–28–78 as an emergency; designated effective 7–1–78 (Register 78, No. 26).
2. Certificate of Substantial Compliance filed 1–29–79 (Register 79, No. 5).
3. Amendment of subsection (a)(3) filed 9–19–79; effective thirtieth day thereafter (Register 79, No. 38).

§ 54003. Definitions and Standards.

The definitions stated in Article 2, Chapter 3, Division 3, Title 22, California Administrative Code, and the standards stated in Article 3, Chapter 3, Division 3 of the California Administrative Code, shall apply to this Chapter unless modified by regulations in this Chapter.

§ 54005. Grants.

The Department shall grant funds for the establishment of Adult Day Health Centers from the one–time appropriation of $100,000 authorized by Chapter 1065, Statute of 1977. The grants shall be made to licensed centers in accordance with the departmental guidelines for AB 1612, issued January 3, 1978.

Article 2. Definitions

§ 54101. Activity Program.

Activity program means a program as defined in Title 22, Division 5, Sections 72381 and 73377, California Administrative Code.

§ 54103. Adult Day Health Care.

Adult day health care means an organized day program of therapeutic, social and health activities and services, provided to elderly persons or other persons with physical or mental impairments for the purpose of restoring or maintaining optimal capacity for self–care.

§ 54105. Adult Day Health Center.

Adult day health center means a licensed facility which provides adult day health care, or a distinct portion of a licensed health facility in which such care is provided in a specialized unit, under a special permit issued by the Department.

§ 54107. Adult Day Health Care County Plan.

Adult Day Health Care County Plan means a county plan for a community–based system of adult day health care.

§ 54108. Adult Day Health Care Planning Council.

"Adult Day Health Care Planning Council" means the council appointed by the county board of supervisors to develop the Adult Day Health Care County Plan.

NOTE: Authority cited: Chapter 1066, Statutes of 1977. Reference: Chapter 1066, Statutes of 1977.

HISTORY

1. New section filed 9–19–79; effective thirtieth day thereafter (Register 79, No. 38).

§ 54109. Affiliate.

Affiliate means an organization or person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with an adult day health care provider and that provides services to an adult day health center.

§ 54111. Beneficiary Agreement of Participation.

Beneficiary agreement of participation means the agreement voluntarily signed by a beneficiary or the beneficiary's guardian or legal con-

[The next page is 539.]

servator in which the beneficiary agrees to receive day health services from the adult day health center.

§ 54113. Day of Attendance.

Day of attendance means any calendar day during which a participant receives covered services at the center for a minimum of four hours, excluding transportation time.

§ 54115. Daily Rate.

Daily rate means the amount paid by the Department per day of attendance to the adult day health center for administration and covered services provided under the adult day health care program.

§ 54117. Discharge.

Discharge means the termination of an agreement of participation.

§ 54119. Individualized Plan of Care.

Individualized plan of care means a written plan designed to provide a participant of an adult day health center with appropriate treatment in accordance with the assessed needs of the participant.

§ 54121. Multidisciplinary Team.

Multidisciplinary team means the group within the adult day health center that conducts assessments and makes recommendations to the Department regarding admission, treatment and services provided, and discharge of participants by the adult day health center.

§ 54123. Nonmedical Transportation.

Nonmedical transportation means the movement of participants to and from the adult day health center in vehicles that are not specially equipped for medical transportation services.

§ 54125. Nutrition Service.

(a) Nutrition service means a service provided by the adult day health center which is organized, staffed and equipped to provide:

(1) Safe, appetizing and nutritional food.

(2) Therapeutic diets prescribed by the participant's physician.

(3) Counseling when therapeutic diets are prescribed.

§ 54127. Nursing Service.

Nursing service means a service provided by the adult day health center which is organized, staffed and equipped to provide skilled nursing care to participants.

§ 54129. Occupational Therapy.

Occupational therapy as used in this Chapter means services rendered by an occupational therapist to train or strengthen muscles or nerve functions. Services shall include, but are not limited to, modification of the environment and training in self-help for activities of daily living.

§ 54131. Participant.

Participant means a Medi-Cal beneficiary who has been accepted by the adult day health center's Intake and Assessment Unit, voluntarily signs an Agreement of Participation, and whose application for participation in an adult day health center has been approved by the Department.

§ 54133. Psychiatric and Psychological Services.

(a) Psychiatric services means services performed by a physician trained or experienced in psychiatry.

(b) Psychology services means services provided by a:

(1) Psychologist.

(2) Psychological assistant under the direction and supervision of a psychologist or board certified psychiatrist.

(3) A psychiatric social worker who is a licensed clinical social worker working in consultation with a psychologist or board certified psychiatrist.

(4) A psychiatric nurse who meets the qualifications of Section 78337.

NOTE: Authority cited: Chapter 1066, Statutes of 1977. Reference: Chapter 1066, Statutes of 1977.

HISTORY

1. Amendment of subsection (b)(3) and new subsection (b)(4) filed 9–19–79; effective thirtieth day thereafter (Register 79, No. 38).

§ 54135. Service Area.

Service area means the geographic area in which the adult day health center is authorized to provide service. Unless otherwise specified, the service area shall be so limited that no participant will be in transit utilizing ground transportation more than one hour from his or her home to the center.

§ 54137. Staff Physician Services.

Staff physician services means those services provided by a physician employed by the adult day health care provider.

§ 54139. Subcontract.

(a) Subcontract means any agreement between the adult day health care provider and any of the following:

(1) A provider of services, as defined in Section 51051, and any other organization that provides services to Medi-Cal beneficiaries in order to meet the requirements of this Chapter.

(2) An organization or person that performs administrative functions or services for the operation of the program specifically related to meeting the requirements of this Chapter.

§ 54141. Supervision.

(a) Supervision means the instruction and direction of an employee or subordinate in the performance of assigned duties. Supervision does not necessarily require the immediate presence of the supervisor.

(1) Direct supervision means that the supervisor shall be present in the same building as the person being supervised and available for consultation and assistance.

(2) Immediate supervision shall mean that the supervisor shall be physically present while the task is being performed.

Article 3. Eligibility, Participation and Discharge

§ 54201. Eligibility.

Adult day health care services may be provided to eligible Medi-Cal beneficiaries who have medical or psychiatric impairment, who meet the criteria stated in Section 54209, and who are one of the following:

(a) Not inpatients in a licensed health facility.

(b) Inpatients in a licensed health facility who are provided transition visits in accordance with Section 54504.

NOTE: Authority cited: Section 14570, Welfare and Institutions Code. Reference: Section 14525, Welfare and Institutions Code.

HISTORY

1. Amendment filed 2–11–83; effective thirtieth day thereafter (Register 83, No. 7).

§ 54203. Participation.

(a) Participation by an eligible Medi-Cal beneficiary in adult day health care program shall require:

(1) A written request from a physician.

(2) A multidisciplinary team assessment.

(3) An agreement of participation signed by the participant or the participant's guardian or conservator.

(4) Approval by the Department.

NOTE: Authority cited: Chapter 1066, Statutes of 1977. Reference: Chapter 1066, Statutes of 1977.

HISTORY

1. Amendment of subsection (a)(3) filed 9–19–79; effective thirtieth day thereafter (Register 79, No. 38).

§ 54205. Physician Request.

(a) Adult day health care services shall be requested in writing by a physician. The request shall include:

(1) Principal and significant diagnoses.

(2) Prognosis.

(3) Specific type of treatment and anticipated duration.
(4) Overall therapeutic goals for the participant.
(5) Medications and special diets.

§ 54207. Multidisciplinary Team Assessment.

(a) Each applicant shall be assessed by a multidisciplinary team prior to acceptance into the program. The assessment shall be conducted by the adult day health care provider in order to ascertain the individual's pathological diagnosis, physical disabilities, functional abilities, psychological status and social and physical environment. The assessment shall include:

(1) Contact with the applicant's physician to obtain the individual's medical history and a statement indicating the applicant's restrictions and medications and absence of infectious disease. If the applicant does not have a personal physician, the center shall assist the individual in finding one. An initial physical examination may be done by the staff physician or by a nurse practitioner under the supervision of a physician to the extent allowed under state law.

(2) Assessment of the home environment based on a home visit within the last 12 months. The assessment shall include:

(A) Living arrangements.
(B) Relationship with family or other person.
(C) Facilities available such as heat, bath, toilet, stove.
(D) Existence of environmental barriers such as stairs or other features not negotiable by the impaired individual.
(E) Access to transportation, shopping, church or other needs of the individual.

NOTE: Authority cited: Chapter 1066, Statutes of 1977. Reference: Chapter 1066, Statutes of 1977.

HISTORY

1. Amendment of subsection (a)(2) filed 9–19–79; effective thirtieth day thereafter (Register 79, No. 38).

§ 54209. Prior Authorization.

(a) Adult day health care services except for the initial assessment and reassessments shall require prior authorization by the Medi–Cal Consultant. The request for authorization shall:

(1) Be initiated by the center and shall include the results of an individual's multidisciplinary assessment conducted by the center within the last 30 days and the participant's plan of care.

(2) Be approved and signed by a physician.

(3) Include a statement describing the patient's progress toward achieving the therapeutic goals.

(b) Initial authorizations and reauthorizations may be granted for up to three months. Adult day health centers which do not have a staff physician shall obtain signed approval of the treatment plan every 180 days.

(c) Authorization or reauthorization may be granted only if all of the following conditions exist:

(1) A medical condition that requires treatment or rehabilitative services prescribed by a physician.

(2) Mental or physical impairments which handicap daily living activities but which are not of such a serious nature as to require 24–hour institutional care.

(3) Reasonable expectation that preventative service will maintain or improve the present level of functioning.

(4) High potential for further deterioration and probable institutionalization if adult day health care were not available.

(d) In determining the need for adult day health care services, the Medi–Cal Consultant shall consider the following:

(1) Medical factors including the necessity:

(A) For nursing care, supervision or observation on an ongoing intermittent basis to abate health deterioration.

(B) To see a physician or psychiatrist no less than every 60 days.

(C) To monitor medications for response and effect on an intermittent basis.

(D) For medications which cannot safely be self–administered due to physical or mental disabilities.

(E) For individualized therapeutic treatment designed to restore optimal functional potential or to prevent deterioration.

(2) Functional status including:

Limitation in movement, with or without an assistive device such as a cane, walker, crutches, prosthesis or wheelchair, or the need for training in the use of these devices.

(B) Inability to perform toileting, bathing, eating, dressing, grooming, transferring and self–medication or the need of training and assistance in the activities of daily living.

(C) Incontinency and the probable benefit from continence retraining.

(D) Vision, hearing or sensory loss to some degree.

(E) Dependency and the need for part–time or full–time basic supervision by persons other than day health center staff.

(3) Psychosocial limitations including:

(A) Inability of person or family to cope adequately with problems associated with the person's disability.

(B) Need for a psychosocial environment involving peer group membership and social rehabilitation.

(C) Mild or moderate confusion or depression, or tendency to wander.

(D) Inappropriate affect, appearance or behavior.

NOTE: Authority cited: Chapter 1066, Statutes of 1977. Reference: Chapter 1066, Statutes of 1977.

HISTORY

1. Amendment of subsection (b) filed 9–19–79; effective thirtieth day thereafter (Register 79, No. 38).

§ 54211. Multidisciplinary Team.

(a) The multidisciplinary team conducting the assessment pursuant to Section 54207 shall consist of at least a physician, nurse, social worker, occupational therapist and physical therapist. The physician may be either a salaried staff member of the adult day health center or the participant's physician. When indicated by the needs of the participant, a psychiatrist, psychologist, psychiatric social worker, speech therapist and dietitian shall be included as members of the assessment team and assist in the assessment.

(b) The multidisciplinary assessment team shall:

(1) Determine the medical, psychosocial and functional status of each participant.

(2) Develop an individualized plan of care including goals, objectives and services designed to meet the needs of the person. The plan shall be signed by each member of the team, except that the signature of only one physician member of the team shall be required.

(A) The individualized plan of care shall include:

1. Medical diagnoses.
2. Prescribed medications and frequency.
3. Scheduled days of attendance.
4. Specific type, number of units of service and frequency of individual services to be given on a monthly basis.
5. The specific elements of the services which need to be identified with individual objectives, therapeutic goals and duration of treatment.
6. An individualized activity plan designed to meet the needs of the participant for social and therapeutic recreational activities.
7. Participation in specific group activities.
8. A plan to meet transportation needs.
9. Therapeutic diet requirements, dietary counseling and education if indicated.
10. A plan for other needed services which the adult day health center will coordinate.
11. Prognosis and prospective length of stay.

NOTE: Authority cited: Chapter 1066, Statutes of 1977. Reference: Chapter 1066, Statutes of 1977.

HISTORY

1. Amendment of subsection (b)(2)(A) 11 filed 9–19–79; effective thirtieth day thereafter (Register 79, No. 38).

§ 54213. Discharge.

(a) Participation in an adult day health program shall be voluntary. The participant may terminate participation at any time. However, if the

assessment team has found the participant's condition to be of such serious nature that continued treatment is essential to prevent institutionalization, the participant shall be informed in writing that termination is counter to the participant's best interest. A copy of the letter shall be sent to the participant's personal physician and the Department.

(b) Discharge shall be mandatory when:

(1) The participant notifies the adult day health care center either orally or in writing of intent to discontinue participation. The date of discharge shall be the date of notification or a later date designated by the participant.

(2) The participant leaves the service area permanently.

(3) The participant requests discharge from the Department either orally or in writing. The date of discharge shall be as in (1).

(c) Discharge may be requested by the adult day health center if:

(1) Maximum benefit has been achieved and there is no further need for adult day health care services.

(2) The participant is unable or unwilling to use the prescribed services and adult day health center staff have made every effort to remove possible obstacles.

(d) The adult day health center shall forward any discharge request and supporting information to the Department within five working days of receipt.

§ 54215. Reassessment.

(a) Reassessment, at least quarterly, shall include:

(1) Progress achieved.

(2) Review and revision of goals and objectives.

(3) Revision or continuation of the individual plan of care.

(4) Preparation of a reauthorization request for continuing care.

§ 54217. Beneficiary Agreement of Participation.

(a) When the initial assessment has been completed and the individualized plan of care prepared, an agreement of participation on forms furnished by the Department shall be prepared by the adult day health care provider and discussed with the prospective participant or the participant's guardian or conservator.

(b) If the terms of agreement are satisfactory, the participant shall sign the statement. The statement shall be sent to the Department with the initial Treatment Authorization Request. The signing of the agreement of participation does not mandate participation and the participant may end participation at any time.

(c) Statement that the participant understands that services beyond the amounts included in each adult day health center's staffing requirements as set forth in Section 54423 (a) are subject to prior authorization by a Medi–Cal consultant.

NOTE: Authority cited: Chapter 1066, Statutes of 1977. Reference: Chapter 1066, Statutes of 1977.

HISTORY

1. Amendment filed 9–19–79; effective thirtieth day thereafter (Register 79, No. 38).

§ 54221. Hours of Operation.

(a) Centers shall be open to participants for no less than 6 hours and no more than 12 hours during each calendar day of operation.

(b) Programs will operate at least five days a week. Adjustment may be made in the hours or days of operation:

(1) To accommodate working relatives of participants.

(2) In response to other special circumstances.

(c) New programs may be initiated with fewer than six hours per day or less than five days per week for the first six months of operation or until full licensed capacity is reached, whichever occurs first.

(1) An adult day health care provider shall not operate less than five days a week or six hours a day after the first six months of operation without written prior approval of the Department. The Department shall consider the following factors in making its decision:

(A) Location of the center.

(B) Density of population.

(C) Average daily attendance.

(D) Availability of transportation and meals from other agencies.

(E) Needs of the participants currently served at the center.

(2) Minimum operation after the sixth month shall be not less than four hours a day and three days a week.

§ 54223. Attendance.

(a) Attendance shall be regular and planned. Treatment needs of the participant shall determine the frequency and duration of attendance. The number of days scheduled shall be governed by the least time needed to carry out an individual plan of care related to the needs of the participant and his or her family.

(b) Participants shall not be encouraged to attend more frequently than necessary for achievement of individual goals and objectives.

Article 4. Services and Standards

§ 54301. Certification.

(a) Each adult day health center shall:

(1) Be licensed or have a special permit pursuant to Chapter 3.5, commencing with Section 1570, Division 2, Health and Safety Code, to provide adult day health care.

(2) Have appropriate licensed and allied health personnel to provide services in accordance with the requirements of this Chapter.

(3) Have a written description of its philosophy, objectives and program for providing medical and ancillary health related services available for public inspection.

(4) Demonstrate to the satisfaction of the Department that staff and facilities are adequate to provide the planned services described in its written program.

(5) Provide or arrange for, through written agreement, nonroutine medical services which may become necessary.

(6) Execute a written agreement with each participant which specifies but is not limited to, a list of basic services which are to be furnished each visit or according to a specified schedule.

(7) When serving a substantial number of participants of a particular racial group, or whose primary language is other than English, employ staff of that particular racial or linguistic group at all times.

(b) Each facility shall sign an adult day health care provider agreement with the Department in order to participate in the Medi–Cal program.

(c) The Department shall certify adult day health centers which meet the requirements of this chapter as a special category of clinic and hospital outpatient services.

§ 54303. Denial of Initial Certification.

(a) The Director shall deny application for certification if the applicant has:

(1) Not been approved as a licensed adult day health care provider.

(2) Failed to meet the requirements of Section 54301, or any other applicable requirements of the statutes or regulations relating to the California Medical Assistance Program.

(3) Previously violated Department regulations and there is probability of noncompliance by the applicant.

(4) Failed to correct violations of regulations pertaining to licensure or Medi–Cal certification.

(5) Failed to comply with the approved adult day health care county plan.

(b) Upon the denial of the application, a written notice of denial shall be sent by the Department by certified mail informing the applicant of the reasons for denial, and advising the applicant of the right to petition for a hearing.

(c) An applicant may submit a written petition for hearing to the Department within 15 days after the Department mails the notice.

(d) The hearing shall be initiated by filing and serving a statement of issues in accordance with Section 11504.

(e) The proceeding shall be conducted in accordance with Chapter 5, commencing with Section 11500, Division 3, Title 2, Government Code.

(f) Hearing concerning denial of Medi–Cal certification as a provider of adult day health care services shall be consolidated with hearing concerning denial of licensure whenever possible.

§ 54305. Termination or Suspension of Certification.

(a) Certification shall be suspended or revoked for any of the following:

(1) Violation of any statute or regulation relating to the California Medical Assistance Program.

(2) Aiding, abetting or permitting the violation of applicable statutory provisions or regulations of the Department.

(3) Conduct in the operation or maintenance of an adult day health center which is inimical to the health, morals, welfare or safety of either participant receiving services from the center or the people of the State of California.

(b) Proceedings for termination or suspension shall be commenced in accordance with Chapter 5, commencing with Section 11500, Part 1, Division 3, Title 2, Government Code.

§ 54307. Denial of Renewal of Certification.

(a) The Director shall deny an application for renewal of certification as a provider of adult day health care services if the applicant:

(1) Was party to an action which resulted in denial, suspension or revocation of license as an adult day health care provider.

(2) Is not currently certified as a Medi–Cal provider because of suspension or disapproval of an application for certification.

(3) Has previously violated Department regulations and there is probability of noncompliance by the applicant.

(4) Has failed to correct violation of regulations pertaining to other licensure and Medi–Cal certification.

(5) Is not in compliance with the approved Adult Day Health County Plan.

(6) Would be denied certification under Section 54303.

(b) A public hearing may be held in accordance with Section 78215, Division 5, on a renewal application if the Director determines that the public's interest will be served.

(c) The Director shall send the applicant a written notice of denial by certified mail. The notice shall advise the applicant concerning the reason for the denial and the right to petition for a hearing as set forth in Section 54303.

(d) The applicant shall submit a plan and date for discontinuing care to the Director for approval. The Director shall approve the plan in writing.

(e) Hearing concerning denial of renewal application for certification as an adult day health care provider shall be consolidated with any hearing concerning denial of licensure as an adult day health care provider, whenever possible.

§ 54309. Required Services.

(a) Each adult day health center shall provide directly on the premises, at least the following services:

(1) Rehabilitation services, including:

(A) Physical therapy as specified in Section 54313.

(B) Occupational therapy as specified in Section 54315.

(C) Speech therapy as specified in Section 54317.

(2) Medical services supervised by either the participant's personal physician or a staff physician or both.

(3) Nursing service, including:

(A) Skilled nursing care rendered by a professional nursing staff, who evaluate the particular nursing needs of each participant and provide the care and treatment indicated.

(B) Self–care training and services oriented toward activities of daily living and personal hygiene, such as toileting, bathing and grooming.

(4) Nutrition services, including:

(A) A minimum of one meal per day which is in accordance with the requirements stated in Section 54331. Therapeutic diets and supplemental feedings shall be available if therapeutically indicated.

(B) Dietary counseling and nutrition education for participants and their families.

(5) Psychiatric and psychological services including:

(A) Consultation.

(B) Individual assessment.

(C) Supervision of treatment by a psychiatrist, psychologist, psychiatric social worker or psychiatric nurse, when indicated.

(6) Medical social services to participants and their families to help with personal, family and adjustment problems that interfere with the effectiveness of treatment.

(7) Planned recreational and social activities suited to the needs of the participants and designed to encourage physical exercise to prevent deterioration and to stimulate social interaction.

(8) Nonmedical and medical transportation service for participants, only if necessary, to and from their homes. Specially equipped vehicles shall be utilized when medically necessary to accommodate participants with severe physical disabilities that limit mobility.

NOTE: Authority cited: Chapter 1066, Statutes of 1977. Reference: Chapter 1066, Statutes of 1977.

HISTORY

1. Amendment of subsection (a)(5)(C) filed 9–19–79; effective thirtieth day thereafter (Register 79, No. 38).

§ 54311. Optional Services.

(a) Each adult day health center may arrange for the following additional services. These services shall be separately billed by the provider according to the requirements of Article 7, Chapter 3, Division 3, Title 22, California Administrative Code.

(1) Podiatric services arranged for by the supervising physician.

(2) Visual care screening and advice for low–vision cases by a licensed ophthalmologist or optometrist, following referral and arrangement by the supervising physician.

(3) Dental screening for the purpose of apprising the participant of the necessity of regular or emergency dental care, which is arranged for by the supervising physician.

(b) Optional services may include other services within the concept and objectives of adult day health care that have been approved by the Department.

§ 54313. Physical Therapy Service.

(a) The physical therapy service shall:

(1) Provide:

(A) Muscle, nerve joint and functional ability tests.

(B) Treatment to relieve pain, develop or restore function.

(C) Assistance to achieve and maintain maximum performance using physical means such as exercise, massage, heat, sound, water, light or electricity.

(2) Provide an evaluation by the physical therapist and establishment of a treatment program. The treatment program shall be modified as needed based upon subsequent reevaluations.

(3) Require that physical therapists:

(A) Record treatments, each day, in the participant's health record. Each entry shall be signed.

(B) Record quarterly progress notes. Each entry shall be signed and dated.

(C) Review and initial all evaluations and the discharge summary.

(4) Define the responsibilities of the physical therapist and the duties assigned to the auxiliary personnel by the individual treatment plan.

(b) Physical therapy staff shall meet the following requirements:

(1) The physical therapist, physical therapist assistant and physical therapist aide shall accomplish those tasks required by the individualized plan of care within the staffing requirements stated in Section 54423.

(2) The physical therapist shall act as a member of the assessment team in an evaluation of the patient's rehabilitation potential.

(c) Physical therapy equipment shall include but is not limited to:

(1) Parallel bars.

(2) Full–view mirror.

(3) Overhead pulley and weights.
(4) Set of training stairs.
(5) Treatment table enclosed for privacy.
(6) Availability of wheelchairs, walkers, canes, crutches and other ambulation aides.
(d) Adequate space shall be maintained for the necessary physical therapy equipment. Space can be used for other services during the day when physical therapy services are not being given.
(e) Physical therapy procedures may include:
(1) Therapeutic exercise.
(2) Neuromuscular reeducation.
(3) Rehabilitation services.
(4) Functional activities.
(5) Gait training.
(6) Orthotics training.
(7) Prosthesis training.
(8) Massage.

NOTE: Authority cited: Chapter 1066, Statutes of 1977. Reference: Chapter 1066, Statutes of 1977.

HISTORY

1. Amendment filed 9–19–79; effective thirtieth day thereafter (Register 79, No. 38).

§ 54315. Occupational Therapy Services.

(a) Occupational therapy services shall:
(1) Reevaluate the participant as the condition changes and modify treatment goals consistent with these changes.
(2) Decrease or eliminate disability during participant's initial phase of recovery following injury or illness.
(3) Increase or maintain the participant's capability for independence.
(4) Enhance the participant's physical, emotional and social well–being.
(5) Develop function to a maximum level.
(6) Guide participants in the use of therapeutic, creative and self–care activities for improving function.
(7) Require that occupational therapists:
(A) Record treatments, each day, in the participant's health record. Each entry shall be signed.
(B) Record quarterly progress notes. Each entry shall be signed and dated.
(C) Review and initial all evaluations and the discharge summary.
(8) Develop personnel policies which define the occupational therapy responsibilities and the duties assigned to the occupational therapy assistant.
(b) Occupational therapy staff shall meet the following requirements:
(1) The occupational therapy service shall be under the direction of an occupational therapist.
(2) The occupational therapist and occupational therapy assistant shall work the hours necessary to accomplish those tasks required by the individualized plan of care within the staffing requirements stated in Section 54423.
(c) The occupational therapy service shall provide:
(1) Equipment and supplies for creative skills. This may include, but is not limited to leatherwork, weaving, needlework, ceramics, woodworking, painting and graphic arts.
(2) Means and supplies for adapting equipment for reeducation in activities of daily living.
(3) Therapeutic exercises, sensory stimulation and coordinating exercise concentrating on the range of motion of the upper extremities.
(4) Evaluation of needed splints or slings to increase or maintain functional use of the upper extremities.
(d) Adequate space shall be provided for the necessary occupational therapy equipment needed to provide occupational therapy. Space can be used for other services during times when occupational therapy services are not being given.

NOTE: Authority cited: Chapter 1066, Statutes of 1977. Reference: Chapter 1066, Statutes of 1977.

HISTORY

1. Amendment of subsection (a)(7)() and new subsections (c)(3) and (4) filed 9–19–79; effective thirtieth day thereafter (Register 79, No. 38).

§ 54317. Speech Therapy Services.

(a) Speech therapy services shall:
(1) Evaluate participants and develop necessary plans for appropriate speech and language therapy.
(2) Instruct other health team personnel and family members in methods of assisting the participant to improve and correct speech disorders.
(3) Require that speech therapists:
(A) Record treatments, each day, in the participant's health record. Each entry shall be signed.
(B) Record quarterly progress notes. Each entry shall be signed and dated.
(C) Review and initial all evaluations and the discharge summary.
(4) Develop personnel policies which define the duties of the speech therapist and allied personnel.
(b) Speech therapy staff shall meet the following requirements:
(1) There shall be a speech therapist employed a sufficient number of hours to accomplish those tasks listed in each individualized plan of care within the staffing requirements stated in Section 54423.
(2) The speech therapist shall act as a member of the assessment team and evaluate to determine the type of speech or language disorder.
(c) Speech therapy equipment, tests, materials and supplies shall be sufficient to implement the treatment and program required by each participant seen by the speech therapists.
(d) Speech therapy space shall be adequately free of ambient noise.

NOTE: Authority cited: Chapter 1066, Statutes of 1977. Reference: Chapter 1066, Statutes of 1977.

HISTORY

1. Amendment of subsection (a)(3)(B) filed 9–19–79; effective thirtieth day thereafter (Register 79, No. 38).

§ 54319. Staff Physician Services.

(a) Staff physician services shall include consultation to staff and may include the following limited direct services to the participant:
(1) Periodic physical examination as part of the assessment process.
(2) Consultation with the participant's physician.
(3) Minor, incidental or occasional treatment.
(4) The development of the medical component of the individual participant's plan of care, except when this component is developed by the participant's physician who retains primary responsibility for all medical care provided to the participant.
(b) The center staff physician may sign the authorization request and the individualized plan of care.
(c) By arrangement with the center director, staff physician services shall be provided at the center on a regular basis. Staff physician services may be secured on a voluntary basis or may be paid by the adult day health center on an hourly basis consistent with reasonable reimbursement for similar consultative services.
(d) Space shall be provided which ensures privacy for the staff physician's examination and consultation.
(e) The adult day health center may allow participants who are independently responsible for taking their own medication at home, if authorized by the participant's physician, to continue to be responsible for taking their own medication during the hours spent in the adult day health care program.

§ 54321. Personal Physician.

(a) Close liaison shall be maintained with the participant's personal physician. The personal physician shall retain primary responsibility for the medical care of the participant.
(b) The personal physician shall be:
(1) Requested to provide the report of physical examination and medical history required for initial evaluation.

(2) Requested to sign the Medi–Cal treatment authorization request for prior authorization if the adult day health center does not have a staff physician.

(3) Informed, on a regular basis, of the participant's status and progress.

(c) Reimbursement for services provided by a personal physician to a participant shall neither be made by nor become the responsibility of the center.

NOTE: Authority cited: Chapter 1066, Statutes of 1977. Reference: Chapter 1066, Statutes of 1977.

HISTORY

1. Amendment of subsection (b)(2) filed 9–19–79; effective thirtieth day thereafter (Register 79, No. 38).

§ 54323. Nursing Service.

(a) The nursing service shall, as a minimum:

(1) Assess each participant to determine needs for personal care and assistance in activities of daily living such as bathing, grooming, toileting and eating; include these needs in the plan of care and supervise the provision of these services.

(2) Specify short–term and long–term nursing goals in each individualized plan of care.

(3) Document all skilled nursing care provided on the day the service is given and include quarterly signed and dated progress notes in each participant record.

(4) Provide health education and counseling to the participant and family when indicated by the plan of care.

(5) Provide assistance to the participant in obtaining medical services from providers other than adult day health staff.

(6) Monitor, administer and record prescribed medications as follows:

(A) Medication shall be given only on the prescriber's order.

(B) Participants shall be identified prior to the administration of a drug.

(C) Medication shall be administered within one hour of the prescribed time.

(D) Time and doses of each drug administered must be recorded in the participant's record by the nurse who gave the drug.

(7) Provide training in self–administration of medications to participants.

(8) Provide liaison to the participant's personal physician.

(9) Develop the nursing component in the plan of care for each participant capable of benefiting from a continence training program.

(10) Provide observation and monitoring of health status.

(11) Provide supportive and restorative nursing as indicated by the treatment plan.

(b) The nursing service shall provide a registered nurse or a licensed vocational nurse under the supervision of a registered nurse at the center during the hours the center is offering required services.

(c) A registered nurse shall be a member of the assessment team to assess the nursing needs of the participant and develop the nursing component of the individualized plan of care.

(d) Nursing service supplies and equipment shall meet the requirements of Section 78439 (a), Title 22, California Administrative Code.

NOTE: Authority cited: Chapter 1066, Statutes of 1977. Reference: Chapter 1066, Statutes of 1977.

HISTORY

1. Amendment of subsections (a)(3), (b), and (d) filed 9–19–79; effective thirtieth day thereafter (Register 79, No. 38).

§ 54325. Psychiatric and Psychological Services.

(a) Each adult day health center shall have a consultant psychiatrist, psychologist, psychiatric social worker or psychiatric nurse who shall make assessments of participants when indicated, develop an individualized plan of care, supervise the carrying out of these plans and do reassessments. The consultant psychiatrist, psychologist, psychiatric social worker or psychiatric nurse shall provide consultation services to center staff at least three hours per month.

(b) Consultant services are indicated when:

(1) The participant's diagnoses or medical history indicate a mental, emotional or behavioral problem.

(2) Information from the participant's family indicates mental, emotional or behavioral problems may exist.

(3) The psychosocial assessment developed by the social worker indicates apparent mental, emotional or behavioral problems that need further assessment by a psychiatrist, psychologist, psychiatric social worker or psychiatric nurse.

(4) Observation by center staff indicates the need for psychiatric or psychological assessment.

(c) Services shall provide a therapeutic setting conducive to restoring dignity and self–esteem and good mental health to all participants. Techniques such as group socialization activities which restore or expand normal social roles, individual and group therapies in various forms such as reality orientation, art and music therapy, psycho–social drama, counseling and discussion shall be a part of the general program. Specialized techniques and mental health treatment supervised by a psychiatrist, psychologist or psychiatric social worker may be provided as part of the plan of care by appropriately qualified personnel.

NOTE: Authority cited: Chapter 1066, Statutes of 1977. Reference: Chapter 1066, Statutes of 1977.

HISTORY

1. Amendment of subsections (a) and (b)(3) filed 9–19–79; effective thirtieth day thereafter (Register 79, No. 38).

§ 54327. Personal Psychiatrist and Psychologist Services.

(a) The adult day health center shall maintain close liaison with the attending psychologist or psychiatrist providing services to a participant. The psychologist or psychiatrist shall maintain primary responsibility for the psychological or psychiatric treatment of the participant and shall be kept informed of the participant's health status. Any psychologic or psychiatric services provided by the center shall be coordinated with the attending psychiatrist or psychologist.

(b) The center shall assist the participant in obtaining psychiatric or psychological services determined to be necessary.

(c) An attending psychiatrist or psychologist for an individual participant who is also the consultant psychiatrist or psychologist for the adult day health center, may not bill for services provided at the center for this participant in the manner prescribed in Article 7, Chapter 3, Division 3, Title 22, California Administrative Code.

§ 54329. Medical Social Services.

(a) Medical social services shall as a minimum:

(1) Interview and screen all referrals to determine the general appropriateness of the prospective participant for the full assessment process and adult day health care participation.

(2) Provide referral for persons not appropriate for adult day health care.

(3) Provide a signed and dated documentation for all service performed the day the service is provided and include signed and dated quarterly progress reports in each participant record.

(4) Provide for periodic reevaluation and revision of plan of care.

(5) Provide counseling and referral to available community resources.

(6) Promote peer group relationship through problem–centered discussion group and task oriented committees.

(7) Serve as liaison with the participant's family and home.

(8) Serve as liaison with other community agencies who may be providing services to a participant and work with these agencies to coordinate all services delivered to the participant to meet the participant's needs and avoid duplication. Liaison shall include, but not be limited to the following agencies:

(A) In–Home Supportive Services in the county welfare department.

(B) Home Health Agency providers.

(9) Provide discharge planning for all discharged participants.

(b) Medical social service staffing shall meet the following requirements:

(1) A medical social worker shall be a full–time employee of the adult day health center.

(2) A social work assistant or social work aide shall provide medical social services only under the supervision of the medical social worker.

(3) A medical social worker shall act as a member of the assessment team to evaluate medical social needs of all participants. The medical social worker shall develop a plan of care if indicated, including short–term and long–term goals with participation of the participant's family and other appropriate individuals.

NOTE: Authority cited: Chapter 1066, Statutes of 1977. Reference: Chapter 1066, Statutes of 1977.

HISTORY

1. Amendment of subsections (a)(3) and (b)(1) filed 9–19–79; effective thirtieth day thereafter (Register 79, No. 38).

§ 54331. Nutrition Service.

(a) The nutrition service shall as a minimum:

(1) Be staffed and equipped to assure that food provided to the participants is safe, appetizing and provides for nutritional needs.

(2) Include dietary counseling and education as part of the nutrition service.

(3) Provide at least one meal to each participant who is present for four hours. The meal shall provide one–third of the recommended dietary allowance of the Nutrition Board of the National Research Council, National Academy of Science.

(4) Each participant who is in the center for eight hours shall be served a meal and between meal nourishments that shall supply at least one–half of the recommended dietary allowance of the Nutrition Board of the National Research Council, National Academy of Science.

(b) Participant food preferences, including ethnic foods shall be adhered to as much as possible.

(c) Therapeutic diets shall be served as ordered and shall be prepared under the guidance of a registered dietitian. The diet order shall be reviewed every 90 days when the reassessment is done.

(d) A dietitian shall be employed on a consulting basis. Consultant services shall be provided on the premises at appropriate times on a regularly scheduled basis. A written record of the frequency, nature and duration of the consultant's visits shall be maintained.

(e) Sufficient staff shall be employed, oriented, trained and their working hours scheduled to provide for the nutritional needs of the participants and to maintain the service areas. If nutritional employees are assigned duties in other services, those duties shall not interfere with the sanitation, safety or time required for work assignments.

§ 54333. Transportation.

(a) Transportation shall be provided only if necessary. Persons who live within walking distance of the center and who are sufficiently mobile shall be encouraged to walk to the center.

(b) Family members shall be encouraged to provide nonmedical transportation for the participant if specially equipped vehicles are not needed. Volunteers may also be utilized to provide transportation.

(c) Transportation to and from participants' homes shall be scheduled to insure that participant one–way transit time does not exceed one hour.

(d) Medical transportation shall be supplied by either the center's own vehicles or by contract with other transportation services to facilitate regular attendance and prompt arrival and departure. If there is an existing transportation system in the area which is equipped to handle handicapped persons and is capable of providing the level of service, medical transportation service shall be purchased from that system. Vehicles used for nonmedical transportation shall be in good condition. Vehicles used for medical transportation shall meet the qualifications stated in Section 51151.

(e) Vehicle operators employed by the center shall maintain good driving records and shall have an appropriate operator's license. The vehicle operator shall be responsible for maintaining a schedule of transportation to and from the center. The driver or the driver's assistant shall assist the participant in and out of home and vehicle as necessary.

(f) If a participant does not appear for transportation or come to the center on a scheduled day of attendance, prompt follow–up shall be made to determine the reason. Efforts should be made to determine if the participant is helpless and unable to answer the door or phone or has gone away for the day.

(g) Participants who know that they will not attend on a scheduled day, shall notify the center.

(h) If the participant is ill, the adult day health center shall determine by visit or by telephone call the extent of the illness and make arrangements for proper treatment if indicated, such as notifying the participant's physician, family or arranging for home health services.

§ 54335. Emergency Service.

(a) Each adult day health center shall provide a readily available source of emergency health services.

(1) The participant, or the participant's sponsor shall sign an agreement granting the center permission to transfer the participant to a hospital or other health facility in case of emergency.

(2) The center shall maintain written agreements for emergency medical care which shall include:

(A) An on–call physician.

(B) Hospital or emergency room care.

(C) Medical transportation.

(b) First aid services shall be available. All staff members shall receive in–service training in first aid and cardiac pulmonary resuscitation within the first six months of employment. Annual refresher courses shall be arranged for by the adult day health provider.

NOTE: Authority cited: Chapter 1066, Statutes of 1977. Reference: Chapter 1066, Statutes of 1977.

HISTORY

1. Amendment of subsection (a)(2)(A) filed 9–19–79; effective thirtieth day thereafter (Register 79, No. 38).

§ 54337. Program Aides.

(a) Program aides may be full–time or part–time employees. Aides shall evidence capacity for learning, the ability to comprehend the use of written and spoken English and shall have personal qualities conducive to good interpersonal relationships with demonstrated competence in helping others.

(b) Program aides, under the supervision of the program director or of members of the multidisciplinary assessment team, shall perform assigned tasks involving:

(1) Support of major group activity and recreational programs.

(2) Transportation of participants to and from the adult day health center.

(3) Arranging for appointments for participants outside the center.

(4) Assistance in personal care under nursing supervision.

(c) Program aides may be part–time or full–time volunteers serving without compensation. Volunteer participation shall be encouraged. Volunteer staff shall not be considered in the basic staff ratio. Regular individual hours of service shall be scheduled to the mutual satisfaction of volunteers and staff. Volunteers shall be responsible to the program director or a delegated staff member.

(d) The duties of volunteers shall be mutually determined by volunteers and staff and shall either supplement staff in established activities or by providing additional services to the program for which the volunteer has special talents, such as but not limited to:

(1) Art.

(2) Music.

(3) Flower arrangements.

(4) Foreign language.

(5) Creative skills or crafts.

§ 54339. Activity Program.

(a) The activity program shall be staffed and equipped to meet the needs and interests of each participant and shall encourage self–care and resumption of normal activities. Participants shall be encouraged to participate in activities suited to their individual needs. The activity program

shall provide a planned schedule of social and other purposeful independent or group activities. Opportunities shall be provided for involvement, both individual and group, in the planning and implementation of the activity programs.

(b) The primary objectives of activity programs shall be to encourage the participant toward restoration to self–care and the resumption of normal activities or for those who cannot realistically resume normal activities, to prevent further mental or physical deterioration.

(c) The individual plan of care of each participant shall include an individual activity plan. This plan shall be reviewed quarterly.

(d) Each adult day health center shall designate an activity coordinator who shall be a full–time employee of the center. The activity coordinator shall have the following duties:

(1) Assess the needs and interests of each participant and develop an individualized activity plan as part of the individualized plan of care developed by the assessment team.

(2) Record, date and sign quarterly progress notes in each participant record.

(3) Provide or supervise the provision of activities specified in the activity plan.

(4) Develop, implement and supervise the activity program.

(5) Schedule and post planned activities.

(e) The center shall provide equipment and supplies necessary for the program, including special equipment and supplies necessary for participants having special needs.

NOTE: Authority cited: Chapter 1066, Statutes of 1977. Reference: Chapter 1066, Statutes of 1977.

HISTORY

1. Amendment of subsection (d) filed 9–19–79; effective thirtieth day thereafter (Register 79, No. 38).

Article 5. Administration

§ 54401. Organization and Administration.

(a) Each adult day health center shall be organized and staffed to carry out the requirements of this Chapter. Staffing and administrative requirements and capabilities shall include:

(1) An administrator.

(2) A program director with appropriate qualifications.

(3) Sufficient clerical supportive staff to conduct the center's daily business in an orderly manner.

(4) A grievance procedure.

(5) The ability to provide data reports required by the Department.

(6) Financial records and books of account fully disclosing the disposition of all funds received. Fiscal reports shall be submitted quarterly to the Department in the format prescribed by the Department.

(7) Appropriately qualified staff in sufficient numbers to provide an adequate scope of services and to meet the staffing requirements stated in Section 54423.

(8) Ethnic or linguistic staff as indicated by participant characteristics.

(9) Participant records maintained in a format approved by the Department.

(10) Adequate personnel records.

(11) Nondiscrimination by and to participants and staff.

(12) Confidentiality of data maintained as stated in Section 54439.

(b) Each adult day health care provider shall establish written policies and procedures for continuously reviewing the performance of health personnel, the utilization of services, costs and standards for acceptable health care. Such procedures shall receive prior approval of the Department.

§ 54403. Administrator.

(a) Each center shall have an administrator. The administrator shall have the responsibility and authority to carry out the policies of the licenses. The licensee shall notify the Department in writing within 14 working days following a change of administrator. Notification shall include the new administrator's name, mailing address, effective date of office, background, qualifications and Social Security number.

(b) An administrator shall have the following qualifications:

(1) Knowledge of supervision and care appropriate to the participants receiving services.

(2) Ability to conform to the applicable laws, rules and regulations.

(3) Ability to maintain or supervise the maintenance of financial and other records.

(4) Ability to direct the work of others.

(5) Be of good character and maintain a reputation of personal integrity.

(6) Graduation from an accredited college or university, in a field related to the program, and either of the following:

(A) A master's degree plus one year of successful experience in a responsible managerial, administrative or supervisory position in a social or health service program or agency.

(B) A bachelor's degree plus three years of successful experience in a responsible managerial, administrative or supervisory position in a social or health service program or agency.

(c) The administrator shall:

(1) Administer the center in accordance with these regulations and established policy, program and budget.

(2) Report to the licensee concerning the operation of the center and interpret recognized standards of care and supervision to the licensee.

(3) Develop an administrative plan and procedure to insure clearly defined lines of responsibility, equitable workloads and adequate supervision.

(4) Recruit, employ and train qualified employees and terminate employment of employees who perform in an unsatisfactory manner.

(d) Each center shall make provision for continuity of operation and assumption of the administrator's responsibilities during the administrator's absence.

(e) Centers with a capacity of 50 and over, shall provide both an administrator and a full–time program director.

(f) The administrator of two or more licensed centers shall not serve as a program director.

(g) The administrator shall not be responsible for more than three centers, without prior written approval by the Department. In this circumstance, there shall be one assistant administrator for every three additional centers or fraction thereof.

§ 54405. Program Director.

(a) Each center shall have a full–time program director during hours of operation. The administrator may serve in this capacity if the administrator meets the qualifications. The program director shall be on the premises and available to participants and their relatives and employees. When the program director is temporarily absent, another adult on the staff shall be designated to serve as the acting program director. When the program director is expected to be or has been absent for more than one month, the acting program director shall meet the qualifications of the program director.

(b) The program director shall be a qualified professional in the field of nursing, social work, psychology or recreational, occupational or physical therapy with demonstrated or potential competence in working with the impaired, elderly living at home. The director shall be knowledgeable of physical, social and mental health programs operating within a licensed health facility or clinic. The director shall have no other duties than those related to adult day health care and during those hours shall not be included in the staff ratios of any other licensed facility.

(c) The duties of the program director shall include:

(1) Developing the program in accordance with the needs of the participants served.

(2) Implementing and coordinating the program.

(3) Evaluating the participant's changing needs and making necessary program adjustments.

(4) Supervising employees and volunteers.

NOTE: Authority cited: Chapter 1066, Statutes of 1977. Reference: Chapter 1066, Statutes of 1977.

HISTORY

1. Amendment of subsection (b) filed 9–19–79; effective thirtieth day thereafter (Register 79, No. 38).

§ 54406. Activity Coordinator.

(a) The activity coordinator shall have one of the following qualifications:

(1) Two years' experience in a social recreational or educational program within the past five years, one year of which was full–time in an activities program in a health care, mental health or handicapped program setting.

(2) Be an occupational therapist, art therapist, music therapist, dance therapist, recreation therapist, occupational therapist assistant or qualified social worker.

(3) Completion of at least 36 hours training in a course designed specifically for this position and approved by the Department and shall receive regular consultation from an occupational therapist, qualified social worker or recreation therapist.

NOTE: Authority cited: Chapter 1066, Statutes of 1977. Reference: Chapter 1066, Statutes of 1977.

HISTORY

1. Amendment filed 9–19–79; effective thirtieth day thereafter (Register 79, No. 38).

§ 54407. Grievance Procedure.

(a) Each adult day health care provider shall establish and maintain a procedure for submittal, processing and resolution of grievances of participants regarding care and administration by the provider. Such procedure shall be approved by the Department and shall provide for the following:

(1) Recording each grievance in writing.

(2) Maintaining a log of all grievances submitted, including notes on progress towards resolution.

(3) A written finding of fact and decision within 30 days of the recording of any grievance received.

(4) Transmittal of the following to the participant within five days of decision:

(A) A written copy of the finding of fact.

(B) An explanation of the decision concerning the grievance.

(C) Information concerning the participant's right to a fair hearing in accordance with Section 54409.

(b) The participant may request a fair hearing by the Department within 10 days following receipt of written decision concerning the grievance.

§ 54409. Participant Fair Hearing.

(a) Each participant shall have the right to a fair hearing for matters relative to an unresolved grievance regarding care and administration by the adult day health care provider.

(b) The adult day care provider shall present its position at the fair hearing and implement the fair hearing decision adopted by the Director.

(c) Implementation of the fair hearing decision shall not be the basis for discharge of the participant by the adult day health care provider.

§ 54411. Reports.

(a) Each provider of adult day health care services shall furnish to the Director or the Director's designee scheduled or requested information and reports including but not limited to information and reports listed below:

(1) Monthly Services Report for each participant.

(2) Agreements of Participation.

(3) Discharge requests.

(4) Initial and successive individualized plans of care.

(5) Treatment Authorization Request.

(6) Annual demographic report.

(7) Financial Reporting.

(8) Any other reports requested by the Department.

NOTE: Authority cited: Chapter 1066, Statutes of 1977. Reference: Chapter 1066, Statutes of 1977.

HISTORY

1. Amendment filed 9–19–79; effective thirtieth day thereafter (Register 79, No. 38).

§ 54413. Financial Reporting.

(a) The adult day health care provider shall maintain financial records on an accrual basis and shall submit to the Department an annual audit performed by an independent certified public accountant. All verified financial statements shall be filed with the Department as soon as practical after the close of the center's fiscal year, and in any event, within a period not to exceed 90 days thereafter. The Department may grant exceptions to this time limit, for good cause.

(b) The audit report prepared by the independent certified public accountant shall include a table of contents and at least the following:

(1) A balance sheet reflecting the assets, liabilities and net worth of the adult day health care provider at the close of the fiscal year under audit.

(2) A statement of income and expenses reflecting all sources and amounts of income and expenses.

(3) A statement of changes in financial position, reflecting the adult day health care provider's sources and applications of funds and the net increase or decrease in working capital for the fiscal year just ended.

(4) All notes relating to the financial statements specified in (1), (2) and (3).

(5) A statement that the audit was conducted in accordance with generally accepted auditing standards and, further where in the accountant's opinion, the financial statements fairly present the financial position, results of operations and changes in financial position in conformity with generally accepted accounting principles applied on a consistent basis. If the accountant is unable to express an unqualified opinion, this shall be stated in his report and the report shall specify the reason or reasons.

(6) Financial statements shall be public records.

(c) Upon the Department's written request, the adult day health care provider shall authorize the accountant to allow representatives of the Department to inspect any and all working papers relating to the preparation of the audit report, including notes, computation, work sheets and rough drafts at the accountant's place of business during normal business hours. The accountant's costs of producing records for inspection and the costs incurred in the reproduction of documents shall be borne by the Department.

(d) When delivery of adult day health care is dependent in part upon affiliates, combined financial statements shall be prepared, and as a minimum disclose:

(1) The financial position of the provider separate from the combined totals.

(2) Inter–entity adjustments and eliminations.

(3) An independent accountant's opinion in writing, indicating why combined statements are not appropriate.

(e) A quarterly report shall be submitted by the center to the Department. The report shall include:

(1) A balance sheet.

(2) Revenue and expenses by cost center, including but not limited to salaries and staff benefits by work classification, equipment, contracts, consultation, training and travel. Cost centers shall include:

(A) Medical and nursing.

(B) Physical therapy.

(C) Occupational therapy.

(D) Speech therapy.

(E) Psycho–social services.

(F) Nutrition.

1. Transportation incidental to provision of meals.

2. Nutritional counseling.

(G) Supportive services.

1. Recreation.

2. Art, music and dance therapy.

3. Services not included in other cost centers.

(H) Administration.
1. Office supplies and equipment.
2. Postage.
3. Furniture.
4. Publications and printing.
5. Liability insurance.
6. Telephone, telegraph.
7. Reproduction.
8. Legal consultation.
9. Audit expenses.
10. Rent.
11. Utilities.
12. Maintenance.
(I) Space.
1. Rent or mortgage payment.
2. Facility insurance.
3. Utilities.
4. Housekeeping supplies and equipment.
5. Maintenance supplies and equipment.
6. Repairs.
7. Facility license fees.
8. Janitorial service.
(J) Transportation.
1. Insurance.
2. Parking fees.
3. Overnight storage fees.
4. Vehicle license fees.
5. Purchased transportation services.
6. Vehicle supplies.
7. Vehicle maintenance.
8. Amortization.

(2) Such financial records shall be filed with the Department as soon as practical after the end of the licensee's fiscal quarter and, in any event, within a period not to exceed 30 days thereafter.

(f) Every affiliated company shall:

(A) Furnish, upon request, to the provider and to the Department financial reports relevant to the disposition of funds paid to the affiliated company by the provider. Reports shall be:

1. Prepared in accordance with generally accepted accounting principles.

2. Provide all financial data required by provider to fulfill its obligations to the Department for financial reporting.

(B) Make all books and records available for inspection by the Department and the United States Department of Health, Education and Welfare for a term of at least four years.

(g) Each adult day health provider shall maintain adequate financial resources to carry out its obligations. The level of such resources shall be determined for each provider by the Department and shall include, but will not necessarily be limited to, the following:

(1) Ability to meet current obligations when due.

(2) Revenue and expense trends.

NOTE: Authority cited: Chapter 1066, Statutes of 1977. Reference: Chapter 1066, Statutes of 1977.

HISTORY

1. Amendment of subsections (e)(2)(H), (I) and (J) filed 9–19–79; effective thirtieth day thereafter (Register 79, No. 38).

§ 54415. Medical Review.

(a) Each adult day health care center shall be reviewed by a Department of Health medical review team at least annually. The review shall include but is not limited to assessment of:

(1) The participant's current medical, psycho–social and functional status.

(2) The appropriateness of care provided.

(3) The quality of care provided.

(4) The necessity for the services rendered.

(5) Staffing requirements.

(6) The system for participant care.

(7) Medical records.

(8) Professional review system and reports.

(9) Grievances relating to health care and their disposition.

(10) Procedures for controlling the utilization of services.

§ 54417. On–Site Visits.

(a) Each adult day health care center shall be subject to periodic on–site visits by Department representatives. Such visits shall include but are not limited to observation of the following:

(1) General operation.

(2) Availability and provision of services.

(3) Degree of participant satisfaction with the adult day health care center.

(4) Administrative operation.

§ 54419. Utilization Review Committee.

(a) Each adult day health center shall establish a utilization review committee. Membership in this committee shall include, but is not limited to, a representative from the adult day health center, and professional personnel such as a physician, psychiatrist, nurse, social worker, occupational, physical or speech therapist who are not employed by the center.

(b) The committee shall evaluate the appropriateness of the health care provided by reviewing individual records of participants and shall make recommendations to the center to correct any deficiencies identified. Procedures for the utilization review committee and the method of selecting records for review shall be approved by the Department. This committee shall meet at least quarterly.

(c) All activities of the utilization review committee shall be reported quarterly to the Department in a format approved by the Department. As a minimum, the report shall include the:

(1) Number of cases reviewed.

(2) Nature and extent of the problems encountered.

(3) Summaries of the actions taken by the review system.

(d) Each provider of adult day health care services shall permit the Department and the Department of Health, Education and Welfare to inspect, audit and otherwise, evaluate the quality and appropriateness of care being rendered to participants served by the center.

NOTE: Authority cited: Chapter 1066, Statutes of 1977. Reference: Chapter 1066, Statutes of 1977.

HISTORY

1. Amendment of subsection (a) filed 9–19–79; effective thirtieth day thereafter (Register 79, No. 38).

§ 54421. Advisory Committees.

(a) Each adult day health care center may establish an advisory committee composed of community and participant representatives other than those comprising the governing body. The functions of this committee shall be:

(1) To serve as informational resources.

(2) To provide liaison between the center and the community.

(3) To resolve individual issues.

(4) To contribute specific expertise as needed.

(5) To assist in reaching those in need of services.

(b) The committee may meet monthly.

§ 54423. Staffing Requirements.

(a) The program director, a registered nurse with public health background, a medical social worker, a program aide and the activity coordinator shall be on duty. Other staff shall be employed in sufficient numbers to provide services as prescribed in the individual plans or care, in accordance with the following minimal requirements, determined by each center's average daily attendance based on the previous quarter experience.

(1) Centers with an average daily attendance of 10 or less shall provide at least:

(A) A total of 40 hours per month in the following areas: Physical therapy, speech therapy and occupational therapy and psychiatric or psychological services.

(B) Two hours per month of nutritional services provided by a dietitian.

(2) Centers with an average daily attendance of 11–20 shall provide at a minimum:

(A) A total of 80 hours per month in the following areas: Physical therapy, speech therapy, occupational therapy and psychiatric or psychological services.

(B) Four hours per month of nutritional services provided by a dietitian.

(3) Centers with an average daily attendance of 21–30 shall provide at least:

(A) A total of 120 hours per month in the following areas: Physical therapy, speech therapy, occupational therapy and psychiatric or psychological services.

(B) Six hours per month of nutritional services provided by a dietitian.

(4) Centers with an average daily attendance of 31–40 shall provide at least:

(A) A total of 160 hours per month in the following areas: Physical therapy, speech therapy, occupational therapy and psychiatric or psychological services.

(B) Seven hours per month of nutritional services provided by a dietitian.

(5) Centers with an average daily attendance of 41–50 shall provide at least:

(A) A total of 200 hours per month in the following areas: Physical therapy, speech therapy, occupational therapy and psychiatric or psychological services.

(B) Eight hours per month of nutritional services provided by a dietitian.

(6) Centers with an average daily attendance of 51–60 shall provide at least:

(A) A total of 240 hours per month in the following areas: Physical therapy, speech therapy, occupational therapy and psychiatric or psychological services.

(B) Ten hours per month of nutritional services provided by a dietitian.

(7) An additional half–time licensed vocational nurse shall be provided for each increment of 10 in average daily attendance exceeding 40.

(8) An additional half–time social work assistant shall be provided for each increment of 10 in average daily attendance exceeding 40.

(9) Program aides shall be provided in a ratio of one–half aide for every increment of eight in average daily attendance.

(10) The program director of centers whose average daily attendance is 20 or less may also serve as the registered nurse, social worker, occupational therapist, physical therapist, speech therapist or dietitian, provided that:

(A) The program director meets the professional qualifications for that position.

(B) The program director and the administrator are not the same person.

(11) The center may request staffing variations to these staffing requirements according to Section 78217, Title 22, California Administrative Code.

(b) Adult day health centers which serve participants whose primary language is other than English, shall employ sufficient trained staff to communicate with and facilitate rendering services to such participants. When a substantial number of the participants are in a non–English speaking group, bilingual staff shall be provided. Bilingual staff shall be persons capable of communicating in English and the preferred language of the participant.

NOTE: Authority cited: Chapter 1066, Statutes of 1977. Reference: Chapter 1066, Statutes of 1977.

HISTORY

1. Amendment of subsection (a) filed 9–19–79; effective thirtieth day thereafter (Register 79, No. 38).

§ 54425. Participant Records.

(a) Each center shall maintain a complete health record for each participant in the program in the format established by the Department. Each medical record shall include, but is not limited to:

(1) Identifying information including:

(A) Name, address, telephone number, sex, age, ethnic background, Social Security and Medi–Cal numbers.

(B) Name, address and phone number of responsible person.

(2) Admission data including:

(A) Referral source.

(B) Reason for application as given by referral source, participant and family or others.

(C) Date of entry into the program, number of days scheduled for attendance, method of transportation and fee if non–Medi–Cal.

(3) Signed Agreement of Participation.

(4) Daily records of participant's attendance and services utilized, including transportation.

(5) Records shall be maintained of:

(A) Referrals to other providers.

(B) Dates and substance of communications with the participants' physician, family members and other persons providing assistance.

(6) Medication records.

(7) Medication errors and drug reactions shall be recorded with notation of action taken.

(8) Progress notes by involved personnel.

(9) Assessment of the participants by the multidisciplinary team.

(10) Physician examination and medical history.

(11) Individual plan of care.

NOTE: Authority cited: Chapter 1066, Statutes of 1977. Reference: Chapter 1066, Statutes of 1977.

HISTORY

1. Amendment of subsection (a)(1) filed 9–19–79; effective thirtieth day thereafter (Register 79, No. 38).

§ 54429. Solicitation.

(a) Adult day health centers shall not:

(1) Hire persons solely for the purpose of solicitation of participants.

(2) Offer money or any valuable consideration as an inducement to become a participant.

(3) Make false statements in advertising in any media.

(4) Make false statements to prospective participants regarding any aspect of the program.

(b) Adult day health centers may assign employed staff to meet with community organizations to provide information concerning the program.

§ 54431. Service Area.

(a) Each adult day health center shall serve only participants living in the service area specified in the county plan and approved by the Department. An exception to this requirement may be granted only if the center meets a special need of a particular individual residing outside the service area. Special needs shall be limited to:

(1) The individual does not reside in an adult day health service area.

(2) The adult day health care center in the individual's service area does not provide a needed service.

(3) The individual is a former resident of the service area.

(4) The center offers strong ties to the cultural background of the individual which are not available in the area in which the individual resides.

(b) The following procedures shall be followed in obtaining a waiver:

(1) The center shall send a written waiver request to the Department. A personal letter from the individual stating the reasons for the request shall be attached.

(2) The center shall request a written statement from the participant's personal physician explaining why the lack of service area waiver would be detrimental to the person's total health needs.

(c) The Department shall not provide reimbursement for transportation provided outside the service area.

NOTE: Authority cited: Chapter 1066, Statutes of 1977. Reference: Chapter 1066, Statutes of 1977.

HISTORY

1. Amendment of subsection (b)(1) filed 9–19–79; effective thirtieth day thereafter (Register 79, No. 38).

§ 54433. Subcontracts.

(a) All subcontracts shall be in writing.

(b) Each subcontract shall be submitted to the Department at least 60 days prior to the effective date. If the Department does not formally act on a subcontract within 60 days after receipt, the adult day health care provider may use the services of the subcontractor.

(c) Each subcontract shall include at least the following:

(1) Full disclosure of the amount of compensation or other consideration to be received by the subcontractor from the adult day health center. That requirement provision shall not apply to subcontracts with providers employed or salaried by the adult day health care provider.

(2) Specification of the services to be provided and the times and days when these services are available to members.

(3) A provision that the subcontract shall be governed by and construed in accordance with all laws, regulations and contractual obligations incumbent upon the adult day health care provider.

(4) A provision that the Department and the Department of Health, Education and Welfare shall have the right to inspect or reproduce all books and records of the subcontractor as they relate to the provision of goods and services under the terms of the subcontract. Such books and records shall be available for inspection or reproduction at all reasonable times at the subcontractor's place of business for a term of at least four years from the effective date of the subcontract.

(5) A provision requiring the subcontractor, upon written request, to furnish financial reports relating to the provision of services under the subcontract and the payment therefore to the adult day health center and to the Department in such form and at such times as required by the adult day health care provider to fulfill its obligations for financial reporting to the Department.

§ 54435. Civil Rights of Participants.

(a) The adult health center shall not discriminate against participants because of race, color, creed, national origin, sex, physical or mental handicaps in accordance with Title VI of the Civil Rights Act of 1964, 42 U.S.C., Section 2000d, rules and regulations on the grounds of race, color, creed, national origin or physical or mental handicaps include, but are not limited to, the following:

(1) Denying a participant any service or benefit or availability of a facility.

(2) Providing any service or benefit to a participant which is different or is provided in a different manner or at a different time from that provided to other participants.

(3) Restricting a participant in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit.

(4) Treating a participant differently from others in satisfying any admission, enrollment quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service or benefits.

(5) Assignment of times or places for the provision of services on the basis of the race, color, creed or national origin of the participants to be served.

(b) The adult day health care center will take affirmative action to ensure that participants are provided services without regard to race, color, creed, sex, national origin, physical or mental handicap.

(c) The center shall refer complaints alleging discrimination against the participants race, color, national origin, creed, sex, physical or mental handicap to the Department for review and appropriate action.

§ 54437. Civil Rights of Employees.

(a) The center will not discriminate against any employee or applicant for employment because of race, color, creed, sex, national origin or mental or physical handicaps. The center will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, sex, national origin, or mental or physical handicaps. Such action shall apply to all forms of personnel actions.

(b) The center shall, in all solicitations or advertisements for employees placed by or on behalf of the adult day health care provider, state that all qualified applicants will receive consideration for employment without regard to race, color, creed, sex, national origin, or mental or physical handicaps.

(c) The adult day health care provider shall send a notice provided by the Department to each labor union or representative of workers, with which it has a collective bargaining agreement or other contract or understanding, advising the labor union or workers' representative of the provider's equal opportunity commitments. Copies of the notice shall be posted in conspicuous places available to employees and applicants for employment.

§ 54439. Confidentiality of Data.

(a) Names of persons receiving public social services are confidential as provided in Section 10850, California Welfare and Institutions Code, and are to be protected from unauthorized disclosure. Release of any information pertaining to adult day health care participants shall be made in accordance with the provisions of Section 51009, Title 22, California Administrative Code.

(b) All information, records, data and data elements collected and maintained for the operation of an adult day health center and pertaining to participants shall be protected by the adult day health care provider from unauthorized disclosure.

§ 54443. Informational Material.

(a) Informational material provided to potential participants must have prior approval of the Department and must include the following:

(1) The name, address and phone number of the center.

(2) The service area boundaries.

(3) Eligibility criteria.

(4) A description of services provided at the center.

(5) The days and hours of operation.

(6) The cost per day.

(b) Information released to the media and the general public which contains eligibility or program information must have prior approval of the Department.

§ 54445. Conflict of Interest.

(a) No state officer or state employee shall have a direct financial interest in a center or a direct financial interest in any contract with the adult day health care provider.

(b) No state officer or state employee shall provide legal or management services to the adult day health care provider, outside of specific duties as a state officer or state employee. No state officer or state employee shall share in the income or any remuneration derived from providing legal or management services to an adult day health care provider.

(c) No state officer or state employee shall receive anything of value for the purpose of influencing or attempting to influence the negotiations for approval or renewal of the provider agreement with the Department.

§ 54447. Provider Sanctions.

(a) The Department shall, after warning, impose one or more of the following sanctions on adult day health care providers for violating time requirements as specified in Sections 54217 (d), 54403 (a), 54411, 54413 and 54507.

(1) Suspension of admission privileges.

(2) Forfeiture of all or part of the Medi–Cal reimbursement for each day the required documents are late.

NOTE: Authority cited: Chapter 1066, Statutes of 1977. Reference: Chapter 1066, Statutes of 1977.

HISTORY

1. Amendment filed 9–19–79; effective thirtieth day thereafter (Register 79, No. 38).

Article 6. Payment of Services

§ 54501. Adult Day Health Care Services.

(a) Department reimbursement for adult day health care services shall be the usual charges made to the general public by the center not to exceed the maximum reimbursement rates listed in this section.

(b) The maximum all–inclusive rate per day of attendance for each approved Medi–Cal participant shall be $68.57.

(c) Payments shall be made only for days of attendance in the time period approved by the Medi–Cal consultant.

(d) The comprehensive daily rate shall be reduced by the Department for any component of the required basic services which is funded in part or in whole from any other source, as indicated in fiscal reports submitted in accordance with Section 54413 or as determined by a Department fiscal audit. Failure to report other income sources may, at the discretion of the Department, result in suspension of certification.

(e) The comprehensive daily rate shall be payment in full for all adult day health care services provided to the Medi–Cal participant. Physical therapy, occupational therapy and speech therapy provided or arranged by the center beyond the requirements stated in Section 54423 (a) may be reimbursed according to Sections 51507, 51507.1 and 51507.2 if a separate prior authorization request is approved for physical therapy in accordance with Section 51309 (b) or for rehabilitation center outpatient services in accordance with Section 51314. A written statement, signed by the adult day health care provider, certifying that they are meeting the requirements of Section 54423 (a) for the time period of the treatment authorization request and that the therapeutic needs of this participant are in excess of Section 54423 requirements, shall be attached to the claim and prior authorization request.

(f) A provider of adult day health care shall not submit claims to or demands or otherwise collect reimbursement from a Medi–Cal participant, or from other persons on behalf of the participant, for any service included in the daily rate for adult day health care services unless the exceptions of Section 51002, Division 3, Chapter 3, Title 22, California Administrative Code, apply.

(g) The daily rate includes costs for purchase of meals and transportation. Utilization of existing community resources for meals and transportation is mandated unless the adult day health care provider can justify to the satisfaction of the Department the need to provide meals or transportation directly.

(h) The maximum number of payments for days of attendance for any 24–hour period shall not exceed the licensed capacity.

(i) A provider of adult day health care shall make reasonable efforts to recover the value of services rendered to participants whenever said participants are covered for the same services, either fully or partially, under any other state or federal program or under other contractual or legal entitlement, including but not limited to, a private group or indemnification program. Such recoveries are returned to the Department. A provider shall notify the Department if efforts to recover payment are unsuccessful.

(j) A provider of adult day health care shall not attempt to recover the value of services rendered when such recovery shall result from an action involving third–party tort liability. The provider shall notify the Department of any situation in which it appears that a participant will benefit from a third–party liability.

NOTE: Authority cited: Sections 10725, 14105, 14124.5 and 14570, Welfare and Institutions Code. Reference: Section 14571, Welfare and Institutions Code; Statutes of 2002, Chapter 379, Items 4260–101–0001 and 4260–101–0890; and the Settlement Agreement in *California Association for Adult Day Services v. Department of Health Services*, January 12, 1994, San Francisco County Superior Court (Case Number 944047).

HISTORY

1. Amendment filed 8–7–89 as an emergency; operative 8–7–89 (Register 89, No. 32). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12–5–89. For prior history, see Register 87, No. 33.
2. Certificate of Compliance transmitted to OAL 12–1–89 and filed 1–2–90 (Register 90, No. 2).
3. Amendment of subsection (b) and NOTE filed 11–7–94 as an emergency; operative 11–7–94 (Register 94, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–7–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–7–94 order transmitted to OAL 3–1–95 and filed 4–12–95 (Register 95, No. 15).
5. Amendment of subsection (b) and NOTE filed 12–31–97 as an emergency; operative 12–31–97 (Register 98, No. 1). A Certificate of Compliance must be transmitted to OAL by 4–30–98 or emergency language will be repealed by operation of law on the following day.
6. Editorial correction of HISTORY 5 (Register 98, No. 24).
7. Certificate of Compliance as to 12–31–97 order transmitted to OAL 4–27–98 and filed 6–9–98 (Register 98, No. 24).
8. Amendment of subsection (b) and NOTE filed 10–29–98 as an emergency; operative 10–29–98 (Register 98, No. 44). A Certificate of Compliance must be transmitted to OAL by 2–26–99 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 10–29–98 order transmitted to OAL 2–26–99 and filed 4–8–99 (Register 99, No. 15).
10. Amendment of subsection (b) and amendment of NOTE filed 11–3–99 as an emergency; operative 11–3–99 (Register 99, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–2–2000 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 11–3–99 order transmitted to OAL 3–1–2000 and filed 4–6–2000 (Register 2000, No. 14).
12. Amendment of subsection (b) and amendment of NOTE filed 11–17–2000 as an emergency; operative 11–17–2000 (Register 2000, No. 46). A Certificate of Compliance must be transmitted to OAL by 3–19–2001 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 11–17–2000 order transmitted to OAL 3–8–2001 and filed 4–19–2001 (Register 2001, No. 16).
14. Amendment of subsection (b) and amendment of NOTE filed 1–27–2003 as an emergency; operative 8–1–2001 pursuant to Statutes of 2002, Chapter 16, Items 4260–101–0001 and 4260–101–0890 (Register 2003, No. 5). A Certificate of Compliance must be transmitted to OAL by 5–27–2003 or emergency language will be repealed by operation of law on the following day.
15. Amendment of subsection (b) and amendment of NOTE refiled 5–22–2003 as an emergency; operative 5–22–2003 (Register 2003, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–19–2003 or emergency language will be repealed by operation of law on the following day.
16. Certificate of Compliance as to 5–22–2003 order transmitted to OAL 9–18–2003 and filed 10–16–2003 (Register 2003, No. 42).
17. Amendment of subsection (d) and amendment of NOTE filed 8–24–2005 as a deemed emergency pursuant to Welfare and Institutions Code section 14105(a); operative 8–24–2005 for dates of service 8–1–2002 through 7–31–2003 pursuant to Statutes of 2002, Chapter 379, Items 4260–101–0001 and 4260–101–0890 (Register 2005, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–23–2005 or emergency language will be repealed by operation of law on the following day.
18. Certificate of Compliance as to 8–24–2005 order transmitted to OAL 12–22–2005 and filed 1–23–2006 (Register 2006, No. 4).

§ 54503. Fee Schedule.

Each approved adult day health care provider shall establish a fee schedule for services to the general public.

§ 54504. Transition Visits.

(a) An adult day health care provider may be reimbursed for a maximum of five transition visits per institutionalized participant, each visit consisting of two to four hours at the adult day health center. Transition visits to an adult day health care center may be made by an inpatient of:

(1) An acute hospital utilizing administrative days,

(2) An Intermediate Care Facility, or

(3) A Skilled Nursing Facility.

(b) Reimbursement for the transition visits shall not exceed 85% of the center's current approved daily rate.

(c) The attending physician shall authorize the transition visits. Physician approval shall be documented in the patient's chart.

NOTE: Authority cited: Sections 14105, 14124.5 and 14570, Welfare and Institutions Code. Reference: Sections 14105, 14525 and 14571, Welfare and Institutions Code.

HISTORY

1. New section filed 2–11–83; effective thirtieth day thereafter (Register 83, No. 7).

§ 54505. Initial Assessment Rate.

(a) An approved adult day health care provider shall be reimbursed for one initial assessment by the provider's multidisciplinary team for each new participant. Assessment made after a discharge and for reentry is not reimbursable for a reentry less than 12 months after the discharge of the same participant.

(b) Reimbursement for the initial assessment shall be based on the center's current approved daily rate plus five percent.

(c) Reimbursement for the initial assessment shall be limited to a maximum of three days.

NOTE: Authority cited: Sections 14105, 14124.5 and 14570, Welfare and Institutions Code and Chapter 1066, Statutes of 1977. Reference: Sections 14105 and 14571, Welfare and Institutions Code and Chapter 1066, Statutes of 1977.

HISTORY

1. Amendment of subsection (b) filed 9–17–79 as an emergency; effective upon filing (Register 79, No. 38). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 1–15–80.
2. Amendment of subsection (a) filed 9–19–79; effective thirtieth day thereafter (Register 79, No. 38).
3. Certificate of Compliance filed 11–29–79 (Register 79, No. 48).

§ 54507. Billing Requirements.

(a) All charges submitted for payment shall be on billing forms approved by the Department. The billing shall include a monthly invoice, the number of days of attendance for each participant and monthly service reports.

(b) Billing shall be submitted by the adult day health care provider directly to the Department for the month of service. Billings are due by the 15th of the month following the month of service.

(c) Billing for initial assessments days shall be submitted on the invoice and shall meet the requirements of (a) and (b).

NOTE: Authority cited: Chapter 1066, Statutes of 1977. Reference: Chapter 1066, Statutes of 1977.

HISTORY

1. Amendment filed 9–19–79; effective thirtieth day thereafter (Register 79, No. 38).

Chapter 5.5. Indians and Indian Health Service Facilities in Medi–Cal Managed Care Programs

§ 55000. General.

(a) The United States Congress has declared that it is the policy of the United States, in fulfillment of the special responsibilities and legal obligations to the American Indian people, to meet the national goal of providing the highest possible health status to Indians. In furtherance of these national goals and national policy, special programs have been developed by the Federal Government to address the health problems of Indians living on and near the Indian reservations, in rural areas, and in urban centers.

(b) These regulations are intended to recognize the inherent sovereignty of Indian tribes and nations, the requirements of the Indian Health Care Improvement Act and the Indian Self–Determination and Education Assistance Act, and to recognize the special status of Indians, Indian tribes, and Indian Health Service programs under federal law. This special status requires that separate considerations be applied to the inclusion or exclusion of Indians and Indian Health Service Facilities from Medi–Cal *managed care plans.*

(c) The programs operated by Indian tribes and Indian organizations within California, referred to in these regulations as Indian Health Service Facilities, are required by federal law to provide services to all eligible Indians who present themselves for care. Indian Health Service Facilities are also required by federal law to act as the payor of last resort for eligible Indians and are required to obtain reimbursement for the services provided to eligible Indians from all sources including the Medi–Cal program. These facilities may serve non–Indians, but only to the extent that such services do not result in the denial or diminution of health services to eligible Indians.

(d) The department intends to provide a single, clear, and accessible set of guidelines which define how Indian Health Service Facilities will relate to the Medi–Cal managed care plans in their respective locations; to ensure that individual Indians continue to receive the required care to which they are entitled; and to ensure that Indian Health Service Facilities may continue to provide comprehensive services to eligible Indians.

(e) The department intends to ensure that the Indian Health Service Facilities are reimbursed, if they are qualified for and elect to receive reasonable cost reimbursement, as provided in federal law, at their reasonable cost reimbursement rate, or a percentage of reasonable cost as provided in 42 U.S.C. 1396a(a)(13)(C), whether they elect to act as subcontractors of the Medi–Cal managed care plans or out–of–plan providers.

(f) The department also intends to ensure that Indian Health Service Facilities which choose to be and are designated as Indian Health Service (IHS) providers by the federal government will receive the IHS payment rate.

NOTE: Authority cited: Stats. 1992, Ch. 722; Sections 10725, 14089.7, 14105, 14124.5, 14203 and 14312, Welfare and Institutions Code. Reference: Sections 14000, 14016.5, 14087.3, 14087.305, 14087.4, 14087.5, 14088, 14089, 14089.05, 14200 and 14499.5, Welfare and Institutions Code; and Title 25, United States Code, Sections 13 and 1601.

HISTORY

1. New chapter 5.5 (sections 55000–55180) and section filed 4–3–98; operative 4–3–98. Submitted to OAL for printing only pursuant to section 147, Senate Bill 485 (Ch. 722/92) (Register 98, No. 15).
2. Change without regulatory effect amending NOTE filed 4–9–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 15).

§ 55100. Definitions.

The following definitions shall control the construction of this chapter unless the context requires otherwise.

(a) County organized health system means a Medi–Cal managed care plan contracting with the department to serve enrolled beneficiaries under the authority of Welfare and Institutions Code, Section 14499.5, or Welfare and Institutions Code, Division 9, Part 3, Chapter 7, Article 2.8, commencing with Section 14087.5.

(b) Disenrollment means the process under which a member's entitlement to receive services from a Medi–Cal managed care plan is terminated.

(c) Federally qualified health center means an entity which:

(1) Is receiving a grant under Section 330 of the Public Health Service Act;

(2) Is receiving funding from such a grant under a contract with the recipient of such a grant, and meets the requirements to receive a grant under Section 330 of such Act;

(3) Based on the recommendation of the Health Resources and Services Administration within the Public Health Service, is determined by the Secretary of Health and Human Services to meet the requirements for receiving such a grant; or

(4) Was treated by the Secretary, for purposes of Part B of Title XVIII, as a comprehensive federally funded health center as January 1, 1990; and

(5) May be an outpatient health program or facility operated by a tribe or tribal organization under the Indian Self–Determination Act (Public Law 93–638) or by an urban Indian organization receiving funds under Title V of the Indian Health Care Improvement Act for the provision of primary health services.

(d) Fee–for–service managed care plan means a Medi–Cal managed care plan that does not assume financial risk for the provision of services to its members.

(e) Fee–for–service managed care program means a single fee–for–service managed care plan contracting in a county to provide or arrange for health care services to mandatorily enrolled Medi–Cal beneficiaries.

(f) Fee–for–service provider means a provider of services as defined in Section 51051 which has been issued a Medi–Cal provider number by the department.

(g) Geographic managed care program means a health care delivery system consisting of Medi–Cal managed care plans contracting with the department under the authority of Welfare and Institutions Code Sections 14089 or 14089.05 to provide services to mandatorily enrolled Medi–Cal beneficiaries.

(h) Health care options program means the program established by the department to inform Medi–Cal beneficiaries of their options for receiving Medi–Cal benefits in areas served by Medi–Cal managed care plans other than county organized health systems.

(i) Indian means any person who is eligible under federal law and regulations (25 U.S.C. Sections 1603c, 1679b, and 1680c and 42 CFR Section 36.12) to receive health services provided directly by the United States Department of Health and Human Services, Indian Health Service, or by a tribal or an urban Indian health program funded by the Indian Health Service to provide health services to eligible individuals either directly or by contract.

(j) Indian Health Service Facility means a tribal or urban Indian organization operating health care programs or facilities with funds from the Department of Health and Human Services, Indian Health Service, appropriated pursuant to the Indian Health Care Improvement Act (25 U.S.C. Section 1601 et. seq.) or the Snyder Act (25 U.S.C. Section 13 et. seq.).

(k) Lock–in means the restriction of a member's right to disenroll from a Medi–Cal managed care plan without good cause.

(*l*) Medi–Cal managed care plan means an entity contracting with the department to provide health care services to enrolled Medi–Cal beneficiaries under Chapter 7, commencing with Section 14000, or Chapter 8, commencing with Section 14200, of Division 9, Part 3, of the Welfare and Institutions Code.

(m) Medi–Cal managed care program means a program established by the department in which participation requirements for beneficiaries and Medi–Cal managed care plans have been standardized. As used in this article, Medi–Cal managed care programs include the two–plan model, Geographic Managed Care, prepaid health plan, primary care case management, county organized health systems, and fee–for–service managed care programs.

(n) Member means any Medi–Cal beneficiary who has enrolled in a Medi–Cal managed care plan.

(o) Prepaid health plan program means the Medi–Cal managed care program in which beneficiaries may voluntarily enroll in Medi–Cal managed care plans contracting with the department under Welfare and Institutions Code Section 14200 et seq.

(p) Primary care case management program means the Medi–Cal managed care program in which beneficiaries may voluntarily enroll in Medi–Cal managed care plans contracting with the department under Welfare and Institutions Code Section 14088 et seq.

(g) Two–plan model means the health care delivery system described in Section 53800, consisting of two Medi–Cal managed care plans in a county providing services to mandatorily enrolled Medi–Cal beneficiaries.

NOTE: Authority cited: Stats. 1992, Ch. 722; Sections 10725, 14089.7, 14105, 14124.5, 14203 and 14312, Welfare and Institutions Code. Reference: Sections 14000, 14016.5, 14087.3, 14087.305, 14087.4, 14087.5, 14088, 14089, 14089.05, 14200 and 14499.5, Welfare and Institutions Code; and Title 25, United States Code, Sections 13 and 1601.

HISTORY

1. New section filed 4–3–98; operative 4–3–98. Submitted to OAL for printing only pursuant to section 147, Senate Bill 485 (Ch. 722/92) (Register 98, No. 15).
2. Change without regulatory effect amending NOTE filed 4–9–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 15).

§ 55110. Enrollment of Indians in Medi–Cal Managed Care Plans.

(a) Indians shall not be required to enroll in any Medi–Cal managed care plans, with the exception of county organized health systems.

(b) Indians who are enrolled in a Medi–Cal managed care plan, including county organized health systems, shall not be restricted in their access to Indian Health Service Facilities by the Medi–Cal managed care plan.

(c) Notwithstanding any other regulations in this title, Indians who are enrolled in a Medi–Cal managed care plan other than a county organized health system shall be permitted to disenroll from the Medi–Cal managed care plan without cause as of the beginning of the first calendar month following a full calendar month after the request for disenrollment is made. Indians shall not be subject to any lock–in provisions which may apply to other members of Medi–Cal managed care plans.

NOTE: Authority cited: Stats. 1992, Ch. 722; Sections 10725, 14089.7, 14105, 14124.5, 14203 and 14312, Welfare and Institutions Code. Reference: Sections 14000, 14016.5, 14087.3, 14087.305, 14087.4, 14087.5, 14088, 14089, 14089.05, 14200 and 14499.5, Welfare and Institutions Code; and Title 25, United States Code, Sections 13 and 1601.

HISTORY

1. New section filed 4–3–98; operative 4–3–98. Submitted to OAL for printing only pursuant to section 147, Senate Bill 485 (Ch. 722/92) (Register 98, No. 15).
2. Change without regulatory effect amending NOTE filed 4–9–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 15).

§ 55120. Indian Health Service Facility Participation in Medi–Cal Managed Care Programs.

(a) Indian Health Service Facilities may participate in the Medi–Cal managed care program as a subcontractor with a Medi–Cal managed care plan, if agreement is reached between the parties to the subcontract and the subcontract is approved by the department. Approval by the department shall be based on the subcontract's compliance with standards applicable to all subcontracts held by Medi–Cal managed care plans, including standards relative to appropriate reimbursement rates.

(b) In the two–plan model, the department shall require the local initiative to offer a subcontract to each Indian Health Service Facility located in the designated region served by the local initiative under the two–plan model. If there is no local initiative in a county and the department exercises its option under Section 53800(b)(3), the department shall establish participation standards for Indian Health Service Facilities that provide that at least one of the two Medi–Cal managed care plans participating in the program shall offer a subcontract to each Indian Health Facility located in the designated region served by the plans under the two–plan model. The terms of these subcontracts shall be consistent with the requirements of this chapter and, in other respects, shall be consistent with the terms and conditions offered to other subcontractors providing a similar scope of services.

(c) In counties with mandatory enrollment in Medi–Cal managed care programs other than the two–plan model and county organized health systems, the department shall establish participation standards for Indian Health Service Facilities. These standards shall provide that at least one Medi–Cal managed care plan participating in the program in the county shall offer a subcontract to each Indian Health Facility located in the geographic region served by the program. The terms of these subcontracts shall be consistent with the requirements of this chapter and, in other respects, shall be consistent with the terms and conditions offered to other subcontractors providing a similar scope of services.

(d) In the two–plan model program or in a Geographic Managed Care program, if the Indian Health Service Facility does not participate as a subcontractor, the department shall accept applications to the extent permitted by federal law from an Indian Health Service Facility interested in contracting as a fee–for–service managed care plan under Section 55130. The fee–for–service managed care plan may only enroll Indians and the number of non–Indians receiving services from the Indian Health Service Facility at the time of application to the department. If departmental resources limit the implementation and monitoring of additional fee–for–service managed care plans, the department may discontinue the acceptance of applications and implemention of any additional fee–for–service managed care programs by providing six months written notice of its intent to discontinue acceptance and implementation to the California Area Office, Indian Health Service, Public Health Service, Department of Health and Human Services.

NOTE: Authority cited: Stats. 1992, Ch. 722; Sections 10725, 14089.7, 14105, 14124.5, 14203 and 14312, Welfare and Institutions Code. Reference: Sections 14000, 14016.5, 14087.3, 14087.305, 14087.4, 14087.5, 14088, 14089, 14089.05, 14200 and 14499.5, Welfare and Institutions Code; and Title 25, United States Code, Sections 13 and 1601.

HISTORY

1. New section filed 4–3–98; operative 4–3–98. Submitted to OAL for printing only pursuant to section 147, Senate Bill 485 (Ch. 722/92) (Register 98, No. 15).
2. Change without regulatory effect amending NOTE filed 4–9–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 15).

§ 55130. Indian Health Service Facilities as Fee–for–Service Managed Care Plans.

(a) If, under the option provided in Section 55120(d), the Indian Health Service Facility elects to become a fee–for–service managed care plan, the Indian Health Service Facility shall act as primary care case manager for Medi–Cal beneficiaries who are Indians or non–Indians currently receiving services from the Indian Health Service Facility, once they voluntarily enroll with the Indian Health Service Facility fee–for–service managed care plan. The plan shall be responsible to provide or arrange for health care services for its members as agreed to in the contract between the department and the Indian Health Service Facility. The department shall inform Medi–Cal beneficiaries who are Indians or non–Indians currently receiving services from the Indian Health Service Facility of their option to enroll in the Indian Health Service Facility fee–for–service managed care plan through the health care options program.

(b) To participate as a fee–for–service managed care plan, the Indian Health Service Facility must demonstrate sufficient resources and capability to implement the fee–for–service managed care contract, including, but not limited to:

(1) Medical and administrative staff.

(2) Information systems.

(3) Organizational structure.

(4) Financial solvency.

(5) Quality improvement system.

(6) Member grievance system.

NOTE: Authority cited: Stats. 1992, Ch. 722; Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14000, 14016.5, 14087.3, 14089 and 14089.05, Welfare and Institutions Code; and Title 25, United States Code, Sections 13 and 1601.

HISTORY

1. New section filed 4–3–98; operative 4–3–98. Submitted to OAL for printing only pursuant to section 147, Senate Bill 485 (Ch. 722/92) (Register 98, No. 15).
2. Change without regulatory effect amending NOTE filed 4–9–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 15).

§ 55140. Indian Health Service Facility Reimbursement When Subcontracting with a Medi–Cal Managed Care Plan.

(a) A Medi–Cal managed care plan subcontracting with an Indian Health Service Facility shall reimburse the Indian Health Service Facility for services according to one of the following reimbursement options:

(1) If the Indian Health Service Facility is a rural health clinic or qualifies as a federally qualified health center, the Medi–Cal managed care plan shall reimburse the facility at the facility's interim per visit rate as established by the department, or through an alternate reimbursement methodology approved in writing by the department.

(2) If the Indian Health Service Facility is a rural health clinic or a federally qualified health center and the facility and the Medi–Cal managed care plan have agreed to an at–risk rate and the Indian Health Service Facility has waived its right to cost–based reimbursement under the subcontract, the Medi–Cal managed care plan shall reimburse the facility at the negotiated rate.

(3) If, prior to the effective date of these regulations, a Medi–Cal a managed care plan has negotiated a subcontract, which has been approved by the department, with an Indian Health Service Facility that is a federally qualified health center or a rural health clinic, and this subcontract contains terms for reimbursement other than cost–based reimbursement as described in subsection (c), the Medi–Cal managed care plan may continue to reimburse the facility at the agreed rate under the subcontract.

(4) If the Indian Health Service Facility is entitled to be reimbursed as an Indian Health Service provider by the federal government at a reimbursement rate other than the rate described in subsection (a)(1), the Medi–Cal managed care plan shall reimburse the facility at the Indian Health Service payment rate.

(b) Referrals made by the Indian Health Service Facility to other providers shall be in accordance with the terms of the subcontract.

(c) If the Indian Health Service Facility has elected to subcontract with a Medi–Cal managed care plan and qualifies to be reimbursed as a rural health clinic or federally qualified health center on the basis of reasonable cost, as provided in federal law, the department shall reimburse or recover from the Indian Health Service Facility at least annually an amount equalling the difference between payments received from the Medi–Cal managed care plan through the subcontract and reasonable cost reimbursement, or a percentage of reasonable cost as provided in 42 U.S.C. 1396a(a)(13)(C), as a part of the department's annual reconciliation process with the facility for all Medi–Cal services. As a condition of obtaining the reconciliation, the Indian Health Service Facility shall maintain a record of the number of visits by plan members separate from visits by fee–for–service Medi–Cal beneficiaries.

NOTE: Authority cited: Stats. 1992, Ch. 722; Sections 10725, 14089.7, 14105, 14124.5, 14203 and 14312, Welfare and Institutions Code. Reference: Sections 14000, 14087.3, 14087.5, 14088, 14089, 14089.05, 14200 and 14499.5, Welfare and Institutions Code; Title 25, United States Code, Sections 13 and 1601; and Title 42, United States Code, Sections 1396(b)(m)(2)(A)(ix) and 1396(d)(*l*)(2).

HISTORY

1. New section filed 4–3–98; operative 4–3–98. Submitted to OAL for printing only pursuant to section 147, Senate Bill 485 (Ch. 722/92) (Register 98, No. 15).
2. Change without regulatory effect amending NOTE filed 4–9–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 15).

§ 55150. Indian Health Service Facility Out–of–Plan Reimbursement.

When the Indian Health Service Facility provides services covered by a Medi–Cal managed care plan to members of that plan and the Indian Health Service Facility does not have a subcontract with the Medi–Cal managed care plan or has a subcontract but is providing services to members not covered by the subcontract, the following reimbursement requirements shall apply:

(a) For Medi–Cal beneficiaries who are Indians, the Medi–Cal managed care plan shall reimburse the Indian Health Service Facility for services provided to the beneficiary at the applicable reimbursement rate that would have been received by the Indian Health Service Facility if the service has been rendered to a Medi–Cal beneficiary through the Medi–Cal fee–for–service program.

(b) For Medi–Cal beneficiaries who are not Indians, the Medi–Cal managed care plan shall reimburse the Indian Health Service Facility only if the Medi–Cal managed care plan has authorized the service or if the Medi–Cal managed care plan is obligated by its contract with the department to pay out–of–plan providers for the service without prior authorization (e.g., emergency services or family planning services). If reimbursement is required, reimbursement shall be at the applicable reimbursement rate that would have been received by the Indian Health Service Facility if the service had been rendered to a Medi–Cal beneficiary through the Medi–Cal fee–for–service program.

(c) The Indian Health Service Facility may be required, as a condition of payment, by the Medi–Cal managed care plan to submit supporting documentation or specific claim information in a format acceptable to the Medi–Cal managed care plan, pursuant to the Medi–Cal managed care plan's out–of–plan claims procedures which are required by the Medi–Cal managed care plan of any other provider of out–of–plan services. In addition, a Medi–Cal managed care plan may request from the Indian Health Service Facility, as a condition of payment, verification of a person's eligibility as an Indian, as defined in section 55100.

(d) Referrals made by the Indian Health Service Facility to other providers shall be coordinated with the Medi–Cal managed care plan. Providers which accept the referrals shall be responsible for obtaining authorization and payment from the Medi–Cal managed care plan.

NOTE: Authority cited: Stats. 1992, Ch. 722; Sections 10725, 14089.7, 14105, 14124.5, 14203 and 14312, Welfare and Institutions Code. Reference: Sections 14000, 14087.3, 14087.5, 14088, 14089, 14089.05, 14200 and 14499.5, Welfare and Institutions Code; Title 25, United States Code, Sections 13 and 1601; and Title 42, United States Code, Sections 1396(b)(m)(2)(A)(ix) and 1396(d)(*l*)(2).

HISTORY

1. New section filed 4–3–98; operative 4–3–98. Submitted to OAL for printing only pursuant to section 147, Senate Bill 485 (Ch. 722/92) (Register 98, No. 15).
2. Change without regulatory effect amending NOTE filed 4–9–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 15).

§ 55160. Indian Health Service Facility Fee–for–Service Managed Care Plan Reimbursement.

If the Indian Health Service Facility provides services as a fee–for–service managed care plan, the department shall reimburse the facility at the applicable reimbursement rate that would have been received by the Indian Health Service Facility if the service had been rendered to a Medi–Cal beneficiary through the Medi–Cal fee–for–service program for each qualifying visit by a member of the fee–for–service managed care plan. In addition, the department shall pay a monthly case management fee established by the department for each member. If the Indian Health Service Facility qualifies for reasonable cost reimbursement, as provided in federal law, the department shall reimburse or recover from the Indian Health Service Facility at least annually an amount equalling the difference between the payments received from the department, excluding case management fees, and reasonable cost reimbursement, or a percentage of reasonable cost, as provided in 42 U.S.C. 1396a(a)(13)(C).

NOTE: Authority cited: Stats. 1992, Ch. 722; Sections 10725, 14089.7, 14105, 14124.5, 14203 and 14312, Welfare and Institutions Code. Reference: Sections 14000, 14087.3, 14087.5, 14088, 14089, 14089.05, 14200 and 14499.5, Welfare and Institutions Code; and Title 25, United States Code, Sections 13 and 1601; and Title 42, United States Code, Sections 1396(b)(m)(2)(A)(ix) and 1396(d)(*l*)(2).

HISTORY

1. New section filed 4–3–98; operative 4–3–98. Submitted to OAL for printing only pursuant to section 147, Senate Bill 485 (Ch. 722/92) (Register 98, No. 15).
2. Change without regulatory effect amending NOTE filed 4–9–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 15).

§ 55170. Indian Health Service Facilities and Non–Indian Beneficiaries.

The Indian Health Service Facility will determine the number of non–Indian Medi–Cal beneficiaries which the facility will accept as patients with the following limitations:

(a) The facility must ensure that it maintains its historical and cultural character as an Indian Health Service Facility;

(b) The facility must ensure that it provides care to Indian patients at a satisfactory level, as required by federal law;

(c) If the Indian Health Service Facility subcontracts with a Medi–Cal managed care plan, the number of non–Indian members may be negotiated between the parties.

(d) In the two–plan model or a Geographic Managed Care program, if the Indian Health Service Facility elects to participate as a fee–for–service managed care plan, the Indian Health Service Facility shall enroll only Indians and the number of non–Indians receiving services from the Indian Health Service Facility at the time of its application to the department.

NOTE: Authority cited: Stats. 1992, Ch. 722; Sections 10725, 14089.7, 14105, 14124.5, 14203 and 14312, Welfare and Institutions Code. Reference: Sections 14000, 14016.5, 14087.3, 14087.305, 14087.4, 14087.5, 14088, 14089, 14089.05, 14200 and 14499.5, Welfare and Institutions Code; and Title 25, United States Code, Sections 13 and 1601.

HISTORY

1. New section filed 4–3–98; operative 4–3–98. Submitted to OAL for printing only pursuant to section 147, Senate Bill 485 (Ch. 722/92) (Register 98, No. 15).
2. Change without regulatory effect amending NOTE filed 4–9–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 15).

§ 55180. Indian Health Service Facilities and the Health Care Options Program.

(a) In geographic areas served by a Geographic Managed Care program, the two–plan model, or where the health care options program is operating, Indian Health Service Facilities shall be listed as an option in the presentation and informing materials used to advise beneficiaries of their options for receiving Medi–Cal benefits. Indians and non–Indians currently receiving services from an Indian Health Service Facility in such an area may, as an alternative to enrollment in a Medi–Cal managed care plan, and upon request, choose to receive health care services through the Indian Health Service Facility. Such a request shall be made to the health care options program.

(b) In areas covered by subsection (a), if the Indian Health Service Facility provides the department with current information on Indian Medi–Cal beneficiaries and non–Indian Medi–Cal beneficiaries who are currently receiving services from the facility in the form agreed to between the department and the Indian Health Service Facility, the following shall apply:

(1) If an Indian Medi–Cal beneficiary, who is identified by the Indian Health Service Facility as currently receiving services from the facility, does not make a choice of options, that beneficiary shall not be assigned to a Medi–Cal managed care plan, but shall remain in the fee–for–service Medi–Cal program to allow the beneficiary to continue to receive care from the Indian Health Service Facility. This requirement shall apply whether or not the Indian Health Service Facility has subcontracted with a Medi–Cal managed care plan, but shall not apply if the Indian Health Service Facility is a fee–for–service managed care plan.

(2) Non–Indian Medi–Cal beneficiaries may be identified by the Indian Health Service Facility as currently receiving services from the facility. Such beneficiaries who do not make a choice of options shall not be assigned to a Medi–Cal managed care plan, but shall remain in the fee–for–service Medi–Cal program to allow those beneficiaries to continue to receive care from the Indian Health Service Facility. This requirement shall apply whether or not the Indian Health Service Facility has subcontracted with a Medi–Cal managed care plan, but shall not apply if the Indian Health Service Facility is a fee–for–service managed care plan.

(3) If the Indian Health Service Facility is a fee–for–service managed care plan, beneficiaries identified in subdivisions (1) and (2) who fail to make a choice shall be assigned to the Indian Health Service Facility's fee–for–service managed care plan.

NOTE: Authority cited: Stats. 1992, Ch. 722; Sections 10725, 14089.7, 14105, 14124.5, 14203 and 14312, Welfare and Institutions Code. Reference: Sections 14000, 14016.5, 14087.3, 14087.305, 14087.4, 14089, 14089.05 and 14200, Welfare and Institutions Code; and Title 25, United States Code, Sections 13 and 1601.

HISTORY

1. New section filed 4–3–98; operative 4–3–98. Submitted to OAL for printing only pursuant to section 147, Senate Bill 485 (Ch. 722/92) (Register 98, No. 15).
2. Change without regulatory effect amending NOTE filed 4–9–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 15).

Chapter 6. Primary Care Case Management Plans

Article 1. General Provisions

§ 56000. General.

(a) Health care services to eligible Medi–Cal beneficiaries may be provided through PCCM plans. PCCM plans shall:

(1) Contract with the Department to provide or arrange for the provision of the full scope of Medi–Cal services, unless certain services are specifically excluded under the terms of the contract, to Medi–Cal beneficiaries voluntarily electing to obtain health care services from the PCCM plan.

(2) Share in the risk of providing health care services.

(3) Provide readily available health care services and utilize preventive health care programs to improve the health status of their members.

(4) Case manage members' utilization of health care services.

(b) The definitions in Article 2 shall apply to Chapter 6 of this division unless the context requires otherwise.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14000, 14053 and 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of subsection (a) transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

Article 2. Definitions

§ 56100. Acceptable Medical Care.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Repealed by operation of Government Code section 11346.1(g). (Register 92, No. 1).

§ 56101. Actuarial Equivalence.

Actuarial equivalence means the per capita costs for Medi–Cal fee–for–service beneficiaries adjusted by age, sex, aid category, geographic location, scope of services, and other appropriate factors in order to be comparable with the costs for Medi–Cal beneficiaries who are members of each PCCM plan.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of section transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56101.1. Actuarial Method.

Actuarial method means any reasonable and adequate method of determining prospective per capita rates of payment for PCCM plan members that is based on actual expenditures for fee–for–service Medi–Cal beneficiaries and recent comparable data from each PCCM plan and other prepaid populations. This data may include:

(a) Experience data to determine the expected costs of services and other requirements for which the rates will serve as payment.

(b) Experience data to determine the expected utilization of each service and other requirements for which the rates will serve as payment by the aid category, age and sex of the Medi–Cal members.

(c) Projected inflation in the costs of the services and other requirements during the period to be covered by the rates.

(d) Costs of any new services or requirements that will be required during the year for which the rates are determined but were not required during the previous year.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of first paragraph transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56102. Affiliate.

Affiliate means an organization or person that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, a PCCM plan and that provides services to or receives services from a PCCM plan.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

[The next page is 553.]

HISTORY
1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56114. Disenrollment.

Disenrollment means the process by which a member's entitlement to receive services from a PCCM plan is terminated.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14088.16 and 14088.5, Welfare and Institutions Code.

HISTORY
1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91(Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56115. Door–to–Door Marketing.

Door–to–door marketing means the use of a marketing presentation at the residence of an individual who has not requested a presentation.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY
1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of section transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56115.5. Effective Date of Enrollment.

Effective date of enrollment means the first day of the first month in which a Medi–Cal beneficiary's name appears on the approved list of members furnished to the PCCM plan by the Department as a result of the completion of a designation form for enrollment in the PCCM plan.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY
1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56116. Enrollment.

Enrollment means the process by which a Medi–Cal beneficiary becomes a member of a PCCM plan.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY
1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56116.5. Experience Data.

Experience data means historical cost and utilization data from the Medi–Cal fee–for–service program, prepaid health plans, PCCM plans or other prepaid populations which is sufficient to enable accurate statistical analysis and comparison.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY
1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of section transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56117. Facility.

Facility means any location which is:

(a) Owned, leased, used or operated directly or indirectly by or for the benefit of a PCCM plan or its affiliates for purposes related to a PCCM contract, or

(b) Maintained by a provider for the provision of services on behalf of a PCCM plan.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of section transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56118. Marketing.

Marketing means:

(a) Any activity conducted by, or on behalf of, a PCCM plan in which information regarding the services offered is disseminated in order to persuade Medi–Cal beneficiaries to enroll, or accept a designation form for enrollment, in that PCCM plan, or

(b) Any presentation made by, or on behalf of, a PCCM plan to any individual or organization for the purpose of enrolling beneficiaries.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14088, 14088.16 and 14088.3, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56120. Marketing Representative.

Marketing representative means any person engaged in marketing activities on behalf of a PCCM plan, pursuant to Article 4 of this Chapter.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14088.16 and 14088.3, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56122. Member.

Member means any Medi–Cal beneficiary who has enrolled in a PCCM plan pursuant to section 56420.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14088, 14088.16 and 14088.3, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56124. Optional Services.

Optional services means any Medi–Cal covered service included in the PCCM contract as a capitated service which the Department does not require the PCCM plan to provide under capitation.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of section transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56130. PCCM Contract.

PCCM contract means the written agreement entered into between a primary care provider as defined in section 14088 (b)(1), Welfare and Institutions Code and the Department, and approved by the Department of Finance to provide health care services to members under the provisions of sections 14088.16 and 14088.17, Welfare and Institutions Code.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14088, 14088.16, 14088.17, 14088.6 and 14088.7, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of section transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56133. Risk Limit.

Risk limit means the per member dollar amount in excess of which the Department will reimburse the PCCM plan the cost, based on Medi–Cal fee–for–service rates, of capitated services rendered to any member.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of section transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56138. Service Site.

Service site means the location designated by a PCCM plan at which members shall receive health care services.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of section transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56144. Subcontract.

(a) Subcontract means an agreement between a PCCM plan and any of the following:

(1) A provider of health care services who agrees to furnish services to PCCM plan members.

(2) A marketing organization.

(3) Any other person or organization who agrees to perform any administrative function or service for the operation of the PCCM plan specifically related to securing or fulfilling its PCCM contractual obligations.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56144.5. Sub–Subcontract.

Sub–subcontract means any agreement, descending from and subordinate to a subcontract, which is entered into for the purpose of providing any goods or services connected with a PCCM plan's obligations under a PCCM contract.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56146. Written Approval.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91

or emergency language will be repealed by operation of law on the following day.

6. Repealed by operation of Government Code section 11346.1(g) (Register 92, No. 1).

§ 56152. Vendor.

Vendor means any person who provides services or supplies to a PCCM plan or subcontractor of a PCCM plan and who does not have a written subcontract with the PCCM or its subcontractors.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of section transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

Article 3. Operational Requirements

§ 56200. Organization and Administration.

Each PCCM plan shall have the organizational and administrative ability to carry out its contractual obligations.To demonstrate this ability, each PCCM plan shall maintain the following:

(a) A license to provide medical care.

(b) An approved Medi–Cal provider number.

(c) A grievance procedure as specified in section 56260.

(d) Member and enrollment reporting systems which fulfill the PCCM plan's contractual obligations.

(e) A data–reporting system which provides reports required under the contract to the Department on a timely basis.

(f) Financial records and books of account fully disclosing the disposition of all Medi–Cal program funds received under the PCCM contract. These records and books shall be maintained on the accrual basis and in a uniform accounting system in accordance with generally accepted accounting principles.

(g) A medical director as specified in section 56246.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14088.16 and 14088.2, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of subsections (d) and (f) transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56210. Scope of Services.

(a) Each PCCM plan shall provide or arrange for the provision of the full scope of Medi–Cal services set forth in Chapter 3, Article 4, beginning with section 51301, and in Chapter 11, beginning with section 59998, unless services are specifically excluded under the terms of the PCCM contract.

(b) A PCCM plan may elect to provide services which are not included in section 14053, Welfare and Institutions Code at no cost to members.

(c) A PCCM plan shall obtain the prior written approval of the Department if any services are to be provided at a cost to members. Departmental approval shall be based on compliance with State and federal law and regulation and the terms of the PCCM contract. Each member shall be notified of the scope of any non–Medi–Cal covered services offered by the PCCM plan and a full disclosure of any charges:

(1) Prior to the signing of any membership designation form.

(2) Any time the scope of services is changed, and

(3) Immediately prior to rendering services at a cost to members.

(d) Each PCCM plan shall meet the requirements of sections 51163 and 51305.1 through 51305.7 of this subdivision, in providing needed human reproductive sterilization services.

(e) Each PCCM plan shall provide Child Health and Disability Prevention Program Services to members under the age of 21 in accordance with the provisions of sections 6800 through 6874, Title 17, California Code of Regulations.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14088, 14088.13 and 14088.2, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of section transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56212. Availability of Services.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Repealed by operation of Government Code section 11346.1(g) (Register 92, No. 1).

§ 56214. Pharmaceutical Services and Prescribed Drugs.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91(Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Repealed by operation of Government Code section 11346.1(g) (Register 92, No. 1).

§ 56216. Care Under Emergency Circumstances.

(a) Each PCCM plan shall provide information to members on obtaining medical services on a 24–hour–a–day, seven–days–a–week basis in the event of an emergency as defined in section 51056(a).

(b) Written procedures shall be developed and followed by the PCCM plan regarding care under emergency circumstances provided by nonplan providers in and outside the service area. These procedures shall include but shall not be limited to the following:

(1) Verification of membership.

(2) Transfer of medical management of the member to the PCCM plan.

(3) Payment for PCCM plan authorized services that are included in the PCCM contract as a covered service.

(4) Notice to nonplan providers of the right to:

(A) Dispute the PCCM plan's rejection or reduction of the claim.

(B) Submit the dispute to the Department for resolution in accordance with section 56262.

(c) When the course of treatment of a PCCM plan member under emergency services requires the use of drugs, the PCCM plan shall authorize the provider to furnish a sufficient quantity of drugs to last until the member can reasonably be expected to have a prescription filled.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14088, 14088.16, 14088.2 and 14088.4, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of subsections (a) and (c) transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56220. Member Billing.

A PCCM plan, affiliate, vendor, subcontractor or sub–subcontractor shall not submit a claim to, demand, or otherwise collect reimbursement from, a member or persons acting on behalf of a member for any services provided under this chapter except to collect third–party payment in accordance with section 56222(a).

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of section transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56222. Recovery from Other Sources.

(a) PCCM plans may recover and retain the cost of capitated services rendered to a member under the terms of this chapter, to the extent that the member is covered for these services under any other state or federal medical care program or under other contractual or legal entitlement, including but not limited to, a private group or individual indemnification program.

(b) PCCM plans shall not attempt recovery in circumstances involving casualty insurance, tort liability, or workers' compensation awards to PCCM plan members. Circumstances which may result in casualty insurance payments, tort liability payments, or workers' compensation awards shall be reported, in writing, to the Department within ten calendar days after discovery by the PCCM plan.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of section transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56230. Facilities and Service Sites.

(a) Each PCCM plan shall have available within the service area, sufficient facilities and service sites to meet its contractual obligations.

(b) Each facility shall meet the following requirements:

(1) Licensing, and accreditation where applicable, by appropriate agencies.

(2) Continued compliance with licensing standards.

(3) Compliance with all applicable local, state and federal standards including those for fire and safety.

(c) Each PCCM plan and subcontracting facility shall be subject to an onsite inspection by the Department prior to approval for use in providing services to members under the terms of the PCCM contract or the subcontract. Inspections for continuing facility adequacy shall be conducted periodically thereafter.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14088 and 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of section transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56242. Providers.

A provider of services employed by or under subcontract to a PCCM plan shall meet those standards for participation as a provider of health care services under the Medi–Cal program set forth in Chapter 3, Article 3, beginning with section 51200.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of section transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56246. Medical Director.

Each PCCM plan shall appoint a physician as medical director. The medical director's responsibilities shall include, but not be limited to:

(a) Ensuring that medical decisions are rendered by qualified medical personnel.

(b) Ensuring that authorized physicians and medical personnel are trained on Treatment Authorization Requests, authorization requirements, and procedures for noncapitated services.

(c) Ensuring that the PCCM plan's medical standards are followed.

(d) Developing and implementing medical policy.

(e) Resolving medically related grievances. The medical director shall refer nonmedical grievances to the PCCM plan's grievance procedure pursuant to section 56260.

(f) Actively participating in the functioning of the PCCM plan grievance procedures.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of section transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56250. Subcontracts.

(a) A provider or management subcontract entered into by a PCCM plan shall become effective upon submission to and approval in writing by the Department. Departmental approval shall be based on compliance with (b) and (c) below.

(b) A PCCM plan that subcontracts for the provision of any health care service to PCCM plan members shall ensure that the subcontractor meets all requirements of Chapters 3 and 6 related to services a PCCM plan is required to perform.

(c) Each subcontract submitted for Department approval pursuant to subdivision (a), shall contain at least the following:

(1) Specification of the services to be provided.

(2) Specification that the subcontract shall be governed by and construed in accordance with all laws, regulations and contractual obligations incumbent upon the PCCM plan.

(3) Specification that the subcontract or subcontract amendments shall become effective only as set forth in subdivision (a).

(4) Specification of the term of the subcontract, including the beginning and ending dates, as well as methods of extension, renegotiation and termination.

(5) Subcontractor's agreement to submit reports as required by the PCCM plan and the Department.

(6) The subcontractor's agreement to make all of its books and records, pertaining to the goods and services furnished under the terms of the subcontract, available for inspection, examination or copying:

(A) By the Department and by the Department of Health and Human Services.

(B) At all reasonable times at the subcontractor's place of business, or at some other mutually agreeable location in California.

(C) In a form maintained in accordance with the general standards applicable to book or record keeping.

(D) For the term required by section 56310.

(7) Full disclosure of the method and amount of compensation or other consideration to be received by the subcontractor from the PCCM plan.

(8) Subcontractor's agreement to maintain and make available to the Department, upon request, copies of all sub–subcontracts and to ensure that all sub–subcontracts are in writing and require that the sub–subcontractor:

(A) Make all applicable books and records available at all reasonable times for inspection, examination or copying by the Department and by the Department of Health and Human Services.

(B) Retain all books and records pertaining to its PCCM sub–subcontract in accordance with section 56310.

(9) Subcontractor's agreement to notify the Department in the event the agreement with the PCCM plan is amended or terminated. Notice to the Department is considered given when properly addressed and deposited in the United States Postal Service as first–class registered mail, postage attached.

(10) Subcontractor's agreement that assignment or delegation of the subcontract shall be void unless prior written approval is obtained from the Department.

(11) Subcontractor's agreement to hold harmless both the State and PCCM plan members in the event the PCCM plan cannot or will not pay for services performed by the subcontractor pursuant to the subcontract.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14088.16 and 14124.1, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of section transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56251. Assumption of Financial Risk.

(a) PCCM plans shall be responsible for the total costs, except as otherwise provided in this chapter, of services covered at risk rendered to members under PCCM contracts.

(b) If so agreed by contract, the Department shall bear the costs of providing medically necessary covered services to a member when costs, based on Medi–Cal schedules of reimbursement and exclusive of third–party recoveries, exceed the risk limit in the aggregate during the 12–month period specified in the contract. The risk limit shall be determined annually, at the same time and using the same data base as used in the determination of new annual rates pursuant to section 56321, and shall be stated in the contract. The Department shall bear costs only for the period of time between the date on which the aggregate amount exceeds the risk limit, and the end of the 12–month period specified in the contract. Within 90 calendar days after submittal of the documentation required in subdivision (b)(2), the Department shall determine whether services are medically necessary and the amounts payable under the schedule of Medi–Cal benefits are reasonable prior to payment.

(1) Members whose cost of care exceeds the risk limit in the 12–month period shall not be disenrolled by the PCCM plan solely for that reason. The PCCM plan shall continue to provide case management and any other services specified by its PCCM contract with the Department.

(2) PCCM plans shall submit to the Department documentation of accumulated costs which result in reaching the risk limit and of all costs in excess of the limit.

(c) A PCCM plan shall not enter into any subcontract which would remove the PCCM plan's obligation to bear a significant portion of the overall risk assumed in providing capitated services under this Chapter.

(d) Significant portion of risk shall be the financial responsibility for all expenditures which exceed 115 percent of the specific total expenditures made under each subcontract in excess of the amount paid to the subcontractor by the PCCM plan in any contract year.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of subsections (b) and (c) transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56252. Reinsurance.

(a) The provisions of section 56251 notwithstanding, the PCCM plan may obtain reinsurance for the cost of providing capitated services, subject to the following conditions:

(1) Reinsurance shall not reduce the PCCM plan's liability below the minimum liability per member for any one12–month period, as set forth in the PCCM contract.

(2) Reinsurance may cover both of the following:

(A) The total cost of capitated services provided to members under emergency circumstances by nonplan providers.

(B) Up to 90 percent of all expenditures related to the contract exceeding 115 percent of the PCCM plan's gross income from capitation payments and third–party recoveries under the terms of the contract during any PCCM plan fiscal year.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14088.16 and 14088.4, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of section transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56260. Grievance Procedures.

Each PCCM plan shall establish and maintain a procedure for submittal, processing and resolution of all member and provider grievances and complaints.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14088.5 and 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of section transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56261. Notice to Members of PCCM Plan Action to Deny, Defer or Modify a Request for Medical Services.

(a) The PCCM plan shall provide members with a notice of an action taken by the PCCM plan to deny a request by a provider for any medical

service. Notice in response to an initial request from a provider shall be provided in accordance with this section. Notice in response to a request for continuation of a medical service shall be provided in accordance with section 51014.1. Notice of denial shall not be required in the following situations:

(1) The denial is a denial of a request for prior authorization for coverage for treatment that has already been provided to the member.

(2) The denial is a non–binding verbal description to a provider of the services which may be approved by the PCCM plan.

(3) The denial is a denial of a request for drugs, and a drug identical in chemical composition, dosage, and bioequivalence may be obtained through prior authorization from the PCCM plan or from the list, established by the PCCM plan, of drugs available without prior authorization from the plan.

(b) The PCCM plan shall provide members with a notice of deferral of a request by a provider for a medical service. Notice of the deferral shall be delayed for 30 days to allow the provider of the medical services time to submit the additional information requested by the plan and to allow time for the PCCM plan to make a decision. If, after 30 days from the PCCM plan's receipt of the request for prior authorization, the provider has not complied with the PCCM plan's request for additional information, the PCCM plan shall provide the member notice of denial pursuant to subdivision (a). If, within that 30 day period, the provider does comply, the PCCM plan shall take appropriate action on the request for prior authorization as supplemented by the additional information, including providing any notice to the member.

(c) The PCCM plan shall provide members notice of modification of a request by a provider for prior authorization. Notice in response to an initial request from a provider shall be provided in accordance with this subdivision. Notice in response to a request for continuation of a medical service shall be provided in accordance with section 51014.1. Notice of modification pursuant to this subdivision shall not be required in the following situations:

(1) The PCCM plan may modify a request for durable equipment without notice, as long as the substituted equipment is capable of performing all medically significant functions that would have been performed by the requested equipment.

(2) The PCCM plan may modify the duration of any approved therapy or the length of stay in an acute hospital inpatient facility without notice as long as the PCCM plan provides an opportunity for the provider to request additional therapy or inpatient days before the end of the approved duration of the therapy or length of stay.

(d) The written notice of action issued pursuant to subdivision (a), (b), or (c) shall be deposited with the United States postal service in time for pick–up no later than the third working day after the action and shall specify:

(1) The action taken by the PCCM plan.

(2) The reason for the action taken.

(3) A citation of the specific regulations or PCCM plan authorization procedures supporting the action.

(4) The member's right to a fair hearing, including:

(A) The method by which a hearing may be obtained.

(B) That the member may be either:

1. Self represented.

2. Represented by an authorized third party such as legal counsel, relative, friend or any other person.

(C) The time limit for requesting fair hearing.

(e) For the purposes of this section, medical services means those services that are subject to prior authorization under the PCCM plan's authorization procedures.

(f) The provisions of this section apply only for medical services that are covered in the contract between the Department and the PCCM plan.

(g) The provisions of this section do not apply to the decisions of providers serving plan members when prior authorization of the service by the PCCM plan's authorization procedures is not a condition of payment to the provider for the medical service.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14450, Welfare and Institutions Code.

HISTORY

1. New section filed 10–17–95; operative 11–16–95 (Register 95, No. 42).

§ 56262. Provider Grievance and Complaints.

(a) A provider of medical services may submit a grievance or complaint concerning the authorization or denial of a service or the processing, payment or nonpayment of a claim by a PCCM plan as follows:

(1) The provider shall initiate a first level appeal, by submitting a grievance or complaint in writing, within 30 calendar days of the action precipitating the grievance or complaint, to the PCCM plan identifying the claim involved and specifically describing the disputed action or inaction regarding the claim.

(2) The PCCM plan shall acknowledge the written grievance or complaint within 15 calendar days of its receipt.

(3) The PCCM plan may refer a grievance or complaint to professional peer review.

(A) When the grievance or complaint is not referred to professional peer review, the PCCM plan shall review the merits of the grievance or complaint and send a written report of its conclusion and reasons to the provider within 30 calendar days of the acknowledgement of the receipt of the grievance or complaint.

(B) When the grievance or complaint is referred to professional peer review:

1. All parties concerned shall be notified that a referral has been made to professional peer review and that a final determination may require up to 60 calendar days from the acknowledgement of the receipt of the grievance or complaint.

2. The professional peer review shall make its evaluation and submit its findings and recommendations to the PCCM plan and the provider within 30 calendar days after the receipt of the referral from the PCCM plan.

3. The PCCM plan, after taking into consideration the findings and recommendations of the professional peer review, shall send a written report of its conclusions and reasons to the provider within 30 calendar days of receipt of the recommendation.

4. The PCCM plan shall retain all documentation related to the peer review in accordance with section 56310.

(b) A provider may, after complying with subdivision (a) above, refer the grievance or complaint to the Department for a second level of appeal:

(1) Within 30 calendar days of receipt of the PCCM plan's written report of its conclusion, or

(2) When the PCCM plan has failed to act within the deadlines set forth in subdivision (a).

(c) In a second level appeal for a grievance or complaint to the Department, the provider shall submit the following to the Department:

(1) A letter requesting the Department to review the first level of appeal.

(2) A copy of the letter sent to the PCCM plan requesting the first level of appeal.

(3) A copy of the original documents submitted to the PCCM plan.

(4) A copy of the first level appeal denial response letter if the second level of appeal is based on denial.

(5) A copy of any other correspondence between the PCCM plan and the provider that documents timely submission and the validity of the appeal.

(d) The Department shall acknowledge the second level appeal request by a provider within 15 calendar days of its receipt, and shall send written notice to the PCCM plan of the appeal.

(e) The Department shall review the written documents submitted in the provider's appeal, may ask for additional information, and may hold an informal meeting with the involved parties. The Department shall send

a written report of its conclusions and reasons to the provider and the PCCM plan within 60 calendar days of receipt of the appeal from the provider.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14088.5 and 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of section transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56264. Member Complaints.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14088.16 and 14088.5, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Repealed by operation of Government Code section 11346.1(g) (Register 92, No. 1).

§ 56280. Quality of Care.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Repealed by operation of Government Code section 11346.1(g) (Register 92, No. 1).

§ 56284. Confidentiality of Medical Records.

Each PCCM plan shall maintain confidentiality of medical records in accordance with the provisions of section 51009 and with section 14100.2, Welfare and Institutions Code.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14088.16 and 14100.2, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of section transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56286. Continuity of Care.

(a) Each PCCM plan shall designate a primary care physician to supervise and coordinate each member's health care. Any member dissatisfied with the primary care physician shall be allowed to select another if more than one is available. Any PCCM plan physician dissatisfied with the professional relationship with any PCCM plan member may request that another primary care physician be substituted to supervise the member's care.

(b) Each PCCM plan shall establish and operate a case management system, which shall assure continuity of care through appropriate referral of members needing specialty health services, documentation of referral services in member's medical records, monitoring of members with ongoing medical conditions, documentation in the member's medical records of emergency medical encounters with appropriate follow–up as medically indicated, and coordinated hospital discharge planning including necessary post–discharge care.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56310. Records.

(a) Each PCCM plan shall maintain or cause to be maintained all records necessary to verify information and reports required by statute, regulation or contractual obligation for three years from the date of submission of information or reports, except as specified in subdivision (b). Such records shall include but shall not be limited to:

(1) Working papers used in the preparation of reports to the Department.

(2) Reports to the Department.

(3) Financial documents.

(4) Medical records.

(5) Prescription files, if pharmacy services are provided under the contract.

(b) A PCCM plan shall retain or cause to be retained all records necessary to complete or accommodate an audit by state or federal agencies, if the audit is either in progress or the PCCM plan has been provided written notice of intent to audit prior to the expiration of the record retention requirements in subdivision (a). The records shall be retained until the audit is complete and the records are released by the Department.

(c) A PCCM plan shall retain or cause to be retained all records pertaining to pending litigation or litigation in progress until the litigation is final.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14088.16 and 14124.1, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of subsection (b) transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56312. Reporting.

Each PCCM plan shall submit reports to the Department as specified below:

(a) Annual reports shall include:

(1) Any financial audit required by section 56340. This audit report shall be submitted no later than 90 calendar days after the close of the PCCM plan's contract year.

(2) Any disclosure statement required by the PCCM contract.

(b) Quarterly reports shall include:

(1) Utilization and statistical data in compliance with section 56314.

(2) Financial reports in compliance with section 56314.

(c) Child Health and Disability Prevention Program services rendered and health problems found shall be reported in accordance with sections 6800 through 6874, Title 17, California Code of Regulations.

(d) When changes occur, an update of any provider listing required under section 56242(b) shall be submitted within 30 calendar days of the change.

(e) Each PCCM plan shall submit to the Department a copy of any financial report submitted to any other government agency or public or private organization.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of section transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56314. Statistical Data.

(a) On a quarterly basis, each PCCM plan shall supply statistical data and information to the Department.

(b) The statistical data shall include but are not limited to:

(1) Utilization of services covered at risk.

(2) Costs of health care services covered at risk.

(3) General and administrative expenses.

(4) Unaudited financial statements.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of subsection (b) transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56320. Capitation Payment.

(a) Payment to each PCCM plan shall be on a monthly capitation payment basis. Each PCCM plan shall be at risk for capitated services provided under the PCCM contract. The capitation payment shall:

(1) Constitute payment in full by the Department for health care and administrative services rendered under the PCCM contract.

(2) Be based upon a count of eligible members furnished to the PCCM plan monthly by the Department.

(b) The capitation payment shall not include payment for recoupment of any losses incurred by the PCCM plan under any prior contractual obligations with the State.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including repealer of subsection (c) transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56321. Capitation Payment Rates Determination.

(a) The Department shall determine capitation payment rates annually by actuarial methods.

(b) The rates shall not exceed actuarially equivalent Medi-Cal fee-for-service costs. These costs shall be determined by viewing the total services at risk and requirements, including administration, provided under this chapter by a PCCM plan as though the same services and require-

ments, including administration, were reimbursable under Chapter 3 commencing with section 51001.

(c) The rates shall be effective for one year beginning the first day of July each year.

(1) In the event that payment of new rates is delayed beyond the first day of July, continued payment of the rate in effect shall be an interim payment only.

(2) Final payment shall be:

(A) Adjusted by increase or decrease to the level of the new rates.

(B) Effective as of the first day of July.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56322. Capitation Rate Redetermination.

(a) Capitation rates shall be redetermined during the rate year only when all of the following conditions are met:

(1) A change occurs in the obligations of the PCCM plan which results in increased or decreased costs of performing under the PCCM contract.

(2) The change in subdivision (1) is the result of either of the following:

(A) A change in federal or state law or regulation.

(B) A change in the Department's interpretation or implementation of federal or state law or regulation.

(3) The projected difference in the actuarial equivalent costs associated with the conditions set forth in subdivision (a)(2) exceeds one percent of the statewide average capitation rate for services covered at risk for the affected categories of members.

(b) The redetermination of capitation rates shall be subject to the approval of the appropriate state and federal control agencies.

(c) Rates redetermined pursuant to subdivision (a) shall be effective on the first day of the month in which the change in the obligations of a PCCM plan becomes effective. During the period of rate redetermination, continued payment of the rate in effect shall be interim payment only. Final payment shall be:

(1) Subject to increase or decrease to the level of the redetermined rates.

(2) Retroactive to the first day of the month in which the change in the obligations of a PCCM plan became effective.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14088.16 and 14088.6, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of subsection (a) transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56322.1. Savings Sharing.

(a) Notwithstanding section 56320, the Department shall calculate and disburse savings sharing to PCCM plans in accordance with the methodology and disbursement schedule specified in the PCCM contract.

(b) The savings sharing amount for a given PCCM plan is determined by comparing the expected fee–for–service cost for all services provided to PCCM plan members to the actual cost, which is the capitation payment plus the cost of noncapitated services paid through the fee–for–service system. If the expected fee–for–service cost exceeds the actual cost minus the State savings on the capitation payment, the difference is the amount saved, a portion of which is paid to the PCCM plan.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of section transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56324. Financial Resources.

(a) Each PCCM plan shall maintain adequate financial resources to carry out its contractual obligations. The Department shall determine the level of adequate financial resources for each PCCM plan by considering factors which include, but shall not be limited to, the following:

(1) Tangible net equity.

(2) Working capital trends.

(3) Profit and loss trends.

(4) Enrollment growth.

(b) Administrative costs incurred by a PCCM plan and its affiliates shall not exceed the limits established in the PCCM contract.

(c) Each PCCM plan shall at all times have and maintain a tangible net equity as specified in the PCCM contract.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.

6. Certificate of Compliance as to 3–25–91 order including amendment of subsection (c) transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56326. Financial Security.

(a) Each PCCM plan that requests payment for medical services in advance of providing those services shall provide evidence of and maintain financial security. Financial security shall be maintained through the duration of the PCCM contract.

(b) Financial security may be in the form of, but is not limited to, one of the following:

(1) A guarantee bond.

(2) A letter of credit.

(3) A time certificate of deposit.

(4) A trust agreement.

(c) The Department shall approve the form and determine the amount of financial security required for each PCCM plan based on the projected number of enrollments and the applicable capitation rates.

(d) The Department may take possession of financial security sufficient to indemnify the Department in the event that the PCCM plan defaults on its contractual obligation to the Department.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of subsections and transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56330. Affiliate.

Upon request by the Department every affiliate shall:

(a) Furnish to the PCCM plan and to the Department financial reports relevant to the disposition of funds paid to the affiliate by the PCCM plan. Reports shall be prepared according to generally accepted accounting principles and shall provide all financial data required by the PCCM plan to fulfill its obligations to the Department for financial reporting pursuant to these regulations and the PCCM contract.

(b) Make all books and records which are pertinent to PCCM plan contracts with the Department available for inspection by the Department and by the Department of Health and Human Services. These books and records shall be retained in accordance with section 56310.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of section transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56340. Financial Audit.

(a) A PCCM plan, not operated by a public entity, that has an average enrollment of 5,000 members per month or more in any three consecutive months within a contract year, shall have an audit performed at the close of the contract year by an independent certified public accountant. Regardless of enrollments, all PCCM plans not operated by a public entity shall have a independent certified public accountant perform an audit at least once every third year after the initial contract is signed with the Department.

(b) A PCCM plan operated by a public entity shall have an annual audit performed in a manner specified in the PCCM contract. The audit may be performed by, but is not limited to performance by:

(1) A certified public accountant.

(2) The county's financial accounting/audit department.

(3) The State's Auditor General office.

(c) Combined financial statements shall be prepared if the PCCM plan and an affiliate are substantially dependent upon each other for the provision of health care, management or other services. When a combined financial statement is required the independent accountant's report or opinion shall cover all the entities included in the combined financial statements. If the accountant's report or opinion makes reference to the fact that a part of the examination was performed by another auditor, the PCCM plan shall also file the individual financial statements and report or opinion issued by the other auditor.

(d) PCCM plans which have subsidiaries that are required to be consolidated under generally accepted accounting principles shall present either consolidating financial statements, or consolidating schedules for the balance sheet and statement of operations, which in either case shall show the PCCM plan separate from the other entities included in the consolidated balances. Interentity transactions and profits shall be eliminated when combined statements are prepared.

(e) The PCCM plan shall authorize the independent accountant to allow representatives of the Department, upon written request, to inspect any and all working papers relating to the preparation of the audit report. The inspection shall:

(1) Be conducted at the accountant's place of business in California during normal business hours.

(2) Be conducted at the Department's headquarters in Sacramento, California, if the accountant's place of business is outside the State of California.

(3) Include supporting documentation, such as notes, computations, work sheets and rough drafts.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of section transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56350. Civil Penalties and Sanctions.

(a) The Department may, except as provided in section 56352(a), impose one or more of the civil penalties specified in subdivision (b) below upon a PCCM plan which fails to comply with the provisions of Chapter 7, Part 3, Division 9, Welfare and Institutions Code, the provisions of this chapter, or the terms of the PCCM contract.

(b) Civil penalties may include but are not limited to:

(1) Restricting the PCCM plan's marketing privileges.

(2) Delaying, or denying payment, in whole or in part, of savings sharing.

(3) Terminating the PCCM contract.

(4) Delaying or withholding capitation payments.

(5) Requiring the PCCM plan to terminate any subcontract or sub–subcontract.

(6) Other penalties as set forth in the contract.

(c) The Department shall issue a written notice of noncompliance to a PCCM plan found to be in violation of any provision of law, regulation or the contract. The notice of noncompliance shall include:

(1) A description of the violation.

(2) The penalties to be imposed by the Department.

(3) A description of any corrective action required by the Department and time limits for compliance.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of subsection (a) transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56352. Contract Termination.

(a) The Department shall terminate a contract with a PCCM plan which the Secretary, Department of Health and Human Services has determined does not meet the requirements for participation in the Medicaid program stated in Title XIX of the Social Security Act.

(b) The Department may terminate a PCCM contract for noncompliance by the PCCM plan with the requirements of state or federal law or regulations or terms of the PCCM contract.

(c) The Department shall give 30 calendar days written notice prior to the termination of a PCCM contract to:

(1) The PCCM plan.

(2) PCCM plan members.

(3) Other entities, organizations, and persons that the Department deems appropriate.

(d) Notwithstanding subdivision (c), the contract shall be terminated immediately if the Department determines that:

(1) There is an immediate threat to the health of Medi–Cal beneficiaries enrolled in the PCCM plan; or,

(2) A state officer or state employee:

(A) Provides legal or management services to the PCCM plan, or

(B) Has a financial interest in:

1. The PCCM contract or PCCM contracting organization.
2. Any contract with the PCCM plan.
3. The procurement of a PCCM contract for the PCCM plan.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of section transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

Article 4. Marketing, Enrollment and Disenrollment

§ 56400. Marketing.

(a) Each PCCM plan shall ensure compliance with all statutory, regulatory and contractual provisions relating to member enrollment and marketing activities.

(b) PCCM plan subcontractors shall not enter into any sub–subcontracts for marketing.

(c) Each PCCM plan shall establish an education program that assures that its marketing representatives have sufficient knowledge about the PCCM plan to explain how it operates to prospective and new members.

(d) A PCCM plan or marketing representative shall not adopt or utilize any procedure to identify prospective members who have medical or psychiatric problems, other than those specifically excluded from coverage by the PCCM contract, in order to exclude prospective members from enrollment in the PCCM plan.

(e) Marketing on county premises by PCCM plans is prohibited unless the marketing of prospective members is in accordance with Welfare and Institutions Code sections 14016.5 and 14016.6.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of section transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56401. Door–to–Door Marketing.

(a) PCCM plans may use door–to–door marketing only when all of the following conditions are met:

(1) The presenter is a marketing representative of the PCCM plan.

(2) Door–to–door marketing is performed only in the service area of the PCCM plan.

(3) The PCCM plan complies with this article and the terms of the PCCM contract.

(b) The Department may revoke door–to–door marketing privileges for any violation of the PCCM contract or applicable law or regulation.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of section transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56402. Marketing Representative.

(a) All PCCM plan marketing representatives shall complete the PCCM plan's marketing education program required by Section 56400(c) and shall receive a passing score of 90 percent or better, based on a straight percentage method, on the Department's examination for marketing representatives prior to engaging in marketing activities on behalf of any PCCM plan.

(b) A PCCM plan marketing representative shall not provide marketing services on behalf of more than one PCCM plan or prepaid health plan.

(c) A PCCM plan marketing representative shall neither offer nor give any form of compensation or reward to induce or procure enrollment of members.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of subsection (a) transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56404. Marketing Presentation.

Marketing presentations shall fully disclose the availability of, and restrictions upon the services provided by the PCCM plan. Such presentations shall, as a minimum, specify:

(a) The scope, access to, and availability of services.

(b) A description of the PCCM plan restricted Medi–Cal card which will authorize the member to obtain services.

(c) That members shall obtain all PCCM plan covered health care services rendered in nonemergency situations through the PCCM plan's providers.

(d) What emergency services are and that emergency services may be obtained at all times from specified PCCM plan providers or from non–PCCM plan providers, if necessary.

(e) That enrollment is voluntary.

(f) That enrollment is subject to a verification and processing period from 15 to 45 calendar days in length.

(g) The conditions under which disenrollment is possible.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of subsections (d) and (g) transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56406. Misrepresentation.

(a) No marketing representatives or marketing organizations under contract with or employed by any PCCM plan shall in any manner misrepresent themselves, the PCCM plans they represent or the Medi–Cal program to induce enrollment.

(b) Violations of this section shall include, but shall not be limited to false or misleading claims that:

(1) Marketing representatives are employees or representatives of the federal government, state, county or anyone other than the PCCM plan.

(2) The PCCM plan is recommended or endorsed by any government organization or official.

(3) The federal government, state or county recommends that a Medi–Cal beneficiary enroll in a specific PCCM plan.

(4) A Medi–Cal beneficiary will lose benefits under the Medi–Cal program or any other health or welfare benefit to which the beneficiary is legally entitled, if the beneficiary does not enroll in a PCCM plan.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56408. Penalties for Misrepresentation.

The Department may impose one or more of the following penalties for violations of the provisions of this Article:

(a) Revoke one or more permitted method of marketing.

(b) Refuse to accept new enrollments for a period specified by the Department.

(c) Refuse to accept enrollments submitted by a specific marketing representative or organization.

(d) Withhold, deny or recover all or part of the capitation payment or savings sharing for persons enrolled as a result of the violations.

(e) Require that the PCCM plan personally contact each member enrolled in violation of this Article, explain the nature of the violation and inform the member of the right to disenroll.

(f) Terminate the PCCM contract.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56420. Member Enrollment.

(a) A Medi–Cal beneficiary is enrolled upon completion of all of the following events:

(1) The voluntary signing and dating of a designation form by the Medi–Cal beneficiary.

(2) Departmental validation of the beneficiary's designation form.

(3) Departmental verification of the beneficiary's Medi–Cal eligibility.

(4) Addition of the beneficiary's name to the approved list of members, furnished by the Department to the PCCM plan, which is effective at the first of any given month.

(b) Enrollment shall be voluntary.

(c) Enrollment shall be limited to Medi–Cal beneficiaries who reside within the PCCM plan's service area.

(d) A Medi–Cal beneficiary shall not be enrolled in more than one PCCM plan, Prepaid Health Plan, or any other Medi–Cal capitated plan providing the same services at any one time.

(e) Dependent minor children or persons legally judged incapable of acting on their own behalf may be enrolled in a PCCM plan by a parent, legal guardian or conservator.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56424. Designation Form Processing.

(a) PCCM plans shall submit all completed designation forms to the Department within 15 calendar days of the date the PCCM plan receives the completed designation form.

(b) Unless otherwise provided in writing by the Department, each PCCM plan shall accept designation forms from eligible Medi–Cal beneficiaries to the enrollment maximums specified in the PCCM contract.

(c) Each PCCM plan shall accept designation forms regardless of the prospective member's race, creed, color, religion, age, sex, national origin, ancestry, marital status, sexual orientation, physical or mental handicap, and without reference to pre–existing medical conditions other than those specifically excluded from coverage by the PCCM contract.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14088.16 and 14088.3, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of subsection (b) transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56426. Term of Membership.

Except as provided in section 56440, membership shall continue indefinitely after enrollment. Membership shall be contingent upon the member's retention of Medi–Cal eligibility as well as eligibility for enrollment in the PCCM plan under the terms of the PCCM contract.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56440. Disenrollment of Members.

(a) A request for disenrollment by a PCCM plan member shall be submitted to the Department by the PCCM plan within five working days after either the date the member submits a signed disenrollment request directly to the PCCM plan or the postmark date for disenrollment requests sent by U.S. mail.

(b) Disenrollment of members for the following reasons shall be processed by the Department:

(1) The member's eligibility as a Medi–Cal beneficiary for enrollment in the PCCM plan is terminated.

(2) The enrollment is in violation of sections 56400, 56402, 56404, or 56406.

(3) Change of a member's place of residence outside the PCCM plan's service area.

(4) The member requests disenrollment.

(c) Requests for disenrollment in which the member states a reason for disenrollment shall be referred to the PCCM plan's grievance process in addition to submission to the Department as required in (a) above.

(d) Requests for disenrollment initiated by the PCCM plan shall be processed through the PCCM plan's grievance procedure and shall be based on the breakdown of the PCCM plan/member relationship.

(1) If the grievance procedure does not resolve the problem, the PCCM plan shall submit a written request to the Department for disenrollment of that member.

(2) The Department shall approve a PCCM plan–initiated disenrollment request only if efforts by the PCCM plan to counsel or modify the members behavior, including referral for mental health services, when appropriate, have been unsuccessful or are impossible or impractical given the circumstances, and if one or more of the following circumstances is documented:

(A) the member is repeatedly verbally abusive to PCCM plan providers, ancillary or administrative staff or other PCCM plan members.

(B) The member physically assaults a PCCM plan provider or staff person or PCCM plan member.

(C) The member is otherwise repeatedly disruptive to PCCM plan operations.

(D) The member repeatedly uses providers not affiliated with the PCCM plan for nonemergency services, causing the PCCM plan to be subjected to repeated provider demands for payment for services or other demonstrable degradation in the PCCM plan's relations with community providers.

(e) The Department shall, on an annual basis, develop a disenrollment processing schedule that assures that disenrollment occurs in compliance with applicable federal and state law and regulation. The Department shall revise the schedule, as necessary, to assure compliance, and shall provide reasonable notice to PCCM plans of the annual schedule and revisions to the schedule.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14088.16 and 14088.5, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of section transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56442. Disenrollment Requests.

Members desiring disenrollment shall make written requests to the PCCM plan.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14088.16 and 14088.5, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56450. Information to Prospective Members.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14088.16 and 14088.5, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Repealed by operation of Government Code section 11346.1(g) (Register 92, No. 1).

§ 56452. Information to New Members.

Each PCCM plan shall provide to members, in writing, within seven days after the effective date of enrollment:

(a) The effective date of enrollment and the term of enrollment.

(b) A description of all available services and an explanation of any service limitations, exclusions from coverage, or charges for services when applicable.

(c) An explanation of the procedure for obtaining services.

(d) The name, telephone number and service site address of the primary care physician chosen by or otherwise made available to the member.

(e) An explanation of and the procedure for obtaining health service rendered in emergency circumstances occurring outside the PCCM plan's service area.

(f) The causes for which a member will lose entitlement to receive services from the PCCM plan.

(g) The procedure for processing and resolving any grievance by members. This information shall include the title, address, and telephone number of a person responsible for resolving grievances or initiating the grievance procedure and shall include an explanation of the member's right to request a fair hearing under Welfare and Institutions Code Section 10950, et seq., for unresolved grievances and to request a fair hearing without going through the PCCM plan's grievance procedures when a health care service requested by the member or a provider has not been provided.

(h) Disenrollment procedures, including an explanation of the member's right to disenroll without cause, and a disenrollment form.

(i) An explanation of the appropriate use of health care services and the contributions the member can make toward the maintenance of the member's own health.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 10950, 14088.16, 14088.5, 14406 and 14450, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Repealed by operation of Government Code section 11346.1(g) (Register 92, No. 1).
7. New section filed 10–17–95; operative 11–16–95 (Register 95, No. 42).

§ 56456. Notification of Changes in Services.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Repealed by operation of Government Code section 11346.1(g) (Register 92, No. 1).

Article 5. Application and Proposal

§ 56500. Application and Proposal Information.

(a) Each applicant for a PCCM contract shall submit to the Department an application containing, but not limited to, the following information:

(1) A statement as to the optional services that will be selected in addition to the mandatory services required of PCCM plans.

(2) A brief description of any existing health care delivery system including information covering the scope and availability of services currently provided to Medi–Cal beneficiaries by the applicant.

(3) A description of the proposed PCCM plan health care delivery system. If the services are a duplicate of those described in (2), a signed statement declaring that the health care delivery system will be the same will satisfy this requirement.

(4) A U.S. Postal Zip Code map with the proposed service area outlined in red.

(5) A separate list of all service area Zip codes in numerical order.

(6) A general area map of the service area that has all service sites distinctly identified and clearly listed on a legend.

(7) An array of the Medi–Cal population in the service area by PCCM plan eligible Medi–Cal Aid categories.

(8) A breakdown of the applicant's current patient population by private pay, insurance and Medi–Cal.

(9) A history of any experience the applicant has in providing care to patients through medical systems such as preferred provider organizations, industrial practice, prepaid health plans, PCCM plans, or any structured medical care delivery system that would demonstrate the ability to function as a PCCM plan.

(b) Each PCCM contract applicant approved by the Department shall submit a proposal containing, but not limited to, the following information:

(1) A description of the administrative structure which includes:

(A) An organization chart with the identification and functional description of each organizational unit, including corporate and medical management personnel.

(B) Complete background information for corporate and medical management personnel.

(C) Job descriptions for corporate and medical management personnel.

(D) A completed disclosure statement pursuant to section 56600.

(2) If applicable, a corporate structure chart identifying and displaying the relationships between the proposed PCCM plan and its parent company, affiliates, subsidiaries, and any principal subcontractors.

(3) For each provider of health care services included in the PCCM plan, provide the following:

(A) Full name.

(B) Business address.

(C) Professional license number including the expiration date, where applicable; medical specialty including any certifying board, where applicable; and Medi–Cal provider number.

(D) Days and hours of operation for each provider.

(E) If an individual provider serves more than one site, list the days and hours of service for each site.

(4) A complete description of the procedures for internal and external referrals.

(5) A complete description of the system for providing or arranging for the provision of emergency services.

(6) Descriptions of the following medical administrative procedures:

(A) The proposed quality assurance, peer review, and utilization review programs.

(B) The proposed medical record system.

(C) The proposed provider grievance and complaint process.

(D) The procedures for provision of health education services.

(E) Proposed protocols for handling and disposing of infectious waste.

(7) Proposed protocols for medical care which includes age specific preventive health services.

(8) A description of the following proposed administrative procedures:

(A) Office procedures for missed appointment follow–up and the handling of emergency telephone calls.

(B) Marketing plan.

(C) Standard subcontract format.

(D) Tort liability protocols/procedures.

(E) The system for prompt reimbursement of nonplan providers for capitated services rendered to PCCM plan members.

(F) The system for complying with PCCM contract quarterly utilization and financial reporting requirements.

(9) A description of the following membership services:

(A) Enrollment procedures.

(B) The Statement of Understanding to be signed by each member.

(C) Member complaint process including a sample of the disposition notice, complaint log, and any related printed materials.

(D) The PCCM plan service guide.

(10) A listing and brief description of any existing government contract which involves current medical operations.

(11) A written statement that the PCCM plan will or will not accept the option of a risk limit.

(12) A description of activities that must be completed prior to contract implementation such as hiring staff, printing marketing materials and enrolling members.

(13) The following financial information:

(A) Detailed financial plan demonstrating the availability and sources of sufficient funds to cover operating costs for the first year of operation.

(B) Current income statement.

(C) Balance Sheet.

(D) Statement of Changes in Financial Position.

(E) A detailed cash flow budget, including all written assumptions, estimates and projections, demonstrating the availability and sources of funds to meet the obligations under the prospective contract. Projections shall include enrollment, income and expenses on a month–by–month basis for two years. Supporting budgets for affiliates shall be provided when the organization relies upon affiliates to provide services under the prospective contract.

(F) A projected calculation of tangible net equity.

(G) Certified financial statements, presented on a combined basis with all affiliates, as of the applicant's fiscal or calendar year end. No additional disclosures are required when the applicant's submission is within 90 calendar days after the end of the applicant's fiscal year. Unaudited financial statements to the most current quarter end shall also be submitted if the applicant's submission occurs prior to or more than 90 calendar days after the close of the applicant's fiscal year. Unaudited statements shall be prepared on a combined basis.

(H) A listing of all proposed subcontracts between the PCCM plan and affiliates.

(I) Proof of adequate professional liability insurance coverage.

(c) Each PCCM contract applicant approved by the Department shall submit the following certifications:

(1) A signed statement as to the willingness and ability of the applicant to revise policies or procedures as necessary or required by the Department.

(2) A signed statement as to the willingness and ability of the applicant to enroll members regardless of their race, creed, color, religion, age, sex, physical or mental handicap, sexual orientation, marital status, national origin or ancestry, and without reference to preexisting medical conditions other than those specifically excluded from converge under the PCCM contract.

(3) A signed statement to the effect that the applicant will not engage in selective enrollment marketing activities.

(4) A written statement that the applicant will maintain and operate a system which ensures the provision of or arrangement for CHDP services in close proximity to the primary care service site for eligible members.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of section transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56502. PCCM Contract Selection Criteria.

(a) The Department in exercising its discretion to enter into PCCM contracts shall evaluate applications, considering the following:

(a) Provider models that are able to offer the broadest base or reach particular segments of the Medi–Cal population, such as rural areas and Medicare/Medi–Cal beneficiaries. These provider models include, but are not limited to:

(1) Primary care clinics with specialists.

(2) Primary care clinics.

(3) Hospital based clinics.

(4) Group practices.

(5) Individual primary care physicians.

(6) Other models which offer potential for contracting, which shall be considered by the Department on an individual basis.

(b) Applicants who demonstrate sufficient resources to implement the PCCM contract, which include, but are not limited to:

(1) Support staff.

(2) Information systems.

(3) Organizational structure.

(4) Available capital.

(c) Applicants who provide the broadest range of optional services in addition to mandatory services.

(d) Applicants who will cover service areas that:

(1) Are in geographic areas which are free from competition from other PCCM or managed care plans.

(2) Have a significant enrollment pool based on the Department's estimated Medi–Cal beneficiary distribution patterns.

(3) Serve an area where PCCM plans exist or have existed and have not achieved significant enrollment given the service area or where the Department determines the Medi–Cal eligible population can support an additional plan.

(e) Applicants who have managed care or related experience, which includes but is not limited to:

(1) Subcontracting experience with PCCM plans.

(2) PHP experience.

(3) Industrial provider experience.

(4) Preferred provider experience.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of section transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56505. Contract Term.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91

or emergency language will be repealed by operation of law on the following day.

6. Repealed by operation of Government Code section 11346.1(g) (Register 92, No. 1).

§ 56506. Contract Renewals.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Repealed by operation of Government Code section 11346.1(g) (Register 92, No. 1).

§ 56508. Mergers, Reorganizations or Assumptions.

(a) A PCCM plan shall submit proposals for mergers, reorganizations or assumptions to the Department for review.

(b) The Department may approve PCCM plan proposals relating to mergers, reorganizations or assumptions if, in addition to satisfying the requirements of section 14088 et seq., Welfare and Institutions Code as applicable, the following conditions are satisfied:

(1) The surviving organization meets the requirements of section 56500.

(2) The surviving organization provides written assurance that it will comply with all PCCM contract requirements and all applicable state and federal laws and regulations.

(c) The Department shall accept or reject the proposal within 60 calendar days of receipt of the proposal.

(d) Implementation of the proposal shall be accomplished by amendment of the PCCM contract.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of section transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

§ 56520. Public Notice.

(a) The Department shall publish a public notice of its intent to enter into a PCCM contract at least 60 calendar days prior to entering into an initial PCCM contract.

(b) The public notice shall appear in at least two major newspapers of general distribution in the service area of the proposed PCCM plan.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of subsection (b) transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

Article 6. Conflict of Interest

§ 56600. Conflict of Interest.

(a) The Department shall terminate a PCCM contract, if the Department determines that a state officer or state employee:

(1) Provides legal or management services to a PCCM plan,

(2) Has financial interest in the PCCM contract or PCCM plan,

(3) Has any separate contract with the PCCM plan, or

(4) Is involved in the procurement of a contract or subcontract for any PCCM plan.

(b) The Department shall terminate a PCCM contract, if the Department determines that a PCCM plan fails to meet any of the following federal requirements:

(1) Disclosure of the identity of any person who has an ownership or control interest in the PCCM plan.

(2) Disclosure of the identity and circumstance surrounding any person who has an ownership or control interest in the PCCM plan who has been convicted of a criminal offense related to the person's involvement in any program under Medicare, Medicaid, or the Federal Social Security Act, Title XIX services program since the inception of the programs.

(3) Conditions required to obtain federal financial participation for the PCCM plan.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14030, 14031, 14032 and 14088.16, Welfare and Institutions Code.

HISTORY

1. New section filed 3–9–90 as an emergency; operative 3–9–90 (Register 90, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–9–90.
2. New section refiled 7–9–90 as an emergency; operative 7–9–90 (Register 90, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 11–6–90.
3. Request to readopt section on an emergency basis pursuant to Government Code section 11346.1 granted and filed 11–6–90 as an emergency; operative 11–6–90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3–6–91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–6–90 order transmitted to OAL 2–22–91; disapproved by OAL on 3–25–91 (Register 91, No. 18).
5. New section filed 3–25–91 as an emergency; operative 3–25–91 (Register 91, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–23–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–25–91 order including amendment of section transmitted to OAL 7–19–91 and filed 8–19–91 (Register 92, No. 1).

Chapter 7. Construction/Renovation Reimbursement Program

Article 1. Definitions

§ 57000. Capital Expenditure Project.

(a) "Capital expenditure project" means a project for expenditures which, under generally accepted accounting principles, are not properly chargeable as expenses of operation and maintenance and are related to the acquisition, construction, renovation, improvement, modernization, expansion, or replacement of a plant, buildings, and equipment with respect to which the expenditure is made, including, but not limited to the following if included in revenue bond debt service:

(1) Studies, surveys, designs, plans, working drawings, and specifications bid preparation, inspection, and material testing;

(2) Site preparation, including demolishing or razing structures, hazardous waste removal, and grading and paving;

(3) Off–site construction and improvements required by the onsite project including the expansion of utilities, access roads, parking structures, bus stops, bus turnouts, bus shelters, and landscaping;

(4) Permit and license fees;

[The next page is 569.]

(5) Architectural, legal, accounting, contract administration cost and appraisal fees;

(6) Costs incurred for borrowing funds including capitalized interest; and

(7) Construction costs.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14085.5, Welfare and Institutions Code.

HISTORY

1. New section filed 10–5–89 as an emergency; operative 10–5–89 (Register 89, No. 41). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–2–90.
2. New section filed 2–9–90 as an emergency; operative 2–6–90 (Register 90, No. 11). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6–6–90.
3. Certificate of Compliance as to 2–6–90 order including amendments transmitted to OAL 6–5–90 and filed 6–22–90 (Register 90, No. 34).

§ 57003. Debt Service.

"Debt service" means principal and interest paid to holders of revenue bonds issued for the purpose of financing capital expenditure projects. Debt service may also include but is not limited to other debt service costs such as credit enhancement, debt service reserve funds, trustee fees, liquidity letters of credit, bond counsel or other costs of bond funding which may or may not be capitalized and reflected in the principal portion of debt service.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14085.5, Welfare and Institutions Code.

HISTORY

1. New section filed 10–5–89 as an emergency; operative 10–5–89 (Register 89, No. 41). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–2–90.
2. New section filed 2–9–90 as an emergency; operative 2–6–90 (Register 90, No. 11). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6–6–90.
3. Certificate of Compliance as to 2–6–90 order including amendments transmitted to OAL 6–5–90 and filed 6–22–90 (Register 90, No. 34).

§ 57006. Disproportionate Share Hospital.

"Disproportionate share hospital" means a hospital which serves a disproportionate number of low income patients as specified in the Medicaid State Plan Attachment 4.19–A., pages 18–29.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14085.5, Welfare and Institutions Code.

HISTORY

1. New section filed 10–5–89 as an emergency; operative 10–5–89 (Register 89, No. 41). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–2–90.
2. New section filed 2–9–90 as an emergency; operative 2–6–90 (Register 90, No. 11). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6–6–90.
3. Certificate of Compliance as to 2–6–90 order including amendments transmitted to OAL 6–5–90 and filed 6–22–90 (Register 90, No. 34).

§ 57009. Final Plans.

"Final plans" means those documents required by the Office of Statewide Health Planning and Development (OSHPD) and the Office of the State Architect which have been submitted to the OSHPD with Form OSH–FD 121 entitled "Application for Building Permit" as specified in the California Code of Regulations, Title 22, division 7, section 94037. In order to constitute "final plans" the box entitled "final plans" on the Form OSH–FD 121 shall be marked.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14085.5, Welfare and Institutions Code.

HISTORY

1. New section filed 10–5–89 as an emergency; operative 10–5–89 (Register 89, No. 41). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–2–90.
2. New section filed 2–9–90 as an emergency; operative 2–6–90 (Register 90, No. 11). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6–6–90.
3. Certificate of Compliance as to 2–6–90 order including amendments transmitted to OAL 6–5–90 and filed 6–22–90 (Register 90, No. 34).

§ 57012. Fixed Equipment.

"Fixed equipment" means equipment that is permanently affixed to the structure and which has a useful life determined in accordance with guidelines published by the American Hospital Association, entitled "Estimated Useful Lives of Depreciable Hospital Assets," 1983 and does not include:

(a) movable equipment;

(b) equipment that under generally accepted accounting principles is usually charged as an expense of operation and maintenance;

(c) items of current operating expense, such as food, fuel, pharmaceuticals.dressings, paper, printed forms, and house–cleaning supplies.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14085.5, Welfare and Institutions Code.

HISTORY

1. New section filed 10–5–89 as an emergency; operative 10–5–89 (Register 89, No. 41). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–2–90.
2. New section filed 2–9–90 as an emergency; operative 2–6–90 (Register 90, No. 11). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6–6–90.
3. Certificate of Compliance as to 2–6–90 order including amendments transmitted to OAL 6–5–90 and filed 6–22–90 (Register 90, No. 34).

§ 57015. New Debt.

"New debt" means funds resulting from the sale of revenue bonds used for financing a certified project as specified in section 57030 of this chapter for which final plans are submitted after July 1, 1989 and prior to June 30, 1994.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14085.5, Welfare and Institutions Code.

HISTORY

1. New section filed 10–5–89 as an emergency; operative 10–5–89 (Register 89, No. 41). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–2–90.
2. New section filed 2–9–90 as an emergency; operative 2–6–90 (Register 90, No. 11). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6–6–90.
3. Certificate of Compliance as to 2–6–90 order including amendments transmitted to OAL 6–5–90 and filed 6–22–90 (Register 90, No. 34).

§ 57018. Revenue Bond.

"Revenue bond" as defined in the California Government Code, division 3, Part 7.2, section 15459(c) means any bonds, warrants, notes, leases or installment sale obligations evidenced by certificates of participation, or other evidence of indebtedness issued by a local agency payable from funds other than the proceeds of ad valorem taxes or the proceeds of assessments levied without limitation as to rate or amount by the local agency upon property in the local agency.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14085.5, Welfare and Institutions Code; and Section 15459(c), Part 7.2, Division 3, California Government Code.

HISTORY

1. New section filed 10–5–89 as an emergency; operative 10–5–89 (Register 89, No. 41). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–2–90.
2. New section filed 2–9–90 as an emergency; operative 2–6–90 (Register 90, No. 11). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6–6–90.
3. Certificate of Compliance as to 2–6–90 order transmitted to OAL 6–5–90 and filed 6–22–90 (Register 90, No. 34).

§ 57021. Three Most Recent Years.

"Three most recent years" means the three most recent calendar years.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14085.5, Welfare and Institutions Code.

HISTORY

1. New section filed 10–5–89 as an emergency; operative 10–5–89 (Register 89, No. 41). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–2–90.
2. New section filed 2–9–90 as an emergency; operative 2–6–90 (Register 90, No. 11). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6–6–90.
3. Certificate of Compliance as to 2–6–90 order including amendments transmitted to OAL 6–5–90 and filed 6–22–90 (Register 90, No. 34).

§ 57024. Supplemental Reimbursement.

"Supplemental reimbursement" for the purposes of this chapter means reimbursement by the Department to an eligible hospital pursuant to the provisions of the Welfare and Institutions Code, section 14085.5.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14085.5, Welfare and Institutions Code.

HISTORY

1. New section filed 10–5–89 as an emergency; operative 10–5–89 (Register 89, No. 41). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–2–90.
2. New section filed 2–9–90 as an emergency; operative 2–6–90 (Register 90, No. 11). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6–6–90.
3. Certificate of Compliance as to 2–6–90 order including amendments transmitted to OAL 6–5–90 and filed 6–22–90 (Register 90, No. 34).

Article 2. Eligibility for Construction/Renovation Reimbursement Program

§ 57027. Hospital Eligibility.

(a) In order to be considered eligible for supplemental reimbursement a hospital shall be determined an eligible hospital.

(b) A hospital shall meet both of the following conditions in order to be determined an eligible hospital:

(1) Be a disproportionate share hospital as defined in section 57006 of article 1, for the three most recent years, and

(2) Have entered into a contract to provide Medi–Cal inpatient hospital services pursuant to section 14082 of the Welfare and Institutions (W&I) Code, have entered into a contract with a county organized health system pursuant to section 14087.5 of W&I or participate as a provider in a successor program.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14082, 14085.5 and 14087.5, Welfare and Institutions Code.

HISTORY

1. New section filed 10–5–89 as emergency; operative 10–5–89 (Register 89, No. 41). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–2–90.
2. New section filed 2–9–90 as an emergency; operative 2–6–90 (Register 90, No. 11). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6–6–90.
3. Certificate of Compliance as to 2–6–90 order including amendments transmitted to OAL 6–5–90 and filed 6–22–90 (Register 90, No. 34).

§ 57030. Capital Expenditure Project Certification.

(a) An eligible hospital's capital expenditure project or portion thereof shall be certified by the Department before supplemental reimbursement is made. In order to be certified or to remain certified, the capital expenditure project shall satisfy the following conditions:

(1) Final plans shall be submitted to the Office of Statewide Health Planning and Development and to the Office of the State Architect after July 1, 1989 and prior to June 30, 1994.

(2) Project funding shall be through the issuance of new debt.

(3) The hospital facilities being constructed, renovated, or replaced by the capital expenditure project shall be related to a covered service reimbursable by the Medi–Cal program and shall be available and accessible to Medi–Cal patients for the duration of the project debt reimbursement period.

(4) The capital expenditure project shall be for the construction, renovation, or replacement of the eligible hospital's facilities.

(5) The total capital expenditure project cost shall be not less than five million dollars ($5,000,000) unless the eligible hospital provides evidence that the project is necessary for the retention of federal and state licensing and certification and for meeting fire and life safety, seismic, or other regulatory standards.

(6) All supplemental reimbursement received by the eligible hospital shall be placed in a special account, the funds of which shall be used exclusively for the payment of debt service issued to finance the project or to reimburse the eligible hospital for debt service already paid for the project.

(7) The capital expenditure project shall finance the upgrading or construction of buildings and equipment to a level required by currently accepted medical practice standards, including projects designed to ensure that buildings and equipment meet the Joint Commission on Accreditation of Hospitals and Health Systems fire and life safety, seismic, or other related regulatory standards.

(b) The eligible hospital shall submit to the Department evidence that demonstrates that conditions set forth in subsection (a) of this section have been satisfied. Such evidence may include, but is not limited to copies of bank statements showing deposits and withdrawals, contracts, the official statement of the debt instrument, and the final plan date stamped by the Office of Statewide Health Planning and Development.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14085.5, Welfare and Institutions Code.

HISTORY

1. New section filed 10–5–89 as an emergency; operative 10–5–89 (Register 89, No. 41). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–2–90.
2. New section filed 2–9–90 as an emergency; operative 2–6–90 (Register 90, No. 11). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6–6–90.
3. Certificate of Compliance as to 2–6–90 order including amendments transmitted to OAL 6–5–90 and filed 6–22–90 (Register 90, No. 34).

Article 3. Standards for Supplemental Reimbursement

§ 57033. Supplemental Reimbursement Calculation.

(a) The eligible hospital's supplemental reimbursement for a capital expenditure project which has been certified under section 57030 shall be calculated as follows:

(1) For each year in which the hospital is eligible to receive supplemental reimbursement, the hospital shall report to the Department the amount of debt service incurred for that portion of the capital expenditure project that represents the costs of the construction, renovation, or replacement of hospital facilities, including buildings and fixed equipment, which are available and accessible to Medi–Cal patients and provides services that are related to a covered service and reimbursable by the Medi–Cal program or successor program.

(2) The Department shall use the Medicaid inpatient utilization rate formula as specified in the Medicaid State Plan Attachment 4.19–A, pages 18–29, to determine the ratio of the hospital's total paid Medi–Cal patient days to total paid patient days.

(3) The supplemental reimbursement to the eligible hospital for each fiscal year shall equal the amount determined annually in subsection (a)(1) multiplied by the percentage resulting from dividing the number of Medi–Cal paid patient days by the total number of paid patient days.

(4) The supplemental reimbursement shall not be decreased by more than 10% of the initial ratio derived under subsection (a)(2) prior to the retirement of the debt.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14085.5, Welfare and Institutions Code.

HISTORY

1. New section filed 10–5–89 as an emergency; operative 10–5–89 (Register 89, No. 41). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–2–90.
2. New section filed 2–9–90 as an emergency; operative 2–6–90 (Register 90, No. 11). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6–6–90.
3. Certificate of Compliance as to 2–6–90 order including amendments transmitted to OAL 6–5–90 and filed 6–22–90 (Register 90, No. 34).

§ 57036. Reimbursement Provisions.

(a) If an eligible hospital's capital expenditure project has been certified pursuant to section 57030 and if appropriations for supplemental reimbursement of capital expenditure projects are available, supplemental

reimbursement to the eligible hospital shall commence no later than 30 days after the department's receipt of the certificate of occupancy for the hospital's capital expenditure project issued by the Office of Statewide Health Planning and Development.

(1) In cases where the hospital must obtain a certificate of occupancy, the Department shall not be required to reimburse for debt service prior to its receipt of the certificate of occupancy.

(2) The frequency of the supplemental reimbursement shall correspond to the bond repayment schedule, but in no case shall the hospital be reimbursed more than twice per fiscal year.

(3) Supplemental reimbursement combined with reimbursement from all other sources dedicated exclusively for debt service shall be limited to no more than 100% (percent) of the debt service.

(b) Interest income realized from unexpended revenue bond funds shall reduce the reimbursement obligation under this section by the percentage figure derived from section 57033(a)(3).

(c) The information required by section 57033(a)(1) shall be reported separately for each hospital facility that is being constructed, renovated or replaced by the capital expenditure project.

(d) An eligible hospital receiving supplemental reimbursement pursuant to this section shall be liable for any reduced federal financial participation resulting from the Department's payment of supplemental reimbursement under this section.

(1) The Department shall offset any reduced federal financial participation against reimbursement otherwise due the eligible hospital either under this chapter or for services provided under the California Medical Assistance Program.

(2) The Department shall not deliver to the eligible hospital the amount of the federal financial participation in the debt service until the federal government approves federal financial participation for supplemental reimbursement made under this chapter and thereby supplements the Medicaid grant award for the Medi-Cal program.

(e) The Department may conduct periodic audits to determine if all requirements under this chapter have been met.

(1) Supplemental reimbursement made to eligible hospitals shall be subject to change based on final calculations when final Medi-Cal utilization data becomes available.

(2) If the final Medi-Cal utilization data, indicates that a hospital was not, in fact, a disproportionate share provider for the time period in which supplemental reimbursement was made, the hospital shall be obligated to return such supplemental reimbursements to the State.

(3) If the final Medi-Cal utilization data indicates that a hospital was either overpaid or underpaid, the Department shall make an adjustment to amounts the Department would otherwise pay to the hospital by reducing or augmenting the current supplemental reimbursement otherwise due under this chapter or due for services provided under the California Medical Assistance Program.

(f) As a condition of receiving supplemental reimbursement, the eligible hospital shall keep, maintain, and have readily retrievable, such records as are necessary to fully disclose supplemental reimbursement amounts to which the hospital is entitled.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14085.5, Welfare and Institutions Code.

HISTORY

1. New section filed 10–5–89 as an emergency; operative 10–5–89 (Register 89, No. 41). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–2–90.
2. New section filed 2–9–90 as an emergency; operative 2–6–90 (Register 90, No. 11). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6–6–90.
3. Certificate of Compliance as to 2–6–90 order including amendments transmitted to OAL 6–5–90 and filed 6–22–90 (Register 90, No. 34).

§ 57039. Continuing Eligibility.

(a) A hospital shall maintain eligibility and the capital expenditure project shall continue to meet the conditions set forth in 57030 for each year for which reimbursement is sought.

(b) Thirty (30) days prior to the anniversary of the certification date all documentation necessary to substantiate continued hospital eligibility and to maintain project certification, as required in this chapter, shall be submitted to the Department by the eligible hospital. The State shall not render supplemental reimbursement until all required documentation has been approved.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14085.5, Welfare and Institutions Code.

HISTORY

1. New section filed 10–5–89 as an emergency; operative 10–5–89 (Register 89, No. 41). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–2–90.
2. New section filed 2–9–90 as an emergency; operative 2–6–90 (Register 90, No. 11). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6–6–90.
3. Certificate of Compliance as to 2–6–90 order including amendments transmitted to OAL 6–5–90 and filed 6–22–90 (Register 90, No. 34).

Chapter 8. California Partnership for Long–Term Care

Article 1. Definitions

§ 58000. Activities of Daily Living.

"Activities of Daily Living" means the verbatim definitions of California Insurance Code Sections 10232.8(f) and 10232.8(g) which must be used verbatim in Partnership Policies.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Section 22006(c), Welfare and Institutions Code.

HISTORY

1. New chapter 8 (sections 58000–58082), article and section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Renumbering of former section 58000 to section 58001 and new section 58000 filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58001. Adult Day Health/Social Care.

"Adult Day Health/Social Care" means a structured, comprehensive program which provides a variety of community–based services including health, social, and related supportive services in a protective setting on a less than 24–hour basis. These community–based services are designed to meet the needs of functionally impaired adults through an individualized service plan, and include the following: personal care and supervision as needed, the provision of meals as long as the meals do not meet a full daily nutritional regimen, transportation to and from the service site, and social, health, and recreational activities.

In California, providers of Adult Day Health/Social Care may include Adult Day Care Facilities as defined in Health and Safety Code Section 1502(a)(2), and Adult Social Day Care Facilities as defined in Health and Safety Code Section 1502.2, which are licensed by the Department of Social Services; Adult Day Health Care Facilities licensed by the Department of Health Services, pursuant to Health and Safety Code Section 1575 et seq.; and Alzheimer Day Care Resource Centers administered by the Department of Health Services pursuant to Health and Safety Code Section 1568.10 et seq.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Section 22006(c), Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.

2. Certificate of Compliance as to 8–30–93 order transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Repealer of former section 58001 and renumbering of former section 58000 to section 58001 filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58002. Average Daily Private Pay Rate for Nursing Facilities.

"Average Daily Private Pay Rate for Nursing Facilities" means the estimated average net revenue per patient day for intermediate and skilled nursing facility services for the current calendar year for patients not qualifying for Federal and State reimbursement. The net revenue per patient day is reported annually by each nursing facility to the Office of Statewide Health Planning and Development (OSHPD) and published annually in the OSHPD report entitled, "Aggregate Long Term Care Facility Financial Data". The published data lags the current year by two years. Therefore, the Department of Health Services will adjust the average net revenue per patient day for the most recent calendar year published by OSHPD to estimate the increase in net revenue per patient day for the two years for which data is not available and thus estimate the average net revenue per patient day for the current calendar year. The average rate of increase in the net revenue per patient day for the most recent five years for which published data is available will be used to make the adjustment. The resulting Average Daily Private Pay Rate for Nursing Facilities for the upcoming calendar year will be rounded to the nearest ten dollars ($10) and distributed by the Department of Health Services in the Long Term Care Issuers' Bulletin.

Charges for ancillary services such as physical therapy, speech therapy, audiology, laboratory, as well as charges for patient supplies and legend prescription drugs are not included in the calculation of Average Daily Private Pay Rate for Nursing Facilities.

NOTE: Authority cited: Section 22009(a)(3), Welfare and Institutions Code. Reference: Section 22005(b), Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order, including amendment of section, transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Repealer of former section 58002 and renumbering of former section 58003 to section 58002 filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58003. Benefit Eligibility.

"Benefit Eligibility" in each Policy or Certificate is defined as follows:

(a) "How to qualify for Benefits: We will pay for the Qualified Long–Term Care Services covered by this policy if:

(1) The insured becomes a Chronically Ill Individual, and

(2) The Services are prescribed for the insured in a written Plan of Care.

(b) The insured will be considered a Chronically Ill Individual when one of the following criteria are met:

(1) The insured is unable to perform, without Standby Assistance or *Hands–On Assistance* from another individual, [2 Activities of Daily Living] due to a loss of functional capacity and the loss of functional capacity is expected to last at least 90 days; OR

(2) the insured has a Severe Cognitive Impairment requiring Substantial Supervision to protect the insured from threats to health and safety.

(c) The certification that the insured is a Chronically Ill Individual must be made by a Licensed Health Care Practitioner, within the preceding 12 months and must be renewed at least every 12 months. The services to be paid by the Policy [Certificate] must be prescribed in a written Plan of Care prepared by a Licensed Health Care Practitioner.

(d) All of the services covered by this policy are Qualified Long–Term Care Services.

(e) The definitions for the following terms will help explain how the insured qualifies for benefits under this Policy:

Activities of Daily Living;
Standby Assistance;
Hands–On Assistance;
Severe Cognitive Impairment;
Substantial Supervision;
Licensed Health Care Practitioner;
Plan of Care; and
Qualified Long–Term Care Services."

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Section 22006(c), Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order, including amendment of section, transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Renumbering of former section 58003 to section 58002 and new section 58003 filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58004. California Partnership for Long–Term Care.

"California Partnership for Long–Term Care" means the program, authorized by Section 22000, et seq. of the California Welfare and Institutions Code, between the State of California and participating insurance companies that offer long–term care insurance Policies [Certificates], and provide Medi–Cal Asset Protection, that are approved as Partnership Policies [Certificates].

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Section 22006(c), Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Renumbering of former section 58004 to section 58005 and new section 58004 filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58005. Care Management/Care Coordination.

"Care Management/Care Coordination" includes, but is not limited to the following:

(a) the performance of a comprehensive individualized face–to–face assessment conducted in the client's place of residence;

(b) the development of a Plan of Care;

(c) the performance of a comprehensive, individualized reassessment at least every six months;

(d) when desired by the individual and determined necessary by the Care Management Provider Agency, coordination of appropriate services and ongoing monitoring of the delivery of such services; and

(e) the development of a discharge plan when the Care Management Provider Agency services, or the Policy benefits, are about to be terminated and if further care is needed. If the insured is immediately eligible for Medi–Cal, the Care Management Provider Agency shall prepare a transition plan.

Care Management/Care Coordination takes an all–inclusive look at a person's total needs and resources, and links the person to a full range of appropriate services using all available funding sources.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Sections 22005(a) and 22006(b), Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Renumbering of former section 58005 to section 58006 and renumbering of former section 58004 to section 58005, including amendment of section heading and section, filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58006. Care Management Provider Agency.

"Care Management Provider Agency" means an agency or other entity that provides Care Management/Care Coordination and meets the standards set forth in Article 5.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Sections 22005(a) and 22006(b), Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Renumbering of former section 58006 to section 58007 and renumbering and amendment of former section 58005 to section 58006 filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58007. Care Management Supervisor.

"Care Management Supervisor" means a person who is an experienced Care Manager/Coordinator and is responsible for directing and supervising other Care Managers/Coordinators and undertaking duties as described in Section 58069.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Sections 22005(a) and 22006(b), Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order, including amendment of section, transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Renumbering of former section 58007 to section 58008 and renumbering and amendment of former section 58006 to section 58007 filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58008. Care Manager/Coordinator.

"Care Manager/Coordinator" means a person who, either alone or as part of a team, is responsible for performing assessments and reassessments, developing Plans of Care, coordinating the provision of care, and monitoring the delivery of services.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Sections 22005(a) and 22006(b), Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Renumbering of former section 58008 to section 58009 and renumbering and amendment of former section 58007 to section 58008 filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58009. Certificate.

"Certificate" means any certificate of coverage issued under a group long–term care insurance policy, which policy has been approved for delivery in the State of California.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Section 22005, Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Repealer of former section 58009 and renumbering of former section 58008 to section 58009 filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58010. Elimination Period.

"Elimination Period" is defined as either (a) or (b).

(a) "Elimination Period" means the total number of days that covered, Formal Long–Term Care Services must be received after the insured is determined to be a Chronically Ill Individual and before the benefits covered by the Policy or Certificate are payable. The number of days must be accumulated within a nine–month period [insurer option: a period longer than 9 months, but not shorter than 9 months can be used] after the insured has been determined to be a Chronically Ill Individual. The number of days can be accumulated before the filing of a claim if the insured can establish that he or she was a Chronically Ill Individual before filing a claim. The Elimination Period need only be met once during a lifetime. Any day when covered services [insurer option: days the insured receives inpatient care in a general acute care hospital may also be counted] are reimbursed by other insurance or Medicare may be counted toward meeting the Elimination Period. Respite Care [insurer option: list other benefits that are exempted] is not subject to the Elimination Period.

(b) "Elimination Period" means a provision that defines the number of days the insured must be disabled before the benefits covered by the Policy or Certificate are payable, and that is approved by the Department of Health Services.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Section 22005.1(b), Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Repealer of former section 58010 and renumbering and amendment of former section 58014 to new section 58010 filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).
5. Amendment of section and NOTE filed 5–30–2001 as an emergency; operative 5–30–2001. A Certificate of Compliance must be transmitted to OAL by 9–27–2001 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 2001, No. 22).
6. Certificate of Compliance as to 5–30–2001 order transmitted to OAL 9–24–2001 and filed 10–31–2001 (Register 2001, No. 44).

§ 58011. Formal Long–Term Care Services.

"Formal Long–Term Care Services" means long–term care services for which the provider is paid.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Section 22006(a), Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Repealer of former section 58011 and renumbering of former section 58015 to new section 58011 filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58012. Hands–On Assistance.

"Hands–on Assistance" means the physical assistance of another person without which the insured would be unable to perform the Activity of Daily Living.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Section 22006(c), Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Repealer and new section filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58013. Home Health Care Services.

"Home Health Care Services" means skilled nursing or other professional services in the residence, including, but not limited to, part–time and intermittent skilled nursing services, home health aide services, physical therapy, occupational therapy, or speech therapy and audiology services, and medical social services by a social worker.

NOTE: Authority cited: Section 22009(a)(3), Welfare and Institutions Code. Reference: Section 10232.9, Insurance Code; Section 22006(c), Welfare and Institutions Code; and 42 United States Code Section 1395x(o).

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Repealer of former section 58013 and renumbering of former section 58016 to new section 58013, including amendment of section and NOTE, filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58014. Elimination Period.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Section 22005(b), Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Renumbering of former section 58014 to new section 58010 filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58015. Formal Long–Term Care Services.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Section 22006(a), Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Renumbering of former section 58015 to new section 58011 filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58016. Home Health Care Services.

NOTE: Authority cited: Section 22009(a)(3), Welfare and Institutions Code. Reference: Section 22006(c), Welfare and Institutions Code; and 42 United States Code Section 1395x(o).

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Renumbering of former section 58016 to new section 58013 filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58017. Homemaker Services.

"Homemaker Services" means assistance with activities necessary to or consistent with the insured's ability to remain in his or her residence, that is provided by a skilled or unskilled person under a plan of care developed by a Licensed Health Care Practitioner.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Section 10232.9, Insurance Code; Section 22006(c), Welfare and Institutions Code; and 42 United States Code Section 488.1 et seq.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Amendment of section and NOTE filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58018. Hospice Services.

"Hospice services" are outpatient services not paid by Medicare, that are designed to provide palliative care, alleviate the physical, emotional, social, and spiritual discomforts of an individual who is experiencing the last phases of life due to the existence of a terminal disease, and to provide supportive care to the primary care giver and the family. Care may be provided by a skilled or unskilled person under a plan of care developed by a physician or a multidisciplinary team under medical direction.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Section 10232, Insurance Code; Section 22006(a), Welfare and Institutions Code.

HISTORY

1. Certificate of Compliance as to 8–30–93 order transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
2. Renumbering of former section 58018 to section 58019 and new section 58018 filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for

printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.

3. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58019. Informal Long–Term Care Services.

"Informal Long–Term Care Services" means long–term care services for which the provider is not paid.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Section 22006(c), Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Repealer of former section 58019 and renumbering of former section 58018 to section 58019 filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58020. Issuer.

"Issuer" means an entity delivering or issuing for delivery in this State, Partnership Long–Term Care Insurance Policies or Certificates, as follows:

(a) insurers, as defined in Section 23, California Insurance Code;

(b) fraternal benefit societies, as defined in Section 10990, California Insurance Code;

(c) any similar organization regulated by the Commissioner of the Department of Insurance pursuant to Section 12921, California Insurance Code; or

(d) The California Public Employees' Retirement System Board of Administration.

NOTE: Authority cited: Sections 22005(f) and 22009(a), Welfare and Institutions Code. Reference: Section 22013, Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Repealer of former section 58020 and renumbering and amendment of former section 58022 to section 58020 filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58021. Licensed Health Care Practitioner.

"Licensed Health Care Practitioner" means any physician (as defined in Title 42, United States Code, Section 1395x(r)(1)) and any registered professional nurse, licensed social worker, or other individual who meets such requirements as may be prescribed by the Secretary of the Treasury. The Licensed Health Care Practitioner must be employed by a Care Management Provider Agency or be a Qualified Official Designee of a Care Management Provider Agency.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Section 22006(c), Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Repealer and new section filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order, including amendment of section, transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58022. Long–Term Care Services Countable Toward Medi–Cal Property Exemption.

"Long–Term Care Services Countable Toward Medi–Cal Property Exemption" means those services that may be covered in a Policy or Certificate which will qualify for the Medi–Cal Property Exemption. These services include the following:

(a) long–term care in nursing facilities, as defined in Sections 51120 and 51123;

(b) home health services, as defined in Section 51337;

(c) home and community–based services approved under 42 U.S.C. Section 1396n(c), and provided in the Welfare and Institutions Code, Section 14132(s) and (t);

(d) Residential Care Facility Services;

(e) personal care services as defined in California Code of Regulations, Title 22, Section 51183;

(f) adult day health care services as defined in California Code of Regulations, Title 22, Section 54103;

(g) hospice services as defined in California Code of Regulations, Title 22, Sections 51180 through 51180.7; and

(h) other services approved by the Department of Health Services.

NOTE: Authority cited: Section 22009(a)(3), Welfare and Institutions Code. Reference: Section 22006, Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Renumbering of former section 58022 to section 58020 and renumbering and amendment of former section 58023 to section 58022 filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58023. Medi–Cal Asset Protection.

"Medi–Cal Asset Protection" means the right extended to the insured by California when the insured uses the benefits of this Policy. This right allows the insured to protect one dollar of assets for every dollar this Policy pays out in benefits, in the event the insured later applies for Medi–Cal benefits or for other qualifying State long–term care benefits. The amount of this asset protection at any time is equal to the sum of all benefit payments made for the insured's care by this Policy. Should the insured later apply for Medi–Cal benefits or for other qualifying public long–term care benefits, he or she will not be required to expend the protected assets prior to becoming eligible for these public benefits. The insured's protected assets will also be exempt from any claim the State of California may have against his or her estate to recover the costs of State–paid long–term care or medical services provided to the insured.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Sections 22004 and 22006(c), Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Renumbering of former section 58023 to section 58022 and new section 58023 filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58024. Medi–Cal Property Exemption.

"Medi–Cal Property Exemption" means the total equity value of real and personal property not otherwise exempt under Medi–Cal regulations (California Code of Regulations, Title 22, Section 50000 et seq.) equal to the sum of qualifying insurance benefit payments made on behalf of the insured.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Sections 22001, 22003, 22006, 22008.5 and 22009(c)(2), Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Amendment filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58025. Partnership Long–Term Care Insurance Policy or Certificate, or Partnership Policy or Certificate.

"Partnership Long–Term Care Insurance Policy or Certificate" or "Partnership Policy or Certificate" means any long–term care insurance Policy or Certificate approved by the Department of Health Services and the Department of Insurance for issue or delivery to California residents as meeting the requirements set forth in Section 22005(e) of the Welfare and Institutions Code.

NOTE: Authority cited: Sections 22005 and 22009(a), Welfare and Institutions Code. Reference: Section 22005, Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Renumbering of former section 58025 to section 58026 and new section 58025 filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58026. Personal Care Services.

"Personal Care Services" means:

(a) Ambulation assistance, including help in walking or moving around (i.e. wheelchair) outside or inside the place of residence, changing locations in a room, moving from room to room to gain access for the purpose of engaging in other activities. Ambulation assistance does not include movement solely for the purpose of exercise.

(b) Bathing and grooming including cleaning the body using a tub, shower or sponge bath, including getting a basin of water, managing faucets, getting in and out of tub or shower, reaching head and body parts for soaping, rinsing, and drying. Grooming includes hair combing and brushing, shampooing, oral hygiene, shaving and fingernail and toenail care.

(c) Dressing including putting on and taking off, fastening and unfastening garments and undergarments, and special devices such as back or leg braces, corsets, elastic stockings/garments and artificial limbs or splints.

(d) Bowel, bladder and menstrual care including assisting the person on and off toilet or commode and emptying commode, managing clothing and wiping and cleaning body after toileting, assistance with using and emptying bedpans, ostomy and/or catheter receptacles and urinals, application of diapers and disposable barrier pads.

(e) Repositioning, transfer skin care, and range of motion exercises, including moving from one sitting or lying position to another sitting or lying position; e.g., from bed to or from a wheelchair, or sofa, coming to a standing position and/or rubbing skin and repositioning to promote circulation and prevent skin breakdown. Motion exercises shall include the carrying out of maintenance programs, i.e. the performance of the repetitive exercises required to maintain function, improve gait, maintain strength or endurance, passive exercises to maintain range of motion in paralyzed extremities, and assistive walking.

(f) Feeding, hydration assistance, including reaching for, picking up, grasping utensil and cup; getting food on utensil; bringing food, utensil, cup to mouth, and manipulating food on plate. Cleansing face and hands as necessary following meal.

(g) Assistance with self–administration of medications.

(h) Assistance with Instrumental Activities of Daily Living, which include:

(1) domestic or cleaning services;

(2) laundry services;

(3) reasonable food shopping and errands;

(4) meal preparation and cleanup;

(5) transportation assistance to and from medical appointments; and,

(6) heavy cleaning which involves thorough cleaning of the home to remove hazardous debris or dirt; and,

(7) using the telephone.

(i) Partnership Long–Term Care Insurance Policy or Certificate shall not, if it provides Personal Care Services, limit or exclude benefits by requiring that the provision of Personal Care Service be at a level of certification or licensure greater than that required by the eligible service, or by limiting benefits to services provided by Medicare–certified agencies or providers.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Sections 22005(b) and 22006(c), Welfare and Institutions Code; Sections 488.1 et seq., 42 Code of Federal Regulations.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Renumbering of former section 58026 to section 58027 and renumbering and amendment of former section 58025 to section 58026 filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58027. Plan of Care.

"Plan of Care" means a written individualized plan of services prescribed by a Licensed Health Care Practitioner which specifies the type, frequency, and providers of all Formal and Informal Long–Term Care Services required for the individual, and the cost, if any, of any Formal Long–Term Care Services prescribed. Changes in the Plan of Care must be documented to show that such alterations are required by changes in the client's medical situation, functional and/or cognitive abilities, behavioral abilities or the availability of social supports.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Sections 22005(a) and 22006(b), Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Renumbering of former section 58027 to section 58028 and renumbering and amendment of former section 58026 to section 58027 filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58028. Policy.

"Policy" means any contract, rider, or endorsement delivered or issued for delivery in the State of California by an Issuer.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Section 22005, Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Renumbering of former section 58028 to section 58030 and renumbering and of former section 58027 to section 58028 filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58029. Qualified Long–Term Care Services.

"Qualified Long–Term Care Services" means necessary diagnostic, preventive, therapeutic, curing, treating, mitigating, and rehabilitative services, and maintenance or personal services which are needed to assist the insured with the disabling conditions that cause the insured to be a Chronically Ill Individual.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Section 22006(c), Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Renumbering of former section 58029 to section 58031 and new section 58029 filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58030. Qualified Official Designee of a Care Management Provider Agency.

"Qualified Official Designee of a Care Management Provider Agency" means an individual who meets the Care Manager/Coordinator qualifications and is designated by the Care Management Provider Agency to certify the insured is a Chronically Ill Individual and/or to perform Care Management/Care Coordination.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Section 22005(a), Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Renumbering of former section 58030 to section 58032 and renumbering and amendment of former section 58028 to section 58030 filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58031. Quarterly/Annually.

"Quarterly/Annually", unless otherwise stated, refers to periods aligned with the State Fiscal Year of July 1 to June 30.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Section 22005(d), Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order, including amendment of section, transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Renumbering of former section 58031 to section 58033 and renumbering of former section 58029 to section 58031 filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58032. Residential Care Facility.

"Residential Care Facility" means a facility licensed as a Residential Care Facility for the Elderly or a residential care facility as defined in the California Health and Safety Code. Outside California, eligible providers are facilities licensed or certified by the appropriate state agency to provide ongoing care and related services sufficient to support needs resulting from an inability to perform Activities of Daily Living or Severe Cognitive Impairment or if no licensure or certification is required, facilities engaged primarily in providing on–going care and related services sufficient to support needs resulting from an inability to perform Activities of Daily Living or Severe Cognitive Impairment and which also:

(a) provide such care and services on a twenty four (24) hour a day basis; and

(b) have a trained ready–to–respond employee on duty in the facility at all times to provide such care and services; and

(c) provide three meals a day and accommodates special dietary needs; and

(d) have arrangements to ensure that residents receive the medical care services of a physician or nurse in case of emergency; and

(e) have appropriate methods and procedures to provide necessary assistance to residents in the management of prescribed medications.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Section 10232.92, Insurance Code; and Section 22006, Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Renumbering of former section 58032 to section 58034 and renumbering of former section 58030 to section 58032, including amendment of section and NOTE, filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58033. Respite Care.

"Respite Care" means the supervision and care of Chronically Ill Individuals in the home or out of the home while the family or other individuals who normally provide care take short–term leave or rest that provides them with temporary relief from the responsibilities of caregiving.

A Partnership Long–Term Care Insurance Policy or Certificate shall not, if it provides Respite Care, limit or exclude benefits by requiring that the provision of Respite Care be at a level of certification or licensure greater than that required by the eligible service or by limiting benefits to services provided by Medicare–certified agencies or providers.

Eligible providers for Respite Care include: a Nursing Facility, a Residential Care Facility, community–based programs such as an Adult Day Health/Social Care provider, persons employed by a home health agency, and a person who is qualified by training and/or experience to provide the care.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Section 10232.9, Insurance Code; Sections 22005(b) and 22006(c), Welfare and Institutions Code; 42 Code of Federal Regulations Section 488.1 et seq.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Renumbering of former section 58033 to section 58036 and renumbering of former section 58031 to section 58033, including amendment of section and NOTE, filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58034. Service Summary.

"Service Summary" means a written summary, prepared by an issuer for a qualified insured, which identifies the following:

(a) the Partnership Policy or Certificate,

(b) the total benefits paid for services as of the end of the previous quarter,

(c) the total benefits paid for services in the current quarter,

(d) the total amount of benefits paid as of the end of the previous quarter qualifying for a Medi–Cal Property Exemption,

(e) The total amount of benefits paid for services in the current quarter qualifying for a Medi–Cal Property Exemption, and

(f) remaining benefit amount.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Sections 22003(b), 22004 and 22005(b), Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Renumbering and amendment of former section 58032 to new section 58034 filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58035. Severe Cognitive Impairment.

"Severe Cognitive Impairment" means a loss or deterioration in intellectual capacity that:

(a) is comparable to (and includes) Alzheimer's disease and similar forms of irreversible dementia and;

(b) is measured by clinical evidence and standardized tests prescribed or approved by the California Partnership for Long–Term Care.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Sections 22003, 22004 and 22005, Welfare and Institutions Code.

HISTORY

1. New section filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58036. Shortened Benefit Period Nonforfeiture Benefit.

"Shortened Benefit Period Nonforfeiture Benefit" means that, when premiums cease being paid, the covered benefits will be paid by the Issuer at the rate specified in the Partnership Policy or Certificate but the lifetime maximum benefit payable will be reduced to an amount less than provided in the Partnership Policy or Certificate at date of issue.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Section 22005(b), Welfare and Institutions Code.

HISTORY

1. Renumbering and amendment of former section 58033 to new section 58036 filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58037. Standby Assistance.

"Standby Assistance" means the presence of another person within arm's reach of the insured that is necessary to prevent, by physical intervention, injury to the insured while the insured is performing an Activity of Daily Living (such as being ready to catch insured if he or she falls while getting into or out of the bathtub or shower as part of bathing, or being ready to remove food from the insured's throat if he or she chokes while eating).

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Sections 22003(b), 22004 and 22005(d), Welfare and Institutions Code.

HISTORY

1. New section filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58038. Substantial Supervision.

"Substantial Supervision" means continual supervision (which may include cuing by verbal prompting, gestures, or other demonstrations) by another person that is necessary to protect a person who has Severe Cognitive Impairment from threats to his or her health or safety (such as may result from wandering).

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Section 22005(b), Welfare and Institutions Code.

HISTORY

1. New section filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

Article 2. Conditions of Issuer Participation

§ 58050. Issuer Requirements.

(a) Each issuer must offer, prominently advertise, and actively market a Partnership Comprehensive Policy or Certificate (paying benefits on an expense incurred or expense reimbursable basis) that contains the following minimum benefits:

(1) a lifetime maximum benefit set in dollars and equivalent in dollars to three hundred sixty–five (365) times eighty percent (80%) of the Average Daily Private Pay Rate for Nursing Facilities;

(2) a thirty–day Elimination Period;

(3) coverage for services in a nursing facility and coverage of the home and community–based care services as specified in Section 58059(e);

(4) a Respite Care benefit not subject to an Elimination Period;

(5) Care Management/Care Coordination;

(6) except for previously approved Partnership Policies, if offered on an expense reimbursable basis,

(A) a nursing facility per diem benefit of eighty (80%) of the Average Daily Private Pay Rate for Nursing Facilities, rounded to the nearest multiple of ten dollars ($10);

(B) a Residential Care Facility benefit;

(C) a monthly home and community–based care benefit of fifty percent (50%) of the nursing facility per diem benefit contained in the Partnership Policy or Certificate multiplied by thirty; and

(D) automatic increases of five percent (5%) each year over the previous year for each year the contract is in force for all covered benefits and for the lifetime maximum benefit;

(7) except for previously approved Partnership Policies if offered on an expense incurred basis,

(A) benefits that pay eighty percent (80%) of the costs incurred by the insured for nursing facility services up to eighty percent (80%) of the Average Daily Private Pay Rate for Nursing Facilities, rounded to the nearest one dollar ($1);

(B) benefits that pay eighty percent (80%) of the costs incurred by the insured for care in a Residential Care Facility up to fifty percent (50%) of the Average Daily Private Pay Rate for Nursing Facilities, rounded to the nearest one dollar ($1);

(C) benefits that pay eighty percent (80%) of the costs incurred by the insured for home and community–based care;

(D) a lifetime maximum benefit that automatically increases by five percent (5%) each year over the previous year for each year the contract is in force; and

(8) all other benefits and provisions defined in Sections 58059(f), (g) and (*l*), 58060, and 58061.

(b) Issuers are not required to offer a Partnership Nursing Facility and Residential Care Facility Only" Policy or Certificate (paying benefits on an expense incurred or expense reimbursable basis), except as provided in Section 58061(c)(3). If the issuer elects to offer such a Policy or Certificate, the policy shall display prominently on page one (1) of the Policy or Certificate: "Nursing Facility and Residential Care Facility Only" Policy [Certificate]. The issuer must also offer, prominently advertise, and actively market a Partnership Policy or Certificate that contains the following minimum benefits:

(1) a lifetime maximum benefit set in dollars that is equivalent in dollars to three hundred sixty–five (365) times eighty percent (80%) of the Average Daily Private Pay Rate for Nursing Facilities;

(2) a thirty–day Elimination Period, and the Elimination Period definition used verbatim;

(3) coverage for services in a nursing facility and a Residential Care Facility as specified in Section 58059(d);

(4) Care Management;

(5) If issued on an expense reimbursable basis,

(A) a nursing facility per diem benefit of eighty percent (80%) of the Average Daily Private Pay Rate for Nursing Facilities, rounded to the nearest multiple of ten dollars ($10);

(B) a Residential Care Facility Benefit of fifty percent (50%) of the nursing facility per diem benefit contained in the Partnership Policy or Certificate;

(C) automatic increases of five percent (5%) each year over the previous year for each year the contract is in force for all covered benefits and for the lifetime maximum benefit;

(6) if issued on an expense incurred basis,

(A) benefits that pay eighty percent (80%) of the costs incurred by the insured for nursing facility services up to eighty percent (80%) of the Average Daily Private Pay Rate for Nursing Facilities, rounded to the nearest one dollar ($1);

(B) benefits that pay eighty percent (80%) of the costs incurred by the insured for care in a Residential Care Facility up to fifty percent (50%) of the Average Daily Private Pay Rate for Nursing Facilities, rounded to the nearest one dollar ($1);

(C) a lifetime maximum benefit that automatically increases by five percent (5%) each year over the previous year for each year the contract is in force; and

(7) all other benefits and provisions specified in Sections 58059(f), (g) and (*l*), 58060 and 58061.

(c) If any Issuer elects to offer and market a Partnership Policy or Certificate with lifetime maximum benefits in amounts greater than the minimum, the Issuer must offer Policies or Certificates with lifetime benefit maximums in amounts equal to seven hundred thirty (730) times and one thousand ninety–five (1095) times the Average Daily Private Pay Rate for Nursing Facilities and with Elimination Periods of both thirty (30) and ninety (90) days.

(d) Issuers of Partnership group Policies to employers may use normal underwriting and age criteria, but may only issue Policies to those employers who agree to make Certificates available to all individuals within one of the following groups:

(1) active employees and retirees, the active employees' and retirees' spouses, and the parents of all employees and their spouses, who are California residents; or,

(2) retirees, the retirees' spouses and the parents of retirees and their spouses, who are California residents.

(e) Social underwriting, defined as refusal to issue an insurance Policy or Certificate based upon non–medical primary determinants, is prohibited. However, social factors may be considered when pricing a Partnership Policy or Certificate for applicants, so long as a clear rationale for the pricing differential and associated premium impact is submitted to the California Partnership for Long–Term Care. Non–medical factors unacceptable for use as primary determinants when refusing to issue a Policy or Certificate include; the applicant's gender; marital status; living arrangements; sexual preference; presence or absence of an assumed support network (for example but not limited to family, church, community), including health status of probable caretaker spouse; current or past occupation except with respect to group Policies or individual Policies issued by Issuers that are precluded by their charter or bylaws from selling to the general public; hobbies, except recognized high risk pursuits; educational level; and geographic location within California.

(f) All Partnership Policies or Certificates issued by the Issuer, whether initial Partnership Policies or Certificates, upgrades to Partnership Policies or Certificates, and/or replacements for Partnership Policies and Certificates, shall bear the same Policy or Certificate form number and use an additional unique identifier to designate subsequent versions of the initial Policies and Certificates. All individual Partnership Policies, upgrades and/or replacements of Partnership Policies shall be considered a single risk pool for purposes of approving any future premiums adjustments with the following exception. A group Issuer may form a separate risk pool whenever at least two thousand (2000) Certificates are in force for a single employer, labor organization, or trust established by a single employer or labor organization, for a single nonprofit association composed of individuals who are or were actively engaged in the same profession, trade, or occupation and organized in good faith for purposes other than obtaining insurance, and for a single nonprofit association created and maintained in good faith for the benefit of its members and not for the purposes of obtaining insurance, in active existence for at least five years, and with a constitution and bylaws and a board with member representation. Nothing in this section, however, shall preclude an Issuer of non–Partnership policies from pooling the non–Partnership policies with Partnership Policies or Certificates to avoid or reduce the amount of any future premium increase that otherwise might have occurred to the risk pool of Partnership Policies and Certificates.

(g) Long–term care insurance policies or certificates that are not approved under the California Partnership for Long–Term Care must include a statement on the outline of coverage, the policy or certificate application, and the front page of the policy or certificate in bold type and in a separate box. The required statement, to appear verbatim, on all non–Partnership policies and certificates issued or delivered sixty (60) days or more after the first Partnership Policies or Certificates have been filed with the Department of Insurance will read as follows:

"THIS POLICY [CERTIFICATE] IS AN APPROVED LONG–TERM CARE INSURANCE POLICY [CERTIFICATE] UNDER CALIFORNIA LAW AND REGULATIONS. HOWEVER, THE BENEFITS PAYABLE BY THIS POLICY [CERTIFICATE] WILL NOT QUALIFY FOR MEDI–CAL ASSET PROTECTION UNDER THE CALIFORNIA PARTNERSHIP FOR LONG–TERM CARE.

FOR INFORMATION ABOUT POLICIES AND CERTIFICATES QUALIFYING UNDER THE CALIFORNIA PARTNERSHIP FOR LONG–TERM CARE, CALL THE HEALTH INSURANCE COUNSELING AND ADVOCACY PROGRAM AT THE TOLL–FREE NUMBER, 1 (800) 434–0222."

The required statement may omit the last sentence giving the telephone number to call for information about the California Partnership for Long–Term Care where an Issuer offers both Partnership and non–Partnership policies or certificates simultaneously in a single application or solicitation to all individuals within either of the groups described in Subsections (d)(1) and (d)(2).

(h) Issuers are responsible for contracting with one or more Care Management Provider Agencies that meet the standards described in Article 5.

(i) Notwithstanding the provisions of Subsection (c), above, an Issuer that elects to offer or market a Partnership Policy or Certificate of lifetime maximum benefits in amounts greater than the minimum required for approval may offer lifetime maximum benefits with amounts equal to seven hundred thirty (730) times the Average Daily Private Pay Rate for Nursing Facilities, or to one thousand ninety–five (1095) times the Average Daily Private Pay Rate for Nursing Facilities, or both, and with Elimination Periods of thirty (30) or ninety (90) days, or both, provided that the offering is made on a non–discriminatory basis to all individuals within one of the following groups:

(1) active employees and retirees, the active employees' and retirees' spouses, and the parents of all employees and their spouses, who are California residents; or,

(2) retirees, the retirees' spouses and the parents of retirees and their spouses, who are California residents.

(j) Each Issuer shall:

(1) maintain records for each agent of that agent's amount of replacement sales as a percent of the agent's total annual sales and the amount of lapses of long–term insurance policies sold by the agent as a percent of the agent's total annual sales;

(2) report annually by June 30, the 10 percent of its agents in the state with the greatest percentage of lapes and replacements as measured by section (j)(1);

(3) report annually by June 30, the number of lapsed policies as a percent of its total annual sales in the state, as a percent of its total number of policies in force in the state, and as a total number of each policy form in the state, as of the end of the preceeding calendar year; and,

(4) report annually by June 30, the number of replacement policies sold as a percent of its total annual sales in the state and as a percent of its total number of policies in force in the state as of the end of the preceding calender year.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Sections 22001, 22003, 22004, 22005.1, 22006 and 22008.5, Welfare and Institutions Code.

HISTORY

1. New article 2 and section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order, including repealer and new subsections (a)(6)(A)–(C) and (b)(6)(A) and subsection relettering, and amendment of subsections (b)(5)(C), (e), (f) and (h) transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Amendment of subsection (h) and new subsection (j) filed 10–26–94 as an emergency; operative 10–26–94 (Register 94, No. 43). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
4. Certificate of Compliance as to 10–26–94 order transmitted to OAL 2–22–95 and filed 3–30–95 (Register 95, No. 13).
5. Amendment filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).
7. Amendment of subsections (a)(2), (a)(4) and (a)(6)(B) and amendment of NOTE filed 5–30–2001 as an emergency; operative 5–30–2001. A Certificate of Compliance must be transmitted to OAL by 9–27–2001 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 2001, No. 22).
8. Certificate of Compliance as to 5–30–2001 order transmitted to OAL 9–24–2001 and filed 10–31–2001 (Register 2001, No. 44).

§ 58051. Targeting Requirements.

(a) Issuers may issue or deliver Partnership individual Policies or Certificates to California residents only.

(b) Issuers are responsible for taking appropriate measures to assure that a substantial number and proportion of their total sales of Partnership Policies or Certificates each year are to individuals within the target population. The target population for the purchase of a Partnership Policy or Certificate or replacement of current long–term care coverage with a Partnership Policy or Certificate is California residents between the ages of 55 and 74 years old with assets greater than 365 times eighty percent (80%) of the Average Daily Private Pay Rate for Nursing Facilities and with annual incomes less than the seventy–fifth (75) percentile for their age cohort, provided that the annual premium for the Partnership Policy or Certificate does not exceed seven percent (7%) of the prospective purchaser's annual income. The California Partnership for Long–Term Care shall annually distribute to participating Issuers the annual incomes equivalent to the seventy–fifth (75) percentile in the target populations based on data from the U.S. Department of Commerce, Bureau of the Census Current Population Survey.

Individuals with ages outside the target population, and/or with assets lower or incomes higher than the target population, are eligible to purchase Partnership Policies or Certificates.

(c) Each prospective Issuer, prior to approval by the Department of Health Services, shall submit a detailed marketing plan describing the Issuer's strategy for marketing a substantial number and proportion of their total sales of Partnership Policies and Certificates to the target population. The Issuer's marketing plan will cover the following issues:

(1) identify the primary and secondary markets and how marketing efforts directed to these markets will result in sales to individuals in the target population;

(2) describe the distribution and sale system to be used, the marketing methods to be used, and how these are appropriate to reach the target population;

(3) detail the resources and materials to be used and how these will result in sales to the target population; and

(4) describe the methods to be used to monitor success in marketing a substantial portion of their Partnership Policies and Certificates to the target population.

(d) Each Issuer will annually, by July 1, submit to the Department of Health Services an assessment of the number and proportion of sales made during the prior year to the target population and an updated market plan for the next year.

(e) Participating Issuers will cooperate in evaluation studies to measure the success of efforts to reach the target population by mailing surveys prepared by The California Partnership for Long–Term Care to a representative sample of their California policy or certificate holders who purchase non–Partnership policies or certificates. Participating insurers shall also submit individual level data on their sales of non–Partnership policies for the prior year to the Department by March 31.

(f) Each prospective Issuer shall each year contribute to a fund to be used for common educational and marketing expenses for reaching the target population in an amount to be negotiated by the California Partnership for Long–Term Care and the participating Issuers. The amount of each participating Issuer's required annual contribution will in no case be lower than $10,000 or the equivalent of $10,000 in "in–kind" services.

(g) Issuers shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement in accordance with the criteria for the target population and Insurance Code Sections 10234.95, 10235.16, and 10235.17.

(h) Participating Issuers who replace existing policies and certificates with Partnership Policies or Certificates, or who replace Partnership Policies or Certificates, shall forward to the Department of Health Services one copy of the "Notice To Applicants Regarding Replacements of Accident and Sickness or Long–Term Care Insurance" required under the Insurance Code Section 10235.16(b) and (d).

The fact that a Partnership Policy or Certificate provides a Medi–Cal Property Exemption shall not in itself, without otherwise determining the appropriateness of the replacement of current long–term care coverage, be deemed as a transaction that materially improves the individual's position within the meaning of Insurance Code Section 10235.16(d).

(i) Agents shall make reasonable efforts to avoid selling Partnership Policies or Certificates to Medi–Cal beneficiaries unless:

(1) a third party pays the premium; and

(2) both the prospective Policy or Certificate holder and the third party sign a statement acknowledging that the applicant is a Medi–Cal beneficiary but wants private coverage for which the third party will pay the premium. The statement must be submitted with the application and shall be retained in the Issuer's files.

(j) Issuers shall not issue or deliver a Partnership Long–Term Care Insurance Policy or Certificate with knowledge that the individual is entitled to benefits under another long–term care insurance policy or certificate, unless:

(1) the existing policy is in force under a non–forfeiture benefit provision; or

(2) the existing policy or certificate is being replaced by issuance or delivery of the new Partnership Policy or Certificate.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Section 22005, Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order, including amendment of subsections (e), (h) and (i)(2), and new subsections (j)(1) and (j)(2) transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Amendment of subsections (a)–(c), (c)(4), (e), (h), (j) and (j)(2) filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58052. Marketing and Disclosure Requirements.

(a) Every Issuer shall submit a copy of any advertisements, educational and/or sales materials intended for use with Partnership Policies or Certificates to the Department of Health Services for review and approval at least thirty (30) days before dissemination. These materials are deemed approved unless the Department of Health Services formally disapproves them within thirty (30) days of receipt.

(b) Policies or Certificates deemed to meet the requirements of this Chapter shall be designated by the presence of the official logo of the California Partnership for Long–Term Care. The official logo shall be printed on every Partnership Policy or Certificate, and all application forms, sales materials, and other information used by the Issuer in conjunction with the sales and marketing of Partnership Policies and Certificates. Subject to the conditions in this Section, all materials bearing this logo must be reviewed and approved by the Department of Health Services.

(c) No long–term care insurance Policy or Certificate may be advertised, solicited, or issued for delivery in this state as a Partnership Long–Term Care Insurance Policy or Certificate unless the Issuer does the following:

(1) provides the Department of Health Services with a written summary of the methods the Issuer will use to alert the consumer, prior to presentation of an application for a Partnership Policy or Certificate, of the availability of consumer information and public education provided by the California Department of Aging's Health Insurance Counseling and Advocacy Program;

(2) uses applications to be signed by the applicant which indicates, that the applicant;

(A) received, prior to the presentation of an application or enrollment form, a complete description of the California Partnership for Long–Term Care in a form and format prepared by the Department of Health Services, including an explanation of Asset Protection provided by the program and how it is achieved and the Health Insurance Counseling and Advocacy Program's toll free consumer information number; and

(B) received, prior to the presentation of an application or enrollment form, a copy of a long–term care insurance shoppers guide approved by the California Partnership for Long–Term Care; and

(C) received a statement regarding Medi–Cal eligibility and benefits that shall be in the following format:

"NOTICE TO APPLICANT
REGARDING MEDI–CAL ELIGIBILITY

I understand that eligibility for Medi–Cal is not automatic; an application is necessary. Once my long–term care insurance begins paying benefits, the insurer will send me quarterly statements showing how much asset protection I have earned. This permanent asset protection is in addition to any asset exemptions available to any Californian applying for Medi–Cal. I understand that should I want to apply for Medi–Cal it is my responsibility to complete the application process. I further understand that before receiving Medi–Cal I will first have to use any additional assets I have not protected. If I become a Medi–Cal beneficiary, I understand that I may have to apply a portion of my income toward the cost of my care, and that Medi–Cal services at that time may not be the same services I was receiving under my private long–term care insurance.

_____
(Signature of Applicant(s))"

(D) agrees to the release of information by the Issuer to the State as may be needed to evaluate the California Partnership for Long–Term Care and to provide the necessary verification to document the applicant's Medi–Cal Property Exemption, in the following format:

"CONSENT AND AUTHORIZATION TO RELEASE
INFORMATION

I hereby agree to the release of all records and information pertaining to this long–term care insurance policy or certificate to the State of California for the purposes of documenting my Medi–Cal asset disregard under the Medi–Cal program, evaluating the California Partnership for Long–Term Care, and meeting Department of Health Services or Department of Insurance audit or quality control requirements.

As part of the evaluation of the California Partnership for Long–Term Care, the State is trying to determine how well this program is reaching people with varying amounts of income and assets. You will therefore be asked to fill out a brief survey, prepared by the State, and indicate what range your income and assets fall into.

I understand that the information contained in these records will be used for no purpose other than those stated above, and will be kept strictly confidential by the State of California.

_____
(Signature of Applicant(s))"

(E) Received a graphic comparison in a form provided by the California Partnership for Long–Term Care showing the benefit levels of a Policy or Certificate that increases benefits at a compounded annual rate of not less than five percent (5%) over the Policy or Certificate period with a policy or certificate that does not increase benefits. The graphic comparison shall show benefit levels over at least a twenty (20) year period. The comparison will also illustrate the costs the Policy or Certificate holder would pay out of their own income or assets for nursing home care between a Policy or Certificate that does not increase benefits and;

1. an expense reimbursable Policy or Certificate that increases benefits but not premiums over the Policy or Certificate period; and

2. an expense incurred Policy or Certificate that increases premiums and benefits over the Policy or Certificate period.

(F) Received a statement regarding the absence of a Medi–Cal residential care facility benefit if the application is for a Nursing Facility and Residential Care Facility Only Policy or Certificate with the following features:

1. Benefit Eligibility is based on deficiencies in two Activities of Daily Living; and

2. the lifetime maximum benefit is less than seven hundred thirty (730) times the Nursing Facility per diem benefit.

(G) Issuers that market by direct mail response without sales agents will meet the requirements of Subsections (c)(2)(A) and (B), above, by using applications, to be signed by the applicant, that indicate the applicant received the specified publications and information prior to completing the application or enrollment form.

NOTE: Authority cited: Sections 22005 and 22009(a), Welfare and Institutions Code. Reference: Sections 22001, 22003, 22004 and 22006, Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order, including amendments of subsections (a), (c)(2)(A) and (c)(2)(C) and new subsection (c)(2)(G) transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Repealer of subsection (c)(2)(E), redesignation of former subsection (c)(2)(F), and amendment of subsection (c)(2)(F02 filed 10–26–94 as an emergency; operative 10–26–94 (Register 94, No. 43). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
4. Certificate of Compliance as to 10–26–94 order transmitted to OAL 2–22–95 and filed 3–30–95 (Register 95, No. 13).
5. Amendment filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58053. Conversion of Policies or Certificates.

(a) Conversion of Non–Partnership Policies or Certificates to Partnership Policies.

Each participating Issuer which has previously sold non–Partnership long–term care insurance policies or certificates shall make the following provisions for its policy or certificate holders who are not in benefit status or in the process of satisfying the policy or certificate elimination period;

(1) Individual policy holders who hold non–Partnership policies on the date when the participating Issuer's Policy is first available for purchase shall have a right to convert to a Partnership Policy at any time during the period the Issuer is a participating Issuer. However, the policy holder's right to convert may be limited to one–time only if the Issuer elects to provide written notification to each individual policy holder of the right to convert to a Partnership Policy within twelve months (12) of the date the participating Issuer is approved and allows the policy holder a minimum window of at least sixty (60) days to convert to a Partnership Policy.

(2) Each holder of a non–Partnership certificate shall be afforded the right to convert to a Partnership Certificate if the employer or entity who holds the group policy elects to make available a Partnership Certificate to any of its employees or members. If the employer or entity so elects, the holders of non–Partnership certificates shall be provided written notification and allowed, at minimum, a window of at least sixty (60) days to convert to a Partnership Certificate.

(3) Except as provided in (4) below, participating Issuers shall allow current policy or certificate holders to convert to a Partnership Policy or Certificate based upon full underwriting criteria no more stringent than if the policy or certificate holder were applying for coverage under a certified Policy or Certificate.

(4) Participating Issuers shall allow current policy or certificate holders with policies or certificates in effect for less than twenty–four (24) months to convert to a Partnership Policy or Certificate based on underwriting criteria no more stringent than specified in (5) below if either of the following conditions are met:

(A) the current policy or certificate converts nursing home care only and the policy or certificate holder is converting to a Partnership Nursing Facility and Residential Care Facility Only Policy or Certificate with a lifetime maximum benefit that is no greater than the lifetime maximum benefit of the current policy or certificate; or

(B) the current policy or certificate covers home and community–based care and nursing home benefits and the policy or certificate holder is converting to a Partnership Comprehensive Policy or Certificate with a lifetime maximum benefit no greater than the lifetime maximum benefit of the current policy or certificate.

(5) Participating Issuers shall allow current policy or certificate holders who meet the conditions of (4) above to convert to a Partnership Policy or Certificate based on either no underwriting or underwriting that only disqualifies the policy or certificate holder from converting to a Partnership Policy or Certificate if he or she is:

(A) currently in benefit status or satisfying an elimination period; and/or

(B) currently receiving Formal or Informal Long–Term Care Services which would reasonably indicate that the policy or certificate holder would meet or shortly meet (within 1 year) the Insured Event criteria were the policy or certificate holder to be assessed; and/or

(C) currently using ambulation devices or medical equipment that would reasonably indicate that the policy or certificate holder would meet or shortly meet (within 1 year) the Insured Event criteria were he or she to be assessed.

(6) When a participating Issuer replaces the current policy or certificate of its policy or certificate holder with a Partnership Policy or Certificate, the Issuer shall acknowledge the prior coverage by granting a premium credit for each full year the original policy or certificate was in force toward all subsequent premium payments for the replacement Policy or Certificate as specified in Section 58066(b).

(b) Conversion of Partnership Policies and Certificates to Non–Partnership Status. The prospective Issuer of a non–Partnership policy or certificate to a holder of a current Partnership Policy or Certificate shall require the applicant to sign a form stating that he/she recognizes that the new policy or certificate does not conform to certification standards and that the Medi–Cal Property Exemption feature will no longer apply. This provision shall apply regardless of whether the original Partnership Policy or Certificate was issued by the Issuer of the new non–Partnership policy or certificate.

(c) Conversion of Non–tax–qualified Partnership Policies or Certificates to Tax Qualified Partnership Policies or Certificate.

Each participating Issuer which sold Non–tax qualified Partnership long–term care insurance Policies or Certificates after January 1, 1997 shall make the following provision for its policy or certificate holders:

(1) Notify each Policy or Certificate holder of the availability of a Tax–Qualified Partnership Policy or Certificate within ninety (90) days after such a Policy of Certificate first becomes available; and

(2) Allow each Policy or Certificate holder a minimum window of at least sixty (60) days to convert to a Tax–Qualified Partnership Policy or Certificate with similar coverage, a premium based on original issue age, and without new underwriting.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Section 22005, Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order, including amendment of subsections (a)(5)(A) and (a)(6), transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Amendment of section heading and section filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58054. Conversion of Certified Policies and Certificates to Non-Certified Status.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Sections 22004 and 22005, Welfare and Institutions Code.

HISTORY

1. New section filed 8-30-93 as an emergency; operative 8-30-93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8-30-93 order transmitted to OAL 12-30-93 and filed 1-28-94 (Register 94, No. 4).
3. Repealer filed 10-1-98 as an emergency; operative 10-1-98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1-29-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10-1-98 order transmitted to OAL 1-28-99 and filed 3-15-99 (Register 99, No. 12).

§ 58055. Issuer's Liability.

Issuers of Partnership Policies or Certificates approved by the California Partnership for Long-Term Care shall be held liable for intentional or fraudulent material misrepresentation made by any agent, broker, solicitor, or Issuer representative regarding any feature or benefit of a Partnership Policy or Certificate that causes financial harm to the Policy or Certificate holder. In addition to any other applicable requirements of California Insurance Code, the Issuer shall be liable for the difference between the benefit promised by the agent, broker, solicitor, or other Issuer representative and the actual benefit provided under the Policy or Certificate. The liability of Issuers shall not diminish or otherwise mitigate the statutory obligations and liabilities of licensed agents and brokers, solicitors, or other Issuer representatives.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Sections 22001, 22003, 22004, 22005 and 22006, Welfare and Institutions Code.

HISTORY

1. New section filed 8-30-93 as an emergency; operative 8-30-93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8-30-93 order, including amendment of section, transmitted to OAL 12-30-93 and filed 1-28-94 (Register 94, No. 4).
3. Amendment filed 10-1-98 as an emergency; operative 10-1-98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1-29-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10-1-98 order transmitted to OAL 1-28-99 and filed 3-15-99 (Register 99, No. 12).

§ 58056. Agent Training.

(a) Issuers shall provide written evidence to the Department of Insurance that procedures are in place to assure that no agent, broker, solicitor, or individual will be authorized to market, sell, solicit, or otherwise contact any person for the purpose of marketing a Partnership Long-Term Care Insurance Policy or Certificate unless the agent, broker, solicitor, or individual has completed eight (8) hours of education on long-term care in general that meet the requirements of Section 10234.93, Chapter 2.6 of Part 2 of the Insurance Code and eight (8) hours of training in a live classroom setting on the California Partnership for Long-Term Care in particular. Such assurances shall be in the form of a document signed by the agent, broker, solicitor, or individual and a representative of the company attesting to the completion of the required training by the agent, broker, solicitor, or individual and submitted to the Department of Insurance.

(b) Issuers shall provide written evidence to the Department of Insurance that procedures are in place to assure that no agent, broker, solicitor, or individual will be authorized to market, sell, solicit, or otherwise contact any person for the purpose of marketing a Partnership Long-Term Care Insurance Policy or Certificate unless, prior to each license renewal, the agent, broker, solicitor, or individual completes eight (8) hours of education in a live classroom setting on the California Partnership for Long-Term Care. This educational requirement is in addition to the requirements of Section 10234.93, Chapter 2.6 of Part 2 of the Insurance Code, which the agent must complete prior to taking the 8 hour training on the California Partnership for Long-Term Care. For licensees issued a license after January 1, 1992, the Partnership education requirement shall be met by completing four (4) hours of such education in each licensure year. Assurances that the education requirements have been met shall be in the form of a document signed by the agent, broker, solicitor, or individual and a representative of the company attesting to the completion of the required training by the agent, broker, solicitor, or individual and submitted to the Department of Insurance.

(c) Issuers shall use only curriculum and instructors approved by the Department of Insurance and the California Partnership for Long-Term Care.

(d) The curriculum for training courses on the California Partnership for Long-Term Care used for continuing education shall be submitted for approval to the Department of Insurance and to the California Partnership for Long-Term Care on an annual basis no later than January 1.

(e) Issuers that are self-funded and not otherwise subject to compliance with the California Insurance Code shall be exempt from the reporting requirements of this Section. Self-funded Issuers shall submit to the California Partnership for Long-Term Care written evidence that individuals authorized to market, sell, solicit, or otherwise contact persons for the purpose of marketing Certified Policies or Certificates have completed training equivalent to the requirements of this Section. Self-funded Issuers shall also use only curriculum and instructors approved by the California Partnership for Long-Term Care.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Sections 22003 and 22004, Welfare and Institutions Code.

HISTORY

1. New section filed 8-30-93 as an emergency; operative 8-30-93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8-30-93 order, including amendment of subsections (a)-(d) and new subsection (e) transmitted to OAL 12-30-93 and filed 1-28-94 (Register 94, No. 4).
3. Amendment of subsections (a) and (b) filed 10-1-98 as an emergency; operative 10-1-98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1-29-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10-1-98 order transmitted to OAL 1-28-99 and filed 3-15-99 (Register 99, No. 12).

§ 58057. Termination of Issuer Participation.

(a) Approval of the long-term care Partnership Policy or Certificate of each Issuer is conditional upon the Issuer fully complying with all requirements of this Chapter. The Director of the Department of Health Services may disqualify any Issuer from participation in the California Partnership for Long-Term Care, and may remove the approval status of any Partnership Policy or Certificate issued by an Issuer, whenever the Issuer fails to comply with any and all requirements of this Chapter.

(b) Any disqualification of an Issuer from participation in the California Partnership for Long-Term Care, or the removal of the certification of any Partnership Policy or Certificate, shall be after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (sections 11500 et seq.).

(c) The Director may temporarily suspend any Issuer from participation in the California Partnership for Long-Term Care prior to a hearing when there is a substantial probability that federal financial participation will be adversely impacted by the Department's continued certification of the Issuer's Policy or Certificate or by the Issuer's continued participation in the California Partnership for Long-Term Care, or where the activities of the participating Issuer are either detrimental to the public interest or adversely impact other participating Issuers, Partnership Policy or Certificate holders, or the California Partnership for Long-Term Care. The Director shall notify the Issuer of any temporary suspension, and the effective date thereof, and at the same time shall serve the Issuer with a written description of the basis for the suspension. Upon the receipt of a notice of defense from the Issuer, the Director shall set the matter for hearing within 30 days after receipt of such notice. The temporary suspension shall remain in effect until such time as the hearing is completed

and the Director has made a final determination on the merits. The temporary suspension shall be deemed vacated if the Director fails to make a determination on the merits within 60 days after the hearing was completed.

(d) If the Department of Health Services withdraws from the California Partnership for Long–Term Care or removes the certification status of any long–term care insurance Policy or Certificate, a Policy or Certificate holder who purchased a Policy or Certificate while the Policy or Certificate was certified will retain his or her right to the Medi–Cal Property Exemption. An individual who applies for any policy or certificate after the removal of certification status will have no right to the Medi–Cal Property Exemption.

(e) Any Issuer whose approval to market Partnership Policies or Certificates is removed by the Director or any issuer who discontinues selling a Partnership–approved Policy or Certificate, shall continue to comply with all requirements of this Chapter including the documentation and reporting requirements set forth in Article 6.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Sections 22001, 22003(b), 22005 and 22006, Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Amendment of subsections (a)–(c) and new subsection (e) filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58058. Conditions Governing Discontinuance of Sales by the Issuer.

Pursuant to the authority granted by Welfare and Institutions Code Section 22005(e) and Insurance Code Section 12921, the following shall apply:

(a) No Partnership Long–Term Care Insurance Policy or Certificate shall be sold, transferred, or otherwise ceded to another Issuer without first having obtained approval from the Commissioner of the Department of Insurance.

(b) The Commissioner of the Department of Insurance shall not approve any sale, transfer, or ceding of any Partnership Long–Term Care Insurance Policy or Certificate if such action would result in premium increases for either the transferred Policy or Certificate holders or the Partnership Policies or Certificates that were not transferred, unless the Commissioner determines such a sale, transfer, or ceding to be in the public interest. The provision does not apply to:

(1) any reinsurance agreement or transaction in which the ceding Issuer continues to remain directly liable for its insurance obligations or risks under the contracts of insurance subject to the reinsurance agreement; and

(2) the ceding Issuer remains responsible for complying with all requirements of this Chapter and those imposed by Insurance Code Sections 1070 et seq. and 1090 et seq.

(c) Self–funded Issuers not subject to compliance with the California Insurance Code are exempt from the requirements of this Section.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Section 22005, Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order, including amendment of first paragraph and new subsection (c) transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Amendment of subsections (a) and (b) filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

Article 3. Benefits and Provisions for Partnership Policies and Certificates

§ 58059. Required Benefits for Partnership Policies and Certificates.

No long–term care insurance policy or certificate may be approved, advertised, or solicited, in this state as a Partnership Long–Term Care Insurance Policy or Certificate which does not meet the standards of Article 3, and which has not been certified by the Department of Health Services and approved by the Commissioner of the Department of Insurance as a Partnership Long–Term Care Insurance Policy or Certificate. A Partnership Long–Term Care Insurance Policy or Certificate shall contain the following benefits and features:

(a) coverage for either nursing facility and Residential Care Facility only, or Comprehensive Benefits. Policies or Certificates covering only nursing facility and Residential Care Facility benefits shall display prominently on page one (1) of the Policy or Certificate:

"NURSING FACILITY AND RESIDENTIAL CARE FACILITY ONLY" POLICY [CERTIFICATE]

Policies or Certificates covering Nursing Facility, Residential Care Facility, and home and community–based benefits shall display prominently on page one (1) of the Policy or Certificate:

"COMPREHENSIVE" POLICY [CERTIFICATE]

(b) a lifetime maximum benefit that is set in dollars and not in days or other units of care;

(c) a lifetime maximum benefit which at the time of purchase is equivalent in dollars to at least three hundred sixty–five (365) times seventy percent (70%) of the Average Daily Private Pay Rate for Nursing Facilities;

(d) if a Partnership Nursing Facility and Residential Care Facility Only Policy or Certificate, it shall provide a Residential Care Facility as well as a nursing facility benefit;

(e) if a Partnership Comprehensive Benefits Policy or Certificate, it shall provide a Respite Care, a Residential Care Facility, and a Nursing Facility Benefit as well as the following home and community–based care benefits:

(1) Home Health Care;
(2) Adult Day Health/Social Care;
(3) Personal Care Services;
(4) Homemaker Services; and
(5) Hospice Care.

The definitions of these services must be identical to those contained in Article 1, and must appear verbatim in any Partnership Policy or Certificate.

(f) Care Management services by a Care Management Provider Agency. Changes for the initial assessment and individualized Plan of Care provided by a Care Management Provider Agency shall not be considered as a claim cost. Charges for coordinating the provision of care and monitoring services can be considered as a claim cost. Insurance benefit payments can count toward the Medi–Cal Property Exemption to the extent they are for Long–Term Care Services Countable Toward Medi–Cal Property Exemption delivered to insured individuals and are part of an individualized Plan of Care approved by the State–approved Care Management Provider Agency as the result of a face–to–face assessment conducted by the Care Management Provider Agency (or its Qualified Official Designee).

(g) the Benefit Eligibility definition (appropriate for the type of Policy or Certificate), and the related definitions for Activities of Daily Living, Severe Cognitive Impairment, Hands–on Assistance, Standby Assistance, Substantial Supervision, Licensed Health Care Practitioner, Plan of Care, and Qualified Long–Term Care Services used to determine eligi-

bility for benefits and when benefits begin counting toward the Medi-Cal Property Exemption. These definitions must be identical to those contained in Article 1, and must appear verbatim in any Partnership Policy or Certificate, except that policies or certificates issued by Issuers that are self-funded and not otherwise subject to compliance with the California Insurance Code may use in a Partnership Policy or Certificate different criteria for determining eligibility for policy benefits so long as the Policy or Certificate complies with the requirements of Section 7702B of the Internal Revenue Code, and so long as the criteria used are approved by the Department of Health Services.

(1) The Partnership will prescribe or approve the precise instruments to be used to determine if a Policy or Certificate holder has met the Benefit Eligibility definition. The Mental Status Questionnaire (MSQ), and the Folstein Mini Mental State Examination will be used to assess Severe Cognitive Impairment. Policy and Certificate holders will be deemed to have met the Severe Cognitive Impairment criteria for the Benefit Eligibility by:

(A) failing to answer correctly at least seven of the ten questions on the MSQ test; or,

(B) exhibiting specific behavior problems requiring daily supervision, including but not limited to wandering, abusive or assaultive behavior, poor judgment or uncooperativeness which poses a danger to self or others, and extreme or bizarre personal hygiene habits, and failing to answer correctly at least four questions on the MSQ, or achieving a score of 23 or lower on the Folstein Mini Mental State Examination.

(2) To determine Benefit Eligibility based on Activities of Daily Living,

(A) In a Comprehensive Policy or Certificate 2 Activities of Daily Living shall be used for home and community-based and Residential Care Facility benefits and either 2 or 3 Activities of Daily Living shall be used for the Nursing Facility benefit.

(B) In a Nursing Facility and Residential Care Facility Only Policy or Certificate, either 2 or 3 Activities of Daily Living shall be used.

(h) either the Elimination Period definition contained in Section 58010(a) must appear verbatim, or the definition specified in Section 58010(b) which defines the number of days the insured must be disabled before the benefits are covered by the Policy or Certificate, must be used in any Partnership Policy or Certificate. The Elimination Period shall not be less than thirty days (30) for Partnership Policies and Certificates with lifetime maximum benefits which at time of purchase are equivalent in dollars to less than seven hundred and thirty (730) times the Average Daily Private Pay Rate for Nursing Facilities. An Elimination Period of not more than ninety days (90) shall be used in Partnership Policies and Certificates with lifetime maximum benefits which at time of purchase are equivalent in dollars to at least seven hundred and thirty (730) times the Average Daily Private Pay Rate for Nursing Facilities;

(i) upon the issue date, if issued as an expense reimbursable Policy;

(1) a nursing facility per diem benefit of no less than seventy percent (70%) of the Average Daily Private Pay Rate for Nursing Facilities, rounded to the nearest multiple of ten dollars ($10);

(2) a Residential Care Facility benefit that is not less than seventy percent (70%) and not more than one hundred percent (100%) of the nursing facility per diem benefit contained in the Partnership Policy or Certificate;

(3) a Respite Care Benefit in Policies or Certificates with Comprehensive Benefits that is not subject to the Elimination Period and not less than a total of 21 days in any calendar year for care in a Nursing Facility, Residential Care Facility, or in a home or a community-based program. The Respite Care benefit is payable at the daily and monthly maximum benefit amounts applicable for the type of service being used to provide the Respite Care; and

(4) monthly home and community-based care benefits, for Partnership Policies or Certificates with Comprehensive Benefits, of at least *fifty percent (50%) and no more than one hundred* (100%) of the nursing facility per diem benefit provided in the Partnership Policy or Certificate, multiplied by thirty. The home and community-based care benefits shall be issued in increments of ten percent (10%). Insurance products approved for residents in continuing care retirement communities are exempt from this provision;

(j) upon the issue date, if issued on an expense incurred basis, benefits that pay no less than seventy percent (70%) and no more than one hundred (100%) of the cost incurred by the insured for all covered services;

(k) an inflation protection provision which satisfies one (1) of the following criteria:

(1) if the Partnership Policy or Certificate is issued on an expense incurred basis, as specified in Section 58059(j), the lifetime maximum benefit must automatically increase at five percent (5%) each year over the previous year for each year that the contract is in force with the following exception: the Partnership Policy or Certificate may be issued with a lifetime maximum benefit that automatically increases each year by a fixed amount equal to five percent (5%) of the original amount issued provided that the applicant is seventy (70) years of age or over at the time the application is taken, the applicant is first offered an inflation protection provision that automatically increases by five percent (5%) each year over the previous year for each year that the contract is in force, and the applicant is given a graph which illustrates the difference in policy benefits payable between the two inflation protection provisions and the cost of care; or

(2) if the Partnership Policy or Certificate is issued on an expense reimbursable basis, the nursing facility per diem benefit, the lifetime maximum benefit, and the monthly home and community-based care benefit if a Comprehensive Benefits Policy or Certificate, must automatically increase at five percent (5%) each year over the previous year for each year that the contract is in force, with the following exception: the Partnership Policy or Certificate may be issued with a nursing facility per diem benefit, a lifetime maximum benefit, and a monthly home and community-based care benefit if a Comprehensive Benefits Policy or Certificate, that automatically increases by five percent (5%) each year over the amount initially issued provided that the applicant is seventy (70) years of age or over at the time the application is taken, the applicant is first offered an inflation protection provision that automatically increases by five percent (5%) each year over the previous year for each year that the contract is in force, and the applicant is given a graph which illustrates the difference in policy benefits payable between the two inflation protection provisions;

(l) a Shortened Benefit Period Non-Forfeiture Benefit, or a provision that gives the Policy or Certificate holder the option to elect, at the time the Partnership Policy or Certificate is issued, to pay an extra premium for a rider providing such a benefit. The Shortened Benefit Period Non-Forfeiture Benefit must have the following features:

(1) eligibility begins no later than after ten (10) years of premium payments;

(2) the lifetime maximum benefit is no less than the dollar equivalent of three (3) months of care at the nursing facility per diem benefit contained in the Partnership Policy or Certificate and, in the case of an expense reimbursable Policy or Certificate, the nursing facility per diem and monthly home and community-based care benefit, if a Comprehensive Benefits Policy or Certificate, are no less than the benefits already contained in the Policy or Certificate.

(3) the lifetime maximum benefit, and, in the case of an expense reimbursable Policy or Certificate, the nursing facility per diem benefit, and the monthly home and community care benefit if a Comprehensive Benefits Policy or Certificate, increases each year in the same amount and is computed in the same manner as the inflation protection provision issued with the Policy or Certificate as specified in subsection (k) of this section;

(4) the lifetime maximum benefit may be reduced by the amount of any claims already paid;

(5) Cash back, extended term, and reduced paid-up forms of non-forfeiture benefits will not be allowed. Other non-forfeiture benefits that meet the requirements of this Section may be allowed if they are accept-

able to the Department of Health Services and the Department of Insurance.

(m) Self-funded Issuers not subject to California Insurance Code are exempt from:

(1) the requirement of Subsection (e) that the definition for Homemaker Services be used verbatim in each Comprehensive Policy and Certificate as long as the definition conforms to Section 58017; and

(2) the requirement of Subsection (i)(2) to include a Residential Care Facility Benefit that is no less than seventy percent (70%) of the nursing facility per diem benefit contained in the Partnership Policy or Certificate, as long as a Residential Care Facility Benefit is included at no less than fifty percent (50%) of the nursing facility per diem benefit contained in the Partnership Policy or Certificate.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Section 22005.1, Welfare and Institutions Code.

HISTORY

1. New article 3 and section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order, including amendment of subsections (c), (i)(3), (j)(1)–(j)(3), (k)(2), and (*l*)(4), repealer of subsections (k)(2)(A)–(B), and new subsection (*l*)(6) transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Amendment of subsection (*l*) filed 10–26–94 as an emergency; operative 10–26–94 (Register 94, No. 43). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
4. Certificate of Compliance as to 10–26–94 order transmitted to OAL 2–22–95 and filed 3–30–95 (Register 95, No. 13).
5. Amendment of subsections (c), (i)(1), (j), (k)(1)–(2) and (*l*)(3) filed 9–6–95 as an emergency; operative 9–6–95. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 95, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–4–96 or emergency language will be repealed by operation of law on the following day.
6. Editorial correction of HISTORY 5 (Register 95, No. 42).
7. Amendment of subsections (c), (i)(1), (j), (k)(1)–(2) and (*l*)(3) refiled 1–2–96 as an emergency; operative 1–2–96 (Register 96, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–1–96 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 9–6–95 order, including amendment of subsections (k)(1)–(2) and (*l*)(3), transmitted to OAL 4–3–96 and filed 5–2–96 (Register 96, No. 18).
9. Amendment filed 1–23–97 as an emergency; operative 1–23–97 (Register 97, No. 10). A Certificate of Compliance must be transmitted to OAL by 5–23–97 or emergency language will be repealed by operation of law on the following day.
10. Editorial correction of HISTORY 9 (Register 97, No. 27).
11. Certificate of Compliance as to 1–23–97 order transmitted to OAL 5–21–97 and filed 7–1–97 (Register 97, No. 27).
12. Amendment of article heading, section heading and section filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).
14. Amendment of subsections (h), (i)(2) and (m), new subsections (m)(1)–(2) and amendment of NOTE filed 5–30–2001 as an emergency; operative 5–30–2001. A Certificate of Compliance must be transmitted to OAL by 9–27–2001 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 2001, No. 22).
15. Certificate of Compliance as to 5–30–2001 order transmitted to OAL 9–24–2001 and filed 10–31–2001 (Register 2001, No. 44).

§ 58060. Required Provisions for Partnership Policies and Certificates.

Partnership Long Term Care Policies or Certificates shall contain the following provisions:

(a) a provision that benefits may not be paid in excess of actual charges.

(b) a provision that the long-term care services covered by the Partnership Policy or Certificate may not be delivered by a member of the individual's family, unless:

(1) the family member is a regular employee of an organization which is providing the services; and

(2) the organization receives the payment for the services; and

(3) the family member receives no compensation other than the normal compensation for employees in his or her job category.

(c) a provision to protect against unintentional lapse that provides the following:

(1) No individual long-term care Policy or Certificate shall be issued until the Issuer has received from the applicant either of the following:

(A) A written designation of at least one Authorized Designee, in addition to the applicant, who is to receive notice of lapse or termination of the Policy or Certificate for nonpayment of premium.

(B) A written waiver dated and signed by the applicant electing not to designate additional persons to receive notice.

(2) The applicant has the right to designate at least one Authorized Designee who is to receive the notice of termination, in addition to the insured. Designation shall not constitute acceptance of any liability on the third party for services provided to the insured. The form used for the written designation must provide space clearly designated for listing at least one Authorized Designee. The designation shall include each Authorized Designee's full name and home address. The Issuer shall notify the insured of the right to change this written designation, no less often than once every two years. In the case of an applicant who elects not to designate an additional person, the waiver shall state:

"Protection Against Unintended Lapse.

I understand that I have the right to designate at least one Authorized Designee other than myself to receive notice of lapse or termination of this long-term care insurance policy for nonpayment of premium. I understand that notice will not be given until 30 days after a premium is due and unpaid. I elect not to designate any person to receive this notice."

(3) When the Policy or Certificate holder pays the premium for a Partnership Long-Term Care Insurance Policy or Certificate through a payroll or pension deduction plan, the requirements contained in paragraph (1) need not be met until 60 days after the Policy or Certificate holder is no longer on that deduction payment plan. The application or enrollment form for a Partnership Long-Term Care Insurance Policy or Certificate shall clearly indicate the deduction payment plan selected by the applicant.

(4) No individual long-term care Policy or Certificate shall lapse or be terminated for nonpayment of premium unless the Issuer, at least 30 days prior to the effective date of the lapse or termination, gives notice to the insured and to those Authorized Designees named pursuant to paragraph (1), at the address provided by the insured for purposes of receiving notice of lapse or termination. Notice shall be given by first-class United States mail, postage prepaid, no less than 30 days after a premium is due and unpaid. Notice shall be deemed to have been given as of five days after the date of mailing.

(5) In addition to the requirement in Subsection (c)(1), a Partnership Long-Term Care Insurance Policy or Certificate shall include a provision which, in the event of lapse, provides for reinstatement of coverage, if the Issuer is provided with proof of the insured's Cognitive Impairment or loss of functional capacity. This option shall be available to the insured if requested within five months after termination and shall allow for the collection of past due premium, where appropriate. The standard of proof of Severe Cognitive Impairment or loss of functional capacity shall not be more stringent than the benefit eligibility criteria on Severe Cognitive Impairment or the loss of functional capacity contained in the Policy or Certificate.

(d) a provision that benefits shall only be paid after the payment of all other benefits to which the Policy or Certificate holder is otherwise entitled, excluding Medi-Cal. The Issuer shall make reasonable efforts to determine whether benefits are available from other policies or certificates or from Medicare. Benefits are not payable for Medicare co-payments and deductibles.

(e) a statement on the outline of coverage, the Policy or Certificate application, and the Policy or Certificate in bold type and in a separate box as follows:

"THE BENEFITS PAYABLE BY THIS POLICY [CERTIFICATE] QUALIFY FOR MEDI-CAL ASSET PROTECTION UNDER THE CALIFORNIA PARTNERSHIP FOR LONG-TERM CARE.

ELIGIBILITY FOR MEDI-CAL IS NOT AUTOMATIC. IF AND WHEN YOU NEED MEDI-CAL, YOU MUST APPLY AND MEET THE ASSET STANDARDS IN EFFECT AT THAT TIME. UPON BECOMING A MEDI-CAL BENEFICIARY, YOU WILL BE ELIGIBLE FOR ALL MEDICALLY NECESSARY BENEFITS MEDI-CAL PROVIDES AT THAT TIME, BUT YOU MAY NEED TO APPLY A PORTION OF YOUR INCOME TOWARD THE COST OF YOUR CARE. MEDI-CAL SERVICES MAY BE DIFFERENT THAN THE SERVICES RECEIVED UNDER THE PRIVATE INSURANCE.

(f) a provision that, in the event a non-Medicaid national or State long-term care program is created through public funding that substantially duplicates benefits covered by Partnership Policies or Certificates, the Policy or Certificate holder will be entitled to be compensated as follows:

(1) for Policies or Certificates issued before January 1, 1997, or for Policies or Certificates issued after January 1, 1997 that are not federally tax-qualified, the Policy or Certificate holder will be entitled to select either a partial refund of premiums paid or a reduction in future premiums. An actuarial method for determining the premium refunds and premium reductions will be mutually agreed upon by the Department of Insurance and the Issuers. The amount of the premium refunds and reductions to be made by each Issuer will be based on the extent of the duplication of covered benefits, the amount of past premium payments, and claims experience. Each participating Issuer's premium refund and reduction plans shall be filed and approved by the Department of Insurance.

(2) for Policies or Certificates issued after January 1, 1997, that are federally tax-qualified, the Policy or Certificate holder will be entitled to select either a reduction in future premiums or an increase in future benefits. An actuarial method for determining the premium reductions and increases in future benefits will be mutually agreed upon by the Department of Insurance and the Issuers. The amount of the premium reductions and benefit increases to be made by each Issuer will be based on the extent of the duplication of covered benefits, the amount of past premium payments and claims experience. Each participating Issuer's premium reduction and benefit increase plans shall be filed and approved by the Department of Justice.

(g) a provision for a waiver of premium as specified in Section 58065(d).

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Section 22005, Welfare and Institutions Code.

HISTORY

1. New section filed 8-30-93 as an emergency; operative 8-30-93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8-30-93 order, including repealer of subsection (a) and subsection relettering, and amendment of newly designated subsections (c)(5) and (e) transmitted to OAL 12-30-93 and filed 1-28-94 (Register 94, No. 4).
3. Amendment filed 1-23-97 as an emergency; operative 1-23-97 (Register 97, No. 10). A Certificate of Compliance must be transmitted to OAL by 5-23-97 or emergency language will be repealed by operation of law on the following day.
4. Editorial correction of HISTORY 3 (Register 97, No. 27).
5. Certificate of Compliance as to 1-23-97 order transmitted to OAL 5-21-97 and filed 7-1-97 (Register 97, No. 27).
6. Amendment of section heading, first paragraph and subsections (b), (c)(3), (c)(5) and (d)-(f) filed 10-1-98 as an emergency; operative 10-1-98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1-29-99 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 10-1-98 order transmitted to OAL 1-28-99 and filed 3-15-99 (Register 99, No. 12).

§ 58061. Required Provisions to Allow the Increase or Decrease of Benefits in Partnership Policies or *Certificates.*

Partnership Long-Term Care Insurance Policies or Certificates shall contain:

(a) a provision that gives the Policy or Certificate holder the option to elect, no less frequently than on each anniversary date after the Policy or Certificate is issued, to pay an extra premium for one or all of the following three riders:

(1) a rider for a Nursing Facility and Residential Care Facility Only expense reimbursable Policy or Certificate to increase the amount of the nursing facility per diem benefit, so long as the increase in the per diem amount is issued in multiples of ten (10) in ten dollar ($10) increments;

(2) a rider for a Comprehensive Benefit expense reimbursable Policy or Certificate to increase the amount of the nursing facility per diem and the monthly home and community-based care benefit, so long as the increase in the nursing facility per diem amount is issued in multiples of ten (10) in ten dollar ($10) increments and the monthly home and community-based care benefit is issued in multiples of ten (10) and in the same ratio to the nursing facility per diem as the ratio in the original Policy or Certificate;

(3) a rider for an expense reimbursable or expense incurred Policy or Certificate to increase the lifetime maximum benefit of either a Nursing Facility and Residential Care Facility Only or a Comprehensive Benefits Policy or Certificate.

The Issuer may require the Policy or Certificate holder to undergo new underwriting, in addition to the payment of an additional premium, to qualify for the rider(s) elected. The Issuer may restrict the aggregate amount of additional coverage a Policy or Certificate holder may acquire by rider(s) to the maximum coverage allowed by this Section or the maximum the Issuer allows when issuing a new Partnership Policy or Certificate, whichever is less. The Issuer may use the same age restrictions for the issuance of any rider governed by this section as the age limits, if any, that the Issuer uses for the issuance or delivery of a new Partnership Policy or Certificate. The extra premium for the increased coverages elected by the Policy or Certificate holder shall be calculated in accordance with Section 58066(a).

(b) a provision that, in the event the Issuer develops new benefits and/or provisions not included in its original Partnership Policy or Certificate or markets a replacement Policy, the Issuer will grant current holders of its Partnership Policies or Certificates who are not in benefit or within the Elimination Period the following rights:

(1) they will be notified by the Issuer of the availability of the new benefits and/or provisions within twelve months;

(2) they will be afforded an opportunity by the Issuer to acquire the new benefits and/or provisions in one of the following ways:

(A) by adding a rider to the original Partnership Policy or Certificate, in which case a separate premium will be calculated for the rider based on the Policy or Certificate holder's attained age; the premium for the original Policy or Certificate will remain unchanged based on age at issuance;

(B) by replacing their existing Partnership Policy or Certificate with a subsequent Partnership Policy or Certificate issued by the current Issuer, in which case consideration for past insured status shall be recognized by giving a five percent (5%) premium credit for each full year the original Partnership Policy or Certificate was in force toward all subsequent premium payments for the replacement Partnership Policy or Certificate as specified in Section 58066(b);

(C) by replacing their existing Partnership Policy or Certificate with a subsequent Partnership Policy or Certificate with a premium based on the insured's original issue age.

(3) they may have to undergo new underwriting, but the underwriting can be no more restrictive than if the Policy or Certificate holder were applying for a new Partnership Policy or Certificate.

(4) the Issuer of Partnership group Policies must offer current group Policy holders the opportunity to have the new benefits and/or provisions extended to current Certificate holders, but the Issuer is relieved of the obligations imposed by this provision if the holder of the group Policy declines the Issuer's offer.

(c) a provision that gives the Policy or Certificate holder a right, exercisable any time after the first year, to retain a Policy or Certificate meet-

ing all the requirements of certification while lowering the premium subject to the following conditions:

(1) the Policy or Certificate holder of an expense reimbursable Policy or Certificate may:

(A) reduce the nursing facility per diem and the monthly home and community–based care benefit (but not below the minimum specified in Section 58050(a) or (b)), and/or;

(B) reduce the lifetime maximum benefit, but not below the dollar equivalent of one hundred eight–two (182) times seventy percent (70%) of the Average Daily Private Pay Rate for Nursing Facilities;

(2) the Policy or Certificate holder of an expense incurred Policy may;

(A) reduce the lifetime maximum benefit, but not below the dollar equivalent of one hundred eight–two (182) times seventy percent (70%) of the Average Daily Private Pay Rate for Nursing Facilities;

(3) the Policy or Certificate holder of either an expense reimbursable or expense incurred Comprehensive Benefits Policy or Certificate may convert to a Nursing Facility and Residential Care Facility Only Policy or Certificate with per diem not less than the minimums specified in Section 58050(b) and a lifetime maximum benefit no less than the dollar equivalent of one hundred eight–two (182) times seventy percent (70%) of the Average Daily Private Pay Rate for Nursing Facilities;

(4) the reduced nursing facility per diem benefit, lifetime maximum benefit, and, if a Comprehensive Benefits Policy or Certificate, monthly home and community–based care benefit, of an expense reimbursable Policy or Certificate, must increase each year in the same amount and be computed in the same manner as the inflation protection provision issued with the original Policy or Certificate as specified in subsection (k) of Section 58059;

(5) the lower premium for any reduced coverage Policy or Certificate shall be calculated in accordance with 58066(c);

(6) in the event a Policy or Certificate is about to lapse, the Issuer shall advise the Policy or Certificate holder of the options to lower the premium by reducing coverage and of the premiums, applicable to the reduced coverage; if the Policy or Certificate has a Non–Forfeiture Benefit rider, the Issuer shall also advise the Policy or Certificate holder that the the original policy may be kept in force for a shortened benefit period under the Non–Forfeiture Benefit rider.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Section 22005, Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order, including amendment of subsections (a), (a)(2), (a)(3), (b)(2)(B), (c)(5) and (c)(6), incorporation (and amendment) of former subsection (a)(4) into subsection (a)(3), and repealer of subsection (a)(5) transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Amendment of subsections (c)(1)(B), (c)(2)(A) and (c)(4) filed 9–6–95 as an emergency; operative 9–6–95. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 95, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–4–96 or emergency language will be repealed by operation of law on the following day.
4. Editorial correction of HISTORY 3 (Register 95, No. 42).
5. Amendment of subsections (c)(1)(B), (c)(2)(A) and (c)(4) refiled 1–2–96 as an emergency; operative 1–2–96 (Register 96, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–1–96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 9–6–95 order, including amendment of subsection (c)(4), transmitted to OAL 4–3–96 and filed 5–2–96 (Register 96, No. 18).
7. Amendment of section heading and section filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58062. Benefits and Provisions Allowable in Partnership Policies or Certificates.

Issuers are allowed to include the following optional benefits and provisions in Partnership Long–Term Care Policies and Certificates;

(a) additional benefits over the minimum benefits required in Comprehensive Benefit Policies or Certificates by Section 58059(e), so long as these benefits are for Long–Term Care Services Countable Toward the Medi–Cal Property Exemption.

(b) a provision to prorate home and community–based care benefits based on the percentage of the month a Policy or Certificate holder was eligible for benefits.

(c) a provision in expense reimbursable Policies and Certificates that requires Policy or Certificate holders to pay co–payments, not to exceed twenty percent (20%), toward the cost of any home and community–based care benefits received in one day that exceed $50.

(d) the use of a Preferred Provider Organization (PPO) to deliver covered benefits and/or the use of a Point–of–Service reimbursement schedule that provides different reimbursement rates for Policy or Certificate holders who go out–of–plan to receive covered benefits, provided that the reimbursement rates at least meet the minimum benefits specified in Section 58050.

(e) a provision that institutional and home and community–based care benefits need not be paid on the same day.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Section 22005, Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order, including amendment of subsection (d) transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Amendment of section heading, first paragraph and subsections (a) and (c), repealer of subsection (d) and subsection relettering filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58063. Prohibited Provisions in Partnership Policies or Certificates.

The following provisions may not be included in a Partnership Policy or Certificate:

(a) a restoration of benefits;

(b) a second Elimination Period;

(c) any cap on the daily or weekly (as opposed to monthly) home and community–based care benefits.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Section 22005, Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order, including amendment of subsection (c) transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Amendment of section heading and first paragraph filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58064. Information for Establishing Allowable Benefits and Minimum and Maximum Benefits.

The Department of Health Services shall distribute the following to assist in implementing the requirements of this Chapter.

(a) a Long Term Care Issuer's Bulletin to participating Issuers. This Long Term Care Issuer's Bulletin, to be issued in November of each year, will establish the Average Daily Private Pay Rate for Nursing Facilities for the upcoming calendar year and establish the minimum benefits that

may be covered in all Partnership Policies and Certificates issued or delivered in the upcoming calendar year; and,

(b) a list of Long–Term Care Services Countable Toward the Medi–Cal Property Exemption as identified in Section 58003.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Section 22005, Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order, including amendment of subsection (b) transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Amendment of subsection (a) filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

Article 4. Premium Provisions

§ 58065. Basic Premium Provisions.

(a) The initial premiums for Partnership Policies and Certificates issued or delivered shall either:

(1) remain level for the life of the Policy or Certificate; or,

(2) increase annually at the rate of no more than five percent (5%) for each year the Partnership Policy or Certificate is in force, in order to provide inflation protection.

(b) The initial premiums for all Partnership Policies and Certificates, whether such Policies or Certificates were issued or delivered with premiums that remain level for the life of the Policy or Certificate or that increase annually at a rate no more than of five percent (5), shall be:

(1) based on the age of the applicant; and,

(2) based on premium rates for which there is a reasonable expectation that rate increases will not be necessary in the future. The Department of Health Services shall not certify a Policy or Certificate and the Department of Insurance shall not approve the premium rates unless a determination is made, based on a review of the Insurer's rate experience with prior offerings, financial condition, and an actuarial review of the rates and assumptions by the Department of Insurance, that there is a reasonable expectation that no rate increase on the Policy or Certificate will be necessary over the life of the Policy or Certificate.

(c) The actuarial filings and premium schedules for indemnity Policies and Certificates shall be presented in units of ten dollars ($10).

(d) The premium for the original Partnership Policy or Certificate as well as any optional rider(s) in force shall be waived during all periods during which the Policy or Certificate holder is receiving nursing facility or Residential Care Facility benefits under the Policy or Certificate. Issuers may elect to waive premiums when home and community–based care services are received.

(e) Any Issuer offering a guarantee of premium on a long–term care Policy or Certificate must offer the guarantee for a period of no less than ten (10) years.

(f) Nothing in this subdivision shall preclude an Issuer from reducing premiums or using a Policy form or Certificate form in which the premiums are no longer required to be paid after a specified period of time.

(g) Self–funded Issuers not subject to compliance with the California Insurance Code are exempt from the requirements of Subsection (b)(2), above.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Section 22005.1, Welfare and Institutions Code.

HISTORY

1. New article 4 and section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order, including amendment of subsection (g) transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Amendment of subsections (a), (a)(2), (b), (b)(2) and (d) filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).
5. Amendment of subsection (b)(2) and amendment of NOTE filed 5–30–2001 as an emergency; operative 5–30–2001. A Certificate of Compliance must be transmitted to OAL by 9–27–2001 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 2001, No. 22).
6. Certificate of Compliance as to 5–30–2001 order transmitted to OAL 9–24–2001 and filed 10–31–2001 (Register 2001, No. 44).

§ 58066. Provisions Governing Premiums When Benefits Increase or Decrease.

(a) The extra premiums for the optional rider(s) that add a Shortened Benefit Period Non–Forfeiture Benefit described in Section 58059(*l*) and/or that increase the amounts of the covered benefits of the Policy or Certificate as provided in Section 58061(a)(1)(2) and (3) shall be in the same form as the original Policy—either remain level for the life of the Policy or increase annually at no more than five percent (5%). The extra premiums for the optional rider(s) may be based on the attained age of the Policy or Certificate holder at the time the rider is elected. Premiums for the optional riders shall be filed and approved by the Department of Insurance at the time rates are filed initially. For the optional riders allowed in Section 58061(a)(1) and (2), the premiums for each additional $10 unit of a covered benefit shall be the rate that corresponds to the current attained age of the Policy or Certificate holder as such rates were filed initially and approved by the Department of Insurance. For the optional riders allowed in Section 58061(a)(3), the premium for the increase in the lifetime maximum benefit shall be the difference in premiums between the new lifetime maximum benefit elected and the lifetime maximum benefit of the current Policy or Certificate, based on the rates filed initially and approved by the Department of Insurance and the current attained age of the Policy or Certificate holder. The premium for the underlying coverage of the original Policy or Certificate shall not be changed by the addition of one or more riders and shall continue to be based on the age of the Policy or Certificate holder on the date when the original Policy or Certificate was issued or delivered.

(b) When an Issuer replaces a non–Partnership or a Partnership Policy or Certificate it has previously issued with either a new non–Partnership or Partnership Policy or Certificate, the Issuer shall recognize past insured status by granting a premium credit that meets the requirements of Insurance Code 10234.87, and satisfies the following conditions:

(1) a credit equal to or not less than five percent (5%) of the premium for the original policy or certificate for each full year the original policy or certificate was in force shall be given toward all subsequent premium payments for the replacement policy or certificate. However, the cumulative credit allowed need not exceed fifty percent (50%).

(2) no credit need be provided if a claim has been filed under the original policy or certificate. The cumulative credits allowed need not reduce the premium for the replacement policy to less than the premium for the original policy or certificate. No credit need be provided if there is no difference between the premium for the replacement policy or certificate and the premium for the current policy or certificate.

(c) The premium when a Partnership Policy or Certificate holder elects to reduce the coverage of the original Policy or Certificate as provided in Section 58061(c)(1)(2) and (3) will be calculated as follows:

(1) the premium will be based on the reduced amount of coverage elected and the age of the Policy or Certificate holder at issue age; and

(2) the premium reductions from the change in coverage shall be applied toward all future premium payments.

(d) Self–funded Issuers not subject to compliance with the California Insurance Code are exempt from the requirements of Subsection (a), above, that premiums for the optional riders be submitted to and approved by the Department of Insurance.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Section 22005, Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order, including repealer of subsection (a) and subsection relettering, amendment of newly designated subsections (b)(1) and (c)(2), and new subsection (d) transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Amendment filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58067. Provisions Governing Rate Increases.

(a) Participating Issuers in the California Partnership for Long–Term Care shall conduct annual actuarial reviews to determine how well current premiums are covering anticipated expenditures for Partnership Policies and Certificates. The result of these reviews shall be made available to the Department of Insurance in a manner and format prescribed by the Department.

(b) Increases in the premiums for all Policies or Certificates and all optional riders can only be made on a class basis after approval by the Department of Insurance. The Department of Insurance shall not approve any premium increases greater than a cumulative total of forty percent (40%) over any three–year period; the total amount of any approved rate increase must be spread equally over each of the three years. This restriction may be waived by the Commissioner of the Department of Insurance in the event the Issuer demonstrates to the Commissioner's satisfaction that major unforeseen changes in the long–term care environment threaten the solvency of the plan or the company. Examples of such changes include a significant change by the courts in the interpretation of benefit or benefit eligibility language, or major medical breakthroughs which notably change underlying morbidity patterns.

(c) If a premium increase is approved by the Department of Insurance, the Issuer shall include in the premium increase notice to the Policy or Certificate holder, or by separate notice to the Certificate holder, a statement advising them of the options to lower their premiums by reducing coverage as provided in Section 58061(c).

(d) Self–funded Issuers not subject to compliance with the California Insurance Code are exempt from the requirement of Subsection (a), above, that the annual actuarial reviews be submitted to and conducted in a manner prescribed by the Department of Insurance and the requirement of Subsection (b), above, pertaining to the Department of Insurance's approval of all premium increases for Partnership Policies or Certificates and for all optional riders to Partnership Policies or Certificates.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Section 22005, Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order, including amendment of subsection (c) and new subsection (d) transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Amendment of subsections (a) and (d) filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

Article 5. Care Management Provider Agency Standards

§ 58068. Care Management Provider Agency Functions.

(a) The Care Management Provider Agency must be capable of providing a professional assessment of a person's physical, cognitive, social and emotional functional levels in order to identify individual strengths and needs. The individual's current functional capacities, family and other support systems, financial status and living arrangements must be evaluated as well. The Care Management Provider Agency must be able to develop a comprehensive Plan of Care that addresses identified needs in a cost effective manner. When desired by the individual and determined necessary by the Care Management Provider Agency, the Care Management Provider Agency must be able to arrange for the delivery and coordination of services as well as monitor their quality over an extended period.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Sections 22005(a) and 22006, Welfare and Institutions Code.

HISTORY

1. New article 5 and section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).

§ 58069. The Role of the Care Management Supervisor.

(a) A Care Management Supervisor shall have demonstrated expert ability in the Care Management role. This individual shall also:

(1) support and clarify the role of the Care Manager;

(2) be accessible to Care Managers on a scheduled and as needed basis;

(3) provide guidance on decisions requiring judgment, assist with problem situations, and approve Plans of Care and discharge;

(4) demonstrate administrative ability to explain goals, policies, and procedures, and assist staff in adjusting to changes that occur;

(5) encourage the development of professional growth and upgrading of skill through access to training and current literature; and

(6) evaluate the Care Manager's performance based on established criteria. The evaluation shall include: a review of client records, observations of client visits, supervisory conferences, and productivity measures.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Sections 22005(a) and 22006, Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–23–93 order, including amendment of subsections (a) and (a)(6) transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).

§ 58070. Staff Qualifications.

(a) Care Managers shall meet or exceed both of the following qualifications:

(1) be a registered nurse and/or graduate of an accredited four year college or university with a degree in nursing, health, social work, gerontology or other related area; and

(2) have a minimum of two years of experience in the human service field, ideally in community–based care. A master's degree in nursing, health, social work, gerontology or a related field may be substituted for one year of experience.

(b) If the Care Manager has a social service background, the agency will have nursing or clinical health care staff available for consultation; if the Care Manager has a clinical health care background, the agency shall have psycho/social staff available for consultation.

(c) All Care Management Supervisors shall, in addition to meeting Care Manager standards, have at least two years of Care Management experience.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Sections 22005(a) and 22006, Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order, including amendment of subsections (a), (b) and (c) transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).

§ 58071. Staff Ratios.

(a) Care Management staffing ratios shall not exceed the following:

(1) clients to Care Manager: 60:1 (total clients in benefit status); and

(2) Care Managers to Care Management Supervisor: 10:1.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Sections 22005(a) and 22006, Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order, including amendment of subsection (a) transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).

§ 58072. Client Bill of Rights and Responsibilities.

(a) A Care Management Provider Agency shall have a written list of rights and legal responsibilities which shall be presented to each client or his or her representative at the time of assessment or as soon as possible thereafter. The list shall include:

[The next page is 591.]

(1) a description of available services, and unit charges and billing mechanisms (where applicable);

(2) a policy on which services are covered by the insurance benefit and which services need to be paid for out–of–pocket (where applicable);

(3) the criteria for admission to service and discharge from service;

(4) a right to be informed of the name of their Care Manager and of the manner in which that person may be contacted;

(5) a right for active client participation in the development and implementation of the Plan of Care. The client or officially designated representative shall, prior to implementation, receive a copy of the Plan of Care and a written list of all potential service providers to be involved in implementation of the Plan of Care;

(6) a right for the client or officially designated representative to be fully informed of the client's health condition;

(7) a provision for the confidential treatment of all client information retained by the agency and a requirement for written consent to release information to persons not otherwise authorized under law to receive it;

(8) a policy regarding client access to the case record;

(9) an explanation of the appeal procedure and the right to file an appeal of benefit eligibility or Plan of Care service authorization decisions without discrimination or reprisal from the agency;

(10) procedures for registering and resolving complaints; and

(11) a right to a discharge plan when the Care Management Provider Agency services are about to be terminated. If the Policy or Certificate holder is immediately eligible for Medi–Cal, the Care Management Provider Agency will prepare a transition plan. The transition plan and/or discharge plan must be provided to the Policy or Certificate holder within 30 days after receipt of notification from the Issuer that coverage will be exhausted.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Sections 22005(a) and 22006, Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Amendment of subsection (a)(11) filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58073. Quality Assurance.

(a) A Care Management Provider Agency shall have a written quality assurance program which shall include but not be limited to:

(1) Annual program evaluation. The agency's board of directors (or their appointed designees) shall, at least Annually, review policies and make recommendations on:

(A) admission and discharge criteria;

(B) Plans of Care and records;

(C) personnel qualifications;

(D) quality assurance program;

(E) delivery of Care Management services; and

(F) methods for assuring the quality of direct services provided including whether client needs as identified in the Plans of Care were met, assessing client satisfaction and incorporating client suggestions.

The written minutes of this annual program evaluation meeting shall document the dates of the meeting(s), attendance, agenda and recommendations.

(2) Quarterly service record review. At least Quarterly, the agency's board of directors, or a committee appointed by the board, shall, observing all confidentiality protocols, review a random sample of active and closed case records. Each record review shall be documented on a record review form and shall include, but not be limited to, verification that:

(A) agency policies are followed in the provision of services to clients and families;

(B) clients and families actively participate in the care planning process, including the decision regarding how much coordination and monitoring is necessary and desirable;

(C) client, family and other community resources are integrated into the Plan of Care;

(D) Care Management services are effective in maintaining an appropriate environment for the client;

(E) the provision of services is coordinated with those provided by other agencies to avoid duplication of services, and to integrate acute care with chronic care;

(F) action is initiated by the Care Management Provider Agency when unmet client service needs are identified. Pattern of unmet needs should be documented and reported to the Department of Health Services;

(G) the agency's sampling methodology shall be defined in its quality assurance program policies and procedures. The sample of client records reviewed each Quarter shall be according to the following ratios:

1. eighty (80) or less cases; eight (8) records; and

2. eighty–one (81) or more cases; ten percent (10%) of caseload for the Quarter to a maximum of twenty–five (25) records.

(3) Annual documentation of clinical competence. At least Annually, a written evaluation report shall be prepared on the clinical competence of each Care Manager by the employee's professional supervisor. Each Care Manager shall review and sign his/her evaluation report, a copy of which shall remain in the employee's personnel folder. The evaluation report shall include but not be limited to:

(A) coordination, assessment and monitoring skills (including clinical counseling, ability to elicit client input and act upon client feedback, problem solving, and ability to build rapport with clients, families and other providers);

(B) recording in client case records; and

(C) participation in the agency's in–service educational programs.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Sections 22005(a) and 22006, Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order, including amendment of subsection (a)(1)(F) transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).

§ 58074. Annual Report of the Agency's Quality Assurance Program.

(a) An Annual written report of the agency's quality assurance program shall be prepared and submitted to the governing authority. The report shall summarize all findings and recommendations resulting from the quality assurance activities. This report and documentation of all actions on the findings or recommendations shall be available to the contracting Issuer(s) and the Department of Health Services (DHS).

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Sections 22005(a) and 22006, Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).

§ 58075. Objectivity and Impartiality.

(a) To insure objectivity, the Care Management Provider Agencies which also provide other services included in an insured's Plan of Care will be required to document that clients were made aware of a full array of services, and the costs and availability of other providers of these services.

(b) Individuals who provide direct care as described in Section 58059(e) cannot also act as Care Managers for assessment and care planning.

(c) Direct service providers and Care Managers should not report to the same clinical supervisor.

(d) Employees of the Issuer cannot also act as Care Managers for assessment and care planning.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Sections 22005(a) and 22006, Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).

§ 58076. Policy Manual.

(a) Prior to the Care Management Provider Agency being approved by the State, and with an Annual update thereafter, the Care Management Provider Agency must file the following with the Department of Health Services and with each Issuer with whom they contract:

(1) an organizational chart; and

(2) a policy manual that includes the following:

(A) job descriptions;

(B) Care Manager training requirements;

(C) Care Manager availability and turn–around time for conducting assessments and developing Plans of Care;

(D) personal policies;

(E) the appeals procedure;

(F) the client bill of rights and responsibilities as described in Section 58072;

(G) the agency's quality assurance program (including the Annual program evaluation, the Quarterly service record review and verification that the Annual documentation of clinical competence has been completed);

(H) data collection procedures (including confidentiality safeguards);

(I) records retention procedures; and

(J) documentation of efforts to provide culturally sensitive services.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Sections 22005(a) and 22006, Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order, including amendment of subsection (a), transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).

Article 6. Issuer Reporting Requirements and Audit Information

§ 58077. Issuer Reporting Requirements.

Unless otherwise noted, the requirements of this Section refer to Issuer documentation and reporting requirements for Partnership Policies and Certificates. Reports are due thirty (30) days after the close of reporting periods specified for the respective reports. Issuers shall submit the following reports, which are all part of the Long–Term Care Insurance Uniform Data Set.

(a) Report on new purchasers. Each Issuer shall maintain a registry of new purchasers and submit on a Quarterly basis aligned with the State Fiscal Year, a report to the Department of Health Services that will include the following information on all individuals who purchased a Partnership Policy or Certificate during the reporting period:

(1) name, address, telephone number, date of birth, sex, marital status, and Social Security number;

(2) Policy or Certificate identification information, including the following:

(A) Policy or Certificate form number;

(B) Policy or Certificate category (individual, organization–sponsored, or group);

(C) effective date of coverage;

(D) Policy type (Nursing Facility and Residential Care Facility Only; Comprehensive Benefit; Single Life; or Multi–Life);

(3) Policy or Certificate Elimination Period in days;

(4) the maximum daily benefit for nursing facility care and monthly benefit for home and community–based care;

(5) maximum lifetime benefit amount in dollars;

(6) any options and riders in force;

(7) purchase type (upgrade from non–Partnership policy or certificate of reporting company, conversion, replacement of another company's policy or certificate, or new issue);

(8) for expense–incurred Policies or Certificates, the percentage of expenses payable;

(9) the annual premium for the Policy or Certificate, the premium payment mode (also known as the "premium frequency"), and the type of premium (level, indexed, or lump sum); and

(10) the name and address of the Authorized Designee to be notified in the event that the Policy is in danger of lapsing due to unpaid premium.

(b) Report on persons who changed or dropped their Policies or Certificates. For the purposes of this Chapter, a Policy change shall include the following: upgrades, reduced coverage option, reinstatement, inflation upgrade, changes to benefits, riders, premium series rerate, Policy category changes, inflation catch–up, Social Security number change, conversion to single/multi–life, non–forfeiture or partnership status lost. Each Issuer shall submit on a Quarterly basis aligned with the State Fiscal Year and in a format specified by the State of California, a report to the Department of Health Services that will include the following information on all individuals who have changed or dropped Partnership Policies or Certificates during the reporting period:

(1) name, address, telephone number, and Social Security number;

(2) effective date of original Policy which is reported in Section 58077(a)(2)(C);

(3) effective date of the Policy or Certificate change or drop;

(4) if applicable, a description of the new Policy or Certificate or amended Policy or Certificate as described in Section 58051(h);

(5) if applicable, the reason the Policy or Certificate was dropped, including any of the following:

(A) death of insured;

(B) converted Policy or Certificate;

(C) benefits exhausted;

(D) recision;

(E) voluntarily;

(F) certified status of the Policy or Certificate lost;

(G) other; and

(H) unknown.

(c) Report on persons who were assessed for long–term care benefit eligibility. Each Issuer shall submit on a Quarterly basis aligned with the State Fiscal Year and in a format specified by the State of California, a report to the Department of Health Services that will include the following information on all individuals who were assessed for long–term care benefit eligibility during the reporting period:

(1) name, address, telephone number, Social Security number, sex, marital status, and living arrangements (alone, with spouse, or with other relatives);

(2) Medicare status (Part A, Part A and B, or none);

(3) other insurance status (Medicare supplement, prepaid health care, or none);

(4) date the assessment was conducted;

(5) benefit contact;

(6) name, address, and telephone number of the person or company that performed the assessment and whether the claimant was found eligible for long–term care services and for Medi–Cal Property Exemption;

(7) eligibility decision date;

(8) effective date of disability; and

(9) a listing of the Benefit Eligibility criteria met for all persons assessed, including deficiencies in Activities of Daily Living, and Severe Cognitive Impairment.

(d) Report on service payments and utilization.

Each Issuer shall submit on a Quarterly basis aligned with the State Fiscal Year and in a format specified by the State of California, a report (in the event the payment is for a service received during a prior reporting period, a separate record shall be generated for each quarter during which a service was received) to the Department of Health Services that will include the following information on the services or benefits paid each month during the reporting period for each insured person:

(1) name and Social Security number of the beneficiary;

(2) Policy or Certificate identification information, including the following:

(A) the Policy or Certificate form number;

(B) the original effective date of coverage;

(3) service code;

(4) number of units of service delivered during the reporting period;

(5) the last month of the quarter in which the reported services were delivered;

(6) the dollar amount of services or benefits paid by the Policy or Certificate and the amount paid that counts toward the Medi-Cal Property Exemption (Asset Protection);

(7) the number of units of service paid by the Policy or Certificate during the reporting period;

(8) the total number of days of service paid for by the Policy or Certificate during the reporting period for services received.

(9) remaining benefit (in dollars) that indicates the total remaining benefit at the end of the reporting period;

(10) remaining nursing home benefit (in days);

(11) remaining home care benefit (in days).

(e) Report on applications received, denied and total Policies in force at end of the reporting period.

Each Issuer shall report on a quarterly basis and in a format specified by the State of California, a single entry summary count of:

(1) the total number of applications received at the Insurer's office during the reporting period.

(2) the total number of applications denied during the reporting period.

(3) the total number of Policies in force at the end of the reporting period.

(f) Issuers will respond to all errors within 30 days of receipt of notification from the Department of a file and/or data error.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Sections 22005, 22011(c), (d) and (e), Welfare and Institutions Code.

HISTORY

1. New article 6 and section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order, including amendment of subsection (a), transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Amendment filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58078. Records Maintenance.

(a) Each Issuer shall maintain information as stipulated in subsection (f) on all Policy or Certificate holders who have ever received any benefit under the Policy or Certificate. Such information shall be updated at least Quarterly. This requirement for updating shall not require the conduct of any assessment, reassessment, or other evaluation of the Policy or Certificate holder's condition which is not otherwise required by federal or State statute or regulation.

(b) When a Policy or Certificate holder who has received any benefit dies or lapses or his or her Policy or Certificate for any reason, the Issuer must retain the stipulated information for a period of at least five (5) years after the time when the Policy ceases to be in force. Unless notified by the Department of Health Services to the contrary during this period, after the five (5) years, the Service Summary provided by the Issuer will be deemed to comply with all Medi-Cal Property Exemption reporting, record keeping, auditing and quality control requirements of this rule. The Issuer may use microfiche, microfilm, optical storage media, or any other cost effective method of record storage as alternatives to storage of paper copies of stipulated information.

(c) At the time the Policy or Certificate ceases to be in force, the Issuer shall notify the Policy or Certificate holder of his or her right to request his or her service records as stipulated in subsection (f).

(d) The Issuer shall also, upon request in writing, provide such Policy or Certificate holder or the Policy or Certificate holder's Authorized Designee, if any, with a copy of the Issuer's service records as required in subsection (f) which are necessary to establish the Medi-Cal Property Exemption. These records shall be provided to the Policy or Certificate holder or the Policy or Certificate holder's Authorized Designee, if requested, within sixty (60) days of the request. The Issuer may charge a reasonable fee to cover the costs of providing each set of requested service record copies.

(e) The Issuer shall enclose with the records a statement advising the former Policy or Certificate holder that it is in his or her interest to retain the records if he or she may ever wish to establish eligibility for the Medi-Cal Program.

(f) The information to be maintained includes the following:

(1) evidence that the Benefit Eligibility has taken place;

(A) Benefit Eligibility must be documented by a Care Management Provider Agency, or its Qualified Official Designee, as part of the initial assessment of the client or as part of a subsequent reassessment.

(B) These assessments must be based on direct observations and interviews in conjunction with a medical record review. The Care Manager carrying out the assessment or their Care Management Supervisor must sign and certify the completion of the assessment. Each individual who completes a portion of such assessment shall sign and certify as to the accuracy of that portion of the assessment.

(2) description of services provided under the Policy or Certificate, including the following:

(A) name, address, phone number, and license number, if applicable, of provider;

(B) amount, date, and type of services provided, and whether the services qualify for Medi-Cal Property Exemption;

(C) dollar amounts paid by the Issuer, whether on an indemnity, expense incurred, or other basis;

(D) the charges of the service providers, including copies of invoices for all services counting towards Medi-Cal Property Exemption; and

(E) identification of the Care Management Provider Agency and copies of all assessments and reassessments.

(3) In order for services to qualify for a Medi-Cal Property Exemption, these services must be in accord with a Plan of Care developed by a Care Management Provider Agency. If the Policy or Certificate holder has received any benefits delivered as part of a Plan of Care, the Issuer must retain the following:

(A) a copy of the original Plan of Care; and

(B) a copy of any changes made in the Plan of Care. Such services shall count towards the Medi-Cal Property Exemption after the Care Management Provider Agency adds the documented need for and description of the new services to the Plan of Care. In cases when the service must begin before the revisions to the Plan of Care are made, the new services will only count towards a Medi-Cal Property Exemption if the revisions to the Plan of Care are made within ten (10) business days of the commencement of the new services. Care Management Provider Agencies must act upon requests for changes in the Plan of Care in an expeditious manner.

Issuers must maintain initial assessments and subsequent reassessments as part of Benefit Eligibility documentation.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Sections 22004, 22005 and 22006, Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Amendment of subsections (f)(1), (f)(1)(A) and (f)(3)(B) filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58079. Reporting to the Policy or Certificate Holder on the Medi–Cal Property Exemption.

(a) Each Issuer shall send a Medi–Cal Property Exemption Report (rev. 12/93) at least Quarterly to each Policy or Certificate holder for whom any benefit payments were made since the last Medi–Cal Property Exemption report. Each Medi–Cal Property Exemption report shall include the dollar amounts of benefits paid by the Policy or Certificate for the Policy or Certificate holder in the following order and for the periods specified:

(1) the cumulative amount of benefits paid prior to the current reporting period that counted towards the Medi–Cal Property Exemption;

(2) the amount paid during the current reporting period regardless of qualification for the Medi–Cal Property Exemption;

(3) the amount paid during the current reporting period that counts towards the Medi–Cal Property Exemption; and

(4) the total cumulative amount paid to date that counts towards the Medi–Cal Property Exemption (i.e., the amounts reported in (1)+(3)). This amount should be clearly indicated with a label "Medi–Cal Property Exemption To Date".

(5) the remaining benefit amount.

(b) The Medi–Cal Property Exemption report shall also include the following statement in bold type:

"This report provides you with a total amount of insurance payments, to date, which count towards the Medi–Cal Property Exemption for purposes of being eligible for the State of California's Medicaid (Medi–Cal) program. Please examine this report and carefully compare your current asset total with the amount indicated in this report with the label "Medi–Cal Property Exemption To Date." If your Property Exemption level is close to the amount of the assets you currently have, you may be eligible for the Medi–Cal program. It is your responsibility to make application to the County (usually the Department of Social Services); at the time of your application, a determination will be made whether and when you are eligible. (*Please note: contact the appropriate County department regarding other exemptions of assets in addition to the Property level listed above.*)"

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Sections 22004, 22005, and 22006, Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order, including amendment of subsection (a), transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. New subsection (a)(5) filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58080. Preparing a Service Summary.

(a) Each Issuer shall prepare a Service Summary at the client's request specifically for the Policy or Certificate holder applying for Medi–Cal. The Issuer shall also prepare a Service Summary and sent it to the Policy or Certificate holder and the Department of Health Services when the Policy or Certificate holder has exhausted his or her benefits under the Policy or Certificate or when the Policy or Certificate ceases to be in force for a reason other than the death of the Policy or Certificate holder, whichever occurs first. This Service Summary will be in a standardized form and format prescribed by the Department of Health Services.

This Service Summary is prepared in addition to the information requirements described in Section 58078.

(b) Each Issuer shall notify the policy or certificate holder and the Care Manager Provider Agency one hundred twenty (120) days prior to the date when coverage for each Policy or Certificate is about to be exhausted. A copy of the Issuer's notification shall be forwarded to the Department of Health Services at the same time it is forwarded to the Care Manager Provider Agency.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Sections 22004, 22005(f), and 22006, Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. New subsection (b) filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order, including further amendment of subsection (b), transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

§ 58081. Plan of Action for Information and Document Maintenance.

(a) Each Issuer shall, prior to certification by the Department of Health Services, submit to the Department a plan for complying with the information maintenance and documentation requirements set forth in Article 6 of this Chapter. No Policy or Certificate shall be certified until the Department of Health Services has approved the Issuer's documentation plan for the Policy or Certificate. The documentation plan will include the following:

(1) the location where records will be kept. Records required for purposes of the California Partnership for Long–Term Care must be available at no more than three (3) locations, each of which shall be easily accessible to the California Partnership for Long–Term Care;

(2) the Issuer shall agree to give the Department of Health Services, or its appointed designee, access to all information described in Section 58078 of this Chapter on an aggregate basis and on an individual basis for all Policy or Certificate holders. Access to information on persons who have not applied for Medi–Cal is required in order for the Department of Health Services, or its appointed designee, to determine if an Issuer's system for documenting the Medi–Cal Property Exemption is functioning correctly. The Department of Health Services shall determine the frequency of access to the data and the size of samples for auditing purposes.

(3) the name, job title, address, and telephone number of the person primarily responsible for the maintenance of the information required and for acting as liaison with the Department of Health Services concerning the information;

(4) methods for determining when insurance benefits or prepaid benefits qualify for the Medi–Cal Property Exemption, including the following:

(A) documentation of the Insured Event;

(B) description of services;

(C) documentation of charges and benefits paid; and

(D) documentation of Plans of Care;

(5) description of electronic and manual systems which will be used in maintaining the required information;

(6) information that will be retained which is needed to comply with this rule; and

(7) copies of forms and descriptions of standard procedures for maintaining and reporting the information required, including the specific electronic medium which will be used to report required information and a description of the relevant files.

(b) After the Department of Health Services has approved a plan of action, the Department of Health Services shall advise the Department of Insurance and the Issuer in writing within five days.

(c) If the Department of Health Services disapproves a plan of action, the Department of Health Services shall within five (5) days advise the Issuer of the shortcomings in the plan of action and shall instruct the Issuer of the methods necessary to resolve them.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Sections 22004, 22005, and 22006, Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).

§ 58082. Auditing and Correcting Deficiencies in Issuer Record Keeping.

(a) Within one (1) year of the first date that any Policy or Certificate holder of a particular Issuer's Policy or Certificate has met the criteria for Benefit Eligibility, and as often as the Department of Health Services deems necessary thereafter, the Department of Health Services, or its appointed designee, shall conduct a systems audit of that company's records. The Issuer shall be responsible for advising the Department of Health Services when this one (1) year period has begun. The Department of Health Services, or its appointed designee, shall inform each Issuer of inaccuracies and other potential problems discovered in its systems audits, and the Issuer shall correct any problems in its methods of operation.

(b) The Department of Health Services shall periodically reconcile a sample of individual applications for Medi–Cal of persons who have submitted documentation for qualification for the Medi–Cal Property Exemption with the reports submitted by Issuers. The Department shall have the final decision concerning sample sizes and other auditing methods. The Department of Health Services shall promptly advise Issuers of any problems discovered, and the Issuer shall correct any problems in its method of operation. The Department of Health Services shall also notify the Issuer of any obligations described in this Chapter to hold clients harmless.

(c) The Department of Health Servicers may enter into voluntary arrangements with Issuers of Partnership Long–Term Care Insurance Policies and Certificates under which the Department of Heath Services would issue binding determinations as to whether or not services qualify for a Medi–Cal Property Exemption. Requests for information and advice from Policy or Certificate holders shall be directed through their Issuer or Care Management Provider Agency. When the procedures in this section are followed, the written determinations of the Department of Health Services concerning whether services qualify for a Medi–Cal Property Exemption shall be binding upon the Department of Health Services in all subsequent actions, and the Department of Health Services shall not make any assertion contradicting these determinations in any action arising in this subsection:

(1) All requests for determinations as to whether or not services qualify for a Medi–Cal Property Exemption shall be submitted to the California Partnership for Long–Term Care in writing. These requests may include, but are not limited to, requests for determinations in the following areas:

(A) whether Benefit Eligibility has occurred and has been adequately documented;

(B) whether a revision of a Plan of Care is required;

(C) whether a service or services are in accord with the Plan of Care;

(D) whether a service is of such a nature as to qualify for a Medi–Cal Property Exemption; and

(E) whether the applicable amount is the amount paid by the Issuer or the amount charged for the service.

(2) The California Partnership for Long–Term Care may require Issuers and Care Management Provider Agencies submitting requests for determination to provide all records and other information necessary for making a determination. The records and other information shall include, but are not limited to, the following:

(A) assessments;

(B) Plans of Care;

(C) invoices for services rendered;

The Issuer providing the records and other information shall be responsible for their accuracy. If any records or other information are later determined to be materially inaccurate, the determination based on the inaccurate information shall be void and not be binding on the Department of Health Services, or any other person or entity in subsequent actions. In the case of a Policy or Certificate holder for whom a determination has been invalidated because information provided was determined to be inaccurate, the provisions of subsections (e) and (f) will apply in the same manner as for any other Policy or Certificate holder.

(3) The California Partnership on Long–Term Care shall render its determination on each request in writing within thirty (30) days of receiving the request. Each determination of the California Partnership for Long–Term Care shall state the reason(s) for it's determination, including the following:

(A) relevant facts;

(B) documentation of facts;

(C) statutes;

(D) regulations; and

(E) policies;

(4) A copy of all determinations of the California Partnership for Long–Term Care shall be kept on file at the Department of Health Services, together with the related records and information. The original of the determination shall be sent to the Issuer or the Care Management Provider Agency who originally requested it. The receipt of the original determination shall be responsible for notifying the Policy or Certificate holder or the Policy or Certificate holder's authorized agent.

(d) When an audit or other review by the Department of Health Services, or its appointed designee, reveals deficiencies in the record keeping procedures of an Issuer, the Department of Health Services will notify the Issuer of the deficiencies and establish a reasonable deadline for correction.

(e) If an Issuer prepares a Service Summary which is used in a Medi–Cal application for a Policy or Certificate holder and the client is found eligible for Medi–Cal, and the Policy or Certificate holder after receiving Medi–Cal services is found to be ineligible for Medi–Cal solely by reason of errors in the Issuer's Service Summary or documentation of services, the Department of Health Services may require the Issuer to pay for services counting towards the Medi–Cal Property Exemption required by the Policy or Certificate holder until the Issuer has paid an amount equal to the amount of the Issuer's errors; after which the Policy or Certificate holder, if otherwise eligible, could qualify for Medi–Cal coverage.

(f) If the Department of Health Services determines that an Issuer's record pertaining to a Policy or Certificate holder who has received Medi–Cal benefits are in such condition that the Department of Health Services cannot determine whether the Policy or Certificate holder qualifies for a Medi–Cal Property Exemption, the Department of Health Services may require the Issuer to pay for services counting towards the Medi–Cal Property Exemption required by the Policy or Certificate holder until the Issuer has paid an amount equal to the amount of the services which could not be determined; after which, the Policy or Certificate holder, if otherwise eligible, could qualify for Medi–Cal coverage.

(g) Compliance with subsections (e) and (f) is a requirement for a Policy or Certificate to retain certification.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Sections 22004, 22005, and 22006, Welfare and Institutions Code.

HISTORY

1. New section filed 8–30–93 as an emergency; operative 8–30–93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8–30–93 order, including amendment of subsection (a), transmitted to OAL 12–30–93 and filed 1–28–94 (Register 94, No. 4).
3. Amendment of subsections (a), (c) and (c)(1)(A) filed 10–1–98 as an emergency; operative 10–1–98. Submitted to OAL for printing only pursuant to Welfare and Institutions Code section 22009(d) (Register 98, No. 41). A Certificate of Compliance must be transmitted to OAL by 1–29–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–1–98 order transmitted to OAL 1–28–99 and filed 3–15–99 (Register 99, No. 12).

Chapter 11. Drug Formulary and Medical Supplies Listing

Article 1. Medical Supplies and Medi–Cal Drug Formulary

§ 59998. Medical Supplies.

(a) Medical supplies covered under section 51320 and payable under section 51520 shall be subject to the following requirements.

(1) Code I items, marked with a single asterisk (*), shall:

(A) Require prior authorization in accordance with section 51003 unless used under the conditions individually specified.

(B) Be subject to the prescription documentation requirements of section 51476(c).

(2) Items listed in subsection (b) shall be subject to quantity and patient age limitations.

(3) Items not listed in subsection (b) shall require prior authorization in accordance with section 51003. Authorization may be granted if:

(A) The clinical condition of the patient requires the use of an unlisted item and listed items have been adequately considered or tried and are not effective.

(B) The use of an unlisted item results in a less expensive treatment than would otherwise occur.

(4) Medical supplies provided to inpatients receiving nursing facility level B services or nursing facility level A services shall be reimbursed only if the item is:

(A) Marked with a double asterisk (**). An exception to this requirement is incontinence medical supplies provided to residents of Intermediate Care Services for the Developmentally Disabled/Habilitative facilities or Intermediate Care Services for the Developmentally Disabled–Nursing facilities pursuant to Sections 51510.2 and 51510.3, Title 22, California Code of Regulations.

(B) Required for exclusive use by a specific patient.

(5) Medical supplies provided to inpatients receiving hospital acute care services are included in reimbursements made under section 51536 and are not separately payable.

(6) Medical supplies for chronic outpatient hemodialysis provided in renal dialysis centers, community hemodialysis units or for home dialysis are covered, but are payable only when included in the all inclusive facility rate set forth in section 51509.2.

(7) The following items, and supplies not primarily medical in nature, are not covered by the program.

(A) Common household items.

(B) Articles of clothing.

(C) Toothbrushes, toothpaste and denture cleaners.

(D) Shaving soap and lotions.

(E) Cigarettes, cigars, pipes and tobacco.

(F) Cosmetics.

(G) Hair combs and brushes.

(H) Tissue wipes.

(I) Cotton, adhesive tapes and elastic bandages.

(b) The following items may be provided without prior authorization if requirements of subsection (a) and requirements specified for individual items are met.

ALCOHOL, ISOPROPYL
  Solution, 91% or 99
ASPIRATOR, NASAL — SEE SYRINGE, BULB
BANDAGES, NONMEDICATED OR MEDICATED
  Dressing Type
  Gauze Type
  Pad Type
*Sanitary Napkin/Tampon Type
*Restricted to use in postpartum bleeding/drainage, hemorrhoid bleeding and wound bleeding/drainage.
Sponge Type
BREAST PUMP, BULB TYPE
CATHETERS, URINARY — SEE URINARY DRAINAGE AND IRRIGATION SUPPLIES
CLYSIS — SEE HYPODERMOCLYSIS ADMINISTRATION SET
COLOSTOMY SUPPLIES — SEE OSTOMY SUPPLIES
**CONDOMS
**CONTRACEPTIVE CREAM, FOAM, JELLY, OR SUPPOSITORY
COVER PADS OR SPONGES — SEE BANDAGES
**DIABETIC TESTS
  Reagent Strips or Tape
  Reagent Tablets or Tablet Set
DIAPERS, DISPOSABLE — SEE INCONTINENCE MEDICAL SUPPLIES
**DIAPHRAGM
  Diaphragm
  Kit
DRESSINGS — SEE BANDAGES
EAR SYRINGE — SEE SYRINGE, BULB
EYE PADS — SEE BANDAGES
FEEDING TUBE
FISTULA SUPPLIES — SEE OSTOMY SUPPLIES
FOUNTAIN SYRINGE (Limit of one per patient)
GAUZE BANDAGE — SEE BANDAGES
*GLOVES, DISPOSABLE
  Nonsterile (Limit of 100 per prescription)
    *Restricted to use in paraplegia or quadriplegia bowel procedures, and the cleaning of body fluids and wastes for patients with Acquired Immune Deficiency Syndrome.
  HOT WATER BOTTLE (Limit of one per patient)
  HEPARIN LOCK CAPS
  HYPODERMIC NEEDLES — SEE NEEDLES, HYPODERMIC
  HYPODERMIC SYRINGES — SEE SYRINGE, HYPODERMIC
  **HYPODERMOCLYSIS ADMINISTRATION SET
  ILEOSTOMY SUPPLIES — SEE OSTOMYSUPPLIES
  *INCONTINENCE MEDICAL SUPPLIES (Limited to patients of age 5 or greater)
    Diapers, Disposable
    Pants (Limit of 2 per prescription)
    Pant Liners, Disposable
    Underpads, Disposable
      *Restricted to use in chronic pathologic conditions causally related to the patient's incontinence, and the cost to the program does not exceed $165.00 per month.
  **INTRAVENOUS SOLUTIONS ADMINISTRATION SET
  INVALID CUSHION
  **KARAYA GUM POWDER
  LEVINE TUBE — SEE FEEDING TUBE
  LUBRICATING JELLY, STERILE
  NEBULIZER, BULB TYPE
  NEEDLES, HYPODERMIC
    Disposable
    Reusable
  OSTOMY SUPPLIES
  PADS, STERILE — SEE BANDAGES
  SANITARY NAPKINS/TAMPONS
  SEE BANDAGES
  SHEETING, WATERPROOF
  SPONGES, STERILE — SEE BANDAGES
  SUSPENSORY
  *SWABSTICKS, SATURATED (3 swab sealed package only)
    Povidone–Iodine Scrub
    70% Isopropyl alcohol
      *Restricted to use for cleansing the skin at central or peripheral catheter exit site during dressing changes and for intravenous starts.
  SYRINGE, BULB TYPES
  SYRINGE, HYPODERMIC
    Disposable
    Reusable

SYRINGE WITH NEEDLE	
Disposable	
THERMOMETER	
TRACHEOSTOMY SUPPLIES	SEE OSTOMY SUPPLIES
URINARY DRAINAGE/IRRIGATION SUPPLIES	
UROSTOMY SUPPLIES	SEE OSTOMY SUPPLIES AND URINARY DRAINAGE/ IRRIGATION SUPPLIES
VAPORIZER	

*Code I. See section 59998(a)(1) regarding prior authorization and section 51476(c) regarding prescription documentation requirements.

**See section 59998(a)(4) regarding coverage for inpatients receiving skilled nursing facility services or intermediate care facility services.

NOTE: Authority cited: Sections 14105, 14124.5 and 14125.4, Welfare and Institutions Code; and Section 57(c), Chapter 328, Statutes of 1982, Section 36, Chapter 456, Statutes of 1990. Reference: Sections 14053, 14053.6, 14105, 14107, 14124.1, 14124.5, 14125.4, 14132 and 14133, Welfare and Institutions Code; Section 53, Chapter 328, Statutes of 1982 and Section 33, Chapter 456, Statutes of 1990.

HISTORY

1. Renumbering of chapter 5 (sections 59998–59999) to chapter 11 (sections 59998–59999) filed 6–28–78 as an emergency; designated effective 7–1–78 (Register 78, No. 26). For prior history, see Register 77, No. 22.
2. Certificate of Substantial Compliance filed 1–29–79 (Register 79, No. 5).
3. Repealer and new section filed 4–24–81; designated effective 7–1–81 (Register 81, No. 17).
4. Editorial correction of subsection (b) (Register 82, No. 35).
5. Amendment of subsections (a)(7) and (b) and new subsection (c) filed 9–1–82 as an emergency; effective upon filing (Register 82, No. 37). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12–30–82.
6. Certificate of Compliance transmitted to OAL 12–28–82 and filed 1–21–83 (Register 83, No. 4).
7. Editorial correction of HISTORY NOTE No. 5 (Register 83, No. 7).
8. Certificate of Compliance as to subsections (a)(7) and (b) transmitted to OAL 12–28–82 and filed 2–7–83 (Register 83, No. 7).
9. Amendment of subsection (b) and repealer of subsection (c) filed 3–1–84; effective thirtieth day thereafter (Register 84, No. 9).
10. Amendment of subsection (b) filed 10–25–89; operative 12–1–89 pursuant to Government Code section 11346.2(c) (Register 89, No. 44).
11. Amendment of subsection (b) filed 10–27–89; operative 12–1–89 (Register 89, No. 44).
12. Amendment filed 10–30–89; operative 12–1–89 (Register 89, No. 44).
13. Amendment of subsection (b) and Note filed 3–22–91; operative 4–21–91 (Register 91, No. 15).
14. Amendment of subsection (b) filed 5–24–91 as an emergency; operative 5–24–91 (Register 91, No. 26). A Certificate of Compliance must be transmitted to OAL by 9–23–91 or emergency language will be repealed by operation of law on the following day.
15. Amendment of subsections (a)(2) and (a)(3) filed 1–9–95; operative 3–1–95 (Register 95, No. 2).
16. Amendment of subsections (a)(4) – (a)(4)(A), (b) and NOTE filed 12–21–95; operative 1–20–96 (Register 95, No. 51).

§ 59999. Medi–Cal Drug Formulary.

NOTE: Authority cited: Sections 14105, 14105.42, 14105.91 and 14124.5, Welfare and Institutions Code; and Section 208, Health and Safety Code. Reference: Sections 14053, 14105, 14105.43, 14105.91 and 14132, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (b), page 58, filed 1–21–88; operative 3–1–88 (Register 88, No. 5). For prior history, see Register 87, No. 47.
2. Amendment of subsection (b), page 61, filed 1–21–88; operative 3–1–88 (Register 88, No. 5).
3. Amendment of subsections (b) and (e) filed 1–21–88; operative 3–1–88 (Register 88, No. 5).
4. Amendment of subsection (b) filed 3–7–88; operative 5–1–88 (Register 88, No. 12).
5. Amendment of subsections (b) and (e) filed 3–9–88; operative 5–1–88 (Register 88, No. 12).
6. Amendment of subsections (c) and (e) filed 3–10–88; operative 5–1–88 (Register 88, No. 12).
7. Amendment of subsections (b) and (e) filed 3–23–88; operative 5–1–88 (Register 88, No. 14).
8. Amendment of subsection (b) filed 4–6–88; operative 4–6–88 (Register 88, No. 17).
9. Amendment of subsections (b) and (e) filed 7–13–88; operative 9–15–88 (Register 88, No. 29).
10. Amendment of subsection (b) filed 8–9–88; operative 8–9–88 (Register 88, No. 33).
11. Amendment of subsections (b) and (e) filed 8–26–88; operative 9–25–88 (Register 88, No. 36).
12. Amendment of subsections (b) and (e) filed 8–29–88; operative 10–1–88 (Register 88, No. 39).
13. Amendment of subsection (b) filed 9–22–88; operative 10–22–88 (Register 88, No. 42).
14. Editorial correction of printing error (Register 88, No. 45).
15. Amendment of subsection (b) filed 11–2–88; operative 12–2–88 (Register 88, No. 45).
16. Amendment of subsections (b) and (e) filed 11–21–88; operative 12–2–88 (Register 88, No. 45).
17. Amendment of subsection (b) filed 12–19–88 pursuant to Welfare and Institutions Code section 14105.91; operative 12–19–88 (Register 88, No. 52).
18. Amendment of subsections (b) and (e) filed 1–17–89; operative 3–1–89 (Register 89, No. 4).
19. Editorial correction of Erythromycin printing error (Register 89, No. 11).
20. Amendment of subsections (b), (c) and (e) filed 4–26–89 pursuant to Welfare and Institutions Code section 14105.91; operative 4–26–89 (Register 89, No. 17).
21. Amendment of subsections (b) and (e) adding Lisinopril filed 5–15–89; operative 6–14–89 (Register 89, No. 21).
22. Amendment of subsections (b) and (e) filed 5–18–89 (Register 89, No. 21). Pentamidine was approved by the United States Food and Drug Administration (Department of Health and Human Services Medicaid Regional Memorandum No. 89–9) and pursuant to Welfare and Institutions Code section 14105.43 is deemed to be approved for addition to the Medi–Cal drug formulary only for the purpose of treating AIDS or an AIDS–related condition for the period prior to the completion of the procedures established pursuant to Welfare and Institutions Code section 14105.4.
23. Amendment of subsections (b) and (e) adding Ciprofloxacin filed 5–24–89; operative 6–23–89 (Register 89, No. 24).
24. Amendment of subsection (b) adding Topical Oil 120cc to Fluocinolone 0.01% filed 8–25–89; operative 8–25–89 (Register 89, No. 36).
25. Amendment of subsections (a), (c) and (e) filed 9–5–89; operative 10–1–89 (Register 89, No. 36).
26. Amendment of subsection (b) filed 9–20–89; operative 9–20–89 (Register 89, No. 40). Pentamidine, approved by the U.S. Food and Drug Administration, and pursuant to Welfare and Institutions Code section 14105.43 is deemed to be approved for addition to the Medi–Cal drug formulary only for the purpose of treating AIDS or an AIDS–related condition for the period prior to the completion of the procedures established pursuant to Welfare and Institutions Code section 14105.4.
27. Amendment of subsection (b) adding injection dosage form of Sodium Chloride filed 10–19–89; operative 12–1–89 (Register 89, No. 44).
28. Amendment of subsections (b) and (e) adding Heparin Lock Flush Solution filed 10–30–89; operative 12–1–89 (Register 89, No. 44).
29. Editorial correction of spelling errors (Glucocorticoids and Trisalicylate) (Register 89, No. 44).
30. Amendment of subsection (b) adding Ganciclovir Sodium filed 10–31–89 pursuant to Welfare and Institutions Code section 14105.43; operative 10–31–89 (Register 89, No. 48).
31. Amendment of subsections (b) and (e) deleting Isotretinoin filed 12–6–89; operative 2–15–90 (Register 89, No. 52).
32. Amendment of subsections (b) and (e) adding Pyrazinamide filed 2–22–90; operative 3–24–90 (Register 90, No. 9).
33. Amendment of subsections (b) and (e) adding Calcitroil filed 3–1–90; operative 3–31–90 (Register 90, No. 9).
34. Amendment of subsection (b) filed 3–2–90, operative 2–15–90 (Register 90, No. 19). Zidovudine, approved by the U.S. Food and Drug Administration, and pursuant to Welfare and Institutions Code sections 14105.43 and 14105.91 is deemed approved for addition to the Medical drug formulary only for the purpose of treating AIDS or an AIDS–related condition for the period prior to the completion of the procedures established pursuant to Welfare and Institutions Code section 14105.4.
35. Amendment of subsection (b) (Albuterol) filed 3–7–90 pursuant to Welfare and Institutions Code section 14105.91; operative 3–7–90 (Register 90, No. 19).
36. Amendment of subsection (b) (Cromolyn Sodium) filed 3–15–90 pursuant to Welfare and Institutions Code section 14105.91; operative 3–15–90 (Register 90, No. 19).
37. Amendment of subsection (b) adding additional dosage of drug Guanfacine HCL to Medi–Cal Drug Formulary filed 3–22–90 pursuant to Welfare and Institutions Code section 14105.91; operative 3–22–90 (Register 90, No. 19).

38. Amendment of subsection (b) (Zidovudine) filed 4–25–90; operative 4–25–90 (Register 90, No. 19).

39. Amendment of subsections (b) and (e) filed 4–25–90; operative 4–15–90 (Register 90, No. 26). Fluconazole, approved by the U.S. Food and Drug Administration, and pursuant to Welfare and Institutions Code sections 14105.43 and 14105.91 is deemed approved for addition to the Medi–Cal Drug Formulary only for the purpose of treating AIDS or an AIDS–related condition for the period prior to the completion of the procedures established pursuant to Welfare and Institutions Code section 14105.4.

40. Amendment of subsections (b) and (e) filed 5–1–90; operative 7–1–90 (Register 90, No. 26).

41. Amendment of subsections (c) and (e) filed 6–15–90; operative 7–15–90 (Register 90, No. 32).

42. Amendment of subsection (b) Gentamicin and subsection (e) adding Gentamicin filed 6–22–90; operative 6–22–90 pursuant to Welfare and Institutions Code section 14105.91 (Register 90, No. 32).

43. Amendment of subsection (b) Haloperidol Decanoate filed 6–22–90; operative 6–22–90 pursuant to Welfare and Institutions Code section 14105.91 (Register 90, No. 32).

44. Amendment of subsection (b) Rifampin filed 6–22–90; operative 6–22–90 pursuant to Welfare and Institutions Code section 14105.91 (Register 90, No. 32).

45. Amendment of subsection (b) Levothyroxine Sodium filed 6–22–90; operative 6–22–90 pursuant to Welfare and Institutions Code section 14105.91 (Register 90, No. 32).

46. Amendment of subsection (b) Nifedipine filed 7–2–90; operative 7–2–90 pursuant to Welfare and Institutions Code section 14105.91 (Register 90, No. 32).

47. Amendment of subsections (b) and (e) (Metronidazole) filed 7–5–90; operative 7–5–90 pursuant to Welfare and Institutions Code section 14105.91 (Register 90, No. 32).

48. Amendment of subsections (b) and (e) adding Nizatidine filed 7–11–90; operative 8–10–90 (Register 90, No. 32).

49. Amendment of subsections (b) and (e) adding Permethrin filed 7–18–90; operative 8–17–90 (Register 90, No. 32).

50. Amendment of subsections (b) and (e) adding Cefuroxime Axetil filed 7–19–90; operative 8–18–90 (Register 90, No. 32).

51. Editorial correction of printing error of subsection (b) Sodium Chloride filed 8–1–90; operative 8–1–90 (Register 90, No. 32).

52. Addition of Lovastatin to (b) and (e) filed 7–30–90; operative 7–30–90 (Register 90, No. 38).

53. Repealer filed 4–22–91 as an emergency pursuant to Statutes of 1990, chapter 456, section 36, p. 1658–1659; operative 5–22–91 (Register 91, No. 27). A Certificate of Compliance must be transmitted to OAL by 9–19–91 or emergency language will be repealed by operation of law on the following day.

54. Repealer of section refiled 9–19–91 as an emergency; operative 9–20–91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 1–20–92 or emergency language will be repealed on the following day.

55. Repealer of section refiled 1–23–92 as an emergency; operative 1–17–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL 5–22–92 or emergency language will be repealed by operation of law on the following day.

56. Certificate of Compliance as to 1–23–92 order transmitted to OAL 5–22–92 and filed 7–6–92 (Register 92, No. 28).

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Barclays Official

CALIFORNIA CODE OF REGULATIONS

Title 22. Social Security

Complete Title

(continued)

Vol. 29A

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Title 22. Social Security

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Division 4. Environmental Health

Chapter 1. Introduction

Article 1. Definitions

§ 60001. Department.

Whenever the term "department" is used in this division, it means the State Department of Health Services, unless otherwise specified.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Section 20, Health and Safety Code.

HISTORY

1. New Division 4 (Sections 60001–60180, not consecutive) filed 7–2–74 as an emergency; effective upon filing. Certificate of Compliance included (Register 74, No. 27).
2. Amendment filed 6–30–78 as an emergency; designated effective at 11:59 p.m. on 6–30–78 (Register 78, No. 26).
3. Certificate of Compliance transmitted to OAH 10–27–78; filed 10–31–78 (Register 78, No. 44).
4. Editorial correction of NOTE filed 7–2–84 (Register 84, No. 27).

§ 60003. Director.

Whenever the term "director" is used in this division, it means the Director, State Department of Health Services, unless otherwise specified.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Section 21, Health and Safety Code.

HISTORY

1. Amendment filed 6–30–78 as an emergency; designated effective at 11:59 p.m. on 6–30–78 (Register 78, No. 26).
2. Certificate of Compliance transmitted to OAH 10–27–78; filed 10–31–78 (Register 78, No. 44).
3. Editorial correction of NOTE filed 7–2–84 (Register 84, No. 27).

§ 60091. Chemical Toilet.

NOTE: Authority cited: Section 25210, Health and Safety Code. Reference: Section 25210, Health and Safety Code.

HISTORY

1. Renumbering from Section 60091 to 66016 filed 5–10–79; effective thirtieth day thereafter (Register 79, No. 19). For former history, see Register 78, No. 51.

§ 60093. Chemical Toilet Additive.

NOTE: Authority cited: Section 25210, Health and Safety Code. Reference: Section 25210, Health and Safety Code.

HISTORY

1. Renumbering from Section 60093 to 66020 filed 5–10–79; effective thirtieth day thereafter (Register 79, No. 19). For former history see Register 78, No. 51.

§ 60095. Chemical Toilet Waste.

NOTE: Authority cited: Section 25210, Health and Safety Code. Reference: Section 25210, Health and Safety Code.

HISTORY

1. Renumbering from Section 60095 to 66024 filed 5–1–79; effective thirtieth day thereafter (Register 79, No. 18). For former history, see Register 78, No. 51.

Chapter 2. Regulations for the Implementation of the California Environmental Quality Act

Article 1. General Requirements and Categorical Exemptions

§ 60100. General Requirements.

The Department of Health Services incorporates by reference the objectives, criteria, and procedures as delineated in Chapters 1, 2, 2.5, 2.6, 3, 4, 5, and 6, Division 13, Public Resources Code, Sections 21000 et seq., and the Guidelines for the Implementation of the California Environmental Quality Act, Title 14, Division 6, Chapter 3, California Administrative Code, Sections 15000 et seq.

NOTE: Authority cited: Title 14, Section 15022(d), California Administrative Code; Section 208, Health and Safety Code; and Section 21082, Public Resources Code. Reference: Sections 21000 et seq., Public Resources Code.

HISTORY

1. New Chapter 2 (Sections 60100 and 60101) filed 1–2–86; effective thirtieth day thereafter (Register 86, No. 1). For history of former Chapter 2, see Registers 79, No. 19 and 77, No. 42.

§ 60101. Specific Activities Within Categorical Exempt Classes.

The following specific activities are determined by the Department to fall within the classes of categorical exemptions set forth in Sections 15300 et seq. of Title 14 of the California Administrative Code:

(a) Class 1: Existing Facilities.

(1) Any interior or exterior alteration of water treatment units, water supply systems, and pump station buildings where the alteration involves the addition, deletion, or modification of mechanical, electrical, or hydraulic controls.

(2) Maintenance, repair, replacement, or reconstruction to any water treatment process units, including structures, filters, pumps, and chlorinators.

(b) Class 2: Replacement or Reconstruction.

(1) Repair or replacement of any water service connections, meters, and valves for backflow prevention, air release, pressure regulating, shut–off and blow–off or flushing.

(2) Replacement or reconstruction of any existing water supply distribution lines, storage tanks and reservoirs of substantially the same size.

(3) Replacement or reconstruction of any water wells, pump stations and related appurtenances.

(c) Class 3: New Construction of Small Structures.

(1) Construction of any water supply and distribution lines of less than sixteen inches in diameter, and related appurtenances.

(2) Construction of any water storage tanks and reservoirs of less than 100,000 gallon capacity.

(d) Class 4: Minor Alterations to Land.

(1) Minor alterations to land, water, or vegetation on any officially existing designated wildlife management areas or fish production facilities for the purpose of reducing the environmental potential for nuisances or vector production.

(2) Any minor alterations to highway crossings for water supply and distribution lines.

NOTE: Authority cited: Section 208, Health and Safety Code; Section 21082, Public Resources Code; and Sections 15022(a) and 15300.4, Title 14, Division 6, California Administrative Code. Reference: Sections 15301, 15302, 15303, 15304 and 15308, Public Resources Code.

CROSS–REFERENCE TABLE

NOTE: Sections in Chapters 1 and 2 of Division 4 were renumbered by an order filed 5–1–79 which created a new Chapter 30. The following cross–reference table showing old and new section numbers is provided for research purposes.

*Those sections which were amended by the 5–1–79 order are asterisked.

OLD SECTION	NEW SECTION
60091	66016
60093	66020
60095	66024
60102	66028
60103	66032
60104	66036
60105	66040
60106	66048
60107	66052
60108	66056
60109	66060
60110	66064
60111	66068
60112	66072
60113	66076
60114	66080
60115	66084
60116	66088
60117	66092
60118	66096
60119	66100
60120	66104
60121	66108
60122	66120*
60123	66124
60124	66128
60125	66132
60127	66136
60127	66136
60128	66140
60129	66144
60130	66148
60131	66160
60133	66164
60135	66176
60137	66180
60139	66184
60141	66188
60143	66196
60145	66200
60147	66204
60149	66208
60151	66212
60153	66216
60155	66220
60157	66224
60159	66228
60161	66232
60163	66236
60165	66240
60167	66300
60169	66305
60171	66310
60173	66315
60175	66320
60177	66328
60179	66336
60181	66344
60185	66352
60187	66360
60189	66370
60191	66084*
60193	66376*
60195	66379*
60197	66391
60199	66384
60201	66387*
60203	66390*
60205	66393*
60207	66396*
60209	66399
60211	66402
60213	66405
60215	66408
60217	66420
60219	66428
60221	66436*
60223	66444*
60225	66452*
60227	66460
60229	66470
60231	66475
60233	66480
60235	66485*
60237	66490*
60239	66495
60241	66500
60243	66505
60245	66510*
60247	66520
60249	66525
60251	66530
60253	66535*
60255	66540*
60257	66545
60259	66550
60261	66555
60263	66560
60265	66570
60267	66595
60269	66620
60271	66645
60273	66670*
60275	66672
60277	66674
60279	66676
60281	66680
60283	66685
60285	66880
60287	66683
60289	66886
60291*	66889*
60293	66892
60295	66895
60297	66898*

Chapter 3. Water Recycling Criteria

Article 1. Definitions

§ 60301. Definitions.

NOTE: Authority cited: Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

HISTORY

1. New Chapter 4 (§§ 60301–60357, not consecutive) filed 4–2–75; effective thirtieth day thereafter (Register 75, No. 14).
2. Renumbering of Chapter 4 (Sections 60301–60357, not consecutive) to Chapter 3 (Sections 60301–60357, not consecutive), filed 10–14–77; effective thirtieth day thereafter (Register 77, No. 42).
3. Amendment of chapter heading, repealer of section and amendment of NOTE filed 11–2–2000; operative 12–2–2000 (Register 2000, No. 44).

§ 60301.100. Approved Laboratory.

"Approved laboratory" means a laboratory that has been certified by the Department to perform microbiological analyses pursuant to section 116390, Health and Safety Code.

NOTE: Authority cited: Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

HISTORY

1. New section filed 11–2–2000; operative 12–2–2000 (Register 2000, No. 44).

§ 60301.160. Coagulated Wastewater.

"Coagulated wastewater" means oxidized wastewater in which colloidal and finely divided suspended matter have been destabilized and agglomerated upstream from a filter by the addition of suitable floc–forming chemicals.

NOTE: Authority cited: Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

HISTORY

1. New section filed 11–2–2000; operative 12–2–2000 (Register 2000, No. 44).

§ 60301.170. Conventional Treatment.

"Conventional treatment" means a treatment chain that utilizes a sedimentation unit process between the coagulation and filtration processes

and produces an effluent that meets the definition for disinfected tertiary recycled water.

NOTE: Authority cited: Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

HISTORY

1. New section filed 11–2–2000; operative 12–2–2000 (Register 2000, No. 44).

§ 60301.200. Direct Beneficial Use.

"Direct beneficial use" means the use of recycled water that has been transported from the point of treatment or production to the point of use without an intervening discharge to waters of the State.

NOTE: Authority cited: Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

HISTORY

1. New section filed 11–2–2000; operative 12–2–2000 (Register 2000, No. 44).

§ 60301.220. Disinfected Secondary–2.2 Recycled Water.

"Disinfected secondary–2.2 recycled water" means recycled water that has been oxidized and disinfected so that the median concentration of total coliform bacteria in the disinfected effluent does not exceed a most probable number (MPN) of 2.2 per 100 milliliters utilizing the bacteriological results of the last seven days for which analyses have been completed, and the number of total coliform bacteria does not exceed an MPN of 23 per 100 milliliters in more than one sample in any 30 day period.

NOTE: Authority cited: Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

HISTORY

1. New section filed 11–2–2000; operative 12–2–2000 (Register 2000, No. 44).

§ 60301.225. Disinfected Secondary–23 Recycled Water.

"Disinfected secondary–23 recycled water" means recycled water that has been oxidized and disinfected so that the median concentration of total coliform bacteria in the disinfected effluent does not exceed a most probable number (MPN) of 23 per 100 milliliters utilizing the bacteriological results of the last seven days for which analyses have been completed, and the number of total coliform bacteria does not exceed an MPN of 240 per 100 milliliters in more than one sample in any 30 day period.

NOTE: Authority cited: Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

HISTORY

1. New section filed 11–2–2000; operative 12–2–2000 (Register 2000, No. 44).

§ 60301.230. Disinfected Tertiary Recycled Water.

"Disinfected tertiary recycled water" means a filtered and subsequently disinfected wastewater that meets the following criteria:

(a) The filtered wastewater has been disinfected by either:

(1) A chlorine disinfection process following filtration that provides a CT (the product of total chlorine residual and modal contact time measured at the same point) value of not less than 450 milligram–minutes per liter at all times with a modal contact time of at least 90 minutes, based on peak dry weather design flow; or

(2) A disinfection process that, when combined with the filtration process, has been demonstrated to inactivate and/or remove 99.999 percent of the plaque–forming units of F–specific bacteriophage MS2, or polio virus in the wastewater. A virus that is at least as resistant to disinfection as polio virus may be used for purposes of the demonstration.

(b) The median concentration of total coliform bacteria measured in the disinfected effluent does not exceed an MPN of 2.2 per 100 milliliters utilizing the bacteriological results of the last seven days for which analyses have been completed and the number of total coliform bacteria does not exceed an MPN of 23 per 100 milliliters in more than one sample in any 30 day period. No sample shall exceed an MPN of 240 total coliform bacteria per 100 milliliters.

NOTE: Authority cited: Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

HISTORY

1. New section filed 11–2–2000; operative 12–2–2000 (Register 2000, No. 44).

§ 60301.240. Drift.

"Drift" means the water that escapes to the atmosphere as water droplets from a cooling system.

NOTE: Authority cited: Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

HISTORY

1. New section filed 11–2–2000; operative 12–2–2000 (Register 2000, No. 44).

§ 60301.245. Drift Eliminator.

"Drift eliminator" means a feature of a cooling system that reduces to a minimum the generation of drift from the system.

NOTE: Authority cited: Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

HISTORY

1. New section filed 11–2–2000; operative 12–2–2000 (Register 2000, No. 44).

§ 60301.250. Dual Plumbed System.

"Dual plumbed system" or "dual plumbed" means a system that utilizes separate piping systems for recycled water and potable water within a facility and where the recycled water is used for either of the following purposes:

(a) To serve plumbing outlets (excluding fire suppression systems) within a building or

(b) Outdoor landscape irrigation at individual residences.

NOTE: Authority cited: Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

HISTORY

1. New section filed 11–2–2000; operative 12–2–2000 (Register 2000, No. 44).

§ 60301.300. F–Specific Bacteriophage MS–2.

"F–specific bacteriophage MS–2" means a strain of a specific type of virus that infects coliform bacteria that is traceable to the American Type Culture Collection (ATCC 15597B1) and is grown on lawns of E. coli (ATCC 15597).

NOTE: Authority cited: Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

HISTORY

1. New section filed 11–2–2000; operative 12–2–2000 (Register 2000, No. 44).

§ 60301.310. Facility.

"Facility" means any type of building or structure, or a defined area of specific use that receives water for domestic use from a public water system as defined in section 116275 of the Health and Safety Code.

NOTE: Authority cited: Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

HISTORY

1. New section filed 11–2–2000; operative 12–2–2000 (Register 2000, No. 44).

§ 60301.320. Filtered Wastewater.

"Filtered wastewater" means an oxidized wastewater that meets the criteria in subsection (a) or (b):

(a) Has been coagulated and passed through natural undisturbed soils or a bed of filter media pursuant to the following:

(1) At a rate that does not exceed 5 gallons per minute per square foot of surface area in mono, dual or mixed media gravity, upflow or pressure filtration systems, or does not exceed 2 gallons per minute per square foot of surface area in traveling bridge automatic backwash filters; and

(2) So that the turbidity of the filtered wastewater does not exceed any of the following:

(A) An average of 2 NTU within a 24–hour period;

(B) 5 NTU more than 5 percent of the time within a 24–hour period; and

(C) 10 NTU at any time.

(b) Has been passed through a microfiltration, ultrafiltration, nanofiltration, or reverse osmosis membrane so that the turbidity of the filtered wastewater does not exceed any of the following:

(1) 0.2 NTU more than 5 percent of the time within a 24–hour period; and

(2) 0.5 NTU at any time.

NOTE: Authority cited: Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

HISTORY
1. New section filed 11–2–2000; operative 12–2–2000 (Register 2000, No. 44).

§ 60301.330. Food Crops.

"Food crops" means any crops intended for human consumption.

NOTE: Authority cited: Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

HISTORY
1. New section filed 11–2–2000; operative 12–2–2000 (Register 2000, No. 44).

§ 60301.400. Hose Bibb.

"Hose bibb" means a faucet or similar device to which a common garden hose can be readily attached.

NOTE: Authority cited: Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

HISTORY
1. New section filed 11–2–2000; operative 12–2–2000 (Register 2000, No. 44).

§ 60301.550. Landscape Impoundment.

"Landscape impoundment" means an impoundment in which recycled water is stored or used for aesthetic enjoyment or landscape irrigation, or which otherwise serves a similar function and is not intended to include public contact.

NOTE: Authority cited: Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

HISTORY
1. New section filed 11–2–2000; operative 12–2–2000 (Register 2000, No. 44).

§ 60301.600. Modal Contact Time.

"Modal contact time" means the amount of time elapsed between the time that a tracer, such as salt or dye, is injected into the influent at the entrance to a chamber and the time that the highest concentration of the tracer is observed in the effluent from the chamber.

NOTE: Authority cited: Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

HISTORY
1. New section filed 11–2–2000; operative 12–2–2000 (Register 2000, No. 44).

§ 60301.620. Nonrestricted Recreational Impoundment.

"Nonrestricted recreational impoundment" means an impoundment of recycled water, in which no limitations are imposed on body–contact water recreational activities.

NOTE: Authority cited: Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

HISTORY
1. New section filed 11–2–2000; operative 12–2–2000 (Register 2000, No. 44).

§ 60301.630. NTU.

"NTU" (Nephelometric turbidity unit) means a measurement of turbidity as determined by the ratio of the intensity of light scattered by the sample to the intensity of incident light as measured by method 2130 B. in Standard Methods for the Examination of Water and Wastewater, 20th ed.; Eaton, A. D., Clesceri, L. S., and Greenberg, A. E., Eds; American Public Health Association: Washington, DC, 1995; p. 2–8.

NOTE: Authority cited: Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

HISTORY
1. New section filed 11–2–2000; operative 12–2–2000 (Register 2000, No. 44).

§ 60301.650. Oxidized Wastewater.

"Oxidized wastewater" means wastewater in which the organic matter has been stabilized, is nonputrescible, and contains dissolved oxygen.

NOTE: Authority cited: Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

HISTORY
1. New section filed 11–2–2000; operative 12–2–2000 (Register 2000, No. 44).

§ 60301.660. Peak Dry Weather Design Flow.

"Peak Dry Weather Design Flow" means the arithmetic mean of the maximum peak flow rates sustained over some period of time (for example three hours) during the maximum 24–hour dry weather period. Dry weather period is defined as periods of little or no rainfall.

NOTE: Authority cited: Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

HISTORY
1. New section filed 11–2–2000; operative 12–2–2000 (Register 2000, No. 44).

§ 60301.700. Recycled Water Agency.

"Recycled water agency" means the public water system, or a publicly or privately owned or operated recycled water system, that delivers or proposes to deliver recycled water to a facility.

NOTE: Authority cited: Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

HISTORY
1. New section filed 11–2–2000; operative 12–2–2000 (Register 2000, No. 44).

§ 60301.710. Recycling Plant.

"Recycling plant" means an arrangement of devices, structures, equipment, processes and controls which produce recycled water.

NOTE: Authority cited: Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

HISTORY
1. New section filed 11–2–2000; operative 12–2–2000 (Register 2000, No. 44).

§ 60301.740. Regulatory Agency.

"Regulatory agency" means the California Regional Water Quality Control Board(s) that have jurisdiction over the recycling plant and use areas.

NOTE: Authority cited: Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

HISTORY
1. New section filed 11–2–2000; operative 12–2–2000 (Register 2000, No. 44).

§ 60301.750. Restricted Access Golf Course.

"Restricted access golf course" means a golf course where public access is controlled so that areas irrigated with recycled water cannot be used as if they were part of a park, playground, or school yard and where irrigation is conducted only in areas and during periods when the golf course is not being used by golfers.

NOTE: Authority cited: Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

HISTORY
1. New section filed 11–2–2000; operative 12–2–2000 (Register 2000, No. 44).

§ 60301.760. Restricted Recreational Impoundment.

"Restricted recreational impoundment" means an impoundment of recycled water in which recreation is limited to fishing, boating, and other non–body–contact water recreational activities.

NOTE: Authority cited: Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

HISTORY
1. New section filed 11–2–2000; operative 12–2–2000 (Register 2000, No. 44).

§ 60301.800. Spray Irrigation.

"Spray irrigation" means the application of recycled water to crops to maintain vegetation or support growth of vegetation by applying it from sprinklers.

NOTE: Authority cited: Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

HISTORY
1. New section filed 11–2–2000; operative 12–2–2000 (Register 2000, No. 44).

§ 60301.830. Standby Unit Process.

"Standby unit process" means an alternate unit process or an equivalent alternative process which is maintained in operable condition and which is capable of providing comparable treatment of the actual flow through the unit for which it is a substitute.

NOTE: Authority cited: Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

HISTORY
1. New section filed 11–2–2000; operative 12–2–2000 (Register 2000, No. 44).

§ 60301.900. Undisinfected Secondary Recycled Water.

"Undisinfected secondary recycled water" means oxidized wastewater.

NOTE: Authority cited: Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

HISTORY

1. New section filed 11–2–2000; operative 12–2–2000 (Register 2000, No. 44).

§ 60301.920. Use Area.

"Use area" means an area of recycled water use with defined boundaries. A use area may contain one or more facilities.

NOTE: Authority cited: Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

NOTE: Authority cited: Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

HISTORY

1. New section filed 11–2–2000; operative 12–2–2000 (Register 2000, No. 44).

Article 2. Sources of Recycled Water

§ 60302. Source Specifications.

The requirements in this chapter shall only apply to recycled water from sources that contain domestic waste, in whole or in part.

NOTE: Authority cited: Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

HISTORY

1. Repealer of former article 2 (sections 60303–60307) and new article 2 (section 60302) and section filed 11–2–2000; operative 12–2–2000 (Register 2000, No. 44).

Article 3. Uses of Recycled Water.

§ 60303. Exceptions.

The requirements set forth in this chapter shall not apply to the use of recycled water onsite at a water recycling plant, or wastewater treatment plant, provided access by the public to the area of onsite recycled water use is restricted.

NOTE: Authority cited: Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

HISTORY

1. Repealer of former article 3 (sections 60309–60311) and new article 3 (sections 60303–60307) and section filed 11–2–2000; operative 12–2–2000 (Register 2000, No. 44).

§ 60304. Use of Recycled Water for Irrigation.

(a) Recycled water used for the surface irrigation of the following shall be a disinfected tertiary recycled water, except that for filtration pursuant to Section 60301.320(a) coagulation need not be used as part of the treatment process provided that the filter effluent turbidity does not exceed 2 NTU, the turbidity of the influent to the filters is continuously measured, the influent turbidity does not exceed 5 NTU for more than 15 minutes and never exceeds 10 NTU, and that there is the capability to automatically activate chemical addition or divert the wastewater should the filter influent turbidity exceed 5 NTU for more than 15 minutes:

(1) Food crops, including all edible root crops, where the recycled water comes into contact with the edible portion of the crop,

(2) Parks and playgrounds,

(3) School yards,

(4) Residential landscaping,

(5) Unrestricted access golf courses, and

(6) Any other irrigation use not specified in this section and not prohibited by other sections of the California Code of Regulations.

(b) Recycled water used for the surface irrigation of food crops where the edible portion is produced above ground and not contacted by the recycled water shall be at least disinfected secondary–2.2 recycled water.

(c) Recycled water used for the surface irrigation of the following shall be at least disinfected secondary–23 recycled water:

(1) Cemeteries,

(2) Freeway landscaping,

(3) Restricted access golf courses,

(4) Ornamental nursery stock and sod farms where access by the general public is not restricted,

(5) Pasture for animals producing milk for human consumption, and

(6) Any nonedible vegetation where access is controlled so that the irrigated area cannot be used as if it were part of a park, playground or school yard

(d) Recycled wastewater used for the surface irrigation of the following shall be at least undisinfected secondary recycled water:

(1) Orchards where the recycled water does not come into contact with the edible portion of the crop,

(2) Vineyards where the recycled water does not come into contact with the edible portion of the crop,

(3) Non food–bearing trees (Christmas tree farms are included in this category provided no irrigation with recycled water occurs for a period of 14 days prior to harvesting or allowing access by the general public),

(4) Fodder and fiber crops and pasture for animals not producing milk for human consumption,

(5) Seed crops not eaten by humans,

(6) Food crops that must undergo commercial pathogen–destroying processing before being consumed by humans, and

(7) Ornamental nursery stock and sod farms provided no irrigation with recycled water occurs for a period of 14 days prior to harvesting, retail sale, or allowing access by the general public.

(e) No recycled water used for irrigation, or soil that has been irrigated with recycled water, shall come into contact with the edible portion of food crops eaten raw by humans unless the recycled water complies with subsection (a).

NOTE: Authority cited: Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

HISTORY

1. New section filed 11–2–2000; operative 12–2–2000 (Register 2000, No. 44).

§ 60305. Use of Recycled Water For Impoundments.

(a) Except as provided in subsection (b), recycled water used as a source of water supply for nonrestricted recreational impoundments shall be disinfected tertiary recycled water that has been subjected to conventional treatment.

(b) Disinfected tertiary recycled water that has not received conventional treatment may be used for nonrestricted recreational impoundments provided the recycled water is monitored for the presence of pathogenic organisms in accordance with the following:

(1) During the first 12 months of operation and use the recycled water shall be sampled and analyzed monthly for *Giardia*, enteric viruses, and *Cryptosporidium*. Following the first 12 months of use, the recycled water shall be sampled and analyzed quarterly for *Giardia,* enteric viruses, and *Cryptosporidium*. The ongoing monitoring may be discontinued after the first two years of operation with the approval of the department. This monitoring shall be in addition to the monitoring set forth in section 60321.

(2) The samples shall be taken at a point following disinfection and prior to the point where the recycled water enters the use impoundment. The samples shall be analyzed by an approved laboratory and the results submitted quarterly to the regulatory agency.

(c) The total coliform bacteria concentrations in recycled water used for nonrestricted recreational impoundments, measured at a point between the disinfection process and the point of entry to the use impoundment, shall comply with the criteria specified in section 60301.230 (b) for disinfected tertiary recycled water.

(d) Recycled water used as a source of supply for restricted recreational impoundments and for any publicly accessible impoundments at fish hatcheries shall be at least disinfected secondary–2.2 recycled water.

(e) Recycled water used as a source of supply for landscape impoundments that do not utilize decorative fountains shall be at least disinfected secondary–23 recycled water.

NOTE: Authority cited: Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

HISTORY

1. Repealer and new section filed 11–2–2000; operative 12–2–2000 (Register 2000, No. 44).

§ 60306. Use of Recycled Water for Cooling.

(a) Recycled water used for industrial or commercial cooling or air conditioning that involves the use of a cooling tower, evaporative condenser, spraying or any mechanism that creates a mist shall be a disinfected tertiary recycled water.

(b) Use of recycled water for industrial or commercial cooling or air conditioning that does not involve the use of a cooling tower, evaporative condenser, spraying, or any mechanism that creates a mist shall be at least disinfected secondary–23 recycled water.

(c) Whenever a cooling system, using recycled water in conjunction with an air conditioning facility, utilizes a cooling tower or otherwise creates a mist that could come into contact with employees or members of the public, the cooling system shall comply with the following:

(1) A drift eliminator shall be used whenever the cooling system is in operation.

(2) A chlorine, or other, biocide shall be used to treat the cooling system recirculating water to minimize the growth of *Legionella* and other micro–organisms.

NOTE: Authority cited: Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

HISTORY

1. New section filed 11–2–2000; operative 12–2–2000 (Register 2000, No. 44).

§ 60307. Use of Recycled Water for Other Purposes.

(a) Recycled water used for the following shall be disinfected tertiary recycled water, except that for filtration being provided pursuant to Section 60301.320(a) coagulation need not be used as part of the treatment process provided that the filter effluent turbidity does not exceed 2 NTU, the turbidity of the influent to the filters is continuously measured, the influent turbidity does not exceed 5 NTU for more than 15 minutes and never exceeds 10 NTU, and that there is the capability to automatically activate chemical addition or divert the wastewater should the filter influent turbidity exceed 5 NTU for more than 15 minutes:

(1) Flushing toilets and urinals,

(2) Priming drain traps,

(3) Industrial process water that may come into contact with workers,

(4) Structural fire fighting,

(5) Decorative fountains,

(6) Commercial laundries,

(7) Consolidation of backfill around potable water pipelines,

(8) Artificial snow making for commercial outdoor use, and

(9) Commercial car washes, including hand washes if the recycled water is not heated, where the general public is excluded from the washing process.

(b) Recycled water used for the following uses shall be at least disinfected secondary–23 recycled water:

(1) Industrial boiler feed,

(2) Nonstructural fire fighting,

(3) Backfill consolidation around nonpotable piping,

(4) Soil compaction,

(5) Mixing concrete,

(6) Dust control on roads and streets,

(7) Cleaning roads, sidewalks and outdoor work areas and

(8) Industrial process water that will not come into contact with workers.

(c) Recycled water used for flushing sanitary sewers shall be at least undisinfected secondary recycled water.

NOTE: Authority cited: Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

HISTORY

1. Repealer and new section filed 11–2–2000; operative 12–2–2000 (Register 2000, No. 44).

§ 60309. Fodder, Fiber, and Seed Crops.

HISTORY

1. Repealer of former article 3 (sections 60309–60311) and repealer of section filed 11–2–2000; operative 12–2–2000 (Register 2000, No. 44).

Article 4. Use Area Requirements

§ 60310. Use Area Requirements.

(a) No irrigation with disinfected tertiary recycled water shall take place within 50 feet of any domestic water supply well unless all of the following conditions have been met:

(1) A geological investigation demonstrates that an aquitard exists at the well between the uppermost aquifer being drawn from and the ground surface.

(2) The well contains an annular seal that extends from the surface into the aquitard.

(3) The well is housed to prevent any recycled water spray from coming into contact with the wellhead facilities.

(4) The ground surface immediately around the wellhead is contoured to allow surface water to drain away from the well.

(5) The owner of the well approves of the elimination of the buffer zone requirement.

(b) No impoundment of disinfected tertiary recycled water shall occur within 100 feet of any domestic water supply well.

(c) No irrigation with, or impoundment of, disinfected secondary–2.2 or disinfected secondary–23 recycled water shall take place within 100 feet of any domestic water supply well.

(d) No irrigation with, or impoundment of, undisinfected secondary recycled water shall take place within 150 feet of any domestic water supply well.

(e) Any use of recycled water shall comply with the following:

(1) Any irrigation runoff shall be confined to the recycled water use area, unless the runoff does not pose a public health threat and is authorized by the regulatory agency.

(2) Spray, mist, or runoff shall not enter dwellings, designated outdoor eating areas, or food handling facilities.

(3) Drinking water fountains shall be protected against contact with recycled water spray, mist, or runoff.

(f) No spray irrigation of any recycled water, other than disinfected tertiary recycled water, shall take place within 100 feet of a residence or a place where public exposure could be similar to that of a park, playground, or school yard.

(g) All use areas where recycled water is used that are accessible to the public shall be posted with signs that are visible to the public, in a size no less than 4 inches high by 8 inches wide, that include the following wording: "RECYCLED WATER – DO NOT DRINK". Each sign shall display an international symbol similar to that shown in figure 60310–A. The Department may accept alternative signage and wording, or an educational program, provided the applicant demonstrates to the Department that the alternative approach will assure an equivalent degree of public notification.

(h) Except as allowed under section 7604 of title 17, California Code of Regulations, no physical connection shall be made or allowed to exist between any recycled water system and any separate system conveying potable water.

(i) The portions of the recycled water piping system that are in areas subject to access by the general public shall not include any hose bibbs. Only quick couplers that differ from those used on the potable water system shall be used on the portions of the recycled water piping system in areas subject to public access.

NOTE: Authority cited: Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

HISTORY

1. Repealer of former article 4 (section 60313) and new article 4 (section 60310) and section filed 11–2–2000; operative 12–2–2000 (Register 2000, No. 44).

Water Recycling Criteria

FIGURE 60310–A

§ 60311. Pasture for Milking Animals.

HISTORY

1. Repealer filed 11-2-2000; operative 12-2-2000 (Register 2000, No. 44).

Article 5. Dual Plumbed Recycled Water Systems

§ 60313. General Requirements.

(a) No person other than a recycled water agency shall deliver recycled water to a dual-plumbed facility.

(b) No recycled water agency shall deliver recycled water for any internal use to any individually-owned residential units including free-standing structures, multiplexes, or condominiums.

(c) No recycled water agency shall deliver recycled water for internal use except for fire suppression systems, to any facility that produces or processes food products or beverages. For purposes of this Subsection, cafeterias or snack bars in a facility whose primary function does not involve the production or processing of foods or beverages are not considered facilities that produce or process foods or beverages.

(d) No recycled water agency shall deliver recycled water to a facility using a dual plumbed system unless the report required pursuant to section 13522.5 of the Water Code, and which meets the requirements set forth in section 60314, has been submitted to, and approved by, the regulatory agency.

NOTE: Authority cited: Section 13521, Water Code. Reference: Sections 13521, 13522.5, 13523.1, 13553 and 13554, Water Code.

HISTORY

1. Amendment filed 9-22-78; effective thirtieth day thereafter (Register 78, No. 38).
2. Repealer of former article 4 (section 60313) and new article 5 (sections 60313-60316) and section filed 11-2-2000; operative 12-2-2000 (Register 2000, No. 44).

§ 60314. Report Submittal.

(a) For dual-plumbed recycled water systems, the report submitted pursuant to section 13522.5 of the Water Code shall contain the following information in addition to the information required by section 60323:

(1) A detailed description of the intended use area identifying the following:

(A) The number, location, and type of facilities within the use area proposing to use dual plumbed systems,

(B) The average number of persons estimated to be served by each facility on a daily basis,

(C) The specific boundaries of the proposed use area including a map showing the location of each facility to be served,

(D) The person or persons responsible for operation of the dual plumbed system at each facility, and

(E) The specific use to be made of the recycled water at each facility.

(2) Plans and specifications describing the following:

(A) Proposed piping system to be used,

(B) Pipe locations of both the recycled and potable systems,

(C) Type and location of the outlets and plumbing fixtures that will be accessible to the public, and

(D) The methods and devices to be used to prevent backflow of recycled water into the public water system.

(3) The methods to be used by the recycled water agency to assure that the installation and operation of the dual plumbed system will not result in cross connections between the recycled water piping system and the potable water piping system. This shall include a description of pressure, dye or other test methods to be used to test the system every four years.

(b) A master plan report that covers more than one facility or use site may be submitted provided the report includes the information required by this section. Plans and specifications for individual facilities covered by the report may be submitted at any time prior to the delivery of recycled water to the facility.

NOTE: Authority cited: Sections 13521 and 13522.5, Water Code. Reference: Sections 13521, 13522.5, 13523.1, 13553 and 13554, Water Code.

HISTORY

1. New section filed 11-2-2000; operative 12-2-2000 (Register 2000, No. 44).

§ 60315. Design Requirements.

The public water supply shall not be used as a backup or supplemental source of water for a dual-plumbed recycled water system unless the connection between the two systems is protected by an air gap separation which complies with the requirements of sections 7602(a) and 7603(a) of title 17, California Code of Regulations, and the approval of the public water system has been obtained.

NOTE: Authority cited: Section 13521, Water Code. Reference: Sections 13521, 13523.1, 13553 and 13554, Water Code.

HISTORY

1. Repealer of former article 5 (sections 60315-60319) and repealer and new section filed 11-2-2000; operative 12-2-2000 (Register 2000, No. 44).

§ 60316. Operation Requirements.

(a) Prior to the initial operation of the dual-plumbed recycled water system and annually thereafter, the Recycled Water Agency shall ensure that the dual plumbed system within each facility and use area is inspected for possible cross connections with the potable water system. The recycled water system shall also be tested for possible cross connections at least once every four years. The testing shall be conducted in accordance with the method described in the report submitted pursuant to section 60314. The inspections and the testing shall be performed by a cross connection control specialist certified by the California-Nevada section of the American Water Works Association or an organization with equivalent certification requirements. A written report documenting the result of the inspection or testing for the prior year shall be submitted to the department within 30 days following completion of the inspection or testing.

(b) The recycled water agency shall notify the department of any incidence of backflow from the dual-plumbed recycled water system into the potable water system within 24 hours of the discovery of the incident.

(c) Any backflow prevention device installed to protect the public water system serving the dual-plumbed recycled water system shall be inspected and maintained in accordance with section 7605 of Title 17, California Code of Regulations.

NOTE: Authority cited: Section 13521, Water Code. Reference: Sections 13521, 13553 and 13554, Water Code.

HISTORY

1. New section filed 11-2-2000; operative 12-2-2000 (Register 2000, No. 44).

§ 60317. Restricted Recreational Impoundment.

HISTORY

1. Repealer filed 11-2-2000; operative 12-2-2000 (Register 2000, No. 44).

§ 60319. Landscape Impoundment.

HISTORY

1. Repealer filed 11-2-2000; operative 12-2-2000 (Register 2000, No. 44).

Article 5.1. Groundwater Recharge

§ 60320. Groundwater Recharge.

(a) Reclaimed water used for groundwater recharge of domestic water supply aquifers by surface spreading shall be at all times of a quality that fully protects public health. The State Department of Health Services' recommendations to the Regional Water Quality Control Boards for proposed groundwater recharge projects and for expansion of existing projects will be made on an individual case basis where the use of reclaimed water involves a potential risk to public health.

(b) The State Department of Health Services' recommendations will be based on all relevant aspects of each project, including the following factors: treatment provided; effluent quality and quantity; spreading area operations; soil characteristics; hydrogeology; residence time; and distance to withdrawal.

(c) The State Department of Health Services will hold a public hearing prior to making the final determination regarding the public health aspects of each groundwater recharge project. Final recommendations will

be submitted to the Regional Water Quality Control Board in an expeditious manner.

NOTE: Authority cited: Section 208, Health and Safety Code; and Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

HISTORY

1. New Article 5.1 (Section 60320) filed 9–22–78; effective thirtieth day thereafter (Register 78, No. 38).
2. Editorial correction of NOTE filed 12–3–84 (Register 84, No. 49).

Article 5.5. Other Methods of Treatment

§ 60320.5. Other Methods of Treatment.

Methods of treatment other than those included in this chapter and their reliability features may be accepted if the applicant demonstrates to the satisfaction of the State Department of Health that the methods of treatment and reliability features will assure an equal degree of treatment and reliability.

NOTE: Authority cited: Section 208, Health and Safety Code; and Section 13521, Water Code. Reference: Section 13520, Water Code.

HISTORY

1. Renumbering of Article 11 (Section 60357) to Article 5.5 (Section 60320.5) filed 9–22–78; effective thirtieth day thereafter (Register 78, No. 38).

Article 6. Sampling and Analysis

§ 60321. Sampling and Analysis.

(a) Disinfected secondary–23, disinfected secondary–2.2, and disinfected tertiary recycled water shall be sampled at least once daily for total coliform bacteria. The samples shall be taken from the disinfected effluent and shall be analyzed by an approved laboratory.

(b) Disinfected tertiary recycled water shall be continuously sampled for turbidity using a continuous turbidity meter and recorder following filtration. Compliance with the daily average operating filter effluent turbidity shall be determined by averaging the levels of recorded turbidity taken at four–hour intervals over a 24–hour period. Compliance with turbidity pursuant to section 60301.320(a)(2)(B) and (b)(1) shall be determined using the levels of recorded turbidity taken at intervals of no more than 1.2–hours over a 24–hour period. Should the continuous turbidity meter and recorder fail, grab sampling at a minimum frequency of 1.2–hours may be substituted for a period of up to 24–hours. The results of the daily average turbidity determinations shall be reported quarterly to the regulatory agency.

(c) The producer or supplier of the recycled water shall conduct the sampling required in subsections (a) and (b).

NOTE: Authority cited: Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

HISTORY

1. Repealer and new section filed 11–2–2000; operative 12–2–2000 (Register 2000, No. 44).

Article 7. Engineering Report and Operational Requirements

§ 60323. Engineering Report.

(a) No person shall produce or supply reclaimed water for direct reuse from a proposed water reclamation plant unless he files an engineering report.

(b) The report shall be prepared by a properly qualified engineer registered in California and experienced in the field of wastewater treatment, and shall contain a description of the design of the proposed reclamation system. The report shall clearly indicate the means for compliance with these regulations and any other features specified by the regulatory agency.

[The next page is 603.]

(c) The report shall contain a contingency plan which will assure that no untreated or inadequately–treated wastewater will be delivered to the use area.

§ 60325. Personnel.

(a) Each reclamation plant shall be provided with a sufficient number of qualified personnel to operate the facility effectively so as to achieve the required level of treatment at all times.

(b) Qualified personnel shall be those meeting requirements established pursuant to Chapter 9 (commencing with Section 13625) of the Water Code.

NOTE: Authority cited: Section 208, Health and Safety Code; and Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

HISTORY

1. New NOTE filed 12–3–84 (Register 84, No. 49).

§ 60327. Maintenance.

A preventive maintenance program shall be provided at each reclamation plant to ensure that all equipment is kept in a reliable operating condition.

NOTE: Authority cited: Section 208. Health and Safety Code; and Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

HISTORY

1. New NOTE filed 12–3–84 (Register 84, No. 49).

§ 60329. Operating Records and Reports.

(a) Operating records shall be maintained at the reclamation plant or a central depository within the operating agency. These shall include: all analyses specified in the reclamation criteria; records of operational problems, plant and equipment breakdowns, and diversions to emergency storage or disposal; all corrective or preventive action taken.

(b) Process or equipment failures triggering an alarm shall be recorded and maintained as a separate record file. The recorded information shall include the time and cause of failure and corrective action taken.

(c) A monthly summary of operating records as specified under (a) of this section shall be filed monthly with the regulatory agency.

(d) Any discharge of untreated or partially treated wastewater to the use area, and the cessation of same, shall be reported immediately by telephone to the regulatory agency, the State Department of Health, and the local health officer.

NOTE: Authority cited: Section 208, Health and Safety Code; and Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

HISTORY

1. New NOTE filed 12–3–84 (Register 84, No. 49).

§ 60331. Bypass.

There shall be no bypassing of untreated or partially treated wastewater from the reclamation plant or any intermediate unit processes to the point of use.

NOTE: Authority cited: Section 208, Health and Safety Code; and Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

HISTORY

1. New NOTE filed 12–3–84 (Register 84, No. 49).

Article 8. General Requirements of Design

§ 60333. Flexibility of Design.

The design of process piping, equipment arrangement, and unit structures in the reclamation plant must allow for efficiency and convenience in operation and maintenance and provide flexibility of operation to permit the highest possible degree of treatment to be obtained under varying circumstances.

§ 60335. Alarms.

(a) Alarm devices required for various unit processes as specified in other sections of these regulations shall be installed to provide warning of:

(1) Loss of power from the normal power supply.

(2) Failure of a biological treatment process.

(3) Failure of a disinfection process.

(4) Failure of a coagulation process.

(5) Failure of a filtration process.

(6) Any other specific process failure for which warning is required by the regulatory agency.

(b) All required alarm devices shall be independent of the normal power supply of the reclamation plant.

(c) The person to be warned shall be the plant operator, superintendent, or any other responsible person designated by the management of the reclamation plant and capable of taking prompt corrective action.

(d) Individual alarm devices may be connected to a master alarm to sound at a location where it can be conveniently observed by the attendant. In case the reclamation plant is not attended full time, the alarm(s) shall be connected to sound at a police station, fire station or other full–time service unit with which arrangements have been made to alert the person in charge at times that the reclamation plant is unattended.

§ 60337. Power Supply.

The power supply shall be provided with one of the following reliability features:

(a) Alarm and standby power source.

(b) Alarm and automatically actuated short–term retention or disposal provisions as specified in Section 60341.

(c) Automatically actuated long–term storage or disposal provisions as specified in Section 60341.

Article 9. Alternative Reliability Requirements for Uses Permitting Primary Effluent

§ 60339. Primary Treatment.

Reclamation plants producing reclaimed water exclusively for uses for which primary effluent is permitted shall be provided with one of the following reliability features:

(a) Multiple primary treatment units capable of producing primary effluent with one unit not in operation.

(b) Long–term storage or disposal provisions as specified in Section 60341.

Article 10. Alternative Reliability Requirements for Uses Requiring Oxidized, Disinfected Wastewater or Oxidized, Coagulated, Clarified, Filtered, Disinfected Wastewater

§ 60341. Emergency Storage or Disposal.

(a) Where short–term retention or disposal provisions are used as a reliability feature, these shall consist of facilities reserved for the purpose of storing or disposing of untreated or partially treated wastewater for at least a 24–hour period. The facilities shall include all the necessary diversion devices, provisions for odor control, conduits, and pumping and pump back equipment. All of the equipment other than the pump back equipment shall be either independent of the normal power supply or provided with a standby power source.

(b) Where long–term storage or disposal provisions are used as a reliability feature, these shall consist of ponds, reservoirs, percolation areas, downstream sewers leading to other treatment or disposal facilities or any other facilities reserved for the purpose of emergency storage or disposal of untreated or partially treated wastewater. These facilities shall be of sufficient capacity to provide disposal or storage of wastewater for at least 20 days, and shall include all the necessary diversion works, provisions for odor and nuisance control, conduits, and pumping and pump back equipment. All of the equipment other than the pump back equip-

ment shall be either independent of the normal power supply or provided with a standby power source.

(c) Diversion to a less demanding reuse is an acceptable alternative to emergency disposal of partially treated wastewater provided that the quality of the partially treated wastewater is suitable for the less demanding reuse.

(d) Subject to prior approval by the regulatory agency, diversion to a discharge point which requires lesser quality of wastewater is an acceptable alternative to emergency disposal of partially treated wastewater.

(e) Automatically actuated short–term retention or disposal provisions and automatically actuated long–term storage or disposal provisions shall include, in addition to provisions of (a), (b), (c), or (d) of this section, all the necessary sensors, instruments, valves and other devices to enable fully automatic diversion of untreated or partially treated wastewater to approved emergency storage or disposal in the event of failure of a treatment process and a manual reset to prevent automatic restart until the failure is corrected.

§ 60343. Primary Treatment.

All primary treatment unit processes shall be provided with one of the following reliability features:

(a) Multiple primary treatment units capable of producing primary effluent with one unit not in operation.

(b) Standby primary treatment unit process.

(c) Long–term storage or disposal provisions.

§ 60345. Biological Treatment.

All biological treatment unit processes shall be provided with one of the following reliability features:

(a) Alarm and multiple biological treatment units capable of producing oxidized wastewater with one unit not in operation.

(b) Alarm, short–term retention or disposal provisions, and standby replacement equipment.

(c) Alarm and long–term storage or disposal provisions.

(d) Automatically actuated long–term storage or disposal provisions.

§ 60347. Secondary Sedimentation.

All secondary sedimentation unit processes shall be provided with one of the following reliability features:

(a) Multiple sedimentation units capable of treating the entire flow with one unit not in operation.

(b) Standby sedimentation unit process.

(c) Long–term storage or disposal provisions.

§ 60349. Coagulation.

(a) All coagulation unit processes shall be provided with the following mandatory features for uninterrupted coagulant feed:

(1) Standby feeders,

(2) Adequate chemical stowage and conveyance facilities,

(3) Adequate reserve chemical supply, and

(4) Automatic dosage control.

(b) All coagulation unit processes shall be provided with one of the following reliability features:

(1) Alarm and multiple coagulation units capable of treating the entire flow with one unit not in operation;

(2) Alarm, short–term retention or disposal provisions, and standby replacement equipment;

(3) Alarm and long–term storage or disposal provisions;

(4) Automatically actuated long–term storage or disposal provisions, or

(5) Alarm and standby coagulation process.

§ 60351. Filtration.

All filtration unit processes shall be provided with one of the following reliability features:

(a) Alarm and multiple filter units capable of treating the entire flow with one unit not in operation.

(b) Alarm, short–term retention or disposal provisions and standby replacement equipment.

(c) Alarm and long–term storage or disposal provisions.

(d) Automatically actuated long–term storage or disposal provisions.

(e) Alarm and standby filtration unit process.

§ 60353. Disinfection.

(a) All disinfection unit processes where chlorine is used as the disinfectant shall be provided with the following features for uninterrupted chlorine feed:

(1) Standby chlorine supply,

(2) Manifold systems to connect chlorine cylinders,

(3) Chlorine scales, and

(4) Automatic devices for switching to full chlorine cylinders.

Automatic residual control of chlorine dosage, automatic measuring and recording of chlorine residual, and hydraulic performance studies may also be required.

(b) All disinfection unit processes where chlorine is used as the disinfectant shall be provided with one of the following reliability features:

(1) Alarm and standby chlorinator;

(2) Alarm, short–term retention or disposal provisions, and standby replacement equipment;

(3) Alarm and long–term storage or disposal provisions;

(4) Automatically actuated long–term storage or disposal provisions; or

(5) Alarm and multiple point chlorination, each with independent power source, separate chlorinator, and separate chlorine supply.

§ 60355. Other Alternatives to Reliability Requirements.

Other alternatives to reliability requirements set forth in Articles 8 to 10 may be accepted if the applicant demonstrates to the satisfaction of the State Department of Health that the proposed alternative will assure an equal degree of reliability.

NOTE: Authority cited: Section 208, Health and Safety Code; and Section 13521, Water Code. Reference: Sections 13520 and 13521, Water Code.

HISTORY

1. New NOTE filed 12–3–84 (Register 84, No. 49).

Article 11. Other Methods of Treatment

§ 60357. Other Methods of Treatment.

NOTE: Authority cited: Section 208, Health and Safety Code and Section 13521, Water Code. Reference: Section 13520, Water Code.

HISTORY

1. Renumbering of Article 11 (Section 60357) to Article 5.5 (Section 60320.5) filed 9–22–78; effective thirtieth day thereafter (Register 78, No. 38.) For history of former Article 11, see Registers 75, No. 14 and 77, No. 42.

Chapter 4. Water Treatment Devices

Article 1. Definitions

§ 60400. Certification.

"Certification" means that a water treatment device or a treatment component used in water treatment devices has met the testing requirements specified in section 60435 or the testing requirements accepted by the Department pursuant to section 4057.1(c) of the Health and Safety Code as defined in section 60440.

NOTE: Authority cited: Sections 208 and 4057.1, Health and Safety Code. Reference: Sections 4057 and 4057.1, Health and Safety Code.

HISTORY

1. New section filed 9–6–90; operative 10–6–90 (Register 90, No. 43).
2. Editorial correction of printing error restoring chapter 4 and article 1 headings (Register 91, No. 31).

§ 60401. Health and Safety Claim.

(a) "Health or Safety Claim" means one or more of the following:

(1) Any claim that the water treatment device or treatment component will remove or reduce a contaminant for which a primary drinking water standard as defined in Health and Safety Code section 4010.1 or a treatment requirement as authorized in sections 4023.1(c) and 4023.3(d) of the Health and Safety Code has been established.

(2) Any claim that the water treatment device or treatment component will remove or reduce a contaminant for which a national primary drinking water standard or treatment requirement has been established under the U.S. Safe Drinking Water Act (PL 93–523 and as amended under PL 99–339) (42 U.S.C. section 3OOg–1).

(3) Any claim that the water treatment device or treatment component will remove or reduce a contaminant which has been determined to present a health risk by the United States Environmental Protection Agency pursuant to sections 1445(a)(2) and 1445(a)(3) of the U.S. Safe Drinking Water Act (PL 93–523 and as amended under PL 99–339) (42 U.S.C. section 300j–4(a)(2) and (a)(3)).

NOTE: Authority cited: Sections 208 and 4057.1, Health and Safety Code. Reference: Sections 4010.1 4023.1, 4023.3, Health and Safety Code.

HISTORY

1. New section filed 9–6–90; operative 10–6–90 (Register 90, No. 43).

§ 60402. Independent Laboratory.

"Independent Laboratory" means a laboratory that is neither owned or operated by the manufacturer or an entity which is a parent or subsidiary company to the manufacturer of a water treatment device or treatment component nor is in a partnership with the manufacturer or entity which is a parent or subsidiary company to the manufacturer.

NOTE: Authority cited: Sections 208 and 4057.1, Health and Safety Code. Reference: Sections 4057 and 4057.1, Health and Safety Code.

HISTORY

1. New section filed 9–6–90; operative 10–6–90 (Register 90, No. 43).

§ 60403. Manufacturer.

(a) "Manufacturer" means any person, as defined by section 4057(c) of the California Health and Safety Code, that makes, converts, constructs, or produces water treatment devices or treatment components for the purpose of sale, lease or rent to individuals, corporations, associations, or other entities. Manufacturer also includes:

(1) Persons that assemble water treatment devices or treatment components from components manufactured by another entity.

(2) Persons who add their own product name or product identification to water treatment devices or treatment components which have been manufactured or assembled by another entity.

NOTE: Authority cited: Sections 208 and 4057.1, Health and Safety Reference: Sections 4057 and 4057.1, Health and Safety Code.

HISTORY

1. New section filed 9–6–90; operative 10–6–90 (Register 90, No. 43).

§ 60404. Recognized Testing Organization.

"Recognized Testing Organization" means an independent laboratory which has been accredited by the Department pursuant to Health and Safety Code, division 1, part 2, chapter 7.5, section 1010 et seq.

NOTE: Authority cited: Sections 208 and 4057.1, Health and Safety Code. Reference: Sections 4010.1, 4057 and 4057.1, Health and Safety Code.

HISTORY

1. New section filed 9–6–90; operative 10–6–90 (Register 90, No. 43).

§ 60405. Testing Requirements.

"Testing Requirements" means the contaminant reduction and general performance requirements pursuant to section 60435.

NOTE: Authority Cited: Sections 208 and 4057.1, Health and Safety Code. Reference: Sections 4057 and 4057.1. Health and Safety Code.

HISTORY

1. New section filed 9–6–90; operative 10–6–90 (Register 90, No. 43).

§ 60406. Modification.

"Modification" means any change made to a certified water treatment device or certified treatment component which may affect its performance in meeting the testing requirements or an change in the health or safety claims made with respect to the certified water treatment device or certified treatment component.

NOTE: Authority cited: Sections 208 and 4057.1, Health and Safety Code. Reference: Sections 4057 and 4057.1, Health and Safety Code.

HISTORY

1. New section filed 9–6–90; operative 10–6–90 (Register 90, No. 43).

Article 2. Certification Requirements

§ 60407. Certification Period.

The certification shall be valid for one year and shall be renewable for a period not to exceed five years.

NOTE: Authority cited: Sections 208, 4057.1 and 4057.2, Health and Safety Code. Reference: Sections 4057.1 and 4057.2, Health and Safety Code.

HISTORY

1. New section filed 9–6–90; operative 10–6–90 (Register 90, No. 43).
2. Editorial correction of printing error restoring article 2 heading (Register 91, No. 31).

Article 3. Application Requirements

§ 60410. Certification Application.

(a) Application for certification shall be submitted by the manufacturer for each water treatment device or treatment component.

(b) A completed application shall include the following:

(1) Applicant business name, address, and phone number.

(2) A contact person, address, and phone number.

(3) The identification of each and every specific contaminant for each and every health or safety claim which is made for the water treatment device or treatment component.

(4) Product design specifications and engineering information including blueprints or similar drawing which will provide detailed information about the construction of the water treatment device and treatment components.

(5) Parts list for the water treatment device or treatment component.

(6) Test data and verification as prescribed by section 60435, 60445, 60450 or 60455.

(7) A list of all names, model numbers, or other product identifications which are used by the manufacturer to describe the water treatment device or treatment component.

(8) A statement containing the following declaration by the manufacturer: "This water treatment device or treatment component, which is identified as (insert name, model number, or other product identification) has been toxicologically reviewed and tested to verify that no substances are contributed by the unit to the treated water at levels that would adversely affect the health of the users. The toxicological review and testing was conducted pursuant to the requirements of the material review and qualifications procedures contained in the appropriate testing standard referenced in Table I of section 60435 or Table II of section 60450".

(9) The application shall be signed by a person in a principal management position.

NOTE: Authority cited: Sections 208 and 4057.1, Health and Safety Code. Reference: Section 4057.1, Health and Safety Code.

HISTORY

1. New section filed 9–6–90; operative 10–6–90 (Register 90, No. 43).
2. Editorial correction of printing error in Reference and restoring article 3 heading (Register 91, No. 31).

§ 60415. Certification Renewal.

(a) A completed application for renewal of a certification shall be submitted by the manufacturer. A completed application shall include the following:

(1) Applicant business name, address, and phone number.

(2) A contact person, address, and phone number.

(3) A written statement that identifies any change to the information provided as described in section 60410(b)(7) and (8) or changes to section 60410(b)(4) and (5) which do not constitute modifications.

(4) The application shall be signed by a person in a principal management position.

(b) The manufacturer shall be responsible for making application for renewal of a certification at least 30 days prior to the expiration date. If the application is submitted after that date, a late application penalty must be paid.

(c) In the event that the application for renewal of the certification is denied by the department, the manufacturer will be notified by registered mail of the denial and the reasons for the denial. The manufacturer may appeal the denial in accordance with Government Code, title 2, division 3, chapter 5, section 11500 et seq. The registered letter providing notice of the denial will be considered the accusation within the appeal process.

NOTE: Authority cited: Sections 208 and 4057.1, Health and Safety Code. Reference: Section 4057.1, Health and Safety Code.

HISTORY

1. New section filed 9–6–90; operative 10–6–90 (Register 90, No. 43).

§ 60425. Modification of a Certification.

(a) Any modification made to a certified water treatment device or certified treatment component without the written approval of the Department shall void the certification.

(b) Application to modify an existing certification shall be submitted by the manufacturer. A completed application for the modification of a certified water treatment device or certified treatment component shall include the following:

(1) Applicant business name, address, and telephone number.

(2) Name of a contact person, address, and telephone number.

(3) A statement of the reasons for the modification(s).

(4) A description of the modification(s) to the certified water treatment device or certified treatment component such as changes in the health or safety claims; changes in treatment components; changes in parts which are in direct contact with the influent or product water; or changes to parts which affect the treatment process or product safety.

(6) Changes to the parts list provided pursuant to section 60410(b)(5).

(7) Changes to the product design, specifications and engineering information including blueprints or similar drawings provided pursuant to section 60410(b)(4).

(8) Changes to the list of names, model numbers, or other product identifications provided pursuant to section 60410(b)(7).

(9) A statement containing the following declaration by the manufacturer: "This water treatment device or treatment component, which is identified as (insert name, model number, or other product identification) has been to toxicologically reviewed and tested to verify that no substances are contributed by the unit to the treated water at levels that would adversely affect the health of the users. The toxicological review and testing was conducted pursuant to the requirements of the material review and qualifications procedures contained in the appropriate testing standard referenced in Table I of section 60435 or Table II of section 60450."

(10) The application shall be signed by a person in a principal management position.

NOTE: Authority cited: Sections 208 and 4057.1, Health and Safety Code. Reference: Section 4057.1, Health and Safety Code.

HISTORY

1. New section filed 9–6–90; operative 10–6–90 (Register 90, No. 43).

§ 60430. Processing Time.

(a) Within 45 calendar days of receipt of an application for certification, or modification of a certified water treatment device or certified treatment component, the Department shall inform the applicant in writing that the application is complete and accepted for filing, or that it is incomplete and what specific information is needed.

(b) Within 90 calendar days from the date of filing a completed application for certification or modification of a certified water treatment device or certified treatment component, the Department shall inform the applicant in writing of its decision.

(c) Within 30 calendar days of receipt of an application for renewal of certification, the Department shall inform the applicant in writing that the application is complete and accepted for filing, or that it is incomplete and what specific information is needed.

(d) Within 30 calendar days of receipt of a completed application for the renewal of certification, the Department shall inform the applicant in writing that certification has or has not been extended.

NOTE: Authority cited: Section 208, Health and Safety Code; and Section 15376, Government Code. Reference: Section 15376, Government Code.

HISTORY

1. New section filed 9–6–90; operative 10–6–90 (Register 90, No. 43).

Article 4. Testing and Testing Protocols

§ 60435. Testing and Testing Protocols.

(a) To be considered for certification, a water treatment device or treatment component shall be tested and found to meet the requirements set forth in Table I.

(b) The testing shall be conducted:

(1) By a recognized testing organization; or

(2) By a manufacturer pursuant to section 60445.

(c) All contaminant reduction and general performance testing shall be conducted by a laboratory which has been accredited by the Department pursuant to Health and Safety Code, division 1, part 2, chapter 7.5, section 1010 et seq. Test data submitted pursuant to section 60450 are exempt from this provision.

Table I
Testing Requirements

Treatment Process	Reference Standard	TESTING PROTOCOLS	
		Contaminant Reduction Requirements (Sections)	General Performance Requirements (Sections)
Mechanical Filtration	NSF Standard 53[1]	5.2, 5.2.1, 5.3, 5.3.1, 5.3.2, 5.3.3	4.2, 4.2.1, 4.2.2, 4.2.3, 4.2.4, 4.4, 5.5
Activated Carbon			
Reverse Osmosis	NSF Standard 58[2]	5.3, 5.4, 5.4.1, 5.4.2, 5.4.3	4.1, 4.7.2, 4.7.3
Cation Exchange	NSF Standard 44[3]	5.2, 5.2.1	4.3
Distillation	NSF Standard 62[4]	5.1, 5.2, 5.3	4.21, 4.5, 4.5.1, 4.5.2, 4.5.2.1, 5.4

Notes:

[1]National Sanitation Foundation Standard 53, Drinking Water Treatment Units Health Effects, June 1988.

[2]National Sanitation Foundation Standard 58, Reverse Osmosis Drinking Water Treatment Systems, November 1986.

[3]National Sanitation Foundation Standard 44, Cation Exchange Water Softeners, December 1987.

[4]National Sanitation Foundation Standard 62, Drinking Water Distillation Systems, May 1989.

NOTE: Authority cited: Sections 208 and 4057.1, Health and Safety Code. Reference: Section 4057.1, Health and Safety Code.

HISTORY

1. New section filed 9–6–90; operative 10–6–90 (Register 90, No. 43).

2. Editorial correction of printing error restoring article 4 heading (Register 91, No. 31).

§ 60440. Manufacturer's Testing Protocols.

(a) Whenever the testing requirements of Table I of section 60435 are not applicable for the treatment process or the specific contaminant for which certification is requested, the applicant shall submit proposed testing protocols to the Department for approval prior to the testing of the water treatment device or treatment component.

(b) The proposed testing protocols shall include the following:

(1) Testing shall be conducted in duplicate.

(2) Testing shall be conducted under pressure and flow conditions typical of the end use of the water treatment device or treatment component.

(3) Testing shall provide an equivalent level of assurance that the performance of a water treatment device or treatment component is consistent with the performance of those water treatment or treatment components devices which are tested against the testing requirements prescribed in Table I of section 60435.

NOTE: Authority cited: Sections 208 and 4057.1, Health and Safety Code. Reference: Section 4057.1, Health and Safety Code.

HISTORY

1. New section filed 9–6–90; operative 10–6–90 (Register 90, No. 43).

§ 60445. Manufacturer's Test Data.

(a) Test data developed by a manufacturer and submitted to the Department pursuant to the provisions of section 60435(b)(2) shall meet all of the following requirements:

(1) The data was obtained using the testing requirements prescribed in section 60435 or the testing requirements accepted by the Department pursuant to section 4057.1(c) of the Health and Safety Code as defined in section 60440.

(2) The data was produced by a laboratory which is wholly owned by the manufacturer of the water treatment device or treatment component.

(3) The manufacturer has complied with the Department's request for information regarding the qualifications of the laboratory staff, laboratory equipment used for testing and analysis, and records related to the testing under review.

(4) The manufacturer's laboratory has been inspected by the Department's staff under a cost reimbursement agreement to recover the cost incurred to make the inspection(s).

(5) The manufacturer has performed replicate testing, as specified by the Department, during the on–site inspection. Such testing shall be required when test data submitted pursuant to this section is incomplete or there is reasonable doubt regarding the ability of the treatment process to remove or reduce one or more of the specific contaminants tested.

NOTE: Authority cited: Sections 208 and 4057.1, Health and Safety Code. Reference: Sections 4057.1, and 4057.2, Health and Safety Code.

HISTORY

1. New section filed 9–6–90; operative 10–6–90 (Register 90, No. 43).

§ 60450. Prior Test Data.

When a manufacturer submits prior test data to satisfy the requirements of section 60410(b)(6), the manufacturer shall demonstrate that any test data developed before September 1, 1990 was developed by an independent laboratory or by a manufacturer's laboratory; and that the test data was developed using a testing protocol that was consistent with the applicable testing requirements set forth in Table II. All test data considered by the Department pursuant to this paragraph shall have been produced from testing that was conducted after January 1, 1983.

Table II
Testing Requirements for Prior Data

Treatment Process	Reference Standard	TESTING PROTOCOLS	
		Contaminant Reduction Requirements (Sections)	General Performance Requirements (Sections)
Mechanical Filtration	NSF Standard 53[1]	5.2, 5.2.1, 5.3, 5.3.1, 5.3.2, 5.3.3	4.2, 4.2.1, 4.2.2, 4.2.3, 4.2.4, 4.4, 5.5
Activated Carbon			
Reverse Osmosis	NSF Standard 58[2]	5.3, 5.4, 5.4.1, 5.4.2, 5.4.3	4.1, 4.7.2, 4.7.3
Cation Exchange	NSF Standard 44[3]	5.2, 5.2.1	4.3
Distillation	NSF Standard 62[4]	5.1, 5.2, 5.3	4.21, 4.5, 4.5.1, 4.5.2, 4.5.2.1, 5.4

Notes:
[1] National Sanitation Foundation Standard 53, Drinking Water Treatment Units Health Effects, June 1988.
[2] National Sanitation Foundation Standard 58, Reverse Osmosis Drinking Water Treatment Systems, November 1986.
[3] National Sanitation Foundation Standard 44, Cation Exchange Water Softeners, December 1987.
[4] National Sanitation Foundation Standard 62, Drinking Water Distillation Systems, May 1989.

NOTE: Authority cited: Sections 208 and 4057.1, Health and Safety Code. Reference: Section 4057.1, Health and Safety Code.

HISTORY
1. New section filed 9–6–90; operative 10–6–90 (Register 90, No. 43).

§ 60455. Extrapolation of Data.

(a) Where a manufacturer has several water treatment devices or treatment components each using the same treatment technology and they are of similar construction, the manufacturer may submit test data developed pursuant to section 60435 or the manufacturer's testing protocol accepted by the Department pursuant to section 4057.i(c) of the Health and Safety Code, as defined in section 60440, on one water treatment device or treatment component as representative of the others under the following conditions:

(1) The manufacturer submits evidence that extrapolation will provide test data that is reasonably consistent with empirical data that would be obtained from the actual testing of the water treatment device or treatment component.

(2) Extrapolation is limited to the scaling or down in size as measured by the volume of product water produced or volume of water to be treated.

(3) Scaling up shall be limited to three times greater than the size of the representative water treatment device or treatment component.

(4) Scaling down shall be limited to one third the size of the representative water treatment device or treatment component.

NOTE: Authority cited: Sections 208 and 4057.1, Health and Safety Code. Reference: Section 4057.1, Health and Safety Code.

HISTORY
1. New section filed 9–6–90; operative 10–6–90 (Register 90, No. 43).

§ 60460. Retesting.

(a) The manufacturer shall retest each certified water treatment device or certified treatment component every five years from the date of certification to insure continued compliance with this chapter and shall submit the results to the Department along with the application for recertification.

(b) The manufacturer shall retest a certified water treatment device or certified treatment component for the reduction of a contaminant or for a general performance requirement when the Department determines through testing pursuant to section 60435 or the manufacturer's testing protocol accepted by the Department pursuant to section 4057.1 of the Health and Safety Code, as defined in section 60440, that the water treatment device or treatment component is not meeting a requirement when the water treatment device or treatment component is used according to the manufacturer's instructions. The manufacturer shall comply with the following requirements when retesting pursuant to this paragraph:

(1) Retesting pursuant to subsection (b) shall be conducted by a recognized testing organization in accordance with section 60435 or the manufacturer's testing protocol and shall be initiated within three months of notification by registered mail of the Department's determination.

(2) The results of retesting shall be submitted to the Department within 60 days of initiating the testing.

(3) The results of retesting shall be in conformance with section 60435 or the manufacturer's testing protocol. Manufacturers of certified water treatment devices or certified treatment components determined to be out of compliance with section 60435 or the manufacturer's testing protocol will be notified by registered mail of the decertification and reason for decertification. The manufacturer may appeal the decertification in accordance with Government Code, title 2, division 3, chapter 5, section 11500 et seq. The registered letter providing notice of the decertification will be considered the accusation within the appeal process.

(c) Retesting pursuant to subdivision (a) shall not be required for a certified water treatment device or certified treatment component if the water treatment device or treatment component is listed under a product listing program operated a non–profit third party testing organization and subject to the following provisions:

(1) The listing program is operated by a recognized testing organization.

(2) The listing program includes retesting of the water treatment device or its treatment components at least every five years.

(3) The listing program requires that the manufacturer maintain a quality assurance and quality control program for the manufacturing of the water treatment device or treatment component.

(4) The listing program includes visits at least every two years to the manufacturing plants to inspect the manufacturing of the water treatment device or treatment component and the quality control records maintained by the manufacturer.

NOTE: Authority cited: Sections 208 and 4057.1, Health and Safety Code. Reference: Sections 4057.1 and 4057.3, Health and Safety Code.

HISTORY

1. New section filed 9–6–90; operative 10–6–90 (Register 90, No. 43).

Article 5. Product Labeling and Data Sheet Requirements

§ 60465. Product Labeling.

(a) A permanent, clear, and legible plate or label containing the following information shall be securely affixed to each certified water treatment device or certified treatment component so that such plate or label can only be removed with a purposeful effort and the plate or label shall be affixed in a readily accessible location:

(1) Equipment name.

(2) Model designation.

(3) Name of manufacturer.

(4) The statement "For conditions of use, health claims certified by the California Department of Health Services, and replacement parts, see product data sheet."

(5) The statement "California Department of Health Services certification Number: XXXXXX."

NOTE: Authority cited: Sections 208 and 4057.1, Health and Safety Code. Reference: Section 4057.1, Health and Safety Code.

HISTORY

1. New section filed 9–6–90; operative 10–6–90 (Register 90, No. 43).
2. Editorial correction of printing error restoring article 5 heading (Register 91, No. 31).

§ 60470. Product Data Sheet.

(a) Each certified water treatment device shall be accompanied by a Product Data Sheet which includes the following information:

(1) A copy of the certificate by which the Department has granted certification of the water treatment device. The copy may be incorporated in the product data sheet or attached to the sheet.

(2) Service flow rate in gallons per minute or gallons per day (Liters/day) or the production rate in gallons per day (Liters/day).

(3) Rated service life of the water treatment device (where applicable).

(4) General use conditions and needs, such as maximum turbidity and bacteriological quality of source water.

(5) Model or part number and estimated cost of components that must be periodically or routinely, replaced to maintain the effectiveness of the certified water treatment device.

(6) Maximum and minimum operating temperature in degrees Fahrenheit and degrees Centigrade.

(7) Maximum and minimum operating pressure in pounds per square inch and kilograms per square centimeter.

(8) A reference to the owner's manual for general operation and maintenance requirements, and the manufacturer's warranty.

NOTE: Authority cited: Sections 208 and 4057.1, Health and Safety Code. Reference: Section 4057.1, Health and Safety Code.

HISTORY

1. New section filed 9–6–90; operative 10–6–90 (Register 90, No. 43).

Article 6. Fees

§ 60475. Fees.

(a) The fees specified shall be paid pursuant to the requirements of this chapter. The fees paid are non–refundable:

(1) Certification or Recertification $1,400

(2) Annual Renewal ..... $ 400

(3) Late Renewal Penalty ..... $ 200

(4) Modification of a Certification ..... $ 300

NOTE: Authority cited: Sections 208, 4057.1 and 4057.5, Health and Safety Code. Reference: Section 4057.5, Health and Safety Code.

HISTORY

1. New section filed 9–6–90; operative 10–6–90 (Register 90, No. 43).
2. Editorial correction of printing error restoring article 6 heading (Register 91, No. 31).

Chapter 12. Safe Drinking Water Project Funding

Article 1. Definitions

§ 63000.10. Applicant.

"Applicant" means a public water system that is applying for funding from the State Revolving Fund.

NOTE: Authority cited: Section 116760.43, Health and Safety Code. Reference: Section 116760.20(i), Health and Safety Code.

HISTORY

1. New chapter 12 (articles 1–7), article 1 (sections 63000.10–63000.95) and section filed 3–23–99 as an emergency; operative 3–23–99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–21–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3–23–99 order transmitted to OAL 7–13–99 and filed 8–18–99 (Register 99, No. 34).

§ 63000.13. CEQA.

"CEQA" means the California Environmental Quality Act and the regulations and guidelines adopted by the California Resources Agency to implement that Act.

NOTE: Authority cited: Section 116760.43, Health and Safety Code. Reference: Section 116760 et seq., Health and Safety Code.

HISTORY

1. New section filed 3–23–99 as an emergency; operative 3–23–99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–21–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3–23–99 order transmitted to OAL 7–13–99 and filed 8–18–99 (Register 99, No. 34).

§ 63000.16. Completion of Project.

"Completion of Project" means, in the case of construction, that the Department has conducted a final inspection of the project and has notified the Department of Water Resources that project construction has been completed. In the case of planning loans, completion of project means that the Department has received and approved the planning report and has notified the Department of Water Resources of the approval.

NOTE: Authority cited: Section 116760.43, Health and Safety Code. Reference: Section 116760.20(g) and 116760.40, Health and Safety Code.

HISTORY

1. New section filed 3–23–99 as an emergency; operative 3–23–99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–21–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3–23–99 order transmitted to OAL 7–13–99 and filed 8–18–99 (Register 99, No. 34).

§ 63000.17. Consolidation Project.

"Consolidation project" means a project that involves the restructuring of two or more water systems into a single public water system through physical consolidation of the water systems.

NOTE: Authority cited: Section 116760.40, Health and Safety Code. Reference: Sections 116760.10(g), 116760.20(g) and 116761(b), Health and Safety Code.

HISTORY

1. New section filed 8–6–2002; operative 9–5–2002 (Register 2002, No. 32).

§ 63000.19. Construction Funding.

"Construction Funding" means a loan and/or grant to cover the cost of planning, preliminary engineering, design, acquisition of water systems, purchase of land or equipment, and construction or consolidation of a water system project.

NOTE: Authority cited: Section 116760.43, Health and Safety Code. Reference: Sections 116760.20(e), 116760.30, 116760.40, 116761.20(a) and 116761.50(b)(2), Health and Safety Code.

HISTORY

1. New section filed 3–23–99 as an emergency; operative 3–23–99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–21–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3–23–99 order transmitted to OAL 7–13–99 and filed 8–18–99 (Register 99, No. 34).
3. Amendment of section and NOTE filed 8–6–2002; operative 9–5–2002 (Register 2002, No. 32).

§ 63000.25. Disadvantaged Community.

"Disadvantaged Community" means a community whose median household income is 65 percent or less of the statewide median household income.

NOTE: Authority cited: Section 116760.43, Health and Safety Code. Reference: Section 116761.21, Health and Safety Code.

HISTORY

1. New section filed 3–23–99 as an emergency; operative 3–23–99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–21–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3–23–99 order transmitted to OAL 7–13–99 and filed 8–18–99 (Register 99, No. 34).

§ 63000.28. Drinking Water Standards.

"Drinking Water Standards" means all drinking water requirements set forth in the California Safe Drinking Water Act (section 116275 et. seq. Health and Safety Code) and the regulations adopted by the Department pursuant thereto.

NOTE: Authority cited: Section 116760.43, Health and Safety Code. Reference: Section 116760.20(k), Health and Safety Code.

HISTORY

1. New section filed 3–23–99 as an emergency; operative 3–23–99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–21–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3–23–99 order transmitted to OAL 7–13–99 and filed 8–18–99 (Register 99, No. 34).

§ 63000.31. Eligible Project Cost.

"Eligible Project Cost" means those costs of a proposed project that are deemed by the Department to comply with the eligibility criteria set forth in section 63010.

NOTE: Authority cited: Section 116760.43, Health and Safety Code. Reference: Section 116760.20(g) and 116760.50, Health and Safety Code.

HISTORY

1. New section filed 3–23–99 as an emergency; operative 3–23–99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–21–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3–23–99 order transmitted to OAL 7–13–99 and filed 8–18–99 (Register 99, No. 34).

§ 63000.34. Federal Cross–Cutters.

"Federal Cross–cutters" means those federal laws, regulations, policies and executive orders listed in Appendix VII of the USEPA program guidelines.

NOTE: Authority cited: Section 116760.43, Health and Safety Code. Reference: Section 116760.42, Health and Safety Code.

HISTORY

1. New section filed 3–23–99 as an emergency; operative 3–23–99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–21–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3–23–99 order transmitted to OAL 7–13–99 and filed 8–18–99 (Register 99, No. 34).

§ 63000.35. Federal Funding Allocation.

"Federal Funding Allocation means the capitalization grant awarded by the USEPA to the Department from a specific federal fiscal year allocation.

NOTE: Authority cited: Section 116760.43, Health and Safety Code. Reference: Section 116760.42, Health and Safety Code.

HISTORY

1. New section filed 3–23–99 as an emergency; operative 3–23–99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–21–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3–23–99 order transmitted to OAL 7–13–99 and filed 8–18–99 (Register 99, No. 34).

§ 63000.37. Notice of Acceptance of Application.

NOTE: Authority cited: Section 116760.43, Health and Safety Code. Reference: Section 116760.70, Health and Safety Code.

HISTORY

1. New section filed 3–23–99 as an emergency; operative 3–23–99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–21–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3–23–99 order transmitted to OAL 7–13–99 and filed 8–18–99 (Register 99, No. 34).
3. Renumbering of former section 63000.37 to new section 63000.67 filed 8–6–2002; operative 9–5–2002 (Register 2002, No. 32).

§ 63000.40. Funding Application.

"Funding Application" means the appropriate application form to be submitted by an applicant for State Revolving Fund funding. The application forms are: Application Cover Sheet [DHS 8595 (5/99)], Application for Construction Funds [DHS 8585 (4/01)]; Application for Short Term Planning Loans [DHS 8586 (1/99)]; Application for Source Water Protection Funds [DHS 8588 (2/00)]; and Application for Refinancing [DHS 8587 (1/99)], which are all incorporated by reference.

NOTE: Authority cited: Section 116760.43, Health and Safety Code. Reference: Section 116760.79, Health and Safety Code.

HISTORY

1. New section filed 3–23–99 as an emergency; operative 3–23–99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–21–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3–23–99 order transmitted to OAL 7–13–99 and filed 8–18–99 (Register 99, No. 34).
3. Amendment filed 8–6–2002; operative 9–5–2002 (Register 2002, No. 32).

§ 63000.43. Funding Agreement.

"Funding Agreement" means the document that is signed by the funding recipient and the Department of Water Resources, acting as the agent for the Department, that consummates the loan and/or grant.

NOTE: Authority cited: Section 116760.43, Health and Safety Code. Reference: Sections 116760.20(e), 116760.30, 116760.40, 116761.20(a) and 116761.50(b)(2), Health and Safety Code.

HISTORY

1. New section filed 3–23–99 as an emergency; operative 3–23–99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–21–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3–23–99 order transmitted to OAL 7–13–99 and filed 8–18–99 (Register 99, No. 34).
3. Amendment of section and NOTE filed 8–6–2002; operative 9–5–2002 (Register 2002, No. 32).

§ 63000.46. Funding Agreement Execution.

"Funding Agreement Execution" means that the funding agreement has been signed by both the funding recipient and the Department of Water Resources acting as the agent for the Department.

NOTE: Authority cited: Section 116760.43, Health and Safety Code. Reference: Section 116760.40, Health and Safety Code.

HISTORY

1. New section filed 3–23–99 as an emergency; operative 3–23–99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–21–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3–23–99 order transmitted to OAL 7–13–99 and filed 8–18–99 (Register 99, No. 34).

§ 63000.47. Funding Recipient.

"Funding recipient" means the public water system that enters into a funding agreement with the State and receives funding from the Safe Drinking Water State Revolving Fund.

NOTE: Authority cited: Section 116760.40, Health and Safety Code. Reference: Section 116760.40, Health and Safety Code.

HISTORY

1. New section filed 8–6–2002; operative 9–5–2002 (Register 2002, No. 32).

§ 63000.49. Local Match Project.

"Local Match Project" means a project whereby the local public agency provides 20 percent of the total eligible cost of the project to the Department to cover the State's matching share of the federal dollars.

NOTE: Authority cited: Section 116760.43, Health and Safety Code. Reference: Section 116760.40, Health and Safety Code.

HISTORY

1. New section filed 3–23–99 as an emergency; operative 3–23–99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–21–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3–23–99 order transmitted to OAL 7–13–99 and filed 8–18–99 (Register 99, No. 34).

§ 63000.62. Median Household Income.

"Median Household Income" means the household income that represents the median value for the service area of a public water system.

NOTE: Authority cited: Section 116760.43, Health and Safety Code. Reference: Section 116761.21, Health and Safety Code.

HISTORY

1. New section filed 3–23–99 as an emergency; operative 3–23–99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–21–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3–23–99 order transmitted to OAL 7–13–99 and filed 8–18–99 (Register 99, No. 34).
3. Amendment filed 8–6–2002; operative 9–5–2002 (Register 2002, No. 32).

§ 63000.65. NEPA.

"NEPA" means the National Environmental Policy Act (42 U.S.C. 4331 et seq.) or a NEPA equivalent or NEPA– Like process approved by the USEPA for the drinking water revolving fund loan program.

NOTE: Authority cited: Section 116760.43, Health and Safety Code. Reference: Section 116760.20, Health and Safety Code.

HISTORY

1. New section filed 3–23–99 as an emergency; operative 3–23–99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–21–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3–23–99 order transmitted to OAL 7–13–99 and filed 8–18–99 (Register 99, No. 34).

§ 63000.66. Non–Profit.

"Non–profit" means an entity that is exempt from taxes under United States Internal Revenue Code Section 501(a), 26 U.S.C. 501(a).

NOTE: Authority cited: Section 116760.40, Health and Safety Code. Reference: Sections 116760.10(l) and 116760.40, Health and Safety Code.

HISTORY

1. New section filed 8–6–2002; operative 9–5–2002 (Register 2002, No. 32).

§ 63000.67. Notice of Acceptance of Application.

"Notice of Acceptance of Application" means a notice sent to the applicant that (1) identifies the portions and costs of the project that have been determined to be eligible for State Revolving Fund funding; (2) explains the terms and conditions that will govern the loan or grant for the project; and (3) sets forth the conditions and schedules that must be met before a funding agreement will be executed.

NOTE: Authority cited: Section 116760.43, Health and Safety Code. Reference: Section 116760.70, Health and Safety Code.

HISTORY

1. Renumbering and amendment of former section 63000.37 to new section 63000.67 filed 8–6–2002; operative 9–5–2002 (Register 2002, No. 32).

§ 63000.68. Planning Loan.

"Planning Loan" means a loan to cover the cost of studies, planning, and preliminary engineering for a project.

NOTE: Authority cited: Section 116760.43, Health and Safety Code. Reference: Section 116761.20, Health and Safety Code.

HISTORY

1. New section filed 3–23–99 as an emergency; operative 3–23–99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–21–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3–23–99 order transmitted to OAL 7–13–99 and filed 8–18–99 (Register 99, No. 34).

§ 63000.70. Possible Contaminating Activity (PCA).

"Possible contaminating activity (PCA)" means a human activity that is an actual or potential origin of contamination for a drinking water source and includes sources of both microbiological and chemical contaminants that could have adverse effects upon human health.

NOTE: Authority cited: Section 116762.60, Health and Safety Code. Reference: Section 116760 et seq., Health and Safety Code.

HISTORY

1. New section filed 8–6–2002; operative 9–5–2002 (Register 2002, No. 32).

§ 63000.71. Project.

"Project" means all planning, engineering, construction, and construction related activities undertaken to solve the specific water system problem for which the project was ranked on the project priority list.

NOTE: Authority cited: Section 116760.43, Health and Safety Code. Reference: Section 116761.20, Health and Safety Code.

HISTORY

1. New section filed 3–23–99 as an emergency; operative 3–23–99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–21–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3–23–99 order transmitted to OAL 7–13–99 and filed 8–18–99 (Register 99, No. 34).

§ 63000.74. Project Priority List.

"Project Priority List" means the list of projects for which public water systems have requested funding and that have been ranked in priority order in accordance with section 116760.70 of the Health and Safety Code.

NOTE: Authority cited: Section 116760.43, Health and Safety Code. Reference: Section 116760.70, Health and Safety Code.

HISTORY

1. New section filed 3–23–99 as an emergency; operative 3–23–99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–21–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3–23–99 order transmitted to OAL 7–13–99 and filed 8–18–99 (Register 99, No. 34).

§ 63000.77. Project Primarily to Serve Future Growth.

"Project Primarily to Serve Future Growth" means a project, or project component, that has a design capacity that is more than double the design capacity needed to serve the existing water demand at peak daily flow.

NOTE: Authority cited: Section 116760.43, Health and Safety Code. Reference: Section 116760.90, Health and Safety Code.

HISTORY

1. New section filed 3–23–99 as an emergency; operative 3–23–99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–21–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3–23–99 order transmitted to OAL 7–13–99 and filed 8–18–99 (Register 99, No. 34).

§ 63000.80. Refinancing Loan.

"Refinancing Loan" means a loan to refinance the remaining balance of an existing indebtedness incurred for construction of an otherwise eligible project where the construction of such project commenced after July 1, 1993.

NOTE: Authority cited: Section 116760.43, Health and Safety Code. Reference: Section 116760.20, Health and Safety Code.

HISTORY

1. New section filed 3–23–99 as an emergency; operative 3–23–99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–21–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3–23–99 order transmitted to OAL 7–13–99 and filed 8–18–99 (Register 99, No. 34).

§ 63000.81. Restructured Water System.

"Restructured water system" means the single public water system that results from the consolidation of two or more water systems.

NOTE: Authority cited: Section 116760.40, Health and Safety Code. Reference: Sections 116760.10(g), 116760.20(g), 116760.40 and 116761(b) and (c), Health and Safety Code.

HISTORY
1. New section filed 8–6–2002; operative 9–5–2002 (Register 2002, No. 32).

§ 63000.83. Service Area.

"Service Area" means all of the geographical area that is currently served drinking water by a public water system.

NOTE: Authority cited: Section 116760.43, Health and Safety Code. Reference: Section 116760.20, Health and Safety Code.

HISTORY
1. New section filed 3–23–99 as an emergency; operative 3–23–99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–21–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3–23–99 order transmitted to OAL 7–13–99 and filed 8–18–99 (Register 99, No. 34).

§ 63000.84. Source Water Assessment.

"Source water assessment" means an evaluation of a drinking water source that includes delineation of the boundaries of the source area, identification of PCAs within the delineated area, a determination of the PCAs to which the source is most vulnerable, and a summary of the vulnerability of the source to contamination.

NOTE: Authority cited: Section 116762.60, Health and Safety Code. Reference: Section 116760 et seq., Health and Safety Code.

HISTORY
1. New section filed 8–6–2002; operative 9–5–2002 (Register 2002, No. 32).

§ 63000.85. Source Water Protection (SWP).

"Source water protection (SWP)" means the process of managing the activities within a delineated source area to prevent drinking water source contamination.

NOTE: Authority cited: Section 116762.60, Health and Safety Code. Reference: Section 116760 et seq., Health and Safety Code.

HISTORY
1. New section filed 8–6–2002; operative 9–5–2002 (Register 2002, No. 32).

§ 63000.86. Source Water Protection Program.

"Source water protection program", also known as a wellhead protection program or a watershed management program, means a comprehensive program developed to protect a water source used as a drinking water supply and includes activities such as organizing a community taskforce to develop and carry out the protection program, educating the community on source protection, conducting a source water assessment to determine the PCAs to which the source is most vulnerable, identifying management measures for the PCAs posing the highest risk, developing a strategy for implementing those measures, considering protection principles when siting any new sources, and identifying alternative sources of supply for emergencies.

NOTE: Authority cited: Section 116762.60, Health and Safety Code. Reference: Section 116760 et seq., Health and Safety Code.

HISTORY
1. New section filed 3–23–99 as an emergency; operative 3–23–99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–21–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3–23–99 order transmitted to OAL 7–13–99 and filed 8–18–99 (Register 99, No. 34).
3. Renumbering of former section 63000.86 to section 63000.89 and new section 63000.86 filed 8–6–2002; operative 9–5–2002 (Register 2002, No. 32).

§ 63000.87. Source Water Protection (SWP) Loan.

"Source Water Protection (SWP) loan" means a loan to cover the cost of a Source Water Protection Project.

NOTE: Authority cited: Section 116762.60 , Health and Safety Code. Reference: Section 116760 et seq., Health and Safety Code.

HISTORY
1. New section filed 8–6–2002; operative 9–5–2002 (Register 2002, No. 32).

§ 63000.88. SWP Loan Applicant.

"SWP loan applicant" means a public water system that is applying for a SWP loan from the State Revolving Fund.

NOTE: Authority cited: Section 116762.60, Health and Safety Code. Reference: Section 116760 et seq., Health and Safety Code.

HISTORY
1. New section filed 8–6–2002; operative 9–5–2002 (Register 2002, No. 32).

§ 63000.89. State Revolving Fund.

"State Revolving Fund" means the Safe Drinking Water State Revolving Fund created pursuant to section 116760.30 of the Health and Safety Code.

NOTE: Authority cited: Section 116760.43, Health and Safety Code. Reference: Section 116760.30, Health and Safety Code.

HISTORY
1. New section filed 3–23–99 as an emergency; operative 3–23–99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–21–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3–23–99 order transmitted to OAL 7–13–99 and filed 8–18–99 (Register 99, No. 34).
3. Renumbering of former section 63000.89 to new section 63000.90 and renumbering of former section 63000.86 to section 63000.89 filed 8–6–2002; operative 9–5–2002 (Register 2002, No. 32).

§ 63000.90. Target Consumer Rate.

"Target Consumer Rate" means an amount equal to 1 1/2 percent of the median household income for water systems where the median household income is equal to or less than the statewide median household income or 2 percent of the median household income for water systems where the median household income is greater than the statewide median household income.

NOTE: Authority cited: Section 116760.43, Health and Safety Code. Reference: Section 116760.70, Health and Safety Code.

HISTORY
1. Renumbering of former section 63000.89 to new section 63000.90 filed 8–6–2002; operative 9–5–2002 (Register 2002, No. 32).

§ 63000.92. USEPA.

"USEPA" means the United States Environmental Protection Agency.

NOTE: Authority cited: Section 116760.43, Health and Safety Code. Reference: Section 116760 et seq., Health and Safety Code.

HISTORY
1. New section filed 3–23–99 as an emergency; operative 3–23–99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–21–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3–23–99 order transmitted to OAL 7–13–99 and filed 8–18–99 (Register 99, No. 34).

§ 63000.95. USEPA Program Guidelines.

"USEPA Program Guidelines" means the Drinking Water State Revolving Fund Program Guidelines (EPA 816–R–97–005, February 28, 1997) adopted by the USEPA.

NOTE: Authority cited: Section 116760.43, Health and Safety Code. Reference: Section 116760 et seq., Health and Safety Code.

HISTORY
1. New section filed 3–23–99 as an emergency; operative 3–23–99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–21–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3–23–99 order transmitted to OAL 7–13–99 and filed 8–18–99 (Register 99, No. 34).

Article 2. Financing Criteria

§ 63010. Project Eligibility.

(a) In order to be eligible for funding, an applicant shall have the authority to enter into a funding agreement with the State.

(b) In order to be eligible for funding that is not a SWP loan, an applicant shall be either a community water system or a non–profit non–community water system.

(1) Only those project costs that are directly associated with the planning, design, and construction of a project shall be eligible for funding.

(2) The following project costs, that would otherwise be eligible pursuant to paragraph (1), shall be ineligible for funding:

(A) Land acquisition except for land or land access that is integral to the construction of source, treatment or distribution facilities.

(B) Ongoing operation and maintenance costs.

(C) Any project facilities that are primarily to serve future growth.

(D) Dams or rehabilitation of dams and any raw water storage facilities.

(E) Water rights except water rights acquired through consolidation with another water system.

(F) Laboratories except those necessary for operation of a treatment facility.

(c) In order to be eligible for a SWP loan, an applicant shall be a community water system except that both a community and non-profit non-community water system shall be eligible for a SWP loan for land or easement acquisition.

(1) SWP project costs that shall be eligible for a SWP loan include only those associated with source water protection measures such as destruction of abandoned wells, hazardous waste collection programs, upgrade or abatement of septic systems, public education, water quality monitoring at critical points in protection areas, fencing out cattle and other animals from intakes, tributaries or reservoir boundaries, restricting public access to critical areas in protection areas, evaluations of agricultural practices and education on best management practices, installation of signs at boundaries of zones or protection areas, and structures to divert contaminated runoff from the source.

(2) SWP project costs shall be ineligible for SWP funding if the project is eligible for funding through the following:

(A) The federal Comprehensive Environmental Response Compensation and Liability Act of 1980 (Superfund) as amended by the Superfund Amendments and Reauthorization Act of 1986; or

(B) Programs established under the Hazardous Substance Account Act (Health and Safety Code, Chapter 6.8, Section 25300 et seq); or

(C) The Underground Storage Tank Cleanup Fund created pursuant to Health and Safety Code section 25299.50.

(d) Costs arising from construction change orders that occur after funding agreement execution shall be ineligible for funding except for the following:

(1) A change in the executed funding agreement amount based on the final accepted construction bid as provided in section 63051 (b).

(2) Change orders that are a result of changes in drinking water standards.

(3) Change orders requested by the Department.

NOTE: Authority cited: Sections 116760.43, 116760.50 and 116762.60, Health and Safety Code. Reference: Sections 116760.10(l), 116760.40(f), 116760.50 and 116761, Health and Safety Code.

HISTORY

1. New article 2 (sections 63010–63014) and section filed 3–23–99 as an emergency; operative 3–23–99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–21–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3–23–99 order transmitted to OAL 7–13–99 and filed 8–18–99 (Register 99, No. 34).
3. Amendment of section and NOTE filed 8–6–2002; operative 9–5–2002 (Register 2002, No. 32).

§ 63011. Planning Loans.

(a) Planning funds shall be used only for loans to finance planning, studies, and preliminary engineering costs for an eligible project. Planning funds shall not be used for detailed design, equipment purchase, or construction.

(b) Planning loans shall be limited to a maximum amount of $100,000 per project.

(c) Projects funded by planning loans shall be completed and a planning report submitted to the Department within 18 months from funding agreement execution.

NOTE: Authority cited: Section 116760.43, Health and Safety Code. Reference: Sections 116760.80(b) and 116761.50(b)(3), Health and Safety Code.

HISTORY

1. New section filed 3–23–99 as an emergency; operative 3–23–99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–21–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3–23–99 order transmitted to OAL 7–13–99 and filed 8–18–99 (Register 99, No. 34).

§ 63012. Construction Funding.

(a) Construction funding shall be limited to a maximum amount of $20,000,000 per project.

(b) A public water system shall not be awarded more than an aggregate amount of $30,000,000 in construction funding and refinancing loans from a federal funding allocation.

(c) The funding limitations established by this section shall not apply during the month preceding the federal deadline for obligation of funds to applicants from a federal funding allocation.

NOTE: Authority cited: Section 116760.43, Health and Safety Code. Reference: Sections 116760.10(l), 116760.42(b) and 116761, Health and Safety Code.

HISTORY

1. New section filed 3–23–99 as an emergency; operative 3–23–99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–21–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3–23–99 order transmitted to OAL 7–13–99 and filed 8–18–99 (Register 99, No. 34).

§ 63013. Refinancing Loans.

(a) Refinancing loan funds shall be used only to refinance the remaining balance of an existing indebtedness incurred by the construction of an eligible project ranked in a category A through G on the Project Priority List.

(b) An applicant for a refinancing loan shall be a public agency.

(c) Refinancing loans shall be limited to a maximum amount of $20,000,000 per project and an aggregate total of $30,000,000 per water system from a federal funding allocation.

NOTE: Authority cited: Section 116760.43, Health and Safety Code. Reference: Sections 116760.20(g), 116760.42(b), 116760.50 and 116761, Health and Safety Code.

HISTORY

1. New section filed 3–23–99 as an emergency; operative 3–23–99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–21–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3–23–99 order transmitted to OAL 7–13–99 and filed 8–18–99 (Register 99, No. 34).
3. Amendment of subsection (a) filed 8–6–2002; operative 9–5–2002 (Register 2002, No. 32).

§ 63014. Local Match Projects.

(a) Local match projects shall be considered to be the same as construction projects and shall be subject to the same conditions and limitations.

(b) An applicant for a local match project shall be a community water system owned by a public agency.

(c) Only projects that exceed $5,000,000 in eligible project costs shall be eligible for local matching.

NOTE: Authority cited: Section 116760.43, Health and Safety Code. Reference: Sections 116760.40(i) and 116760.50, Health and Safety Code.

HISTORY

1. New section filed 3–23–99 as an emergency; operative 3–23–99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–21–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3–23–99 order transmitted to OAL 7–13–99 and filed 8–18–99 (Register 99, No. 34).

§ 63015. SWP Loans.

(a) SWP loan funds shall be used only for planning, preliminary engineering, detailed design, construction, education, land acquisition, conservation easements, equipment purchase, and implementing the elements of a source water protection program.

(b) SWP loans shall be limited to a maximum amount of $2,000,000 per project per year.

(c) A SWP loan applicant shall not be awarded more than an aggregate amount of $3,000,000 in SWP loans in any fiscal year.

(d) A planning project funded by a SWP loan shall be completed and a planning report submitted to the Department within 18 months from funding agreement execution.

NOTE: Authority cited: Section 116760.50 and 116762.60, Health and Safety Code. Reference: Sections 116760.80(b) and 116761, Health and Safety Code.

HISTORY

1. New section filed 8–6–2002; operative 9–5–2002 (Register 2002, No. 32).

Article 3. Disadvantaged Communities

§ 63020. Grant Eligibility.

Funding in the form of a grant shall be made only to a public water system owned by a public agency and whose service area is a disadvantaged community. In the case of a consolidation project, the service area that would be assimilated (cease to exist as a separate public water system) as a result of the consolidation shall be used to determine grant eligibility.

NOTE: Authority cited: Section 116760.43, Health and Safety Code. Reference: Sections 116760.10(g), 116760.20(h) and 116761.23(b), Health and Safety Code.

HISTORY

1. New article 3 (sections 63020–63021) and section filed 3–23–99 as an emergency; operative 3–23–99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–21–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3–23–99 order transmitted to OAL 7–13–99 and filed 8–18–99 (Register 99, No. 34).
3. Amendment of section and NOTE filed 8–6–2002; operative 9–5–2002 (Register 2002, No. 32).

§ 63021. Grant Limitations.

(a) The maximum amount of grant funding to be awarded to a project shall be limited to the following percentages according to the classification of the project using the Project Priority List adopted September 15, 1998, pursuant to Health and Safety Code section 116760.70:

(1) 80% of the eligible project cost if the project is in Project Priority List categories A through G;

(2) 65% of the eligible project cost if the project is in Project Priority List categories H through L; or

(3) 50% of the eligible project cost if the project is in Project Priority List categories M through O.

(b) Grant funds awarded to a disadvantaged community project shall not exceed $10,000 per service connection.

(c) The maximum amount of grant funding that one water system may receive from a federal funding allocation shall not exceed $1,000,000.

(d) The total amount of grant funding awarded to a disadvantaged community for a project shall be limited to the amount of funding needed so that the projected average residential water rate, which would result from a loan from the State Revolving Fund, will not exceed the target consumer rate.

(e) For consolidation projects, the limitations and maximum grant calculations set forth in this section shall be applied to each applicant's eligible share of the total project cost of the consolidation project, and the grant eligibility for the entire consolidation project shall be the total of the eligibilities for the individual applicants.

NOTE: Authority cited: Section 116760.43, Health and Safety Code. Reference: Sections 116760.10(g) and (l), 116760.40, 116760.42(b) and 116760.70, Health and Safety Code.

HISTORY

1. New section filed 3–23–99 as an emergency; operative 3–23–99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–21–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3–23–99 order transmitted to OAL 7–13–99 and filed 8–18–99 (Register 99, No. 34).
3. New subsection (e) and amendment of NOTE filed 8–6–2002; operative 9–5–2002 (Register 2002, No. 32).

Article 4. Application Process

§ 63025. Funding Application.

(a) All funding applications shall be submitted by public water systems only after a water system has received a written invitation from the Department to do so.

(b) Upon receipt of a written invitation from the Department to submit a funding application, an applicant shall indicate their intention to submit the application within the deadline set forth in the letter by signing a statement of intent. The statement of intent shall be received by the Department prior to close of business on the day indicated in the invitation.

(c) In order to be assured of receiving funding consideration from a specific federal funding allocation, a completed funding application shall be submitted to the Department by close of business on the date set forth in the letter of invitation.

(d) A funding application shall not be accepted for processing unless the funding application form is completed and the additional information specified below is submitted:

(1) For SWP loan applications, the information in Sections 63026(d), 63026(e), 63027, and 63028(a).

(2) For all other funding applications, the information in Sections 63026, 63027, and 63028.

NOTE: Authority cited: Section 116760.43, Health and Safety Code. Reference: Section 116760.79, Health and Safety Code.

HISTORY

1. New article 4 (sections 63025–63030) and section filed 3–23–99 as an emergency; operative 3–23–99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–21–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3–23–99 order transmitted to OAL 7–13–99 and filed 8–18–99 (Register 99, No. 34).
3. Amendment of subsection (d) and new subsections (d)(1)–(2) filed 8–6–2002; operative 9–5–2002 (Register 2002, No. 32).

§ 63026. Technical Information.

(a) Each funding application for construction funding or a refinancing loan shall contain the following information:

(1) A map showing the current service area of the water system.

(2) A map or drawing showing the location of all existing water sources, pumping facilities, treatment facilities, storage tanks or reservoirs, water transmission mains, and water main pressure zones.

(3) A schedule for full compliance with CEQA and NEPA.

(b) Each applicant for construction funding shall prepare and submit with the funding application, an engineering report addressing all of the following elements:

(1) An identification and evaluation of alternative solutions to the problem. The evaluation shall compare estimated project costs, relative effectiveness in solving the problem, and environmental impacts of each alternative.

(2) An evaluation, including costs and feasibility, of possible physical consolidation with other water systems.

(3) A description of the selected or proposed alternative.

(4) A conceptual or preliminary engineering design, including the design capacity of project components, and a schematic layout of the proposed project. All assumptions, criteria, and calculations used for the preliminary design shall be shown.

(5) An analysis and estimation of the anticipated useful life of components of the proposed project.

(6) A preliminary analysis of projected growth anticipated to occur within the service area within the next ten years, the resultant projected water demand, and the amount of growth or water demand to be included in the project.

(7) A proposed design and construction schedule.

(8) A cost estimate breakdown of the proposed project.

(9) In the case of a consolidation project, each funding application also shall include identification of the single public water system that would result from completion of the consolidation project.

(c) Each funding application for a refinancing loan shall include all of the following:

(1) A description and estimated costs of all alternative solutions to the problem that were considered prior to construction of the selected project.

(2) A layout or schematic drawing showing the location and relationship of all project facilities including the newly constructed portions.

(3) A description of the facilities that were constructed and for which refinancing is being requested including an estimate of their useful life.

(4) The design capacities of project components and the design parameters and engineering calculations used in the sizing and design of the project components.

(5) An analysis and estimation of the water demand within the service area at the time of start of construction of the project and a projection of anticipated growth and water demand for a ten-year period commencing from the time of start of construction.

(6) A cost breakdown of the constructed project.

(7) As-built plans for all of the construction facilities that are to be covered by the refinancing loan.

(8) The final plans and specifications used to solicit and select the construction bid.

(9) Information that demonstrates that the applicant has complied with all applicable federal cross-cutters.

(d) Each SWP loan applicant shall submit the following:

(1) A completed source water assessment for each drinking water source addressed by the proposed project.

(2) A list of the types of contaminants that the proposed project is intended to address and the associated PCAs.

(3) A description of the dimensions and location of the area or zone in which the associated PCAs are located.

(4) A map showing water system facilities, intake or well location, and source protection areas and/or zones.

(5) A description of the local community taskforce addressing source water protection (if one exists). The description shall include a list of the participants and their affiliations, and the methods used to establish the membership in the taskforce.

(6) A schedule for full compliance with CEQA and NEPA.

(e) Each SWP loan applicant shall prepare and submit an engineering report with the loan application that addresses all of the following:

(1) Descriptions and estimated costs of all alternative solutions to the problem that were considered prior to selection of the proposed project.

(2) A description of the proposed project.

(3) A conceptual or preliminary engineering design and schematic layout of the proposed project, if applicable. All assumptions, criteria, and calculations used shall be shown.

(4) An analysis and estimation of the anticipated useful life of the components of the proposed project, if applicable.

(5) A proposed schedule for carrying out the project.

(6) A cost estimate breakdown of the proposed project.

NOTE: Authority cited: Section 116760.43 and 116762.60, Health and Safety Code. Reference: Sections 116760.40, 116760.79 and 116760.90, Health and Safety Code.

HISTORY

1. New section filed 3-23-99 as an emergency; operative 3-23-99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7-21-99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3-23-99 order transmitted to OAL 7-13-99 and filed 8-18-99 (Register 99, No. 34).
3. New subsection (b)(9), amendment of subsection (c)(9), new subsections (d)-(e)(6) and amendment of NOTE filed 8-6-2002; operative 9-5-2002 (Register 2002, No. 32).

§ 63027. Managerial Information.

Each funding application shall contain the following:

(a) Copies of any leases, easements, or other documentation for land, water sources, treatment, pumping, storage, or distribution facilities used in the operation of the water system that are not owned by the water system.

(b) A written statement certifying that the applicant, or in the case of a consolidation project, the restructured water system, is a legal entity and that it has the authority to enter into a long-term indebtedness with the State of California.

(c) A description of the water rights held by the water system and any available documentation to substantiate those rights.

NOTE: Authority cited: Section 116760.43, Health and Safety Code. Reference: Sections 116760.50, 116760.79 and 116760.90, Health and Safety Code.

HISTORY

1. New section filed 3-23-99 as an emergency; operative 3-23-99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7-21-99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3-23-99 order transmitted to OAL 7-13-99 and filed 8-18-99 (Register 99, No. 34).
3. Amendment of subsection (b) filed 8-6-2002; operative 9-5-2002 (Register 2002, No. 32).

§ 63028. Financial Information.

(a) Each funding application shall contain the following:

(1) A projected revenue/expenditure analysis that compares all anticipated water system revenues and planned expenditures for the next five years.

(2) An analysis and calculation of the average current water rate charged to residential users and the projected average water rate that will be charged to residential users following completion of the eligible project. This analysis is not required for non-community water systems.

(3) Financial statements (balance and income) of the water system covering the past three years.

(4) A description of the accounting and budget control procedures used and any proposed changes to the procedures.

(b) In addition to the requirements of subsection (a), applicants for a refinancing loan shall also include a certification that proceeds of the previous debt were used to pay for eligible project costs. If ineligible items were funded, a list of those items and their costs shall be included.

(c) In addition to the requirements of subsection (a), applicants that propose to use local matching funds pursuant to section 63014 shall include a resolution adopted by the governing body. The resolution shall identify the source of the local matching funds and pledge those funds for deposit into the State Revolving Fund.

NOTE: Authority cited: Section 116760.43, Health and Safety Code. Reference: Sections 116760.40(i), 116760.79, 116760.90 and 116761.50(d), Health and Safety Code.

HISTORY

1. New section filed 3-23-99 as an emergency; operative 3-23-99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7-21-99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3-23-99 order transmitted to OAL 7-13-99 and filed 8-18-99 (Register 99, No. 34).

§ 63029. Notice of Acceptance of Application.

(a) Within 60 days of receipt of a Notice of Acceptance of Application from the Department of Water Resources, the applicant shall indicate its acceptance of the terms and conditions of the funding offer by countersigning the letter and returning it to the Department of Water Resources.

(b) If the proposed project is a consolidation project for which the restructured water system is not one of the applicants, within 60 days of receipt of a Notice of Acceptance of Application from the Department of Water Resources, the applicant(s) and the restructured water system shall indicate their acceptance of the terms and conditions of the funding offer by countersigning the letter and returning it to the Department of Water Resources.

NOTE: Authority cited: Section 116760.43, Health and Safety Code. Reference: Sections 116760.40 and 116760.50, Health and Safety Code.

HISTORY

1. New section filed 3-23-99 as an emergency; operative 3-23-99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7-21-99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3-23-99 order transmitted to OAL 7-13-99 and filed 8-18-99 (Register 99, No. 34).
3. Redesignation and amendment of existing section as subsection (a), new subsection (b) and amendment of NOTE filed 8-6-2002; operative 9-5-2002 (Register 2002, No. 32).

§ 63030. Project By-Passing.

(a) A project on the Project Priority List shall be by-passed for funding consideration for the current fiscal year if any of the following apply:

(1) The water system indicated that it did not desire to receive funding for a particular project in the current fiscal year.

(2) A water system fails to sign a statement of intent to submit an application and return it to the Department by the date identified in the letter as specified in Section 63025(b).

(3) A water system, receiving an invitation from the Department to submit a funding application, informs the Department that it does not wish to submit an application at this time.

(4) A funding application is rejected by the Department for failure on the part of the applicant to comply with the requirements of this chapter.

(5) An applicant fails to sign and return the Notice of Acceptance of Application within 60 days of receipt of the Notice of Acceptance of Application.

(6) The Department of Water Resources or the Department of Health Services withdraws a previously issued Notice of Acceptance of Application for failure on the part of the applicant to comply with the terms and conditions as stated in the Notice of Acceptance of Application.

(7) The applicant has reached the $3,000,000 loan maximum set forth in subsection 63015(c) for a SWP loan, or the $30,000,000 funding maximum set forth in subsection 63012(b) for a construction funding or refinancing loan.

(b) Any project that is by–passed for any reason shall remain on the Project Priority List and be eligible for future funding consideration.

NOTE: Authority cited: Section 116760.43, Health and Safety Code. Reference: Sections 116760.42(b), 116760.70(e) and 116761.50(b)(3), Health and Safety Code.

HISTORY

1. New section filed 3–23–99 as an emergency; operative 3–23–99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–21–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3–23–99 order transmitted to OAL 7–13–99 and filed 8–18–99 (Register 99, No. 34).
3. Amendment of subsections (a)(2), (a)(5) and (a)(7) filed 8–6–2002; operative 9–5–2002 (Register 2002, No. 32).

Article 5. Information to Be Submitted Prior to Execution of the Funding Agreement

§ 63040. Technical and Financial Information.

(a) All applicants for construction funding, SWP loans, or refinancing loans shall comply with all applicable environmental review and procedural requirements of CEQA and NEPA prior to execution of the funding agreement.

(b) Prior to execution of a funding agreement that includes a loan, each funding recipient shall submit the following:

(1) A resolution or ordinance adopted by the governing body dedicating the source of repayment of the loan.

(2) A completed and signed Fiscal Services Agreement [DWR–4280 (New 2/99) which is incorporated by reference].

NOTE: Authority cited: Section 116760.43, Health and Safety Code. Reference: Sections 116760.10(l), 116760.79 and 116760.90, Health and Safety Code.

HISTORY

1. New article 5 (section 63040) and section filed 3–23–99 as an emergency; operative 3–23–99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–21–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3–23–99 order transmitted to OAL 7–13–99 and filed 8–18–99 (Register 99, No. 34).
3. Amendment of subsections (a)–(b) filed 8–6–2002; operative 9–5–2002 (Register 2002, No. 32).

Article 6. Design and Construction

§ 63050. Plans and Specifications.

(a) Applicants for construction funding or SWP loans involving construction shall submit final design plans and project specifications to the Department in accordance with the schedule set forth in the Notice of Acceptance of Application.

(b) Each project that requests funding in excess of $500,000, and each project proposed by an applicant whose service area serves more than 1,000 service connections, shall comply with federal cross–cutters. In addition, each SWP applicant shall comply with federal cross–cutters.

NOTE: Authority cited: Section 116760.43, Health and Safety Code. Reference: Sections 116760.10(l), 116760.90, 116761 and 116761.50(b)(3), Health and Safety Code.

HISTORY

1. New article 6 (sections 63050–63051) and section filed 3–23–99 as an emergency; operative 3–23–99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–21–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3–23–99 order transmitted to OAL 7–13–99 and filed 8–18–99 (Register 99, No. 34).
3. Amendment filed 8–6–2002; operative 9–5–2002 (Register 2002, No. 32).

§ 63051. Construction.

(a) Construction contracts awarded by the applicant for any project involving the use of grant funds from the State Revolving Fund shall be based on competitive construction bids.

(b) An applicant's request for a change in the amount of funding specified in the funding agreement shall be limited to one occasion and shall be based solely on the final accepted construction bid(s).

NOTE: Authority cited: Section 116760.43, Health and Safety Code. Reference: Section 116761.50, Health and Safety Code.

HISTORY

1. New section filed 3–23–99 as an emergency; operative 3–23–99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–21–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3–23–99 order transmitted to OAL 7–13–99 and filed 8–18–99 (Register 99, No. 34).

Article 7. Claims and Loan Repayments

§ 63055. Submission of Claims for Reimbursement.

(a) No claims for reimbursement shall be submitted prior to execution of the funding agreement. Claims shall be submitted only for reimbursement of costs already incurred.

(b) Claims submitted by loan recipients shall be made using a claim form [DWR – 4277 (New 2/99) which is incorporated by reference] provided by the Department of Water Resources and shall be submitted no more frequently than monthly.

(c) No claims shall be submitted for costs incurred after completion of the project.

(d) No claims for local match projects shall be reimbursed until the applicant's local share has been received and deposited into the State Revolving Fund account.

NOTE: Authority cited: Section 116760.43, Health and Safety Code. Reference: Sections 116760.10(l) and 116761.50, Health and Safety Code.

HISTORY

1. New article 7 (sections 63055–63057) and section filed 3–23–99 as an emergency; operative 3–23–99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–21–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3–23–99 order transmitted to OAL 7–13–99 and filed 8–18–99 (Register 99, No. 34).

§ 63056. Loan Repayments.

(a) Loan repayments shall be made in accordance with the schedule set forth in the funding agreement.

(b) A penalty of one–tenth of one percent per day (not compounded) on the payment amount due shall be assessed for late payments.

NOTE: Authority cited: Section 116760.43, Health and Safety Code. Reference: Section116761.50, Health and Safety Code.

HISTORY

1. New section filed 3–23–99 as an emergency; operative 3–23–99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–21–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3–23–99 order transmitted to OAL 7–13–99 and filed 8–18–99 (Register 99, No. 34).

§ 63057. Records.

(a) All applicant records and documents relating to funding received from the State Revolving Fund shall be maintained until such time that any State Revolving Fund loan has been fully repaid.

(b) All applicant records and documents pertaining to the funding agreement shall be available for inspection and audit by the Department or the USEPA during normal business hours.

(c) In the case of a consolidation project, the requirements of this section shall also be met by the restructured water system.

NOTE: Authority cited: Section 116760.43, Health and Safety Code. Reference: Section 116760.10(l), Health and Safety Code.

HISTORY

1. New section filed 3–23–99 as an emergency; operative 3–23–99 (Register 99, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–21–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3–23–99 order transmitted to OAL 7–13–99 and filed 8–18–99 (Register 99, No. 34).
3. Amendment filed 8–6–2002; operative 9–5–2002 (Register 2002, No. 32).

Article 8. Consolidation Projects

§ 63058. Limitations on Water Systems Involved in Consolidation Projects.

Upon completion of a consolidation project, all water systems involved in the consolidation, other than the restructured system, shall cease to operate as public water systems.

NOTE: Authority cited: Section 116760.40, Health and Safety Code. Reference: 116760.10(g), 116760.20(g) and 116760.40, Health and Safety Code.

HISTORY

1. New article 8 (section 63058) and section filed 8–6–2002; operative 9–5–2002 (Register 2002, No. 32).

Chapter 13. Operator Certification

Article 1. Definitions

§ 63750.10. Accredited Academic Institution.

"Accredited academic institution" means an academic institution accredited by the Western Association of Schools and Colleges or an accrediting organization recognized by the Council of Post Secondary Education.

NOTE: Authority cited: Sections 100275 and 106910, Health and Safety Code. Reference: Section 106910, Health and Safety Code.

HISTORY

1. New chapter 13 (articles 1–5, sections 63750.10–63850), article 1 (sections 63750.10–63750.85) and section filed 12–26–2000 as an emergency; operative 1–1–2001 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2001 or emergency language will be repealed by operation of law on the following day.
2. New chapter 13 (articles 1–5, sections 63750.10–63850), article 1 (sections 63750.10–63750.85) and section refiled 4–25–2001 as an emergency; operative 5–2–2001 (Register 2001, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–30–2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–25–2001 order transmitted to OAL 7–12–2001 and filed 8–13–2001 (Register 2001, No. 33).

§ 63750.15. Certificate.

"Certificate" means a certificate of competency issued by the Department stating that the operator has met the requirements for a specific operator classification of the certification program.

NOTE: Authority cited: Sections 100275 and 106910, Health and Safety Code. Reference: Sections 106885 and 106910, Health and Safety Code.

HISTORY

1. New section filed 12–26–2000 as an emergency; operative 1–1–2001 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–25–2001 as an emergency; operative 5–2–2001 (Register 2001, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–30–2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–25–2001 order transmitted to OAL 7–12–2001 and filed 8–13–2001 (Register 2001, No. 33).

§ 63750.20. Certified Distribution Operator.

"Certified distribution operator" means a distribution operator who possesses a valid certificate issued pursuant to this chapter.

NOTE: Authority cited: Sections 100275 and 106910, Health and Safety Code. Reference: Sections 106885 and 106910, Health and Safety Code.

HISTORY

1. New section filed 12–26–2000 as an emergency; operative 1–1–2001 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–25–2001 as an emergency; operative 5–2–2001 (Register 2001, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–30–2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–25–2001 order transmitted to OAL 7–12–2001 and filed 8–13–2001 (Register 2001, No. 33).

§ 63750.25. Chief Operator.

"Chief operator" means the person who has overall responsibility for the day–to–day, hands–on, operation of a water treatment facility or the person who has overall responsibility for the day–to–day, hands–on, operation of a distribution system.

NOTE: Authority cited: Sections 100275 and 106910, Health and Safety Code. Reference: Section 106910, Health and Safety Code.

HISTORY

1. New section filed 12–26–2000 as an emergency; operative 1–1–2001 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–25–2001 as an emergency; operative 5–2–2001 (Register 2001, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–30–2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–25–2001 order transmitted to OAL 7–12–2001 and filed 8–13–2001 (Register 2001, No. 33).

§ 63750.30. Comprehensive Operator Training Program.

"Comprehensive Operator Training Program" means an on–the–job training program that allows an operator to gain proficiency in all systems and processes related to a water treatment facility.

NOTE: Authority cited: Sections 100275 and 106910, Health and Safety Code. Reference: Section 106910, Health and Safety Code.

HISTORY

1. New section filed 12–26–2000 as an emergency; operative 1–1–2001 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–25–2001 as an emergency; operative 5–2–2001 (Register 2001, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–30–2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–25–2001 order transmitted to OAL 7–12–2001 and filed 8–13–2001 (Register 2001, No. 33).

§ 63750.35. Contact Hour.

"Contact hour" means not less than 50 minutes of specialized training or a continuing education course.

NOTE: Authority cited: Sections 100275 and 106910, Health and Safety Code. Reference: Sections 106900 and 106910, Health and Safety Code.

HISTORY

1. New section filed 12–26–2000 as an emergency; operative 1–1–2001 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–25–2001 as an emergency; operative 5–2–2001 (Register 2001, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–30–2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–25–2001 order transmitted to OAL 7–12–2001 and filed 8–13–2001 (Register 2001, No. 33).

§ 63750.40. Continuing Education Course.

"Continuing education course" means a presentation that transmits information related to the operation of a treatment facility and/or distribution system.

NOTE: Authority cited: Sections 100275 and 106910, Health and Safety Code. Reference: Sections 106900 and 106910, Health and Safety Code.

HISTORY

1. New section filed 12–26–2000 as an emergency; operative 1–1–2001 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–25–2001 as an emergency; operative 5–2–2001 (Register 2001, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–30–2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–25–2001 order transmitted to OAL 7–12–2001 and filed 8–13–2001 (Register 2001, No. 33).

§ 63750.45. Distribution Operator.

"Distribution operator" means any person who maintains or operates any portion of a distribution system.

NOTE: Authority cited: Sections 100275 and 106910, Health and Safety Code. Reference: Sections 106885 and 106910, Health and Safety Code.

HISTORY

1. New section filed 12–26–2000 as an emergency; operative 1–1–2001 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–25–2001 as an emergency; operative 5–2–2001 (Register 2001, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–30–2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–25–2001 order transmitted to OAL 7–12–2001 and filed 8–13–2001 (Register 2001, No. 33).

§ 63750.50. Distribution System.

"Distribution system" means any combination of pipes, tanks, pumps, etc., which delivers drinking water from a source or treatment facility to the consumer and includes:

(a) Disinfection facilities for which no *Giardia* or virus reduction is required pursuant to section 64654 (a).

(b) The composite of all distribution systems of a public water system.

NOTE: Authority cited: Sections 100275 and 106910, Health and Safety Code. Reference: Sections 106885 and 106910, Health and Safety Code.

HISTORY

1. New section filed 12–26–2000 as an emergency; operative 1–1–2001 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–25–2001 as an emergency; operative 5–2–2001 (Register 2001, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–30–2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–25–2001 order transmitted to OAL 7–12–2001 and filed 8–13–2001 (Register 2001, No. 33).

§ 63750.55. GED.

"GED" means a general equivalency diploma.

NOTE: Authority cited: Sections 100275 and 106910, Health and Safety Code. Reference: Section 106910, Health and Safety Code.

HISTORY

1. New section filed 12–26–2000 as an emergency; operative 1–1–2001 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–25–2001 as an emergency; operative 5–2–2001 (Register 2001, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–30–2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–25–2001 order transmitted to OAL 7–12–2001 and filed 8–13–2001 (Register 2001, No. 33).

§ 63750.60. Interim Distribution Operator Certificate.

"Interim Distribution Operator Certificate" means a certificate issued by the Department pursuant to section 63810.

NOTE: Authority cited: Sections 100275 and 106910, Health and Safety Code. Reference: Sections 106895 and 106910, Health and Safety Code.

HISTORY

1. New section filed 12–26–2000 as an emergency; operative 1–1–2001 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–25–2001 as an emergency; operative 5–2–2001 (Register 2001, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–30–2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–25–2001 order transmitted to OAL 7–12–2001 and filed 8–13–2001 (Register 2001, No. 33).

§ 63750.65. Operator Experience.

"Operator experience" means the daily performance of activities consisting of the control or oversight of any process or operation at a water treatment facility or in a distribution system that may affect the quality or quantity of water.

NOTE: Authority cited: Sections 100275 and 106910, Health and Safety Code. Reference: Section 106910, Health and Safety Code.

HISTORY

1. New section filed 12–26–2000 as an emergency; operative 1–1–2001 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–25–2001 as an emergency; operative 5–2–2001 (Register 2001, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–30–2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–25–2001 order transmitted to OAL 7–12–2001 and filed 8–13–2001 (Register 2001, No. 33).

§ 63750.70. Shift Operator.

"Shift operator" means a person in direct charge of the operation of a water treatment facility or distribution system for a specified period of the day.

[The next page is 610.7.]

NOTE: Authority cited: Sections 100275 and 106910, Health and Safety Code. Reference: Section 106910, Health and Safety Code.

HISTORY

1. New section filed 12–26–2000 as an emergency; operative 1–1–2001 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–25–2001 as an emergency; operative 5–2–2001 (Register 2001, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–30–2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–25–2001 order transmitted to OAL 7–12–2001 and filed 8–13–2001 (Register 2001, No. 33).

§ 63750.75. Specialized Training.

"Specialized training" means college level courses providing at least 36 contact hours of training each in drinking water or waste water quality, drinking water or waste water treatment, drinking water distribution, or drinking water or waste water facility operation, offered by an accredited academic institution or an organization either accredited by the International Association of Continuing Education Training (IACET) or an authorized provider of IACET, or courses completed and deemed acceptable by the Department prior to January 1, 2001 for the purpose of operator certification.

NOTE: Authority cited: Sections 100275 and 106910, Health and Safety Code. Reference: Sections 106900 and 106910, Health and Safety Code.

HISTORY

1. New section filed 12–26–2000 as an emergency; operative 1–1–2001 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–25–2001 as an emergency; operative 5–2–2001 (Register 2001, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–30–2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–25–2001 order transmitted to OAL 7–12–2001 and filed 8–13–2001 (Register 2001, No. 33).

§ 63750.85. Water Treatment Facility.

"Water treatment facility" means a group or assemblage of structures, equipment, and processes that treat or condition a water supply, affecting the physical, chemical, or bacteriological quality of water distributed or otherwise offered to the public for domestic use by a public water system as defined in Health and Safety Code section 116275. Facilities consisting of only disinfection for which no *Giardia* or virus reduction is required pursuant to section 64654(a) and which are under the control of a certified distribution operator are not included as water treatment facilities.

NOTE: Authority cited: Sections 100275 and 106910, Health and Safety Code. Reference: Section 106910, Health and Safety Code.

HISTORY

1. New section filed 12–26–2000 as an emergency; operative 1–1–2001 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–25–2001 as an emergency; operative 5–2–2001 (Register 2001, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–30–2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–25–2001 order, including amendment of section, transmitted to OAL 7–12–2001 and filed 8–13–2001 (Register 2001, No. 33).

Article 2. Operator Certification Grades

§ 63765. Water Treatment Facility Staff Certification Requirements.

(a) Except as provided in (c), chief and shift operators shall possess valid operator certificates pursuant to Table 63765–A.

Table 63765–A — Minimum Certification Requirements for Chief and Shift Operators

Treatment Facility Classification	*Minimum Certification of Chief Operator*	*Minimum Certification of Shift Operator*
T1	T1	T1
T2	T2	T1
T3	T3	T2
T4	T4	T3
T5	T5	T3

(b) Treatment operators not designated by the water supplier as chief or shift operator pursuant to section 64413.5 shall be certified but may hold certificates of any grade.

(c) Until January 1, 2003, a shift and/or chief operator may continue to be employed in that capacity provided that the operator:

(1) Is in compliance with the certification requirements that were in effect on December 31, 2000, and

(2) Has been in continuous employment since December 31, 2000 in a water treatment facility that has not modified its treatment process resulting in a change in classification.

(d) Operators who possessed treatment operator certificates valid as of December 31, 2000 shall be deemed to hold certificates pursuant to Table 63765–B.

Table 63765–B — Certificate Grade Equivalents

Operator Certification Grades December 31, 2000	*Operator Certification Grades January 1, 2001*
I	T1
II	T2
III	T3
IV	T4
V	T5

NOTE: Authority cited: Sections 100275 and 106910, Health and Safety Code. Reference: Sections 106875, 106880, 106885 and 116555, Health and Safety Code.

HISTORY

1. New article 2 (sections 63765–63770) and section filed 12–26–2000 as an emergency; operative 1–1–2001 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2001 or emergency language will be repealed by operation of law on the following day.
2. New article 2 (sections 63765–63770) and section refiled 4–25–2001 as an emergency; operative 5–2–2001 (Register 2001, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–30–2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–25–2001 order transmitted to OAL 7–12–2001 and filed 8–13–2001 (Register 2001, No. 33).

§ 63770. Distribution System Staff Certification Requirements.

(a) Chief and shift operators shall possess valid operator certificates pursuant to Table 63770–A.

Table 63770–A – Minimum Certification Requirements for Chief and Shift Operators

Distribution System Classification	*Minimum Certification of Chief Operator*	*Minimum Certification of Shift Operator*
D1	D1	D1
D2	D2	D1
D3	D3	D2
D4	D4	D3
D5	D5	D3

(b) Water systems shall utilize only certified distribution operators to make decisions addressing the following operational activities:

(1) Install, tap, re–line, disinfect, test and connect water mains and appurtenances.

(2) Shutdown, repair, disinfect and test broken water mains.

(3) Oversee the flushing, cleaning, and pigging of existing water mains.

(4) Pull, reset, rehabilitate, disinfect and test domestic water wells.

(5) Stand–by emergency response duties for after hours distribution system operational emergencies.

(6) Drain, clean, disinfect, and maintain distribution reservoirs.

(c) Water systems shall utilize either certified distribution operators or treatment operators that have been trained to make decisions addressing the following operational activities:

(1) Operate pumps and related flow and pressure control and storage facilities manually or by using a system control and data acquisition (SCADA) system.

(2) Maintain and/or adjust system flow and pressure requirements, control flows to meet consumer demands including fire flow demands and minimum pressure requirements.

(d) Water systems shall utilize either certified distribution operators or treatment operators to make decisions addressing the following operational activities:

(1) Determine and control proper chemical dosage rates for wellhead disinfection and distribution residual maintenance.

(2) Investigate water quality problems in the distribution system.

NOTE: Authority cited: Sections 100275 and 106910, Health and Safety Code. Reference: Sections 106875, 106880, 106885 and 116555, Health and Safety Code.

HISTORY

1. New section filed 12–26–2000 as an emergency; operative 1–1–2001 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–25–2001 as an emergency; operative 5–2–2001 (Register 2001, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–30–2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–25–2001 order transmitted to OAL 7–12–2001 and filed 8–13–2001 (Register 2001, No. 33).

Article 3. Operator Examination Criteria and Applications

§ 63775. Eligibility Criteria for Taking a Water Treatment Operator Examination.

(a) An applicant who has had a certificate revoked, and not reinstated, for any reason other than failure to meet renewal requirements pursuant to section 63840 shall not be eligible for water treatment operator examination at any grade level.

(b) In order to be eligible for taking the T1 operator exam, an applicant shall have a high school diploma or GED. The following experience and/or training may be substituted for a high school diploma or GED:

(1) Successful completion of the "Basic Small Water System Operations" course provided by the Department, or

(2) One year as an operator of a facility that required an understanding of chemical feeds, hydraulic systems, and pumps.

(c) In order to be eligible for taking the T2 operator exam, an applicant shall have:

(1) A high school diploma or GED. The following experience and/or training may be substituted for a high school diploma or GED:

(A) Successful completion of the "Basic Small Water System Operations" course provided by the Department, or

(B) One year as an operator of a facility that required an understanding of chemical feeds, hydraulic systems, and pumps.

(2) Successfully completed at least one course of specialized training covering the fundamentals of drinking water treatment.

(d) In order to be eligible for taking the T3 operator exam, an applicant shall have:

(1) A high school diploma or GED.

(2) Successfully completed a total of at least two courses of specialized training that includes at least one course covering the fundamentals of drinking water treatment.

(e) In order to be eligible for taking the T4 operator exam, an applicant shall have:

(1) A valid Grade T3 operator certificate.

(2) Successfully completed at least three courses of specialized training that includes at least two courses in drinking water treatment.

(f) In order to be eligible for taking the T5 operator exam, an applicant shall have:

(1) A valid Grade T4 operator certificate.

(2) Successfully completed at least four courses of specialized training that includes at least two courses in drinking water treatment.

(g) Specialized training courses used to fulfill the requirements of this section may also be used to fulfill the requirements of section 63780.

NOTE: Authority cited: Sections 100275 and 106910, Health and Safety Code. Reference: Sections 106875, 106900, 106910 and 116555, Health and Safety Code.

HISTORY

1. New article 3 (sections 63775–63795) and section filed 12–26–2000 as an emergency; operative 1–1–2001 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2001 or emergency language will be repealed by operation of law on the following day.
2. New article 3 (sections 63775–63795) and section refiled 4–25–2001 as an emergency; operative 5–2–2001 (Register 2001, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–30–2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–25–2001 order transmitted to OAL 7–12–2001 and filed 8–13–2001 (Register 2001, No. 33).

§ 63780. Eligibility Criteria for Taking a Distribution Operator Examination.

(a) An applicant who has had a certificate revoked, and not reinstated, for any reason other than failure to meet renewal requirements pursuant to section 63840 shall not be eligible for distribution operator examination at any grade level.

(b) In order to be eligible for taking the D1 operator exam, an applicant shall have a high school diploma or GED. The following experience and/or training may be substituted for a high school diploma or GED:

(1) Successful completion of the "Basic Small Water System Operations" course provided by the Department, or

(2) One year as an operator of a facility that required an understanding of a piping system that included pumps, valves, and storage tanks.

(c) In order to be eligible for taking the D2 operator exam, an applicant shall have:

(1) A high school diploma or GED. The following experience and/or training may be substituted for a high school diploma or GED:

(A) Successful completion of the "Basic Small Water System Operations" course provided by the Department, or

(B) One year as an operator of a facility that required an understanding of a piping system that included pumps, valves, and storage tanks.

(2) Successfully completed a total of at least one course of specialized training in water supply principles.

(d) In order to be eligible for taking the D3 operator exam, an applicant shall have:

(1) A valid Grade D2 or interim Grade D3 or higher operator certificate.

(2) Successfully completed a total of at least two courses of specialized training that includes at least one course in water supply principles.

(e) In order to be eligible for taking the D4 operator exam, an applicant shall have:

(1) A valid Grade D3 or interim Grade D4 or higher operator certificate.

(2) Successfully completed at least three courses of specialized training that includes at least two courses in water supply principles.

(f) In order to be eligible for taking the D5 operator exam, an applicant shall have:

(1) A valid Grade D4 or interim Grade D5 operator certificate.

(2) Successfully completed at least four courses of specialized training that includes at least two courses in water supply principles.

(g) Specialized training courses used to fulfill the requirements of this section may also be used to fulfill the requirements of section 63775.

NOTE: Authority cited: Sections 100275 and 106910, Health and Safety Code. Reference: Sections 106875, 106900, 106910 and 116555, Health and Safety Code.

HISTORY

1. New section filed 12–26–2000 as an emergency; operative 1–1–2001 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–25–2001 as an emergency; operative 5–2–2001 (Register 2001, No. 17). A Certificate of Compliance must be transmitted to OAL by

8–30–2001 or emergency language will be repealed by operation of law on the following day.

3. Certificate of Compliance as to 4–25–2001 order transmitted to OAL 7–12–2001 and filed 8–13–2001 (Register 2001, No. 33).

§ 63785. Examination Application Content and Submittal.

(a) A complete application for examination shall include the following information:

(1) The applicant's full name, social security number (pursuant to the authority found in sections 100275 and 106910 of the Health and Safety Code and as required by section 17520 of the Family Code, providing the social security number is mandatory. The social security number will be used for purposes of identification), date of birth, certificate number of any operator certificates ever held, mailing address, work telephone number, and home telephone number.

(2) The date of the examination for which the applicant is applying.

(3) The examination fee, pursuant to section 63850.

(4) For T1, T2, D1, and D2 applicants one of the following:

(A) A copy of the applicant's high school diploma or the name and location of the high school and date of graduation; or

(B) A copy of the applicant's GED; or

(C) A certificate of completion for the "Basic Small Water System Operations" course provided by the Department; or

(D) The name, address, and phone number of each employer, the length of time employed, and the nature of the work performed that satisfies the requirements of section 63775(b)(2) or (c)(1)(B) or 63780(b)(2) or (c)(1)(B).

(5) For T3 and D3 applicants, a copy of the applicant's high school diploma, or the name and location of the high school and date of graduation, or a copy of the applicant's GED.

(6) Copies of transcripts or certificates of completion of specialized training courses, as provided by the educational institution, claimed to meet the requirements of section 63775 or 63780.

NOTE: Authority cited: Sections 100275 and 106910, Health and Safety Code; and Section 17520, Family Code. Reference: Section 1798.17, Civil Code; and Sections 106875, 106880, 106890, 106900 and 106910, Health and Safety Code.

HISTORY

1. New section filed 12–26–2000 as an emergency; operative 1–1–2001 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–25–2001 as an emergency; operative 5–2–2001 (Register 2001, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–30–2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–25–2001 order, including amendment of subsections (a)(1) and (a)(4)(D), transmitted to OAL 7–12–2001 and filed 8–13–2001 (Register 2001, No. 33).

§ 63790. Examination Scheduling and Application Processing.

(a) For admission to an examination, the completed application shall be postmarked by the final filing date established by the Department.

(b) Each applicant for examination shall be notified of the Department's decision regarding compliance with the minimum requirements to take the examination set forth in section 63775 or section 63780 within 75 days after the receipt of a complete application. If the Department determines that the application does not meet the requirements, the notice shall include the reasons for the disqualification. If the Department determines that the application does meet the requirements the notice shall include the date of the examination for which they have been accepted.

(c) Examinees shall present their driver's license, photo identification (ID) card issued by the Department of Motor Vehicles, or passport upon entry to the exam.

NOTE: Authority cited: Sections 100275 and 106910, Health and Safety Code. Reference: Sections 106875, 106880 and 106910, Health and Safety Code.

HISTORY

1. New section filed 12–26–2000 as an emergency; operative 1–1–2001 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–25–2001 as an emergency; operative 5–2–2001 (Register 2001, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–30–2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–25–2001 order transmitted to OAL 7–12–2001 and filed 8–13–2001 (Register 2001, No. 33).

§ 63795. Examination Application Resubmittals and Reexaminations.

(a) Applications for examination that the Department determines are incomplete pursuant to section 63785 or do not meet the qualification requirements pursuant to section 63775 or 63780 may be amended within 12 months of the original submittal date for reconsideration without payment of an additional examination fee.

(b) Examinees may apply to retake the exam provided they submit an application that includes the following:

(1) Applicant name, social security number (pursuant to the authority found in sections 100275 and 106910 of the Health and Safety Code and as required by section 17520 of the Family Code, providing the social security number is mandatory. The social security number will be used for purposes of identification), current mailing address, grade for which applying, certificate number if currently certified, date of original application, and date of most recent exam taken.

(2) Payment of the reexamination fee pursuant to section 63850.

NOTE: Authority cited: Sections 100275 and 106910, Health and Safety Code; and Section 17520, Family Code. Reference: Section 1798.17, Civil Code; and Sections 106875, 106880, 106890, 106900 and 106910, Health and Safety Code.

HISTORY

1. New section filed 12–26–2000 as an emergency; operative 1–1–2001 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–25–2001 as an emergency; operative 5–2–2001 (Register 2001, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–30–2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–25–2001 order, including amendment of subsection (b)(1), transmitted to OAL 7–12–2001 and filed 8–13–2001 (Register 2001, No. 33).

Article 4. Operator Certification Criteria and Applications

§ 63800. Eligibility Criteria for Water Treatment Operator Certification.

(a) In order to be eligible for certification as a T1 operator, an applicant shall have passed a Grade T1 operator examination within the three years prior to submitting the application for certification.

(b) In order to be eligible for certification as a T2 operator, an applicant shall have passed a Grade T2 or T3 operator certificate examination within the three years prior to submitting the application for certification.

(c) In order to be eligible for certification as a T3 operator, an applicant shall have passed a Grade T3 operator examination within the three years prior to submitting the application for certification, and shall have completed the following:

(1) At least one year of operator experience working as a certified T2 operator for a T2 facility or higher, or a facility that, prior to January 1, 2001, would have met the criteria for classification as a T2 facility or higher pursuant to section 64413.1.

(2) At least one additional year of operator experience working as a certified treatment operator.

(d) In order to be eligible for certification as a T4 operator, an applicant shall have passed a Grade T4 operator examination within the three years prior to submitting the application for certification, and shall have completed the following:

(1) At least one year of operator experience working as a shift or chief operator, while holding a valid T3 operator certificate, at a T3 facility or higher, or a facility that, prior to January 1, 2001, would have met the criteria for classification as a T3 facility or higher pursuant to section 64413.1, and

(2) At least three additional years of operator experience working as a certified treatment operator.

(e) In order to be eligible for certification as a T5 operator, an applicant shall have passed a Grade T5 operator examination within the three years prior to submitting the application for certification, and shall have completed the following:

(1) At least two years of operator experience working as a shift or chief operator, while holding a valid T4 operator certificate, at a T4 facility or higher, or a facility that, prior to January 1, 2001, would have met the criteria for classification as a T4 facility or higher pursuant to section 64413.1, and

(2) At least three additional years of operator experience working as a certified treatment operator.

(f) A degree earned at an accredited academic institution may be used to fulfill experience requirements in (c)(2), (d)(2), and (e)(2) as follows:

(1) An Associate degree or certificate in water or wastewater technology that includes at least 15 units of physical, chemical, or biological science may be used to fulfill 1 year of operator experience.

(2) A Bachelors degree in engineering or in physical, chemical, or biological sciences may be used to fulfill 1.5 years of operator experience.

(3) A Masters degree in engineering or in physical, chemical, or biological sciences may be used to fulfill 2 years of operator experience.

(g) A certified operator may substitute on a day–for–day basis the experience requirements in (c)(2) with experience gained while working with lead responsibility for water quality related projects or research.

(h) If the applicant has a bachelor of science or a master of science degree, completion of a comprehensive operator training program may be used to fulfill the operator experience requirements in (c)(1) and (d)(1). Completion of the training shall be verified in writing by the chief operator. The comprehensive operator training program shall be at least 6 months in duration and shall cover the following elements:

(1) California Safe Drinking Water Act and regulations promulgated pursuant thereto.

(2) Water treatment calculations.

(3) SCADA operation.

(4) Handling of laboratory chemicals used for drinking water analyses.

(5) Laboratory analyses conducted by operators.

(6) Safety training.

(7) Distribution system operation.

(8) Treatment chemical dosing and monitoring.

(9) Disinfectant dosing and monitoring.

(10) Treatment processes and controls.

(i) Experience gained as a certified waste water treatment plant operator, pursuant to California Water Code sections 13625 through 13633, may be used to fulfill up to two years of the operator experience requirements in (c)(2), (d)(2), and (e)(2). Each two months of experience as a waste water treatment plant operator shall be considered equivalent to one month of water treatment facility operator experience.

NOTE: Authority cited: Sections 100275 and 106910, Health and Safety Code. Reference: Sections 106875, 106900, 106910 and 116555, Health and Safety Code.

HISTORY

1. New article 4 (sections 63800–63835) and section filed 12–26–2000 as an emergency; operative 1–1–2001 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2001 or emergency language will be repealed by operation of law on the following day.
2. New article 4 (sections 63800–63835) and section refiled 4–25–2001 as an emergency; operative 5–2–2001 (Register 2001, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–30–2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–25–2001 order transmitted to OAL 7–12–2001 and filed 8–13–2001 (Register 2001, No. 33).

§ 63805. Eligibility Criteria for Distribution Operator Certification.

(a) In order to be eligible for certification as a D1 operator, an applicant shall have passed a Grade D1 operator examination within the three years prior to submitting the application for certification.

(b) In order to be eligible for certification as a D2 operator, an applicant shall have passed a Grade D2 operator examination within the three years prior to submitting the application for certification.

(c) In order to be eligible for certification as a D3 operator, an applicant shall have passed a Grade D3 operator examination within the three years prior to submitting the application for certification, and shall have completed the following:

(1) At least one year of operator experience working as a certified D2 operator, interim D3 or higher operator, or temporary D3 operator for a D2 system or higher, or a system that, prior to January 1, 2001, would have met the criteria for classification as a D2 system or higher pursuant to section 64413.3.

(2) At least one additional year of operator experience working as a distribution operator.

(d) In order to be eligible for certification as a D4 operator, an applicant shall have passed a Grade D4 operator examination within the three years prior to submitting the application for certification, and shall have completed the following:

(1) At least one year of operator experience working as a certified D3, interim D4 or higher operator, or temporary D4 operator for a D3 system or higher, or a system that, prior to January 1, 2001, would have met the criteria for classification as a D3 facility or higher pursuant to section 64413.3, and

(2) At least three additional years of operator experience working as a distribution operator.

(e) In order to be eligible for certification as a D5 operator, an applicant shall have passed a Grade D5 operator examination within the three years prior to submitting the application for certification, and shall have completed the following:

(1) At least two years of operator experience working as a certified D4, interim D5 operator, or temporary D5 operator for a D4 or D5 system, or a system that, prior to January 1, 2001, would have met the criteria for classification as a D4 or D5 system pursuant to section 64413.3, and

(2) At least three additional years of operator experience working as a distribution operator.

(f) A degree earned at an accredited academic institution may be used to fulfill experience requirements in (c)(2), (d)(2), and (e)(2) as follows:

(1) An Associate degree, or certificate, in water or wastewater technology or distribution that includes at least 15 units of physical, chemical, or biological science may be used to fulfill 1 year of operator experience.

(2) A Bachelors degree in engineering or in physical, chemical, or biological sciences may be used to fulfill 1.5 years of operator experience.

(3) A Masters degree in engineering or in physical, chemical, or biological sciences may be used to fulfill 2 years of operator experience.

(g) A certified operator may substitute on a day–for–day basis the experience requirements in (c)(2) with experience gained while working with lead responsibility for water quality or quantity related projects or research.

NOTE: Authority cited: Sections 100275 and 106910, Health and Safety Code. Reference: Sections 106875, 106900, 106910 and 116555, Health and Safety Code.

HISTORY

1. New section filed 12–26–2000 as an emergency; operative 1–1–2001 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–25–2001 as an emergency; operative 5–2–2001 (Register 2001, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–30–2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–25–2001 order transmitted to OAL 7–12–2001 and filed 8–13–2001 (Register 2001, No. 33).

§ 63810. Interim Certification of Distribution Operators.

(a) A distribution operator in a position responsible for making decisions identified in section 63770(b), (c), or (d) on December 31, 2000, shall be eligible for interim certification provided that the employing water supplier, as defined in section 64402.20, submits an application which shall include for each employee:

(1) The employee's full name, social security number (pursuant to the authority found in sections 100275 and 106910 of the Health and Safety Code and as required by section 17520 of the Family Code, providing the social security number is mandatory. The social security number will be used for purposes of identification), date of birth, certificate number of any operator certificates ever held, mailing address, work telephone number, and home telephone number.

(2) The grade at which the operator will be certified.

(3) The certification fee specified in Table 63850–C.

(b) Interim distribution operator certificates shall be effective as of January 1, 2001, and shall expire on January 1, 2004. Such certificates may be renewed only once for an additional 3 years and only if the water system has not received any notice of violation, citation, or order from the Department or EPA since January 1, 2001, unless the public water system can demonstrate to the satisfaction of the Department that the violation was not the result of actions taken or not taken by the operator(s). After January 1, 2007, all interim operator certificates shall be invalid.

(c) In order to renew an interim certificate, a water supplier shall submit a renewal application between July 1, 2003 and September 1, 2003. The renewal application shall include the following:

(1) The operator's name, social security number (pursuant to the authority found in sections 100275 and 106910 of the Health and Safety Code and as required by section 17520 of the Family Code, providing the social security number is mandatory. The social security number will be used for purposes of identification), current mailing address, certificate grade, and certificate number.

(2) Payment of the renewal fee specified in section 63850(e).

(3) Documentation of continuing education contact hours as required by section 63840.

NOTE: Authority cited: Sections 100275 and 106910, Health and Safety Code; and Section 17520, Family Code. Reference: Section 1798.17, Civil Code; and Sections 106885, 106895, 106900, 106910 and 116555, Health and Safety Code.

HISTORY

1. New section filed 12–26–2000 as an emergency; operative 1–1–2001 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–25–2001 as an emergency; operative 5–2–2001 (Register 2001, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–30–2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–25–2001 order, including amendment of subsections (a)(1) and (c)(1), transmitted to OAL 7–12–2001 and filed 8–13–2001 (Register 2001, No. 33).

§ 63815. CNAWWA Distribution Operator Certification.

(a) Distribution operators holding a valid California–Nevada Section of the American Water Works Association (CNAWWA) distribution operator certificate on December 31, 2000, shall be deemed to have a distribution operator certification valid through December 31, 2001, pursuant to Table 63815–A.

Table 63815–A. CNAWWA — California State Operator Grade Equivalents

CNAWWA Grade	*California State Grade*
1	D2
2	D3
3	D4
4	D5

(b) In order to renew a certification deemed valid pursuant to subsection (a), an operator shall submit a renewal application by September 1, 2001.

(c) The renewal application shall include the following:

(1) The applicant's name, social security number (pursuant to the authority found in sections 100275 and 106910 of the Health and Safety Code and as required by section 17520 of the Family Code, providing the social security number is mandatory. The social security number will be used for purposes of identification), date of birth, current mailing address, work telephone number, home telephone number, certificate number of any operator certificates ever held, CNAWWA grade, and a copy of the CNAWWA certificate.

(2) Payment of the appropriate renewal fee specified in section 63850(f).

(d) The initial renewal of a certificate deemed valid pursuant to subsection (a) shall be valid for a two–year period.

NOTE: Authority cited: Sections 100275 and 106910, Health and Safety Code; and Section 17520, Family Code. Reference: Section 1798.17, Civil Code; and Sections 106885, 106890, 106896 106900 and 106910, Health and Safety Code.

HISTORY

1. New section filed 12–26–2000 as an emergency; operative 1–1–2001 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–25–2001 as an emergency; operative 5–2–2001 (Register 2001, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–30–2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–25–2001 order, including amendment of subsections (c)(1) and (c)(2), transmitted to OAL 7–12–2001 and filed 8–13–2001 (Register 2001, No. 33).

§ 63820. Temporary Distribution Operator Certification.

(a) Distribution operators who have received notice of qualification for examination shall be deemed to have a temporary distribution operator certification at the grade for which they have been qualified for examination. All temporary certifications will expire January 1, 2004 and shall not be renewable.

NOTE: Authority cited: Sections 100275 and 106910, Health and Safety Code. Reference: Sections 106885 and 106910, Health and Safety Code.

HISTORY

1. New section filed 12–26–2000 as an emergency; operative 1–1–2001 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–25–2001 as an emergency; operative 5–2–2001 (Register 2001, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–30–2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–25–2001 order transmitted to OAL 7–12–2001 and filed 8–13–2001 (Register 2001, No. 33).

§ 63825. Restricted Operator Certification.

(a) A T1, T2, D1, or D2 restricted operator certificate may be issued without a written examination if the following conditions are met:

(1) The water supplier, as defined in section 64402.20, serves a disadvantaged community as defined in section 63000.25; and

(2) The Department has issued a citation or order to the water supplier for noncompliance with section 64413.5 or 64413.7, or Health and Safety Code section 116555(a)(4), (5), or (b); and

(3) The water supplier submits an application pursuant to section 63830 and pays the application and examination fee specified in section 63850; and

(4) The operator meets the criteria for taking the T1, T2, D1, or D2 exam and passes a performance test administered by the Department that measures his or her knowledge and ability to operate the specific treatment facility and/or distribution system without jeopardizing public health or safety.

(b) The restricted operator certificate shall be valid for three years. The certificate may be renewed if the water supplier continues to serve a disadvantaged community and submits an application pursuant to section 63840 and the operator has met the continuing education requirements as specified in subsection 63840(c).

(c) The restricted operator certificate is not transferable.

NOTE: Authority cited: Sections 100275 and 106910, Health and Safety Code. Reference: Sections 106875, 106880, 106885, 106890, 106910 and 116555, Health and Safety Code.

HISTORY

1. New section filed 12–26–2000 as an emergency; operative 1–1–2001 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–25–2001 as an emergency; operative 5–2–2001 (Register 2001, No. 17). A Certificate of Compliance must be transmitted to OAL by

8–30–2001 or emergency language will be repealed by operation of law on the following day.

3. Certificate of Compliance as to 4–25–2001 order transmitted to OAL 7–12–2001 and filed 8–13–2001 (Register 2001, No. 33).

§ 63830. Certification Application Content and Submittal.

(a) A complete application for operator certification shall contain the following:

(1) The applicant's full name, social security number (pursuant to the authority found in sections 100275 and 106910 of the Health and Safety Code and as required by section 17520 of the Family Code, providing the social security number is mandatory. The social security number will be used for purposes of identification), date of birth, certificate number of any operator certificates ever held, mailing address, work telephone number, and home telephone number.

(2) Payment of certification fee pursuant to section 63850.

(3) For any experience being claimed to meet the experience requirements in sections 63800 or 63805, the name, address, and phone number of each employer, the length of time employed, and the nature of the work performed.

(4) Employer verification of the experience being claimed in paragraph (3) with the signature of the chief operator or supervisor of each employer.

(5) Copies of college transcripts if claiming any of the credits pursuant to sections 63800(f), 63800(h) and 63805(f).

(6) Copies of transcripts or certificates of completion of specialized training courses claimed to meet minimum requirements.

NOTE: Authority cited: Sections 100275 and 106910, Health and Safety Code; and Section 17520, Family Code. Reference: Section 1798.17, Civil Code; and Sections 106875, 106885, 106890, 106900, 106910 and 116555, Health and Safety Code.

HISTORY

1. New section filed 12–26–2000 as an emergency; operative 1–1–2001 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–25–2001 as an emergency; operative 5–2–2001 (Register 2001, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–30–2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–25–2001 order, including amendment of subsection (a)(1), transmitted to OAL 7–12–2001 and filed 8–13–2001 (Register 2001, No. 33).

§ 63835. Certification and Renewal Application Processing.

(a) Each applicant submitting an application or reapplication for certification or renewal shall be notified of the Department's decision regarding compliance with the requirements set forth in Sections 63800, 63805, 63830, or 63840 within 75 days after the receipt of the application or reapplication. If the Department determines that the application or reapplication does not meet the requirements, the applicant shall be notified of the reasons for the disqualification.

(b) Applications for certification that the Department determines do not meet the requirements may reapply within 12 months of the original submittal date without payment of an additional certification or renewal fee.

(c) The Department's median, minimum, and maximum processing times for applications for operator certification are as follows:

Median — 25 calendar days

Minimum — 5 calendar days

Maximum — 60 calendar days

NOTE: Authority cited: Sections 100275 and 106910, Health and Safety Code. Reference: Section 15376, Government Code; and Sections 106875, 106880 and 106910, Health and Safety Code.

HISTORY

1. New section filed 12–26–2000 as an emergency; operative 1–1–2001 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–25–2001 as an emergency; operative 5–2–2001 (Register 2001, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–30–2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–25–2001 order, including amendment of NOTE, transmitted to OAL 7–12–2001 and filed 8–13–2001 (Register 2001, No. 33).

Article 5. Certification Renewals, Delinquent Renewals and Fees

§ 63840. Certification Renewals.

(a) All certified operators shall notify the Department within 60 days of any change in address or name during the period of their certification.

(b) Any person wishing to maintain a valid operator certificate shall submit an application for renewal at least 120 days, but no more than 180 days, prior to expiration of the certification. The following items constitute a complete application for renewal:

(1) The applicant's name, social security number (pursuant to the authority found in sections 100275 and 106910 of the Health and Safety Code and as required by section 17520 of the Family Code, providing the social security number is mandatory. The social security number will be used for purposes of identification), current mailing address, grade, and certificate number.

(2) Payment of the renewal fee specified in Section 63850(c), (d), (e), or (f).

(3) A list of successfully completed continuing education courses as required by subsection (c). The following information shall be provided for each course:

(A) Title,

(B) name of the instructor,

(C) location,

(D) date(s), and

(E) number of contact hours.

(c) To be eligible for certificate renewal, certified operators possessing certificates that expire after December 31, 2003, shall have completed continuing education contact hours since the previous renewal or issuance of the certificate pursuant to Table 63840–A. No more than 25% of the contact hours shall be courses in operator safety.

Table 63840–A. Required Continuing Education Contact Hours for Certificate Renewal

Water Treatment Operators	*Contact Hours Required*
Grade T1	12
Grade T2	16
Grade T3	24
Grade T4	36
Grade T5	36
Distribution Operators	
Grade D1	12
Grade D2	16
Grade D3	24
Grade D4	36
Grade D5	36

(1) Operators possessing both distribution and treatment certificates may apply continuing education credits to both certificates.

(2) Specialized training that is used to satisfy the requirements of section 63775 or 63780 may be used to satisfy the continuing education requirements of Table 63840–A if obtained since the previous renewal or issuance of the certificate.

(d) Except as provided in section 63815, each certificate renewed pursuant to (b) shall be valid for a period of three years.

NOTE: Authority cited: Sections 100275 and 106910, Health and Safety Code; and Section 17520, Family Code. Reference: Section 1798.17, Civil Code; and Sections 106875, 106885, 106890, 106900 and 106910, Health and Safety Code.

HISTORY

1. New article 5 (sections 63840–63850) and section filed 12–26–2000 as an emergency; operative 1–1–2001 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2001 or emergency language will be repealed by operation of law on the following day.

2. New article 5 (sections 63840–63850) and section refiled 4–25–2001 as an emergency; operative 5–2–2001 (Register 2001, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–30–2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–25–2001 order, including amendment of (b)(1), transmitted to OAL 7–12–2001 and filed 8–13–2001 (Register 2001, No. 33).

§ 63845. Reinstatement.

(a) A certificate that has been revoked only for lack of payment may be reinstated within 1 year if all fees and penalties specified in section 63850 are paid and the renewal application is complete.

(b) A certificate that has been revoked for failure to complete the continuing education contact hours required in Table 63840–A may be reinstated within six months if all requirements specified in Table 63840–A are met and penalties specified in section 63850 are paid and the renewal application is complete. Contact hours obtained for reinstatement shall not be used to satisfy the requirements of the next renewal period.

(c) A certificate that has been revoked for more than one year shall not be renewed.

(d) The expiration date of a certificate that has been renewed pursuant to this section shall remain the same as if the previous certificate had been renewed prior to the expiration date.

NOTE: Authority cited: Sections 100275 and 106910, Health and Safety Code. Reference: Sections 106875, 106876, 106890, 106900 and 106910, Health and Safety Code.

HISTORY

1. New section filed 12–26–2000 as an emergency; operative 1–1–2001 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–25–2001 as an emergency; operative 5–2–2001 (Register 2001, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–30–2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–25–2001 order transmitted to OAL 7–12–2001 and filed 8–13–2001 (Register 2001, No. 33).

§ 63850. Fees.

(a) Except as provided in subsection (e), payment of the fees specified in this section shall be made by a separate check or money order for each operator. The operator's name, and in the case of renewals, the operator's certificate number, shall be written on the check or money order.

(b) All fees submitted to the Department pursuant to this section are nonrefundable.

(c) Operator fees shall be pursuant to Table 63850–A.

Table 63850–A. Operator Fee Schedule

Grade	*Examination Fee ($)*	*Reexamination Fee ($)*	*Certification Fee ($)*	*Triennial Renewal Fee ($)*
D1 or T1	50	30	70	70
D2 or T2	65	45	80	80
D3 or T3	100	70	120	120
D4 or T4	130	95	140	140
D5 or T5	155	120	140	140

(d) Operators who are certified or have been notified by the Department that they have met requirements for certification as both treatment and distribution operators shall pay the certification and renewal fees specified in Table 63850–B for each certificate.

Table 63850–B. Fee Schedule for Operators With Multiple Certificates

Grade	*Certification Fee ($) per Certificate*	*Triennial Renewal Fee ($) per Certificate*
D1 or T1	55	55
D2 or T2	60	60
D3 or T3	90	90
D4 or T4	105	105
D5 or T5	105	105

(e) The fee schedule for interim distribution operator certification is in Table 63850–C. The fees specified in this subsection may be paid by a single check or money order for all operators included in the application.

Table 63850–C. Interim Operator Fee Schedule

Grade	*Certification Fee ($)*	*Triennial Renewal Fee ($)*
D1	70	70
D2	80	80
D3	120	120
D4	140	140
D5	140	140

(f) The fee schedule for distribution operators holding valid CNAWWA certificates pursuant to 63850(b) is in Table 63850–D.

Table 63850–D. CNAWWA Certification Fees

CNAWWA Grade	*Biennial Renewal Fee Due in 2001 – valid for two years*
1	80
2	100
3	120
4	120

(g) A penalty fee of $50 shall be paid for renewals submitted or resubmitted after the renewal due date but at least 45 days prior to the expiration date. A penalty fee of $100 shall be paid for renewals submitted or resubmitted less than 45 days prior to the expiration date but within 1 year after the expiration date.

(h) A certificate replacement fee of $25 shall be paid by any certificate holder requesting to have a lost, stolen, or destroyed certificate replaced.

NOTE: Authority cited: Sections 100275 and 106910, Health and Safety Code. Reference: Sections 106890 and 106910, Health and Safety Code.

HISTORY

1. New section filed 12–26–2000 as an emergency; operative 1–1–2001 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–25–2001 as an emergency; operative 5–2–2001 (Register 2001, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–30–2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–25–2001 order transmitted to OAL 7–12–2001 and filed 8–13–2001 (Register 2001, No. 33).

Chapter 14. Water Permits

Article 1. Applications

§ 64001. Water Permit Application.

(a) Within 30 calendar days of receipt of an application for a permit or petition for permit modification pursuant to Section 4011 or 4019, Health and Safety Code, the Department shall inform the applicant in writing that it is either complete and accepted for filing or that it is deficient and what specific information or documentation is required to complete the application. An application is considered complete if it is in compliance with the requirements of Section 4012, Health and Safety Code. For proposed water system improvements, new water systems or a "project" as defined in Section 15378, Title 14, California Administrative Code where environmental documentation is required, a copy of such documentation shall be included in the application.

(b) Within 90 calendar days from the date of filing of a completed application, the Department shall inform the applicant in writing of its decision regarding an application.

NOTE: Authority cited: Section 15376, Government Code; and Sections 4011, 4012 and 4019, Health and Safety Code. Reference: Section 15376, Government Code; and Sections 21000–21176, Public Resources Code.

HISTORY

1. New Chapter 14 (Sections 64001 and 64002) filed 7–14–86; effective thirtieth day thereafter (Register 86, No. 29).

§ 64002. Processing Time.

The Department's time periods for processing an application from the receipt of the initial application to the final decision regarding issuance or denial of a water permit based on the Department's actual performance during the two years preceding the proposal of this section, were as follows:

(a) The median time was—7.5 months

(b) The minimum time was—1.5 months

(c) The maximum time was—85.5 months

NOTE: Authority cited: Section 15376, Government Code; and Sections 4011 and 4019, Health and Safety Code. Reference: Section 15376, Government Code; and Sections 21000–21176, Public Resources Code.

HISTORY

1. New section filed 7–14–86; effective thirtieth day thereafter (Register 86, No. 29).

§ 64197. Service Connection Fee.

(a) Each public water system serving at least 200 service connections shall pay to the Department a one time fee of fifty cents ($0.50) for each service connection it serves. The fee shall be submitted to the Department no later than April 30, 1991.

(b) The fee shall be based on the number of service connections previously reported to the Department for the calendar year 1989.

NOTE: Authority cited: Section 4019.5, Health and Safety Code. Reference: Section 4019.5, Health and Safety Code.

HISTORY

1. New section filed 3–5–91 as an emergency; operative 3–5–91 (Register 91, No. 14). The emergency language will remain in effect until revised by the Department of Health Services pursuant to Health and Safety Code section 4019.5(b).
2. Change without regulatory effect repealing article heading filed 4–21–94 pursuant to title 1, section 100, California Code of Regulations (Register 94, No. 16).

§ 64200. Local Health Officer Authority & Responsibility.

NOTE: Authority cited: Sections 7, 208 and 4010.8, Health and Safety Code. Reference: Sections 7, 208, 4010, 4010.8 and 4010.55, Health and Safety Code.

HISTORY

1. New section filed 3–7–91 as an emergency; operative 3–7–91 (Register 91, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–5– 91 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3–7–91 order transmitted to OAL 7–2–91 and filed 7–2–91 (Register 91, No. 40).
3. Change without regulatory effect repealing section filed 4–21–94 pursuant to title 1, section 100, California Code of Regulations (Register 94, No. 16).

§ 64201. Definitions.

NOTE: Authority cited: Section 4020.5, Health and Safety Code. Reference: Sections 4020.5 and 4023.3, Health and Safety Code.

HISTORY

1. New section filed 6–16–91; operative 7–16–92 (Register 92, No. 25).
2. Change without regulatory effect repealing section filed 4–21–94 pursuant to title 1, section 100, California Code of Regulations (Register 94, No. 16).

§ 64202. Large Water System Regulatory Fee Determination for the Period of July 1, 1991 Through June 30, 1992.

NOTE: Authority cited: Sections 4010.1 and 4020.5, Health and Safety Code. Reference: Sections 4010.1, 4020.5 and 4023.3, Health and Safety Code.

HISTORY

1. New section filed 6–16–91; operative 7–16–92 (Register 92, No. 25).
2. Change without regulatory effect repealing section filed 4–21–94 pursuant to title 1, section 100, California Code of Regulations (Register 94, No. 16).

§ 64203. Workload Rating Factors.

NOTE: Authority cited: Section 4020.5, Health and Safety Code. Reference: Sections 4020.5 and 4023.3, Health and Safety Code.

HISTORY

1. New section filed 6–16–91; operative 7–16–92 (Register 92, No. 25).
2. Change without regulatory effect repealing section filed 4–21–94 pursuant to title 1, section 100, California Code of Regulations (Register 94, No. 16).

§ 64204. Wholesale Water Suppliers.

NOTE: Authority cited: Sections 4010.1 and 4020.5, Health and Safety Code. Reference: Sections 4020.5 and 4023.3, Health and Safety Code.

HISTORY

1. New section filed 6–16–91; operative 7–16–92 (Register 92, No. 25).
2. Change without regulatory effect repealing section filed 4–21–94 pursuant to title 1, section 100, California Code of Regulations (Register 94, No. 16).

§ 64205. Late Payment.

NOTE: Authority cited: Sections 205, 208 and 4020.5, Health and Safety Code. Reference: Sections 4020.5 and 4023.3, Health and Safety Code.

HISTORY

1. New section filed 6–16–91; operative 7–16–92 (Register 92, No. 25).
2. Change without regulatory effect repealing section filed 4–21–94 pursuant to title 1, section 100, California Code of Regulations (Register 94, No. 16).

§ 64206. Large Water System Reimbursement Fee Determination for the Billing Periods After July 1, 1992.

NOTE: Authority cited: Sections 4010.1, 4019.10 and 4020.5, Health and Safety Code. Reference: Sections 4010.1, 4019.10 and 4023.3, Health and Safety Code.

HISTORY

1. New section filed 1–15–93; operative 2–15–93 (Register 93, No. 3).
2. Change without regulatory effect repealing section filed 4–21–94 pursuant to title 1, section 100, California Code of Regulations (Register 94, No. 16).

Article 3. State Small Water Systems

§ 64211. Permit Requirement.

(a) No person shall operate a state small water system unless a permit to operate the system has been issued by the local health officer. Within 30 calendar days of receipt of an application for a permit, the local health officer shall inform the applicant in writing that the application is either complete and accepted for filing or that it is deficient and what specific information or documentation is required to complete the application.

(b) The state small water system shall submit a technical report to the local health officer as part of the permit application. The report shall describe the proposed or existing system as follows: service area, distribution system including storage and pumping facilities, the water source including source capacity, water quality, and any water treatment facilities. The report shall identify the owner of the system and the party responsible for day to day operation of the system. The report shall include a plan for notification of those served by the system under emergency conditions. The report shall describe the operating plan for the system and shall specify how the responsible party will respond to failure of major system components.

(c) Within 90 calendar days from the date of filing of a completed application, the local health officer shall inform the applicant in writing of its decision regarding an application.

(d) A change in ownership of a state small water system shall require the submission of a new application.

(e) By July 1, 1992, each state small water system in existence on January 1, 1992, shall submit to the local health officer a plan for notification of those served by the system under emergency conditions.

(f) Each state small water system shall provide the following notice to the consumers served by the state small water system: "The domestic water supply for this area is provided by a state small water system. State regulatory requirements for operation of a state small water system are less extensive than requirements for larger public water systems. If you have questions concerning your water supply, you should contact [insert (1) name of water system, (2) name of responsible person, and (3) telephone number] or your local health department." This notice shall be by direct delivery on an annual basis or by continuous posting at a central location within the area served by the state small water system.

NOTE: Authority cited: Sections 208 and 4010.8, Health and Safety Code. Reference: Sections 4010.1 and 4010.8, Health and Safety Code.

HISTORY

1. New section filed 11–12–91 as an emergency; operative 11–12–91 (Register 92, No. 8). A Certificate of Compliance must be transmitted to OAL 3–11–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–6–92 as an emergency; operative 3–11–92 (Register 92, No. 15). A Certificate of Compliance must be transmitted to OAL 7–9–92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 3–6–92 order including new subsections (e) and (f) transmitted to OAL 5–5–92 and filed 6–16–92 (Register 92, No. 25).

§ 64212. Bacteriological Quality Monitoring.

(a) Each water supplier operating a state small water system shall collect a minimum of one routine sample from the distribution system at least once every three months. The sample shall be analyzed for the presence of total coliform bacteria by a laboratory certified by the Depart-

ment for bacteriological analyses pursuant to Section 4025 of the Health and Safety Code. The results of the analyses shall be reported to the local health officer no later than the 10th day of the month following receipt of the results by the state small water system.

(b) If any routine sample is total coliform–positive, the water supplier shall collect a repeat sample from the same location within 48 hours of being notified of the positive result. If the repeat sample is also total coliform–positive, the sample shall also be analyzed for the presence of fecal coliforms or Escherichia coli (E. Coli). The water supplier shall notify the local health officer within 48 hours from the time the results are received and shall take corrective actions as directed by the local health officer to eliminate the cause of the positive samples.

(c) The local health office may require a state small water system to sample the distribution system each month, in lieu of the requirements of subsection (a), if the system has bacteriological contamination problems indicated by more than one total–coliform positive sample during the most recent 24 months of operation. The monthly sample shall be analyzed for the presence of total coliform bacteria by a laboratory certified by the Department for bacteriological analyses pursuant to Section 4025 of the Health and Safety Code. The results of the analyses shall be re-

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ported to the local health officer no later than the 10th day of the month following receipt of the results by the state small water system.

NOTE: Authority cited: Sections 208 and 4010.8, Health and Safety Code. Reference: Sections 4010.1 and 4010.8, Health and Safety Code.

HISTORY

1. New section filed 11–12–91 as an emergency; operative 11–12–91 (Register 92, No. 8). A Certificate of Compliance must be transmitted to OAL 3–11–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–6–92 as an emergency; operative 3–11–92 (Register 92, No. 15). A Certificate of Compliance must be transmitted to OAL 7–9–92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 3–6–92 order including amendment of subsection (b) and new subsection (c) transmitted to OAL 5–5–92 and filed 6–16–92 (Register 92, No. 25).

§ 64213. Chemical Quality Monitoring.

(a) Each water supplier operating a state small water system shall sample each source of supply prior to any treatment at least once. The sample shall be analyzed by a laboratory, certified by the Department pursuant to Section 4025 of the Health and Safety Code, for fluoride, iron, manganese, chlorides, total dissolved solids, and the inorganic chemicals listed in Table 64431–A, Section 64431(a).

(b) Each groundwater source which has been designated as vulnerable by the local health officer pursuant to criteria set forth in Sections 64445(d)(1) and (2) shall be sampled by the water supplier operating the state small water system at least once prior to any treatment and analyzed for volatile organic compounds according to Environmental Protection Agency Method 502.2, "Methods for the Determination of Organic Compounds in Finished Drinking Water and Raw Source Water," September 1986. The analysis shall be performed by a laboratory certified by the Department to perform Method 502.2 analyses for organic chemicals pursuant to Section 4025 of the Health and Safety Code.

(c) The results of the laboratory analyses shall be submitted to the local health officer by the state small water system no later than the 10th day of the month following receipt of the results by the state small water system. A copy of the results of the analyses and a comparison of the results with the maximum contaminant levels for those contaminants listed in Table 64431–A and B, Section 64431(a) and Table 64444–A, Section 64444 shall be distributed by the state small water system to each regular user of the water system within 90 days of receiving the results. A copy of the distribution notice shall be provided to the local health officer.

(d) The water supplier operating a state small water system shall comply with any corrective actions ordered by the local health officer for any chemical contaminant which exceeds the maximum contaminant level.

NOTE: Authority cited: Sections 208, 4010.8 and 4011, Health and Safety Code. Reference: Sections 4010.1, 4010.8, 4011 and 4014, Health and Safety Code.

HISTORY

1. New section filed 11–12–91 as an emergency; operative 11–12–91 (Register 92, No. 8). A Certificate of Compliance must be transmitted to OAL 3–11–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–6–92 as an emergency; operative 3–11–92 (Register 92, No. 15). A Certificate of Compliance must be transmitted to OAL 7–9–92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 3–6–92 order transmitted to OAL 5–5–92 and filed 6–16–92 (Register 92, No. 25).
4. Amendment of subsections (a)–(c) filed 6–19–95; operative 6–19–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 25).

§ 64214. Service Connection Limitation.

No state small water system shall add additional service connections to the system such that the total number of service connections served by the system exceeds 14 before the water system has applied for and received a permit to operate as a public water system from the Department.

NOTE: Authority cited: Sections 208 and 4010.8, Health and Safety Code. Reference: Sections 4010.1 and 4010.8, Health and Safety Code.

HISTORY

1. New section filed 11–12–91 as an emergency; operative 11–12–91 (Register 92, No. 8). A Certificate of Compliance must be transmitted to OAL 3–11–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–6–92 as an emergency; operative 3–11–92 (Register 92, No. 15). A Certificate of Compliance must be transmitted to OAL 7–9–92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 3–6–92 order transmitted to OAL 5–5–92 and filed 6–16–92 (Register 92, No. 25).
4. Editorial correction of HISTORY 2 (Register 95, No. 47).

§ 64215. Water Supply Requirements.

Prior to receiving permit approval, a state small water system which was not in existence on November 12, 1991 shall demonstrate to the local health officer that sufficient water is available from the water system's sources and distribution storage facilities to supply a minimum of three gallons per minute for at least 24 hours for each service connection served by the system.

NOTE: Authority cited: Sections 208 and 4010.8, Health and Safety Code. Reference: Sections 4010.1 and 4010.8, Health and Safety Code.

HISTORY

1. New section filed 11–12–91 as an emergency; operative 11–12–91 (Register 92, No. 8). A Certificate of Compliance must be transmitted to OAL 3–11–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–6–92 as an emergency; operative 3–11–92 (Register 92, No. 15). A Certificate of Compliance must be transmitted to OAL 7–9–92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 3–6–92 order transmitted to OAL 5–5–92 and filed 6–16–92 (Register 92, No. 25).
4. Editorial correction of HISTORY 2 (Register 95, No. 47).

§ 64216. Mutual Associations Prohibited.

No state small water system which was not in existence on November 12, 1991 shall be issued a permit to operate if the water supplier is an unincorporated association organized under Title 3 (commencing with Section 20000) of Division 3 of the Corporations Code.

NOTE: Authority cited: Sections 208 and 4010.8, Health and Safety Code. Reference: Sections 4010.1, 4010.8 and 4014, Health and Safety Code.

HISTORY

1. New section filed 11–12–91 as an emergency; operative 11–12–91 (Register 92, No. 8). A Certificate of Compliance must be transmitted to OAL 3–11–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–6–92 as an emergency; operative 3–11–92 (Register 92, No. 15). A Certificate of Compliance must be transmitted to OAL 7–9–92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 3–6–92 order transmitted to OAL 5–5–92 and filed 6–16–92 (Register 92, No. 25).
4. Editorial correction of HISTORY 2 (Register 95, No. 47).

§ 64217. Surface Water Treatment Requirement.

All state small water systems using surface water as a source of supply shall provide continuous disinfection treatment of the water prior to entry to the distribution system.

NOTE: Authority cited: Sections 208 and 4010.8, Health and Safety Code. Reference: Sections 4010.1 and 4010.8, Health and Safety Code.

HISTORY

1. New section filed 11–12–91 as an emergency; operative 11–12–91 (Register 92, No. 8). A Certificate of Compliance must be transmitted to OAL 3–11–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–6–92 as an emergency; operative 3–11–92 (Register 92, No. 15). A Certificate of Compliance must be transmitted to OAL 7–9–92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 3–6–92 order transmitted to OAL 5–5–92 and filed 6–16–92 (Register 92, No. 25).
4. Editorial correction of HISTORY 2 (Register 95, No. 47).

Article 4. Local Primacy Delegation

§ 64251. Definitions.

(a) For the purpose of this Article the following definitions shall apply:

(1) "Small Water System" means a community water system except those serving 200 or more service connections, or any noncommunity or nontransient noncommunity water system.

(2) "Primacy Delegation Agreement" means the document, issued by the department and signed by the local health officer, delegating primacy to a local health officer.

(3) "Routine Inspection" means an on–site review of a small water system which includes, but is not limited to, inspections of system operations, operation and maintenance records, system facilities and equipment.

(4) "Sanitary Survey" means an on–site review of a small water system which includes, in addition to the elements of a routine inspection, an evaluation of the watershed for surface water sources and vulnerability assessments for groundwater sources.

NOTE: Authority cited: Sections 4010.7 and 4023.3(h), Health and Safety Code. Reference: Sections 4010.1 and 4023.3, Health and Safety Code.

HISTORY

1. New article 4 and section filed 4–2–93 as an emergency; operative 4–2–93 (Register 93, No. 14). A Certificate of Compliance must be transmitted to OAL 8–2–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 4–2–93 order transmitted to OAL 7–29–93 and filed 9–8–93 (Register 93, No. 37).

§ 64252. Primacy Delegation Application.

(a) The primacy delegation application submitted by a local health officer pursuant to section 116330 of the Health and Safety Code shall describe how the primacy requirements of this article will be complied with and shall contain the following information relating to the small water system program to be delegated:

(1) The number of staff persons, percentage of time and personnel classification of each staff person, and a description of the program responsibilities of each person involved in the small water system program.

(2) A proposed program budget projecting both revenues and expenditures for the first year of the program. The expenditures categories shall include personnel, general expense (i.e. rent, supplies and communications), travel, equipment, data management, any other specific services to be provided (e.g. laboratory), administrative overhead and other indirect charges. The anticipated revenues shall specify all planned sources of revenues to be used for support of the small water system program.

(3) A description of engineering and legal resources to be used in conducting the program.

(4) A description of the electronic data management system to be used to comply with the requirements of section 64256 (e) and the compatibility of the proposed system with the data management system used by the department.

(5) A description of the current status of compliance with Division 5, Part 1, Chapter 7; Division 104, Part 1, Chapters 4 and 5; Division 104, Part 12, Chapters 1 through 6 of the Health and Safety Code and California Code of Regulations, Title 22, Division 4, Chapters 15, 17, and 17.5 of the small water systems within the county. This description shall include the following:

(A) All violations of drinking water monitoring or reporting requirements by any of the systems during the 12 months preceding the submission of the application for primacy.

(B) All violations of standards of California Code of Regulations, Title 22, Division 4, Chapters 15, 17, and 17.5 during the 12 months preceding the submission of the application for primacy.

(C) All enforcement actions against small water systems taken by the county during the 12 months preceding the submission of the application for primacy.

(6) A current inventory list of the small water systems within the county. For each small water system the inventory list shall specify the system name, water system identification number, mailing address, type of system (community, nontransient noncommunity or noncommunity), name and address and phone number of the responsible party, type of ownership, type of water source, type of treatment if any, dates of operation for seasonally operated systems, and either:

(A) for a community water system, the number of service connections; or

(B) for a noncommunity or nontransient noncommunity water system, the average monthly population served.

(b) For applications submitted by March 1, 1993, the primacy application shall demonstrate that the local primacy program requirements specified in Article 4.1, sections 64253 through 64258 will be complied with by June 30, 1994. If these requirements cannot be fully complied with by June 30, 1994, the application shall set forth a priority implementation schedule for activities to be conducted such that the program requirements will be fully complied with by June 30, 1995.

(c) For applications submitted for fiscal years subsequent to the fiscal year 1993–94, the application shall demonstrate that the local primacy agency will be able to immediately undertake the activities specified as local primacy program requirements in section 64253 at the time of delegation.

(d) The application shall be signed by the local health officer or by a local official with the authority to submit the application on behalf of the county.

(e) Within 15 working days of receipt of an application for local primacy delegation the department shall inform the applicant in writing that the application is either complete and accepted for filing, or that it is deficient and what specific information or documentation is required to complete the application.

(f) Within 5 working days of being notified of deficiencies in its application the local health officer shall resubmit an application with the deficient items included or corrected.

(g) Within 15 working days of receipt of the resubmitted application the department shall determine that the application is complete or reject the application as incomplete and find that the local health officer is not capable of meeting the primacy program requirements.

(h) Within 20 working days of being notified that the application is complete the local health officer shall submit the annual workplan required pursuant to section 64260.

(i) Within 20 working days from the date the workplan is submitted the department shall inform the applicant in writing of its determination regarding the local health officer's capability of meeting the primacy program requirements.

NOTE: Authority cited: Sections 116330, 116335, 116345, 116350 and 116375, Health and Safety Code; and Section 15376, Government Code. Reference: Sections 116300 through 116750, Health and Safety Code; and 40 Code of Federal Regulations 141.

HISTORY

1. New section filed 4–2–93 as an emergency; operative 4–2–93 (Register 93, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–2–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 4–2–93 order transmitted to OAL 7–29–93 and filed 9–8–93 (Register 93, No. 37).
3. Amendment of subsections (a)(5), (a)(5)(B) and NOTE filed 12–11–95 as an emergency; operative 12–11–95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–9–96 or emergency language will be repealed by operation of law on the following day.
4. Refiling of 12–11–95 order, including further amendment of subsection (a)(5) and amendment of NOTE, filed 4–9–96 as an emergency; operative 4–10–96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 12–11–95 order, including amendment of subsection (a), transmitted to OAL 8–7–96 and filed 9–16–96 (Register 96, No. 38).

§ 64253. Local Primacy Agency Minimum Program Requirements.

Each local primacy agency shall conduct a regulatory program for small water systems within its jurisdiction that complies with all of the requirements set forth in sections 64254, 64255, 64256, 64257, and 64258.

NOTE: Authority cited: Sections 4010.7 and 4023.3 (h), Health and Safety Code. Reference: Sections 4010.7 and 4023.3(h), Health and Safety Code.

HISTORY

1. New section filed 4–2–93 as an emergency; operative 4–2–93 (Register 93, No. 14). A Certificate of Compliance must be transmitted to OAL 8–2–93 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 4–2–93 order transmitted to OAL 7–29–93 and filed 9–8–93 (Register 93, No. 37).

§ 64254. Permits.

(a) Each local primacy agency shall issue and maintain a valid drinking water permit for all small water systems within its jurisdiction in accordance with Sections 116525 through 116550 of the Health and Safety Code. The permit shall include terms and conditions, including compliance schedules, that are necessary to assure that water served will comply with Division 5, Part 1, Chapter 7; Division 104, Part 1, Chapters 4 and 5; Division 104, Part 12, Chapters 1 through 6 of the Health and Safety Code, and Title 22, Division 4, Chapters 15, 16, 17, and 17.5, and Title 17, Division 1, Chapter 5, Groups 2 and 4 of the California Code of Regulations.

(b) All existing permits shall be reviewed and updated as necessary at least every ten years.

(c) A copy of all permit applications for proposed new community water systems under the jurisdiction of the local primacy agency that are designed to serve 200 or more service connections shall be submitted to the department. The local primacy agency shall not issue a permit for these systems unless the department concurs that the systems are capable of complying with Division 5, Part 1, Chapter 7; Division 104, Part 1, Chapters 4 and 5; Division 104, Part 12, Chapters 1 through 6 of the Health and Safety Code, and Title 22, Division 4, Chapters 15, 16, 17, and 17.5, and Title 17, Division 1, Chapter 5, Groups 2 and 4 of the California Code of Regulations.

NOTE: Authority cited: Sections 116330, 116375, 116525 through 116550, Health and Safety Code. Reference: Sections 116300 through 116750, Health and Safety Code; and 40 Code of Federal Regulations 141.

HISTORY

1. New section filed 4–2–93 as an emergency; operative 4–2–93 (Register 93, No. 14). A Certificate of Compliance must be transmitted to OAL 8–2–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 4–2–93 order transmitted to OAL 7–29–93 and filed 9–8–93 (Register 93, No. 37).
3. Amendment of subsections (a), (c) and NOTE filed 12–11–95 as an emergency; operative 12–11–95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–9–96 or emergency language will be repealed by operation of law on the following day.
4. Refiling of 12–11–95 order, including further amendment of subsections (a) and (c) and amendment of NOTE, filed 4–9–96 as an emergency; operative 4–10–96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 12–11–95 order, including amendment of subsection (a) and NOTE, transmitted to OAL 8–7–96 and filed 9–16–96 (Register 96, No. 38).

§ 64255. Surveillance.

(a) The local primacy agency shall establish and maintain an inventory of all small water systems under its jurisdiction. The inventory shall be updated at least annually and shall include the following information for each system:

(1) All of the information specified in section 64252(a)(6).

(2) The name and telephone number of the operator of any treatment facilities utilized by the system.

(3) A copy of the current emergency notification plan required pursuant to section 4029 of the Health and Safety Code.

(b) The local primacy agency shall conduct a routine inspection of each small water system within its jurisdiction as follows:

(1) At least once every two years on each small water system utilizing a surface water source as defined in section 4651.10.

(2) At least once every two years on each small water system utilizing groundwater that is treated in order to meet drinking water standards.

(3) At least once every five years on each small water system utilizing groundwater without treatment.

(c) Each local primacy agency shall conduct a sanitary survey of each small water system within its jurisdiction at least once every five years. A sanitary survey may be conducted in lieu of any routine inspection.

(d) The local primacy agency shall identify any deficiencies found during the routine inspection or sanitary survey and shall submit a follow–up notice to the small water system describing such deficiencies and prescribing a time schedule for corrective action. The notice shall be sent to the small water system within 60 days of the routine inspection or sanitary survey.

(e) The local primacy agency shall complete a routine inspection or sanitary survey report for each routine inspection or sanitary survey conducted within 90 days of completion of the sanitary survey or routine inspection.

(f) The local primacy agency shall determine which small water systems under its jurisdiction utilize surface water or groundwater under the direct influence of surface water and are subject to surface water treatment requirements as specified in section 64650.

NOTE: Authority cited: Sections 4010.7 and 4023.3(h), Health and Safety Code. Reference: Sections 4010.7 and 4023.3(h), Health and Safety Code.

HISTORY

1. New section filed 4–2–93 as an emergency; operative 4–2–93 (Register 93, No. 14). A Certificate of Compliance must be transmitted to OAL 8–2–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 4–2–93 order transmitted to OAL 7–29–93 and filed 9–8–93 (Register 93, No. 37).

§ 64256. Sampling and Monitoring.

(a) The local primacy agency shall notify each small water system under its jurisdiction in writing of the monitoring requirements for that system pursuant to Title 22, Division 4, Chapters 15, 17, and 17.5 of the California Code of Regulations. The notice shall identify the specific contaminants to be monitored, the type of laboratory analyses required for each contaminant, the frequency of sampling and any other sampling and reporting requirements applicable to that system.

(b) The local primacy agency shall ensure that each small water system under its jurisdiction complies with the sample siting plan requirements of section 64422.

(c) The local primacy agency shall establish a tracking system to assure that all required sampling and laboratory analyses are completed and reported by the small water systems pursuant to Title 22, Division 4, Chapters 15, 17, and 17.5 of the California Code of Regulations. The tracking system shall include the date the sample was collected, the type or purpose of the sample, and the laboratory result.

(d) An ongoing record of the status of compliance with monitoring and reporting requirements of California Code of Regulations, Title 22, Division 4, Chapters 15, 17, and 17.5 of each small water system shall be maintained by the local primacy agency.

(e) A system shall be established by the local primacy agency to assure that the water quality monitoring data submitted by the small water systems is routinely reviewed for compliance with the requirements of Title 22, Division 4, Chapters 15, 17, and 17.5 of the California Code of Regulations. The monitoring reports shall be reviewed each month for each small water system and the data entered into the data management system at least monthly.

NOTE: Authority cited: Sections 116330, 116375 and 116385 Health and Safety Code. Reference: Sections 116300 through 116750, Health and Safety Code; and 40 Code of Federal Regulations 141.

HISTORY

1. New section filed 4–2–93 as an emergency; operative 4–2–93 (Register 93, No. 14). A Certificate of Compliance must be transmitted to OAL 8–2–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 4–2–93 order transmitted to OAL 7–29–93 and filed 9–8–93 (Register 93, No. 37).
3. Amendment of subsections (a), (c)–(e) and NOTE filed 12–11–95 as an emergency; operative 12–11–95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–9–96 or emergency language will be repealed by operation of law on the following day.
4. Refiling of 12–11–95 order, including amendment of NOTE, filed 4–9–96 as an emergency; operative 4–10–96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 12–11–95 order transmitted to OAL 8–7–96 and filed 9–16–96 (Register 96, No. 38).

§ 64257. Reporting.

(a) The following reports shall be submitted monthly in an electronic data format to the department no later than the last day of the month following the period being reported:

(1) A report listing all small water systems that failed during the previous month to comply with drinking water monitoring and reporting regulations of Title 22, Division 4, Chapters 15, 17, and 17.5 of the California Code of Regulations.

(2) A compliance report containing the following information for each small water system under the jurisdiction of the local primacy agency that is in violation of Title 22, Division 4, Chapters 15, 17, and 17.5 of the California Code of Regulations:

(A) The name and water system identification number of the system.

(B) A description of the type of violation and the standard violated.

(C) A description of any enforcement action taken by the local primacy agency with respect to the violation.

(b) The following reports shall be submitted quarterly in an electronic data format to the department no later than the last day of the quarter following the quarter being reported:

(1) A list of domestic water supply permits for small water systems that have been issued, amended or renewed during the reporting period. The list shall include the name and the identification number of the water system.

(2) A list of the small water systems for which a routine inspection or sanitary survey was conducted during the reporting period. The list shall indicate the name and identification number of the small water system and the type of routine inspection or sanitary survey performed.

(c) An updated inventory of small water systems under the jurisdiction of the local primacy agency shall be submitted annually in an electronic format to the department no later than August 15 of each year.

NOTE: Authority cited: Sections 116330, 116345, 116350, 116375, Health and Safety Code. Reference: Sections 116300 through 116375, Health and Safety Code; and 40 Code of Federal Regulations 141.

HISTORY

1. New section filed 4–2–93 as an emergency; operative 4–2–93 (Register 93, No. 14). A Certificate of Compliance must be transmitted to OAL 8–2–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 4–2–93 order including amendment of subsection (a) transmitted to OAL 7–29–93 and filed 9–8–93 (Register 93, No. 37).
3. Amendment of subsections (a)(1)–(2) and NOTE filed 12–11–95 as an emergency; operative 12–11–95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–9–96 or emergency language will be repealed by operation of law on the following day.
4. Refiling of 12–11–95 order, including amendment of NOTE, filed 4–9–96 as an emergency; operative 4–10–96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–96 or emergency language will be repealed by operation of law on the following day.
5. Editorial correction of subsection (b)(1) (Register 96, No. 38).
6. Certificate of Compliance as to 12–11–95 order, including amendment of NOTE, transmitted to OAL 8–7–96 and filed 9–16–96 (Register 96, No. 38).

§ 64258. Enforcement.

(a) The local primacy agency shall take enforcement actions as necessary to assure that all small water systems under the jurisdiction of the local primacy agency are in compliance with Division 5, Part 1, Chapter 7; Division 104, Part 1, Chapters 4 and 5; Division 104, Part 12, Chapters 1 through 6 of the Health and Safety Code, and California Code of Regulations, Title 17, Division 1, Chapter 5, Groups 2 and 4, and Title 22, Division 4, Chapters 14, 15, 16, 17, and 17.5.

(b) Each local primacy agency shall notify each small water system under their jurisdiction of any new state or federal drinking water requirements applicable to those systems.

NOTE: Authority cited: Sections 116330, 116345, 116350, 116375, 116625–116675 and 116725–116750, Health and Safety Code. Reference: Sections 116300–116750, Health and Safety Code; and 40 Code of Federal Regulations 141.

HISTORY

1. New section filed 4–2–93 as an emergency; operative 4–2–93 (Register 93, No. 14). A Certificate of Compliance must be transmitted to OAL 8–2–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 4–2–93 order transmitted to OAL 7–29–93 and filed 9–8–93 (Register 93, No. 37).
3. Amendment of subsection (a) and NOTE filed 12–11–95 as an emergency; operative 12–11–95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–9–96 or emergency language will be repealed by operation of law on the following day.
4. Refiling of 12–11–95 order, including further amendment of subsection (a) and amendment of NOTE, filed 4–9–96 as an emergency; operative 4–10–96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–96 or emergency language will be repealed by operation of law on the following day.
5. Editorial correction of subsection (a) (Register 96, No. 38).
6. Certificate of Compliance as to 12–11–95 order transmitted to OAL 8–7–96 and filed 9–16–96 (Register 96, No. 38).

§ 64259. Program Management.

(a) Each local primacy agency shall establish and maintain a time accounting system for determining the amount of reimbursement to be billed to each small water system pursuant to section 4019.40 of the Health and Safety Code. The hourly cost rate of the local primacy agency shall be determined using the criteria set forth in section 4019.35 (b) of the Health and Safety Code.

(b) Each local primacy agency shall establish and maintain an individual file for each small water system under its jurisdiction. The following information shall be maintained in the file:

(1) The current operating permit and all technical reports supporting it.

(2) Permit applications, permit technical reports, permits and amended permits for a minimum of 10 years.

(3) The most recent plans, specifications and other information submitted by the water system pertaining to sources of supply, treatment works, storage facilities, and distribution system, including water quality monitoring plans and total coliform siting plans.

(4) Inspection and sanitary survey reports for a minimum of 10 years.

(5) Copies of bacteriological water quality analyses for a minimum of 5 years; copies of all other water quality analyses for a minimum of 10 years.

(6) Correspondence, memoranda and other written records pertaining to the system issued or written within the past three years.

(7) Copies of all compliance orders, citations, court actions and other enforcement documentation.

NOTE: Authority cited: Section 4010.7 and 4023.3(h), Health and Safety Code. Reference: Sections 4010.7 and 4023.3(h), Health and Safety Code.

HISTORY

1. New section filed 4–2–93 as an emergency; operative 4–2–93 (Register 93, No. 14). A Certificate of Compliance must be transmitted to OAL 8–2–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 4–2–93 order including amendment of subsection (b)(5) transmitted to OAL 7–29–93 and filed 9–8–93 (Register 93, No. 37).

§ 64260. Workplans.

(a) Each local primacy agency shall develop and submit to the department a proposed annual program workplan for the upcoming fiscal year. The local primacy agency shall submit the proposed annual workplan to the department no later than May 1 of each year for the fiscal year commencing July 1 of that year; except for the initial proposed annual workplan submitted in accordance with section 64252.

(b) The workplan developed pursuant to subsection (a) shall describe the activities proposed to be performed by the local primacy agency during the forthcoming fiscal year and shall include:

(1) The anticipated number of new small water system permits to be issued and the proposed number of existing community or noncommunity permits (designated by category) to be updated or amended.

(2) A description of how the small water system inventory specified in section 64255 (a) will be maintained.

(3) A description of how the surveillance activities specified in section 64255 (b) through (f) will be conducted and the priorities to be used in determining the activities to be performed.

(4) The number of planned routine inspections and sanitary surveys to be performed for each category of small water systems (community, noncommunity and nontransient noncommunity).

(5) A listing of small water systems proposed for enforcement action and the priorities to be used in determining these systems.

NOTE: Authority cited: Sections 4010.7 and 4023.3(h), Health and Safety Code. Reference: Sections 4010.7 and 4023.3(h), Health and Safety Code.

HISTORY

1. New section filed 4–2–93 as an emergency; operative 4–2–93 (Register 93, No. 14). A Certificate of Compliance must be transmitted to OAL 8–2–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 4–2–93 order transmitted to OAL 7–29–93 and filed 9–8–93 (Register 93, No. 37).

Chapter 15. Domestic Water Quality and Monitoring Regulations

Article 1. Definitions

§ 64400. Acute Risk.

"Acute Risk" means the potential for a contaminant or disinfectant residual to cause acute health effects, i.e., death, damage or illness, as a result of a single period of exposure of a duration measured in seconds, minutes, hours, or days.

NOTE: Authority cited: Sections 100275, 116375 and 116450, Health and Safety Code. Reference: Sections 116270–116751, Health and Safety Code.

HISTORY

1. Repealer and new article 1 and new section filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
2. Repealer and new article 1 and new section refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. Repealer and new article 1 and new section refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order including amendment of chapter 15 heading transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).
5. Amendment of section and NOTE filed 5–18–2006; operative 6–17–2006 (Register 2006, No. 20).

§ 64400.10. Community Water System.

"Community water system" means a public water system which serves at least 15 service connections used by yearlong residents or regularly serves at least 25 yearlong residents.

NOTE: Authority cited: Sections 208, 4023.3 and 4028, Health and Safety Code. Reference: Sections 4010 through 4039.6, Health and Safety Code.

HISTORY

1. New section filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).

§ 64400.20. Compliance Cycle.

"Compliance cycle" means the nine–year calendar year cycle during which public water systems shall monitor. Each compliance cycle consists of three three–year compliance periods. The first calendar year cycle began January 1, 1993 and ends December 31, 2001; the second begins January 1, 2002 and ends December 31, 2010; the third begins January 1, 2011 and ends December 31, 2019.

NOTE: Authority cited: Sections 208, 4023.3 and 4028, Health and Safety Code. Reference: Sections 4010 through 4039.6, Health and Safety Code.

HISTORY

1. New section filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).

§ 64400.25. Compliance Period.

"Compliance period" means a three–year calendar year period within a compliance cycle. Within the first compliance cycle, the first compliance period runs from January 1, 1993 to December 31, 1995; the second from January 1, 1996 to December 31, 1998; the third from January 1, 1999 to December 31, 2001.

NOTE: Authority cited: Sections 100275, 116375 and 116450, Health and Safety Code. Reference: Sections 116270–116751, Health and Safety Code.

HISTORY

1. Renumbering of former section 64400.30 to new section 64400.25, including amendment of NOTE, filed 5–18–2006; operative 6–17–2006 (Register 2006, No. 20).

§ 64400.28. Confluent Growth.

"Confluent growth" means a continuous bacterial growth covering the entire filtration area of a membrane filter, or a portion thereof, in which bacterial colonies are not discrete.

NOTE: Authority cited: Sections 100275, 116375 and 116450, Health and Safety Code. Reference: Sections 116270–116751, Health and Safety Code.

HISTORY

1. Renumbering of former section 64400.40 to new section 64400.28, including amendment of NOTE, filed 5–18–2006; operative 6–17–2006 (Register 2006, No. 20).

§ 64400.30. Customer.

"Customer" means a service connection to which water is delivered by a community water system or a person that receives water from a nontransient–noncommunity water system for more than six months of the year.

NOTE: Authority cited: Sections 116350 and 116375, Health and Safety Code. Reference: Sections 116275 and 116470, Health and Safety Code.

HISTORY

1. New section filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).
5. Renumbering of former section 64400.30 to new section 64400.25 and renumbering of former section 66400.42 to section 64400.30 filed 5–18–2006; operative 6–17–2006 (Register 2006, No. 20).

§ 64400.32. Detected.

"Detected" means at or above the detection limit for purposes of reporting (DLR).

NOTE: Authority cited: Sections 116350 and 116375, Health and Safety Code. Reference: Sections 116275 and 116470, Health and Safety Code.

HISTORY

1. Renumbering of former section 64400.44 to new section 64400.32 filed 5–18–2006; operative 6–17–2006 (Register 2006, No. 20).

§ 64400.34. Detection Limit for Purposes of Reporting (DLR).

"Detection limit for purposes of reporting (DLR)" means the designated minimum level at or above which any analytical finding of a contaminant in drinking water resulting from monitoring required under this chapter shall be reported to the Department.

NOTE: Authority cited: Sections 100275, 116375 and 116450, Health and Safety Code. Reference: Sections 116270–116751, Health and Safety Code.

HISTORY

1. Renumbering of former section 64400.45 to new section 64400.34, including amendment of NOTE, filed 5–18–2006; operative 6–17–2006 (Register 2006, No. 20).

§ 64400.38. Enhanced Coagulation.

"Enhanced coagulation" means the addition of sufficient coagulant for improved removal of disinfection byproduct precursors by conventional filtration treatment.

NOTE: Authority cited: Sections 116325 and 116375, Health and Safety Code. Reference: Sections 116275 and 116350, Health and Safety Code.

HISTORY

1. New section filed 5–18–2006; operative 6–17–2006 (Register 2006, No. 20).

§ 64400.40. Enhanced Softening.

"Enhanced softening" means the improved removal of disinfection byproduct precursors by precipitative softening.

NOTE: Authority cited: Sections 116325 and 116375, Health and Safety Code. Reference: Sections 116275 and 116350, Health and Safety Code.

HISTORY

1. New section filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).
5. Renumbering of former section 64400.40 to new section 64400.28 and new section 64400.40 filed 5–18–2006; operative 6–17–2006 (Register 2006, No. 20).

§ 64400.42. Fluoridation.

"Fluoridation" means the addition of fluoride to drinking water to achieve an optimal level, pursuant to Section 64433.2, that protects and maintains dental health.

NOTE: Authority cited: Sections 100275, 116410 and 116375, Health and Safety Code. Reference: Sections 116410 and 116415, Health and Safety Code.

HISTORY

1. New section filed 4–26–2001; operative 5–26–2001 (Register 2001, No. 17).
2. Renumbering of former section 64400.42 to section 64400.30 and renumbering of former section 66400.47 to section 64400.42 filed 5–18–2006; operative 6–17–2006 (Register 2006, No. 20).

§ 64400.44. Detected.

NOTE: Authority cited: Sections 116350 and 116375, Health and Safety Code. Reference: Sections 116275 and 116470, Health and Safety Code.

HISTORY

1. New section filed 4–26–2001; operative 5–26–2001 (Register 2001, No. 17).
2. Renumbering of former section 64400.44 to new section 64400.32 filed 5–18–2006; operative 6–17–2006 (Register 2006, No. 20).

§ 64400.45. GAC10.

"GAC10" means granular activated carbon filter beds with an empty-bed contact time of 10 minutes based on average daily flow and a carbon reactivation frequency of every 180 days.

NOTE: Authority cited: Sections 116325 and 116375, Health and Safety Code. Reference: Sections 116275 and 116350, Health and Safety Code.

HISTORY

1. New section filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).
5. Renumbering of former section 64400.45 to new section 64400.34 and new section 64400.45 filed 5–18–2006; operative 6–17–2006 (Register 2006, No. 20).

§ 64400.47. Haloacetic Acids (Five) or HAA5.

"Haloacetic acids (five)" or "HAA5" means the sum of the concentrations in milligrams per liter (mg/L) of the haloacetic acid compounds (monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid, and dibromoacetic acid), rounded to two significant figures after addition.

NOTE: Authority cited: Sections 116325 and 116375, Health and Safety Code. Reference: Sections 116275 and 116350, Health and Safety Code.

HISTORY

1. New section filed 3–23–98; operative 4–22–98 (Register 98, No. 13).
2. Renumbering of former section 66400.47 to section 64400.42 and new section 64400.47 filed 5–18–2006; operative 6–17–2006 (Register 2006, No. 20).

§ 64400.50. Initial Compliance Period.

"Initial compliance period" means the first full three-year compliance period which began January 1, 1993, for existing systems. For new systems, the "initial compliance period" means the period in which the Department grants the permit.

NOTE: Authority cited: Sections 208, 4023.3 and 4028, Health and Safety Code. Reference: Sections 4010 through 4039.6, Health and Safety Code.

HISTORY

1. New section filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).

§ 64400.60. Initial Finding.

"Initial finding" means the first laboratory result from a water source showing the presence of an organic chemical listed in Section 64444, Table 64444–A.

NOTE: Authority cited: Sections 208, 4023.3 and 4028, Health and Safety Code. Reference: Sections 4010 through 4039.6, Health and Safety Code.

HISTORY

1. New section filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).

§ 64400.65. IOC.

"IOC" means inorganic chemical.

NOTE: Authority cited: Sections 208, 4023.3 and 4028, Health and Safety Code. Reference: Sections 4010 through 4039.6, Health and Safety Code.

HISTORY

1. New section filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).

§ 64400.67. Maximum Residual Disinfectant Level or MRDL.

"Maximum residual disinfectant level" or "MRDL" means a level of a disinfectant added for water treatment that may not be exceeded at the consumer's tap.

NOTE: Authority cited: Sections 116325 and 116375, Health and Safety Code. Reference: Sections 116275 and 116350, Health and Safety Code.

HISTORY

1. New section filed 5–18–2006; operative 6–17–2006 (Register 2006, No. 20).

§ 64400.70. MCL.

"MCL" means maximum contaminant level.

NOTE: Authority cited: Sections 208, 4023.3 and 4028, Health and Safety Code. Reference: Sections 4010 through 4039.6, Health and Safety Code.

HISTORY

1. New section filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).

§ 64400.80. Nontransient–Noncommunity Water System.

"Nontransient–noncommunity water system" means a public water system that is not a community water system and that regularly serves at least the same 25 persons over 6 months per year.

NOTE: Authority cited: Sections 208, 4023.3 and 4028, Health and Safety Code. Reference: Sections 4010 through 4039.6, Health and Safety Code.

HISTORY

1. New section filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).

§ 64401. Repeat Compliance Period.

"Repeat compliance period" means any subsequent compliance period after the initial compliance period.

NOTE: Authority cited: Sections 208, 4023.3 and 4028, Health and Safety Code. Reference: Sections 4010 through 4039.6, Health and Safety Code.

HISTORY

1. New section filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 92, No. 28.
2. New section refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).

§ 64401.10. Repeat Sample.

"Repeat sample" means a required sample collected following a total coliform–positive sample.

NOTE: Authority cited: Sections 208, 4023.3 and 4028, Health and Safety Code. Reference: Sections 4010 through 4039.6, Health and Safety Code.

HISTORY

1. New section filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).

§ 64401.20. Replacement Sample.

"Replacement sample" means a sample collected to replace an invalidated sample.

NOTE: Authority cited: Sections 208, 4023.3 and 4028, Health and Safety Code. Reference: Sections 4010 through 4039.6, Health and Safety Code.

HISTORY

1. New section filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).

§ 64401.30. Routine Sample.

"Routine sample" means a bacteriological sample the water supplier is required to collect on a regular basis, or one which the supplier is required to collect for a system not in compliance with Sections 64650 through 64666 when treated water turbidity exceeds 1 nephelometric turbidity unit (NTU), pursuant to section 64423(b).

NOTE: Authority cited: Sections 208, 4023.3 and 4028, Health and Safety Code. Reference: Sections 4010 through 4039.6, Health and Safety Code.

HISTORY

1. New section filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).

§ 64401.40. Sanitary Survey.

"Sanitary survey" means an on–site review of a public water system for the purpose of evaluating the adequacy of the water source, facilities, equipment, operation and maintenance for producing and distributing safe drinking water.

NOTE: Authority cited: Sections 208, 4023.3 and 4028, Health and Safety Code. Reference: Sections 4010 through 4039.6, Health and Safety Code.

HISTORY

1. New section filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).

§ 64401.50. Significant Rise in Bacterial Count.

"Significant rise in bacterial count" means an increase in coliform bacteria, as determined in Section 64426, when associated with a suspected waterborne illness or disruption of physical works or operating procedures.

NOTE: Authority cited: Sections 208, 4023.3 and 4028, Health and Safety Code. Reference: Sections 4010 through 4039.6, Health and Safety Code.

HISTORY

1. New section filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).

§ 64401.55. SOC.

"SOC" means synthetic organic chemical.

NOTE: Authority cited: Sections 208, 4023.3 and 4028, Health and Safety Code. Reference: Sections 4010 through 4039.6, Health and Safety Code.

HISTORY

1. New section filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).

§ 64401.60. Standby Source.

"Standby source" means a source which is used only for emergency purposes pursuant to Section 64414.

NOTE: Authority cited: Sections 208, 4023.3 and 4028, Health and Safety Code. Reference: Sections 4010 through 4039.6, Health and Safety Code.

HISTORY

1. New section filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).

§ 64401.65. SUVA.

"SUVA" means Specific Ultraviolet Absorption at 254 nanometers (nm), an indicator of the humic content of a water. It is calculated by dividing a sample's ultraviolet absorption at a wavelength of 254 nm (UV_{254}) (in m^{-1}) by its concentration of dissolved organic carbon (DOC) (in mg/L).

NOTE: Authority cited: Sections 116325 and 116375, Health and Safety Code. Reference: Sections 116275 and 116350, Health and Safety Code.

HISTORY

1. New section filed 5–18–2006; operative 6–17–2006 (Register 2006, No. 20).

§ 64401.70. System with a Single Service Connection.

"System with a single service connection" means a system which supplies drinking water to consumers via a single service line.

NOTE: Authority cited: Sections 208, 4023.3 and 4028, Health and Safety Code. Reference: Sections 4010 through 4039.6, Health and Safety Code.

HISTORY

1. New section filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).

§ 64401.71. Tier 1 Public Notice.

"Tier 1 public notice" means a public notice issued in response to the events listed in subsection 64463.1(a) and in the manner specified in subsections 64463.1(b) and (c).

NOTE: Authority cited: Sections 116325, 116350 and 116375, Health and Safety Code. Reference: Section 116450, Health and Safety Code.

HISTORY

1. New section filed 8–2–2006; operative 9–1–2006 (Register 2006, No. 31).

§ 64401.72. Tier 2 Public Notice.

"Tier 2 public notice" means a public notice issued in response to the events listed in section 64463.4(a) and in the manner specified in subsections 64463.4(b) and (c).

NOTE: Authority cited: Sections 116325, 116350 and 116375, Health and Safety Code. Reference: Section 116450, Health and Safety Code.

HISTORY

1. New section filed 8–2–2006; operative 9–1–2006 (Register 2006, No. 31).

§ 64401.73. Tier 3 Public Notice.

"Tier 3 public notice" means a public notice issued in response to the events listed in section 64463.7(a) and in the manner specified in subsections 64463.7(b), and (c) or (d).

NOTE: Authority cited: Sections 116325, 116350 and 116375, Health and Safety Code. Reference: Section 116450, Health and Safety Code.

HISTORY

1. New section filed 8–2–2006; operative 9–1–2006 (Register 2006, No. 31).

§ 64401.75. Too Numerous to Count.

"Too numerous to count" means that the total number of bacterial colonies exceeds 200 on a 47–mm diameter membrane filter used for coliform detection.

NOTE: Authority cited: Sections 208, 4023.3 and 4028, Health and Safety Code. Reference: Sections 4010 through 4039.6, Health and Safety Code.

HISTORY

1. New section filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).

§ 64401.80. Total Coliform–positive.

"Total coliform–positive" means a sample result in which the presence of total coliforms has been demonstrated.

NOTE: Authority cited: Sections 208, 4023.3 and 4028, Health and Safety Code. Reference: Sections 4010 through 4039.6, Health and Safety Code.

HISTORY

1. New section filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).

§ 64401.82. Total Organic Carbon or TOC.

"Total organic carbon" or "TOC" means total organic carbon reported in units of milligrams per liter (mg/L), as measured using heat, oxygen,

ultraviolet irradiation, chemical oxidants, or combinations of these oxidants that convert organic carbon to carbon dioxide, rounded to two significant figures.

NOTE: Authority cited: Sections 116325 and 116375, Health and Safety Code. Reference: Sections 116275 and 116350, Health and Safety Code.

HISTORY

1. New section filed 5–18–2006; operative 6–17–2006 (Register 2006, No. 20).

§ 64401.85. Transient–Noncommunity Water System.

"Transient–noncommunity water system" means a public water system that is not a community water system or a nontransient–noncommunity water system.

NOTE: Authority cited: Sections 208, 4023.3 and 4028, Health and Safety Code. Reference: Sections 4010 through 4039.6, Health and Safety Code.

HISTORY

1. New section filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).

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§ 64401.90. Treatment.

"Treatment" means physical, biological, or chemical processes, including blending, designed to affect water quality parameters to render the water acceptable for domestic use.

NOTE: Authority cited: Sections 208, 4023.3 and 4028, Health and Safety Code. Reference: Sections 4010 through 4039.6, Health and Safety Code.

HISTORY

1. New section filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).

§ 64401.92. Total Trihalomethanes or TTHM.

"Total Trihalomethanes" or "TTHM" means the sum of the concentrations in milligrams per liter (mg/L) of the trihalomethane compounds (bromodichloromethane, bromoform, chloroform, and dibromochloromethane), rounded to two significant figures after addition.

NOTE: Authority cited: Sections 116325 and 116375, Health and Safety Code. Reference: Sections 116275 and 116350, Health and Safety Code.

HISTORY

1. New section filed 5–18–2006; operative 6–17–2006 (Register 2006, No. 20).

§ 64401.95. VOC.

"VOC" means volatile organic chemical.

NOTE: Authority cited: Sections 208, 4023.3 and 4028, Health and Safety Code. Reference: Sections 4010 through 4039.6, Health and Safety Code.

HISTORY

1. New section filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).

§ 64402. Vulnerable System.

"Vulnerable system" means a water system which has any water source which in the judgement of the Department, has a risk of containing an organic contaminant, based on an assessment as set forth in Section 64445(d)(1).

NOTE: Authority cited: Sections 208, 4023.3 and 4028, Health and Safety Code. Reference: Sections 4010 through 4039.6, Health and Safety Code.

HISTORY

1. New section filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).

§ 64402.10. Water Source.

"Water source" means an individual groundwater source or an individual surface water intake. Sources which have not been designated as standby sources shall be deemed to be water sources.

NOTE: Authority cited: Sections 208, 4023.3 and 4028, Health and Safety Code. Reference: Sections 4010 through 4039.6, Health and Safety Code.

HISTORY

1. New section filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order including amendment of section transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).

§ 64402.20. Water Supplier.

"Water supplier", "person operating a public water system" or "supplier of water" means any person who owns or operates a public water system. These terms will be used interchangeably in this chapter.

(a) "Wholesale water supplier," or "wholesaler" means any person who treats water on behalf of one or more public water systems for the purpose of rendering it safe for human consumption.

(b) "Retail water supplier," or "retailer" means

(1) Any person who owns or operates any distribution facilities and any related collection, treatment, or storage facilities under the control of the operator of the public water system which are used primarily in connection with the public water system; or

(2) Any person who owns or operates any collection or pretreatment storage facilities not under the control of the operator of the public water system which are used primarily in connection with the public water system.

NOTE: Authority cited: Sections 208, 4023.3 and 4028, Health and Safety Code. Reference: Sections 4010 through 4039.6, Health and Safety Code.

HISTORY

1. New section filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).

§ 64403. Responsibility.

NOTE: Authority cited: Sections 408 and 4023.3, Health and Safety Code. Reference: Section 4023.3, Health and Safety Code.

HISTORY

1. Amendment of subsection (a)(3) and new NOTE filed 7–1–92; operative 7–31–92 (Register 92, No. 28).
2. Repealer of article 1 heading and section filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
3. Repealer of article 1 heading and section refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
4. Repealer of article 1 heading and section refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).

§ 64411. Definitions.

NOTE: Authority cited: Sections 208, 4023.3 and 4028, Health and Safety Code. Reference: Sections 4010 through 4039.6, Health and Safety Code.

HISTORY

1. Amendment of subsection (b) filed 11–12–91 as an emergency; operative 11–12–91 (Register 92, No. 8). A Certificate of Compliance must be transmitted to OAL 3–11–92 or emergency language will be repealed by operation of law on the following day.
2. Amendment of subsection (b) refiled 3–6–92 as an emergency; operative 3–11–92 (Register 92, No. 15). A Certificate of Compliance must be transmitted to OAL 7–9–92 or emergency language will be repealed by operation of law on the following day.

3. New subsections (e)(1), (e)(2) and (n) and amendment of NOTE filed 5–27–92; operative 6–26–92 (Register 92, No. 22).
4. Editorial correction of printing error restoring subsections (c)–(m) (Register 92, No. 22).
5. Certificate of Compliance as to 3–6–92 order transmitted to OAL 5–5–92 and filed 6–16–92 (Register 92, No. 25).
6. Amendment filed 7–1–92; operative 7–31–92 (Register 92, No. 28).
7. Repealer of article heading and section filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
8. Repealer of article heading and section refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
9. Repealer of article heading and section refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).

Article 2. General Requirements

§ 64412. Determination of Persons Served.

(a) The number of persons served by a community water system shall be determined by the water system using one of the following methods:

(1) Utilizing the most recent United States census data, or more recent special census data certified by the California Department of Finance, for the service area served by the water system;

(2) Multiplying the number of service connections served by the water system by 3.3 to determine the total population served;

(3) Determining the total number of dwelling units or efficiency dwelling units as defined in the Uniform Building Code (Title 24, California Code of Regulations), the number of mobile home park spaces and the number of individual business, commercial, industrial and institutional billing units served by the water system and multiplying this total by 2.8 to arrive at the total population served by the system.

(b) Each community water system shall report to the Department annually the number of persons and the number of service connections served by the system using the procedures set forth in subsection (a).

NOTE: Authority cited: Sections 4021(b)(3) and 4023.3, Health and Safety Code. Reference: Sections 4012 and 4023.3, Health and Safety Code.

HISTORY

1. New article 2 and repealer and new section filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 90, No. 13.
2. New article 2 and repealer and new section refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. New article 2 and repealer and new section refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).

§ 64413. Initial Effective Dates.

NOTE: Authority cited: Sections 208 and 4026, Health and Safety Code. Reference: Section 4024, Health and Safety Code.

HISTORY

1. Repealer filed 11–22–88; operative 12–22–88 (Register 88, No. 51).

§ 64413.1. Classification of Water Treatment Facilities.

(a) Each water treatment facility shall be classified pursuant to Table 64413.1–A based on the calculation of total points for the facility using the factors specified in subsection (b).

Table 64413.1–A. Water Treatment Facility Class Designations

Total Points	*Class*
Less than 20	T1
20 through 39	T2
40 through 59	T3
60 through 79	T4
80 or more	T5

(b) The calculation of total points for each water treatment facility shall be the sum of the points derived in each of paragraphs (1) through (13) except where a treatment facility treats more than one source, in which case the source with the highest average of each contaminant shall be used to determine the point value in paragraphs (2) through (5).

(1) For water source, the points are determined pursuant to Table 64413.1–B.

Table 64413.1–B. Points for Source Water Used by the Facility

Type of source water used by the facility	*Points*
Groundwater and/or purchased treated water meeting primary and secondary drinking water standards, as defined in section 116275 of the Health and Safety Code	2
Water that includes any surface water or groundwater under the direct influence of surface water	5

(2) For influent microbiological water quality, points shall be determined by using the median of all total coliform analyses completed in the previous 24 months pursuant to Table 64413.1–C:

Table 64413.1–C. Influent Water Microbiological Quality Points

Median Coliform Density Most Probable Number Index (MPN)	*Points*
less than 1 per 100 mL	0
1 through 100 per 100 mL	2
greater than 100 through 1,000 per 100 mL	4
greater than 1,000 through 10,000 per 100 mL	6
greater than 10,000 per 100 mL	8

(3) For facilities treating surface water or groundwater under the direct influence of surface water, points for influent water turbidity shall be determined pursuant to Table 64413.1–D on the basis of the previous 24 months of data, except that if turbidity data is missing for one or more of the months, the points given for turbidity shall be 5. The maximum influent turbidity sustained for at least one hour according to an on–line turbidimeter shall be used unless such data is not available, in which case, the maximum influent turbidity identified by grab sample shall be used. For facilities that have not been in operation for 24 months, the available data shall be used. For facilities whose permit specifies measures to ensure that influent turbidity will not exceed a specified level, the points corresponding to that level shall be assigned.

Table 64413.1–D. Influent Water Turbidity Points

Maximum Influent Turbidity Level Nephelometric Turbidity Units (NTU)	*Points*
Less than 15	0
15 through 100	2
Greater than 100	5

(4) The points for influent water perchlorate, nitrate, or nitrite levels shall be determined by an average of the three most recent sample results, pursuant to Table 64413.1–E.

Table 64413.1–E. Influent Water Perchlorate, Nitrate, and Nitrite Points

Perchlorate, Nitrate, and Nitrite Data Average	*Points*
Less than or equal to the maximum contaminant level (MCL), as specified in Table 64431–A	0
Greater than the MCL	5

(5) The points for other influent water contaminants with primary MCLs shall be a sum of the points for each of the inorganic contaminants (Table 64431–A), organic contaminants (Table 64444–A) and radionuclides (Tables 64442 and 64443). The points for each contaminant shall be based on an average of the three most recent sample results, pursuant to Table 64413.1–F. If monitoring for a contaminant has been waived pursuant to sections 64432(k), 64432.2(c), or 64445(d), the points shall be zero for that contaminant.

Table 64413.1–F. Influent Water Chemical and Radiological Contaminant Points

Contaminant Data Average	*Points*
Less than or equal to the MCL	0
Greater than the MCL	2
5 Times the MCL or greater	5

(6) The total points for surface water filtration treatment shall be the sum of the points of those treatment processes utilized by the facility for compliance with section 64652, pursuant to Table 64413.1–G.

Table 64413.1–G. Points for Surface Water Filtration Treatment

Treatment	*Points*
Conventional, direct, or inline	15
Diatomaceous earth	12
Slow sand, membrane, cartridge, or bag filter	8
Backwash recycled as part of process	5

(7) The points for each treatment process utilized by the facility and not included in paragraph (6) that is used to reduce the concentration of one or more contaminants for which a primary MCL exists, pursuant to Table 64431–A, Table 64444–A, and Tables 64442 and 64443, shall be 10. Blending shall only be counted as a treatment process if one of the blended sources exceeds a primary MCL.

(8) The points for each treatment process not included in paragraphs (6), or (7) that is used to reduce the concentration of one or more contaminants for which a secondary MCL exists, pursuant to Tables 64449–A and 64449–B, shall be 3. Blending shall only be counted as a treatment process if one of the blended sources exceeds a secondary MCL.

(9) The points for each treatment process not included in paragraphs (6), (7), or (8) that is used for corrosion control or fluoridation shall be 3.

(10) The total points for disinfection treatment shall be the sum of the points for those treatment processes utilized by the facility for compliance with section 64654(a), pursuant to Table 64413.1–H.

Table 64413.1–H. Points for Disinfection Treatment

Treatment Process	*Points*
Ozone	10
Chlorine and/or chloramine	10
Chlorine dioxide	10
Ultra violet (UV)	7

(11) The points for disinfection/oxidation treatment not included in paragraphs (6), (7), (8), or (10) shall be a sum of the points for all the treatment processes used at the facility pursuant to Table 64413.1–I.

Table 64413.1–I. Points for Disinfection/Oxidation Treatment without Inactivation Credit

Treatment Process	*Points*
Ozone	5
Chlorine and/or chloramine	5
Chlorine dioxide	5
Ultra violet (UV)	3
Other oxidants	5

(12) The points for any other treatment process that alters the physical or chemical characteristics of the drinking water and that was not included in paragraphs (6), (7), (8), (9), (10), or (11) shall be 3.

(13) The points for facility flow shall be 2 per million gallons per day or fraction thereof of maximum permitted treatment facility capacity, up to a maximum of 50 points; except that for facilities utilizing only blending, the points shall be based on the flow from the contaminated source and the dilution flow required to meet the MCL(s) specified in Tables 64431–A, 64444–A, 64449–A, 64449–B, and Tables 64442 and 64443.

NOTE: Authority cited: Sections 106910 and 131200, Health and Safety Code. Reference: Sections 106875, 106910, 116555 and 131051, Health and Safety Code.

HISTORY

1. New section filed 12–26–2000 as an emergency; operative 1–1–2001 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–25–2001 as an emergency; operative 5–2–2001 (Register 2001, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–30–2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–25–2001 order transmitted to OAL 7–12–2001 and filed 8–13–2001 (Register 2001, No. 33).
4. Amendment of subsections (b)(4)–(5), (b)(7) and (b)(13) and amendment of NOTE filed 9–18–2007; operative 10–18–2007 (Register 2007, No. 38).

§ 64413.3. Classification of Distribution Systems.

(a) The distribution system for each community and nontransient–noncommunity water system shall be classified pursuant to Table 64413.3–A unless modified pursuant to subsection (b). For a wholesaler, the population served shall include the customers served by its retailers.

Table 64413.3–A. Distribution System Classifications

Population Served	*Class*
1,000 or less	D1
1,001 through 10,000	D2
10,001 through 50,000	D3
50,001 through 5 million	D4
Greater than 5 million	D5

(b) The class determined pursuant to (a) shall be upgraded by one level if the population served is 5 million or less and the sum of all the points from paragraphs (1) through (6) exceeds 20.

(1) The points for pressure zones shall be zero for up to three zones, 4 for four to ten zones, or 6 for more than ten zones.

(2) The points for disinfectants used shall be zero if no disinfectant is applied in the distribution system and no more than one type of disinfectant residual is entering the distribution system. The points shall be 5 if a single disinfectant or ammonia is applied in the distribution system. The points shall be 8 if there are multiple disinfectants in the system.

(3) The points based on the largest single pump in the system for which the distribution operator is responsible shall be 4 for up to fifty horsepower, or 6 for fifty or more horsepower.

(4) The points for distribution storage reservoirs in the system shall be 4 for one to five reservoirs, or 6 for greater than five.

(5) The points for one or more existing uncovered distribution reservoirs shall be 10.

(6) The points to be added if any of the distribution system customers are also served by a non–potable water distribution system shall be 6. This does not apply to wholesalers if the only customers receiving non–potable water are served by its retailers.

NOTE: Authority cited: Sections 100275 and 106910, Health and Safety Code. Reference: Sections 106875, 106910 and 116555, Health and Safety Code.

HISTORY

1. New section filed 12–26–2000 as an emergency; operative 1–1–2001 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–25–2001 as an emergency; operative 5–2–2001 (Register 2001, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–30–2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–25–2001 order transmitted to OAL 7–12–2001 and filed 8–13–2001 (Register 2001, No. 33).

§ 64413.5. Treatment Facility Staff Certification Requirements.

(a) Each water supplier shall designate at least one chief operator that meets the requirements specified in section 63765 for each water treatment facility utilized by the water system.

(b) Each water supplier shall designate at least one shift operator that meets the requirements specified in section 63765 for each water treatment facility utilized by the water system for each operating shift.

(c) Except as provided in (d), a chief operator or shift operator shall be on–site at all times that the facility is operating.

(d) If the water supplier's operations plan, submitted and approved pursuant to section 64661, demonstrates an equal degree of operational oversight and reliability with either unmanned operation or operation under reduced operator certification requirements, the chief operator or shift operator is not required to be on–site, but shall be able to be contacted within one hour.

(e) If there is no change in the treatment facility and the employed shift and/or chief operators, the water supplier shall be in compliance until January 1, 2003 with the shift and operator certification requirements that were in effect on December 31, 2000. If the water system employs a new shift and/or chief operator, that operator shall meet the certification requirements pursuant to section 63765(a).

NOTE: Authority cited: Sections 100275, 106910, and 116375, Health and Safety Code. Reference: Sections 106875, 106885, 106910, 116375 and 116555, Health and Safety Code.

HISTORY

1. New section filed 12–26–2000 as an emergency; operative 1–1–2001 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–25–2001 as an emergency; operative 5–2–2001 (Register 2001, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–30–2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–25–2001 order transmitted to OAL 7–12–2001 and filed 8–13–2001 (Register 2001, No. 33).

§ 64413.7. Distribution System Staff Certification Requirements.

(a) Each water supplier shall designate at least one chief operator that meets the requirements specified in section 63770 for each distribution system utilized by the water system.

(b) Each water supplier shall designate at least one shift operator that meets the requirements specified in section 63770 for each distribution system utilized by the water system for each operating shift.

(c) The chief operator or shift operator shall be on–site or able to be contacted within one hour.

NOTE: Authority cited: Sections 100275, 106910, and 116375, Health and Safety Code. Reference: Sections 106875, 106885, 106910, 116375 and 116555, Health and Safety Code.

HISTORY

1. New section filed 12–26–2000 as an emergency; operative 1–1–2001 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–25–2001 as an emergency; operative 5–2–2001 (Register 2001, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–30–2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–25–2001 order transmitted to OAL 7–12–2001 and filed 8–13–2001 (Register 2001, No. 33).

§ 64414. Standby Sources.

(a) A source which has been designated "standby" shall be monitored a minimum of once every compliance cycle for all inorganic, organic, and radiological MCLs, unless a waiver has been granted by the Department pursuant to Section 64432(k) or (*l*) for inorganics, or Section 64445(d) for organics.

(b) A standby source which has previous monitoring results indicating nitrate or nitrite levels equal to or greater than 50 percent of the MCL shall collect and analyze a sample for nitrate and nitrite annually. In addition, upon activation of such a source, a sample shall be collected, analyzed for these chemicals and the analytical results reported to the Department within 24 hours of activation.

(c) A standby source shall be used only for short–term emergencies of five consecutive days or less, and for less than a total of fifteen calendar days a year.

(d) Within 3 days after the short–term emergency use of a standby source, the water supplier shall notify the Department. The notification shall include information on the reason for and duration of the use.

(e) The status of a designated standby source shall not be changed to that of a regular source of drinking water supply, unless the source meets all existing drinking water standards and approval is obtained from the Department in advance.

NOTE: Authority cited: Sections 208 and 4023.3, Health and Safety Code. Reference: Section 4024, Health and Safety Code.

HISTORY

1. Repealer and new section filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 88, No. 51.
2. Repealer and new section refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. Repealer and new section refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order including amendment of subsection (b) and NOTE transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).

§ 64415. Laboratory and Personnel.

(a) Required analyses shall be performed by laboratories approved to perform those analyses by the Department, pursuant to Section 116390, Health and Safety Code. Analyses shall be made in accordance with EPA approved methods as prescribed at 40 Code of Federal Regulations Sections 141.21 through 141.40, 141.41, 141.42, 141.66, and 141.89.

(b) Sample collection, and field tests including color, odor, turbidity, pH, temperature, and disinfectant residual shall be performed by a water treatment operator certified by the Department pursuant to Section 106875 of the Health and Safety Code or by personnel trained to collect samples and/or perform these tests by the Department, a certified laboratory, or a certified operator.

NOTE: Authority cited: Sections 100275, 106875, 116375 and 116390, Health and Safety Code. Reference: Sections 116300 through 116750, Health and Safety Code; and 40 Code of Federal Regulations 141.

HISTORY

1. Amendment and new NOTE filed 7–1–92; operative 7–31–92 (Register 92, No. 28).
2. Amendment of subsections (a)–(b) filed 6–19–95; operative 6–19–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 25).
3. Amendment of subsection (a) and NOTE filed 12–11–95 as an emergency; operative 12–11–95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–9–96 or emergency language will be repealed by operation of law on the following day.
4. Refiling of 12–11–95 order, including amendment of NOTE, filed 4–9–96 as an emergency; operative 4–10–96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 12–11–95 order, including further amendment of section, transmitted to OAL 8–7–96 and filed 9–16–96 (Register 96, No. 38).
6. Amendment of subsection (a) filed 5–12–2006; operative 6–11–2006 (Register 2006, No. 19).

§ 64416. Sampling Plan for all Monitoring Except Bacteriological.

(a) Each public water system serving contiguous areas totalling more than 10,000 service connections shall submit a plan to the Department for monitoring the quality of water.

(1) This plan shall be supported by analytical, hydrological and geological data, and may be developed in cooperation with other agencies or water suppliers.

(2) Constituents to be addressed in the plan shall include inorganic chemicals, organic chemicals, trihalomethanes, radioactivity, general minerals and general physical parameters.

(3) Sampling of certain wells on a rotating basis may be included in the plan if the water supplier is able to demonstrate with analytical, hydrological and geological data that those wells are producing similar quality water from the same aquifer.

(4) The water supplier shall submit an updated plan to the Department at least once every ten years or at any time the plan no longer ensures representative monitoring of the system.

NOTE: Authority cited: Sections 208 and 4023.3, Health and Safety Code. Reference: Section 4024, Health and Safety Code.

HISTORY

1. New section filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).

§ 64417. Siting Requirements. [Repealed]

NOTE: Authority cited: Sections 208 and 4026, Health and Safety Code. Reference: Section 4024, Health and Safety Code.

HISTORY

1. New NOTE filed 12–7–84 (Register 84, No. 49).
2. Repealer filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64419. Agricultural Water Service Exceptions.

HISTORY

1. Repealer filed 7–1–92; operative 7–31–92 (Register 92, No. 28).

Article 3. Primary Standards—Bacteriological Quality

§ 64421. General Requirements.

(a) Each water supplier shall:

(1) Develop a routine sample siting plan as required in Section 64422;

(2) Collect routine, repeat and replacement samples as required in Sections 64423, 64424, and 64425;

(3) Have all samples analyzed by laboratories approved to perform those analyses by the Department and report results as required in Section 64423.1;

(4) Notify the Department when there is an increase in coliform bacteria in bacteriological samples as required in Section 64426; and

(5) Comply with the Maximum Contaminant Level as required in Section 64426.1.

(b) Water suppliers shall perform additional bacteriological monitoring as follows:

(1) After construction or repair of wells;

(2) After main installation or repair;

(3) After construction, repair, or maintenance of storage facilities; and

(4) After any system pressure loss to less than five psi. Samples collected shall represent the water quality in the affected portions of the system.

NOTE: Authority cited: Sections 208 and 4023.3, Health and Safety Code. Reference: Section 4023.3, Health and Safety Code.

HISTORY

1. Repealer of subsection (h), deletion of former subsection (i) designator and relettering of following subsections and amendment of NOTE filed 11–12–91 as an emergency; operative 11–12–91 (Register 92, No. 8). A Certificate of Compliance must be transmitted to OAL 3–11–92 or emergency language will be repealed by operation of law on the following day.
2. Repealer of subsection (h), deletion of former subsection (i) designator and relettering of following subsections and amendment of NOTE refiled 3–6–92 as an emergency; operative 3–11–92 (Register 92, No. 15). A Certificate of Compliance must be transmitted to OAL 7–9–92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 3–6–92 order transmitted to OAL 5–5–92 and filed 6–16–92 (Register 92, No. 25).
4. Amendment filed 7–1–92; operative 7–31–92 (Register 92, No. 28).
5. Editorial correction of HISTORY 2 (Register 95, No. 47).

§ 64422. Routine Sample Siting Plan.

(a) By September 1, 1992, each water supplier shall develop and submit to the Department a siting plan for the routine collection of samples for total coliform analysis, subject to the following:

(1) The sample sites chosen shall be representative of water throughout the distribution system including all pressure zones, and areas supplied by each water source and distribution reservoir.

(2) The water supplier may rotate sampling among the sample sites if the total number of sites needed to comply with (a)(1) above exceeds the number of samples required according to Table 64423–A. The rotation plan shall be described in the sample siting plan.

(b) If personnel other than certified operators will be performing field tests and/or collecting samples, the sample siting plan shall include a declaration that such personnel have been trained, pursuant to Section 64415 (b).

(c) The supplier shall submit an updated plan to the Department at least once every ten years and at any time the plan no longer ensures representative monitoring of the system.

NOTE: Authority cited: Sections 208 and 4023.3, Health and Safety Code. Reference: Section 4024, Health and Safety Code.

HISTORY

1. New section filed 7–1–92; operative 7–31–92 (Register 92, No. 28).

§ 64423. Routine Sampling.

(a) Each water supplier shall collect routine bacteriological water samples as follows:

(1) The minimum number of samples for community water systems shall be based on the known population served or the total number of service connections, whichever results in the greater number of samples, as shown in Table 64423–A. A community water system using groundwater which serves 25–1000 persons may request from the Department a reduction in monitoring frequency. The minimum reduced frequency shall not be less than one sample per quarter.

(2) The minimum number of samples for nontransient–noncommunity water systems shall be based on the known population served as shown in Table 64423–A during those months when the system is operating. A nontransient–noncommunity water system using groundwater which serves 25–1000 persons may request from the Department a reduction in monitoring frequency if it has not violated the requirements in this article during the past twelve months. The minimum reduced frequency shall not be less than one sample per quarter.

(3) The minimum number of samples for transient–noncommunity water systems using groundwater and serving 1000 or fewer persons a month shall be one in each calendar quarter during which the system provides water to the public.

(4) The minimum number of samples for transient–noncommunity water systems using groundwater and serving more than 1000 persons during any month shall be based on the known population served as shown in Table 64423–A, except that the water supplier may request from the Department a reduction in monitoring for any month the system serves 1000 persons or fewer. The minimum reduced frequency shall not be less than one sample in each calendar quarter during which the system provides water to the public.

(5) The minimum number of samples for transient–noncommunity water systems using approved surface water shall be based on the population served as shown in Table 64423–A. A system using groundwater under the direct influence of surface water shall begin monitoring at this frequency by the end of the sixth month after the Department has designated the source to be approved surface water.

(6) A public water system shall collect samples at regular time intervals throughout the month, except that a system using groundwater which serves 4,900 persons or fewer may collect all required samples on a single day if they are taken from different sites.

(b) In addition to the minimum sampling requirements, all water suppliers using approved surface water which do not practice treatment in compliance with Sections 64650 through 64666, shall collect a minimum of one sample before or at the first service connection each day during which the turbidity level of the water delivered to the system exceeds 1 NTU. The sample shall be collected within 24 hours of the exceedance and shall be analyzed for total coliforms. If the water supplier is unable to collect and/or analyze the sample within the 24–hour time period because of extenuating circumstances beyond its control, the supplier shall notify the Department within the 24–hour time period and may request an extension. Sample results shall be included in determining compliance with the MCL for total coliforms in Section 64426.1.

(c) If any routine, repeat, or replacement sample is total coliform–positive, then the water supplier shall collect repeat samples in accordance with Section 64424 and comply with the reporting requirements specified in Sections 64426 and 64426.1.

Table 64423–A
Minimum Number of Routine Total Coliform Samples

Monthly Population Served	*Service Connections*	*Minimum Number of Samples*
25 to 1000	15 to 400	1 per month
1,001 to 2,500	401 to 890	2 "
2,501 to 3,300	891 to 1,180	3 "
3,301 to 4,100	1,181 to 1,460	4 "
4,101 to 4,900	1,461 to 1,750	5 "
4,901 to 5,800	1,751 to 2,100	6 "
5,801 to 6,700	2,101 to 2,400	7 "
6,701 to 7,600	2,401 to 2,700	2 per week
7,601 to 12,900	2,701 to 4,600	3 "
12,901 to 17,200	4,601 to 6,100	4 "
17,201 to 21,500	6,101 to 7,700	5 "
21,501 to 25,000	7,701 to 8,900	6 "
25,001 to 33,000	8,901 to 11,800	8 "
33,001 to 41,000	11,801 to 14,600	10 "
41,001 to 50,000	14,601 to 17,900	12 "
50,001 to 59,000	17,901 to 21,100	15 "
59,001 to 70,000	21,101 to 25,000	18 "
70,001 to 83,000	25,001 to 29,600	20 "
83,001 to 96,000	29,601 to 34,300	23 "
96,001 to 130,000	34,301 to 46,400	25 "
130,001 to 220,000	46,401 to 78,600	30 "
220,001 to 320,000	78,601 to 114,300	38 "
320,001 to 450,000	114,301 to 160,700	50 "
450,001 to 600,000	160,701 to 214,300	55 "
600,001 to 780,000	214,301 to 278,600	60 "
780,001 to 970,000	278,601 to 346,400	70 "
970,001 to 1,230,000	346,401 to 439,300	75 "
1,230,001 to 1,520,000	439,301 to 542,900	85 "
1,520,001 to 1,850,000	542,901 to 660,700	90 "
1,850,001 to 2,270,000	660,701 to 810,700	98 "
2,270,001 to 3,020,000	810,701 to 1,078,600	105 "
3,020,001 to 3,960,000	1,078,601 to 1,414,300	110 "
3,960,001 or more	1,414,301 or more	120 "

NOTE: Authority cited: Sections 208 and 4023.3, Health and Safety Code. Reference: Sections 4023.3, 4024 and 4026.4, Health and Safety Code.

HISTORY

1. Repealer and new section filed 7–1–92; operative 7–31–92 (Register 92, No. 28).
2. Amendment of subsections (a)–(b) filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsections (a)–(b) refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsections (a)–(b) refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).

§ 64423.1. Sample Analysis and Reporting of Results.

(a) The water supplier shall designate (label) each sample as routine, repeat, replacement, or "other" pursuant to Section 64421(b), and have each sample analyzed for total coliforms. The supplier also shall require the laboratory to analyze the same sample for fecal coliforms or Escherichia coli (*E. coli*) whenever the presence of total coliforms is indicated. As a minimum, the analytical results shall be reported in terms of the presence or absence of total or fecal coliforms, or *E. coli* in the sample, whichever is appropriate.

(b) The water supplier shall require the laboratory to notify the supplier within 24 hours, whenever the presence of total coliforms, fecal coliforms or *E. coli* is demonstrated in a sample or a sample is invalidated due to interference problems, pursuant to Section 64425(b), and shall ensure that a contact person is available to receive these analytical results 24–hours a day. The water supplier shall also require the laboratory to immediately notify the Department of any positive bacteriological results if the laboratory cannot make direct contact with the designated contact person within 24 hours.

(c) Analytical results of all required samples collected for a system in a calendar month shall be reported to the Department not later than the tenth day of the following month, as follows:

(1) The water supplier shall submit a monthly summary of the bacteriological monitoring results to the Department.

(2) For systems serving fewer than 10,000 service connections or 33,000 persons, the water supplier shall require the laboratory to submit copies of all required bacteriological monitoring results directly to the Department.

(3) For systems serving more than 10,000 service connections, or 33,000 persons, the water supplier shall require the laboratory to submit copies of bacteriological monitoring results for all positive routine samples and all repeat samples directly to the Department.

(d) Laboratory reports shall be retained by the water supplier for a period of at least five years and shall be made available to the Department upon request.

NOTE: Authority cited: Sections 100275 and 116375, Health and Safety Code. Reference: Section 116385, Health and Safety Code.

HISTORY

1. New section filed 7–1–92; operative 7–31–92 (Register 92, No. 28).
2. Amendment of subsection (b) and NOTE filed 5–15–2001; operative 6–14–2001 (Register 2001, No. 20).

§ 64424. Repeat Sampling.

(a) If a routine sample is total coliform–positive, the water supplier shall collect a repeat sample set as described in paragraph (a)(1) within 24 hours of being notified of the positive result. The repeat samples shall all be collected within the same 24 hour time period. A single service connection system may request that the Department allow the collection of the repeat sample set over a four–day period.

(1) For a water supplier that normally collects more than one routine sample a month, a repeat sample set shall be at least three samples for each total coliform–positive sample. For a water supplier that normally collects one or fewer samples per month, a repeat sample set shall be at least four samples for each total coliform–positive sample.

(2) If the water supplier is unable to collect the samples within the 24–hour time period specified in subsection (a) or deliver the samples to the laboratory within 24 hours after collection because of circumstances beyond its control, the water supplier shall notify the Department within 24 hours. The Department will then determine how much time the supplier will have to collect the repeat samples.

(b) When collecting the repeat sample set, the water supplier shall collect at least one repeat sample from the sampling tap where the original total coliform–positive sample was taken. Other repeat samples shall be collected within five service connections upstream or downstream of the original site. At least one sample shall be from upstream and one from downstream unless there is no upstream and/or downstream service connection.

(c) If one or more samples in the repeat sample set is total coliform–positive, the water supplier shall collect and have analyzed an additional set of repeat samples as specified in subsections (a) and (b). The supplier shall repeat this process until either no coliforms are detected in one complete repeat sample set or the supplier determines that the MCL for total coliforms specified in Section 64426.1 has been exceeded and notifies the Department.

(d) If a public water system for which fewer than five routine samples/month are collected has one or more total coliform–positive samples, the water supplier shall collect at least five routine samples the following month. If the supplier stops supplying water during the month after the total coliform–positive(s), at least five samples shall be collected during the first month the system resumes operation. A water supplier may request the Department waive the requirement to collect at least five routine samples the following month, but a waiver will not be granted solely on the basis that all repeat samples are total coliform–negative. To request a waiver, one of the following conditions shall be met:

(1) The Department conducts a site visit before the end of the next month the system provides water to the public to determine whether addi-

tional monitoring and/or corrective action is necessary to protect public health.

(2) The Department determines why the sample was total coliform–positive and establishes that the system has corrected the problem or will correct the problem before the end of the next month the system serves water to the public. If a waiver is granted, a system shall collect at least one routine sample before the end of the next month it serves water to the public and use it to determine compliance with Section 64426.1.

NOTE: Authority cited: Sections 208 and 4023.3, Health and Safety Code. Reference: Section 4023.3, Health and Safety Code.

HISTORY

1. New section filed 7–1–92; operative 7–31–92 (Register 92, No. 28).
2. Amendment of subsection (d) filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsection (d) refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsection (d) refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).

§ 64425. Sample Invalidation.

(a) A water supplier may request the Department to invalidate a sample for which a total coliform–positive result has been reported if the supplier demonstrates:

(1) All repeat sample(s) collected at the same tap as the original total coliform–positive sample also are total coliform– positive and all repeat samples collected within five service connections of the original tap are not total coliform–positive; or

(2) The laboratory did not follow the prescribed analytical methods pursuant to Section 64415(a), based on a review of laboratory documentation by the Department. The supplier shall submit to the Department a written request for invalidation along with the laboratory documentation, the supplier's sample collection records and any observations noted during sample collection and delivery. The water supplier shall require the laboratory to provide the supplier with documentation which shall include, but not be limited to:

(A) A letter from the director of the laboratory having generated the data, confirming the invalidation request by reason of laboratory accident or error;

(B) Complete sample identification, laboratory sample log number (if used), date and time of collection, date and time of receipt by the laboratory, date and time of analysis for the sample(s) in question;

(C) Complete description of the accident or error alleged to have invalidated the result(s);

(D) Copies of all analytical, operating, and quality assurance records pertaining to the incident in question; and

(E) Any observations noted by laboratory personnel when receiving and analyzing the sample(s) in question.

(b) Whenever any total coliform sample result indicative of the absence of total coliforms has been declared invalid by the laboratory due to interference problems as specified at 40 Code Federal Regulations, Section 141.21(c)(2), the supplier shall collect a replacement sample from the same location as the original sample within 24 hours of being notified of the interference problem, and have it analyzed for the presence of total coliforms. The supplier shall continue to re–sample at the original site within 24 hours and have the samples analyzed until a valid result is obtained.

NOTE: Authority cited: Sections 208 and 4023.3, Health and Safety Code. Reference: Section 4023.3, Health and Safety Code.

HISTORY

1. Repealer and new section filed 7–1–92; operative 7–31–92 (Register 92, No. 28).

§ 64426. Significant Rise in Bacterial Count.

(a) Any of the following criteria shall indicate a possible significant rise in bacterial count:

(1) A system collecting at least 40 samples per month has a total coliform–positive routine sample followed by two total coliform–positive repeat samples in the repeat sample set;

(2) A system has a sample which is positive for fecal coliform or *E. coli*; or

(3) A system fails the total coliform Maximum Contaminant Level (MCL) as defined in Section 64426.1.

(b) When the coliform levels specified in subsection (a) are reached or exceeded, the water supplier shall:

(1) Contact the Department by the end of the day on which the system is notified of the test result or the system determines that it has exceeded the MCL, unless the notification or determination occurs after the Department office is closed, in which case the supplier shall notify the Department within 24 hours; and

(2) Submit to the Department information on the current status of physical works and operating procedures which may have caused the elevated bacteriological findings, or any information on community illness suspected of being waterborne. This shall include, but not be limited to:

(A) Current operating procedures that are or could potentially be related to the increase in bacterial count;

(B) Any interruptions in the treatment process;

(C) System pressure loss to less than 5 psi;

(D) Vandalism and/or unauthorized access to facilities;

(E) Physical evidence indicating bacteriological contamination of facilities;

(F) Analytical results of any additional samples collected, including source samples;

(G) Community illness suspected of being waterborne; and

(H) Records of the investigation and any action taken.

(c) Upon receiving notification from the Department of a significant rise in bacterial count, the water supplier shall implement the emergency notification plan required by Section 4029, Health and Safety Code.

NOTE: Authority cited: Sections 208 and 4023.3, Health and Safety Code. Reference: Section 4029, Health and Safety Code.

HISTORY

1. New section filed 7–1–92; operative 7–31–92 (Register 92, No. 28).

§ 64426.1. Total Coliform Maximum Contaminant Level (MCL).

(a) Results of all samples collected in a calendar month pursuant to Sections 64423, 64424, and 64425 that are not invalidated by the Department or the laboratory shall be included in determining compliance with the total coliform MCL. Special purpose samples such as those listed in Section 64421(b) and samples collected by the water supplier during special investigations shall not be used to determine compliance with the total coliform MCL.

(b) A public water system is in violation of the total coliform MCL when any of the following occurs:

(1) For a public water system which collects at least 40 samples per month, more than 5.0 percent of the samples collected during any month are total coliform–positive; or

(2) For a public water system which collects fewer than 40 samples per month, more than one sample collected during any month is total coliform–positive; or

(3) Any repeat sample is fecal coliform–positive or E. coli–positive; or

(4) Any repeat sample following a fecal coliform–positive or E. coli–positive routine sample is total coliform–positive.

(c) If a public water system is not in compliance with paragraphs (b)(1) through (4), during any month in which it supplies water to the public, the water supplier shall notify the Department by the end of the business day on which this is determined, unless the determination occurs after the Department office is closed, in which case the supplier shall notify the Department within 24 hours of the determination. The water supplier

shall also notify the consumers served by the water system. A Tier 2 Public Notice shall be given for violations of paragraphs (b)(1) or (2), pursuant to section 64463.4. A Tier 1 Public Notice shall be given for violations of paragraphs (b)(3) or (4), pursuant to section 64463.1.

NOTE: Authority cited: Sections 100275 and 116375, Health and Safety Code. Reference: Section 116375, Health and Safety Code.

HISTORY

1. New section filed 7–1–92; operative 7–31–92 (Register 92, No. 28).
2. Amendment of subsection (c) and new subsection (d) filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsection (c) and new subsection (d) refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsection (c) and new subsection (d) refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 4–26–95 order including repealer of subsection (d) transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).
6. Amendment of subsection (c) and amendment of NOTE filed 8–2–2006; operative 9–1–2006 (Register 2006, No. 31).

§ 64426.5. Variance from Total Coliform Maximum Contaminant Level.

A water system may apply to the Department for a variance from the total coliform MCL in section 64426.1(b)(1) or (2). To be eligible for a variance, the water system shall demonstrate that it meets the following criteria:

(a) During the thirty days prior to application for a variance, water entering the distribution system has:

(1) Been free from fecal coliform or E. coli occurrence based on at least daily sampling;

(2) Contained less than one total coliform per hundred milliliters of water in at least ninety–five per cent of all samples based on at least daily sampling;

(3) Complied with the turbidity requirements of section 64653, if approved surface water; and

(4) Maintained a continuous disinfection residual of at least 0.2 mg/L at the entry point(s) to the distribution system;

(b) The system has had no waterborne microbial disease outbreak, pursuant to section 64651.91, while operated in its present configuration;

(c) The system maintains contact at least twice a week with the Department and local health departments to assess illness possibly attributable to microbial occurrence in the public drinking water system;

(d) The system has analyzed, on a monthly basis, at least the number of samples required pursuant to the approved sample siting plan and has not had an E. coli–positive compliance sample within the last six months, unless the system demonstrates to the Department that the occurrence is not due to contamination entering the distribution system;

(e) The system has undergone a sanitary survey conducted by the Department within the past twelve months;

(f) The system maintains a cross–connection control program in accordance with sections 7583 through 7605, title 17 of the California Code of Regulations;

(g) The system agrees to submit a biofilm control plan to the Department within twelve months of the granting of the first request for a variance;

(h) The system monitors general distribution system bacterial quality by conducting heterotrophic bacteria plate counts on at least a weekly basis at a minimum of ten percent of the number of total coliform sites specified in the approved sample siting plan (preferably using the methods in section 9215(a), 18th edition of *Standard Methods for the Examination of Water and Wastewater*, 1992, American Public Health Association, et. al); and

(i) The system conducts daily monitoring at distribution system total coliform monitoring sites approved by the Department and maintains a detectable disinfectant residual at a minimum of ninety–five percent of those points and a heterotrophic plate count of less than 500 colonies per ml at sites without a disinfectant residual.

(j) No water system shall be eligible for a variance or exemption from the MCL for total coliforms unless it demonstrates that the violation of the total coliform MCL is due to a persistent growth of total coliforms in the distribution system pursuant to section 64426.5, rather than to fecal or pathogenic contamination, a treatment lapse or deficiency, or a problem in the operation or maintenance of the distribution system.

NOTE: Authority cited: Sections 100275 and 116375, Health and Safety Code. Reference: Section 116430(a), Health and Safety Code.

HISTORY

1. New section filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order including amendment of subsections (b), (e), (h), (i) and new subsection (j) transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).
5. Amendment of first paragraph, subsections (a)(3), (b), (f), (h) and (j) and NOTE filed 6–8–98; operative 7–8–98 (Register 98, No. 24).

§ 64427. Sanitary Survey.

Systems which collect less than five routine samples per month shall be subject to an initial sanitary survey by the Department by June 29, 1994 for community water systems and June 29, 1999 for nontransient–noncommunity and transient–noncommunity water systems. Sanitary surveys shall be repeated every five years.

NOTE: Authority cited: Sections 208 and 4023.3, Health and Safety Code. Reference: Section 4023.3, Health and Safety Code.

HISTORY

1. New section filed 7–1–92; operative 7–31–92 (Register 92, No. 28).
2. Amendment filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
3. Amendment refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
4. Amendment refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).

§ 64430. Best Available Technology (BAT).

NOTE: Authority cited: Section 4023.2, Health and Safety Code. Reference: Section 4021, Health and Safety Code.

HISTORY

1. New section filed 7–1–92; operative 7–31–92 (Register 92, No. 28).
2. Renumbering of former section 64430 to section 64447 filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
3. Renumbering of former section 64430 to section 64447 refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
4. Renumbering of former section 64430 to section 64447 refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).

Article 4. Primary Standards—Inorganic Chemicals

§ 64431. Maximum Contaminant Levels—Inorganic Chemicals.

(a) Public water systems shall comply with the primary MCLs in Table 64431–A as specified in this article.

Table 64431–A
Maximum Contaminant Levels
Inorganic Chemicals

Chemical	*Maximum Contaminant Level, mg/L*
Aluminum	1.
Antimony	0.006
Arsenic	0.05
Asbestos	7 MFL*
Barium	1.
Beryllium	0.004
Cadmium	0.005
Chromium	0.05
Cyanide	0.15
Fluoride	2.0
Mercury	0.002
Nickel	0.1
Nitrate (as NO_3)	45.
Nitrate+Nitrite (sum as nitrogen)	10.
Nitrite (as nitrogen)	1.
Perchlorate	0.006
Selenium	0.05
Thallium	0.002

* MFL=million fibers per liter; MCL for fibers exceeding 10 um in length.

NOTE: Authority cited: Sections 116293(b), 116350, 116365, 116375 and 131200, Health and Safety Code. Reference: Sections 116365, 116470 and 131051, Health and Safety Code.

HISTORY

1. Amendment of article heading, repealer of section and renumbering and amendment of former section 64435 to section 64431 filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 88, No. 51.
2. Amendment of article heading, repealer of section and renumbering and amendment of former section 64435 to section 64431 refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. Amendment of article heading, repealer of section, and renumbering and amendment of former section 64435 to section 64431 refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).
5. Amendment of subsection (a) and table 64431–A, repealer of table 64431–B and subsection (b) and amendment of NOTE filed 3–23–98; operative 4–22–98 (Register 98, No. 13).
6. Amendment of Table 64431–A and amendment of NOTE filed 5–13–2003; operative 6–12–2003 (Register 2003, No. 20).
7. Amendment of section and NOTE filed 9–18–2007; operative 10–18–2007 (Register 2007, No. 38).

§ 64432. Monitoring and Compliance—Inorganic Chemicals.

(a) All public water systems shall monitor to determine compliance with the nitrate and nitrite MCLs in Table 64431–A, pursuant to subsections (c) through (e) and Section 64432.1. All community and nontransient–noncommunity water systems shall monitor to determine compliance with the perchlorate MCL, pursuant to subsections (c), (d), (j), and Section 64432.3. All community and nontransient–noncommunity water systems shall also monitor to determine compliance with the MCLs in Table 64431–A, pursuant to subsections (b) through (*l*), and, for asbestos, Section 64432.2. Monitoring shall be conducted in the year designated by the Department of each compliance period beginning with the compliance period starting January 1, 1993.

(b) The frequency of monitoring conducted to determine compliance with the MCLs for the inorganic chemicals listed in Table 64431–A, except for asbestos, nitrate/nitrite and perchlorate, shall be as follows:

(1) Each compliance period, all community and nontransient–noncommunity systems using groundwater shall monitor once during the year designated by the Department. The Department will designate the year based on historical monitoring frequency and laboratory capacity. All community and nontransient–noncommunity systems using approved surface water shall monitor annually. All systems monitoring at distribution entry points which have combined surface and groundwater sources shall monitor annually.

(2) Quarterly samples shall be collected and analyzed for any chemical if analyses of such samples indicate a continuous or persistent trend toward higher levels of that chemical, based on an evaluation of previous data.

(c) For the purposes of Sections 64432, 64432.1, 64432.2, and 64432.3, detection shall be defined by the detection limits for purposes of reporting (DLRs) in Table 64432–A.

Table 64432–A
Detection Limits for Purposes
of Reporting (DLRs) for
Regulated Inorganic Chemicals

Chemical	*Detection Limit for Purposes of Reporting (DLR) (mg/L)*
Aluminum	0.05
Antimony	0.006
Arsenic	0.002
Asbestos	0.2 MFL>10um*
Barium	0.1
Beryllium	0.001
Cadmium	0.001
Chromium	0.01
Cyanide	0.1
Fluoride	0.1
Mercury	0.001
Nickel	0.01
Nitrate (as NO_3)	2.
Nitrite (as nitrogen)	0.4
Perchlorate	0.004
Selenium	0.005
Thallium	0.001

* MFL=million fibers per liter; DLR for fibers exceeding 10 um in length.

(d) Samples shall be collected from each water source or a supplier may collect a minimum of one sample at every entry point to the distribution system which is representative of each source after treatment. The system shall collect each sample at the same sampling site, unless a change is approved by the Department.

(e) A water system may request approval from the Department to composite samples from up to five sampling sites, provided that the number of sites to be composited is less than the ratio of the MCL to the DLR. Approval will be based on a review of three years of historical data, well construction and aquifer information for groundwater, and intake location, similarity of sources, and watershed characteristics for surface water. Compositing shall be done in the laboratory.

(1) Systems serving more than 3,300 persons shall composite only from sampling sites within a single system. Systems serving 3,300 persons or less may composite among different systems up to the 5–sample limit.

(2) If any inorganic chemical is detected in the composite sample at a level equal to or greater than one fifth of the MCL, a follow–up sample shall be analyzed within 14 days from each sampling site included in the composite for the contaminants which exceeded the one–fifth–MCL level. If available, duplicates of the original sample taken from each sampling site used in the composite may be used instead of resampling; the analytical results shall be reported within 14 days. The water supplier may collect up to two additional samples each from one or more of the sources to confirm the result(s).

(3) Compliance for each site shall be determined on the basis of the individual follow–up samples, or on the average of the follow–up and confirmation sample(s) if the supplier collects confirmation sample(s) for each detection.

(f) If the level of any inorganic chemical, except for nitrate, nitrite, nitrate plus nitrite, or perchlorate, exceeds the MCL, the water supplier shall do one of the following:

(1) Inform the Department within 48 hours and monitor quarterly beginning in the next quarter after the violation occurred; or

(2) Inform the Department within seven days from the receipt of the analysis and collect one additional sample within 14 days to confirm the result. If the average of the two samples collected exceeds the MCL, this information shall be reported to the Department within 48 hours and the water supplier shall monitor quarterly beginning in the next quarter after the violation occurred.

(g) For systems monitoring quarterly, compliance shall be determined by a running annual average; if any one sample would cause the annual average to exceed the MCL, the system is out of compliance immediately. For systems monitoring annually or less frequently, compliance shall be determined based on the initial sample or the average of the initial and confirmation samples, if a confirmation sample is collected.

(h) If a system using groundwater has collected a minimum of two quarterly samples or a system using approved surface water has collected a minimum of four quarterly samples and the sample results have been below the MCL, the system may apply to the Department for a reduction in monitoring frequency.

(i) Water quality data collected prior to January 1, 1990, and/or data collected in a manner inconsistent with this section shall not be used in the determination of compliance with the monitoring requirements for inorganic chemicals.

(j) Water quality data collected in compliance with the monitoring requirements of this section by a wholesaler providing water to a public water system shall be acceptable for use by that system for compliance with the monitoring requirements of this section.

(k) A water system may apply to the Department for a waiver from the monitoring frequencies specified in paragraph (b)(1) of this section, if the system has conducted at least three rounds of monitoring (three periods for groundwater sources or three years for approved surface water sources) and all previous analytical results are less than the MCL. The water system shall specify the basis for its request. If granted a waiver, a system shall collect a minimum of one sample per source while the waiver is in effect and the term of the waiver shall not exceed one compliance cycle (i.e., nine years).

(*l*) A water system may be eligible for a waiver from the monitoring frequencies for cyanide specified in paragraph (b)(1) of this section without any prior monitoring if it is able to document that it is not vulnerable to cyanide contamination pursuant to the requirements in section 64445(d)(1) or (d)(2).

(m) Transient–noncommunity water systems shall monitor for the inorganic chemicals in Table 64431–A as follows:

(1) All sources shall be monitored at least once for fluoride;

(2) Surface water sources for parks and other facilities with an average daily population use of more than 1000 people and/or which are determined to be subject to potential contamination based on a sanitary survey shall be monitored at the same frequency as community water systems.

NOTE: Authority cited: Sections 116293(b), 116375 and 131200, Health and Safety Code. Reference: Sections 116385 and 131051, Health and Safety Code.

HISTORY

1. New section filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order including amendment of subsection (b)(1), Table 64432–A, and subsections (e)(1)–(2) and (k) transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).
5. Amendment of subsections (a) and (b) and table 64432–A and amendment of NOTE filed 3–23–98; operative 4–22–98 (Register 98, No. 13).
6. Amendment of subsections (a), (b), (c), (f), (j) and (m) and amendment of NOTE filed 9–18–2007; operative 10–18–2007 (Register 2007, No. 38).

§ 64432.1. Monitoring and Compliance—Nitrate and Nitrite.

(a) To determine compliance with the MCL for nitrate in Table 64431–A, all public water systems using groundwater and transient–noncommunity systems using approved surface water shall monitor annually, and all community and nontransient–noncommunity systems using approved surface water shall monitor quarterly.

(1) The water supplier shall require the laboratory to notify the supplier within 24 hours whenever the level of nitrate in a single sample exceeds the MCL, and shall ensure that a contact person is available to receive such analytical results 24–hours a day. The water supplier shall also require the laboratory to immediately notify the Department of any acute nitrate MCL exceedance if the laboratory cannot make direct contact with the designated contact person within 24 hours. Within 24 hours of notification, the water supplier shall:

(A) Collect another sample, and

(B) Analyze the new sample; if the average of the two nitrate sample results exceeds the MCL, report the result to the Department within 24 hours. If the average does not exceed the MCL, inform the Department of the results within seven days from the receipt of the original analysis.

(C) If a system is unable to resample within 24 hours, it shall notify the consumers by issuing a Tier 1 Public Notice pursuant to section 64463.1 and shall collect and analyze a confirmation sample within two weeks of notification of the results of the first sample.

(2) For public water systems using groundwater, the repeat monitoring frequency shall be quarterly for at least one year following any one sample in which the concentration is greater than or equal to 50 percent of the MCL. After four consecutive quarterly samples are less than the MCL, a system may request that the Department reduce monitoring frequency to annual sampling.

(3) For public water systems using approved surface water, the repeat monitoring frequency shall be quarterly following any one sample in which the concentration is greater than or equal to 50 percent of the MCL. After four consecutive quarterly samples are less than 50 percent of the MCL, a system may request that the Department reduce monitoring frequency to annual sampling. A system using approved surface water shall return to quarterly monitoring if any one sample is greater than or equal to 50 percent of the MCL.

(4) After any round of quarterly sampling is completed, each community and nontransient–noncommunity system which initiates annual monitoring shall take subsequent samples during the quarter which previously resulted in the highest analytical results.

(b) All public water systems shall monitor to determine compliance with the MCL for nitrite in Table 64431–A, by taking one sample at each sampling site during the compliance period beginning January 1, 1993.

(1) If the level of nitrite in a single sample is greater than the MCL, the water supplier shall proceed as for nitrate in accordance with paragraph (a)(1) of this section.

(2) The repeat monitoring frequency for systems with an analytical result for nitrite that is greater than or equal to 50 percent of the MCL shall be quarterly monitoring for at least one year. After four consecutive quarterly samples are less than the MCL, a system may request that the Department reduce monitoring frequency to annual sampling, collecting subsequent samples during the quarter which previously resulted in the highest analytical results.

(3) The repeat monitoring frequency for systems with an analytical result for nitrite that is less than 50 percent of the MCL shall be one sample during each compliance period (every three years).

(c) All public water systems shall determine compliance with the MCL for nitrate plus nitrite in Table 64431–A. If the level exceeds the MCL, the water supplier shall proceed as for nitrate in accordance with paragraphs (a)(1) through (a)(4) of this section.

NOTE: Authority cited: Sections 100275 and 116375, Health and Safety Code. Reference: Section 116385, Health and Safety Code.

HISTORY

1. New section filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order including amendment of subsections (a)(2)–(3) and (b)(2) transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).
5. Amendment of subsection (a)(1) and NOTE filed 5–15–2001; operative 6–14–2001 (Register 2001, No. 20).
6. Amendment of subsection (a)(1)(C) and amendment of NOTE filed 8–2–2006; operative 9–1–2006 (Register 2006, No. 31).

§ 64432.2. Monitoring and Compliance—Asbestos.

(a) All community and nontransient–noncommunity water systems are required to monitor to determine compliance with the MCL for asbestos in Table 64431–A during the year designated by the Department of the first compliance period of each nine–year compliance cycle, beginning in the compliance period starting January 1, 1993. The Department will designate the year based on historical monitoring frequency and laboratory capacity.

(1) If a groundwater system is vulnerable to asbestos contamination solely in its source water, it shall collect one sample at every entry point to the distribution system which is representative of each water source after treatment and proceed in accordance with Subsections 64432(b)(2) through (d) and Subsections 64432(f) through (j).

(2) All approved surface water systems shall be designated vulnerable to asbestos contamination in their source waters. If a surface water system is vulnerable solely in its source water, it shall proceed as in paragraph (1) above.

(3) If a system is vulnerable to asbestos contamination due to leaching of asbestos–cement pipe, with or without vulnerability to asbestos contamination in its source water, it shall take one sample at a tap served by asbestos–cement pipe under conditions where asbestos contamination is most likely to occur.

(b) If the level of asbestos exceeds the MCL in Table 64431–A, the supplier shall report to the Department within 48 hours and monitor quarterly beginning in the next quarter after the violation occurred. A system may request that the Department reduce monitoring frequency to one sample every compliance cycle, pursuant to Section 64432(h).

(c) If a system is not vulnerable either to asbestos contamination in its source water or due to leaching of asbestos–cement pipe, it may apply to the Department for a waiver of the monitoring requirements in paragraphs (a)(1) through (3) of this section. The Department will determine the vulnerability of groundwater sources on the basis of historical monitoring data and possible influence of serpentine formations. Vulnerability due to leaching of asbestos–cement pipe will be determined by the Department on the basis of the presence of such pipe in the distribution system and evaluation of the corrosivity of the water. The period of the waiver shall be three years.

NOTE: Authority cited: Sections 208 and 4023.3, Health and Safety Code. Reference: Section 4024, Health and Safety Code.

HISTORY

1. New section filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order including amendment of subsections (a), (b), and (c) transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).

§ 64432.3. Monitoring and Compliance — Perchlorate.

(a) For initial monitoring for the perchlorate MCL, each community and nontransient–noncommunity water system shall collect two samples at each source in a year, five to seven months apart. At least one of the samples shall be collected during the period from May 1 through September 30 (vulnerable time), unless the Department specifies a different vulnerable time for the water system due to seasonal conditions related to use, manufacture and/or weather.

(b) Data collected since January 3, 2001, that is in conformance with subsection (a) may be used to comply with the initial monitoring requirement.

(c) After meeting the initial monitoring requirements in subsection (a) and if no perchlorate is detected, during each compliance period each water system:

(1) Using groundwater, shall monitor once during the year designated by the Department;

(2) Using approved surface water, shall monitor annually; and

(3) Monitoring at distribution entry points that have combined surface and groundwater sources, shall monitor annually; if perchlorate is detected in the water from the combined sources, the water system shall sample each source individually to determine which is contaminated.

(d) The water supplier shall require the laboratory to notify the supplier within 48 hours of the result whenever the level of perchlorate in a single sample exceeds the MCL, and shall ensure that a contact person is available to receive such analytical results 24–hours a day. The water supplier shall also require the laboratory to immediately notify the Department of any perchlorate MCL exceedance if the laboratory cannot make direct contact with the designated contact person within 48 hours. Within 48 hours of notification of the result, the water supplier shall:

(1) Collect and analyze a confirmation sample, and

(2) If the average of the two perchlorate sample results exceeds the MCL, report the result to the Department within 48 hours. If the average does not exceed the MCL, inform the Department of the results within seven days from the receipt of the original analytical result.

(3) If a system is unable to resample within 48 hours, it shall issue a Tier 1 notice to the consumers in accordance with sections 64463 and 64463.1 and shall collect and analyze a confirmation sample within two weeks of notification of the results of the first sample.

(e) A water system shall monitor quarterly any source in which perchlorate has been detected. After four consecutive quarterly samples indicate that perchlorate is not present at or above the DLR, a system may request that the Department reduce monitoring to the frequencies specified in paragraphs (c)(1) through (3).

(f) A water system serving less than 10,000 persons may apply to the Department for a variance from the perchlorate MCL if it can demonstrate that the estimated annualized cost per household for treatment to comply with the MCL exceeds 1% of the median household income in the community within which the customers served by the water system reside.

NOTE: Authority cited: Sections 116275, 116293(b), 116375, 116430(a) and 131200, Health and Safety Code. Reference: Sections 116275, 116385 and 131051, Health and Safety Code.

HISTORY

1. New section filed 9–18–2007; operative 10–18–2007 (Register 2007, No. 38).

§ 64432.8. Sampling of Treated Water Sources.

(a) Each water supplier utilizing treatment to comply with one or more MCL(s) in Table 64431–A shall collect monthly samples of the treated water at a site prior to the distribution system and analyze for the chemical(s) for which treatment is being applied. If the treated water exceeds an MCL, within 48 hours of receipt of the result the water supplier shall resample the treated water to confirm the result and report the initial result to the Department. The result of the analysis of the confirmation sample shall be reported to the Department within 24 hours of receipt of the confirmation result.

(b) The Department may require more frequent monitoring based on an evaluation of the treatment process used, the treatment effectiveness and efficiency, and the concentration of the inorganic chemical in the water source.

NOTE: Authority cited: Sections 100275, 116375 and 131200, Health and Safety Code. Reference: Sections 116275, 116361, 116385 and 131051, Health and Safety Code.

HISTORY

1. New section filed 9–18–2007; operative 10–18–2007 (Register 2007, No. 38).

§ 64433. System Requirements and Exemptions.

(a) Any public water system with 10,000 service connections or more that does not have a fluoridation system shall install such a system pursuant to the requirements in this article if the Department identifies a source of sufficient funds not excluded by Health and Safety Code section 116415 to cover capital and any associated costs necessary to install such a system. Installation shall be completed within two years of the date the funds are received by the water system; the water system may apply to the Department for an extension of the deadline. Following installation, if the Department identifies a source of sufficient funds not excluded by Health and Safety Code section 116415 to cover the noncapital operations and maintenance costs for the period of a year or more, the system shall fluoridate within three months of receiving the funds and shall continue fluoridating so long as such funds are received.

(b) Any public water system with 10,000 service connections or more that has a fluoridation system but ceased fluoridating prior to December 31, 1995 shall fluoridate the drinking water if its fluoridation system is determined to be capable of fluoridating the drinking water in compliance with Section 64433.2, based on a Departmental review, and the Department identifies a source of sufficient funds not excluded by Health and Safety Code section 116415 to cover the noncapital operations and maintenance costs for the period of a year or more. Such a system shall fluoridate within one month of receiving the funds and shall continue fluoridating so long as such funds are received.

(c) Any public water system required to install a fluoridation system pursuant to subsection (a) or required to fluoridate pursuant to subsection (b) shall annually submit an estimate of anticipated fluoridation operations and maintenance costs for the next fiscal year (July 1 through June 30) to the Department by the January 1 preceding that fiscal year.

(d) Any public water system with 10,000 service connections or more that has naturally–occurring fluoride and cannot demonstrate that it maintains an average annual fluoride level that is equal to or greater than the low level specified in the temperature–appropriate "control range" in Table 64433.2–A shall be subject to subsections (a) and (b).

(e) Any public water system which achieves 10,000 service connections or more subsequent to July 1, 1996, that does not have a fluoridation system, or that has naturally–occurring fluoride and meets the criteria in subsection (d) shall provide an estimate to the Department of capital and any associated costs necessary to install a fluoridation system within one year of achieving at least 10,000 service connections:

(f) Any public water system with 10,000 service connections or more shall be exempted from fluoridation in either of the following cases:

(1) The water system does not receive sufficient funds from a source identified by the Department and not excluded by Health and Safety Code section 116415 to cover the capital and associated costs needed to install a fluoridation system; or

(2) The water system received sufficient capital funds from a source identified by the Department and not excluded by Health and Safety Code section 116415 and subsequently installed a fluoridation system or the water system meets the criteria in subsection (b), and the water system did not receive sufficient funds from a source identified by the Department and not excluded by Health and Safety Code section 116415 to cover the noncapital operation and maintenance costs to fluoridate. The water system shall be exempted for any fiscal year (July 1 through June 30) for which it does not receive the funds for noncapital operation and maintenance costs.

NOTE: Authority cited: Sections 100275, 116410 and 116415, Health and Safety Code. Reference: Sections 116410 and 116415, Health and Safety Code.

HISTORY

1. New section filed 3–23–98; operative 4–22–98 (Register 98, No. 13). For prior history, see Register 95, No. 25.

§ 64433.2. Optimal Fluoride Levels.

Any public water system that is fluoridating shall comply with the temperature–appropriate fluoride levels in Table 64433.2–A. The system shall determine, and submit to the Department, its annual average of maximum daily air temperatures based on the five calendar years immediately preceding the current calendar year.

Table 64433.2–A
Optimal Fluoride Levels

Annual average of maximum daily air temperatures, degrees		*Optimal fluoride level, mg/L*	*Control Range, mg/L*	
Fahrenheit	*Celsius*		*Low*	*High*
50.0 to 53.7	10.0 to 12.0	1.2	1.1	1.7
53.8 to 58.3	12.1 to 14.6	1.1	1.0	1.6
58.4 to 63.8	14.7 to 17.7	1.0	0.9	1.5
63.9 to 70.6	17.8 to 21.4	0.9	0.8	1.4
70.7 to 79.2	21.5 to 26.2	0.8	0.7	1.3
79.3 to 90.5	26.3 to 32.5	0.7	0.6	1.2

NOTE: Authority cited: Sections 100275, 116410 and 116415, Health and Safety Code. Reference: Sections 116410 and 116415, Health and Safety Code.

HISTORY

1. New section filed 3–23–98; operative 4–22–98 (Register 98, No. 13).

§ 64433.3. Monitoring and Compliance—Fluoride Levels.

(a) If a water system has a single fluoridation system which treats all the water distributed to consumers, the supplier shall collect a daily sample for fluoride analysis, pursuant to Section 64415(b), either in the distribution system or at the entry point. If a water system does not fluoridate all its water and/or has more than one fluoridation system, the supplier shall collect one sample daily in the distribution system and rotate the sample sites in order to be representative of the water throughout the distribution system according to a monitoring plan the Department has determined to be representative. For water systems fluoridating as of January 1, 1997, the plan shall be submitted by July 1, 1998. For all others, the plan shall be submitted prior to initiating fluoridation treatment. A water system shall monitor only when it is operating its fluoridation system.

(b) If more than 20 percent of the daily fluoride samples collected in a month by a water system pursuant to subsection (a) fall outside the control range of optimal levels as determined by temperature for that system pursuant to Section 64433.2, the system shall be out of compliance with Section 64433.2.

(c) At least once a month, any water supplier with an operating fluoridation system shall divide one sample and have one portion analyzed for fluoride by water system personnel and the other portion analyzed pursuant to Section 64415(a).

(d) Any water system with an operating fluoridation system shall sample the raw source waters annually and analyze for fluoride pursuant to Section 64415(a); samples collected pursuant to Section 64432(b)(1) may be used toward satisfying this requirement. All raw source water samples collected under this subsection are subject to compliance with the fluoride MCL in Table 64431–A.

(e) If any sample result obtained pursuant to subsection (a) does not fall within the temperature–appropriate fluoride level control range in Table 64433.2–A, the water supplier shall take action as detailed in the water system's approved fluoridation system operations contingency plan as specified in section 64433.8.

NOTE: Authority cited: Sections 100275, 116385, 116410 and 116415, Health and Safety Code. Reference: Sections 116365, 116410 and 116415, Health and Safety Code.

HISTORY

1. New section filed 3–23–98; operative 4–22–98 (Register 98, No. 13).

§ 64433.5. Fluoridation System.

Each fluoridation system installed or modified after January 1, 1997, shall meet the following criteria, as a minimum:

(a) Operate only when a flow of water is detected. If the water system serves less than 200 service connections, a secondary flow–based control device shall be provided as back–up protection;

(b) Provide flow measuring and recording equipment for the fluoride addition;

(c) Provide design and reliability features to maintain the level of fluoride within the temperature–appropriate control range 95 per cent of the time;

(d) Provide for containment of spills; and

(e) Provide alarm features for fluoride chemical feed and fluoride spills.

NOTE: Authority cited: Sections 100275, 116410 and 116415, Health and Safety Code. Reference: Sections 116410 and 116415, Health and Safety Code.

HISTORY

1. New section filed 3–23–98; operative 4–22–98 (Register 98, No. 13).

§ 64433.7. Recordkeeping, Reporting, and Notification for Water Systems Fluoridating.

(a) By the tenth day of each month following the month being reported, each water supplier fluoridating its water supply shall send operational reports to the Department which include the following:

(1) The fluoride compounds used and the calculated fluoride dose in mg/L;

(2) Information on any interruptions in the fluoridation treatment which may have occurred during the month including the duration of the interruptions, an explanation of causes, and what corrective actions were taken to insure that fluoridation treatment was resumed in a timely manner;

(3) The results of the daily monitoring for fluoride in the water distribution system, reported in terms of daily results, and ranges and the number of samples collected; and

(4) The results of monthly split sample(s) analyzed pursuant to Section 64433.3(c).

(b) For water systems that fluoridated the previous fiscal year (July 1 through June 30), the water supplier shall report the operations and maintenance costs for that year to the Department by August 1.

(c) Whenever a water system initiates fluoridation, suspends fluoridation for more than ninety days, or reinitiates fluoridation after a suspension of more than ninety days, the water supplier shall notify the consumers, local health departments, pharmacists, dentists, and physicians in the area served by the water system, regarding the status of the fluoridation treatment. If a water system with more than one fluoridation system suspends the use of one or more of its fluoridation systems, but the level of fluoride being served to the consumers is in conformance with Table 64433.2–A, no notification shall be required.

(d) If a fluoride overfeed exceeding 10.0 mg/L occurs, the water system shall notify the Department by the end of the business day of the occurrence or within 24 hours if the Department office is closed.

(e) If the level of fluoride in the distribution system is found to be less than the control range in Table 64433.2–A in two or more samples in a month, the water system shall notify the Department within three business days of the second occurrence. If the level of fluoride in the distribution system is found to be 0.1 mg/L or more above the control range up to 10.0 mg/L, the water supplier shall notify the Department within three business days of the occurrence.

NOTE: Authority cited: Sections 100275, 116410, 116415 and 116450, Health and Safety Code. Reference: Sections 116410, 116415 and 116450, Health and Safety Code.

HISTORY

1. New section filed 3–23–98; operative 4–22–98 (Register 98, No. 13).

§ 64433.8. Fluoridation System Operations Contingency Plan.

(a) Water systems fluoridating as of July 1, 1996 shall submit a fluoridation system operations contingency plan by July 1, 1998. All other water systems shall submit the plan at least three months before initiating fluoridation treatment. All fluoridating water systems shall operate in accordance with a fluoridation system operations contingency plan determined by the Department to include the elements in subsection (b).

(b) A fluoridation system operation contingency plan shall include, but not be limited to, the following elements:

(1) Actions to be implemented by the water supplier in the event that the fluoride level in a distribution system sample is found to be less than the control range in Table 64433.2–A, 0.1 mg/L above the control range up to a fluoride level of 2.0 mg/L, from 2.1 to a level of 4.0 mg/L, from 4.1 to a level of 10.0 mg/L, or above a level of 10.0 mg/L.

(2) The procedure for shutting down the fluoridation equipment if there is a fluoride overfeed and the need to do so is identified by the Department and/or the water supplier;

(3) The procedure for investigating the cause of an underfeed or overfeed;

(4) A list of water system, county health department, and Department personnel with day and evening phone numbers to be notified by the end of the business day of the occurrence or within 24 hours if the Department office is closed in the event of an overfeed exceeding 10.0 mg/L; and

(5) The procedure for notifying the public if instructed to do so by the Department in the event of a fluoride underfeed extending for more than three months or a fluoride overfeed exceeding 10.0 mg/L.

NOTE: Authority cited: Sections 100275, 116410 and 116415, Health and Safety Code. Reference: Sections 116410, 116415 and 116450, Health and Safety Code.

HISTORY

1. New section filed 3–23–98; operative 4–22–98 (Register 98, No. 13).

§ 64434. Water System Priority Funding Schedule.

Public water systems with 10,000 service connections or more that are not fluoridating as of July 1, 1996, shall install fluoridation systems and initiate fluoridation according to the order established in Table 64434–A, as the water systems receive funds from sources identified by the Department, pursuant to Health and Safety Code section 116415.

Table 64434–A

Water System Priority Funding Schedule

SYSTEM No.	SYSTEM NAME	PRIORITY
3710010	Helix Water District	1
5610017	Ventura, City of	2
4110013	Daly City, City of	3
3710006	Escondido, City of	4
4210011	Santa Maria, City of	5
3410009	Fair Oaks Water District	6
1910083	Manhattan Beach, City of	7
3710025	Sweetwater Authority	8
4210010	Santa Barbara, City of	9
0910001	El Dorado Irrigation District	10
3410006	Citrus Heights Water District	11
4410010	Santa Cruz, City of	12
3610039	San Bernardino, City of	13
3310009	Eastern Municipal Water District	14
3710037	Padre Dam Municipal Water District	15
1910067	Los Angeles, City of	16
2810003	Napa, City of	17
3710020	San Diego, City of	18
3710034	Otay Water District	19
3310031	Riverside, City of	20
1910173	Whittier, City of	21
3410020	Sacramento, City of	22
1910139	California American Water Company – San Marino	23
3710021	San Dieguito Water District	24
3610024	Hesperia Water District	25
1910179	Burbank, City of	26
2710004	California American Water Company – Monterey	27
3310049	Western Municipal Water District	28
3010073	Moulton Niguel Water District	29
3010101	Santa Margarita Water District	30
1910239	Lakewood, City of	31
2110003	North Marin Water District	32
3010037	Yorba Linda Water District	33
3710015	Poway, City of	34
3110025	Placer County Water Agency	35
5010010	Modesto, City of	36
1910126	Pomona, City of	37
3410004	Carmichael Water District	38
1910043	Glendale, City of	39
3610018	Cucamonga Community Water District	40
3910011	Tracy, City of	41
1910234	Walnut Valley Water District	42
3910012	Stockton, City of	43
1910146	Santa Monica, City of	44
3710027	Vista Irrigation District	45
3010018	La Habra, City of	46
1910009	Valley County Water District	47
3310012	Elsinore Valley Municipal Water District	48
1910051	Inglewood, City of	49
3710005	Carlsbad Municipal Water District	50

SYSTEM No.	SYSTEM NAME	PRIORITY
4210004	Goleta Water District	51
1910213	Torrance, City of	52
1910152	South Gate, City of	53
1910155	Southern California Water Company – Southwest	54
1510017	Indian Wells Valley Water District	55
1910039	San Gabriel Valley Water Company – El Monte	56
1610003	Hanford, City of	57
3310037	Corona, City of	58
3010062	Garden Grove, City of	59
3610003	Apple Valley Ranchos Water Community	60
3610036	Chino Hills, City of	61
3010064	Westminster, City of	62
4310011	San Jose Water Company	63
3610012	Chino, City of	64
3910004	Lodi, City of	65
5610007	Oxnard, City of	66
1910019	Cerritos, City of	67
1910205	Suburban Water Systems – San Jose Hills	68
1910059	Suburban Water Systems – La Mirada	69
1910092	Monterey Park, City of	70
1910174	Suburban Water Systems – Whittier	71
1910026	Compton, City of	72
1910124	Pasadena, City of	73
3310022	Lake Hemet Municipal Water District	74
1910142	Southern California Water Company – San Dimas	75
4510005	Redding, City of	76
3610037	Redlands, City of	77
3910005	Manteca, City of	78
3710014	Oceanside, City of	79
3610038	Rialto, City of	80
4310022	Great Oaks Water Company	81
4310014	Sunnyvale, City of	82
3310021	Jurupa Community Services District	83
3410001	Arcade– Town & County	84
3610052	Victor Valley Water District	85
3010023	Newport Beach, City of	86
3610064	East Valley Water District	87
1910225	Las Virgenes Municipal Water District	88
3710001	California American Water Company – Coronado	89
3610034	Ontario, City of	90
3910001	California Water Service Company – Stockton	91
1910033	Dominguez Water Agency	92
5410015	Tulare, City of	93
5710006	Woodland, City of	94
3710029	Olivenhain Municipal Water District	95
1910003	Arcadia, City of	96

[The next page is 616.10(c).]

SYSTEM No.	SYSTEM NAME	PRIORITY
1910008	Azusa Valley Water Company	97
4410011	Watsonville, City of	98
3010003	Buena Park, City of	99
4310005	Milpitas, City of100	
1910017	Santa Clarita Water Company	101
1910240	Valencia Water Company	102
3610004	West San Bernardino Water District	103
0910002	South Tahoe Public Utilities District	104
5610059	Southern California Water Company – Simi Valley	105
3010027	Orange, City of	106
5410010	Porterville, City of	107
4410017	Soquel Creek Water District	108
4110023	San Bruno, City of	109
1910001	Alhambra, City of	110
3010022	Southern California Water Company–West Orange County	111
3010091	Los Alisos Water District	112
3610050	Upland, City of	113
3410024	Northridge Water District	114
1010003	Clovis, City of	115
3010004	Mesa Consolidated Water District	116
3610041	San Gabriel Valley Water Company – Fontana	117
3410010	Citizens Utilities Company of California – Suburban	118
3010038	Santa Ana, City of	119
3010092	Irvine Ranch Water District	120
1910211	Park Water Company – Bellflower	121
3010010	Fullerton, City of	122
4310007	Mountain View, City of	123
3010036	San Clemente, City of	124
3010079	El Toro Water District	125
5610020	Thousand Oaks, City of	126
3610029	Monte Vista Water District	127
1910004	Southern California Water Company – Artesia	128
4210016	Southern California Water Company – Orcutt	129
4110008	California Water Service Company – San Mateo	130
1310038	Rancho California Water District	131
3410017	Citizens Utilities Company of California – Parkway	132
1910024	Southern California Water Company – Claremont	133
1910044	Glendora, City of	134
3010001	Anaheim, City of	135
5710001	Davis, City of	136
1910134	California Water Service Company–Hermosa/Redondo	137
1010007	Fresno, City of	138
1910102	Palmdale Water District	139
4310012	Santa Clara, City of	140
2710010	California Water Service Company – Salinas	141
4910006	Petaluma, City of	142
1910036	California Water Service Company – East Los Angeles	143
3410013	Citizens Utilities Company of California – Lincoln Oaks	144
3310001	Coachella Valley Water District	145
5010019	Turlock, City of	146
5410016	California Water Service Company – Visalia	147
5610023	Waterworks District 8–Simi Valley	148
0410002	California Water Service Company – Chico	149
1910104	California Water Service Company – Palos Verdes	150
3410015	Southern California Water Company – Corodva	151
4910009	Santa Rosa, City of	152
1910194	Rowland Water District	153
1510003	California Water Service Company – Bakersfield	154
5610040	California American Water Company – Village District	155
3310005	Desert Water Agency	156
0110003	California Water Service Company – Livermore	157
3010046	Tustin, City of	158
4310001	California Water Service Company – Los Altos Suburban	159
4110007	California Water Service Company – San Carlos	160
1910070	Los Angeles, County Water Works District 4&34–Lancaster	161
1510031	Bakersfield, City of	162
4110009	California Water Service Company – South San Francisco	163
3010053	Huntington Beach, City of	164
4110006	California Water Service Company – Bear Gulch	165
1910034	Downey, City of	166
4110022	Redwood City	167

NOTE: Authority cited: Sections 100275, 116410 and 116415, Health and Safety Code. Reference: *Sections 116410 and 116415, Health and Safety Code.*

HISTORY

1. New section filed 3–23–98; operative 4–22–98 (Register 98, No. 13).

§ 64435. Maximum Contaminant Levels.

NOTE: Authority cited: Sections 208 and 4023.3, Health and Safety Code. Reference: Sections 4010–4039.6, Health and Safety Code.

HISTORY

1. Amendment of subsections (a), (b) and (d) filed 1–22–88; operative 12–22–88 (Register 88, No. 51).
2. Amendment of subsection (a) filed 1–26–89; operative 2–25–89 (Register 89, No. 6).
3. Repealer of subsection (f) and renumbering and amendment of subsection (g) to subsection (f) filed 5–6–91; operative 6–5–91 (Register 91, No. 25).
4. Amendment of subsections (c) and (d)(2), repealer of subsection (e)(2) and (e)(3), new subsection (e)(2), and amendment of NOTE filed 5–27–92; operative 6–26–92 (Register 92, No. 22).
5. Renumbering of former section 64435 to section 64431 filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
6. Renumbering of former section 64435 to section 64431 refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
7. Renumbering and amendment of former section 64435 to section 64431 refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).

§ 64437. Sampling of System Sources.

NOTE: Authority cited: Sections 208 and 4026, Health and Safety Code. Reference: Section 4024, Health and Safety Code.

HISTORY

1. New NOTE filed 12–7–84 (Register 84, No. 49).
2. Renumbering and amendment of former Section 64437 to Section 64447 filed 11–22–88; operative 12–22–88 (Register 88, No. 51).

Article 4.5. Trihalomethanes

§ 64439. Requirements.

Community water systems shall comply with the National Interim Primary Drinking Water Regulations for the control of Trihalomethanes in Drinking Water, Sections 141.2(p), (q), (r), (s) and (t), 141.6, 141.12 and 141.30 of Title 40, Code of Federal Regulations, as published in the November 29, 1979, Federal Register (Vol. 44, No. 231) and revised in the March 11, 1980, Federal Register (Vol. 45, No. 49), the December 16, 1998, Federal Register (Vol. 63, No. 241) and the January 16, 2001, Federal Register (Vol. 66, No. 10).

NOTE: Authority cited: Sections 100275 and 116385, Health and Safety Code. Reference: Sections 100275 and 116385, Health and Safety Code.

HISTORY

1. New Article 4.5 (Section 64439) filed 3–14–83; effective thirtieth day thereafter (Register 83, No. 12).
2. Amendment of section and NOTE filed 5–18–2006; operative 6–17–2006 (Register 2006, No. 20).

Article 5. Radioactivity

§ 64441. Natural Radioactivity.

NOTE: Authority cited: Sections 208 and 4026, Health and Safety Code. Reference: Section 4024, Health and Safety Code.

HISTORY

1. Amendment of subsections (a) and (c) filed 10–7–88; operative 1–1–89 (Register 88, No. 42).
2. Amendment of subsections (a) and (b) filed 11–22–88; operative 12–22–88 (Register 88, No. 51).
3. Repealer filed 5–12–2006; operative 6–11–2006 (Register 2006, No. 19).

§ 64442. MCLs and Monitoring — Gross Alpha Particle Activity, Radium–226, Radium–228, and Uranium.

(a) Each community and nontransient–noncommunity water system (system) shall comply with the primary MCLs in Table 64442 in the drinking water supplied to the public and use the DLRs for reporting monitoring results:

Table 64442
Radionuclide Maximum Containment Levels (MCLs)
and Detection Levels for Purposes of Reporting (DLRs)

Radionuclide	*MCL*	*DLR*
Radium–226		1 pCi/L
Radium–228	5 pCi/L (combined radium–226 & –228)	1 pCi/L
Gross Alpha particle activity (excluding radon and uranium)	15 pCi/L	3 pCi/L
Uranium	20 pCi/L	1 pCi/L

(b) Each system shall monitor to determine compliance with the MCLs in table 64442, as follows:

(1) Monitor at each water source, or every entry point to the distribution system that is representative of all sources being used under normal operating conditions; conduct all monitoring at the same sample site(s) unless a change is approved by the Department, based on a review of the system and its historical water quality data;

(2) For quarterly monitoring, monitor during the same month (first, second or third) of each quarter during each quarter monitored;

(3) By December 31, 2007, complete initial monitoring that consists of four consecutive quarterly samples at each sampling site for each radionuclide in table 64442, except that nontransient–noncommunity water systems shall not be required to monitor radium–228 as a separate analyte, but shall monitor for compliance with the combined radium MCL using the analytical method described in Prescribed Procedures for Measurement of Radioactivity in Drinking Water, Section 6, Alpha–Emitting Radium Isotopes in Drinking Water, method 903.0 (EPA/600/4–80–032, August, 1980):

(A) Data collected for a sampling site between January 1, 2001, and December 31, 2004, may be used to satisfy the initial monitoring requirement, subject to the Department's approval based on whether the analytical methods, DLRs, sampling sites, and the frequency of monitoring used were consistent with this article.

(B) For gross alpha particle activity, uranium, radium–226 and radium–228, the Department may waive the final two quarters of initial monitoring at a sampling site if the results from the previous two quarters are below the DLR(s) and the sources are not known to be vulnerable to contamination.

(c) Any new system or new source for an existing system shall begin monitoring pursuant to Subsection (b) within the first quarter after initiating water service to the public.

(d) After initial monitoring, each system shall monitor for each radionuclide at each sampling site at a frequency determined by the monitoring result(s) [single sample result or average of sample results if more than one sample collected] from the most recent compliance period as follows:

(1) For nontransient–noncommunity water systems, the results for the total radium analyses shall be averaged.

(2) For community water systems, the results of radium–226 and radium–228 analyses shall be added and the average calculated.

(3) The values used for the radionuclide MCLs and DLRs shall be as specified in Table 64442.

(4) If the single sample result or average is:

A. Below the DLR, the system shall collect and analyze at least one sample every nine years (3 compliance periods).

B. At or above the DLR, but at or below 1/2 the MCL, the system shall collect and analyze at least one sample every six years.

C. Above 1/2 the MCL, but not above the MCL, the system shall collect and analyze at least one sample every three years.

(e) A system that monitors quarterly may composite up to four consecutive samples from a single sampling site if analysis is done within a year of the first sample's collection. If the result of the composited sample is greater than 1/2 the MCL, at least one additional quarterly sample shall be analyzed to evaluate the range and trend of results over time before allowing the system to reduce the monitoring frequency.

(f) A gross alpha particle activity measurement may be substituted for other measurements by adding the 95% confidence interval (1.65σ, where σ is the standard deviation of the net counting rate of the sample) to it; and if,

(1) For uranium and radium measurements (after initial radium–228 monitoring has been completed), the gross alpha measurement does not exceed 5 pCi/L; or

(2) For radium measurements (after initial radium–228 monitoring has been completed), the result obtained from subtracting the uranium measurement from the gross alpha measurement does not exceed 5 pCi/L.

(g) If any sample result is greater than an MCL:

(1) For a system monitoring less than quarterly, quarterly samples shall be collected and analyzed to determine compliance, pursuant to subsection (h);

(2) For a system that already has four consecutive quarterly results, compliance shall be determined pursuant to subsection (h).

(3) The system shall monitor quarterly until the results of four consecutive quarterly sample results do not exceed the MCL.

(h) A system with one or more sample results greater than an MCL shall determine compliance with the MCL as follows:

(1) At each sampling site, based on the analytical results for that site. Any confirmation sample result shall be averaged with the initial result.

(2) Using all monitoring results collected under this section during the previous 12 months, even if more than the minimum required number of samples was collected.

(3) By a running annual average of four consecutive quarters of sampling results. Averages shall be rounded to the same number of significant figures as the MCL for which compliance is being determined.

(A) If any sample result will cause the annual average at any sample site to exceed the MCL, the system shall be out of compliance immediately upon receiving the result;

(B) If a system has not analyzed the required number of samples, compliance shall be determined by the average of the samples collected at the site during the most recent 12 months; and

(C) If a sample result is less than the DLR in table 64442, zero shall be used to calculate the annual average, unless a gross alpha particle activity is being used in lieu of radium–226, total radium, and/or uranium. In that case, if the gross alpha particle activity result is less than the DLR, 1/2 the DLR shall be used to calculate the annual average.

(4) If compositing is allowed at a sampling site, by the results of a composite of four consecutive quarterly samples.

(5) If the system can provide documentation that a sample was subject to sampling or analytical errors, the Department may invalidate the result based on its review of the documentation, the sampling result, and the historical sampling data.

(6) Each system shall ensure that the laboratory analyzing its samples collected for compliance with this article calculates and reports the sample–specific Minimum Detectable Activity at the 95% confidence level (MDA_{95}) along with the sample results. The MDA_{95} shall not exceed the DLR and shall be calculated as described in ANSI N42.23 Measurement and Associated Instrumentation Quality Assurance for Radiobioassay Laboratories, Appendix A.7.6 (September 10, 1995).

NOTE: Authority cited: Sections 116325, 116350 and 116375, Health and Safety Code. Reference: Sections 116275, 116365 and 116385, Health and Safety Code.

HISTORY

1. New section filed 5–12–2006; operative 6–11–2006 (Register 2006, No. 19).

[The next page is 616.11.]

§ 64443. MCLs and Monitoring — Beta Particle and Photon Radioactivity.

(a) Each community and nontransient–noncommunity water system (system) shall comply with the primary MCLs in table 64443 and use the DLRs for reporting monitoring results:

Table 64443
Radionuclide Maximum Contaminant Levels (MCLs)
and Detection Levels for Purposes of Reporting (DLRs)

Radionuclide	*MCL*	*DLR*
Beta/photon emitters	4 millirem/year annual dose equivalent to the total body or any internal organ	Gross Beta particle activity: 4 pCi/L
Strontium–90	8 pCi/L (= 4 millirem/yr dose to bone marrow)	2 pCi/L
Tritium	20,000 pCi/L (= 4 millirem/yr dose to total body)	1,000 pCi/L

(b) Each system designated by the Department as vulnerable to contamination by nuclear facilities and/or a determination of vulnerability by a Source Water Assessment, as defined in section 63000.84, shall monitor to determine compliance with the MCLs in table 64443, as follows:

(1) Beginning within one quarter after being notified by the Department that the system is vulnerable, quarterly for beta/photon emitters and annually for tritium and strontium–90 at each water source, or every entry point to the distribution system that is representative of all sources being used under normal operating conditions, and shall conduct all monitoring at the same sample site(s) unless a change is approved by the Department, based on a review of the system and its historical water quality data;

(2) For quarterly monitoring, during the same month (first, second or third) of each quarter during each quarter monitored; and

(3) If the gross beta particle activity minus the naturally–occurring potassium–40 beta particle activity at a sampling site has a running annual average less than or equal to 50 pCi/L (screening level), reduce monitoring to a single sample for beta/photon emitters, tritium and strontium–90 once every three years (compliance monitoring period).

(c) Each system designated by the Department as utilizing waters contaminated by effluents from nuclear facilities on the basis of analytical data and/or a Source Water Assessment, shall:

(1) Beginning within one quarter after being notified by the Department of the above designation, monitor on an ongoing basis pursuant to paragraphs (A) through (C) at each sampling site:

(A) For beta/photon emitters, quarterly by analyzing three monthly samples and averaging the results or by analyzing a composite of three monthly samples;

(B) For iodine–131, quarterly by analyzing a composite of five consecutive daily samples, unless the Department has directed the system to do more frequent monitoring based on a detection of iodine–131 in the sampled water; and

(C) For strontium–90 and tritium, annually by analyzing four quarterly samples and averaging the results or by analyzing a composite of four quarterly samples.

(2) If the gross beta particle activity minus the naturally–occurring potassium–40 beta particle activity at a sampling site has a running annual average (computed quarterly) less than or equal to 15 pCi/L (screening level), reduce the frequency of monitoring to a single sample for beta/photon emitters, iodine–131, strontium–90 and tritium once every three years (compliance monitoring period).

(d) If the gross beta particle activity minus the naturally–occurring potassium–40 beta particle activity exceeds a system's screening level pursuant to Subsection (b)(3) or (c)(2):

(1) The sample shall be analyzed to identify the primary radionuclides present and the doses shall be calculated and summed to determine compliance with the MCL for beta particle/photon radioactivity; and

(2) Except for strontium–90 and tritium for which the MCLs provide the average annual concentrations assumed to produce a total body or organ dose equivalent to 4 millirem/year, the concentration of manmade radionuclides shall be calculated on the basis of 2 liters per day drinking water intake using the 168 hour data list in "Maximum Permissible Body Burdens and Maximum Permissible Concentrations of Radionuclides in Air and in Water for Occupational Exposure," NBS (National Bureau of Standards) Handbook 69 as amended August 1963, U.S. Department of Commerce. (See Title 40, Code of Federal Regulations, section 141.66(d)(2).)

(e) If a system analyzes for naturally–occurring potassium–40 beta particle activity from the same or equivalent samples used for the gross beta particle activity analysis, the potassium–40 beta particle activity shall be calculated by multiplying elemental potassium concentrations (in mg/L) by a factor of 0.82 pCi/mg.

(f) A system required to monitor under this section may use environmental surveillance data (collected by the nuclear facility to detect any radionuclide contamination) in lieu of monitoring, subject to the Department's determination that the data is applicable to the system based on a review of the data and the hydrogeology of the area. In the event that there is a release of radioactivity or radioactive contaminants from the nuclear facility, a system using environmental surveillance data shall begin the monitoring in paragraph (b)(1) or (c)(1)(A) through (C), whichever is most applicable.

(g) If a sample result is greater than an MCL:

(1) Compliance shall be determined as follows:

(A) At each sampling site, based on the analytical results for that site. Any confirmation sample result shall be averaged with the initial result.

(B) Using all monitoring results collected under this article during the previous 12 months, even if more than the minimum required number of samples was collected.

(C) By a running annual average of four consecutive quarters of sampling results where quarterly monitoring is required, or by an annual sample when applicable for tritium and strontium–90. Averages shall be rounded to the same number of significant figures as the MCL for which compliance is being determined.

1. If any sample result will cause the annual average at any sample site to exceed the MCL, the system shall be out of compliance immediately after being notified of the result;

2. If a system has not analyzed the required number of samples, compliance shall be determined by the average of the samples collected at the site during the most recent 12 months; and

3. If a sample result is less than the DLR in 64443, zero shall be used to calculate the annual average.

(D) If the system can provide documentation that a sample was subject to sampling or analytical errors, the Department may invalidate the result based on its review of the documentation, the sampling result, and the historical sampling data.

(E) Each system shall ensure that the laboratory analyzing its samples collected for compliance with this article calculates and reports the sample–specific Minimum Detectable Activity at the 95% confidence level (MDA_{95}) along with the sample results. The MDA_{95} shall not exceed the DLR and is calculated as described in ANSI N42.23 Measurement and Associated Instrumentation Quality Assurance for Radiobioassay Laboratories, Appendix A.7.6. (September 10, 1995).

(2) If a sample has a gross beta/photon radioactivity level greater than the MCL:

(A) A system shall monitor monthly beginning the month after receiving a result greater than the MCL and continue monthly monitoring until an average of three consecutive monthly sample results does not exceed the MCL;

(B) The system shall then monitor quarterly until the average of four consecutive quarterly sample results does not exceed the MCL; and

(C) Subsequently, the system shall conduct the monitoring in paragraph (b)(1) or (c)(1)(A) through (C), whichever is most applicable.

NOTE: Authority cited: Sections 116325, 116350 and 116375, Health and Safety Code. Reference: Sections 116275, 116365 and 116385, Health and Safety Code; and Section 141.66(d)(2), Title 40, Code of Federal Regulations.

HISTORY

1. New NOTE filed 12-7-84 (Register 84, No. 49).
2. Amendment of subsection (c) filed 10-7-88; operative 1-1-89 (Register 88, No. 42).
3. Amendment of subsections (b) and (c), and renumbering of Table 5 to Table 4 filed 11-22-88; operative 12-22-88 (Register 88, No. 51).
4. Repealer and new section filed 5-12-2006; operative 6-11-2006 (Register 2006, No. 19).

Article 5.5. Primary Standards—Organic Chemicals

§ 64444. Maximum Contaminant Levels—Organic Chemicals.

The MCLs for the primary drinking water chemicals shown in Table 64444-A shall not be exceeded in the water supplied to the public.

Table 64444-A
Maximum Contaminant Levels
Organic Chemicals

Chemical	*Maximum Contaminant Level, mg/L*
(a) Volatile Organic Chemicals (VOCs)	
Benzene	0.001
Carbon Tetrachloride	0.0005
1,2-Dichlorobenzene	0.6
1,4-Dichlorobenzene	0.005
1,1-Dichloroethane	0.005
1,2-Dichloroethane	0.0005
1,1-Dichloroethylene	0.006
cis-1,2-Dichloroethylene	0.006
trans-1,2-Dichloroethylene	0.01
Dichloromethane	0.005
1,2-Dichloropropane	0.005
1,3-Dichloropropene	0.0005
Ethylbenzene	0.3
Methyl-*tert*-butyl ether	0.013
Monochlorobenzene	0.07
Styrene	0.1
1,1,2,2-Tetrachloroethane	0.001
Tetrachloroethylene	0.005
Toluene	0.15
1,2,4-Trichlorobenzene	0.005
1,1,1-Trichloroethane	0.200
1,1,2-Trichloroethane	0.005
Trichloroethylene	0.005
Trichlorofluoromethane	0.15
1,1,2-Trichloro-1,2,2-Trifluoroethane	1.2
Vinyl Chloride	0.0005
Xylenes	1.750*
(b) Non-Volatile Synthetic Organic Chemicals (SOCs)	
Alachlor	0.002
Atrazine	0.001
Bentazon	0.018
Benzo(a)pyrene	0.0002
Carbofuran	0.018
Chlordane	0.0001
2,4-D	0.07
Dalapon	0.2
Dibromochloropropane	0.0002
Di(2-ethylhexyl)adipate	0.4
Di(2-ethylhexyl)phthalate	0.004
Dinoseb	0.007
Diquat	0.02
Endothall	0.1
Endrin	0.002
Ethylene Dibromide	0.00005
Glyphosate	0.7
Heptachlor	0.00001
Heptachlor Epoxide	0.00001
Hexachlorobenzene	0.001
Hexachlorocyclopentadiene	0.05
Lindane	0.0002
Methoxychlor	0.03
Molinate	0.02
Oxamyl	0.05
Pentachlorophenol	0.001
Picloram	0.5
Polychlorinated Biphenyls	0.0005
Simazine	0.004
Thiobencarb	0.07
Toxaphene	0.003
2,3,7,8-TCDD (Dioxin)	$3x10^{-8}$
2,4,5-TP (Silvex)	0.05

*MCL is for either a single isomer or the sum of the isomers.

NOTE: Authority cited: Sections 100275, 116350 and 116365, Health and Safety Code. Reference: Sections 116365, 116385 and 116555, Health and Safety Code.

HISTORY

1. Repealer of section and renumbering and amendment of section 64445.5 to section 64441 filed 9-8-94 as an emergency; operative 9-8-94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1-6-95 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 90, No. 13.
2. Repealer of section and renumbering and amendment of section 64445.5 to section 64444 refiled 1-3-95 as an emergency; operative 1-3-95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-3-95 or emergency language will be repealed by operation of law on the following day.
3. Repealer of section and renumbering and amendment of former section 64444.5 to section 64444 refiled 4-26-95 as an emergency; operative 4-26-95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8-24-95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4-26-95 order including amendment of Table 64444-A transmitted to OAL 5-5-95 and filed 6-19-95 (Register 95, No. 25).
5. Editorial correction of Ethylene Dibromide entry (Register 95, No. 38).
6. Amendment of subsection (a) of Table and amendment of NOTE filed 4-17-2000; operative 5-17-2000 (Register 2000, No. 16).
7. Amendment of Table 64444-A filed 5-13-2003; operative 6-12-2003 (Register 2003, No. 20).

§ 64444.5. Maximum Contaminant Levels.

NOTE: Authority cited: Sections 208, 4021 and 4023.1, Health and Safety Code. Reference: Sections 4017, 4023.1 and 4024, Health and Safety Code.

HISTORY

1. New section filed 11-22-88; operative 12-22-88 (Register 89, No. 6).
2. New subsection (c) filed 1-26-89; operative 2-25-89 (Register 89, No. 6).
3. Amendment of subsection (c) filed 1-26-89; operative 2-25-89 (Register 89, No. 6).
4. Amendment of subsection (c) adding Ethylene Dibromide filed 1-26-89; operative 2-25-89 (Register 89, No. 6).
5. Amendment of subsection (c) filed 3-2-89; operative 4-1-89 (Register 89, No. 11).
6. Amendment of subsection (c) filed 3-6-89; operative 4-5-89 (Register 89, No. 11).
7. Amendment of subsection (c) (Table 5) filed 4-28-89; operative 5-28-89 (Register 89, No. 18).
8. Amendment of subsection (c) (Table 5) filed 6-26-89; operative 7-26-89 (Register 89, No. 26).
9. Amendment of subsection (c) (Table 5) filed 5-25-90; operative 7-1-90 (Register 90, No. 28).
10. Amendment of subsection (c) of Table 5 repealing the .0002 mcl for Dibromochloropropane filed 5-3-91 as an emergency; operative 5-3-91 (Register 91, No. 25). A Certificate of Compliance must be transmitted to OAL by 9-3-91 or emergency language will be repealed by operation of law on the following day.
11. Amendment of subsection (c) of Table 5 by adopting a .0002 mcl for 1,2-Dibromo-3-chloropropane filed 5-3-91 as an emergency; operative 5-3-91 (Register 91, No. 25). A Certificate of Compliance must be transmitted to OAL by 9-3-91 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 5-3-91 order transmitted to OAL 7-31-91 and filed 8-28-91 (Register 91, No. 51).
13. Renumbering of section 64444.5 to section 64444 filed 9-8-94 as an emergency; operative 9-8-94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1-6-95 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 91, No. 51.
14. Renumbering of section 64444.5 to section 64444 refiled 1-3-95 as an emergency; operative 1-3-95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-3-95 or emergency language will be repealed by operation of law on the following day.
15. Renumbering and amendment of former section 64444.5 to section 64444 refiled 4-26-95 as an emergency; operative 4-26-95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8-24-95 or emergency language will be repealed by operation of law on the following day.
16. Certificate of Compliance as to 4-26-95 order transmitted to OAL 5-5-95 and filed 6-19-95 (Register 95, No. 25).

§ 64445. Initial Sampling—Organic Chemicals.

(a) Each community and nontransient–noncommunity water system shall collect four quarterly samples during the year designated by the Department of each compliance period beginning with the compliance period starting January 1, 1993, from each water source at a site prior to any treatment and test for all applicable organic chemicals listed in Table 64444–A. The Department will designate the year based on historical monitoring frequency and laboratory capacity. For surface sources, the samples shall be taken at each water intake. For groundwater sources, the samples shall be taken at each well head. Where multiple intakes or wells draw from the same water supply, the Department will consider sampling of representative sources as a means of complying with this section. Selection of representative sources shall be based on evidence which includes a hydrogeological survey and sampling results. Wells shall be allowed to flow for a minimum of 15 minutes before sampling to insure that the samples reflect the water quality of the source. In place of water source samples, a supplier may collect samples at sites located at the entry points to the distribution system. The samples shall be representative of each source after treatment. The system shall collect each sample at the same sampling site, unless a change is approved by the Department.

(b) For any organic chemical added to Table 64444–A, the water system shall initiate the quarterly monitoring for that chemical in January of the calendar year after the effective date of the MCL.

(c) A water system may request approval from the Department to composite samples from up to five sampling sites, provided that the number of the sites to be composited is less than the ratio of the MCL to the DLR in Section 64445.1. Approval will be based on a review of three years of historical data, well construction and aquifer information for groundwater, and intake location, similarity of sources, and watershed characteristics for surface water. Compositing shall be done in the laboratory and analyses shall be conducted within 14 days of sample collection.

(1) Systems serving more than 3,300 persons shall composite only from sampling sites within a single system. Systems serving 3,300 persons or less may composite among different systems up to the 5–sample limit.

(2) If any organic chemical is detected in the composite sample, a follow–up sample shall be analyzed within 14 days from each sampling site included in the composite for the contaminants which were detected. The water supplier shall report the results to the Department within 14 days of the follow–up sample collection. If available, duplicates of the original sample taken from each sampling site used in the composite may be used instead of resampling.

(d) A water system may apply to the Department for a monitoring waiver for one or more of the organic chemicals on Table 64444–A in accordance with the following:

(1) A source may be eligible for a waiver if it can be documented that the chemical has not been previously used, manufactured, transported, stored, or disposed of within the watershed or zone of influence and, therefore, that the source can be designated nonvulnerable.

(2) If previous use of the chemical locally is unknown or the chemical is known to have been used previously and the source cannot be designated nonvulnerable pursuant to Paragraph (d)(1), it may still be eligible for a waiver based on a review related to susceptibility to contamination. The application to the Department for a waiver based on susceptibility shall include the following:

(A) Previous monitoring results;

(B) user population characteristics;

(C) proximity to sources of contamination;

(D) surrounding land uses;

(E) degree of protection of the water source;

(F) environmental persistence and transport of the chemical in water, soil and air;

(G) elevated nitrate levels at the water supply source; and

(H) historical system operation and maintenance data including previous Departmental inspection results.

(3) To apply for a monitoring waiver for VOCs, the water system shall have completed the initial four quarters of monitoring pursuant to subsection (a) or three consecutive years of monitoring with no VOCs detected. If granted a waiver for VOC monitoring, a system using groundwater shall collect a minimum of one sample from every sampling site every six years and a system using surface water shall not be required to monitor for the term of the waiver. The term of a VOC waiver shall not exceed three years.

(4) To obtain a monitoring waiver for one or more of the SOCs, the water system may apply before doing the initial round of monitoring or shall have completed three consecutive years of annual monitoring with no detection of the SOC(s) listed. If the system is granted a waiver for monitoring for one or more SOC(s), no monitoring for the waived SOC(s) shall be required for the term of the waiver, which shall not exceed three years.

(e) For water sources designated by a water supplier as standby sources, the water supplier shall sample each source for any organic chemical added to Table 64444–A once within the three–year period beginning in January of the calendar year after the effective date of the MCL.

(f) Water quality data collected prior to January 1, 1988, for VOCs, or January 1, 1990, for SOCs, and/or data collected in a manner inconsistent with this section shall not be used in the determination of compliance with the monitoring requirements for organic chemicals.

(g) Data (i.e., a single sample) collected in a manner consistent with this section after January 1, 1998 in which no MTBE is detected, along with a designation of nonvulnerability pursuant to subsection (d), may be used to satisfy the initial monitoring requirements in subsection (a). If the requirements are satisfied in this way by a water system, the system shall begin annual monitoring pursuant to Section 64445.1(b)(1).

(h) Water quality data collected in compliance with the monitoring requirements of this section by a wholesaler agency providing water to a public water system shall be acceptable for use by that system for compliance with the monitoring requirements of this section.

NOTE: Authority cited: Sections 100275 and 116375, Health and Safety Code. Reference: Sections 116385 and 116555, Health and Safety Code.

HISTORY

1. New section filed 11–22–88; operative 12–22–88 (Register 88, No. 51).
2. Amendment of subsections (a) and (c) filed 3–12–90; operative 4–11–90 (Register 90, No. 13).
3. Amendment of section heading and subsections (a)–(b), repealer of subsection (c) and new subsections (c)–(d)(4), redesignation of former subsection (d) to subsection (e), new subsections (f)–(h) and amendment of NOTE filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36).
4. Amendment of section heading and subsections (a)–(b), repealer of subsection (c) and new subsections (c)–(d)(4), redesignation of former subsection (d) to subsection (e), new subsections (f)–(h) and amendment of NOTE refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
5. Amendment refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 4–26–95 order including amendment of subsections (a), (c)–(c)(1), (d)(1)–(2), (d)(3) and (g) transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).
7. Amendment of subsections (d)(3), (e) and (g) and amendment of NOTE filed 4–17–2000; operative 5–17–2000 (Register 2000, No. 16).

§ 64445.1. Repeat Monitoring and Compliance—Organic Chemicals.

(a) For the purposes of this article, detection shall be defined by the detection limits for purposes of reporting (DLRs) in Table 64445.1–A:

Table 64445.1–A
Detection Limits for Purposes
of Reporting (DLRs) for
Regulated Organic Chemicals

Chemical	*Detection Limit for Purposes of Reporting (DLR) (mg/L)*
(a) All VOCs, except as listed	0.0005
Methyl–*tert*–butyl ether	0.003
Trichlorofluoromethane	0.005
1,1,2–Trichloro–1,2,2–Trifluoroethane	0.01
(b) SOCs	
Alachlor	0.001
Atrazine	0.0005
Bentazon	0.002
Benzo(a)pyrene	0.0001
Carbofuran	0.005
Chlordane	0.0001
2,4–D	0.01
Dalapon	0.01
Dibromochloropropane (DBCP)	0.00001
Di(2–ethylhexyl)adipate	0.005
Di(2–ethylhexyl)phthalate	0.003
Dinoseb	0.002
Diquat	0.004
Endothall	0.045
Endrin	0.0001
Ethylene dibromide (EDB)	0.00002
Glyphosate	0.025
Heptachlor	0.00001
Heptachlor epoxide	0.00001
Hexachlorobenzene	0.0005
Hexachlorocyclopentadiene	0.001
Lindane	0.0002
Methoxychlor	0.01
Molinate	0.002
Oxamyl	0.02
Pentachlorophenol	0.0002
Picloram	0.001
Polychlorinated biphenyls (PCBs) (as decachlorobiphenyl)	0.0005
Simazine	0.001
Thiobencarb	0.001
Toxaphene	0.001
2,3,7,8–TCDD (Dioxin)	$5x10^{-9}$
2,4,5–TP (Silvex)	0.001

(b) When organic chemicals are not detected pursuant to Table 64445.1–A.

(1) A water system, which has not detected any of the VOCs on Table 64444–A during the initial four quarters of monitoring, shall collect and analyze one sample annually. After a minimum of three years of annual sampling with no detection of a VOC in Table 64444–A, a system using groundwater may reduce the monitoring frequency to one sample during each compliance period. A system using surface water shall continue monitoring annually.

(2) A system serving more than 3,300 persons which has not detected an SOC on Table 64444–A during the initial four quarters of monitoring shall collect a minimum of two quarterly samples for that SOC in one year during the year designated by the Department of each subsequent compliance period. The year will be designated on the basis of historical monitoring frequency and laboratory capacity.

(3) A system serving 3,300 persons or less which has not detected an SOC on Table 64444–A during the initial four quarters of monitoring shall collect a minimum of one sample for that SOC during the year designated by the Department of each subsequent compliance period. The year will be designated on the basis of historical monitoring frequency and laboratory capacity.

(c) When organic chemicals are detected pursuant to Table 64445.1–A.

(1) Prior to proceeding with the requirements of paragraphs (c)(2) through (7), the water supplier may first confirm the analytical result, as follows: Within seven days from the notification of an initial finding from a laboratory reporting the presence of one or more organic chemicals in a water sample, the water supplier shall collect one or two additional sample(s) to confirm the initial finding. Confirmation of the initial finding shall be shown by the presence of the organic chemical in either the first or second additional sample, and the detected level of the contaminant for compliance purposes shall be the average of the initial and confirmation sample(s). The initial finding shall be disregarded if two additional samples do not show the presence of the organic chemical.

(2) If one or both of the related organic chemicals heptachlor and heptachlor epoxide are detected, subsequent monitoring shall analyze for both chemicals until there has been no detection of either chemical for one compliance period.

(3) A groundwater sampling site at which one or more of the following chemicals has been detected shall be monitored quarterly for vinyl chloride: trichloroethylene, tetrachloroethylene, 1,2–dichloroethane, 1,1,1–trichloroethane, cis–1,2–dichloroethylene, trans–1,2–dichloroethylene, or 1,1–dichloroethylene. If vinyl chloride is not detected in the first quarterly sample,the sampling site shall be monitored once for vinyl chloride during each compliance period.

(4) If the detected level of organic chemicals for any sampling site does not exceed any shown in Table 64444–A, the water source shall be resampled every three months and the samples analyzed for the detected chemicals. After one year of sampling an approved surface water system or two quarters of sampling a groundwater system, the Department will consider allowing the water supplier to reduce the sampling to once per year upon request, based on a review of previous sampling data. Systems shall monitor during the quarter(s) which previously yielded the highest analytical results.

(5) If the detected level of an organic chemical for any sampling site exceeds that listed in Table 64444–A, the water supplier shall report this information to the Department within 48 hours. Unless use of the contaminated source is discontinued, the water supplier shall resample the contaminated source as follows:

(A) Water systems serving more than 3,300 persons shall sample monthly for six months and shall submit the results to the Department as specified in Section 64451(a). A water source shall be deemed to be in compliance with Section 64444 if the average concentration of the initial finding, confirmation sample(s), and six subsequent monthly samples does not exceed the MCL shown in Table 64444–A. In such cases, the water supplier may reduce the sampling frequency to once every three months. If the average annual concentration of four quarterly samples exceeds the MCL the water source shall be deemed to be in violation of Section 64444. If any sample would cause the annual average to exceed the MCL, then the system is out of compliance immediately.

(B)Water systems serving 3,300 persons or less shall sample quarterly for one year and shall submit the results to the Department as specified in Section 64451(a). Compliance with Section 64444 shall be based on the average concentration of the initial finding, confirmation sample(s) if collected, and three subsequent quarterly samples. If any sample would cause the annual average to exceed the MCL, then the system is out of compliance immediately. If the average concentration does not exceed the MCL in Table 64444–A, the water supplier may reduce the sampling frequency to once every year during the quarter that previously yielded the highest analytical result. If the average concentration exceeds the MCL in Table 64444–A, the water system shall be deemed to be in violation of Section 64444. Subsequently, compliance shall be determined on the basis of a running annual average of the most recent four quarters of sample results.

(6) If any resample, other than those taken in accordance with (c)(5) of this section, of a water sampling site shows that the concentration of any organic chemical exceeds a MCL shown in Table 64444–A, the water supplier shall proceed in accordance with (c)(1) and (c)(4), or (c)(5).

(7) If an organic chemical is detected and the concentration exceeds ten times the MCL, the water supplier shall notify the Department within 48 hours of the receipt of the results and the contaminated site shall be resampled within 48 hours to confirm the result. The water supplier shall notify the Department of the result of the confirmation sample(s) within 24 hours of the receipt of the confirmation result(s).

(A) If the average concentration of the original and confirmation sample(s) is less than ten times the MCL, the water supplier shall proceed in accordance with subsection (c)(5).

(B) If the average concentration of the original and confirmation samples exceeds ten times the MCL, use of the contaminated water source shall immediately be discontinued. Such a water source shall not be returned to service without written approval from the Department

NOTE: Authority cited: Sections 100275, 116350 and 116375, Health and Safety Code. Reference: Sections 116385, 116450, 116460 and 116555, Health and Safety Code.

HISTORY

1. New section filed 11–22–88; operative 12–22–88 (Register 88, No. 51).
2. Amendment of section heading, text and NOTE filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
3. Amendment of section heading, text and NOTE refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
4. Amendment of section heading, text and NOTE refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 4–26–95 order including amendment of subsections (b)(1)–(b)(3), (c)(1)–(2), and (c)(4)–(c)(5)(B) transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).
6. Amendment of subsection (a) of Table and amendment of NOTE filed 4–17–2000; operative 5–17–2000 (Register 2000, No. 16).
7. Amendment of Table 64445.1–A and amendment of NOTE filed 5–13–2003; operative 6–12–2003 (Register 2003, No. 20).

§ 64445.2. Sampling of Treated Water Sources.

(a) Each water supplier utilizing treatment to comply with any MCL for an organic chemical listed in Table 64444–A shall collect monthly samples of the treated water at a site prior to the distribution system. If the treated water exceeds the MCL, the water supplier shall resample the treated water to confirm the result and report the result to the Department within 48 hours of the confirmation.

(b) The Department will consider requiring more frequent monitoring based on an evaluation of (1) the treatment process used, (2) the treatment effectiveness and efficiency, and (3) the concentration of the organic chemical in the water source.

NOTE: Authority cited: Sections 208 and 4023.3.3, Health and Safety Code. Reference: Sections 4017 and 4024, Health and Safety Code.

HISTORY

1. New section filed 11–22–88; operative 12–22–88 (Register 88, No. 51).
2. Amendment of section and NOTE filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
3. Amendment of section and NOTE refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
4. Amendment of section and NOTE refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).

Article 12. Best Available Technologies (BAT)

§ 64447. Best Available Technology (BAT)—Microbiological Contaminants.

The technologies identified by the Department as the best available technology, treatment techniques, or other means available for achieving compliance with the total coliform MCL are as follows:

(a) Protection of wells from coliform contamination by appropriate placement and construction;

(b) Maintenance of a disinfectant residual throughout the distribution system;

(c) Proper maintenance of the distribution system; and

(d) Filtration and/or disinfection of approved surface water, in compliance with Section 64650, or disinfection of groundwater.

NOTE: Authority cited: Section 4023.2, Health and Safety Code. Reference: Section 4021, Health and Safety Code.

HISTORY

1. Repealer of article 5.6 heading and section, new article 12, and renumbering and amendment of former section 64430 to section 64447 filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 88, No. 51.
2. Repealer of article 5.6 heading and section, new article 12, and renumbering and amendment of former section 64430 to section 64447 refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. Repealer of article 5.6 heading and section, new article 12, and renumbering and amendment of former section 64430 to section 64447 refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).

§ 64447.2. Best Available Technologies (BATs)—Inorganic Chemicals.

The technologies listed in Table 64447.2–A are the best available technology, treatment techniques, or other means available for achieving compliance with the MCLs in Table 64431–A for inorganic chemicals.

Table 64447.2–A
Best Available Technologies (BATs)
Inorganic Chemicals

Chemical	*Best Available Technologies (BATs)*
Aluminum	10
Antimony	2, 7
Arsenic	1, 2, 5, 6, 7
Asbestos	2, 3, 8
Barium	5, 6, 7, 9
Beryllium	1, 2, 5, 6, 7
Cadmium	2, 5, 6, 7
Chromium	2, 5, 6[a], 7
Cyanide	5, 7, 11
Fluoride	1
Mercury	2[b], 4, 6[b], 7[b]
Nickel	5, 6, 7
Nitrate	5, 7, 9
Nitrite	5, 7
Perchlorate	5, 12
Selenium	1, 2[c], 6, 7, 9
Thallium	1, 5

[a]BAT for Chromium III only.
[b]BAT only if influent mercury concentrations <10 ug/L.
[c]BAT for Selenium IV only.

Key to BATs in Table 64447.2–A:

1 = Activated Alumina

2 = Coagulation/Filtration (not BAT for systems <500 service connections)

3 = Direct and Diatomite Filtration

4 = Granular Activated Carbon

5 = Ion Exchange

6 = Lime Softening (not BAT for systems <500 service connections)

7 = Reverse Osmosis

8 = Corrosion Control

9 = Electrodialysis

10 = Optimizing treatment and reducing aluminum added

11 = Chlorine oxidation

12 = Biological fluidized bed reactor

NOTE: Authority cited: Sections 116293(b), 116370 and 131200, Health and Safety Code. Reference: Sections 116350 and 131051, Health and Safety Code.

HISTORY

1. New section filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or

emergency language will be repealed by operation of law on the following day. For prior history, see Register 88, No. 51.
2. New section refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order including amendment of section heading, first paragraph and Table 64447.2–A transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).
5. Amendment of Table and NOTE filed 4–17–2000; operative 5–17–2000 (Register 2000, No. 16).
6. Amendment of section and NOTE filed 9–18–2007; operative 10–18–2007 (Register 2007, No. 38).

§ 64447.3. Best Available Technologies (BATs) — Radionuclides.

The technologies listed in tables 64447.3–A, B and C are the best available technology, treatment technologies, or other means available for achieving compliance with the MCLs for radionuclides in tables 64442 and 64443.

Table 64447.3–A
Best Available Technologies (BATs)
Radionuclides

Radionuclide	*Best Available Technology*
Combined radium–226 and radium–228	Ion exchange, reverse osmosis, lime softening
Uranium	Ion exchange, reverse osmosis, lime softening, coagulation/filtration
Gross alpha particle activity	Reverse osmosis
Beta particle and photon radioactivity	Ion exchange, reverse osmosis

Table 64447.3–B
Best Available Technologies (BATs) and Limitations for Small Water Systems Radionuclides

Unit Technologies	*Limitations (see footnotes)*	*Operator Skill Level Required*	*Raw Water Quality Range and Considerations*
1. Ion exchange	(a)	Intermediate	All ground waters; competing anion concentrations may affect regeneration frequency
2. Point of use, ion exchange	(b)	Basic	All ground waters; competing anion concentrations may affect regeneration frequency
3. Reverse osmosis	(c)	Advanced	Surface waters usually require pre–filtration
4. Point of use, reverse osmosis	(b)	Basic	Surface waters usually require pre–filtration
5. Lime softening	(d)	Advanced	All waters
6. Green sand filtration	(e)	Basic	All ground waters; competing anion concentrations may affect regeneration frequency
7. Co–precipitation with barium sulfate	(f)	Intermediate to advanced	Ground waters with suitable quality
8. Electrodialysis/electrodialysis reversal	(g)	Basic to intermediate	All ground waters
9. Pre–formed hydrous manganese oxide filtration	(h)	Intermediate	All ground waters
10. Activated alumina	(a), (i)	Advanced	All ground waters; competing anion concentrations may affect regeneration frequency
11. Enhanced coagulation/filtration	(j)	Advanced	Can treat a wide range of water qualities

Limitation Footnotes:
[a] The regeneration solution contains high concentrations of the contaminant ions, which could result in disposal issues.
[b] When point of use devices are used for compliance, programs for long–term operation, maintenance, and monitoring shall be provided by systems to ensure proper performance.
[c] Reject water disposal may be an issue.
[d] The combination of variable source water quality and the complexity of the water chemistry involved may make this technology too complex for small systems.
[e] Removal efficiencies can vary depending on water quality.
[f] Since the process requires static mixing, detention basins, and filtration, this technology is most applicable to systems with sufficiently high sulfate levels that already have a suitable filtration treatment train in place.
[g] Applies to ionized radionuclides only.
[h] This technology is most applicable to small systems with filtration already in place.
[i] Chemical handling during regeneration and pH adjustment may be too difficult for small systems without an operator trained in these procedures.
[j] This would involve modification to a coagulation/filtration process already in place.

Table 64447.3–C
Best Available Technologies (BATs) for Small Water Systems by System Size
Radionuclides

Contaminant	*Compliance Technologies for System Size Categories Based On Population Served* 25–500	501–3,300	3,301–10,000
	Unit Technologies (Numbers Correspond to Table 64447.3–B)		
Combined radium–226 and radium–228	1, 2, 3, 4, 5, 6, 7, 8, 9	1, 2, 3, 4, 5, 6, 7, 8, 9	1, 2, 3, 4, 5, 6, 7, 8, 9
Gross alpha particle activity	3, 4	3, 4	3, 4
Beta particle activity and photon radioactivity	1, 2, 3, 4	1, 2, 3, 4	1, 2, 3, 4
Uranium	1, 2, 4, 10, 11	1, 2, 3, 4, 5, 10, 11	1, 2, 3, 4, 5, 10, 11

NOTE: Authority cited: Section 116370, Health and Safety Code. Reference: Section 116350, Health and Safety Code.

HISTORY

1. New section filed 5–12–2006; operative 6–11–2006 (Register 2006, No. 19).

§ 64447.4. Best Available Technologies (BATs)—Organic Chemicals.

The technologies listed in Table 64447.4–A are the best available technology, treatment technologies, or other means available for achieving compliance with the MCLs in Table 64444–A for organic chemicals.

Table 64447.4–A
Best Available Technologies (BATs)
Organic Chemicals

Chemical	*Best Available Technologies* Granular Activated Carbon	Packed Tower Aeration	Oxidation
(a) Volatile Organic Chemicals (VOCs)			
Benzene	X	X	
Carbon Tetrachloride	X	X	
1,2–Dichlorobenzene	X	X	
1,4–Dichlorobenzene	X	X	
1,1–Dichloroethane	X	X	
1,2–Dichloroethane	X	X	
1,1–Dichloroethylene	X	X	
cis–1,2–Dichloroethylene	X	X	
trans–1,2–Dichloroethylene	X	X	
Dichloromethane		X	
1,2–Dichloropropane	X	X	
1,3–Dichloropropene	X	X	
Ethylbenzene	X	X	
Methyl–*tert*–butyl ether		X	
Monochlorobenzene	X	X	
Styrene	X	X	
1,1,2,2–Tetrachloroethane	X	X	
Tetrachlorethylene	X	X	
Toluene	X	X	
1,2,4–Trichlorobenzene	X	X	
1,1,1–Trichloroethane	X	X	
1,1,2–Trichloroethane	X	X	
Trichlorofluoromethane	X	X	
Trichlorotrifluoroethane	X	X	
Trichloroethylene	X	X	
Vinyl Chloride		X	
Xylenes	X	X	
(b) Synthetic Organic Chemicals (SOCs)			
Alachlor	X	X	
Atrazine	X		
Bentazon		X	
Benzo(a)pyrene	X		
Carbofuran	X		
Chlordane	X		
2,4–D	X		
Dalapon	X		
Di(2–ethylhexyl)adipate	X	X	
Dinoseb	X		
Diquat	X		
1,2–Dibromo–3–chloropropane	X	X	
Di(2–ethylhexyl)phthalate	X		
Endothall	X		
Endrin	X		
Ethylene Dibromide	X	X	
Glyphosate			X
Heptachlor	X		
Heptachlor epoxide	X		
Hexachlorobenzene	X		
Hexachlorocyclopentadiene	X	X	
Lindane	X		
Methoxychlor	X		
Molinate	X		
Oxamyl	X		
Picloram	X		
Pentachlorophenol	X		
Polychlorinated Biphenyls	X		
Simazine	X		
Thiobencarb	X		
Toxaphene	X	X	
2,3,7,8–TCDD (Dioxin)	X		
2,4,5–TP (Silvex)	X		

NOTE: Authority cited: Section 116370, Health and Safety Code. Reference: Section 116350, Health and Safety Code.

HISTORY

1. New section filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 88, No. 51.
2. New section refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order including amendment of section heading and Table 64447.4–A transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).
5. Amendment of subsection (a) of Table and amendment of NOTE filed 4–17–2000; operative 5–17–2000 (Register 2000, No. 16).

Article 14. Treatment Techniques

§ 64448. Treatment Technique Requirements.

(a) A public water system which uses acrylamide and/or epichlorohydrin in drinking water treatment shall certify annually in writing to the Department that the combination of dose and monomer does not exceed the following levels:

(1) Acrylamide ..... 0.05% monomer in polyacrylamide dosed at 1 mg/L, or equivalent.

(2) Epichlorohydrin ..... 0.01% residual of epichlorohydrin dosed at 20 mg/L, or equivalent.

NOTE: Authority cited: Sections 208 and 4023.3, Health and Safety Code. Reference: Section 4024, Health and Safety Code.

HISTORY

1. New article 14 and section filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL

by 1-6-95 or emergency language will be repealed by operation of law on the following day.

2. New article 14 and section refiled 1-3-95 as an emergency; operative 1-3-95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-3-95 or emergency language will be repealed by operation of law on the following day.
3. New article 14 and section refiled 4-26-95 as an emergency; operative 4-26-95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8-24-95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4-26-95 order including amendment of subsections (a)(1)-(2) transmitted to OAL 5-5-95 and filed 6-19-95 (Register 95, No. 25).

Article 16. Secondary Drinking Water Standards

§ 64449. Secondary Maximum Contaminant Levels and Compliance.

(a) The secondary MCLs shown in Tables 64449-A and 64449-B shall not be exceeded in the water supplied to the public by community water systems.

Table 64449-A
Secondary Maximum Contaminant Levels
"Consumer Acceptance Contaminant Levels"

Constituents	*Maximum Contaminant Levels/Units*
Aluminum	0.2 mg/L
Color	15 Units
Copper	1.0 mg/L
Foaming Agents (MBAS)	0.5 mg/L
Iron	0.3 mg/L
Manganese	0.05 mg/L
Methyl-*tert*-butyl ether (MTBE)	0.005 mg/L
Odor—Threshold	3 Units
Silver	0.1 mg/L
Thiobencarb	0.001 mg/L
Turbidity	5 Units
Zinc	5.0 mg/L

Table 64449-B
Secondary Maximum Contaminant Levels —
"Consumer Acceptance Contaminant Level Ranges"

	Maximum Contaminant Level Ranges		
Constituent, Units	*Recommended*	*Upper*	*Short Term*
Total Dissolved Solids, mg/L	500	1,000	1,500
or			
Specific Conductance, µS/cm	900	1,600	2,200
Chloride, mg/L	250	500	600
Sulfate, mg/L	250	500	600

(b) Each community water system shall monitor its groundwater sources or distribution system entry points representative of the effluent of source treatment every three years and its approved surface water sources or distribution system entry points representative of the effluent of source treatment annually for the following:

(1) Secondary MCLs listed in Tables 64449-A and 64449-B; and

(2) Bicarbonate, carbonate, and hydroxide alkalinity, calcium, magnesium, sodium, pH, and total hardness.

(c) If the level of any constituent in Table 64449-A exceeds an MCL, the community water system shall proceed as follows:

(1) If monitoring quarterly, determine compliance by a running annual average of four quarterly samples;

(2) If monitoring less than quarterly, initiate quarterly monitoring and determine compliance on the basis of an average of the initial sample and the next three consecutive quarterly samples collected;

(3) If a violation has occurred (average of four consecutive quarterly samples exceeds an MCL), inform the Department when reporting pursuant to Section 64451;

(4) After one year of quarterly monitoring during which all the results are below the MCL and the results do not indicate any trend toward exceeding the MCL, the system may request the Department to allow a reduced monitoring frequency.

(d) For the constituents shown on Table 64449-B, no fixed consumer acceptance contaminant level has been established.

(1) Constituent concentrations lower than the recommended contaminant level are desirable for a higher degree of consumer acceptance.

(2) Constituent concentrations ranging to the upper contaminant level are acceptable if it is neither reasonable nor feasible to provide more suitable waters.

(3) Constituent concentrations ranging to the Short Term contaminant level are acceptable only for existing community water systems on a temporary basis pending construction of treatment facilities or development of acceptable new water sources.

(e) New services from community water systems serving water which carries constituent concentrations between the upper and short term contaminant levels shall be approved only:

(1) If adequate progress is being demonstrated toward providing water of improved mineral quality.

(2) For other compelling reasons approved by the Department.

(f) A community water system may apply to the Department for a waiver from the monitoring frequencies specified in subsection (b), if the system has conducted at least three rounds of monitoring (three periods for groundwater sources or three years for approved surface water sources) and these analytical results are less than the MCLs. The water system shall specify the basis for its request. A system with a waiver shall collect a minimum of one sample per source while the waiver is in effect and the term of the waiver shall not exceed one compliance cycle (i.e., nine years).

(g) Nontransient-noncommunity and transient-noncommunity water systems shall monitor their sources or distribution system entry points representative of the effluent of source treatment for bicarbonate, carbonate, and hydroxide alkalinity, calcium, iron, magnesium, manganese, pH, specific conductance, sodium, and total hardness at least once. In addition, nontransient-noncommunity water systems shall monitor for the constituents in Tables 64449-A and B at least once.

NOTE: Authority cited: Sections 100275 and 116375, Health and Safety Code. Reference: Sections 116385, 116555 and 116610, Health and Safety Code.

HISTORY

1. Renumbering and relocation of article 8 to article 16 and renumbering and amendment of former section 64473 to section 64449 filed 9-8-94 as an emergency; operative 9-8-94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1-6-95 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of subsection (a) Thiobencarb (Register 94, No. 50).
3. Renumbering and relocation of article 8 to article 16 and renumbering and amendment of former section 64473 to section 64449 refiled 1-3-95 as an emergency; operative 1-3-95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-3-95 or emergency language will be repealed by operation of law on the following day.
4. Renumbering and relocation of former article 8 to article 16 and renumbering and amendment of former section 64473 to section 64449 refiled 4-26-95 as an emergency; operative 4-26-95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8-24-95 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 4-26-95 order including amendment of section transmitted to OAL 5-5-95 and filed 6-19-95 (Register 95, No. 25).
6. Amendment of Table 64449-A, subsections (h) and (i) and NOTE filed 12-8-98; operative 1-7-99 (Register 98, No. 50).
7. Amendment filed 8-28-2006; operative 9-27-2006 (Register 2006, No. 35).

§ 64449.1. Applicability of Requirements.

NOTE: Authority cited: Sections 208, 4021 and 4023.3, Health and Safety Code. Reference: Sections 4017, 4024, 4026.3 and 4026.4, Health and Safety Code.

HISTORY

1. New section filed 3-12-90; operative 4-11-90 (Register 90, No. 13).
2. Renumbering and relocation of article 5.7 to article 17 and repealer of section filed 9-8-94 as an emergency; operative 9-8-94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1-6-95 or emergency language will be repealed by operation of law on the following day.
3. Renumbering and relocation of article 5.7 to article 17 and repealer of section refiled 1-3-95 as an emergency; operative 1-3-95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-3-95 or emergency language will be repealed by operation of law on the following day.
4. Renumbering and relocation of article 5.7 to article 17 and repealer of section refiled 4-26-95 as an emergency; operative 4-26-95 (Register 95, No. 17). A

Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).

§ 64449.2. Waivers for Secondary MCL Compliance.

(a) If the average of four consecutive quarters of sample results for a constituent that does not have a primary MCL is not greater than three times the secondary MCL or greater than the State Notification Level, an existing community water system is eligible to apply for a nine–year waiver of a secondary MCL in Table 64449–A, for the following:

(1) An existing source; or

(2) A new source that is being added to the existing water system, as long as:

(A) The source is not being added to expand system capacity for further development; and

(B) The concentration of the constituent of concern in the new source would not cause the average value of the constituent's concentration at any point in the water delivered by the system to increase by more than 20%.

(b) To apply for a waiver of a secondary MCL, the community water system shall conduct and submit a study to the Department within one year of violating the MCL that includes the following:

(1) The water system complaint log, maintained pursuant to section 64453(a), along with any other evidence of customer dissatisfaction, such as a log of calls to the county health Department;

(2) An engineering report, prepared by an engineer registered in California and with experienced in drinking water treatment, that evaluates all reasonable alternatives and costs for bringing the water system into MCL compliance and includes a recommendation for the most cost–effective and feasible approach;

(3) The results of a customer survey distributed to all the water system's bill–payingbilled customers that has first been approved by the Department based on whether it includes:

(A) Estimated costs to individual customers of the most cost–effective alternatives presented in the engineering report that are acceptable to the Department based on its review of their effectiveness and feasibility;

(B) The query: "Are you willing to pay for *(identify constituent)* reduction treatment?";

(C) The query: "Do you prefer to avoid the cost of treatment and live with the current water quality situation?"

(D) The statement: "If you do not respond to this survey, *(insert system name)* will assume that you are in support of the reduction treatment recommended by the engineering report."

(4) A brief report (agenda, list of attendees, and transcript) of a public meeting held by the water system to which customers were invited, and at which both the tabulated results of the customer survey and the engineering report were presented with a request for input from the public.

(c) A community water system may apply for a waiver for iron and/or manganese if, in addition to meeting the requirements in Subsection (b), an average of four consecutive quarter results for the source has not exceeded a State Notification Level for iron and/or manganese. In addition, the system shall include sequestering, as follows:

(1) As one of the alternatives evaluated in the Engineering Report;

(2) In the customer survey as a query: "Are you willing to pay for iron and/or manganese sequestering treatment?"

(d) Unless 50% or more of the bill–payinged customers respond to the survey, the community water system shall conduct another survey pursuant to Subsections (b) or (c) within three months from the date of the survey by sending the survey out to either all the customers again, or only the customers that did not respond to the survey. The water system shall not be eligible for a waiver until it achieves at least a 50% response rate on the survey.

(e) If the customer survey indicates that the percentage of bill–payinged customers that voted for constituent reduction treatment and the number of bill–paying customers that did not respond to the survey at all exceeds 50% of the total number of bill–paying customers, the community water system shall install treatment, except as provided in Subsection (f), within three years from the date the system completed the customer survey, pursuant to a schedule established by the Department.

(f) For iron and/or manganese MCL waiver applications, if the percentage of survey respondents that voted for constituent reduction treatment plus the percentage of survey respondents that voted for sequestering exceeds the percentage that voted to avoid the cost and maintain the current water quality situation, the community water system shall implement either constituent reduction treatment or sequestering, on the basis of which was associated with the higher percentage result. If the highest percentage result is for sequestering, the system shall submit a sequestering implementation and assessment plan to the Department that includes:

(1) A description of the pilot testing or other type of evaluation performed to determine the most effective sequestering agent for use in the system's water;

(2) The sequestering agent feed rate and the equipment to be used to insure that the rate is maintained for each source;

(3) An operations plan; and

(4) The projected cost of sequestering including capital, operations and maintenance costs.

(g) To apply for renewal of a waiver for a subsequent nine years, the system shall request approval from the Department at least six months prior to the end of the current waiver period. The renewal request shall include all monitoring and treatment operations data for the constituent for which the waiver had been granted and any related customer complaints submitted to the water system. Based on its review of the data and customer complaints, the Department may require the water system to conduct another customer survey pursuant to this section before making a determination on the waiver renewal.

NOTE: Authority cited: Sections 100275 and 116375, Health and Safety Code. Reference: Sections 116385, 116455, 116555 and 116610, Health and Safety Code.

HISTORY

1. New section filed 8–28–2006; operative 9–27–2006 (Register 2006, No. 35). For prior history, see Register 95, No. 25.

§ 64449.3. Repeat Sampling.

NOTE: Authority cited: Sections 208, 4021 and 4023.3, Health and Safety Code. Reference: Sections 4017, 4024, 4026.3 and 4026.4, Health and Safety Code.

HISTORY

1. Repealer filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
2. Repealer refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. Repealer refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).

§ 64449.4. Use of Sources that Exceed a Secondary MCL and Do Not Have a Waiver.

A source that exceeds one or more of the secondary MCLs in Table 64449–A and does not have a waiver may be used only if the source meets the requirements in Section 64414, and the community water system:

(a) Meters the source's monthly production and submits the results to the Department by the 10th day of the next month;

(b) Counts any part of a day as a full day for purposes of determining compliance with Section 64414(c);

(c) As a minimum, conducts public notification by including information on the source's use (dates, constituent levels, and reasons) in the Consumer Confidence Report (Sections 64480 through 64483);

(d) Provides public notice prior to use of the source by electronic media, publication in a local newspaper, and/or information in the customer billing, if the situation is such that the water system can anticipate the use of the source (e.g., to perform water system maintenance); and

(e) Takes corrective measures such as flushing after the source is used to minimize any residual levels of the constituent in the water distribution system.

NOTE: Authority cited: Sections 100275 and 116375, Health and Safety Code. Reference: Sections 116385, 116555 and 116610, Health and Safety Code.

HISTORY

1. New section filed 8–28–2006; operative 9–27–2006 (Register 2006, No. 35). For prior history, see Register 95, No. 25.

§ 64449.5. Distribution System Physical Water Quality.

(a) The water supplier shall determine the physical water quality in the distribution system. This determination shall be based on one or more of the following:

(1) Main flushing operations and flushing records.

(2) Consumer complaint records showing location, nature and duration of the physical water quality problem.

(3) Other pertinent data relative to physical water quality in the distribution system.

(b) If the Department determines that a water system does not have sufficient data on physical water quality in the distribution system to make the determination required in paragraph (a), the water supplier shall collect samples for the following general physical analyses: color, odor, and turbidity. Samples shall be collected from representative points in the distribution system:

(1) For community water systems with 200 to 1,000 service connections: one sample per month.

(2) For community water systems with greater than 1,000 service connections: one sample for every four bacteriological samples required per month.

(3) For community water systems with less than 200 service connections: as established by the local health officer or the Department.

(c) Odor samples required as a part of general physical analyses may be examined in the field as per Section 64415(b).

(d) The distribution system water of public water systems shall be free from significant amounts of particulate matter.

NOTE: Authority cited: Sections 208 and 4023.3, Health and Safety Code. Reference: Section 4024, Health and Safety Code.

HISTORY

1. Repealer of former section 64449.5 and renumbering and amendment of former section 64475 to section 64449.5 filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 90, No. 13.
2. Repealer of former section 64449.5 and renumbering and amendment of former section 64475 to section 64449.5 refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. Repealer of former section 64449.5 and renumbering and amendment of former section 64475 to section 64449.5 refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order including amendment of subsection (b) and NOTE transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).

§ 64449.7. Exemptions.

NOTE: Authority cited: Sections 208, 4021 and 4923.3, Health and Safety Code. Reference: Sections 4017, 4024, 4026.3 and 4026.4, Health and Safety Code.

HISTORY

1. New section filed 3–12–90; operative 4–11–90 (Register 90, No. 13).
2. Repealer filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
3. *Repealer refiled 1–3–95 as an emergency; operative* 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
4. Repealer refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).

Article 17. Special Monitoring Requirements for Unregulated Chemicals

§ 64450. Unregulated Chemicals — Monitoring. [Repealed]

NOTE: Authority cited: Sections 100275, 116350 and 116375, Health and Safety Code. Reference: Sections 116385 and 116555, Health and Safety Code.

HISTORY

1. Renumbering and relocation of article 5.7 to article 17 and new section filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
2. Renumbering and relocation of article 5.7 to article 17 and new section refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. Renumbering and relocation of former article 5.7 to article 17 and new section refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order including amendment of section transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).
5. Amendment of Table 64450–B and NOTE filed 1–14–97; operative 2–13–97 (Register 97, No. 3).
6. Amendment of first paragraph and Table 64450–B, new Table 64450–D and amendment of NOTE filed 12–8–98; operative 1–7–99 (Register 98, No. 50).
7. Amendment of Table 64450–B filed 4–17–2000; operative 5–17–2000 (Register 2000, No. 16).
8. Amendment of article heading, section heading and section filed 1–3–2001 as an emergency; operative 1–3–2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 1–3–2001 order transmitted to OAL 4–4–2001 and filed 4–30–2001 (Register 2001, No. 18).
10. Repealer filed 9–18–2007; operative 10–18–2007 (Register 2007, No. 38).

§ 64450.1. Monitoring—Unregulated Chemicals.

NOTE: Authority cited: Sections 100275, 116350 and 116375, Health and Safety Code. Reference: Sections 116375, 116385, 116400 and 116555, Health and Safety Code.

HISTORY

1. Renumbering and amendment of former section 64449.2 to new section 64450.1 filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
2. Renumbering and amendment of former section 64449.2 to new section 64450.1 refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. Renumbering and amendment of former section 64449.2 to new section 64450.1 refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order including amendment of subsections (b)–(c) and new subsections (c)(1)–(2) transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).
5. Amendment of subsections (a)–(b) and NOTE filed 12–8–98; operative 1–7–99 (Register 98, No. 50).
6. Repealer filed 1–3–2001 as an emergency; operative 1–3–2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–2001 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 1–3–2001 order transmitted to OAL 4–4–2001 and filed 4–30–2001 (Register 2001, No. 18).

§ 64451. Reporting Requirements.

NOTE: Authority cited: Sections 100275 and 116375, Health and Safety Code. Reference: Section 116385, Health and Safety Code.

HISTORY

1. New NOTE filed 12–7–84 (Register 84, No. 49).
2. Amendment filed 11–22–88; operative 12–22–88 (Register 88, No. 51).
3. Renumbering of article 6 to article 18 and repealer and new subsection (b) filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
4. Renumbering of article 6 to article 18 and repealer and new subsection (b) refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
5. Renumbering of article 6 to article 18 and amendment refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.

6. Certificate of Compliance as to 4–26–95 order including amendment of NOTE transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).
7. Amendment of subsections (a) and (b), new subsection (c) and amendment of NOTE filed 5–15–2001; operative 6–14–2001 (Register 2001, No. 20).
8. Change without regulatory effect amending subsection (c) filed 8–24–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 34).
9. Renumbering and amendment of former article 18 to article 19 and renumbering of former section 64451 to new section 64469 filed 8–2–2006; operative 9–1–2006 (Register 2006, No. 31).

§ 64453. Record Maintenance.

NOTE: Authority cited: Sections 208 and 4026, Health and Safety Code. Reference: Section 4024, Health and Safety Code.

HISTORY

1. New NOTE filed 12–7–84 (Register 84, No. 49).
2. Renumbering of former section 64453 to new section 64470 filed 8–2–2006; operative 9–1–2006 (Register 2006, No. 31).

Article 18. Notification of Water Consumers and the Department

§ 64461. Significant Rise in Bacterial Count Notification.

HISTORY

1. Repealer filed 7–1–92; operative 7–31–92 (Register 92, No. 28).
2. Renumbering of article 7 to article 19 filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
3. Renumbering of article 7 to article 19 refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
4. Renumbering of article 7 to article 19 refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).
6. Renumbering and amendment of former article 19 to article 18 filed 8–2–2006; operative 9–1–2006 (Register 2006, No. 31).

§ 64463. General Public Notification Requirements.

(a) Each public (community, nontransient–noncommunity and transient–noncommunity) water system shall give public notice to persons served by the water system pursuant to this article.

(b) Each water system required to give public notice shall submit the notice to the Department for approval prior to distribution or posting, unless otherwise directed by the Department.

(c) Each wholesaler shall give public notice to the owner or operator of each of its retailer systems. A retailer is responsible for providing public notice to the persons it serves. If the retailer arranges for the wholesaler to provide the notification, the retailer shall notify the Department prior to the notice being given.

(d) Each water system that has a violation of any of the regulatory requirements specified in subsections 64463.1(a), 64463.4(a) or 64463.7(a) in a portion of the distribution system that is physically or hydraulically isolated from other parts of the distribution system may limit distribution of the notice to only persons served by that portion of the system that is out of compliance, if the Department has granted written approval on the basis of a review of the water system and the data leading to the violation or occurrence for which notice is being given.

(e) Each water system shall give new customers public notice of any acute violation as specified in subsection 64463.1(a) that occurred within the previous thirty days, any continuing violation, the existence of a variance or exemption, and/or any other ongoing occurrence that the Department has determined poses a potential risk of adverse effects on human health [based on a review of estimated exposures and toxicological data associated with the contaminant(s)] and requires a public notice. Notice to new customers shall be given as follows:

(1) Community water systems shall give a copy of the most recent public notice prior to or at the time service begins; and

(2) Noncommunity water systems shall post the most recent public notice in conspicuous locations for as long as the violation, variance, exemption, or other occurrence continues.

NOTE: Authority cited: Sections 116325, 116350 and 116375, Health and Safety Code. Reference: Section 116450, Health and Safety Code.

HISTORY

1. New section filed 8–2–2006; operative 9–1–2006 (Register 2006, No. 31). For prior history, see Register 92, No. 22.

§ 64463.1. Tier 1 Public Notice.

(a) Each water system shall give public notice pursuant to this section and section 64465 if any of the following occurs:

(1) Violation of the total coliform MCL when:

(A) Fecal coliform or *E. coli* are present in the distribution system, or

(B) When any repeat sample tests positive for coliform and the water system fails to test for fecal coliforms or *E. coli* in the repeat sample;

(2) Violation of the MCL for nitrate, nitrite, or total nitrate and nitrite, or when the water system fails to take a confirmation sample within 24 hours of the system's receipt of the first sample showing an exceedance of the nitrate or nitrite MCL;

(3) Violation of a Chapter 17 treatment technique requirement resulting from a single exceedance of a maximum allowable turbidity level if:

(A) The Department determines after consultation with the water system and a review of the data that a Tier 1 public notice is required, or

(B) The consultation between the Department and the water system does not take place within 24 hours after the water system learns of the violation;

(4) Occurrence of a waterborne microbial disease outbreak, as defined in section 64651.91 or other waterborne emergency, a failure or significant interruption in water treatment processes, a natural disaster that disrupts the water supply or distribution system, or a chemical spill or unexpected loading of possible pathogens into the source water that has the potential for adverse effects on human health as a result of short–term exposure;

(5) Other violation or occurrence that has the potential for adverse effects on human health as a result of short–term exposure, as determined by the Department based on a review of all available toxicological and analytical data; or

(6) Violation of the MCL for perchlorate or when a system is unable to resample within 48 hours of the system's receipt of the first sample showing an exceedance of the perchlorate MCL as specified in section 64432.3(d)(3).

(b) As soon as possible within 24 hours after learning of any of the violations in subsection (a) or being notified by the Department that it has determined there is a potential for adverse effects on human health [pursuant to paragraph (a)(4), (5), or (6)], the water system shall:

(1) Give public notice pursuant to this section

(2) Initiate consultation with the Department within the same timeframe; and

(3) Comply with any additional public notice requirements that are determined by the consultation to be necessary to protect public health.

(c) Each water system shall deliver the public notice in a manner designed to reach residential, transient, and nontransient users of the water system and shall use, as a minimum, one of the following forms:

(1) Radio or television;

(2) Posting in conspicuous locations throughout the area served by the water system;

(3) Hand delivery to persons served by the water system; or

(4) Other method approved by the Department, based on the method's ability to inform water system users.

NOTE: Authority cited: Sections 116325, 116350, 116375 and 131200, Health and Safety Code. Reference: Sections 116450 and 131051, Health and Safety Code.

HISTORY

1. New section filed 8-2-2006; operative 9-1-2006 (Register 2006, No. 31). For prior history, see Register 2001, No. 17.
2. Amendment of subsections (a)(4)-(5), new subsection (a)(6) and amendment of subsection (b) and NOTE filed 9-18-2007; operative 10-18-2007 (Register 2007, No. 38).

§ 64463.2. Reporting and Notification of Unregulated Organic Chemicals Monitoring.

NOTE: Authority cited: Sections 208, 4021 and 4023.3, Health and Safety Code. Reference: Sections 4017, 4024 and 4028, Health and Safety Code.

HISTORY

1. New section filed 3-12-90; operative 4-11-90 (Register 90, No. 13).
2. Repealer filed 8-2-2006; operative 9-1-2006 (Register 2006, No. 31).

§ 64463.4. Tier 2 Public Notice.

(a) Each water system shall give public notice pursuant to this section if any of the following occurs:

(1) Any violation of the MCL and treatment technique requirements, except:

(A) Where a Tier 1 public notice is required under section 64463.1, or

(B) Where the Department determines that a Tier 1 public notice is required, based on potential health impacts and persistence of the violations;

(2) All violations of the monitoring and testing procedure requirements in sections 64421 through 64426.1, article 3 (Primary Standards — Bacteriological Quality), for which the Department determines that a Tier 2 rather than a Tier 3 public notice is required, based on potential health impacts and persistence of the violations;

(3) Other violations of the monitoring and testing procedure requirements in this chapter, and chapters 17 and 17.5, for which the Department determines that a Tier 2 rather than a Tier 3 public notice is required, based on potential health impacts and persistence of the violations; or

(4) Failure to comply with the terms and conditions of any variance or exemption in place.

(b) Each water system shall give the notice as soon as possible within 30 days after it learns of a violation or occurrence specified in subsection (a), except that the water system may request an extension of up to 60 days for providing the notice. This extension would be subject to the Department's written approval based on the violation or occurrence having been resolved and the Department's determination that public health and welfare would in no way be adversely affected. In addition, the water system shall:

(1) Maintain posted notices in place for as long as the violation or occurrence continues, but in no case less than seven days;

(2) Repeat the notice every three months as long as the violation or occurrence continues. Subject to the Department's written approval based on its determination that public health would in no way be adversely affected, the water system may be allowed to notice less frequently but in no case less than once per year. No allowance for reduced frequency of notice shall be given in the case of a total coliform MCL violation or violation of a Chapter 17 treatment technique requirement;

(3) For turbidity violations pursuant to subsections 64652.5(c)(2) and 64653(c), (d) and (f), as applicable, a water system shall consult with the Department as soon as possible within 24 hours after the water system learns of the violation to determine whether a Tier 1 public notice is required. If consultation does not take place within 24 hours, the water system shall give Tier 1 public notice within 48 hours after learning of the violation.

(c) Each water system shall deliver the notice, in a manner designed to reach persons served, within the required time period as follows:

(1) Unless otherwise directed by the Department in writing based on its assessment of the violation or occurrence and the potential for adverse effects on public health and welfare, community water systems shall give public notice by

(A) Mail or direct delivery to each customer receiving a bill including those that provide their drinking water to others (e.g., schools or school systems, apartment building owners, or large private employers), and other service connections to which water is delivered by the water system; and

(B) Use of one or more of the following methods to reach persons not likely to be reached by a mailing or direct delivery (renters, university students, nursing home patients, prison inmates, etc.):

1. Publication in a local newspaper;
2. Posting in conspicuous public places served by the water system, or on the Internet; or
3. Delivery to community organizations.

(2) Unless otherwise directed by the Department in writing based on its assessment of the violation or occurrence and the potential for adverse effects on public health and welfare, noncommunity water systems shall give the public notice by:

(A) Posting in conspicuous locations throughout the area served by the water system; and

(B) Using one or more of the following methods to reach persons not likely to be reached by a public posting:

1. Publication in a local newspaper or newsletter distributed to customers;
2. E-mail message to employees or students;
3. Posting on the Internet or intranet; or
4. Direct delivery to each customer.

NOTE: Authority cited: Sections 116325, 116350 and 116375, Health and Safety Code. Reference: Section 116450, Health and Safety Code.

HISTORY

1. New section filed 8-2-2006; operative 9-1-2006 (Register 2006, No. 31).

§ 64463.7. Tier 3 Public Notice.

(a) Each water system shall give public notice pursuant to this section if any of the following occurs:

(1) Monitoring violations;

(2) Failure to comply with a testing procedure, except where a Tier 1 public notice is required pursuant to section 64463.1 or the Department determines that a Tier 2 public notice is required pursuant to section 64463.4; or

(3) Operation under a variance or exemption.

(b) Each water system shall give the public notice within one year after it learns of the violation or begins operating under a variance or exemption.

(1) The water system shall repeat the public notice annually for as long as the violation, variance, exemption, or other occurrence continues.

(2) Posted public notices shall remain in place for as long as the violation, variance, exemption, or other occurrence continues, but in no case less than seven days.

(3) Instead of individual Tier 3 public notices, a water system may use an annual report detailing all violations and occurrences for the previous twelve months, as long as the water system meets the frequency requirements specified in this subsection.

(c) Each water system shall deliver the notice in a manner designed to reach persons served within the required time period, as follows:

(1) Unless otherwise directed by the Department in writing based on its assessment of the violation or occurrence and the potential for adverse effects on public health and welfare, community water systems shall give public notice by

(A) Mail or direct delivery to each customer receiving a bill including those that provide their drinking water to others (e.g., schools or school systems, apartment building owners, or large private employers), and other service connections to which water is delivered by the water system; and

(B) Use of one or more of the following methods to reach persons not likely to be reached by a mailing or direct delivery (renters, university students, nursing home patients, prison inmates, etc.):

1. Publication in a local newspaper;
2. Posting in conspicuous public places served by the water system, or on the Internet; or

3. Delivery to community organizations.

(2) Unless otherwise directed by the Department in writing based on its assessment of the violation or occurrence and the potential for adverse effects on public health and welfare, noncommunity water systems shall give the public notice by:

(A) Posting in conspicuous locations throughout the area served by the water system; and

(B) Using one or more of the following methods to reach persons not likely to be reached by a posting:

1. Publication in a local newspaper or newsletter distributed to customers;

2. E-mail message to employees or students;

3. Posting on the Internet or intranet; or

4. Direct delivery to each customer.

(d) Community and nontransient-noncommunity water systems may use the Consumer Confidence Report pursuant to sections 64480 through 64483, to meet the initial and repeat Tier 3 public notice requirements in subsection 64463.7(b), as long as the Report meets the following:

(1) Is given no later than one year after the water system learns of the violation or occurrence;

(2) Includes the content specified in section 64465; and

(3) Is distributed pursuant to paragraph(b)(1) and (2) or subsection (c).

NOTE: Authority cited: Sections 116325, 116350 and 116375, Health and Safety Code. Reference: Section 116450, Health and Safety Code.

HISTORY

1. New section filed 8-2-2006; operative 9-1-2006 (Register 2006, No. 31).

§ 64464.1. Notification Methods.

NOTE: Authority cited: Sections 208, 4023.3 and 4028, Health and Safety Code. Reference: Sections 4010-4039.6, Health and Safety Code.

HISTORY

1. New section filed 5-27-92; operative 6-26-92 (Register 92, No. 22).
2. Repealer filed 8-2-2006; operative 9-1-2006 (Register 2006, No. 31).

§ 64464.3. Public Notification—Water Quality Failure.

NOTE: Authority cited: Sections 100275, 116375 and 116450, Health and Safety Code. Reference: Sections 116270-116751, Health and Safety Code.

HISTORY

1. New section filed 5-27-92; operative 6-26-92 (Register 92, No. 22).
2. Amendment of subsection (a)(1), redesignation of subsections (b)(1)(A)-(D), amendment of subsection (b)(2), redesignation of subsections (b)(2)(A)-(C) and redesignation and amendment of subsection (b)(2)(D) filed 9-8-94 as an emergency; operative 9-8-94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1-6-95 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsection (a)(1), redesignation of subsections (b)(1)(A)-(D), amendment of subsection (b)(2), redesignation of subsections (b)(2)(A)-(C) and redesignation and amendment of subsection (b)(2)(D) refiled 1-3-95 as an emergency; operative 1-3-95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-3-95 or emergency language will be repealed by operation of law on the following day.
4. Amendment refiled 4-26-95 as an emergency; operative 4-26-95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8-24-95 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 4-26-95 order including amendment of subsection (a)(1) transmitted to OAL 5-5-95 and filed 6-19-95 (Register 95, No. 25).
6. Amendment of subsection (a)(1) and NOTE filed 5-18-2006; operative 6-17-2006 (Register 2006, No. 20).
7. Repealer filed 8-2-2006; operative 9-1-2006 (Register 2006, No. 31).

§ 64464.6. Public Notification—Procedural Failure.

NOTE: Authority cited: Sections 100275, 116425 and 116450, Health and Safety Code. Reference: Sections 116270-116751, Health and Safety Code.

HISTORY

1. New section filed 5-27-92; operative 6-26-92 (Register 92, No. 22).
2. Amendment of subsection (a)(1), redesignation of subsections (b)(1)(A)-(D), amendment of subsection (b)(2), redesignation of subsections (b)(2)(A)-(C) and redesignation and amendment of subsection (b)(2)(D) filed 9-8-94 as an emergency; operative 9-8-94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1-6-95 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsection (a)(1), redesignation of subsections (b)(1)(A)-(D), amendment of subsection (b)(2), redesignation of subsections (b)(2)(A)-(C) and redesignation and amendment of subsection (b)(2)(D) refiled 1-3-95 as an emergency; operative 1-3-95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-3-95 or emergency language will be repealed by operation of law on the following day.
4. Amendment refiled 4-26-95 as an emergency; operative 4-26-95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8-24-95 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 4-26-95 order transmitted to OAL 5-5-95 and filed 6-19-95 (Register 95, No. 25).
6. Amendment of subsection (a)(1) and NOTE filed 5-18-2006; operative 6-17-2006 (Register 2006, No. 20).
7. Repealer filed 8-2-2006; operative 9-1-2006 (Register 2006, No. 31).

§ 64465. Public Notice Content and Format.

(a) Each public notice given pursuant to this article, except Tier 3 public notices for variances and exemptions pursuant to subsection (b), shall contain the following:

(1) A description of the violation or occurrence, including the contaminant(s) of concern, and (as applicable) the contaminant level(s);

(2) The date(s) of the violation or occurrence;

(3) Any potential adverse health effects from the violation or occurrence, including the appropriate standard health effects language from appendices 64465-A through G;

(4) The population at risk, including subpopulations particularly vulnerable if exposed to the contaminant in drinking water;

(5) Whether alternative water supplies should be used;

(6) What actions consumers should take, including when they should seek medical help, if known;

(7) What the water system is doing to correct the violation or occurrence;

(8) When the water system expects to return to compliance or resolve the occurrence;

(9) The name, business address, and phone number of the water system owner, operator, or designee of the water system as a source of additional information concerning the public notice;

(10) A statement to encourage the public notice recipient to distribute the public notice to other persons served, using the following standard language: "Please share this information with all the other people who drink this water, especially those who may not have received this public notice directly (for example, people in apartments, nursing homes, schools, and businesses). You can do this by posting this public notice in a public place or distributing copies by hand or mail"; and

(11) For a water system with a monitoring and testing procedure violation, this language shall be included: "We are required to monitor your drinking water for specific contaminants on a regular basis. Results of regular monitoring are an indicator of whether or not your drinking water meets health standards. During [*compliance period dates*], we *['did not monitor or test' or 'did not complete all monitoring or testing']* for *[contaminant(s)]*, and therefore, cannot be sure of the quality of your drinking water during that time."

(b) A Tier 3 public notice for a water system operating under a variance or exemption shall include the elements in this subsection. If a water system has violated its variance or exemption conditions, the public notice shall also include the elements in subsection (a).

(1) An explanation of the reasons for the variance or exemption;

(2) The date on which the variance or exemption was issued;

(3) A brief status report on the steps the water system is taking to install treatment, find alternative sources of water, or otherwise comply with the terms and schedules of the variance or exemption; and

(4) A notice of any opportunity for public input in the review of the variance or exemption.

(c) Each public notice given pursuant to this article shall contain information in Spanish regarding the importance of the notice, or contain a telephone number or address where Spanish-speaking residents may contact the water system to obtain a translated copy of the public notice or assistance in Spanish. For each non-English speaking group other than Spanish-speaking that exceeds 1,000 residents or 10% of the residents in the community served, whichever is less, the public notice shall:

(1) Contain information in the appropriate language(s) regarding the importance of the notice, or

(2) Contain a telephone number or address where such residents may contact the water system to obtain a translated copy of the notice or assistance in the appropriate language.

(d) Each public notice given pursuant to this article shall:

(1) Be displayed such that it catches people's attention when printed or posted and be formatted in such a way that the message in the public notice can be understood at the eighth–grade level;

(2) Not contain technical language beyond an eighth–grade level or print smaller than 12 point; and

(3) Not contain language that minimizes or contradicts the information being given in the public notice.

Appendix 64465–A. Health Effects Language Microbiological Contaminants.

Contaminant	*Health Effects language*
Total Coliform	Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially–harmful, bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems.
Fecal coliform/*E.Coli*	Fecal coliforms and *E. coli* are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short–term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.
Turbidity	Turbidity has no health effects. However, high levels of turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease–causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.

Appendix 64465–B. Health Effects Language Surface Water Treatment

Contaminant	*Health Effects language*
Giardia lamblia Viruses Heterotrophic plate count bacteria Legionella Cryptosporidium	Inadequately treated water may contain disease–causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.

Appendix 64465–C. Health Effects Language Radioactive Contaminants.

Contaminant	*Health Effects Language*
Gross Beta particle activity	Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. Some people who drink water containing beta and photon emitters in excess of the MCL over many years may have an increased risk of getting cancer.
Strontium–90	Some people who drink water containing strontium–90 in excess of the MCL over many years may have an increased risk of getting cancer.
Tritium	Some people who drink water containing tritium in excess of the MCL over many years may have an increased risk of getting cancer.
Gross Alpha particle activity	Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.
Combined Radium 226/228	Some people who drink water containing radium 226 or 228 in excess of the MCL over many years may have an increased risk of getting cancer.
Uranium	Some people who drink water containing uranium in excess of the MCL over many years may have kidney problems or an increased risk of getting cancer.

Appendix 64465–D. Health Effects Language Inorganic Contaminants.

Contaminant	*Health Effects Language*
Aluminum	Some people who drink water containing aluminum in excess of the MCL over many years may experience short–term gastrointestinal tract effects.
Antimony	Some people who drink water containing antimony in excess of the MCL over many years may experience increases in blood cholesterol and decreases in blood sugar.
Arsenic	Some people who drink water containing arsenic in excess of the MCL over many years may experience skin damage or circulatory system problems, and may have an increased risk of getting cancer.
Asbestos	Some people who drink water containing asbestos in excess of the MCL over many years may have an increased risk of developing benign intestinal polyps.
Barium	Some people who drink water containing barium in excess of the MCL over many years may experience an increase in blood pressure.
Beryllium	Some people who drink water containing beryllium in excess of the MCL over many years may develop intestinal lesions.
Cadmium	Some people who drink water containing cadmium in excess of the MCL over many years may experience kidney damage.
Chromium	Some people who use water containing chromium in excess of the MCL over many years may experience allergic dermatitis.
Copper	Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time may experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years may suffer liver or kidney damage. People with Wilson's Disease should consult their personal doctor.
Cyanide	Some people who drink water containing cyanide in excess of the MCL over many years may experience nerve damage or thyroid problems.
Fluoride	*For the Consumer Confidence Report:* Some people who drink water containing fluoride in excess of the federal MCL of 4 mg/L over many years may get bone disease, including pain and tenderness of the bones. Children who drink water containing fluoride in excess of the state MCL of 2 mg/L may get mottled teeth. *For a Public Notice:* This is an alert about your drinking water and a cosmetic dental problem that might affect children under nine years of age. At low levels, fluoride can help prevent cavities, but children drinking water containing more than 2 milligrams per liter (mg/L) of fluoride may develop cosmetic discoloration of their permanent teeth (dental fluorosis). The drinking water provided by your community water system [*name*] has a fluoride concentration of [*insert value*] mg/L. Dental fluorosis may result in a brown staining and/or pitting of the permanent teeth. This problem occurs only in developing teeth, before they erupt from the gums. Children under nine should be provided with alternative sources of drinking water or water that has been treated to remove the fluoride to avoid the possibility of staining and pitting of their permanent teeth. You may also want to contact your dentist about proper use by young children of fluoride–containing products. Older children and adults may safely drink the water. Drinking water containing more than 4 mg/L of fluoride can increase your risk of developing bone disease. For more information, please call [*water system contact name*] of [*water system name*] at [*phone number*]. Some home water treatment units are also available to remove fluoride from drinking water. To learn more about available home water treatment units, you may call the California Department of Public Health's Water Treatment Device Unit at (916) 449–5600.

Contaminant	*Health Effects Language*
Lead	Infants and children who drink water containing lead in excess of the action level may experience delays in their physical or mental development. Children may show slight deficits in attention span and learning abilities. Adults who drink this water over many years may develop kidney problems or high blood pressure.
Mercury	Some people who drink water containing mercury in excess of the MCL over many years may experience mental disturbances, or impaired physical coordination, speech and hearing.
Nickel	Some people who drink water containing nickel in excess of the MCL over many years may experience liver and heart effects.
Nitrate	Infants below the age of six months who drink water containing nitrate in excess of the MCL may quickly become seriously ill and, if untreated, may die because high nitrate levels can interfere with the capacity of the infant's blood to carry oxygen. Symptoms include shortness of breath and blueness of the skin. High nitrate levels may also affect the oxygen–carrying ability of the blood of pregnant women.
Nitrite	Infants below the age of six months who drink water containing nitrite in excess of the MCL may become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blueness of the skin.
Perchlorate	Perchlorate has been shown to interfere with uptake of iodide by the thyroid gland, and to thereby reduce the production of thyroid hormones, leading to adverse affects associated with inadequate hormone levels. Thyroid hormones are needed for normal prenatal growth and development of the fetus, as well as for normal growth and development in the infant and child. In adults, thyroid hormones are needed for normal metabolism and mental function.
Selenium	Selenium is an essential nutrient. However, some people who drink water containing selenium in excess of the MCL over many years may experience hair or fingernail losses, numbness in fingers or toes, or circulation system problems.
Thallium	Some people who drink water containing thallium in excess of the MCL over many years may experience hair loss, changes in their blood, or kidney, intestinal, or liver problems.

Appendix 64465–E. Health Effects Language Volatile Organic Contaminants.

Contaminant	*Health Effects Language*
Benzene	Some people who use water containing benzene in excess of the MCL over many years may experience anemia or a decrease in blood platelets, and may have an increased risk of getting cancer.
Carbon Tetrachloride	Some people who use water containing carbon tetrachloride in excess of the MCL over many years may experience liver problems and may have an increased risk of getting cancer.
1,2–Dichlorobenzene	Some people who drink water containing 1,2–dichlorobenzene in excess of the MCL over many years may experience liver, kidney, or circulatory system problems.
1,4–Dichlorobenzene	Some people who use water containing 1.4–dichlorobenzenein in excess of the MCL over many years may experience anemia, liver, kidney, or spleen damage, or changes in their blood.
1,1–Dichloroethane	Some people who use water containing 1,1–dichloroethane in excess of the MCL over many years may experience nervous system or respiratory problems.
1,2–Dichloroethane	Some people who use water containing 1,2– dichloroethane in excess of the MCL over many years may have an increased risk of getting cancer.
1,1–Dichloroethylene	Some people who use water containing 1,1–dichloroethylene in excess of the MCL over many years may experience liver problems.
cis–1,2–Dichloroethylene	Some people who use water containing cis–1,2–dichloroethylene in excess of the MCL over many years may experience liver problems.
trans–1,2–Dichloroethylene	Some people who drink water containing trans–1,2–dichloroethylene in excess of the MCL over many years may experience liver problems.
Dichloromethane	Some people who drink water containing dichloromethane in excess of the MCL over many years may experience liver problems and may have an increased risk of getting cancer.
1,2–Dichloropropane	Some people who use water containing 1,2–dichloropropane in excess of the MCL over many years may have an increased risk of getting cancer.
1,3–Dichloropropene	Some people who use water containing 1,3–dichloropropene in excess of the MCL over many years may have an increased risk of getting cancer.
Ethylbenzene	Some people who use water containing ethylbenzene in excess of the MCL over many years may experience liver or kidney problems.
Methyl–tert–butyl ether	Some people who use water containing methyl–tert–butyl ether in excess of the MCL over many years may have an increased risk of getting cancer.
Monochlorobenzene	Some people who use water containing monochlorobenzene in excess of the MCL over many years may experience liver or kidney problems.
Styrene	Some people who drink water containing styrene in excess of the MCL over many years may experience liver, kidney, or circulatory system problems.
1,1,2,2–Tetrachloroethane	Some people who drinking water containing 1,1,2,2–tetrachloroethane in excess of the MCL over many years may experience liver or nervous system problems.
Tetrachloroethylene	Some people who use water containing tetrachloroethylene in excess of the MCL over many years may experience liver problems, and may have an increased risk of getting cancer.
1,2,4–Trichlorobenzene	Some people who use water containing 1,2,4–trichlorobenzene in excess of the MCL over many years may experience adrenal gland changes.
1,1,1,–Trichloroethane	Some people who use water containing 1,1,1–trichloroethane in excess of the MCL over many years may experience liver, nervous system, or circulatory system problems.
1,1,2–Trichloroethane	Some people who use water containing 1,1,2– trichloroethane in excess of the MCL over many years may experience liver, kidney, or immune system problems.
Trichloroethylene (TCE)	Some people who use water containing trichloroethylene in excess of the MCL over many years may experience liver problems and may have an increased risk of getting cancer.
Toluene	Some people who use water containing toluene in excess of the MCL over many years may experience nervous system, kidney, or liver problems.
Trichlorofluoromethane	Some people who use water containing trichlorofluoromethane in excess of the MCL over many years may experience liver problems.
1,1,2–Trichloro–1,2,2–trifluoroethane	Some people who use water containing 1,1,2–trichloro–1,2,2–trifluoroethane in excess of the MCL over many years may experience liver problems.
Vinyl Chloride	Some people who use water containing vinyl chloride in excess of the MCL over many years may have an increased risk of getting cancer.
Xylenes	Some people who use water containing xylenes in excess of the MCL over many years may experience nervous system damage.

Appendix 64465–F. Health Effects Language Synthetic Organic Contaminants.

Contaminant	*Health Effects Language*
2,4–D	Some people who use water containing the weed killer 2,4–D in excess of the MCL over many years may experience kidney, liver, or adrenal gland problems.
2,4,5–TP (Silvex)	Some people who drink water containing Silvex in excess of the MCL over many years may experience liver problems.

Contaminant	*Health Effects Language*
Alachlor	Some people who use water containing alachlor in excess of the MCL over many years may experience eye, liver, kidney, or spleen problems, or experience anemia, and may have an increased risk of getting cancer.
Atrazine	Some people who use water containing atrazine in excess of the MCL over many years may experience cardiovascular system problems or reproductive difficulties.
Bentazon	Some people who drink water containing bentazon in excess of the MCL overy many year may experience prostate and gastrointestinal effects.
Benzo(a)pyrene [PAH]	Some people who use water containing benzo(a)pyrene in excess of the MCL over many years may experience reproductive difficulties and may have an increased risk of getting cancer.
Carbofuran	Some people who use water containing carbofuran in excess of the MCL over many years may experience problems with their blood, or nervous or reproductive system problems.
Chlordane	Some people who use water containing chlordane in excess of the MCL over many years may experience liver or nervous system problems, and may have an increased risk of getting cancer.
Dalapon	Some people who drink water containing dalapon in excess of the MCL over many years may experience minor kidney changes.
Dibromochloropropane (DBCP)	Some people who use water containing DBCP in excess of the MCL over many years may experience reproductive difficulties and may have an increased risk of getting cancer.
Di (2–ethylhexyl) adipate	Some people who drink water containing di(2–ethylhexyl) adipate in excess of the MCL over many years may experience weight loss, liver enlargement, or possible reproductive difficulties.
Di (2–ethylhexyl) phthalate	Some people who use water containing di(2–ethylhexyl) phthalate well in excess of the MCL over many years may experience liver problems or reproductive difficulties, and may have an increased risk of getting cancer.
Dinoseb	Some people who drink water containing dinoseb in excess of the MCL over many years may experience reproductive difficulties.
Dioxin (2,3,7,8–TCDD):	Some people who use water containing dioxin in excess of the MCL over many years may experience reproductive difficulties and may have an increased risk of getting cancer.
Diquat	Some people who drink water containing diquat in excess of the MCL over many years may get cataracts.
Endothall	Some people who drink water containing endothall in excess of the MCL over many years may experience stomach or intestinal problems.
Endrin	Some people who drink water containing endrin in excess of the MCL over many years may experience liver problems.
Ethylene dibromide (EDB)	Some people who use water containing ethylene dibromide in excess of the MCL over many years may experience liver, stomach, reproductive system, or kidney problems, and may have an increased risk of getting cancer.
Glyphosate	Some people who drink water containing glyphosate in excess of the MCL over many years may experience kidney problems or reproductive difficulties.
Heptachlor	Some people who use water containing heptachlor in excess of the MCL over many years may experience liver damage and may have an increased risk of getting cancer.
Heptachlor epoxide	Some people who use water containing heptachlor epoxide in excess of the MCL over many years may experience liver damage, and may have an increased risk of getting cancer.
Hexachlorobenzene	Some people who drink water containing hexachlorobenzene in excess of the MCL over many years may experience liver or kidney problems, or adverse reproductive effects, and may have an increased risk of getting cancer.
Hexachlorocyclopentadiene	Some people who use water containing hexachlorocyclopentadiene in excess of the MCL over many years may experience kidney or stomach problems.
Lindane	Some people who drink water containing lindane in excess of the MCL over many years may experience kidney or liver problems.
Methoxychlor	Some people who drink water containing methoxychlor in excess of the MCL over many years may experience reproductive difficulties.
Molinate (Ordram)	Some people who use water containing molinate in excess of the MCL over many years may experience reproductive effects.
Oxamyl [Vydate]:	Some people who drink water containing oxamyl in excess of the MCL over many years may experience slight nervous system effects.
PCBs [Polychlorinated biphenyls]:	Some people who drink water containing PCBs in excess of the MCL over many years may experience changes in their skin, thymus gland problems, immune deficiencies, or reproductive or nervous system difficulties, and may have an increased risk of getting cancer.
Pentachlorophenol	Some people who use water containing pentachlorophenol in excess of the MCL over many years may experience liver or kidney problems, and may have an increased risk of getting cancer.
Picloram	Some people who drink water containing picloram in excess of the MCL over many years may experience liver problems.
Simazine	Some people who use water containing simazine in excess of the MCL over many years may experience blood problems.
Thiobencarb	Some people who use water containing thiobencarb in excess of the MCL over many years may experience body weight and blood effects.
Toxaphene	Some people who use water containing toxaphene in excess of the MCL over many years may experience kidney, liver, or thyroid problems, and may have an increased risk of getting cancer.

Appendix 64465–G. Health Effects Language Disinfection Byproducts, Byproduct Precursors, and Disinfectant Residuals

Contaminant	*Health Effects language*
TTHMs [Total Trihalomethanes]:	Some people who drink water containing trihalomethanes in excess of the MCL over many years may experience liver, kidney, or central nervous system problems, and may have an increased risk of getting cancer.
Haloacetic Acids	Some people who drink water containing halocetic acids in excess of the MCL over many years may have an increased risk of getting cancer.
Bromate	Some people who drink water containing bromate in excess of the MCL over many years may have an increased risk of getting cancer.
Chloramines	Some people who use water containing chloramines well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chloramines well in excess of the MRDL could experience stomach discomfort or anemia.
Chlorine	Some people who use water containing chlorine well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chlorine well in excess of the MRDL could experience stomach discomfort.
Chlorite	Some infants and young children who drink water containing chlorite in excess of the MCL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorite in excess of the MCL. Some people may experience anemia.
Chlorine dioxide (2 consecutive daily samples at the entry point to the distribution system that are greater than the MRDL)	Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia. *Add for public notification only:* The chlorine dioxide violations reported today are the result of exceedances at the treatment facility only, not within the distribution system that delivers water to consumers.

Contaminant	*Health Effects Language*
	Continued compliance with chlorine dioxide levels within the distribution system minimizes the potential risk of these violations to consumers.
Chlorine dioxide (one or more distribution system samples are above the MRDL.)	Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia. *Add for public notification only*: The chlorine dioxide violations reported today include exceedances of the State standard within the distribution system that delivers water to consumers. These violations may harm human health based on short-term exposures. Certain groups, including fetuses, infants, and young children, may be especially susceptible to nervous system effects from excessive chlorine dioxide exposure.
Control of DBP precursors (TOC)	Total organic carbon (TOC) has no health effects. However, total organic carbon provides a medium for the formation of disinfection byproducts. These byproducts include trihalomethanes (THMs) and haloacetic acids (HAAs). Drinking water containing these byproducts in excess of the MCL may lead to adverse health effects. liver or kidney problems, or nervous system effects, and may lead to an increased risk of getting cancer.

Appendix 64465-H. Health Effects Language Other Treatment Techniques

Contaminant	*Health Effects language*
Acrylamide	Some people who drink water containing high levels of acrylamide over a long period of time may experience nervous system or blood problems, and may have an increased risk of getting cancer.
Epichlorohydrin	Some people who drink water containing high levels of epichlorohydrin over a long period of time may experience stomach problems, and may have an increased risk of getting cancer.

NOTE: Authority cited: Sections 116325, 116350, 116375 and 131200, Health and Safety Code. Reference: Sections 116450 and 131051, Health and Safety Code.

HISTORY

1. New section filed 5-27-92; operative 6-26-92 (Register 92, No. 22).
2. Amendment filed 9-8-94 as an emergency; operative 9-8-94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1-6-95 or emergency language will be repealed by operation of law on the following day.
3. Amendment refiled 1-3-95 as an emergency; operative 1-3-95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-3-95 or emergency language will be repealed by operation of law on the following day.
4. Amendment refiled 4-26-95 as an emergency; operative 4-26-95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8-24-95 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 4-26-95 order including amendment of section transmitted to OAL 5-5-95 and filed 6-19-95 (Register 95, No. 25).
6. Amendment of section and NOTE filed 5-18-2006; operative 6-17-2006 (Register 2006, No. 20).
7. Repealer and new section filed 8-2-2006; operative 9-1-2006 (Register 2006, No. 31).
8. Amendment of Appendix 64465-D and amendment of NOTE filed 9-18-2007; operative 10-18-2007 (Register 2007, No. 38).

§ 64466. Special Notice for Unregulated Contaminant Monitoring Results.

Water systems required to monitor pursuant to section 64450 (Unregulated Chemicals — Monitoring) and/or Federal Register 64(180), p 50556-50620, September 17, 1999, shall notify persons served by the water system of the availability of the results, as follows:

(a) No later than 12 months after the results are known;

(b) Pursuant to sections 64463.7(c) and (d)(1) and (3); and

(c) Include a contact and telephone number where information on the results may be obtained.

NOTE: Authority cited: Sections 116325, 116350 and 116375, Health and Safety Code. Reference: Section 116450, Health and Safety Code.

HISTORY

1. New section filed 5-27-92; operative 6-26-92 (Register 92, No. 22).
2. Repealer and new section filed 8-2-2006; operative 9-1-2006 (Register 2006, No. 31).

§ 64467. Notice.

NOTE: Authority cited: Sections 208, 4027 and 4028, Health and Safety Code. Reference: Sections 4010-4039.6, Health and Safety Code.

HISTORY

1. New section filed 5-27-92; operative 6-26-92 (Register 92, No. 22).
2. Repealer filed 8-2-2006; operative 9-1-2006 (Register 2006, No. 31).

§ 64467.5. Wholesaler.

NOTE: Authority cited: Sections 208, 4023.3, 4027 and 4028, Health and Safety Code. Reference: Sections 4010-4039.6, Health and Safety Code.

HISTORY

1. New section filed 5-27-92; operative 6-26-92 (Register 92, No. 22).
2. Repealer filed 8-2-2006; operative 9-1-2006 (Register 2006, No. 31).

§ 64468. Health Effects Language.

NOTE: Authority cited: Sections 208 and 4028, Health and Safety Code. Reference: Sections 4010-4039.5, Health and Safety Code.

HISTORY

1. New section filed 5-27-92; operative 6-26-92 (Register 92, No. 22).
2. Repealer filed 9-8-94 as an emergency; operative 9-8-94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1-6-95 or emergency language will be repealed by operation of law on the following day.
3. Repealer refiled 1-3-95 as an emergency; operative 1-3-95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-3-95 or emergency language will be repealed by operation of law on the following day.
4. Repealer refiled 4-26-95 as an emergency; operative 4-26-95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8-24-95 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 4-26-95 order transmitted to OAL 5-5-95 and filed 6-19-95 (Register 95, No. 25).

§ 64468.1. Health Effects Language—Inorganic Chemicals.

NOTE: Authority cited: Sections 100275, 116350, 116365, 116375 and 116450, Health and Safety Code. Reference: Sections 116270-116751, Health and Safety Code; and 40 Code of Federal Regulations 141.32(e).

HISTORY

1. New section filed 9-8-94 as an emergency; operative 9-8-94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1-6-95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1-3-95 as an emergency; operative 1-3-95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-3-95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4-26-95 as an emergency; operative 4-26-95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8-24-95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4-26-95 order including amendment of subsections (a) and (j) transmitted to OAL 5-5-95 and filed 6-19-95 (Register 95, No. 25).
5. New subsections (g) and (i), subsection relettering and amendment of NOTE filed 12-11-95 as an emergency; operative 12-11-95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4-9-96 or emergency language will be repealed by operation of law on the following day.
6. Refiling of 12-11-95 order, including amendment of NOTE, filed 4-9-96 as an emergency; operative 4-10-96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8-8-96 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 12-11-95 order transmitted to OAL 8-7-96 and filed 9-16-96 (Register 96, No. 38).
8. Amendment of subsection (h) and amendment of NOTE filed 5-13-2003; operative 6-12-2003 (Register 2003, No. 20).
9. Repealer filed 8-2-2006; operative 9-1-2006 (Register 2006, No. 31).

§ 64468.2. Health Effects Language—Volatile Organic Chemicals.

NOTE: Authority cited: Sections 100275, 116350, 116375 and 116450, Health and Safety Code. Reference: Sections 116270-116751, Health and Safety Code; and 40 Code of Federal Regulations 141.32(e).

HISTORY

1. New section filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order including amendment of subsection (s) transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).
5. New subsection (*l*), subsection relettering and amendment of NOTE filed 4–17–2000; operative 5–17–2000 (Register 2000, No. 16).
6. Amendment of subsections (k) and (q) and amendment of NOTE filed 5–13–2003; operative 6–12–2003 (Register 2003, No. 20).
7. Repealer filed 8–2–2006; operative 9–1–2006 (Register 2006, No. 31).

§ 64468.3. Health Effects Language—Synthetic Organic Chemicals.

NOTE: Authority cited: Sections 100275, 116350, 116375 and 116450, Health and Safety Code. Reference: Sections 116270–116751, Health and Safety Code; and 40 Code of Federal Regulations 141.32(e).

HISTORY

1. New section filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).
5. Amendment of subsections (b), (v) and (w) and amendment of NOTE filed 5–13–2003; operative 6–12–2003 (Register 2003, No. 20).
6. Repealer filed 8–2–2006; operative 9–1–2006 (Register 2006, No. 31).

§ 64468.4. Health Effects Language—Treatment Technique Chemicals.

NOTE: Authority cited: Sections 208 and 4028, Health and Safety Code. Reference: Sections 4010–4039.5, Health and Safety Code.

HISTORY

1. New section filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).
5. Repealer filed 8–2–2006; operative 9–1–2006 (Register 2006, No. 31).

§ 64468.5. Health Effects Language — Disinfectants and Disinfection Byproducts.

Pursuant to Section 64467, the explanation of potential adverse health effects for disinfectants and disinfection byproducts shall include the following mandatory language for the designated contaminants:

(a) Chlorine: "The California Department of Health Services (DHS) sets drinking water standards and has determined that chlorine is a health concern at certain levels of exposure. Chlorine is added to drinking water as a disinfectant to kill bacteria and other disease–causing microorganisms and is also added to provide continuous disinfection throughout the distribution system. Disinfection is required for surface water systems. However, at high doses for extended periods of time, chlorine has been shown to affect blood and the liver in laboratory animals. DHS has set a drinking water standard for chlorine to protect against the risk of these adverse effects. Drinking water which meets this DHS standard is associated with little to none of this risk and should be considered safe with respect to chlorine."

(b) Chloramines: "The California Department of Health Services (DHS) sets drinking water standards and has determined that chloramines are a health concern at certain levels of exposure. Chloramines are added to drinking water as a disinfectant to kill bacteria and other disease–causing microorganisms and are also added to provide continuous disinfection throughout the distribution system. Disinfection is required for surface water systems. However, at high doses for extended periods of time, chloramines have been shown to affect blood and the liver in laboratory animals. DHS has set a drinking water standard for chloramines to protect against the risk of these adverse effects. Drinking water which meets this DHS standard is associated with little to none of this risk and should be considered safe with respect to chloramines."

(c) Chlorine Dioxide: "The California Department of Health Services (DHS) sets drinking water standards and has determined that chlorine dioxide is a health concern at certain levels of exposure. Chlorine dioxide is used in water treatment to kill bacteria and other disease–causing microorganisms and can be used to control tastes and odors. Disinfection is required for surface water systems. However, at high doses, chlorine dioxide–treated drinking water has been shown to affect blood in laboratory animals. Also, high levels of chlorine dioxide given to laboratory animals in drinking water have been shown to cause neurological effects on the developing nervous system. These neurodevelopmental effects may occur as a result of a short–term excessive chlorine dioxide exposure. To protect against such potentially harmful exposures, DHS requires chlorine dioxide monitoring at the treatment plant, where disinfection occurs, and at representative points in the distribution system serving water users. DHS has set a drinking water standard for chlorine dioxide to protect against the risk of these adverse effects." **[In addition to this language, systems with a violation at the treatment plant, but not in the distribution system, shall include the language in paragraph (1); systems with a violation in the distribution system shall include the language in paragraph (2) and provide notification pursuant to section 64464.1(a) — Method 1.]**

(1) "The chlorine dioxide violations reported today are the result of exceedances at the treatment facility only, and do not include violations within the distribution system serving users of this water supply. Continued compliance with chlorine dioxide levels within the distribution system minimizes the potential risk of these violations to present consumers."

(2) "The chlorine dioxide violations reported today include exceedances of the DHS standard within the distribution system serving water users. Violations of the chlorine dioxide standard within the distribution system may harm human health based on short–term exposures. Certain groups, including pregnant women, infants, and young children, may be especially susceptible to adverse effects of excessive exposure to chlorine dioxide–treated water. The purpose of this notice is to advise that such persons should consider reducing their risk of adverse effects from these chlorine dioxide violations by seeking alternate sources of water for human consumption until such exceedances are rectified. The Local Health Department and DHS are the best sources for information concerning alternate sources of drinking water."

(d) Disinfection Byproducts and Treatment Technique for DBPs: "The California Department of Health Services (DHS) sets drinking water standards and requires the disinfection of drinking water. However, when used in the treatment of drinking water, disinfectants react with naturally–occurring organic and inorganic matter present in water to form chemicals called disinfection byproducts (DBPs). DHS has determined that a number of DBPs are a health concern at certain levels of exposure. Certain DBPs, including some trihalomethanes (THMs) and some haloacetic acids (HAAs), have been shown to cause cancer in laboratory animals. Other DBPs have been shown to affect the liver and the nervous system, and cause reproductive or developmental effects in laboratory animals. Exposure to certain DBPs may produce similar effects in

people. DHS has set standards to limit exposure to THMs, HAAs, and other DBPs."

(e) Bromate: "The California Department of Health Services (DHS) sets drinking water standards and has determined that bromate is a health concern at certain levels of exposure. Bromate is formed as a byproduct of ozone disinfection of drinking water. Ozone reacts with naturally occurring bromide in the water to form bromate. Bromate has been shown to produce cancer in rats. DHS has set a drinking water standard to limit exposure to bromate."

(f) Chlorite: "The California Department of Health Services (DHS) sets drinking water standards and has determined that chlorite is a health concern at certain levels of exposure. Chlorite is formed from the breakdown of chlorine dioxide, a drinking water disinfectant. Chlorite in drinking water has been shown to affect blood and the developing nervous system. DHS has set a drinking water standard for chlorite to protect against these effects. Drinking water which meets this standard is associated with little to none of these risks and should be considered safe with respect to chlorite."

NOTE: Authority cited: Sections 116325 and 116375, Health and Safety Code. Reference: Sections 116350, 116450 and 116460, Health and Safety Code.

HISTORY

1. New section filed 5–18–2006; operative 6–17–2006 (Register 2006, No. 20).

Article 19. Records, Reporting and Recordkeeping

§ 64469. Reporting Requirements.

(a) Analytical results of all sample analyses completed in a calendar month shall be reported to the Department no later than the tenth day of the following month.

(b) Analytical results of all sample analyses completed by water wholesalers in a calendar month shall be reported to retail customers and the Department no later than the tenth day of the following month.

(c) Analytical results shall be reported to the Department electronically using the Electronic Deliverable Format as defined in The Electronic Deliverable Format [EDF] Version 1.2i Guidelines & Restrictions dated April 2001 and Data Dictionary dated April 2001.

(d) Within 10 days of giving initial or repeat public notice pursuant to Article 18 of this Chapter, except for notice given under 64463.7(d), each water system shall submit a certification to the Department that it has done so, along with a representative copy of each type of public notice given.

NOTE: Authority cited: Sections 100275 and 116375, Health and Safety Code. Reference: Section 116385, Health and Safety Code.

HISTORY

1. Renumbering and amendment of former article 18 to article 19, repealer of section 64469 and renumbering and amendment of former section 64451 to section 64469 filed 8–2–2006; operative 9–1–2006 (Register 2006, No. 31).

§ 64470. Recordkeeping.

(a) Each water supplier shall maintain records on all water quality and system water outage complaints, both verbal and written, received and corrective action taken. These records shall be retained for a period of five years for Department review.

(b) Each water supplier shall retain, on or at a convenient location near the water utility premises, records as indicated below:

(1) Records of bacteriological analyses for at least the 5 most recent years and chemical analyses for at least the most recent 10 years. Actual laboratory reports may be kept, or data may be transferred to tabular summaries, provided that the following information is included:

(A) The date, place and time of sampling and identification of the person who collected the sample.

(B) Identification of the sample as a routine sample, check sample, raw or finished water or other special sample.

(C) Date of Report.

(D) Name of the laboratory and either the person responsible for performing the analysis or the laboratory director.

(E) The analytical technique or method used.

(F) The results of the analysis.

(2) Records and resultant corrective actions shall be kept not less than three years following the final action taken to correct a particular violation.

(3) Copies of any written reports, summaries or communications relating to sanitary surveys of the system conducted by the water supplier, a private consultant or any local, state or federal agency, for not less than 10 years following completion of the sanitary survey involved.

(4) Variances or exemptions granted to the system, for not less than five years following the expiration of such variance or exemption.

(5) Copies of any Tier 1, Tier 2 and Tier 3 public notices, for not less than three years.

NOTE: Authority cited: Sections 100275, Health and Safety Code. Reference: Section 116385, Health and Safety Code.

HISTORY

1. New section filed 7–1–92; operative 7–31–92 (Register 92, No. 28).
2. Repealer of section 64470 and renumbering of former section 64452 to section 64470 with amendment of section and NOTE filed 8–2–2006; operative 9–1–2006 (Register 2006, No. 31).

§ 64471. Applicability.

HISTORY

1. Relocation of article 8 to article 16 and repealer of section filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
2. Relocation of article 8 to article 16 and repealer of section refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
3. Relocation of article 8 to article 16 and repealer of section refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).

§ 64473. Maximum Contaminant Levels.

NOTE: Authority cited: Sections 208 and 4026, Health and Safety Code. Reference: Sections 4017 and 4024, Health and Safety Code.

HISTORY

1. Amendment of subsection (a) (Table 6) filed as an editorial correction 1–18–78; effective thirtieth day thereafter (Register 78, No. 3).
2. Amendment of subsection (a) (Table 6) filed 3–6–89; operative 4–5–89 (Register 89, No. 11).
3. Renumbering of former section 64473 to section 64449 filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
4. Renumbering of former section 64473 to section 64449 refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
5. Renumbering of former section 64473 to section 64449 refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).

§ 64475. Distribution System Physical Water Quality.

NOTE: Authority cited: Sections 208 and 4026, Health and Safety Code. Reference: Section 4024, Health and Safety Code.

HISTORY

1. Amendment of subsection (b) filed as an editorial correction 1–18–78; effective thirtieth day thereafter (Register 78, No. 3).
2. New NOTE filed 12–7–84 (Register 84, No. 49).
3. Renumbering of former section 64475 to section 64449.5 filed 9–8–94 as an emergency; operative 9–8–94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–6–95 or emergency language will be repealed by operation of law on the following day.
4. Renumbering of former section 64475 to section 64449.5 refiled 1–3–95 as an emergency; operative 1–3–95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–3–95 or emergency language will be repealed by operation of law on the following day.
5. Renumbering of former section 64475 to section 64449.5 refiled 4–26–95 as an emergency; operative 4–26–95 (Register 95, No. 17). A Certificate of Com-

pliance must be transmitted to OAL by 8–24–95 or emergency language will be repealed by operation of law on the following day.

6. Certificate of Compliance as to 4–26–95 order transmitted to OAL 5–5–95 and filed 6–19–95 (Register 95, No. 25).

Article 20. Consumer Confidence Report

§ 64480. Applicability and Distribution.

(a) Except as provided in subsection (b), each community and nontransient–noncommunity (NTNC) water system shall prepare and deliver the first Consumer Confidence Report by July 1, 2001, and subsequent reports by July 1 annually thereafter. The first Consumer Confidence Report shall contain data collected during, or prior to, calendar year 2000, as prescribed by section 64481(d)(1). Each Consumer Confidence Report thereafter shall contain data collected during, or prior to, the previous calendar year.

(b) A new community or NTNC water system shall deliver its first Consumer Confidence Report by July 1 of the year after its first full calendar year in operation and subsequent reports by July 1 annually thereafter.

(c) A community or NTNC water system that sells water to another community or NTNC water system shall deliver the applicable information required in section 64481 to the purchasing system by no later than April 1 of each year or on a date mutually agreed upon by the seller and the purchaser, and specifically included in a contract between the parties.

NOTE: Authority cited: Sections 116350 and 116375, Health and Safety Code. Reference: Sections 116275 and 116470, Health and Safety Code.

HISTORY

1. New article 20 (sections 64480–64483) and section filed 4–26–2001; operative 5–26–2001 (Register 2001, No. 17). For prior history of article 9 (sections 64481–64501), see Register 94, No. 48.

§ 64481. Content of the Consumer Confidence Report.

(a) Each Consumer Confidence Report shall contain information on the source of the water delivered, including:

(1) The type of water delivered by the water system, e.g., surface water, ground water; and the commonly used name (if any) and location of the body (or bodies) of water.

(2) If a source water assessment has been completed, notification that the assessment is available, how to obtain it, the date it was completed or last updated, and a brief summary of the system's vulnerability to potential sources of contamination, using language provided by the Department if the Department conducted the assessment.

(b) For any of the following terms used in the Consumer Confidence Report, the water system shall provide the specified language below:

(1) Regulatory Action Level: "The concentration of a contaminant which, if exceeded, triggers treatment or other requirements that a water system must follow."

(2) Maximum Contaminant Level or MCL: "The highest level of a contaminant that is allowed in drinking water. Primary MCLs are set as close to the PHGs (or MCLGs) as is economically and technologically feasible. Secondary MCLs are set to protect the odor, taste, and appearance of drinking water."

(3) Maximum Contaminant Level Goal or MCLG: "The level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs are set by the U.S. Environmental Protection Agency."

(4) Public Health Goal or PHG: "The level of a contaminant in drinking water below which there is no known or expected risk to health. PHGs are set by the California Environmental Protection Agency."

(5) Primary Drinking Water Standard or PDWS: "MCLs for contaminants that affect health along with their monitoring and reporting requirements, and water treatment requirements."

(6) Treatment technique: "A required process intended to reduce the level of a contaminant in drinking water."

(7) Variances and exemptions: "Department permission to exceed an MCL or not comply with a treatment technique under certain conditions."

(c) If any of the following are detected, information for each pursuant to subsection (d) shall be included in the Consumer Confidence Report:

(1) Contaminants subject to an MCL, regulatory action level, or treatment technique (regulated contaminants), as specified in sections 64426.1, 64431, 64439, 64441, 64443, 64444, 64448, 64449, 64653 and 64672.3;

(2) Contaminants specified in section 64450 for which monitoring is required (unregulated contaminants) or in 40 CFR Parts 9, 141 and 142 (Federal Register 64(180), p. 50556–50620, September 17, 1999); and

(3) Disinfection by–products or microbial contaminants detected in the finished water for which monitoring is required by 40 CFR §§141.142 and 141.143 (Information Collection Rule, Federal Register 61, p 24354, May 14, 1996;), except as provided under subsection (e).

(4) Sodium and hardness.

(d) For contaminants identified in subsection (c), the water system shall include in the Consumer Confidence Report one table or several adjacent tables that have been developed pursuant to this subsection. Any additional monitoring results that a water system chooses to include in its Consumer Confidence Report shall be displayed separately.

(1) The data in the table(s) shall be derived from data collected to comply with U.S. Environmental Protection Agency (USEPA) and Department monitoring and analytical requirements during calendar year 2000 for the first Consumer Confidence Report and subsequent calendar years thereafter except that:

(A) Where a system is allowed to monitor for regulated contaminants less often than once a year, the table(s) shall include the date and results of the most recent sampling and the Consumer Confidence Report shall include a brief statement indicating that the data presented in the table(s) are from the most recent testing done in accordance with the regulations. No data older than 9 years need be included.

(B) Results of monitoring in compliance with 40 CFR §§141.142 and 141.143 (Information Collection Rule, Federal Register 61, p 24354, May 14, 1996), need only be included in the table(s) for 5 years from the date of the last sampling or until any of the detected contaminants becomes regulated and subject to routine monitoring requirements, whichever comes first. Both the average and range sample results for the most recent year of sampling shall be included for any detected contaminant.

(2) For detected regulated contaminants (listed in subsection (c)(1)), the table(s) shall include:

(A) The MCL expressed as a number equal to or greater than 1.0;

(B) For a primary MCL, the public health goal (PHG) in the same units as the MCL; or if no PHG has been set for the contaminant, the table shall include the USEPA maximum contaminant level goal in the same units as the MCL.

(C) For a detected contaminant that does not have an MCL, the table(s) shall indicate whether there is a treatment technique or specify the regulatory action level applicable to that contaminant, and the Consumer Confidence Report shall include the appropriate language specified in subsection (b);

(D) For detected contaminants subject to an MCL, except turbidity and total coliforms, the sample result(s) collected at compliance monitoring sampling points shall be reported in the same units as the MCL as follows:

1. When compliance is determined by the results of a single sample, an initial sample averaged with one or two confirmation sample(s), or an average of four quarterly or six monthly samples, results shall be reported as follows:

A. For a single sampling point, or multiple sampling points for which data is being individually listed on the Consumer Confidence Report: The sample result; if more than one sample was collected, the average and range of the sample results.

B. For more than one sampling point, each of which has been sampled only once and for which data is being summarized together on the Con-

sumer Confidence Report: The average and range of the sample results. If the waters from the sampling points are entering the distribution system at the same point, a flow–weighted average may be reported.

C. For multiple sampling points, one or more of which has been sampled more than once and for which data is being summarized together on the Consumer Confidence Report: The average of the individual sampling point averages and range of all the sample results. If the waters from the sampling points are entering the distribution system at the same point, a flow–weighted average may be reported.

2. When compliance with the MCL is determined by calculating a running annual average of all samples taken at a sampling point: The highest running annual average of the sampling point and the range of sample results or, if sampling points are summarized together for the Consumer Confidence Report, the highest running annual average of any of the sampling points and the range of sample results from all the sampling points.

3. When compliance with the MCL is determined on a system–wide basis by calculating a running annual average of all sampling point averages: The highest running annual average and the range of sample results from all the sampling points.

4. When compliance with the MCL is determined on the basis of monitoring after treatment installed to remove a contaminant: The average level detected in the water entering the distribution system and the range of sample results.

5. If an MCL compliance determination was made in the year for which sample results are being reported and that determination was based on an average of results from both the previous and reporting years, then the compliance determination average shall be reported, but the range shall be based only on results from the year for which data is being reported.

(E) For turbidity:

1. When it is reported pursuant to the requirements of section 64652.5 (filtration avoidance): The highest value.

2. When it is reported pursuant to section 64653 (filtration): The highest single measurement based on compliance reporting and the lowest monthly percentage of samples meeting the turbidity limits specified in section 64653 for the filtration technology being used.

(F) For lead and copper: The 90th percentile value of the most recent round of sampling, the number of sites sampled, and the number of sampling sites exceeding the action level.

(G) For total coliform:

1. The highest monthly number of positive samples for systems collecting fewer than 40 samples per month; or

2. The highest monthly percentage of positive samples for systems collecting at least 40 samples per month.

(H) For fecal coliform or *E. coli*: the total number of positive samples during the year.

(I) The likely source(s) of detected contaminants for any detected contaminant with an MCL. If the water system lacks specific information on the likely source, the table(s) shall include one or more of the typical sources for that contaminant listed in appendices 64481–A or 64481–B that are most applicable to the system.

(3) The table(s) shall clearly identify any data indicating violations of MCLs or treatment techniques and the Consumer Confidence Report shall give information on each violation including the length of the violation, potential adverse health effects (primary MCLs only), and actions taken by the system to address the violation. To describe the potential health effects, the system shall use the relevant language pursuant to appendices 64465–A through H.

(4) For detected unregulated contaminants for which monitoring is required (except *Cryptosporidium*), the table(s) shall contain the average and range at which the contaminant was detected.

(e) If the system has performed any monitoring for *Cryptosporidium*, including monitoring performed to satisfy the requirements of 40 CFR § 141.143 (Information Collection Rule, Federal Register 61, p 24354, May 14, 1996), that indicates that Cryptosporidium may be present in the source water or the finished water, the Consumer Confidence Report shall include a summary of the monitoring results and an explanation of their significance.

(f) If the system has performed any monitoring for radon that indicates that radon is present in the finished water, the Consumer Confidence Report shall include the monitoring results and an explanation of their significance.

(g) For the year covered by the report, the Consumer Confidence Report shall note any violations of (1) through (7) and give related information, including any potential adverse health effects, and the steps the system has taken to correct the violation.

(1) Monitoring and reporting of compliance data.

(2) Filtration and disinfection prescribed by sections 64652, 64652.5, 64653, or 64654. For systems that have failed to install adequate filtration or disinfection equipment or processes, or have had a failure of such equipment or processes that constitutes a violation, the Consumer Confidence Report shall include the following language as part of the explanation of potential adverse health effects: "Inadequately treated water may contain organisms that can cause illness when consumed. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea, and associated headaches."

(3) One or more actions prescribed by the lead and copper requirements in sections 64673 through 64679. To address potential adverse health effects, the Consumer Confidence Report shall include the applicable language pursuant to appendix 64465–D for lead, copper, or both.

(4) Treatment technique requirements for Acrylamide and Epichlorohydrin in section 64448; to address potential adverse health effects, the Consumer Confidence Report shall include the relevant language from appendix 64465–H.

(5) Recordkeeping of compliance data.

(6) Special monitoring requirements prescribed by sections 64450, and 64449(c)(2) and (i).

(7) Terms of a variance, an exemption, or an administrative or judicial order.

(h) If a system is operating under the terms of a variance or an exemption issued under section 116430 or 116425 of the Health and Safety Code, the Consumer Confidence Report shall contain:

(1) An explanation of the reasons for the variance or exemption;

(2) The date on which the variance or exemption was issued;

(3) A brief status report on the steps the system is taking to install treatment, find alternative sources of water, or otherwise comply with the terms and schedules of the variance or exemption; and

(4) A notice of any opportunity for public input in the review, or renewal, of the variance or exemption.

(i) The Consumer Confidence Report shall contain the language in paragraphs (1) through (4).

(1) "The sources of drinking water (both tap water and bottled water) include rivers, lakes, streams, ponds, reservoirs, springs, and wells. As water travels over the surface of the land or through the ground, it dissolves naturally–occurring minerals and, in some cases, radioactive material, and can pick up substances resulting from the presence of animals or from human activity."

(2) "Contaminants that may be present in source water include:

(A) Microbial contaminants, such as viruses and bacteria, that may come from sewage treatment plants, septic systems, agricultural livestock operations, and wildlife.

(B) Inorganic contaminants, such as salts and metals, that can be naturally–occurring or result from urban stormwater runoff, industrial or domestic wastewater discharges, oil and gas production, mining, or farming.

(C) Pesticides and herbicides, that may come from a variety of sources such as agriculture, urban stormwater runoff, and residential uses.

(D) Organic chemical contaminants, including synthetic and volatile organic chemicals, that are by–products of industrial processes and pe-

troleum production, and can also come from gas stations, urban stormwater runoff, agricultural application, and septic systems.

(E) Radioactive contaminants, that can be naturally–occurring or be the result of oil and gas production and mining activities."

(3) "In order to ensure that tap water is safe to drink, the U.S. Environmental Protection Agency (USEPA) and the State Department of Health Services (Department) prescribe regulations that limit the amount of certain contaminants in water provided by public water systems. Department regulations also establish limits for contaminants in bottled water that provide the same protection for public health."

(4) "Drinking water, including bottled water, may reasonably be expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that water poses a health risk. More information about contaminants and potential health effects can be obtained by calling the USEPA's Safe Drinking Water Hotline (1–800–426–4791)."

(j) All Consumer Confidence Reports shall prominently display the following language: "Some people may be more vulnerable to contaminants in drinking water than the general population. Immuno–compromised persons such as persons with cancer undergoing chemotherapy, persons who have undergone organ transplants, people with HIV/AIDS or other immune system disorders, some elderly, and infants can be particularly at risk from infections. These people should seek advice about drinking water from their health care providers. USEPA/Centers for Disease Control (CDC) guidelines on appropriate means to lessen the risk of infection by *Cryptosporidium* and other microbial contaminants are available from the Safe Drinking Water Hotline (1–800–426–4791)."

(k) The Consumer Confidence Report shall include the telephone number of the owner, operator, or designee of the water system as a source of additional information concerning the report.

(*l*) All Consumer Confidence Reports shall contain information in Spanish regarding the importance of the report or contain a telephone number or address where Spanish–speaking residents may contact the system to obtain a translated copy of the report or assistance in Spanish. For each non–English speaking group other than Spanish–speaking that exceeds 1,000 residents or 10% of the residents in a community, whichever is less, the Consumer Confidence Report shall contain information in the appropriate language(s) regarding the importance of the report or contain a telephone number or address where such residents may contact the system to obtain a translated copy of the report or assistance in the appropriate language.

(m) The Consumer Confidence Report shall include information (e.g., time and place of regularly scheduled board meetings) about opportunities for public participation in decisions that may affect the quality of the water.

Appendix 64481–A. Typical Origins of Contaminants with Primary MCLs

Contaminant	*Major origins in drinking water*
Microbiological	
Total coliform bacteria	Naturally present in the environment
Fecal coliform and *E. coli*	Human and animal fecal waste
Turbidity	Soil runoff
Radioactive	
Gross Beta particle activity	Decay of natural and man–made deposits
Strontium–90	Decay of natural and man–made deposits
Tritium	Decay of natural and man–made deposits
Gross Alpha particle activity	Erosion of natural deposits
Combined radium 226/228	Erosion of natural deposits
Uranium	Erosion of natural deposits
Inorganic	
Aluminum	Erosion of natural deposits; residue from some surface water treatment processes
Antimony	Discharge from petroleum refineries; fire retardants; ceramics; electronics; solder
Arsenic	Erosion of natural deposits; runoff from orchards; glass and electronics production wastes
Asbestos	Internal corrosion of asbestos cement water mains; erosion of natural deposits
Barium	Discharges of oil drilling wastes and from metal refineries; erosion of natural deposits
Beryllium	Discharge from metal refineries, coal–burning factories, and electrical, aerospace, and defense industries
Cadmium	Internal corrosion of galvanized pipes; erosion of natural deposits; discharge from electroplating and industrial chemical factories, and metal refineries; runoff from waste batteries and paints
Chromium	Discharge from steel and pulp mills and chrome plating; erosion of natural deposits
Copper	Internal corrosion of household plumbing systems; erosion of natural deposits; leaching from wood preservatives
Cyanide	Discharge from steel/metal, plastic and fertilizer factories
Fluoride	Erosion of natural deposits; water additive that promotes strong teeth; discharge from fertilizer and aluminum factories
Lead	Internal corrosion of household water plumbing systems; discharges from industrial manufacturers; erosion of natural deposits
Mercury	Erosion of natural deposits; discharge from refineries and factories; runoff from landfills and cropland
Nickel	Erosion of natural deposits; discharge from metal factories
Nitrate	Runoff and leaching from fertilizer use; leaching from septic tanks and sewage; erosion of natural deposits
Nitrite	Runoff and leaching from fertilizer use; leaching from septic tanks and sewage; erosion of natural deposits
Perchlorate	Perchlorate is an inorganic chemical used in solid rocket propellant, fireworks, explosives, flares, matches, and a variety of industries. It usually gets into drinking water as a result of environmental contamination from historic aerospace or other industrial operations that used or use, store, or dispose of perchlorate and its salts.
Selenium	Discharge from petroleum, glass, and metal refineries; erosion of natural deposits; discharge from mines and chemical manufacturers; runoff from livestock lots (feed additive)
Thallium	Leaching from ore–processing sites; discharge from electronics, glass, and drug factories
Synthetic organic	
2,4–D	Runoff from herbicide used on row crops, range land, lawns, and aquatic weeds
2,4,5–TP (Silvex)	Residue of banned herbicide
Acrylamide	Added to water during sewage/wastewater treatment
Alachlor	Runoff from herbicide used on row crops
Atrazine	Runoff from herbicide used on row crops and along railroad and highway right–of–ways
Bentazon	Runoff/leaching from herbicide used on beans, peppers, corn, peanuts, rice, and ornamental grasses
Benzo(a)pyrene [PAH]	Leaching from linings of water storage tanks and distribution mains
Carbofuran	Leaching of soil fumigant used on rice and alfalfa, and grape vineyards
Chlordane	Residue of banned insecticide
Dalapon	Runoff from herbicide used on right–of–ways, and crops and landscape maintenance
Dibromochloropropane (DBCP)	Banned nematocide that may still be present in soils due to runoff/leaching from former use on soybeans, cotton, vineyards, tomatoes, and tree fruit
Di(2–ethylhexyl) adipate	Discharge from chemical factories
Di(2–ethylhexyl) phthalate	Discharge from rubber and chemical factories; inert ingredient in pesticides
Dinoseb	Runoff from herbicide used on soybeans, vegetables, and fruits
Dioxin [2,3,7,8–TCDD]	Emissions from waste incineration and other combustion; discharge from chemical factories
Diquat	Runoff from herbicide use for terrestrial and aquatic weeds
Endothall	Runoff from herbicide use for terrestrial and aquatic weeds; defoliant
Endrin	Residue of banned insecticide and rodenticide

Contaminant	*Major origins in drinking water*
Synthetic organic	
Epichlorohydrin	Discharge from industrial chemical factories; impurity of some water treatment chemicals
Ethylene dibromide (EDB)	Discharge from petroleum refineries; underground gas tank leaks; banned nematocide that may still be present in soils due to runoff and leaching from grain and fruit crops
Glyphosate	Runoff from herbicide use
Heptachlor	Residue of banned insecticide
Heptachlor epoxide	Breakdown of heptachlor
Hexachlorobenzene	Discharge from metal refineries and agricultural chemical factories; byproduct of chlorination reactions in wastewater
Hexachlorocyclo-pentadiene	Discharge from chemical factories
Lindane	Runoff/leaching from insecticide used on cattle, lumber, gardens
Methoxychlor	Runoff/leaching from insecticide used on fruits, vegetables, alfalfa, livestock
Molinate [Ordram]	Runoff/leaching from herbicide used on rice
Oxamyl [Vydate]	Runoff/leaching from insecticide used on field crops, fruits and ornamentals, especially apples, potatoes, and tomatoes
Pentachlorophenol	Discharge from wood preserving factories, cotton and other insecticidal/herbicidal uses
Picloram	Herbicide runoff
Polychlorinated biphenyls [PCBs]	Runoff from landfills; discharge of waste chemicals
Simazine	Herbicide runoff
Thiobencarb	Runoff/leaching from herbicide used on rice
Toxaphene	Runoff/leaching from insecticide used on cotton and cattle
Volatile organic	
Benzene	Discharge from plastics, dyes and nylon factories; leaching from gas storage tanks and landfills
Carbon tetrachloride	Discharge from chemical plants and other industrial activities
1,2-Dichlorobenzene	Discharge from industrial chemical factories
1,4-Dichlorobenzene	Discharge from industrial chemical factories
1,1-Dichloroethane	Extraction and degreasing solvent; used in manufacture of pharmaceuticals, stone, clay and glass products; fumigant
1,2-Dichloroethane	Discharge from industrial chemical factories
1,1-Dichloroethylene	Discharge from industrial chemical factories
cis-1,2-Dichloroethylene	Discharge from industrial chemical factories; major biodegradation byproduct of TCE and PCE groundwater contamination
trans-1,2-Dichloroethylene	Discharge from industrial chemical factories; minor biodegradation byproduct of TCE and PCE groundwater contamination
Dichloromethane	Discharge from pharmaceutical and chemical factories; insecticide
1,2-Dichloropropane	Discharge from industrial chemical factories; primary component of some fumigants
1,3-Dichloropropene	Runoff/leaching from nematocide used on croplands
Ethylbenzene	Discharge from petroleum refineries; industrial chemical factories
Methyl-tert-butyl ether (MTBE)	Leaking underground storage tanks; discharge from petroleum and chemical factories.
Monochlorobenzene	Discharge from industrial and agricultural chemical factories and drycleaning facilities
Styrene	Discharge from rubber and plastic factories; leaching from landfills
1,1,2,2-Tetrachloroethane	Discharge from industrial and agricultural chemical factories; solvent used in production of TCE, pesticides, varnish and lacquers
Tetrachloroethylene (PCE)	Discharge from factories, dry cleaners, and auto shops (metal degreaser)
1,2,4-Trichlorobenzene	Discharge from textile-finishing factories
1,1,1-Trichloroethane	Discharge from metal degreasing sites and other factories; manufacture of food wrappings
1,1,2-Trichloroethane	Discharge from industrial chemical factories
Trichloroethylene (TCE)	Discharge from metal degreasing sites and other factories
TTHMs [total trihalomethanes]	By-product of drinking water chlorination
Toluene	Discharge from petroleum and chemical factories; underground gas tank leaks
Trichlorofluoromethane	Discharge from industrial factories; degreasing solvent; propellant and refrigerant
1,1,2-Trichloro-1,2,2-Trifluoroethane	Discharge from metal degreasing sites and other factories; drycleaning solvent; refrigerant
Volatile organic	
Vinyl chloride	Leaching from PVC piping; discharge from plastics factories; biodegradation byproduct of TCE and PCE groundwater contamination
Xylenes	Discharge from petroleum and chemical factories; fuel solvent

Appendix 64481-B.
Typical Origins of Contaminants with Secondary MCLs

Contaminant	*Major origins in drinking water*
Aluminum	Erosion of natural deposits; residual from some surface water treatment processes
Color	Naturally-occurring organic materials
Corrosivity	Natural or industrially-influenced balance of hydrogen, carbon and oxygen in the water; affected by temperature and other factors.
Foaming Agents (MBAS)	Municipal and industrial waste discharges
Iron	Leaching from natural deposits; industrial wastes
Manganese	Leaching from natural deposits
Methyl-tert-butyl ether (MTBE)	Leaking underground storage tanks; discharge from petroleum and chemical factories;
Odor—Threshold	Naturally-occurring organic materials
Silver	Industrial discharges
Thiobencarb	Runoff/leaching from rice herbicide
Turbidity	Soil runoff
Zinc	Runoff/leaching from natural deposits; industrial wastes
Total dissolved solids	Runoff/leaching from natural deposits
Specific conductance	Substances that form ions when in water; seawater influence
Chloride	Runoff/leaching from natural deposits; seawater influence
Sulfate	Runoff/leaching from natural deposits; industrial wastes

NOTE: Authority cited: Sections 116350, 116375 and 131200, Health and Safety Code. Reference: Sections 116275, 116470 and 131051, Health and Safety Code.

HISTORY

1. New section and appendices A-G filed 4-26-2001; operative 5-26-2001 (Register 2001, No. 17). For prior history, see Register 94, No. 48.
2. Amendment of subsections (c)(2)-(3), (d)(1)(B), (d)(3), (e), (g)(3)-(4) and appendix A and repealer of appendices C-G filed 8-2-2006; operative 9-1-2006 (Register 2006, No. 31).
3. Amendment of Appendix 64481-A and amendment of NOTE filed 9-18-2007; operative 10-18-2007 (Register 2007, No. 38).

§ 64482. Required Additional Health Information.

(a) A system that detects arsenic at levels above 25 ug/L, but below the MCL, shall include the following in its Consumer Confidence Report: "The U.S. Environmental Protection Agency is reviewing the drinking water standard for arsenic because of special concerns that the standard may not be stringent enough. Arsenic is a naturally-occurring mineral known to cause cancer in humans at high concentrations."

(b) A system that detects nitrate at levels above 23 mg/L (as nitrate), but below the MCL, shall include the following in its Consumer Confidence Report: "Nitrate in drinking water at levels above 45 mg/L is a health risk for infants of less than six months of age. Such nitrate levels in drinking water can interfere with the capacity of the infant's blood to carry oxygen, resulting in a serious illness; symptoms include shortness of breath and blueness of the skin. Nitrate levels above 45 mg/L may also affect the ability of the blood to carry oxygen in other individuals, such as pregnant women and those with certain specific enzyme deficiencies. If you are caring for an infant, or you are pregnant, you should ask advice from your health care provider. If a system cannot demonstrate to the Department with at least five years of the most current monitoring data that its nitrate levels are stable, it shall also add the following language to the preceding statement on nitrate: "Nitrate levels may rise quickly for short periods of time because of rainfall or agricultural activity."

(c) A system that detects lead above the action level in more than 5%, and up to and including 10%, of sites sampled, shall include the following in its Consumer Confidence Report: "Infants and young children are typically more vulnerable to lead in drinking water than the general population. It is possible that lead levels at your home may be higher than at other homes in the community as a result of materials used in your home's plumbing. If you are concerned about elevated lead levels in your home's

water, you may wish to have your water tested and/or flush your tap for 30 seconds to 2 minutes before using tap water. Additional information is available from the USEPA Safe Drinking Water Hotline (1–800–426–4791)."

(d) A community water system serving 10,000 or more people that has a running annual average for total trihalomethanes compliance determined pursuant to section 64439 that exceeds 0.080 mg/L, but does not exceed the total trihalomethanes MCL, shall include the health effects language in Appendix 64465–G in its Consumer Confidence Report.

NOTE: Authority cited: Sections 116350 and 116375, Health and Safety Code. Reference: Sections 116275 and 116470, Health and Safety Code.

HISTORY

1. New section filed 4–26–2001; operative 5–26–2001 (Register 2001, No. 17).
2. Amendment of subsection (d) filed 8–2–2006; operative 9–1–2006 (Register 2006, No. 31).

§ 64483. Consumer Confidence Report Delivery and Recordkeeping.

(a) Each water system shall mail or directly deliver one copy of the Consumer Confidence Report to each customer.

(b) The system shall make a good faith effort to reach consumers who are served by the water system but are not bill–paying customers, such as renters or workers, using a mix of methods appropriate to the particular system such as: Posting the Consumer Confidence Reports on the Internet; mailing to postal patrons in metropolitan areas; advertising the availability of the Consumer Confidence Report in the news media; publication in a local newspaper; posting in public places such as cafeterias or lunch rooms of public buildings; delivery of multiple copies for distribution by single–biller customers such as apartment buildings or large private employers; and delivery to community organizations.

(c) No later than the date the water system is required to distribute the Consumer Confidence Report to its customers, each water system shall mail a copy of the report to the Department, followed within 3 months by a certification that the report has been distributed to customers, and that the information is correct and consistent with the compliance monitoring data previously submitted to the Department.

(d) No later than the date the water system is required to distribute the Consumer Confidence Report to its customers, each privately–owned water system shall mail a copy of the report to the California Public Utilities Commission.

(e) Each water system shall make its Consumer Confidence Report available to the public upon request.

(f) Each water system serving 100,000 or more persons shall post its current year's Consumer Confidence Report on a publicly–accessible site on the Internet.

(g) Each water system shall retain copies of its Consumer Confidence Reports for no less than 3 years.

NOTE: Authority cited: Sections 116350 and 116375, Health and Safety Code. Reference: Sections 116275 and 116470, Health and Safety Code.

HISTORY

1. New section filed 4–26–2001; operative 5–26–2001 (Register 2001, No. 17). For prior history, see Register 94, No. 48.
2. Amendment of subsection (g) filed 8–2–2006; operative 9–1–2006 (Register 2006, No. 31).

Chapter 15.5. Disinfectant Residuals, Disinfection Byproducts, and Disinfection Byproduct Precursors

Article 1. General Requirements and Definitions

§ 64530. Applicability of this Chapter.

(a) Community water systems and nontransient, noncommunity water systems that treat their water with a chemical disinfectant in any part of the treatment process or which provide water that contains a chemical disinfectant shall comply with the requirements of this chapter beginning on the dates specified in paragraphs (1) or (2).

(1) Systems using approved surface water and serving 10,000 or more persons shall comply beginning January 1, 2002.

(2) Systems using approved surface water and serving fewer than 10,000 persons and systems using only ground water not under the direct influence of surface water shall comply beginning January 1, 2004.

(b) Transient noncommunity water systems using chlorine dioxide shall comply with the requirements for chlorine dioxide in this chapter beginning on the dates specified in paragraphs (1) or (2).

(1) Systems using approved surface water and serving 10,000 or more persons shall comply beginning January 1, 2002.

(2) Systems using approved surface water and serving fewer than 10,000 persons and systems using only ground water not under the direct influence of surface water shall comply beginning January 1, 2004.

NOTE: Authority cited: Sections 116325 and 116375, Health and Safety Code. Reference: Section 116350, Health and Safety Code.

HISTORY

1. New chapter 15.5 (articles 1–6, sections 64530–64537.6), article 1 (sections 64530–64531) and section filed 5–18–2006; operative 6–17–2006 (Register 2006, No. 20).

§ 64531. Definitions Governing Terms Used in this Chapter.

The definitions in sections 64400 through 64402.20 of chapter 15 and sections 64651.10 through 64651.93 of chapter 17 shall govern the interpretation of terms used in this chapter.

NOTE: Authority cited: Sections 116325 and 116375, Health and Safety Code. Reference: Sections 116275 and 116350, Health and Safety Code.

HISTORY

1. New section filed 5–18–2006; operative 6–17–2006 (Register 2006, No. 20).

Article 2. Maximum Contaminant Levels for Disinfection Byproducts and Maximum Residual Disinfectant Levels

§ 64533. Maximum Contaminant Levels for Disinfection Byproducts.

(a) Using the monitoring and calculation methods specified in sections 64534, 64534.2, 64535, and 64535.2, the primary MCLs for the disinfection byproducts shown in table 64533–A shall not be exceeded in drinking water supplied to the public.

Table 64533–A

Maximum Contaminant Levels and Detection Limits for Purposes of Reporting Disinfection Byproducts

Disinfection Byproduct	*Maximum Contaminant Level (mg/L)*	*Detection Limit for Purposes of Reporting (mg/L)*
Total trihalomethanes (TTHM)	0.080	
Bromodichloromethane		0.0005
Bromoform		0.0005
Chloroform		0.0005
Dibromochloromethane		0.0005
Haloacetic acids (five) (HAA5)	0.060	
Monochloroacetic Acid		0.002
Dichloroacetic Acid		0.001
Trichloroacetic Acid		0.001
Monobromoacetic Acid		0.001
Dibromoacetic Acid		0.001
Bromate	0.010	0.005
Chlorite	1.0	0.02

(b) A system installing GAC, membranes, or other technology to limit disinfectant byproducts to comply with this section may apply to the Department for an extension up to December 31, 2003. Applications for extensions shall include the results of disinfection byproduct monitoring, a description of the technology being installed and how it is expected to affect future disinfection byproduct levels, and a proposed schedule for compliance. If granted an extension, a system shall meet the schedule and interim treatment and monitoring requirements established by the Department.

(c) The best technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant levels for disinfection byproducts are identified in table 64533–B.

Table 64533–B
Best Available Technology
Disinfection Byproducts

Disinfection Byproduct	*Best Available Technology*
TTHM and HAA5	Enhanced coagulation or enhanced softening or GAC10, with chlorine as the primary and residual disinfectant
Bromate	Control of ozone treatment process to reduce production of bromate
Chlorite	Control of treatment processes to reduce disinfectant demand and control of disinfection treatment processes to reduce disinfectant levels

NOTE: Authority cited: Sections 116325 and 116375, Health and Safety Code. Reference: Sections 116350, 116365 and 116370, Health and Safety Code.

HISTORY

1. New article 2 (sections 64533–64533.5) and section filed 5–18–2006; operative 6–17–2006 (Register 2006, No. 20).

§ 64533.5. Maximum Residual Disinfectant Levels.

(a) Using the monitoring and calculation methods specified in sections 64534, 64534.4, 64535, and 64535.4, the MRDLs for the disinfectants shown in table 64533.5–A shall not be exceeded in drinking water supplied to the public.

[The next page is 616.39.]

Table 64533.5–A
Maximum Residual Disinfectant Level

Disinfectant Residual	*MRDL (mg/L)*
Chlorine	4.0 (as Cl_2)
Chloramines	4.0 (as Cl_2)
Chlorine dioxide	0.8 (as ClO_2)

(b) Notwithstanding subsection (a), systems may increase residual disinfectant levels of chlorine or chloramines (but not chlorine dioxide) in the distribution system in excess of the levels specified in table 64533.5–A in order to protect public health, to address specific microbiological contamination problems caused by circumstances such as, but not limited to, distribution line breaks, storm run–off events, source water contamination events, natural disasters, or cross–connection events. In such circumstances, systems shall immediately notify the Department of the source and cause of contamination, the levels of residual disinfectant, other actions being taken to correct the problem, and the expected duration of the exceedance.

(c) The best technologies, treatment techniques, or other means available for achieving compliance with the maximum residual disinfectant levels in this section are control of treatment processes to reduce disinfectant demand and control of disinfection treatment processes to reduce disinfectant levels.

NOTE: Authority cited: Sections 116325 and 116375, Health and Safety Code. Reference: Sections 116350, 116365 and 116370, Health and Safety Code.

HISTORY

1. New section filed 5–18–2006; operative 6–17–2006 (Register 2006, No. 20).

Article 3. Monitoring Requirements

§ 64534. General Monitoring Requirements.

(a) Analyses required pursuant to this chapter shall be performed by laboratories certified to perform those analyses by the Department, pursuant to section 116390, Health and Safety Code. Analyses shall be made in accordance with EPA approved methods as prescribed in Section 141.131 of Title 40, Code of Federal Regulations, as published in the December 16, 1998, Federal Register (Vol. 63, No. 241) and revised in the January 16, 2001, Federal Register (Vol. 66, No. 10).

(b) Sample collection, and field tests including pH, alkalinity, and chlorine, chloramines, and chlorine dioxide residual disinfectants, shall be performed by a water treatment or distribution operator certified by the Department pursuant to section 106875 of the Health and Safety Code or by personnel trained to collect samples and/or perform these tests by the Department, a certified laboratory, or a certified operator.

(c) Systems shall take all samples during normal operating conditions, which exclude those circumstances covered under section 64533.5(b).

(d) A system may apply to the Department for approval to consider multiple wells drawing water from a single aquifer as one treatment plant for determining the minimum number of TTHM and HAA5 samples required. In order to qualify for this reduction in monitoring requirements a system shall demonstrate to the Department that the multiple wells produce water from the same aquifer. To make this demonstration, a system shall submit information to the Department regarding the location, depth, construction, and geologic features of each well, and water quality information for each well. The Department will use this information to determine whether the wells produce water from a single aquifer.

(e) Systems shall use only data collected under the provisions of this chapter or 40 CFR Part 141 Subpart M (Information Collection Rule), as published in the May 14, 1996 Federal Register (Vol. 61, No. 94), to qualify for reduced monitoring pursuant to this article.

NOTE: Authority cited: Sections 116325 and 116375, Health and Safety Code. Reference: Sections 116350, 116385 and 116555, Health and Safety Code.

HISTORY

1. New article 3 (sections 64534–64534.8) and section filed 5–18–2006; operative 6–17–2006 (Register 2006, No. 20).

§ 64534.2. Disinfection Byproducts Monitoring.

(a) Community and nontransient noncommunity water systems shall monitor for TTHM and HAA5 at the frequencies and locations indicated in table 64534.2–A.

Table 64534.2–A
Routine and Increased Monitoring Frequency for TTHM and HAA5

COLUMN A Type of System	*COLUMN B Persons served*	*COLUMN C Minimum monitoring frequency*	*COLUMN D Sample location in the distribution system & increased monitoring frequencies*
Systems using approved surface water	≥10,000	Four samples per quarter per treatment plant	At least 25 percent of all samples collected each quarter at locations representing maximum residence time. Remaining samples taken at locations representative of at least average residence time in the distribution system and representing the entire distribution system, taking into account number of persons served, different sources of water, and different treatment methods[1].
	500–9,999	One sample per quarter per treatment plant	Locations representing maximum residence time[1].
	<500	One sample per year per treatment plant during month of warmest water temperature	Locations representing maximum residence time[1]. If the sample (or average of annual samples, if more than one sample is taken) exceeds MCL, system shall increase monitoring to one sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until system meets reduced monitoring criteria in paragraph (3) of this subsection.

COLUMN A *Type of System*	*COLUMN B* *Persons served*	*COLUMN C* *Minimum monitoring frequency*	*COLUMN D* *Sample location in the distribution system & increased monitoring frequencies*
Systems using only ground water not under direct influence of surface water and using chemical disinfectant	≥10,000	One sample per quarter per treatment plant	Locations representing maximum residence time[1].
	<10,000	One sample per year per treatment plant during month of warmest water temperature	Locations representing maximum residence time[1]. If the sample (or average of annual samples, if more than one sample is taken) exceeds MCL, system shall increase monitoring to one sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until system meets reduced monitoring criteria in paragraph (3) of this subsection.

[1]If a system elects to sample more frequently than the minimum required, at least 25 percent of all samples collected each quarter (including those taken in excess of the required frequency) shall be taken at locations that represent the maximum residence time of the water in the distribution system. The remaining samples shall be taken at locations representative of at least average residence time in the distribution system.

(1) Systems may apply to the Department to monitor at a reduced frequency in accordance with table 64534.2–B. The application shall include the results of all TOC, TTHM, and HAA5 monitoring conducted in the previous 12 months and the proposed revised monitoring plan as required by section 64534.8. The Department will evaluate data submitted with the application to determine whether or not the system is eligible for the reduced monitoring specified in table 64534.2–B.

Table 64534.2–B
Reduced Monitoring Frequency for TTHM and HAA5

If the system is a(n) ...	*serving...*	*the system may reduce monitoring if it has monitored at least one year and...*	*to this level*
Approved surface water system which has a source water TOC[1] level, before any treatment, ≤ 4.0 mg/L	≥10,000	TTHM[1] ≤0.040 mg/L and HAA5[1] ≤0.030 mg/L	One sample per treatment plant per quarter at distribution system location reflecting maximum residence time.
	500–9,999	TTHM[1] ≤0.040 mg/L and HAA5[1] ≤0.030 mg/L	One sample per treatment plant per year at distribution system location reflecting maximum residence time during month of warmest water temperature.
System using only ground water not under direct influence of surface water and using chemical disinfectant	≥10,000	TTHM[1] ≤0.040 mg/L and HAA5[1] ≤0.030 mg/L	One sample per treatment plant per year at distribution system location reflecting maximum residence time during month of warmest water temperature.
	<10,000	TTHM[1] ≤0.040 mg/L and HAA5[1] ≤0.030 mg/L for two consecutive years OR TTHM[1] ≤0.020 mg/L and HAA5[1] ≤0.015 mg/L for one year	One sample per treatment plant per three–year monitoring cycle at distribution system location reflecting maximum residence time during month of warmest water temperature, with the three–year cycle beginning on January 1 following the quarter in which system qualifies for reduced monitoring.

[1] TOC, TTHM, and HAA5 values based on annual averages.

(2) Systems on reduced monitoring shall resume monitoring at the frequency specified in column C of table 64534.2–A in the quarter immediately following the quarter in which the system exceeds 0.060 mg/L for the TTHM annual average or 0.045 mg/L for the HAA5 annual average. For systems using only ground water not under the direct influence of surface water and serving fewer than 10,000 persons or systems using approved surface water and serving fewer than 500 persons, if either the TTHM annual average is >0.080 mg/L or the HAA5 annual average is >0.060 mg/L, the system shall go to increased monitoring identified in column D of table 64534.2–A in the quarter immediately following the quarter in which the system exceeds 0.080 mg/L or 0.060 mg/L for the TTHM and HAA5 annual averages, respectively.

(3) Systems on increased monitoring pursuant to column D of table 64534.2–A may return to routine monitoring specified in column C of table 64534.2–A if, after at least one year of monitoring, TTHM annual average is ≤0.060 mg/L and HAA5 annual average is ≤0.045 mg/L.

(b) Community and nontransient noncommunity water systems using chlorine dioxide shall conduct monitoring for chlorite as follows:

(1) Systems shall take daily samples at the entrance to the distribution system. For any daily sample that exceeds the chlorite MCL, the system shall take three additional chlorite distribution system samples the following day (in addition to the daily sample required at the entrance to the distribution system) at these locations: As close to the first customer as

possible, at a location representative of average residence time, and at a location reflecting maximum residence time in the distribution system.

(2) Systems shall take a three–sample set each month in the distribution system. The system shall take one sample at each of the following locations: As close to the first customer as possible, at a location representative of average residence time, and at a location reflecting maximum residence time in the distribution system. Any additional routine sampling shall be conducted in the same manner (as three–sample sets, at the specified locations). The system may use the results of additional monitoring conducted under paragraph (1) to meet the monitoring requirement in this paragraph.

(3) Systems may apply to the Department to reduce monthly chlorite monitoring in the distribution system pursuant to paragraph (2) to one three–sample set per quarter after one year of monitoring during which no individual chlorite sample taken in the distribution system has exceeded the chlorite MCL and the system has not been required to conduct additional monitoring under paragraph (1). The application shall include the results of all chlorite monitoring conducted in the previous 12 months and the proposed revised monitoring plan as required by section 64534.8. The Department will evaluate data submitted with the application and determine whether or not the system is eligible to reduce monitoring to one three–sample set per quarter. The system may remain on the reduced monitoring schedule until either any of the three individual chlorite samples taken quarterly in the distribution system under paragraph (2) exceeds the chlorite MCL or the system is required to conduct additional monitoring under paragraph (1), at which time the system shall revert to routine monitoring.

(c) Community and nontransient noncommunity systems using ozone shall monitor for bromate as follows:

(1) Systems shall take one sample per month for each treatment plant in the system using ozone. Samples shall be taken at the entrance to the distribution system while the ozonation system is operating under normal conditions.

(2) Systems may reduce bromate monitoring from monthly to once per quarter, if the average source water bromide concentration is less than 0.05 mg/L based upon representative monthly bromide measurements for one year. The system shall continue monthly bromide monitoring of the source water to remain on reduced bromate monitoring. If the running annual average source water bromide concentration, computed quarterly, is equal to or greater than 0.05 mg/L based upon representative monthly measurements, the system shall resume routine bromate monitoring pursuant to paragraph (1).

NOTE: Authority cited: Sections 116325 and 116375, Health and Safety Code. Reference: Sections 116350, 116385 and 116555, Health and Safety Code.

HISTORY

1. New section filed 5–18–2006; operative 6–17–2006 (Register 2006, No. 20).
2. Editorial correction of Table 64534.2–B (Register 2007, No. 30).

§ 64534.4. Disinfectant Residuals Monitoring.

(a) Community and nontransient noncommunity water systems that use chlorine or chloramines shall measure the residual disinfectant levels at the same points in the distribution system and at the same time as total coliforms are sampled, as specified in section 64421. Systems using approved surface water may use the results of residual disinfectant concentration sampling conducted under section 64656, in lieu of taking separate samples.

(b) Public water systems that use chlorine dioxide shall monitor for chlorine dioxide daily at the entrance to the distribution system. For any daily sample that exceeds the MRDL, the system shall take three chlorine dioxide distribution system samples the following day as follows:

(1) If chlorine dioxide or chloramines are used to maintain a disinfectant residual in the distribution system, or if chlorine is used to maintain a disinfectant residual in the distribution system and there are no disinfection addition points after the entrance to the distribution system (i.e., no booster chlorination), the system shall take three samples as close to the first customer as possible, at intervals of at least six hours.

(2) If chlorine is used to maintain a disinfectant residual in the distribution system and there are one or more disinfection addition points after the entrance to the distribution system (i.e., booster chlorination), the system shall take one sample at each of the following locations: As close to the first customer as possible, in a location representative of average residence time, and as close to the furthest customer as possible (reflecting maximum residence time in the distribution system).

NOTE: Authority cited: Sections 116325 and 116375, Health and Safety Code. Reference: Sections 116350, 116385 and 116555, Health and Safety Code.

HISTORY

1. New section filed 5–18–2006; operative 6–17–2006 (Register 2006, No. 20).

§ 64534.6. Disinfection Byproduct Precursors (DBPP) Monitoring.

(a) Systems that use approved surface water and conventional filtration treatment (as defined in section 64651.23) shall take one paired TOC sample (source water and treated water) and one source water alkalinity sample per month per treatment plant at a time representative of normal operating conditions and influent water quality. TOC and alkalinity in the source water shall be monitored prior to any treatment and at the same time as TOC monitoring in the treated water. TOC in the treated water shall be monitored no later than the point of combined filter effluent turbidity monitoring and shall be representative of the treated water.

(b) Systems using approved surface water with an annual average treated water TOC of less than 2.0 mg/L for two consecutive years, or less than 1.0 mg/L for one year, may reduce monitoring for both TOC and alkalinity to one paired sample and one source water alkalinity sample per plant per quarter. The system shall revert to monitoring pursuant to subsection (a) in the first month following the quarter that the annual average treated water TOC is equal to or greater than 2.0 mg/L.

NOTE: Authority cited: Sections 116325 and 116375, Health and Safety Code. Reference: Sections 116350, 116385 and 116555, Health and Safety Code.

HISTORY

1. New section filed 5–18–2006; operative 6–17–2006 (Register 2006, No. 20).

§ 64534.8. Monitoring Plans.

Each system shall develop and submit to the Department a monitoring plan. The system shall implement the plan after Department review and approval. The system shall maintain the plan and make it available for inspection by the general public no later than 30 days following the applicable compliance date in section 64530(a) or (b). The Department will evaluate the plan based on the following required elements:

(a) Specific locations and schedules for collecting samples for any parameters included in this chapter, including seasonal variations if applicable.

(b) How the system will calculate compliance with MCLs, MRDLs, and treatment techniques.

NOTE: Authority cited: Sections 116325 and 116375, Health and Safety Code. Reference: Sections 116350, 116385, 116530 and 116555, Health and Safety Code.

HISTORY

1. New section filed 5–18–2006; operative 6–17–2006 (Register 2006, No. 20).

Article 4. Compliance Requirements

§ 64535. General Requirements for Determining Compliance.

(a) All samples taken and analyzed in accordance with section 64534.8 shall be included in determining compliance, pursuant to sections 64535.2, 64535.4, and 64536.4.

(b) For violations of the MCLs in section 64533 or MRDLs in section 64533.5 that may pose an acute risk to human health, notification shall be pursuant to section 64465.

NOTE: Authority cited: Sections 116325 and 116375, Health and Safety Code. Reference: Sections 116350, 116450 and 116460, Health and Safety Code.

HISTORY

1. New article 4 (sections 64535–64535.4) and section filed 5–18–2006; operative 6–17–2006 (Register 2006, No. 20).

§ 64535.2. Determining Disinfection Byproducts Compliance.

(a) During the first year of monitoring for disinfection byproducts under section 64534.2 the system shall comply with the following:

(1) The average of the first quarter's results shall not exceed four times the MCLs specified in section 64533.

(2) The average of the first and second quarter's results shall not exceed two times the MCLs specified in section 64533.

(3) The average of the first, second, and third quarter's results shall not exceed 1.33 times the MCLs specified in section 64533.

(b) TTHM and HAA5 MCL compliance is determined as follows:

(1) For systems monitoring quarterly, the running annual arithmetic average, computed quarterly, of quarterly arithmetic averages of all samples collected pursuant to section 64534.2(a) shall not exceed the MCLs specified in section 64533.

(2) For systems monitoring less frequently than quarterly, the average of samples collected that calendar year pursuant to section 64534.2(a) shall not exceed the MCLs specified in section 64533. If the average of the samples collected under section 64534.2(a) exceeds the MCL, the system shall increase monitoring to once per quarter per treatment plant. Compliance with the MCL shall then be determined by the average of the sample that triggered the quarterly monitoring and the following three quarters of monitoring, unless the result of fewer than four quarters of monitoring will cause the running annual average to exceed the MCL, in which case the system is in violation at the end of that quarter. After monitoring quarterly for four consecutive quarters (including the quarter that triggered the quarterly monitoring), and until such time as monitoring returns to routine monitoring pursuant to section 64534.2(a)(3), compliance shall be determined pursuant to paragraph (1).

(3) If the running annual arithmetic average of quarterly averages covering any consecutive four–quarter period exceeds the MCL, the system is in violation of the MCL and shall notify the public pursuant to sections 64464.3 and 64467, including language in section 64468.5, in addition to reporting to the Department pursuant to sections 64537 through 64537.6.

(4) If a public water system fails to complete four consecutive quarters of monitoring, compliance with the MCL for the last four–quarter compliance period shall be based on an average of the available data.

(c) Compliance for bromate shall be based on a running annual arithmetic average, computed quarterly, of monthly samples (or, for months in which the system takes more than one sample, the average of all samples taken during the month) collected by the system as prescribed by section 64534.2(c). If the average of samples covering any consecutive four–quarter period exceeds the MCL, the system is in violation of the MCL and shall notify the public pursuant to sections 64464.3 and 64467, including language in section 64468.5, in addition to reporting to the Department pursuant to sections 64537 through 64537.6. If a public water system fails to complete 12 consecutive months of monitoring, compliance with the MCL for the last four–quarter compliance period shall be based on an average of the available data.

(d) Compliance for chlorite shall be based on an arithmetic average of each three–sample set taken in the distribution system as prescribed by sections 64534.2(b)(1), (2) and (3). If the arithmetic average of any three–sample set exceeds the MCL, the system is in violation of the MCL and shall notify the public pursuant to sections 64464.3 and 64467, including language in section 64468.5, in addition to reporting to the Department pursuant to sections 64537 through 64537.6.

NOTE: Authority cited: Sections 116325 and 116375, Health and Safety Code. Reference: Sections 116350, 116450 and 116460, Health and Safety Code.

HISTORY

1. New section filed 5–18–2006; operative 6–17–2006 (Register 2006, No. 20).

§ 64535.4. Determining Disinfectant Residuals Compliance.

(a) During the first year of monitoring for disinfection residuals under section 64534.4 the system shall comply with the following:

(1) The average of the first quarter's results shall not exceed four times the MRDLs specified in section 64533.5.

(2) The average of the first and second quarter's results shall not exceed two times the MRDLs specified in section 64533.5.

(3) The average of the first, second, and third quarter's results shall not exceed 1.33 times the MRDLs specified in section 64533.5.

(b) Chlorine and chloramines MRDL compliance is determined as follows:

(1) Compliance shall be based on a running annual arithmetic average, computed quarterly, of monthly averages of all samples collected by the system under section 64534.4(a). If the average covering any consecutive four–quarter period exceeds the MRDL, the system is in violation of the MRDL and shall notify the public pursuant to sections 64464.3 and 64467, including language in section 64468.5, in addition to reporting to the Department pursuant to sections 64537 through 64537.6.

(2) In cases where systems switch between the use of chlorine and chloramines for residual disinfection during the year, compliance shall be determined by including together all monitoring results of both chlorine and chloramines. Reports submitted pursuant to sections 64537 through 64537.6 shall clearly indicate which residual disinfectant was analyzed for each sample.

(c) Compliance for chlorine dioxide shall be based on consecutive daily samples collected by the system under section 64534.4(b).

(1) If any daily sample taken at the entrance to the distribution system exceeds the MRDL, and one (or more) of the three samples taken in the distribution system exceed the MRDL, the system is in violation of the MRDL and shall take immediate corrective action to lower the level of chlorine dioxide below the MRDL. The system shall notify the Department within 48 hours of the determination, notify the public pursuant to the procedures for acute health risks in section 64465, including language in section 64468.5(c), in addition to reporting to the Department pursuant to sections 64537 through 64537.6. Failure to take samples in the distribution system the day following an exceedance of the chlorine dioxide MRDL at the entrance to the distribution system is also an MRDL violation and the system shall notify the public pursuant to the procedures for acute health risks in section 64465, including language in section 64468.5(c), in addition to reporting to the Department pursuant to sections 64537 through 64537.6.

(2) If any two consecutive daily samples taken at the entrance to the distribution system exceed the MRDL and all distribution system samples taken are below the MRDL, the system is in violation of the MRDL and shall take corrective action to lower the level of chlorine dioxide below the MRDL at the point of sampling. The system shall notify the public pursuant to the procedures for nonacute health risks in section 64464.3, including language in section 64468.5(c), in addition to reporting to the Department pursuant to sections 64537 through 64537.6. Failure to monitor at the entrance to the distribution system the day following an exceedance of the chlorine dioxide MRDL at this site is also an MRDL violation and the system shall notify the public pursuant to the procedures for nonacute health risks in section 64464.3, including language in section 64468.5(c), in addition to reporting to the Department pursuant to sections 64537 through 64537.6.

NOTE: Authority cited: Sections 116325 and 116375, Health and Safety Code. Reference: Sections 116350, 116450 and 116460, Health and Safety Code.

HISTORY

1. New section filed 5–18–2006; operative 6–17–2006 (Register 2006, No. 20).

Article 5. Treatment Technique for Control of Disinfection Byproduct Precursors (DBPP)

§ 64536. Alternative Compliance Criteria to the Enhanced Coagulation and Enhanced Softening Performance Requirements.

(a) Systems using approved surface water and conventional filtration treatment shall meet any one of the alternative compliance criteria in

paragraphs (1) through (6) to comply with this article or comply with the requirements of section 64536.2. Systems that meet one of the criteria in paragraphs (1) through (6) shall still comply with monitoring requirements in section 64534.6.

(1) The system's source water TOC level is less than 2.0 mg/L, calculated quarterly as a running annual average.

(2) The system's treated water TOC level is less than 2.0 mg/L, calculated quarterly as a running annual average.

(3) The system's source water TOC level is less than 4.0 mg/L, calculated quarterly as a running annual average; the source water alkalinity is greater than 60 mg/L (as $CaCO_3$), calculated quarterly as a running annual average; and either

(A) The TTHM and HAA5 running annual averages are no greater than 0.040 mg/L and 0.030 mg/L, respectively; or

(B) Prior to the applicable compliance date in section 64530(a) or (b), the system has applied to the Department for the approval of, and committed funds to the installation of, technologies that will limit the levels of TTHM and HAA5 to no more than 0.040 mg/L and 0.030 mg/L, respectively. The application to the Department shall include a description of the technology to be installed, evidence of a commitment to complete the installation, such as a signed contract, bid solicitation, or approved bond measure, and a schedule containing milestones and periodic progress reports for installation and operation of the technology. These technologies shall be installed and operating not later than June 30, 2005.

(4) The TTHM and HAA5 running annual averages are no greater than 0.040 mg/L and 0.030 mg/L, respectively, and the system uses only chlorine for primary disinfection and maintenance of a residual in the distribution system.

(5) The system's source water SUVA, prior to any treatment and measured monthly, is less than or equal to 2.0 L/mg-m, calculated quarterly as a running annual average.

(6) The system's finished water SUVA, measured monthly, is less than or equal to 2.0 L/mg-m, calculated quarterly as a running annual average.

(b) Systems using approved surface water and conventional filtration treatment and practicing softening that cannot achieve the TOC removal required by section 64536.2(a) shall meet any one of the criteria in paragraphs (1) through (2) below or any one of the criteria in section 64536(a), paragraphs (1) through (6) to comply with this article. Systems that meet one of the criteria in paragraphs (1) through (2) below or one of the criteria in section 64536(a), paragraphs (1) through (6) shall still comply with the monitoring requirements in section 64534.6.

(1) Softening that results in lowering the treated water alkalinity to less than 60 mg/L (as $CaCO_3$), measured monthly and calculated quarterly as a running annual average; or

(2) Softening that results in removing at least 10 mg/L of magnesium hardness (as $CaCO_3$), measured monthly and calculated quarterly as an annual running average.

NOTE: Authority cited: Sections 116325, 116370 and 116375, Health and Safety Code. Reference: Sections 116350, 116385 and 116555, Health and Safety Code.

HISTORY

1. New article 5 (sections 64536–64536.6) and section filed 5–18–2006; operative 6–17–2006 (Register 2006, No. 20).

§ 64536.2. Enhanced Coagulation and Enhanced Softening Performance Requirements.

(a) Systems using approved surface water and conventional filtration treatment (as defined in section 64651.23) shall operate with enhanced coagulation or enhanced softening to achieve the TOC percent removal levels specified in this section, unless the system meets at least one of the alternative compliance criteria listed in section 64536(a) or (b).

(b) Systems shall achieve the Step 1 percent reduction of TOC specified in table 64536.2–A between the source water and the combined filter effluent, unless the Department approves a system's request for alternate minimum TOC removal (Step 2) requirements under subsection (c). Systems practicing softening shall meet the Step 1 TOC removals in the far-right column (Source water alkalinity >120 mg/L) of table 64536.2–A for the specified source water TOC:

Table 64536.2–A
Step 1 Required Removal of TOC by Enhanced Coagulation and Enhanced Softening Systems Using Conventional Treatment[1, 2]

Source-Water TOC,mg/L	*Required Removal of TOC Source-Water Alkalinity, mg/L as $CaCO_3$* 0–60	>60–120	>120%
>2.0–4.0	35.0%	25.0%	15.0%
>4.0–8.0	45.0%	35.0%	25.0%
>8.0	50.0%	40.0%	30.0%

[1] Systems that meet one of the criteria in section 64536(a), paragraphs (1) through (6) do not have to operate with enhanced coagulation.

[2] Softening systems that meet one of the criteria in section 64536(b), paragraphs (1) through (2) do not have to operate with enhanced softening.

(c) Systems using approved surface water and conventional treatment that cannot achieve the Step 1 TOC removals required by subsection (b) due to water quality parameters or operational constraints shall apply to the Department, within three months of failure to achieve the TOC removals required by subsection (b), for approval of Step 2 removal requirements. If the Department approves the Step 2 removal requirements pursuant to subsection (d), and the system conducted monthly TOC monitoring beginning one year prior to the compliance date specified in section 64530, the Step 2 removal requirements will be retroactive to the compliance date for the purposes of determining compliance.

(d) Applications made to the Department by systems using enhanced coagulation for approval of Step 2 removal requirements under subsection (c) shall include, as a minimum, results of bench-scale or pilot-scale testing conducted under paragraph (1) of this subsection that were used to determine the alternate enhanced coagulation level.

(1) Alternate enhanced coagulation level is defined as coagulation at a coagulant dose and pH as determined by the method described in paragraphs (1) through (4) such that an incremental addition of 10 mg/L of alum (or equivalent addition of iron coagulant) results in a TOC removal of $\leq$0.3 mg/L. The percent removal of TOC at this point on the "TOC removal versus coagulant dose" curve is then defined as the Step 2 removal requirement for the system. Once approved by the Department, this Step 2 removal requirement supersedes the minimum TOC removal required by subsection 64536.2(b). This requirement shall be effective until such time as the Department approves a new value based on the results of a new bench-scale or pilot-scale test.

(2) Bench-scale or pilot-scale testing of enhanced coagulation shall be conducted by using representative water samples and adding 10 mg/L increments of alum (or equivalent addition of iron coagulant) until the pH is reduced to a level less than or equal to the enhanced coagulation Step 2 target pH shown in table 64536.2–B.

Table 64536.2–B
Enhanced Coagulation Step 2 Target pH

Alkalinity mg/L as $CaCO_3$	*Target pH*
0–60	5.5
>60–120	6.3
>120–240	7.0
>240	7.5

(3) For waters with alkalinities of less than 60 mg/L for which the addition of small amounts of alum (or equivalent addition of iron coagulant) drives the pH below 5.5 before significant TOC removal occurs, the system shall add necessary chemicals to maintain the pH between 5.3 and 5.7 in samples until the TOC removal of 0.3 mg/L per 10 mg/L alum added (or equivalent addition of iron coagulant) is reached.

(4) If the TOC removal is consistently less than 0.3 mg/L of TOC per 10 mg/L of incremental alum dose at all dosages of alum (or equivalent addition of iron coagulant), the system is eligible to apply for a waiver of enhanced coagulation requirements. The application shall include, as a minimum, the results of bench-scale or pilot-scale testing conducted under paragraph (1) of this subsection.

NOTE: Authority cited: Sections 116325, 116370 and 116375, Health and Safety Code. Reference: Sections 116350, 116385 and 116555, Health and Safety Code.

HISTORY

1. New section filed 5–18–2006; operative 6–17–2006 (Register 2006, No. 20).
2. Editorial correction of Table 64536.2–A (Register 2007, No. 30).

§ 64536.4. Disinfection Byproduct Precursor Compliance Calculations.

(a) Systems not meeting any of the criteria identified in sections 64536(a) or (b) shall comply with requirements contained in sections 64536.2(a) or (b) and shall calculate compliance quarterly, beginning after the system has collected 12 months of data, by determining an annual average using the following method:

(1) Determine actual monthly TOC percent removal, equal to:

(1 – [treated water TOC/source water TOC]) x 100.

(2) Determine the required monthly TOC percent removal (from either table 64536.2–A or from section 64536.2(c)).

(3) Divide the value in paragraph (a)(1) by the value in paragraph (a)(2).

(4) Add together the results of paragraph (a)(3) for the last 12 months and divide by 12.

(5) If the value calculated in paragraph (a)(4) is less than 1.00, the system is not in compliance with the TOC percent removal requirements.

(b) In any month that one or more of the conditions of sections 64536.4(b)(1) through (b)(6) are met, the system may assign a monthly value of 1.0 (in lieu of the value calculated in section 64536.4(a)(3)) when calculating compliance under the provisions of subsection (a).

(1) The system's source water TOC level, prior to any treatment, is less than or equal to 2.0 mg/L.

(2) The system's treated water TOC level is less than or equal to 2.0 mg/L.

(3) The system's source water SUVA, prior to any treatment, is less than or equal to 2.0 L/mg–m.

(4) The system's finished water SUVA is less than or equal to 2.0 L/mg–m.

(5) A system practicing softening removes at least 10 mg/L of magnesium hardness (as $CaCO_3$).

(6) A system practicing enhanced softening lowers alkalinity below 60 mg/L (as $CaCO_3$).

NOTE: Authority cited: Sections 116325, 116370 and 116375, Health and Safety Code. Reference: Sections 116350, 116385 and 116555, Health and Safety Code.

HISTORY

1. New section filed 5–18–2006; operative 6–17–2006 (Register 2006, No. 20).

§ 64536.6. Disinfection Byproduct Precursors (DBPP) Public Notification Requirements.

For systems using conventional treatment, enhanced coagulation or enhanced softening are identified as treatment techniques to control the level of disinfection byproduct precursors in drinking water treatment and distribution systems. If a system fails to comply with the enhanced coagulation or enhanced softening requirements established in this article the system shall notify the public pursuant to sections 64464.3 and 64467, including language in section 64468.5, in addition to reporting to the Department pursuant to sections 64537 through 64537.6.

NOTE: Authority cited: Sections 116325, 116370 and 116375, Health and Safety Code. Reference: Section 116350, Health and Safety Code.

HISTORY

1. New section filed 5–18–2006; operative 6–17–2006 (Register 2006, No. 20).

Article 6. Reporting and Recordkeeping Requirements

§ 64537. General Reporting Requirements.

Systems required to sample quarterly or more frequently, pursuant to section 64534.2, 64534.4, or 64534.6, shall report to the Department within 10 days after the end of each quarter in which samples were collected according to section 64451(c), notwithstanding the provisions of sections 64451(a) and (b). Systems required to sample less frequently than quarterly shall report to the Department within 10 days after the end of each monitoring period in which samples were collected. Systems shall report information to the Department in conformance with the requirements of sections 64537.2, 64537.4, and 64537.6.

NOTE: Authority cited: Sections 116325 and 116375, Health and Safety Code. Reference: Sections 116350, 116385, 116530 and 116555, Health and Safety Code.

HISTORY

1. New article 6 (sections 64537–64537.6) and section filed 5–18–2006; operative 6–17–2006 (Register 2006, No. 20).

§ 64537.2. Disinfection Byproducts Reporting.

Systems shall report to the Department the information specified in table 64537.2–A.

Table 64537.2–A
Disinfection Byproducts Reporting

If the system is monitoring under the requirements of section 64534.2 for...		*The system shall report...*
TTHM and HAA5	(a) on a quarterly or more frequent basis	(1) The number of samples taken during the last quarter. (2) The location, date, and result of each sample taken during the last quarter. (3) The arithmetic average of all samples taken in the last quarter. (4) The annual arithmetic average of the quarterly arithmetic averages of the samples for the last four quarters. (5) Whether, based on section 64535.2(b), the MCL was violated.
	(b) less frequently than quarterly (but at least annually)	(1) The number of samples taken during the last year. (2) The location, date, and result of each sample taken during the last monitoring period. (3) The arithmetic average of all samples taken over the last year. (4) Whether, based on section 64535.2(b), the MCL was violated.
	(c) less frequently than annually	(1) The location, date, and result of the last sample taken. (2) Whether, based on section 64535.2(b), the MCL was violated.
Chlorite		(1) The number of entry point samples taken each month for the last 3 months. (2) The location, date, and result of each sample (both entry point and distribution system) taken during the last quarter. (3) For each month in the reporting period, the arithmetic average of all samples taken in each three sample set taken in the distribution system. (4) Whether, based on section 64535.2(d), the MCL was violated, in which month it was violated, and how many times it was violated in each month.
Bromate		(1) The number of samples taken during the last quarter. (2) The location, date, and result of each sample taken during the last quarter. (3) The arithmetic average of the monthly arithmetic averages of all samples taken in the last year. (4) Whether, based on section 64535.2(c), the MCL was violated.

NOTE: Authority cited: Sections 116325 and 116375, Health and Safety Code. Reference: Sections 116350, 116385, 116530 and 116555, Health and Safety Code.

HISTORY

1. New section filed 5–18–2006; operative 6–17–2006 (Register 2006, No. 20).

§ 64537.4. Disinfectants Reporting.

Systems shall report to the Department the information specified in table 64537.4–A

Table 64537.4–A
Disinfectants Reporting

If the system is monitoring under the requirements of section 64534.4 for...	*The system shall report...*
Chlorine or chloramines	(1) The number of samples taken during each month of the last quarter. (2) The monthly arithmetic average of all samples taken in each month for the last 12 months. (3) The arithmetic average of all monthly averages for the last 12 months. (4) Whether, based on section 64535.4(b), the MRDL was violated.
Chlorine dioxide	(1) The dates, results, and locations of samples taken during the last quarter. (2) Whether, based on section 64535.4(c), the MRDL was violated. (3) Whether the MRDL was exceeded in any two consecutive daily samples and whether the resulting violation was acute or nonacute.

NOTE: Authority cited: Sections 116325 and 116375, Health and Safety Code. Reference: Sections 116350, 116385, 116530 and 116555, Health and Safety Code.

HISTORY

1. New section filed 5–18–2006; operative 6–17–2006 (Register 2006, No. 20).

§ 64537.6. Disinfection Byproduct Precursors and Enhanced Coagulation or Enhanced Softening Reporting.

(a) Systems required to meet the enhanced coagulation or enhanced softening requirements in section 64536.2(a) or (b) shall report the following:

(1) The number of paired (source water and treated water) samples taken during the last quarter.

(2) The location, date, and result of each paired sample and associated alkalinity taken during the last quarter.

(3) For each month in the reporting period that paired samples were taken, the arithmetic average of the percent reduction of TOC for each paired sample and the required TOC percent removal.

(4) Calculations for determining compliance with the TOC percent removal requirements, as provided in section 64536.4(a).

(5) Whether the system is in compliance with the enhanced coagulation or enhanced softening percent removal requirements in section 64536.2 for the last four quarters.

(b) Systems meeting one or more of the alternative compliance criteria in section 64536(a) or (b), in lieu of meeting the requirements in section 64536.2(a) or (b), shall report the following:

(1) The alternative compliance criterion that the system is using.

(2) The number of paired samples taken during the last quarter.

(3) The location, date, and result of each paired sample and associated alkalinity taken during the last quarter.

(4) The running annual arithmetic average based on monthly averages (or quarterly samples) of source water TOC for systems meeting a criterion in sections 64536(a)(1) or (3) or of treated water TOC for systems meeting the criterion in section 64536(a)(2).

(5) The running annual arithmetic average based on monthly averages (or quarterly samples) of source water SUVA for systems meeting the criterion in section 64536(a)(5) or of treated water SUVA for systems meeting the criterion in section 64536(a)(6).

(6) The running annual average of source water alkalinity for systems meeting the criterion in section 64536(a)(3) and of treated water alkalinity for systems meeting the criterion in section 64536(b)(1).

(7) The running annual average for both TTHM and HAA5 for systems meeting the criterion in section 64536(a)(3) or (4).

(8) The running annual average of the amount of magnesium hardness removal (as $CaCO_3$, in mg/L) for systems meeting the criterion in section 64536(b)(2).

(9) Whether the system is in compliance with the particular alternative compliance criterion in section 64536(a) or (b).

NOTE: Authority cited: Sections 116325 and 116375, Health and Safety Code. Reference: Sections 116350, 116385, 116530 and 116555, Health and Safety Code.

HISTORY

1. New section filed 5–18–2006; operative 6–17–2006 (Register 2006, No. 20).

Chapter 16. California Waterworks Standards

Article 1. Definitions

§ 64551. Applicability. [Repealed]

NOTE: Authority cited: Sections 208 and 4010.1(h), Health and Safety Code. Reference: Sections 4010.1(h), 4012, 4013 and 4019, Health and Safety Code.

HISTORY

1. New Chapter 16 (Sections 64551–64644, not consecutive) filed 12–6–79; effective thirtieth day thereafter (Register 79, No. 49).
2. Repealer filed 10–9–85; effective thirtieth day thereafter (Register 85, No. 42).
3. Amendment of article heading and repealer of former article 1 (sections 64551–64555) and new article 1 (sections 64551.10–64551.70) filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64551.10. Distribution Reservoir.

"Distribution reservoir" means any tank or other structure located within or connected to the distribution system and used to store treated/finished drinking water.

NOTE: Authority cited: Sections 116350, 116375 and 131200, Health and Safety Code. Reference: Sections 116275, 116375 and 131051, Health and Safety Code.

HISTORY

1. New section filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64551.20. Distribution System.

"Distribution system" means all physical parts of the water system, including, but not limited to: Pipes, valves, pumping stations, storage tanks or reservoirs, and user service lines, that are located between the water treatment plant, or the source if there is no treatment, and the consumer's service connection.

NOTE: Authority cited: Sections 116350, 116375 and 131200, Health and Safety Code. Reference: Sections 116275, 116375 and 131051, Health and Safety Code.

HISTORY

1. New section filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64551.30. Maximum Day Demand (MDD).

"Maximum day demand (MDD)" means the amount of water utilized by consumers during the highest day of use (midnight to midnight), excluding fire flow, as determined pursuant to Section 64554.

NOTE: Authority cited: Sections 116350, 116375 and 131200, Health and Safety Code. Reference: Sections 116275, 116375 and 131051, Health and Safety Code.

HISTORY

1. New section filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64551.35. Peak Hour Demand (PHD).

"Peak hour demand (PHD)" means the amount of water utilized by consumers during the highest hour of use during the maximum day, excluding fire flow, as determined pursuant to Section 64554.

NOTE: Authority cited: Sections 116350, 116375 and 131200, Health and Safety Code. Reference: Sections 116275, 116375 and 131051, Health and Safety Code.

HISTORY

1. New section filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64551.40. Source Capacity.

"Source capacity" means the total amount of water supply available, expressed as a flow, from all active sources permitted for use by the water system, including approved surface water, groundwater, and purchased water.

NOTE: Authority cited: Sections 116350, 116375 and 131200, Health and Safety Code. Reference: Sections 116275, 116375 and 131051, Health and Safety Code.

HISTORY

1. New section filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64551.60. User Service Line.

"User service line" means the pipe, tubing, and fittings connecting a water main to an individual water meter or service connection.

NOTE: Authority cited: Sections 116350, 116375 and 131200, Health and Safety Code. Reference: Sections 116275, 116375 and 131051, Health and Safety Code.

HISTORY

1. New section filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64551.70. Water Main.

"Water main" means any pipeline, except for user service lines, within the distribution system.

NOTE: Authority cited: Sections 116350, 116375 and 131200, Health and Safety Code. Reference: Sections 116275, 116375 and 131051, Health and Safety Code.

HISTORY

1. New section filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

Article 1.5. Waivers and Alternatives

§ 64551.100. Waivers and Alternatives.

(a) A water system that proposes to use an alternative to a requirement in this chapter shall:

(1) Demonstrate to the Department that the proposed alternative would provide at least the same level of protection to public health; and

(2) Obtain written approval from the Department prior to implementation of the alternative.

NOTE: Authority cited: Sections 116350, 116375 and 131200, Health and Safety Code. Reference: Sections 116275, 116375, 116535 And 131051, Health And Safety Code.

HISTORY

1. New article 1.5 (section 64551.100) and section filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

Article 2. Permit Requirements

§ 64552. Initial Permit for Public Water System.

(a) Each public water system applying for an initial domestic public water system permit shall submit an application that includes:

(1) A map and description of the entire existing and proposed service area, showing:

(A) The location of each water source, as well as wells that are abandoned, out–of–service, destroyed, standby, or inactive (not physically connected to the water system), together with:

1. Any valid water rights owned by the system for surface water sources, including information on any limitations or restrictions of those rights;

2. For a groundwater aquifer, the groundwater levels and drawdown patterns;

3. Permits or approvals for groundwater extraction if pumping from an adjudicated groundwater basin;

4. Existing and planned source pumping capability and distribution storage capacity for the system as a whole and for each pressure zone;

5. The calculated sustained well yields of existing wells if groundwater sources are used;

6. Permits for any waters proposed for use to offset potable water demand; and

(B) Treatment facilities and pumping plants;

(C) Distribution system piping, pressure zones, hydropneumatic tanks, and reservoirs;

(D) Valves, sample taps, and other system appurtenances;

(E) Recycled water and sewage systems;

(F) Conveyance facilities;

(G) Any flood plains in the projected service area; and

(H) The 100 year flood or highest recorded flood level, whichever is higher.

(2) The population, and number and type of residential, commercial, agricultural, and industrial service connections, in the system's projected service area;

(3) Design drawings of proposed facilities drawn to scale, showing location, size, and construction material;

(4) As–built drawings of existing facilities, drawn to scale, showing location, size, construction materials, and year of installation of any water main or other facility that has already been constructed;

(5) The estimated MDD and PHD with the methods, assumptions, and calculations used for the estimations;

(6) A source water assessment and description of each source of water proposed for use to meet the estimated MDD and information demonstrating that the sources are adequate to do so, such as, but not limited to, well pump tests, the capacities of all pumping facilities, and the hydraulic capacity of surface water treatment facilities,

(A) If the system plans to use surface water, the system shall demonstrate that it holds a valid water right to that amount of water including any allowable reductions or limitations on its availability, as stated in the water rights contract;

(B) If groundwater is to be used, the system shall demonstrate that the groundwater aquifer is sufficient, or in the case of adjudicated groundwater basins, that approval has been obtained to allow that amount of sustained withdrawal including any allowable reductions or limitations on its availability, as stated in the water rights contract;

(C) If purchased water is to be used, the system shall provide contracted amount and the hydraulic capacity at each turnout and any allowable reductions or limitations on its availability, as stated in the purchased water contract; and

(7) Information that demonstrates how the system proposes to reliably meet four hours of PHD using, but not limited to, available source capacity and distribution reservoirs.

(b) The information in subsection (a) shall be prepared by a professional civil engineer registered in the State of California with experience in water supply engineering.

NOTE: Authority cited: Sections 116350, 116375 and 131200, Health and Safety Code. Reference: Sections 116275, 116375, 116525, 116555 and 131051, Health and Safety Code.

HISTORY

1. New article 2 (sections 64552–64558) and section filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64553. Responsibility.

NOTE: Authority cited: Sections 208 and 4010.1(h), Health and Safety Code. Reference: Sections 4010.1(h), 4012, 4013 and 4019, Health and Safety Code.

HISTORY

1. Repealer filed 10–9–85; effective thirtieth day thereafter (Register 85, No. 42).

§ 64554. New and Existing Source Capacity.

(a) At all times, a public water system's water source(s) shall have the capacity to meet the system's maximum day demand (MDD). MDD shall be determined pursuant to subsection (b).

(1) For systems with 1,000 or more service connections, the system shall be able to meet four hours of peak hourly demand (PHD) with source capacity, storage capacity, and/or emergency source connections.

(2) For systems with less than 1,000 service connections, the system shall have storage capacity equal to or greater than MDD, unless the system can demonstrate that it has an additional source of supply or has an emergency source connection that can meet the MDD requirement.

(3) Both the MDD and PHD requirements shall be met in the system as a whole and in each individual pressure zone.

(b) A system shall estimate MDD and PHD for the water system as a whole (total source capacity and number of service connections) and for each pressure zone within the system (total water supply available from the water sources and interzonal transfers directly supplying the zone and number of service connections within the zone), as follows:

[The next page is 617.]

(1) If daily water usage data are available, identify the day with the highest usage during the past ten years to obtain MDD; determine the average hourly flow during MDD and multiply by a peaking factor of at least 1.5 to obtain the PHD.

(2) If no daily water usage data are available and monthly water usage data are available:

(A) Identify the month with the highest water usage (maximum month) during at least the most recent ten years of operation or, if the system has been operating for less than ten years, during its period of operation;

(B) To calculate average daily usage during maximum month, divide the total water usage during the maximum month by the number of days in that month; and

(C) To calculate the MDD, multiply the average daily usage by a peaking factor that is a minimum of 1.5; and

(D) To calculate the PHD, determine the average hourly flow during MDD and multiply by a peaking factor that is a minimum of 1.5.

(3) If only annual water usage data are available:

(A) Identify the year with the highest water usage during at least the most recent ten years of operation or, if the system has been operating for less than ten years, during its years of operation;

(B) To calculate the average daily use, divide the total annual water usage for the year with the highest use by 365 days; and

(C) To calculate the MDD, multiply the average daily usage by a peaking factor of 2.25.

(D) To calculate the PHD, determine the average hourly flow during MDD and multiply by a peaking factor that is a minimum of 1.5.

(4) If no water usage data are available, utilize records from a system that is similar in size, elevation, climate, demography, residential property size, and metering to determine the average water usage per service connection. From the average water usage per service connection, calculate the average daily demand and follow the steps in paragraph (3) to calculate the MDD and PHD.

(c) Community water systems using only groundwater shall have a minimum of two approved sources before being granted an initial permit The system shall be capable of meeting MDD with the highest–capacity source off line.

(d) A public water system shall determine the total capacity of its groundwater sources by summing the capacity of its individual active sources. If a source is influenced by concurrent operation of another source, the total capacity shall be reduced to account for such influence. Where the capacity of a source varies seasonally, it shall be determined at the time of MDD.

(e) The capacity of a well shall be determined from pumping data existing prior to March 9, 2008 or in accordance with subsection (f) or (g). Prior to conducting a well capacity test pursuant to subsection (g), a system shall submit the information listed below to the Department for review and approval. For well capacity tests conducted pursuant to subsection (f), the information shall be submitted to the Department if requested by the Department.

(1) The name and qualifications of the person who will be conducting the test;

(2) The proposed test's pump discharge rate, based on the design rate determined during well development and/or a step–drawdown test.

(3) A copy of a United States Geological Survey 7 1/2–minute topographic map of the site at a scale of 1:24,000 or larger (1 inch equals 2,000 feet or 1 inch equals less than 2,000 feet) or, if necessary, a site sketch at a scale providing more detail, that clearly indicates;

(A) The well discharge location(s) during the test, and

(B) The location of surface waters, water staff gauges, and other production wells within a radius of 1000 feet;

(4) A well construction drawing, geologic log, and electric log, if available;

(5) Dates of well completion and well development, if known;

(6) Specifications for the pump that will be used for the test and the depth at which it will draw water from the well;

(7) A description of the methods and equipment that will be used to measure and maintain a constant pumping rate;

(8) A description of the water level measurement method and measurement schedule;

(9) For wells located in or having an influence on the aquifer from which the new well will draw water, a description of the wells' operating schedules and the estimated amount of groundwater to be extracted, while the new well is tested and during normal operations prior to and after the new well is in operation;

(10) A description of the surface waters, water staff gauges, and production wells–shown in (3)(B);

(11) A description of how the well discharge will be managed to ensure the discharge doesn't interfere with the test;

(12) A description of how the initial volume of water in the well's casing, or bore hole if there is no casing at the time, will be addressed to ensure it has no impact on the test results; and

(13) A written description of the aquifer's annual recharge.

(f) To determine the capacity of a well drilled in alluvial soils when there is no existing data to determine the capacity, a water system shall complete a constant discharge (pumping rate) well capacity test and determine the capacity as follows:

(1) Take an initial water level measurement (static water level) and then pump the well continuously for a minimum of eight hours, maintaining the pump discharge rate proposed in subsection (e)(2);

(2) While pumping the well, take measurements of the water level drawdown and pump discharge rates for a minimum of eight hours at a frequency no less than every hour;

(3) Plot the drawdown data versus the time data on semi–logarithmic graph paper, with the time intervals on the horizontal logarithm axis and the drawdown data on the vertical axis;

(4) Steady–state is indicated if the last four hours of drawdown measurements and the elapsed time yield a straight line in the plot developed pursuant to subsection (3). If steady–state is not achieved, the pump discharge rate shall be continued for a longer period of time or adjusted, with paragraphs (2) and (3) above repeated, until steady–state is achieved.

(5) Discontinue pumping and take measurements of the water level drawdown no less frequently than every 15 minutes for the first two hours and every hour thereafter for at least six hours or until the test is complete; and

(6) To complete the test, the well shall demonstrate that, within a length of time not exceeding the duration of the pumping time of the well capacity test, the water level has recovered to within two feet of the static water level measured at the beginning of the test or to a minimum of ninety–five percent of the total drawdown measured during the test, whichever is more stringent.

(7) The capacity of the well shall be the pump discharge rate determined by a completed test.

(g) The capacity of a well whose primary production is from a bedrock formation, such that the water produced is yielded by secondary permeability features (e.g. fractures or cracks), shall be determined pursuant to either paragraph (1) or (2) below.

(1) The public water system shall submit a report, for Department review and approval, proposing a well capacity based on well tests and the evaluation and management of the aquifer from which the well draws water. The report shall be prepared and signed by a California registered geologist with at least three years of experience with groundwater hydrology, a California licensed engineer with at least five years of experience with groundwater hydrology, or a California certified hydrogeologist. Acceptance of the proposed well capacity by the Department shall, at a minimum, be based on the Department's review and approval of the following information presented in the report in support of the proposed well capacity:

(A) The rationale for the selected well test method and the results;

(B) The geological environment of the well;

(C) The historical use of the aquifer;

(D) Data from monitoring of other local wells;

(E) A description of the health risks of contaminants identified in a Source Water Assessment, as defined in section 63000.84 of Title 22, and the likelihood of such contaminants being present in the well's discharge;

(F) Impacts on the quantity and quality of the groundwater;

(G) How adjustments were made to the estimated capacity based on drawdown, length of the well test, results of the wells test, discharge options, and seasonal variations and expected use of the well; and

(H) The well test(s) results and capacity analysis.

(2) During the months of August, September, or October, conduct either a 72–hour well capacity test or a 10–day well capacity test, and determine the well capacity using the following procedures:

(A) Procedures for a 72 hour well capacity test:

1. For the purpose of obtaining an accurate static water level value, at least twelve hours before initiating step 2., pump the well at the pump discharge rate proposed in subsection (e)(2) for no more than two hours, then discontinue pumping;

2. Measure and record the static water level and then pump the well continuously for a minimum of 72 hours starting at the pump discharge rate proposed in (e)(2);

3. Measure and record water drawdown levels and pump discharge rate:

a. Every thirty minutes during the first four hours of pumping,

b. Every hour for the next four hours, and

c. Every four hours thereafter until the water drawdown level is constant for at least the last four remaining measurements, and;

4. Plot the drawdown and pump discharge rate data versus time data on semi–logarithmic graph paper, with the time intervals on the horizontal logarithmic axis and the drawdown and pump discharge rate data on the vertical axis.

(B) Procedures for a 10 day well capacity test:

1. For the purpose of obtaining an accurate static water level value, at least twelve hours before initiating step 2., pump the well at the pump discharge rate proposed in subsection (e)(2) for no more than two hours, then discontinue pumping;

2. Measure and record the static water level and then pump the well continuously for a minimum of 10 days starting at the pump discharge rate proposed in (e)(2);

3. Measure and record water drawdown levels and pumping rate:

a. Every thirty minutes during the first four hours of pumping,

b. Every hour for the next four hours,

c. Every eight hours for the remainder of the first four days,

d. Every 24 hours for the next five days, and

e. Every four hours thereafter until the water drawdown level is constant for at least the last four remaining measurements, and;

4. Plot the drawdown and pump discharge rate data versus time data on semi–logarithmic graph paper, with the time intervals on the horizontal logarithmic axis and the drawdown and pump discharge rate data on the vertical axis.

(C) To complete either the 72–hour or 10–day well capacity test the well shall demonstrate that, within a length of time not exceeding the duration of the pumping time of the well capacity test, the water level has recovered to within two feet of the static water level measured at the beginning of the well capacity test or to a minimum of ninety–five percent of the total drawdown measured during the test, whichever is more stringent. If the well recovery does not meet these criteria, the well capacity cannot be determined pursuant to subsection (g)(2) using the proposed pump rate. To demonstrate meeting the recovery criteria, the following water level data in the well shall be measured, recorded, and compared with the criteria:

1. Every 30 minutes during the first four hours after pumping stops,

2. Hourly for the next eight hours, and

3. Every 12 hours until either the water level in the well recovers to within two feet of the static water level measured at the beginning of the well capacity test or to a at least ninety–five percent of the total drawdown measured during the test, which ever occurs first.

(D) Following completion of a 72–hour or 10–day well capacity test, the well shall be assigned a capacity no more than:

1. For a 72–hour test, 25 percent of the pumping rate at the end of a completed test's pumping.

2. For a 10–day test, 50 percent of the pumping rate at the end a completed test's pumping.

(h) The public water system shall submit a report to the Department that includes all data and observations associated with a well capacity test conducted pursuant to subsection (f) or (g), as well as the estimated capacity determination methods and calculations. The data collected during pumping and recovery phases of the well capacity tests shall be submitted in an electronic spreadsheet format in both tabular and graphic files.

(i) An assigned well capacity may be revised by the Department if pumping data collected during normal operations indicates that the assigned well capacity was not representative of the actual well capacity.

(j) If directed by the Department to do so, based on adverse conditions that may lead or may have led to a regional aquifer's inability to meet a water system's demand on such an aquifer, the water system shall submit a report to the Department that includes regional aquifer recharge estimates and a water balance analysis. The report shall be prepared and signed by a California registered geologist with at least three years of experience with groundwater hydrology, a California licensed engineer with at least five years of experience with groundwater hydrology, or a California certified hydrogeologist.

(k) The source capacity of a surface water supply or a spring shall be the lowest anticipated daily yield based on adequately supported and documented data.

(*l*) The source capacity of a purchased water connection between two public water systems shall be included in the total source capacity of the purchaser if the purchaser has sufficient storage or standby source capacity to meet user requirements during reasonable foreseeable shutdowns by the supplier.

NOTE: Authority cited: Sections 116350, 116375 and 131200, Health and Safety Code. Reference: Sections 116275, 116375, 116540, 116555 and 131051, Health and Safety Code.

HISTORY

1. New section filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64555. Definitions. [Repealed]

NOTE: Authority cited: Sections 208 and 4010.1 (h), Health and Safety Code. Reference: Sections 4010.1 (h), 4012, 4013 and 4019, Health and Safety Code.

HISTORY

1. Amendment filed 10–9–85; effective thirtieth day thereafter (Register 85, No. 42).
2. Repealer filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64556. Permit Amendments.

(a) An application for an amended domestic water supply permit shall be submitted to the Department prior to any of the following:

(1) Addition of a new distribution reservoir (100,000 gallon capacity or greater) to the distribution system;

(2) Modification or extension of an existing distribution system using an alternative to the requirements in this chapter;

(3) Modification of the water supply by:

A. Adding a new source;

B. Changing the status of an existing source (e.g., active to standby); or

C. Changing or altering a source, such that the quantity or quality of supply could be affected;

(4) Any addition or change in treatment, including:

A. Design capacity; or

B. Process;

(5) Expansion of the existing service area (by 20% or more of the number of service connections specified in the most recent permit or permit amendment);

(6) Consolidation with one or more other water systems;

(7) Change in regulatory jurisdiction;

(8) Change in type of public water system;

(9) Obtaining a water quality standard exemption from the Department;

(10) Obtaining a secondary standard waiver from the Department;

(11) Proposal for modifications of existing recreational uses on a water supply reservoir;

(12) Request for a hand washing exclusion by a transient noncommunity water system, pursuant to section 116282 of the Health and Safety Code; or

(13) Proposal for offsetting domestic water needs with an unapproved water supply.

(b) A water system shall submit an application to the Department if it has been notified by the Department that changes to the water system require an amended permit based on the Department's review of system operations, source type and capacity, geographical location, system size, and distribution system complexity.

(c) Except as set forth in subsections(a) and (b) any modifications or extensions to an existing distribution system may be made without applying for and receiving an amended domestic water supply permit provided the modifications comply with all of the requirements of this chapter.

NOTE: Authority cited: Sections 116350, 116375 and 131200, Health and Safety Code. Reference: Sections 116275, 116375, 116535, 116550 and 131051, Health and Safety Code.

HISTORY

1. New section filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64558. Source Capacity Planning Study.

(a) If directed by the Department to do so based on its determination that there is an existing or potential problem with the system's source capacity or a proposed expansion pursuant to section 64556(a)(5), a water system shall submit a Source Capacity Planning Study (Study) containing the following information:

(1) The anticipated growth of the water system over a projected period of at least ten years in terms of the population and number and type of residential, commercial, and industrial service connections to be served by the water system.

(2) Estimates of the amount of water needed to meet the total annual demand and the MDD over the projected ten–year growth period (projected system demand). Methods, assumptions, and calculations used to estimate the projected system demand shall be included.

(3) A map and description of the entire existing and proposed service area, showing:

(A) The location of each water source, including wells that are abandoned, out–of–service, destroyed, standby, or inactive;

1. Any valid water rights owned by the system for surface water sources, including information on any limitations or restrictions of those rights;

2. For a groundwater aquifer, the groundwater levels and drawdown patterns;

3. Permits or approvals for groundwater extraction if pumping from an adjudicated groundwater basin;

4. Existing and planned source pumping capability and distribution storage capacity for the system as a whole and for each pressure zone;

5. The calculated sustained well yields of existing wells if groundwater sources are used;

6. Permits, if required, for any waters proposed for use to offset potable water demand; and

7. A Source Water Assessment for each potable water source.

(B) Distribution system piping, pressure zones, hydropneumatic tanks, and reservoirs;

(C) Valves, sample taps, flow meters, unmetered service connections, and other system appurtenances;

(D) Conveyance facilities;

(E) Any flood plains in the projected service area; and

(F) The 100 year flood or highest recorded flood level, whichever is higher.

(b) If directed by the Department to do so based on its determination that a study is out of date, a water system shall update and submit the Study to the Department.

(c) Water systems that have submitted an Urban Water Management Plan to the Department of Water Resources pursuant to Water Code Part 2.6 commencing with section 10610, may submit a copy of that report in lieu of some or all of the requirements of subsection (a) to the extent such information is included in the plan.

NOTE: Authority cited: Sections 116350, 116375 and 131200, Health and Safety Code. Reference: Sections 116275, 116375, 116555 and 131051, Health and Safety Code.

HISTORY

1. New section filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

Article 3. Water Sources

§ 64560. New Well Siting, Construction, and Permit Application.

(a) To receive a new or amended domestic water supply permit for a proposed well, the water system shall provide the following information to the Department in the technical report as part of its permit application:

(1) A source water assessment as defined in Section 63000.84 for the proposed site;

(2) Documentation demonstrating that a well site control zone with a 50–foot radius around the site can be established for protecting the source from vandalism, tampering, or other threats at the site by water system ownership, easement, zoning, lease, or an alternative approach approved by the Department based on its potential effectiveness in providing protection of the source from contamination;

(3) Design plans and specifications for the well; and

(4) Documentation required for compliance with the California Environmental Quality Act (CEQA).

(b) After the Department has provided written or oral approval of the initial permit amendment application and the water system has constructed the well, the water system shall submit the following additional materials for its permit application:

(1) A copy of the well construction permit if required by the county or local agency;

(2) Department of Water Resources well completion report;

(3) A copy of any pump tests required by the Department;

(4) Results of all required water quality analyses; and

(5) As–built plans.

(c) Each new public water supply well shall:

(1) As a minimum, be constructed in accordance with the community water system well requirements in California Department of Water Resources Bulletins 74–81 and 74–90, which are hereby incorporated by reference;

(2) Be constructed in accordance with American Water Works Association (AWWA) Standard A100–06 (Water Wells), which is hereby incorporated by reference;

(3) Be installed such that:

(A) All equipment is accessible for operation, maintenance, and removal;

(B) Protection is provided against flooding;

(C) The wellhead terminates a minimum of 18 inches above the finished grade;

(D) Wellhead and electrical controls are not installed in vaults;

(E) The well is equipped with:

1. Fittings and electrical connections to enable chlorination facilities to be readily installed;

2. A non–threaded down–turned sampling tap located on the discharge line between the wellhead and the check valve. Sampling taps used for obtaining samples for bacteriological analysis shall not have a screen, aerator, or other such appurtenance;

(F) Provisions are made to allow the well to be pumped to waste with a waste discharge line that is protected against backflow.

NOTE: Authority cited: Sections 116350, 116375 and 131200, Health and Safety Code. Reference: Sections 116275, 116375, 116530, 116535 and 131051, Health and Safety Code.

HISTORY

1. Repealer of former article 2 (sections 64560–64570) and repealer of section and new article 3 (sections 64560–64561) and new section filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64560.5. Well Destruction.

Destruction of a public drinking water supply well shall be in accordance with the California Department of Water Resources Bulletins 74–81 and 74–90.

NOTE: Authority cited: Sections 116350, 116375 and 131200, Health and Safety Code. Reference: Sections 116275, 116375, 116535 and 131051, Health and Safety Code.

HISTORY

1. New section filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64561. Source Flow Meters.

Each water system shall:

(a) Except for inactive sources, install a flow meter at a location between each water source and the entry point to the distribution system;

(b) Meter the quantity of water flow from each source, and record the total monthly production each month.

NOTE: Authority cited: Sections 116350, 116375 and 131200, Health and Safety Code. Reference: Sections 116275, 116375, 116555 and 131051, Health and Safety Code.

HISTORY

1. New section filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6). For prior history, see Register 85, No. 42.

§ 64562. Quantity of Supply. [Repealed]

NOTE: Authority cited: Sections 208 and 4010.1(h), Health and Safety Code. Reference: Sections 4010.1(h), 4012, 4013 and 4019, Health and Safety Code.

HISTORY

1. Amendment filed 10–9–85; effective thirtieth day thereafter (Register 85, No. 42).
2. Repealer filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64563. Procedures for Determining Source Capacity. [Repealed]

NOTE: Authority cited: Sections 208 and 4010.1(h), Health and Safety Code. Reference: Sections 4010.1(h), 4012, 4013 and 4019, Health and Safety Code.

HISTORY

1. Repealer filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64564. Procedures for Determining Needed Source Capacity and Needed Storage Volume. [Repealed]

NOTE: Authority cited: Sections 208 and 4010.1(h), Health and Safety Code. Reference: Sections 4010.1(h), 4012, 4013 and 4019, Health and Safety Code.

HISTORY

1. Amendment filed 10–9–85; effective thirtieth day thereafter (Register 85, No. 42).
2. Repealer filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64565. Department Approval of Source and Storage Capacities.

NOTE: Authority cited: Sections 208, 4010.1(h), Health and Safety Code. Reference: Sections 4010.1(h), 4012, 4013 and 4019, Health and Safety Code.

HISTORY

1. Repealer filed 10–9–85; effective thirtieth day thereafter (Register 85, No. 42).

§ 64566. System Pressure. [Repealed]

NOTE: Authority cited: Sections 208 and 4010.1(h), Health and Safety Code. Reference: Sections 4010.1(h), 4012, 4013 and 4019, Health and Safety Code.

HISTORY

1. Repealer filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64568. Conditions for Adding Service Connections. [Repealed]

NOTE: Authority cited: Sections 208 and 4010.1(h), Health and Safety Code. Reference: Sections 4010.1(h), 4012, 4013 and 4019, Health and Safety Code.

HISTORY

1. Repealer filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

Article 4. Materials and Installation of Water Mains and Appurtenances

§ 64570. Materials and Installation.

(a) All newly installed water mains shall comply with the materials and installation standards of the American Water Works Association pursuant to tables 64570–A and 64570–B. The standards are hereby incorporated by reference.

Table 64570–A
Materials Standards for Water Mains

Type of Material	*Diameter of Main*	*Applicable Standard*
PVC	4 in. through 12 in.	C900–97
PVC	14 in. through 48 in.	C905–97
Polyethylene (HDPE)	4 in. through 63 in.	C906–99
Fiberglass	All sizes	C950–01
Ductile Iron	All sizes	C150/A21.50–02
Ductile Iron, Centrifugally cast	All sizes	C151/A21.51–02
Steel	6 inches and larger	C200–97
Copper	All sizes	C800–05
Concrete		
Reinforced steel–cylinder	All sizes	C300–04
Prestressed steel–cylinder	All sizes	C301–99, C304–99
Reinforced noncylinder	All sizes	C302–04
Bar wrapped/steel cylinder	All sizes	C303–02
PVC, Molecularly oriented polyvinyl chloride	All sizes	C909–02

Table 64570–B
Installation Standards for Water Mains

Type of Installation	*Applicable Standard*
Steel Pipe–Design and Installation	M–11 (2004)
Ductile–Iron Water Mains and Their Appurtenances	C600–05
Underground Installation of PVC Pressure Pipe and Fittings	C605–05
Concrete Pressure Pipe	M9(1995)

(b) Water mains shall:

(1) Be installed below the frost line or be otherwise protected to prevent freezing; and

(2) Be protected against crushing under loads that could pass above the installation.

NOTE: Authority cited: Sections 116350, 116375 and 131200, Health and Safety Code. Reference: Sections 116275, 116375, 116535 and 131051, Health and Safety Code.

HISTORY

1. Amendment filed 10–9–85; effective thirtieth day thereafter (Register 85, No. 42).
2. New article 4 (sections 64570–64578) and repealer and new section filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64572. Water Main Separation.

(a) New water mains and new supply lines shall not be installed in the same trench as, and shall be at least 10 feet horizontally from and one foot vertically above, any parallel pipeline conveying:

(1) Untreated sewage,

(2) Primary or secondary treated sewage,

(3) Disinfected secondary–2.2 recycled water (defined in section 60301.220),

(4) Disinfected secondary–23 recycled water (defined in section 60301.225), and

(5) Hazardous fluids such as fuels, industrial wastes, and wastewater sludge.

(b) New water mains and new supply lines shall be installed at least 4 feet horizontally from, and one foot vertically above, any parallel pipeline conveying:

(1) Disinfected tertiary recycled water (defined in section 60301.230), and

(2) Storm drainage.

(c) New supply lines conveying raw water to be treated for drinking purposes shall be installed at least 4 feet horizontally from, and one foot vertically below, any water main.

(d) If crossing a pipeline conveying a fluid listed in subsection (a) or (b), a new water main shall be constructed no less than 45–degrees to and at least one foot above that pipeline. No connection joints shall be made in the water main within eight horizontal feet of the fluid pipeline.

(e) The vertical separation specified in subsections (a), (b), and (c) is required only when the horizontal distance between a water main and pipeline is less than ten feet.

(f) New water mains shall not be installed within 100 horizontal feet of the nearest edge of any sanitary landfill, wastewater disposal pond, or hazardous waste disposal site, or within 25 horizontal feet of the nearest edge of any cesspool, septic tank, sewage leach field, seepage pit, underground hazardous material storage tank, or groundwater recharge project site.

(g) The minimum separation distances set forth in this section shall be measured from the nearest outside edge of each pipe barrel.

(h) With Department approval, newly installed water mains may be exempt from the separation distances in this section, except subsection (f), if the newly installed main is:

(1) less than 1320 linear feet,

(2) replacing an existing main, installed in the same location, and has a diameter no greater than six inches more than the diameter of the main it is replacing, and

(3) installed in a manner that minimizes the potential for contamination, including, but not limited to:

(A) sleeving the newly installed main, or

(B) utilizing upgraded piping material

NOTE: Authority cited: Sections 116350, 116375 and 131200, Health and Safety Code. Reference: Sections 116275, 116375 and 131051, Health and Safety Code.

HISTORY

1. New section filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64573. Minimum Water Main Size for Community Water Systems.

Newly installed water mains in a community water system shall have a nominal diameter of at least four inches.

NOTE: Authority cited: Sections 116350, 116375 and 131200, Health and Safety Code. Reference: Sections 116275, 116375 and 131051, Health and Safety Code.

HISTORY

1. New section filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64575. Flushing.

(a) A flushing valve or blowoff shall be provided at the end of each +ly installed dead–end water main. Fire hydrants meeting the criteria of this section may be considered flushing valves.

(b) Flushing valves and blowoffs shall not discharge to a sanitary sewer without an air gap separation between the sewer and the valve or blowoff.

(c) The flushing velocity in the main shall not be less than 2.5 ft/s unless it is determined that conditions do not permit the required flow to be discharged to waste.

(d) Newly installed flushing valves and blowoffs shall be designed to maintain the minimum continuous flushing flows as indicated below to produce a minimum velocity of 2.5ft/s in commonly used sizes of pipe.

Table 64575–A. Minimum Flushing Flows for Different Size Water Mains.

Nominal Main Size Diameter (inches)	*Minimum Flushing Flow (gallons per minute)*
2	25
3	50
4	100
6	225
8	400
10	600
12	900
14	1200
16	1600

NOTE: Authority cited: Sections 116350, 116375 and 131200, Health and Safety Code. Reference: Sections 116275, 116375, 116535 and 131051, Health and Safety Code.

HISTORY

1. New section filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64576. Air–Release, Air Vacuum, and Combination Valves.

Each new air–release, air vacuum, or combination valve, and any such valve installed to replace an existing valve shall be:

(a) Installed such that its vent opening is above grade, above the calculated 100–year flood water level, and, if recorded data are available, above the highest recorded water level;

(b) Readily accessible for inspection, maintenance and replacement;

(c) Constructed and designed to prevent exposure to rainwater or runoff, vandalism, and birds, insects, rodents, or other animals;

(d) Fitted with a downward–facing screened vent or a domed and screened cap; and

(e) Installed pursuant to American Water Works Association Standard C512–04 and Manual M51 (2001), which are hereby incorporated by reference.

NOTE: Authority cited: Sections 116350, 116375 and 131200, Health and Safety Code. Reference: Sections 116275, 116375, 116535 and 131051, Health and Safety Code.

HISTORY

1. New section filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64577. Isolation Valves.

As a minimum, isolation valves shall be installed on all new water mains within the distribution system as follows:

(a) No farther than 1,320 linear feet apart on all mains having a diameter of 12 inches or less.

(b) At each tee or crossing connection between mains that have a diameter of 12 inches or less, within 100 feet of the tee or crossing connection with the primary main.

(c) Between the water main and each fire hydrant served by the main.

NOTE: Authority cited: Sections 116350, 116375 and 131200, Health and Safety Code. Reference: Sections 116275, 116375, 116535 and 131051, Health and Safety Code.

HISTORY

1. New section filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64578. Water Main Valve Construction.

Newly installed valves constructed on water mains shall comply with the following:

(a) A valve box shall be installed over each buried valve stem to aid in locating and operating the valve.

(b) For valves buried in trenches greater than five feet below the finished grade, either a valve stem riser to permit the use of a normal key or a notation on valve records indicating that a long key will be required shall be provided.

NOTE: Authority cited: Sections 116350, 116375 and 131200, Health and Safety Code. Reference: Sections 116275, 116375, 116535 and 131051, Health and Safety Code.

HISTORY

1. New section filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

Article 5. Disinfection Requirements

§ 64580. Disinfection of New or Repaired Mains.

Prior to use, newly installed water mains, or water mains that have been taken out of service for maintenance or repair, shall be disinfected and sampled for bacteriological quality in accordance with American Water Works Association Standard C651–05, which is hereby incorporated by reference. Samples from new mains shall be negative for coliform bacteria prior to the new main(s) being placed into service.

NOTE: Authority cited: Sections 116350, 116375 and 131200, Health and Safety Code. Reference: Sections 116275, 116375, 116535 and 131051, Health and Safety Code.

HISTORY

1. New article 5 (sections 64580–64583) and section filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64582. Disinfection of Reservoirs.

A newly–installed distribution reservoir or distribution reservoir that has been taken out of service for repair or inspection shall be disinfected and sampled for bacteriological quality in accordance with the American Water Works Association Standard C652–02, which is hereby incorporated by reference. If the results of the bacteriological sampling are positive for coliform bacteria, the reservoir shall be resampled for bacteriological quality and the test results shall be submitted to the Department for review and approval before the reservoir is placed into service.

NOTE: Authority cited: Sections 116350, 116375 and 131200, Health and Safety Code. Reference: Sections 116275, 116375, 116535 and 131051, Health and Safety Code.

HISTORY

1. New section filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64583. Disinfection of Wells.

A new or repaired well, or a well that has not been in operation for more than three months shall be sampled for bacteriological quality prior to use. If the results of the bacteriological sampling are positive for coliform bacteria, the well shall be disinfected in accordance with the American Water Works Association C654–03, which is hereby incorporated by reference, and resampled for bacteriological quality and the test results shall be submitted to the Department for review and approval before the well is placed into service.

NOTE: Authority cited: Sections 116350, 116375 and 131200, Health and Safety Code. Reference: Sections 116275, 116375, 116535 and 131051, Health and Safety Code.

HISTORY

1. New section filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

Article 6. Distribution Reservoirs

§ 64585. Design and Construction.

(a) Each distribution reservoir shall meet the following:

(1) Any reservoir coatings or linings shall be installed in accordance with manufacturer's instructions;

(2) Vents and other openings shall be constructed and designed to prevent the entry of rainwater or runoff, and birds, insects, rodents, or other animals;

(3) At least one sampling tap shall be available to enable representative sampling of the water in the reservoir that will be entering the distribution system; the tap shall be protected against freezing, if necessary; and

(4) A reservoir shall not be designed, constructed, or used for any activity that creates a contamination hazard.

(b) The water supplier shall submit to the Department for review the design drawings and specifications for each proposed distribution reservoir prior to its construction. Each new distribution reservoir shall be:

(1) If it is a tank, constructed in accordance with American Water Works Association (AWWA) standards, which are hereby incorporated by reference, as follows: AWWA D100–05 (Welded Carbon Steel Tanks for Water Storage), D102–03 (Coating Steel Water–Storage Tanks), D103–97 (Factory–Coated Bolted Steel Tanks for Water Storage), D110–04 (Wire–and Strand–Wound, Circular, Prestressed Concrete Water Tanks), and D120–02 (Thermosetting Fiberglass–Reinforced Plastic Tanks);

(2) Constructed of an impervious material that prevents the movement of water into or out of the reservoir;

(3) Covered with

(A) A rigid structural roof made of impervious material that prevents the movement of water or other liquids into or out of the reservoir; or

(B) A floating cover designed, constructed, and maintained in conformance with the AWWA California–Nevada Section's "Reservoir Floating Cover Guidelines" (April 1999), AWWA Manual M25 (2000), and AWWA D130–02 (Flexible–Membrane Materials for Potable Water Applications), which are hereby incorporated by reference.

(4) Equipped with at least one separate inlet and outlet (internal or external), and designed to minimize short–circuiting and stagnation of the water flow through the reservoir;

(5) Equipped with drainage facilities that allow the tank to be drained and all residual sediment removed, and an overflow device. The reservoir drainage facilities and overflow device shall not be connected directly to a sewer or storm drain and shall be free of cross–connections;

(6) Equipped with controls to maintain and monitor reservoir water levels;

(7) Equipped to prevent access by unauthorized persons;

(8) Designed to allow authorized access and adequate lighting of reservoir interior for inspections, cleaning or repair;

(9) Equipped with isolation valves, and designed and operated to allow continued distribution of water when the reservoir is removed from service. The isolation valves shall be located within 100 feet of the reservoir. For a reservoir used to meet the disinfectant contact time requirements of chapter 17 (Surface Water Treatment), bypass lines shall be blind–flanged closed during normal operations;

(10) Designed and constructed to prevent the entry of surface runoff, subsurface flow, or drainage into the reservoir;

(11) Designed to prevent corrosion of the interior walls of the reservoir;

(12) For a subsurface reservoir,

(A) Protected against flooding (both reservoir and vents);

(B) Equipped with underdrain facilities to divert any water in proximity to the reservoir away from the reservoir;

(C) Sited a minimum of 50 feet horizontally from a sanitary sewer and 100 feet horizontally from any other waste facilities and any force main;

(D) Constructed so as to have the reservoir bottom located above the highest anticipated groundwater level, based on a site investigation that includes actual measurements of the groundwater level during peak rainfall periods; extraction wells shall not be used to influence the highest anticipated groundwater level;

(E) Provided with a minimum of two groundwater level monitoring wells drilled to a depth at least 20 feet below the reservoir bottom and sited within 100 feet and on opposite sides (upgradient and downgradient) of the reservoir; and

(F) If the roof is to be buried and have a function (e.g., recreation, landscape, parking) in addition to covering the reservoir:

1. Designed and constructed pursuant to AWWA D110–04 (Wire–Strand–Wound, Circular, Prestressed Concrete Water Tanks), which is hereby incorporated by reference;

2. Equipped with an impervious connection, such as a pvc waterstop, between the wall and buried roof; and

3. Watertight, sloped for drainage and coated with a damp proofing material.

NOTE: Authority cited: Sections 116350, 116375 and 131200, Health and Safety Code. Reference: Sections 116275, 116375, 116535 and 131051, Health and Safety Code.

HISTORY

1. New article 6 (section 64585) and section filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

Article 7. Additives

§ 64590. Direct Additives.

No chemical or product shall be added to drinking water by a water supplier unless the chemical or product is certified as meeting the specifications of NSF International/American National Standard Institute (NSF/ANSI) 60–2005 (Drinking Water Treatment Chemicals—Health Effects), which is hereby incorporated by reference. Certification shall be from an ANSI accredited product certification organization whose certification system includes, as a minimum, the following criteria for ensuring the chemical or product meets NSF/ANSI Standard 60.

(a) Annual product testing,

(b) Annual facility inspections,

(c) Annual quality assurance and quality control review,

(d) Annual manufacturing practice reviews, and

(e) Annual chemical stock inspections.

NOTE: Authority cited: Section 116350, 116375 and 131200, Health and Safety Code. Reference: Sections 116275, 116375, 116550 and 131051, Health and Safety Code.

HISTORY

1. New article 7 (sections 64590–64593) and renumbering of former section 64700 to new section 64590, including amendment of section and NOTE, filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64591. Indirect Additives.

(a) Except as provided in Section 64593 or where a more stringent statutory requirement exists, after March 9, 2008, a water system shall not use any chemical, material, lubricant, or product in the production, treatment or distribution of drinking water that will result in its contact with the drinking water including process media (carbon, sand), protective materials (coatings, linings, liners), joining and sealing materials (solvent cements, welding materials, gaskets, lubricating oils), pipes and related products (pipes, tanks, fittings), and mechanical devices used in treatment/transmission/distribution systems (valves, chlorinators, separation membranes) that has not been tested and certified as meeting the specifications of NSF International/American National Standard Institute (NSF/ANSI) 61–2005 / Addendum 1.0–2005 (Drinking Water System Components—Health Effects), which is hereby incorporated by reference. This requirement shall be met under testing conducted by a product certification organization accredited for this purpose by the American National Standards Institute.

(b) If a treatment chemical is generated on site,

(1) No equipment used in the generation process shall be in contact with a drinking water, or a chemical to be applied to drinking water, after March 9, 2008, unless the equipment has been tested and certified as meeting the specifications of NSF International/American National Standard Institute (NSF/ANSI) Standard 61–2005/Addendum 1.0–2005 (Drinking Water System Components—Health Effects). This requirement shall be met under testing conducted by a product certification organization accredited for this purpose by the American National Standards Institute; and

(2) No input chemical used in the generation process shall be in contact with a drinking water after March 9, 2008 unless the chemical meets the requirements of section 64590.

(c) Any chemical used to clean on–line or off–line drinking water treatment facilities that may subsequently come into contact with drinking water to be distributed to the public shall meet the requirements of section 64590.

(d) Any contract for the purchase of chemicals, materials, or products that was signed by a public water system and effective prior to March 9, 2008 shall be exempt from the provisions of subsections (a) and (b) until March 9, 2009.

NOTE: Authority cited: Sections 116350, 116375 and 131200, Health and Safety Code. Reference: Sections 116275, 116375, 116535 and 131051, Health and Safety Code.

HISTORY

1. New section filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64593. Use of Uncertified Chemicals, Materials or Products.

(a) A water supplier may use a chemical, material or product that has not been certified pursuant to sections 64590 or 64591 if the chemical, material or product is in the process of being tested and certified and there are no certified alternatives.

(b) Prior to use of an uncertified chemical, material or product, the water supplier shall provide the Department with an explanation of the need for the chemical, material or product; the date that the chemical, material or product was submitted for testing; the name of the accredited product certification organization conducting the testing; and a statement that certified alternatives are not available.

(c) Unless directed otherwise by the Department to ensure a pure and wholesome drinking water supply, a water supplier may use the following chemicals, materials, or products that have not been and are not in the process of being certified pursuant to section 64590 or 64591:

(1) a material or product previously approved by the Department for use or installation on or before March 9, 2008;

(2) a material or product constructed of components meeting the requirements of sections 64590 and 64591;

(3) chemical by–products necessary for meeting drinking water standards, such as sodium hypochlorite for disinfection, generated by chemicals certified pursuant to section 64590 or 64591; and

(4) atmospheric air and small parts, such as probes, sensors, wires, nuts, bolts, and tubing for which there are no certified alternatives.

NOTE: Authority cited: Sections 116350, 116375 and 131200, Health and Safety Code. Reference: Sections 116275, 116375, 116535 and 131051, Health and Safety Code.

HISTORY

1. Renumbering of former section 64710 to new section 64593, including amendment of section heading, section and NOTE, filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

Article 8. Distribution System Operation

§ 64600. Water System Operations and Maintenance Plan.

(a) If directed by the Department to do so based on an identified deficiency in the system's operations, a water system shall develop and submit a Water System Operations and Maintenance Plan (Plan); the water system shall include those elements in the following list that are deemed by the Department to be relevant to the deficiency:

(1) The operations and maintenance schedule for each unit process for each treatment plant that treats an approved surface water;

(2) The operations and maintenance schedule for each groundwater source and unit process;

(3) The schedule and procedure for flushing dead end mains, and the procedures for disposal of the flushed water including dechlorination;

(4) The schedule for routine inspection of reservoirs, and the procedures for cleaning reservoirs;

(5) The schedule and procedures for inspecting, repairing, and replacing water mains;

(6) The plan and procedures for responding to water supply emergencies;

(7) The plan and procedures for responding to consumer complaints;

(8) The schedule and procedures for testing backflow prevention assemblies;

(9) The schedule and procedures for routine exercising of water main valves;

(10) The schedule and program for maintenance and calibration of source flow meters and other online instruments used to determine the quality or quantity of water;

(11) The qualifications and training of operating personnel;

(12) The program for control of biological organisms on the interior walls of water mains; and

(13) For an underground reservoir with a buried roof designed for a function in addition to covering the reservoir, a comprehensive routine inspection and monitoring plan to ensure that there is no contamination of the reservoir as a result of that additional function.

(b) Each water system that has prepared a Plan pursuant to subsection (a) shall operate in accordance with its Department–approved Plan.

(c) Each water system that has prepared a Plan pursuant to subsection (a) shall update the Plan at least once every five years and, in addition, following any change in the method of treatment or any other modification to the system requiring a change in the systems operations and maintenance.

NOTE: Authority cited: Sections 116350, 116375 and 131200, Health and Safety Code. Reference: Sections 116275, 116375, 116535 and 131051, Health and Safety Code.

HISTORY

1. Repealer of former article 3 (sections 64600–64604) and section and new article 8 (sections 64600–64604) and new section filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64602. Minimum Pressure.

(a) Each distribution system shall be operated in a manner to assure that the minimum operating pressure in the water main at the user service line connection throughout the distribution system is not less than 20 pounds per square inch at all times.

(b) Each new distribution system that expands the existing system service connections by more than 20 percent or that may otherwise adversely affect the distribution system pressure shall be designed to provide a minimum operating pressure throughout the new distribution system of not less than 40 pounds per square inch at all times excluding fire flow.

NOTE: Authority cited: Sections 116350, 116375 and 131200, Health and Safety Code. Reference: Sections 116275, 116375, 116535, 116555 and 131051, Health and Safety Code.

HISTORY

1. Repealer of subsection (c) filed 10–9–85; effective thirtieth day thereafter (Register 85, No. 42).
2. Repealer and new section filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64604. Preparation and Maintenance of Records.

(a) Each public water system subject to this chapter shall prepare:

(1) "As built" plans, maps, and drawings of all new water system facilities including updated information for all existing facilities in the same location or connected to the new facilities. The plans, maps, and drawings shall be clear and legible and shall include the location, size, construction material, and year of installation of each new water main or other facility.

(2) A schematic drawing or map showing the location of each water source, treatment facility, pumping plant, reservoir, water main and isolation valve.

(b) The plans, drawings, and maps prepared pursuant to subsection (a) shall be updated as changes occur, and maintained until replaced or superseded by updated plans or drawings. The most current plans, drawings, and maps shall be available for Department review.

(c) Results of laboratory analyses of samples taken pursuant to sections 64580, 64582, and 64583, records of flushing of mains; and records of reservoir inspections and cleaning shall be maintained for at least three years.

NOTE: Authority cited: Sections 116350, 116375 and 131200, Health and Safety Code. Reference: Sections 116275, 116375, 116450, 116535 and 131051, Health and Safety Code.

HISTORY

1. Repealer and new section filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64610. Basic Design of Pumping Stations. [Repealed]

NOTE: Authority cited: Sections 208 and 4010.1(h), Health and Safety Code. Reference: Sections 4010.1(h), 4012, 4013 and 4019, Health and Safety Code.

HISTORY

1. Repealer filed 10–9–85; effective thirtieth day thereafter (Register 85, No. 42).
2. Repeal and deletion of former article 4 heading and repealer of article 4 (sections 64610–64612) filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64612. Water Sealed Pumps. [Repealed]

NOTE: Authority cited: Sections 208 and 4010.1(h), Health and Safety Code. Reference: Sections 4010.1(h), 4012, 4013 and 4019, Health and Safety Code.

HISTORY

1. Amendment filed 10–9–85; effective thirtieth day thereafter (Register 85, No. 42).
2. Repealer filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64622. Water Main Materials. [Repealed]

NOTE: Authority cited: Sections 208 and 4010.1(h), Health and Safety Code. Reference: Sections 4010.1(h), 4012, 4013 and 4019, Health and Safety Code.

HISTORY

1. Amendment filed 10–9–85; effective thirtieth day thereafter (Register 85, No. 42).
2. Repeal and deletion of former article 5 heading and repealer of article 5 (sections 64622–64644) and section filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64624. Water Main Selection and Installation. [Repealed]

NOTE: Authority cited: Sections 208 and 4010.1(h), Health and Safety Code. Reference: Sections 4010.1(h), 4012, 4013 and 4019, Health and Safety Code.

HISTORY

1. Amendment filed 10–9–85; effective thirtieth day thereafter (Register 85, No. 42).
2. Repealer filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64626. Layout of Water Mains. [Repealed]

NOTE: Authority cited: Sections 208 and 4010.1(h), Health and Safety Code. Reference: Sections 4010.1(h), 4012, 4013 and 4019, Health and Safety Code.

HISTORY

1. Repealer filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64628. Minimum Water Main Diameter and Length of Run. [Repealed]

NOTE: Authority cited: Sections 208 and 4010.1(h), Health and Safety Code. Reference: Sections 4010.1(h), 4012, 4013 and 4019, Health and Safety Code.

HISTORY

1. Amendment of subsection (d)(2) filed 10–9–85; effective thirtieth day thereafter (Register 85, No. 42).
2. Repealer filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64630. Water Main Installation. [Repealed]

NOTE: Authority cited: Sections 208 and 4010.1(h), Health and Safety Code. Reference: Sections 4010.1(h), 4012, 4013 and 4019, Health and Safety Code.

HISTORY

1. Amendment filed 10–9–85; effective thirtieth day thereafter (Register 85, No. 42).
2. Repealer filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64632. Water Main Valve Locations. [Repealed]

NOTE: Authority cited: Sections 208 and 4010.1(h), Health and Safety Code. Reference: Sections 4010.1(h), 4012, 4013 and 4019, Health and Safety Code.

HISTORY

1. Repealer filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64634. Water Main Valve Construction Standards. [Repealed]

NOTE: Authority cited: Sections 208 and 4010.1(h), Health and Safety Code. Reference: Sections 4010.1(h), 4012, 4013 and 4019, Health and Safety Code.

HISTORY

1. Amendment filed 10–9–85; effective thirtieth day thereafter (Register 85, No. 42).
2. Repealer filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64636. Air and Vacuum Relief and Air Release Valves. [Repealed]

NOTE: Authority cited: Sections 208 and 4010.1(h), Health and Safety Code. Reference: Sections 4010.1(h), 4012, 4013 and 4019, Health and Safety Code.

HISTORY

1. Repealer filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64638. Water Main Joints. [Repealed]

NOTE: Authority cited: Sections 208 and 4010.1(h), Health and Safety Code. Reference: Sections 4010.1(h), 4012, 4013 and 4019, Health and Safety Code.

HISTORY

1. Repealer filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64640. Fire Hydrants. [Repealed]

NOTE: Authority cited: Sections 208 and 4010.1(h), Health and Safety Code. Reference: Sections 4010.1(h), 4012, 4013 and 4019, Health and Safety Code.

HISTORY

1. Repealer filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64642. Flushing Valves and Blowoffs. [Repealed]

NOTE: Authority cited: Sections 208 and 4010.1(h), Health and Safety Code. Reference: Sections 4010.1(h), 4012, 4013 and 4019, Health and Safety Code.

HISTORY

1. Repealer filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64644. Service Connection Pipe. [Repealed]

NOTE: Authority cited: Sections 208 and 4010.1(h), Health and Safety Code. Reference: Sections 4010.1(h), 4012, 4013 and 4019, Health and Safety Code.

HISTORY

1. Repealer filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

Chapter 17. Surface Water Treatment

Article 1. General Requirements and Definitions

§ 64650. General Requirements.

(a) For a supplier using an approved surface water, as defined in section 64651.10, this chapter establishes treatment techniques in lieu of maximum contaminant levels for turbidity and the following microbial contaminants: *Giardia lamblia* (cysts), viruses, heterotrophic plate count bacteria, and *Legionella*. In addition, for a supplier using an approved surface water and serving at least 10,000 people, Article 3.5, commencing with section 64657, establishes treatment techniques in lieu of maximum contaminant limits for *Cryptosporidium*.

(b) Each supplier using an approved surface water shall provide multibarrier treatment necessary to reliably protect users from the adverse health effects of microbiological contaminants and to comply with the requirements and performance standards prescribed in this chapter. A supplier that meets the requirements of section 64652.5 and wishes to not be required to provide multibarrier treatment shall submit an application to the Department. That application shall consist of comprehensive documentation that either demonstrates current compliance with the requirements in section 64652.5 or demonstrates that the water system will be in compliance within fifteen months from application submittal. Within 30 days, the Department will review the application and inform the applicant in writing that the application is complete and accepted for filing, or that the application is deficient and what specific information is required. Within 90 days from the date the application is accepted for filing, the Department will complete its review of the documentation, determine whether to approve the application, and notify the water supplier. If at any time the Department determines that a water supplier is not in compliance with the requirements of this chapter, the Department will notify the supplier of that determination within 30 days of its being made.

(c) Except as provided for existing treatment plants in section 64652(c), within 90 days from the date of notification by the Department pursuant to subsection (b), the supplier shall submit for Department approval a plan and schedule to modify its system to meet the requirements of this chapter.

(d) If the supplier disagrees with the Department's notification specified in subsection (b), then the supplier shall submit reasons for its disagreement within 30 days from the receipt of the notification. The Department shall notify the supplier of its final determination in writing within 30 days of receipt of the supplier's reasons for disagreement. If the Department's final determination is that the supplier does not meet the requirements of this chapter, then the supplier shall comply with provisions of subsection (c) within 90 days of receipt of the Department's final determination.

NOTE: Authority cited: Sections 100275, 116375 and 131200, Health and Safety Code. Reference: Sections 116270, 116275, 116350, 116365, 116375, 116385, 116390, 116400, 116525, 116530, 116535, 116540, 116550, 116625 and 131051, Health and Safety Code.

HISTORY

1. New section filed 5–6–91; operative 6–5–91 (Register 91, No. 25).
2. Amendment of chapter heading, section and NOTE filed 6–8–98; operative 7–8–98 (Register 98, No. 24).
3. Amendment of subsection (a) and NOTE filed 12–13–2007; operative 1–12–2008 (Register 2007, No. 50).

§ 64651.10. Approved Surface Water.

"Approved surface water" means a surface water or groundwater under the direct influence of surface water that has received permit approval from the Department in accordance with sections 116525 through 116550 of the Health and Safety Code.

NOTE: Authority cited: Sections 100275, 116375 and 131200, Health and Safety Code. Reference: Sections 116270, 116275, 116365, 116375, 116385, 116390, 116400, 116525, 116530, 116535, 116540, 116550, 116625 and 131051, Health and Safety Code.

HISTORY

1. New section filed 5–6–91; operative 6–5–91 (Register 91, No. 25).
2. Amendment of section and NOTE filed 12–13–2007; operative 1–12–2008 (Register 2007, No. 50).

§ 64651.16. Coagulant Chemical.

"Coagulant chemical" means a floc–forming agent that has been demonstrated to provide coagulation.

NOTE: Authority cited: Sections 208 and 4023.3, Health and Safety Code. Reference: Sections 4010, 4010.1, 4011, 4012, 4013, 4014, 4016, 4023.1, 4023.3, 4024, 4025, 4026.4, and 4031, Health and Safety Code.

HISTORY

1. New section filed 5–6–91; operative 6–5–91 (Register 91, No. 25).

§ 64651.20. Coagulation.

"Coagulation" means a process using coagulant chemicals and rapid mixing, by which colloidal and suspended material are destabilized and agglomerated into settleable and/or filterable flocs.

NOTE: Authority cited: Sections 208 and 4023.3, Health and Safety Code. Reference: Sections 4010, 4010.1, 4011, 4012, 4013, 4014, 4016, 4023.1, 4023.3, 4024, 4025, 4026.4, and 4031, Health and Safety Code.

HISTORY

1. New section filed 5–6–91; operative 6–5–91 (Register 91, No. 25).

§ 64651.21. Comprehensive Performance Evaluation (CPE).

"Comprehensive performance evaluation (CPE)" means a review and analysis of a treatment plant's performance–based capabilities and associated administrative, operation, and maintenance practices.

NOTE: Authority cited: Sections 100275, 116375 and 131200, Health and Safety Code. Reference: Sections 116270, 116275, 116365, 116375, 116385, 116390, 116400, 116525, 116530, 116535, 116540, 116550, 116625 and 131051, Health and Safety Code.

HISTORY

1. New section filed 12–13–2007; operative 1–12–2008 (Register 2007, No. 50).

§ 64651.23. Conventional Filtration Treatment.

"Conventional filtration treatment" means a series of treatment processes which includes coagulation, flocculation, sedimentation, and filtration resulting in substantial particulate removal.

NOTE: Authority cited: Sections 208 and 4023.3, Health and Safety Code. Reference: Sections 4010, 4010.1, 4011, 4012, 4013, 4014, 4016, 4023.1, 4023.3, 4024, 4025, 4026.4, and 4031, Health and Safety Code.

HISTORY

1. New section filed 5–6–91; operative 6–5–91 (Register 91, No. 25).

§ 64651.26. Diatomaceous Earth Filtration.

"Diatomaceous earth filtration" means a process resulting in particulate removal in which a precoat cake of graded diatomaceous earth filter media is deposited on a support membrane (septum) and, while the water is being filtered by passing through the cake on the septum, additional filter media known as body feed is continuously added to the feed water to maintain the permeability of the filter cake.

NOTE: Authority cited: Sections 208 and 4023.3, Health and Safety Code. Reference: Sections 4010, 4010.1, 4011, 4012, 4013, 4014, 4016, 4023.1, 4023.3, 4024, 4025, 4026.4, and 4031, Health and Safety Code.

HISTORY

1. New section filed 5–6–91; operative 6–5–91 (Register 91, No. 25).

§ 64651.30. Direct Filtration Treatment.

"Direct filtration treatment" means a series of processes including coagulation, flocculation, and filtration but excluding sedimentation.

NOTE: Authority cited: Sections 208 and 4023.3, Health and Safety Code. Reference: Sections 4010, 4010.1, 4011, 4012, 4013, 4014, 4016, 4023.1. 4023.3, 4024, 4025, 4026.4, and 4031, Health and Safety Code.

HISTORY

1. New section filed 5–6–91; operative 6–5–91 (Register 91, No. 25).

§ 64651.32. Disinfectant Contact Time.

"Disinfectant contact time" means the time in minutes that it takes for water to move from the point of disinfectant application or a previous point of disinfectant residual measurement to a point before or at the point where residual disinfectant concentration is measured. Disinfec-

tant contact time in pipelines is calculated by dividing the internal volume of the pipe by the flow rate through the pipe. Disinfectant contact time within mixing basins and storage reservoirs is determined by tracer studies or an equivalent demonstration to the Department.

NOTE: Authority cited: Sections 208 and 4023.3, Health and Safety Code. Reference: Sections 4010, 4010.1, 4011, 4012, 4013, 4014, 4016, 4023.1, 4023.3, 4024, 4025, 4026.4, and 4031, Health and Safety Code.

HISTORY

1. New section filed 5–6–91; operative 6–5–91 (Register 91, No. 25).

§ 64651.33. Disinfection.

"Disinfection" means a process which inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.

NOTE: Authority cited: Sections 208 and 4023.3, Health and Safety Code. Reference: Sections 4010, 4010.1, 4011, 4012, 4013, 4014, 4016, 4023.1, 4023.3, 4024, 4025, 4026.4, and 4031, Health and Safety Code.

HISTORY

1. New section filed 5–6–91; operative 6–5–91 (Register 91, No. 25).

§ 64651.34. Disinfection Profile.

"Disinfection profile" means a summary of *Giardia lamblia* or virus inactivation through the treatment plant.

NOTE: Authority cited: Sections 100275, 116375 and 131200, Health and Safety Code. Reference: Sections 116270, 116275, 116365, 116375, 116385, 116390, 116400, 116525, 116530, 116535, 116540, 116550, 116625 and 131051, Health and Safety Code.

HISTORY

1. New section filed 12–13–2007; operative 1–12–2008 (Register 2007, No. 50).

§ 64651.36. Engineering Report.

"Engineering report" means a water treatment technical report prepared by a qualified engineer.

NOTE: Authority cited: Sections 208 and 4023.3, Health and Safety Code. Reference: Sections 4010, 4010.1, 4011, 4012, 4013, 4014, 4016, 4023.1. 4023.3, 4024, 4025, 4026.4, and 4031, Health and Safety Code.

HISTORY

1. New section filed 5–6–91; operative 6–5–91 (Register 91, No. 25).

§ 64651.38. Filter Profile.

"Filter profile" means a graphical representation of individual filter performance, based on continuous turbidity measurements or total particle counts versus time for an entire filter run, from startup to backwash inclusively, that includes data collected while another filter is being backwashed.

NOTE: Authority cited: Sections 100275, 116375 and 131200, Health and Safety Code. Reference: Sections 116270, 116275, 116365, 116375, 116385, 116390, 116400, 116525, 116530, 116535, 116540, 116550, 116625 and 131051, Health and Safety Code.

HISTORY

1. New section filed 12–13–2007; operative 1–12–2008 (Register 2007, No. 50).

§ 64651.40. Filter–to–Waste.

"Filter–to–waste" means a provision in a filtration process to allow the first filtered water, after backwashing a filter, to be wasted or reclaimed.

NOTE: Authority cited: Sections 208 and 4023.3, Health and Safety Code. Reference: Sections 4010, 4010.1, 4011, 4012, 4013, 4014, 4016, 4023.1, 4023.3, 4024, 4025, 4026.4, and 4031, Health and Safety Code.

HISTORY

1. New section filed 5–6–91; operative 6–5–91 (Register 91, No. 25).

§ 64651.43. Filtration.

"Filtration" means a process for removing particulate matter from water by passage through porous media.

NOTE: Authority cited: Sections 208 and 4023.3, Health and Safety Code. Reference: Sections 4010, 4010.1, 4011, 4012, 4013, 4014, 4016, 4023.1, 4023.3, 4024, 4025, 4026.4, and 4031, Health and Safety Code.

HISTORY

1. New section filed 5–6–91; operative 6–5–91 (Register 91, No. 25).

§ 64651.46. Flocculation.

"Flocculation" means a process to enhance agglomeration or collection of smaller floc particles into larger, more easily settleable or filterable particles through gentle stirring by hydraulic or mechanical means.

NOTE: Authority cited: Sections 208 and 4023.3, Health and Safety Code. Reference: Sections 4010, 4010.1, 4011, 4012, 4013, 4014, 4016, 4023.1, 4023.3, 4024, 4025, 4026.4, and 4031, Health and Safety Code.

HISTORY

1. New section filed 5–6–91; operative 6–5–91 (Register 91, No. 25).

§ 64651.50. Groundwater Under the Direct Influence of Surface Water.

"Groundwater under the direct influence of surface water" means any water beneath the surface of the ground with significant occurrence of insects or other macroorganisms, algae or large diameter pathogens such as *Giardia lamblia* or *Cryptosporidium*, or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity or pH which closely correlate to climatological or surface water conditions.

NOTE: Authority cited: Sections 100275, 116375 and 131200, Health and Safety Code. Reference: Sections 116270, 116275, 116365, 116375, 116385, 116390, 116400, 116525, 116530, 116535, 116540, 116550, 116625 and 131051, Health and Safety Code.

HISTORY

1. New section filed 5–6–91; operative 6–5–91 (Register 91, No. 25).
2. Amendment of section and NOTE filed 12–13–2007; operative 1–12–2008 (Register 2007, No. 50).

§ 64651.53. Legionella.

"*Legionella*" means a genus of bacteria, some species of which have caused a type of pneumonia called Legionnaires disease.

NOTE: Authority cited: Sections 100275, 116375 and 131200, Health and Safety Code. Reference: Sections 116270, 116275, 116365, 116375, 116385, 116390, 116400, 116525, 116530, 116535, 116540, 116550, 116625 and 131051, Health and Safety Code.

HISTORY

1. New section filed 5–6–91; operative 6–5–91 (Register 91, No. 25).
2. Amendment of section and NOTE filed 12–13–2007; operative 1–12–2008 (Register 2007, No. 50).

§ 64651.56. Multibarrier Treatment.

"Multibarrier treatment" means a series of water treatment processes that provide for both removal and inactivation of waterborne pathogens.

NOTE: Authority cited: Sections 208 and 4023.3, Health and Safety Code. Reference: Sections 4010, 4010.1, 4011, 4012, 4013, 4014, 4016, 4023.1, 4023.3, 4024, 4025, 4026.4, and 4031, Health and Safety Code.

HISTORY

1. New section filed 5–6–91; operative 6–5–91 (Register 91, No. 25).

§ 64651.60. NTU (Nephelometric Turbidity Unit).

"Nephelometric Turbidity Unit (NTU)" means a measurement of the turbidity of water as determined by the methods in 40 Code of Federal Regulations, part 141.74(a)(1) (67 Fed. Reg. 65888 (October 29, 2002)), which is incorporated by reference.

NOTE: Authority cited: Sections 100275, 116375 and 131200, Health and Safety Code. Reference: Sections 116270, 116275, 116365, 116375, 116385, 116390, 116400, 116525, 116530, 116535, 116540, 116550, 116625 and 131051, Health and Safety Code.

HISTORY

1. New section filed 5–6–91; operative 6–5–91 (Register 91, No. 25).
2. Amendment of section and NOTE filed 12–13–2007; operative 1–12–2008 (Register 2007, No. 50).

§ 64651.63. Pressure Filter.

"Pressure filter" means a pressurized vessel containing properly sized and graded granular media.

NOTE: Authority cited: Sections 208 and 4023.3, Health and Safety Code. Reference: Sections 4010, 4010.1, 4011, 4012, 4013, 4014, 4016, 4023.1, 4023.3, 4024, 4025, 4026.4, and 4031, Health and Safety Code.

HISTORY

1. New section filed 5–6–91; operative 6–5–91 (Register 91, No. 25).

§ 64651.66. Qualified Engineer.

"Qualified engineer" means a Civil Engineer, registered in the State of California, with 3 years experience in water treatment design, construction, operation, and watershed evaluations.

NOTE: Authority cited: Sections 208 and 4023.3, Health and Safety Code. Reference: Sections 4010, 4010.1, 4011, 4012, 4013, 4014, 4016, 4023.1, 4023.3, 4024, 4025, 4026.4, and 4031, Health and Safety Code.

HISTORY
1. New section filed 5–6–91; operative 6–5–91 (Register 91, No. 25).

§ 64651.70. Residual Disinfectant Concentration.

"Residual disinfectant concentration" means the concentration of the disinfectant in milligrams per liter (mg/l) in a representative sample of water.

NOTE: Authority cited: Sections 208 and 4023.3, Health and Safety Code. Reference: Sections 4010, 4010.1, 4011, 4012, 4013, 4014, 4016, 4023.1, 4023.3, 4024, 4025, 4026.4, and 4031, Health and Safety Code.

HISTORY
1. New section filed 5–6–91; operative 6–5–91 (Register 91, No. 25).

§ 64651.73. Sedimentation.

"Sedimentation" means a process for removal of settleable solids before filtration by gravity or separation.

NOTE: Authority cited: Sections 208 and 4023.3, Health and Safety Code. Reference: Sections 4010, 4010.1, 4011, 4012, 4013, 4014, 4016, 4023.1, 4023.3, 4024, 4025, 4026.4, and 4031, Health and Safety Code.

HISTORY
1. New section filed 5–6–91; operative 6–5–91 (Register 91, No. 25).

§ 64651.76. Slow Sand Filtration.

"Slow sand filtration" means a process involving passage of raw water through a bed of sand at rates not to exceed 0.10 gallons per minute per square foot resulting in substantial particulate removal by physical and biological mechanisms.

NOTE: Authority cited: Sections 208 and 4023.3, Health and Safety Code. Reference: Sections 4010, 4010.1, 4011, 4012, 4013, 4014, 4016, 4017, 4023.1, 4023.3, 4024, 4025, 4026.4, and 4031, Health and Safety Code.

HISTORY
1. New section filed 5–6–91; operative 6–5–91 (Register 91, No. 25).

§ 64651.80. Supplier.

"Supplier," for the purpose of this chapter, means the owner or operator of a water system for the provision to the public of piped water for human consumption, provided such system has at least 15 service connections or regularly serves at least 25 individuals daily at least 60 days out of the year.

NOTE: Authority cited: Sections 208 and 4023.3, Health and Safety Code. Reference: Sections 4010, 4010.1, 4011, 4012, 4013, 4014, 4016, 4017, 4023.1, 4023.3, 4024, 4025, 4026.4, and 4031, Health and Safety Code.

HISTORY
1. New section filed 5–6–91; operative 6–5–91 (Register 91, No. 25).

§ 64651.83. Surface Water.

"Surface water" means all water open to the atmosphere and subject to surface runoff. For purposes of this chapter, water runoff originating from the lined walls and other man–made appurtenant structures of treated water distribution reservoirs, is excluded from the definition of surface water.

NOTE: Authority cited: Sections 208 and 4023.3, Health and Safety Code. Reference: Sections 4010, 4010.1, 4011, 4012, 4013, 4014, 4016, 4023.1, 4023.3, 4024, 4025, 4026.4 and 4031, Health and Safety Code.

HISTORY
1. New section filed 5–6–91; operative 6–5–91 (Register 91, No. 25).

§ 64651.86. Turbidity Level.

"Turbidity level" means the value in NTU obtained by measuring the turbidity of a representative grab sample of water at a specified regular interval of time. If continuous turbidity monitoring is utilized, the turbidity level is the discrete turbidity value at a given time.

NOTE: Authority cited: Sections 208 and 4023.3, Health and Safety Code. Reference: Sections 4010, 4010.1, 4011, 4012, 4013, 4014, 4016, 4023.1, 4023.3, 4024, 4025, 4026.4, and 4031, Health and Safety Code.

HISTORY
1. New section filed 5–6–91; operative 6–5–91 (Register 91, No. 25).

§ 64651.88. Uncovered Finished Water Storage Facility.

"Uncovered finished water storage facility" means a tank, reservoir, or other facility that is open to the atmosphere with no cover or other means to prevent access by waterfowl, rodents, or other pests and is used to store water that will undergo no further treatment except residual disinfection.

NOTE: Authority cited: Sections 100275, 116375 and 131200, Health and Safety Code. Reference: Sections 116270, 116275, 116365, 116375, 116385, 116390, 116400, 116525, 116530, 116535, 116540, 116550, 116625 and 131051, Health and Safety Code.

HISTORY
1. New section filed 12–13–2007; operative 1–12–2008 (Register 2007, No. 50).

§ 64651.90. Virus.

"Virus" means a virus of fecal origin which is infectious to humans by waterborne transmissions.

NOTE: Authority cited: Sections 208 and 4023.3, Health and Safety Code. Reference: Sections 4010, 4010.1, 4011, 4012, 4013, 4014, 4016, 4023.1, 4023.3, 4024, 4025, 4026.4 and 4031, Health and Safety Code.

HISTORY
1. New section filed 5–6–91; operative 6–5–91 (Register 91, No. 25).

§ 64651.91. Waterborne Microbial Disease Outbreak.

"Waterborne microbial disease outbreak" means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a public water system which is deficient in treatment, as determined by a County Health Officer or the Department.

NOTE: Authority cited: Sections 100275 and 116375, Health and Safety Code. Reference: Sections 116270, 116275, 116350, 116365, 116385, 116390, 116400, 116525, 116530, 116535, 116540, 116550 and 116625, Health and Safety Code.

HISTORY
1. New section filed 6–8–98; operative 7–8–98 (Register 98, No. 24).

§ 64651.93. Watershed.

"Watershed" means the area contained in a drainage basin which is tributary to a water supply diversion point.

NOTE: Authority cited: Sections 208 and 4023.3, Health and Safety Code. Reference: Sections 4010, 4010.1, 4011, 4012, 4013, 4014, 4016, 4023.1, 4023.3, 4024, 4025, 4026.4, and 4031, Health and Safety Code.

HISTORY
1. New section filed 5–6–91; operative 6–5–91 (Register 91, No. 25).

Article 2. Treatment Requirements, Watershed Protection Requirements, and Performance Standards

§ 64652. Treatment Requirements and Compliance Options.

(a) Each supplier using an approved surface water shall provide multibarrier treatment that meets the requirements of this chapter and reliably ensures at least:

(1) A total of 99.9 percent reduction of *Giardia lamblia* cysts through filtration and disinfection; and

(2) A total of 99.99 percent reduction or viruses through filtration and disinfection.

(b) Suppliers meeting the requirements of section 64654 in combination with either section 64652.5 or 64653 shall be deemed to be in compliance with the minimum reduction requirements specified in section 64652(a).

(c) For treatment plants existing as of June 13, 1990, which do not consist of the approved technologies specified in section 64653(a), or are not in compliance with the design criteria specified in section 64658, the supplier shall submit a report demonstrating that the plant can be operated to reliably produce water meeting the performance requirements of sections 64653 and 64654. This demonstration shall be a presentation and analysis of the latest 12 months of operating data, and special studies conducted to test the performance of the plant under adverse water quality conditions or other means. The supplier shall submit the required report within 15 months of being notified by the Department pursuant to section 64650(b) that their plant does not consist of the approved technologies.

(d) In addition to complying with subsections (a) through (c), a supplier using an approved surface water and serving at least 10,000 people shall also comply with the requirements of Article 3.5, commencing with section 64657.

(e) No variances from the requirements in this section are permitted.

NOTE: Authority cited: Sections 100275, 116375 and 131200, Health and Safety Code. Reference: Sections 116270, 116275, 116365, 116375, 116385, 116390, 116400, 116525, 116530, 116535, 116540, 116550, 116555, 116625, 116735 and 131051, Health and Safety Code.

HISTORY

1. New section filed 5–6–91; operative 6–5–91 (Register 91, No. 25).
2. Amendment of article heading, section heading, section and NOTE filed 6–8–98; operative 7–8–98 (Register 98, No. 24).
3. Amendment of subsection (a)(1), new subsection (d), subsection relettering and amendment of NOTE filed 12–13–2007; operative 1–12–2008 (Register 2007, No. 50).

§ 64652.5. Criteria for Avoiding Filtration.

(a) A supplier that uses an approved surface water shall meet all of the requirements of this section to avoid the necessity of providing filtration. A supplier that uses an approved surface water and serves at least 10,000 people shall also meet the requirements of section 64657.10 to avoid the necessity of providing filtration. Within 18 months of the failure of a supplier using an approved surface water to meet any one of the requirements of subsections (b) through (*l*) or section 64657.10, the supplier shall have installed filtration and meet the requirements for filtered systems specified in sections 64653, 64658, 64659, 64660, and 64661 and Article 3.5, commencing with section 64657.

(b) The approved surface water quality shall be monitored downstream of all surface water and groundwater under the influence of surface water contributions and upstream of the first or only point of disinfectant application, as follows:

(1) For fecal or total coliform density at the following minimum frequency each week:

System size (persons served)	*Samples/week*
≤ 500	1
501–3,300	2*
3,301–10,000	3*
10,001–25,000	4*
> 25,000	5*

*Shall be taken on separate days.

(2) For fecal or total coliform density, once every day the turbidity of the source water exceeds 1 NTU unless the Department determines that the system, for logistical reasons outside the system's control, is unable to have the sample analyzed within 30 hours of collection. If collected, these samples count toward the weekly coliform sampling requirement.

(3) For turbidity at a minimum frequency of once every four hours. A supplier may substitute continuous turbidity monitoring for grab sample monitoring if, at regular intervals, it validates the accuracy of the continuous measurement using a protocol approved by the Department.

(c) The approved surface water quality monitored pursuant to subsection (b) shall meet the following criteria:

(1) The fecal coliform concentration shall be equal to or less than 20/100 ml, or the total coliform concentration shall be equal to or less than 100/100 ml, in representative samples of the approved surface water in at least 90 percent of the measurements made for the six previous months that the system served unfiltered approved surface water to the public on an ongoing basis. If a system measures both fecal and total coliforms, the fecal coliform criterion, not the total coliform criterion, in this paragraph shall be met.

(2) The turbidity level shall not exceed 5 NTU in representative samples of the approved surface water unless:

(A) The Department determines that any such event was caused by circumstances that were unusual and unpredictable; and

(B) As a result of any such event, there have not been more than two events in the past 12 months the system served unfiltered approved surface water to the public, or more than five events in the past 120 months the system served unfiltered approved surface water to the public, in which the turbidity level exceeded 5 NTU. An "event" is one day or a series of consecutive days during which at least one turbidity measurement each day exceeds 5 NTU.

(d) Water quality information collected pursuant to subsection (a) shall be reported to the Department in conformance with the requirements of 40 CFR section 141.75(a)(1) (54 Fed. Reg. 27535, June 29, 1989).

(e) The supplier shall maintain a watershed control program which minimizes the potential for contamination by *Giardia lamblia* cysts and viruses in the source water. The adequacy of a program to limit potential contamination by *Giardia lamblia* cysts and viruses shall be determined by: the comprehensiveness of the watershed review; the effectiveness of the supplier's program to monitor and control detrimental activities occurring in the watershed; and the extent to which the water system has maximized land ownership and/or controlled land use within the watershed. At a minimum, the watershed control program shall:

(1) Characterize the watershed hydrology and land ownership;

(2) Identify watershed characteristics and activities which may have an adverse effect on water quality;

(3) Monitor the occurrence of activities which may have an adverse effect on water quality. The supplier shall demonstrate through ownership and/or written agreements with landowners within the watershed that it can control all human activities which may have an adverse impact on the microbiological quality of the water. The supplier shall submit an annual report to the Department that identifies any special concerns about the watershed and how they are being handled; describes activities in the watershed that affect water quality; and projects what adverse activities are expected to occur in the future and how the public water system expects to address them; and

(4) Monitor the presence of *Giardia lamblia* cysts in the approved surface water whenever agricultural grazing, water oriented recreation, or point source domestic wastewater discharges occur on the watershed. At a minimum the monitoring shall measure the *Giardia lamblia* cyst concentration monthly at a point immediately prior to the first or only point of disinfectant application. The monitoring results shall be included in an annual report to the Department. This monitoring requirement may be waived after one year for suppliers serving fewer than 500 persons when the monitoring results indicate a mean *Giardia lamblia* cyst concentration of 1 cyst per 100 litres or less.

(f) The water system shall be subject to an annual on–site inspection to assess the watershed control program and disinfection treatment process. Either the Department or a party approved by the Department shall conduct the on–site inspection. The inspection shall be conducted by competent individuals who have a sound understanding of public health principles and waterborne diseases, such as sanitary engineers, civil engineers, environmental health specialists, or technicians who have experience and knowledge about the operation and maintenance of a public water system. A report of the on–site inspection summarizing all findings shall be prepared every calendar year and submitted to the Department, if not conducted by the Department, by December 31 of that year. The on–site inspection shall be comprehensive to enable the Department to determine whether the watershed control program and disinfection treatment process are adequately designed and maintained. The on–site inspection shall include:

(1) A review of the effectiveness of the watershed control program;

(2) A review of the physical condition of the source intake and how well it is protected;

(3) A review of the supplier's equipment maintenance program to ensure there is low probability for failure of the disinfection process;

(4) An inspection of the disinfection equipment for physical deterioration;

(5) A review of operating procedures;

(6) A review of data records to ensure that all required tests are being conducted and recorded and disinfection is effectively practiced; and

(7) Identification of any improvements which are needed in the equipment, system maintenance and operation, or data collection.

(g) The water system shall not have been identified as a source of a waterborne microbial disease outbreak, or if it has been so identified, the system shall have been modified sufficiently to prevent another such occurrence, as determined by the Department.

(h) The water system shall comply with the total coliform maximum contaminant level (MCL) specified in 22 CCR section 64426.1 at least 11 of the 12 previous months that the system served water to the public on an ongoing basis, unless the Department determines that failure to meet this requirement was not caused by the unfiltered approved surface water.

(i) The water system shall comply with the requirements for total trihalomethanes, haloacetic acids (five), bromate, chlorite, chlorine, chloramines, and chlorine dioxide specified in 22 CCR chapter 15.5, commencing with section 64530.

(j) The supplier shall provide to the Department an annual report, by December 31st of each year, which summarizes its compliance with all the watershed control program requirements.

(k) The water system shall meet the following special disinfection requirements:

(1) The water system shall not fail to provide disinfection treatment sufficient to ensure at least a 99.9 percent inactivation of *Giardia lamblia* cysts and a 99.99 percent inactivation of viruses for more than one day in any month the water system served unfiltered approved surface water. The means used to demonstrate the required percent inactivation with disinfection shall be as identified in 40 CFR sections 141.72(a)(1), and 141.74(b)(3) and (b)(4). Disinfection information collected pursuant to this subsection shall be reported to the Department in conformance with the requirements of 40 CFR section 141.75(a)(2). The necessity to install filtration as a result of a failure to meet the requirements in subsection (c) will not apply if:

(A) Either the supplier meets the requirements of subsection (c) at least 11 of the 12 previous months that the system served unfiltered approved surface water to the public on an ongoing basis, or

(B) The system fails to meet the requirements of subsection (c) during 2 of the 12 previous months that the system served unfiltered approved surface water to the public, and

(C) The Department determines that failure to meet the requirements in subsection (c) for at least one of these months was caused by circumstances that were unusual and unpredictable.

(2) The disinfection system shall have either:

(A) Redundant components, including an auxiliary power supply with automatic start–up and alarm to ensure that disinfectant application is maintained continuously while water is being delivered to the distribution system; or

(B) Automatic shut–off of delivery of water to the distribution system whenever there is less than 0.2 mg/l of residual disinfectant concentration in the water.

(3) The water system shall meet the requirements of section 64654(b)(1) at all times the system serves unfiltered approved surface water to the public unless the Department determines that any such failure was caused by circumstances that were unusual and unpredictable.

(4) The water system shall meet the requirements of section 64654(b)(2) on an ongoing basis unless the Department determines that failure to meet these requirements was not caused by a deficiency in treatment of the unfiltered approved surface water.

(*l*) Whenever the monitoring of the quality of the approved surface water indicates the turbidity exceeds 5.0 NTU, or the fecal coliform level exceeds 20/100 mL or the total coliform concentration exceeds 100/100 mL in 10 percent or more of the samples collected in the previous six months during which the system served unfiltered approved surface water to the public on an ongoing basis, the source shall be removed from service. The source may be returned to service when monitoring subsequent to removing the source from service demonstrates that the turbidity is less than or equal to 5.0 NTU and the fecal coliform level is less than or equal to 20/100 mL or the total coliform level is less than or equal to 100/100 mL for two consecutive days, and *Giardia lamblia* monitoring results indicate 1 cyst per 100 liters or less. If a system measures both fecal and total coliforms, the fecal coliform criterion, not the total coliform criterion, in this subsection shall be met.

NOTE: Authority cited: Sections 100275, 116375 and 131200, Health and Safety Code. Reference: Sections 116270, 116275, 116350, 116365, 116375, 116385, 116390, 116400, 116525, 116530, 116535, 116540, 116550, 116625, 116735 and 131051, Health and Safety Code.

HISTORY

1. New section filed 6–8–98; operative 7–8–98 (Register 98, No. 24).
2. Amendment of subsections (a), (c), (e), (e)(4), (i), (k)(1) and (*l*) and amendment of NOTE filed 12–13–2007; operative 1–12–2008 (Register 2007, No. 50).

§ 64653. Filtration.

(a) All approved surface water utilized by a supplier shall be treated using one of the following filtration technologies unless an alternative process has been approved by the Department pursuant to subsections (f), (g) and (h):

(1) Conventional filtration treatment

(2) Direct filtration treatment

(3) Diatomaceous earth filtration

(4) Slow sand filtration

(b) Conventional filtration treatment shall be deemed to be capable of achieving at least 99.7 percent removal of *Giardia lamblia* cysts and 99 percent removal of viruses when in compliance with operation criteria specified in section 64660 and performance standards specified in subsection (c). Direct filtration treatment, diatomaceous earth filtration and slow sand filtration shall be deemed to be capable of achieving at least 99 percent removal of *Giardia lamblia* cysts and a 90 percent removal of viruses when in compliance with operation criteria specified in section 64660 and performance standards specified in subsections (c) and (d).

(c) Conventional filtration, direct filtration, or diatomaceous earth filtration shall comply with the following performance standards for each treatment plant:

(1) The turbidity level of the filtered water shall be equal to or less than 0.5 NTU in 95 percent of the measurements taken each month and shall not exceed 5.0 NTU at any time.

(2) For those suppliers using a grab sampling monitoring program the turbidity level of the filtered water shall not exceed 1.0 NTU in more than two samples taken consecutively while the plant is in operation. For those suppliers using a continuous monitoring program the turbidity level of the filtered water shall not exceed 1.0 NTU for more than eight consecutive hours while the plant is in operation.

(3) A supplier serving at least 10,000 people and using either conventional filtration or direct filtration shall meet the turbidity requirements specified in section 64657.30(a)(2) in lieu of subsections (c)(1) and (c)(2).

(d) Slow sand filtration shall comply with the following performance standards for each treatment plant:

(1) The turbidity level of the filtered water shall be less than or equal to 1.0 NTU in 95 percent of the measurements taken each month. However, filtered water from the treatment plant may exceed 1.0 NTU, provided the filter effluent prior to disinfection meets the maximum contaminant level for total coliforms as specified in 22 CCR section 64426.1.

(2) The turbidity level of the filtered water shall not exceed 5.0 NTU at any time.

(e) In order to obtain approval for a higher removal efficiency than that specified in subsection (b), a water supplier shall demonstrate to the Department that the higher removal efficiency can be reliably obtained.

(f) An alternative to the filtration technologies specified in subsection (a) may be used provided that the supplier demonstrates to the Department that the alternative technology provides a minimum of 99 percent *Giardia lamblia* cyst removal and 90 percent virus removal for suppliers serving more than 500 persons, or 90 percent *Giardia lamblia* cyst removal for suppliers serving 500 or fewer persons, and meets the turbidity performance standards established in subsection (d). A supplier serving at least 10,000 people shall also provide a minimum of 99 percent *Cryptosporidium* oocyst removal and meet the turbidity performance standards established in section 64657.30(a)(2). The demonstration shall be based on the results from a prior equivalency demonstration or a testing of a full scale installation that is treating a water with similar characteris-

tics and is exposed to similar hazards as the water proposed for treatment. A pilot plant test of the water to be treated may also be used for this demonstration if conducted with the approval of the Department. The demonstration shall be presented in an engineering report prepared by a qualified engineer.

(g) Suppliers proposing to use an alternative filtration technology may request from the Department a waiver to comply with the requirements of subsection (f) to demonstrate 90 percent virus removal. The request shall be based on a watershed sanitary survey conducted in accordance with section 64665, within 12 months of the date of the request, that demonstrates a lack of virus hazard in the watershed.

(h) The Department's approval of alternative filtration technologies, including establishment of performance standards and monitoring requirements, shall be done in accordance with the permit process specified in sections 116525 through 116550 of the Health and Safety Code.

(i) Within 60 days following the first full year of operation of a new alternative filtration treatment process approved by the Department, the supplier shall submit an engineering report prepared by a qualified engineer describing the effectiveness of the plant operation. The report shall include results of all water quality tests performed and shall evaluate compliance with established performance standards under actual operating conditions. It shall also include an assessment of problems experienced, corrective actions needed, and a schedule for providing needed improvements.

NOTE: Authority cited: Sections 100275, 116375 and 131200, Health and Safety Code. Reference: Sections 116270, 116275, 116365, 116375, 116385, 116390, 116400, 116525, 116530, 116535, 116540, 116550, 116555, 116625, 116735 and 131051, Health and Safety Code.

HISTORY

1. New section filed 5–6–91; operative 6–5–91 (Register 91, No. 25).
2. Amendment of subsections (a), (b), (d)(1) and (e)–(h) and amendment of NOTE filed 6–8–98; operative 7–8–98 (Register 98, No. 24).
3. Amendment of subsection (b), new subsection (c)(3) and amendment of subsection (f) and NOTE filed 12–13–2007; operative 1–12–2008 (Register 2007, No. 50).

§ 64653.5. Recycle Provisions.

A supplier that uses conventional filtration or direct filtration and recycles spent filter backwash water, thickener supernatant, or liquids from dewatering processes shall:

(a) Provide the Department with the following information in writing:

(1) Plant schematic showing the origin of all recycle flows, the hydraulic conveyance used to transport each, and the point at which each is reintroduced into the treatment plant; and

(2) Typical recycle flow in gallons per minute (gpm), the highest observed plant flow experienced in the previous year (gpm), design flow for the treatment plant (gpm), and the approved operating capacity for the plant if the Department has specified one.

(b) Return all recycle flows to the headworks of the treatment plant or an alternative location approved by the Department.

(c) Collect and retain the following information and provide it to the Department upon request:

(1) A copy of the Department notification required pursuant to subsection (a);

(2) A list of all recycle flows and the frequency with which they are returned;

(3) Average and maximum backwash flow rates through the filters and the average and maximum durations of the filter backwash process in minutes;

(4) Typical filter run length and a written summary of how filter run length is determined;

(5) The type of treatment provided for the recycle flow; and

(6) Data on the physical dimensions of the equalization and/or treatment units, typical and maximum hydraulic loading rates, type of treatment chemicals used and average dose and frequency of use, and frequency at which solids are removed, if applicable.

NOTE: Authority cited: Sections 100275, 116375 and 131200, Health and Safety Code. Reference: Sections 116270, 116275, 116365, 116375, 116385, 116390, 116400, 116525, 116530, 116535, 116540, 116550, 116555, 116625, 116735 and 131051, Health and Safety Code.

HISTORY

1. New section filed 12–13–2007; operative 1–12–2008 (Register 2007, No. 50).

§ 64654. Disinfection.

(a) All approved surface water utilized by a supplier shall be provided with continuous disinfection treatment sufficient to insure that the total treatment process provides inactivation of *Giardia lamblia* cysts and viruses, in conjunction with the removals obtained through filtration, to meet the reduction requirements specified in section 64652(a).

(b) Disinfection treatment shall comply with the following performance standards:

(1) Water delivered to the distribution system shall not contain a disinfectant residual of less than 0.2 mg/l for more than four hours in any 24 hour period.

(2) The residual disinfectant concentrations of samples collected from the distribution system shall be detectable in at least 95 percent of the samples taken each month that the system serves water to the public, except as provided in subsection (c). At any sample point in the distribution system, the presence of heterotrophic plate count (HPC) at concentrations less than or equal to 500 colony forming units per milliliter shall be considered equivalent to a detectable disinfectant residual.

(c) Paragraph (b)(2) shall not apply to suppliers serving fewer than 500 persons provided:

(1) The system is in compliance with 17 CCR sections 7583 through 7605, and with 22 CCR sections 64602, 64570(b), 64572, and 64580;

(2) The supplier has no means for having a sample transported and analyzed for HPC by a certified laboratory under the appropriate time and temperature conditions; and

(3) The supplier is providing adequate disinfection in the distribution system.

(d) No exemptions from the requirement in paragraph (b)(1) are permitted.

NOTE: Authority cited: Sections 100275, 116350, 116375 and 131200, Health and Safety Code. Reference: Sections 116270, 116275, 116365, 116375, 116385, 116390, 116400, 116525, 116530, 116535, 116540, 116550, 116555, 116625, 116735, 116750 and 131051, Health and Safety Code.

HISTORY

1. New section filed 5–6–91; operative 6–5–91 (Register 91, No. 25).
2. Change without regulatory effect amending section filed 6–28–91, pursuant to section 100, title 1, California Code of Regulations; operative 6–28–91 (Register 91, No. 40).
3. Amendment of subsections (a) and (b)(2)–(c)(2), new subsection (d) and amendment of NOTE filed 6–8–98; operative 7–8–98 (Register 98, No. 24).
4. Amendment of subsections (a), (b)(2) and (c)(1)–(3) and amendment of NOTE filed 12–13–2007; operative 1–12–2008 (Register 2007, No. 50).
5. Amendment of subsection (c)(1) and NOTE filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).
6. Editorial correction removing duplicate article heading and amending HISTORY 5 (Register 2008, No. 7).

Article 3. Monitoring Requirements

§ 64655. Treatment Plant Process Monitoring.

(a) Each supplier using an approved surface water source shall monitor the turbidity level of each raw water supply by the taking and analyzing of daily grab samples.

(b) Each supplier using an approved surface water source shall monitor the raw water supply for total coliform and either fecal coliform or *E. coli* bacteria using density analysis no less than once each month. Monitoring shall be conducted in accordance with the operations plan required by section 64661.

(c) Each supplier using conventional filtration shall monitor the turbidity of the settled water at least once each day in accordance with the operations plan required by section 64661.

(d) Each supplier recycling filter backwash water shall monitor the turbidity and determine the flow of the recycled water at least once each day

or during each recycle event. Monitoring shall be representative of the water recycled and be conducted in accordance with the operations plan required by section 64661.

(e) To determine compliance with the performance standards specified in section 64653, each supplier shall determine the turbidity level of representative samples of the combined filter effluent, prior to clearwell storage, at least once every four hours that the system is in operation, except as provided in subsections (g) and (h). Monitoring shall be conducted in accordance with the operations plan required by section 64661.

(f) Continuous turbidity measurements may be substituted for grab sample monitoring provided the supplier validates the accuracy of the measurements on a weekly basis.

(g) Suppliers using slow sand filtration or serving 500 or fewer persons which are in compliance with performance standards specified in section 64653, may reduce turbidity monitoring to one grab sample per day.

(h) Each supplier using conventional filtration or direct filtration, and serving at least 10,000 people shall conduct turbidity monitoring pursuant to section 64657.40 in lieu of subsection (e).

NOTE: Authority cited: Sections 100275, 116375 and 131200, Health and Safety Code. Reference: Sections 116270, 116275, 116365, 116375, 116385, 116390, 116400, 116525, 116530, 116535, 116540, 116550, 116555, 116625, 116735 and 131051, Health and Safety Code.

HISTORY

1. New section filed 5–6–91; operative 6–5–91 (Register 91, No. 25).
2. Amendment of subsection (b) and NOTE filed 6–8–98; operative 7–8–98 (Register 98, No. 24).
3. Amendment of section heading, section and NOTE filed 12–13–2007; operative 1–12–2008 (Register 2007, No. 50).

§ 64656. Disinfection.

(a) To determine compliance with disinfection inactivation requirements specified in section 64654(a), each supplier shall develop and conduct a monitoring program to measure those parameters that affect the performance of the disinfection process. This shall include but not be limited to the temperature of the disinfected water, the pH(s) of the disinfected water if chlorine is used as a disinfectant, the disinfectant contact time(s) and the residual disinfectant concentration(s) before or at the first customer. The monitoring program shall be described in the operations plan required by section 64661.

(b) To determine compliance with the performance standard specified in section 64654(b)(1), the disinfectant residual concentration of the water being delivered to the distribution system shall be measured and recorded continuously except as provided in subsection (f).

(c) To determine compliance with section 64654(b)(2), the residual disinfectant concentration must be measured at least at the same points in the distribution system and at the same time as total coliforms are sampled in accordance with 22 CCR section 64421, and described in the operations plan required by section 64661, except as provided in subsection (d).

(d) For suppliers that use both an approved surface water and a groundwater, the Department shall approve a request to take disinfectant residual samples at points other than those specified in subsection (c) provided the supplier demonstrates that such sampling points are representative of the disinfected approved surface water in the distribution system.

(e) If there is a failure of continuous disinfectant residual monitoring equipment, grab sampling every four hours may be conducted in lieu of continuous monitoring, but for no more than five working days following the failure of the equipment.

(f) Suppliers serving 3,300 or fewer persons may collect and analyze grab samples of disinfectant residual each day as shown below in lieu of the continuous monitoring specified in subsection (b), provided that any time the residual disinfectant falls below 0.2 mg/l, the supplier shall take a grab sample every four hours until the residual concentration is equal to or greater than 0.2 mg/l:

System size by population	*Samples/day*
less than or equal to 500	1
501 – 1,000	2
1,001 – 2,500	3
2,501 – 3,300	4

(g) Suppliers shall describe the location and frequency of sampling to comply with subsection (f) in the operations plan required by section 64661.

NOTE: Authority cited: Sections 100275 and 116375, Health and Safety Code. Reference: Sections 116270, 116275, 116365, 116375, 116385, 116390, 116400, 116525, 116530, 116535, 116540, 116550, 116555, 116625 and 116735, Health and Safety Code.

HISTORY

1. New section filed 5–6–91; operative 6–5–91 (Register 91, No. 25).
2. Amendment of section and NOTE filed 6–8–98; operative 7–8–98 (Register 98, No. 24).

§ 64657. General Requirements.

(a) A supplier using an approved surface water and serving at least 10,000 people shall comply with the requirements in this Article.

(b) A supplier shall achieve at least 99 percent (2–log) removal of *Cryptosporidium* between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer for filtered water systems, or achieve *Cryptosporidium* control under the watershed control plan for unfiltered systems.

(c) A supplier is considered to be in compliance with the requirements of subsection (b) if:

(1) It meets the requirements for avoiding filtration in sections 64652.5 and 64657.10 and the requirements in sections 64654 and 64657.20; or

(2) It meets the applicable filtration requirements in either section 64653 or section 64657.30 and the requirements in sections 64654 and 64657.20.

(d) A supplier shall not begin construction of an uncovered finished water storage facility.

NOTE: Authority cited: Sections 100275, 116375 and 131200, Health and Safety Code. Reference: Sections 116270, 116275, 116365, 116375, 116385, 116390, 116400, 116525, 116530, 116535, 116540, 116550, 116555, 116625, 116735 and 131051, Health and Safety Code.

HISTORY

1. New section filed 12–13–2007; operative 1–12–2008 (Register 2007, No. 50).

§ 64657.10. Criteria for Avoiding Filtration.

(a) In addition to the requirements specified in section 64652.5, a supplier shall meet all of the requirements of this section to avoid the necessity of providing filtration.

(b) To minimize the potential for contamination by *Cryptosporidium* oocysts in the source water, the watershed control program required in section 64652.5(e) shall:

(1) Identify watershed characteristics and activities that may have an adverse effect on source water quality; and

(2) Monitor the occurrence of activities that may have an adverse effect on source water quality.

(c) The onsite inspection conducted pursuant to section 64652.5(f) shall also determine if the program will minimize the potential for contamination by *Cryptosporidium* based on an evaluation of the following:

(1) The comprehensiveness of the watershed review;

(2) The effectiveness of the supplier's program to monitor and control detrimental activities occurring in the watershed; and

(3) The extent to which the water system has maximized land ownership and/or controlled land use within the watershed.

NOTE: Authority cited: Sections 100275, 116375 and 131200, Health and Safety Code. Reference: Sections 116270, 116275, 116350, 116365, 116375, 116385, 116390, 116400, 116525, 116530, 116535, 116540, 116550, 116625, 116735 and 131051, Health and Safety Code.

HISTORY

1. New section filed 12–13–2007; operative 1–12–2008 (Register 2007, No. 50).

§ 64657.20. Disinfection Profiling and Benchmarking.

A supplier that has developed a disinfection profile pursuant to 40 Code of Federal Regulations parts 141.172(a) and (b) (63 Fed. Reg. 69477 (December 16, 1998); amended Jan. 16, 2001, 66 Fed. Reg. 3769, which are incorporated by reference, shall:

(a) Retain disinfection profile data and make it available to the Department upon request; and

(b) Submit the following information to the Department when applying for an amended permit to change the point of disinfection, disinfectant(s) used in the treatment plant, or disinfection process:

(1) A description of the proposed change;

(2) The disinfection profile and benchmark conducted pursuant to 40 Code of Federal Regulations part 141.172(c) (63 Fed. Reg. 69477 (December 16, 1998)), which is incorporated by reference; and

(3) An analysis of how the proposed change will affect the current levels of disinfection.

NOTE: Authority cited: Sections 100275, 116375 and 131200, Health and Safety Code. Reference: Sections 116270, 116275, 116365, 116375, 116385, 116390, 116400, 116525, 116530, 116535, 116540, 116550, 116555, 116625, 116735 and 131051, Health and Safety Code.

HISTORY

1. New section filed 12–13–2007; operative 1–12–2008 (Register 2007, No. 50).

§ 64657.30. Filtration.

(a) Except as specified in subsection (b), a supplier that does not meet all of the criteria in sections 64652.5 and 64657.10 for avoiding filtration shall provide treatment consisting of both disinfection, as specified in section 64654, and filtration consisting of:

(1) Diatomaceous earth or slow sand filtration that meets the performance requirements specified for those technologies in sections 64653(c) and (d); or

(2) Conventional filtration or direct filtration that meets the following performance standards for each treatment plant:

(A) The turbidity level of the combined filter effluent shall be less than or equal to 0.3 NTU in at least 95 percent of the measurements taken each month and shall not exceed 1 NTU for more than 1 continuous hour, measured pursuant to section 64657.40;

(B) The turbidity level of the combined filter effluent at four–hour intervals shall never exceed 1 NTU; and

(C) The turbidity level of the combined filter effluent shall not exceed 1.0 NTU for more than 8 consecutive hours while the plant is operating.

(b) An alternative to the filtration technologies specified in subsection (a) may be used provided that the supplier complies with sections 64653(f), (g), (h), and (i).

NOTE: Authority cited: Sections 100275, 116375 and 131200, Health and Safety Code. Reference: Sections 116270, 116275, 116365, 116375, 116385, 116390, 116400, 116525, 116530, 116535, 116540, 116550, 116555, 116625, 116735 and 131051, Health and Safety Code.

HISTORY

1. New section filed 12–13–2007; operative 1–12–2008 (Register 2007, No. 50).

§ 64657.40. Filtration Sampling.

(a) In addition to monitoring required by sections 64655(a) through (d), and in lieu of the monitoring required by section 64655(e), a supplier that provides conventional filtration or direct filtration shall conduct continuous turbidity monitoring of each individual filter and the combined filter effluent. Monitoring shall be conducted pursuant to the operations plan required by section 64661 and monitoring of the combined filter effluent shall be conducted prior to clearwell storage.

(b) For the purpose of determining compliance with the performance standards specified in section 64657.30(a)(2) and the operating criteria specified in section 64660(b)(7), the results of the continuous monitoring shall be recorded at least once every 15 minutes that the treatment plant is in operation.

(c) A supplier shall calibrate turbidimeters used to comply with the requirements of this section using the procedure specified by the manufacturer.

(d) If there is a failure in the continuous turbidity monitoring system, or there are interruptions in continuous monitoring due to system maintenance, a supplier shall conduct grab sampling every four hours in lieu of continuous monitoring, but continuous monitoring shall be reinitiated within 48 hours of system failure or maintenance interruption for the combined effluent, and within five working days for individual filter effluents.

NOTE: Authority cited: Sections 100275, 116375 and 131200, Health and Safety Code. Reference: Sections 116270, 116275, 116365, 116375, 116385, 116390, 116400, 116525, 116530, 116535, 116540, 116550, 116555, 116625, 116735 and 131051, Health and Safety Code.

HISTORY

1. New section filed 12–13–2007; operative 1–12–2008 (Register 2007, No. 50).

§ 64657.50. Supplemental Reporting and Recordkeeping.

(a) In lieu of the monthly reporting specified in section 64664(b), a supplier that provides conventional filtration or direct filtration shall include in the monthly report required by section 64664 the total number of combined filter effluent turbidity measurements taken during the month pursuant to section 64657.40 and either:

(1) The turbidity achieved 50, 90, 95, 98 and 99 percent of the time that the plant was producing water; and date, time, and value of any turbidity measurement taken during the month that exceed 1.0 NTU; or

(2) The results of turbidity measurements recorded at intervals no greater than every 4 hours; all results that exceed 0.3 NTU, recorded at intervals no greater than every 15 minutes; and the number and percent of turbidity measurements that are less than or equal to 0.3 NTU, based on all measurements recorded during the month at intervals no greater than every 15 minutes.

(b) A supplier that provides conventional filtration or direct filtration shall review the data reported according to subsection (a) to ensure that it is not compromised by system or instrument maintenance, hardware or software problems, signal transmission problems, or for other technical reasons.

(c) A supplier that provides conventional filtration or direct filtration shall include in the monthly report required by section 64664 the following information:

(1) That individual filter turbidity monitoring was conducted pursuant to section 64657.40; and

(2) The filter number, turbidity measurements, and date(s) and time(s) of the exceedance and either the obvious reason for the exceedance or, if the supplier is not able to identify an obvious reason for the abnormal filter performance, a filter profile produced within 7 days of the exceedance, if either of the following occurs:

(A) Any individual filter has a measured turbidity level of greater than 1.0 NTU in two consecutive measurements taken no more than 15 minutes apart; or

(B) After a backwash or being taken offline for some other reason, any individual filter has a measured turbidity level of greater than 0.3 NTU in two consecutive measurements taken no more than 15 minutes apart after the filter has been in continuous operation for 60 minutes or more.

(d) For any individual filter that has a measured turbidity level of greater than 1.0 NTU in two consecutive measurements taken no more than 15 minutes apart at any time in each of three consecutive months, a supplier that provides conventional filtration or direct filtration shall conduct a self–assessment of the filter within 14 days of the exceedance and report to the Department that the self–assessment was conducted. The self–assessment shall consist of at least the following components: assessment of filter performance; development of a filter profile; identification and prioritization of factors limiting filter performance; assessment of the applicability of corrections; and preparation of a filter self–assessment report. The filter self–assessment report shall be submitted to the Department within 28 days of the exceedance.

(e) For any individual filter that has a measured turbidity level of greater than 2.0 NTU in two consecutive measurements taken no more than 15 minutes apart at any time in each of two consecutive months, a supplier that provides conventional filtration or direct filtration shall arrange with the Department for the conduct of a comprehensive performance evaluation (CPE) no later than 30 days following the exceedance and have the evaluation completed and submitted to the Department no later than 90 days following the exceedance. The CPE shall be conducted pursuant to "Optimizing Water Treatment Plant Performance Using the Composite Correction Program", EPA Handbook, Chapter 4, pg. 21–65, Office of Research and Development, USEPA, EPA/625/6–91/027 (revised August 1998) which is incorporated by reference.

NOTE: Authority cited: Sections 100275, 116375, 116450 and 131200, Health and Safety Code. Reference: Sections 116270, 116275, 116365, 116375, 116385,

116390, 116400, 116525, 116530, 116535, 116540, 116550, 116555, 116625, 116735 and 131051, Health and Safety Code.

HISTORY

1. New section filed 12–13–2007; operative 1–12–2008 (Register 2007, No. 50).

Article 4. Design Standards

§ 64658. New Treatment Plants.

(a) Suppliers that propose to construct new filtration and disinfection treatment facilities or to modify or make additions to existing treatment facilities which require permit approval from the Department pursuant to Health and Safety Code sections 116525 through 116550 shall submit an engineering report to the Department describing how the proposed new treatment facilities will be designed to comply with the treatment, design, performance and reliability provisions required pursuant to this chapter. Modifications requiring permit approval include those that have a significant effect on plant performance, change the plant design rating or capacity, or change a major treatment process.

(b) All new filtration and disinfection facilities shall be designed and constructed to comply with the following criteria:

(1) Achieve an average daily effluent turbidity goal of 0.2 NTU when using conventional, direct, and diatomaceous earth filtration plants.

(2) Be free of structural and sanitary hazards.

(3) Protect against contamination by backflow.

(4) Meet the capacity and pressure requirements prescribed in 22 CCR sections 64554 and 64602.

(5) Provide flow measuring and recording equipment.

(6) Take into consideration the effects of events such as earthquakes, fires, floods, freezing, and sabotage that are reasonably foreseeable.

(7) Provide reasonable access for inspection, maintenance, and monitoring of all unit processes.

(8) Provide for filter–to–waste for each filter unit or addition of coagulant chemicals to the water used for backwashing.

(9) Provide backwash rates and surface or subsurface wash facilities using air, water or a combination thereof to clean the filter after use to its original condition.

(10) Provide solids removal treatment for filter backwash water if it is recycled into the treatment process. Recycled backwash water shall be returned to the headworks of the treatment plant.

(11) Provide for the future addition of pretreatment facilities in the design of direct filtration, slow sand, or diatomaceous earth filtration plants.

(12) Provide disinfection equipment sized for the full range of flow conditions expected and capable of feeding accurately at all flow rates.

(13) Provide for treatment plant operation without frequent shutdowns and startups or rapid changes in filtration rates.

(c) Whenever a coagulation process is used, the process selection shall be based on pilot plant or laboratory scale (jar test) or equivalent results that demonstrate effectiveness of the coagulant chemicals over the full range of water quality conditions expected.

NOTE: Authority cited: Sections 100275, 116350, 116375 and 131200, Health and Safety Code. Reference: Sections 116270, 116275, 116365, 116375, 116385, 116390, 116400, 116525, 116530, 116535, 116540, 116550, 116625, 116735 and 131051, Health and Safety Code.

HISTORY

1. New section filed 5–6–91; operative 6–5–91 (Register 91, No. 25).
2. Amendment of subsection (a) and NOTE filed 12–13–2007; operative 1–12–2008 (Register 2007, No. 50).
3. Amendment of subsection (b)(4) and NOTE filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64659. Reliability.

(a) The following reliability features shall be included in the design and construction of all new and existing surface water treatment plants:

(1) Alarm devices to provide warning of coagulation, filtration, and disinfection failures. All devices shall warn a person designated by the supplier as responsible for taking corrective action, or have provisions to shut the plant down until corrective action can be taken.

(2) Standby replacement equipment available to assure continuous operation and control of unit processes for coagulation, filtration and disinfection.

(3) A continuous turbidity monitoring and recording unit on the combined filter effluent prior to clearwell storage.

(4) Multiple filter units which provide redundant capacity when filters are out of service for backwash or maintenance.

(b) Alternatives to the requirements specified in section 64659(a) shall be accepted provided the water supplier demonstrates to the satisfaction of the Department that the proposed alternative will assure an equal degree of reliability.

NOTE: Authority cited: Sections 208 and 4023.3, Health and Safety Code. Reference: Sections 4010, 4010.1, 4011, 4012, 4013, 4014, 4016, 4023.1, 4023.3, 4024, 4025, 4026.4, 4031 and 4039, Health and Safety Code.

HISTORY

1. New section filed 5–6–91; operative 6–5–91 (Register 91, No. 25).

Article 5. Operation

§ 64660. Operating Criteria.

(a) All treatment plants utilizing an approved surface water shall be operated by operators certified by the Department in accordance with Health and Safety Code section 106885.

(b) Filtration facilities shall be operated in accordance with the following requirements:

(1) Conventional and direct filtration plants shall be operated at flow rates not to exceed 3.0 gallons per minute per square foot (gpm/sq. ft.) for single media filters and 6.0 gpm/sq. ft. for deep bed, dual or mixed media filters under gravity flow conditions. For pressure filters, filtration rates shall not exceed 2.0 gpm/sq. ft. for single media filters and 3.0 gpm/sq. ft. for dual, mixed media, or deep bed filters.

(2) Slow sand filters shall be operated at filtration rates not to exceed 0.10 gallon per minute per square foot. The filter bed shall not be dewatered except for cleaning and maintenance purposes.

(3) Diatomaceous earth filters shall be operated at filtration rates not to exceed 1.0 gallon per minute per square foot.

(4) In order to obtain approval for filtration rates higher than, but not more than twice, those specified in section 64660(b)(1), (b)(2), and (b)(3), a water supplier shall demonstrate to the Department that the filters can comply with the performance requirements of section 64653.

(5) In order to obtain approval for filtration rates greater than twice those specified in paragraphs (b)(1), (b)(2), and (b)(3), a water supplier shall demonstrate to the Department that the filters do the following:

(A) Provide a minimum of 99 percent *Giardia lamblia* cyst removal and 90 percent virus removal;

(B) Meet the turbidity performance standards established in section 64653(c); and

(C) If a supplier serves at least 10,000 people, provide a minimum 99 percent *Cryptosporidium* oocyst removal and meet the turbidity performance standards established in section 64657.30.

(6) Filtration rates shall be increased gradually when placing filters back into service following backwashing or any other interruption in the operation of the filter.

(7) When any individual filter in a conventional or direct filtration plant is placed back into service following backwashing or other interruption event, the filtered water turbidity of the effluent from that filter shall not exceed any of the following:

(A) 2.0 NTU at any time during the first four hours of filter operation following all interruption events.

(B) 1.0 NTU at any time during the first four hours of filter operation following at least 90 percent of the interruption events during any consecutive 12 month period.

(C) 0.5 NTU at the time that the filter has been in operation for 4 hours.

(8) Pressure filters shall be physically inspected and evaluated annually for such factors as media condition, mudball formation, and short circuiting. A written record of the inspection shall be maintained at the treatment plant.

(9) Coagulation and flocculation unit processes shall be in use at all times during which conventional and direct filtration treatment plants are in operation. The effectiveness of these processes shall be demonstrated by either at least an 80 percent reduction through the filters of the monthly average raw water turbidity or jar testing, pilot testing or other means to demonstrate that optimum coagulation is being achieved.

(10) The filtered water turbidity level from each filter unit shall be monitored with a continuous turbidity meter and recorder, or with a grab sampling program designed to identify compliance with the requiremeents of paragraph (b)(7) and approved by the Department. If this monitoring indicates that any filter unit in a conventional or direct filtration plant is not performing as required in paragraph (b)(7), the filter shall be taken out of service and inspected to determine the cause of its inadequate performance. The filter unit shall not be returned to service until deficiencies have been corrected and operations tests demonstrate that the filter unit is meeting the requirements of paragraph (b)(7).

(c) Disinfection facilities shall be operated in accordance with the following requirements:

(1) A supply of chemicals necessary to provide continuous operation of disinfection facilities shall be maintained as a reserve or demonstrated to be available.

(2) An emergency plan shall be developed prior to initiating operation of the disinfection facilities. The plan shall be implemented in the event of disinfection failure to prevent delivery to the distribution system of any undisinfected or inadequately disinfected water. The plan shall be posted in the treatment plant or other place readily accessible to the plant operator.

NOTE: Authority cited: Sections 100275, 116375 and 131200, Health and Safety Code. Reference: Sections 106885, 116270, 116275, 116365, 116375, 116385, 116390, 116400, 116460, 116525, 116530, 116535, 116540, 116550, 116555, 116625, 116735 and 131051, Health and Safety Code.

HISTORY

1. New section filed 5–6–91; operative 6–5–91 (Register 91, No. 25).
2. Amendment of section and NOTE filed 6–8–98; operative 7–8–98 (Register 98, No. 24).
3. Amendment of subsections (b)(1) and (b)(5)(A)–(B), new subsection (b)(5)(C) and amendment of NOTE filed 12–13–2007; operative 1–12–2008 (Register 2007, No. 50).

§ 64661. Operations Plan.

(a) A supplier shall operate each treatment plant in accordance with an operations plan that has been approved by the Department. With a permit application for a new treatment plant or modification to an existing treatment plant, the supplier shall submit for Department review and approval an operations plan for each treatment plant that treats an approved surface water. The Department shall review the operations plan to determine if it includes those items required in subsection (b). The operations plan shall be designed to produce the optimal water quality from the treatment process. The supplier shall operate its treatment plant in accordance with the approved plan.

(b) The operations plan shall consist of a description of the utility's treatment plant performance monitoring program, filter media inspection program, unit process equipment maintenance program, operating personnel, including numbers of staff, certification levels and responsibilities; how and when each unit process is operated; laboratory procedures; procedures used to determine chemical dose rates; records; response to plant and watershed emergencies; and reliability features.

NOTE: Authority cited: Sections 100275, 116375 and 131200, Health and Safety Code. Reference: Sections 116270, 116275, 116365, 116375, 116385, 116390, 116400, 116450, 116460, 116525, 116530, 116535, 116540, 116550, 116555, 116625, 116735 and 131051, Health and Safety Code.

HISTORY

1. New section filed 5–6–91; operative 6–5–91 (Register 91, No. 25).
2. Amendment of subsection (a) and NOTE filed 6–8–98; operative 7–8–98 (Register 98, No. 24).
3. Amendment of section and NOTE filed 12–13–2007; operative 1–12–2008 (Register 2007, No. 50).

§ 64662. Records.

(a) The supplier shall maintain accurate and complete operation records for each treatment plant that treats an approved surface water. The records shall include but not be limited to the following:

(1) The results of all monitoring conducted in accordance with sections 64655, 64656, 64657.20, 64657.40, 64657.50, and 64660.

(2) Dates on which filter maintenance and inspections were performed and the results of any inspections including pressure filter evaluations required by section 64660(b)(7).

(3) Quantity of water produced, plant flow rates, filtration rates, hours of operation, and backwash rates.

(4) Dates and description of major equipment and process failures and corrective actions taken.

(b) Treatment plant records shall be retained for not less than three years, except where the Department has determined that longer retention times are necessary to complete legal actions taken under the provisions of Health and Safety Code sections 116625 through 116675 and sections 116725 through 116730.

NOTE: Authority cited: Sections 100275, 116375 and 131200, Health and Safety Code. Reference: Sections 116270, 116275, 116365, 116375, 116385, 116390, 116400, 116450, 116525, 116530, 116535, 116540, 116550, 116555, 116625, 116735 and 131051, Health and Safety Code.

HISTORY

1. New section filed 5–6–91; operative 6–5–91 (Register 91, No. 25).
2. Amendment of subsections (a)(1) and (b) and NOTE filed 12–13–2007; operative 1–12–2008 (Register 2007, No. 50).

Article 6. Reporting

§ 64663. Department Notification.

The supplier shall notify the Department as soon as possible, but no later than by the end of the next business day, or within 24 hours, whichever is less, by telephone or other equally rapid means whenever:

(a) The turbidity of the combined filter effluent as monitored pursuant to section 64655 or 64657.40 exceeds 5.0 NTU at any time.

(b) More than two consecutive turbidity samples of the combined filter effluent taken every four hours pursuant to section 64655 exceed 1.0 NTU or samples collected pursuant to section 64657.40 exceed 1 NTU for more than 1 continuous hour, 1 NTU at 4–hour intervals, or 1.0 NTU for more than 8 consecutive hours.

(c) There is a failure to maintain a minimum disinfectant residual of 0.2 mg/l in the water being delivered to the distribution system. The supplier shall report whether or not the disinfectant residual was restored to at least 0.2 mg/l within four hours.

(d) An event occurs which may affect the ability of the treatment plant to produce a safe, potable water including but not limited to spills of hazardous materials in the watershed and unit treatment process failures.

(e) The turbidity immediately prior to the first or only point of disinfectant application exceeds 5 NTU for suppliers avoiding filtration.

(f) The supplier discovers the occurrence of an acute infectious illness that may be potentially attributable to the water system.

NOTE: Authority cited: Sections 100275, 116375, 116450 and 131200, Health and Safety Code. Reference: Sections 116270, 116275, 116365, 116375, 116385, 116390, 116400, 116450, 116460, 116525, 116530, 116535, 116540, 116550, 116555, 116625, 116735, 116750 and 131051, Health and Safety Code.

HISTORY

1. New section filed 5–6–91; operative 6–5–91 (Register 91, No. 25).
2. Amendment of first paragraph and subsection (c), new subsections (e) and (f), and amendment of NOTE filed 6–8–98; operative 7–8–98 (Register 98, No. 24).
3. Amendment of subsections (a) and (b) and NOTE filed 12–13–2007; operative 1–12–2008 (Register 2007, No. 50).

§ 64664. Monthly Report.

(a) Each supplier with an approved surface water treatment facility shall submit a monthly report on the operation of each facility to the Department by the tenth day of the following month. The report shall be signed by the chief water treatment plant operator, plant superintendent or other person directly responsible for the operation of the water treatment plant.

(b) The report shall include the following results of turbidity monitoring of the combined filter effluent:

(1) All turbidity measurements taken during the month to determine compliance with section 64653.

(2) The number and percent of turbidity measurements taken during the month which are less than or equal to the performance standard specified for each filtration technology in section 64653, or as required for an alternative treatment process. The report shall also include the date and value of any turbidity measurements that exceed performance levels specified in section 64653.

(3) The average daily turbidity level.

(4) If the turbidity level of the filter effluent from a slow sand filter is greater than 1.0 NTU in five percent or more of the measurements taken that month, the supplier must also report the dates and results of total coliform sampling of the filter effluent prior to disinfection to demonstrate compliance with section 64653(d)(1).$

(c) The report shall include the following disinfection monitoring results taken to comply with section 64654:

(1) The date and duration of each instance when the disinfectant residual in water supplied to the distribution system is less than 0.2 mg/l and when the Department was notified of the occurrence.

(2) The following information on samples taken from the distribution system to comply with section 64654(b)(2):

(A) The number of samples where the disinfectant residual is measured.

(B) The number of samples where only the heterotrophic plate count (HPC) is measured.

(C) The number of measurements with no detectable disinfectant residual and no HPC is measured.

(D) The number of measurements with no detectable disinfectant residual and HPC is greater than 500 colony forming units per milliliter.

(E) The number of measurements where only HPC is measured and is greater than 500 colony forming units per milliliter.

(F) The value of V in the following formula:

$$V = \left[1 - \frac{(C + D + E)}{(A + B)} \right] 100$$

Where V = the percent of distribution system samples with a detectable residual.

A = the value in paragraph (2)(A) of this subsection.

B = the value in paragraph (2)(B) of this subsection.

C = the value in paragraph (2)(C) of this subsection.

D = the value in paragraph (2)(D) of this subsection.

E = the value in paragraph (2)(E) of this subsection.

(3) For each day the lowest measurement of residual disinfectant concentration in mg/l in the water entering the distribution system.

(d) The report shall include the following raw water and process water data:

(1) All raw water turbidity measurements taken during the month pursuant to section 64655(a). If more than one sample is taken each day, the highest value of all samples taken that day may be reported in lieu of reporting all that day's values.

(2) All raw water coliform measurements taken during the month pursuant to section 64655(b).

(3) Daily settled water turbidity for each day of the month, measured pursuant to section 64655(c). If more than one sample is taken each day, the highest value of all samples taken that day may be reported in lieu of reporting all that day's values.

(4) Daily recycled water turbidity and flow for each day of the month that backwash water was recycled back into the treatment process, measured pursuant to section 64655(d). If more than one turbidity sample (or flow measurement) is taken each day, the highest value of all turbidity samples (or flow measurements) taken that day may be reported in lieu of reporting all that day's values.

(e) The report shall include a written explanation of the cause of any violation of performance standards specified in sections 64653, 64654, or 64657.30, and operating criteria specified in sections 64660(b)(7) and (9).

(f) The report shall include a summary of water quality complaints and reports of gastrointestinal illness received from consumers.

(g) If a supplier provides conventional filtration or direct filtration and serves at least 10,000 people, the report shall include the information required by sections 64657.50(a) and (c).

NOTE: Authority cited: Sections 100275, 116375, 116450 and 131200, Health and Safety Code. Reference: Sections 116270, 116275, 116365, 116375, 116385, 116390, 116400, 116525, 116530, 116535, 116540, 116550, 116555, 116625, 116735 and 131051, Health and Safety Code.

HISTORY

1. New section filed 5–6–91; operative 6–5–91 (Register 91, No. 25).
2. Amendment of subsection (c)(2)(F), new subsections (d)–(d)(4), subsection relettering, amendment of newly designated subsection (e), new subsection (g) and amendment of NOTE filed 12–13–2007; operative 1–12–2008 (Register 2007, No. 50).

Article 7. Watershed Sanitary Surveys

§ 64665. Watershed Requirements.

(a) All suppliers shall have a sanitary survey of their watershed(s) completed at least every five years. The first survey shall be completed by January 1, 1996.

(b) A report of the survey shall be submitted to the Department not later than 60 days following completion of the survey.

(c) The survey and report shall include physical and hydrogeological description of the watershed, a summary of source water quality monitoring data, a description of activities and sources of contamination, a description of any significant changes that have occurred since the last survey which could affect the quality of the source water, a description of watershed control and management practices, an evaluation of the system's ability to meet requirements of this chapter, and recommendations for corrective actions.

NOTE: Authority cited: Sections 208 and 4023.3, Health and Safety Code. Reference: Sections 4010, 4010.1, 4011, 4012, 4013, 4014, 4016, 4017, 4023.1, 4023.3, 4024, 4025, 4026.4, 4031, and 4039, Health and Safety Code.

HISTORY

1. New section filed 5–6–91; operative 6–5–91 (Register 91, No. 25).

Article 8. Public Notification

§ 64666. Consumer Notification.

(a) For water systems that filter approved surface water, the supplier shall notify persons served by the system whenever there is a failure to comply with any of the treatment requirements specified in sections 64652, 64653, 64653.5(b), and 64654(a) or performance standards specified in sections 64653(c)(1), (d), (h), 64654(b), and 64657.30(a)(2) and (b).

(b) For water systems that do not filter approved surface water, the supplier shall notify persons served by the system whenever:

(1) There is a failure to comply with sections 64652.5(b) through (k), sections 64652 and 64654(a), or section 64654(b);

(2) The turbidity level in a representative sample of the approved surface water immediately prior to the first or only point of disinfectant application exceeds 5 NTU; or

(3) The unfiltered approved surface water has been identified as a source of waterborne microbial disease outbreak.

(c) The notification required by either subsections (a) or (b) shall be given in accordance with sections 64463.1 or 64463.4, as required.

(d) For water systems that filter approved surface water, the supplier shall notify persons served by the system whenever there is a failure to comply with the monitoring requirements specified in sections 64655, 64656, or 64657.40. The notification shall be given in accordance with section 64463.7.

(e) For water systems that do not filter approved surface water, the supplier shall notify persons served by the system whenever there is a failure to comply with the monitoring requirements specified in sections 64652.5(b), (d), or (e), or 64656. The notification shall be given in accordance with section 64463.7.

(f) If a supplier is unable to remove a source from service pursuant to section 64652.5(*l*), the supplier shall notify the Department immediately, and notify persons served by the system pursuant to section 64463.1.

NOTE: Authority cited: Sections 100275, 116375, 116450 and 131200, Health and Safety Code. Reference: Sections 116270, 116275, 116365, 116375, 116385, 116390, 116400, 116450, 116460, 116525, 116530, 116535, 116540, 116550, 116555, 116625, 116735 and 131051, Health and Safety Code.

HISTORY

1. New section filed 5–6–91; operative 6–5–91 (Register 91, No. 25).
2. Repealer of subsection (a), subsection relettering, amendment of newly designated subsection (a), new subsections (b)–(b)(3), amendment of subsections (c) and (d), new subsections (e) and (f), and amendment of NOTE filed 6–8–98; operative 7–8–98 (Register 98, No. 24).
3. Amendment of subsections (c)–(f) filed 8–2–2006; operative 9–1–2006 (Register 2006, No. 31).
4. Amendment of subsections (a), (c)–(d) and NOTE filed 12–13–2007; operative 1–12–2008 (Register 2007, No. 50).

Chapter 17.5. Lead and Copper

Article 1. General Requirements and Definitions

§ 64670. General Requirements.

(a) Unless otherwise indicated, the requirements in this chapter apply to community water systems and nontransient–noncommunity water systems (hereinafter referred to as "water systems" or "systems").

(b) An action level exceedance shall not constitute a violation of this chapter.

(c) Analyses for lead, copper, pH, conductivity, calcium, alkalinity, orthophosphate, silica, and temperature shall be conducted using the methods prescribed at 40 Code of Federal Regulations, Section 141.89 [Federal Register (FR) 56 (110), 26460–26564, June 7, 1991; amended July 15, 1991 (56 FR 32113), June 29, 1992 (57 FR 28786), June 30, 1994 (59 FR 33860), and January 12, 2000 (65 FR 1250)]. Field tests shall be performed by water treatment or distribution operators certified by the Department pursuant to Section 106875 of the Health and Safety Code or by personnel trained to perform these tests by the Department, a certified laboratory, or certified operator.

(d) A new water system shall initiate compliance with this chapter within six months of distributing water to consumers. An existing system that changes size pursuant to the definitions in sections 64671.30, 64671.40 and 64671.70, shall initiate compliance with the requirements of this chapter applicable to the new size within six months.

NOTE: Authority cited: Sections 100275, 116350, 116365 and 116375, Health and Safety Code. Reference: Sections 116325–116750, Health and Safety Code.

HISTORY

1. New chapter 17.5, article 1 and section filed 12–11–95 as an emergency; operative 12–11–95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–9–96 or emergency language will be repealed by operation of law on the following day.
2. Refiling of 12–11–95 order, including amendment of NOTE, filed 4–9–96 as an emergency; operative 4–10–96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12–11–95 order transmitted to OAL 8–7–96 and filed 9–16–96 (Register 96, No. 38).
4. Repealer of chapter 17.5 (articles 1–9, sections 64670–64692), article 1 (sections 64670–64672.6) and section and new chapter 17.5 (articles 1–9, sections 64670–64690.80), article 1 (sections 64670–64671.85) and section filed 9–11–2003; operative 10–11–2003 (Register 2003, No. 37).

§ 64671.05. Action Level.

"Action level", for the purpose of this chapter only, means the concentration of lead or copper in water that is used to determine the requirements of this chapter that a system shall meet.

NOTE: Authority cited: Sections 100275, 116350, 116365 and 116375, Health and Safety Code. Reference: Sections 116325–116750, Health and Safety Code.

HISTORY

1. New section filed 12–11–95 as an emergency; operative 12–11–95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–9–96 or emergency language will be repealed by operation of law on the following day.
2. Refiling of 12–11–95 order, including amendment of NOTE, filed 4–9–96 as an emergency; operative 4–10–96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12–11–95 order transmitted to OAL 8–7–96 and filed 9–16–96 (Register 96, No. 38).
4. Repealer and new section filed 9–11–2003; operative 10–11–2003 (Register 2003, No. 37).

§ 64671.08. Action Level Exceedance.

"Action level exceedance", for the purpose of this chapter only, means that the level of lead or copper is greater than the respective action level, as determined pursuant to section 64678(d) through (g).

NOTE: Authority cited: Sections 100275, 116350, 116365 and 116375, Health and Safety Code. Reference: Sections 116325–116750, Health and Safety Code.

HISTORY

1. New section filed 9–11–2003; operative 10–11–2003 (Register 2003, No. 37).

[The next page is 622.6(c).]

§ 64671.09. Corrosion Control Treatment or CCT.

"Corrosion control treatment" or "CCT" means the corrosion control treatment that minimizes the lead and copper concentrations at users' taps without causing the water system to violate any primary drinking water standards.

NOTE: Authority cited: Sections 100275, 116350, 116365 and 116375, Health and Safety Code. Reference: Sections 116325–116750, Health and Safety Code.

HISTORY

1. New section filed 9–11–2003; operative 10–11–2003 (Register 2003, No. 37).

§ 64671.10. Corrosion Inhibitor.

"Corrosion inhibitor" means a substance capable of reducing the corrosivity of water toward metal plumbing materials, especially lead and copper, by forming a protective film on the interior surface of those materials.

NOTE: Authority cited: Sections 100275, 116350, 116365 and 116375, Health and Safety Code. Reference: Sections 116325–116750, Health and Safety Code.

HISTORY

1. New section filed 12–11–95 as an emergency; operative 12–11–95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–9–96 or emergency language will be repealed by operation of law on the following day.
2. Refiling of 12–11–95 order, including amendment of NOTE, filed 4–9–96 as an emergency; operative 4–10–96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12–11–95 order transmitted to OAL 8–7–96 and filed 9–16–96 (Register 96, No. 38).
4. Repealer and new section filed 9–11–2003; operative 10–11–2003 (Register 2003, No. 37).

§ 64671.15. Detection Limit for Purposes of Reporting or DLR.

"Detection limit for purposes of reporting" or "DLR" means the designated minimum level at or above which any analytical finding of a contaminant in drinking water resulting from monitoring required under this chapter shall be reported to the Department.

NOTE: Authority cited: Sections 100275, 116350, 116365 and 116375, Health and Safety Code. Reference: Sections 116325–116750, Health and Safety Code.

HISTORY

1. New section filed 12–11–95 as an emergency; operative 12–11–95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–9–96 or emergency language will be repealed by operation of law on the following day.
2. Refiling of 12–11–95 order, including amendment of NOTE, filed 4–9–96 as an emergency; operative 4–10–96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12–11–95 order transmitted to OAL 8–7–96 and filed 9–16–96 (Register 96, No. 38).
4. Repealer and new section filed 9–11–2003; operative 10–11–2003 (Register 2003, No. 37).

§ 64671.20. Effective Corrosion Inhibitor Residual.

NOTE: Authority cited: Sections 100275, 116350, 116365 and 116375, Health and Safety Code. Reference: Sections 116300–116750, Health and Safety Code; and 40 Code of Federal Regulations 141.2.

HISTORY

1. New section filed 12–11–95 as an emergency; operative 12–11–95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–9–96 or emergency language will be repealed by operation of law on the following day.
2. Refiling of 12–11–95 order, including amendment of NOTE, filed 4–9–96 as an emergency; operative 4–10–96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12–11–95 order, including amendment of NOTE, transmitted to OAL 8–7–96 and filed 9–16–96 (Register 96, No. 38).
4. Repealer filed 9–11–2003; operative 10–11–2003 (Register 2003, No. 37).

§ 64671.25. First Draw Sample.

NOTE: Authority cited: Sections 100275, 116350, 116365 and 116375, Health and Safety Code. Reference: Sections 116300–116750, Health and Safety Code; and 40 Code of Federal Regulations 141.2.

HISTORY

1. New section filed 12–11–95 as an emergency; operative 12–11–95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–9–96 or emergency language will be repealed by operation of law on the following day.
2. Refiling of 12–11–95 order, including amendment of NOTE, filed 4–9–96 as an emergency; operative 4–10–96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–96 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of NOTE (Register 96, No. 38).
4. Certificate of Compliance as to 12–11–95 order transmitted to OAL 8–7–96 and filed 9–16–96 (Register 96, No. 38).
5. Repealer filed 9–11–2003; operative 10–11–2003 (Register 2003, No. 37).

§ 64671.30. Large Water System.

"Large water system", for the purpose of this chapter only, means a water system that serves more than 50,000 persons.

NOTE: Authority cited: Sections 100275, 116350, 116365 and 116375, Health and Safety Code. Reference: Sections 116325–116750, Health and Safety Code.

HISTORY

1. New section filed 12–11–95 as an emergency; operative 12–11–95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–9–96 or emergency language will be repealed by operation of law on the following day.
2. Refiling of 12–11–95 order, including amendment of NOTE, filed 4–9–96 as an emergency; operative 4–10–96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–96 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of NOTE (Register 96, No. 38).
4. Certificate of Compliance as to 12–11–95 order transmitted to OAL 8–7–96 and filed 9–16–96 (Register 96, No. 38).
5. Repealer and new section filed 9–11–2003; operative 10–11–2003 (Register 2003, No. 37).

§ 64671.35. Lead Service Line.

"Lead service line" means a service line made of lead that connects the water main to the building inlet and any lead pigtail, gooseneck or other fitting which is connected to such lead line.

NOTE: Authority cited: Sections 100275, 116350, 116365 and 116375, Health and Safety Code. Reference: Sections 116325–116750, Health and Safety Code.

HISTORY

1. New section filed 12–11–95 as an emergency; operative 12–11–95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–9–96 or emergency language will be repealed by operation of law on the following day.
2. Refiling of 12–11–95 order, including amendment of NOTE, filed 4–9–96 as an emergency; operative 4–10–96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–96 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of NOTE (Register 96, No. 38).
4. Certificate of Compliance as to 12–11–95 order transmitted to OAL 8–7–96 and filed 9–16–96 (Register 96, No. 38).
5. Repealer and new section filed 9–11–2003; operative 10–11–2003 (Register 2003, No. 37).

§ 64671.40. Medium–Size Water System.

"Medium–size water system", for the purpose of this chapter only, means a water system that serves greater than 3,300 and less than or equal to 50,000 persons.

NOTE: Authority cited: Sections 100275, 116350, 116365 and 116375, Health and Safety Code. Reference: Sections 116325–116750, Health and Safety Code.

HISTORY

1. New section filed 12–11–95 as an emergency; operative 12–11–95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–9–96 or emergency language will be repealed by operation of law on the following day.
2. Refiling of 12–11–95 order, including amendment of NOTE, filed 4–9–96 as an emergency; operative 4–10–96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–96 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of NOTE (Register 96, No. 38).
4. Certificate of Compliance as to 12–11–95 order transmitted to OAL 8–7–96 and filed 9–16–96 (Register 96, No. 38).
5. Repealer and new section filed 9–11–2003; operative 10–11–2003 (Register 2003, No. 37).

§ 64671.50. Optimal Corrosion Control Treatment.

NOTE: Authority cited: Sections 100275, 116350, 116365 and 116375, Health and Safety Code. Reference: Sections 116300 through 116750, Health and Safety Code; and 40 Code of Federal Regulations 141.2.

HISTORY

1. New section filed 12–11–95 as an emergency; operative 12–11–95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–9–96 or emergency language will be repealed by operation of law on the following day.
2. Refiling of 12–11–95 order, including amendment of NOTE, filed 4–9–96 as an emergency; operative 4–10–96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–96 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of NOTE (Register 96, No. 38).
4. Certificate of Compliance as to 12–11–95 order transmitted to OAL 8–7–96 and filed 9–16–96 (Register 96, No. 38).
5. Repealer filed 9–11–2003; operative 10–11–2003 (Register 2003, No. 37).

§ 64671.55. Period.

"Period", for the purpose of this chapter only, means a six–month monitoring timeframe.

NOTE: Authority cited: Sections 100275, 116350, 116365 and 116375, Health and Safety Code. Reference: Sections 116325–116750, Health and Safety Code.

HISTORY

1. New section filed 9–11–2003; operative 10–11–2003 (Register 2003, No. 37).

§ 64671.60. Service Line Sample.

NOTE: Authority cited: Sections 100275, 116350, 116365 and 116375, Health and Safety Code. Reference: Sections 116300 through 116750, Health and Safety Code; and 40 Code of Federal Regulations 141.2.

HISTORY

1. New section filed 12–11–95 as an emergency; operative 12–11–95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–9–96 or emergency language will be repealed by operation of law on the following day.
2. Refiling of 12–11–95 order, including amendment of NOTE, filed 4–9–96 as an emergency; operative 4–10–96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–96 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of NOTE (Register 96, No. 38).
4. Certificate of Compliance as to 12–11–95 order transmitted to OAL 8–7–96 and filed 9–16–96 (Register 96, No. 38).
5. Repealer filed 9–11–2003; operative 10–11–2003 (Register 2003, No. 37).

§ 64671.65. Single–Family Structure.

"Single–family structure" means a building constructed as a single–family residence that is currently used as either a residence or a place of business.

NOTE: Authority cited: Sections 100275, 116350, 116365 and 116375, Health and Safety Code. Reference: Sections 116325–116750, Health and Safety Code.

HISTORY

1. New section filed 12–11–95 as an emergency; operative 12–11–95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–9–96 or emergency language will be repealed by operation of law on the following day.
2. Refiling of 12–11–95 order, including amendment of NOTE, filed 4–9–96 as an emergency; operative 4–10–96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–96 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of NOTE (Register 96, No. 38).
4. Certificate of Compliance as to 12–11–95 order transmitted to OAL 8–7–96 and filed 9–16–96 (Register 96, No. 38).
5. Repealer and new section filed 9–11–2003; operative 10–11–2003 (Register 2003, No. 37).

§ 64671.70. Small Water System.

"Small water system", for the purpose of this chapter only, means a water system that serves 3,300 persons or fewer.

NOTE: Authority cited: Sections 100275, 116350, 116365 and 116375, Health and Safety Code. Reference: Sections 116325–116750, Health and Safety Code.

HISTORY

1. New section filed 12–11–95 as an emergency; operative 12–11–95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–9–96 or emergency language will be repealed by operation of law on the following day.
2. Refiling of 12–11–95 order, including amendment of NOTE, filed 4–9–96 as an emergency; operative 4–10–96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–96 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of NOTE (Register 96, No. 38).
4. Certificate of Compliance as to 12–11–95 order transmitted to OAL 8–7–96 and filed 9–16–96 (Register 96, No. 38).
5. Repealer and new section filed 9–11–2003; operative 10–11–2003 (Register 2003, No. 37).

§ 64671.75. Tap Sampling.

"Tap sampling" means sampling conducted pursuant to sections 64675 (General Requirements for Tap Sampling for Lead and Copper), 64675.5 (Tap Sampling Frequency), and 64677 (Sampling Collection Methods for Taps) at sites selected pursuant to section 64676 (Sampling Site Selection).

NOTE: Authority cited: Sections 100275, 116350, 116365 and 116375, Health and Safety Code. Reference: Sections 116325–116750, Health and Safety Code.

HISTORY

1. New section filed 9–11–2003; operative 10–11–2003 (Register 2003, No. 37).

§ 64671.80. Water Quality Parameter or WQP.

"Water quality parameter" or "WQP", for the purposes of this chapter, means a characteristic or constitutent of water, or a water treatment chemical added to water to control corrosion.

NOTE: Authority cited: Sections 100275, 116350, 116365 and 116375, Health and Safety Code. Reference: Sections 116325–116750, Health and Safety Code.

HISTORY

1. New section filed 9–11–2003; operative 10–11–2003 (Register 2003, No. 37).

§ 64671.85. WQP Monitoring.

"WQP monitoring" means sampling conducted pursuant to sections 64680 (General WQP Monitoring Requirements), 64681 (Initial WQP Monitoring), and 64682 (WQP Monitoring Requirements after CCT Installation).

NOTE: Authority cited: Sections 100275, 116350, 116365 and 116375, Health and Safety Code. Reference: Sections 116325–116750, Health and Safety Code.

HISTORY

1. New section filed 9–11–2003; operative 10–11–2003 (Register 2003, No. 37).

§ 64672. Analytical Methods and Detection Limits.

NOTE: Authority cited: Sections 100275, 116350, 116365 and 116375, Health and Safety Code. Reference: Sections 116300 through 116750, Health and Safety Code; and 40 Code of Federal Regulations 141.89.

HISTORY

1. New section filed 12–11–95 as an emergency; operative 12–11–95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–9–96 or emergency language will be repealed by operation of law on the following day.
2. Refiling of 12–11–95 order, including amendment of NOTE, filed 4–9–96 as an emergency; operative 4–10–96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12–11–95 order, including new subsections (c)–(d), transmitted to OAL 8–7–96 and filed 9–16–96 (Register 96, No. 38).
4. Repealer filed 9–11–2003; operative 10–11–2003 (Register 2003, No. 37).

§ 64672.3. Determination of Compliance with Lead and Copper Action Levels.

NOTE: Authority cited: Sections 100275, 116350, 116365 and 116375, Health and Safety Code. Reference: Sections 116300 through 116750, Health and Safety Code; and 40 Code of Federal Regulations 141.80(c).

HISTORY

1. New section filed 12–11–95 as an emergency; operative 12–11–95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–9–96 or emergency language will be repealed by operation of law on the following day.
2. Refiling of 12–11–95 order, including amendment of NOTE, filed 4–9–96 as an emergency; operative 4–10–96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12–11–95 order transmitted to OAL 8–7–96 and filed 9–16–96 (Register 96, No. 38).
4. Repealer filed 9–11–2003; operative 10–11–2003 (Register 2003, No. 37).

§ 64672.6. Use of Information Developed Prior to December 1, 1995.

NOTE: Authority cited: Sections 100275, 116350, 116365 and 116375, Health and Safety Code. Reference: Sections 116300 through 116750, Health and Safety Code; and 40 Code of Federal Regulations 141.81(d) and (e).

HISTORY

1. New section filed 12–11–95 as an emergency; operative 12–11–95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–9–96

or emergency language will be repealed by operation of law on the following day.
2. Refiling of 12–11–95 order, including amendment of NOTE, filed 4–9–96 as an emergency; operative 4–10–96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12–11–95 order, including amendment of subsections (c)(2)–(3), transmitted to OAL 8–7–96 and filed 9–16–96 (Register 96, No. 38).
4. Repealer filed 9–11–2003; operative 10–11–2003 (Register 2003, No. 37).

Article 2. Requirements According to System Size

§ 64673. Small and Medium–Size Water System Requirements.

(a) The requirements in this section are applicable to all small and medium–size water systems.

(b) Each small and medium–size system shall conduct standard tap sampling for lead and copper pursuant to section 64675 (General Requirements for Tap Sampling for Lead and Copper). Tap sampling frequency may be reduced pursuant to section 64675.5 (Tap Sampling Frequency).

(c) A small or medium–size system with an action level exceedance shall take the following steps:

(1) Monitor WQPs beginning with the first period after the exceedance, pursuant to section 64681 (Initial WQP Monitoring).

(2) Proceed with subparagraphs (A) through (E) if a corrosion control study is required by the Department based on a review of the system's water quality, distribution system, water treatment, and system features. If such a study is required, the Department will notify the system in writing within 12 months of the action level exceedance.

(A) Complete the study, pursuant to section 64683 (Corrosion Control Study Procedure), within eighteen months of being notified of the requirement; the system will be notified of the Department's designation within six months of the study's completion;

(B) Begin installation of the CCT designated by the Department, pursuant to section 64684 (CCT Installation and Operation), within twelve months of being notified of the Department's designation;

(C) Complete CCT installation and begin operation within 24 months of the designation;

(D) Complete two periods of standard tap sampling pursuant to section 64675 (General Requirements for Tap Sampling for Lead and Copper) and two periods of WQP monitoring pursuant to section 64682 (WQP Monitoring After CCT Installation) within 36 months of the designation; and

(E) Monitor WQPs and operate in compliance with the WQP levels specified by the Department pursuant to section 64684 (CCT Installation and Operation), beginning no later than within 42 months of the designation.

(3) If the Department does not require a corrosion control study, the system shall submit to the Department, within six months of the action level exceedance, a written recommendation for CCT. The Department may require the system to conduct additional WQP monitoring to assist in the review of the CCT recommendation. The Department will designate CCT and notify the system in writing within the following timeframes; the system shall then comply with paragraphs (2)(B) through (E):

(A) For medium–size systems, within 12 months of the exceedance, and

(B) For small–size systems, within 18 months of the exceedance;

(4) Monitor source waters, pursuant to article 6 (Source Water Requirements for Action Level Exceedances) of this chapter;

(d) A small or medium–size system with an action level exceedance for lead shall:

(1) Complete a lead public education program, pursuant to article 7 (Public Education Program for Lead Action Level Exceedances) of this chapter; and

(2) Replace lead service lines, pursuant to article 8 (Lead Service Line Requirements for Action Level Exceedances) of this chapter.

(e) A small or medium–size system that is required to comply with subsections (c) or (d) may cease completing the steps whenever the system does not have an action level exceedance during each of two consecutive periods. If any such system thereafter has an exceedance during any period, the system shall:

(1) Resume completion of the applicable steps, beginning with the first step that was not previously completed. The Department may require a system to repeat steps previously completed if the Department determines that this is necessary to implement the requirements of this section, based on a review of the system's data and treatment status.

(2) Resume standard tap sampling pursuant to 64675 (General Requirements for Tap Sampling for Lead and Copper).

(3) Conduct WQP monitoring during the period in which the system exceeded the action level, pursuant to section 64682, (WQP Monitoring After CCT Installation) or 64684 (CCT Installation and Operation).

NOTE: Authority cited: Sections 100275, 116350, 116365 and 116375, Health and Safety Code. Reference: Sections 116325–116750, Health and Safety Code.

HISTORY

1. New article 2 and section filed 12–11–95 as an emergency; operative 12–11–95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–9–96 or emergency language will be repealed by operation of law on the following day.
2. Refiling of 12–11–95 order, including amendment of NOTE, filed 4–9–96 as an emergency; operative 4–10–96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–96 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of subsection (b)(2)(B) (Register 96, No. 38).
4. Certificate of Compliance as to 12–11–95 order transmitted to OAL 8–7–96 and filed 9–16–96 (Register 96, No. 38).
5. Repealer of article 2 (sections 64673–64676), new article 2 (sections 64673–64674) and repealer and new section filed 9–11–2003; operative 10–11–2003 (Register 2003, No. 37).

§ 64674. Large Water System Requirements.

(a) The requirements in this section are applicable to all large water systems.

(b) Each large system shall conduct standard tap sampling pursuant to section 64675 (General Requirements for Tap Sampling for Lead and Copper), and monitor for WQPs pursuant to section 64681 (Initial WQP Monitoring). Tap sampling frequency may be reduced pursuant to section 64675.5 (Tap Sampling Frequency).

(c) Each large system shall complete a corrosion control study, pursuant to section 64683 (Corrosion Control Study Procedure), unless it can meet one of the following criteria:

(1) The system submits the following documentation to the Department and the Department determines in writing that the system has optimized corrosion control based on its review of the submittal:

(A) The results of all test samples collected for each of the WQPs in section 64683(a)(3) (Corrosion Control Study Procedure);

(B) A report explaining the test methods used by the water system to evaluate corrosion control treatment alternatives pursuant to section 64683 (Corrosion Control Study Procedure), the results of all tests conducted, and the basis for the system's selection of CCT;

(C) A report explaining how CCT has been installed and is being operated pursuant to section 64684 (CCT Installation and Operation); and

(D) The results of tap sampling for lead and copper for two consecutive periods after corrosion control has been installed; or

(2) The system demonstrates for two consecutive periods that the difference between the 90th percentile tap sampling lead level and the highest source water monitoring result for each period is less than the reporting level for purposes of reporting (DLR), pursuant to subsections 64678 (a), (b) and (c) (Determination of Exceedances of Lead and Copper Action Levels), or that the source water lead levels are below the method detection level of 0.001 mg/L and the 90th percentile lead level is equal to or less than the DLR for each period. In either case, the system shall also not have a copper action level exceedance. If such a system ceases to meet this criteria, it shall conduct a corrosion control study, pursuant to section 64683 (Corrosion Control Study Procedure) within eighteen

months of not meeting the criteria, and proceed thereafter pursuant to subsection (e).

(d) Each large system that conducts a corrosion control study will be notified of the Department's designation for CCT within 6 months of the study's completion and shall comply with the following timeframes:

(1) Begin CCT installation within 12 months of being notified of the Department's designation for CCT.

(2) Complete CCT installation within 24 months of the Department's designation.

(3) Complete two periods of WQP monitoring and tap sampling for lead and copper within 36 months of the Department's designation.

(4) Operate in compliance with the WQP levels specified by the Department pursuant to section 64684 (CCT Installation and Operation), beginning no later than within 42 months of the Department's designation. WQP tap monitoring may be reduced as follows:

(A) Pursuant to section 64682(c) (WQP Monitoring After CCT Installation), if the system has no action level exceedance; or

(B) To once every three years at the reduced number of sites pursuant to table 64680–A, if the system has 90th percentile levels that do not exceed 0.005 mg/L for lead and 0.65 mg/L for copper for two consecutive periods.

(5) If source water treatment has been installed, conduct source sampling for lead and copper pursuant to section 64685 (Source Water Monitoring and Treatment Designation).

(e) A large system with an action level exceedance for lead shall:

(1) Monitor source waters, pursuant to article 6 (Source Water Requirements) of this chapter;

(2) Complete a lead public education program, pursuant to article 7 (Public Education Program for Action Level Exceedances) of this chapter; and

(3) Replace lead service lines, pursuant to article 8 (Lead Service Line Requirements) of this chapter.

(f) A large system with an action level exceedance for copper shall monitor source waters pursuant to article 6 (Source Water Requirements) of this chapter.

NOTE: Authority cited: Sections 100275, 116350, 116365 and 116375, Health and Safety Code. Reference: Sections 116325–116750, Health and Safety Code.

HISTORY

1. New section filed 12–11–95 as an emergency; operative 12–11–95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–9–96 or emergency language will be repealed by operation of law on the following day.
2. Refiling of 12–11–95 order, including amendment of NOTE, filed 4–9–96 as an emergency; operative 4–10–96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12–11–95 order, including amendment of subsections (a)(2) and (a)(4)–(6), transmitted to OAL 8–7–96 and filed 9–16–96 (Register 96, No. 38).
4. Repealer and new section filed 9–11–2003; operative 10–11–2003 (Register 2003, No. 37).

Article 3. Monitoring for Lead and Copper

§ 64675. General Requirements for Tap Sampling for Lead and Copper.

(a) During each period, each system shall conduct standard tap sampling by collecting one sample from the number of sites based on the number of people served specified in table 64675–A under Standard Tap Sampling.

(b) During each period, each system conducting reduced tap sampling shall collect at least one sample from the number of sites based on the number of people served specified in table 64675–A under Reduced Tap Sampling, as follows:

(1) The sites shall be representative of the sites required for standard tap sampling.

(2) The samples shall be collected during the months of June, July, August, or September, unless the Department approves an alternate set of four months based on a review of the system's operations and lead and copper data, in which case the system shall initiate sampling during the alternate set of four months when directed in writing to do so by the Department, as follows:

(A) No later than 21 months after the previous period, if sampling annually, or

(B) No later than 45 months after the previous period, if sampling triennially.

Table 64675–A
Lead and Copper Tap Sampling Sites

System Size	*Standard Tap Sampling*	*Reduced Tap Sampling*
	(Minimum Number of Sites)	
>100,000	100	50
10,001 to 100,000	60	30
3,301 to 10,000	40	20
501 to 3,300	20	10
101 to 500	10	5
<101	5	5

(c) Sample sites shall be selected pursuant to section 64676 (Sample Site Selection).

NOTE: Authority cited: Sections 100275, 116350, 116365, 116375 and 116385, Health and Safety Code. Reference: Sections 116325–116750, Health and Safety Code.

HISTORY

1. New section filed 12–11–95 as an emergency; operative 12–11–95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–9–96 or emergency language will be repealed by operation of law on the following day.
2. Refiling of 12–11–95 order, including amendment of NOTE, filed 4–9–96 as an emergency; operative 4–10–96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12–11–95 order, including amendment of subsection (a)(1), transmitted to OAL 8–7–96 and filed 9–16–96 (Register 96, No. 38).
4. Repealer of article 3 (sections 64677–64678), new article 3 (sections 64675–64679) and repealer and new section filed 9–11–2003; operative 10–11–2003 (Register 2003, No. 37).

§ 64675.5. Tap Sampling Frequency.

(a) A system shall conduct standard tap sampling for two consecutive periods; thereafter, tap sampling frequency may be reduced pursuant to section 64675 (General Requirements for Tap Sampling for Lead and Copper) as follows:

(1) If a system has 90th percentile levels that do not exceed 0.005 mg/L for lead and 0.65 mg/L for copper for two consecutive periods, it may reduce the sampling to once every three years at the reduced number of sites;

(2) For systems that do not meet the criteria in paragraph (1), after two consecutive periods with no action level exceedance, the frequency may be reduced to annually at the reduced number of sites, if the system receives written approval from the Department based on its review of the system's data. After sampling for three years (including the initial sampling year) with no action level exceedance, the frequency may be reduced to once every three years at the reduced number of sites, if the system receives written approval from the Department.

(b) If a system demonstrates for two consecutive periods that the difference between the 90th percentile tap sampling lead level and the highest source water monitoring result for each period is less than the reporting level for purposes of reporting (DLR), pursuant to subsections 64678(a), (b), and (c) or that the source water lead levels are below the method detection level of 0.001 mg/L and the 90th percentile lead level is equal to or less than the DLR for each period, the system shall conduct tap sampling once every three years.

NOTE: Authority cited: Sections 100275, 116350, 116365, 116375 and 116385, Health and Safety Code. Reference: Sections 116325–116750, Health and Safety Code.

HISTORY

1. New section filed 9–11–2003; operative 10–11–2003 (Register 2003, No. 37).

§ 64676. Sample Site Selection.

(a) Each system shall identify a pool of sampling sites that:

(1) Is large enough to ensure that the water system can collect the number of lead and copper tap samples required in section 64675 (General Requirements for Tap Sampling for Lead and Copper);

(2) Meets the criteria in subsections (c) or (d), as applicable; and

(3) Does not include faucets that have point–of–use or point–of–entry treatment devices designed to remove inorganic contaminants.

(b) Prior to identifying sampling sites, each system shall conduct an evaluation of its distribution system to determine the construction materials (lead, copper, and galvanized steel) exposed to the water. If necessary to ensure the sample site criteria is met, the system shall collect additional information during the course of its normal operations (e.g., checking service line materials when reading water meters, or performance maintenance activities) and from the following:

(1) All plumbing codes, permits, and records in the files of the building department(s) that indicate the plumbing materials installed within publicly and privately owned structures connected to the distribution system;

(2) All inspections and records of the distribution system that indicate the material composition of the service connections connecting a structure to the distribution system; and

(3) All existing water quality information, which includes the results of prior analyses of the system or individual structures connected to the system, indicating locations that may be particularly susceptible to high lead or copper concentrations.

(c) Each community water system shall:

(1) Identify a sampling pool of "tier 1" sampling sites consisting of single–family structures except that, when multiple–family residences comprise at least 20 percent of the structures served by a water system, the system may include these types of structures as "tier 1" sites in its sampling pool. The "tier 1" sampling sites shall

(A) Contain copper pipes with lead solder installed after 1982; or

(B) Contain lead pipes; or

(C) Be served by a lead service line.

(2) If there is an insufficient number of "tier 1" sites, complete its sampling pool with "tier 2" sampling sites, consisting of buildings, including multiple–family residences that:

(A) Contain copper pipes with lead solder installed after 1982; or

(B) Contain lead pipes; or

(C) Are served by a lead service line.

(3) If there is an insufficient number of "tier 1" and "tier 2" sampling sites, complete its sampling pool with "tier 3" sampling sites, consisting of single–family structures that contain copper pipes with lead solder installed before 1983. A system with an insufficient number of tier 1, 2 and 3 sites shall complete its sampling pool with representative sites (i.e., plumbing materials commonly found at other sites) throughout the distribution system.

(d) Each nontransient–noncommunity water system shall:

(1) Identify a pool of "tier 1" sampling sites consisting of buildings that:

(A) Contain copper pipes with lead solder installed after 1982; or

(B) Contain lead pipes; or

(C) Are served by a lead service line.

(2) If there is an insufficient number of "tier 1" sites that meet the criteria in paragraph (1), complete its sampling pool with sites that contain copper pipes with lead solder installed before 1983. If additional sites are needed to complete the sampling pool, the system shall use representative sites (i.e., plumbing materials commonly found at other sites) throughout the distribution system.

(e) Each system whose distribution system contains lead service lines shall draw 50 percent of the samples it collects during each period from sites that contain lead pipes, or copper pipes with lead solder, and 50 percent of the samples from sites served by a lead service line. A system that cannot identify a sufficient number of sites served by a lead service line shall collect first draw samples from all of the sites identified as being served by such lines.

(f) A system that does not have enough taps that can provide first–draw samples shall submit written documentation to the Department identifying standing times and locations for enough non–first–draw samples to make up its sampling pool by the start of its next monitoring period.

NOTE: Authority cited: Sections 100275, 116350, 116365, 116375 and 116385, Health and Safety Code. Reference: Sections 116325–116750, Health and Safety Code.

HISTORY

1. New section filed 12–11–95 as an emergency; operative 12–11–95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–9–96 or emergency language will be repealed by operation of law on the following day.
2. Refiling of 12–11–95 order, including amendment of NOTE, filed 4–9–96 as an emergency; operative 4–10–96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12–11–95 order transmitted to OAL 8–7–96 and filed 9–16–96 (Register 96, No. 38).
4. Repealer and new section filed 9–11–2003; operative 10–11–2003 (Register 2003, No. 37).

§ 64677. Sample Collection Methods for Taps.

(a) All tap samples for lead and copper collected pursuant to this chapter, with the exception of lead service line samples collected under section 64689 (Lead Service Line Sampling) and samples collected under subsection (d), shall be first–draw samples, pursuant to subsection (b).

(b) A first–draw sample shall be one liter in volume and have stood motionless in the plumbing system of each site for at least six hours, but not more than twelve. Samples from residential housing shall be collected from the cold–water kitchen tap or bathroom sink tap. Samples from a non–residential building shall be collected at an interior tap from which water is typically drawn for consumption. Samples may be collected by the system or the system may allow residents to collect tap samples after instructing the residents of the sampling procedures specified in this section. To avoid problems of residents handling nitric acid, acidification of samples may be done up to 14 days after collection. After acidification to resolubilize the metals, the sample shall stand in the original container for the time specified by the method used pursuant to section 64670(c) before it can be analyzed. If a system allows residents to perform sampling, the system may not challenge, based on alleged errors in sample collection, the accuracy of sampling results.

(c) A system shall collect each tap sample from the same site from which it collected a sample during the previous period. If the system cannot gain entry to a site in order to collect a tap sample, it may collect the tap sample from another site in its sampling pool as long as the new site meets the same criteria, and is as close as possible to the original site.

(d) A system that does not have enough taps to supply first–draw samples may apply to the Department in writing to substitute non–first–draw samples. Such systems shall collect as many first–draw samples as possible and identify sampling times and locations that would likely result in the longest standing time for the remaining sites.

NOTE: Authority cited: Sections 100275, 116350, 116365, 116375 and 116385, Health and Safety Code. Reference: Sections 116325–116750, Health and Safety Code.

HISTORY

1. New article 3 and section filed 12–11–95 as an emergency; operative 12–11–95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–9–96 or emergency language will be repealed by operation of law on the following day.
2. Refiling of 12–11–95 order, including amendment of NOTE, filed 4–9–96 as an emergency; operative 4–10–96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12–11–95 order, including amendment of subsection (a), transmitted to OAL 8–7–96 and filed 9–16–96 (Register 96, No. 38).
4. Repealer of article 3 (sections 64677–64678) and repealer and new section filed 9–11–2003; operative 10–11–2003 (Register 2003, No. 37).

§ 64677.5. Sample Invalidation.

(a) A lead or copper sample may be invalidated by the Department if at least one of the following conditions is met and documented in writing:

(1) The laboratory establishes that improper sample analysis caused erroneous results;

(2) The Department determines that the sample was taken from a site that did not meet the site selection criteria in section 64676 (Sample Site Selection);

(3) The sample container was damaged in transit;

(4) The Department determines the sample does not meet the requirements in section 64677 (Sample Collection Methods for Taps); or

(5) There is substantial reason to believe that the sample was subject to tampering.

(b) To apply for invalidation of one or more samples, a system shall report the results of all samples for the period to the Department, including written documentation to support the system's belief that one or more samples should be invalidated.

(c) A sample invalidated pursuant to subsection (a) shall not count toward determining lead or copper 90th percentile levels or toward meeting any monitoring requirements in this chapter.

(d) The system shall collect replacement samples for any invalidated samples if, after the invalidation of one or more samples, the system has too few samples to meet the monitoring requirements of this chapter. Replacement samples taken after the end of the applicable period shall not be used to meet the monitoring requirements of a subsequent period. Replacement samples shall be collected as follows:

(1) As soon as possible, but no later than 20 days after the system receives notification from the Department that it has invalidated the sample, or by the end of the applicable period, whichever occurs later; and

(2) At the same locations as the invalidated samples or, if that is not possible, at locations other than those already used for sampling during the monitoring period.

NOTE: Authority cited: Sections 100275, 116350, 116365, 116375 and 116385, Health and Safety Code. Reference: Sections 116325–116750, Health and Safety Code.

HISTORY

1. New section filed 9–11–2003; operative 10–11–2003 (Register 2003, No. 37).

§ 64678. Determination of Exceedances of Lead and Copper Action Levels.

(a) The detection limits for purposes of reporting (DLRs) for lead and copper are as follows:

Table 64678–A. DLRs for Lead and Copper

Contaminant	*DLR (mg/L)*
Lead	0.005
Copper	0.050

(b) For purposes of determining the difference in concentration between the source water and the 90th percentile tap results, the following shall apply:

(1) Analytical results for lead greater than or equal to 0.001 mg/L and less than 0.005 mg/L shall be as measured or 0.0025 mg/L, whichever is greater.

(2) Analytical results for copper greater than or equal to 0.001 mg/L and less than 0.050 mg/L shall be as measured or 0.025 mg/L, whichever is greater.

(3) Analytical results below 0.001 mg/L for lead and copper shall be considered zero.

(c) Analytical results below the DLRs for lead and copper specified shall be reported as zero.

(d) The lead action level is exceeded if the concentration of lead in more than 10 percent of the tap water samples collected during any period is greater than 0.015 mg/L (i.e., if the "90th percentile" lead level is greater than 0.015 mg/L).

(e) The copper action level is exceeded if the concentration of copper in more than 10 percent of the tap water samples collected during any period is greater than 1.3 mg/L (i.e., if the "90th percentile" copper level is greater than 1.3 mg/L).

(f) The 90th percentile lead and copper levels shall be computed as follows:

(1) The results of all lead or copper samples collected during a period shall be placed in ascending order from the sample with the lowest concentration to the sample with the highest concentration. Each sampling result shall be assigned a number, ascending by single integers beginning with the number 1 for the sample with the lowest contaminant level. The number assigned to the sample with the highest contaminant level shall be equal to the total number of samples taken.

(2) The number of samples taken during the period shall be multiplied by 0.9.

(3) The contaminant concentration in the numbered sample identified by the calculation in paragraph (f)(2) is the 90th percentile contaminant level.

(4) For water systems serving less than or equal to 100 people that collect 5 samples per period, the 90th percentile is computed by taking the average of the highest and second highest concentrations.

(g) The results of any monitoring conducted in addition to the minimum requirements of this section shall be considered by the system and submitted to the department for making any determinations.

NOTE: Authority cited: Sections 100275, 116350, 116365, 116375 and 116385, Health and Safety Code. Reference: Sections 116325–116750, Health and Safety Code.

HISTORY

1. New section filed 12–11–95 as an emergency; operative 12–11–95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–9–96 or emergency language will be repealed by operation of law on the following day.
2. Refiling of 12–11–95 order, including amendment of NOTE, filed 4–9–96 as an emergency; operative 4–10–96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12–11–95 order transmitted to OAL 8–7–96 and filed 9–16–96 (Register 96, No. 38).
4. Repealer and new section filed 9–11–2003; operative 10–11–2003 (Register 2003, No. 37).

§ 64678.5. Monitoring Waivers for Small Systems.

(a) A small water system may apply to the Department for a waiver to reduce the tap sampling frequency for lead and copper to once every nine years, and shall continue tap sampling as required by this chapter until it receives written notification from the Department that the waiver has been approved.

(b) A system that meets the following materials and monitoring criteria for both lead and copper will be granted a full waiver, while a system that meets both sets of criteria for only one of the chemicals will be granted a partial waiver that covers only that chemical.

(1) To meet the materials criteria, a system shall provide certification and documentation that its distribution system and service lines and all drinking water supply plumbing, including plumbing conveying drinking water within all residences and buildings connected to the system, satisfy the following:

(A) For lead, the system shall be free of the following lead–containing materials:

1. Plastic pipes that contain lead plasticizers, or plastic service lines that contain lead plasticizers; and

2. Lead service lines, lead pipes, lead soldered pipe joints, and leaded brass or bronze alloy fittings and fixtures, unless the utility can demonstrate to the Department that such fittings and fixtures will not leach lead into the drinking water.

(B) For copper, the system shall be free of copper pipes and copper service lines.

(2) To meet the monitoring criteria, the system shall have completed at least one period of standard tap sampling and demonstrate that the 90th percentile levels for all periods of tap sampling conducted since the system became free of all lead–containing and/or copper–containing materials, as appropriate, do not exceed the following:

(A) For lead, 0.005 mg/L.

(B) For copper, 0.65 mg/L.

(c) If granted a waiver, the system shall

(1) Comply with any requirements that the Department includes as conditions of the waiver, such as limited monitoring, periodic outreach to customers to remind them to avoid installation of materials that might void the waiver;

(2) Conduct tap sampling at the reduced number of sites for one period every nine years for the chemical(s) for which the waiver has been granted;

(3) Provide the materials certification specified in paragraph (b)(1) for the chemical(s) for which the waiver has been granted, along with the monitoring results; and

(4) If the waiver was granted for only one chemical, continue to monitor pursuant to this chapter for the other chemical.

(d) If the system continues to satisfy the requirements of subsections (b) and (c), the waiver will be renewed automatically, unless the Department notifies the system in writing that the waiver has been revoked and why. A system whose waiver has been revoked may re-apply for a waiver at such time as it again meets the appropriate materials and monitoring criteria in subsection (b) and (c).

(e) If a system with a waiver adds a new source of water or changes any water treatment, the Department may require the system to add or modify waiver conditions (e.g., require recertification that the system is free of lead-containing and/or copper-containing materials, require additional tap sampling periods), if it deems such modifications are necessary to address treatment or source water changes at the system.

(f) If a system with a waiver becomes aware that it is no longer free of lead-containing or copper-containing materials, it shall notify the Department in writing no later than 60 days after becoming aware of such a change.

(g) If a system with a waiver that has been collecting samples during the months of June, July, August and September receives Department approval for an alternate set of months pursuant to section 64675(b)(2) (General Requirements for Tap Sampling for Lead and Copper), it shall conduct its next tap sampling before the waiver expires.

NOTE: Authority cited: Sections 100275, 116350, 116365, 116375 and 116385, Health and Safety Code. Reference: Sections 116325-116750, Health and Safety Code.

HISTORY

1. New section filed 9-11-2003; operative 10-11-2003 (Register 2003, No. 37).

§ 64679. Supplemental Monitoring.

A water system with a lead action level exceedance shall offer to sample the tap water of any customer who requests it. The system is not required to pay for collecting or analyzing the sample.

NOTE: Authority cited: Sections 100275, 116350, 116365, 116375 and 116385, Health and Safety Code. Reference: Sections 116325-116750, Health and Safety Code.

HISTORY

1. New article 4 and section filed 12-11-95 as an emergency; operative 12-11-95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4-9-96 or emergency language will be repealed by operation of law on the following day.
2. Refiling of 12-11-95 order, including amendment of NOTE, filed 4-9-96 as an emergency; operative 4-10-96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8-8-96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12-11-95 order, including amendment of subsections (d) and (f), transmitted to OAL 8-7-96 and filed 9-16-96 (Register 96, No. 38).
4. Repealer of article 4 (section 64679) and repealer and new section filed 9-11-2003; operative 10-11-2003 (Register 2003, No. 37).

Article 4. Water Quality Parameter (WQP) Monitoring

§ 64680. General WQP Monitoring Requirements.

(a) WQP tap monitoring shall be:

(1) Representative of water quality throughout the distribution system, by considering the number of persons served, the different sources of water and treatment methods employed, and seasonal variability;

(2) Not restricted to sites targeted for lead and copper sampling; and

(3) Include two samples for each applicable WQP during each period, from the standard number of sites, based on the number of persons served, specified in table 64680-A.

Table 64680-A
WQP Tap Monitoring Sites

System Size	*Standard Tap Sampling (Minimimum Number of Sites)*	*Reduced Tap Sampling*
>100,000	25	10
10,001 to 100,000	10	7
3,301 to 10,000	3	3
501 to 3,300	2	2
101 to 500	1	1
<101	1	1

(b) Initial WQP monitoring at the entry point(s) to the distribution system shall be two samples for each applicable WQP at each entry point from locations representative of each source after treatment. After the installation of CCT, only one sample is required at each entry point. If a system draws water from more than one source and the sources are combined before distribution, the system shall sample at each entry point during normal operating conditions.

NOTE: Authority cited: Sections 100275, 116350, 116365, 116375 and 116385, Health and Safety Code. Reference: Sections 116325-116750, Health and Safety Code.

HISTORY

1. New article 5 and section filed 12-11-95 as an emergency; operative 12-11-95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4-9-96 or emergency language will be repealed by operation of law on the following day.
2. Refiling of 12-11-95 order, including amendment of NOTE, filed 4-9-96 as an emergency; operative 4-10-96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8-8-96 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of subsection (a)(1)(D)2.A. (Register 96, No. 38).
4. Certificate of Compliance as to 12-11-95 order, including amendment of subsections (a)(1)(D)2.D., (a) (1)(D)3.A. and (b)(5), transmitted to OAL 8-7-96 and filed 9-16-96 (Register 96, No. 38).
5. Repealer of former article 4 (section 64679), repealer of former article 5 (sections 64680-64681), new article 4 (sections 64680-64684) and repealer and new section filed 9-11-2003; operative 10-11-2003 (Register 2003, No. 37).

§ 64681. Initial WQP Monitoring.

For initial WQP monitoring, each system shall monitor for the following WQPs, pursuant to section 64680 (General WQP Monitoring Requirements):

(a) pH;

(b) Alkalinity;

(c) Orthophosphate, when an inhibitor containing a phosphate compound is used;

(d) Silica, when an inhibitor containing a silicate compound is used;

(e) Calcium;

(f) Conductivity; and

(g) Water temperature.

NOTE: Authority cited: Sections 100275, 116350, 116365, 116375 and 116385, Health and Safety Code. Reference: Sections 116325-116750, Health and Safety Code.

HISTORY

1. New section filed 12-11-95 as an emergency; operative 12-11-95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4-9-96 or emergency language will be repealed by operation of law on the following day.
2. Refiling of 12-11-95 order, including amendment of NOTE, filed 4-9-96 as an emergency; operative 4-10-96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8-8-96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12-11-95 order transmitted to OAL 8-7-96 and filed 9-16-96 (Register 96, No. 38).
4. Repealer and new section filed 9-11-2003; operative 10-11-2003 (Register 2003, No. 37).

§ 64682. WQP Monitoring After CCT Installation.

(a) Each system that installs CCT shall monitor the following WQPs, pursuant to section 64680 (General WQP Monitoring Requirements), as applicable:

(1) At taps:

(A) pH;
(B) Alkalinity;
(C) Orthophosphate, when an inhibitor containing a phosphate compound is used;
(D) Silica, when an inhibitor containing a silicate compound is used;
(E) Calcium, when calcium carbonate stabilization is used as part of corrosion control.
(2) At each entry point to the distribution system every two weeks as a minimum:
(A) pH;
(B) When alkalinity is adjusted as part of CCT, a reading of the dosage rate of the chemical used to adjust alkalinity, and the alkalinity concentration; and
(C) When a corrosion inhibitor is used as part of CCT, a reading of the dosage rate of the inhibitor used, and the concentration of the active ingredient(s).
(b) A ground water system may use entry points that are representative of water quality and treatment conditions throughout the system for the monitoring required in paragraph (a)(2) as follows:
(1) If waters from untreated and treated groundwater sources mix, the system shall monitor entry points representative of each;
(2) Prior to monitoring, the system shall submit written documentation to the Department identifying the sites and demonstrating that they are representative.
(c) Subject to the Department's written approval, a system that has no action level exceedance and meets the Department-specified WQP values or ranges may reduce tap monitoring as follows:
(1) After two consecutive periods during which it has met the WQP values or ranges, the system shall monitor each period at the reduced number of sites, pursuant to table 64680-A;
(2) After three consecutive years (including the initial sampling year) during which it has met the WQP values or ranges, the system shall monitor annually at the reduced number of sites at evenly-spaced intervals throughout the year; and
(3) After three consecutive years of annual monitoring during which the system meets the WQP values or ranges, the system shall monitor once every three years at the reduced number of sites at evenly-spaced intervals throughout the monitoring year.

NOTE: Authority cited: Sections 100275, 116350, 116365, 116375 and 116385, Health and Safety Code. Reference: Sections 116325-116750, Health and Safety Code.

HISTORY

1. New article 6 and section filed 12-11-95 as an emergency; operative 12-11-95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4-9-96 or emergency language will be repealed by operation of law on the following day.
2. Refiling of 12-11-95 order, including amendment of NOTE, filed 4-9-96 as an emergency; operative 4-10-96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8-8-96 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of subsection (b) (Register 96, No. 38).
4. Certificate of Compliance as to 12-11-95 order, including amendment of subsection (i), transmitted to OAL 8-7-96 and filed 9-16-96 (Register 96, No. 38).
5. Repealer of article 6 (sections 64682-64685) and repealer and new section filed 9-11-2003; operative 10-11-2003 (Register 2003, No. 37).

Article 5. Corrosion Control

§ 64683. Corrosion Control Study Procedure.

(a) Each system conducting a corrosion control study shall:
(1) Evaluate the effectiveness of each of the following treatments, and, *if appropriate*, combinations of the following treatments to identify the CCT for that system:
(A) Alkalinity and pH adjustment;
(B) Calcium hardness adjustment; and
(C) The addition of a corrosion inhibitor at a concentration sufficient to maintain an effective residual concentration throughout the distribution system.
(2) Evaluate each of the corrosion control treatments using either pipe rig/loop tests, metal coupon tests, partial-system tests, or analyses based on documentation of such treatments from systems of similar size, water chemistry and distribution system configuration.
(3) Measure the following WQPs in any tests conducted under this subsection before and after evaluating the corrosion control treatments listed above:
(A) Lead;
(B) Copper;
(C) pH;
(D) Alkalinity;
(E) Calcium;
(F) Conductivity;
(G) Corrosion control inhibitor active ingredient (when an inhibitor is used);
(H) Water temperature.
(4) Identify all chemical or physical constraints that limit or prohibit the use of a particular corrosion control treatment and document such constraints with at least one of the following:
(A) Data and documentation showing that a particular corrosion control treatment has adversely affected other water treatment processes when used by another water system with comparable water quality characteristics; and/or
(B) Data and documentation demonstrating that the water system has previously attempted to evaluate a particular corrosion control treatment and has found that the treatment is ineffective or adversely affects other water quality treatment processes.
(5) Evaluate the effect of the chemicals used for corrosion control treatment on other water treatment processes.
(6) Recommend to the Department in writing the treatment option that the corrosion control studies indicate constitutes CCT for that system on the basis of an analysis of the data generated during each evaluation. The water system shall provide a rationale for its recommendation along with all supporting documentation specified in paragraphs (a)(1) through (5) of this section.
(b) Based on the study conducted pursuant to subsection (a), and a system's recommended treatment alternative, the Department will either approve the corrosion control treatment option recommended by the system, or designate alternative corrosion control treatment(s) from among those listed in paragraph (a)(1) of this section, notify the system of its decision on CCT in writing and explain the basis for its determination. If the Department requests additional information to aid its review, the water system shall provide the information.

NOTE: Authority cited: Sections 100275, 116350, 116365, 116375 and 116385, Health and Safety Code. Reference: Sections 116325-116750, Health and Safety Code.

HISTORY

1. New section filed 12-11-95 as an emergency; operative 12-11-95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4-9-96 or emergency language will be repealed by operation of law on the following day.
2. Refiling of 12-11-95 order, including amendment of NOTE, filed 4-9-96 as an emergency; operative 4-10-96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8-8-96 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of subsections (c)(2) and (d) (Register 96, No. 38).
4. Certificate of Compliance as to 12-11-95 order transmitted to OAL 8-7-96 and filed 9-16-96 (Register 96, No. 38).
5. Repealer of former article 5 (sections 64680-64681), new article 5 (sections 64683-64685) and repealer and new section filed 9-11-2003; operative 10-11-2003 (Register 2003, No. 37).

§ 64684. CCT Installation and Operation.

(a) Each system shall install and operate throughout its distribution system the CCT designated by the Department in subsection 64683(b) (Corrosion Control Studies) or paragraph 64673(c)(3) (Small and Medium-size Water System Requirements) and monitor WQPs pursuant to section 64682 (WQP Monitoring After CCT Installation). When the system completes its installation of CCT, it shall submit a letter to the Department certifying that it has done so.

(b) After the system installs CCT, the Department will review the treatment and pre- and post-treatment tap sampling and WQP monitoring data and specify WQPs in writing within 42 months of its CCT designation as follows:

(1) A minimum value or a range of values for pH measured at each entry point to the distribution system;

(2) A minimum pH value of 7.0 or greater, measured in all tap samples, unless the Department determines that meeting a pH level of 7.0 is not technologically feasible or is not necessary for the system to optimize corrosion control;

(3) If a corrosion inhibitor is used, a minimum concentration or a range of concentrations for the inhibitor, measured at each entry point to the distribution system and in all tap samples, that the Department determines is necessary to maintain a passivating film on the interior walls of the pipes of the distribution system;

(4) If alkalinity is adjusted as part of CCT, a minimum concentration or a range of concentrations for alkalinity, measured at each entry point to the distribution system and in all tap samples;

(5) If calcium carbonate stabilization is used as part of corrosion control, a minimum concentration or a range of concentrations for calcium, measured in all tap samples; and

(6) Values for additional WQPs determined by the Department to reflect CCT for the system.

(c) After the Department specifies WQP values and ranges, each system shall monitor pursuant to section 64680 (General WQP Monitoring Requirements) and maintain WQPs as specified by the Department.

(d) A system shall be out of compliance with the WQP values and ranges specified by the Department pursuant to subsection (b) for any period during which it has excursions for more than nine days.

(1) An excursion occurs when a "daily value" at one or more sample sites for one or more WQPs in a day is below the minimum value or outside the range of Department-specified WQPs.

(2) A "daily value" for a WQP at a site is determined as follows:

(A) If sampling is more than once a day by continuous monitoring, grab sampling or both, the daily value shall be the average of all the day's results at the sampling site.

(B) If sampling is once a day, the daily value shall be the day's result.

(C) If sampling is less than once a day, the daily value shall apply to the day that the water supplier receives the result from the laboratory or the 30th day after the sample is collected, whichever comes first.

(3) When an excursion occurs, within 48 hours of being notified of the results of the initial sample(s), the system shall investigate the cause and collect a followup sample at each affected site for each WQP that did not meet the Department-specified values. The criteria in paragraphs (d)(1) and (2) shall be applied to the followup sample results to determine if another excursion has occurred.

(e) A system conducting reduced WQP tap monitoring that fails to meet the Department-specified WQPs shall resume standard WQP tap monitoring pursuant to section 64680 (General WQP Monitoring Requirements).

(f) The results of any monitoring conducted in addition to the minimum requirements of this section shall be considered by the system and submitted to the Department for making any determinations (i.e., determining concentrations of WQPs).

(g) Upon its own initiative or in response to a request by a system, the Department may modify in writing its designation of CCT or its specified WQP values and ranges if it determines that modification is necessary to ensure that the system continues to maintain CCT. Any request shall be in writing, explain the reason for the requested modification, and include supporting documentation.

NOTE: Authority cited: Sections 100275, 116350, 116365, 116375 and 116385, Health and Safety Code. Reference: Sections 116325-116750, Health and Safety Code.

HISTORY

1. New section filed 12-11-95 as an emergency; operative 12-11-95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4-9-96 or emergency language will be repealed by operation of law on the following day.
2. Refiling of 12-11-95 order, including amendment of NOTE, filed 4-9-96 as an emergency; operative 4-10-96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8-8-96 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of subsection (b)(2)(A) (Register 96, No. 38).
4. Certificate of Compliance as to 12-11-95 order, including amendment of subsection (a), transmitted to OAL 8-7-96 and filed 9-16-96 (Register 96, No. 38).
5. Repealer and new section filed 9-11-2003; operative 10-11-2003 (Register 2003, No. 37).

Article 6. Source Water Requirements for Action Level Exceedances

§ 64685. Source Water Monitoring and Treatment Designation.

(a) Within six months of an action level exceedance, a system shall:

(1) Collect one lead and copper source water sample from each entry point to the distribution system that is representative of the source or combined sources and is collected after any treatment, if treatment is applied before distribution;

(2) In writing, either recommend to the Department the installation and operation of a source water treatment (ion exchange, reverse osmosis, lime softening, or coagulation/filtration) or demonstrate that source water treatment is not needed to minimize lead and copper levels at users' taps; and

(3) Submit any additional information requested by the Department to aid in its determination of whether source water treatment is necessary to minimize lead and copper levels in water delivered to users' taps.

(b) The Department will make a determination regarding source water treatment within six months after submission of monitoring results under subsection (a).

NOTE: Authority cited: Sections 100275, 116350, 116365, 116375 and 116385, Health and Safety Code. Reference: Sections 116325-116750, Health and Safety Code.

HISTORY

1. New section filed 12-11-95 as an emergency; operative 12-11-95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4-9-96 or emergency language will be repealed by operation of law on the following day.
2. Refiling of 12-11-95 order, including amendment of NOTE, filed 4-9-96 as an emergency; operative 4-10-96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8-8-96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12-11-95 order, including amendment of subsection (a)(1), transmitted to OAL 8-7-96 and filed 9-16-96 (Register 96, No. 38).
4. Repealer of former article 6 (sections 64682-64685), new article 6 (sections 64685-64686) and repealer and new section filed 9-11-2003; operative 10-11-2003 (Register 2003, No. 37).

§ 64686. Requirements Subsequent to the Department's Designation.

(a) If the Department determines that source water treatment is required pursuant to subsection 64685(b), the system shall comply with the following within the specified timeframes that begin with the Department's determination regarding source water treatment:

(1) Install the treatment within 24 months and submit a letter to the Department certifying that installation has been completed;

(2) Collect an additional source water sample from each entry point to the distribution system during two consecutive periods within 36 months;

(3) Complete two consecutive periods of standard monitoring for lead and copper pursuant to section 64675 (General Requirements for Tap Sampling for Lead and Copper) within 36 months.

(b) Within 6 months after the system installs source water treatment, based on its review of the data collected pursuant to subsection (a) and the contaminant removal capability of the installed treatment when properly operated, the Department will specify maximum permissible lead

and copper levels for water entering the distribution system. The water system shall comply with these maximum permissible levels.

(c) After the Department specifies maximum permissible levels or determines that source water treatment is not needed, the system shall conduct standard monitoring related to source water pursuant to table 64686–A, according to source water type. If approved by the Department based on a review of source water data, the system may reduce monitoring pursuant to table 64686–A.

Table 64686–A. Standard and Reduced Monitoring Related to Source Water

Type of monitoring	*Ground water*	*Surface water with or without groundwater*
Standard monitoring	1 sample at each entry point every 3 years, as a minimum	1 sample at each entry point every year, as a minimum
Reduced monitoring, after 3 consecutive rounds of standard monitoring in compliance with maximum permissible levels.	1 sample at each entry point every 9 years	1 sample at each entry point every 9 years

(d) If a system does not have an action level exceedance for lead and/or copper during three consecutive years for groundwater or one year for surface water with or without groundwater, the system is not required to conduct sampling related to source water for the specific chemical.

(e) If the results of sampling indicate an exceedance of the maximum permissible levels specified pursuant to subsection (b), one additional sample may be collected at the same sampling point as soon as possible within 14 days of the initial sample to confirm the result. If a confirmation sample is collected, then the average of the initial and confirmation sample results shall be used to determine compliance with the maximum permissible levels.

(f) A water system that begins using a new water source shall reinitiate standard monitoring pursuant to subsection (c) and conduct three rounds of monitoring with the new source online before reducing the monitoring frequency.

(g) Upon its own initiative or in response to a request by a system, the Department may modify its determination of the source water treatment, or maximum permissible lead and copper concentrations for treated source water. Any request shall be in writing, explain the reason for the requested modification, and include supporting documentation.

NOTE: Authority cited: Sections 100275, 116350, 116365, 116375 and 116385, Health and Safety Code. Reference: Sections 116325–116750, Health and Safety Code.

HISTORY

1. New section filed 1–16–90; operative 2–15–90 (Register 90, No. 4).
2. Renumbering and amendment of NOTE of former section 64686 to section 64469 filed 5–27–92; operative 6–26–92 (Register 92, No. 22).
3. New article 7 and section filed 12–11–95 as an emergency; operative 12–11–95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–9–96 or emergency language will be repealed by operation of law on the following day.
4. Refiling of 12–11–95 order, including amendment of NOTE, filed 4–9–96 as an emergency; operative 4–10–96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 12–11–95 order, including amendment of subsections (b)(1) and (c), transmitted to OAL 8–7–96 and filed 9–16–96 (Register 96, No. 38).
6. Repealer of article 7 (sections 64686–64688) and repealer and new section filed 9–11–2003; operative 10–11–2003 (Register 2003, No. 37).

Article 7. Public Education Program for Lead Action Level Exceedances

§ 64687. Lead Public Education Program Content and Delivery.

(a) Each system with a lead action level exceedance shall conduct a lead public education program that includes delivery of the following public education materials pursuant to subsection (d). Within 10 days after the period during which the program was required, the system shall submit a letter to the Department demonstrating that it has delivered the public education materials as required and include a list of all the newspapers, radio stations, television stations, facilities and organizations to which the system delivered the materials during the previous year.

(1) Except as provided in subsection (b), a community water system shall include the following text in all of the printed materials it distributes through its lead public education program:

(A) Introduction. The California Department of Health Services (DHS), the U.S. Environmental Protection Agency, and [insert name of water supplier] are concerned about lead in your drinking water. Although most homes have very low levels of lead in their drinking water, some homes in the community have lead levels above the state and federal action level of 15 parts per billion (ppb), or 0.015 milligrams of lead per liter of water (mg/L). Under state and federal law we are required to have a program in place to minimize lead in your drinking water by [insert date when corrosion control will be completed for your system]. This program includes corrosion control treatment, source water treatment, and public education. We are also required to replace the portion of each lead service line that we own if the line contributes lead concentrations of 15 ppb or more after we have completed the comprehensive treatment program. If you have any questions about how we are carrying out the requirements of the lead regulation please give us a call at [insert water system's phone number]. This brochure explains the simple steps you can take to protect you and your family by reducing your exposure to lead in drinking water.

(B) Health Effects of Lead. Lead is a common metal found throughout the environment in lead–based paint, air, soil, household dust, food, certain types of pottery porcelain and pewter, and water. Lead can pose a significant risk to your health if too much of it enters your body. Lead builds up in the body over many years and can cause damage to the brain, red blood cells and kidneys. The greatest risk is to young children and pregnant women. Amounts of lead that won't hurt adults can slow down normal mental and physical development of growing bodies. In addition, a child at play often comes into contact with sources of lead contamination — like dirt and dust — that rarely affect an adult. It is important to wash children's hands and toys often, and to try to make sure they only put food in their mouths.

(C) Lead In Drinking Water

1. Lead in drinking water, although rarely the sole cause of lead poisoning, can significantly increase a person's total lead exposure, particularly the exposure of infants who drink baby formulas and concentrated juices that are mixed with water. The U.S. Environmental Protection Agency estimates that drinking water can make up 20 percent or more of a person's total exposure to lead.

2. Lead is unusual among drinking water contaminants in that it seldom occurs naturally in water supplies like rivers and lakes. Lead enters drinking water primarily as a result of the corrosion, or wearing away, of materials containing lead in the water distribution system and household plumbing. These materials include lead–based solder used to join copper pipe, brass and chrome plated brass faucets, and in some cases, pipes made of lead that connect your house to the water main (service lines). In 1986, Congress banned the use of lead solder containing greater than 0.2% lead, and restricted the lead content of faucets, pipes and other plumbing materials to 8.0%. In California, a similar law prohibiting the use of both lead solder and lead pipe was enacted in 1985.

3. When water stands in lead pipes or plumbing systems containing lead for several hours or more, the lead may dissolve into your drinking water. This means the first water drawn from the tap in the morning, or later in the afternoon after returning from work or school, can contain fairly high levels of lead.

(D) Steps You Can Take in the Home to Reduce Exposure to Lead in Drinking Water

1. Despite our best efforts mentioned earlier to control water corrosivity and remove lead from the water supply, lead levels in some homes or

buildings can be high. To find out whether you need to take action in your own home, have your drinking water tested to determine if it contains excessive concentrations of lead. Testing the water is essential because you cannot see, taste, or smell lead in drinking water. Some local laboratories that can provide this service are listed at the end of this booklet. For more information on having your water tested, please call [insert phone number of water system].

2. If a water test indicates that the drinking water drawn from a tap in your home contains lead above 15 ppb, then you should take the following precautions:

A. Let the water run from the tap before using it for drinking or cooking any time the water in a faucet has gone unused for more than six hours. The longer water resides in your home's plumbing the more lead it may contain. Flushing the tap means running the cold water faucet until the water gets noticeably colder, usually about 15 to 30 seconds. If your house has a lead service line to the water main, you may have to flush the water for a longer time, perhaps one minute, before drinking. Although toilet flushing or showering flushes water through a portion of your home's plumbing system, you still need to flush the water in each faucet before using it for drinking or cooking. Flushing tap water is a simple and inexpensive measure you can take to protect your family's health. It usually uses less than one or two gallons of water and costs less than [insert a cost estimate based on flushing two times a day for 30 days] per month. To conserve water, fill a couple of bottles for drinking water after flushing the tap, and whenever possible use the first flush water to wash the dishes or water the plants. If you live in a high–rise building, letting the water flow before using it may not work to lessen your risk from lead. The plumbing systems have more, and sometimes larger pipes than smaller buildings. Ask your landlord for help in locating the source of the lead and for advice on reducing the lead level.

B. Try not to cook with, or drink water from the hot water tap. Hot water can dissolve more lead more quickly than cold water. If you need hot water, draw water from the cold tap and heat it on the stove.

C. Remove loose lead solder and debris from the plumbing materials installed in newly constructed homes, or homes in which the plumbing has recently been replaced, by removing the faucet strainers from all taps and running the water from 3 to 5 minutes. Thereafter, periodically remove the strainers and flush out any debris that has accumulated over time.

D. If your copper pipes are joined with lead solder that has been installed illegally since it was banned in 1986, notify the plumber who did the work and request that he or she replace the lead solder with lead–free solder. Lead solder looks dull gray, and when scratched with a key looks shiny. In addition, notify the California Department of Health Services and your local environmental health department about the violation.

E. Determine whether or not the service line that connects your home or apartment to the water main is made of lead. The best way to determine if your service line is made of lead is by either hiring a licensed plumber to inspect the line or by contacting the plumbing contractor who installed the line. You can identify the plumbing contractor by checking the record of building permits which should be maintained in the files of the [insert name of department that issues building permits]. A licensed plumber can at the same time check to see if your home's plumbing contains lead solder, lead pipes, or pipe fittings that contain lead. The public water system that delivers water to your home should also maintain records of the materials located in the distribution system. If the service line that connects your dwelling to the water main contributes more than 15 ppb to drinking water, after our comprehensive treatment program is in place, we are required to replace the portion of the line we own. If the line is only partially owned by the [insert name of the city, county, or water system that owns the line], we are required to provide the owner of the privately–owned portion of the service line with information on how to replace the privately–owned portion of the service line, and offer to replace that portion of the line at the owner's expense. If we replace only the portion of the line that we own, we also are required to notify you in advance and provide you with information on the steps you can take to minimize exposure to any temporary increase in lead levels that may result from the partial replacement, to take a follow–up sample at our expense from the line within 72 hours after the partial replacement, and to mail or otherwise provide you with the results of that sample within three business days of receiving the results. Acceptable replacement alternatives include copper, stainless steel, and plastic pipes. Partial replacement should avoid the creation of mixed piping systems and include the installation of approved dielectric couplings at all dissimilar metal interfaces.

F. Have an electrician check your wiring. If grounding wires from the electrical system are attached to your pipes, corrosion may be greater. Check with a licensed electrician or your local electrical code to determine if your wiring can be grounded elsewhere. DO NOT attempt to change the wiring yourself because improper grounding can cause electrical shock and fire hazards.

3. The steps described above will reduce the lead concentrations in your drinking water. However, if a water test indicates that the drinking water coming from your tap contains lead concentrations in excess of 15 ppb after flushing, or after we have completed our actions to minimize lead levels, then you may want to take the following additional measures:

A. Purchase or lease a home treatment device. Home treatment devices are limited in that each unit treats only the water that flows from the faucet to which it is connected, and all of the devices require periodic maintenance and replacement. Devices such as reverse osmosis systems or distillers can effectively remove lead from your drinking water. Since these treatments remove dissolved minerals, water treated by these devices will have a greater tendency to leach lead from brass faucets or fittings which the water contacts after treatment. Some activated carbon filters may reduce lead levels at the tap, however all lead reduction claims should be investigated. Be sure to check the actual performance of a specific home treatment device before and after installing the unit. The California Department of Health Services certifies the effectiveness of home treatment devices. Only devices certified by the California Department of Health Services to remove lead should be used for this purpose.

B. Purchase bottled water for drinking and cooking.

4. You can consult a variety of sources for additional information. Your family doctor or pediatrician can perform a blood test for lead and provide you with information about the health effects of lead. State and local government agencies that can be contacted include:

A. [insert the name of city or county department of public utilities] at [insert phone number] can provide you with information about your community's water supply, and a list of local laboratories that have been certified by the California Department of Health Services for testing water quality;

B. [insert the name of city or county department that issues building permits] at [insert phone number] can provide you with information about building permit records that should contain the names of plumbing contractors that plumbed your home; and

C. California Department of Health Services, Childhood Lead Poisoning Prevention Branch at [insert the phone number] or the [insert the name of the city or county health department] at [insert phone number] can provide you with information about the health effects of lead and how you can have your child's blood tested.

5. The following is a list of some state approved laboratories in your area that you can call to have your water tested for lead. [Insert names and phone numbers of at least two laboratories].

(2) Except as provided in subsection (b), a nontransient–noncommunity water system shall include either the text in paragraph (a)(1) or the following text, in all of the printed materials it distributes through its lead public education program.

(A) Introduction. The California Department of Health Services, the United States Environmental Protection Agency (EPA) and [insert name of water supplier] are concerned about lead in your drinking water. Some drinking water samples taken from this facility have lead levels above the EPA action level of 15 parts per billion (ppb), or 0.015 milligrams of lead per liter of water (mg/L). Under Federal law we are required to have a

program in place to minimize lead in your drinking water by [insert date when corrosion control will be completed for your system]. This program includes corrosion control treatment, source water treatment, and public education. We are also required to replace the portion of each lead service line that we own if the line contributes lead concentrations of more than 15 ppb after we have completed the comprehensive treatment program. If you have any questions about how we are carrying out the requirements of the lead regulation please give us a call at [insert water system's phone number]. This brochure explains the simple steps you can take to protect yourself by reducing your exposure to lead in drinking water.

(B) Health Effects of Lead. Lead is found throughout the environment in lead–based paint, air, soil, household dust, food, certain types of pottery porcelain and pewter, and water. Lead can pose a significant risk to your health if too much of it enters your body. Lead builds up in the body over many years and can cause damage to the brain, red blood cells and kidneys. The greatest risk is to young children and pregnant women. Amounts of lead that won't hurt adults can slow down normal mental and physical development of growing bodies. In addition, a child at play often comes into contact with sources of lead contamination — like dirt and dust — that rarely affect an adult. It is important to wash children's hands and toys often, and to try to make sure they only put food in their mouths.

1. Lead in drinking water, although rarely the sole cause of lead poisoning, can significantly increase a person's total lead exposure, particularly the exposure of infants who drink baby formulas and concentrated juices that are mixed with water. The EPA estimates that drinking water can make up 20 percent or more of a person's total exposure to lead.

2. Lead is unusual among drinking water contaminants in that it seldom occurs naturally in water supplies like rivers and lakes. Lead enters drinking water primarily as a result of the corrosion, or wearing away, of materials containing lead in the water distribution system and household plumbing. These materials include lead–based solder used to join copper pipe, brass and chrome–plated brass faucets, and in some cases, pipes made of lead that connect houses and buildings to water mains (service lines). In 1986, Congress banned the use of lead solder containing greater than 0.2% lead, and restricted the lead content of faucets, pipes and other plumbing materials to 8.0%.

3. When water stands in lead pipes or plumbing systems containing lead for several hours or more, the lead may dissolve into your drinking water. This means the first water drawn from the tap in the morning, or later in the afternoon if the water has not been used all day, can contain fairly high levels of lead.

(D) Steps You Can Take. Steps you can take to reduce exposure to lead in drinking water include:

1. Let the water run from the tap before using it for drinking or cooking any time the water in a faucet has gone unused for more than six hours. The longer water resides in plumbing the more lead it may contain. Flushing the tap means running the cold water faucet for about 15–30 seconds. Although toilet flushing or showering flushes water through a portion of the plumbing system, you still need to flush the water in each faucet before using it for drinking or cooking. Flushing tap water is a simple and inexpensive measure you can take to protect your health. It usually uses less than one gallon of water.

2. Do not cook with, or drink water from the hot water tap. Hot water can dissolve more lead more quickly than cold water. If you need hot water, draw water from the cold tap and then heat it.

3. The steps described above will reduce the lead concentrations in your drinking water. However, if you are still concerned, you may wish to use bottled water for drinking and cooking.

4. You can consult a variety of sources for additional information. Your family doctor or pediatrician can perform a blood test for lead and provide you with information about the health effects of lead. State and local government agencies that can be contacted include:

A. [insert the name or title of facility official if appropriate] at [insert phone number] can provide you with information about your facility's water supply; and

B. [insert the name or title of the State Department of Health Services] at [insert phone number] or the [insert the name of the city or county health department] at [insert phone number] can provide you with information about the health effects of lead.

(b) Any additional information presented shall be consistent with the information in subsection (a) and be in plain language that can be understood by laypersons. A system may delete information pertaining to lead service lines, on approval by the Department, if the water system does not have any such lines. Building permit record availability and consumer access to these records may be modified, if approved by the Department.

(c) The system shall include the following information in all public service announcements submitted under its lead public education program to television and radio stations for broadcasting:

(1) Why should everyone want to know the facts about lead and drinking water? Because unhealthy amounts of lead can enter drinking water through the plumbing in your home. That's why I urge you to do what I did. I had my water tested for [insert free or cost per sample]. You can contact the [insert the name of the city or water system] for information on testing and on simple ways to reduce your exposure to lead in drinking water.

(2) To have your water tested for lead, or to get more information about this public health concern, please call [insert the phone number of the city or water system].

(d) The system shall conduct the lead public education program as follows:

(1) In communities where a significant proportion of the population speaks a language other than English, public education materials shall be communicated in the appropriate language(s).

(2) Within 60 days after it has a lead action level exceedance, unless it is already conducting a lead public education program, a community water system shall:

(A) Insert notices in each customer's water utility bill containing the information in paragraph (a)(1), along with the following alert on the water bill itself in large print: SOME HOMES IN THIS COMMUNITY HAVE ELEVATED LEAD LEVELS IN THEIR DRINKING WATER. LEAD CAN POSE A SIGNIFICANT RISK TO YOUR HEALTH. PLEASE READ THE ENCLOSED NOTICE FOR FURTHER INFORMATION. A community water system with a billing cycle that does not include a billing within 60 days of the exceedance, or that cannot insert information in the bill without making major changes to its billing system, may use a separate mailing as long as it is conducted within 60 days of the exceedance.

(B) Submit the information in paragraph (a)(1) to the editorial departments of the major daily and weekly newspapers circulated throughout the community.

(C) Deliver pamphlets and/or brochures that contain the public education materials in subparagraphs (a)(1)(B) and (D) to facilities and organizations, including the following:

1. Public schools and/or local school boards;
2. City or county health department;
3. Women, Infants, and Children and/or Head Start Program(s) whenever available;
4. Public and private hospitals and/or clinics;
5. Pediatricians;
6. Family planning clinics; and
7. Local welfare agencies.

(D) Submit the public service announcement in subsection (c) to at least five of the radio and television stations with the largest audiences that broadcast to the community served by the system.

(3) A community system shall repeat the tasks in subparagraphs (d)(2)(A),(B) and (C) every 12 months, and the tasks in subparagraph (d)(2)(D) every 6 months for as long as the system has a lead action level exceedance.

(4) Within 60 days after it has a lead action level exceedance, unless it is already conducting a lead public education program, a nontransient–

noncommunity system shall deliver the public education materials in paragraphs (a)(1) or (a)(2) as follows:

(A) Post informational posters on lead in drinking water in a public place or common area in each of the buildings served by the system; and

(B) Distribute informational pamphlets and/or brochures on lead in drinking water to each person served by the system. The Department may allow the system to utilize electronic transmission in lieu of or combined with printed materials as long as it achieves at least the same coverage.

(5) A nontransient–noncommunity system shall repeat the tasks in paragraph (4) at least once during each calendar year in which the system has a lead action level exceedance.

(6) A system may discontinue the lead public education program if it does not have a lead action level exceedance during the most recent period. The system shall recommence the program pursuant to this section if it subsequently has a lead action level exceedance.

(7) A community water system may apply to the Department, in writing, to use the text in paragraph (a)(2) in lieu of the text in paragraph (a)(1) and to perform the tasks listed in paragraphs (d)(4) and (c)(5) of this section in lieu of the tasks in paragraphs (d)(2) and (d)(3) of this section if:

(A) The system is a facility, such as a prison or a hospital, where the population served is not capable of or is prevented from making improvements to plumbing or installing point of use treatment devices; and

(B) The system provides water as part of the cost of services provided and does not separately charge for water consumption.

(8) A community water system serving 3,300 or fewer people may omit the task contained in subparagraph (d)(2)(D). As long as it distributes notices containing the information contained in paragraph (a)(1) of this section to every household served by the system, such systems may further limit their public education programs as follows:

(A) Systems serving 500 or fewer people may forego the task contained in subparagraph (d)(2)(B). Such a system may limit the distribution of the public education materials required under subparagraph (d)(2)(C) to facilities and organizations served by the system that are most likely to be visited regularly by pregnant women and children, unless notified by the Department in writing that it shall make a broader distribution.

(B) If approved by the Department in writing, a system serving 501 to 3,300 people may omit the task in subparagraph (d)(2)(B) and/or limit the distribution of the public education materials required under subparagraph (d)(2)(C) to facilities and organizations served by the system that are most likely to be visited regularly by pregnant women and children.

(9) A community water system serving 3,300 or fewer people that delivers the lead public education in accordance with paragraph (d)(8)(A) of this section shall repeat these requirements at least once during each calendar year in which the system exceeds the lead action level.

NOTE: Authority cited: Sections 100275, 116350, 116365 and 116375, Health and Safety Code. Reference: Sections 116325–116750, Health and Safety Code.

HISTORY

1. New section filed 12–11–95 as an emergency; operative 12–11–95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–9–96 or emergency language will be repealed by operation of law on the following day.
2. Refiling of 12–11–95 order, including amendment of NOTE, filed 4–9–96 as an emergency; operative 4–10–96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12–11–95 order, including amendment of subsection (a), transmitted to OAL 8–7–96 and filed 9–16–96 (Register 96, No. 38).
4. Repealer of former article 7 (sections 64686–64688), new article 7 (section 64687) and repealer and new section filed 9–11–2003; operative 10–11–2003 (Register 2003, No. 37).

Article 8. Lead Service Line Requirements for Action Level Exceedances

§ 64688. Lead Service Line Replacement.

(a) A system shall replace lead service lines if:

(1) It has a lead action level exceedance in tap samples after installing corrosion control and/or source water treatment (whichever sampling occurs later) and/or

(2) It is in violation for failure to install source water treatment or CCT.

(b) Within 6 months after it has a lead action level exceedance, the system shall demonstrate in writing that it has conducted a materials evaluation including that in section 64676 (Sample Site Selection) to identify the initial number of lead service lines in its distribution system, and shall submit both the demonstration and a schedule for complying with subsection (c) to the Department.

(c) Except as provided in subsection (e), a system that is required to conduct lead service line replacement shall annually replace at least 7 percent of the initial number of lead service lines in its distribution system, pursuant to the following.

(1) At the time the lead service line replacement begins, the system shall identify the initial number of lead service lines in its distribution system based on the evaluation in section 64676 (Sample Site Selection).

(2) The first year of lead service line replacement shall begin on the date the system first had a lead action level exceedance subsequent to its installation of CCT and, if required pursuant to section 64686, source water treatment.

(3) The system is not required to replace an individual lead service line if the lead concentration in each and every service line sample from that line, taken pursuant to the section 64687 (Lead Service Line Sampling), is less than or equal to 0.015 mg/L.

(4) The system shall replace that portion of the lead service line that it owns and keep ownership documentation in its files and offer to replace the building owner's portion of the line with the cost being borne by the building owner. If the building owner does not accept the offer, the system shall:

(A) At least 45 days prior to commencing the partial replacement, notify the resident(s) of all buildings served by the line that they may experience a temporary increase of lead levels in their drinking water, along with guidance on measures they may take to minimize their exposure. If the replacement is in conjunction with emergency repairs, the Department will allow a shorter notice, depending on the nature of the emergency and the timing involved. The notice shall be mailed unless an alternate method is approved by the Department, based on the feasibility of insuring that all consumers receive the notice; and

(B) Inform the resident(s) that the system will collect a first flush tap water sample within 72 hours after the partial replacement of the service line has been completed if the resident(s) so desire. If the resident(s) accept the offer, the system shall collect the sample and report the results to the resident(s) and the owner within three business days of receiving the results and to the Department.

(d) Within 12 months after the lead action level exceedance, and every 12 months thereafter, the system shall submit in writing to the Department the number of lead service lines scheduled to be replaced during the previous year of the system's replacement schedule, along with the following information to the Department:

(1) The number and location of each lead service line replaced during the previous year of the system's replacement schedule to demonstrate that it has replaced at least 7 percent of the initial lead service lines within

the previous 12 months, or a greater number of lines if required by the Department; or

(2) Lead service line sampling results that demonstrate that the lead level from an individual line(s) is less than or equal to 0.015 mg/L, pursuant to section 64689 (Lead Service Line Sampling). The system shall submit the results of the lead service line sampling including the lead levels, location of each lead service line sampled, the sampling method, and the date of sampling. It shall also include the number and location of each lead service line replaced during the previous year. In such cases, the total number of lines replaced and/or that meet the criteria shall equal at least 7 percent of the initial number of lead lines identified or the percentage required by the Department.

(e) A system shall replace lead service lines at a faster rate than that required by subsection (b), taking into account the number of lead service lines in the system, if the Department determines either that this is necessary based on elevated blood lead levels in the population served, or that it is feasible to complete the lead service line replacement program in a shorter time without increasing the water rates to the customers.

(f) A system may cease replacing lead service lines when it has two consecutive periods without a lead action level exceedance. If the system has a lead action level exceedance during any subsequent period, it shall recommence replacing lead service lines.

NOTE: Authority cited: Sections 100275, 116350, 116365, 116375 and 116385, Health and Safety Code. Reference: Sections 116325–116750, Health and Safety Code.

HISTORY

1. New section filed 12–11–95 as an emergency; operative 12–11–95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–9–96 or emergency language will be repealed by operation of law on the following day.
2. Refiling of 12–11–95 order, including amendment of NOTE, filed 4–9–96 as an emergency; operative 4–10–96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12–11–95 order, including amendment of subsections (c)(1)–(2) and (c)(4), transmitted to OAL 8–7–96 and filed 9–16–96 (Register 96, No. 38).
4. Repealer of former article 8 (sections 64689–64690), new article 8 (sections 64688–64689) and repealer and new section filed 9–11–2003; operative 10–11–2003 (Register 2003, No. 37).

§ 64689. Lead Service Line Sampling.

(a) Each lead service line sample shall be one liter in volume and have stood motionless in the lead service line for at least six hours, but not more than twelve.

(b) Lead service line samples shall be collected in one of the following three ways:

(1) At the tap after flushing the volume of water between the tap and the lead service line. The volume of water to be flushed shall be calculated based on the interior diameter and length of the pipe between the tap and the lead service line;

(2) Tapping directly into the lead service line; or

(3) If the sampling site is a building constructed as a single–family residence, allowing the water to run until there is a change in temperature that would be indicative of water that has been standing in the lead service line.

NOTE: Authority cited: Sections 100275, 116350, 116365, 116375 and 116385, Health and Safety Code. Reference: Sections 116325–116750, Health and Safety Code.

HISTORY

1. New article 8 and section filed 12–11–95 as an emergency; operative 12–11–95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–9–96 or emergency language will be repealed by operation of law on the following day.
2. Refiling of 12–11–95 order, including amendment of NOTE, filed 4–9–96 as an emergency; operative 4–10–96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12–11–95 order, including amendment of subsection (b), transmitted to OAL 8–7–96 and filed 9–16–96 (Register 96, No. 38).
4. Repealer of article 8 (sections 64689–64690) and repealer and new section filed 9–11–2003; operative 10–11–2003 (Register 2003, No. 37).

§ 64690. Source Water Monitoring Frequency Requirements.

NOTE: Authority cited: Sections 100275, 116350, 116365, 116375 and 116385, Health and Safety Code. Reference: Sections 116300 through 116750, Health and Safety Code; and 40 Code of Federal Regulations 141.88(b through e).

HISTORY

1. New section filed 12–11–95 as an emergency; operative 12–11–95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–9–96 or emergency language will be repealed by operation of law on the following day.
2. Refiling of 12–11–95 order, including amendment of NOTE, filed 4–9–96 as an emergency; operative 4–10–96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–96 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of subsection (c)(1)(B) (Register 96, No. 38).
4. Certificate of Compliance as to 12–11–95 order transmitted to OAL 8–7–96 and filed 9–16–96 (Register 96, No. 38).
5. Repealer filed 9–11–2003; operative 10–11–2003 (Register 2003, No. 37).

Article 9. Reporting and Recordkeeping

§ 64690.10. Data Reporting.

Each system shall report the following within the first 10 days after the end of each period during which such sampling or monitoring was conducted:

(a) For lead and copper tap sampling:

(1) The results of all tap samples including the location of each site and the associated tier criteria from section 64676 (Sample Site Selection);

(2) The 90th percentile lead and copper concentrations calculated pursuant to section 64678 (Determination of Exceedances of Lead and Copper Action Levels); and

(3) With the exception of the first period of tap sampling, an identification of any site that was not sampled during previous periods, along with an explanation of why the sampling site was changed;

(b) For WQP monitoring, the results of all samples collected and analyzed pursuant to article 4 (WQP Monitoring) of this chapter;

(c) For source water monitoring:

(1) The results for all samples related to source water collected and analyzed under article 6 (Source Water Requirements for Action Level Exceedances) of this chapter; and

(2) With the exception of the first round of sampling related to source water, an identification of any site that was not sampled during previous periods along with an explanation of why the sampling point was changed; and

(d) The results for any samples collected and analyzed for lead and copper or WQPs in addition to those required by this chapter.

NOTE: Authority cited: Sections 100275, 116350, 116365 and 116375, Health and Safety Code. Reference: Sections 116325–116750, Health and Safety Code.

HISTORY

1. Repealer of former article 9 (sections 64691–64692), new article 9 (sections 64690.10–64690.80) and new section filed 9–11–2003; operative 10–11–2003 (Register 2003, No. 37).

§ 64690.80. Recordkeeping.

Any system subject to the requirements of this chapter shall retain on its premises original records of all sampling data and analyses, reports, surveys, letters, evaluations, schedules, Department determinations, and any other information required by this chapter. Each water system shall retain the records required by this section for no fewer than 12 years or two compliance cycles (as defined in Section 64400.20), whichever is longer.

NOTE: Authority cited: Sections 100275, 116350, 116365 and 116375, Health and Safety Code. Reference: Sections 116325–116750, Health and Safety Code.

HISTORY

1. New section filed 9–11–2003; operative 10–11–2003 (Register 2003, No. 37).

§ 64691. Reporting Requirements.

NOTE: Authority cited: Sections 100275, 116350, 116365 and 116375, Health and Safety Code. Reference: Sections 116300 through 116750, Health and Safety Code; and 40 Code of Federal Regulations 141.90.

HISTORY

1. New article 9 and section filed 12–11–95 as an emergency; operative 12–11–95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL

by 4–9–96 or emergency language will be repealed by operation of law on the following day.

2. Refiling of 12–11–95 order, including amendment of NOTE, filed 4–9–96 as an emergency; operative 4–10–96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12–11–95 order transmitted to OAL 8–7–96 and filed 9–16–96 (Register 96, No. 38).
4. Repealer of article 9 (sections 64691–64692) and repealer of section filed 9–11–2003; operative 10–11–2003 (Register 2003, No. 37).

§ 64692. Recordkeeping Requirements.

NOTE: Authority cited: Sections 100275, 116350, 116365 and 116375, Health and Safety Code. Reference: Sections 116300 through 116750, Health and Safety Code; and 40 Code of Federal Regulations 141.91.

HISTORY

1. New section filed 12–11–95 as an emergency; operative 12–11–95 (Register 95, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–9–96 or emergency language will be repealed by operation of law on the following day.
2. Refiling of 12–11–95 order, including amendment of NOTE, filed 4–9–96 as an emergency; operative 4–10–96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12–11–95 order transmitted to OAL 8–7–96 and filed 9–16–96 (Register 96, No. 38).
4. Repealer filed 9–11–2003; operative 10–11–2003 (Register 2003, No. 37).

Chapter 18. Drinking Water Additives

Article 1. Requirements

§ 64700. Direct Additives. [Renumbered]

NOTE: Authority cited: Section 4023.3, Health and Safety Code. Reference: Section 4021, Health and Safety Code.

HISTORY

1. New chapter 18, article 1 and section filed 4–22–93; operative 5–24–93 (Register 93, No. 17).
2. Repealer of former chapter 18, article 1 (sections 64700–64710) and renumbering of former section 64700 to new section 64590 filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

§ 64710. Exception. [Renumbered]

NOTE: Authority cited: Section 4023.3, Health and Safety Code. Reference: Section 4021, Health and Safety Code.

HISTORY

1. New section filed 4–22–93; operative 5–24–93 (Register 93, No. 17).
2. Renumbering of former section 64710 to new section 64593 filed 2–8–2008; operative 3–9–2008 (Register 2008, No. 6).

Chapter 19. Certification of Environmental Laboratories

Article 1. Definitions

§ 64801. Definitions.

(a) "Alternate Test Procedure" means an analytical test method, or procedure that is different in technic from the method(s) cited in Section 64811(a), (b), or (c), but detects and quantifies to the same degree of precision, accuracy, and level of detection.

(b) "Auxiliary Laboratory Facility" means any stationary place which:

(1) is operated by the owner of a laboratory for the purpose of providing additional capacity, or to reduce or eliminate sample contamination; and

(2) performs analyses in one or more of the same Field(s) of Testing as the laboratory to which it is auxiliary; and

(3) is under the supervision of the same Laboratory Director as the laboratory to which it is auxiliary; and

(4) only receives samples from, and reports raw analytical data to, the laboratory to which it is auxiliary for its generation of the final report; and

(5) is located such that the transport of samples to the auxiliary laboratory does not affect the quality of the analytical results.

(c) "A Complete Application" means a verified application for certification containing all the information required in Section 64805(a) or (b), and utilizing ELAP form 001 (dated 1/1/93).

[The next page is 622.7.]

(d) "Contact Person" means an individual designated by the Laboratory Director to act as a contact between the laboratory and the Department for purposes of exchanging information between the Department and the laboratory.

(e) "Laboratory" shall have the same meaning as given in Health and Safety Code Section 1010(c)(2).

(f) "Laboratory Director" means the person who, for the laboratory and its auxiliary or mobile laboratories, if any, is in charge of all analytical and operational laboratory activities; supervises all personnel, including those designated as Principal Analysts; and is the person responsible for the quality of reported data.

(g) "Facility or Facilities" means fixed or portable building(s), which contain the analytical and ancillary operating equipment, supplies and space necessary to perform the analyses in the Field(s) of Testing for which a laboratory is certified, and includes storage areas.

(h) "Mobile Laboratory" means a vehicle, vessel, aircraft, or trailer, which is certified under Field of Testing 23, and is operated by the same owner as a certified stationary laboratory, and which is designed and equipped for the purpose of transporting and using laboratory equipment to perform analyses in one of the Fields of Testing for which the stationary laboratory is certified.

(i) "Owner" means any person who is a sole proprietor of a laboratory, or any person who holds a partnership interest in a laboratory, or any person who is an officer, or 5% (five percent) or more shareholder in a corporation which owns a laboratory.

(j) "Owner's Agent" or "Agents of Owners" means those persons who have been designated by the Owner(s) of the laboratory to act in its behalf for purposes of complying with these regulations or the statutes under which these regulations are adopted.

(k) "Principal Analyst" means a person who either supervises the activities of others in, or conducts, the analyses of environmental samples using sophisticated laboratory instruments. For these purposes, "sophisticated laboratory instruments" means: gas chromatograph/mass spectrometers (GC/MS), inductively coupled plasma spectrometers (ICP), direct current plasma spectrometers (ICP–MS), liquid chromatograph/mass spectrometers (LC–MS), atomic absorption spectrophotometers (AA), gas chromatographs (GC), alpha particle or gamma ray spectrophotometer, electron microscopes (EM), polarized light microscope (PLM), or high pressure liquid chromatographs (HPLC).

(*l*) "Stationary Laboratory" means a laboratory that is permanent and nonmovable and may include fixed–in–place vehicles.

(m) "Trade Secret" means any information that meets the definition in Section 6254.7(d) of the Government Code.

(n) "Trailer" means a vehicle designed for carrying persons or property on its own structure and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon any other vehicle. This definition is the same as the definition given in Section 630, Vehicle Code.

(o) "Utility–Owned" means laboratories owned and operated by federal, state, city, or county agencies.

(p) "Vehicle" means a device by which any person or property may be propelled, moved, or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or track. This definition is the same as the definition as given in Section 670, Vehicle Code.

(q) "Verified Application" means that the truth and accuracy of the information in the application has been attested to by the signature of a laboratory Owner.

(r) "Vessel" includes ships of all kinds, steamboats, steamships, canal boats, barges, sailing vessels, and every structure adapted to be navigated from place to place for the transportation of merchandise or persons. This definition is the same as given in Section 21, Harbors and Navigation Code.

NOTE: Authority cited: Sections 208. 1011 and 1012, Health and Safety Code. Reference: Sections 1010, 1014 and 1017, Health and Safety Code; Section 6254.7(d), Government Code; Sections 630 and 670, Vehicle Code; Section 21, Harbors and Navigation Code.

HISTORY

1. New chapter 19, article 1 and section filed 12–2–94; operative 12–2–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 48).

Article 2. Certification and Amendment Process

§ 64803. Certification and Amendment.

(a) A laboratory and its auxiliary or mobile laboratories shall be certified for a 24 month period in the Subgroups within each Field of Testing applied for when all the following have occurred:

(1) a complete application has been filed with the Department pursuant to Section 64805; and

(2) a site visit pursuant to Section 64807 has occurred and a response to any cited deficiencies has been received and accepted by the Department; and

(3) acceptable results for performance evaluation sample study sets have been received by the Department pursuant to Section 64809; and

(4) payment of the basic fee and per–Field–of–Testing fees published by the Department pursuant to Health and Safety Code, Section 113 and 1017(a) has been made to the Department.

(b) A laboratory desiring to add or remove one or more Subgroups within a Field(s) of Testing from its current certificate shall file a written request detailing the Field(s) of Testing or Subgroup(s) to be added or removed. Additions, which shall be effective for the remainder of the certification period, shall be made, and an amended certificate issued, when all of the following have occurred:

(1) a complete application has been filed with the Department pursuant to Section 64805; and

(2) a site visit pursuant to Section 64807 has occurred and a response to any cited deficiencies has been received and accepted by the Department; and

(3) acceptable results for performance evaluation samples have been received by the Department pursuant to Section 64809; and

(4) payment for a per–Field–of–Testing fee published by the Department pursuant to Health and Safety Code, Sections 113 and 1017(a) for each Field of Testing to be added to the certificate has been made to the Department.

(c) Whenever there is an amendment to a certificate, the certificate number and the expiration date on the amended certificate shall be the same as the original certificate.

(d) Laboratories seeking an amendment to add one or more Subgroups within a Field(s) of Testing shall not perform analyses in the additional Field(s) of Testing, or Subgroup(s) of Field(s) of Testing, until approved by the Department as evidenced by the issuance of an amended certificate.

(e) Laboratories seeking removal of one or more Subgroups within a Field(s) of Testing shall not perform analyses in the Field of Testing, or Subgroup, after the date of its written request for removal.

(f) A laboratory desiring interim certification under authority of Health and Safety Code, Section 1015(d) shall file a written request for interim certification with its application. An interim certificate shall be issued after payment of the basic and per–Field–of–Testing fee published by the Department pursuant to Health and Safety Code, Section 113 and 1017(a) for each Field of Testing applied for, completion of the requirements of either Section 64807 or 64809, and after the Department has determined that the laboratory has submitted a complete application. In cases where reciprocity agreements exist, compliance with Section 64807 shall be based on a site visit report issued by the other government agency and conducted within 6 months prior to the request for interim certification.

(g) The Department's estimated schedule for processing a complete application for certification from the receipt of the complete application to the final decision regarding issuance or denial of a certificate is as follows:

(1) The median time is 6 months;

(2) The minimum time is 3 months;

(3) The maximum time is 12 months.

NOTE: Authority cited: Sections 208, 1011 and 1012, Health and Safety Code; and Section 15376, Government Code. Reference: Section 15376, Government Code; and Sections 113, 1012, 1013, 1014 and 1015, Health and Safety Code.

HISTORY

1. New article 2 and section filed 12–2–94; operative 12–2–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 48).

Article 3. Application Process

§ 64805. Application.

(a) All laboratories seeking certification in any Subgroup as identified in Section 64823 within Field(s) of Testing 1 through 22, as listed in Health and Safety Code, Section 1017, shall file a complete application utilizing ELAP form 001, dated January 1, 1993, and containing the following information:

(1) complete name of the laboratory; and

(2) if the laboratory is stationary, the location, by street address, or map directions (if no street address exists), city, state, zip code, and county of the laboratory and any auxiliary laboratories; and

(3) if the laboratory is owned by a holder of a waste discharge permit issued by a California Regional Water Quality Control Board, the name or number of the Regional Board issuing the permit; and

(4) mailing address, parcel or package delivery address of the laboratory and any auxiliary laboratories; and

(5) if the laboratory is a vehicle or trailer, the vehicle identification and license plate number, including state of issue, or if the laboratory is a vessel, the vessel identification number, vessel registration number, including state of issue, or if the laboratory is an aircraft, the aircraft identification number, aircraft registration number, including state of issue, of all mobile laboratories; and

(6) name, education, and experience for the person designated as the Laboratory Director; and

(7) name, education, and experience for each and every person designated as Principal Analyst; and

(8) name of a Contact Person; and

(9) phone numbers for the laboratory, fax devices, Laboratory Director, and Contact Person; and

(10) the name(s) of the Owner(s) of the laboratory. If the laboratory is owned by a corporation, the name of the officers, and stockholders owning 5% or more of the shares. If the laboratory is owned by a partnership, the name of all partners; and

(11) whether the laboratory seeks exemption from fees as allowed by Health and Safety Code, Section 1017(e). If exemption is claimed, it shall include evidences showing the laboratory to be established under the authority of Health and Safety Code, Section 1000, or that the laboratory meets the definition of a government–owned reference laboratory as established in Health and Safety Code, Section 1017(g); and

(12) the Field(s) of Testing for which the laboratory desires certification; and

(13) a quality assurance document meeting the requirements of Section 64815; and

(14) date of completion of the application and signature by an Owner.

(b) Laboratories seeking certification of a mobile laboratory under Field of Testing 23, shall file a complete application, which shall include the following information:

(1) the Subgroup within the Field of Testing to be employed in the mobile laboratory; and

(2) the name of the Owner(s) of the stationary laboratory that operates the mobile laboratory; and

(3) name, education, and experience for the person designated as Laboratory Director for the stationary laboratory that operates the mobile laboratory; and

(4) name, education and experience for each and every person designated as Principal Analyst for the mobile laboratory; and

(5) a quality assurance program meeting the requirements of Section 64815 covering the test methods to be employed in the mobile laboratory; and

(6) the location, by street address, or map directions (if no street address exists), city, state, zip code, and county of the certified stationary laboratory under the same owner as the mobile laboratory and the Subgroups within each Field of Testing for which that stationary laboratory is certified.

(c) All applications filed with the Department shall be considered complete unless within 30 days of receipt, the Department mails to the laboratory's mailing address a notice that the application is not complete. Any noted deficiencies in a submitted application must be corrected and the corrected application returned to the Department within ninety days from the date of the Department's notice of deficiencies or the application shall be considered null and void.

(d) An application for renewal of a certificate shall be received by the Department no later than ninety days prior to the expiration date of the certificate or it shall expire by operation of law on the stated expiration date as specified in Health and Safety Code Section 1014(a).

NOTE: Authority cited: Sections 208 and 1011, Heath and Safety Code. Reference: Sections 1013, 1014 and 1017(e), Health and Safety Code.

HISTORY

1. New article 3 and section filed 12–2–94; operative 12–2–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 48).

§ 64806. Certification Fees.

(a) The following schedule of fees shall apply to every environmental laboratory applying for an initial, amendment, or renewal Environmental Laboratory Accreditation Program certification:

(1) A non–refundable base or administrative fee of $959 payable at the time of initial and renewal application for certification and annually thereafter, and

(2) An additional fee of $432 for each Field of Testing specified in Health and Safety Code Section 100860.1 which the laboratory has requested in its application, payable at the time of application for an initial, amended, or renewed ELAP certification, and annually thereafter.

(b) For a certificate issued between 01/01/02 and 12/31/02, the fee required at the time of the initial and renewal application shall be due and payable within the time period for which the certificate is valid and within 30 days notice by the Department.

NOTE: Authority cited: Sections 100830, 100835(a) and 100860.1, Health and Safety Code. Reference: Section 100825, Health and Safety Code.

HISTORY

1. New section filed 10–31–2002 as an emergency; operative 10–31–2002 (Register 2002, No. 44). A Certificate of Compliance must be transmitted to OAL by 2–28–2003 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 10–31–2002 order transmitted to OAL 2–27–2003 and filed 4–3–2003 (Register 2003, No. 14).

Article 4. Site Visits

§ 64807. Site Visits.

(a) Site visits shall be conducted by the Department to verify information contained in a laboratory's application for certification or when a laboratory requests the addition of one or more Subgroups within a Field of Testing. During the site visit, the Department shall verify the following:

(1) the laboratory uses only the analytical test methods identified in Section 64811 for each Subgroup within a Field of Testing for which the laboratory is seeking certification;

(2) the laboratory's instrumentation and equipment meet the requirements of Section 64813;

(3) the laboratory's quality assurance and quality control procedures meet the requirements of Section 64815; and

(4) the information contained in the application.

(b) Within 30 days of completion of a site visit, the Department shall notify a laboratory, in writing, of its deficiencies, if any, in complying with the requirements of (a)(1) through (a)(4) above. No laboratory shall be issued a certificate in any Subgroup within any Field of Testing applied for unless it has corrected all deficiencies noted, and has forwarded to the Department a statement, in writing, of all corrective actions taken. The statement of corrective actions shall be received by the Department within the time frame established in the Department's notice of deficiencies. If in a subsequent site visit the Department determines that the laboratory failed to take any of the corrective action(s) specified in the laboratory's statement, citation(s) as specified under the authority of Health and Safety Code, Section 1021, may be issued.

(c) A site visit shall be conducted within 6 months from the date of receipt by the Department of a laboratory's application. If a site visit is not conducted within this time period and the delay is not a result of Department error or procedure, certification shall be denied pursuant to Section 64803(a)(2).

NOTE: Authority cited: Sections 208, 1011 and 1012, Heath and Safety Code. Reference: Sections 1015, 1018 and 1021, Health and Safety Code.

HISTORY

1. New article 4 and section filed 12–2–94; operative 12–2–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 48).

[The next page is 622.9.]

Article 5. Performance Evaluation Testing Process

§ 64809. Performance Evaluation Testing.

(a) No laboratory shall be certified to perform analyses in any Subgroup of any Field(s) of Testing as identified in Section 64823 unless the laboratory has submitted results for the analysis of performance evaluation sample study set(s) (where performance evaluation sample study set(s) exist) in each Subgroup within each Field of Testing for which certification is requested, and the results for the testing of the study set are in agreement with the criteria established below:

(1) within the 99% confidence limit of the mean computed by the Department for the collection of results received for the performance evaluation sample set for the following Subgroups: detection of total coliform or fecal coliform organisms in wastewater by Multiple Tube Fermentation technics; detection of total coliform or fecal coliform organisms in wastewater by Membrane Filter technics; Heterotrophic Plate Count technics; Fecal streptococci and Enterococci by Multiple Tube Fermentation technics; Fecal streptococci and Enterococci by Membrane Filter technics of Field of Testing 1; all Subgroups in Fields of Testing 6, 9, 10, 12, 13, 16, 17, 18, and 19;

(2) positive/negative, present/absent, above/below, or other similar discrete response when the only result possible from a test is a discrete response for the following Subgroups in Field of Testing 1: detection of total coliform, fecal coliform, or Escherichia coli (E. coli) organisms in drinking water by Multiple Tube Fermentation technics; detection of total coliform, fecal coliform, or Escherichia coli (E. coli) organisms in drinking water by Membrane Filter technics; detection of total coliform, fecal coliform, or Escherichia coli (E. coli) organisms in drinking water by use of Clark's Presence/Absence medium; detection of both total coliforms and Escherichia coli (E. coli) organisms in drinking water by the Minimal Medium ortho–nitrophenyl–beta–D–galactopyranoside – 4–methylumbelliferyl–beta–D–glucuronide (MMO–MUG) technics;

(3) for all Subgroups in Field of Testing 8: within the 99% confidence limit of the mean computed by the Department from the collection of results received for the performance evaluation sample set, or within the 95th percentile of a distribution of non–normal values. The choice determined by the Department through the application of standard tests that determine the normalcy of data;

(4) within the 95% confidence limit of the mean computed by the Department from the collection of results received for the performance evaluation sample set for the following Subgroups: alkalinity, calcium, chloride, corrosivity, hardness, magnesium, MBAS, sodium, sulfate, total filterable residue and conductivity, iron (colorimetric methods only), manganese (colorimetric methods only), and ortho phosphate in Field of Testing 2; asbestos in Field of Testing 3;

(5) within a given percentage of a known or true value for the following Subgroups: cyanide, fluoride, nitrate and nitrite in Field of Testing 2; all Subgroups in Field of Testing 3, except asbestos; all Subgroups in Fields of Testing 4, 5, 20, 21, and 22.

(b) Each performance evaluation sample study set shall state the method of evaluation that shall be utilized to score results for that performance evaluation sample study set, and which requirements identified in (a) above, or (c) below must be met by the laboratory.

(c) If a performance evaluation sample study set contains one or more analytes that may be analyzed by a single test method that the Department recognizes and certifies as a Subgroup of a Field of Testing, the results shall meet one of the following:

(1) when 6 or fewer analytes are in the performance evaluation sample study set, all analytes are within the stated acceptance limits; or

(2) when more than 6 analytes are in the performance evaluation sample study set, eighty–five point zero percent (85.0%) of the analytes are within the stated acceptance limits.

(d) If a laboratory fails to submit results for the analysis of performance evaluation sample study sets, which meet the above requirements, the laboratory may, within 30 days, request that it be given a second, successive attempt to submit such results. Failure of a laboratory to submit results for the analysis of performance evaluation sample study sets meeting the requirements of (a) or (c) within 6 months from the date of receipt by the Department of the laboratory's application for certification, or of its request for the addition of one or more Subgroups within a Field(s) of Testing shall result in the denial of the application or request.

(e) With the exception of Field of Testing 6, a certified laboratory shall, within 12 months from the date of certification, participate in at least one performance evaluation sample study set (where performance evaluation sample study set(s) exist) for each Subgroup within each Field of Testing as identified in Section 64823 for which certification is held. If the results from the study do not meet the requirements of (a) or (c), the laboratory shall be provided a second, successive attempt to submit such results. Irrespective of whether a second, successive attempt is provided, results meeting the requirements of (a) or (c) must be submitted by a certified laboratory to the Department at least 90 days prior to the expiration of its certificate or the laboratory's certificate may be restricted under Health and Safety Code, Section 1015(c).

(f) Laboratories holding certification in any Subgroup within Field of Testing 6 shall participate in all available performance evaluation test samples provided through the Environmental Protection Agency's Environmental Monitoring and Support Laboratory, Las Vegas inter–comparison cross check and performance evaluation studies. The laboratory must successfully complete a minimum of two inter–comparison cross check studies and one performance evaluation study each annual period from the date of certification. Failure to do so may be used by the Department as grounds for restricting the laboratory's certificate under Health and Safety Code, Section 1015(c).

(g) Laboratories seeking or holding certification in any Subgroup within Field of Testing 11 are exempt from compliance with the requirements of Health and Safety Code, Section 1015(b)(1).

NOTE: Authority cited: Sections 208, 1011 and 1012, Heath and Safety Code. Reference: Sections 1015, 1017 and 1019, Health and Safety Code.

HISTORY

1. New article 5 and section filed 12–2–94; operative 12–2–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 48).

Article 6. Required Test Methods

§ 64811. Test Methods.

(a) Laboratories certified for any Subgroup within Fields of Testing 1 through 6, as identified in Section 64823, shall employ those methods found in 40 Code of Federal Regulations Part 141 as amended July 17, 1992, 57 Federal Register 31776.

(b) Laboratories certified for any Subgroup within Fields of Testing 9 through 14, as identified in Section 64823, shall employ those methods found in Article 5, Section 66260.11, Title 22, California Code of Regulations.

(c) Laboratories certified for any Subgroup within Fields of Testing 8 or 16 through 19, as identified in Section 64823, shall employ those methods found in 40 Code of Federal Regulations Part 136, amended September 11, 1992, 57 Federal Register 41830, or methods stated in any permit issued by a California Regional Water Quality Control Board. If no method is stated in the permit and there is no method cited for the substance in Part 136, the laboratory is to seek approval for the use of the method from the Regional Board issuing the permit.

(d) Laboratories certified for any Subgroup within Fields of Testing 20, 21 or 22, as identified in Section 64823, shall develop and employ analytical confirmation procedures for the verification of pesticide identification and quantification.

(e) Laboratories certified in any Subgroup within Field of Testing 7, as identified in Section 64823, shall employ those methods found in either "Recommended Procedures for the Examination of Sea Water and

Shellfish", 4th edition, 1970, American Public Health Association (APHA); or "Official Methods of Analysis of the Association of Official Analytical Chemists", 14th edition, 1984, AOAC, Arlington, Virginia. Laboratories certified in any Subgroup within Filed of Testing 15, as identified in Section 64823, shall employ methods which were submitted to the Department at time of application for certification, or at time of request to add a Subgroup within a Field of Testing and which have been approved by the Department for use in the laboratory.

(f) Laboratories may substitute alternate test methods for those allowed by (a) above. If such substitution is desired, the laboratory shall obtain written approval for the alternate test method to be utilized from the United States Environmental Protection Agency (EPA) through that agency's Alternate Test Procedure approval process, or shall obtain a waiver from the Environmental Laboratory Accreditation Program (ELAP), prior to implementing any substitution. ELAP may grant a waiver when a State Maximum Contaminant Level (MCL) is more stringent than a federal MCL or no State MCL exists and when ELAP determines that the test method the laboratory proposes to use is one for which that laboratory was previously ELAP certified. A waiver shall be valid until a new State MCL is adopted for the analyte being detected by the method.

(g) Laboratories may substitute alternate test methods for those allowed by (b) above. If such substitution is desired, the laboratory shall obtain written approval for the alternate test method to be utilized from the California Environmental Protection Agency, Hazardous Materials Laboratory, Berkeley, California prior to implementing any substitutions.

(h) Laboratories may substitute alternate test methods for those allowed by (c) above. If such substitution is desired, the laboratory shall obtain written approval for the alternate test method to be utilized from the United States Environmental Protection Agency (EPA) through that agency's Alternate Test Procedure approval process prior to implementing any substitution.

(i) Laboratories seeking certification for the subgroups consisting of fecal coliform or Escherichia coli (E. coli) organism technics, must also obtain, or hold, certification for the subgroups consisting of the same technic for total coliform organisms.

(j) To gain certification for individual radioactive elements or isotopes, except for uranium by fluorimetric technics, a laboratory shall obtain certification for gross alpha and beta radiation testing.

(k) A laboratory may seek certification, or hold certification for Field of Testing 11 without seeking or holding certification in Fields of Testing 10, 12, or 13. However, the laboratory shall submit all resulting preparations from the use of any of the subgroup members of Field of Testing 11 to a laboratory certified for Fields of Testing 10, 12, or 13.

NOTE: Authority cited: Sections 208, 1011 and 1012, Heath and Safety Code. Reference: Sections 1012, 1017 and 28503, Health and Safety Code; Section 12901, Title 22, California Code of Regulations; Appendices I, II and III of Article 5 (commencing with Section 66261.100), Title 22, California Code of Regulations.

HISTORY

1. New article 6 and section filed 12–2–94; operative 12–2–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 48).

Article 7. Laboratory and Equipment

§ 64813. Laboratory and Equipment.

(a) A laboratory shall be arranged and operated so that:

(1) utilities are maintained to the degree necessary to allow the laboratory equipment to function and produce analyses in each Subgroup within each Field(s) of Testing for which the laboratory is certified;

(2) ventilation and environmental control are maintained in the laboratory so that analytical results are not adversely affected beyond establish quality control limits as specified in the approved test methods or in the laboratory's quality assurance manual;

(3) the design, arrangement, and operation of the laboratory minimizes the potential for sample contamination;

(4) the storage and handling of hazardous materials in accordance with the California Code of Regulations, Title 8, General Industry Safety Orders, Department of Industrial Relations; and

(5) the disposal of chemical wastes is in accordance with the California Code of Regulations, Title 22, Division 4.5, Environmental Health Standards for the Management of Hazardous Wastes, State of California, Department of Health Services.

(b) Each piece of laboratory equipment shall meet all operational, quality assurance, quality control, and design criteria established in the method(s) employed by the laboratory.

(c) Each piece of laboratory equipment shall be operated and maintained by the laboratory as required by the manufacturer's maintenance instructions for the equipment.

(d) Records shall be kept of all operational and maintenance activities associated with the operation of laboratory equipment.

NOTE: Authority cited: Sections 208, 1011 and 1012, Heath and Safety Code. Reference: Section 1012, Health and Safety Code; California Code of Regulations, Title 8; and Title 22, Division 4, Chapter 30, California Code of Regulations.

HISTORY

1. New article 7 and section filed 12–2–94; operative 12–2–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 48).

Article 8. Quality Assurance Documents

§ 64815. Quality Assurance.

(a) Each laboratory shall develop and implement a quality assurance program to assure the reliability and validity of the analytical data produced by the laboratory. As evidence of such a program, the laboratory shall develop and maintain a quality assurance program manual.

(b) The quality assurance program manual shall address all quality assurance and quality control practices to be employed by the laboratory and shall, at least, include the quality assurance and quality control requirements specified in the test methods for which the laboratory holds, or seeks, certification. The manual shall include the following elements: laboratory organization and personnel responsibilities; quality assurance objectives for measurement data; sampling procedures (when the laboratory performs the sampling); custody, handling, and disposal of samples; calibration procedures and frequency; analytical procedures; acquisition and reduction, validation and reporting of data; internal quality control checks; performance and system audits; preventive maintenance; assessment of precision and accuracy; corrective action; and quality assurance reports.

(c) The Laboratory Director shall review, and amend if necessary, the quality assurance program and quality assurance program manual at least annually. The Laboratory Director shall also review and amend the quality assurance program and manual whenever there are changes in methods or laboratory equipment employed, in the laboratory structure or physical arrangements, or changes in the laboratory organization.

(d) A laboratory shall maintain records of the implementation of its quality assurance program, and provide those records upon request of the Department. Records shall be maintained for a minimum of three years.

NOTE: Authority cited: Sections 208 and 1011, Health and Safety Code. Reference: Section 1012, Health and Safety Code.

HISTORY

1. New article 8 and section filed 12–2–94; operative 12–2–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 48).

Article 9. Laboratory Personnel

§ 64817. Laboratory Personnel.

(a) Each laboratory shall designate a Laboratory Director. Except as provided in (b) below, no person shall be designated as a Laboratory Director unless he or she meets the following educational and experience requirements.

(1) Possesses at least a baccalaureate degree in chemistry, biochemistry, biology, microbiology, environmental, sanitary or public health engineering, natural or physical science.

(2) Has at least three years experience in the analysis of water, wastewater, solid waste, hazardous waste or other environmental samples. The experience requirement shall be satisfied from relevant work experience prior to the person having obtained the position of Laboratory Director. A master's degree in chemistry, biochemistry, biology, microbiology, environmental, sanitary or public hearing engineering, natural or physical science may be substituted for one year of the required experience. A doctorate in chemistry, biochemistry, environmental, sanitary or public hearing engineering, biology, microbiology, natural or physical science may be substituted for two years of the required experience.

(b) Laboratory Directors of utility–owned water or wastewater treatment plant laboratories performing any of the analyses required under Section 4025 of the Health and Safety Code, or Section 13176 of the Water Code may fulfill the requirements for Laboratory Director by possession of a Laboratory Analyst/Water Quality Analyst Certificate from the California Water Pollution Control Association (CWPCA) or the California–Nevada Section of the American Water Works Association (CA–NV/AWWA). The minimum grade of the above certificate acceptable to the Department shall be based on the Fields of Testing for which the laboratory seeks certification as noted in the conversion table set out below:

Fields of Testing	*Minimum Certificate Grade Required*
1, 2* and 16**	I
1, 2, 8 and 16	II
3, 5, 17 and 19 plus those allowed for a grade II	III
4, 6, and 18 plus those allowed for a grade III	IV

* Limited to testing for: alkalinity, chloride, hardness, total filterable residue, and conductivity.

** Limited to testing for: acidity, alkalinity, biochemical oxygen demand, chemical oxygen demand, chlorine residual, hardness, dissolved oxygen, pH, total residue, filterable residue, nonfilterable residue, settleable residue, volatile residue, specific conductance, and turbidity.

(c) All Laboratory Directors of laboratories certified by the Department as of December 31, 1994 shall be exempt from meeting the requirements of (a) or (b) above.

(d) A Laboratory Director shall be responsible for:

(1) all analytical and operational activities of the laboratory, including those of any auxiliary or mobile laboratory facilities; and

(2) supervision of all personnel employed by the laboratory, including those assigned to work in any auxiliary or mobile laboratory facilities, and those persons designated as Principle Analysts; and

(3) the accuracy and quality of all data reported by the laboratory, including any auxiliary or mobile laboratory facilities.

(e) If, for any reason, a Laboratory Director leaves and is not replaced within 15 days by a person meeting the requirements specified in (a) or (b), whichever applies, a person or persons with lesser qualifications may serve as a temporary director for a period not to exceed ninety days, provided that the laboratory notifies the Department, pursuant to Section 1014(d) of the Health and Safety Code, describing the qualifications of the temporary director and receives written confirmation from the Department. An additional extension of no more than ninety days beyond the original 90–day period may be granted by the Department, provided the laboratory can document that its good–faith efforts to recruit a qualified director were unsuccessful for reason beyond its control.

(f) A Laboratory Director shall assume the position of, or shall designate another person as Principal Analyst whenever there is use of a sophisticated laboratory instrument as defined in Section 64801(k). No person shall be a Principal Analyst for a laboratory unless he or she is:

(1) the user of the sophisticated laboratory instrument; or

(2) the supervisor of the users of the sophisticated laboratory instrument.

(g) Except as provided in (h) below, no person shall be a Principal Analyst unless he or she meets the following educational and experience requirements.

(1) Possesses at least a baccalaureate degree in chemistry, biochemistry, biology, microbiology, environmental, sanitary or public health engineering, natural or physical science; or

(2) Possesses a certification of participation in, and completion of, a course taught by the manufacturer of the particular sophisticated laboratory instrument which is being used or supervised by the Principal Analyst; and

(3) Has at least six months experience in the operation of a sophisticated laboratory instrument in the analysis of water, wastewater, solid waste, hazardous waste or other environmental samples, or food. This experience requirement must be satisfied from experience gained prior to obtaining the position of Principal Analyst.

(h) Principal Analysts of utility–owned water or wastewater treatment plant laboratories performing any analyses under Section 4025 of the Health and Safety Code, or Section 13176 of the Water Code may fulfill the requirements for Principal Analyst by possession of a Laboratory Analyst/Water Quality Analyst Certificate from the California Water Pollution Control Association (CWPCA) or the California–Nevada Section of the American Water Works Association (CA–NV/AWWA). The minimum grade of the above certificate acceptable to the Department shall be based on the Fields of Testing for which the laboratory seeks certification as noted in the conversion table set out below:

Fields of Testing	*Minimum Certificate Grade Required*
1, 2 and 16	I
8 plus those allowed for a Grade I	II
3, 5, 17 and 19 plus those allowed for a grade II	III
4, 6, and 18 plus those allowed for a grade III	IV

(i) All Principal Analysts of laboratories certified by the Department as of December 31, 1994 shall be exempt from meeting the requirements of (g) or (h) above.

NOTE: Authority cited: Sections 208, 1011 and 1012, Health and Safety Code. Reference: Section 1012, Health and Safety Code.

HISTORY

1. New article 9 and section filed 12–2–94; operative 12–2–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 48).

Article 10. Notification and Reporting

§ 64819. Notification and Reporting.

(a) Laboratories certified for Field of Testing 1, 2, 3, 4, 5, or 6 shall conform to the following reporting and notification requirements.

(1) Laboratories reporting bacterial quality results as required by Title 22, California Code of Regulations, Section 64423.1 shall submit a bacterial monitoring report including information required in Title 22, California Code of Regulations, Sections 64423.1(c)(2) and (c)(3) directly to the Department.

(2) The laboratory shall notify a water supplier's designated contact person as soon as possible, but within 24 hours, and record the method and time of notification or attempted notification, whenever any of the following occur:

(A) The presence of total coliforms, fecal coliforms, or Escherichia coli (E. coli) is confirmed.

(B) A bacterial sample is invalidated due to an interference as defined in Title 22, California Code of Regulations, Section 64425(b).

(C) A nitrate sample exceeds the MCL.

(3) If the laboratory is unable to make direct contact with the supplier's designated contact person within 24 hours, pursuant to subparagraphs (2)(A) or (C), the laboratory shall immediately notify the Department and provide a written record of the time and method of attempted contacts.

(4) All analytical results conducted pursuant to Title 22, California Code of Regulations, Chapter 15, Domestic Water Quality and Monitoring, shall be reported directly to the Department electronically using the

Electronic Deliverable Format as defined in The Electronic Deliverable Format [EDF] Version 1.2i Guidelines & Restrictions dated April 2001 and Data Dictionary dated April 2001, by the 10th day of the month following the month in which the analyses were completed.

(5) Whenever a laboratory is requested by a water supplier, pursuant to Title 22, California Code of Regulations, Section 64425(a)(2), to submit evidence invalidating a sample due to laboratory error, the laboratory shall provide the supplier with information which shall include:

(A) A letter from the Laboratory Director to the water supplier agreeing to the invalidation request by reason of laboratory accident or error;

(B) complete sample identification, laboratory sample log number (if used), date and time of collection, date and time of receipt by the laboratory, date and time of analysis for the sample(s) in question;

(C) complete description of the error alleged to have invalidated the result(s);

(D) copies of all analytical, operating, and quality assurance records pertaining to the incident in question; and

(E) any observations noted by laboratory personnel when receiving and analyzing the sample(s) in question.

(b) Laboratories certified for Fields of Testing 20, 21, or 22 shall verify the identity and quantity of a pesticide residue before reporting the results. The confirmation procedures must conform to those in Section 64811(d) of this Chapter.

(c) In any arrangements between laboratories involving the transfer of samples, or portions of samples, the laboratory issuing the report of analyses shall include the original of any report(s) prepared by all other laboratories who are party to the agreement.

NOTE: Authority cited: Sections 100275, 100830, 100835 and 116375, Health and Safety Code. Reference: Sections 100825(b) and 100835, Health and Safety Code.

HISTORY

1. New article 10 and section filed 12–2–94; operative 12–2–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 48).
2. Amendment of section and NOTE filed 5–15–2001; operative 6–14–2001 (Register 2001, No. 20).
3. Change without regulatory effect amending subsection (a)(4) filed 8–24–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 34).

Article 11. Reciprocity Agreements

§ 64821. Reciprocity Agreements.

(a) Another State's, or a United States agency's environmental laboratory certification, accreditation, or licensing program shall be recognized for the purposes of reciprocity if the program requires:

(1) periodic analyses of performance evaluation samples by the participating laboratories with the frequency of submittal, the method of evaluation, and the established acceptance limits at least equal to those established in Section 64809 of this Chapter;

(2) on–site evaluation of participating laboratories during which the laboratory is reviewed under criteria at least equal to that established in Section 64807 of this Chapter;

(3) standards for quality assurance, laboratory facilities, test methods, laboratory equipment, and personnel for participating laboratories at least equal to those in Sections 64811, 64813, 64815, and 64817 of this Chapter.

(b) Where reciprocity exists, each laboratory seeking California certification shall submit:

(1) an application pursuant to Section 64805(a) of this Chapter;

(2) copies of the results evaluated, or scored, from the last performance evaluation sample testing conducted by the laboratory for the other program;

(3) copies of the last on–site evaluation report prepared by the other program and the laboratory's response to any deficiencies noted;

(4) all applicable fees pursuant to Health and Safety Code, Section 1017(a); and

(5) a copy of the certificate, license, permit, or authorization to operate as an environmental laboratory issued to the laboratory by the other agency.

(c) When a reciprocity agreement exists between the Department and another State, only those laboratories that reside within the boundaries of the other State shall be eligible for certification through reciprocity.

(d) If a reciprocity agreement with another State, or U.S. government agency is revoked, all certificates issued by the Department to all affected laboratories shall remain valid until the stated expiration date.

(e) No fees are waived where reciprocity exists.

(f) A laboratory certified under reciprocity may be visited or issued performance evaluation samples by the Department for the purposes of addressing questions or concerns on quality of results raised by any California government agency who has received a report from the laboratory. Applicable performance evaluation sample costs, pursuant to Section 1017(f) or travel costs pursuant to Section 1017(b) of the Health and Safety Code shall be paid.

NOTE: Authority cited: Sections 208, 1011 and 1012, Health and Safety Code. Reference: Sections 1011 and 1017, Health and Safety Code.

HISTORY

1. New article 11 and section filed 12–2–94; operative 12–2–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 48).

Article 12. Subgroups for Fields of Testing

§ 64823. Fields of Testing.

(a) Field of Testing 1 consists of those methods whose purpose is to detect the presence of microorganisms in the determination of drinking water or wastewater quality and encompasses the following Subgroups: detection of total coliform, fecal coliform, or Escherichia coli (E. coli) organisms by Multiple Tube Fermentation technics; detection of total coliform, fecal coliform, or Escherichia coli (E. coli) organisms by Membrane Filter technics; Heterotrophic Plate Count technics; detection of both total coliforms and Escherichia coli (E. coli) organisms by the Minimal Medium ortho–nitrophenyl–beta–D–galactopyranoside – 4–methylumbelliferyl–beta–D–glucuronide (MMO–MUG) technics; detection of total coliform, fecal coliform, or Escherichia coli (E. coli) organisms by use of Clark's Presence/Absence medium; Fecal streptococci and Enterococci by Multiple Tube Fermentation technics, Fecal streptococci and Enterococci by Membrane Filter technics; detection of total coliforms and fecal coliforms other than for drinking water or wastewater quality.

(b) Field of Testing 2 consists of those analytes or methods whose purpose is to detect the presence of inorganic substances in the determination of drinking water quality and whose methods require the use colorimetric, gravimetric, titrimetric, electrometric, or ion chromatographic technic; and encompasses the following Subgroups: alkalinity; calcium (titrimetric technics); chloride; corrosivity; fluoride; hardness (direct determination); magnesium (titrimetric technics); methylene blue active substances (MBAS); nitrate; nitrite; sodium (flame emission technics); sulfate; total filterable residue and conductivity; iron; manganese; orthophosphate; silica; cyanide; potassium (flame emission technics).

(c) Field of Testing 3 consists of those methods whose purpose is to detect the presence of trace metals, or asbestos in the determination of drinking water quality and whose methods require the use of an atomic absorption, inductively coupled plasma, inductively coupled plasma/mass spectrophotometer, or electron microscope device and encompasses the following Subgroups: arsenic; barium; cadmium; total chromium; copper; iron; lead; manganese; mercury; selenium; silver; zinc; aluminum; asbestos; antimony; beryllium; nickel; thallium; calcium; magnesium; sodium; potassium.

(d) Filed of Testing 4 consists of those methods whose purpose is to detect the presence of trace organics in the determination of drinking water quality, and require the use of a gas chromatographic/mass spectrophotometric device and encompasses the following Subgroups: EPA method 524.2 for volatile organics; EPA method 501.3 for trihalome-

thanes; EPA method 525 for acid and base/neutral compounds; EPA method 513 for dioxins; EPA method 1613 for dioxins.

(e) Field of Testing 5 consists of those methods whose purpose is to detect the presence of trace organics in the determination of drinking water quality and do not require the use of a gas chromatographic/mass spectrophotometric device and encompasses the following Subgroups: EPA method 501.1 for trihalomethanes; EPA method 501.2 for trihalomethanes; EPA method 510 for total trihalomethanes; EPA method 508 for chlorinated pesticides; EPA method 515.1 for chlorophenoxy herbicides; EPA method 502.1 for halogenated volatiles; EPA method 503.1 for aromatic volatiles; EPA method 502.2 for both halogenated and aromatic volatiles; EPA method 504 for EDB and DBCP; EPA method 505 for chlorinated pesticides and ploychlorinated biphenyls; EPA method 507 for the haloacids; EPA method 531.1 for carbamates; EPA method 547 for glyphosate; EPA method 506 for adipates and phthalates; EPA method 508A for total polychlorinated biphenyls; EPA method 548 for endothall; EPA method 549 for diquat and paraquat; EPA method 550 for polycyclic aromatic hydrocarbons; EPA method 550.1 for polycyclic aromatic hydrocarbons; EPA method 551 for chlorination disinfection byproducts; EPA method 552 for haloacetic acids.

(f) Field of Testing 6 consists of those methods whose purpose is to detect the presence of radioactive substances in drinking water, wastewater, or hazardous wastes; and encompasses the following Subgroups: gross alpha and beta radiation; total radium; radium 226; uranium; radon 222; radioactive cesium; iodine 131; radioactive strontium; tritium; gamma emitting isotopes; gross alpha by coprecipitation; radium 228; radioactive iodine; gross alpha and beta radiation in hazardous wastes; alpha emitting radium isotopes in hazardous wastes; radium 228 in hazardous wastes.

(g) Field of Testing 7 consists of those methods whose purpose is to detect the presence of microbial contamination or toxins in the determination of shellfish meat quality and encompasses the following Subgroups: shellfish meat microbiology; paralytic shellfish poison (PSP) and other marine biotoxins; microbiology of shellfish growing waters.

(h) Field of Testing 8 consists of those methods whose purpose is to detect the presence of toxins in the determination of wastewater quality, or in hazardous wastes and encompasses the following Subgroups: hazardous waste testing pursuant to Title 22, California Code of Regulations, Section 66261.24(a)(6); wastewater testing according to Kopperdahl (1976) using freshwater fish; wastewater testing according to EPA/600/4–85/013 using freshwater and/or marine organisms; wastewater testing by EPA method 1000.0; wastewater testing by EPA method 1002.0; wastewater testing by EPA method 1003.0; wastewater testing by EPA method 1006; wastewater testing by EPA method 1007; wastewater testing by EPA method 1009; wastewater testing according to Anderson, et al. (1990) using Giant Kelp (Macrocystis pyrifera); wastewater testing according to Anderson, et al. (1990) using red abalone (Haliotus rufescens); wastewater testing according to Dinnel and Stober (1987) using purple sea urchin (Strongylocentrotus purpuratus); wastewater testing according to Dinnel and Stober (1987) using red sea urchin (Strongylocentrotus franciscanus); wastewater testing according to Dinnel and Stober (1987) using sand dollar (Dendraster excentricus); wastewater testing according to procedure E 724–89 (ASTM, 1989) using Pacific oyster (Crassostrea gigas); wastewater testing according to procedure E 724–89 (ASTM, 1989) using California Bay Mussel (Mytilus edulis); wastewater testing according to procedure E 1218–90 (ASTM, 1990) using an alga (skeletonema costatum); wastewater testing according to EPA/600/4–90/027 using freshwater and/or marine organisms.

(i) Field of Testing 9 consists of those methods whose purpose is to detect physical properties of hazardous wastes for regulatory purposes and encompasses the following Subgroups: ignitability; corrosivity by pH determination; corrosivity by corrosivity towards steel; reactivity.

(j) Field of Testing 10 consists of those methods whose purpose is to detect the presence of inorganic substances in hazardous waste samples and encompasses the following Subgroups: antimony; arsenic; barium; beryllium; cadmium; chromium, total; cobalt; copper; lead; mercury; molybdenum; nickel; selenium; silver, thallium; vanadium; zinc; chromium (VI); cyanide; fluoride; sulfide; total organic lead.

(k) Field of Testing 11 consists of those methods whose purpose is to prepare samples of hazardous wastes for further testing and encompasses the following Subgroups: California waste extraction test (WET); extraction procedure toxicity (EP TOX); toxicity characteristic leaching procedure (TCLP), all phases; TCLP, extraction of inorganics only; TCLP, extraction of semivolatile organics only; TCLP, extraction of volatile organics only.

(*l*) Field of Testing 12 consists of those methods whose purpose is to detect the presence of trace organics in hazardous waste samples, and do not require the use of a gas chromatographic/mass spectrophotometric device and encompasses the following Subgroups: EPA method 8240 for volatile compounds; EPA method 8250 for semivolatile compounds; EPA method 8270 for semivolatile compounds; EPA method 8280 for dioxins, EPA method 8290, EPA method 8260.

(m) Field of Testing 13 consists of those methods whose purpose is to detect the presence of trace organics in hazardous waste samples, and do not require the use of a gas chromatographic/mass spectrophotometric device and encompasses the following Subgroups: EPA method 8010 for halogenated volatiles; EPA method 8015 for nonhalogenated volatiles; EPA method 8020 for aromatic volatiles; EPA method 8030 for acrolein, acrylonitrile, acetonitrile; EPA method 8040 for phenols; EPA method 8060 for phthalate esters; EPA method 8080 for organochlorine pesticides or polychlorinated biphenyls; EPA method 8090 for nitroaromatics and cyclic ketones; EPA method 8100 for polynuclear aromatic hydrocarbon; EPA method 8130 for polynuclear aromatic hydrocarbons; EPA method 8120 for chlorinated hydrocarbons; EPA method 8140 for organophosphorus pesticides; EPA method 8150 for chlorinated herbicides; EPA method 632 for carbamates; total petroleum hydrocarbons – gasoline (LUFT manual); total petroleum hydrocarbons – diesel (LUFT manual); EPA method 8011; EPA method 8021; EPA method 8070; EPA method 8110; EPA method 8141; EPA method 8330; EPA method 8080 for PCBs only; EPA method 8080 for chlorinated pesticides only.

(n) Field of Testing 14 consists of those methods whose purpose is to detect the presence of asbestos for purposes of complying with the provisions of Title 22, California Code of Regulations, Section 66261.24(a)92)(A) and encompasses the following Subgroups: asbestos by polarized light microsopy.

(o) Field of Testing 15 shall be any method whose purpose is to detect the presence of any analyte found in the list of substances regulated by the California Safe Drinking Water and Toxic Enforcement Act in drinking water, wastewater, hazardous wastes, and contaminated soils or sediments, but which method is not within any subgroup of any other Field of Testing cited in this section.

(p) Field of Testing 16 consists of those methods whose purpose is to detect the presence of inorganic substances, nutrients, physical or chemical demands, or physical properties in the determination of wastewater quality, and whose methods require the use colorimetric, gravimetric, titrimetric, electrometric, or ion chromatographic technics and encompasses the following Subgroups: acidity; alkalinity (includes determination of bicarbonate, carbonate, & hydroxide); ammonia; biochemical oxygen demand (BOD); boron; bromide; calcium (titrimetric technics); carbonaceous biochemical oxygen demand (cBOD); chemical oxygen demand (COD); chloride; chlorine residual, total; cyanide; cyanide amenable to chlorination; fluoride; hardness (direct determination); kjeldahl nitrogen (includes determination of organic nitrogen); magnesium (titrimetric technics); nitrate; nitrite; oil and grease; organic carbon; oxygen, dissolved, pH; phenols; phosphate ortho; phosphorus, total; potassium (flame emission technics); residue, total; residue, filterable (total dissolved solids); residue, nonfilterable (total suspended solids); residue, settleable (settleable solids); residue, volatile; silica; sodium (flame emission technics); specific conductance; sulfate; sulfide (includes total and soluble); sulfite; surfactants (MBAs); tannin and lignin; turbidity; iron; manganese; total recoverable hydrocarbons by EPA method 418.1; total organic halides.

(q) Field of Testing 17 consists of those methods whose purpose is to detect the presence of trace metals, or asbestos in the determination of wastewater quality and whose methods require the use of an atomic absorption, inductively coupled plasma, inductively coupled plasma/mass spectrophotometer, or electron microscope device and encompasses the following Subgroups: aluminum; antimony; arsenic; barium; beryllium; cadmium; chromium (VI); chromium, total; cobalt; copper; gold; iridium; iron; lead; manganese; mercury; molybdenum; nickel, osmium; palladium; platinum; rhodium; ruthenium; selenium; silver; strontium; thallium; tin; titanium; vanadium; zinc; asbestos; calcium; magnesium; potassium; sodium.

(r) Field of Testing 18 consists of those methods whose purpose is to detect the presence of trace organics in the determination of wastewater quality, and require the use of a gas chromatographic/mass spectrophotometric device and encompasses the following Subgroups: EPA method 624 for volatile organics; EPA method 625 for acid and base/neutral compounds; EPA method 1613 for dioxins; EPA method 1625 for dioxins; EPA method 613.

(s) Field of Testing 19 consists of those methods whose purpose is to detect the presence of trace organics in the determination of wastewater quality, and do not require the use of a gas chromatographic/mass spectrophotometric device and encompasses the following Subgroups: EPA method 601 for halogenated volatiles; EPA method 602 for aromatic volatiles; EPA method 603 for acrolein, acrylonitrile, acetonitrile; EPA method 604 for phenols; EPA method 605 for benzidine; EPA method 606 for phthalate esters; EPA method 607 for nitrosoamines; EPA method 608 for organochlorine pesticides or polychlorinated biphenyls; EPA method 609 for nitroaromatics and cyclic ketones; EPA method 610 for polynuclear aromatics; EPA method 612 for haloethers; EPA method 632 for carbamates; EPA method 619; EPA method 608 for PCBs only; EPA method 608 for chlorinated pesticides only.

(t) Field of Testing 20 consists of those methods whose purpose is to detect the presence of inorganic pesticide residues in raw agricultural or bulk processed food and encompasses the following Subgroups: pesticide residues in processed foods detected by either atomic absorption, inductively coupled plasma, inductively coupled plasma/mass spectrophotometer, or colorimetric technics; pesticide residues in raw commodities detected by either atomic absorption, inductively coupled plasma, inductively coupled plasma/mass spectrophotometer, or colorimetric technics; pesticide residues in dairy products detected by either atomic absorption, inductively coupled plasma, inductively coupled plasma/mass spectrophotometer, or colorimetric technics; pesticide residues in feed products detected by either atomic absorption, inductively coupled plasma, inductively coupled plasma/mass spectrophotometer, or colorimetric technics.

(u) Field of Testing 21 consists of those methods whose purpose is to detect the presence of organic pesticide residues in raw agricultural or bulk processed food, and require the use of a gas chromatographic/mass spectrophotometric device and encompass the following Subgroups: chromatographic/mass spectrophotometric methods in either processed foods; raw commodities; dairy products; feed products.

(v) Field of Testing 22 consists of those methods whose purpose is to detect the presence of organic pesticide residues in raw agricultural or bulk processed food, and do not require the use of a gas chromatographic/mass spectrophotometric device and encompass the following Subgroups: halogenated compounds in processed foods detected by either gas chromatography, high pressure liquid chromatography, or liquid chromatography/mass spectrophotometry technics; organophosphorous compounds in processed foods detected by either gas chromatography, high pressure liquid chromatography, or liquid chromatography/mass spectrophotometry technics; carbamates in processed foods detected by either gas chromatography, high pressure liquid chromatography, or liquid chromatography/mass spectrophotometry technics; halogenated compounds in raw commodities detected by either gas chromatograph, high pressure liquid chromatography, or liquid chromatography/mass spectrophotometry technics; organophosphorous compounds in raw commodities detected by either gas chromatography, high pressure liquid chromatography, or liquid chromatography/mass spectrophotometry technics; carbamates in raw commodities detected by either gas chromatography, high pressure liquid chromatography, or liquid chromatography/mass spectrophotometry technics; halogenated compounds in dairy products detected by either gas chromatography, high pressure liquid chromatography, or liquid chromatography/mass spectrophotometry technics; organophosphorous compounds in dairy products detected by either gas chromatography, high pressure liquid chromatography, or liquid chromatography/mass spectrophotometry technics; carbamates in dairy products detected by either gas chromatography, high pressure liquid chromatography, or liquid chromatography/mass spectrophotometry technics; halogenated compounds in feed products detected by either gas chromatography, high pressure liquid chromatography, or liquid chromatography/mass spectrophotometry technics; organophosphorous compounds in feed products detected by either gas chromatography, high pressure liquid chromatography, or liquid chromatography/mass spectrophotometry technics; carbamates in feed products detected by either gas chromatography, high pressure liquid chromatography, or liquid chromatography/mass spectrophotometry technics.

(w) Field of Testing 23 consists of the subgroup members appropriate to the Field of Testing stated by the laboratory, pursuant to Section 64805(b)(1).

NOTE: Authority cited: Sections 208 and 1011, Health and Safety Code. Reference: Sections 1012, 1013, 1015, 1017 and 1019, Health and Safety Code.

HISTORY

1. New article 12 and section filed 12–2–94; operative 12–2–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 48).

Article 13. Trade Secrets

§ 64825. Trade Secrets.

(a) If a laboratory identifies information provided to the Department as a trade secret, the Department shall not release such information unless:

(1) the release is authorized under state or federal law; and

(2) the Department has notified the laboratory of the impending release. Such notification shall be at least ten days prior to releasing any information identified as a trade secret, stating the name of the party requesting the information, the reason for the request, the authority to release this information, and the date the information will be released.

NOTE: Authority cited: Sections 208, 1011 and 1012, Health and Safety Code. Reference: Sections 1012 and 1013, Health and Safety Code; Section 6254.7(d), Government Code.

HISTORY

1. New article 13 and section filed 12–2–94; operative 12–2–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 48).

Article 14. Sale or Transfer of Ownership of a Laboratory

§ 64827. Sale or Transfer of Ownership.

(a) A certificate shall be voided by operation of law if one or more of the following occurs.

(1) An original Owner fails to notify the Department, in writing, within 15 days after a change in ownership.

(2) A new Owner relocates the laboratory within 90 days of assuming ownership.

(3) If more than half the number of laboratory persons either quit or are terminated and replaced by a new Owner within 90 days of assuming ownership.

(4) If a new Owner submits an application to alter the laboratory's certificate as issued to the prior Owner by the addition of any Subgroup within any Field of Testing.

(b) A new Owner of a laboratory shall notify the Department, in writing, within 15 days after the sale or transfer of ownership and provide, at minimum, the following information.

(1) The name(s) of the new Owner(s).

(2) The date of sale or transfer of ownership.

(3) The name, education and laboratory related work experiences, as specified in Section 64817(a); or voluntary laboratory certificate grade as specified in Section 64817(b), of the person designated as the Laboratory Director.

(4) The names, education and laboratory related work experiences, as specified in Section 64817(g); or voluntary laboratory certificate grade as specified in Section 64817(h), of all persons who are designated as Principal Analysts.

(5) The names of all Principal Analysts who have quit, or were terminated and replaced; and the names of all Principal Analysts hired as replacements.

(6) A statement that there will be no changes in laboratory location, or in the certificate issued to the prior Owner(s) within 90 days of assuming ownership.

(7) A statement that all equipment, method, and quality assurance practices will not change within 90 days of assuming ownership.

(8) The notice shall be signed by one or more of the new Owner(s), or their Agents.

(c) New Owners that comply with the provisions of (b) above shall have use of the certificate issued to the prior Owner for a period of ninety days commencing with the date of the Department's notice of receipt of the information supplied by the new Owner.

(1) The certificate number and the laboratory name appearing on the certificate shall remain the same.

(2) The new Owner shall display, and provide a copy with all data reports, the Department's notice recognizing the sale or transfer of ownership.

(d) To obtain the use of the certificate to its original expiration date, the new Owner shall request such use in writing, and the laboratory shall be subjected to, and pass the following, within the 90 days use period granted by the Department.

(1) A site visit in accordance with Section 64807; and

(2) Performance evaluation samples in accordance with Section 64809.

NOTE: Authority cited: Sections 208, 1011 and 1012, Health and Safety Code. Reference: Section 1014, Health and Safety Code.

HISTORY

1. New article 14 and section filed 12–2–94; operative 12–2–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 48).

Article 16. National Environmental Laboratory Accreditation Program (NELAP)

§ 64860. NELAP Accreditation Fees.

(a) The following schedule of fees shall apply to every environmental laboratory applying for an initial, amendment, or renewal of a National Environmental Laboratory Accreditation Program (NELAP) primary or secondary accreditation:

(1) A non–refundable application fee of $3,000 payable at the time of initial and renewal application for accreditation, and

(2) An additional non–refundable fee for each Field of Testing specified in Health and Safety Code Section 100862 which the laboratory has requested in its application, payable at the time of application for an initial, amended, or renewed NELAP accreditation, as follows:

(A) A fee of $750 for each low complexity Field of Testing, identified as Fields of Testing number N115, N120, and N121.

(B) A fee of $1000 for each medium complexity Field of Testing, identified as Field of Testing number N101, N102, N103, N106, N107, N108, N109, N112, N114, and N118.

(C) A fee of $1,800 for each high complexity Field of Testing, identified as Field of Testing number N104, N105, N110, N111, N113, N116, N117 and N119.

(b) No environmental laboratory shall be approved as a NELAP accredited laboratory until fees provided by this section have been paid.

NOTE: Authority cited: Sections 100830, 100835(a) and 100862, Health and Safety Code. Reference: Section 100825, Health and Safety Code.

HISTORY

1. New article 16 (section 64860) and section filed 11–13–2001 as an emergency; operative 11–13–2001 (Register 2001, No. 46). A Certificate of Compliance must be transmitted to OAL by 3–13–2002 or emergency language will be repealed by operation of law on the following day.
2. New article 16 (section 64860) and section refiled 3–6–2002 as an emergency; operative 3–14–2002 (Register 2002, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–12–2002 or emergency language will be repealed by operation of law on the following day.
3. Repealed by operation of Government Code section 11346.1(g) (Register 2002, No. 29).
4. New article 16 (section 64860) and section filed 7–15–2002 as an emergency; operative 7–15–2002 (Register 2002, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–12–2002 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7–15–2002 order transmitted to OAL 11–7–2002 and filed 12–23–2002 (Register 2002, No. 52).

Chapter 20. Public Swimming Pools

Article 1. Definitions and Scope

§ 65501. Definitions.

(a) "Swimming Pool" or "Pool" means an artificial basin, chamber or tank used, or intended to be used, for public swimming, diving, or recreative bathing, but does not include baths where the main purpose is the cleaning of the body, nor individual therapeutic tubs.

(b) "Wading Pool" means an artificial basin, chamber or tank used, or intended to be used, for wading by small children and having a maximum depth of not to exceed 46 centimeters (18 inches) at the deepest point nor more than 30 centimeters (12 inches) at the side walls.

(c) "Special Use Pools" means pools designed and used exclusively for a single purpose such as wading, instruction, diving, competition or medical treatment where a licensed professional in the healing arts is in attendance.

(d) "Enforcing Agent" means the Health Officer or Director of Environmental Health or their designated registered sanitarian representative.

(e) "Temporary Training Pool" means an artificial basin, chamber or tank intended to be used for instruction in swimming and so constructed as to be readily disassembled for storage or for transporting to and reassembling at a different location.

(f) "Spa Pool" means a pool, not used under medical supervision, that contains water of elevated temperature, and incorporates a water jet system, an aeration system or a combination of the two systems.

(g) "Department" means the State Department of Health Services.

NOTE: Authority cited: Sections 208 and 24102, Health and Safety Code. Reference: Sections 24100 through 24109, Health and Safety Code.

HISTORY

1. New Chapter 20 (Articles 1–3, Sections 65501–65547, not consecutive) filed 10–16–80; designated effective 10–1–81 (Register 80, No. 42).
2. Editorial correction of effective date of History Note No. 1 (Register 80, No. 52).
3. Editorial change filed 9–4–81 redesignating effective date of 10–16–80 order from 10–1–81 to 12–30–81 (Register 81, No. 36).

§ 65503. Scope.

(a) The provisions of this Chapter shall apply to all pools as defined in Section 65501, including but not limited to:

(1) Commercial pools.

(2) Real estate pools.

(3) Community pools.

(4) Hotel pools.

(5) Motel pools.

(6) Resort pools.

(7) Auto and trailer park pools.

(8) Auto court pools.

(9) Apartment house pools.

(10) Club pools.

(11) Public or private school pools.

(12) Gymnasium pools.
(13) Health establishment pools.
(14) Townhouse pools.
(15) Condominium pools.
(16) Mobile home park pools.
(17) Campground pools.
(18) Homeowner association pools.

(b) Only private pools maintained by an individual for the use of family and friends are exempt from the provisions of this Chapter.

(c) The provisions of this Chapter shall apply to all auxiliary structures and equipment provided and maintained in connection with pools, including but not limited to:

(1) Locker rooms.
(2) Shower rooms.

[The next page is 623.]

(3) Dressing rooms.
(4) Toilet facilities.
(5) Filtration equipment.
(6) Pumping equipment.
(7) Piping.
(8) Disinfecting equipment.
(9) Safety equipment.

NOTE: Authority cited: Sections 208 and 24102, Health and Safety Code. Reference: Section 24100, Health and Safety Code.

Article 2. Plans, Construction and Inspection

§ 65505. Plans and Specifications.

(a) A person proposing to construct, reconstruct or alter a swimming pool or auxiliary structure or equipment shall submit legible plans and specifications to the enforcing agent for review and written approval prior to commencing the work and in advance of the issuance of any building, plumbing or electrical permit.

(b) Plans submitted for approval pursuant to this section shall be drawn to a scale of 1 centimeter equals 0.48 meters (1/4 inch equals 1 foot), except that plans for spa pools shall be drawn to a scale of 1 centimeter equals 0.12 meters (1 inch equals 1 foot).

(c) The enforcing agent may require the submission of such additional information as may be required to determine the compliance of plans and specifications submitted for approval.

(d) Within 30 days of the receipt of plans and specifications, the enforcing agent shall notify the person submitting the plans and specifications of their approval or disapproval.

NOTE: Authority cited: Sections 208 and 24102, Health and Safety Code. Reference: Section 24101.1, Health and Safety Code.

§ 65507. Records.

(a) The enforcing agent shall retain one copy of the plans and specifications submitted for approval.

(b) At the request of the Department, the enforcing agent shall make available to the Department records pertaining to swimming pools which are within the enforcing agent's jurisdiction.

NOTE: Authority cited: Sections 208 and 24102, Health and Safety Code. Reference: Sections 24101.1 and 24105, Health and Safety Code.

§ 65509. Construction.

(a) Swimming pools shall be constructed, reconstructed or altered in compliance with plans approved pursuant to Section 65505, unless written approval of variance from such plans is obtained from the enforcing agent.

(b) Swimming pools shall conform to the requirements of Chapter 2–90, Title 24, Building Standards, California Administrative Code.

NOTE: Authority cited: Sections 208 and 24102, Health and Safety Code. Reference: Section 24101.1, Health and Safety Code.

§ 65511. Inspection.

(a) The swimming pool owner, or his designated agent, shall notify the enforcing agent at least two working days before guniting or constructing the pool shell to allow inspection and approval by the enforcing agent. Following pool construction, the enforcing agent shall again be notified at least two days in advance of placing the pool in operation to allow for final inspection and approval.

(b) No pool shall be placed in use without the written approval of the enforcing agent.

NOTE: Authority cited: Sections 208 and 24102, Health and Safety Code. Reference: Sections 24101.1 and 24104, Health and Safety Code.

Article 3. Maintenance and Operation

§ 65521. Pool Supervision Responsibility.

(a) Every pool shall be under the supervision of a person who is fully capable of, and shall assume responsibility for, compliance with all requirements relating to pool operation, maintenance and safety of bathers.

(b) No pools shall be used or available for use unless all of the requirements of subsection (a) and the following are complied with.

(1) Routine (e.g., daily and weekly) operating procedures shall be permanently posted in a location accessible to and frequented by the operator.

(2) Manufacturers' instructions for operation and maintenance of mechanical and electrical equipment shall be kept available for the operator.

NOTE: Authority cited: Sections 208 and 24102, Health and Safety Code. Reference: Sections 24102.2 and 24101.3, Health and Safety Code.

§ 65523. Operation Records.

(a) Except as provided in Health and Safety Code, Section 24101.5, the operator of each pool open for use shall keep a daily record of information regarding operation, including readings of disinfectant residual, pH and maintenance procedures such as cleaning of filters and quantity of chemicals used.

(b) If cyanuric acid by itself or in a combined form with the disinfectant is added to a pool, the cyanuric acid concentration shall be measured a minimum of once per month and records shall be kept of the results of such testing.

(c) Data collected pursuant to subsections (a) and (b) shall be maintained at least one year for inspection by the enforcing agent, or shall be submitted to the enforcing agent upon request.

NOTE: Authority cited: Sections 208, 24101.5 and 24102, Health and Safety Code. Reference: Sections 24101.2, 24101.3 and 24101.5, Health and Safety Code.

HISTORY

1. Amendment of subsections (a) and (c) filed 8–20–87; operative 9–19–87 (Register 87, No. 35).

§ 65525. Recirculation and Purification System Operation.

The pumps, filters, disinfectant and chemical feeders, flow indicators, gauges and all related parts of the pool water purification system shall be kept in operation whenever the pool is available for use, and at such additional times and periods as may be necessary to maintain the water in the pool in a clear and disinfected condition. The variation in flow during a filtration cycle shall be such as to not reduce the flow below 65 percent of the rate required in Section 2–9032 of Title 24, California Administrative Code.

NOTE: Authority cited: Sections 208 and 24102, Health and Safety Code. Reference: Sections 24101.3 and 24102, Health and Safety Code.

HISTORY

1. Change without regulatory effect (Register 86, No. 51).

§ 65527. Clarity of Water.

The recirculation and purification system shall be operated and maintained so as to keep the pool water clean and clear. Under no circumstances shall the pool be used if the main drain is not clearly visible from the deck. Such a pool shall be closed and shall not be reopened until the water is clean and clear, and upon specific written approval of the enforcing agent. If the pool drain is still not visible 48 hours following inspection and closure by the enforcing agent, the enforcing agent may order the pool drained as a safety procedure.

NOTE: Authority cited: Sections 208 and 24102, Health and Safety Code. Reference: Sections 24101.3, 24102 and 24103 and 24104, Health and Safety Code.

§ 65529. Disinfection, pH Control and Cyanuric Acid

(a) Pools, when open or in use, shall be disinfected continuously by a chemical which imparts a residual effect and shall be maintained in an alkaline condition at a pH between 7.2 and 8.0. For pools using hypochlorite or gaseous chlorine without a stabilizer, a free chlorine residual of at least 1.0 ppm shall be maintained throughout the pool. If cyanuric acid

or a chlorinated isocyanurate is used, a free chlorine residual of at least 1.5 ppm shall be maintained throughout the pool. The cyanuric acid concentration in any pool shall not exceed 100 ppm. Appropriate test kits for measuring the pH, concentration of the disinfectant, and, when used, concentration of cyanuric acid shall be provided at each pool. If halogens other than chlorine are used, residuals of equivalent strength shall be maintained. A test kit for measuring the concentration of the disinfectant accurate to within 0.1 ppm shall be available at each pool.

(b) When test kits for chlorine utilize comparative color standards, the standards shall be accurate to within plus or minus 0.1 ppm. There shall be at least four color standards as follows: 0.6, 1.0, 1.5 and 2.0. The test kit shall be capable of testing for free chlorine residual.

(c) The enforcing agent may accept other disinfecting materials or methods after they have been demonstrated to provide a readily measurable residual. Such materials or methods must not be dangerous to public health or create objectionable physiological effects.

NOTE: Authority cited: Sections 208 and 24102, Health and Safety Code. Reference: Sections 24101.3, Health and Safety Code.

HISTORY

1. Editorial correction of printing error in subsection (a) (Register 92, No. 29).

§ 65531. Bacteriological and Chemical Quality of Pool Water.

(a) Bacteriological quality of water in the pool shall be such that not more than two consecutive samples, taken when the pool is in use, shall:

(1) Contain more than 200 bacteria per milliliter, as determined by the standard (35°C.) plate count; or

(2) Contain a total coliform organism MPN (most probable number) count of 2.2 or greater per 100 milliliters of sample.

(b) Chemical quality of water in the pool shall not cause irritation of eyes or skin of the bathers, or have other objectionable physiological effects on bathers.

NOTE: Authority cited: Sections 208 and 24102, Health and Safety Code. Reference: Sections 24101.3, Health and Safety Code.

HISTORY

1. Change without regulatory effect of subsection (a) (1) (Register 86, No. 51).

§ 65533. Cleanliness of Pool.

(a) Floating scum, sputum or debris shall not be allowed to accumulate in the pool. Skimmers, where provided, and water levels shall be maintained and operated to remove such material continuously. The bottom and sides of the pool shall be cleaned as often as necessary to be kept in a clean condition. The sides and bottom of pools, decks, and other surfaces shall be kept free of slime and algae.

(b) Animals shall not be permitted in the pool or pool area.

NOTE: Authority cited: Sections 208 and 24102, Health and Safety Code. Reference: Sections 24101.3, Health and Safety Code.

§ 65535. Cleaning and Maintenance.

(a) All parts of the pool and related pool facilities and equipment shall be maintained in good repair. Floors shall be kept free from cracks and other defects and in compliance with Section 2–9021, Title 24, California Administrative Code. Walls, ceilings, partitions, doors, lockers and similar surfaces and equipment shall be refinished in a manner acceptable to the enforcing agent as often as necessary to be kept in a state of good repair.

(b) Hoses shall be provided for regular flushing and cleaning. The whole pool area shall be kept clean, sanitary and free of litter and vermin.

(c) Toilets, urinals, showers, wash basins and other plumbing fixtures shall be maintained in a clean condition, and in good repair.

NOTE: Authority cited: Sections 208 and 24102, Health and Safety Code. Reference: Sections 24101.3, Health and Safety Code.

HISTORY

1. Change without regulatory effect of subsection (a) (Register 86, No. 51).

§ 65537. Bathing Suits, Caps and Towels.

Bathing suits and towels furnished by the management shall be laundered and clean, and caps shall be sanitized after each usage.

NOTE: Authority cited: Sections 208 and 24102, Health and Safety Code. Reference: Sections 24101.3, Health and Safety Code.

§ 65539. Lifesaving, First Aid and Control of Bathers.

(a) Lifeguard services shall be provided in accordance with Sections 24100.1 and 24101.4 of the Health and Safety Code.

(b) Where lifeguard service is provided, the number of lifeguards shall be adequate to maintain continuous surveillance over the bathers.

(c) Where no lifeguard service is provided, a warning sign shall be placed in plain view and shall state "Warning—No Lifeguard on Duty" with clearly legible letters at least 10.2 centimeters (4 inches) high. In addition, the sign shall also state "Children Under the Age of 14 Should Not Use Pool Without an Adult in Attendance."

(d) The enforcing agent may require posting of notices directing the bathers to make use of the toilets and showers before entering the pool. At all pools, diagrammatic illustrations of artificial respiration procedures shall be posted where clearly visible from the nearby deck. Such illustrations shall be protected against the elements. Also, the telephone number of the nearest ambulance, fire and police or sheriff's department shall be kept similarly posted along with instructions that, if needed, manual or mouth–to–mouth artificial respiration should be started immediately and continued until a physician arrives or mechanical resuscitators are applied.

(e) Every swimming pool shall be equipped for safety and rescue procedures with one or more rescue poles not less than 3.5 meters (12 feet) in length with body hooks, and one or more life rings having a minimum exterior diameter of 43 centimeters (17 inches) readily accessible for use. Such life rings shall have attached to them an 0.476 centimeter (3/16–inch) line long enough to span the maximum width of the pool. The line shall be stored when not in use in such a way as to prevent kinking or fouling. When rescue can be effected from the perimeter of a spa pool, such a pool may be exempt from the requirements of this paragraph if so approved by the enforcing agent.

(f) When, in the opinion of the enforcing agent, any pool is of such size that unaided swimmings by lifeguards may not offer sufficient protection to swimmers, one or more square–sterned boats equipped with oars, oarlocks and life rings, or paddle boats, as the enforcing agent shall order, shall be provided.

(g) A first aid kit shall be provided at all swimming pools when required by the enforcing agent.

NOTE: Authority cited: Sections 208 and 24102, Health and Safety Code. Reference: Sections 24101.2, 24101.3 and 24102, Health and Safety Code.

§ 65541. Health of Employees and Patrons.

(a) No person having a communicable disease shall be employed at a public swimming pool.

(b) All patrons known to be, or suspected by the enforcing agent or the management of being afflicted with an infectious disease, suffering from a cough, cold or sores, or wearing bands or bandages shall be excluded from all public bathing places unless at least one of the following conditions is met:

(1) The patron submits a current written statement, signed by a licensed physician, confirming that the patron does not present a health hazard to other pool users.

(2) Pool use by patron is approved by the enforcing agent.

NOTE: Authority cited: Sections 208 and 24102, Health and Safety Code. Reference: Sections 24101.2, 24101.3 and 24102, Health and Safety Code.

§ 65543. Wading Pool—Water Clarity.

The water of every wading pool shall be kept sufficiently clear so that the bottom of the wading pool will be visible at all times.

NOTE: Authority cited: Sections 208 and 24102, Health and Safety Code. Reference: Sections 24101.3, Health and Safety Code.

§ 65545. Pool Closure.

(a) If, in the opinion of the enforcing agent, a pool is maintained or operated in a manner which creates an unhealthful, unsafe, or unsanitary condition, the pool may be closed by the enforcing agent. Such a pool shall not be reopened until correction is made, and upon specific written approval of the enforcing agent.

(b) Unhealthful, unsafe or unsanitary conditions include, but are not limited to, the failure to meet clarity, disinfection, pH, safety or bacteriological standards.

NOTE: Authority cited: Sections 208 and 24102, Health and Safety Code. Reference: Sections 24101.2, 24101.3 and 24104, Health and Safety Code.

§ 65547. Compressed Chlorine Gas.

(a) When compressed chlorine gas is employed, the following requirements shall be met:

(1) A solution of commercial strength ammonia shall be kept available for use in testing for chlorine gas leaks.

(2) A gas mask designed for use in a chlorine atmosphere shall be provided unless a self–contained breathing apparatus meeting the requirements of paragraph (a) (3) is provided. Gas masks shall be of a type approved by the U.S. Bureau of Mines and/or the National Institute for Occupational Safety and Health. The following requirements for gas mask canisters shall be met:

(A) A replacement canister shall be provided and kept serviceable. Any canister which has been utilized during chlorine leakage shall be discarded and a replacement canister provided.

(B) The date of attaching a canister to the mask breathing tube shall be recorded on the canister. The canister shall be discarded one year from the date of attachment, or sooner if the canister is expended as shown by the indicator color change.

(C) Date stamped expired canisters shall be replaced with unexpired, unused canisters.

(3) A self–containing breathing apparatus may be used in place of a gas mask only if all pool attendants and lifeguards who may be responsible for the health and safety of pool users have received formal training in the use of the equipment. Following initial formal training, responsible pool attendants and lifeguards shall receive refresher training at least once every six months if working at pools which are open year–round. For pools open on a seasonal basis, all returning responsible personnel shall receive retraining on the use of the equipment before the pool is opened for the season. The self–contained breathing apparatus provided shall comply with the provisions of Section 5144 of Title 8, California Administrative Code, and the following:

(A) Only parts approved for the specific respiratory system shall be used for replacement.

(B) The respirator equipment shall be kept at a readily accessible point outside the room in which the chlorinator is maintained.

(4) All swimming pools with gas type automatic chlorinators shall post in a conspicuous location near the entrance to the pool an emergency pool evacuation procedure.

(A) Emergency exit doors or gates shall not be locked when the pool is open for use. Keys to such doors and gates shall be readily available to pool attendants and lifeguards.

(B) Pool attendants and lifeguards shall receive training in the application of effective pool emergency procedures. Such training shall be reviewed at least once every six months for pools open year–round. For pools open on a seasonal basis, training in emergency procedures shall be be conducted before the pool is opened for the season.

NOTE: Authority cited: Sections 208 and 24102, Health and Safety Code. Reference: Sections 24101.2, 24101.3 and 24102, Health and Safety Code.

§ 65549. Replacement of Equipment or Appurtenances.

When fixed or installed equipment or appurtenances are changed or replaced, the change or replacement units shall meet applicable requirements of this Chapter subject to the provisions of Section 24102 of the Health and Safety Code, and shall first be cleared with the enforcing agent before substitution if not an exact duplicate of the units being changed or replaced.

NOTE: Authority cited: Sections 208 and 24102, Health and Safety Code. Reference: Sections 24101.1, 24101.3 and 24102, Health and Safety Code.

HISTORY

1. New section filed 1–14–81; designated effective 10–1–81 (Register 81, No. 3).

§ 65551. Shower, Toilet and Dressing Facilities.

(a) For shower, toilet and dressing facilities, the walls, partitions, doors, lockers and similar surfaces which require periodic cleaning shall be maintained smooth and finished so as to facilitate cleaning.

(b) Showers shall be provided with soap in soap dispensers or containers.

(c) For toilet facilities, handwashing detergent or soap, sanitary towels or hot air blowers, and toilet tissues shall be provided in permanently installed dispensing devices.

NOTE: Authority cited: Sections 208 and 24102, Health and Safety Code. Reference: Section 24101.3, Health and Safety Code.

HISTORY

1. New section filed 1–14–81; designated effective 10–1–81 (Register 81, No. 3).

Chapter 21. Minimum Standards for Permitting Medical Waste Facilities

Article 1. Definitions and Scope

§ 65600. Onsite.

(a) "Onsite" means a medical waste treatment facility on the same or adjacent property as the generator of the medical waste being treated.

(b) "Adjacent," for purposes of subdivision (a), means real property within 400 yards from the property boundary of the existing onsite medical waste treatment facility.

NOTE: Authority cited: Sections 208 and 25017, Health and Safety Code. Reference: Sections 25025.8, 25040.(d) and 25050.(d), Health and Safety Code.

HISTORY

1. New section filed 10–15–91 as an emergency; operative 10–15–91 (Register 92, No. 7). A Certificate of Compliance must be transmitted to OAL 2–12–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–23–92 as an emergency; operative 2–12–92 (Register 92, No. 15). A Certificate of Compliance must be transmitted to OAL 6–11–92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 1–23–92 order including newly designated subsection (a), adoption of subsection (b) and amendment of NOTE transmitted to OAL 6–2–92 and filed 7–14–92 (Register 92, No. 29).
4. Editorial correction of HISTORY 2 (Register 95, No. 47).

§ 65601. Offsite.

"Offsite" means any location which is not onsite.

NOTE: Authority cited: Sections 208 and 25017, Health and Safety Code. Reference: Sections 25025.5 and 25070, Health and Safety Code.

HISTORY

1. New section filed 10–15–91 as an emergency; operative 10–15–91 (Register 92, No. 7). A Certificate of Compliance must be transmitted to OAL 2–12–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–23–92 as an emergency; operative 2–12–92 (Register 92, No. 15). A Certificate of Compliance must be transmitted to OAL 6–11–92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 1–23–92 order transmitted to OAL 6–2–92 and filed 7–14–02 (Register 92, No. 29).
4. Editorial correction of HISTORY 2 (Register 95, No. 47).

§ 65602. Transfer Station.

"Transfer station" means any offsite location where medical waste is loaded, unloaded, or stored during the normal course of transportation of the medical waste. "Transfer station" does not include common storage facilities, large quantity generators used for the purpose of consolidation, or onsite treatment facilities.

NOTE: Authority cited: Sections 208 and 25017, Health and Safety Code. Reference: Sections 25020.8, 25027.5, 25062, 25070.2 and 25070.3, Health and Safety Code.

HISTORY

1. New section filed 10–15–91 as an emergency; operative 10–15–91 (Register 92, No. 7). A Certificate of Compliance must be transmitted to OAL 2–12–92

or emergency language will be repealed by operation of law on the following day.

2. New section refiled 1–23–92 as an emergency; operative 2–12–92 (Register 92, No. 15). A Certificate of Compliance must be transmitted to OAL 6–11–92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 1–23–92 order including amendment of section transmitted to OAL 6–2–92 and filed 7–14–92 (Register 92, No. 29).
4. Editorial correction of HISTORY 2 (Register 95, No. 47).

§ 65603. Applicant.

"Applicant" means an owner, operator, or other person who applies to the enforcement agency for a permit pursuant to this chapter.

NOTE: Authority cited: Sections 208 and 25017, Health and Safety Code. Reference: Sections 25030, 25030.1, 25030.4 and 25072, Health and Safety Code.

HISTORY

1. New section filed 10–15–91 as an emergency; operative 10–15–91 (Register 92, No. 7). A Certificate of Compliance must be transmitted to OAL 2–12–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–23–92 as an emergency; operative 2–12–92 (Register 92, No. 15). A Certificate of Compliance must be transmitted to OAL 6–11–92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 1–23–92 order including amendment of section transmitted to OAL 6–2–92 and filed 7–14–92 (Register 92, No. 29).
4. Editorial correction of HISTORY 2 (Register 95, No. 47).

§ 65604.

"Enforcement agency" means the Department of Health Services or the local agency administering the Medical Waste Management Act.

NOTE: Authority cited: Sections 208 and 25017, Health and Safety Code. Reference: Section 25021.2, 25034.8 and 25040, Health and Safety Code.

HISTORY

1. New section filed 7–14–92; operative 7–14–92 (Register 92, No. 29).

Article 2. General Provisions

§ 65610. Compliance with the California Environmental Quality Act (CEQA).

(a) All medical waste treatment facility or transfer station permit applications, and applications for permit revisions, modifications, and amendments shall be accompanied by the following:

(1) Information necessary to enable the enforcement agency to comply with the requirements of the California Environmental Quality Act (Public Resources Code Sections 21000–21174). This information shall be either:

(A) A copy of any environmental impact report (EIR) or negative declaration prepared by a lead agency, evidence that a lead agency is preparing or will prepare environmental documentation, or other evidence deemed acceptable by the enforcement agency of showing compliance with the requirements of CEQA.

(B) Where the enforcement agency is required by law to be the lead agency, the applicant shall submit environmental information as set forth in the CEQA guidelines, Title 14, Division 6, Chapter 3, Sections 15000 through 15387 and Appendix H of the California Code of Regulations.

NOTE: Authority cited: Sections 208 and 25017, Health and Safety Code; and Section 65940, Government Code. Reference: Sections 25071, 25072 and 25077, Health and Safety Code; Sections 21100.2 and 21151.5, Public Resources Code; and Section 65940, Government Code.

HISTORY

1. New section filed 10–15–91 as an emergency; operative 10–15–91 (Register 92, No. 7). A Certificate of Compliance must be transmitted to OAL 2–12–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–23–92 as an emergency; operative 2–12–92 (Register 92, No. 15). A Certificate of Compliance must be transmitted to OAL 6–11–92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 1–23–92 order including amendment of section transmitted to OAL 6–2–92 and filed 7–14–92 (Register 92, No. 29).
4. Editorial correction of HISTORY 2 (Register 95, No. 47).

§ 65611. Application Procedures.

(a) Any person proposing to operate an offsite medical waste treatment facility or transfer station shall submit an application for a medical waste treatment facility or transfer station to the Department. Any person proposing to operate an onsite medical waste treatment facility shall submit an application for an onsite medical waste treatment facility permit to the enforcement agency. Submission of an application for an offsite medical waste treatment facility permit, or a modification or renewal thereof, shall be deemed to occur on the date the application is received by the Department. Submission of an application for an onsite medical waste treatment facility permit, or a modification or renewal thereof, shall be deemed to occur on the date the application is received by the enforcement agency.

(b) An application for a medical waste treatment facility or transfer station permit, or a modification or renewal thereof, is considered complete when the applicant has fully complied with the application requirements set forth in Sections 65610, 65621, and 65625 of this chapter.

NOTE: Authority cited: Section 15376, Government Code; and sections 208, 25017 and 25072, Health and Safety Code. Reference: Section 15376, Government Code; and sections 25070 and 25072, Health and Safety Code.

HISTORY

1. New section filed 10–15–91 as an emergency; operative 10–15–91 (Register 92, No. 7). A Certificate of Compliance must be transmitted to OAL 2–12–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–23–92 as an emergency; operative 2–12–92 (Register 92, No. 15). A Certificate of Compliance must be transmitted to OAL 6–11–92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 1–23–92 order including amendment of section and NOTE transmitted to OAL 6–2–92 and filed 7–14–92 (Register 92, No. 29).
4. Editorial correction of HISTORY 2 (Register 95, No. 47).

§ 65612. Determination of Completeness and Notification.

(a) Within 30 calendar days of receipt of an application for a medical waste treatment facility or transfer station permit, or a request for permit modification pursuant to Section 25078, Health and Safety Code, the enforcement agency shall inform the applicant in writing either that the application is complete and accepted for filing, or that it is deficient and identify the additional specific information necessary for the application to be complete.

(b) The date on which the application is determined complete for filing, or on which the application is determined deficient, shall be the date on which the enforcement agency's written notification to the applicant is postmarked.

NOTE: Authority cited: Section 15376, Government Code; and sections 208 and 25017, Health and Safety Code. Reference: Sections 15376, 65940 and 65943, Government Code; and section 25079, Health and Safety Code.

HISTORY

1. New section filed 10–15–91 as an emergency; operative 10–15–91 (Register 92, No. 7). A Certificate of Compliance must be transmitted to OAL 2–12–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–23–92 as an emergency; operative 2–12–92 (Register 92, No. 15). A Certificate of Compliance must be transmitted to OAL 6–11–92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 1–23–92 order including amendment of section transmitted to OAL 6–2–92 and filed 7–14–92 (Register 92, No. 29).
4. Editorial correction of HISTORY 2 (Register 95, No. 47).

§ 65613. Notice of Decision on Application.

(a) The notification of the enforcement agency's decision to grant or deny an application shall be mailed via certified mail to the applicant within 120 calendar days after the date on which the enforcement agency determines the application to be complete and accepted for filing.

(b) Within 20 days after the enforcement agency mails a notice of denial, the applicant may present a written petition for a hearing to the enforcement agency. Upon receipt of the petition, which shall clearly identify that it is an appeal, the petition shall be set for hearing.

(c) If the Department is the enforcement agency, the proceedings shall commence with the filing of a statement of issues and shall be conducted

in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(d) If the Department is not the enforcement agency, the hearings shall be held in accordance with the ordinance or resolution adopting the medical waste management program.

NOTE: Authority cited: Sections 208 and 25017, Health and Safety Code; section 15376, Government Code; and section 21100.2, Public Resources Code. Reference: Section 15376, Government Code; sections 25077 and 25079, Health and Safety Code; and sections 21100.2 and 21151.5, Public Resources Code.

HISTORY

1. New section filed 10–15–91 as an emergency; operative 10–15–91 (Register 92, No. 7). A Certificate of Compliance must be transmitted to OAL 2–12–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–23–92 as an emergency; operative 2–12–92 (Register 92, No. 15). A Certificate of Compliance must be transmitted to OAL 6–11–92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 1–23–92 order including amendment of subsections (c) and (d) transmitted to OAL 6–2–92 and filed 7–14–92 (Register 92, No. 29).
4. Editorial correction of HISTORY 2 (Register 95, No. 47).

§ 65614. Application Time Periods for Processing a Permit Based on Actual Performance.

(a) The Department's time periods for processing a medical waste facility permit, from receipt of the initial application to the final decision regarding the permit or registration, are as follows:

(1) The median time for processing is:

(A) 180 calendar days for a medical waste facility permit;

(2) The minimum time for processing is:

(A) 120 calendar days for a medical waste facility permit;

(3) The maximum time for processing is:

(A) 730 calendar days for a medical waste facility permit.

NOTE: Authority cited: Section 15376, Government Code; and sections 208 and 25017, Health and Safety Code. Reference: Section 15376, Government Code; and section 25077, Health and Safety Code.

HISTORY

1. New section filed 10–15–91 as an emergency; operative 10–15–91 (Register 92, No. 7). A Certificate of Compliance must be transmitted to OAL 2–12–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–23–92 as an emergency; operative 2–12–92 (Register 92, No. 15). A Certificate of Compliance must be transmitted to OAL 6–11–92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 1–23–92 order transmitted to OAL 6–2–92 and filed 7–14–92 (Register 92, No. 29).
4. Editorial correction of HISTORY 2 (Register 95, No. 47).

Article 3. Medical Waste Treatment Facility Permits

§ 65619. Requirements for Medical Waste Facility Permit.

For a new medical waste facility, the permittee may not commence treatment or storage of medical waste; and for a facility being modified, the permittee may not treat or store medical waste in the modified portion of the facility until the permittee has submitted evidence of successful completion of a trial burn, if applicable.

NOTE: Authority cited: Sections 208 and 25017, Health and Safety Code. Reference: Sections 25072 and 25078, Health and Safety Code.

HISTORY

1. New section filed 10–15–91 as an emergency; operative 10–15–91 (Register 92, No. 7). A Certificate of Compliance must be transmitted to OAL 2–12–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–23–92 as an emergency; operative 2–12–92 (Register 92, No. 15). A Certificate of Compliance must be transmittted to OAL 6–11–92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 1–23–92 order including amendment of section transmitted to OAL 6–2–92 and filed 7–14–92 (Register 92, No. 29).

§ 65620. Scope of Permit Requirement.

(a) Permits are required for storage and treatment of medical waste. Owners and operators of medical waste treatment facilities or transfer stations shall have a valid permit to operate while the facility is in operation. The period of operation includes cleanup and removal of medical waste prior to closure of the facility. The permit shall be terminated by the enforcement agency upon closure.

(b) The following persons are not required to obtain a permit pursuant to this article:

(1) Generators who accumulate their own medical waste on site for up to 7 days above 0 degrees Centigrade, or up to 90 days at or below 0 degrees Centigrade.

(2) A person is not required to obtain a permit for those activities carried out immediately to contain or treat a spill of biohazardous or sharps waste.

(3) Registered small quantity generators providing onsite treatment for their own waste.

NOTE: Authority cited: Sections 208 and 25017, Health and Safety Code. Reference: Sections 25040, 25040.5, 25062, 25070, 25081, 25084 and 25084.5, Health and Safety Code.

HISTORY

1. New section filed 10–15–91 as an emergency; operative 10–15–91 (Register 92, No. 7). A Certificate of Compliance must be transmitted to OAL 2–12–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–23–92 as an emergency; operative 2–12–92 (Register 92, No. 15). A Certificate of Compliance must be transmitted to OAL 6–11–92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 1–23–92 order including amendment of subsections (a), (b) and (b)(1) and NOTE transmitted to OAL 6–2–92 and filed 7–14–92 (Register 92, No. 29).
4. Editorial correction of HISTORY 2 (Register 95, No. 47).

§ 65621. Application for a Permit.

(a) Any person who is required to have a medical waste facility permit (including new applicants and permittees with expiring permits) shall complete, sign, and submit an original application with two copies to the enforcement agency. In order to continue operations after January 1, 1992, persons authorized to operate under an interim status infectious waste facility permit effective January 1, 1991, shall comply with the provisions of this article in submitting a medical waste treatment facility permit application. The application shall be completed by the applicant pursuant to Sections 65610 through 65612, 65622, and 65625 and must be approved by the enforcement agency prior to a permit being issued. Failure to provide the renewal information required in these sections prior to January 1, 1992, shall result in a final permit not being issued.

(b) For new onsite medical waste facilities, the application shall be filed with the enforcement agency, and written approval by the enforcement agency shall be provided before construction can commence. For all offsite medical waste facilities, the applications shall be filed with the Department and written approval by the Department shall be provided before construction can commence.

(c) Any ongoing medical waste treatment facility or transfer station with a valid permit which is about to expire shall submit a new permit application at least 90 days before the expiration date of the effective permit.

(d) When a facility is owned by one person but is operated by another person, it is the operator's duty to obtain a permit. Both the owner and operator shall sign the application.

(e) No medical waste shall be treated until the applicant has fully complied with the application requirements for that permit and the permit has been issued by the enforcement agency.

(f) Applicants shall keep records of all data used to complete the permit application, along with any supplemental information submitted, for the life of the permit.

NOTE: Authority cited: Sections 208 and 25017, Health and Safety Code. Reference: Sections 25070, 25072, 25074, 25077 and 25097, Health and Safety Code.

HISTORY

1. New section filed 10–15–91 as an emergency; operative 10–15–91 (Register 92, No. 7). A Certificate of Compliance must be transmitted to OAL 2–12–92

or emergency language will be repealed by operation of law on the following day.

2. New section refiled 1–23–92 as an emergency; operative 2–12–92 (Register 92, No. 15). A Certificate of Compliance must be transmitted to OAL 6–11–92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 1–23–92 order including amendment of subsections (a), (b), (c) and (e) transmitted to OAL 6–2–92 and filed 7–14–92 (Register 92, No. 29).
4. Editorial correction of HISTORY 2 (Register 95, No. 47).

§ 65622. Signatories to Permit Applications and Reports.

(a) All permit applications shall be signed by both the owner and operator of the medical waste facility as follows:

(1) For a corporation: By a responsible corporate officer authorized to make management decisions which govern the operation of the regulated facility.

(2) For a partnership or sole proprietorship: By a general partner or the proprietor, respectively; or

(3) For a municipality, state, federal or other public agency: By either a principal executive officer or ranking elected official.

(b) All reports required by permits and other information requested by the enforcement agency shall be signed by a person described in subsection (a) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in subsection (a) of this section;

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility, such as the position of plant manager, superintendent or position of equivalent responsibility (a duly authorized person may be a named individual or any individual occupying a named position); and

(3) The written authorization is submitted to the enforcement agency.

(c) If an authorization under subsection (b) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (b) of this section shall be submitted to the enforcement agency prior to or together with any reports, information or applications to be signed by an authorized representative.

(d) Any person signing a document under subsection (a) or (b) of this section shall make the following certification:

"I certify under penalty of perjury that this document and all attachments have been prepared under my direction and supervision in accordance with a system to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those directly responsible for gathering the information, the information is to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

City:_____

State:_____

Date:_____

Name:_____
(Please print)

Signature:_____"

NOTE: Authority cited: Sections 208 and 25017, Health and Safety Code. Reference: Sections 25072, 25098 and 25099.1, Health and Safety Code.

HISTORY

1. New section filed 10–15–91 as an emergency; operative 10–15–91 (Register 92, No. 7). A Certificate of Compliance must be transmitted to OAL 2–12–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–23–92 as an emergency; operative 2–12–92 (Register 92, No. 15). A Certificate of Compliance must be transmitted to OAL 6–11–92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 1–23–92 order including amendment of subsections (a), (b), (b)(3), (c) and (d) transmitted to OAL 6–2–92 and filed 7–14–92 (Register 92, No. 29).
4. Editorial correction of HISTORY 2 (Register 95, No. 47).

§ 65623. Requirements Applicable to All Permits.

(a) The permittee shall comply with all requirements of this article and any specific conditions of the permit.

(b) No permittee shall continue an activity regulated by a medical waste facility permit after the expiration date of the permit. If the permittee fails to make a timely application for renewal, the medical waste permit shall expire on the expiration date.

(c) In an enforcement action, it shall not be a defense for a permittee to state or show that reducing or ceasing of the permitted activity would have been necessary in order to maintain compliance with the requirements of this article.

(d) The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with the conditions of the permit.

(e) The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the specific conditions of the permit and requirements of this article. Proper operation and maintenance shall include but not be limited to effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. Backup or auxiliary facilities or similar systems shall be operated only when necessary to achieve compliance with the requirements of this article.

(f) The permittee shall furnish to the enforcement agency any relevant information which the enforcement agency may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance with the permit. The permittee shall also furnish to the enforcement agency upon request copies of records required to be kept by the permit. Such information shall be furnished within 30 days or as otherwise set by the enforcement agency if a longer duration is required.

(g) The permittee shall allow an authorized representative of the enforcement agency to:

(1) Enter, at reasonable times, the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the permit;

(2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(3) Inspect, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the permit; and

(4) Sample or monitor, at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by law, any substances or parameters at any location.

(h) The permittee shall establish and maintain a monitoring and sampling program.

(1) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(2) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the application for the permit, for a period of at least three years from the date of the sample, measurement, report, or application. This period may be extended by request of the enforcement agency at any time.

(3) Records of monitoring information shall include:

(A) The date, exact place, and time of sampling or measurements;

(B) The individual(s) who performed the sampling or measurements;

(C) The date(s) analyses were performed;

(D) The individual(s) who performed the analyses;

(E) The analytical techniques or methods used; and

(F) The results of such analyses.

(i) All applications, reports, or information submitted to the enforcement agency shall be signed and certified (see Section 65622).

(j) The permittee shall meet all reporting requirements as required below:

(1) The permittee shall give notice to the enforcement agency as soon as possible and at least 30 days in advance of any planned physical alterations or additions to the permitted facility.

(2) Reports of compliance or noncompliance with, or any progress reports on, interim and final conditions contained in any compliance schedule of the permittee's permit shall be submitted no later than 14 days following each scheduled date.

(3) The permittee shall report any noncompliance with the Medical Waste Management Act (Health and Safety Code, Sections 25015 et seq.) or this chapter which may endanger health, safety, or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written report shall also be provided within five days of the time the permittee becomes aware of the circumstances. The written report shall contain a description of the noncompliance as specified above, and its cause; the period of noncompliance, including exact starting and ending dates and time frames, and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence.

(4) The permittee shall report all instances of noncompliance with permit conditions not reported under subsections (1), (2), and (3) of this Section, at the time the monitoring reports are submitted. The reports shall contain the information listed in subsections (1) and (3) of this section.

(5) Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the enforcement agency, it shall promptly submit the relevant facts or correct information.

(k) For a new medical waste facility, the permittee may not commence treatment or storage of medical waste; and for a facility being modified, the permittee may not treat or store medical waste in the modified portion of the facility until:

(1) The permittee has submitted to the enforcement agency, by certified mail or hand delivery, a letter signed by the permittee and a professional engineer, registered in California, stating that the facility has been constructed or modified in compliance with the permit; and

(2) The enforcement agency has inspected the modified or newly constructed facility and finds it is in compliance with the conditions of the permit;

(*l*) The following shall be included as information which shall be reported orally within 24 hours under subsection (j)(3) of this section:

(1) Information concerning release of any medical waste that may endanger the public health;

(2) Any information of a release or discharge of medical waste from or of a fire or explosion at a medical waste facility which could threaten the environment or human health outside the facility. The description of the occurrence and its cause shall include:

(A) Name, address, and telephone number of the owner or operator;

(B) Name, address, and telephone number of the facility;

(C) Date, time, and type of incident;

(D) Name and quantity of material(s) involved;

(E) The extent of injuries, if any;

(F) An assessment of actual or potential hazards to the environment and human health outside the facility, where this is applicable; and

(G) Estimated quantity and disposition of recovered material that resulted from the incident.

(m) The permittee shall attempt to reconcile any significant discrepancy in a tracking document. The permittee shall also report any medical waste received without a tracking document. In either case, the discrepancy with or without a tracking document shall be reported to the enforcement agency within 15 days.

NOTE: Authority cited: Sections 208 and 25017, Health and Safety Code. Reference: Sections 25040.5, 25050, 25062, 25063, 25064, 25070, 25071, 25072, 25072.5, 25074 and 25075, Health and Safety Code.

HISTORY

1. New section filed 10–15–91 as an emergency; operative 10–15–91 (Register 92, No. 7). A Certificate of Compliance must be transmitted to OAL 2–12–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–23–92 as an emergency; operative 2–12–92 (Register 92, No. 15). A Certificate of Compliance must be transmitted to OAL 6–11–92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 1–23–92 order including amendment of section and NOTE transmitted to OAL 6–2–92 and filed 7–14–92 (Register 92, No. 29).
4. Editorial correction of HISTORY 2 (Register 95, No. 47).

§ 65624. Duration of Permits.

The term of a medical waste facility permit shall not exceed 5 years.

NOTE: Authority cited: Sections 208 and 25017, Health and Safety Code. Reference: Sections 25049, 25050, 25059 and 25074, Health and Safety Code.

HISTORY

1. New section filed 10–15–91 as an emergency; operative 10–15–91 (Register 92, No. 7). A Certificate of Compliance must be transmitted to OAL 2–12–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–23–92 as an emergency; operative 2–12–92 (Register 92, No. 15). A Certificate of Compliance must be transmitted to OAL 6–11–92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 1–23–92 order transmitted to OAL 6–2–92 and filed 7–14–92 (Register 92, No. 29).
4. Editorial correction of HISTORY 2 (Register 95, No. 47).

§ 65625. Contents of a Medical Waste Treatment Facility Permit Application.

(a) The application shall include the following information:

(1) The name, business address, and telephone number of the owner and operator of the facility. Include ownership status as federal, state, local government or other public or private entity.

(2) The name, mailing address, and location of the facility for which the application is submitted.

(3) A description of the nature of the business and activities which require it to have a permit.

(4) An indication of whether the facility is new or existing and whether it is a first or revised application.

(5) A description of the process to be used for treating, storing, and disposing of medical waste (i.e. incinerator, autoclave, or other approved treatment technology as specified in Section 25090(d) Health and Safety Code).

(6) A description of the treatment and/or storage capacity of the facility, an estimate of the average monthly quantity of the waste to be treated and/or stored, and a general description of the process to be used for disposal of treated wastes.

(7) A scale drawing and general description of the facility showing location of all treatment and storage areas.

(8) A map extending one mile beyond the property boundary of the facility identifying access roads and the type of development in the area (i.e., residential, commercial, recreational, schools, etc.).

(9) A disclosure statement, as required in Section 25072 of the Health and Safety Code.

(10) A description of the security procedures required pursuant to Section 25086 of the Health and Safety Code.

(11) A copy of the general operation plan including a schedule for inspection and calibration of monitoring equipment, a description of disinfection procedures, location and type of safety and emergency equipment, location and type of security devices, and operating and structural equipment that are important in preventing or responding to medical–waste related environmental or human health hazards.

(12) A copy of the emergency action plan addressing equipment breakdowns, natural disasters, or other occurrences as required in Section 25092, Health and Safety Code.

(13) An outline of both the introductory and continuing training programs which will be provided by owners or operators to prepare employees to operate or maintain the medical waste treatment facility in a safe manner. A brief description of how training will be designed to meet actual job tasks.

(14) A copy of the closure plan including a written estimate of the cost of closing a facility. The estimate shall equal the cost of closure at the point in the facility's operating life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan. The owner shall revise the closure cost estimate whenever a change in the closure plan increases the cost of closure.

(15) A description of the compliance history of the applicant under any local, state, or federal law or regulation governing the control of medical waste or pollution including, but not limited to, the Clean Air Act. Such description shall include all violations as specified in Section 25072.5 of the Health and Safety Code which have occurred at this or any other facility permitted and owned or operated by the applicant in the State for the three years prior to the date of this application.

(16) A schedule for the installation of monitoring equipment and a written statement of operating procedures covering the proper use, maintenance, and testing of such equipment.

(17) A monitoring schedule, including type of monitoring, intervals and frequency of monitoring sufficient to yield data which are representative of the monitored activity, including, when appropriate, continuous monitoring.

NOTE: Authority cited: Sections 208 and 25017, Health and Safety Code. Reference: Sections 25071, 25072, 25072.5, 25073, 25090 and 25092, Health and Safety Code.

HISTORY

1. New section filed 10–15–91 as an emergency; operative 10–15–91 (Register 92, No. 7). A Certificate of Compliance must be transmitted to OAL 2–12–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–23–92 as an emergency; operative 2–12–92 (Register 92, No. 15). A Certificate of Compliance must be transmitted to OAL 6–11–92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 1–23–92 order including amendment of subsections (a)(5), (11), (12), (13), (15) and (17) transmitted to OAL 6–2–92 and filed 7–14–92 (Register 92, No. 29).
4. Editorial correction of subsection (a)(13) and HISTORY 2 (Register 95, No. 47).

Article 4. Fees

§ 65628. Application Fees.

(a) Each person submitting an offsite treatment facility permit application will be charged a processing fee of one hundred dollars ($100) per hour up to a maximum of fifty thousand dollars ($50,000). The processing fee is to cover costs for technology evaluation, construction inspections, and review of records relative to monitoring procedures and operation. The fee will be billed as follows:

(1) An initial deposit of twenty–five thousand dollars ($25,000) with the application.

(2) When the costs for processing the application reach 75 percent of the initial deposit, a second deposit amounting to one–half of the initial deposit shall be paid, and if processing costs exceed 75 percent of the second deposit, the remaining twelve thousand, five hundred dollars ($12,500) shall be charged.

(3) For subsequent deposits, after the first deposit, the Department shall give 30 days notice by registered mail of the further amount of fee due. If this amount is not received by the Department within the stated 30–day period, the application shall be denied, and there shall be no refund to the applicant.

NOTE: Authority cited: Sections 208 and 25017, Health and Safety Code. Reference: Sections 25036, 25079, 25079.1, 25079.2 and 25079.3(b), Health and Safety Code.

HISTORY

1. New section filed 10–15–91 as an emergency; operative 10–15–91 (Register 92, No. 7). A Certificate of Compliance must be transmitted to OAL 2–12–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–23–92 as an emergency; operative 2–12–92 (Register 92, No. 15). A Certificate of Compliance must be transmitted to OAL 6–11–92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 1–23–92 order including amendment of section transmitted to OAL 6–2–92 and filed 7–14–92 (Register 92, No. 29).
4. Editorial correction of HISTORY 2 (Register 95, No. 47).

Chapter 22. Safety Regulations for Playgrounds

Article 1. Definitions

§ 65700. Certified Playground Safety Inspector.

"Certified Playground Safety Inspector" means an individual who has completed program requirements as a Certified Playground Safety Inspector as specified in Section 65750.

NOTE: Authority cited: Sections 100275 and 115725, Health and Safety Code. Reference: Section 115725, Health and Safety Code.

HISTORY

1. New chapter 22 (articles 1–4, sections 65700–65755), article 1 (sections 65700–65700.12) and section filed 12–22–99; operative 1–1–2000 pursuant to Government Code section 11343.4(d) (Register 99, No. 52).

§ 65700.2. Children.

"Children" means individuals who are two years of age through twelve years of age.

NOTE: Authority cited: Sections 100275 and 115725, Health and Safety Code. Reference: Section 115725, Health and Safety Code.

HISTORY

1. New section filed 12–22–99; operative 1–1–2000 pursuant to Government Code section 11343.4(d) (Register 99, No. 52).

§ 65700.6. Operator.

"Operator" means any entity which operates a playground open to the public, including a church, subdivision, hotel, motel, resort, camp, office, hospital, shopping center, child care setting, and restaurant and any public agency, state agency, city, county, city and county, school district, and any other district.

NOTE: Authority cited: Sections 100275 and 115725, Health and Safety Code. Reference: Sections 115725 and 115735, Health and Safety Code.

HISTORY

1. New section filed 12–22–99; operative 1–1–2000 pursuant to Government Code section 11343.4(d) (Register 99, No. 52).

§ 65700.8. Playground.

"Playground" means an improved outdoor area designed, equipped, and set aside for children's play that is not intended for use as an athletic playing field or athletic court, and shall include all playground equipment, surfacing, fencing, signs, internal pathways, internal land forms, vegetation, and related structures.

NOTE: Authority cited: Sections 100275 and 115725, Health and Safety Code. Reference: Sections 115725 and 115735, Health and Safety Code.

HISTORY

1. New section filed 12–22–99; operative 1–1–2000 pursuant to Government Code section 11343.4(d) (Register 99, No. 52).

§ 65700.10. Playground Equipment.

"Playground Equipment" means a fabricated structure intended primarily for play by children located at a playground which has at least one surface designated and intended for play by children and which is anchored to or built into the ground and not intended to be moved.

NOTE: Authority cited: Sections 100275 and 115725, Health and Safety Code. Reference: Section 115725, Health and Safety Code.

HISTORY

1. New section filed 12–22–99; operative 1–1–2000 pursuant to Government Code section 11343.4(d) (Register 99, No. 52).

§ 65700.12. Supervisor.

"Supervisor" means an individual who has been hired or appointed by the operator, on a paid or volunteer basis, and trained by the operator to

oversee the use of the playground, report hazards or injuries, and administer first aid in the case of injury.

NOTE: Authority cited: Sections 100275 and 115725, Health and Safety Code. Reference: Sections 115725 and 115735, Health and Safety Code.

HISTORY

1. New section filed 12–22–99; operative 1–1–2000 pursuant to Government Code section 11343.4(d) (Register 99, No. 52).

Article 2. General Standards

§ 65710. Operator Requirements.

(a) Operators shall comply with the sections of the Handbook for Public Playground Safety (CPSC Handbook), Publication Number 325, U.S. Consumer Product Safety Commission November 1997, Date Code: 009711, (available from the Office of Information and Public Affairs, U.S. Consumer Product Safety Commission, Washington, D.C. 20207), and the sections of the Standard Consumer Safety Performance Specification for Playground Equipment for Public Use (ASTM Standard), Designation: F 1487 – 98, American Society for Testing and Materials, 1998 (available from the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428), that relate to the design, installation, inspection, and maintenance of a playground and playground equipment, which are identified in this chapter and are hereby incorporated by reference.

(b) Wherever the sections of the CPSC Handbook identified in this chapter make recommendations, they shall be understood as mandatory requirements for purposes of this chapter; for instance, wherever those sections use the term "should," it shall be understood as the term "shall"; wherever those sections use the term "recommend," it shall be understood as the term "require"; wherever those sections use the term "recommendation," it shall be understood as the term "requirement"; wherever those sections use the phrase "it is recommended," it shall be understood as the phrase "it is required"; wherever those sections use the phrase "it is not recommended," it shall be understood as the phrase "it is prohibited."

NOTE: Authority cited: Sections 100275 and 115725, Health and Safety Code. Reference: Sections 115725 and 115735, Health and Safety Code.

HISTORY

1. New article 2 (sections 65710–65745) and section filed 12–22–99; operative 1–1–2000 pursuant to Government Code section 11343.4(d) (Register 99, No. 52).

§ 65715. Initial Inspection.

Operators shall have an initial inspection of their playgrounds by a Certified Playground Safety Inspector by October 1, 2000. Based on the initial inspection, operators shall implement any changes in the design, installation, inspection, maintenance and supervision of their playgrounds that are identified as necessary to comply with the requirements established in this chapter. Operators shall upgrade their playgrounds by replacement or improvement to the extent required by Section 115730 of the Health and Safety Code.

NOTE: Authority cited: Sections 100275 and 115725, Health and Safety Code. Reference: Sections 115725, 115730 and 115735, Health and Safety Code.

HISTORY

1. New section filed 12–22–99; operative 1–1–2000 pursuant to Government Code section 11343.4(d) (Register 99, No. 52).

§ 65720. Design.

Operators shall design or redesign playgrounds, locate or relocate playground equipment and routes of access to and from playgrounds, and surface or resurface portions of playgrounds to comply with the following requirements:

(a) Section 4.2 of the CPSC Handbook – Critical Height

(b) Section 4.3 of the CPSC Handbook – Fall Heights for Equipment

(c) Section 4.4 of the CPSC Handbook – Equipment to Which Protective Surfacing Recommendations Do Not Apply

(d) Section 5 of the CPSC Handbook – Use Zones for Equipment, in its entirety

(e) Section 9 of the ASTM Standard – Playground Layout, in its entirety

(f) Section 10 of the ASTM Standard – Accessibility, in its entirety

(g) Section 11.2 of the ASTM Standard – Owner's/Operator's Responsibilities for Installation.

NOTE: Authority cited: Sections 100275 and 115725, Health and Safety Code. Reference: Sections 115725 and 115735, Health and Safety Code.

HISTORY

1. New section filed 12–22–99; operative 1–1–2000 pursuant to Government Code section 11343.4(d) (Register 99, No. 52).

§ 65725. Equipment and Materials.

Operators shall provide playground equipment and surfacing materials that comply with the following requirements:

(a) Section 8 of the CPSC Handbook – Materials of Manufacture and Construction, in its entirety

(b) Section 9 of the CPSC Handbook – General Hazards, in its entirety

(c) Section 10 of the CPSC Handbook – Stairways, Ladders and Handrails (including 10.1, General; 10.2.1, Rungs and Other Handgripping Components; 10.3, Handrails; 10.3.1, Handrail Height; 10.3.2, Handrail Diameter; and 10.4, Transition From Access to Platform), except for 10.2, Stairways and Ladders, which is excluded

(d) Section 11 of the CPSC Handbook – Platforms, Guardrails and Protective Barriers, in its entirety

(e) Section 12 of the CPSC Handbook – Major Types of Playground Equipment, except for 12.4.3, Slide Platforms, which is excluded

(f) Section 4 of the ASTM Standard – Materials and Manufacture, in its entirety

(g) Section 6 of the ASTM Standard – Performance Requirements, in its entirety

(h) Section 7 of the ASTM Standard – Requirements for Access/Egress, in its entirety

(i) Section 8 of the ASTM Standard – Equipment, except for 8.6, Swings, which is excluded

(j) Section 14 of the ASTM Standard – Labeling, in its entirety

NOTE: Authority cited: Sections 100275 and 115725, Health and Safety Code. Reference: Sections 115725 and 115735, Health and Safety Code.

HISTORY

1. New section filed 12–22–99; operative 1–1–2000 pursuant to Government Code section 11343.4(d) (Register 99, No. 52).

§ 65730. Assembly and Installation.

Operators shall have playground equipment assembled and installed in compliance with the written instructions of the manufacturer. Either the playground equipment shall be assembled and installed by or under the direct supervision of an individual who is authorized by the manufacturer to assemble and install the equipment or, prior to its first use, the playground equipment shall be inspected by a Certified Playground Safety Inspector who shall certify to the operator in writing that the equipment, insofar as it can be seen without disassembling it or digging into the surfacing, is in compliance with the requirements established in this chapter.

NOTE: Authority cited: Sections 100275 and 115725, Health and Safety Code. Reference: Sections 115725 and 115735, Health and Safety Code.

HISTORY

1. New section filed 12–22–99; operative 1–1–2000 pursuant to Government Code section 11343.4(d) (Register 99, No. 52).

§ 65735. Maintenance.

Operators shall maintain and inspect the playground and playground equipment in accordance with Section 7.2 of the CPSC Handbook and Section 13 of the ASTM Standard.

NOTE: Authority cited: Sections 100275 and 115725, Health and Safety Code. Reference: Sections 115725 and 115735, Health and Safety Code.

HISTORY

1. New section filed 12–22–99; operative 1–1–2000 pursuant to Government Code section 11343.4(d) (Register 99, No. 52).

§ 65740. Training.

Operators shall train their personnel involved in the design, installation, and maintenance of a playground by ensuring their personnel have

read and understood the requirements established in this chapter, before participating in the design, installation or maintenance of a playground for which the personnel has responsibility.

NOTE: Authority cited: Sections 100275 and 115725, Health and Safety Code. Reference: Sections 115725 and 115735, Health and Safety Code.

HISTORY

1. New section filed 12–22–99; operative 1–1–2000 pursuant to Government Code section 11343.4(d) (Register 99, No. 52).

§ 65745. Supervision.

Operators who provide supervision shall do so in accordance with Section 6.4 of the CPSC Handbook.

NOTE: Authority cited: Sections 100275 and 115725, Health and Safety Code. Reference: Sections 115725 and 115730, Health and Safety Code.

HISTORY

1. New section filed 12–22–99; operative 1–1–2000 pursuant to Government Code section 11343.4(d) (Register 99, No. 52).

Article 3. Certified Playground Safety Inspector Requirements

§ 65750. Certified Playground Safety Inspector.

A Certified Playground Safety Inspector shall possess a current Certified Playground Safety Inspector certificate issued by the National Playground Safety Institute (c/o National Parks and Recreation Association, 22377 Belmont Ridge Road, Ashburn, VA 20148, telephone: (703) 858–2148 or e–mail: info@nrpa.org).

NOTE: Authority cited: Sections 100275 and 115725, Health and Safety Code. Reference: Section 115725, Health and Safety Code.

HISTORY

1. New article 3 (section 65750) and section filed 12–22–99; operative 1–1–2000 pursuant to Government Code section 11343.4(d) (Register 99, No. 52).

Article 4. Provisions for Child Care Centers and Facilities Operated for the Developmentally Disabled

§ 65755. Child Care Center and Developmentally Disabled Facility Requirements.

Operators of playgrounds in child care centers regulated by the California Department of Social Services (CDSS) pursuant to California Code of Regulations, Title 22, Division 12, Chapter 1, and facilities operated for the developmentally disabled, shall comply with the requirements established in this chapter.

NOTE: Authority cited: Sections 100275 and 115725, Health and Safety Code. Reference: Sections 115725 and 115740, Health and Safety Code.

HISTORY

1. New article 4 (section 65755) and section filed 12–22–99; operative 1–1–2000 pursuant to Government Code section 11343.4(d) (Register 99, No. 52).

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Title 22. Social Security

Division 4.5. Environmental Health Standards for the Management of Hazardous Waste

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Article 1. General

§ 66001. Accidental Occurrence.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25245 and 25246, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day hereafter (Register 85, No. 2). For history of Chapter 30, see Register 79, No. 19.
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66001.5. Active Portion.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66002. Acute Aquatic 96–Hour LC_{50}.

NOTE: Authority cited: Sections 208, 25141 and 25150, Health and Safety Code. Reference: Section 25141, Health and Safety Code.

HISTORY

1. New section filed 9–27–84; effective thirtieth day thereafter (Register 84, No. 41). For history of Chapter 30, see Register 79, No. 19.
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66004. Acute Dermal LD_{50}.

NOTE: Authority cited: Sections 208, 25141 and 25150, Health and Safety Code. Reference: Section 25141, Health and Safety Code.

HISTORY

1. New section filed 9–27–84; effective thirtieth day thereafter (Register 84, No. 41).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66005. Acute Inhalation LC_{LO}.

NOTE: Authority cited: Sections 208, 25141 and 25150, Health and Safety Code. Reference: Section 25141, Health and Safety Code.

HISTORY

1. New section filed 9–27–84; effective thirtieth day thereafter (Register 84, No. 41).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66006. Acute Inhalation LC_{50}.

NOTE: Authority cited: Sections 208, 25141 and 25150, Health and Safety Code. Reference: Section 25141, Health and Safety Code.

HISTORY

1. New section filed 9–27–84; effective thirtieth day thereafter (Register 84, No. 41).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66007. Acute LD_{LO}.

NOTE: Authority cited: Sections 208, 25141 and 25150, Health and Safety Code. Reference: Section 25141, Health and Safety Code.

HISTORY

1. New section filed 9–27–84; effective thirtieth day thereafter (Register 84, No. 41).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66008. Acute Oral LD_{50}.

NOTE: Authority cited: Sections 208, 25141 and 25150, Health and Safety Code. Reference: Section 25141, Health and Safety Code.

HISTORY

1. New section filed 9–27–84; effective thirtieth day thereafter (Register 84, No. 41).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66010. Acute Toxicity.

NOTE: Authority cited: Sections 208, 25141 and 25150, Health and Safety Code. Reference: Section 25141, Health and Safety Code.

HISTORY

1. New section filed 9–27–84; effective thirtieth day thereafter (Register 84, No. 41).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66011. Applicant.

NOTE: Authority cited: Sections 208, 25150 and 25168.1, Health and Safety Code. Reference: Section 25165, Health and Safety Code.

HISTORY

1. New section filed 10–6–81 as an emergency; effective upon filing (Register 81, No. 42). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–3–82.
2. Certificate of Compliance transmitted to OAL 2–2–82 and filed 3–8–82 (Register 82, No. 11).
3. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66011.1. Aquifer.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66011.2. Assets.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25245 and 25246, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66011.3. Authorized Representative.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66012. Bioaccumulative Toxic Substance.

NOTE: Authority cited: Sections 208, 25141 and 25150, Health and Safety Code. Reference: Section 25141, Health and Safety Code.

HISTORY

1. New section filed 9–27–84; effective thirtieth day thereafter (Register 84, No. 41).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66013. Bodily Injury.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25245 and 25246, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66015. Cargo Tank.

NOTE: Authority cited: Sections 208, 25150 and 25168.1, Health and Safety Code. Reference: Sections 25163(d), 25168, 25168.2, 25168.3 and 25169.1, Health and Safety Code.

HISTORY

1. New section filed 10–6–81 as an emergency; effective upon filing (Register 81, No. 42). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–3–82.
2. Certificate of Compliance transmitted to OAL 2–2–82 and filed 3–8–82 (Register 82, No. 11).
3. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66015.5. Certification.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66016. Chemical Toilet.

NOTE: Authority cited: Section 25210, Health and Safety Code. Reference: Section 25210, Health and Safety Code.

HISTORY

1. Renumbering of sections 60091, 60093, and 60095 from Chapter 1, and Sections 60102–60297 from Chapter 2, to form new Chapter 30 (Sections 66016–66898); filed 5–10–79; effective thirtieth day thereafter. See cross-reference table listing old and new section numbers (Register 79, No. 19).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66020. Chemical Toilet Additive.

NOTE: Authority cited: Section 25210, Health and Safety Code. Reference: Section 25210, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66024. Chemical Toilet Waste.

NOTE: Authority cited: section 25210, Health and Safety Code. Reference: Section 25210, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66026. Chronic Toxicity.

NOTE: Authority cited: Sections 208, 25141 and 25150, Health and Safety Code. Reference: Section 25141, Health and Safety Code.

HISTORY

1. New section filed 9–27–84; effective thirtieth day thereafter (Register 84, No. 41).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66027. Closed Portion.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66027.6. Closure Plan.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25245 and 25246, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66027.8. Confined Aquifer.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66027.9. Constituent.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66028. Container.

NOTE: Authority cited: Sections 208, 25150 and 25168.1, Health and Safety Code. *Reference: Sections 25123, 25123.5, 25163(d), 5167.3, 25168, 25168.2, 25168.3* and 25169.1, Health and Safety Code.

HISTORY

1. Amendment filed 10–6–81 as an emergency; effective upon filing (Register 81, No. 42). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–3–82.
2. Certificate of Compliance transmitted to OAL 2–2–82 and filed 3–8–82 (Register 82, No. 11).
3. Amendment filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
4. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66032. Corrosive.

NOTE: Authority cited: Sections 208, 25141 and 25150, Health and Safety Code. Reference: Section 25141, Health and Safety Code.

HISTORY

1. Amendment filed 9–27–84; effective thirtieth day thereafter (Register 84, No. 41).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66033. Contingency Plan.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66036. Covered Container.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66038. Current Assets.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25245 and 25246, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66038.2. Current Closure Cost Estimate.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25245 and 25246, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
3. Editorial correction of section heading (Register 95, No. 47).

§ 66038.4. Current Liabilities.

NOTE: Authority cited: section 208, Health and Safety Code. Reference: Sections 25245 and 25246, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66038.6. Current Post–Closure Cost Estimate.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25245 and 25246, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66038.9. Decontaminate.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66040. Dike.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer and new section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).

2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66041. Discharge.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66042. Disposal.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66044. Disposal Facility.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66048. Elementary Neutralization Unit.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer and new section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66049. End–User.

NOTE: Authority cited: Sections 208, 25150 and 25159.5, Health and Safety Code. Reference: Sections 25159.5 and 25170, Health and Safety Code.

HISTORY

1. New section filed 7–29–85; effective thirtieth day thereafter (Register 85, No. 31).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66050. Environmental Protection Agency (EPA) Identification Number.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66052. Disposal Site.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150 and 25159, Health and Safety Code.

HISTORY

1. Repealer filed 1–3–85; effective thirtieth day thereafter Register 85, No. 2).

§ 66056. Existing Hazardous Waste Facility.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer and new section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66058. Existing Portion.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66060. Extremely Hazardous Material.

NOTE: Authority cited: Sections 208, 25141 and 25150, Health and Safety Code. Reference: Section 25141, Health and Safety Code.

HISTORY

1. Amendment filed 9–27–84; effective thirtieth day thereafter (Register 84, No. 41).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66070. Facility.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).,

§ 66071. Fine Powder.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Section 25170, Health and Safety Code.

HISTORY

1. New section filed 7–29–85; effective thirtieth day thereafter (Register 85, No. 31).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66074. Freeboard.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 2).

§ 66076. Free Liquids.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer and new section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66078. Generator.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66079. Ground Water.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66080. Hauler.

NOTE: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Amendment filed 10–6–81 as an emergency; effective upon filing (Register 81, No. 42). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–3–82.
2. Certificate of Compliance transmitted to OAL 2–2–82 and filed 3–8–82 (Register 82, No. 11).
3. Amendment filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
4. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66084. Hazardous Material.

NOTE: Authority cited: Sections 208, 25141 and 25150, Health and Safety Code. Reference: Sections 25117 and 25141, Health and Safety Code.

HISTORY

1. Amendment filed 9–27–84; effective thirtieth day thereafter (Register 84, No. 41).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66088. Hazardous Waste.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150 and 25159, Health and Safety Code.

HISTORY
1. Repealer filed 9–27–84; effective thirtieth day thereafter (Register 84, No. 41).
2. Editorial correction of NOTE filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
3. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66092. Hazardous Waste Area.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150 and 25159, Health and Safety Code.

HISTORY
1. Repealer filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).

§ 66096. Hazardous Waste Facility.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY
1. Repealer and new section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66099. Hazardous Waste Facility Permit.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY
1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66100. Hazardous Waste Facility Permit.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150 and 25159, Health and Safety Code.

HISTORY
1. Repealer filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).

§ 66104. Hazardous Waste Manifest.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150 and 25159, Health and Safety Code.

HISTORY
1. Repealer filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).

§ 66106. Highway.

NOTE: Authority cited: Sections 208, 25150 and 25168.1, Health and Safety Code. Reference: Section 25169.1(b), Health and Safety Code.

HISTORY
1. New section filed 10–6–81 as an emergency, effective upon filing (Register 81, No. 42). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–3–81.
2. Certificate of Compliance transmitted to OAL 2–2–82 and filed 3–8–82 (Register 82, No. 11).
3. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66107. Ignitable.

NOTE: Authority cited: Sections 208, 25141 and 25150, Health and Safety Code. Reference: Section 25141, Health and Safety Code.

HISTORY
1. New section filed 9–27–84; effective thirtieth day thereafter (Register 84, No. 41).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66108. In Operation.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY
1. Repealer and new section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66109. Inactive Portion.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY
1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66110. Incinerator.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY
1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66111. Incompatible Waste.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY
1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66112. Independently Audited.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25245 and 25246, Health and Safety Code.

HISTORY
1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66113. Injection Well.

NOTE: Authority cited: Section 208, Health and safety Code. Reference: Sections 25159 and 25159.5, Health and safety Code.

HISTORY
1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66114. Inner Liner.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY
1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66115. Interim Status.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25245 and 25246, Health and Safety Code.

HISTORY
1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66116. International Shipment.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY
1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66120. Irritant.

NOTE: Authority and reference cited: Sections 208, 25141 and 25150, Health and Safety Code. Reference: Section 25141, Health and Safety Code.

HISTORY
1. Amendment filed 5–10–79; effective thirtieth day thereafter (Register 79, No. 19).
2. Repealer filed 9–27–84; effective thirtieth day thereafter (Register 84, No. 41).
3. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66122. Land Disposal Method.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code.

HISTORY
1. New section filed 12–23–82; effective thirtieth day thereafter (Register 82, No. 52).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66123. Landfill.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY
1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66124. Landfill Cell.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.
HISTORY
1. Renumbering of former Section 66124 to Section 66129.5 and new Section 66124 filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective thirtieth day thereafter (Register 91, No. 22).

§ 66125. Land Treatment Facility.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.
HISTORY
1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66126. Leachate.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.
HISTORY
1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66127. Legal Defense Costs.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25245 and 25246, Health and Safety Code.
HISTORY
1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66128. Liabilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25245 and 25246, Health and Safety Code.
HISTORY
1. Repealer and new section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66129. Liner.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.
HISTORY
1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66129.5. Load.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: section 25150, Health and Safety Code.
HISTORY
1. Renumbering of Section 66124 to section 66129.5 filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66130. Management.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.
HISTORY
1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66131. Manifest.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.
HISTORY
1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66131.4. Manifest Document Number.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.
HISTORY
1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66132. Manifest.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150 and 25159, Health and Safety Code.
HISTORY
1. Repealer filed 1–3–85; effective thirtieth day thereafter Register 85, No. 2).

§ 66133. Movement.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.
HISTORY
1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66134. Net Working Capital.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25245 and 25246, Health and Safety Code.
HISTORY
1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66134.5. Net Worth.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference:Sections 25245 and 25246, Health and Safety Code.
HISTORY
1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66134.8. New Hazardous Waste Facility.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.
HISTORY
1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66135. Nonsudden Accidental Occurrence.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25245 and 25246, Health and Safety Code.
HISTORY
1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66136. Off–Site Hazardous Waste Facility.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150 and 25159, Health and Safety Code.
HISTORY
1. Repealer filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).

§ 66140. On–Site Hazardous Waste Facility.

NOTE: Authority cited, Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.
HISTORY
1. Repealer and new section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66142. Open Burning.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.
HISTORY
1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66144. Operator.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer and new section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66146. Owner.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66148. Operation Plan.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150 and 25159, Health and Safety Code.

HISTORY

1. Repealer filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).

§ 66150. Parent Corporation.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25245 and 25246, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 22).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66151. Part A of Permit Application.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New Section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66151.1. Part B of Permit Application.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66152. Partial Closure.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66154. Permitted Facility.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25245 and 25246, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66156. Persistent Toxic Substance.

NOTE: Authority cited: Sections 208, 25141 and 25150, Health and Safety Code. Reference: Section 25141, Health and Safety Code.

HISTORY

1. New section filed 9–27–84; effective thirtieth day thereafter (Register 84, No. 41).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66158. Personnel.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66160. Pile.

NOTE: Authority cited: section 208, Health and Safety code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer and new section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66162. Point Source.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66163. Post–Closure Plan.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25245 and 25246, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66164. Producer.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Amendment filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66165. Property Damage.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25245 and 25246, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66166. Publicly Owned Treatment Works.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66168. Reactive.

NOTE: Authority cited: Sections 208, 25141 and 25150, Health and Safety Code. Reference: Section 25141, Health and Safety Code.

HISTORY

1. New section filed 9–27–84; effective thirtieth day thereafter (Register 84, No. 41).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66172. Recyclable Hazardous waste.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150 and 25159, Health and Safety Code.

HISTORY

1. New section filed 5–16–79; effective thirtieth day thereafter (Register 79, No. 19).
2. Repealer filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).

§ 66174. Recycle.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150 and 25159, Health and Safety Code.

HISTORY

1. New section filed 5–16–79; effective thirtieth day thereafter (Register 79, No. 19).
2. Repealer filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).

§ 66176. Registered Hazardous Waste Transporter.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25150 and 25163, Health and Safety Code.

HISTORY

1. Amendment filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).

2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66178. Representative Sample.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66180. Resource Recovery.

NOTE: Authority cited: Section 25150, Health and Safety Code. Reference: Sections 25170.5 and 25175, Health and Safety Code.

HISTORY

1. Amendment filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66181. Resource Recovery Facility.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Section 25170, Health and Safety Code.

HISTORY

1. New section filed 7–29–85; effective thirtieth day thereafter (Register 85, No. 38). Printing of Section 66181 delayed due to omission of text by printing plant during processing of Register 85, No. 31.
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66184. Reuse.

NOTE: Authority cited: sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150 and 25159, Health and Safety Code.

HISTORY

1. Repealer filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).

§ 66186. Run–off.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66187. Run–on.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66188. Salvaging.

NOTE: Authority cited: sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150 and 25159, Health and Safety Code.

HISTORY

1. Repealer filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).

§ 66189. Saturated Zone.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66189.5. Scrap Metal.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Section 25170, Health and Safety Code.

HISTORY

1. New section filed 7–29–85; effective thirtieth day thereafter (Register 85, No. 38). Printing of Section 66189.5 delayed due to omission of text by printing plant during processing of Register 85, No. 31.
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66190. Semitrailer.

NOTE: Authority cited: Sections 208, 25150 and 25168.1, Health and Safety Code. Reference: Sections 25163 (d), 25168, 25168.2, 25168.3 and 25169.1, Health and Safety Code.

HISTORY

1. New section filed 10–6–81 as an emergency; effective upon filing (Register 81, No. 42). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–3–82.
2. Certificate of Compliance transmitted to OAL 2–2–82 and filed 3–8–82 (Register 82, No. 11).
3. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66190.2. Series 'A' Resource Recovery Facility Permit.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Sections 25170 and 25201, Health and Safety Code.

HISTORY

1. New section filed 7–29–85; effective thirtieth day thereafter (Register 85, No. 38). Printing of Section 66190.2 delayed due to omission of text by printing plant during processing of Register 85, No. 31.
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66190.4. Series B Resource Recovery Facility Permit.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Sections 25170 and 25201, Health and Safety Code.

HISTORY

1. New section filed 7–29–85; effective thirtieth day thereafter (Register 85, No. 31).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66190.6. Series C Resource Recovery Facility Permit.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Sections 25170 and 25201, Health and Safety Code.

HISTORY

1. New section filed 7–29–85; effective thirtieth day thereafter (Register 85, No. 31).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66191. Sharps.

NOTE: Authority cited: Sections 208, 25150 and 25157.3, Health and Safety Code. Reference: Sections 25117 and 25117.5, Health and Safety Code.

HISTORY

1. New section filed 12–30–83 as an emergency; effective upon filing (Register 84, No. 3). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–29–84.
2. Certificate of Compliance transmitted to OAL 4–30–84 and withdrawn 5–30–84 (Register 84, No. 24).
3. New section filed 5–30–84 as an emergency; effective upon filing (Register 84, No. 24). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9–27–84.
4. Certificate of Compliance transmitted to OAL 9–26–84 and filed 10–16–84 (Register 84, No. 41).
5. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66193. Sludge.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66194. Soluble Threshold Limit Concentration.

NOTE: Authority cited: Sections 208, 25141 and 25150, Health and Safety Code. Reference: Section 25141, Health and Safety Code.

HISTORY

1. New section filed 9–27–84; effective thirtieth day thereafter (Register 84, No. 41).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66195. Special Waste.

NOTE: Authority cited: Sections 208, 25141, 25143 and 25150, Health and Safety Code. Reference: Sections 25117 and 25143, Health and Safety Code.

HISTORY

1. New section filed 4–30–85; effective thirtieth day thereafter (Register 85, No. 18).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66196. Spill.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY
1. Repealer and new section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66199. Sudden Accidental Occurrence.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25245 and 25246, Health and Safety Code.

HISTORY
1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66200. Surface Impoundment

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25245 and 25246, Health and Safety Code.

HISTORY
1. Repealer and new section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66201. Surplus Material.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Section 25170, Health and Safety Code.

HISTORY
1. New section filed 7–29–85; effective thirtieth day thereafter (Register 85, No. 31).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66202. Tangible Net Worth.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25245 and 25246, Health and Safety Code.

HISTORY
1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66203. Tank.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY
1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66204. Thermal Treatment.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY
1. Repealer and new section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 22).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66206. Total Threshold Limit Concentration.

NOTE: Authority cited: Sections 208, 25141 and 25150, Health and Safety Code. Reference: Section 25141, Health and Safety Code.

HISTORY
1. New section filed 9–27–84; effective thirtieth day thereafter (Register 84, No. 41).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66208. Totally Enclosed Treatment Facility.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY
1. Repealer and new section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66209. Toxicity Concentration Leaching Procedure or TCLP.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25179.6, Health and Safety Code. Reference: Sections 25159, 25159.5 and 25159.6, Health and Safety Code.

HISTORY
1. New section filed 5–24–89; operative 6–23–89 (Register 89, No. 22).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66210. Trailer.

NOTE: Authority cited: Sections 208, 25150 and 25168.1, Health and Safety Code. Reference: Sections 25163(d), 25168, 25168.2, 25168.3 and 25169.1, Health and Safety Code.

HISTORY
1. New section filed 10–6–81 as an emergency; effective upon filing (Register 81, No. 42). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–3–82.
2. Certificate of Compliance transmitted to OAL 2–2–82 and filed 3–8–82 (Register 82, No. 11).
3. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66212. Transfer Station.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Sections 25150, 25154, 25159, 25159.5 and 25201, Health and Safety Code.

HISTORY
1. Amendment filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66213. Transport Vehicle.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY
1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66213.2. Transportable Treatment Units.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25150 and 25200.2, Health and Safety Code.

HISTORY
1. New section filed 4–19–88 as an emergency; operative 5–19–88 (Register 88, No. 18). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–17–88.
2. New section refiled 8–17–88 as an emergency; operative 9–17–88 (Register 88, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12–15–88.
3. Certificate of Compliance including amendment transmitted to OAL 12–15–88 and filed 1–17–89 (Register 89, No. 6).
4. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66213.5. Transportation.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY
1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66214. Transporter.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY
1. New section filed 10–6–81 as an emergency; effective upon filing (Register 81, No. 42). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–3–82.
2. Certificate of Compliance transmitted to OAL 2–2–82 and filed 3–8–82 (Register 82, No. 11).
3. Amendment filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
4. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66216. Treatment.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY
1. Repealer and new section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66218. Treatment Zone.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY
1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).

2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66220. Treatment Facility.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150 and 25159, Health and Safety Code.

HISTORY

1. Repealer filed 1–3–85; effective thirtieth day thereafter Register 85, No. 2).

§ 66222. Truck.

NOTE: Authority cited: Sections 208, 25150 and 25168.1, Health and Safety Code. Reference: Sections 25163(d), 25168, 25168.2, 25168.3 and 25169.1, Health and Safety Code.

HISTORY

1. New section filed 10–6–81 as an emergency; effective upon filing (Register 81, No. 42). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–3–82.
2. Certificate of Compliance including amendment transmitted to OAL 2–2–82 and filed 3–8–82 (Register 82, No. 11).
3. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66224. Underground Injection.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer and new section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66225. Unsaturated Zone.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66225.5. Uppermost Aquifer.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66226. Vacuum Tank.

NOTE: Authority cited: Sections 208, 25150 and 25168.1, Health and Safety Code. Reference: Sections 25163(d), 25168, 25168.2, 25168.3 and 25169.1, Health and Safety Code.

HISTORY

1. New section filed 10–6–81 as an emergency; effective upon filing (Register 81, No. 42). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–3–82.
2. Certificate of Compliance transmitted to OAL 2–2–82 and filed 3–8–82 (Register 82, No. 11).
3. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66228. Variance.

NOTE: Authority cited: Sections 208, 25141 and 25150, Health and Safety Code. Reference: Section 25141, Health and Safety Code.

HISTORY

1. Amendment filed 9–27–84; effective thirtieth day thereafter (Register 84, No. 41).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66230. Vehicle.

NOTE: Authority cited: Sections 208, 25150 and 25168.1, Health and Safety Code. Reference: Sections 25163(d), 25168, 25168.2, 25168.3 and 25169.1, Health and Safety Code.

HISTORY

1. New section filed 10–6–81 as an emergency; effective upon filing (Register 81, No. 42). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–3–82.
2. Certificate of Compliance including amendment transmitted to OAL 2–2–82 and filed 3–8–82 (Register 82, No. 11).
3. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66232. Vessel.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer and new section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66234. Wastewater Treatment Unit.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66236. Water Reactive.

NOTE: Authority cited: Sections 208, 25141 and 25150, Health and Safety Code. Reference: Section 25141, Health and Safety Code.

HISTORY

1. Amendment filed 9–27–84; effective thirtieth day thereafter (Register 84, No. 41).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66238. Water Bulk Shipment.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66240. Well.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer and new section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

Article 1.5. Conflict of Interest Code

§ 66250. General Provisions.

The Political Reform Act of 1974 (Government Code section 81000 et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission (FPPC) has adopted regulations (Title 2, California Code of Regulations section 18730 et seq.) which contain the terms of a standard conflict of interest code and which can be incorporated by reference into another agency's code. After public notice and hearing, section 18730 et seq. may be amended by the FPPC to conform to amendments in the Political Reform Act. The terms of section 18730 and any amendments to it duly adopted by the FPPC are hereby incorporated by reference. This section and the following sections, which specify all the terms and procedures for a model conflict of interest code and set forth the conditions under which designated employees must disqualify themselves from influencing governmental decisions, are hereby incorporated by reference and constitute the Conflict of Interest Code of the Department of Toxic Substances Control (Department).

Designated employees shall file statements of economic interest by using instructions and forms prescribed by the FPPC with the person designated to perform this function for the Department. The original statement by the Director of the Department shall be sent to the FPPC and a copy retained by the Department's filing officer along with all other such statements.

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300, 87302, 87306 and 87311, Government Code.

HISTORY

1. New article 1.5 (sections 66250–66250.2) and section filed 11–8–2001; operative 12–8–2001. Approved by Fair Political Practices Commission 10–2–2001 (Register 2001, No. 45).

§ 66250.1. Disclosure Categories.

Category 1

Designated employees in this category must disclose, pursuant to instructions and forms prescribed by the FPPC, the following:

(a) All investments and sources of income, including gifts, loans and travel payments, from business or nonprofit entities that do business or receive income from any source within the State of California.

(b) All interests in real property in California.

(c) Any positions held in business entities that do business or receive income from any source within the State of California.

Category 2

Designated employees in this category must disclose, pursuant to instructions and forms prescribed by the FPPC, the following:

(a) All investments in business entities whose activities are subject to regulation or oversight by the Department or that contract, or are the type that contract, with the Department to provide services, supplies, materials, machinery or equipment.

(b) All interests in real property in California that are owned or operated by a business or nonprofit entity with activities subject to regulation or oversight by the Department or any real property within 2,000 feet of such property.

(c) Any positions held in business entities whose activities are subject to regulation or oversight by the Department or that contract, or are of the type that contract, with the Department to provide services, supplies, materials, machinery or equipment and income from those sources.

(d) All sources of income, including gifts, loans and travel payments, from business or nonprofit entities whose activities are subject to regulation or oversight by the Department or that contract, or are of the type that contract, with the Department to provide services, supplies, materials, machinery or equipment.

Category 3

Designated employees in this category must disclose, pursuant to instructions and forms prescribed by the FPPC, the following:

(a) Any positions held in business entities that contract, or are of the type that contract, with the Department to provide services, supplies, materials, machinery or equipment.

(b) Any source of income, including gifts, loans and travel payments, and investment in business entities that contract, or are of the type that contract, with the Department to provide services, supplies, materials, machinery or equipment.

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300, 87302, 87306 and 87311, Government Code.

HISTORY

1. New section filed 11–8–2001; operative 12–8–2001. Approved by Fair Political Practices Commission 10–2–2001 (Register 2001, No. 45).
2. Amendment of section filed 6–10–2003; operative 6–10–2003. Approved by Fair Political Practices Commission 4–15–2003 (Register 2003, No. 24).
3. Amendment filed 3–26–2004; operative 4–25–2004. Approved by Fair Political Practices Commission 2–9–2004 (Register 2004, No. 13).
4. Amendment of Category 1, subsection (b) and Category 2, subsection (b) filed 1–31–2006; operative 3–2–2006. Approved by Fair Political Practices Commission 1–9–2006 (Register 2006, No. 5).

§ 66250.2. Employee Designations.

Designated Employees By Positions	*Assigned Disclosure Categories*
Accounting Administrators (All Levels)	2
Air Pollution Specialists	2
Assistant Chief Counsels	2
Assistant Laboratory Chief, Public Health Laboratory	2
Associate Budget Analysts	2
Associate Governmental Program Analysts (except in Legislation)	3
Associate Governmental Program Analysts in the Office of Legislation	2
Associate Information Systems Analyst (Specialist)	3
Career Executive Assignments	2
Chemists (Staff and higher)	2
Chief, Hazardous Material Laboratory	2
Consultants*	2
Criminal Investigators (All Levels)	2
Data Processing Managers (All Levels)	3
Division Chiefs, DTSC	2
Engineering Geologists (All Levels)	2
Environmental Biochemists	2
Environmental Planners (Associate and higher)	2
Exempt Appointments	1
Hazardous Substances Engineers (All Levels)	2
Hazardous Substances Scientists (All Levels)	2
Health Program Audit Managers	2
Industrial Hygienists (Associate and higher)	2
Information Officers (I and higher)	2
Management Auditors (All Levels)	2
Programmer Analysts (All Levels)	3
Public Participation Specialists	2
Public Participation Supervisors	2
Records Management Analysts	3
Research Program Specialists II	2
Research Scientists (I and higher)	2
Staff Counsels (All Levels)	2
Staff Information Systems Analyst (All Levels)	3
Staff Services Analysts in the Office of Legislation	2
Staff Services Managers (All Levels)	2
Toxicologists (All Levels)	2
Training Officers I	3

*With respect to consultants, the Director may determine in writing that a particular consultant, although in a "designated position", is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Director's determination is a public record and shall be retained for public inspection.

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300, 87302, 87306 and 87311, Government Code.

HISTORY

1. New section filed 11–8–2001; operative 12–8–2001. Approved by Fair Political Practices Commission 10–2–2001 (Register 2001, No. 45).
2. Amendment of section filed 6–10–2003; operative 6–10–2003. Approved by Fair Political Practices Commission 4–15–2003 (Register 2003, No. 24).
3. Amendment filed 3–26–2004; operative 4–25–2004. Approved by Fair Political Practices Commission 2–9–2004 (Register 2004, No. 13).
4. Amendment filed 5–17–2005; operative 6–16–2005. Approved by Fair Political Practices Commission 3–17–2005 (Register 2005, No. 20).
5. Amendment filed 1–31–2006; operative 3–2–2006. Approved by Fair Political Practices Commission 1–9–2006 (Register 2006, No. 5).

Article 2. Definitions

§ 66260.1. Purpose, Scope, and Applicability.

(a) This chapter provides definitions of terms, general standards, and overview information applicable to this division.

(b) In this chapter:

(1) Section 66260.2 sets forth the rules that the Department will use in making information it receives available to the public and sets forth the requirements that generators, transporters, or owners or operators of treatment, storage, or disposal facilities must follow to assert claims of business confidentiality with respect to information that is submitted to the Department under this division.

(2) Section 66260.3 establishes rules of grammatical construction for this division.

(3) Section 66260.4 establishes a rule restricting local enforcement actions relating to the management of hazardous waste.

(4) Section 66260.5 sets forth processing times for specified Departmental actions.

(5) Section 66260.10 defines terms which are used in this division.

(6) Section 66260.11 lists references used in this division and a source for these documents.

(7) Section 66260.12 lists acronyms and abbreviations used in this division.

(8) Section 66260.21 establishes requirements and procedures for obtaining waivers to use alternative test methods or analytical methods for classifying non–RCRA hazardous waste and for obtaining the Department's concurrence for using alternative methods allowed by the USEPA Administrator per 40 CFR Section 260.21 for the analysis of RCRA hazardous waste.

(9) Section 66260.200 establishes procedures for obtaining the Department's concurrence on classification of a waste as hazardous or nonhazardous.

(10) Section 66260.210 establishes procedures and requirements for obtaining waivers from regulation for non–RCRA hazardous waste and non–RCRA regulated activities.

NOTE: Authority cited: Sections 208 and 25159, Health and Safety Code. Reference: Section 25159.5, Health and Safety Code and 40 CFR Section 260.1.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Relocation of article 2 heading from preceding section 66260.10 to precede section 66260.1 filed 3–26–2004; operative 4–25–2004. Approved by Fair Political Practices Commission 2–9–2004 (Register 2004, No. 13).

§ 66260.2. Availability of Information; Confidentiality of Information.

(a) Any information provided to the Department pursuant to this division will be made available to the public to the extent and in the manner authorized by section 3007(b) of RCRA and the California Public Records Act (Government Code section 6250 et seq.), and EPA regulations set forth in 40 CFR Part 2, as applicable.

(b) Any person who submits information to the Department in accordance with 40 CFR Parts 260 through Part 266 and Part 268 or chapters 10 through 16 and chapter 18 of this division may assert a claim of business confidentiality covering part or all of that information by following the procedures set forth in 40 CFR section 2.203(b). Information covered by such a claim will be disclosed by the USEPA or the Department only to the extent, and by means of the procedures, set forth in this division except that information required by 40 CFR section 262.53(a) and 40 CFR section 262.83 or section 66262.53(a) and section 66262.83 that is submitted in a notification of intent to export a hazardous waste will be provided to the U.S. Department of State and the appropriate authorities in the transit and receiving or importing countries regardless of any claims of confidentiality. However, if no such claim accompanies the information when it is received by the Department, it may be made available to the public without further notice to the person submitting it.

(c) Information covered by such a claim will be disclosed by the Department only to the extent, and by means of the procedures, set forth in Part 2, Subpart B, of 40 CFR except that information required by section 66262.53(a) which is submitted in notification of intent to export a hazardous waste pursuant to section 66262.53(a) will be provided to the U.S. Department of State and the appropriate authorities in a receiving country regardless of any claims of confidentiality.

NOTE: Authority cited: Sections 208 and 25159, Health and Safety Code. Reference: Section 25159.5, Health and Safety Code and 40 CFR Section 260.2.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect amending subsection (b) filed 8–20–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

§ 66260.3. Use of Number.

As used in this division:

(a) Words in the singular include the plural; and

(b) Words in the plural include the singular.

NOTE: Authority cited: Sections 208 and 25159, Health and Safety Code. Reference: Section 25159.5, Health and Safety Code and 40 CFR Section 260.3.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66260.4. Local Agency Regulation of Hazardous Waste Facilities.

No local agency shall enforce any requirement, other than those in this division, which would impede interstate or intrastate transportation or disposal of hazardous waste or which would impede use of facilities for regional multi–county management of hazardous waste.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Section 25150, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66260.5. Processing Times Based on Actual Performance.

The Department's time periods for processing applications for specific Departmental actions based on actual performance for the two years immediately preceding proposal of this regulation are as follows:

(a) Hazardous waste hauler registration (section 66263.11):

(1) Median time: 60 days

(2) Minimum time: 1 day

(3) Maximum time: 180 days

(b) waste classification concurrence (section 66260.200) and Special waste classification (section 66261.124):

(1) Median time: 11 months

(2) Minimum time: 2 days

(3) Maximum time: 39 months

(c) Variances (section 66260.210):

(1) Median time: 60 days

(2) Minimum time: 1 day

(3) Maximum time: 1200 days.

NOTE: Authority cited: Section 15376, Government Code; and Sections 208 and 25150, Health and Safety Code. Reference: Section 15376, Government Code; and Sections 25141, 25143 and 25163, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66260.10. Definitions.

Additional definitions applicable to management of universal wastes are found in section 66273.9. When used in this division, the following terms have the meanings given below:

"Aboveground tank" means a device meeting the definition of "tank" in section 66260.10 and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

"Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury, property damage or environmental degradation neither expected nor intended from the standpoint of the insured.

"Accumulated speculatively" means that a material is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potential-

ly recyclable and has a feasible means of being recycled; and that, during the calendar year (commencing on January 1), the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75 percent by weight or volume of the amount of that material accumulated at the beginning of the period. In calculating the percentage of turnover, the 75 percent requirement is to be applied to each material of the same type (e.g., slags from a single smelting process) that is recycled in the same way (i.e., from which the same material is recovered or that is used in the same way). Materials accumulating in units that would be exempt from regulation under section 66261.4(c) are not to be included in making the calculation. (Materials that are already defined as wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling, however.

"Active life" or "Operating life" of a facility means the period from the initial receipt of hazardous waste at the facility until the Department receives certification of final closure.

"Active portion" means that portion of a facility where transfer, treatment, storage or disposal operations are being or have been conducted after November 19, 1980 and which is not a closed portion.

"Activity" means any activity that is subject to regulation under this division.

"Acute aquatic 96–hour LC_{50}" means the concentration of a substance or mixture of substances in water, in milligrams per liter, which produces death within 96 hours in half of a group of at least 10 test fish.

"Acute dermal LD_{50}" means the dose of a substance or mixture of substances, in milligrams per kilogram of test animal body weight, which, when applied continuously to the bare skin for 24 hours, produces death within 14 days in half of a group of 10 or more rabbits.

"Acute inhalation LC_{LO}" means the lowest concentration of a substance or mixture of substances in air, other than acute inhalation LD_{50} in parts per million by volume if the substance or mixture of substances is a gas or vapor, reported to have caused death in humans or animals.

"Acute inhalation LC_{50}" means the concentration of a substance or mixture of substances in air, in parts per million by volume if the substance or mixture of substances is a gas or vapor, which when inhaled continuously for 8 hours by a group of 10 or more laboratory white rats, each weighing between 200 and 300 grams, produces death in half the group within 14 days.

"Acute LD_{LO}" means the lowest dose, other than an acute LD_{50} of a substance or mixture of substances, in milligrams per kilogram body weight introduced orally or dermally over any given period of time in one or more divided portions and reported to have caused death in humans or animals.

"Acute oral LD_{50}" means the dose of a substance or mixture of substances, in milligrams per kilogram of test animal body weight, which, when administered orally as a single dose, produces death within 14 days in half of a group of 10 or more laboratory white rats which have fasted for 24 hours immediately prior to administration of the dose, and which weigh between 200 and 300 grams each.

"Acute toxicity" Means the ability of a substance or mixture of substances to cause injury, illness or damage to humans, animals or other living organisms by a single exposure of a duration measured in seconds, minutes, hours or days or, in the case of oral ingestion, by a single dose.

"Acute hazardous waste" see "Acutely hazardous waste."

"Acutely hazardous waste" or "Acute hazardous waste" means any hazardous waste classified as an acutely hazardous waste in article 4 of chapter 11 of this division.

"Administrator" see "USEPA Administrator."

"Affected medium" means any medium (e.g., ground water, surface water or the unsaturated zone) that has been affected by a release from a regulated unit.

For the purposes of chapters 14 and 15, "Air stripping operation" is a desorption operation employed to transfer one or more volatile components from a liquid mixture into a gas (air) either with or without the application of heat to the liquid. Packed towers, spray towers, and bubble–cap, sieve, or valve–type plate towers are among the process configurations used for contacting the air and a liquid.

"Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves and pumps, that is used to distribute, meter or control the flow of hazardous waste from its point of generation to a storage or treatment tank(s), between hazardous waste storage and treatment tanks to a point of disposal onsite, or to a point of shipment for disposal offsite.

"Applicant" means a person who applies to the Department or to the USEPA for a permit, registration, certification or permission to take specified action, pursuant to the provisions of this division.

"Application" means (a) the USEPA standard national forms for applying for a permit (Form EPA 8700–23, Revised 1/90) and the information required by the Department under sections 66270.14 through 66270.29 (contents of Part B of the application); or (b) the forms approved by the Department for applying for registration as a hazardous waste hauler. These forms are:

Form DTSC 187, revised 2/92: Hazardous Waste Hauler Application

Form DTSC 8025, revised 2/92: Application for Vehicle/container inspection

Form DTSC 8038, revised 2/93: Certificate of insurance

Form DHS 8430, revised 3/89: Disclosure Statement

"Aquifer" means a geologic formation, group of formations or part of a formation capable of yielding a significant amount of ground water to wells or springs.

"Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

"Authorized agency" means, in a jurisdiction where there is no CUPA, the agency authorized to continue its role, responsibilities and authority pursuant to section 25404.3 of the Health and Safety Code to implement and enforce the requirements identified in paragraph (1) of subdivision (c) of section 25404 of the Health and Safety Code. In those instances when the Department is the authorized agency, the Department is not limited from exercising any authority it otherwise has under the Health and Safety Code and Title 22 of the California Code of Regulations.

"Authorized representative" means the person responsible for the overall operation of a facility or an operational unit (i.e., part of a facility), e.g., the plant manager, superintendent or person of equivalent responsibility.

"Average volatile organic concentration" or "average VO concentration" means the mass–weighted average volatile organic concentration of a hazardous waste as determined in accordance with the requirements of section 66265.1084.

"Background monitoring point" means a well, device or location specified in the facility permit at which monitoring for background water, soil, air or soil–vapor quality is conducted.

"Bioaccumulative toxic substance" means a toxic substance that concentrates in living organisms through direct assimilation or food chain accumulation.

"Bodily Injury" means (a) any injury that causes physical pain, illness or any impairment of physical condition; or (b) for the purposes of chapter 13 of this division, "bodily injury" means injury to the body, sickness or disease to any person, including death resulting from any of these.

"Boiler" means an enclosed device using controlled flame combustion and having the following characteristics:

(a)(1) the unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids or heated gases; and

(2) the unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterfalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be

physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream), and fluidized bed combustion units; and

(3) while in operation, the unit must maintain a thermal energy recovery efficiency of at least 60 percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(4) the unit must export and utilize at least 75 percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(b) the unit is one which the USEPA Regional Administrator has determined, on a case–by–case basis, to be a boiler, after considering the standards in 40 CFR section 260.32.

"Border zone property" means any property designated as border zone property pursuant to Health and Safety Code section 25229 which is within 2,000 feet of a significant disposal of hazardous waste, and the wastes so located are a significant existing or potential hazard to present or future public health or safety on the land in question.

For the purposes of chapters 14 and 15, "Bottoms receiver" means a container or tank used to receive and collect the heavier bottoms fractions of the distillation feed stream that remain in the liquid phase.

"Buffer zone" means an area of land which surrounds a hazardous waste facility and on which certain land uses and activities are restricted to protect the public health and safety and the environment from existing or potential hazards caused by the migration of hazardous waste.

"Bulk container" means any container or container–like vehicle, other than a vessel or a barge, with a capacity greater than 119 gallons (450 liters), which is used to transport hazardous waste(s), hazardous material(s), hazardous substance(s), or recyclable material(s) in bulk by air, highway, rail, or water, including, but not limited to, cargo tanks, vacuum trucks, roll–off bins, rail tank cars, and intermodal containers.

"Bulking" means the process of consolidating various quantities of the same type of waste by placing them into a single, larger container.

"Business" means the conduct of an activity and is not limited to a commercial or proprietary activity.

"Business concern" means any sole proprietorship, corporation, association, firm, partnership, trust or other form of commercial organization.

"By–product" is a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a co–product that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

"Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

"Cargo tank" means any tank permanently attached to, or a structural part of, a vehicle; or any bulk liquid or compressed gas packaging that is not permanently attached to a vehicle and by reason of its size, construction or method of attachment is filled or emptied without removal from the vehicle. The term does not include tanks that furnish fuel for propulsion of motor vehicle, or auxiliary equipment on which they are installed or any packaging fabricated to cylinder specifications.

"Cathode ray tube" or "CRT" means a vacuum tube or picture tube used to convert an electrical signal into a visual image.

"Certification" means a statement of professional opinion based upon knowledge and belief.

"Certified Unified Program Agency (CUPA)" means the agency certified pursuant to the requirements of Chapter 6.11 and Title 27, CCR.

"Chemical toilet" means any portable or permanently installed sanitation apparatus or system which utilizes a tank for toilet waste retention and into which a chemical toilet additive is added.

"Chemical toilet additive" means any chemical substance, biological agent, other material or formulation thereof, which is employed for the primary purpose of controlling waste decomposition and odors in a chemical toilet holding tank or any tank in which chemical toilet wastes are held, collected or transported. The term "chemical toilet additive" includes, but is not limited to, a chemical substance, biological agent or other material which is a deodorant, bactericide, bacteriostat, microbiocide, chemical reactant, surfactant or enzymatic agent.

"Chemical toilet waste" means the waste in or from a chemical toilet.

"Chronic toxicity" means the ability of a substance or mixture of substances to cause injury, illness or damage to humans, animals or other living organisms by prolonged or repeated exposure or consumption over a period of days, weeks, months or years.

"Class I Violation" means:

(a) a deviation from the requirements specified in Chapter 6.5 of Division 20 of the Health and Safety Code, or regulations, permit or interim status document conditions, standards, or requirements adopted pursuant to that chapter, that represents a significant threat to human health or safety or the environment, because of (1) the volume of the waste; (2) the relative hazard of the waste; or (3) the proximity of the population at risk, or that is significant enough that it could result in a failure to accomplish the following:

(A) Assure that hazardous wastes are destined for and delivered to an authorized hazardous waste facility;

(B) Prevent releases of hazardous waste or constituents to the environment during the active or post closure period of facility operation;

(C) Assure early detection of such releases;

(D) Assure adequate financial resources in the case of releases; or

(E) Assure adequate financial resources to pay for facility closure;

(F) Perform emergency clean–up operation or other corrective action for releases; or

(b) The deviation is a Class II violation which is a chronic violation or committed by a recalcitrant violator.

"Class II Violation" means a deviation from the requirements specified in Chapter 6.5 of Division 20 of the Health and Safety Code, or regulations, permit or interim status document conditions standards, or requirements adopted pursuant to that chapter, that is not a Class I violation.

"Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements and for which the Department has released the owner and operator from the financial assurance requirements for closure under section 66264.143(j) or section 66265.143(i).

For the purposes of chapters 14 and 15, "Closed–vent system" means a system that is not open to the atmosphere and that is composed of piping, connections, and, if necessary, flow–inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device.

"Closure" means the act of closing a hazardous waste management facility or hazardous waste management unit to pursuant the requirements of chapters 14 and 15 of this division.

"Closure device" means a cap, hatch, lid, plug, seal, valve, or other type of fitting that blocks an opening in a cover such that when the device is secured in the closed position it prevents or reduces air pollutant emissions to the atmosphere. Closure devices include devices that are detachable from the cover (e.g., a sampling port cap), manually operated (e.g., a hinged access lid or hatch), or automatically operated (e.g., a spring–loaded pressure relief valve).

"Closure period" means the period during which a unit at a hazardous waste management facility is being closed according to an approved closure plan.

"Closure plan" means the plan for closure prepared in accordance with section 66264.112 or section 66265.112.

"Commence" means to receive the first delivery of waste.

"Component" means any constituent part of a unit or any group of constituent parts of a unit which are assembled to perform a specific function (e.g., a tank or ancillary equipment of a tank system, a pump seal, pump, kiln liner, kiln thermocouple).

"Concentration limit" means the value for a constituent specified in the water quality protection standard or environmental protection standard including, but not limited to, values for concentration, temperature, pH, conductivity and resistivity.

For the purposes of chapters 14 and 15, "Condenser" means a heat–transfer device that reduces a thermodynamic fluid from its vapor phase to its liquid phase.

"Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined ground water.

For the purposes of chapters 14 and 15, "Connector" means flanged, screwed, welded, or other joined fittings used to connect two pipelines or a pipeline and a piece of equipment. For the purposes of reporting and recordkeeping, connector means flanged fittings that are not covered by insulation or other materials that prevent location of the fittings.

"Consignee" means the ultimate treatment, storage or disposal facility in a receiving country to which the hazardous waste will be sent.

"Consignment state" or "Destination state" means the state to which the shipment is manifested. This definition takes effect on September 5, 2006.

"Consolidated Manifest" means a hazardous waste manifest used by a milkrun or consolidated transporter to combine hazardous waste shipments from multiple generators on one consolidated manifest pursuant to the procedures in Health and Safety Code section 25160.2.

"Consolidated Transporter" means a hazardous waste transporter registered pursuant to Health and Safety Code section 25165 and the regulations adopted by the Department who has notified the Department pursuant to Health and Safety Code section 25165 of its intent to use the consolidated manifesting procedures set forth in Health and Safety Code section 25160.2.

"Constituents of concern" means any waste constituents, reaction products and hazardous constituents that are reasonably expected to be in or derived from waste contained in a regulated unit.

"Container" means any device that is open or closed, and portable in which a material can be stored, handled, treated, transported, recycled or disposed of.

"Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of article 29 of chapters 14 or 15 of this division.

"Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

For the purposes of chapters 14 and 15, "Continuous recorder" means a data–recording device recording an instantaneous data value at least once every 15 minutes.

"Continuous seal" means a seal that forms a continuous closure that completely covers the space between the edge of the floating roof and the wall of a tank. A continuous seal may be a vapor–mounted seal, liquid–mounted seal, or metallic shoe seal. A continuous seal may be constructed of fastened segments so as to form a continuous seal.

"Control chart" means a graphical method for evaluating whether a process is or is not in a state of statistical control.

For the purposes of chapters 14 and 15, "Control device" means an enclosed combustion device, vapor recovery system, or flare. Any device the primary function of which is the recovery or capture of solvents or other organics for use, reuse, or sale (e.g., a primary condenser on a solvent recovery unit) is not a control device.

For the purposes of chapters 14 and 15, "Control device shutdown" means the cessation of operation of a control device for any purpose.

"Corrective action management unit" means an area within a facility that is designated by the Department under article 15.5 of chapter 14 of this division, for the purpose of implementing corrective action requirements under articles 6, 15.5, or 17 of chapter 14 of this division or article 18 of chapter 15 of this division, Health and Safety Code sections 25200.10 or 25187, or section 25358.9 where as provided for under the provisions of that section the Department has excluded the removal or remedial action at a site from the hazardous waste facilities permit required by Health and Safety Code section 25201, or federal RCRA section 3005 [Title 42, U.S.C., section 6925]. A corrective action management unit shall only be used for the management of remediation wastes pursuant to implementing such corrective action requirements at the facility.

"Corrosion expert" means a person who, by reason of that person's knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the National Association of Corrosion Engineers (NACE) or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

"Cover" means a device that provides a continuous barrier over the hazardous waste managed in a unit to prevent or reduce air pollutant emissions to the atmosphere. A cover may have openings (such as access hatches, sampling ports, gauge wells) that are necessary for operation, inspection, maintenance, and repair of the unit on which the cover is used. A cover may be a separate piece of equipment which can be detached and removed from the unit or a cover may be formed by structural features permanently integrated into the design of the unit.

"Covered container" means any container which is equipped with a cover or other device that will prevent the escape of a liquid or solid substance when closed.

"Covered electronic device" has the same meaning as Public Resource Code section 42463(f)(1).

"Covered electronic waste" has the same meaning as Public Resource Code section 42463(g).

"Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

"Current closure cost estimate" means the most recent of the estimates prepared in accordance with section 66264.142 or section 66265.142.

"Current liabilities" means obligations for which liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

"Current plugging and abandonment cost estimate" means the most recent of estimates prepared in accordance with 40 CFR section 144.62(a), (b) and (c) incorporated by reference in section 66260.11 of this chapter.

"Current postclosure cost estimate" means the most recent of the estimates prepared in accordance with section 66264.144 or section 66265.144.

"Day" means a calendar day. Periods of time are calculated by excluding the first day and including the last. Except, if the last day is a Saturday, Sunday or other holiday specified in Government Code section 6700 it is also excluded.

"Debris" means solid material exceeding a 60 mm particle size that is intended for disposal and that is: A manufactured object; or plant or animal matter; or natural geologic material. However, the following materials are not debris: any material for which a specific treatment standard is provided in article 4 of chapter 18 of this division, namely lead acid batteries, cadmium batteries, and radioactive lead solids; process residuals such as smelter slag and residues from the treatment of waste, wastewater, sludges, or air emission residues; and intact containers of hazardous waste that are not ruptured and that retain at least 75% of their original volume. A mixture of debris that has not been treated to the standards provided by section 66268.45 and other material is subject to regulation as debris if the mixture is comprised primarily of debris, by volume, based on visual inspection.

"Decontaminate" means to make free of wastes that are hazardous pursuant to the criteria in chapter 11 of this division.

"Department" means the Department of Toxic Substances Control.

"Designated facility" means a hazardous waste transfer, treatment, storage, or disposal facility which has received a permit (or a facility with interim status) in accordance with the requirements of chapters 20 and 21 of this division, a permit from a State authorized in accordance with part 271 of title 40 CFR, or that is regulated under chapter 16 of this division, or has received a permit, a grant of interim status, or a variance to operate without a permit or grant of interim status from the Department, or is otherwise authorized by law to receive specific hazardous wastes, and that has been designated on the manifest by the generator pursuant to section 66262.20. This definition is repealed as of September 5, 2006.

"Designated facility" means (1) a hazardous waste transfer, treatment, storage, or disposal facility which has received a permit (or a facility with interim status) in accordance with the requirements of chapters 20 and 21 of this division, or (2) has received a permit from a State authorized in accordance with part 271 of 40 Code of Federal Regulations, or (3) that is regulated under chapter 16 of this division, or (4) has received a permit, a grant of interim status, or a variance to operate without a permit or grant of interim status from the Department, or (5) is otherwise authorized by law to receive specific hazardous wastes, and (6) that has been designated on the manifest by the generator pursuant to section 66262.20. Designated facility also means a generator site designated on the manifest to receive its waste as a return shipment from a facility that has rejected the waste in accordance with sections 66264.72 subsection (f) or 66265.72 subsection (f). If a waste is destined to a facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility shall be a facility allowed by the Receiving state to accept such waste. This definition takes effect on September 5, 2006.

"Destination state" see "Consignment state". This definition takes effect on September 5, 2006.

"Dike" means an embankment or ridge of either natural or man–made materials used to prevent the movement of liquids, sludges, solids or other materials.

"Director" means the State Department of Toxic Substances Control Director, or an authorized representative.

"Discharge" or "hazardous waste discharge" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying or dumping of hazardous waste into or on any land or water.

"Disclosure statement," as defined by Health and Safety Code section 25112.5, means the following:

(a) a statement submitted to the Department by an applicant, signed by the applicant under penalty of perjury, which includes all of the following information:

(1) the full name, any previous name or names, business address, social security number and driver's license number of all of the following:

(A) the applicant;

(B) any officers, directors or partners, if the applicant is a business concern;

(C) all persons or any officers, partners, or any directors if there are no officers, of business concerns holding more than five percent of the equity in, or debt liability of the applicant, except that if the debt liability is held by a lending institution, the applicant shall only supply the name and address of the lending institution;

(2) Except as provided in subdivision (b), the following persons listed on the disclosure statement shall properly submit completed fingerprint images and related identification information:

(A) the sole proprietor;

(B) the partners;

(C) all persons listed in subparagraph (C) of paragraph (1) and any officers or directors of the applicant company as required by the Department;

(3) if fingerprint images and related identification information are submitted for purposes of paragraph (2), the fingerprint images and related identification information shall be submitted for any person required by paragraph (2) only once. If there is a change in the person serving in a position for which fingerprint images and related identification information are required to be submitted pursuant to paragraph (2), fingerprint images and related identification information shall be captured and submitted for that person. Fingerprint images and the related identification information may be obtained using the Department of Justice's electronic fingerprint network.

(4) the full name and business address of any business concern which generates, transports, treats, stores, recycles, disposes of or handles hazardous waste and hazardous materials in which the applicant holds at least a five percent debt liability or equity interest;

(5) a description of any local, state, or federal licenses, permits, or registrations for the generation, transportation, treatment, storage, recycling, disposal or handling of hazardous waste or hazardous materials applied for, or possessed by the applicant, or by the applicant under any previous name or names, in the five years preceding the filing of the statement, or, if the applicant is a business concern, by the officers, directors, or partners of the business concern, including the name and address or the issuing agency;

(6) a listing and explanation of any final administrative orders or license revocations or suspensions issued or initiated by any local, state or federal authority, in the five years immediately preceding the filing of the statement, or any civil or criminal prosecutions filed in the five years immediately preceding, or pending at the time of, the filing of the statement, with any remedial actions or resolutions if applicable, relating to the generation, transportation, treatment, storage, recycling, disposal or handling of hazardous waste or hazardous materials received by the applicant, or by the applicant under any previous name or names, or, if the applicant is a business concern, by any officer, director or partner of the business concern;

(7) a listing of any agencies outside of the state which regulate, or had regulated, the applicant's, or the applicant's under any previous name or names, generation, transportation, treatment, storage, recycling, disposal or handling of hazardous waste or hazardous materials in the five years preceding the filing of the disclosure statement;

(8) a listing and explanation of any federal or state conviction, judgment, or settlement, in the five years immediately preceding the filing of the statement, with any remedial actions or resolutions if applicable, relating to the generation, transportation, treatment, storage, recycling, disposal or handling of hazardous waste or hazardous materials by the applicant, or by the applicant under any previous name or names, or if the applicant is a business concern, by any officer, director or partner of the business concern;

(9) a listing of all owners, officers, directors, trustees and partners of the applicant who have owned, or been an officer, director, trustee or partner of, any company which generated, transported, treated, stored, recycled, disposed of, or handled hazardous wastes or hazardous materials and which was the subject of any of the actions described in paragraphs (6) and (8) for the five years preceding the filing of the statement.

(b) Notwithstanding paragraph (2) of subdivision (a), a corporation, the stock of which is listed on a national securities exchange and registered under the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a et seq.), or a subsidiary of such a corporation, is not subject to the fingerprint requirements of subdivision (a).

(c) In lieu of the statement specified in subdivision (a), a corporation, the stock of which is listed on a national securities exchange or on the National Market System of the NASDAQ Stock Market and registered under the Securities Exchange Act of 1934 (15 U.S.C. section 78a et seq.), or a subsidiary of such a corporation, may submit to the Department copies of all periodic reports, including, but not limited to, those reports required by Section 78m of title 15 of the United States Code and Part 229 (commencing with Section 229.10) of chapter II of title 17 of the Code of Federal Regulations that the corporation or subsidiary has filed with the Securities and Exchange Commission in the three years immediately preceding the submittal, if the corporation or subsidiary thereof has held a hazardous waste facility permit or operated a hazardous waste facility under interim status pursuant to Health and Safety Code section 25200 or 25200.5 since January 1, 1984.

"Disposal" means:

(a) the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste or hazardous waste into or on any land or water so that such waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters;

(b) the abandonment of any waste.

"Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term "disposal facility" does not include a corrective action management unit into which remediation wastes are placed.

"Disposal site" means the location where any final deposition of hazardous waste occurs.

For the purposes of chapters 14 and 15, "Distillate receiver" means a container or tank used to receive and collect liquid material (condensed) from the overhead condenser of a distillation unit and from which the condensed liquid is pumped to larger storage tanks or other process units.

For the purposes of chapters 14 and 15, "Distillation operation" means an operation, either batch or continuous, separating one or more feed stream(s) into two or more exit streams, each exit stream having component concentrations different from those in the feed stream(s). The separation is achieved by the redistribution of the components between the liquid and vapor phase as they approach equilibrium within the distillation unit.

For the purposes of chapters 14 and 15, "Double block and bleed system" means two block valves connected in series with a bleed valve or line that can vent the line between the two block valves.

"Draft permit" means a document prepared under section 66271.5 or 40 CFR section 124.6 indicating the Department's tentative decision to issue or deny, modify, revoke and reissue, terminate or reissue a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit, as discussed in section 66271.4, are types, of draft permits. A denial of a request for modification, revocation and reissuance, or termination, as discussed in section 66271.4 or 40 CFR section 124.5 is not a "draft permit." A proposed permit is not a draft permit.

"Drip pad" means an engineered structure consisting of a curbed, free–draining base, constructed of non–earthen materials and designed to convey preservative kick–back or drippage from treated wood, precipitation, and surface water run–on to an associated collection system at wood preserving plants.

"Elementary neutralization unit" means a device which:

(a) is used for neutralizing wastes which are hazardous wastes only because they exhibit the corrosivity characteristic defined in section 66261.22, or are listed in article 4 of chapter 11 of this division only for this reason; and,

(b) meets the definition of tank, tank system, container, transport vehicle or vessel in this section.

"Emergency permit" means a permit issued in accordance with section 66270.61.

"Enclosure" means a structure that surrounds a tank or container, captures organic vapors emitted from the tank or container, and vents the captured vapors through a closed–vent system to a control device.

"End–user" means (a) any person who receives a hazardous waste from an unaffiliated third party and who intends to, or does, use or reuse that waste as:

(1) an ingredient in an industrial process to make a product, provided that distinct components of the material are not recovered as separate end products; or

(2) a substitute for a raw material in a process that uses raw materials as principal feedstocks; or

(3) a substitute for a commercial product in a particular function or application.

(b) "End–user" does not include:

(1) a person who receives a RCRA hazardous waste;

(2) a person who receives a hazardous waste from an unaffiliated third party and who intends to, or does, process that waste to recover usable products or regenerate that waste;

(3) a person managing a material that is not a waste pursuant to Health and Safety Code section 25143.2.

"EPA Acknowledgment of Consent" means the cable sent to the USEPA from the U.S. Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

"EPA hazardous waste number" means the number assigned to each hazardous waste listed in article 4 of chapter 11 of this division and to each characteristic identified in article 3 of chapter 11 of this division as an EPA hazardous waste number.

For the purposes of chapters 14 and 15, "Equipment" means each valve, pump, compressor, pressure relief device, sampling connection system, open–ended valve or line, or flange or other connector, and any control devices or systems required by these regulations.

"Equivalent method" means any testing or analytical method approved by the USEPA Administrator under 40 CFR sections 260.20 and 260.21 or by the Department under section 66260.21 of this division.

"Existing component" see "Existing tank system."

"Existing facility" see "Existing hazardous waste management facility."

"Existing hazardous waste facility" see "Existing hazardous waste management facility."

"Existing hazardous waste management (HWM) facility," "Existing hazardous waste facility," or "existing facility" means a facility which was in operation or for which construction commenced on or before November 19, 1980 and for which a Part A permit application has been submitted to the Department or the USEPA. A facility has commenced construction if:

(a) the owner or operator has obtained the Federal, State and local approvals or permits necessary to begin physical construction; and either

(b)(1) a continuous onsite, physical construction program has begun; or

(2) the owner or operator has entered into contractual obligations, which cannot be cancelled or modified without substantial loss, for physical construction of the facility to be completed within a reasonable time.

"Existing portion" means:

(a) that land surface area of an existing facility, included in the original RCRA Part A permit application, on which wastes have been placed prior to February 2, 1985;

(b) for facilities that were not required to submit a RCRA permit application, that land surface area of an existing facility on which wastes have been placed prior to February 2, 1985.

"Existing tank system" or "existing tank component" means a tank system or component that is used for the transfer, storage or treatment of hazardous waste and that is in operation, or for which installation has commenced on or prior to the dates indicated below:

(a) July 14, 1986, for tanks containing RCRA hazardous wastes, unless:

(1) the owner or operator is a conditionally exempt small quantity generator as defined in 40 CFR section 261.5, or a 100 to 1,000 kg per month generator as defined in 40 CFR section 265.201, or

(2) the owner or operator is not subject to regulation in 40 CFR part 264 or part 265 pursuant to an exemption in 40 CFR section 264.1 or section 265.1;

(b) July 1, 1991 for:

(1) tanks containing only non–RCRA hazardous wastes, and

(2) tanks containing RCRA hazardous wastes, if:

(A) the owner or operator is a conditionally exempt small quantity generator as defined in 40 CFR section 261.5, or a 100 to 1,000 kg per month generator as defined in 40 CFR section 265.201, or

(B) the owner or operator is not subject to regulation in 40 CFR part 264 or part 265 pursuant to an exemption in 40 CFR section 264.1 or section 265.1, but the owner or operator is subject to the standards of article 10 of chapter 14 or article 10 of chapter 15 of this division.

Installation will be considered to have commenced if the owner or operator has obtained all Federal, State and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either a continuous onsite physical construction or installation program has begun, or the owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the site or installation of the tank system to be completed within a reasonable time.

"External floating roof" means a pontoon–type or double–deck type cover that rests on the surface of the material managed in a tank with no fixed roof.

"Extremely hazardous material" means a substance or combination of substances which, if human exposure should occur, may likely result in death, disabling personal injury or serious illness caused by the substance or combination of substances because of its quantity, concentration or chemical characteristics.

"Extremely hazardous waste" means any hazardous waste or mixture of hazardous wastes which, if human exposure should occur, may likely result in death, disabling personal injury or serious illness caused by the hazardous waste or mixture of hazardous wastes because of its quantity, concentration or chemical characteristics.

"Facility" see "Hazardous waste facility."

"Facility mailing list" means the mailing list for a facility maintained by the Department in accordance with section 66271.9(c)(1)(D).

"Facility personnel" see "Personnel."

"Federal agency" means any department, agency or other instrumentality of the Federal Government, any independent agency or establishment of the Federal Government including any Government corporation, and the Government Printing Office.

"Federal, State and local approvals or permits necessary to begin physical construction" means permits and approvals required under Federal, State or local hazardous waste control statutes, regulations or ordinances.

"Final closure" means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under chapters 14 and 15 of this division are no longer conducted at the facility unless subject to the provisions in section 66262.34.

"Fine powder" means a metal in dry, solid form having a particle size smaller than 100 micrometers (0.004 inches) in diameter.

For the purposes of chapters 14 and 15, "First attempt at repair" means to take rapid action to maintain compliance with Section 66265.31, for the purpose of stopping or reducing leakage of organic material to the atmosphere using best practices.

"Fixed roof" means a cover that is mounted on a unit in a stationary position and does not move with fluctuations in the level of the material managed in the unit.

"Fixed Treatment Unit" means any equipment which performs a treatment as defined in this section and which is permanently stationed, or which is periodically assembled for use, at a single facility for the purpose of performing treatment, regardless of the period or frequency of treatment.

For the purposes of chapters 14 and 15, "Flame zone" means the portion of the combustion chamber in a boiler occupied by the flame envelope.

For the purposes of chapters 14 and 15, "Flow indicator" means a device that indicates whether gas flow is present in a vent stream.

"Floating membrane cover" means a cover consisting of a synthetic flexible membrane material that rests upon and is supported by the hazardous waste being managed in a surface impoundment.

"Floating roof" means a cover consisting of a double deck, pontoon single deck, or internal floating cover which rests upon and is supported by the material being contained, and is equipped with a continuous seal.

"Food–chain crops" means tobacco, crops grown for human consumption and crops grown for feed for animals whose products are consumed by humans.

For the purposes of chapters 14 and 15, "Fractionation operation" means a distillation operation or method used to separate a mixture of several volatile components of different boiling points in successive stages, each stage removing from the mixture some proportion of one of the components.

"Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure. Free liquids are determined by using the paint filter test (EPA Method No. 9095), as modified in section 66264.314(b) of this division.

"Freeboard" means the vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

"Functionally equivalent component" means a component which performs the same function or measurement and which meets or exceeds the performance specifications of another component.

"Generator" or "Producer" means any person, by site, whose act or process produces hazardous waste identified or listed in chapter 11 of this division or whose act first causes a hazardous waste to become subject to regulation.

"Generator state" means the state where the waste is generated and from which the shipment originates. This definition takes effect on September 5, 2006.

"Groundwater" means water below the land surface in a zone of saturation.

"Halogenated organic compounds" or "HOCs" means those compounds having a carbon–halogen bond which are listed under Appendix III or Appendix III–A to chapter 18 of this division.

"Handling" means the transporting or transferring from one place to another, or pumping, processing, storing or packaging of hazardous waste, but does not include the handling of any substance before it becomes a waste.

"Hard–piping" means pipe or tubing that is manufactured and properly installed in accordance with relevant standards and good engineering practices.

"Hauler" means a transporter.

"Hazardous Constituent" means:

(a) a constituent identified in Appendix VIII to chapter 11 of this division; or

(b) any other element, chemical compound, or mixture of compounds which is a component of a hazardous waste or leachate and which has a physical or chemical property that causes the waste or leachate to be identified as a hazardous waste.

"Hazardous debris" means debris that contains a hazardous waste listed in article 4 of chapter 11 of this division, or that exhibits a characteristic of hazardous waste identified in article 3 of chapter 11. Any deliberate mixing of prohibited hazardous waste with debris that changes its treatment classification (i.e., from waste to hazardous debris) is not allowed under the dilution prohibition in section 66268.3 of this division.

"Hazardous material" as defined in Health and Safety Code Section 25501 as applied in Chapter 6.95 of Division 20 of the Health and Safety Code.

"Hazardous waste" means a hazardous waste as defined in section 66261.3 of this division. "Hazardous waste" includes extremely hazardous waste, acutely hazardous waste, RCRA hazardous waste, non–RCRA hazardous waste and special waste.

"Hazardous waste constituent" means a constituent that caused the USEPA Administrator to list the hazardous waste in 40 CFR Part 261, Subpart D, or a constituent listed in Table 1 of 40 CFR section 261.24.

"Hazardous waste discharge" see "discharge."

"Hazardous waste facility," "hazardous waste management facility," "HW facility," or "facility" means:

(a) all contiguous land and structures, other appurtenances, and improvements on the land used for the treatment, transfer, storage, resource

recovery, disposal or recycling of hazardous waste. A hazardous waste facility may consist of one or more treatment, transfer, storage, resource recovery, disposal or recycling operational units or combinations of these units.

(b) For the purpose of implementing corrective action under articles 6, 15.5, or 17 of chapter 14 or article 18 of chapter 15 of this division, all contiguous property under the control of the owner or operator seeking a permit under Title 22, Division 4.5 of the California Code of Regulations. This definition applies to all contiguous property of an owner or operator implementing corrective action at a facility under Health and Safety Code sections 25200.10 or 25187, or federal RCRA section 3004(u) [Title 42, U.S.C., section 6924(u)] or federal RCRA section 3008(h) [Title 42, U.S.C., section 6928(h)]. This definition also applies to all contiguous property of an owner or operator implementing removal or remedial action at an extra–large, large, medium, or small site where hazardous substances have been released or threaten to be released under Health and Safety Code sections 25187 or 25358.9 where as provided for under the provisions of that section the Department has excluded the removal or remedial action at a site from the hazardous waste facilities permit required by Health and Safety Code section 25201.

"Hazardous waste facility permit" or "permit" means an authorization, license or equivalent control document issued by the USEPA or the Department to implement the requirements of RCRA and this division. "Permit" includes permit by rule pursuant to section 66270.60, and emergency permit pursuant to section 66270.61. "Permit" does not include interim status (article 7 of chapter 20), or any permit which has not yet been the subject of final USEPA or Department action, such as a draft permit or a proposed permit.

"Hazardous waste management" see "Management."

"Hazardous waste management facility" see "Hazardous waste facility."

"Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, a waste transfer area, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

For the purposes of chapters 14 and 15, "Hazardous waste management unit shutdown" means a work practice or operational procedure that stops operation of a hazardous waste management unit or part of a hazardous waste management unit. An unscheduled work practice or operational procedure that stops operation of a hazardous waste management unit or part of a hazardous waste management unit for less than 24 hours is not a hazardous waste management unit shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping operation are not hazardous waste management unit shutdowns.

"Hazardous waste property" means (a) land which is either of the following:

(1) any hazardous waste facility or portion thereof, required to be permitted pursuant to this division, which has a permit for disposal from the Department or has submitted an application for such a permit;

(2) a portion of any land designated as a hazardous waste property pursuant to Health and Safety Code section 25229 where a significant disposal of hazardous waste has occurred on, under or into the land resulting in a significant existing or potential hazard to present or future public health or safety.

(b) "Hazardous waste property" does not mean residential land that has never received waste chemicals from an industrial, commercial, agricultural, research or business activity.

"Highway" means a way, or place, of whatever nature open to the use of the public for purposes of vehicular travel. Highway includes street.

"HOCs" see "Halogenated organic compound."

For the purposes of chapters 14 and 15, "Hot well" means a container for collecting condensate as in a steam condenser serving a vacuum–jet or steam–jet ejector.

"Household" means a single detached residence or a single unit of a multiple residence unit and all appurtenant structures.

"Household hazardous waste" means any hazardous waste generated incidental to owning and/or maintaining a place of residence. Household hazardous waste does not include any waste generated in the course of operating a business at a residence.

"HWM facility" see "Hazardous waste facility."

"ID Number" see "Identification number."

"Identification Number" or "ID Number" means the number applied for by and and assigned to all handlers of hazardous waste. A State ID number will be issued to handlers of non–RCRA hazardous waste (HW) and/or under 100 KG per calendar month of a RCRA HW. The State ID number will have a prefix of three letters followed by nine numbers. A federal ID number (EPA ID number) will be issued to handlers of 100 KG or more per calendar month of a RCRA HW and/or more than 1 KG per calendar month of acute HW, and any amount of non–RCRA HW. The federal ID number will have a prefix of three letters followed by nine numbers. Federal facilities will have a prefix of two letters followed by ten numbers.

"Ignitable" means capable of being set afire, or of bursting into flame spontaneously or by interaction with another substance or material.

"Impoundment" see "Surface impoundment."

For the purposes of chapters 14 and 15, "In gas/vapor service" means that the piece of equipment contains or contacts a hazardous waste stream that is in the gaseous state at the operating conditions.

For the purposes of chapters 14 and 15, "In heavy liquid service" means that the piece of equipment is not in either gas/vapor service or in light liquid service.

For the purposes of chapters 14 and 15, "In light liquid service" means that the piece of equipment contains or contacts a wastestream where the vapor pressure of one or more of the components in the stream is greater than 0.3 kilopascals (kPa) at 20 degrees C, the total concentration of the pure components having a vapor pressure greater than 0.3 kPa at 20 degrees C is equal to or greater than 20 percent by weight, and the fluid is a liquid at the operating conditions.

"In light liquid service" means that the piece of equipment contains or contacts a waste stream where the vapor pressure of one or more of the organic components in the stream is greater than 0.3 kilopascals (kPa) at 20 deg.C, the total concentration of the pure organic components having a vapor pressure greater than 0.3 kilopascals (kPa) at 20 deg.C is equal to or greater than 20 percent by weight, and the fluid is a liquid at operating conditions.

"In light material service" means the container is used to manage a material for which both of the following conditions apply: The vapor pressure of one or more of the organic constituents in the material is greater than 0.3 kilopascals (kPa) at 20 deg.C; and the total concentration of the pure organic constituents having a vapor pressure greater than 0.3 kPa at 20 deg.C is equal to or greater than 20 percent by weight.

"In situ sampling systems" means non–extractive samplers or in–line samplers.

"In operation" refers to a facility which is transferring, treating, storing or disposing of hazardous waste.

For the purposes of chapters 14 and 15, "In vacuum service" means that equipment is operating at an internal pressure that is at least 5 kPa below ambient pressure.

"Inactive portion" means that portion of a facility which is not operated after November 19, 1980.

"Incinerator" means any enclosed device that:

(1) Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(2) Meets the definition of infrared incinerator or plasma arc incinerator.

"Incompatible waste" means a hazardous waste which is unsuitable for:

(a) placement in a particular device or facility because it may cause corrosion or decay of containment materials (e.g., container inner liners or tank walls); or

(b) commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases or flammable fumes or gases. (See Appendix V to chapter 15 of this division for examples.)

"Independent sample" means an individual sample that has not been affected by previous sampling efforts.

"Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

"Individual generation site" means the contiguous site at or on which one or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

"Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

(a) cement kilns;

(b) lime kilns;

(c) aggregate kilns;

(d) phosphate kilns;

(e) coke ovens;

(f) blast furnaces;

(g) smelting, melting and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters and foundry furnaces);

(h) titanium dioxide chloride process oxidation reactors;

(i) methane reforming furnaces;

(j) pulping liquor recovery furnaces;

(k) combustion devices used in the recovery of sulfur values from spent sulfuric acid;

(*l*) Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3%, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20% as-generated.

(m) such other devices as the USEPA Administrator may, after notice and comment, add to the list of "industrial furnaces" in 40 CFR section 260.10 on the basis of one or more of the following factors:

(1) the design and use of the device primarily to accomplish recovery of material products;

(2) the use of the device to burn or reduce raw materials to make a material product;

(3) the use of the device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feedstocks;

(4) the use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;

(5) the use of the device in common industrial practice to produce a material product; and

(6) other factors, as appropriate.

"Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

"Injection well" means any bored, drilled, or driven shaft, dug pit, or hole in the ground whose depth is greater than its largest surface dimension and any associated subsurface appertances, including, but not limited to, the casing.

"Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.

"Inorganic metal-bearing waste" is one for which the Department has established treatment standards for metal hazardous constituents, and which does not otherwise contain significant organic or cyanide content as described in section 66268.3(b)(1), and is specifically listed in appendix XI of chapter 18.

"Interim status" means the authorization granted by the Department or the USEPA which allows a facility to continue to operate pending review and decision of the facility's permit application.

"Internal floating roof" means a cover that rests or floats on the material surface (but not necessarily in complete contact with it) inside a tank that has a fixed roof.

"International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

"Land disposal" means placement in or on the land, except in a corrective action management unit, and includes, but is not limited to, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, underground mine or cave, or placement in a concrete vault or bunker intended for disposal purposes.

"Land disposal method" means:

(a) disposal of hazardous wastes on or into the land, including, but not limited to, landfill, surface impoundment, waste piles, deep-well injection, land spreading and co-burial with municipal garbage;

(b) treatment of hazardous wastes on or in the land, such as neutralization and evaporation ponds and land farming, where the treatment residues are hazardous wastes and are not removed for subsequent processing or disposal within one year;

(c) storage of hazardous wastes on or in the land, such as waste piles and surface impoundments, other than neutralization and evaporation ponds, for longer than one year.

"Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

"Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

"Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface so that hazardous constituents are degraded, transformed or immobilized within the treatment zone. Such facilities are disposal facilities if the waste will remain after closure.

"LCD with a mercury-containing lamp" means a liquid crystal display illuminated by mercury-containing back lighting.

"Leachate" means any liquid, including any suspended components in the liquid, that has percolated through or drained from hazardous waste.

"Leachate collection and removal system/leak detection system (LCRS/LDS)" means the liner system component that immediately underlies the uppermost liner of a waste management unit, and that serves both: (a) as a leachate collection and removal system (LCRS), by collecting and conveying leachate to a sump for disposal; and (b) as a leak detection system (LDS), by enabling the discharger to determine when the uppermost liner is leaking, by virtue of the leachate flow rate through the uppermost liner's exceeding the action leakage rate.

"Leak-detection system" means a system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of hazardous waste or accumulated liquid in the second-

ary containment structure. Such a system must employ operational controls (e.g., daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of hazardous waste into the secondary containment structure.

"Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

"Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

"License" includes, but is not limited to any permit, registration or certification issued by any local, State, or Federal agency for the generation, transportation, treatment, storage, recycling, disposal or handling of hazardous waste.

"Liner" means a continuous layer of natural or man–made materials, beneath or on the sides of a surface impoundment, landfill or landfill cell, which restricts the downward or lateral escape of hazardous waste, hazardous waste constituents or leachate.

"Liquid–mounted seal" means a foam or liquid–filled primary seal mounted in contact with the hazardous waste between the tank wall and the floating roof continuously around the circumference of the tank.

"Load" means the amount of waste transported by one truck, one railroad car or one barge to a hazardous waste facility.

"Major facility" means any facility or activity classified as such by the USEPA Regional Administrator in conjunction with the Department.

For the purposes of chapters 14 and 15, "Malfunction" means any sudden failure of a control device or a hazardous waste management unit or failure of a hazardous waste management unit to operate in a normal or usual manner, so that organic emissions are increased.

"Malfunction" means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

"Management" or "hazardous waste management" means the handling, storage, transportation, processing, treatment, recovery, recycling, transfer and disposal of hazardous waste.

"Manifest" means the shipping document DHS 8022A, or the equivalent document required by the state to which the waste will be shipped, which is originated and signed by the generator in accordance with the instructions included in the appendix to chapter 12 of this division. This definition is repealed as of September 5, 2006.

"Manifest" and "California Uniform Hazardous Waste Manifest" mean the shipping document, the Uniform Hazardous Waste Manifest, EPA Form 8700–22, (including, if necessary, the Continuation Sheet, EPA Form 8700– 22A), originated and signed by the generator or offeror in accordance with the instructions in the Appendix to chapter 12 of this division and the applicable requirements of chapters 12 through 15 and in the appendix to 40 Code of Federal Regulations part 262 and the applicable requirements of 40 Code of Federal Regulations parts 262 through 265. This definition takes effect on September 5, 2006.

"Manifest document number" means the unique number assigned to the manifest by the Department for recording and reporting purposes. This definition is repealed as of September 5, 2006.

"Manifest tracking number" means the alphanumeric identification number (i.e., a unique three letter suffix preceded by nine numerical digits), which is pre–printed in Item 4 of the Manifest by a registered source approved by U.S. EPA to print manifests under 40 Code of Federal Regulations section 262. 21(c) and (e). This definition takes effect on September 5, 2006.

"Maximum credible earthquake" means the maximum earthquake which rationally appears capable of occurring under the presently known tectonic framework and all known geologic and seismologic facts. The following factors and standards shall be applied in determining the maximum credible earthquake:

(a) the seismic history of the vicinity and the geologic province;

(b) the length of the significant fault or faults which can affect the site within a radius of 100 kilometers;

(c) the type(s) of faults involved;

(d) the tectonic and/or structural history;

(e) the tectonic and/or structural pattern or regional setting (geologic framework);

(f) the time factor (known or expected frequency of occurrence) shall not be a parameter.

"Maximum organic vapor pressure" means the sum of the individual organic constituent partial pressures exerted by the material contained in a tank, at the maximum vapor pressure–causing conditions (i.e., temperature, agitation, pH effects of combining wastes, etc.) reasonably expected to occur in the tank. For the purpose of chapter 14, and 15, maximum organic vapor pressure is determined using the procedures specified in section 66265.1084(c).

"Mercury–containing motor vehicle light switch" means any motor vehicle switch found in the hood or trunk of a motor vehicle that contains mercury.

"Metallic shoe seal" means a continuous seal that is constructed of metal sheets which are held vertically against the wall of the tank by springs, weighted levers, or other mechanisms and is connected to the floating roof by braces or other means. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

"Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

"Miscellaneous unit" means a hazardous waste management unit where hazardous waste is transferred, treated, stored, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace other than industrial furnaces which are conditionally exempted pursuant to subsections (c) or (f) of section 66266.100, underground injection well with appropriate technical standards under article 5.5 commencing with section 25159.10 of chapter 6.5 of division 20 of the Health and Safety Code, containment building, corrective action management unit, or unit eligible for a research, development and demonstration permit under section 66270.65.

"Monitoring parameter" means one of the set of parameters specified in the facility permit for which monitoring is conducted. Monitoring parameters shall include physical parameters, waste constituents, reaction products, and hazardous constituents, that provide a reliable indication of a release from a regulated unit.

"Monitoring point" means a well, device or location specified in the facility permit at which the water quality or environmental protection standard applies and at which monitoring is conducted.

"Movement" means that hazardous waste transported to a facility in an individual vehicle.

"National Pollutant Discharge Elimination System" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 318, 402, and 405 of the Federal Water Pollution Control Act (33 U.S.C. sections 1317, 1328, 1342 and 1345). The term includes an approved program.

"Natural resources" includes, but is not limited to, disposal site capacity and substances which are hazardous waste, or which are in hazardous waste, the reuse of which is technologically and economically feasible.

"Net working capital" means current assets minus current liabilities.

"Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

"New facility" see "New hazardous waste management facility."

"New hazardous waste facility" see "New hazardous waste management facility."

"New hazardous waste management facility," "new hazardous waste facility," or "new facility" means a facility which began operation, or for which construction commenced after November 19, 1980.

"New tank component" see "New tank system."

"New tank system" or "new tank component" means a tank system or component that will be used for the transfer, storage or treatment of hazardous waste and for which installation (as defined under "Existing tank system" in this section) has commenced after the dates indicated below; except, however, for purposes of sections 66264.193(g) and 66265.193(g), a new tank system is one for which construction commences after the dates indicated below: (See also "Existing tank system.")

(a) July 14, 1986, for tanks containing RCRA hazardous wastes, unless:

(1) the owner or operator is a conditionally exempt small quantity generator as defined in 40 CFR section 261.5, or a 100 to 1,000 kg per month generator as defined in 40 CFR section 265.201, or

(2) the owner or operator is not subject to regulation in 40 CFR part 264 or part 265 pursuant to an exemption in 40 CFR section 264.1 or section 265.1;

(b) July 1, 1991 for:

(1) tanks containing only non–RCRA hazardous wastes, and

(2) tanks containing RCRA hazardous wastes, if:

(A) the owner or operator is a conditionally exempt small quantity generator or a 100 to 1,000 kg per month generator, or

(B) the owner or operator is not subject to regulation in 40 CFR part 264 or part 265 pursuant to an exemption in 40 CFR section 264.1 or section 265.1, but the owner or operator is subject to the standards of article 10 of chapter 14 or article 10 of chapter 15 of this division.

"No detectable organic emissions" means no escape of organics to the atmosphere as determined using the procedure specified in section 66265.1084(d).

"Non–RCRA hazardous waste" means all hazardous waste regulated in the State, other than RCRA hazardous waste as defined in this section. A hazardous waste is presumed to be a RCRA hazardous waste, unless it is determined pursuant to section 66261.101 that the hazardous waste is a non–RCRA hazardous waste.

"Nonsudden accidental occurrence" means an unforeseen and unexpected accident which takes place over time, involves continuous or repeated exposure and results in bodily injury, property damage or environmental degradation.

"Nonwastewaters" means, for the purposes of chapter 18 of this division, wastes that do not meet the criteria for wastewaters found in the definition of "wastewaters" in this section.

"Offsite" means any site which is not onsite.

"Offsite facility" means a hazardous waste facility that is not an onsite facility.

"Onground tank" means a device meeting the definition of "tank" in this section that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

"Onsite" means the same or geographically contiguous property which may be divided by public or private right–of–way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing as opposed to going along, the right–of–way. Noncontiguous properties owned by the same person but connected by a right–of–way which that person controls and to which the public does not have access, is also considered onsite property.

"Onsite facility" or "Onsite hazardous waste facility" means a facility:

(a) at which a hazardous waste is generated and which is owned by, leased to, or under the control of, the generator of the waste; and

(b) which is located on the same or geographically contiguous property, on which the waste is produced, which may be divided by public or private right–of–way, provided the entrance and exit between the properties is at a cross–roads intersection, and access is by crossing as opposed to going along, the right–of–way. Noncontiguous properties owned by the same person but connected by a right–of–way which the person controls and to which the public does not have access, is also considered an onsite facility.

"Onsite hazardous waste facility" see "Onsite facility."

"Open burning" means the combustion of any material without the following characteristics:

(a) control of combustion air to maintain adequate temperature for efficient combustion;

(b) containment of the combustion–reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(c) control of emission of the gaseous combustion products. (See also "incineration" and "thermal treatment.")

For the purposes of chapters 14 and 15, "Open–ended valve or line" means any valve, except pressure relief valves, having one side of the valve seat in contact with hazardous waste and one side open to the atmosphere, either directly or through open piping.

"Operator" means the person responsible for the overall operation of a facility.

"Operating life" see "Active life."

"Owner" means the person who owns a facility or part of a facility.

"Owner or operator" means the owner or operator of any facility or activity subject to regulation under chapter 6.5 commencing with section 25100, division 20, Health and Safety Code.

"P–value" means the smallest significance level for which the null hypothesis would be rejected based on the data that was actually observed.

"Parent corporation" means a corporation which directly owns at least 50 percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

"Part A of Permit Application" or "Part A" means an application to the Department or the USEPA for a permit to operate a hazardous waste facility. The application is described in section 66270.13.

"Part B of Permit Application" or "Part B" means the operation plan described in sections 66270.14 through 66270.23 for a hazardous waste facility.

"Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of chapters 14 and 15 of this division at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile or other hazardous waste management unit, while other units of the same facility continue to operate or will be placed in operation in the future.

"PCBs" see "Polychlorinated biphenyls."

"Permanent household hazardous waste collection facility" or "PHHWCF" means a facility operated by a public agency or its contractor which:

(a) is operated in accordance with section 67450.25; and

(b) is permanently sited at a location.

"Permit" see "Hazardous waste facility permit."

"Permit–by–rule" means a provision of these regulations stating that a facility or activity is deemed to have a permit if it meets the requirements of the provision.

"Permitted facility" means a facility that has received a hazardous waste facility permit from the Department or the USEPA in accordance with section 25200 of the Health and Safety Code or RCRA.

"Persistent toxic substance" means a toxic substance that resists natural degradation or detoxification.

"Person" means an individual, trust, firm, joint stock company, business concern, corporation, including, but not limited to, a government corporation, partnership and association. "Person" also includes any city, county, district, commission, the State or any department, agency or political subdivision thereof, any interstate body, and the Federal Government or any department or agency thereof to the extent permitted by law.

"Personnel" or "facility personnel" means all persons who work, at, or oversee the operations of, a hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of this division.

"Physical parameter" means any measurable physical characteristic of a substance including, but not limited to, temperature, electrical conductivity, pH and specific gravity.

"Physical construction" means excavation, movement of earth, erection of forms or structures, or similar activity to prepare a facility to accept hazardous waste.

"Pile" or "waste pile" means any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

"Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

"Point of compliance" means a vertical surface located at the hydraulically downgradient limit, of a regulated unit, that extends through the uppermost aquifer.

"Point of waste origination" means as follows:

(1) When the facility owner or operator is the generator of the hazardous waste, the point of waste origination means the point where a solid waste produced by a system, process, or waste management unit is determined to be a hazardous waste as defined in this division. *[NOTE: In this case, this term is being used in a manner similar to the use of the term "point of generation" in air standards established for waste management operations under authority of the Clean Air Act in 40 CFR parts 60, 61 and 63.]*

(2) When the facility owner and operator are not the generator of the hazardous waste, point of waste origination means the point where the owner or operator accepts delivery or takes possession of the hazardous waste.

"Point of waste treatment" means the point where a hazardous waste to be treated in accordance with section 66265.1083(c)(2) exits the treatment process. Any waste determination shall be made before the waste is conveyed, handled, or otherwise managed in a manner that allows the waste to volatilize to the atmosphere.

"Point source" means any discernible, confined and discrete conveyance, including, but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

"Polychlorinated biphenyls" or "PCBs" are halogenated organic compounds defined in accordance with 40 CFR 761.3.

"Postclosure plan" means the plan for postclosure care prepared in accordance with chapter 14 or chapter 15 of this division.

"POTW" see "Publicly owned treatment works."

For the purposes of chapters 14 and 15, "Pressure release" means the emission of materials resulting from the system pressure being greater than the set pressure of the pressure relief device.

"Primary Exporter" means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with article 2 of chapter 12 of this division, which specifies a treatment, storage or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

For the purposes of chapters 14 and 15, "Process heater" means a device that transfers heat liberated by burning fuel to fluids contained in tubes, including all fluids except water that are heated to produce steam.

For the purposes of chapters 14 and 15, "Process vent" means any open-ended pipe or stack that is vented to the atmosphere either directly, through a vacuum-producing system, or through a tank (e.g., distillate receiver, condenser, bottoms receiver, surge control tank, separator tank, or hot well) associated with hazardous waste distillation, franctionation, thin-film evaporation, solvent extraction, or air or steam stripping operations.

"Processing" means treatment.

"Producer" see "Generator."

"Property Damage" means (a) an injury to property which deprives its owner of the benefit of the property by taking, withholding, deteriorating or destroying it.

(b) For the purposes of chapter 13, "property damage" means damage to or loss of tangible property.

"Publicly owned treatment works" or "POTW" means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a "State" or "municipality" (as defined by 33 U.S.C. section 1362). This definition includes sewers, pipes or other conveyances only if they convey wastewater to a POTW providing treatment.

"R chart" (Range chart) means a control chart for evaluating the variability within a process in terms of the subgroup range R.

"RCRA Characteristic" means the characteristic of ignitability, corrosivity, reactivity, or toxicity identified in sections 66261.21, 66261.22(a)(1), 66261.22(a)(2), 66261.23, and 66261.24(a)(1) of this division.

"RCRA Characteristic Hazardous Waste" or "RCRA Characteristic Waste" means a hazardous waste that exhibits any of the RCRA characteristics.

"RCRA hazardous waste" means all waste identified as a hazardous waste in Part 261 (commencing with section 261.1) of subchapter I of chapter 1 of Title 40 of the Code of Federal Regulations and appendices thereto.

"RCRA Hazardous Waste Facility Permit" or "RCRA Permit" means any hazardous waste facility permit for a facility which would be required to have a permit under 42 U.S.C. section 6925, if California's hazardous waste program were not authorized pursuant to 42 U.S.C. section 6926.

"RCRA Permit" See "RCRA Hazardous Waste Facility Permit"

"Reactive" means having properties of explosivity or of chemical activity which can be a hazard to human health or the environment.

"Receiving country" means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage or disposal (except short-term storage incidental to transportation).

"Reclaimed" means that a material is processed to recover a usable product, or that it is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents.

"Recyclable material" means a hazardous waste that is capable of being recycled, including, but not limited to, any of the following:

(a) a residue;

(b) a spent material, including, but not limited to, a used or spent stripping or plating solution or etchant;

(c) a material that is contaminated to such an extent that it can no longer be used for the purpose for which it was originally purchased or manufactured;

(d) a byproduct listed in section 66261.31 or section 66261.32;

(e) any retrograde material that has not been used, distributed or reclaimed through treatment by the original manufacturer or owner by the later of the following dates:

(1) one year after the date when the material became a retrograde material;

(2) if the material has been returned to the original manufacturer, one year after the material is returned to the original manufacturer.

"Recycled material" means a material which is used or reused or reclaimed.

"Regional Administrator" or "USEPA Regional Administrator" means the Regional Administrator for the EPA Region in which the facility is located, or that person's designee.

"Registered hazardous waste transporter" means a transporter registered with the Department to transport hazardous wastes.

"Regulated Unit" means:

(a) a permitted hazardous waste facility, which operates or operated:

(1) any surface impoundment, waste pile, land treatment unit or landfill that receives or has received hazardous waste after July 26, 1982; or

(2) any surface impoundment, waste pile, land treatment unit, or landfill that ceased receiving hazardous waste by July 26, 1982 which is required to comply with the requirements of article 6 of chapter 14 of this division pursuant to section 66264.90(a);

(b) an interim status hazardous waste facility which operates or operated:

(1) any surface impoundment, waste pile, land treatment unit, or landfill that receives or has received hazardous waste after November 19, 1980; or

(2) any surface impoundment, waste pile, land treatment unit, or landfill that ceased receiving hazardous waste by November 19, 1980 which is required to comply with the requirements of article 6 of chapter 15 of this division pursuant to section 66265.90(a).

"Release" means:

(a) Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.

(b) "Release" does not include any of the following:

(1) Any release which results in exposure to persons solely within a workplace, with respect to a claim such exposed persons may assert against their employer.

(2) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel or pipeline pumping station engine.

(3) Release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954 (42 U.S.C. 2011, et seq.), if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 2210 of Title 42 of the United States Code or, for the purposes of section 104 of the federal act (42 U.S.C. 9604) or any other response action, any release of source byproduct, or special nuclear material from any processing site designated under section 7912(a)(1) or 7942(a) of Title 42 of the United States Code, which sections are a part of the Uranium Mill Tailings Radiation Control Act of 1978.

(d) The normal application of fertilizer, plant growth regulants and pesticides.

For the purposes of chapters 14 and 15, "Repaired" means that equipment is adjusted, or otherwise altered, to eliminate a leak.

"Remediation waste" means all solid and hazardous wastes, hazardous substances, and all media (including groundwater, surface water, soils, and sediments) and debris, that are managed for the purpose of implementing corrective action requirements under articles 6, 15.5, or 17 of chapter 14 or article 18 of chapter 15 of this division, Health and Safety Code sections 25200.10 or 25187, or section 25358.9 where as provided for under the provisions of that section the Department has excluded the removal or remedial action at a site from the hazardous waste facilities permit required by Health and Safety Code section 25201, or federal RCRA section 3005 [Title 42, U.S.C., section 6925]. For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing Health and Safety Code Sections 25200.10 or 25187, or section 25358.9 where as provided for under the provisions of that section the Department has excluded the removal or remedial action at a site from the hazardous waste facilities permit required by Health and Safety Code section 25201, or federal RCRA section 3005 [Title 42, U.S.C., section 6925] or 3004(v) [Title 42, U.S.C., section 6924(v)] for releases beyond the facility boundary.

"Replacement unit" means a landfill, surface impoundment, or waste pile unit (1) from which all or substantially all of the waste is removed, and (2) that is subsequently reused to transfer, treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or EPA or State approved corrective action.

"Representative sample" means a sample of a universe or whole (e.g., waste pile, lagoon, ground water) which can be expected to exhibit the average properties of the universe or whole.

"Residuals Repository" means a hazardous waste facility or part of a facility that is permitted to accept for land disposal only non–liquid, treated hazardous waste (as defined in Section 25179.3(1), Health and Safety Code). Non–liquid means non–liquid and containing less than 50 percent moisture by weight as determined in accordance with Section 66265.317 of this Division.

"Resource recovery facility" means an authorized offsite hazardous waste facility whose principal method of hazardous waste management is the recycling of recyclable material pursuant to Health and Safety Code section 25201(a).

"Restricted hazardous waste" means any hazardous waste which is subject to land disposal restriction pursuant to Health and Safety Code section 25179.6 or chapter 18 of this division.

"Retrograde material" means any hazardous material which is not to be used, sold or distributed for use in an originally intended or prescribed manner or for an originally intended or prescribed purpose and which meets any one or more of the following criteria:

(a)(1) has undergone chemical, biochemical, physical or other changes due to the passage of time or the environmental conditions under which it was stored;

(2) has exceeded a specified or recommended shelf life;

(3) is banned by law, regulation, ordinance or decree;

(4) cannot be used for reasons of economics, health or safety or environmental hazard.

(b) "Retrograde material" does not include material listed in section 66261.33 if either of the following conditions is met:

(1) the material is used in a manner constituting disposal and the material is not normally used in a manner constituting disposal;

(2) the material is burned for energy recovery and the material is not normally burned for energy recovery.

"Run–off" means any rainwater, leachate or other liquid that drains over land from any part of a facility.

"Run–on" means any rainwater, leachate or other liquid that drains over land onto any part of a facility.

"Safety device" means a closure device such as a pressure relief valve, frangible disc, fusible plug, or any other type of device which functions exclusively to prevent physical damage or permanent deformation to a unit or its air emission control equipment by venting gases or vapors directly to the atmosphere during unsafe conditions resulting from an unplanned, accidental, or emergency event. For the purpose of chapters 14 and 15, a safety device is not used for routine venting of gases or vapors from the vapor headspace underneath a cover such as during filling of the unit or to adjust the pressure in this vapor headspace in response to normal daily diurnal ambient temperature fluctuations. A safety device is designed to remain in a closed position during normal operations and open only when the internal pressure, or another relevant parameter, exceeds the device threshold setting applicable to the air emission control equipment as determined by the owner or operator based on manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials.

For the purposes of chapters 14 and 15, "Sampling connection system" means an assembly of equipment within a process or waste management unit used during periods of representative operation to take samples of the process or waste fluid. Equipment used to take non–routine grab samples is not considered a sampling connection system.

"Saturated zone" or "zone of saturation" means that part of the earth's crust in which all voids are filled with water.

"Schedule of compliance" means a schedule of remedial measures included in a permit or order, including an enforceable sequence of interim requirements (for example, actions, operations or milestone events) leading to compliance with applicable law.

"Scrap metal" means (a) any one or more of the following, except as provided in subsection (b) of this section:

(1) manufactured, solid metal objects and products;

(2) metal workings, including cuttings, trimmings, stampings, grindings, shavings and sandings; or

(3) solid metal residues of metal production.

(b) "Scrap metal" excludes all of the following:

(1) lead–acid storage batteries, waste elemental mercury, and water–reactive metals such as sodium, potassium and lithium;

(2) magnesium borings, trimmings, grindings, shavings and sandings and any other forms capable of producing independent combustion;

(3) beryllium borings, trimmings, grindings, shavings, sandings and any other forms capable of producing adverse health effects or environmental harm in the opinion of the Department;

(4) any metal contaminated with a hazardous waste, such that the contaminated metal exhibits any characteristic of a hazardous waste under article 3 of chapter 11 of this division;

(5) any metal contaminated with an oil that is a hazardous waste and that is free–flowing;

(6) sludges, fine powders, semi–solids and liquid solutions that are hazardous wastes.

"Semitrailer" means a vehicle designed for carrying persons, property or waste, used in conjunction with a motor vehicle, and so constructed that some part of its weight and that of its load rests upon, or is carried by, another vehicle.

For the purposes of chapters 14 and 15, "Sensor" means a device that measures a physical quantity or that change in a physical quantity, such as temperature, pressure, flow rate, pH, or liquid level.

For the purposes of chapters 14 and 15, "Separator tank" means a device used for separation of two immiscible liquids.

"Single–seal system" means a floating roof having one continuous seal. This seal may be vapor–mounted, liquid–mounted, or a metallic shoe seal.

"Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

"Sludge" means any solid, semi–solid or liquid waste generated from a municipal, commercial or industrial wastewater treatment plant, water supply treatment plant or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

"Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 Btu/lb of sludge treated on a wet–weight basis.

"Small quantity commercial source" means a business which generates less than 100 kilograms of household waste, as defined in paragraph (1) of subdivision (b) of Section 261.4 of Title 40 of the Code of Federal Regulations, or which meets the criteria for conditionally exempt small quantity generators specified in Section 261.5 of Title 40 of the Code of Federal Regulations, or, if the hazardous waste is perchlorethylene, a business which generates less than 50 kilograms of hazardous waste per month and meets the criteria set forth in Sections 261.4 or 261.5 of Title 40 of the Code of Federal Regulations.

"Small quantity generator" means a generator who generates less than 1,000 kg of hazardous waste in a calendar month.

"Soil" means unconsolidated earth material composing the superficial geologic strata (material overlying bedrock), consisting of clay, silt, sand, or gravel size particles as classified by the U.S. Natural Resources Conservation Service, or a mixture of such materials with liquids, sludges or solids which is inseparable by simple mechanical removal processes and is made up primarily of soil by volume based on visual inspection. Any deliberate mixing of prohibited hazardous waste with soil that changes its treatment classification (i.e., from waste to contaminated soil) is not allowed under the dilution prohibition in section 66268.3 of this division.

"Soil–pore liquid" means the liquid contained in openings between particles of soil in the unsaturated zone.

"Solid Waste Management Unit" means any unit at a hazardous waste facility from which hazardous constituents might migrate, irrespective of whether the units were intended for the management of wastes, including but not limited to: containers, tanks, surface impoundments, waste piles, land treatment units, landfills, incinerators and underground injection wells.

"Soluble threshold limit concentration" or "STLC" means the concentration of a solubilized and extractable bioaccumulative or persistent toxic substance which, if equaled or exceeded in a waste or waste extract determined pursuant to Appendix II of chapter 11 of this division renders the waste hazardous.

"Sorb" means to either adsorb or absorb, or both.

"Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both. See also "Sorb".

"Special waste" means a waste which is a hazardous waste only because it contains an inorganic substance or substances which cause it to pose a chronic toxicity hazard to human health or the environment and which meets all of the criteria and requirements of section 66261.122 and has been classified a special waste pursuant to section 66261.124.

"Spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

For the purposes of chapters 14 and 15, "Start–up" means the setting in operation of a hazardous waste management unit or control device for any purpose.

"State/EPA Agreement" means an agreement between the Regional Administrator and the Department which coordinates EPA and State activities, responsibilities and programs.

"Steam stripping operation" means a distillation operation in which vaporization of the volatile constituents of a liquid mixture takes place by the introduction of steam directly into the charge.

"STLC" see "Soluble threshold limiting concentration."

"Storage" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of or stored elsewhere.

"Sudden accidental occurrence" means an unforeseen and unexpected accident which is not continuous or repeated in nature and results in bodily injury, property damage or environmental degradation.

"Substantial business relationship" means the extent of a business relationship necessary under applicable State law to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" must arise from a pattern of recent or ongoing business transactions, in addition the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the Department.

"Sump" means any pit or reservoir that meets the definition of tank and those troughs/trenches connected to it that serve to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

"Surface impoundment" or "impoundment" means a facility or part of a facility which is a natural topographic depression, man–made excavation or diked area formed primarily of earthen materials (although it may be lined with man–made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is

not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds and lagoons.

"Surge control tank" means a pipe or storage reservoir sufficient in capacity to contain the surging liquid discharge of the process tank to which it is connected.

"Surplus material" means an unused raw material or commercial product obtained by a person who intended to use or sell it, but who no longer needs it, and who transfers ownership of it to another person for use in a manner for which the material or product is commonly used. Surplus material is excess material. Surplus material is neither of the following:

(a) a retrograde material as defined in this section;

(b) a recyclable material as defined in this section.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

"Tank" means a stationary device, designed to contain an accumulation of hazardous waste which is constructed primarily of nonearthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

"Tank system" means a hazardous waste transfer, storage or treatment tank and its associated ancillary equipment and containment system.

"Temporary household hazardous waste collection facility" or "THHWCF" means a facility operated by a public agency which:

(a) is operated in accordance with section 66270.1(c)(1)(F);

(b) is operated at the same location no more than 12 times per calendar year and no more than once in any calendar month at the same location; and

(c) terminates operation within two days of commencing each session.

"Terminate" means to accept the last delivery of waste.

"Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation and microwave discharge. (See also "incinerator" and "open burning.")

"The State" means the State of California.

"Thin-film evaporation operation" means a distillation operation that employs a heating surface consisting of a large diameter tube that may be either straight or tapered, horizontal or vertical. Liquid is spread on the tube wall by a rotating assembly of blades that maintain a close clearance from the wall or actually ride on the film of liquid on the wall.

"Total threshold limit concentration" or "TTLC" means the concentration of a solubilized, extractable and nonextractable bioaccumulative or persistent toxic substance which, if equaled or exceeded in a waste, renders the waste hazardous.

"Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which waste acid is neutralized.

"Toxic waste" means a hazardous waste designated as a toxic waste by the USEPA Administrator pursuant to 40 CFR section 261.11.

"Trailer" means a vehicle designed for carrying persons, property or waste on its own structure and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon any other vehicle.

"Transfer" means the loading, unloading, pumping or packaging of hazardous waste. Transfer does not include loading, unloading, pumping or packaging of hazardous waste on the site where the hazardous waste was generated.

"Transfer facility" or "transfer station" means any transportation related facility including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste are held and/or transferred during the normal course of transportation.

"Transfer station" see "Transfer facility."

"Transit country" means any foreign country, other than a receiving country, through which a hazardous waste is transported.

"Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle.

"Transportable Treatment Unit" means any mobile equipment which performs a "treatment" as defined in this section and which is transported onto a facility to perform treatment and which is not permanently stationed at a single facility.

"Transportation" means the movement of hazardous waste by air, rail, highway or water.

"Transporter" means a person engaged in the offsite transportation of hazardous waste by air, rail, highway or water.

"Treatability study" means either of the following, but does not include the commercial treatment or disposal of hazardous waste:

(a) The application of a treatment process to a representative sample of hazardous waste to determine any of the following:

(1) Whether the hazardous waste can be effectively treated by the treatment process employed in the treatability study.

(2) What pretreatment, if any, is required.

(3) The optimal conditions and processing techniques required to achieve the desired treatment.

(4) The efficiency of a treatment process for a specific hazardous waste or wastes.

(5) The characteristics and volumes of residual from a particular treatment process.

(b) Liner compatibility, corrosion, or other material compatibility studies.

"Treatability study sample" means a small quantity of hazardous waste, of no more than 400 kilograms (kg), which will be subject to a treatability study.

"Treatment" means any method, technique, or process which changes or is designed to change the physical, chemical, or biological character or composition of any hazardous waste or any material contained therein, or removes or reduces its harmful properties or characteristics for any purpose including, but not limited to, energy recovery, material recovery or reduction in volume.

"Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents and constituents of concern are degraded, transformed or immobilized. A treatment zone may not extend more than five feet below the initial surface and the base of the treatment zone shall be a minimum of five feet above the highest anticipated elevation of underlying groundwater.

"Truck" means a motor vehicle, excluding truck tractor, designed, used or maintained primarily for the transportation of property or waste.

"TTLC" see "Total threshold limiting concentration."

"Underground injection" means the subsurface emplacement of fluids through a bored, drilled or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "injection well.")

"Underground source of drinking water" or "USDW" means an aquifer or its portion:

(a)(1) which supplies any public water system; or

(2) which contains a sufficient quantity of ground water to supply a public water system; and

(A) currently supplies drinking water for human consumption; or

(B) contains fewer than 10,000 mg/l total dissolved solids; and

(b) which is not an exempted aquifer.

"Underground tank" means a device meeting the definition of "tank" in this section which is substantially or totally beneath the surface of the ground.

"Underlying hazardous constituent" means any constituent listed in section 66268.48, Table UTS—Universal Treatment Standards, except fluoride, selenium, sulfides, vanadium, and zinc, which can reasonably be expected to be present at the point of generation of the hazardous

waste at a concentration above the constituent–specific UTS treatment standards.

"Unfit–for–use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of transferring, storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

"Unit" means a tank, a container, or a combination of tanks or tank systems and/or containers located together that are used in sequence to treat or accumulate one or more compatible hazardous wastestreams. The devices are either plumbed together or otherwise linked so as to form one system. This definition only applies to Conditional Exemption, Conditional Authorization, and Permit By Rule operations.

"Unsaturated zone," "Vadose zone," or "zone of aeration" means the zone between the land surface and the water table.

"United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa and the commonwealth of the Northern Mariana Islands.

"Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer.

"Used oil re–refining distillation bottoms" means the heavy fraction produced by vacuum distillation of filtered and dehydrated used oil. The composition of still bottoms varies with column operation and feedstock.

"Used or reused" means that a material is either:

(a) employed as an ingredient, including use as an intermediate, in an industrial process to make a product (for example, distillation bottoms from one process used as feedstock in another process). However, a material will not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal–containing secondary materials); or

(b) employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

"USEPA Administrator" or "Administrator" means the Administrator of the federal Environmental Protection Agency, or the Administrator's designee.

"USEPA Regional Administrator" see "Regional Administrator."

"Vacuum tank" means a cargo tank which has the capability of being subjected to a vacuum or a pressure for purposes of loading and unloading its contents.

"Vadose zone" see "Unsaturated zone."

"Vapor incinerator" means any enclosed combustion device that is used for destroying organic compounds and does not extract energy in the form of steam or process heat.

"Vapor–mounted seal" means a continuous seal that is mounted such that there is a vapor space between the hazardous waste in the unit and the bottom of the seal.

"Variance" means a deviation from a provision of this division and chapter 6.5 of the Health and Safety Code authorized pursuant to section 66260.210 or Health and Safety Code section 25143.

"Vehicle" means a device by which any person or property, including waste, may be propelled, moved or drawn, excepting a device moved exclusively by human power. "Vehicle" also means a device by which any person or property, including waste, may be propelled, moved or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks.

"Vented" means discharged through an opening, typically an open–ended pipe or stack, allowing the passage of a stream of liquids, gases, or fumes into the atmosphere. The passage of liquids, gases, or fumes is caused by mechanical means such as compressors or vacuum–producing systems or by process–related means such as evaporation produced by heating and not caused by tank loading and unloading (working losses) or by natural means such as diurnal temperature changes.

"Vessel" includes every description of watercraft, used or capable of being used as a means of transportation on the water.

"Volatile organic compound" means a compound which is a volatile organic compound according to Method No. 8240 in the Environmental Protection Agency Document No. Sw 846 (1982) or any equivalent, alternative method acceptable to the Department.

"Volatile organic concentration" or "VO concentration" means the fraction by weight of the volatile organic compounds contained in a hazardous waste expressed in terms of parts per million (ppmw) as determined by direct measurement or by knowledge of the waste in accordance with the requirements of section 66265.1084. For the purpose of determining the VO concentration of a hazardous waste, organic compounds with a Henry's law constant value of at least 0.1 mole–fraction–in–the–gas–phase/mole–fraction–in the liquid–phase (0.1 Y/X) (which can also be expressed as 1.8×10^{-6} atmospheres/gram–mole/m^3) at 25 degrees Celsius must be included. Appendix VI of chapter 15, article 30 presents a list of compounds known to have a Henry's law constant value less than the cutoff level.

"Waste" means waste as defined in section 66261.2.

"Waste constituent" means a constituent that is reasonably expected to be in or derived from waste contained in a regulated unit.

"Waste determination" means performing all applicable procedures in accordance with the requirements of section 66265.1084 to determine whether a hazardous waste meets standards +specified in chapters 14 and 15. Examples of a waste determination include performing the procedures in accordance with the requirements of section 66265.1084 to determine the average VO concentration of a hazardous waste at the point of waste origination; the average VO concentration of a hazardous waste at the point of waste treatment and comparing the results to the exit concentration limit specified for the process used to treat the hazardous waste; the organic reduction efficiency and the organic biodegradation efficiency for a biological process used to treat a hazardous waste and comparing the results to the applicable standards; or the maximum volatile organic vapor pressure for a hazardous waste in a tank and comparing the results to the applicable standards.

"Waste pile" see "Pile."

"Waste stabilization process" means any physical or chemical process used to either reduce the mobility of hazardous constituents in a hazardous waste or eliminate free liquids as determined by Test Method 9095 (Paint Filter Liquids Test) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW–846, Third Edition, September 1986, as amended by Update I, November 15, 1992 (incorporated by reference–refer to section 66260.11). A waste stabilization process includes mixing the hazardous waste with binders or other materials, and curing the resulting hazardous waste and binder mixture. Other synonymous terms used to refer to this process are "waste fixation" or "waste solidification." This does not include the adding of absorbent materials to the surface of a waste, without mixing, agitation, or subsequent curing, to absorb free liquid.

"Wastewaters" means, for the purposes of chapter 18 of this division, wastes that contain less than one percent by weight total organic carbon (TOC) and less than one percent by weight total suspended solids (TSS).

"Wastewater treatment unit" means a device which:

(a) is part of a wastewater treatment facility which is subject to regulation under either section 402 (33 U.S.C. section 1317) or 307(b) (33 U.S.C. section 1342) of the Federal Clean Water Act; and

(b) receives and treats or stores an influent wastewater which is a hazardous waste as defined in chapter 11 of this division, or that generates and accumulates a wastewater treatment sludge which is a hazardous waste as defined in chapter 11 of this division, or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in chapter 11 of this division; and

(c) meets the definition of tank or tank system in this section.

"Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

"Water reactive" means having properties of, when contacted by water, reacting violently, generating extreme heat, burning, exploding or

rapidly reacting to produce an ignitable, toxic or corrosive mist, vapor or gas.

"Well" means any shaft or pit dug or bored into the earth, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

"Well injection": (See "underground injection.")

"X-bar chart" means a control chart for evaluating the process level or subgroup differences in terms of the subgroup average.

"Zone of aeration" see "Unsaturated zone."

"Zone of engineering control" means an area under the control of the owner or operator that, upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to ground water or surface water.

"Zone of saturation" see "Saturated zone."

NOTE: Authority cited: Sections 25141, 25150, 25158.1, 25158.4, 25159, 25159.5, 25187.7, 25200.10, 25204, 25214.9, 25214.10.2, 25218.3(d), 25316, 25355.5, 25356.9, 25358.3, 25358.9 and 58012, Health and Safety Code; Governor's Reorganizational Plan #1 of 1991; and Sections 42475.1 and 42475.2, Public Resources Code. Reference: Sections 25110.02, 25110.1, 25110.5, 25111, 25112, 25112.5, 25113, 25114, 25115, 25117, 25117.1, 25117.3, 25117.8, 25117.9, 25117.11, 25118, 25119, 25120, 25121, 25121.5, 25122.7, 25123, 25123.3, 25123.5, 25123.6, 25141, 25150, 25158.2, 25159, 25159.5, 25187.7, 25200.10, 25201.6, 25204, 25214.9, 25218.1(f), 25218.3, 25229, 25316, 25354(b), 25355.5, 25355.6, 25356.9, 25358.1, 25358.9, 25359.8, 25361, 25501, 25529 and 58012, Health and Safety Code; Section 42463(f)(1), Public Resources Code; and 40 Code of Federal Regulations Sections 260.10, 261.1, 262.21, 264.551, 264.1031, 268.2, 270.2 and 273.6.

HISTORY

1. New section filed 5-24-91; effective 7-1-91 (Register 91, No. 22).
2. Amendment of section filed 8-12-91; operative 9-11-91 (Register 91, No. 50).
3. New definitions "Fixed Treatment Unit" and "Release" and amendment of "Transportable Treatment Unit" filed 10-23-91; operative 1-1-92 (Register 92, No. 12).
4. Amendment of "Hazardous material" filed 8-25-92; operative 8-25-92 pursuant to Government Code section 11346.2(d) (Register 92, No. 35).
5. Addition of definitions and amendment of NOTE filed 12-23-92; operative 1-22-93 (Register 93, No. 2).
6. Addition of definitions and amendment of NOTE filed 4-12-93; operative 4-12-93 (Register 93, No. 16).
7. Change without regulatory effect amending the definition of "Application" filed 6-1-93 pursuant to section 100, title 1, California Code of Regulations (Register 93, No. 23).
8. Amendment adding definitions of "Class I Violation" and "Class II Violation" and amendment of NOTE filed 6-21-93; operative 6-21-93 pursuant to Government Code section 11346.2(d) (Register 93, No. 26).
9. Amendment adding "Permanent household hazardous waste collection facility" filed 9-29-93 as an emergency; operative 9-29-93 (Register 93, No. 40). A Certificate of Compliance must be transmitted to OAL by 1-27-94 or emergency language will be repealed by operation of law on the following day.
10. Adoption of "Corrective action management unit" and "Remediation waste" and amendment of "Disposal facility," "Hazardous waste facility," "Land disposal," "Landfill" and "Miscellaneous unit" filed 12-23-93 as an emergency; operative 12-23-93 (Register 93, No. 52). A Certificate of Compliance must be transmitted to OAL by 5-9-94 or emergency language will be repealed by operation of law on the following day.
11. Amendment adding "Permanent household hazardous waste collection facility" and amendment of NOTE refiled 1-19-94 as an emergency; operative 1-19-94 (Register 94, No. 3). A Certificate of Compliance must be transmitted to OAL by 5-19-94 or emergency language will be repealed by operation of law on the following day.
12. Editorial correction adding HISTORY 11 (Register 94, No. 9).
13. Adoption of "Corrective action management unit" and "Remediation waste" and amendment of "Disposal facility," "Hazardous waste facility," "Land disposal," "Landfill" and "Miscellaneous unit" refiled 4-25-94 as an emergency; operative 4-25-94 (Register 94, No. 17). A Certificate of Compliance must be transmitted to OAL by 8-23-94 or emergency language will be repealed by operation of law on the following day.
14. Amendment adding "Permanent household hazardous waste collection facility" and amendment of NOTE refiled 5-23-94 with amendments as an emergency; operative 5-23-94 (Register 94, No. 21). A Certificate of Compliance must be transmitted to OAL by 9-20-94 or emergency language will be repealed by operation of law on the following day.
15. Amendment adding "Treatability study" and "Treatability study sample" filed 5-27-94 as an emergency; operative 5-27-94 (Register 94, No. 21). A Certificate of Compliance must be transmitted to OAL by 9-26-94 or emergency language will be repealed by operation of law on the following day.
16. Amendment adding "Drip pad" filed 7-29-94; operative 8-29-94 (Register 94, No. 30).
17. Adoption of "Corrective action management unit" and "Remediation waste" and amendment of "Disposal facility," "Hazardous waste facility," "Land disposal," "Landfill" and "Miscellaneous unit" refiled 8-22-94 as an emergency; operative 8-22-94 (Register 94, No. 34). A Certificate of Compliance must be transmitted to OAL by 12-20-94 or emergency language will be repealed by operation of law on the following day.
18. Amendment adding "Permanent household hazardous waste facility" and amendment of NOTE refiled 9-19-94 with amendments as an emergency; operative 9-19-94 (Register 94, No. 38). A Certificate of Compliance must be transmitted to OAL by 1-17-95 or emergency language will be repealed by operation of law on the following day.
19. Amendment adding "Treatability study" and "Treatability study sample" refiled 9-19-94 as an emergency; operative 9-19-94 (Register 94, No. 38). A Certificate of Compliance must be transmitted to OAL by 1-17-95 or emergency language will be repealed by operation of law on the following day.
20. New definitions "Containment building," "Debris" and "Hazardous debris," repealer of "Inorganic solid debris," amendment of "Pile," new "Underlying hazardous constituent," and amendment of "Wastewaters" and NOTE filed 10-24-94 as an emergency; operative 10-24-94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2-20-95 or emergency language will be repealed by operation of law on the following day.
21. Adoption of "Corrective action management Unit" and "Remediation waste" and amendment of "Disposal Facility", "Hazardous waste Facility", Land disposal", "Landfill" and "Miscellaneous Unit" refiled 12-22-94 as an emergency; operative 12-22-94 (Register 94, No. 51). A Certificate of Compliance must be transmitted to OAL 4-21-95 or emergency language will be repealed by operation of law on the following day.
22. Amendment adding "Treatability study" and "Treatability study sample" refiled 1-13-95 as an emergency; operative 1-13-95 (Register 95, No. 2). A Certificate of Compliance must be transmitted to OAL by 5-15-95 or emergency language will be repealed by operation of law on the following day.
23. New definitions "Containment building," "Debris" and "Hazardous debris," repealer of "Inorganic solid debris," amendment of "Pile," new "Underlying hazardous constituent," and amendment of "Wastewaters" and NOTE refiled 2-21-95 as an emergency; operative 2-21-95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-21-95 or emergency language will be repealed by operation of law on the following day.
24. "Permanent household hazardous waste collection facility" repealed by operation of Government Code section 11346.1(f) (Register 95, No. 10).
25. Amendment adding "Permanent household hazardous waste collection facility" filed 3-8-95; operative 3-8-95 pursuant to Government Code section 11343.4(d) (Register 95, No. 10).
26. Certificate of Compliance as to 1-13-95 order transmitted to OAL 4-10-95 and filed 5-22-95 (Register 95, No. 21).
27. Editorial correction of Reference cite (Register 95, No. 25).
28. New definitions "Containment building," "Debris" and "Hazardous debris," repealer of "Inorganic solid debris," amendment of "Pile," new "Underlying hazardous constituent" and amendment of "Wastewaters" and NOTE refiled 6-19-95 as an emergency; operative 6-19-95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-17-95 or emergency language will be repealed by operation of law on the following day.
29. Amendments of definitions "Existing tank system" and "New tank system" and NOTE filed 6-19-95 as an emergency; operative 6-19-95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-17-95 or emergency language will be repealed by operation of law on the following day.
30. New definitions "Corrective action management unit" and "Remediation waste" and amendment of "Disposal facility," "Hazardous waste facility," "Land disposal," "Landfill" and "Miscellaneous unit" refiled 6-29-95 as an emergency; operative 6-29-95 (Register 95, No. 26). A Certificate of Compliance must be transmitted to OAL by 10-27-95 or emergency language will be repealed by operation of law on the following day.
31. New definitions "Replacement unit," Sump" and "Leachate collection and removal system/leak detection system" filed 7-19-95; operative 8-18-95 (Register 95, No. 29).
32. New definition "Sorbent" filed 8-8-95 as an emergency; operative 8-8-95 (Register 95, No. 32). A Certificate of Compliance must be transmitted to OAL by 12-6-95 or emergency language will be repealed by operation of law on the following day.
33. Amendment of definition "Permanent household hazardous waste collection facility" and NOTE filed 8-30-95 as an emergency; operative 8-30-95 (Register 95, No. 35). A Certificate of Compliance must be transmitted to OAL by 12-28-95 or emergency language will be repealed by operation of law on the following day.
34. Reinstatement of section as it existed prior to emergency amendment filed 9-15-95 by operation of Government Code section 11346.1(f) (Register 95, No. 37).
35. New definitions "Containment building," "Debris" and "Hazardous debris," repealer of "Inorganic solid debris," amendment of "Pile," new "Underlying hazardous constituent," and amendment of "Wastewaters" and NOTE refiled 10-16-95 as an emergency; operative 10-16-95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2-13-96 or emergency language will be repealed by operation of law on the following day.
36. Amendment of definitions "Existing tank system" and "New tank system" and NOTE refiled 10-16-95 as an emergency; operative 10-16-95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2-13-96 or emergency language will be repealed by operation of law on the following day.
37. New definitions "Corrective action management unit" and "Remediation waste," amendment of "Disposal facility," "Hazardous waste facility," "Land disposal," "Landfill" and "Miscellaneous unit," and amendment of NOTE refiled 10-26-95 as an emergency; operative 10-26-95 (Register 95, No. 43). A Cer-

tificate of Compliance must be transmitted to OAL by 2–23–96 or emergency language will be repealed by operation of law on the following day.
38. Amendment of definition "Permanent household hazardous waste collection facility" and NOTE refiled 12–26–95 as an emergency; operative 12–26–95 (Register 95, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–24–96 or emergency language will be repealed by operation of law on the following day.
39. Change without regulatory effect amending "Fractionation operation" filed 12–28–95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 52).
40. Certificate of Compliance as to 10–26–95 order transmitted to OAL 11–30–95 and filed 1–16–96 (Register 96, No. 3).
41. Certificate of Compliance as to 10–24–94 order including amendment of definitions "underlying hazardous constituent" and "wastewaters" and amendment of NOTE transmitted to OAL 12–15–95 and filed 1–31–96 (Register 96, No. 5).
42. Amendment of definitions "Existing tank system" and "New tank system" and NOTE refiled 2–16–96 as an emergency; operative 2–16–96 (Register 96, No. 7). A Certificate of Compliance must be transmitted to OAL by 6–15–96 or emergency language will be repealed by operation of law on the following day.
43. Amendment of definition "Permanent household hazardous waste collection facility" and NOTE refiled 4–25–96 as an emergency; operative 4–25–96 (Register 96, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–23–96 or emergency language will be repealed by operation of law on the following day.
44. Editorial correction of definition "Existing tank system" subsection (b) (Register 96, No. 25).
45. Amendment of definitions "Existing tank system" and "New tank system" and NOTE refiled 6–17–96 as an emergency; operative 6–17–96 (Register 96, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–15–96 or emergency language will be repealed by operation of law on the following day.
46. New definition "Carbon regeneration unit," amendment of definitions of "Department," "Director," "Incinerator," and "Industrial furnace," new definitions "Infrared incinerator," "Plasma arc incinerator," and "Sludge dryer," and amendment of NOTE filed 7–1–96; operative 7–31–96 (Register 96, No. 27).
47. Amendment of definition "Permanent household hazardous waste collection facility" and NOTE refiled 8–23–96 as an emergency; operative 8–23–96 (Register 96, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–23–96 or emergency language will be repealed by operation of law on the following day.
48. Amendment of "Resource Recovery Facility" and repealer of "Series A Resource Recovery Facility Permit," "Series B Resource Recovery Facility Permit," and "Series C Resource Recovery Facility Permit" filed 9–20–96; operative 10–20–96 (Register 96, No. 38).
49. Amendment of definitions "Existing tank system" and "New tank system" and amendment of NOTE refiled 10–15–96 as an emergency; operative 10–15–96 (Register 96, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–12–97 or emergency language will be repealed by operation of law on the following day.
50. Certificate of Compliance as to 8–23–96 order transmitted to OAL 9–27–96 and filed 11–7–96 (Register 96, No. 45).
51. Amendment of definition of "Miscellaneous unit" filed 12–17–96 as an emergency; operative 12–17–96 (Register 96, No. 51). A Certificate of Compliance must be transmitted to OAL by 4–16–97 or emergency language will be repealed by operation of law on the following day.
52. Change without regulatory effect adding new definitions "RCRA Hazardous Waste Facility Permit" and "RCRA Permit" filed 12–19–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 51).
53. Amendment of definitions "Existing tank system" and "New tank system" and amendment of NOTE refiled 2–11–97 as an emergency, including additional amendment of NOTE; operative 2–11–97 (Register 97, No. 7). A Certificate of Compliance must be transmitted to OAL by 6–11–97 or emergency language will be repealed by operation of law on the following day.
54. Reinstatement of section as it existed prior to 12–17–96 emergency amendment by operation of Government Code section 11346.1(f) (Register 97, No. 17).
55. Amendment of definition of "Miscellaneous unit" filed 4–23–97 as an emergency; operative 4–23–97 (Register 97, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–21–97 or emergency language will be repealed by operation of law on the following day.
56. Change without regulatory effect amending definitions of "Corrective action management unit," "Hazardous waste facility" and "Remediation waste" filed 6–2–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 23).
57. Change without regulatory effect amending definition of "RCRA Hazardous Waste Facility Permit" filed 6–18–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 25).
58. Certificate of Compliance as to 2–11–97 order transmitted to OAL 6–10–97; disapproved by OAL and order of repeal as to 2–11–97 filed on 7–24–97 (Register 97, No. 30).
59. Certificate of Compliance as to 2–11–97 order, including amendment of section, resubmitted to OAL and approved on 7–24–97 (Register 97, No. 30).
60. Change without regulatory effect amending definition of "Containment building" and "Wastewaters" filed 8–15–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 33).
61. Reinstatement of section as it existed prior to 4–23–97 emergency amendment by operation of Government Code section 11346.1(f) (Register 97, No. 35).
62. Amendment of definition of "Miscellaneous unit" filed 8–26–97 as an emergency; operative 8–26–97 (Register 97, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–24–97 or emergency language will be repealed by operation of law on the following day.
63. Amendment of definition of "Miscellaneous unit" refiled 12–30–97 as an emergency, including amendment of NOTE; operative 12–30–97 (Register 98, No. 1). A Certificate of Compliance must be transmitted to OAL by 4–29–98 or emergency language will be repealed by operation of law on the following day.
64. New definition of "Used oil re–refining distillation bottoms" and amendment of NOTE filed 2–3–98; operative 3–5–98 (Register 98, No. 6).
65. Certificate of Compliance as to 12–30–97 order, including further amendment of definition of "Miscellaneous unit," transmitted to OAL 4–3–98 and filed 5–15–98 (Register 98, No. 20).
66. New definitions of "Sorb" and "Sorbent" filed 10–13–98; operative 11–12–98 (Register 98, No. 42).
67. Change without regulatory effect amending definitions of "Container" and "Vehicle" filed 9–29–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 40).
68. Editorial correction implementing 9–29–98 order and adding HISTORY (Register 98, No. 44).
69. Amendment of definition of "Hazardous waste facility" and amendment of NOTE filed 11–19–98 as an emergency; operative 11–19–98 (Register 98, No. 47). A Certificate of Compliance must be transmitted to OAL by 3–19–99 or emergency language will be repealed by operation of law on the following day.
70. New definitions of "Authorized agency," "Certified Unified Program Agency" and "Unit" filed 1–8–99 as an emergency; operative 1–8–99 (Register 99, No. 2). A Certificate of Compliance must be transmitted to OAL by 5–10–99 or emergency language will be repealed by operation of law on the following day.
71. Amendment of definition of "Hazardous waste facility" and amendment of NOTE refiled 3–19–99 as an emergency; operative 3–20–99 (Register 99, No. 12). A Certificate of Compliance must be transmitted to OAL by 7–19–99 or emergency language will be repealed by operation of law on the following day.
72. New definitions of "Authorized agency," "Certified Unified Program Agency" and "Unit" refiled 5–7–99 as an emergency; operative 5–7–99 (Register 99, No. 19). A Certificate of Compliance must be transmitted to OAL by 9–7–99 or emergency language will be repealed by operation of law on the following day.
73. Change without regulatory effect adding new definitions of "Ironganic metal–bearing waste" and "Soil" and repealing and adding new definition of "Underlying hazardous constituent" filed 6–4–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 23).
74. Change without regulatory effect amending section filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).
75. New definitions of "Authorized agency," "Certified Unified Program Agency" and "Unit" refiled 9–3–99 as an emergency; operative 9–3–99 (Register 99, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–3–2000 or emergency language will be repealed by operation of law on the following day.
76. New definitions of "Authorized agency," "Certified Unified Program Agency" and "Unit" refiled 12–29–99 as an emergency; operative 1–3–2000 (Register 99, No. 53). A Certificate of Compliance must be transmitted to OAL by 5–2–2000 or emergency language will be repealed by operation of law on the following day.
77. Certificate of Compliance as to 12–29–99 order transmitted to OAL 2–29–2000 and filed 4–11–2000 (Register 2000, No. 15).
78. Change without regulatory effect amending definitions of "Equipment" and "Open–ended valve or line" and adding definition of "Sampling connection system" filed 8–3–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 31).
79. Change without regulatory effect amending definitions of "Hazardous debris" and "Soil" and adding definitions of "RCRA characteristic" and "RCRA characteristic hazardous waste" filed 9–11–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 37).
80. New definition of "Bulk container" and amendment of NOTE filed 10–19–2000; operative 11–18–2000 (Register 2000, No. 42).
81. Change without regulatory effect adding new definitions of "Consolidated Manifest" and "Consolidated Transporter" filed 12–31–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 1).
82. Amendment of first paragraph and NOTE filed 2–8–2002; operative 2–8–2002 (Register 2002, No. 6).
83. New definition of "Mercury–containing motor vehicle light switch" filed 2–13–2003; operative 3–15–2003 (Register 2003, No. 7).
84. Change without regulatory effect amending definition of "Soil" filed 2–26–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 9).
85. Change without regulatory effect amending definition of "Disclosure statement" filed 3–22–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 13).
86. Amendment relocating article 2 heading to precede section 66260.1 filed 3–26–2004; operative 4–25–2004. Approved by Fair Political Practices Commission 2–9–2004 (Register 2004, No. 13).
87. New definitions of "Cathode ray tube," "Covered electronic device," "Covered electronic waste" and "LCD with a mercury–containing lamp" and amend-

ment of NOTE filed 6–7–2004 as an emergency; operative 6–7–2004 (Register 2004, No. 24). Pursuant to Public Resources Code section 42475.2, a Certificate of Compliance must be transmitted to OAL by 6–7–2006 or emergency language will be repealed by operation of law on the following day.

88. Change without regulatory effect amending definition of "Remediation waste" and amending NOTE filed 7–19–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 30).

89. Editorial correction implementing reinstatement of section as it existed prior to 3–19–99 emergency amendment by operation of Government Code section 11346.1(f) (Register 2005, No. 26).

90. New definitions of "Cathode ray tube," "Covered electronic device," "Covered electronic waste" and "LCD with a mercury–containing lamp" and amendment of NOTE refiled 6–5–2006 as an emergency, including further amendment of NOTE; operative 6–5–2006 (Register 2006, No. 23). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.

91. Change without regulatory effect adding definitions of "Consignment state," "Destination state," "Generator state," "'Manifest' and 'California Uniform Hazardous Waster Manifest'" and "Manifest tracking number," amending definitions of "Bulk Container," "Designated facility," "Manifest" and "Manifest document number," adding version of definition of "Designated facility" to take effect 9–5–2006 and amending NOTE filed 8–24–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 34).

92. New definitions of "Cathode ray tube," "Covered electronic device," "Covered electronic waste" and "LCD with a mercury–containing lamp" and amendment of NOTE refiled 5–8–2008 as an emergency; operative 5–8–2008 (Register 2008, No. 19). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.

§ 66260.11. References.

(a) When used in this division, the following publications are incorporated by reference:

(1) "Analysis of Pesticides in Humans and Environmental Samples," EPA–600/8–80–038, U.S. Environmental Protection Agency, June 1980. This reference is available from the National Technical Information Service; United States Department of Commerce; Springfield, VA 22161, (703) 487–4650;

(2) API Publication 2517, Third Edition, February 1989, "Evaporative Loss from External Floating–Roof Tanks," available from the American Petroleum Institute, 1220 L Street, Northwest, Washington, D.C. 20005.

(3) "ASTM Standard Test Methods for Flash Point of Liquids by Setaflash Closed Tester," ASTM Standard D–3278–78, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103;

(4) "ASTM Standard Guide for Investigating and Sampling Soil and Rock," ASTM Standard D–420–87, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

(5) "ASTM Standard Method of Collection and Preparation of Coke Samples for Laboratory Analysis," ASTM Standard D–346–78, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103;

(6) "ASTM Standard Method of Collection of a Gross Sample of Coal," ASTM Standard D–2234–82, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103;

(7) "ASTM Standard Practice for Soil Investigation and Sampling by Auger Boring," ASTM Standard D–1452–80, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103;

(8) "ASTM Standard Practice for Sampling Bituminous Materials," ASTM Standard D–140–88, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103;

(9) "ASTM Standard Test Methods for Flash Point by Pensky–Martens Closed Tester," ASTM Standard D–93–79 or D–93–80. D–93–80 is available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103;

(10) "Fire Protection Guide on Hazardous Materials" (1977) is available from National Fire Protection Association, Battery March Park, Quinch, MA 02269 (800) 344–3555;

(11) "Fire Protection Guide on Hazardous Materials" (1984) is available from National Fire Protection Association, Battery March Park, Quinch, MA 02269 (800) 344–3555;

(12) "Flammable and Combustible Liquids Code" (1981), available from the National Fire Protection Association, 470 Atlantic Avenue, Boston, MA 02210;

(13) "Geotechnical Branch Training Manual Nos. 4, 5 and 6," published by the United States Bureau of Reclamation, January 1986. These manuals are available from: Bureau of Reclamation Engineering and Research Center; Attention: D–7923.A; P.O. Box 25007; Denver, Colorado 80255;

(14) "Interim Method of the Determination of Asbestos in Bulk Insulation Samples," 40 CFR, Part 763, Subpart F, Appendix A, published July 1, 1989. A bound version of 40 CFR is available from the Superintendent of Documents; United States Government Printing Office, Washington, DC 20402, (202) 783–3238;

(15) "Methods for Chemical Analysis of Water and Wastes," EPA–600/4–79–020, U.S. Environmental Protection Agency, 1979. This reference is available from the Superintendent of Documents; United States Government Printing Office; Washington, DC 20402, (202) 783–3238;

(16) "Standard Methods for the Examination of Water and Wastewater," 14th Edition, available from the American Public Health Association, 1015 Eighteenth Street NW, Washington, DC 20036.

(17) "Standard Methods for the Examination of Water and Wastewater," 16th Edition, available from the American Public Health Association, 1015 Eighteenth Street NW, Washington, DC 20036.

(18) "Static Acute Bioassay Procedures for Hazardous Waste Samples," California Department of Fish and Game, Water Pollution Control Laboratory, November 1988. This reference is available from the California Department of Fish and Game, Water Pollution Control Laboratory, 2005 Nimbus Road, Rancho Cordova, CA 95670;

(19) "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846 [Second Edition, 1982 as amended by Update I (April, 1984), and Update II (April, 1985)];

(20) "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846 [Third Edition (November, 1986), as amended by Updates I (July 1992), II (September, 1994), IIA (August, 1993), IIB (January, 1995), and III (December 1996)]. The Third Edition of SW–846 and Updates I, II, IIA, IIB, and III (document number 955–001–00000–1) are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800. Copies of The Third Edition and its updates are also available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 487–4650. The documents are ordered separately as follows:

SW–846 (Third Edition): Order No. PB 88–239223
Update I: Order No. PB 94–170313
Update II and IIA: Order No. PB 95–187225
Update IIB: Order No. PB 95–234480
Update III: Order No. PB 97–156137
CD–ROM, single user: Order No. PB 95–503249
LAN, 2–5 users: Order No. PB 95–504171

Copies may be inspected at the Library, United States Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

(21) "Title 40, Code of Federal Regulations," (40 CFR), revised as of July 1, 1998. A bound version of 40 CFR is available from the Superintendent of Documents; United States Government Printing Office, Washington, DC 20402, (202) 783–3238.

(22) "Uncontrolled Hazardous Waste Site Ranking System, A User's Manual" (1982), MTR–82W111, is available from the Mitre Corporation, 7525 Colshire Drive, McClean, VA 22102–3481, (703) 883–6000.

(23) "ASTM Standard Method for Analysis of Reformed Gas by Gas Chromatography," ASTM Standard D 1946–82, available from American Society for Testing and Materials, 1916 Race street, Philadelphia, PA 19103.

(24) "ASTM Standard Test for Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High–Precision Method)," ASTM Standard D 2382–83, available from American Society for Testing and Materials, 1916 Race street, Philadelphia, PA 19103.

(25) "ASTM Standard Practice for General Techniques of Ultraviolet Visible Quantitative Analysis," ASTM Standard E 169–87, available from American Society for Testing and Materials, 1916 Race street, Philadelphia, PA 19103.

(26) "ASTM Standard Practices for General Techniques of Infrared Quantitative Analysis," ASTM Standard E 168–88, available from American Society for Testing and Materials, 1916 Race street, Philadelphia, PA 19103.

(27) "ASTM Standard Practices for Packed Column Gas Chromatography," ASTM Standard E 260–85, available from American Society for Testing and Materials, 1916 Race street, Philadelphia, PA 19103.

(28) "ASTM Standard Test Method for Aromatics in Light Naphthas and Aviation Gasolines by Gas Chromatography," ASTM Standard E 2267–88, available from American Society for Testing and Materials, 1916 Race street, Philadelphia, PA 19103.

(29) "ASTM Standard Test Method for Vapor Pressure–Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteriscope," ASTM Standard D 2879–92, available from American Society for Testing and Materials (ASTM), 1916 Race street, Philadelphia, PA 19103.

(30) APTI Course 415: Control of Gaseous Emissions, EPA Publication EPA–450/2–81–005, December 1981, available from National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

(31) "Screening Procedures for Estimating the Air Quality Impact of Stationary Sources, Revised," October 1992, EPA Publication No. EPA–450/R–92–019, Environmental Protection Agency, Research Triangle Park, NC.

(32) American Petroleum Institute, Recommended Practice for the Closure of Underground Petroleum Storage Tanks, API Publication 1604, Third Edition, March 1996, available from the American Petroleum Institute, 1220 L Street, N.W., Washington, DC 20005;

(33) American Petroleum Institute, Safe Entry and Cleaning of Petroleum Storage Tanks, API Publication 2015, May 1994, available from the American Petroleum Institute, 1220 L Street, N.W., Washington, DC 20005;

(34) National Fire Protection Association, Standard Procedures for Cleaning or Safeguarding Small Tanks and Containers Without Entry, NFPA 327, 1993 Edition, available from the National Fire Protection Association, Battery March Park, Quinch, MA 02269 (800) 344–3555;

(35) "ASTM Standard Test Methods for Preparing Refuse–Derived Fuel (RDF) Samples for Analyses of Metals," ASTM Standard E926–94, Test Method C–Bomb, Acid Digestion Method, available from American Society for Testing Materials, 1916 Race Street, Philadelphia, PA 19103.

(36) ASTM Method G21–90–Standard Practice for Determining Resistance of Synthetic Polymer Materials to Fungi, available from American Society for Testing Materials, 1916 Race Street, Philadelphia, PA 19103.

(37) ASTM Method G22–76 (1984b)–Standard Practice for Determining Resistance of Plastics to Bacteria, available from American Society for Testing Materials, 1916 Race Street, Philadelphia, PA 19103.

(38) OECD test 301B: (CO_2 Evolution (Modified Strum Test))

(b) The references listed in subsection (a) of this section are also available for inspection at the California Department of Toxic Substances Control, Technical Reference Library, 400 P Street, Sacramento, CA 95812–0806.

NOTE: Authority cited: Sections 25141, 25150, 25159 and 58012, Health and Safety Code. Reference: Sections 25141, 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 260.11.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. New subsections (a)(22)–(29) and amendment of NOTE filed 12–23–92; operative 1–22–93 (Register 93, No. 2).
3. Editorial correction of printing error repositioning subsection (b) (Register 93, No. 26).
4. Amendment of subsection (a)(19) filed 1–31–96; operative 1–31–96 (Register 96, No. 5).
5. New subsection (a)(30) and amendment of NOTE filed 7–1–96; operative 7–31–96 (Register 96, No. 27).
6. Amendment of subsection (a)(19) filed 7–22–97 as an emergency; operative 7–22–97 (Register 97, No. 30). A Certificate of Compliance must be transmitted to OAL by 11–19–97 or emergency language will be repealed by operation of law on the following day.
7. Change without regulatory effect amending subsection (a)(19) filed 10–28–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 44).
8. Certificate of Compliance as to 7–22–97 order transmitted to OAL 11–19–97 and filed 1–5–98 (Register 98, No. 2).
9. New subsections (a)(31)–(33) filed 8–6–98; operative 8–6–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 32).
10. New subsections (a)(36) and (a)(37) filed 10–13–98; operative 11–12–98 (Register 98, No. 42).
11. New subsections (a)(34) and (a)(35) and amendment of NOTE filed 3–17–99; operative 4–16–99 (Register 99, No. 12).
12. Change without regulatory effect amending subsection (a)(1), adding subsection (a)(2), renumbering subsections, and amending newly designated subsections (a)(14), (a)(21), (a)(22), (a)(29), (a)(31) and subsection (b) filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).

§ 66260.12. Acronyms and Abbreviations.

As used in this division, the following acronyms and abbreviations have the specified meaning:

"ASTM"	means American Society for Testing and Materials;
"C"	means hazard code for corrosive waste and the potential hazardous property of being corrosive;
"CCR"	means California Code of Regulations;
"CEQA"	means the California Environmental Quality Act (Division 13 (commencing with section 21000) of the Public Resources Code);
"CERCLA"	means Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended. (42 U.S.C. section 9610 et seq.);
"CFR"	means Code of Federal Regulations;
"CUPA"	means the "certified unified program agency" as defined in section 66260.10
"CWA"	means Clean Water Act of 1977, as amended (33 U.S.C. section 1251 et seq.);
"DOT"	means Department of Transportation, Federal;
"EP Toxicity"	means a toxicity characteristic determined pursuant to EPA Method 1310 from SW–846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, 2nd or 3rd Edition (Incorporated by reference in section 66260.11 of this Division);
"FFDCA"	means the Federal Food, Drug, and Cosmetic Act (21 U.S.C. section 301–392).
"FIA"	means Federal Insurance Administration;
"FR"	means Federal Register;
"H"	means hazard code for Acute Hazardous Waste;
"HSC"	means Health and Safety Code;
"HWCA"	means Hazardous Waste Control Act (chapter 6.5 (commencing with section 25100) of division 20 of the Health and Safety Code);
"I"	means hazard code for ignitable waste and the potential hazardous property of being ignitable;
"Kg"	means the unit of measure, kilogram;
"NACE"	means National Association of Corrosion Engineers;
"NPDES"	means National Pollutant Discharge Elimination System;
"POHC"	means Principal Organic Hazardous Constituent;
"POTW"	means Publicly Owned Treatment Works;
"R"	means hazard code for reactive waste and the potential hazardous property of being reactive;
"RCRA"	means Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. section 6901 et seq.);
"SAE"	means Society of Automotive Engineers;
"SAE steel"	means a grade or type of steel;
"SDWA"	means Safe Drinking Water Act of 1976, as amended (42 U.S.C. section 300 f et seq.);
SIC"	means Standard Industrial Classification;
"SQG"	means Small Quantity Generator;
"STLC"	means Soluble Threshold Limit Concentration;
"SW–846"	means "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods";

"SWMU"	means Solid Waste Management Unit;
"T"	means hazard code for Toxic Waste with a constituent or constituents listed in Appendix VIII of chapter 11;
"TC"	means Toxicity Characteristic;
"TCLP"	means Toxicity Characteristics Leaching Procedure;
"TTLC"	means Total Threshold Limit Concentration;
"TTU"	means Transportable Treatment Unit;
"UIC"	means Underground Injection Control;
"U.S.C."	means United States Code;
"USDW"	means Underground Source of Drinking Water;
"USEPA"	means United States Environmental Protection Agency;
"WET"	means Waste Extraction Test;
"X"	means the potential hazardous property of being toxic by any of the parameters in section 66261.24;

NOTE: Authority cited: Sections 25141, 25150, 25159, 25201.4 and 58012, Health and Safety Code. Reference: Sections 25141, 25159, 25201.4, 25404 and 25404.3, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Amendment adding new definition of "CUPA" and amendment of NOTE filed 8–6–98; operative 8–6–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 32).
3. Amendment of definition of "CUPA" filed 1–8–99 as an emergency; operative 1–8–99 (Register 99, No. 2). A Certificate of Compliance must be transmitted to OAL by 5–10–99 or emergency language will be repealed by operation of law on the following day.
4. Amendment of definition of "CUPA" refiled 5–7–99 as an emergency; operative 5–7–99 (Register 99, No. 19). A Certificate of Compliance must be transmitted to OAL by 9–7–99 or emergency language will be repealed by operation of law on the following day.
5. Amendment of definition of "CUPA" refiled 9–3–99 as an emergency; operative 9–3–99 (Register 99, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–3–2000 or emergency language will be repealed by operation of law on the following day.
6. Amendment of definition of "CUPA" refiled 12–29–99 as an emergency; operative 1–3–2000 (Register 99, No. 53). A Certificate of Compliance must be transmitted to OAL by 5–2–2000 or emergency language will be repealed by operation of law on the following day.
7. Amendment adding new definition of "FFDCA" and amendment of NOTE filed 3–6–2000 as an emergency; operative 3–6–2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2000 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 12–29–99 order transmitted to OAL 2–29–2000 and filed 4–11–2000 (Register 2000, No. 15).
9. Amendment adding new definition of "FFDCA" and amendment of NOTE refiled 6–29–2000 as an emergency; operative 7–6–2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–3–2000 or emergency language will be repealed by operation of law on the following day.
10. Amendment adding new definition of "FFDCA" and amendment of NOTE refiled 11–1–2000 as an emergency; operative 11–4–2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–5–2001 or emergency language will be repealed by operation of law on the following day.
11. Amendment adding new definition of "FFDCA" and amendment of NOTE refiled 3–6–2001 as an emergency; operative 3–6–2001 (Register 2001, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2001 or emergency language will be repealed by operation of law on the following day.
12. Amendment adding new definition of "FFDCA" and amendment of NOTE refiled 6–26–2001 as an emergency; operative 7–5–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–2–2001 or emergency language will be repealed by operation of law on the following day.
13. Amendment adding new definition of "FFDCA" and amendment of NOTE refiled 11–2–2001 as an emergency; operative 11–3–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–4–2002 or emergency language will be repealed by operation of law on the following day.

Article 3. Variances

§ 66260.21. Petitions for Equivalent Testing or Analytical Methods.

(a) The Department shall only grant a variance from the provisions of this chapter to allow use of a test method or analytical method alternative to that prescribed in chapter 11 of this division for use in classifying a specific non–RCRA hazardous waste or a RCRA hazardous waste if the proposed testing or analytical method has been added to 40 CFR Parts 261, 264, or 265 per 40 CFR section 260.21. For the variance to be granted, the applicant must show to the satisfaction of the Department that the proposed alternative test method or analytical method is equal or superior to the appropriate corresponding method in chapter 11 of this division, when applied to the specific waste with respect to accuracy, precision, sensitivity and stringency.

(b) An application for a variance pursuant to section 66260.21(a) shall include all of the following:

(1) the name and address of the generator of the waste and where the waste is located;

(2) a complete description of the waste, including its composition and source or process of generation;

(3) a complete description of the proposed alternative test method or analytical method, including all equipment and procedural steps used;

(4) a comparison of results obtained from a statistically significant number of replicate trials with the proposed alternative test method or analytical method with those results obtained from use of the appropriate corresponding method prescribed in chapter 11 of this division when both methods are applied simultaneously to the applicant's waste;

(5) an assessment of any factors which might interfere with or limit the applicability of the proposed test method or analytical method;

(6) a description of the quality control and quality assurance procedures to be followed to ensure the accuracy, precision, sensitivity and stringency of the proposed test method or analytical method.

(c) The Department shall, within 60 days after receipt of an application for a variance pursuant to section 66260.21(a), notify the applicant that the application is complete and accepted for processing by the Department or that the application is incomplete and what further information is required.

(d) The Department shall, within 180 days of receipt of a complete application for a variance pursuant to section 66260.21(a), notify the applicant that the request for a variance is granted or denied.

(e) If the variance requested pursuant to section 66260.21(a) is denied, the Department shall provide to the applicant in writing the reason for the denial.

NOTE: Authority cited: Sections 208 and 25159, Health and Safety Code and Section 15376, Government Code. Reference: Sections 25141, 25143 and 25159.5, Health and Safety Code and Section 15376, Government Code.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66260.22. Petitions to Include Other Wastes Under Chapter 23.

(a) Any person seeking to add a hazardous waste or a category of hazardous waste to the universal waste regulations contained in chapter 23 of this division shall petition for a regulatory amendment under this section and Government Code section 11340.6.

(b) To be successful, the petitioner shall demonstrate to the satisfaction of the Director that regulation under the Universal Waste Rule contained in chapter 23 of this division:

(1) is appropriate for the waste or category of waste;

(2) will improve management practices for the waste or category of waste; and

(3) will improve implementation of the hazardous waste program.

(c) The petition shall include the information, in writing, required by Government Code section 11340.6.

(d) The petition shall address as many of the factors listed in section 66260.23 as are appropriate for the waste or waste category addressed in the petition.

(e) The Director will evaluate and grant or deny petitions using the factors listed in section 66260.23 and the petition review process specified in Government Code section 11340.7. The decision will be based on the weight of evidence showing that regulation under chapter 23 of this division is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

NOTE: Authority cited: Sections 25159 and 58012, Health and Safety Code. Reference: Section 25159.5, Health and Safety Code; and 40 CFR Section 273.80.

HISTORY

1. New section filed 2–3–2003; operative 2–3–2003 (Register 2003, No. 6).
2. Amendment of subsection (a) and amendment of NOTE filed 2–13–2003; operative 3–15–2003 (Register 2003, No. 7).

§ 66260.23. Factors for Petitions to Include Other Wastes Under Chapter 23.

The Director will evaluate petitions submitted under section 66260.22 using the following factors:

(a) The waste or category of waste, as generated by a wide variety of generators, is listed in article 4 of chapter 11 of this division, or if not listed, a proportion of the waste stream exhibits one or more characteristics of hazardous waste identified in article 3 of chapter 11 of this division. [When a characteristic waste is added to the universal waste regulations in chapter 23 by using a generic name to identify the waste category (e.g., batteries), the definition of universal waste in section 66273.9 of chapter 23 will be amended to include only hazardous waste portions of the waste category (e.g., hazardous waste batteries).] Thus, only the portion of the waste stream that exhibits one or more characteristics (i.e., is hazardous waste) is subject to the universal waste regulations of chapter 23;

(b) The waste or category of waste is not exclusive to a specific industry or group of industries, is commonly generated by a wide variety of types of establishments (including for example, households, retail and commercial businesses, office complexes, conditionally exempt small quantity generators, small businesses, governmental organizations, as well as large industrial facilities);

(c) The waste or category of waste is generated by a large number of generators and is frequently generated in relatively small quantities by each generator;

(d) Systems to be used for collecting the waste or category of waste (including packaging, marking, and labeling practices) would ensure close stewardship of the waste;

(e) The risk posed by the waste or category of waste during accumulation and transport is relatively low compared to other hazardous wastes, and specific management standards proposed or referenced by the petitioner (e.g., waste management requirements appropriate to be added to sections 66273.13, 66273.33, and 66273.52; and/or applicable Department of Transportation requirements) would be protective of human health and the environment during accumulation and transport;

(f) Regulation of the waste or waste category under chapter 23 will increase the likelihood that the waste will be diverted from non–hazardous waste management systems (e.g., the municipal wastestream, non–hazardous industrial or commercial wastestream, municipal sewer or stormwater systems) to recycling, treatment or disposal in compliance with this division and division 20 of the California Health and Safety Code;

(g) Regulation of the waste or category of waste under chapter 23 will improve implementation of and compliance with the hazardous waste regulatory program; and/or;

(h) Such other factors as may be appropriate.

NOTE: Authority cited: Sections 25159 and 58012, Health and Safety Code. Reference: Section 25159, Health and Safety Code; and 40 CFR Section 273.81.

HISTORY

1. New section filed 2–3–2003; operative 2–3–2003 (Register 2003, No. 6).

§ 66260.200. Classification of a Waste as Hazardous or Nonhazardous.

(a) A waste shall be classified a hazardous waste if it meets the definition of a hazardous waste in section 66261.3.

(b) No person shall deviate from the provisions of this chapter in the management of a hazardous waste, except as provided for in section 66260.200(f) or section 66260.210.

(c) It shall be the generator's responsibility to determine if the waste is classified as a hazardous waste pursuant to section 66260.200(a). If the generator determines that the waste is hazardous, the waste shall be managed pursuant to the provisions of this division. If the generator determines that the waste is nonhazardous, the generator, except as provided for in section 66260.200(f), may either proceed to manage the waste as nonhazardous or apply to the Department for concurrence with the nonhazardous determination through the notification procedure set forth in section 66260.200(d) before managing the waste as nonhazardous. A generator who incorrectly determines that a hazardous waste is nonhazardous and fails to manage the waste pursuant to the provisions of this division is in violation of the requirements of this division and is subject to enforcement action.

(d) If a person chooses to obtain departmental concurrence with the nonhazardous waste determination, a notification shall be submitted to the Department which includes all information required by section 66260.200(m). Pending concurrence by the Department pursuant to section 66260.200(e), that person shall manage the waste as hazardous waste.

(e) The Department, within 30 days of receipt of a notification pursuant to section 66260.200(d), shall acknowledge in writing receipt of the notification. Within 60 days of receipt of a notification, the Department shall notify the sender of the notification in writing that concurrence with that person's classification of the waste as nonhazardous is approved, disapproved, or that the notification is incomplete or inadequate and what additional information is needed. Upon receipt of the additional information, the Department, within 60 days of receipt of the additional information, shall notify the sender of the notification in writing that concurrence of that person's classification of the waste as nonhazardous is approved or disapproved. The notification shall be considered disapproved if the sender of the notification fails to provide the additional information within 90 days from the date the information was requested. However, that person may request in writing an extension, up to 90 days, within which the information shall be submitted or the notification shall be considered disapproved.

(f) If a person wishes to classify and manage as nonhazardous a waste which would otherwise be a non–RCRA hazardous waste because it has mitigating physical or chemical characteristics which render it insignificant as a hazard to human health and safety, livestock and wildlife, that person shall apply to the Department for its approval to classify and manage the waste as nonhazardous. The application for approval shall include the information required by section 66260.200(m). The Department, within 30 days of receipt of the application, shall acknowledge in writing receipt of the application. Pending written approval by the Department, the applicant shall manage the waste as hazardous waste. Within 60 days of receipt of an application, the Department shall notify the applicant in writing that the application for classification and management of the waste as nonhazardous is approved, disapproved, or that the application is incomplete or inadequate and what additional information is needed. Upon receipt of the additional information, the Department, within 60 days of receipt of the additional information, shall notify the applicant in writing that the application for classification and management of the waste as nonhazardous is approved or disapproved. The application shall be considered disapproved if the applicant fails to provide the additional information in writing 90 days from the date the information was requested. However, the applicant may request, in writing, an extension up to 90 days, within which the information shall be submitted or the application shall be considered disapproved.

(g) The Department may find that the notification submitted by a person pursuant to section 66260.200(d) or the application submitted pursuant to section 66260.200(f) is incomplete or inadequate for reasons which may include any of the following:

(1) the application is not complete or there is insufficient information on which to classify the waste; or

(2) the methods used in testing or analyzing the waste are not those prescribed in chapter 11 of this division, or have not been approved by the Department pursuant to section 66260.21(a) as alternative methods; or

(3) sampling and sample management were not in accord with Appendix I of chapter 11 and Table 3 of Appendix III of chapter 11; or

(4) representative samples of the waste are required pursuant to section 66260.200(k) in order that the Department may independently assess the properties of the waste.

(h) If the Department disapproves of a person's determination that a waste is nonhazardous or a person's application to manage as nonhazardous a waste which would otherwise be a non–RCRA hazardous waste, the Department shall give in writing the reason for the disapproval.

(i) If the Department at any time finds that the information submitted or generated for a determination pursuant to section 66260.200(c), a concurrence pursuant to section 66260.200(d) or an approval pursuant to 66260.200(f) was erroneous for any of the following reasons, the Department may notify that person in writing of the deficiencies:

(1) the results given in the laboratory report or other submitted data demonstrate that the waste is hazardous pursuant to the criteria given in chapter 11 of this division; or

(2) fraudulently derived information is utilized or included; or

(3) analysis or testing of the waste performed by the Department or other agencies or information available to the Department demonstrates that the waste is hazardous according to the criteria given in chapter 11 of this division.

(j) A person, upon receipt of such notice under section 66260.200(i), shall immediately cease managing the subject waste as a nonhazardous waste and shall manage the waste as hazardous waste.

That person may submit to the Department an amended notification or application. Within 30 days of receipt of an amended notification or application, the Department shall acknowledge in writing receipt of the amended notification or application. Within 60 days of receipt of an amended notification or application, the Department shall notify the sender of the notification or the applicant in writing that the notification or application is approved, disapproved, or that the notification or application is incomplete or inadequate and what additional information is needed. Upon receipt of the additional information, the Department, within 60 days of receipt of the additional information, shall notify the sender of the notification or the applicant in writing that the notification or application is approved or disapproved. The notification or application shall be considered disapproved if the additional information is not provided within 90 days from the date the information was requested. However, the sender of the notification or the applicant may request in writing an extension, up to 90 days, within which the information shall be submitted or the notification or application shall be considered disapproved.

(k) Not later than 60 days after receipt of an adequate notification or application under section 66260.200(d) or (f), the Department may request representative samples of wastes. The sender of the notification or the applicant shall maintain representative samples for that period of time. The quantity of sample submitted shall be adequate to conduct verification tests. Samples shall be collected, packaged, transported and stored in accordance with the sample management procedures in "Test Methods for Evaluating Solid Waste, Physical and Chemical Methods" (SW–846), Third Edition, incorporated by reference in section 66260.11.

(*l*) If the waste changes so that the prior notification or application as nonhazardous no longer adequately assesses the waste by the criteria which may render it hazardous, the waste shall be managed as hazardous.

(m) A person seeking Department concurrence with a nonhazardous determination or approval to classify and manage as nonhazardous a waste which would otherwise be a non–RCRA hazardous waste shall supply the following information to the Department:

(1) name, mailing and billing address, location, contact person and phone number for the generating facility;

(2) A description of the waste including a physical description, quantities produced per unit time, a detailed description of the generating process and current waste disposal method;

(3) information on the sampling of the waste including the name and address of the firm sampling the waste, the name(s) of the person(s) sampling the waste, dates and locations of sample collection and a description of the sampling methodology and sample handling and preservation procedures;

(4) testing laboratory information including the name, address, and certification number of the testing laboratory, the test methods used and references for locating these methods, the name(s) and qualifications of the person(s) testing the waste, the method for preparation of laboratory samples from field samples and information needed to identify each sample;

(5) laboratory results including results from all tests required by chapter 11 of this division and a listing of the waste's constituents. Results shall include analyses from a minimum of four representative samples as specified in chapter 9 of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," SW–846, 3rd Edition, U.S. Environmental Protection Agency, 1986 (incorporated by reference in section 66260.11 of this chapter);

(6) certification of the veracity of the information submitted, signed and dated by a person who is the responsible manager of the facility.

(n) Notwithstanding the time frames specified above, the Department shall not notify the applicant of the Department's decision regarding a notification submitted pursuant to subsection (d) of this section or an application submitted pursuant to subsection (f) of this section until the California Board of Equalization receives the fee assessed pursuant to Health and Safety Code section 25205.8.

NOTE: Authority cited: Sections 208, 25141 and 25150, Health and Safety Code and Section 15376, Government Code. Reference: Sections 25205.8, 25141 and 25143, Health and Safety Code and Section 15376, Government Code.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Editorial correction of printing error in subsection (j) (Register 92, No. 49).

§ 66260.201. Classification of an Electronic Device as a Covered Electronic Device.

(a) Subsequent to the dates set forth in Health and Safety Code section 25214.10.1, subdivision (d)(1) or (2) as appropriate, an electronic device that is listed in subdivision (c) of Appendix X to Chapter 11 shall be managed as a "covered electronic device" under chapter 8.5 of part 3 of division 30 of the Public Resources Code (section 42460 et seq.) unless the manufacturer of the device has obtained the Department's concurrence that the device is nonhazardous pursuant to subsection (d). Upon issuance of the department's concurrence, the electronic device shall cease to be a covered electronic device. Health and Safety Code section 25214.10.1, subdivision (e)(1) prescribes the date on which the device is no longer subject to management under chapter 8.5.

(b)(1) Each manufacturer of electronic devices sold in the State shall determine if it produces any device(s) of the types listed in subdivision (c) of Appendix X of Chapter 11, and if so, shall send an annual notice to retailers and the Board of Equalization pursuant to Health and Safety Code section 25214.10.1, subdivision (c)(1) and (c)(2). The notice shall include all covered electronic devices listed in Appendix X of Chapter 11 that are manufactured by the manufacturer and shall include the information specified in subsection (b)(3) below.

(2) A manufacturer who distributes any covered electronic device for which a notice was not provided as required in subsection (b)(1), shall provide the notice to the retailer(s) no later than the date the retailer(s) first receives the covered electronic device. A manufacturer who provides a notice pursuant to subsection (b)(2) remains subject to penalties for any noncompliance with subsection (b)(1) above.

(3) The identification of the covered electronic devices in the notice shall include:

(A) The brand name (or brand names) of each of the covered electronic devices,

(B) A general description of each of the covered electronic devices (e.g., CRT–television, laptop computer, LCD monitor, etc.),

(C) The viewable screen size for each covered electronic device. As used in this section, viewable screen size means the diagonal measurement of the output surface, as viewed by the operator of the covered elec-

tronic device, excluding any plastic, wood, metal, or other bezel material that surrounds the video display surface.

(D) At least one of the following: the product group or family, model number or series, part number or series, or a similar descriptor for each covered electronic device that will enable the retailers to determine that the electronic device is a covered electronic device. For example, a notification could include a statement such as "All (brand name) XYZ series, 15–inch through 21–inch, LCD–desktop computer monitors and all bundled computer systems containing these monitors," rather than delineating each XYZ monitor individually.

(c) A manufacturer who incorrectly determines that a product it produces is not a listed device or fails to make a notification pursuant to this subsection is in violation of the requirements of this division.

(d) A manufacturer may determine that it produces an electronic device that is listed in subdivision (c) of Appendix X of Chapter 11 that is nonhazardous and apply to the Department for concurrence with its non–hazardous determination through the procedure set forth in section 66260.200(d).

NOTE: Authority cited: Sections 25140, 25141, 25214.9 and 25214.10.2, Health and Safety Code; and Sections 42475 and 42475.2, Public Resources Code. Reference: Sections 25140, 25141, 25214.9 and 25214.10.1, Health and Safety Code; and Sections 42463(f)(1) and 42464, Public Resources Code.

HISTORY

1. New section filed 6–7–2004 as an emergency; operative 6–7–2004 (Register 2004, No. 24). Pursuant to Public Resources Code section 42475.2, a Certificate of Compliance must be transmitted to OAL by 6–7–2006 or emergency language will be repealed by operation of law on the following day.
2. Amendment of subsections (a) and (b)(1)–(2) and amendment of NOTE filed 12–27–2004 as an emergency; operative 12–27–2004 (Register 2004, No. 53). Pursuant to Public Resources Code section 42475.2, a Certificate of Compliance must be transmitted to OAL by 1–1–2007 or emergency language will be repealed by operation of law on the following day.
3. Amendment of section and NOTE filed 4–11–2005 as an emergency; operative 4–11–2005 (Register 2005, No. 15). Pursuant to Public Resources Code section 42475.2 and Health and Safety Code section 25214.10.2, a Certificate of Compliance must be transmitted to OAL by 4–11–2007 or emergency language will be repealed by operation of law on the following day.
4. New section, including subsequent emergency amendments, refiled 6–5–2006 as an emergency; operative 6–5–2006 (Register 2006, No. 23). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.
5. Editorial correction of subsection (b)(3)(D) (Register 2006, No. 24).
6. New section, including subsequent emergency amendments, refiled 5–8–2008 as an emergency; operative 5–8–2008 (Register 2008, No. 19). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.

§ 66260.202. Restrictions on the Use of Heavy Metals in Covered Electronic Devices.

(a) On or after January 1, 2007, no person shall sell or offer for sale in California, a covered electronic device if the device is prohibited from being sold or offered for sale in the European Union on or after its date of manufacture due to the concentration of one or more heavy metals in the device exceeding its maximum concentration value, as specified in the Commission of European Communities' Decision of August 18, 2005, amending Directive 2002/95/EC (European Union document 2005/618/EC), or as specified in a subsequent amendment to the Directive.

(b) The prohibition in subsection (a) applies only to a covered electronic device that is manufactured on or after January 1, 2007.

(c) The prohibition in subsection (a) does not apply to a covered electronic device that is sold or offered for sale in California only for purposes of resale or offering for resale to persons outside of California.

(d) In determining the concentrations of metals for compliance with subsection (a), the Department shall not consider any cadmium, chromium, lead, or mercury, or any component containing any of those metals, which has been exempted by Directive 2002/95/EC, or by an amendment to the Directive.

(e) The prohibition established by subsection (a) of this section does not apply to a covered electronic device that would be prohibited from sale or being offered for sale in California based solely on metals used to meet consumer, health or safety requirements.

NOTE: Authority cited: Sections 25214.10, 25214.10.2 and 58012, Health and Safety Code; and Section 42475.2, Public Resources Code. Reference: Section 25214.10, Health and Safety Code; and Section 42465.2, Public Resources Code.

HISTORY

1. New section filed 12–29–2006 as an emergency; operative 12–29–2006 (Register 2006, No. 52). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.

§ 66260.210. Variances.

(a) The department may grant a variance from one or more of the requirements of this division and chapter 6.5 of division 20 of the Health and Safety Code pursuant to Health and Safety Code section 25143.

(b) The Department shall within 60 calendar days after receipt of an application for a variance inform the applicant in writing that the application is complete and accepted for filing, or that the application is incomplete and what specific information is required for the application to be submitted in a complete form. The Department shall, within 60 days of determining that an application is complete, inform the applicant in writing that variance is granted or denied.

(c) If the variance requested is denied, the Department shall provide to the applicant in writing the reason for the denial.

NOTE: Authority cited: Sections 208, 25141 and 25150, Health and Safety Code and Section 15376, Government Code. Reference: Sections 25141 and 25143, Health and Safety Code and Section 15376, Government Code.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

Chapter 11. Identification and Listing of Hazardous Waste

Article 1. General

§ 66261.1. Purpose and Scope.

(a) This chapter identifies those wastes which are subject to regulation as hazardous wastes under this division and which are subject to the notification requirements of Health and Safety Code section 25153.6. In this chapter:

(1) article 1 defines the terms "waste" and "hazardous waste," identifies those wastes which are excluded from regulation under this division, and establishes special management requirements for hazardous waste which is recycled and establishes rules for classifying and managing contaminated containers;

(2) article 2 sets forth the criteria used by the Department to identify characteristics of hazardous waste;

(3) article 3 identifies characteristics of hazardous waste;

(4) article 4 lists particular hazardous wastes;

(5) article 4.1 lists other hazardous wastes;

(6) article 5 identifies categories of hazardous waste including RCRA hazardous waste, non–RCRA hazardous waste, extremely hazardous waste, and special waste, and establishes criteria and management standards for special waste and extremely hazardous waste;

(b)(1) The definition of waste contained in this chapter applies only to wastes that also are hazardous pursuant to this division and chapter 6.5 of division 20 of the Health and Safety Code. It does not apply to materials (such as non–hazardous scrap, paper, textiles, or rubber) that are not otherwise hazardous wastes.

(2) This chapter identifies only some of the materials which are wastes and hazardous wastes for the purposes of Health and Safety Code sections 25185 and 25187.1. A material which is not defined as a waste or identified as a hazardous waste pursuant to this chapter, is still a waste and a hazardous waste for purposes of Health and Safety Code sections 25185 and 25187.1, if the Department has reason to believe that a material may be a waste within the meaning of Health and Safety Code section 25124 and a hazardous waste within the meaning of Health and Safety Code section 25117.

NOTE: Authority cited: Sections 25140, 25141, 25150, 25159 and 58012, Health and Safety Code. Reference: Sections 25117, 25124, 25140, 25141, 25159, 25159.5, 25185 and 25187.1, Health and Safety Code and 40 CFR Section 261.1.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

2. New subsection (a)(5), subsection renumbering and amendment of NOTE filed 2–13–2003; operative 3–15–2003 (Register 2003, No. 7).

§ 66261.2. Definition of Waste.

(a) "Waste" means any discarded material of any form (for example, liquid, semi–solid, solid or gaseous) that is not excluded by section 66261.4(a) or section 66261.4(e) or that is not excluded by Health and Safety Code section 25143.2(b) or Health and Safety Code section 25143.2(d).

(b) A discarded material is any material which is any of the following:

(1) relinquished as explained in subsection (c) of this section; or

(2) recycled, as explained in subsection (d) of this section; or

(3) considered inherently waste–like, as explained in paragraph (e) of this section.

(c) A material is a waste if it is relinquished by being any of the following:

(1) disposed of;

(2) burned or incinerated;

(3) accumulated, stored or treated, but not recycled, before or in lieu of, being relinquished by being disposed of, burned or incinerated.

(d) A material is a waste if it is recycled, or accumulated, stored or treated before recycling, by being managed:

(1) through being used in a manner constituting disposal:

(A) materials noted with an "*" in column 1 of Table I are wastes when they are:

1. applied to or placed on the land in a manner that constitutes disposal; or

2. used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself is a waste);

(B) however, commercial chemical materials listed in section 66261.33, which are discarded commercial chemical products, off–specification species, container residues, or spill residues thereof, and which are applied to the land and application to the land is their ordinary manner of use are non–RCRA hazardous wastes. Commercial chemical products which are "retrograde materials" as defined in section 66260.10 are not wastes until they become "recyclable materials" pursuant to subsection (e) of the definition of "recyclable materials" in section 66260.10;

(2) through being burned for energy recovery:

(A) materials noted with an "*" in column 2 of Table 1 are wastes when they are:

1. burned to recover energy;

2. used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself is a waste);

(B) however, commercial chemical materials listed in section 66261.33, which are discarded commercial chemical products, off–specification species, container residues, or spill residues thereof, and which are fuels are non–RCRA hazardous wastes. Commercial chemical products which are "retrograde materials" as defined in section 66260.10 are not wastes until they become "recyclable materials" pursuant to subsection (e) of the definition of "recyclable materials" in section 66260.10

(3) through being reclaimed: materials noted with an "*" or "**" in column 3 of Table 1 are wastes when reclaimed;

(4) through being accumulated speculatively: materials noted with an "*" or "**" in column 4 of Table 1 are wastes when accumulated speculatively.

TABLE 1

Column	*Use Constituting Disposal 66261.2(d)(1)* (1)	*Energy Recovery/Fuel 66261.2(d)(2)* (2)	*Reclamation 66261.2(d)(3)* (3)	*Speculative Accumulation 66261.2(d)(4)* (4)
Spent Materials	*	*	*	*
Sludges (listed in section 66261.31 or 66261.32)	*	*	*	*
Sludges exhibiting a characteristic of hazardous waste	*	*	**	*
By–products (listed in section 66261.31 or 66261.32)	*	*	*	*
By–products exhibiting a characteristic of hazardous waste	*	*	**	*
Commercial chemical products (listed in section 66261.33)	*	*	**	**

Note: The terms "spent materials," "sludges," and "by–products" are defined in section 66260.10.

*Except as provided in sections 66261.2(d)(1)(B) and 66261.2(d)(2)(B), a material designated by a single asterisk in Column (1), (2), (3), or (4) is a waste which is not eligible to be classified as a non–RCRA hazardous waste.

**Unless exempt pursuant to Health and Safety Code section 25143.2(d), a material designated with a double asterisk in Column (3) or (4) which is identified as a hazardous waste pursuant to section 66261.3 is a non–RCRA hazardous waste. Commercial chemical products which are "retrograde materials" as defined in section 66260.10 are not wastes until they become "recyclable materials" pursuant to subsection (e) of the definition of "recyclable materials" in section 66260.10.

(e) A material is a waste if it is inherently waste–like when it is recycled. The following materials are wastes when they are recycled:

(1) Hazardous Waste Nos. F020, F021 (unless used as an ingredient to make a product at the site of generation), F022, F023, F026 and F028.

(2) Secondary materials fed to a halogen acid furnace that exhibit a characteristic of a hazardous waste or are listed as a hazardous waste as defined in articles 3 or 4 of this chapter, except for brominated material that meets the following criteria:

(A) The material must contain a bromine concentration of at least 45%; and

(B) The materials must contain less than a total of 1% of toxic organic compounds listed in appendix VIII; and

(C) The material is processed continually on–site in the halogen acid furnace via direct conveyance (hard piping).

(f) A material is a waste if it poses a threat to human health or the environment and meets either, or both, of the following:

(1) it is mislabeled or not adequately labeled, unless the material is correctly labeled or adequately labeled within 10 days after the material is discovered to be mislabeled or inadequately labeled;

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(2) it is packaged in deteriorated or damaged containers, unless the material is contained in sound or undamaged containers within 96 hours after the containers are discovered to be deteriorated or damaged.

(g) Respondents in actions to enforce regulations implementing this division who claim that a certain material is not a waste or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners and operators of facilities claiming that they are recycling materials must show that they have the necessary equipment to do so.

NOTE: Authority cited: Sections 25141, 25150, 25159, 25159.5, 58004 and 58012, Health and Safety Code. Reference: Sections 25120.5, 25121, 25124, 25143.2, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 261.2.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Amendment of subsection (a) and NOTE filed 4–23–92 as an emergency; operative 4–23–92 (Register 92, No. 18). A Certificate of Compliance must be transmitted to OAL 8–21–92 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsection (a) refiled 6–22–92 as an emergency; operative 6–22–92 (Register 92, No. 26). A Certificate of Compliance must be transmitted to OAL by 10–20–92 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsection (a) refiled 10–22–92 as an emergency; operative 10–19–92 (Register 92, No. 43). A Certificate of Compliance must be transmitted to OAL 2–22–93 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsection (a) refiled 2–16–93 as an emergency; operative 2–16–93 (Register 93, No. 8). A Certificate of Compliance must be transmitted to OAL 6–16–93 or emergency language will be repealed by operative of law on the following day.
6. Amendment of subsection (a) refiled 6–14–93 as an emergency; operative 6–15–93 (Register 93, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–13–93 or emergency language will be repealed by operation of law on the following day.
7. Amendment of subsection (a) refiled 10–13–93 as an emergency; operative 10–13–93 (Register 93, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–10–94 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 10–13–93 order transmitted to OAL 12–3–93 and filed 1–14–94 (Register 94, No. 2).
9. Amendment of subsection (e), new subsection (e)(1) designator, new subsections (e)(2)–(e)(2)(C), and amendment of NOTE filed 7–1–96; operative 7–31–96 (Register 96, No. 27).
10. New subsection (g) filed 2–3–98; operative 3–5–98 (Register 98, No. 6).

§ 66261.3. Definition of Hazardous Waste.

(a) A waste, as defined in section 66261.2, is a hazardous waste if:

(1) it is not excluded from classification as a waste or a hazardous waste under Health and Safety Code section 25143.2(b) or 25143.2(d) or section 66261.4; and

(2) it meets any of the following criteria:

(A) it exhibits any of the characteristics of hazardous waste identified in article 3 of this chapter except that any mixture of a waste from the extraction, benefication, and processing of ores and minerals excluded under 40 CFR section 261.4(b)(7) and any other solid waste exhibiting a characteristic of hazardous waste under Article 3 of this chapter only if it exhibits a characteristic that would not have been exhibited by the excluded waste alone if such mixture had not occurred or if it continues to exhibit any of the characteristics exhibited by the non–excluded wastes prior to mixture. Further, for the purposes of applying the Toxicity Characteristic to such mixtures, the mixture is also a hazardous waste if it exceeds the maximum concentrations for any contaminant listed in table I to section 66261.24 that would not have been exceeded by the excluded waste alone if the mixture had not occurred or if it continues to exceed the maximum concentration for any contaminant exceeded by the nonexempt waste prior to mixture;

(B) it is listed in article 4 of this chapter and has not been excluded by the USEPA Administrator from 40 CFR Part 261 Subpart D pursuant to 40 CFR sections 260.20 and 260.22;

(C) it is listed in or contains a constituent listed in Appendix X to this chapter. However, the waste is not a hazardous waste if:

1. it is determined that the waste does not meet the criteria of subsection (a)(2)(B) of this section; and

2. it is determined that the waste does not meet the criteria of subsection (a)(2)(A) of this section by:

i. testing the waste according to the methods set forth in article 3 of this chapter, or according to an equivalent method approved by the Department pursuant to section 66260.21; or

ii. applying knowledge of the hazardous properties of the waste in light of the materials or the processes used and the characteristics set forth in article 3 of this chapter;

(D) it is listed in article 4.1 of this chapter;

(E) it is a mixture of a hazardous waste that is listed in article 4 of this chapter other than a hazardous waste listed with hazard code (T) or (H), and another waste, unless the resultant mixture no longer exhibits any characteristic of hazardous waste identified in article 3 of this chapter. However, nonwastewater mixtures are still subject to the requirements of chapter 18 of this division, even if they no longer exhibit a characteristic at the point of land disposal;

(F) it is a mixture of a waste and one or more hazardous wastes listed in article 4 of this chapter which has not been excluded by the USEPA Administrator from 40 CFR Part 261 Subpart D pursuant to 40 CFR sections 260.20 and 260.22. However, the following mixtures of wastes and hazardous wastes listed in article 4 of this chapter are not hazardous wastes (except by application of subsection (a)(2)(A) or (a)(2)(B) of this section) if the generator can demonstrate that the mixture consists of wastewater, the discharge of which is subject to regulation under either section 402 or section 307(b) of the Clean Water Act (including wastewater at facilities which have eliminated the discharge of wastewater), and:

1. one or more of the following spent solvents listed in section 66261.31 — carbon tetrachloride, tetrachloroethylene, trichoroethylene — provided, that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed 1 part per million; or

2. one or more of the following spent solvents listed in section 66261.31 — methylene chloride, 1,1,1–trichloroethane, chlorobenzene, o–dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents — provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed 25 parts per million; or

3. heat exchanger bundle cleaning sludge from the petroleum refining industry (EPA Hazardous Waste No. K050); or

4. a discarded commercial chemical product, or chemical intermediate listed in section 66261.33 arising from "de minimis" losses of these materials from manufacturing operations in which these materials are used as raw materials or are produced in the manufacturing process. For purposes of this subsection, "de minimis" losses include those from normal material handling operations (e.g., spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials); minor leaks of process equipment, storage tanks or containers; leaks from well–maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing; or

5. wastewater resulting from laboratory operations containing toxic (T) wastes listed in article 4 of this chapter, provided that the annualized average flow of laboratory wastewater does not exceed one percent of total wastewater flow into the headworks of the facility's wastewater treatment or pretreatment system, or provided the wastes, combined annualized average concentration does not exceed one part per million in the headworks of facility's wastewater treatment or pretreatment facility. Toxic (T) wastes used in laboratories that are demonstrated not to be discharged to wastewater are not to be included in this calculation; or

6. One or more of the following wastes listed in 40 CFR § 261.32–wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157)–Provided that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine (including all amounts that can not be demonstrated to be reacted in the process, destroyed through treatment, or is recovered, i.e., what is discharged or volatilized) divided by the average weekly flow of process wastewater prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 parts per million by weight; or

7. Wastewaters derived from the treatment of one or more of the following wastes listed in 40 CFR § 261.32–organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K156).–Provided, that the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 milligrams per liter.

(G) it is not classified as a hazardous waste by application of the criteria in subsections (a)(2)(A) through (a)(2)(F) of this section, but has been classified as a hazardous waste by the Department because it otherwise conforms to the definition of hazardous waste set forth in Health and Safety Code section 25117.

(b) A waste which is not excluded from classification as a waste or hazardous waste under the provisions of section 66261.4(b) or Health and Safety Code section 25143.2(b) or 25143.2(d) becomes a hazardous waste when any of the following events occur:

(1) In the case of a waste listed in article 4 of this chapter, when the waste first meets the listing description set forth in article 4 of this chapter;

(2) In the case of a waste listed in article 4.1 of this chapter, when the waste first meets the listing description set forth in article 4.1 of this chapter;

(3) In the case of a mixture of waste and one or more hazardous wastes listed in article 4 of this chapter, when the hazardous waste listed in article 4 of this chapter is first added to the waste.

(4) In the case of any other waste (including a waste mixture), when the waste exhibits any of the characteristics identified in article 3 of this chapter.

(c)(1) A hazardous waste will remain a hazardous waste unless and until it meets the criteria of subsection (d) of this section. Except as otherwise provided in subsections (c)(2), (c)(3), (c)(4), and (c)(5) of this section, any waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust or leachate including precipitation run–off is a hazardous waste. (However, materials that are reclaimed from wastes and that are used beneficially are not wastes and hence are not hazardous wastes under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.)

(2) Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry (SIC Codes 331 and 332) is not hazardous even though it is generated from the treatment, storage, or disposal of a hazardous waste, unless it exhibits one or more of the characteristics of hazardous waste.

(3)(A) Nonwastewater residues, such as slag, resulting from high temperature metals recovery (HTMR) processing of K061, K062 or F006 waste, in units identified as rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth furnace/electric furnace combinations or industrial furnaces (as defined in section 66260.10, for "Industrial furnace", (f), (g) and (*l*)), that are disposed in RCRA Subtitle D units, provided that these residues meet the generic exclusion levels identified below for all constituents, and exhibit no characteristics of hazardous waste, as identified in article 3 of Chapter 11 of division 4.5, Title 22, CCR. Testing requirements shall be incorporated in a facility's waste analysis plan; at a minimum, composite samples of residues shall be collected and analyzed quarterly and/or when the process or operation generating the waste changes. Persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements.

Constituent	*Maximum for any single composite sample – TCLP mg/L*
Generic exclusion levels for K061 and K062 nonwastewater HTMR residues	
Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

Constituent	*Maximum for any single composite sample – TCLP mg/L*
Generic exclusion levels for F006 nonwastewater HTMR residues	
Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33

Constituent	*Maximum for any single composite sample – TCLP mg/L*
Generic exclusion levels for F006 nonwastewater HTMR residues	
Cyanide (total)(mg/kg)	1.8
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

(B) A one–time notification and certification shall be placed in the facility's files and sent to the Department for K061, K062 or F006 HTMR residues that meet the generic exclusion levels for all constituents and do not exhibit any characteristics in article 3 of chapter 11 that are sent to a RCRA subtitle D unit. The notification and certification that is placed in the generators or treaters files shall be updated if the process or operation generating the waste changes and/or if the 40 CFR subtitle D unit receiving the waste changes. However, the generator or treater need only notify the Department on an annual basis if such changes occur. Such notification and certification should be sent to the Department by the end of the calendar year, but no later than December 31.

The notification shall include the following information: (1) The name and address of the RCRA Subtitle D unit receiving the waste shipment; (2) the EPA hazardous waste number(s) and treatability group(s) at the initial point of generation; and (3) the treatment standards applicable to the waste at the initial point of generation. The certification shall be signed by an authorized representative and shall state as follows: "I certify under penalty of law that the generic exclusion levels for all constituents have been met without impermissible dilution and that no characteristic of hazardous waste, as identified in article 3 of chapter 11 of division 4.5, Title 22, CCR, is exhibited. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

(4) Biological treatment sludge from the treatment of one of the following wastes listed in 40 CFR § 261.32 – organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K156), and wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157) – is not a hazardous waste even though it is generated from the treatment, storage, or disposal of a hazardous waste, unless it exhibits one or more of the characteristics of hazardous waste.

(5) Waste consisting of only material derived from the treatment or recycling of one or more hazardous wastes listed in article 4.1 of this chapter is not a hazardous waste, provided the material does not exhibit any of the characteristics identified in article 3 of this chapter, and does not meet any listing description in article 4.1 of this chapter.

(d) Any waste described in subsection (c) of this section is not a hazardous waste if it meets all of the following criteria:

(1) the waste does not exhibit any of the characteristics of hazardous waste identified in article 3 of this chapter; (however, wastes that exhibit a characteristic at the point of generation may still be subject to the requirements of chapter 18, even if they no longer exhibit a characteristic at the point of land disposal,)

(2) in the case of a waste which is a waste listed in article 4 of this chapter, contains a waste listed under article 4 of this chapter or is derived from a waste listed in article 4 of this chapter (but not including precipitation run off), the waste also has been excluded by the USEPA Administrator from the lists of hazardous wastes in 40 CFR Part 261 Subpart D pursuant to 40 CFR sections 260.20 and 260.22, and

(3) the waste is not listed in article 4.1.

(e) Notwithstanding subsections (a) through (d) of this section and provided the debris as defined in section 66260.10 of chapter 10 of this division does not exhibit a characteristic identified in article 3 of chapter 11, the following materials are not subject to regulation under chapters 10, 11 to 16, 18 or 20 of this division;

(1) Hazardous debris as defined in section 66260.10 of chapter 10 of this division that has been treated using one of the required extraction or destruction technologies specified in Table 1 of section 66268.45; persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements; or

(2) Debris as defined in 66260.10 of chapter 10 of this division that the Department considering the extent of contamination, has determined is no longer contaminated with hazardous waste.

NOTE: Authority cited: Sections 25141, 25150, 25159, 25159.5, 25179.6, 58004 and 58012, Health and Safety Code. Reference: Sections 25117, 25141, 25143.1, 25159, 25159.5 and 58012, Health and Safety Code; and 40 CFR Section 261.3.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Amendment of subsection (a)(2)(D), new subsections (c)(3)(A)–(B), amendment of subsection (d)(1), new subsections (e)–(e)(2) and amendment of NOTE filed 10–24–94 as an emergency; operative 10–24–94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–20–95 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsection (a)(2)(D), new subsections (c)(3)(A)–(B), amendment of subsection (d)(1), new subsections (e)–(e)(2) and amendment of NOTE refiled 2–21–95 as an emergency; operative 2–21–95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–21–95 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsection (a)(2)(D), new subsections (c)(3)(A)–(B), amendment of subsection (d)(1), new subsections (e)–(e)(2) and amendment of NOTE refiled 6–19–95 as an emergency; operative 6–19–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–95 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsection (a)(2)(D), new subsections (c)(3)(A)–(B), amendment of subsection (d)(1), new subsections (e)–(e)(2) and amendment of NOTE refiled 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 10–24–94 order including amendment of subsections (c)(1)–(c)(3)(B) and (d)(1)–(e)(1) and amendment of NOTE transmitted to OAL 12–15–95 and filed 1–31–96 (Register 96, No. 5).
7. Change without regulatory effect amending subsections (c)(3)(A), (c)(3)(B), (d) and (e) filed 8–15–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 33).
8. Amendment of subsections (a)(2)(A) and (a)(2)(E)5., new subsections (a)(2)(E)6., (a)(2)(E)7. and (c)(4), and amendment of NOTE filed 10–13–98; operative 11–12–98 (Register 98, No. 42).
9. Amendment filed 2–13–2003; operative 3–15–2003 (Register 2003, No. 7).

§ 66261.4. Exclusions.

(a) Materials which are not wastes. The following materials are not wastes for the purpose of this chapter:

(1) industrial wastewater discharges that are point source discharges subject to regulation under section 402 of the federal Clean Water Act, as amended (33 U.S.C. section 1342). This exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected, stored or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment;

(2) source, special nuclear or by–product material as defined by the federal Atomic Energy Act of 1954, as amended, (42 U.S.C. section 2011 et seq.);

(3) spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively as defined in section 66260.10.

(4) pulping liquors (e.g., black liquor) that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless accumulated speculatively as defined in 66260.10.

(5) secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(A) only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(B) reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

(C) the materials are never accumulated in such tanks for over twelve months without being reclaimed; and

(D) the reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

(b) Wastes which are not hazardous wastes. The following wastes are not hazardous wastes:

(1) infectious waste which consists solely of the carcasses of animals, which is not otherwise hazardous, and which is handled, stored and disposed of according to all applicable requirements established by the Department of Food and Agriculture pursuant to provisions of chapter 1, part 1, division 5 (commencing with section 9101) and of chapter 5, part 3, division 9 (commencing with section 19200) of the Food and Agricultural Code;

(2) materials which are exempted or excluded from classification as solid waste or hazardous waste pursuant to 40 CFR section 261.4 if they do not exhibit a characteristic of a hazardous waste as set forth in article 3 of this chapter;

(3) used oil re–refining distillation bottoms that are used as feedstock to manufacture asphalt products.

(4) Used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, including mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is reclaimed for further use.

(5)(A) Solid wastes, which meet the criteria for classification as a RCRA hazardous waste set forth in section 66261.100(a)(1), (a)(2), or (a)(3), from the extraction, beneficiation, and processing of ores and minerals (including coal, phosphate rock and overburden from the mining of uranium ore), except as provided by 40 CFR section 266.112 for facilities that burn or process hazardous waste, are not hazardous wastes and are not subject to the requirements of this division or of Chapter 6.5 of Division 20 of the Health and Safety Code. However, these wastes remain subject to Article 9.5 of Chapter 6.5 of the Health and Safety Code if the wastes would otherwise be classified as hazardous wastes pursuant to section 25117 of the Health and Safety Code or pursuant to this division. For purposes of this paragraph, beneficiation of ores and minerals is restricted to the following activities: Crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water and/or carbon dioxide; roasting; autoclaving, and/or chlorination in preparation for leaching (except where the roasting (and/or autoclaving and/or chlorination)/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; electrowinning; precipitation; amalgam-

ation; and heap, dump, vat, tank, and in situ leaching. For the purpose of this paragraph, solid waste from the processing of ores and minerals includes only the following wastes:

1. Slag from primary copper processing;
2. Slag from primary lead processing;
3. Red and brown muds from bauxite refining;
4. Phosphogypsum from phosphoric acid production;
5. Slag from elemental phosphorus production;
6. Gasifier ash from coal gasification;
7. Process wastewater from coal gasification;
8. Calcium sulfate wastewater treatment plant sludge from primary copper processing;
9. Slag tailings from primary copper processing;
10. Fluorogypsum from hydrofluoric acid production;
11. Process wastewater from hydrofluoric acid production;
12. Air pollution control dust/sludge from iron blast furnaces;
13. Iron blast furnace slag;
14. Treated residue from roasting/leaching of chrome ore;
15. Process wastewater from primary magnesium processing by the anhydrous process;
16. Process wastewater from phosphoric acid production;
17. Basic oxygen furnace and open hearth furnace air pollution control dust/sludge from carbon steel production;
18. Basic oxygen furnace and open hearth furnace slag from carbon steel production;
19. Chloride process waste solids from titanium tetrachloride production;
20. Slag from primary zinc processing.

(B) Waste from the extraction, beneficiation, and processing of ores and minerals, as those terms are defined in Health and Safety Code section 25143.1, which would otherwise be classified as a non–RCRA hazardous waste pursuant to section 66261.101, is not subject to the requirements of this division or of Chapter 6.5 of the Health and Safety Code. However, these wastes remain subject to Article 9.5 of Chapter 6.5 of the Health and Safety Code if the wastes would otherwise be classified as hazardous wastes pursuant to section 25117 of the Health and Safety Code or to this division.

(c) hazardous wastes which are exempted from certain regulations. A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated non–waste–treatment–manufacturing unit, is not subject to regulation under this division or to the notification requirements of Health and Safety Code section 25153.6 until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials. The exemption in this subsection applies only to the hazardous waste generated in the above–named tanks, not to the tanks themselves. The tanks remain subject to the requirements of chapter 32 if the tank is a hazardous waste pursuant to article 3 of chapter 11 of this division.

(d) samples;

(1) except as provided in subsection (d)(2) of this section, a sample of waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or composition, is not subject to any requirements of this division or to the notification requirements of Health and Safety Code section 25153.6 when:

(A) the sample is being transported to a laboratory for the purpose of testing; or

(B) the sample is being transported back to the sample collector after testing; or

(C) the sample is being stored for less than 90 days by the sample collector before transport to a laboratory for testing; or

(D) the sample is being stored in a laboratory before testing; or

(E) the sample is being stored in a laboratory after testing but before it is returned to the sample collector; or

(F) the sample is being stored temporarily in the laboratory after testing for a specific purpose (for example, until conclusion of a court case or enforcement action where further testing of the sample may be necessary).

(2) In order to qualify for the exemption in subsections (d)(1)(A) and (d)(1)(B) of this section, a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector shall:

(A) comply with California Highway Patrol (CHP), U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(B) comply with the following requirements if the sample collector determines that CHP, DOT, USPS, or other shipping requirements do not apply to the shipment of the sample:

1. assure that the following information accompanies the sample:

a. the sample collector's name, mailing address, and telephone number;

b. the laboratory's name, mailing address, and telephone number;

c. the quantity of the sample;

d. the date of shipment; and

e. a description of the sample.

2. package the sample so that it does not leak, spill, or vaporize from its packaging.

(3) This exemption does not apply if the laboratory determines that the waste is hazardous but the laboratory is no longer meeting any of the conditions stated in subsection (d)(1) of this section.

(e) Treatability Study Samples.

(1) Except as provided in paragraph (e)(2) of this section, any person who generates a treatability study sample for the purpose of conducting a treatability study is not subject to Chapter 6.5 of Division 20 of the Health and Safety Code with respect to that sample, except for the requirements of subdivision (e) of Health and Safety Code section 25162, or this division, except for sections 66262.50, 66262.52, and 66262.53 when:

(A) the treatability study sample is being collected and prepared for transportation by the generator or the agent of the generator;

(B) the treatability study sample is being accumulated or stored by the generator or the agent of the generator prior to transportation to a laboratory or testing facility; or,

(C) the treatability study sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.

(2) The exemption specified in paragraph (e)(1) of this section applies to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies only if all of the following conditions are met:

(A) the treatability study sample mass is not more than 400 kilograms (kg) of any hazardous waste that is not an extremely hazardous waste, 1 kg of extremely hazardous waste, or 250 kg of soil, water, or debris contaminated with extremely hazardous waste, for each process being evaluated for each generated hazardous waste stream,

(B) the treatability study sample is retained at the site of generation for not longer than one year and not more than 10 days elapse between when the treatability study sample is shipped to the laboratory or testing facility and when it is received at the laboratory or testing facility,

(C) the generator or the agent of the generator retains responsibility for the recycling or disposal of the treatability study sample or its residues after the treatability study is completed;

(D) at all times during accumulation and storage, the treatability study samples are in containers that are marked clearly with the words "treatability study sample," that are in a good, nonleaking condition and that are clearly labeled with all of the following information:

1. the composition and physical state of the material;

2. a statement that calls attention to the particular hazardous properties of the treatability study sample;

3. the name and address of the generator of the treatability study sample; and

4. the date the treatability study sample was first placed in the containers.

(3) each treatability study sample may be transported only if the treatability study sample complies with all of the following:

(A) the treatability study sample is packaged so that it will not leak, spill, or vaporize from its packaging during shipment, complies with all shipping requirements of the Department of Transportation, United States Postal Service, or any other applicable shipping requirements, and, at a minimum, is accompanied by all of the following information:

1. the name, mailing address, telephone number, and Environmental Protection Agency identification number, if available, of the generator of the treatability study sample or the agent of the generator.

2. The name, address, telephone number, and EPA number, if available, of the facility that will perform the treatability study.

3. The quantity of the treatability study sample.

4. The date of shipment.

5. A description of the treatability study sample, including its California waste code.

(B) The treatability study sample is shipped to a laboratory or testing facility which has a hazardous waste facilities permit issued pursuant to Health and Safety Code section 25200, is exempt from state hazardous waste facilities permitting requirements pursuant to subsection (f) of section 66261.4 of this title or, if located in another state, is authorized by that state or the Environmental Protection Agency to conduct treatability studies or is exempted pursuant to subsection (f) of Section 261.4 of Title 40 of the Code of Federal Regulations.

(4) A generator or the agent of the generator exempt pursuant to this section shall maintain the following records for three years after completion of the treatability study and shall, if requested by the department before the end of three years, retain the records for up to an additional five years:

(A) Copies of shipping documents.

(B) A copy of the contract with the facility conducting the treatability study.

(C) Documentation showing the amount of waste shipped, the name and address of the laboratory or testing facility that received the waste, the date the shipment was made, and the final disposition of unused portions of samples and residues.

(5) The department may grant an application, on a case–by–case basis, following the submittal of information pursuant to subdivision (e)(6) for an exemption for treatability study samples that exceed the quantity limits specified in subdivision (e)(2)(A), for up to an additional 500 kg of hazardous waste that is not extremely hazardous waste, 1 kg of extremely hazardous waste, and 250 kg of soil, water, or debris contaminated with extremely hazardous waste, to conduct a further treatability study evaluation, if the department finds that the exemption is necessary based on any of the following:

(A) There has been an equipment or mechanical failure during the conduct of a treatability study rendering the treatability study sample unsuited for study.

(B) There is a need to repeat a portion of a previously conducted treatability study.

(C) There is a need to study and analyze alternative techniques within a treatability study and these multiple techniques required greater total sample size.

(D) The treatability study design cannot produce verifiable results without greater quantities of a sample.

(6) A generator applying for an exemption pursuant to subdivision (e)(5) shall submit all of the following information in writing to the department:

(A) The reason why the generator or agent of the generator requires an additional quantity of a treatability study sample for the treatability study.

(B) The quantity of the treatability study sample for which the exemption is requested.

(C) Documentation accounting for all samples of treatability study samples from the waste stream that have previously been sent for, or undergone, treatability studies, including the dates of each previous treatability study sample, the quantity of each previous treatability study sample, the laboratory or testing facility to which each treatability study sample was shipped, what treatability studies were conducted on each treatability study sample shipped, and the results of each treatability study.

(D) If the generator cites paragraph (C) of subdivision (e)(5) as the basis for the exemption, a description of the proposed technique or techniques to be evaluated.

(E) If the generator cites paragraph (A) of subdivision (e)(5) as the basis for the exemption, information regarding the reasons for the failure or breakdown and what procedures or improvements have been made to protect against further breakdowns.

(f) Samples Undergoing Treatability Studies at Laboratories and Testing Facilities;

(1) Except as provided in subdivision (f)(2), Chapter 6.5 of Division 20 of the Health and Safety Code, and division 4.5 of this title, do not apply to any treatability study sample undergroing a treatability study, and those activities of the laboratory or testing facility, including transportable treatment units, conducting a treatability study, that are activities exclusively devoted to, and in support of, the treatability study conducted on a treatability study sample, if all of the following conditions are met:

(A) If a group of two or more transportable treatment units are located at the same site, the requirements specified in subdivision (f)(1) apply to the entire group of transportable treatment units collectively as if the group were one unit.

(B) Not less than 45 days before conducting the treatability study, the facility notifies the department in writing, that it intends to conduct a treatability study pursuant to this subsection.

(C) The laboratory or testing facility conducting the treatability study has an Environmental Protection Agency identification number.

(D) Not more than a total of 250 kg of treatability study samples are subjected to initiation of treatment in all treatability studies in any single day.

(E) The quantity of treatability study samples stored at the facility for the purpose of evaluation in treatability studies does not exceed 400 kg, the total of which may include not more than 200 kg of soil, water, or debris contaminated with extremely hazardous waste or 1 kg of extremely hazardous waste. This quantity limitation does not include either of the following:

1. Treatability study residues.

2. Treatment materials, including nonhazardous waste, added to treatability study samples as received hazardous waste.

(F) Not more than 90 days has elapsed since the treatability study for the treatability study sample was completed, or not more than one year have elapsed since the generator or treatability study sample collector shipped the treatability study sample to the laboratory or testing facility, whichever date first occurs.

(G) The treatability study does not involve the placement of hazardous waste on the land, incineration, or the open burning of hazardous waste.

(H) The facility maintains records for three years following completion of each study that show compliance with the treatment rate limits and the storage time and quantity limits. All of the following specific information shall be included for each treatability study conducted:

1. The name, address, and Environmental Protection Agency identification number of the generator or agent of the generator of each treatability study sample.

2. The date the treatability study sample was received.

3. The quantity of treatability study sample accepted.

4. The quantity of treatability study samples in storage each day.

5. The date the treatability study was initiated and the amount of treatability study samples introduced to treatment each day.

6. The date the treatability study was concluded.

7. The date any unused treatability study sample or residues generated from the treatability study were returned to the generator or the agent of the generator or, if sent to a designated facility, the name of the facility and the Environmental Protection Agency identification number.

(I) The facility keeps, onsite, a copy of the treatability study contract and all shipping papers associated with the transport of treatability study

samples to and from the facility for a period ending three years from the completion date of each treatability study.

(J) The facility prepares and submits a report to the department not later than March 15 of each year that estimates the number of studies and the amount of waste expected to be used in treatability studies during the current year, and includes all of the following information for the previous calendar year:

1. The name, address, and Environmental Protection Agency identification number of the facility conducting the treatability studies.

2. The numbers of, and types, by process, of treatability studies conducted.

3. The names and addresses of persons for whom studies have been conducted, including their Environmental Protection Agency identification numbers.

4. The total quantity of hazardous waste in storage each day.

5. The quantity and types of hazardous waste subjected to treatability studies.

6. When each treatability study was conducted.

7. The final disposition of residues and unused treatability study samples from each treatability study.

(K) The facility determines whether any unused treatability study sample or residues generated by the treatability study are hazardous waste that are subject to Chapter 6.5 of Division 20 of the Health and Safety Code, and division 4.5 of this title, and, if so, the facility handles the unused treatability study sample or residues in accordance with Chapter 6.5 of Division 20 of the Health and Safety Code, and division 4.5 of this title, unless the residues and unused treatability study samples are returned to the treatability study sample originator, as specified in Health and Safety Code section 25158.2.

(L) The facility notifies the department by letter when the facility is no longer planning to conduct any treatability studies at the site.

(M) All treatability studies shall be initiated within 60 days of the receipt of each treatability study sample.

(2) The requirements of subdivision (e) of Health and Safety Code section 25162, and sections 66262.50, 66262.52, and 66262.53 of this title shall apply to a sample undergoing a treatability study, including those activities of the laboratory or testing facility conducting the treatability study.

(g) controlled substances;

(1) A conditionally exempt controlled substance, as defined in paragraph (2) of this subsection, which is managed in accordance with the requirements of paragraph (3) of this subsection, is not a waste for purposes of this division or Health and Safety Code, division 20, chapter 6.5.

(2) For the purposes of this division, a conditionally exempt controlled substance is a "controlled substance", as defined in section 11007 of the Health and Safety Code, which meets all of the following conditions:

(A) the controlled substance is a discarded material (as defined in section 66261.2(b)) which is not excluded from the definition of a "waste" (as defined in section 66261.2(a)), except pursuant to the provisions of this subsection;

(B) the controlled substance is solely a non–RCRA hazardous waste, or the controlled substance or its management is exempt or conditionally exempt from, or is not otherwise regulated pursuant to, RCRA;

(C) the controlled substance was seized by a peace officer, as defined in section 830 of the Penal Code, or a person exercising the powers of a peace officer pursuant to section 830.8 of the Penal Code or otherwise authorized to exercise the powers of a peace officer pursuant to applicable federal laws; and

(D) the controlled substance was seized from a site other than a clandestine laboratory, or the controlled substance was seized from such a laboratory for use as evidence or as a sample for purposes of testing.

(3) A conditionally exempt controlled substance shall be managed in accordance with the following requirements:

(A) conditionally exempt controlled substances shall be held in containers which are managed in accordance with the requirements of sections 66265.171, 66265.172, 66265.173 and 66265.177;

(B) conditionally exempt controlled substances shall be stored in an area:

1. with ventilation approved by the local fire department,

2. separate from controlled substances which are not conditionally exempt pursuant to this subsection and other chemicals seized from clandestine laboratories, and

3. under the control of employees of a federal, state or local law enforcement agency;

(C) transportation of conditionally exempt controlled substances shall be in accordance with the following requirements:

1. conditionally exempt controlled substances shall be transported by employees of a federal, state or local law enforcement agency;

2. during transportation, the conditionally exempt controlled substances shall be accompanied by a shipping paper which, at a minimum, shall provide the following information:

a. a list of the substances being transported;

b. the type and number of containers being used to transport each type of substance;

c. the quantity, by weight or volume, of each type of substance being transported (if known);

d. the state(s) (e.g., solid, powder, liquid, semi–liquid, gas, etc.) of each type of substance being transported;

e. the final destination and interim destinations, if any, of the substances;

f. the name and telephone number of an emergency response contact, for use in the event of a spill or other release;

g. the name, address and telephone number of the law enforcement agency from which the shipment originates, the printed name and signature of the peace officer authorizing the shipment, and the date the shipment originates;

h. the name, address, telephone number and signature of the law enforcement agency employee(s) responsible for the custody and security of the substances during transportation; and

i. the name, address and telephone number of the facility which is the final destination of the substances; and

3. in the event of a spill or release of a conditionally exempt controlled substance during transportation, the law enforcement agency employee responsible for the substance during transportation shall take appropriate immediate action to protect human health and the environment (e.g., notify local law enforcement agencies and/or other local emergency response agencies, dike the spill area, etc.). The law enforcement agency employee responsible for the released substance during transportation shall clean up or provide for the clean up of the spilled or released substance, or take such other action as may be required or approved by Federal, State, or local officials to ensure that the release no longer presents a hazard to human health or the environment;

(D) treatment of conditionally exempt controlled substances shall be limited to:

1. incineration in accordance with paragraphs (3)(E) of this subsection; and

2. the addition of absorbent material to a conditionally exempt controlled substance in a container or the addition of a conditionally exempt controlled substance to absorbent material in a container, in conjunction with incineration pursuant to paragraphs (3)(E) of this subsection;

(E) incineration of conditionally exempt controlled substances pursuant to this subsection shall be subject to the following requirements and limitations:

1. conditionally exempt controlled substances shall be incinerated under the following operating conditions:

a. incineration shall be in an airtight combustion device operated under negative air pressure through the combustion zone;

b. a feed airlock or an equivalent mechanism shall be used to prevent fugitive emissions;

c. the temperature in the combustion zone shall be maintained at or above 1600 degrees Fahrenheit for a minimum residence time of one second;

d. when only controlled substances are being incinerated, the controlled substance feed rate shall be between 25 percent and 75 percent of the incinerator's thermal design capacity;

e. when controlled substances are being incinerated with other materials, the total feed rate shall be greater than 40 percent, and no more than 100 percent, of the incinerator's thermal design capacity; and

f. if the incineration facility is not equipped with emissions control devices (e.g., scrubbers), the controlled substances feed rate shall be limited to 40 pounds per hour; and

2. the incineration facility shall comply with all applicable Federal, State and local regulatory agency requirements;

(F) all law enforcement agency and incinerator facility personnel who handle conditionally exempt controlled substances shall complete health and safety training equivalent to the training required under Title 8, CCR, section 5194, within six months after the effective date of these regulations. No personnel shall be newly assigned to handle conditionally exempt controlled substances after the effective date of these regulations until they have completed the required health and safety training.

(4) Except as provided in paragraph (3) of this subsection, conditionally exempt controlled substances shall be stored, transported, treated and disposed of as hazardous waste in accordance with the requirements of this division and Health and Safety Code, division 20, chapter 6.5.

(5) Any controlled substance, as defined in section 11007 of the Health and Safety Code, which is not a hazardous waste, pursuant to section 66262.11, is not subject to the requirements of this division.

NOTE: Authority cited: Sections 25141, 25150, 25158.4, 25159, 25159.5, 58004 and 58012, Health and Safety Code. Reference: Sections 25117, 25124, 25141, 25143, 25143.1, 25143.2, 25143.4(a), 25143.11, 25158.2, 25158.3, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 261.4.

HISTORY

1. New section with renumbering and amendment of former section 66300(g) to section 66261.4(b)(2) filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Repealer of subsection (b)(2) and renumbering of following subsections and amendments filed 6–28–91 as an emergency; operative 6–28–91 (Register 91, No. 41). A Certificate of Compliance must be transmitted to OAL 10–28–91 or emergency language will be repealed by operation of law on the following day.
3. New subsection (e) filed 4–23–92 as an emergency; operative 4–23–92 (Register 92, No. 18). A Certificate of Compliance must be transmitted to OAL 8–21–92 or emergency language will be repealed by operation of law on the following day.
4. Repealer and new subsection (e) filed 6–22–92 as an emergency; operative 6–22–92 (Register 92, No. 26). A Certificate of Compliance must be transmitted to OAL by 10–20–92 or emergency language will be repealed by operation of law on the following day.
5. Repealer of subsection (b)(2) filed 8–25–92; operative 8–25–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 35).
6. Editorial correction of HISTORY 2. (Register 92, No. 35).
7. Editorial correction of HISTORY 2. (Register 92, No. 42).
8. Repealer and new subsection (e) refiled 10–22–92 as an emergency; operative 10–19–92 (Register 92, No. 43). A Certificate of Compliance must be transmitted to OAL 2–22–93 or emergency language will be repealed by operation of law on the following day.
9. Editorial correction of printing error in subsection (d)(1) (Register 92, No. 49).
10. Repealer and new subsection (e) refiled 2–16–93 as an emergency; operative 2–16–93 (Register 93, No. 8). A Certificate of Compliance must be transmitted to OAL 6–16–93 or emergency language will be repealed by operation of law on the following day.
11. Repealer and new subsection (e) filed 6–14–93 as an emergency; operative 6–15–93 (Register 93, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–13–93 or emergency language will be repealed by operation of law on the following day.
12. Repealer and new subsection (e) refiled 10–13–93 as an emergency; operative 10–13–93 (Register 93, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–10–94 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 10–13–93 order with amendments transmitted to OAL 12–3–93 and filed 1–14–94 (Register 94, No. 2).
14. New subsections (e)–(f)(2) and subsection redesignation filed 5–27–94 as an emergency; operative 5–27–94 (Register 94, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–26–94 or emergency language will be repealed by operation of law on the following day.
15. New subsections (e)–(f)(2) and subsection redesignation refiled 9–19–94 as an emergency; operative 9–19–94 (Register 94, No. 38). A Certificate of Compliance must be transmitted to OAL by 1–17–95 or emergency language will be repealed by operation of law on the following day.
16. Editorial correction of subsection (f)(1) (Register 95, No. 2).
17. New subsections (e)–(f)(2) and subsection redesignation refiled 1–13–95 as an emergency; operative 1–13–95 (Register 95, No. 2). A Certificate of Compliance must be transmitted to OAL by 5–15–95 or emergency language will be repealed by operation of law on the following day.
18. Certificate of Compliance as to 1–13–95 order transmitted to OAL 4–10–95 and filed 5–22–95 (Register 95, No. 21).
19. New subsections (a)(4)–(a)(4)(D) and (b)(3) and amendment of NOTE filed 2–3–98; operative 3–5–98 (Register 98, No. 6).
20. Amendment of subsection (c) filed 8–6–98; operative 8–6–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 32).
21. New subsections (b)(4)–(b)(5)(B) and amendment of NOTE filed 10–13–98; operative 11–12–98 (Register 98, No. 42).
22. Editorial correction restoring inadvertently deleted subsection (e)(4) (Register 99, No. 12).

§ 66261.6. Requirements for Recyclable Materials.

(a)(1) Recyclable materials are subject to the applicable requirements for generators, transporters and facilities of articles 1 and 2 of chapter 16 of this division, except as specified otherwise for the materials listed in subsections (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6) of this section.

(2) The following recyclable materials are also regulated under the articles (of chapter 16 of this division) specified below, and all applicable provisions in chapters 20 and 21 of this division:

(A) [RESERVED];

(B) hazardous wastes burned for energy recovery in boilers and industrial furnaces that are not regulated under article 15 of chapter 14 or 15 of this division are regulated under article 8 of chapter 16 of this division.

(C) spent lead–acid storage batteries that are being reclaimed are regulated under article 7 of chapter 16 of this division;

(D) recyclable materials that are being used in agriculture are regulated under article 8.5 of chapter 16 of this division;

(E) waste elemental mercury that is being recycled is regulated under article 9 of chapter 16 of this division.

(3) The following are not subject to regulation under this division, and are not subject to the notification requirements of Health and Safety Code section 25153.6:

(A) materials that can be shown to be recycled by methods identified in subdivisions (b), (c) or (d) of Health and Safety Code section 25143.2; and

(B) scrap metal as defined in section 66260.10. However, scrap metal that meets the definition of a RCRA hazardous waste is not subject to regulation under this division and is not subject to the notification requirements of Health and Safety Code section 25153.6, only when the scrap metal is being recycled; and

(C) hazardous wastes that exhibit the characteristic of toxicity specified in section 66261.24(a)(1) and do not exhibit any other characteristic of a hazardous waste specified in article 3 of this chapter (commencing with section 66261.20), are not listed in article 4 of this chapter (commencing with section 66261.30), and that qualify as one of the materials specified in 40 CFR section 261.6(a)(3) (incorporated by reference in section 66260.11).

(4) The following are prohibited as specified:

(A) the use of material (e.g., waste, used oil or other material) which is contaminated with dioxin or any other hazardous waste (other than a waste identified solely on the basis of ignitability), for dust suppression or road treatment is prohibited;

(B) the use of used oil as a road oil, dust suppressant or weed control agent is prohibited, except as provided otherwise in Health and Safety Code section 25250.5.

(5) The following hazardous waste, when recycled, is exempt from the restrictions concerning the materials used in a manner constituting disposal or used to produce products that are applied to the land, as provided in Section 25143.2(e) of the Health and Safety Code.

(A) Spent catalyst generated from the Fluid Catalytic cracking (FCC) unit in a petroleum refinery when it is recycled at portland cement kilns as the substitute of alumina and silica in the kiln feed. The concentration of the extractable heavy metals in the FCC catalyst shall not exceed the values given in Table I–C CCWE, Section 66268.106(a) except for nickel and vanadium. The total concentration of nickel and vanadium in the FCC catalyst shall not exceed 3,000 mg/kg, combined.

(6) Hazardous wastes that meet all the following criteria are not subject to regulation under this division but, instead, are subject to regulation as specified in 40 CFR section 261.6(a)(2) (incorporated by reference in section 66260.11):

(A) the hazardous waste exhibits the characteristic of a hazardous waste specified in section 66261.24(a)(1);

(B) the hazardous waste does not exhibit any other characteristic of a hazardous waste specified in article 3 of this chapter (commencing with section 66261.20);

(C) the hazardous waste is not listed in article 4 of this chapter (commencing with section 66261.30);

(D) the hazardous waste is not listed in article 4.1 of this chapter (commencing with section 66261.50); and

(E) the hazardous waste qualifies for regulation pursuant to 40 CFR section 261.6(a)(2) (incorporated by reference in section 66260.11).

(7) Hazardous waste that is exported to or imported from designated member countries of the Organization for Economic Cooperation and Development (OECD) (as defined in 40 CFR section 262.58(a)(1) or section 66262.58(a)(1)) for purpose of recovery is subject to the requirements of 40 CFR Part 262, Subpart H or this article, if it is subject to either the Federal manifesting requirements of 40 CFR Part 262, or to the universal waste management standards of 40 CFR Part 273.

(b) Owners and operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of articles 1 through 12 , 27, 28, and 28.5 of chapters 14 and 15 and any applicable provisions of chapters 16, 18, and 20 and the notification requirements under section 3010 of RCRA, except as provided in subsection (a) of this section.

(c) Owners or operators of facilities subject to RCRA permitting requirements with hazardous waste management units that recycle hazardous wastes are subject to the requirements of articles 27 and 28 of chapters 14 or 15.

NOTE: Authority cited: Sections 25143.2(e), 25150, 25159, 25159.5, 25170, 25179.6, 25245, 25250.22 and 58012, Health and Safety Code. Reference: Sections 25143, 25143.2, 25150, 25159, 25159.5, 25163, 25170, 25179.6, 25250.5 and 25250.22, Health and Safety Code; and 40 CFR Sections 261.6 and 266.23.

HISTORY

1. New section with renumbering and amendment of former section 66826 to subsection (a)(5), filed 5-24-91; effective 7-1-91 (Register 91, No. 22). A Certificate of Compliance for 5-6-91 order must be transmitted to OAL by 9-3-91 or emergency language will be repealed by operation of law on the following day.
2. Emergency order of 5-6-91 adopting subsection (a)(5) refiled, including further amendments, 9-3-91 as an emergency; operative 9-3-91 (Register 92, No. 17). A Certificate of Compliance must be transmitted to OAL 1-2-92 or emergency language will be repealed by operation of law on the following day.
3. New subsection (a)(5) refiled 4-20-92 as an emergency; operative 4-20-92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 8-18-92 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4-20-92 order including amendment of NOTE transmitted to OAL 8-11-92 and filed 9-23-92 (Register 92, No. 39).
5. Repealer of subsections (a)(2)(B)-(C) filed 6-22-95 as an emergency; operative 6-22-95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-20-95 or emergency language will be repealed by operation of law on the following day.
6. Repealer of subsections (a)(2)(B)-(C) refiled 10-20-95 as an emergency; operative 10-20-95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2-17-96 or emergency language will be repealed by operation of law on the following day.
7. Repealer of subsections (a)(2)(B)-(C) refiled 3-14-96 as an emergency; operative 3-14-96 (Register 96, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-12-96 or emergency language will be repealed by operation of law on the following day.
8. Amendment of subsection (a)(2)(E) and NOTE filed 7-1-96; operative 7-31-96 (Register 96, No. 27).
9. Repealer of subsections (a)(2)(B)-(C) refiled 7-9-96 as an emergency; operative 7-9-96 (Register 96, No. 28). A Certificate of Compliance must be transmitted to OAL by 11-6-96 or emergency language will be repealed by operation of law on the following day.
10. Repealer of subsections (a)(2)(B)-(C) refiled 11-1-96 as an emergency; operative 11-1-96 (Register 96, No. 44). A Certificate of Compliance must be transmitted to OAL by 3-3-97 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 11-1-96 order transmitted to OAL 12-23-96 and disapproved 2-6-97 (Register 97, No. 6).
12. Repealer of subsection (a)(2)(B)-(C) filed 2-7-97 as an emergency; operative 2-7-97 (Register 97, No. 6). A Certificate of Compliance must be transmitted to OAL by 6-9-97 or emergency language will be repealed by operation of law on the following day.
13. Change without regulatory effect adding new subsection (a)(2)(B) filed 6-12-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 24).
14. Certificate of Compliance as to 2-7-97 order transmitted to OAL 6-6-97 and disapproved 7-22-97 (Register 97, No. 30).
15. Amendment of subsection (a)(2)(C) and amendment of NOTE filed 7-22-97 as an emergency; operative 7-22-97 (Register 97, No. 30). A Certificate of Compliance must be transmitted to OAL by 11-19-97 or emergency language will be repealed by operation of law on the following day.
16. Change without regulatory effect amending subsection (a)(7) and NOTE filed 8-20-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).
17. Certificate of Compliance as to 7-22-97 order, including relettering of subsections (a)(2)(B)-(D), transmitted to OAL 11-19-97 and filed 1-5-98 (Register 98, No. 2).
18. Amendment of subsection (a)(6)(A) and NOTE filed 10-13-98; operative 11-12-98 (Register 98, No. 42).
19. Change without regulatory effect adding new subsections (b) and (c) and amending NOTE filed 6-11-99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).
20. Change without regulatory effect amending subsection (b) filed 6-11-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 24).
21. Change without regulatory effect amending subsection (a)(3)(B) and amending NOTE filed 4-11-2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 15).
22. Amendment of subsection (a)(6)(C), new subsection (a)(6)(D) and subsection relettering filed 2-13-2003; operative 3-15-2003 (Register 2003, No. 7).
23. Change without regulatory effect amending subsection (a)(7) filed 6-7-2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 24).

§ 66261.7. Contaminated Containers.

(a) Except as provided in Section 66262.70 and subsections (g), (h), (i), (k), (*l*), (m), (n), and (o) of this section, any container (as defined in Section 66260.10 of this division), or inner liner removed from a container, which previously held a hazardous material, including but not limited to hazardous waste, and which is empty as defined in subsection (b) or (d) of this section shall be exempt from regulation under this division and Chapter 6.5 of Division 20 of the Health and Safety Code if it will be managed in accordance with subsection (e) of this section. Existing permits which contain specific conditions governing container cleaning operations which conflict with the provisions of these regulations may be amended to be consistent with this regulation by following the Class 2 permit modification procedures set forth in Section 66270.42(b).

(b) A container, or an inner liner removed from a container, which previously held a hazardous material, including hazardous waste, is empty if the container or the inner liner removed from a container has been emptied so that:

(1) If the hazardous material which the container or inner liner held is pourable, no hazardous material can be poured or drained from the container or inner liner when the container or inner liner is held in any orientation (e.g., tilted, inverted, etc.); and

(2) If the hazardous material which the container or inner liner held is not pourable, no hazardous material remains in or on the container or inner liner that can feasibly be removed by physical methods (excluding rinsing) which comply with applicable air pollution control laws and which are commonly employed to remove materials from that container or inner liner. Following material removal, the top, bottom and sidewalls of such a container shall not contain remaining adhered or crusted material resulting from buildup of successive layers of material or a mass of solidified material. A thin uniform layer or dried material or powder is considered acceptable. A person who treats a container or inner liner onsite by employing physical methods to satisfy the standard in this subsection is authorized to perform such treatment for purposes of Health and Safety Code Section 25201.

(c) A person who treats a container or an inner liner removed from a container of five gallons or less in capacity which has been emptied pursuant to subsection (b) of this section is authorized, for purposes of Health and Safety Code Section 25201, to perform such activities if any rinsate or other residue generated by these activities is completely captured and classified in accordance with the provisions of this division and any applicable waste discharge requirements.

(d) A container or an inner liner removed from a container that has held a material listed as an acute hazardous waste in Sections 261.31, 261.32, or 261.33 (e) Title 40 of the Federal Code of Regulations or a waste which is extremely hazardous pursuant to any of the criteria of Sections 66261.110, 66261.113, and Title 22, California Code of Regulations, Division 4.5, Chapter 11, Appendix X is empty if:

(1) The container or inner liner has been triple rinsed using a solvent capable of removing the waste and all pourable residues have been removed from the container or inner liner in accordance with subsection (b)(1) of this section. Triple rinsing activities shall require specific authorization from the Department unless subject to the provisions of Health and Safety Code Section 25143.2(c)(2); or

(2) The container or inner liner is cleaned by another method that has been shown in the scientific literature, or by tests conducted by the generator, to achieve equivalent removal. Alternative methods to rinsing require prior approval by the Department.

(e) In order to retain the exemption under this section, an empty container or an inner liner removed from a container must be managed by one of the following methods:

(1) Except as otherwise provided in Section 42170 of the Public Resources Code, for containers of five gallons or less in capacity, or inner liners removed from containers of five gallons or less in capacity, by disposing of the container or inner liner at an appropriate solid waste facility, provided that the container or inner liner is packaged and transported in accordance with applicable U.S. Department of Transportation regulations (49 CFR Part 173); or

(2) By reclaiming its scrap value onsite or shipping the container or inner liner to a person who reclaims its scrap value, provided that the container or inner liner is packaged and transported in accordance with applicable U.S. Department of Transportation regulations (49 CFR Part 173); or

(3) By reconditioning or remanufacturing the container or inner liner onsite pursuant to 49 CFR Section 173.28 (c) and (d) (revised at 55 FR 52402 – 52729) for subsequent reuse, or shipping the container or inner liner to a person who reconditions or remanufactures the container or inner liner pursuant to 49 CFR Section 173.28 (c) and (d) (revised at 55 FR 52402 – 52729); or

(4) By shipping the container or inner liner to a supplier or to another intermediate collection location for accumulation prior to managing the container or inner liner pursuant to subsections (e)(1), (e)(2) or (e)(3) of this section, provided that the container or inner liner is packaged and transported in accordance with applicable U.S. Department of Transportation regulations.

(f) A container or an inner liner removed from a container larger than five gallons in capacity which is managed pursuant to subsection (e) of this section shall be marked with the date it has been emptied and shall be managed within one year of being emptied.

(g) Any person who generates an empty container or an inner liner larger than five gallons in capacity which previously held a hazardous material shall maintain, and provide upon request, to the Department, the Environmental Protection Agency, or any local agency or official authorized to bring an action as provided in Health and Safety Code Section 25180 the name, street address, mailing address and telephone number of the owner or operator of the facility where the empty container has been shipped. The above information shall be retained onsite for a period of three years.

(h) Uncontaminated containers, where an inner liner has prevented contact of the hazardous material with the inner surface of the container, are not hazardous waste subject to regulation under this division and Chapter 6.5 of Division 20 of the Health and Safety Code.

(i) Containers or inner liners which previously held a hazardous material which are sent back to the supplier for the purpose of being refilled are exempt from regulation under this division and Chapter 6.5 of Division 20 of the Health and Safety Code if all of the following requirements are met:

(1) The container or inner liner was last used to hold a hazardous material acquired from a supplier of hazardous materials;

(2) The container or inner liner is empty pursuant to the standards set forth in Section 261.7 of Title 40 of the Code of Federal Regulations;

(3) The container or inner liner is returned to a supplier of hazardous materials for the purpose of being refilled, provided that the supplier's reuse of the container or inner liner is in compliance with the requirements of Section 173.28 of Title 49 of the Code of Federal Regulations;

(4) The container or inner liner is not treated prior to being returned to the supplier of hazardous materials, except as authorized by this section;

(5) The container is not treated (except as authorized by this section) by the supplier of hazardous materials without obtaining specific authorization from the Department; and

(6) The container or inner liner is refilled by the supplier with hazardous material which is compatible with the hazardous material which the container or inner liner previously held unless the container has been adequately decontaminated.

(j) If the supplier, upon receiving a container or an inner liner pursuant to subsection (i) of this section, is unable to refill the container or inner liner, the supplier shall empty the container or inner liner pursuant to subsections (b) or (d) of this section and manage the container or inner liner pursuant to subsection (e) of this section.

(k) Emptied household hazardous material and pesticide container, or inner liners removed from containers, of five gallon or less in capacity, are exempt from regulation under this division and Chapter 6.5 of Division 20 of the Health and Safety Code if the container or inner liner is emptied by removing all of the contents that can be removed using practices commonly employed to remove materials from that type of container.

(*l*) A compressed gas cylinder is exempt from regulation under this division and Chapter 6.5 of Division 20 of the Health and Safety Code when the pressure in the container approaches atmospheric pressure.

(m)(1) Provided that they are not a RCRA regulated hazardous waste, as defined in Section 66260.10 of this division, aerosol containers are exempt from regulation under this division and Chapter 6.5 of Division 20 of the Health and Safety Code if the aerosol container was emptied of the contents and propellant to the maximum extent practical under normal use (i.e., the spray mechanism was not defective and thus allowed discharge of the contents and propellant).

(2) Unless otherwise exempt under other provisions of law, aerosol containers which held a material listed as an acute hazardous waste in Sections 261.31, 261.32, or a material identified as an acute hazardous waste in Section 261.33(e), Title 40 of the Code of Federal Regulations, or a waste which is extremely hazardous pursuant to any of the criteria of Sections 66261.110, 66261.113, and Title 22, California Code of Regulations, Division 4.5, Chapter 11, Appendix X are not exempt under this section and shall be managed as hazardous waste in accordance with this division and Chapter 6.5 of Division 20 of the Health and Safety Code (commencing with Section 25100).

(3) For purposes of this section, "aerosol container" means a pressurized, sealed container which contains a product and liquified or compressed gases, and which can dispense that product by the activation of a pressure–sensitive valve.

(n) Containers made of wood, paper, cardboard, fabric, or any other similarly absorptive material are not exempt from regulation under this division or Chapter 6.5 of Division 20 of the Health and Safety Code if the container was in direct contact with and has absorbed the hazardous waste or a hazardous material.

(o) The following items are not containers for purposes of this section and should continue to be managed as specified below:

(1) Used oil filters managed pursuant to Section 66266.130 of this division.

(2) PCB or PCB contaminated electrical equipment, including but not limited to, transformers and capacitors managed pursuant to 40 CFR Section 761.60, or Section 66268.29(b) of this division, so that the Soluble Threshold Limit Concentration (STLC) and the Total Threshold Limit Concentration (TTLC) values set forth in Section 66261.24(a)(2) of this division are not exceeded.

(3) Chemotherapy drug intravenous (IV) bags or tubing used for the delivery of chemotherapy agents managed pursuant to Chapter 6.1 of Division 20 of the Health and Safety Code.

(p) The residue remaining in a bulk container (as defined in section 66260.10) that has held hazardous waste is not a hazardous waste, except as provided in subsections (p)(2) and (p)(3), and a facility that receives the bulk container for cleaning or reuse, by such receipt is not receiving offsite waste, if the bulk container is empty as defined in subsection (p)(1) below.

(1) A bulk container that has held hazardous waste is empty if:

(A) for a residue that contains a material described in subsection (d) of this section, the bulk container is empty pursuant to subsection (d); or

(B) for a residue that does not contain a material described in subsection (d), the residue is no more than 0.3% by weight of the total capacity of the bulk container.

(2) The residue in a bulk container that is empty pursuant to subsection (p)(1)(B) of this section is subject to regulation under this division as a hazardous waste when:

(A) the bulk container ceases to be operated for hazardous waste or hazardous material transportation; or

(B) the residue is from hazardous waste that was hazardous by the characteristic of toxicity (as defined in section 66261.24), and, without prior removal of the residue, the bulk container is subsequently used to hold a product or recyclable material which would be reduced in quality, value, or usefulness, rendered non-recyclable, or which would potentially have an adverse effect on human health and/or the environment by commingling with the residue, or

(C) without prior removal of the residue, the bulk container is subsequently used to hold a material that is chemically incompatible with the residue, including, but not limited to, those incompatible materials listed in Appendix V of chapter 14 of this division.

(3) An offsite facility that receives a bulk container that held a hazardous waste is an offsite facility subject to the facility standards of chapters 14, 15, and 20 of this division if:

(A) the bulk container is not empty pursuant to subsection (p)(1); or

(B) the bulk container is empty pursuant to subsection (p)(2), and, without removal of the residue, the bulk container is subsequently used to hold a material that is chemically incompatible with that residue, including, but not limited to, those incompatible materials listed in Appendix V of chapter 14 of this division.

(q) Reserved.

(r) Any container, or inner liner removed from a container, which previously held a hazardous material, including but not limited to hazardous waste, and which is not empty as defined in subsections (b) or (d) of this section, or otherwise exempt from regulation as a hazardous waste under this division or Chapter 6.5 of Division 20 of the Health and Safety Code (commencing with Section 25100), shall be managed as a hazardous waste in accordance with this division and Chapter 6.5 of Division 20 of the Health and Safety Code (commencing with Section 25100).

(s) The generator and transporter shall comply with the provisions of the Sanitary Food Transportation Act of 1990 (Title 49 of the United States Code Section 5701 et seq.) and the National Economic Crossroads Transportation Efficiency Act of 1997 (Title 12 section 12002 et seq.) as applicable.

NOTE: Authority cited: Sections 208, 25141, 25143.2, 25150 and 58012, Health and Safety Code. References: Sections 208, 25141, 25143.2, 25150, 25159.5 and 58012, Health and Safety Code; and 40 CFR Section 261.7.

HISTORY

1. Renumbering and amendment of former section 66730 to section 66261.7(a)–(g) and new subsection (h) filed 5–24–91; operative 7–1–91 (Register 91, No. 22). A Certificate of Compliance must be transmitted to OAL by 6–28–91 or emergency language, subsections (a)–(g) will be repealed by operation of law on the following day.
2. New section refiled 6–28–91 as an emergency; operative 6–28–91 (Register 91, No. 41). A Certificate of Compliance must be transmitted to OAL by 10–28–91 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsections (d)–(f) and NOTE filed 10–28–91 as an emergency; operative 10–28–91 (Register 92, No. 13). A Certificate of Compliance must be transmitted to OAL 2–25–92 or emergency language will be repealed by operation of law on the following day.
4. New section with amendments to subsection (a), (c)(1) and (c)(2), new subsection (g), and subsection relettering refiled 3–12–92 as an emergency; operative 3–12–92 (Register 92, No. 22). A Certificate of Compliance must be transmitted to OAL 7–10–92 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 3–12–92 order including amendment of section transmitted to OAL 4–18–92 and filed 5–29–92 (Register 92, No. 25).
6. Editorial correction of subsection (m)(2) (Register 95, No. 42).
7. Repealer of subsection (o)(4), new subsections (p)–(q), subsection relettering, new subsection (s) and amendment of NOTE filed 10–19–2000; operative 11–18–2000 (Register 2000, No. 42).

§ 66261.9. Requirements for Universal Waste.

(a) The hazardous wastes listed in this section are exempt from the management requirements of chapter 6.5 of division 20 of the California Health and Safety Code and its implementing regulations except as specified in chapter 23 and, therefore, are not fully regulated as hazardous waste. The wastes listed in this section are subject to regulation under chapter 23 and shall be known as "universal waste."

(1) Batteries as described in section 66273.2;

(2) Thermostats as described in section 66273.4;

(3) Lamps as described in section 66273.5 (including, but not limited to, M003 wastes);

(4) Cathode ray tube materials, as described in section 66273.6;

(5) Universal waste electronic devices as described in section 66273.3;

(6) Aerosol cans as specified in Health and Safety Code section 25201.16;

(7) Mercury-containing motor vehicle light switches as specified in Health and Safety Code section 25214.5 (M001 Wastes) and motor vehicles that contain such switches, as described in section 66273.7.1;

(8) Non-automotive mercury switches and products that contain such switches (including, but not limited to, M002 Wastes), as described in section 66273.7.2;

(9) Dental amalgam wastes, as described in section 66273.7.3;

(10) Mercury-containing pressure or vacuum gauges, as described in section 66273.7.4;

(11) Mercury-added novelties (including, but not limited to, M004 Wastes), as described in section 66273.7.5;

(12) Mercury counterweights and dampers, as described in section 66273.7.6;

(13) Mercury thermometers, as described in section 66273.7.7;

(14) Mercury dilators and weighted tubing, as described in section 66273.7.8;

(15) Mercury-containing rubber flooring, as described in section 66273.7.9, and

(16) Mercury gas flow regulators, as described in section 66273.7.10.

(b) Universal wastes shall be managed as hazardous wastes after arrival at a destination facility.

NOTE: Authority cited: Sections 25141, 25150, 25150.6, 25201, 25214.9, 25214.10.2, 25219.1 and 58012, Health and Safety Code; and Sections 42475.1 and 42475.2, Public Resources Code. Reference: Sections 25117.2, 25141, 25150, 25159.5, 25180–25196, 25214.5, 25214.9, 25219, 25219.1 and 25219.2, Health and Safety Code; 40 CFR Section 261.9.

HISTORY

1. New section filed 3–6–2000 as an emergency; operative 3–6–2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2000 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6–29–2000 as an emergency; operative 7–6–2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–3–2000 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11–1–2000 as an emergency; operative 11–4–2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–5–2001 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 3–6–2001 as an emergency; operative 3–6–2001 (Register 2001, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2001 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 6–26–2001 as an emergency; operative 7–5–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–2–2001 or emergency language will be repealed by operation of law on the following day.
6. Amendment of subsections (a)(2)–(3) and new subsection (a)(4) filed 8–3–2001 as an emergency; operative 8–3–2001 (Register 2001, No. 31). A Certificate of Compliance must be transmitted to OAL by 12–3–2001 or emergency language will be repealed by operation of law on the following day.
7. New section refiled 11–2–2001 as an emergency; operative 11–3–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–4–2002 or emergency language will be repealed by operation of law on the following day.
8. Amendment of subsections (a)(2)–(3) and new subsection (a)(4) refiled 11–30–2001 as an emergency; operative 11–30–2001 (Register 2001, No. 48). A Certificate of Compliance must be transmitted to OAL by 4–2–2002 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 11–2–2001 order, including further amendment of section, transmitted to OAL 12–27–2001 and filed 2–8–2002 (Register 2002, No. 6).
10. Amendment refiled 3–26–2002 as an emergency; operative 4–12–2002 (Register 2002, No. 13). A Certificate of Compliance must be transmitted to OAL by 8–12–2002 or emergency language will be repealed by operation of law on the following day.
11. Amendment refiled 8–6–2002 as an emergency; operative 8–6–2002 (Register 2002, No. 32). A Certificate of Compliance must be transmitted to OAL by

12–4–2002 or emergency language will be repealed by operation of law on the following day.

12. Amendment of subsection (a) and amendment of NOTE filed 9–23–2002 as an emergency; operative 9–23–2002 (Register 2002, No. 39). A Certificate of Compliance must be transmitted to OAL by 1–21–2003 or emergency language will be repealed by operation of law on the following day.

13. Amendments in 8–6–2002 order refiled 11–25–2002 as an emergency; operative 12–5–2002 (Register 2002, No. 48). A Certificate of Compliance must be transmitted to OAL by 4–4–2003 or emergency language will be repealed by operation of law on the following day.

14. Certificate of Compliance as to 11–25–2002 order, including amendment of section and NOTE, transmitted to OAL 12–24–2002 and filed 2–3–2003 (Register 2003, No. 6).

15. Amendment of section and NOTE filed 2–13–2003; operative 3–15–2003 (Register 2003, No. 7).

16. Amendment of subsection (a)(5) and NOTE filed 6–7–2004 as an emergency; operative 6–7–2004 (Register 2004, No. 24). Pursuant to Public Resources Code section 42475.2, a Certificate of Compliance must be transmitted to OAL by 6–7–2006 or emergency language will be repealed by operation of law on the following day.

17. Amendment of subsection (a)(5) and NOTE refiled 6–5–2006 as an emergency, including further amendment of NOTE; operative 6–5–2006 (Register 2006, No. 23). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.

18. Amendment of subsection (a)(5) and NOTE refiled 5–8–2008 as an emergency; operative 5–8–2008 (Register 2008, No. 19). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.

§ 66261.9.5. Requirements for Treated Wood Waste.

Treated wood waste as defined in section 67386.4 when managed as specified in chapter 34 is exempt from the management requirements of chapter 12 through 20.

NOTE: Authority cited: Sections 25150, 25150.7 and 58012, Health and Safety Code. Reference: Section 25150.7, Health and Safety Code.

HISTORY

1. New section filed 12–27–2006 as an emergency; operative 1–1–2007 (Register 2006, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2007 or emergency language will be repealed by operation of law on the following day.

2. Editorial correction of HISTORY 1 (Register 2007, No. 17).

3. New section refiled 4–23–2007 as an emergency; operative 4–30–2007 (Register 2007, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–28–2007 or emergency language will be repealed by operation of law on the following day.

4. Repealer and new section and amendment of NOTE filed 6–18–2007; operative 7–1–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 25).

Article 2. Criteria for Identifying the Characteristics of Hazardous Waste

§ 66261.10. Criteria for Identifying the Characteristics of Hazardous Waste.

(a) The Department shall identify and define a characteristic of hazardous waste in article 3 of this chapter only upon determining that:

(1) a waste that exhibits the characteristic may:

(A) cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(B) pose a substantial present or potential hazard to human health or the environment when it is improperly treated, stored, transported, disposed of or otherwise managed; and

(2) the characteristic can be:

(A) measured by an available standardized test method which is reasonably within the capability of generators of waste or private sector laboratories that are certified by the Department pursuant to Chapter 44 of this division and available to serve generators of waste; or

(B) reasonably detected by generators of waste through their knowledge of their waste.

NOTE: Authority cited: Sections 208, 25141 and 25159, Health and Safety Code. Reference: Sections 25117, 25141, 25159 and 25159.5, Health and Safety Code and 40 CFR Section 261.10.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

Article 3. Characteristics of Hazardous Waste

§ 66261.20. General.

(a) A waste, as defined in section 66261.2, which is not excluded from regulation as a hazardous waste pursuant to section 66261.4(b), is a hazardous waste if it exhibits any of the characteristics identified in this article.

(b) A waste which is identified as a hazardous waste pursuant to one or more of the characteristics set forth in section 66261.21, 66261.22(a)(1), 66261.22(a)(2), 66261.23 or 66261.24(a)(1) is assigned the EPA Hazardous Waste Number set forth in this article for each characteristic that is applicable to that waste. These numbers shall be used in complying with the notification requirements of Health and Safety Code section 25153.6 and, where applicable, in the recordkeeping and reporting requirements under chapters 12 through 15, 18 and 20 of this division.

(c) Sampling and sample management of wastes and other materials for analysis and testing pursuant to this article shall be in accord with the sampling planning, methodology and equipment, and the sample processing, documentation and custody procedures specified in chapter nine of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," SW–846, 3rd edition, U.S. Environmental Protection Agency, 1986 (incorporated by reference, see section 66260.11 of this chapter). In addition to the sampling methods in chapter nine of SW–846, the Department will consider samples obtained using any of the other applicable sampling methods specified in Appendix I of this chapter to be representative samples.

NOTE: Authority cited: Sections 208, 25141 and 25159, Health and Safety Code. Reference: Sections 25141, 25159 and 25159.5, Health and Safety Code and 40 CFR Section 261.20.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66261.21. Characteristic of Ignitability.

(a) A waste exhibits the characteristic of ignitability if representative samples of the waste have any of the following properties:

(1) it is a liquid, other than an aqueous solution containing less than 24 percent alcohol by volume, and has a flash point less than 60°C (140°F), as determined by a Pensky–Martens Closed Cup Tester, using the test method specified in ASTM Standard D–93–79 or D–93–80 (incorporated by reference, see section 66260.11), or a Setaflash Closed Cup Tester, using the test method specified in ASTM Standard D–3278–78 (incorporated by reference, see section 66260.11), or as determined by an equivalent test method approved by the Department pursuant to section 66260.21;

(2) it is not a liquid and is capable, under standard temperature and pressure, of causing fire through friction, absorption of moisture or spontaneous chemical changes and, when ignited, burns so vigorously and persistently that it creates a hazard;

(3) it is an ignitable compressed gas as defined in 49 CFR section 173.300 (as amended September 30, 1982) and as determined by the test methods described in that regulation or equivalent test methods approved by the Department pursuant to section 66260.21;

(4) it is an oxidizer as defined in 49 CFR section 173.151 (as amended May 31, 1979).

(b) A waste that exhibits the characteristic of ignitability has the EPA Hazardous Waste Number of D001.

NOTE: Authority cited: Sections 208, 25141 and 25159, Health and Safety Code. Reference: Sections 25117, 25120.2, 25141, 25159 and 25159.5, Health and Safety Code and 40 CFR Section 261.21.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66261.22. Characteristic of Corrosivity.

(a) A waste exhibits the characteristic of corrosivity if representative samples of the waste have any of the following properties:

(1) it is aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5, as determined by a pH meter using either the EPA test

method for pH or an equivalent test method approved by the Department pursuant to section 66260.21. The EPA test method for pH is specified as Method 9040 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," SW–846, 3rd edition and updates (incorporated by reference, see section 66260.11);

(2) it is a liquid and corrodes steel (SAE 1020) at a rate greater than 6.35 mm (0.250 inch) per year at a test temperature of 55°C (130°F) as determined by the test method specified in NACE Standard TM–01–69 as standardized in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," SW–846, 3rd edition and updates (incorporated by reference, see section 66260.11) or an equivalent test method approved by the Department pursuant to section 66260.21;

(3) it is not aqueous and, when mixed with an equivalent weight of water, produces a solution having a pH less than or equal to 2 or greater than or equal to 12.5, as determined by a pH meter using either Method 9040 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," SW–846, 3rd edition and updates (incorporated by reference, see section 66260.11) or an equivalent test method approved by the Department pursuant to 66260.21;

(4) it is not a liquid and, when mixed with an equivalent weight of water, produces a liquid that corrodes steel (SAE 1020) at a rate greater than 6.35 mm (0.250 inch) per year at a test temperature of 55°C (130°F) as determined by the test method specified in NACE Standard TM–01–69 as standardized in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," SW–846, 3rd edition and updates (incorporated by reference, see section 66260.11) or an equivalent test method approved by the Department pursuant to 66260.21.

(b) A waste that exhibits the characteristic of corrosivity specified in subsection (a)(1) or (a)(2) of this section has the EPA Hazardous Waste Number of D002.

NOTE: Authority cited: Sections 25141, 25159, 58004 and 58012, Health and Safety Code. Reference: Sections 25117, 25120.2, 25141, 25159 and 25159.5, Health and Safety Code and 40 CFR Section 261.22.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Amendment of subsections (a)(1)–(4) and NOTE filed 10–13–98; operative 11–12–98 (Register 98, No. 42).

§ 66261.23. Characteristic of Reactivity.

(a) A waste exhibits the characteristic of reactivity if representative samples of the waste have any of the following properties:

(1) it is normally unstable and readily undergoes violent change without detonating;

(2) it reacts violently with water;

(3) it forms potentially explosive mixtures with water;

(4) when mixed with water, it generates toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment;

(5) it is a cyanide or sulfide bearing waste which, when exposed to pH conditions between 2 and 12.5, can generate toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment;

(6) it is capable of detonation or explosive reaction if it is subjected to a strong initiating source or if heated under confinement;

(7) it is readily capable of detonation or explosive decomposition or reaction at standard temperature and pressure;

(8) it is a forbidden explosive as defined in 49 CFR section 173.51 (as amended April 20, 1987), or a Class A explosive as defined in 49 CFR section 173.53 (as amended April 5, 1967) or a Class B explosive as defined in 49 CFR section 173.88 (as amended May 19, 1980).

(b) A waste that exhibits the characteristic of reactivity has the EPA Hazardous Waste Number of D003.

NOTE: Authority cited: Sections 208, 25141 and 25159, Health and Safety Code. Reference: Sections 25117, 25120.2, 25141, 25159 and 25159.5, Health and Safety Code and 40 CFR Section 261.23.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66261.24. Characteristic of Toxicity.

(a) A waste exhibits the characteristic of toxicity if representative samples of the waste have any of the following properties:

(1) when using the Toxicity Characteristic Leaching Procedure (TCLP), test Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, third edition and Updates (incorporated by reference in section 66260.11 of this division), the extracts from representative samples of the waste contain any of the contaminants listed in Table I of this section at a concentration equal to or greater than the respective value given in that table unless the waste is excluded from classification as a solid waste or hazardous waste or is exempted from regulation pursuant to 40 CFR section 261.4. Where the waste contains less than 0.5 percent filterable solids, the waste itself, after filtering using the methodology outlined in Method 1311, is considered to be the extract for the purposes of this section;

(A) a waste that exhibits the characteristic of toxicity pursuant to subsection (a)(1) of this section has the EPA Hazardous Waste Number specified in Table I of this section which corresponds to the toxic contaminant causing it to be hazardous;

(B) Table I – Maximum Concentration of Contaminants for the Toxicity Characteristic:

EPA Hazardous Waste Number	*Contaminant*	*Chemical Abstracts Service Number*	*Regulatory Level Mg/l*
D004	Arsenic	7440–38–2	5.0
D005	Barium	7440–39–3	100.0
D018	Benzene	71–43–2	0.5
D006	Cadmium	7440–43–9	1.0
D019	Carbon tetrachloride	56–23–5	0.5
D020	Chlordane	57–74–9	0.03
D021	Chlorobenzene	108–90–7	100.0
D022	Chloroform	67–66–3	6.0
D007	Chromium	7440–47–3	5.0
D023	o–Cresol	95–48–7	200.0[1]
D024	m–Cresol	108–39–4	200.0[1]
D025	p–Cresol	106–44–5	200.0[1]
D026	Cresol		200.0[1]
D016	2,4–D	94–75–7	10.0
D027	1,4–Dichlorobenzene	106–46–7	7.5
D028	1,2–Dichloroethane	107–06–2	0.5
D029	1,1–Dichloroethylene	75–35–4	0.7
D030	2,4–Dinitrotoluene	121–14–2	0.13
D012	Endrin	72–20–8	0.02
D031	Heptachlor (and its epoxide)	76–44–8	0.008
D032	Hexachlorobenzene	118–74–1	0.13
D033	Hexachlorobutadiene	87–68–3	0.5
D034	Hexachloroethane	67–72–1	3.0
D008	Lead	7439–92–1	5.0
D013	Lindane	58–89–9	0.4
D009	Mercury	7439–97–6	0.2
D014	Methoxychlor	72–43–5	10.0
D035	Methyl ethyl ketone	78–93–3	200.0
D036	Nitrobenzene	98–95–3	2.0
D037	Pentachlorophenol	87–86–5	100.0
D038	Pyridine	110–86–1	5.0[2]
D010	Selenium	7782–49–2	1.0
D011	Silver	7440–22–4	5.0
D039	Tetrachloroethylene	127–18–4	0.7
D015	Toxaphene	8001–35–2	0.5
D040	Trichloroethylene	79–01–6	0.5
D041	2,4,5–Trichlorophenol	95–95–4	400.0
D042	2,4,6–Trichlorophenol	88–06–2	2.0
D017	2,4,5–TP (Silvex)	93–72–1	1.0
D043	Vinyl chloride	75–01–4	0.2

[1] If o–, m– and p–Cresol concentrations cannot be differentiated, the total cresol (D026) concentration is used. The regulatory level of total cresol is 200 mg/l.

[2] Quantitation limit is greater than the calculated regulatory level. The quantitation limit therefore becomes the regulatory level.

(2) it contains a substance listed in subsections (a)(2)(A) or (a)(2)(B) of this section at a concentration in milligrams per liter of waste extract, as determined using the Waste Extraction Test (WET) described in Appendix II of this chapter, which equals or exceeds its listed soluble threshold limit concentration or at a concentration in milligrams per kilogram in the waste which equals or exceeds its listed total threshold limit concentration;

(A) Table II – List of Inorganic Persistent and Bioaccumulative Toxic Substances and Their Soluble Threshold Limit Concentration:

(STLC) and Total Threshold Limit Concentration (TTLC) Values.

Substance[a,b]	*STLC* *mg/l*	*TTLC Wet-Weight mg/kg*
Antimony and/or antimony compounds	15	500
Arsenic and/or arsenic compounds	5.0	500
Asbestos		1.0 (as percent)
Barium and/or barium compounds (excluding barite)	100	10,000[c]
Beryllium and/or beryllium compounds	0.75	75
Cadmium and/or cadmium compounds	1.0	100
Chromium (VI) compounds	5	500
Chromium and/or chromium (III) compounds	5[d]	2,500
Cobalt and/or cobalt compounds	80	8,000
Copper and/or copper compounds	25	2,500
Fluoride salts	180	18,000
Lead and/or lead compounds	5.0	1,000
Mercury and/or mercury compounds	0.2	20
Molybdenum and/or molybdenum compounds	350	3,500[e]
Nickel and/or nickel compounds	20	2,000
Selenium and/or selenium compounds	1.0	100
Silver and/or silver compounds	5	500
Thallium and/or thallium compounds	7.0	700
Vanadium and/or vanadium compounds	24	2,400
Zinc and/or zinc compounds	250	5,000

[a]STLC and TTLC values are calculated on the concentrations of the elements, not the compounds.

[b]In the case of asbestos and elemental metals, the specified concentration limits apply only if the substances are in a friable, powdered or finely divided state. Asbestos includes chrysotile, amosite, crocidolite, tremolite, anthophyllite, and actinolite.

[c]Excluding barium sulfate.

[d]If the soluble chromium, as determined by the TCLP set forth in Appendix I of chapter 18 of this division, is less than 5 mg/l, and the soluble chromium, as determined by the procedures set forth in Appendix II of chapter 11, equals or exceeds 560 mg/l and the waste is not otherwise identified as a RCRA hazardous waste pursuant to section 66261.100, then the waste is a non-RCRA hazardous waste.

[e]Excluding molybdenum disulfide.

(B) Table III – List of Organic Persistent and Bioaccumulative Toxic Substances and Their Soluble Threshold Limit Concentration (STLC) and Total Threshold Limit Concentration (TTLC) Values:

Substance	*STLC* *mg/l*	*TTLC Wet Weight mg/kg*
Aldrin	0.14	1.4
Chlordane	0.25	2.5
DDT, DDE, DDD	0.1	1.0
2,4-Dichlorophenoxyacetic acid	10	100
Dieldrin	0.8	8.0
Dioxin (2,3,7,8-TCDD)	0.001	0.01
Endrin	0.02	0.2
Heptachlor	0.47	4.7
Kepone	2.1	21
Lead compounds, organic	—	13
Lindane	0.4	4.0
Methoxychlor	10	100
Mirex	2.1	21
Pentachlorophenol	1.7	17
Polychlorinated biphenyls (PCBs)	5.0	50
Toxaphene	0.5	5
Trichloroethylene	204	2,040
2,4,5-Trichlorophenoxypropionic acid	1.0	10

(3) it has an acute oral LD_{50} less than 2,500 milligrams per kilogram;

(4) it has an acute dermal LD_{50} less than 4,300 milligrams per kilogram;

(5) it has an acute inhalation LC_{50} less than 10,000 parts per million as a gas or vapor;

(6) it has an acute aquatic 96-hour LC_{50} less than 500 milligrams per liter when measured in soft water (total hardness 40 to 48 milligrams per liter of calcium carbonate) with fathead minnows (*Pimephales promelas*), rainbow trout (*Salmo gairdneri*) or golden shiners (*Notemigonus crysoleucas*) according to procedures described in Part 800 of the "Standard Methods for the Examination of Water and Wastewater (16th Edition)," American Public Health Association, 1985 and "Static Acute Bioassay Procedures for Hazardous Waste Samples," California Department of Fish and Game, Water Pollution Control Laboratory, revised November 1988 (incorporated by reference, see section 66260.11), or by other test methods or test fish approved by the Department, using test samples prepared or meeting the conditions for testing as prescribed in subdivisions (c) and (d) of Appendix II of this chapter, and solubilized, suspended, dispersed or emulsified by the cited procedures or by other methods approved by the Department;

(7) it contains any of the following substances at a single or combined concentration equal to or exceeding 0.001 percent by weight:

(A) 2-Acetylaminofluorene (2-AAF);

(B) Acrylonitrile;

(C) 4-Aminodiphenyl;

(D) Benzidine and its salts;

(E) bis (Chloromethyl) ether (BCME);

(F) Methyl chloromethyl ether;

(G) 1,2-Dibromo-3-chloropropane (DBCP);

(H) 3,3′-Dichlorobenzidine and its salts (DCB);

(I) 4-Dimethylaminoazobenzene (DAB);

(J) Ethyleneimine (EL);

(K) alpha-Naphthylamine (1-NA);

(L) beta-Naphthylamine (2-NA);

(M) 4-Nitrobiphenyl (4-NBP);

(N) N-Nitrosodimethylamine (DMN);

(0) beta-Propiolactone (BPL);

(P) Vinyl chloride (VCM);

(8) it has been shown through experience or testing to pose a hazard to human health or environment because of its carcinogenicity, acute toxicity, chronic toxicity, bioaccumulative properties or persistence in the environment.

(b) A waste containing one or more materials which exhibit the characteristic of toxicity because the materials have the property specified in subsection (a)(5) of this section may be classified as nonhazardous pursuant to section 66260.200 if the waste does not exhibit any other characteristic of this article and is not listed in article 4 of this chapter and its head space vapor contains no such toxic materials in concentrations exceeding their respective acute inhalation LC_{50} or their LC_{LO}. The head space vapor of a waste shall be prepared, and two milliliters of it shall be sampled using a five milliliter gas-tight syringe, according to Method 5020 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," SW-846, 2nd edition, U.S. Environmental Protection Agency, 1982 (incorporated by reference, see section 66260.11). The quantity in milligrams of each material, which exhibits the characteristic of toxicity because it has the property specified in subsection (a)(5) of this section, in the sampling syringe shall be determined by comparison to liquid standard solutions according to the appropriate gas chromatographic procedures in Method 8010, 8015, 8020, 8030 or 8240 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," SW-846, 3rd edition, U.S. Environmental Protection Agency, 1986 (incorporated by reference, see section 66260.11). The concentration of each material in the head space vapor shall be calculated using the following equation:

$$C_A = \frac{Q_A}{MW} \times \frac{29.8ml}{mmole} \times \frac{1}{2 \times 10^{-6} M^3}$$

where C (in parts per million) is the concentration of material A in head space vapor, Q (in milligrams) is the quantity of material A in sampling syringe and MW (in milligrams per millimole) is the molecular weight of material A. Where an acute inhalation LC_{50} is not available, an LC_{50} measured for another time (t) may be converted to an eight-hour value with the following equation:

Eight–hour LC_{50} = (t/8) x (t–hour LC_{50}).

(c) A waste containing one or more materials which exhibit the characteristic of toxicity because the materials have either of the properties specified in subsection (a)(3) or (a)(4) of this section may be classified as nonhazardous pursuant to section 66260.200 if the waste does not exhibit any other characteristic of this article and is not listed in article 4 of this chapter and the calculated oral LD_{50} of the waste mixture is greater than 2,500 milligrams per kilogram and the calculated dermal LD_{50} is greater than 4,300 milligrams per kilogram by the following equation:

$$\text{Calculated oral or dermal } LD_{50} = \frac{100\%}{\sum_{x=1}^{n} \frac{\%A_x}{TA_x}}$$

where $\%A_x$ is the weight percent of each component in the waste mixture and $^{T}A_X$ is the acute oral or dermal LD_{50} or the acute oral LD_{LO} of each component.

NOTE: Authority cited: Sections 25141, 25159, 58004 and 58012, Health and Safety Code. Reference: Sections 25117, 25120.2, 25141, 25159 and 25159.5, Health and Safety Code and 40 CFR Section 261.24.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Amendment of table II filed 1–31–94; operative 1–31–94 (Register 94, No. 5).
3. Editorial correction of equation (Register 95, No. 36).
4. Amendment of subsection (a)(1) and NOTE filed 10–13–98; operative 11–12–98 (Register 98, No. 42).
5. Change without regulatory effect amending subsections (a)(3) and (c) filed 6–3–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 23).

Article 4. Lists of RCRA Hazardous Wastes

§ 66261.30. General.

(a) A waste is a RCRA hazardous waste if it is listed in this article, unless it has been excluded from this list pursuant to 40 CFR sections 260.20 and 260.22 or is categorized as a non–RCRA hazardous waste pursuant to section 66261.101. Wastes shall only be listed in this article if they are listed in 40 CFR Part 261 Subpart D.

(b) The Department will indicate the USEPA Administrator's basis for listing the classes or types of wastes listed in this article by employing one or more of the following Hazard Codes:

Ignitable Waste	(I)
Corrosive Waste	(C)
Reactive Waste	(R)
Acute Hazardous Waste	(H)
Toxic Waste	(T)

Appendix VII of this chapter identifies the constituent which caused the USEPA Administrator to list the waste as a Toxic Waste (T) as included in sections 66261.31 and 66261.32.

(c) Each RCRA hazardous waste listed in this article is assigned an EPA Hazardous Waste Number which precedes the name of the waste. This number shall be used in complying with the notification requirements of Health and Safety Code section 25153.6 and certain record-keeping and reporting requirements under chapters 12 through 15, 18, and 20 of this division.

[The next page is 669.]

NOTE: Authority cited: Sections 208, 25141 and 25159, Health and Safety Code. Reference: Sections 25117, 25120.2, 25141, 25159 and 25159.5, Health and Safety Code and 40 CFR Section 261.30.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66261.31. Hazardous Wastes from Non–Specific Sources.

(a) The following wastes are listed hazardous wastes from non–specific sources unless they are excluded pursuant to 40 CFR sections 260.20 and 260.22:

EPA Hazardous Waste No.	*Hazardous Waste*	*Hazard Code*
F001	the following spent halogenated solvents used in degreasing: Tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1–trichloroethane, carbon tetrachloride, and chlorinated fluorocarbons; all spent solvent mixtures/blends used in degreasing containing, before use, a total of ten percent or more (by volume) of one or more of the above halogenated solvents or those solvents listed in F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures;	(T)
F002	the following spent halogenated solvents: tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1–trichloroethane, chlorobenzene, 1,1,2–trichloro–1,2,2–trifluoroethane, ortho–dichlorobenzene, trichlorofluoromethane, and 1,1,2–trichloroethane; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above halogenated solvents or those listed in F001, F004, or F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures;	(T)
F003	the following spent non–halogenated solvents: xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n–butyl alcohol, cyclohexanone, and methanol; all spent solvent mixtures/blends containing, before use, only the above spent non–halogenated solvents; and all spent solvent mixtures/blends containing, before use, one or more of the above non–halogenated solvents, and, a total of ten percent or more (by volume) of one or more of those solvents listed in F001, F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures;	(I)*
F004	the following spent non–halogenated solvents: cresols and cresylic acid, and nitrobenzene; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above non–halogenated solvents or those solvents listed in F001, F002, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures;	(T)
F005	the following spent non–halogenated solvents: toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2–ethoxyethanol, and 2–nitropropane; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above non–halogenated solvents or those solvents listed in F001, F002, or F004; and still bottoms from the recovery of these spent solvents and spent solvent mixtures;	(I,T)
F006	wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc–aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum;	(T)
F007	spent cyanide plating bath solutions from electroplating operations;	(R,T)
F008	plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process;	(R,T)
F009	spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process;	(R,T)
F010	quenching bath residues from oil baths from metal heat treating operations where cyanides are used in the process;	(R,T)
F011	spent cyanide solutions from salt bath pot cleaning from metal heat treating operations;	(R,T)
F012	quenching waste water treatment sludges from metal heat treating operations where cyanides are used in the process;	(T)
F019	wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process;	(T)
F020	wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri– or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives; (This listing does not include wastes from the production of Hexachlorophene from highly purified 2,4,5–trichlorophenol.)	(H)
F021	wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of pentachlorophenol, or of intermediates used to produce its derivatives;	(H)
F022	wastes (except wastewater and spent carbon from hydrogen chloride purification) from the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra–, penta–, or hexachlorobenzenes under alkaline conditions;	(H)
F023	wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri– and tetrachlorophenols; (This listing does not include wastes from equipment used only for the production or use of Hexachlorophene from highly purified 2,4,5–trichlorophenol.)	(H)

EPA Hazardous Waste No.	Hazardous Waste	Hazard Code
F024	process wastes, including but not limited to, distillation, residues, heavy ends, tars, and reactor clean–out wastes, from the production of certain chlorinated aliphatic hydrocarbons by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution; (This listing does not include wastewaters, wastewater treatment sludges, spent catalysts, and wastes listed in section 66261.31 or 66261.32.)	(T)
F025	condensed light ends, spent filters and filter aids, and spent dessicant wastes from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution;	(T)
F026	wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra–, penta–, or hexachlorobenzene under alkaline conditions;	(H)
F027	discarded unused formulations containing tri–, tetra–, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols; (This listing does not include formulations containing Hexachlorophene synthesized from prepurified 2,4,5–trichlorophenol as the sole component.)	(H)
F028	residues resulting from the incineration or thermal treatment of soil contaminated with EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027;	(T)
F032	wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that currently use or have previously used chlorophenolic formulations (except potentially cross–contaminated wastes that have had the F032 waste code deleted in accordance with section 66261.35 of this chapter or potentially cross–contaminated wastes that are otherwise currently regulated as hazardous wastes (i.e., F034 or F035), and where the generator does not resume or initiate use of chorophenolic formulations). This listing does not include K001 bottom sediment sludge from the treatment of waste water from wood preserving processes that use creosote and/or pentachlorophenol;	(T)
F034	Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use creosote formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol;	(T)
F035	Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use inorganic preservatives containing arsenic or chromium. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.	(T)
F037	petroleum refinery primary oil/water/solids separation sludge – any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in: oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated from non–contact once–through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in section 66261.31(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing.	(T)
F038	petroleum refinery secondary (emulsified) oil/water/solids separation sludge – any sludge and/or float generated from the physical and/or chemical separation of oil/water/solids in process wastewaters and oily cooling wastewaters from petroleum refineries. Such wastes include, but are not limited to, all sludges and floats generated in: induced air flotation (IAF) units; tanks and impoundments; and all sludges generated in dissolved air flotation (DAF) units. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated from non–contact once–through cooling waters segregated for treatment from other process or oily cooling waters, sludges and floats generated in aggressive biological treatment units as defined in section 66261.31(b)(2) (including sludges and floats generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and F037, K048, and K051 wastes are not included in this listing.	(T)
F039	leachate (liquids that have percolated through land disposed wastes) resulting from the disposal of more than one restricted waste classified as hazardous under article 4 of this chapter. (Leachate resulting from the disposal of one or more of the following EPA Hazardous Wastes and no other hazardous wastes retains its EPA hazardous waste number(s): F020, F021, F022, F026, F027, and/or F028.)	(T)

*(I) specifies mixtures containing ignitable constituents.
(I,T) specifies mixtures containing ignitable and toxic constituents.

(b) Listing Specific Definitions:

(1) For the purposes of the F037 and F038 listings, oil/water/solids is defined as oil and/or water and/or solids.

(2)(A) For the purposes of the F037 and F038 listings, aggressive biological treatment units are defined as units which employ one of the following four treatment methods: activated sludge; trickling filter; rotating biological contactor for the continuous accelerated biological oxidation of wastewaters; or high-rate aeration. High-rate aeration is a system of surface impoundments or tanks, in which intense mechanical aeration is used to completely mix the wastes, enhance biological activity, and:

1. The unit employs a minimum of six horsepower per million gallons of treatment volume; and

2. a. The hydraulic retention time of the unit is no longer than five days; or

b. The hydraulic retention time is no longer than 30 days and the unit does not generate a sludge that is a hazardous waste by the Toxicity Characteristic.

(B) Generators and treatment, storage and disposal facilities have the burden of proving that sludges generated or managed by the generator or facility are exempt from listing as F037 and F038 wastes under this definition. Generators and treatment, storage and disposal facilities shall maintain, in the facility operating or other onsite records, documents and data sufficient to prove that:

1. The unit is an aggressive biological treatment unit as defined in this subsection; and

2. The sludges sought to be exempted from the definitions of F037 and/or F038 wastes were actually generated in the aggressive biological treatment unit.

(3)(A) For the purposes of the F037 listing, sludges are considered to be generated at the moment of deposition in the unit, where deposition is defined as at least a temporary cessation of lateral particle movement.

(B) For the purposes of the F038 listing:

1. Sludges are considered to be generated at the moment of deposition in the unit, where deposition is defined as at least a temporary cessation of lateral particle movement; and

2. Floats are considered to be generated at the moment of formation in the top of the unit.

NOTE: Authority cited: Section 58012, Governor's Reorganizational Plan Number 1 of 1991; and sections 25140, 25141, 25150, 25159, 25159.5 and 25179.6, Health and Safety Code. Reference: Sections 25117, 25120.2, 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 261.31.

HISTORY

1. New section filed 5-24-91; effective 7-1-91 (Register 91, No. 22).
2. Change without regulatory effect correcting entry sequence filed 4-19-93 pursuant to title 1, section 100, California Code of Regulations (Register 93, No. 17).
3. Designation of subsection (a), new listings F037-F038 and subsections (b)-(b)(3)(B)2 and amendment of NOTE filed 7-7-94; operative 8-8-94 (Register 94, No. 27).
4. New subsection (a) listings F032, F034 and F035 and amendment of NOTE filed 7-29-94; operative 8-29-94 (Register 94, No. 30).
5. Amendment of F039 and NOTE filed 10-24-94 as an emergency; operative 10-24-94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2-20-95 or emergency language will be repealed by operation of law on the following day.
6. Editorial correction of subsection (a) listing F032 (Register 94, No. 43).
7. Amendment of F039 and NOTE refiled 2-21-95 as an emergency; operative 2-21-95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-21-95 or emergency language will be repealed by operation of law on the following day.
8. Amendment of F039 and NOTE refiled 6-19-95 as an emergency; operative 6-19-95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-17-95 or emergency language will be repealed by operation of law on the following day.
9. Amendment of F039 and NOTE refiled 10-16-95 as an emergency; operative 10-16-95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2-13-96 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 10-24-94 order transmitted to OAL 12-15-95 and filed 1-31-96 (Register 96, No. 5).

§ 66261.32. Hazardous Wastes from Specific Sources.

The following wastes are listed hazardous wastes from specific sources unless they are excluded pursuant to 40 CFR sections 260.20 and 260.22:

Industry and EPA Hazardous Waste No.	*Hazardous Waste*	*Hazard Code*
Wood preservation:		
K001	bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol;	(T)
Inorganic pigments:		
K002	wastewater treatment sludge from the production of chrome yellow and orange pigments;	(T)
K003	wastewater treatment sludge from the production of molybdate orange pigments;	(T)
K004	wastewater treatment sludge from the production of zinc yellow pigments;	(T)
K005	wastewater treatment sludge from the production of chrome green pigments;	(T)
K006	wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated);	(T)
K007	wastewater treatment sludge from the production of iron blue pigments;	(T)
K008	oven residue from the production of chrome oxide green pigments;	(T)
Organic chemicals:		
K009	distillation bottoms from the production of acetaldehyde from ethylene;	(T)
K010	distillation side cuts from the production of acetaldehyde from ethylene;	(T)
K011	bottom stream from the wastewater stripper in the production of acrylonitrile;	(R,T)
K013	bottom stream from the acetonitrile column in the production of acrylonitrile;	(R,T)
K014	bottoms from the acetonitrile purification column in the production of acrylonitrile;	(T)
K015	still bottoms from the distillation of benzyl chloride;	(T)
K016	heavy ends or distillation residues from the production of carbon tetrachloride;	(T)
K017	heavy ends (still bottoms) from the purification column in the production of epichlorohydrin;	(T)
K018	heavy ends from the fractionation column in ethyl chloride production;	(T)
K019	heavy ends from the distillation of ethylene dichloride in ethylene dichloride production;	(T)
K020	heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production;	(T)
K021	aqueous spent antimony catalyst waste from fluoromethanes production;	(T)
K022	distillation bottom tars from the production of phenol/acetone from cumene;	(T)
K023	distillation light ends from the production of phthalic anhydride from naphthalene;	(T)
K024	distillation bottoms from the production of phthalic anhydride from naphthalene;	(T)
K093	distillation light ends from the production of phthalic anhydride from ortho-xylene;	(T)
K094	distillation bottoms from the production of phthalic anhydride from ortho-xylene;	(T)
K025	distillation bottoms from the production of nitrobenzene by the nitration of benzene;	(T)
K026	stripping still tails from the production of methyl ethyl pyridines;	(T)
K027	centrifuge and distillation residues from toluene diisocyanate production;	(R,T)
K028	spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane;	(T)
K029	waste from the product steam stripper in the production of 1,1,1-trichloroethane;	(T)

Industry and EPA Hazardous Waste No.	*Hazardous Waste*	*Hazard Code*
K095	distillation bottoms from the production of 1,1,1–trichloroethane;	(T)
K096	heavy ends from the heavy ends column from the production of 1,1,1–trichloroethane;	(T)
K030	column bottoms or heavy ends from the combined production of trichloroethylene and perchloroethylene;	(T)
K083	distillation bottoms from aniline production;	(T)
K103	process residues from aniline extraction from the production of aniline;	(T)
K104	combined wastewater streams generated from nitrobenzene/aniline production;	(T)
K085	distillation or fractionation column bottoms from the production of chlorobenzenes;	(T)
K105	separated aqueous stream from the reactor product washing step in the production of chlorobenzenes;	(T)
K107	column bottoms from product separation from the production of 1,1–dimethylhydrazine (UDMH) from carboxylic acid hydrazines;	(C,T)
K108	condensed column overheads from product separation and condensed reactor vent gases from the production of 1,1–dimethylhydrazine (UDMH) from carboxylic acid hydrazides;	(I,T)
K109	spent filter cartridges from product purification from the production of 1,1–dimethylhydrazine (UDMH) from carboxylic acid hydrazides;	(T)
K110	condensed column overheads from intermediate separation from the production of 1,1–dimethylhydrazine (UDMH) from carboxylic acid hydrazides;	(T)
K111	product washwaters from the production of dinitrotoluene via nitration of toluene;	(C,T)
K112	reaction by–product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene;	(T)
K113	condensed liquid light ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene;	(T)
K114	vicinals from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene;	(T)
K115	heavy ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene;	(T)
K116	organic condensate from the solvent recovery column in the production of toluene diisocyanate via phosgenation of toluenediamine;	(T)
K117	wastewater from the reactor vent gas scrubber in the production of ethylene dibromide via bromination of ethylene;	(T)
K118	spent absorbent solids from purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethylene;	(T)
K136	still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethylene;	(T)
K149	Distillation bottoms from the production of alpha– (or methyl–) chlorinated toluenes, ring–chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups. (This waste does not include still bottoms from the distillation of benzyl chloride).	(T)
K150	Organic residuals, excluding spent carbon *adsorbent*, from the spent chlorine gas and hydrochloric acid recovery processes associated with the production of alpha– (or methyl–) chlorinated toluenes, ring–chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups.	(T)
K151	Wastewater treatment sludges, excluding neutralization and biological sludges, generated during the treatment of wastewaters from the production of alpha– (or methyl–) chlorinated toluenes, ring–chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups.	(T)
K156	Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes. (This listing does not apply to wastes generated from the manufacture of 3–iodo–2–propynyl n–butylcarbamate.)	(T)
K157	Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes (This listing does not apply to wastes generated from the manufacture of 3–iodo–2–propynyl n–butylcarbamate.).	(T)
K158	Bag house dusts and filter/separation solids from the production of carbamates and carbamoyl oximes. (This listing does not apply to wastes generated from the manufacture of 3–iodo–2–propynyl n–butylcarbamate.).	(T)
K159	Organics from the treatment of thiocarbamate wastes.	(T)
K161	Purification solids (including filtration, evaporation, and centrifugation solids), bag house dust and floor sweepings from the production of dithiorcarbamate acids and their salts. (This listing does not include K125 or K126.)	(T)
K174	Wastewater treatment sludges from the production of ethylene dichloride or vinyl chloride monomer (including sludges that result from commingled ethylene dichloride or vinyl chloride monomer wastewater and other wastewater), unless the sludges meet the following conditions: (i) they are disposed of in a RCRA subtitle C or non–hazardous landfill licensed or permitted by the state or federal government; (ii) they are not otherwise placed on the land prior to final disposal; and (iii) the generator maintains documentation demonstrating that the waste was either disposed of in an on–site landfill or consigned to a transporter or disposal facility that provided a written commitment to dispose of the waste in an off–site landfill. Respondents in any action brought to enforce the requirements of this division must, upon a showing by the government that the respondent managed wastewater treatment sludges from the production of vinyl chloride monomer or ethylene dichloride, demonstrate that they meet the terms of the exclusion set forth above. In doing so, they must provide appropriate documentation (e.g., contracts between the generator and the landfill owner/operator, invoices documenting delivery of waste to landfill, etc.) that the terms of the exclusion were met.	(T)
K175	Wastewater treatment sludges from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene–based process.	T
Inorganic chemicals:		
K071	brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used;	(T)
K073	chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production;	(T)

Industry and EPA Hazardous Waste No.	Hazardous Waste	Hazard Code
K106	wastewater treatment sludge from the mercury cell process in chlorine production;	(T)
Pesticides:		
K031	by–product salts generated in the production of MSMA and cacodylic acid;	(T)
K032	wastewater treatment sludge from the production of chlordane;	(T)
K033	wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane;	(T)
K034	filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane;	(T)
K097	vacuum stripper discharge from the chlordane chlorinator in the production of chlordane;	(T)
K035	wastewater treatment sludges generated in the production of creosote;	(T)
K036	still bottoms from toluene reclamation distillation in the production of disulfoton;	(T)
K037	wastewater treatment sludges from the production of disulfoton;	(T)
K038	wastewater from the washing and stripping of phorate production;	(T)
K039	filter cake from the filtration of diethylphosphorodithioic acid in the production of phorate;	(T)
K040	wastewater treatment sludge from the production of phorate;	(T)
K041	wastewater treatment sludge from the production of toxaphene;	(T)
K098	untreated process wastewater from the production of toxaphene;	(T)
K042	heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5–T;	(T)
K043	2,6–Dichlorophenol waste from the production of 2,4–D;	(T)
K099	untreated wastewater from the production of 2,4–D;	(T)
K123	process wastewater (including supernates, filtrates, and washwaters) from the production of ethylenebisdithiocarbamic acid and its salt;	(T)
K124	reactor vent scrubber water from the production of ethylenebisdithiocarbamic acid and its salts;	(C,T)
K125	filtration, evaporation, and centrifugation solids from the production of ethylenebisdithiocarbamic acid and its salts;	(T)
K126	baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylenebisdithiocarbamic acid and its salts;	(T)
K131	wastewater from the reactor and spent sulfuric acid from the acid dryer from the production of methyl bromide;	(C,T)
K132	spent absorbent and wastewater separator solids from the production of methyl bromide;	(T)
Explosives:		
K044	wastewater treatment sludges from the manufacturing and processing of explosives;	(R)
K045	spent carbon from the treatment of wastewater containing explosives;	(R)
K046	wastewater treatment sludges from the manufacturing, formulation and loading of lead–based initiating compounds;	(T)
K047	pink/red water from TNT operations;	(R)
Petroleum refining:		
K048	dissolved air flotation (DAF) float from the petroleum refining industry;	(T)
K049	slop oil emulsion solids from the petroleum refining industry;	(T)
K050	heat exchanger bundle cleaning sludge from the petroleum refining industry;	(T)
K051	API separator sludge from the petroleum refining industry;	(T)
K052	tank bottoms (leaded) from the petroleum refining industry;	(T)
Iron and steel:		
K061	emission control dust/sludge from the primary production of steel in electric furnaces;	(T)
K062	spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332);	(C,T)
Primary copper:		
K064	acid plant blowdown slurry/sludge resulting from the thickening of blowdown slurry from primary copper production;	(T)
Primary lead:		
K065	surface impoundment solids contained in and dredged from surface impoundments at primary lead smelting facilities;	(T)
Primary zinc:		
K066	sludge from treatment of process wastewater and/or acid plant blowdown from primary zinc production;	(T)
Primary aluminum:		
K088	spent potliners from primary aluminum reduction;	(T)
Ferroalloys:		
K090	emission control dust or sludge from ferrochromium–silicon production;	(T)
K091	emission control dust or sludge from ferrochromium production;	(T)
Secondary lead:		
K069	emission control dust/sludge from secondary lead smelting; (Note, this listing has been stayed administratively for sludge generated from secondary acid scrubber systems. The stay will remain in effect until further administrative action is taken. Further administrative action will be taken after the U.S. EPA publishes a notice of action in the /Federal Register and the Department adopts regulations making this listing effective.)	(T)
K100	waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting;	(T)
Veterinary pharmaceuticals:		
K084	wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo–arsenic compounds;	(T)
K101	distillation tar residues from the distillation of aniline–based compounds in the production of veterinary pharmaceuticals from arsenic or organo–arsenic compounds;	(T)
K102	residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo–arsenic compounds;	(T)
Ink formulation:		
K086	solvent washes and sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead;	(T)
Coking:		

Industry and EPA Hazardous Waste No.	*Hazardous Waste*	*Hazard Code*
K060	ammonia still lime sludge from coking operations;	(T)
K087	decanter tank tar sludge from coking operations.	(T)
K141	process residues from the recovery of coat tar, including, but not limited to, collecting sump residues from the production of coke from coal or the recovery of coke by-products produced from coal. This listing does not include K087 (decanter tank tar sludges from coking operations).	(T)
K142	tar storage tank residues from the production of coke from the coal or from the recovery of coke by-products produced from coal.	(T)
K143	process residues from the recovery of light oil, including, but not limited to, those generated in stills, decanters, and wash oil recovery units from the recovery of coke by-products produced from coal.	(T)
K144	wastewater sump residues from light oil refining, including, but not limited to, intercepting or contamination sump sludges from the recovery of coke by-products produced from coal.	(T)
K145	residues from naphthalene collection and recovery operations from the recovery of coke by-products produced from coal.	(T)
K147	tar storage tank residues from coal tar refining.	(T)
K148	residues from coal tar distillation, including but not limited to, still bottoms.	(T)

NOTE: Authority cited: Sections 25150, 25159, 25170, 25250.22 and 58012, Health and Safety Code. Reference: Sections 25117, 25120.2, 25150, 25159 and 25159.5, Health and Safety Code and 40 CFR Section 261.32.

HISTORY

1. New section filed 5-24-91; effective 7-1-91 (Register 91, No. 22).
2. Amendment of table and NOTE filed 7-1-96; operative 7-31-96 (Register 96, No. 27).
3. Amendment filed 10-13-98; operative 11-12-98 (Register 98, No. 42).
4. Change without regulatory effect amending table heading and adding new listing K140 filed 5-17-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 21).
5. Change without regulatory effect removing listing K140, adding listings K174 and K175 and amending NOTE filed 7-3-2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 27).

§ 66261.33. Discarded Commercial Chemical Products, Off-Specification Species, Container Residues, and Spill Residues Thereof.

The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded as described in section 66261.2(b):

(a) any commercial chemical product, or manufacturing chemical intermediate having the generic name listed in subsection (e) or (f) of this section. The phrase "commercial chemical product or manufacturing chemical intermediate having the generic name listed in . . ." refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient. It does not refer to a material, such as a manufacturing process waste, that contains any of the substances listed in subsection (e) or (f) of this section. Where a manufacturing process waste is deemed to be a hazardous waste because it contains a substance listed in subsection (e) or (f) of this section, such waste will be listed in either section 66261.31 or 66261.32 or will be identified as a hazardous waste by the characteristics set forth in article 3 of this chapter;

(b) any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in subsection (e) or (f) of this section;

(c) any residue remaining in a container or in an inner liner removed from a container that has held any commercial chemical product or manufacturing chemical intermediate having the generic name listed in subsections (e) or (f) of this section, unless the container is empty as defined in section 66261.7(b) of this chapter;

(d) any residue or contaminated soil, water or other debris resulting from the cleanup of a spill into or on any land or water of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in subsection (e) or (f) of this section, or any residue or contaminated soil, water or other debris resulting from the cleanup of a spill, into or on any land or water, of any off-specification chemical product and manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in subsection (e) or (f) of this section;

(e) the following commercial chemical products, manufacturing chemical intermediates or off-specification commercial chemical products or manufacturing chemical intermediates referred to in subsections (a) through (d) of this section, are Acute Hazardous Wastes (H). The primary hazardous properties of these materials have been indicated by the letters T (Toxicity), and R (Reactivity). Absence of a letter indicates that the compound only is listed for acute toxicity. These wastes and their corresponding EPA hazardous waste numbers are:

EPA Hazardous Waste No.	*Chemical Abstracts No.*	*Substances*
P023	107-20-0	Acetaldehyde, chloro-
P002	591-08-2	Acetamide, N-(aminothioxomethyl)-
P057	640-19-7	Acetamide, 2-fluoro-
P058	62-74-8	Acetic acid, fluoro-, sodium salt
P002	591-08-2	1-Acetyl-2-thiourea
P003	107-02-8	Acrolein
P070	116-06-3	Aldicarb
P023	1646-88-4	Aldicarb sulfone
P004	309-00-2	Aldrin
P005	107-18-6	Allyl alcohol
P006	20859-73-8	Aluminum phosphide (R,T)
P007	2763-96-4	5-(Aminomethyl)-3-isoxazolol
P008	504-24-5	4-Aminopyridine
P009	131-74-8	Ammonium picrate (R)
P119	7803-55-6	Ammonium vanadate
P099	506-61-6	Argentate (1-), bis (cyano-C)-, potassium
P010	7778-39-4	Arsenic acid H_3AsO_4
P012	1327-53-3	Arsenic oxide As_2O_3
P011	1303-28-2	Arsenic oxide As_2O_5
P011	1303-28-2	Arsenic pentoxide
P012	1327-53-3	Arsenic trioxide
P038	692-42-2	Arsine, diethyl
P036	696-28-6	Arsonous dichloride, phenyl-
P054	151-56-4	Aziridine
P067	75-55-8	Aziridine, 2-methyl-
P013	542-62-1	Barium cyanide
P024	106-47-8	Benzenamine, 4-chloro-
P077	100-01-6	Benzenamine, 4-nitro-
P028	100-44-7	Benzene, (chloromethyl)-
P042	51-43-4	1,2-Benzenediol, 4-[1-hydroxy-2-(methylamino)ethyl]-, (R)-
P046	122-09-8	Benzeneethanamine, alpha,alpha-dimethyl-
P014	108-98-5	Benzenethiol
P127	1563-66-2	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-, methylcarbamate.
P188	57-64-7	Benzoic acid, 2-hydroxy-, compd. with (3aS-cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-pyrrolo [2,3-b]indol-5-yl methylcarbamate ester (1:1).
P001	[1]81-81-2	2H-1-Benzopyran-2-one,4-hydroxy-3-(3-oxo-1-phenylbutyl)-, and salts when present at concentrations greater than 0.3
P028	100-44-7	Benzyl chloride
P015	7440-41-7	Beryllium powder
P017	598-31-2	Bromoacetone
P018	357-57-3	Brucine
P045	39196-18-4	2-Butanone, 3,3-dimethyl-1-(methylthio)-, o-[(methylamino) carbonyl] oxime
P021	592-01-8	Calcium cyanide Ca(CN)

EPA Hazardous Waste No.	Chemical Abstracts No.	Substances
P189	55285–14–8	Carbamic acid, [(dibutylamino)–thio]methyl–,2,3–dihydro–2,2–dimethyl– 7–benzofuranyl ester
P191	644–64–4	Carbamic acid, dimethyl–,1–[(dimethyl–amino)carbonyl]–5–methyl–1H–pyrazol–3–yl ester.
P192	119–38–0	Carbamic acid, dimethyl–, 3–methyl–1–(1–methylethyl)–1H–pyrazol–5–yl ester.
P190	1129–41–5	Carbamic acid, methyl–, 3–methylphenyl ester.
P127	1536–66–2	Carbofuran
P022	75–15–0	Carbon disulfide
P095	75–44–5	Carbonic dichloride
P189	55285–14–8	Carbosulfan
P023	107–20–0	Chloroacetaldehyde
P024	106–47–8	p–Chloroaniline
P026	5344–82–1	1–(o–Chlorophenyl) thiourea
P027	542–76–7	3–Chloropropionitrile
P029	544–92–3	Copper cyanide Cu(CN)
P202	64–00–6	m–Cumenyl methylcarbamate.
P030		Cyanides (soluble cyanide salts), not otherwise specified
P031	460–19–5	Cyanogen
P033	506–77–4	Cyanogen chloride (CN)Cl
P034	131–89–5	2–Cyclohexyl–4,6–dinitrophenol
P016	542–88–1	Dichloromethyl ether
P036	696–28–6	Dichlorophenylarsine
P037	60–57–1	Dieldrin
P038	692–42–2	Diethylarsine
P041	311–45–5	Diethyl–p–nitrophenyl phosphate
P040	297–97–2	O,O–Diethyl O–pyrazinyl phosphorothioate
P043	55–91–4	Diisopropyl fluorophosphate (DFP)
P004	309–00–2	1,4,5,8–Dimethanonaphthalene,1,2,3,4–,10,10–hexachloro–1,4,4a,5,8,8a–hexahydro–,(1alpha,4alpha,4abeta,5alpha,8alpha,8abeta)–
P060	465–73–6	1,4,5,8–Dimethanonaphthalene, 1,2,3,4,10,10–hexachloro–1,4,4a,5,8,8a–hexahydro–, (1alpha,4alpha,4abeta,5beta,8beta,8abeta)–
P037	60–57–1	2,7:3,6–Dimethanonaphth[2,3–b]oxirene,3,4,5,6,9,9–hexachloro–1a,2,2a,3,6,6a,7,7a–octahydro–,(1aalpha,2beta,2aalpha,3beta,6beta,6aalpha, 7beta,7aalpha)–
P051	[1]72–20–8	2,7:3,6–Dimethanonaphth[2,3–b] oxirene, 3,4,5,6,9,9–hexachloro–1a,2,2a,3,6,6a,7,7a– octahydro–, (1aalpha,2beta,2abeta,3alpha,6alpha,6abeta,7beta,7aalpha)–, and metabolites
P191	644–64–4	Dimetilan
P044	60–51–5	Dimethoate
P046	122–09–8	alpha, alpha–Dimethylphenethylamine
P047	[1]534–52–1	4,6–Dinitro–o–cresol and salts
P048	51–28–5	2,4–Dinitrophenol
P020	88–85–7	Dinoseb
P085	152–16–9	Diphosphoramide, octamethyl–
P111	107–49–3	Diphosphoric acid, tetraethyl ester
P039	298–04–4	Disulfoton
P049	541–53–7	Dithiobiuret
P185	26419–73–8	1,3–Dithiolane–2–carboxaldehyde, 2,4–dimethyl–, O–[(methylamino)–carbonyl]oxime.
P050	115–29–7	Endosulfan
P088	145–73–3	Endothall
P051	72–20–8	Endrin
P051	72–20–8	Endrin, and metabolites
P042	51–43–4	Epinephrine
P031	460–19–5	Ethanedinitrile
P066	16752–77–5	Ethanimidothioic acid, N–[(methylamino) carbonyl] oxy]–, methyl ester
P194	23135–22–0	Ethanimidothioc acid, 2–(dimethylamino)–N–[[(methylamino) carbonyl]oxy]–2–oxo–, methyl ester.
P101	107–12–0	Ethyl cyanide
P054	151–56–4	Ethyleneimine
P097	52–85–7	Famphur
P056	7782–41–4	Fluorine
P057	640–19–7	Fluoroacetamide
P058	62–74–8	Fluoroacetic acid, sodium salt
P198	23422–53–9	Formetanate hydrochloride.
P197	17702–57–7	Formparanate
P065	628–86–4	Fulminic acid, mercury (2+) salt (R,T)
P059	76–44–8	Heptachlor
P062	757–58–4	Hexaethyl tetraphosphate
P116	79–19–6	Hydrazinecarbothioamide
P068	60–34–4	Hydrazine, methyl–
P063	74–90–8	Hydrocyanic acid
P063	74–90–8	Hydrogen cyanide
P096	7803–51–2	Hydrogen phosphide
P060	465–73–6	Isodrin
P192	119–38–0	Isolan
P202	64–00–6	3–Isopropylphenyl N–methylcarbamate.
P007	2763–96–4	3(2H)–Isoxazolone, 5–(aminomethyl)–
P196	15339–36–3	Manganese, bis(dimethylcarbamodithioato–S,S′)–,
P196	15339–36–3	Manganese dimethyldithiocarbamate.
P092	62–38–4	Mercury, (acetato–O)phenyl–
P065	628–86–4	Mercury fulminate (R,T)
P082	62–75–9	Methanamine, N–methyl–N–nitroso–
P064	624–83–9	Methane, isocyanato–
P016	542–88–1	Methane, oxybis[chloro–
P112	509–14–8	Methane, tetranitro– (R)
P118	75–70–7	Methanethiol, trichloro–
P198	23422–53–9	Methanimidamide, N,N–dimethyl–N′–[3–[[(methylamino)–carbonyl]oxy]phenyl]–, monohydrochloride.
P197	17702–57–7	Methanimidamide, N,N–dimethyl–N′–2[–methyl–4–[[methylamino)carb onyl]oxy]phenyl]–
P050	115–29–7	6,9–Methano–2,4,3–benzodioxathiepen,6,7,8,9,10,10—hexachloro–1,5,5a,6,9,9a–hexahydro–, 3–oxide
P059	76–44–8	4,7–Methano–1H–indene, 1,4,5,6,7,8,8–heptachloro– 3a,4,7,7a–tetrahydro–
P199	2032–65–7	Methiocarb
P066	16752–77–5	Methomyl
P068	60–34–4	Methyl hydrazine
P064	624–83–9	Methyl isocyanate
P069	75–86–5	2–Methyllactonitrile
P071	298–00–0	Methyl parathion
P190	1129–41–5	Metolcarb
P128	315–8–4	Mexacarbate
P072	86–88–4	alpha–Naphthylthiourea
P073	13463–39–3	Nickel carbonyl, $Ni(CO)_4$, (T–4)–
P074	557–19–7	Nickel cyanide $Ni(CN)_2$
P075	[1]54–11–5	Nicotine and salts
P076	10102–43–9	Nitric oxide
P077	100–01–6	p–Nitroaniline
P078	10102–44–0	Nitrogen dioxide
P076	10102–43–9	Nitrogen oxide NO
P078	10102–44–0	Nitrogen oxide NO_2
P081	55–63–0	Nitroglycerine (R)
P082	62–75–9	N–Nitrosodimethylamine
P084	4549–40–0	N–Nitrosomethylvinylamine
P085	152–16–9	Octamethylpyrophosphoramide
P087	20816–12–0	Osmium oxide OsO, (T–4)–
P087	20816–12–0	Osmium tetroxide
P088	145–73–3	7–Oxabicyclo[2.2.1]heptane–2,3–dicarboylic acid
P194	23135–22–0	Oxamyl
P089	56–38–2	Parathion
P034	131–89–5	Phenol, 2–cyclohexyl–4,6–dinitro–
P048	51–28–5	Phenol, 2,4–dinitro–
P047	[1]534–52–1	Phenol, 2–methyl–4,6–dinitro– and salts
P020	88–85–7	Phenol, 2–(1–methylpropyl)–4,6–dinitro–
P009	131–74–8	Phenol, 2,4,6–trinitro–, ammonium salt (R)
P128	315–18–4	Phenol, 4–(dimethylamino)–3,5–dimethyl–, methylcarbamate (ester).
P199	2032–65–7	Phenol, (3,5–dimethyl–4–(methylthio)–, methylcarbamate
P202	64–00–6	Phenol, 3–(1–methylethyl)–, methyl carbamate.
P201	2631–37–0	Phenol, 3–methyl–5–(1–methylethyl)–, methyl carbamate
P092	62–38–4	Phenylmercury acetate
P093	103–85–5	Phenylthiourea
P094	298–02–2	Phorate
P095	75–44–5	Phosgene
P096	7803–51–2	Phosphine
P041	311–45–5	Phosphoric acid, diethyl 4–nitrophenylester

EPA Hazardous Waste No.	*Chemical Abstracts No.*	*Substances*
P039	298–04–4	Phosphorodithioic acid, O,O–diethyl S–[2–(ethylthio)ethyl] ester
P094	298–02–2	Phosphorodithioic acid, O,O–diethyl S– [(ethylthio)methyl] ester
P044	60–51–5	Phosphorodithioic acid, O,O–dimethyl S–[2—(methylamino)–2–oxoethyl] ester
P043	55–91–4	Phosphorofluoridic acid, bis(1–methylethyl) ester
P089	56–38–2	Phosphorothioic acid, O,O–diethyl 0–(4–nitrophenyl) ester
P040	297–97–2	Phosphorothioic acid, O,O–diethyl O–pyrazinyl ester
P097	52–85–7	Phosphorothioic acid, 0–[4– [(dimethylamino) sulfonyl]phenyl] O,O–dimethyl ester
P071	298–00–0	Phosphorothioic acid, O,O–dimethyl 0–(4–nitrophenyl) ester
P204	57–47–6	Physostigmine.
P188	57–64–7	Physostigmine salicylate.
P110	78–00–2	Plumbane, tetraethyl–
P098	151–50–8	Potassium cyanide K(CN)
P099	506–61–6	Potassium silver cyanide
P201	2631–37–0	Promecarb
P070	116–06–3	Propanal, 2–methyl–2–(methylthio)–, 0– [(methylamino)carbonyl]oxime
P203	1646–88–4	Propanal, 2–methyl–2–(methyl–sulfonyl)–, O–[(methylamino)carbonyl] oxime.
P101	107–12–0	Propanenitrile
P027	542–76–7	Propanenitrile, 3–chloro–
P069	75–86–5	Propanenitrile, 2–hydroxy–2–methyl–
P081	55–63–0	1,2,3–Propanetriol, trinitrate (R)
P017	598–31–2	2–Propanone, 1–bromo–
P102	107–19–7	Propargyl alcohol
P003	107–02–8	2–Propenal
P005	107–18–6	2–Propen–1–ol
P067	75–55–8	1,2–Propylenimine
P102	107–19–7	2–Propyn–1–ol
P008	504–24–5	4–Pyridinamine
P075	54–11–5	Pyridine, 3–(1–methyl–2–pyrrolidinyl)–, (S) and salts
P204	57–47–6	Pyrrolo[2,3–b]indol–5–ol, 1,2,3,3a,8,8a–hexahydro–1,3a,8–trimethyl–, methylcarbamate (ester), (3aS–cis)–.
P114	12039–52–0	Selenious acid, dithallium (1+) salt
P103	630–10–4	Selenourea
P104	506–64–9	Silver cyanide Ag(CN)
P105	26628–22–8	Sodium azide
P106	143–33–9	Sodium cyanide Na(CN)
P108	[1]57–24–9	Strychnidin–10–one, and salts
P018	357–57–3	Strychnidin–10–one, 2,3–dimethoxy–
P108	[1]57–24–9	Strychnine and salts
P115	7446–18–6	Sulfuric acid, dithallium (1+) salt
P109	3689–24–5	Tetraethyldithiopyrophosphate
P110	78–00–2	Tetraethyl lead
P111	107–49–3	Tetraethyl pyrophosphate
P112	509–14–8	Tetranitromethane (R)
P062	757–58–4	Tetraphosphoric acid, hexaethyl ester
P113	1314–32–5	Thallic oxide
P113	1314–32–5	Thallium oxide Tl_2O_3
P114	12039–52–0	Thallium (I) selenite
P115	7446–18–6	Thallium (I) sulfate
P109	3689–24–5	Thiodiphosphoric acid, tetraethyl ester
P045	39196–18–4	Thiofanox
P049	541–53–7	Thioimidodicarbonic diamide $[(H_2N)C(S)]_2NH$
P014	108–98–5	Thiophenol
P116	79–19–6	Thiosemicarbazide
P026	5344–82–1	Thiourea, (2–chlorophenyl)–
P072	86–88–4	Thiourea, 1–naphthalenyl–
P093	103–85–5	Thiourea, phenyl–
P185	26419–73–8	Tirpate
P123	8001–35–2	Toxaphene
P118	75–70–7	Trichloromethanethiol
P119	7803–55–6	Vanadic acid, ammonium salt
P120	1314–62–1	Vanadium oxide V_2O_5
P120	1314–62–1	Vanadium pentoxide
P084	4549–40–0	Vinylamine, N–methyl–N–nitroso–
P001	[1]81–81–2	Warfarin, and salts, when present at concentrations greater than 0.3%
P205	137–30–4	Zinc, bis(dimethylcarbamodithioato–S,S′)–,
P121	557–21–1	Zinc cyanide $Zn(CN)_2$
P122	1314–84–7	Zinc phosphide Zn_3P_2 , when present at concentrations greater than 10% (R,T)
P205	137–30–4	Ziram

[1]CAS Number given for parent compound only.

(f) the following commercial chemical products, manufacturing chemical intermediates, or off–specification commercial chemical products referred to in subsections (a) through (d) of this section, are Toxic Wastes (T). The primary hazardous properties of these materials have been indicated by the letters T (Toxicity), R (Reactivity), I (Ignitability) and C (Corrosivity). Absence of a letter indicates that the compound is only listed for toxicity. These wastes and their corresponding EPA Hazardous Waste Numbers are:

EPA Hazardous Waste No.	*Chemical Abstracts No.*	*Substances*
U394	30558–43–1	A2213
U001	75–07–0	Acetaldehyde (I)
U034	75–87–6	Acetaldehyde, trichloro–
U187	62–44–2	Acetamide, N–(4–ethoxyphenyl)–
U005	53–96–3	Acetamide, N–9H–fluoren–2–yl
U240	194–75–7	Acetic acid, (2–4–dichlorophenoxy)–, salts and esters
U112	141–78–6	Acetic acid, ethyl ester (I)
U144	301–04–2	Acetic acid, lead (2+) salt
U214	563–68–8	Acetic acid, thallium (1+) salt
See F027	93–76–5	Acetic acid, (2,4,5–trichlorophenoxy)–
U002	67–64–1	Acetone (I)
U003	75–05–8	Acetonitrile (I,T)
U004	98–86–2	Acetophenone
U005	53–96–3	2–Acetylaminofluorene
U006	75–36–5	Acetyl chloride (C,R,T)
U007	79–06–1	Acrylamide
U008	79–10–7	Acrylic acid (I)
U009	107–13–1	Acrylonitrile
U011	61–82–5	Amitrole
U012	62–53–3	Aniline (I,T)
U136	75–60–5	Arsinic acid, dimethyl–
U014	492–80–8	Auramine
U015	115–02–6	Azaserine
U010	50–07–7	Azirino(2′,3′:3,4)pyrrolo [1,2–a]indole–4,7–dione,6– amino–8–[((aminocarbonyl)oxy)methyl]–1,1a,2,8,8a,8b–hexahydro–8a–methoxy–5–methyl–[1aS–(1aalpha, 8beta, 8aalpha,8balpha)]–
U280	101–27–9	Barban.
U278	22781–23–3	Bendiocarb.
U364	22961–82–6	Bendiocarb phenol.
U271	17804–35–2	Benomyl.
U157	56–49–5	Benz[j]aceanthrylene, 1,2–dihydro–3—methyl--
U016	225–51–4	Benz[c]acridine
U017	98–87–3	Benzal chloride
U192	23950–58–5	Benzamide, 3,5–dichloro–N–(1,1–dimethyl–2–propynyl)–
U018	56–55–3	Benz[a]anthracene
U094	57–97–6	Benz[a]anthracene, 7,12–dimethyl–
U012	62–53–3	Benzenamine (I,T)
U014	492–80–8	Benzenamine, 4,4′–carbonimidoylbis [N,N–dimethyl]–
U049	3165–93–3	Benzenamine, 4–chloro–2–methyl–, hydrochloride
U093	60–11–7	Benzenamine, N,N–dimethyl–4–(phenylazo)–
U328	95—53–4	Benzenamine, 2–methyl–
U353	106–49–0	Benzenamine, 4–methyl–
U158	101–14–4	Benzenamine, 4,4′–methylenebis[2–chloro–
U222	636–21–5	Benzenamine, 2–methyl–, hydrochloride
U181	99–55–8	Benzenamine, 2–methyl–5–nitro–
U019	71–43–2	Benzene (I,T)

EPA Hazardous Waste No.	Chemical Abstracts No.	Substances
U038	510–15–6	Benzeneacetic acid, 4–chloro–alpha–(4–chlorophenyl)– alpha–hydroxy, ethyl ester
U030	101–55–3	Benzene, 1–bromo–4–phenoxy–
U035	305–03–3	Benzenebutanoic acid, 4–[bis(2–chloroethyl)amino]–
U037	108–90–7	Benzene, chloro–
U221	25376–45–8	Benzenediamine, ar–methyl–
U028	117–81–7	1,2–Benzenedicarboxylic acid, bis (2–ethylhexyl) ester
U069	84–74–2	1,2–Benzenedicarboxylic acid, dibutyl ester
U088	84–66–2	1,2–Benzenedicarboxylic acid, diethyl ester
U102	131–11–3	1,2–Benzenedicarboxylic acid, dimethyl ester
U107	117–84–0	1,2–Benzenedicarboxylic acid, dioctyl ester
U070	95–50–1	Benzene, 1,2–dichloro–
U071	541–73–1	Benzene, 1,3–dichloro–
U072	106–46–7	Benzene, 1,4–dichloro–
U060	72–54–8	Benzene, 1, 1′–(2,2–dichloroethylidene)bis [4–chloro]–
U017	98–87–3	Benzene, (dichloromethyl)–
U223	26471–62–5	Benzene, 1,3–diisocyanatomethyl– (R,T)
U239	1330–20–7	Benzene, dimethyl– (I,T)
U201	108–46–3	1,3–Benzenediol
U127	118–74–1	Benzene, hexachloro–
U056	110–82–7	Benzene, hexahydro– (I)
U220	108–88–3	Benzene, methyl–
U105	121–14–2	Benzene, 1–methyl–2,4–dinitro–
U106	606–20–2	Benzene, 2–methyl–1,3–dinitro–
U055	98–82–8	Benzene, (1–methylethyl)– (I)
U169	98–95–3	Benzene, nitro–
U183	608–93–5	Benzene, pentachloro–
U185	82–68–8	Benzene, pentachloronitro–
U020	98–09–9	Benzenesulfonic acid chloride (C,R)
U020	98–09–9	Benzenesulfonyl chloride (C,R)
U207	95–94–3	Benzene, 1,2,4,5–tetrachloro–
U061	50–29–3	Benzene, 1,1′–(2,2,2–trichloroethylidene)bis [4–chloro]–
U247	72–43–5	Benzene, 1,1′–(2,2,2–trichloroethylidene) bis [4–methoxy]–
U023	98–07–7	Benzene, (trichloromethyl)–
U234	99–35–4	Benzene, 1,3,5–trinitro–
U021	92–87–5	Benzidine
U202	181–07–2	1,2–Benzisothiazol–3–(2H)–one, 1,1–dioxide and salts
U203	94–59–7	1,3–Benzodioxole, 5–(2–propenyl)–
U141	120–58–1	1,3–Benzodioxole, 5–(1–propenyl)–
U090	94–58–6	1,3–Benzodioxole, 5–propyl–
U064	189–55–9	Benzo[rst]pentaphene
U248	181–81–2	2H–1–Benzopyran–2–one, 4–hydroxy–3–(3–oxo–1–phenylbutyl)–, and salts, when present at concentrations of 0.3% or less
U022	50–32–8	Benzo[a]pyrene
U278	22781–23–3	1,3–Benzodioxol–4–ol, 2,2–dimethyl–, methyl carbamate.
U364	22961–82–6	1,3–Benzodioxol–4–ol, 2,2–dimethyl–,
U367	1563–38–8	7–Benzofuranol, 2–3–dihydro–2,2–dimethyl–
U197	106–51–4	p–Benzoquinone
U023	98–07–7	Benzotrichloride (C,R,T)
U085	1464–53–5	2,2′–Bioxirane
U021	92–87–5	[1,1′–Biphenyl]–4,4′–diamine
U073	91–94–1	[1,1′–Biphenyl]–4,4′–diamine, 3.3′–dichloro–
U091	119–90–4	[1,1′–Biphenyl]–4,4′–diamine, 3,3′–dimethoxy–
U095	119–93–7	[1,1′–Biphenyl]–4,4′–diamine, 3,3′–dimethyl–
U225	75–25–2	Bromoform
U030	101–55–3	4–Bromophenyl phenyl ether
U128	87–68–3	1,3–Butadiene, 1,1,2,3,4,4–hexachloro–
U172	924–16–3	1–Butanamine, N–butyl–N–nitroso–
U031	71–36–3	1–Butanol (I)
U159	78–93–3	2–Butanone (I,T)
U160	1338–23–4	2–Butanone, peroxide (R,T)
U053	4170–30–3	2–Butenal
U074	764–41–0	2–Butene, 1,4–dichloro– (I,T)
U143	303–34–4	2–Butenoic acid, 2–methyl–, 7–[(2,3–dihydroxy–2–(1–methoxyethyl)–3–methyl–1–oxobutoxy) methyl]–2,3,5,7a–tetrahydro–1H–pyrrolizin–1–yl ester,[1S–[1alpha (Z),7(2S*, 3R*), 7aalpha]–
U031	71–36–3	n–Butyl alcohol (I)
U136	75–60–5	Cacodylic acid
U032	13765–19–0	Calcium chromate
U372	10605–21–7	Carbamic acid, 1H–benzimidazol–2–yl, methyl ester.
U271	17804–35–2	Carbamic acid, [1–[(butylamino)carbonyl]–1H–benzimidazol–2–yl]–, methyl ester.
U280	101–27–9	Carbamic acid, (3–chlorophenyl)–, 4–chloro–2–butynyl ester.
U238	51–79–6	Carbamic acid, ethyl ester
U178	615–53–2	Carbamic acid, methylnitroso–, ethyl ester
U373	122–42–9	Carbamic acid, phenyl–, 1–methylethyl ester.
U409	23564–05–8	Carbamic acid, [1,2–phenylenebis (iminocarbonothioyl)]bis–, dimethyl ester.
U389	2303–17–5	Carbamothioic acid, bis(1–methylethyl)–, S–(2,3,3–trichloro–2–propenyl) ester.
U387	52888–80–9	Carbamothioic acid, dipropyl–, S–(phenylmethyl) ester.
U097	79–44–7	Carbamic chloride, dimethyl–
U114	[1]111–54–6	Carbamodithioic acid, 1,2–ethanediylbis–, salts and esters
U062	2303–16–4	Carbamothioic acid, bis(1–methylethyl)–, S–(2,3–dichloro–2–propenyl) ester
U279	63–25–2	Carbaryl.
U372	10605–21–7	Carbendazim.
U367	1563–38–8	Carbofuran phenol.
U215	6533–73–9	Carbonic acid, dithallium (1+) salt
U033	353–50–4	Carbonic difluoride
U156	79–22–1	Carbonochloridic acid, methyl ester (I,T)
U033	353–50–4	Carbon oxyfluoride (R,T)
U211	56–23–5	Carbon tetrachloride
U034	75–87–6	Chloral
U035	305–03–3	Chlorambucil
U036	57–74–9	Chlordane, alpha and gamma isomers
U026	494–03–1	Chlornaphazine
U037	108–90–7	Chlorobenzene
U038	510–15–6	Chlorobenzilate
U039	59–50–7	p–Chloro–m–cresol
U042	110–75–8	2–Chloroethyl vinyl ether
U044	67–66–3	Chloroform
U046	107–30–2	Chloromethyl methyl ether
U047	91–58–7	beta–Chloronaphthalene
U048	95–57–8	o–Chlorophenol
U049	3165–93–3	4–Chloro–o–toluidine, hydrochloride
U032	13765–19–0	Chromic acid HCr_2O_4, calcium salt
U050	218–01–9	Chrysene
U051		Creosote
U052	1319–77–3	Cresol (Cresylic acid)
U053	4170–30–3	Crotonaldehyde
U055	98–82–8	Cumene (I)
U246	506–68–3	Cyanogen bromide (CN)Br
U197	106–51–4	2,5–Cyclohexadiene–1, 4–dione
U056	110–82–7	Cyclohexane (I)
U129	58–89–9	Cyclohexane, 1,2,3,4,5,6–hexachloro–, (1alpha, 2alpha, 3beta, 4alpha, 5alpha, 6beta)–
U057	108–94–1	Cyclohexanone (I)
U130	77–47–4	1,3–Cyclopentadiene, 1,2,3,4,5,5–hexachloro–
U058	50–18–0	Cyclophosphamide
U240	[1]94–75–7	2,4–D, salts and esters
U059	20830–81–3	Daunomycin
U060	72–54–8	DDD
U061	50–29–3	DDT
U062	2303–16–4	Diallate
U063	53–70–3	Dibenz[a,h]anthracene
U064	189–55–9	Dibenzo[a,i]pyrene
U066	96–12–8	1,2–Dibromo–3–chloropropane

EPA Hazardous Waste No.	Chemical Abstracts No.	Substances
U069	84-74-2	Dibutyl phthalate
U070	95-50-1	o-Dichlorobenzene
U071	541-73-1	m-Dichlorobenzene
U072	106-46-7	p-Dichlorobenzene
U073	91-94-1	3,3'-Dichlorobenzidine
U074	764-41-0	1,4-Dichloro-2-butene (I,T)
U075	75-71-8	Dichlorodifluoromethane
U078	75-35-4	1,1-Dichloroethylene
U079	156-60-5	1,2-Dichloroethylene
U025	111-44-4	Dichloroethyl ether
U027	108-60-1	Dichloroisopropyl ether
U024	111-91-1	Dichloromethoxy ethane
U081	120-83-2	2,4-Dichlorophenol
U082	87-65-0	2,6-Dichlorophenol
U084	542-75-6	1,3-Dichloropropene
U085	1464-53-5	1,2:3,4-Diepoxybutane (I,T)
U108	123-91-1	1,4-Diethyleneoxide
U395	5952-26-1	Diethylene glycol, dicarbamate.
U028	117-81-7	Diethylhexyl phthalate
U086	1615-80-1	N,N'-Diethylhydrazine
U087	3288-58-2	O,O-Diethyl-S-methyl dithiophosphate
U088	84-66-2	Diethyl phthalate
U089	56-53-1	Diethylstilbestrol
U090	94-58-6	Dihydrosafrole
U091	119-90-4	3,3'-Dimethoxybenzidine
U092	124-40-3	Dimethylamine (I)
U093	60-11-7	p-Dimethylaminoazobenzene
U094	57-97-6	7,12-Dimethylbenz[a]anthracene
U095	119-93-7	3,3'-Dimethylbenzidine
U096	80-15-9	alpha,alpha-Dimethylbenzylhydroperoxide (R)
U097	79-44-7	Dimethylcarbamoyl chloride
U098	57-14-7	1,1-Dimethylhydrazine
U099	540-73-8	1,2-Dimethylhydrazine
U101	105-67-9	2,4-Dimethylphenol
U102	131-11-3	Dimethyl phthalate
U103	77-78-1	Dimethyl sulfate
U105	121-14-2	2,4-Dinitrotoluene
U106	606-20-2	2,6-Dinitrotoluene
U107	117-84-0	Di-n-octyl phthalate
U108	123-91-1	1,4-Dioxane
U109	122-66-7	1,2-Diphenylhydrazine
U110	142-84-7	Dipropylamine (I)
U111	621-64-7	Di-n-propylnitrosamine
U041	106-89-8	Epichlorohydrin
U001	75-07-0	Ethanal (I)
U174	55-18-5	Ethanamine, N-ethyl-N-nitroso-
U404	121-44-8	Ethanamine, N,N-diethyl-
U155	91-80-5	1,2-Ethanediamine, N,N-dimethyl-N'-2-pyridinyl-N'-(2-thienylmethyl)-
U067	106-93-4	Ethane, 1,2-dibromo-
U076	75-34-3	Ethane, 1,1-dichloro-
U077	107-06-2	Ethane, 1,2-dichloro-
U131	67-72-1	Ethane, hexachloro-
U024	111-91-1	Ethane, 1,1'-[methylenebis(oxy)]bis [2-chloro-
U117	60-29-7	Ethane, 1,1'-oxybis- (I)
U025	111-44-4	Ethane, 1,1'-oxybis[2-chloro-
U184	76-01-7	Ethane, pentachloro-
U208	630-20-6	Ethane, 1,1,1,2-tetrachloro-
U209	79-34-5	Ethane, 1,1,2,2-tetrachloro-
U218	62-55-5	Ethanethioamide
U226	71-55-6	Ethane, 1,1,1- trichloro-
U227	79-00-5	Ethane, 1,1,2-trichloro-
U410	59669-26-0	Ethanimidothioic acid, N,N'-[thiobis [(methylimino)carbonyloxy]]bis-, dimethyl ester
U394	30558-43-1	Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester.
U359	110-80-5	Ethanol, 2-ethoxy
U173	1116-54-7	Ethanol, 2,2'-(nitrosoimino)bis-
U395	5952-26-1	Ethanol, 2,2'-oxybis-, dicarbamate.
U004	98-86-2	Ethanone, 1-phenyl-
U043	75-01-4	Ethene, chloro-
U042	110-75-8	Ethene, (2-chloroethoxy)-
U078	75-35-4	Ethene, 1,1-dichloro-
U079	156-60-5	Ethene, 1,2-dichloro-, (E)-
U210	127-18-4	Ethene, tetrachloro-
U228	79-01-6	Ethene, trichloro-
U112	141-78-6	Ethyl acetate (I)
U113	140-88-5	Ethyl acrylate (I)
U238	51-79-6	Ethyl carbamate (urethane)
U114	[1]111-54-6	Ethylenebisdithiocarbamic acid, salts and esters
U067	106-93-4	Ethylene dibromide
U077	107-06-2	Ethylene dichloride
U359	110-80-5	Ethylene glycol monoethyl ether
U115	75-21-8	Ethylene oxide (I,T)
U116	96-45-7	Ethylene thiourea
U117	60-29-7	Ethyl ether (I)
U076	75-34-3	Ethylidene dichloride
U118	97-63-2	Ethyl methacrylate
U119	62-50-0	Ethyl methanesulfonate
U120	206-44-0	Fluoranthene
U122	50-00-0	Formaldehyde
U123	64-18-6	Formic acid (C,T)
U124	110-00-9	Furan (I)
U125	98-01-1	2-Furancarboxaldehyde (I)
U147	108-31-6	2,5-Furandione
U213	109-99-9	Furan, tetrahydro- (I)
U125	98-01-1	Furfural (I)
U124	110-00-9	Furfuran (I)
U206	18883-66-4	Glucopyranose, 2-deoxy-2(3-methyl-3-nitrosoureido)-, D-
U206	18883-66-4	D-Glucose, 2-deoxy-2-[c(methylnitrosoamino)-carbonyl]amino]-
0126	765-34-4	Glycidylaldehyde
U163	70-25-7	Guanidine, N-methyl-N'-nitro-N-nitroso-
U127	118-74-1	Hexachlorobenzene
U128	87-68-3	Hexachlorobutadiene
U130	77-47-4	Hexachlorocyclopentadiene
U131	67-72-1	Hexachloroethane
U132	70-30-4	Hexachlorophene
U243	1888-71-7	Hexachloropropene
U133	302-01-2	Hydrazine (R,T)
U086	1615-80-1	Hydrazine, 1,2-diethyl-
U098	57-14-7	Hydrazine, 1,1-dimethyl-
U099	540-73-8	Hydrazine, 1,2-dimethyl-
U109	122-66-7	Hydrazine, 1,2-diphenyl-
U134	7664-39-3	Hydrofluoric acid (C,T)
U134	7664-39-3	Hydrogen fluoride (C,T)
U135	7783-06-4	Hydrogen sulfide H_2S
U096	80-15-9	Hydroperoxide, 1-methyl-1-phenylethyl-(R)
U116	96-45-7	2-Imidazolidinethione
U137	193-39-5	Indeno[1,2,3-cd]pyrene
U190	85-44-9	1,3-Isobenzofurandione
U140	78-83-1	Isobutyl alcohol (I,T)
U141	120-58-1	Isosafrole
U142	143-50-0	Kepone
U143	303-34-4	Lasiocarpine
U144	301-04-2	Lead acetate
U146	1335-32-6	Lead, bis(acetato-O)tetrahydroxytri-
U145	7446-27-7	Lead phosphate
U146	1335-32-6	Lead subacetate
U129	58-89-9	Lindane
U163	70-25-7	MNNG
U147	108-31-6	Maleic anhydride
U148	123-33-1	Maleic hydrazide
U149	109-77-3	Malononitrile
U150	148-82-3	Melphalan
U151	7439-97-6	Mercury
U152	126-98-7	Methacrylonitrile (I,T)
U092	124-40-3	Methanamine, N-methyl- (I)
U029	74-83-9	Methane, bromo-
U045	74-87-3	Methane, chloro- (I,T)
U046	107-30-2	Methane, chloromethoxy-
U068	74-95-3	Methane, dibromo-
U080	75-09-2	Methane, dichloro-
U075	75-71-8	Methane, dichlorodifluoro-
U138	74-88-4	Methane, iodo-
U119	62-50-0	Methanesulfonic acid, ethyl ester
U211	56-23-5	Methane, tetrachloro-
U153	74-93-1	Methanethiol (I,T)
U225	75-25-2	Methane, tribromo-
U044	67-66-3	Methane, trichloro-

EPA Hazardous Waste No.	Chemical Abstracts No.	Substances
U121	75-69-4	Methane, trichlorofluoro-
U036	57-74-9	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-
U154	67-56-1	Methanol (I)
U155	91-80-5	Methapyrilene
U142	143-50-0	1,3,4-Metheno-2H-cyclobuta[cd]pentalen-2-one,1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-
U247	72-43-5	Methoxychlor
U154	67-56-1	Methyl alcohol (I)
U029	74-83-9	Methyl bromide
U186	504-60-9	1-Methylbutadiene (I)
U045	74-87-3	Methyl chloride (I,T)
U156	79-22-1	Methyl chlorocarbonate (I,T)
U226	71-55-6	Methyl chloroform
U157	56-49-5	3-Methylcholanthrene
U158	101-14-4	4,4'-Methylenebis(2-chloroaniline)
U068	74-95-3	Methylene bromide
U080	75-09-2	Methylene chloride
U159	78-93-3	Methyl ethyl ketone (MEK) (I,T)
U160	1338-23-4	Methyl ethyl ketone peroxide (R,T)
U138	74-88-4	Methyl iodide
U161	108-10-1	Methyl isobutyl ketone (I)
U162	80-62-6	Methyl methacrylate (I,T)
U161	108-10-1	4-Methyl-2-pentanone (I)
U164	56-04-2	Methylthiouracil
U010	50-07-7	Mitomycin C
U059	20830-81-3	5,12-Naphthacenedione, 8-acetyl-10-[(3-amino-2,3,6-trideoxy)-alpha-L-lyxo-hexopyranosyl)oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-, (8S-cis)-
U167	134-32-7	1-Naphthalenamine
U168	91-59-8	2-Naphthalenamine
U026	494-03-1	Naphthalenamine, N,N'-bis(2-chloroethyl)-
U165	91-20-3	Naphthalene
U047	91-58-7	Naphthalene, 2-chloro-
U166	130-15-4	1,4-Naphthalenedione
U236	72-57-1	2,7-Naphthalenedisulfonic acid, 3,3'-[(3,3'-dimethyl [1,1'-biphenyl]-4,4'-diyl)]-bis(azo)bis(5-amino-4-hydroxy)-, tetrasodium salt
U279	63-25-2	1-Naphthalenol, methylcarbamate.
U166	130-15-4	1,4-Naphthoquinone
U167	134-32-7	alpha-Naphthylamine
U168	91-59-8	beta-Naphthylamine
U217	10102-45-1	Nitric acid, thallium (1+) salt
U169	98-95-3	Nitrobenzene (I,T)
U170	100-02-7	p-Nitrophenol
U171	79-46-9	2-Nitropropane (I,T)
U172	924-16-3	N-Nitrosodi-n-butylamine
U173	1116-54-7	N-Nitrosodiethanolamine
U174	55-18-5	N-Nitrosodiethylamine
U176	759-73-9	N-Nitroso-N-ethylurea
U177	684-93-5	N-Nitroso-N-methylurea
U178	615-53-2	N-Nitroso-N-methylurethane
U179	100-75-4	N-Nitrosopiperidine
U180	930-55-2	N-Nitrosopyrrolidine
U181	99-55-8	5-Nitro-o-toluidine
U193	1120-71-4	1,2-Oxathiolane, 2,2-dioxide
U058	50-18-0	2H-1,3,2-Oxazaphosphorin-2-amine, N,N-bis(2-chloroethyl) tetrahydro-,2-oxide
U115	75-21-8	Oxirane (I,T)
U126	765-34-4	Oxiranecarboxyaldehyde
U041	106-89-8	Oxirane, (chloromethyl)-
U182	123-63-7	Paraldehyde
U183	608-93-5	Pentachlorobenzene
U184	76-01-7	Pentachloroethane
U185	82-68-8	Pentachloronitrobenzene (PCNB)
See F027	87-86-5	Pentachlorophenol
U161	108-10-1	Pentanol, 4-methyl-
U186	504-60-9	1,3-Pentadiene (I)
U187	62-44-2	Phenacetin
U188	108-95-2	Phenol
U048	95-57-8	Phenol, 2-chloro-
U039	59-50-7	Phenol, 4-chloro-3-methyl-
U081	120-83-2	Phenol, 2,4-dichloro-
U082	87-65-0	Phenol, 2,6-dichloro-
U089	56-53-1	Phenol, 4,4'-(1,2-diethyl-1,2-ethenediyl) bis-, (E)-
U101	105-67-9	Phenol, 2,4-dimethyl-
U052	1319-77-3	Phenol, methyl-
U411	114-26-1	Phenol, 2-(1-methylethoxy)-, methylcarbamate.
U132	70-30-4	Phenol, 2,2'-methylenebis[3,4,6-trichloro-
U170	100-02-7	Phenol, 4-nitro-
See F027	87-86-5	Phenol, pentachloro-
See F027	58-90-2	Phenol, 2,3,4,6-tetrachloro-
See F027	95-95-4	Phenol, 2,4,5-trichloro-
See F027	88-06-2	Phenol, 2,4,6-trichloro-
U150	148-82-3	L-Phenylalanine, 4-[bis(2-chloroethyl)amino]-
U145	7446-27-7	Phosphoric acid, lead (2+) salt (2:3)
U087	3288-58-2	Phosphorodithioic acid, O,O-diethyl S-methyl ester
U189	1314-80-3	Phosphorous sulfide (R)
U190	85-44-9	Phthalic anhydride
U191	109-06-8	2-Picoline
U179	100-75-4	Piperidine, 1-nitroso-
U192	23950-58-5	Pronamide
U194	107-10-8	1-Propanamine (I,T)
U111	621-64-7	1-Propanamine, N-nitroso-N-propyl-
U110	142-84-7	1-Propanamine, N-propyl- (I)
U066	96-12-8	Propane, 1,2-dibromo-3-chloro-
U083	78-87-5	Propane, 1,2-dichloro-
U149	109-77-3	Propanedinitrile
U171	79-46-9	Propane, 2-nitro- (I,T)
U027	108-60-1	Propane, 2,2'-oxybis[1-chloro-
U193	1120-71-4	1,3-Propane sultone
See F027	93-72-1	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-
U235	126-72-7	1-Propanol, 2,3-dibromo-, phosphate (3:1)
U140	78-83-1	1-Propanol, 2-methyl- (I,T)
U002	67-64-1	2-Propanone (I)
U007	79-06-1	2-Propenamide
U084	542-75-6	1-Propene, 1,3-dichloro
U243	1888-71-7	1-Propene, 1,1,2,3,3,3-hexachloro-
U009	107-13-1	2-Propenenitrile
U152	126-98-7	2-Propenenitrile, 2-methyl- (I,T)
U008	79-10-7	2-Propenoic acid (I)
U113	140-88-5	2-Propenoic acid, ethyl ester (I)
U118	97-63-2	2-Propenoic acid, 2-methyl-, ethyl ester
U162	80-62-6	2-Propenoic acid, 2-methyl-, methyl ester (I,T)
U373	122-42-9	Propham.
U411	114-26-1	Propoxur.
U194	107-10-8	n-Propylamine (I,T)
U083	78-87-5	Propylene dichloride
U387	52888-80-9	Prosulfocarb.
U148	123-33-1	3,6-Pyridazinedione, 1,2-dihydro-
U196	110-86-1	Pyridine
U191	109-06-8	Pyridine, 2-methyl-
U237	66-75-1	2,4-(1H,3H)-Pyrimidinedione, 5-[bis(2-chloroethyl)amino]-
U164	56-04-2	4-(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-
U180	930-55-2	Pyrrolidine, 1-nitroso-
U200	50-55-5	Reserpine
U201	108-46-3	Resorcinol
U202	[1]81-07-2	Saccharin and salts
U203	94-59-7	Safrole
U204	7783-00-8	Selenious acid
U204	7783-00-8	Selenium dioxide
U205	7488-56-4	Selenium sulfide SeS_2 (R,T)
U015	115-02-6	L-Serine, diazoacetate (ester)
See F027	93-72-1	Silvex
U206	18883-66-4	Streptozotocin
U103	77-78-1	Sulfuric acid, dimethyl ester
U189	1314-80-3	Sulfur phosphide (R)
See F027	93-76-5	2,4,5-T
U207	95-94-3	1,2,4,5-Tetrachlorobenzene
U208	630-20-6	1,1,1,2-Tetrachloroethane
U209	79-34-5	1,1,2,2-Tetrachloroethane
U210	127-18-4	Tetrachloroethylene
See F027	58-90-2	2,3,4,6-Tetrachlorophenol

EPA Hazardous Waste No.	*Chemical Abstracts No.*	*Substances*
U213	109-99-9	Tetrahydrofuran (I)
U214	563-68-8	Thallium (I) acetate
U215	6533-73-9	Thallium (I) carbonate
U216	7791-12-0	Thallium (I) chloride
U216	7791-12-0	Thallium chloride TlCl
U217	10102-45-1	Thallium (I) nitrate
U218	62-55-5	Thioacetamide
U410	59669-26-0	Thiodicarb.
U153	74-93-1	Thiomethanol (I,T)
U244	137-26-8	Thioperoxydicarbonic diamide $[(H_2N)C(S)]_2S_2$, tetramethyl-
U409	23564-05-8	Thiophanate-methyl.
U219	62-56-6	Thiourea
U244	137-26-8	Thiram
U220	108-88-3	Toluene (I,T)
U221	25376-45-8	Toluenediamine
U223	26471-62-5	Toluene diisocyanate (R,T)
U328	95-53-4	o-Toluidine
U353	106-49-0	p-Toluidine
U222	636-21-5	o-Toluidine hydrochloride
U011	61-82-5	1H-1,2,4-Triazol-3-amine
U389	2303-17-5	Triallate.
U227	79-00-5	1,1,2-Trichloroethane
U228	79-01-6	Trichloroethylene
U121	75-69-4	Trichloromonofluoromethane
See F027	95-95-4	2,4,5-Trichlorophenol
See F027	88-06-2	2,4,6-Trichlorophenol
U404	121-44-8	Triethylamine.
U234	99-35-4	1,3,5-Trinitrobenzene (R,T)
U182	123-63-7	1,3,5-Trioxane, 2,4,6-trimethyl-
U235	126-72-7	Tris (2,3-dibromopropyl) phosphate
U236	72-57-1	Trypan blue
U237	66-75-1	Uracil mustard
U176	759-73-9	Urea, N-ethyl-N-nitroso-
U177	684-93-5	Urea, N-methyl-N-nitroso-
U043	75-01-4	Vinyl chloride
U248	[1]81-81-2	Warfarin, and salts, when present at concentrations of 0.3% or less
U239	1330-20-7	Xylene (I)
U200	50-55-5	Yohimban-16-carboxylic acid, 11,17-di methoxy- 18-[(3,4,5-trimethoxybenzoyl)oxy]-, methyl ester,(3 beta, 16 beta, 17 alpha, 18 beta, 20 alpha)-
U249	1314-84-7	Zinc phosphide Zn_3P_2 , when present at concentrations of 10% or less

[1]CAS Number given for parent compound only.

NOTE: Authority cited: Sections 25159 and 58012, Health and Safety Code. Reference: Sections 25117, 25120.2, 25159 and 25159.5, Health and Safety Code and 40 CFR Section 261.33.

HISTORY

1. New section filed 5-24-91; effective 7-1-91 (Register 91, No. 22).
2. Change without regulatory effect amending subsection (c) filed 8-15-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 33).
3. Amendment of section and NOTE filed 10-13-98; operative 11-12-98 (Register 98, No. 42).
4. Change without regulatory effect adding new listing U408 filed 5-17-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 21).
5. Change without regulatory effect removing listing U408 (2,4,6-Tribomophenol) and amending NOTE filed 7-3-2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 27).

§ 66261.35. Deletion of Certain Hazardous Waste Codes Following Equipment Cleaning and Replacement.

(a) Wastes from wood preserving processes at plants that do not resume or initiate use of chlorophenolic preservatives will not meet the listing definition of F032 once the generator has met all of the requirements of subsections (b) and (c) of this section. These wastes may, however, continue to meet another hazardous waste listing description or may exhibit one or more of the hazardous waste characteristics.

(b) Generators shall either clean or replace all process equipment that may have come into contact with chlorophenolic formulations or constituents thereof, including, but not limited to, treatment cylinders, sumps, tanks, piping systems, drip pads, fork lifts, and trams, in a manner that minimizes or eliminates the escape of hazardous waste or constituents, leachate, contaminated drippage, or hazardous waste decomposition products to the groundwater, surface waters, or atmosphere.

(1) generators shall do one of the following:

(A) prepare and follow an equipment cleaning plan and clean equipment in accordance with this section;

(B) prepare and follow an equipment replacement plan and replace equipment in accordance with this section; or

(C) document cleaning and replacement in accordance with this section, carried out after termination of use of chlorophenolic preservations.

(2) cleaning requirements.

(A) preserve and sign a written equipment cleaning plan that describes:

1. the equipment to be cleaned;
2. how the equipment will be cleaned;
3. the solvent to be used in cleaning;
4. how solvent rinses will be tested; and
5. how cleaning residues will be disposed.

(B) equipment shall be cleaned as follows:

1. remove all visible residues from process equipment;
2. rinse process equipment with an appropriate solvent until dioxins and dibenzofurans are not detected in the final solvent rinse.

(C) analytical requirements.

1. rinses shall be tested in accordance with SW-846, Method 8290.
2. "not detected" means at or below the lower method calibration limit (MCL) in Method 8290, Table 1.

(D) The generator shall manage all residues from the cleaning process as F032 waste.

(3) replacement requirements.

(A) prepare and sign a written equipment replacement plan that describes:

1. the equipment to be replaced;
2. how the equipment will be replaced; and
3. how the equipment will be disposed.

(B) the generator shall manage the discarded equipment as F032 waste.

(4) documentation requirements.

(A) document that previous equipment cleaning and/or replacement was performed in accordance with this section and occurred after cessation of use of chlorophenolic preservatives.

(c) The generator shall maintain the following records documenting the cleaning and replacement as part of the facility's operating record:

(1) the name and address of the facility;

(2) formulations previously used and the date on which their use ceased in each process at the plant;

(3) formulations currently used in each process at the plant;

(4) the equipment cleaning or replacement plan;

(5) the name and address of any persons who conducted the cleaning and replacement;

(6) the dates on which cleaning and replacement were accomplished;

(7) the dates of sampling and testing;

(8) a description of the sample handling and preparation techniques, including techniques used for extraction, containerization, preservation, and chain-of-custody of the samples;

(9) a description of the tests performed, the date the tests were performed, and the results of the tests;

(10) the name and model numbers of the instrument(s) used in performing the tests;

(11) QA/QC documentation; and

(12) the following statement signed and dated by the generator or his authorized representative:

I certify under penalty of perjury under the laws of the state of California that all process equipment required to be cleaned or replaced under Title 22, CCR, section 66261.35 was cleaned or replaced as represented in the equipment cleaning and replacement plan and accompanying doc-

umentation. I am aware that there are significant penalties for providing false information, including the possibility of fine or imprisonment.

NOTE: Authority cited: Sections 25150, 25159, 25159.5 and 25245, Health and Safety Code; and Section 58012, Governor's Reorganization Plan Number 1 of 1991. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR section 261.35.

HISTORY

1. New section filed 7–29–94; operative 8–29–94 (Register 94, No. 30).

Article 4.1. Additional Lists of Hazardous Wastes

§ 66261.50. Mercury–Containing Products That Are Hazardous Wastes When Discarded.

The following mercury–containing products are listed hazardous wastes when discarded:

California Hazardous Waste Number	*Hazardous Waste*
M001	Mercury–containing motor vehicle light switches, as defined in section 66273.9, and any motor vehicle or portion of a motor vehicle that contains such switches, when any person decides to crush, bale, shred, or shear the vehicle. Motor vehicles and portions of motor vehicles from which all mercury–containing light switches have been removed are not included in this category. A light switch that cannot be removed from a vehicle due to accidental damage to the vehicle is not included. This listing becomes effective on January 1, 2005.
M002	Non–automotive mercury switches and any product that contains such switches. Includes any mercury switch that does not meet the listing description for M001, including but not limited to, mercury switches from household appliances and household appliances from which mercury switches have not been removed; relays; silent wall switches; and float switches. Also includes mercury–containing flame sensors and household appliances from which all mercury flame sensors have not been removed. Appliances and other products from which all mercury switches and flame sensors have been removed are not included in this category. This listing becomes effective on February 9, 2006.
M003	Lamps that contain intentionally–added mercury and products with lamps that contain intentionally–added mercury. A lamp is defined as the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infrared regions of the electromagnetic spectrum. Products from which all mercury–containing lamps have been removed are not included in this category. This listing does not apply to liquid crystal displays (LCDs) with mercury back lighting, products that contain such LCDs, or vehicles that contain mercury–added lamps. This listing becomes effective on February 9, 2004.
M004	Mercury–added novelties, as defined in section 66273.9 (other than novelties with mercury switches, which meet the listing description for M002, and novelties with mercury–containing lamps, which meet the listing description for M003). Includes, but is not limited to, novelties painted with mercury–containing paints. This listing becomes effective on January 1, 2004.

NOTE: Authority cited: Sections 25140 and 58012, Health and Safety Code. Reference: Sections 25140 and 25212, Health and Safety Code.

HISTORY

1. New article 4.1 (section 66261.50) and section filed 2–13–2003; operative 3–15–2003 (Register 2003, No. 7).

Article 5. Categories of Hazardous Waste

§ 66261.100. RCRA Hazardous Waste.

(a) A hazardous waste is a RCRA hazardous waste if it meets any of the following criteria:

(1) it exhibits any of the characteristics of ignitability, corrosivity, reactivity, or toxicity identified in sections 66261.21, 66261.22(a)(1), 66261.22(a)(2), 66261.23, and 66261.24(a)(1);

(2) it is listed as a hazardous waste in article 4 of this chapter and has not been excluded by the USEPA Administrator from 40 CFR Part 261, Subpart D pursuant to 40 CFR sections 260.20 and 260.22. Wastes excluded by the USEPA Administrator pursuant to 40 CFR sections 260.20 and 260.22 are listed in 40 CFR Part 261, Appendix IX;

(3) it is identified as a hazardous waste pursuant to section 66261.3(a)(2)(B), section 66261.3(a)(2)(D), section 66261.3(a)(2)(E), or section 66261.3(c)(2).

(b) A hazardous waste is presumed to be a RCRA hazardous waste unless or until the generator determines that the waste is non–RCRA hazardous waste pursuant to section 66261.101.

NOTE: Authority cited: Sections 208, 25141 and 25159, Health and Safety Code. Reference: Sections 25117, 25120.2, 25141 and 25159, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66261.101. Non–RCRA Hazardous Waste.

(a) A hazardous waste is a non–RCRA hazardous waste if it meets all of the following criteria:

(1) it does not exhibit any of the characteristics of ignitability, corrosivity, reactivity or toxicity as identified in sections 66261.21, 66261.22(a)(1), 66261.22(a)(2), 66261.23 and 66261.24(a)(1);

(2) it exhibits any of the characteristics of corrosivity and toxicity identified in sections 66261.22(a)(3), 66261.22(a)(4) and 66261.24 (a)(2) through (a)(8) or otherwise meets the definition of a hazardous waste in section 66261.3(a)(2)(C) or 66261.3(a)(2)(F);

(3) it is not listed as a hazardous waste in article 4 of this chapter or is listed and has been excluded by the USEPA Administrator pursuant to 40 CFR sections 260.20 and 260.22;

(4) it is listed in article 4.1 and is not identified as a RCRA hazardous waste in section 66261.100.

(b) A hazardous waste is a non–RCRA hazardous waste if it exhibits any characteristic set forth in article 3 of this chapter and meets any of the following criteria:

(1) it is identified as a potential non–RCRA hazardous waste in section 66261.2(d)(1)(B) or section 66261.2(d)(2)(B), or is identified as a potential non–RCRA hazardous waste in Table 1 of section 66261.2;

(2) it is excluded from classification as a solid waste or a hazardous waste in 40 CFR section 261.4.

(c) A container, or an inner liner from a container, which is empty pursuant to 40 CFR section 261.7, but is required to be managed as a hazardous waste pursuant to section 66261.7 is a non–RCRA hazardous waste.

(d) A waste which is not classified as a non–RCRA hazardous waste pursuant to the criteria in subsections (a) through (c) of this section may be classified as a non–RCRA hazardous waste if the generator can otherwise determine that the waste would not be regulated as a hazardous waste pursuant to subtitle C of RCRA or implementing regulations.

(e) The Department or the USEPA may request the following items from a person claiming that the hazardous waste generated or managed by that person is a non–RCRA hazardous waste:

(1) documentation demonstrating that the waste meets the applicable criteria in subsection (a), (b), (c) or (d) of this section;

(2) analytical information, from a laboratory certified by the Department pursuant to chapter 44 of this division, demonstrating that the extracts from representative samples of the waste, developed using the Toxicity Characteristic Leaching Procedure in Appendix I of chapter 18 of this division, contain none of the substances in section 66261.24(a)(1)(B) at a concentration which equals or exceeds the value for that substance in that section;

(3) representative samples of that waste.

NOTE: Authority cited: Sections 25141, 25159 and 58012, Health and Safety Code. Reference: Sections 25117, 25117.9, 25141 and 25159, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Amendment of subsection (a)(3), new subsection (a)(4) and amendment of NOTE filed 2–13–2003; operative 3–15–2003 (Register 2003, No. 7).

§ 66261.107. Applicability of Extremely Hazardous Waste Criteria.

Any waste which is extremely hazardous pursuant to any of the criteria of section 66261.110 or 66261.113 is an extremely hazardous waste and

shall be managed in accordance with the specific provisions of this division pertaining to extremely hazardous waste.

NOTE: Authority cited: Sections 208 and 25141, Health and Safety Code. Reference: Sections 25115, 25117 and 25141, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66261.110. Extremely Hazardous Waste Criteria.

(a) A waste, or a material, is extremely hazardous if it:

(1) has an acute oral LD_{50} less than or equal to 50 milligrams per kilogram; or

(2) has an acute dermal LD_{50} less than or equal to 43 milligrams per kilogram; or

(3) has an acute inhalation LC_{50} less than or equal to 100 parts per million as a gas or vapor; or

(4) contains any of the substances listed in section 66261.24(a)(7) at a single or combined concentration equal to or exceeding 0.1 percent by weight; or

(5) has been shown through experience or testing that human exposure to the waste or material may likely result in death, disabling personal injury or serious illness because of the carcinogenicity, high acute or chronic toxicity, bioaccumulative properties, or persistence in the environment of the waste or material; or

(6) is water–reactive.

(b) A waste containing one or more materials which are extremely hazardous according to any criterion of subsection (a)(1) or (a)(2) of this section is not extremely hazardous if the generator determines that neither the calculated acute oral toxicity nor the calculated acute dermal toxicity of the waste using the equation in section 66261.24(c) is numerically equal to or less than the toxicity limits prescribed in subsection (a)(1) or (a)(2) of this section and the waste is not extremely hazardous by any other criterion of this section.

NOTE: Authority cited: Sections 208 and 25141, Health and Safety Code. Reference: Sections 25115, 25117 and 25141, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66261.111. Hazardous Waste of Concern Criteria.

(a) A hazardous waste of concern is a hazardous waste that originated from a material with a label placed by the manufacturer with one of the following hazard class divisions, or a hazardous waste that is identified on the Uniform Hazardous Waste Manifest with one of the following hazard divisions within the U.S. DOT description, or otherwise known as:

(1) An explosive material, hazard division 1.1, 1.2, or 1.3, as defined under 49 Code of Federal Regulations section 173.50 (as revised October 1, 2002); or

(2) A poisonous material, hazard division 6.1, packing group I or II, as defined under 49 Code of Federal Regulations section 173.132 (as revised October 1, 2002); or

(3) A poisonous gas, hazard division 2.3, as defined under 49 Code of Federal Regulations section 173.115 (as revised October 1, 2002).

(b) "Missing hazardous waste of concern" is a hazardous waste of concern that has been lost, stolen, is unaccounted for, or a difference in type has been identified when it is received at the designated facility. It does not include the unintentional release of a hazardous waste of concern within the meaning of 49 Code of Federal Regulations section 171.16 (as revised October 1, 2002).

(c) Specified reporting requirements for missing hazardous wastes of concern apply in instances where the missing waste represents a reportable quantity or a reportable difference in type.

(1) Reportable quantities of missing hazardous waste of concern are:

(A) for bulk waste, variations greater than 3 percent in weight or volume; and

(B) for containerized waste, any variation in piece count, such as a discrepancy of one drum in a truckload.

(2) Reportable differences in type of a hazardous waste of concern are obvious differences that can be discovered by observation of the physical properties of the waste through inspection or waste analysis (e.g., mineral spirits substituted for waste carbon tetrachloride, or waste that contains hazardous constituents not reported on the manifest that would change the shipping name or waste code).

NOTE: Authority cited: Sections 25150, 25169.6, 25169.8 and 58012, Health and Safety Code. Reference: Sections 25169.5, 25169.6, 25169.7 and 25169.8, Health and Safety Code.

HISTORY

1. New section filed 7–10–2003 as an emergency; operative 7–10–2003 (Register 2003, No. 28). Pursuant to Health and Safety Code section 25169.8, this is a deemed emergency and stays effective until revised by the agency.
2. Amendment of subsections (a), (b) and (c)(2) and amendment of NOTE filed 12–27–2005; operative 1–26–2006 (Register 2005, No. 52).

§ 66261.113. Total Threshold Limit Concentration Values of Persistent and Bioaccumulative Toxic Substances in Extremely Hazardous Wastes.

(a) Any waste containing a substance listed in subsection (b) of this section at a concentration equal to or exceeding its listed total threshold limit concentration is an extremely hazardous waste.

(b) List of Persistent and Bioaccumulative Toxic Substances and Their Total Threshold Limit Concentration (TTLC) Values:

Substance	*TTLC (Wet–Weight in mg/kg)*
Aldrin	140
Arsenic and/or arsenic compounds	50,000 (as As)
Beryllium and/or beryllium compounds*	7,500 (as Be)
Cadmium and/or cadmium compounds*	10,000 (as Cd)
Chlordane	250
2,4–Dichlorophenoxyacetic acid	10,000
Dieldrin	800
Dioxin (2,3,7,8–TCDD)	1
Endrin	20
Heptachlor	470
Kepone	2,100
Lead compounds, organic	1,300 (dry weight basis; as Pb)
Lindane	400
Mercury and/or mercury compounds	2,000 (as Hg)
Mirex	2,100
Polychlorinated biphenyls (PCBs)	5,000
Selenium and/or selenium compounds*	10,000 (as Se)
Thallium and/or thallium compounds*	70,000 (as Tl)
Toxaphene	500
2,4,5–Trichlorophenoxypropionic acid	1,000

*In the case of elemental metals, the specified concentration limits apply only if the metals are in a friable, powdered or finely divided state.

NOTE: Authority cited: Sections 208 and 25141, Health and Safety Code. Reference: Sections 25115, 25117 and 25141, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66261.120. List of Special Wastes.

(a) The following is a noninclusive list of wastes which may be classified as special wastes pursuant to section 66261.122:

(1) ash from burning of fossil fuels, biomass and other combustible materials;

(2) auto shredder waste;

(3) baghouse and scrubber wastes from air pollution control;

(4) catalyst from petroleum refining and chemical plant processes;

(5) cement kiln dust;

(6) dewatered sludge from treatment of industrial process water;

(7) dewatered tannery sludge;

(8) drilling mud from drilling of gas and oil wells;

(9) refractory from industrial furnaces, kilns and ovens;

(10) sand from sandblasting;

(11) sand from foundry casting;

(12) slag from coal gasification;

(13) sulfur dioxide scrubber waste from flue gas emission control in combustion of fossil fuels;

(14) tailings from the extraction, beneficiation and processing of ores and minerals;

NOTE: Authority cited: Sections 208 and 25140, Health and Safety Code. Reference: Sections 25117 and 25140, Health and Safety Code.

HISTORY
1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66261.122. Criteria and Requirements of a Special Waste.

(a) A hazardous waste which meets all of the following criteria and requirements shall be classified as a special waste upon application pursuant to section 66261.124:

(1) it is a solid, a water–based sludge or a water–based slurry of which the solid constituents are substantially insoluble in water;

(2) it is a hazardous waste only because:

(A) it contains a persistent or bioaccumulative substance listed in section 66261.24(a)(2)(A) at a solubilized and extractable concentration exceeding its Soluble Threshold Limit Concentration (STLC), or at a total concentration exceeding its Total Threshold Limit Concentration (TTLC), as said STLC and TTLC values are set forth in section 66261.24(a)(2)(A) and determined as prescribed in Appendix II of this chapter; except that:

1. it shall contain no persistent or bioaccumulative substance listed in section 66261.24(a)(2)(A) at a solubilized and extractable concentration in milligrams per kilogram of waste exceeding the TTLC value for the substance as set forth in section 66261.24(a)(2)(A) and determined as prescribed in Appendix II of this chapter; and

2. it shall contain no persistent or bioaccumulative inorganic substance listed in section 66261.113(b) at a concentration equal to or exceeding the TTLC value of the substance as set forth in section 66261.113(b).

(b) Special wastes do not include wastes which meet any of the following criteria:

(1) wastes which are hazardous wastes pursuant to or because of:

(A) any characteristic of a hazardous waste or other provision set forth in sections 66261.21, section 66261.22, section 66261.23 or section 66261.24(a)(3) through (a)(7); or

(B) any criterion of an extremely hazardous waste or other provision set forth in section 66261.110 or section 66261.113; or

(C) any constituent, except for a substance or material listed in section 66261.24(a)(2)(A), which experience or testing has shown to pose a threat to human health or the environment because of its carcinogenicity, chronic toxicity, bioaccumulative properties or persistence in the environment; or

(D) the characteristic of toxicity, as this characteristic is set forth in section 66261.24(a)(1); or

(E) the lists in article 4 of this chapter, unless a waste is excluded by the USEPA Administrator from 40 CFR Part 261, Subpart D pursuant to 40 CFR sections 260.20 and 260.22. Wastes excluded by the USEPA Administrator pursuant to 40 CFR sections 260.20 and 260.22 are listed in 40 CFR 261 Part 261, Appendix IX;

(2) wastes which contain any of the following:

(A) more than 1.0 percent by weight of any organic substance or mixture of organic substance which is toxic pursuant to section 66261.24(a)(3), section 66261.24(a)(4), or section 66261.24(a)(5); or

(B) more than 0.1 percent by weight of any organic substance or mixture of organic substance which is extremely hazardous pursuant to Appendix X of this chapter or section 66261.110(a)(1), section 66261.110(a)(2), section 66261.110(a)(3), or section 66261.110(a)(4); or

(C) any organic substance listed in section 66261.24(a)(2)(B) at a total concentration exceeding the STLC value given for that substance; or

(D) any inorganic or organic material which is extraneous to the waste as it is normally produced by the producer of the waste, excepting material which are incidental to, or necessary for, the handling of the waste;

(3) hazardous wastes for which there are land disposal restrictions set forth in section 66268.32 and are defined in Health and Safety Code section 25122.7.

NOTE: Authority cited: Sections 208 and 25141, Health and Safety Code. Reference: Sections 25117 and 25141, Health and Safety Code.

HISTORY
1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66261.124. Classification of a Waste as a Special Waste.

(a) A person who wishes to classify and manage a hazardous waste as a special waste shall obtain prior written approval from the Department for such classification and management. A person seeking approval to classify and manage a hazardous waste as a special waste shall submit an application to the Department which includes all the following information:

(1) the name and address of the applicant and, if different, a billing address for receipt of the fee assessment required by Health and Safety Code section 25205.8;

(2) the address where the waste is generated and located;

(3) a description of the waste which shall include its source, physical state, quantity and rate of generation;

(4) chemical analysis data showing that the waste meets the requisites of a special waste pursuant to section 66261.122(a)(2);

(5) chemical analysis data, chemical and physical test data, and bioassay data, or factual information on the origin of the waste, which establish that it meets the criteria and requirements of special wastes in section 66261.122(a)(1) and section 66261.122(b). Data shall include analyses from a minimum of four representative samples as specified in chapter nine of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," SW–846, 3rd Edition, U.S. Environmental Protection Agency, 1986 (incorporated by reference, see section 66260.11 of this chapter).

(b) The Department, within 30 days of receipt of an application for approval to classify and manage a waste as special waste pursuant to subsection (a) of this section, shall acknowledge in writing receipt of the application. Pending written approval from the Department, the applicant shall manage the waste in accordance with all provisions of this division.

(c) The Department, within 60 days of receipt of an application for approval to classify and manage a waste as special waste pursuant to subsection (a) of this section, shall notify the applicant in writing that classification of the waste as special waste is approved or disapproved or that the application is incomplete or inadequate and what additional information is needed.

(d) If the application is incomplete or inadequate, the Department, within 60 days of receipt of adequate additional information, shall notify the applicant in writing that classification of the waste as special waste is approved or disapproved.

(e) When the Department has notified the applicant in writing that the application is incomplete or inadequate and what additional information is needed, the application will be considered disapproved if the applicant fails to provide the additional information within 90 days from the date the information was requested.

(f) If the applicant cannot submit the additional information within the time frame specified in subsection (e) of this section, the applicant shall notify the Department in writing the reason for the delay and shall specify an additional time frame, up to 90 days, within which the information shall be submitted.

(g) The application will be considered disapproved if the applicant fails to provide the additional information by the end of the additional time frame specified in subsection (f) of this section.

(h) If the Department disapproves the application, the Department shall specify in writing the reason(s) for the disapproval.

(i) Notwithstanding the time frames specified above, the Department shall not notify the applicant of the approval or disapproval of an application until after the applicant submits payment of the fee assessed by the Board of Equalization pursuant to Health and Safety Code section 25205.8.

(j) Upon receipt of written approval from the Department, the applicant may classify and manage the waste as special waste pursuant to section 66261.126.

(k) For wastes which are continuously or repetitively generated at the same facility, from the same process, utilizing the same kinds of materials (with respect to origin, composition and properties), the requirements

of this section can be met by the submission of the required information either for each separately generated quantity of the waste or for a representative sample of the continuously or repetitively generated waste.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code and Section 15367, Government Code. Reference: Sections 25205.8 and 25150, Health and Safety Code and Section 15367, Government Code.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66261.126. Management of Special Wastes.

(a) A special waste may be disposed of at a landfill disposal facility which is not operated under a hazardous waste facility permit or an interim status document provided:

(1) the facility is operated under waste discharge requirements allowing disposal of the special waste which were issued by the Regional Water Quality Control Board with jurisdiction over the facility; and

(2) the owner or operator of the facility has been granted a variance pursuant to section 66260.210 of this division which allows the special waste to be disposed of at the facility.

(b) Except as provided in subsection (c) of this section, the owner and operator of a landfill disposal facility which is not operated under a hazardous waste facility permit and where a special waste is disposed of are subject to all requirements of this division which are not specifically waived by a variance granted pursuant to section 66260.210 of this division, including, but not limited to, enforcement, inspection, manifest, special measures, incompatible waste, reporting, and payment of land disposal fee requirements.

(c) The owner and operator of a landfill disposal facility authorized to dispose of a special waste pursuant to subsection (a) of this section shall be exempt from requirements implementing Health and Safety Code sections 25245 and 25246 relative to closure and postclosure plans and financial assurances so long as the facility does not handle, treat, store or dispose of any hazardous waste not specifically authorized by a variance issued by the Department or by Health and Safety Code section 25143.7.

(d) The generator of a special waste shall be subject to all generator requirements of this division.

(e) The transporter of a special waste shall be subject to all transporter requirements of this division.

(f) The owner or operator of a facility for the recycling, storage or treatment of a special waste shall have a hazardous waste facility permit for the recycling, treatment or storage of the waste at the facility.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Sections 25117, 25143 and 25150, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

Appendix I

Representative Sampling Methods

The methods and equipment used for sampling waste materials will vary with the form and consistency of the waste materials to be sampled. In addition to the sampling methods described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," SW–846, 3rd edition, 1986 (incorporated by reference, see Section 66260.11), samples collected using the sampling protocols listed below, for sampling waste with properties similar to the indicated materials, will be considered by the Department to be representative of the waste:

Standard Practice for Sampling Bituminous Materials, (e.g., extremely viscous liquid), ASTM Standard D140–88;

Standard Method of Collection and Preparation of Coke Samples for Laboratory Analysis, (e.g., crushed or powdered material), ASTM Standard D346–78;

Standard Guide for Investigating and Sampling Soil and Rock, (e.g., soil or rock–like material), ASTM Standard D420–87;

Standard Practice for Soil Investigation and Sampling by Auger Borings, (e.g., soil–like material), ASTM Standard D1452–80;

Standard Methods for Collection of a Gross Sample of Coal, (e.g., fly Ash–like material), ASTM Standard D2234–82.

[ASTM Standards are available from ASTM, 1916 Race St., Philadelphia, PA 19103] (incorporated by reference, see Section 66260.11).

NOTE: Authority cited: Sections 208, 25141 and 25159, Health and Safety Code. Reference: Section 25141, Health and Safety Code and 40 CFR Part 261 Appendix I.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

Appendix II

Waste Extraction Test (WET) Procedures

(a) The Waste Extraction Test (WET) described in this appendix shall be used to determine the amount of extractable substance in a waste or other material as set forth in section 66261.24(a)(2).

(b) Except as provided in subdivision (d) of this appendix, the WET shall be carried out if the total concentration in the waste, or other material, of any substance listed in section 66261.24(a)(2) equals or exceeds the STLC value, but does not exceed the TTLC value, given for that substance. The total concentrations of substances listed in section 66261.24(a)(2) shall be determined by analysis of samples of wastes, or other materials, which have been prepared, or meet the conditions, for analysis as set forth in subdivisions (c) and (d) of this appendix. Methods used for analysis for total concentrations of substances listed in section 66261.24(a)(2) shall be those given in the following documents or alternate methods that have been approved by the Department pursuant to section 66260.21:

(1) for metal elements and their compounds, the waste shall be digested according to the indicated methods described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," SW–846, 2nd edition, U.S. Environmental Protection Agency, 1982 (incorporated by reference, see section 66260.11):

(A) all listed metal elements and their compounds, except hexavalent chromium: Method 3050;

(B) hexavalent chromium: Method 3060;

(2) for all substances listed in section 66261.24(a)(2), except organic lead compounds, the methods and references in which the methods can be found are listed in Appendix III, Table 4 of this chapter;

(3) the method used for analysis of organic lead compounds is given in Appendix XI of this chapter.

(c) Samples shall be prepared for analysis for total and extractable content of substances listed in section 66261.24(a)(2)(A) and for extractable content of substances listed in section 66261.24(a)(2)(B) as follows:

(1) Type i: if the waste or other material is a millable solid, the sample shall be passed directly, or shall be milled to pass, through a No. 10 (two millimeter) standard sieve before it is analyzed. If the sample contains non–friable solid particles which do not pass directly through a No. 10 sieve and which are extraneous and irrelevant as hazardous constituents to the waste or other material, they shall be removed to the extent feasible by mechanical means and discarded. Solids which remain in the waste or other material after removal of the aforesaid extraneous particles shall be milled to pass through a No. 10 sieve and shall then be combined and mixed well with the solids which passed through the sieve without milling. The reconstituted sample shall then be analyzed as prescribed in this appendix;

(2) Type ii: if the waste or other material is a filterable mixture of liquid and solids in which the solids constitute five–tenths (0.5) percent by weight or greater of the sample, the liquid and solids shall be separated by filtration through a 0.45 micron membrane filter. The filtrate so obtained is to be designated as Initial Filtrate. Its volume is determined, and it is retained. The separated solids shall be sieved in a No. 10 sieve and any nonfriable extraneous particles of the kinds described in subdivision (c)(1) of this appendix which do not pass through the sieve shall be removed to the extent feasible by mechanical means and discarded. The solids which remain after removal of the extraneous particles shall be milled to pass through a No. 10 sieve and shall be recombined with solids which passed through the sieve without milling. This recombined solid material shall be extracted following the procedure in subdivision (g) of this appendix. A ratio of 10 milliliters of extraction solution per gram of

solid shall be utilized with appropriate modifications for extraction vessel size. After completion of solids extraction, the filtered extractant is combined with Initial Filtrate, mixed thoroughly and analyzed as described in subdivision (g)(3) of this appendix;

(3) Type iii: if the waste or other material is a nonfilterable and nonmillable sludge, slurry, or oily, tarry or resinous material, it shall be analyzed as received unless it contains non–friable extraneous and irrelevant solid particles of the kinds described in subdivision (c)(1) of this appendix. If it contains such solid particles and they are of such size as not to pass through a No. 10 sieve, they shall be removed to the extent feasible by mechanical means and discarded. The remainder of the sample shall be analyzed as prescribed in this appendix;

(4) if it is necessary to dry a solid sample or the solids fraction of a sample before sieving, milling or removal of extraneous solids, or if a sample is dried prior to analysis, all weight losses due to drying shall be determined, and these losses and the conditions of drying shall be reported.

(d) Samples shall be prepared for analysis for total content of substances listed in section 66261.24(a)(2)(B) as follows:

(1) type i: if the waste or other material is a millable solid, the sample shall be passed directly, or shall be milled to pass, through a one–millimeter standard sieve before it is analyzed. If the sample contains non–friable solid particles which do not pass directly through a one–millimeter sieve and which are extraneous and irrelevant as hazardous constituents to the waste or other material, they shall be removed to the extent feasible by mechanical means and discarded. Solids which remain in the waste or other material after removal of the aforesaid extraneous particles shall be milled to pass through a one–millimeter sieve and shall then be combined and mixed well with the solids which passed through the sieve without milling. The reconstituted sample shall then be analyzed as prescribed in this appendix;

(2) type ii: if the waste or other material is a filterable mixture of liquid and solids in which the solids constitute five–tenths (0.5) percent by weight or greater of the sample, the liquid and solids shall be separated by filtration through a 0.45 micron membrane filter. The filtrate so obtained is to be designated as Initial Filtrate. Its volume is determined, and it is retained. The separated solids shall be sieved in a one–millimeter sieve and any nonfriable extraneous particles of the kinds described in subdivision (d)(1) of this appendix which do not pass through the sieve shall be removed to the extent feasible by mechanical means and discarded. The solids which remain after removal of the extraneous particles shall be milled to pass through a one–millimeter sieve and shall be recombined with solids which passed through the sieve without milling. This recombined solid material shall be extracted following the procedure in subdivision (g) of this appendix. A ratio of 10 milliliters of extraction solution per gram of solid shall be utilized with appropriate modifications for extraction vessel size. After completion of solids extraction, the filtered extractant is combined with Initial Filtrate, mixed thoroughly and analyzed as described in subdivision (9)(3) of this appendix;

(3) type iii: if the waste or other material is a nonfilterable and nonmillable sludge, slurry, or oily, tarry or resinous material, it shall be analyzed as received unless it contains non–friable extraneous and irrelevant solid particles of the kinds described in subdivision (d)(1) of this appendix. If it contains such solid particles and they are of such size as not to pass through a one–millimeter sieve, they shall be removed to the extent feasible by mechanical means and discarded. The remainder of the sample shall be analyzed as prescribed in this appendix;

(4) if it is necessary to dry a solid sample or the solids fraction of a sample before sieving, milling or removal of extraneous solids, or if a sample is dried prior to analysis, all weight losses due to drying shall be determined, and these losses and the conditions of drying shall be reported.

(e) If the waste or other material is a liquid containing less than five–tenths (0.5) percent by weight of undissolved solids, it shall not be subject to the WET procedure, but shall be analyzed directly for the substances listed in section 66261.24(a)(2). The waste shall be classified as a hazardous waste if the total concentration in the waste of any substances listed in section 66261.24(a)(2) exceeds the TTLC value given for that substance. If, however, the total concentration is less than the TTLC but exceeds the STLC when expressed on a milligrams per liter basis, the waste or other material shall be filtered through a 0.45 micron membrane filter, the solids discarded and the filtrate shall be analyzed directly for the substances listed in section 66261.24(a)(2). The waste shall be classified as a hazardous waste if the concentration in the filtrate of any of the substances listed in section 66261.24 (a)(2) exceeds the STLC value given for that substance.

(f) The WET extraction solution shall consist of 0.2 M sodium citrate at pH 5.0 + 0.1, which is prepared by titrating an appropriate amount of analytical grade citric acid in deionized water with 4.0 N NaOH, except that the extraction solution for the determination of chromium (VI) shall consist of deionized water.

[The next page is 682.3.]

(g) The extraction procedure shall be as follows:

(1) fifty grams of sample, or less if it is a type ii sample prepared pursuant to subdivision (c)(2) or (d)(2) of this appendix, obtained pursuant to subdivision (c), (d), or (e) of this appendix shall be placed in a clean polyethylene or glass container designated the Treatment, capable of physically withstanding the extraction procedure and which was rinsed previously with, in succession, an aqueous 1:1 ratio by volume nitric acid solution and deionized water. If the extract will be analyzed for any of the organic substances listed in section 66261.24(a)(2), a glass container shall be used. Furthermore, a container of the same size, shape and material shall be used for an extraction designated as the Blank, which shall be carried through the same procedure as the Treatment, but without addition of the sample;

(2) five hundred milliliters of extraction solution, or less if the waste sample is a type ii sample prepared pursuant to subdivision (c)(2) or (d)(2) of this appendix, shall be added to the Treatment and Blank containers, which shall be then fitted with covered air scrubbers extended well into the extraction solutions and flushed vigorously with nitrogen gas for 15 minutes so as to remove and exclude atmospheric oxygen from the extraction medium. If the sample is to be analyzed for any volatile substance, such as trichloroethylene, the sample shall be added after deaeration with nitrogen to avoid volatilization loss. After deaeration the containers shall be quickly sealed with tightly fitting caps and agitated, using a table shaker, an overhead stirrer or a rotary extractor, operated at a speed which shall maintain the sample in a state of vigorously agitated suspension. Required equipment is described in test method 1310 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," SW–846, 3rd edition, U.S. Environmental Protection Agency, 1986 (incorporated by reference, see section 66260.11). The temperature during the extraction shall be maintained between 20 and 40 degrees centigrade. After 48 hours of extracting, the contents of the Treatment and Blank containers shall be either filtered directly or centrifuged and then filtered. Filtering shall be through a medium porosity prefilter and then through a 0.45 micron membrane filter, using a clean, thick–walled suction flask. For coarser solids, prefiltration shall not be necessary. Pressure filtration shall be an optional alternative to vacuum filtration. If the extracts are first centrifuged, glass or polyethylene bottles shall be used as prescribed for extraction. For very fine solids, centrifuging at as high as 10,000 X G may be necessary. After centrifugation, the liquids shall be decanted, prefiltered if necessary, and then passed through a 0.45 micron membrane filter. All filters shall be of low and identified extractable heavy metals, fluoride and organic chemicals content;

(3) if the filtered extracts are to be analyzed only for the metal elements listed in section 66261.24(a)(2)(A), the filtered extracts from the Treatment and Blank shall be transferred to clean polyethylene bottles and acidified with nitric acid to five percent by volume acid content soon after each extract is filtered. For those wastes or waste materials classified under subdivision (c)(2) or (d)(2) of this appendix, the Treatment shall be the Initial Filtrate combined with the extract generated by the WET extraction of the initially separated solids. Similarly the Blank in this instance shall be the filtrate generated by the WET Blank accompanying the initially separated solids, to which is subsequently added a volume of deionized water equivalent to that of the Initial Filtrate. These procedures shall be followed prior to acidification of Treatment and Blank solutions with nitric acid to five percent (by volume) acid content. The bottle shall then be stored at room temperature or frozen. If the extracts are also to be analyzed for the organic substances listed in section 66261.24(a)(2)(B), or for the organic substances only, the filtered extracts shall be transferred to clean glass bottles. If the extracts are to be analyzed for fluoride, they shall be transferred to clean polyethylene bottles. These extracts, containing organic substances or flouride, shall not be acidified, but shall be frozen soon after each extract is obtained and held frozen until the day of analysis, unless the extracts are analyzed within 24 hours.

(h) Sample analysis and data treatment shall be as follows:

(1) each of the filtered extracts from the Treatment and Blank extractions shall have been acidified to five percent by volume nitric acid, and stored at room temperature or frozen in polyethylene bottles or kept frozen without addition of acid in glass bottles until the day of analysis, as prescribed. Each of the extracts shall be thoroughly mixed just prior to being individually analyzed for the substances listed in section 66261.24(a)(2) in order to determine whether the extractable concentration (EC) in the waste or other material exceeds the STLC for any of the substances listed. The extracts shall be analyzed according to the procedures identified in subdivisions (b)(2) and (b)(3) of this appendix;

(2) the net EC of a substance in the Treatment sample which is listed in section 66261.24(a)(2) shall be calculated and reported as milligrams per liter of sample (mg/l). This value is derived after subtracting the concentration of the substance in the appropriate Blank extract from that concentration determined in the Treatment extract.

NOTE: Authority cited: Sections 208 and 25141, Health and Safety Code. Reference: Section 25141, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

Appendix III

Chemical Analysis Test Methods

NOTE: Appropriate analytical procedures to determine whether a sample contains a given toxic constituent are specified in Chapter Two, "Choosing the Correct Procedure" found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846. Third Edition and Updates (incorporated by reference in section 66260.11 of this chapter). Prior to final sampling and analysis method selection, the individual should consult the specific section or method described in SW–846 for additional guidance on which of the approved methods should be employed for a specific sample analysis situation.

NOTE: Authority cited: Sections 25141, 25159 and 58012, Health and Safety Code. Reference: Sections 25141, 25150 and 25159, Health and Safety Code and 40 CFR Part 261 Appendix III.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Amendment adding Benzo(k)fluoranthene to Table 1 and amendment of NOTE filed 7–29–94; operative 8–29–94 (Register 94, No. 30).
3. Editorial correction of Table 2 (Register 95, No. 21).
4. Repealer and new appendix III and amendment of NOTE filed 10–13–98; operative 11–12–98 (Register 98, No. 42).
5. Change without regulatory effect amending appendix filed 6–7–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 24).

Appendix VII

Basis for Listing Hazardous Waste

EPA Hazardous Waste No.	*Hazardous constituents for which listed*
F001	Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1–trichloroethane, carbon tetrachloride, chlorinated fluorocarbons.
F002	Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1–trichloroethane, 1,1,2–trichloroethane, chlorobenzene, 1,1,2–trichloro–1,2,2–trifluoroethane, ortho–dichlorobenzene, trichlorofluoromethane.
F003	N.A.
F004	Cresols and cresylic acid, nitrobenzene.
F005	Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, 2–ethoxyethanol, benzene, 2–nitropropane.
F006	Cadmium, hexavalent chromium, nickel, cyanide (complexed).
F007	Cyanide (salts).
F008	Cyanide (salts).
F009	Cyanide (salts).
F010	Cyanide (salts).
F011	Cyanide (salts).
F012	Cyanide (complexed).
F019	Hexavalent chromium, cyanide (complexed).
F020	Tetra– and pentachlorodibenzo–p–dioxins; tetra and pentachlorodi–benzofurans; tri– and tetrachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine and other salts.

EPA Hazardous Waste No.	*Hazardous constituents for which listed*
F021	Penta– and hexachlorodibenzo–p–dioxins; penta– and hexachlorodibenzofurans; pentachlorophenol and its derivatives.
F022	Tetra–, penta–, and hexachlorodibenzo–p–dioxins; tetra–, penta–, and hexachlorodibenzofurans.
F023	Tetra–, and pentachlorodibenzo–p–dioxins; tetra– and pentachlorodibenzofurans; tri– and tetrachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine and other salts.
F024	Chloromethane, dichloromethane, trichloromethane, carbon tetrachloride, chloroethylene, 1,1–dichloroethane, 1,2–dichloroethane, trans–1–,2–dichloroethylene, 1,1–dichloroethylene,1,1,1–trichloroethane, 1,1,2–trichloroethane, trichloroethylene, 1,1,1,2–tetrachloroethane, 1,1,2,2–tetrachloroethane, tetrachloroethylene, pentachloroethane, hexachloroethane, allyl chloride (3–chloropropene), dichloropropane, dichloropropene, 2–chloro–1,3–butadiene, hexachloro–1,3–butadiene, hexachlorocyclopentadiene, hexachlorocycloexane, benzene, chlorobenzene, dichlorobenzenes, 1,2,4–trichlorobenzene, tetrachlorobenzene, pentachlorobenzene, hexachlorobenzene, toluene, naphthalene.
F025	Chloromethane, dichloromethane, trichloromethane, carbon tetrachloride, chlorethylene,1,1–dichloroethane, 1,2–dichloroethane, trans–1,2–dichlorethylene, 1,1–dichloroethylene, 1,1,1–trichlorethane, 1,1,2–trichlorethane, trichlorethylene, 1,1,1,2–tetrachloroethane, 1,1,2,2–techrachloroethane, tetrachloroethylene, pentachloroethane, hexachloroethane, allyl chloride (3–chloropropene), dichloropropane, dichloropropene, 2–chloro–1,3–butadiene, hexachloro– 1,3–butadiene, hexachlorocyclopentadiene, benzene, chlorobenzene, dichlorobenzene, 1,2,4–trichlorobenzene, tetrachlorobenzene, pentachlorobenzene, hexachlorobenzene, toluene, naphthalene.
F026	Tetra–, penta–, and hexachlorodibenzo–p–dioxins; tetra, penta–, and hexachlorodibenzofurans.
F027	Tetra–, penta–, and hexachlorodibenzo–p–dioxins; tetra–, penta–, and hexachlorodibenzofurans; tri–, tetra–, and pentachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine and other salts.
F028	Tetra–, penta–, and hexachlorodibenzo–p–dioxins; tetra–, penta–, and hexachlorodibenzofurans; tri–, tetra–, and pentachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine and other salts.
F032	Benz(a)anthracene, benzo(a)pyrene, dibenz(a,h)anthracene, indeno(1,2,3–cd)pyrene, pentachlorophenol, arsenic, chromium, tetra–, penta–, hexa–, heptachlorodibenzo–p–dioxins, tetra–, penta–, hexa–, heptachlorodibenzofurans.
F034	Benz(a)anthracene, benzo(k)fluoranthene, benzo(a)pyrene, dibenz(a,h)anthracene, indeno(1,2,3–cd)pyrene, napthalene, arsenic, chromium.
F035	Arsenic, chromium, lead.
F037	Benzene, benzo(a)pyrene, chrysene, lead, chromium.
F038	Benzene, benzo(a)pyrene, chrysene, lead, chromium.
F039	All constituents which treatments standards are specified for multi–source leachate (wastewaters and nonwastewaters) under Section 66268.43(a), Table CCW.
K001	Pentachlorophenol, phenol, 2–chlorophenol, p–chloro–m–cresol, 2,4–dimethylphenyl, 2,4–dinitrophenol, trichlorophenols, tetrachlorophenols, 2,4–dinitrophenol, creosote, chrysene, naphthalene, fluoranthene, benzo(b)fluoranthene, benzo(a) pyrene, indeno(1,2,3–cd)pyrene, benz(a)anthracene, dibenz(a) anthracene, acenaphthalene.
K002	Hexavalent chromium, lead.
K003	Hexavalent chromium, lead.
K004	Hexavalent chromium.
K005	Hexavalent chromium, lead.
K006	Hexavalent chromium.
K007	Cyanide (complexed), hexavalent chromium.
K008	Hexavalent chromium.
K009	Chloroform, formaldehyde, methylene chloride, methyl chloride, paraldehyde, formic acid.
K010	Chloroform, formaldehyde, methylene chloride, methyl chloride, paraldehyde, formic acid, chloroacetaldehyde.
K011	Acrylonitrile, acetonitrile, hydrocyanic acid.
K013	Hydrocyanic acid, acrylonitrile, acetonitrile.
K014	Acetonitrile, acrylamide.
K015	Benzyl chloride, chlorobenzene, toluene, benzotrichloride.
K016	Hexachlorobenzene, hexachlorobutadiene, carbon tetrachloride, hexachloroethane, perchloroethylene.
K017	Epichlorohydrin, chloroethers [bis(chloromethyl) ether and bis (2–chloroethyl) ethers], trichloropropane, dichloropropanols.
K018	1,2–dichloroethane, trichloroethylene, hexachlorobutadiene, hexachlorobenzene.
K019	Ethylene dichloride, 1,1,1–trichloroethane, 1,1,2–trichloroethane, tetrachloroethanes (1,1,2,2–tetrachloroethane and 1,1,1,2–tetrachloroethane), trichloroethylene, tetrachloroethylene, carbon tetrachloride, chloroform, vinyl chloride, vinylidene chloride.
K020	Ethylene dichloride, 1,1,1–trichloroethane, 1,1,2–trichloroethane, tetrachloroethanes (1,1,2,2–tetrachloroethane and 1,1,1,2–tetrachloroethane), trichloroethylene, tetrachloroethylene, carbon tetrachloride, chloroform, vinyl chloride, vinylidene chloride.
K021	Antimony, carbon tetrachloride, chloroform.
K022	Phenol, tars (polycyclic aromatic hydrocarbons).
K023	Phthalic anhydride, maleic anhydride.
K024	Phthalic anhydride, 1,4–naphthoquinone.
K025	Meta–dinitrobenzene, 2,4–dinitrotoluene.
K026	Paraldehyde, pyridines, 2–picoline.
K027	Toluene diisocyanate, 2,4–toluenediamine.
K028	1,1,1–trichloroethane, vinyl chloride.
K029	1,2–dichloroethane, 1,1,1–trichloroethane, vinyl chloride, vinylidene chloride, chloroform.
K030	Hexachlorobenzene, hexachlorobutadiene, hexachloroethane, 1,1,1,2–tetrachloroethane, 1,1,2,2–tetrachloroethane, ethylene dichloride.
K031	Arsenic.
K032	Hexachlorocyclopentadiene.
K033	Hexachlorocyclopentadiene.
K034	Hexachlorocyclopentadiene.
K035	Creosote, chrysene, naphthalene, fluoranthene, benzo(b) fluoranthene, benzo(a)pyrene, indeno(1,2,3–cd) pyrene, benzo(a)anthracene, dibenzo(a)anthracene, acenaphthalene.
K036	Toluene, phosphorodithioic and phosphorothioic acid esters.
K037	Toluene, phosphorodithioic and phosphorothioic acid esters.
K038	Phorate, formaldehyde, phosphorodithioic and phosphorothioic acid esters.
K039	Phosphorodithioic and phosphorothioic acid esters.
K040	Phorate, formaldehyde, phosphorodithioic and phosphorothioic acid esters.
K041	Toxaphene.
K042	Hexachlorobenzene, ortho–dichlorobenzene.
K043	2,4–dichlorophenol, 2,6–dichlorophenol, 2,4,6–trichlorophenol.
K044	N.A.
K045	N.A.
K046	Lead.
K047	N.A.
K048	Hexavalent chromium, lead.
K049	Hexavalent chromium, lead.
K050	Hexavalent chromium.
K051	Hexavalent chromium, lead.
K052	Lead.
K060	Cyanide, napthalene, phenolic compounds, arsenic.

EPA Hazardous Waste No.	Hazardous constituents for which listed
K061	Hexavalent chromium, lead, cadmium.
K062	Hexavalent chromium, lead.
K064	Lead, cadmium.
K065	Lead, cadmium.
K066	Lead, cadmium.
K069	Hexavalent chromium, lead, cadmium.
K071	Mercury.
K073	Chloroform, carbon tetrachloride, hexachloroethane, trichloroethane, tetrachloroethylene, dichloroethylene, 1,1,2,2–tetrachloroethane.
K083	Aniline, diphenylamine, nitrobenzene, phenylenediamine.
K084	Arsenic.
K085	Benzene, dichlorobenzenes, trichlorobenzenes, tetrachlorobenzenes, pentachlorobenzene, hexachlorobenzene, benzyl chloride.
K086	Lead, hexavalent chromium.
K087	Phenol, naphthalene.
K088	Cyanide (complexes).
K090	Chromium.
K091	Chromium.
K093	Phthalic anhydride, maleic anhydride.
K094	Phthalic anhydride.
K095	1,1,2–trichloroethane, 1,1,1,2–tetrachloroethane, 1,1,2,2–tetrachloroethane.
K096	1,2–dichloroethane, 1,1,1–trichloroethane, 1,1,2–trichloroethane.
K097	Chlordane, heptachlor.
K098	Toxaphene.
K099	2,4–dichlorophenol, 2,4,6–trichlorophenol.
K100	Hexavalent chromium, lead, cadmium.
K101	Arsenic.
K102	Arsenic.
K103	Aniline, nitrobenzene, phenylenediamine.
K104	Aniline, benzene, diphenylamine, nitrobenzene, phenylenediamin
K105	Benzene, monochlorobenzene, dichlorobenzenes, 2,4,6–trichlorophenol.
K106	Mercury.
K107	1,1–Dimethylhydrazine (UDMH).
K108	1,1–Dimethylhydrazine (UDMH).
K109	1,1–Dimethylhydrazine (UDMH).
K110	1,1–Dimethylhydrazine (UDMH).
K111	2,4–Dinitrotoluene.
K112	2,4–Toluenediamine, o–toluidine, p–toluidine, aniline.
K113	2,4–Toluenediamine, o–toluidine, p–toluidine, aniline.
K114	2,4–Toluenediamine, o–toluidine, p–toluidine.
K115	2,4–Toluenediamine.
K116	Carbon tetrachloride, tetrachloroethylene, chloroform, phosgene.
K117	Ethylene dibromide.
K118	Ethylene dibromide.
K123	Ethylene thiourea.
K124	Ethylene thiourea.
K125	Ethylene thiourea.
K126	Ethylene thiourea.
K131	Dimethyl sulfate, methyl bromide.
K132	Methyl bromide.
K136	Ethylene dibromide.
K141	Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3–cd)pyrene.
K142	Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3–cd)pyrene.
K143	Benzene, benz(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene.
K144	Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene.
K145	Benzene, benz(a)anthracene, benzo(a)pyrene, dibenz(a,h)anthracene, naphthalene.
K147	Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3–cd)pyrene.
K148	Benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3–cd)pyrene.
K149	Benzotrichloride, benzyl chloride, chloroform, chloromethane, chlorobenzene, 1,4–dichlorobenzene, hexachlorobenzene, pentachlorobenzene, 1,2,4,5–tetrachlorobenzene, toluene.
K150	Carbon tetrachloride, chloroform, chloromethane, 1,4–dichlorobenzene, hexachlorobenzene, pentachlorobenzene, 1,2,4,5–tetrachlorobenzene, 1,1,2,2–tetrachloroethane, tetrachloroethylene, 1,2,4–trichlorobenzene.
K151	Bebzene, carbon tetrachloride, chloroform, hexachlorobenzene, pentachlorobenzene, toluene, 1,2,4,5–tetrachlorobenzene, tetrachloroethylene.
K156	Benomyl, carbaryl, carbendazim, carbofuran, carbosulfan, formaldehyde, methylene chloride, triethylamine.
K157	Carbon tetrachloride, formaldehyde, methyl chloride, methylene chloride, pyridine, triethylamine.
K158	Benomyl, carbendazim, carbofuran, carbosulfan, chloroform, methylene chloride.
K159	Benzene, butylate, eptc, molinate, pebulate, vernolate.
K161	Antimony, arsenic, metam–sodium, ziram.
K174	1,2,3,4,6,7,8–Heptachlorodibenzo–p–dioxin (1,2,3,4,6,7,8–HpCDD), 1,2,3,4,6,7,8–Heptachlorodibenzofuran (1,2,3,4,6,7,8–HpCDF), 1,2,3,4,7,8,9–Heptachlorodibenzofuran (1,2,3,4,7,8,9–HpCDF), HxCDDs (All Hexachlorodibenzo–p–dioxins, HxCDFs (All Hexachlorodibenzofurans), PeCDDs (All Pentachlorodibenzo–p–dioxins), OCDD (1,2,3,4,6,7,8,9–Octachlorodibenzo–p–dioxin), OCDF (1,2,3,4,6,7,8,9–Octachlorodibenzofuran), PeCDFs (All Pentachlorodibenzofurans), TCDDS (All tetrachlorodibenzo–p–dioxins), TCDFs (All tetrachlorodibenzofurans).
K175	Mercury

N.A.—Waste is hazardous because it exhibits the characteristic of ignitability, corrosivity or reactivity.

NOTE: Authority cited: Sections 25140, 25141, 25150, 25159 and 58012, Health and Safety Code. Reference: Sections 25141, 25150 and 25159, Health and Safety Code; and 40 CFR Part 261 Appendix VII.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. New listings F037 and F038 and amendment of NOTE filed 7–7–94; operative 8–8–94 (Register 94, No. 27).
3. New listings F032, F034 and F035 and amendment of NOTE filed 7–29–94; operative 8–29–94 (Register 94, No. 30).
4. Change without regulatory effect amending F032 entry filed 12–28–95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 52).
5. Amendment and NOTE filed 7–1–96; operative 7–31–96 (Register 96, No. 27).
6. New listings K156–K161 and amendment of NOTE filed 10–13–98; operative 11–12–98 (Register 98, No. 42).
7. Change without regulatory effect adding new listing K140 and amending NOTE filed 5–17–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 21).
8. Change without regulatory effect removing listing K140 and adding listings K174 and K175 filed 7–3–2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 27).

Appendix VIII
Hazardous Constituents

Common Name	*Chemical Abstracts Name*	*Chemical Abstracts No.*	*EPA Haz. Waste No.*
A2213	Ethanimidothioic acid, 2- (dimethylamino) -N-hydroxy-2-oxo-, methyl ester	30558-43-1	U394
Acetonitrile	Same	75-05-8	U003
Acetophenone	Ethanone, 1-phenyl-	98-86-2	U004
2-Acetylaminefluarone	Acetamide, N-9H-fluoren-2-yl-	53-96-3	U005
Acetyl chloride	Same	75-36-5	U006
1-Acety1-2-thiourea	Acetamide, N-(aminothioxo methyl)-	591-08-2	P002
Acrolein	2-Propenal	107-02-8	P003
Acrylamide	2-Propenamide	79-06-1	U007
Acrylonitrile	2-Propenenitrile	107-13-1	U009
Aflatoxins	Same	1402-68-2	
Aldicarb	Propanal, 2-methyl-2-(methylthio)-,O-[(methyl-amino)carbonyl]oxime	116-06-3	P070
Aldicarb sulfone	Propanal, 2-methyl-2-(methylsulfonyl)-, O-[(methylamino) carbonyl] oxime	1646-88-4	P203
Aldrin	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexa chloro-1,4,4a,5,8,8a-hexa hydro-,(1alpha,4alpha, 4abeta,5alpha,8alpha, 8abeta)-	309-00-2	P004
Allyl alcohol	2-Propen-1-ol	107-18-6	P005
Allyl chloride	1-Propene, 3-chloro	107-05-1	
Aluminum phosphide	Same	20859-73-8	P006
4-Aminobiphenyl	[1,1'-Biphenyl]-4-amine	92-67-1	
5-(Aminomethyl)-3-isoxazolol	3(2H)-Isoxazolone, 5-(aminomethyl)-	2763-96-4	P007
4-Aminopyridine	4-Pyridinamine	504-24-5	P008
Amitrole	1H-1,2,4-Triazol-3-amine	61-82-5	U011
Ammonium vanadate	Vanadic acid, ammonium salt	7803-55-6	P119
Aniline	Benzenamine	62-53-3	U012
Antimony	Same	7440-36-0	
Antimony compounds	N.O.S.[1]		
Aramite	Sulfurous acid, 2-chloro ethyl 2-[4-(1,1-dimethyl ethyl)phenoxy]-1-methyl-ethyl ester	140-57-8	
Arsenic	Same	7440-38-2	
Arsenic compounds,	N.O.S.[1]		
Arsenic acid	Arsenic acid H_3AsO_4	7778-39-4	P010
Arsenic pentoxide	Arsenic oxide As_2O_5	1303-28-2	P011
Arsenic trioxide	Arsenic oxide As_2O_3	1327-53-3	P012
Auramine	Benzenamine, 4,4'-carbonimidoylbis[N,N-dimethyl	492-80-8	U014
Azaserine	L-Serine, diazoacetate (ester)	115-02-6	U015
Barban	Carbamic acid, (3-chlorophenyl)-,4-chloro-2-butynyl ester	101-27-9	U280
Barium	Same	7440-39-3	
Barium compounds	N.O.S.[1]		
Barium cyanide	Same	542-62-1	P013
Bendiocarb	1,3-Benzodioxol-4-ol, 2,2-dimetyl-, methyl carbamate	22781-23-3	U278
Bendiocarb phenol	1,3-Benzodioxol-4-ol, 2,2-dimethyl-,	22961-82-6	U364
Benomyl	Carbamic acid, [1-[(butylamino) carbonyl]-1H-benzimidazol-2-yl]-, methyl ester	17804-35-2	U271
Benz[c]acridine	Same	225-51-4	U016
Benz[a]anthracene	Same	56-55-3	U018
Benzal chloride	Benzene, (dichloromethyl)-	98-87-3	U017
Benzene	Same	71-43-2	U019
Benzenearsonic acid	Arsonic acid, phenyl-	98-05-5	
Benzidine	[1,1'-Biphenyl]-4,4'-diamine	92-87-5	U021
Benzo[b]fluoranthene	Benz[e]acephenanthrylene	205-99-2	
Benzo[j]fluoranthene	sSame	205-82-3	
Benzo[a]pyrene	Same	50-32-8	U022
p-Benzoquinone	2,5-Cyclohexadiene-1,4-dione	106-51-4	U197
Benzo(k)fluoranthene	Same	207-08-09	
Benzotrichloride	Benzene, (trichloromethyl)-	98-07-7	U023
Benzyl chloride	Benzene, (chloromethyl)-	100-44-7	P028
Beryllium compounds	N.O.S.[1]		
Beryllium Powder	Same	7440-41-7	P015
Bis(pentamethylene)-thiuram tetrasulfide	Piperidine, 1,1'-(tetrathiodicarbonothioyl)-bis-	120-54-7	none
Bromoacetone	2-Propanone, 1-bromo-	598-31-2	P017
Bromoform	Methane, tribromo-	75-25-2	U225
4-Bromophenyl phenyl ether	Benzene, 1-bromo-4-phenoxy	101-55-3	U030
Brucine	Strychnidin-10-one, 2,3-dimethoxy	357-57-3	P018
Butyl benzyl phthalate	1,2-Benzenedicarboxylic acid, butyl phenylmethyl ester	85-68-7	
Butylate	Carbamothioic acid, bis(2-methylpropyl)-, S-ethyl ester	2008-41-5	none
Cacodylic acid	Arsinic acid, dimethyl-	75-60-5	U136
Cadmium	Same	7440-43-9	
Cadmium compounds	N.O.S.[1]		
Calcium chromate	Chromic acid, H_2CrO_4, calcium salt	13765-19-0	U032
Calcium cyanide	Calcium cyanide $Ca(CN)_2$	592-01-8	P021
Carbaryl	1-Naphthalenol, methylcarbamate	63-25-2	U279
Carbendazim	Carbamic acid,10605-21-7 1H-benzimidazol-2-yl, methyl ester	U372	
Carbofuran	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-, methylcarbamate	1563-66-2	P127
Carbofuran phenol	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-	1563-38-8	U367
Carbon disulfide	Same	75-15-0	P022
Carbon oxyfluoride	Carbonic difluoride	353-50-4	U033
Carbon tetrachloride	Methane, tetrachloro-	56-23-5	U211
Carbosulfan	Carbamic acid,55285-14-8 [(dibutylamino) thio] methyl-,2,3-dihydro-2,2-dimethyl-7-benzofuranyl ester	P189	
Chloral	Acetaldehyde, trichloro-	75-87-6	U034
Chlorambucil	Benzenebutanoic acid, 4-[bis(2-chloroethyl)amino]-	305-03-3	U035
Chlordane	4,7-Methano-1H-indene,1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-	57-74-9	U036
Chlordane (alpha and gamma isomers)		U036	
Chlorinated benzenes	N.O.S.[1]		
Chlorinated ethane	N.O.S.[1]		
Chlorinated fluorocarbons	N.O.S.[1]		
Chlorinated naphthalene	N.O.S.[1]		
Chlorinated phenol	N.O.S.[1]		
Chlornaphazine	Naphthalenamine, N,N'-bis (2-chloroethyl)-	494-03-1	U026
Chloroacetaldehyde	Acetaldehyde, chloro-	107-20-0	P023
Chloroalkyl ethers	N.O.S.[1]		
p-Chloroaniline	Benzenamine, 4-chloro	106-47-8	P024
Chlorobenzene	Benzene, chloro-	108-90-7	U037
Chlorobenzilate	Benzeneacetic acid, 4-chloro-alpha-(4-chloro-phenyl)-alpha-hydroxy-, ethyl ester	510-15-6	U038
p-Chloro-m-cresol	Phenol, 4-chloro-3-methyl-	59-50-7	U039
2-Chloroethyl vinyl	Ethene, (2-chloroethoxy)-ether	110-75-8	U042
Chloroform	Methane, trichloro-	67-66-3	U044

Common Name	Chemical Abstracts Name	Chemical Abstracts No.	EPA Haz. Waste No.
Chloromethyl methyl	Methane, chloromethoxy– ether	107–30–2	U046
beta–Chloro–	Napthalene, 2–chloro– naphthalene	91–58–7	U047
o–Chlorophenol	Phenol, 2–chloro–	95–57–8	U048
1–(o–Chlorophenyl)	Thiourea, (2–chlorophenyl)– thiourea	5344–82–1	P026
Chloroprene	1,3–Butadiene, 2–chloro–	126–99–8	
3–Chloropropio–	Propanenitrile, 3–chloro– nitrile	542–76–7	P027
Chromium	Same	7440–47–3	
Chromium compounds	N.O.S.[1]		
Chrysene	Same	218–01–9	U050
Citrus red No. 2	2–Naphthalenol, 1–[(2,5– dimethoxyphenyl)azo]–	6358–53–8	
Coal tar creosote	Same	8007–45–2	
Copper cyanide	Copper cyanide CuCN	544–92–3	P029
Copper dimethyldithiocarbamate	Copper, bis(dimethylcarbamodithioato– S,S′)–,	137–29–1	none
Creosote	Same		U051
Cresol (Cresylic acid)	Phenol, methyl–	1319–77–3	U052
Crotonaldehyde	2–Butenal	4170–30–3	U053
m–Cumenyl methylcarbamate	Phenol, 3–(methylethyl)–, methyl carbamate	64–00–6	P202
Cyanides (soluble salts and complexes)	N.O.S.[1]		P030
Cyanogen	Ethanedinitrile	460–19–5	P031
Cyanogen bromide	Cyanogen bromide (CN)Br	506–68–3	U246
Cyanogen chloride	Cyanogen chloride (CN)Cl	506–77–4	P033
Cycasin	beta–D–Glucopyranoside, (methyl–ONN–azoxy)methyl	14901–08–7	
Cycloate	Carbamothioic acid, cyclohexylethyl–, S–ethyl ester	1134–23–2	none
2–Cyclohexyl–4,6– dinitrophenol	Phenol, 2–cyclohexyl–4, 6–dinitro–	131–89–5	P034
Cyclophosphamide	2H–1,3,2–0xazaphosphorin– 2–amine, N,N–bis(2–chloro– ethyl)tetrahydro–, 2–oxide	50–18–0	U058
2,4–D	Acetic acid, (2,4–dichloro– phenoxy)–	94–75–7	U240
2,4–D, salts and esters			U240
Daunomycin	5,12–Naphthacenedione, 8– acetyl–10–[(3–amino–2,3, 6–trideoxy–alpha–L–lyxo– hexopyranosyl)oxy]–7,8,9,10– tetrahydro–6,8,11–trihy– droxy–1–methoxy–, (8S–cis)–	20830–81–3	U059
Dazomet	2H–1,3,5–thiadiazine–2– thione, tetrahydro–3,5–dimethyl	533–74–4	none
DDD	Benzene, 1,1′–(2,2–dichlo– roethylidene)bis[4–chloro–	72–54–8	U060
DDE	Benzene, 1,1′–(dichloro– ethenylidene)bis[4–chloro–	72–55–9	
DDT	Benzene, 1,1′–(2,2,2–tri– chloroethylidene)bis[4– chloro–	50–29–3	U061
Diallate	Carbamothioic acid, bis (1–methylethyl)–, S–(2,3– dichloro–2–propenyl) ester	2303–16–4	U062
Dibenz[a,h]acridine	Same	226–36–8	
Dibenz[a,j]acridine	Same	224–42–0	
Dibenz[a,h]anthracene	Same	53–70–3	U063
7H—Dibenzo[c,g] carbazole	Same	194–59–2	
Dibenzo[a,e]pyrene	Naphtho[1,2,3,4–def] chrysene	192–65–4	
Dibenzo[a,h]pyrene	Dibenzo[b,def]chrysene	189–64–0	
Dibenzo[a,i]pyrene	Dibenzo[rst]pentaphene	189–55–9	U064
1,2–Dibromo–3– chloropropane	Propane, 1,2–dibromo–3– chloro–	96–12–8	U066
Dibutyl phthalate	1,2–Benzenedicarboxylic acid, dibutylester	84–74–2	U069
o–Dichlorobenzene	Benzene, 1,2–dichloro–	95–50–1	U070
m–Dichlorobenzene	Benzene, 1,3–dichloro–	541–73–1	U071
p–Dichlorobenzene	Benzene, 1,4–dichloro–	106–46–7	U072
Dichlorobenzene, N.O.S.[1]	Benzene, dichloro–	25321–22–6	
3,3′–Dichloro benzidine	[1,1′–Biphenyl]–4,4′– diamine, 3,3′–dichloro–	91–94–1	U073
1,4–Dichloro–2– butene	2–Butene, 1,4–dichloro–	764–41–0	U074
Dichlorodifluoro– methane	Methane, dichlorodifluoro–	75–71–8	U075
Dichloroethylene, N.O.S.[1]	Dichloroethylene	25323–30–2	
1,1–Dichloro– ethylene	Ethene, 1,1–dichloro–	75–35–4	U078
1,2–Dichloro– ethylene	Ethene, 1,2–dichloro–, (E)–	156–60–5	U079
Dichloroethyl ether	Ethane, 1,1′oxybis [2–chloro–	111–44–4	U025
Dichloroisopropyl ether	Propane, 2,2′–oxybis [1–chloro–	108–60–1	U027
Dichloromethoxy ethane	Ethane, 1,1′–[methylenebis (oxy)]bis[2–chloro–	111–91–1	U024
Dichloromethyl ether	Methane, oxybis[chloro–	542–88–1	P016
2,4–Dichlorophenol	Phenol, 2,4–dichloro–	120–83–2	U081
2,6–Dichlorophenol	Phenol, 2,6–dichloro–	87–65–0	U082
Dichlorophenyl– arsine	Arsonous dichloride, phenyl–	696–28–6	P036
Dichloropropane, N.O.S.[1]	Propane, dichloro–	26638–19–7	
Dichloropropanol, N.O.S.[1]	Propanol, dichloro–	26545–73–3	
Dichloropropene, N.O.S.[1]	1–Propene, dichloro–	26952–23–8	
1,3–Dichloropropene	1–Propene, 1,3–dichloro–	542–75–6	U084
Dieldrin	2,7:3,6–Dimethanonaphth [2,3–b]oxirene, 3,4,5,6, 9,9–hexachloro–1a,2,2a,3, 6,6a,7,7a–octahydro–, (1aalpha,2beta,2aalpha, 3beta,6beta,6aalpha, 7beta,7aalpha)–	60–57–1	P037
1,2:3,4–Diepoxy butane	2,2′–Bioxirane	1464–53–5	U085
Diethylarsine	Arsine, diethyl–	692–42–2	P038
1,4–Diethyleneoxide	1,4–Dioxane	123–91–1	U108
Diethylene glycol, dicarbamate	Ethanol, 2,2′–oxybis–, discarbamate	5952–26–1	U395
Diethylhexyl phthalate	1,2–Benzenedicarboxylic acid, bis(2–ethylhexyl) ester	117–81–7	U028
N,N′–Diethylhydrazine	Hydrazine, 1,2–diethyl	1615–80–1	U086
O,O–Diethyl S–methyl dithiophosphate	Phosphorodithioic acid, O,O–diethyl S–methyl ester	3288–58–2	U087
Diethyl–p–nitrophenyl phosphate	Phosphoric acid, diethyl 4–nitrophenyl ester	311–45–5	P041
Diethyl phthalate	1,2–Benzenedicarboxylic acid, diethyl ester	84–66–2	U088
O,O–Diethyl O–pyra– zinyl phosphoro– thioate	Phosphorothioic acid, O,O–diethyl O–pyrazinyl ester	297–97–2	P040
Diethylstilbestrol	Phenol, 4,4′–(1,2–diethyl– 1,2–ethenediyl)bis–, (E)–	56–53–1	U089
Dihydrosafrole	1,3–Benzodioxole, 5–propyl–	94–58–6	U090
Diisopropyl– fluorophosphate (DFP)	Phosphorofluoridic acid, bis(1–methylethyl) ester	55–91–4	P043
Dimethoate	Phosphorodithioic acid, O,O–dimethyl S–[2– (methylamino)–2– oxoethyl] ester	60–51–5	P044
3,3′–Dimethoxy Benzidine	[1,1′–Biphenyl]–4,4′– diamine, 3,3′–dimethoxy–	119–90–4	U091
p–Dimethylaminoazo– benzene	Benzenamine, N,N–dimethyl– 4–(phenylazo)–	60–11–7	U093
7,12–Dimethylbenz[a] anthracene	Benz[a]anthracene, 7,12–dimethyl–	57–97–6	U094
3,3′–Dimethylbenzidine	[1,1′–Biphenyl]–4, 4′–diamine, 3,3′–dimethyl–	119–93–7	U095
Dimethylcarbamoyl chloride	Carbamic chloride, dimethyl–	79–44–7	U097
1,1–Dimethylhydrazine	Hydrazine, 1,1–dimethyl–	57–14–7	U098
1,2–Dimethylhydrazine	Hydrazine, 1,2–dimethyl–	540–73–8	U099
alpha, alpha–Dimethyl– phenethylamine	Benzeneethanamine, alpha, alpha–dimethyl–	122–09–8	P046

Common Name	Chemical Abstracts Name	Chemical Abstracts No.	EPA Haz. Waste No.
2,4-Dimethylphenol	Phenol, 2,4-dimethyl-	105-67-9	U101
Dimethyl phthalate	1,2-Benzenedicarboxylic acid, dimethyl ester	131-11-3	U102
Dimethyl sulfate	Sulfuric acid, dimethyl ester	77-78-1	U103
Dimetilan	Carbamic acid, dimethyl-, 1- [(dimethylamino) carbonyl]-5-methyl-1H-pyrazol-3-yl ester	644-64-4	P191
Dinitrobenzene, N.O.S.[1]	Benzene, dinitro-	25154-54-5	
4,6-Dinitro-o-cresol	Phenol, 2-methyl-4,6-dinitro-	534-52-1	P047
4,6-Dinitro-o-cresol salts			P047
2,4-Dinitrophenol	Phenol, 2,4-dinitro-	51-28-5	P048
2,4-Dinitrotoluene	Benzene, 1-methyl-2,4-dinitro-	121-14-2	U105
2,6-Dinitrotoluene	Benzene, 2-methyl-1,3-dinitro-	606-20-2	U106
Dinoseb	Phenol, 2-(1-methylpropyl)-4,6-dinitro-	88-85-7	P020
Di-n-octyl phthalate	1,2-Benzenedicarboxylic acid, dioctyl ester	117-84-0	U017
Diphenylamine	Benzenamine, N-phenyl-	122-39-4	
1,2-Diphenylhydrazine	Hydrazine, 1,2-diphenyl-	122-66-7	U109
Di-n-propylnitrosamine	1-Propanamine, N-nitroso-N-propyl-	621-64-7	U111
Disulfiram	Thioperoxydicarbonic, diamide, tetraethyl	97-77-8	none
Disulfoton	Phosphorodithioic acid, O,O-diethyl S-[2-(ethylthio)ethyl] ester	298-04-4	P039
Dithiobiuret	Thioimidodicarbonic diamide $[(H_2N)C(S)]_2NH$	541-53-7	P049
Endosulfan	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a- hexahydro-, 3-oxide	115-29-7	P050
Endothall	7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid	145-73-3	P088
Endrin	2,7:3,6-Dimethanonaphth [2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha,2beta,2abeta,3alpha,6alpha,6abeta,7beta, 7aalpha)-	72-20-8	P051
Endrin metabolites			P051
Epichlorohydrin	Oxirane, (chloromethyl)-	106-89-8	U041
Epinephrine	1,2-Benzenediol, 4-[1-hydroxy-2-(methylamino) ethyl]-,(R)-	51-43-4	P042
EPTC	Carbamothioic acid, dipropyl-, S-ethyl ester	759-94-4	none
Ethyl carbamate (urethane)	Carbamic acid, ethyl ester	51-79-6	U238
Ethyl cyanide	Propanenitrile	107-12-0	P101
Ethyl Ziram	Zinc, bis(diethylcarbamodithioato-S,S′)-	14324-55-1	none
Ethylenebisdithiocarbamic acid	Carbamodithioic acid, 1,2-ethanediylbis-	111-54-6	U114
Ethylenebisdithiocarbamic acid, salts and esters			U114
Ethylene dibromide	Ethane, 1,2-dibromo-	106-93-4	U067
Ethylene dichloride	Ethane, 1,2-dichloro-	107-06-2	U077
Ethylene glycol monoethyl ether	Ethanol, 2-ethoxy-	110-80-5	U359
Ethyleneimine	Aziridine	151-56-4	P054
Ethylene oxide	Oxirane	75-21-8	U115
Ethylenethiourea	2-Imidazolidinethione	96-45-7	U116
Ethylidene dichloride	Ethane, 1,1-dichloro-	75-34-3	U076
Ethyl methacrylate	2-Propenoic acid, 2-methyl-, ethyl ester	97-63-2	U118
Ethyl methanesulfonate	Methanesulfonic acid, ethyl ester	62-50-0	U119
Famphur	Phosphorothioic acid, 0-[4-[(dimethylamino) sulfonyl] phenyl] O,O-dimethyl ester	52-85-7	P097
Ferbam	Iron, tris(dimethylcarbamodithioato-S,S′)-,	14484-64-1	none
Fluoranthene	Same	206-44-0	U120
Fluorine	Same	7782-41-4	P056
Fluoroacetamide	Acetamide, 2-fluoro-	640-19-7	P057
Fluoroacetic acid, sodium salt	Acetic acid, fluoro-, sodium salt	62-74-8	P058
Formaldehyde	Same	50-00-0	U122
Formetanate hydrochloride	Methanimidamide, N,N-dimethyl-N′-[3-[[(methylamino) carbonyl]oxy] phenyl]-,monohydrochloride	23422-53-9	P198
Formic acid	Same	64-18-6	U123
Formparanate	Methanimidamide, N,N-dimethyl-N′-[2-methyl-4-[[(methylamino) carbonyl]oxy]phenyl]-.	17702-57-7	P197
Glycidylaldehyde	Oxiranecarboxyaldehyde	765-34-4	U126
Halomethanes, N.O.S.[1]			
Heptachlor	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-	76-44-8	P059
Heptachlorodibenzofurans			
Heptachlorodibenzo-p-dioxins			
Heptachlor epoxide	2,5-Methano-2H-indeno [1,2-b]oxirene,2,3,4,5,6,7,7-heptachloro-1a,1b,5,5a,6,6a-hexahydro-(1aalpha,1bbeta,2alpha,5alpha,5abeta,6beta,6aalpha)-	1024-57-3	
Heptachlor epoxide (alpha, beta, and gamma isomers)			
Hexachlorobenzene	Benzene, hexachloro-	118-74-1	U127
Hexachlorobutadiene	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	87-68-3	U128
Hexachlorocyclopentadiene	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	77-47-4	U130
Hexachlorodibenzo-p-dioxins			
Hexachlorodibenzofurans			
Hexachloroethane	Ethane, hexachloro-	67-72-1	U131
Hexachlorophene	Phenol, 2,2′-methylenebis [3,4,6-trichloro-	70-30-4	U132
Hexachloropropene	1-Propene, 1,1,2.3,3,3,-hexachloro-	1888-71-7	U243
Hexaethyl tetraphosphate	Tetraphosphoric acid, hexaethyl ester	757-58-4	P062
Hydrazine	Same	302-01-2	U133
Hydrogen cyanide	Hydrocyanic acid	74-90-8	P063
Hydrogen fluoride	Hydrofluoric acid	7664-39-3	U134
Hydrogen sulfide	Hydrogen sulfide H_2S	7783-06-4	U135
Indeno[1,2,3-cd]-pyrene	Same	193-39-5	U137
3-Iodo-2-propynyl n-butylcarbamate	Carbamic acid, butyl-, . 3-iodo-2-propynyl ester	55406-53-6	none
Isobutyl alcohol	1-Propanol, 2-methyl-	78-83-1	U140
Isodrin	1,4,5,8-Dimethanonaphthalene,1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexa-hydro-,(1alpha,4alpha,4abeta,5beta,8beta,8abeta)-	465-73-6	P060
Isolan	Carbamic acid, dimethyl-,3-methyl-1-(1-methylethyl)-1H-pyrazol-5-yl ester	119-38-0	P192
Isosafrole	1,3-Benzodioxole, 5-(1-propenyl)-	120-58-1	U141

Common Name	Chemical Abstracts Name	Chemical Abstracts No.	EPA Haz. Waste No.
Kepone	1,3,4–Metheno–2H–cyclobuta [cd]pentalen–2–one,1,1a, 3,3a,4,5,5,5a,5b,6–deca– chlorooctahydro–	143–50–0	U142
Lasiocarpine	2–Butenoic acid, 2–methyl–, 7–[[2,3–dihydroxy–2– (1–methoxyethyl)–3–methyl– 1–oxobutoxy]methyl]–2,3,5, 7a–tetrahydro–1H–pyrroli– zin–1–yl ester,[1S–[1alpha (Z),7(2S*,3R*),7aalpha]]–	303–34–4	U143
Lead	Same	7439–92–1	
Lead compounds, N.O.S.[1]			
Lead acetate	Acetic acid, lead (2+) salt	301–04–2	U144
Lead phosphate	Phosphoric acid, lead (2+) salt (2:3)	7446–27–7	U145
Lead subacetate	Lead, bis(acetato–O) tetrahydroxytri–	1335–32–6	U146
Lindane	Cyclohexane, 1,2,3,4,5,6– hexachloro–, (1alpha, 2alpha,3beta,4alpha, 5alpha,6beta)	58–89–9	U129
Maleic anhydride	2,5–Furandione	108–31–6	U147
Maleic hydrazide	3,6–Pyridazinedione, 1,2– dihydro–	123–33–1	U148
Malononitrile	Propanedinitrile	109–77–3	U149
Manganese dimethyldithiocarbamate	Manganese, bis(dimethylcarbamodithioato– S,S′)–,	15339–36–3	P196
Melphalan	L–Phenylalanine, 4–[bis(2– chloroethyl)aminol]–	148–82–3	U150
Mercury	Same	7439–97–6	U151
Mercury compounds, N.O.S.[1]			
Mercury fulminate	Fulminic acid, mercury (2+) salt	628–86–4	P065
Metam Sodium	Carbamodithioic acid, methyl–, monosodium salt	137–42–8	none
Methacrylonitrile	2–Propenenitrile, 2–methyl–	126–98–7	U152
Methapyrilene	1,2–Ethanediamine, N,N– dimethyl–N′–2–pyridinyl– N′–(2–thienylmethyl)–	91–80–5	U155
Methiocarb	Phenol, (3,5–dimethyl– 4–(methylthio)–, methylcarbamate	2032–65–7	P199
Methomyl	Ethanimidothioic acid, N– [[(methylamino)carbonyl] oxy]–, methyl ester	16752–77–5	P066
Methoxychlor	Benzene, 1,1′–(2,2,2–tri– chloroethylidene)bis [4–methoxy–	72–43–5	U247
Methyl bromide	Methane, bromo–	74–83–9	U029
Methyl chloride	Methane, chloro–	74–87–3	U045
Methyl chlorocarbonate	Carbonochloridic acid, methyl ester	79–22–1	U156
Methyl chloroform	Ethane, 1,1,1–trichloro–	71–55–6	U226
3–Methylcholanthrene	Benz[j]aceanthrylene, 1,2– dihydro–3–methyl–	56–49–5	U157
4,4′–Methylenebis (2–chloroaniline)	Benzenamine, 4,4′–methyl– enebis[2–chloro–	101–14–4	U158
Methylene bromide	Methane, dibromo–	74–95–3	U068
Methylene chloride	Methane, dichloro–	75–09–2	U080
Methyl ethyl ketone (MEK)	2–Butanone	78–93–3	U159
Methyl ethyl ketone peroxide	2–Butanone, peroxide	1338–23–4	U160
Methyl hydrazine	Hydrazine, methyl–	60–34–4	P068
Methyl iodide	Methane, iodo–	74–88–4	U138
Methyl isocyanate	Methane, isocyanato–	624–83–9	P064
2–Methyllactonitrile	Propanenitrile, 2–hydroxy– 2–methyl–	75–86–5	P069
Methyl methacrylate	2–Propenoic acid, 2– methyl–, methyl ester	80–62–6	U162
Methyl methanesul– fonate	Methanesulfonic acid, methyl ester	66–27–3	
Methyl parathion	Phosphorothioic acid, 0,0– dimethyl 0–(4–nitrophenyl) ester	298–00–0	P071
Methylthiouracil	4(1H)–Pyrimidinone, 2,3– dihydro–6–methyl–2– thioxo–	56–04–2	U164
Metolcarb	Carbamic acid, methyl–, 3–methylphenyl ester	1129–41–5	P190
Mexacarbate	Phenol, 4–(dimethylamino)–3,5– dimethyl–,methylcarbamate (ester)	315–18–4	P128
Mitomycin C	Azirino[2,3′:3,4]pyrrolo [1,2–a]indole–4,7–dione, 6–amino–8–[[(aminocarbonyl) oxy]methyl]– 1,1a,2,8,8a, 8b–hexahydro–8a–methoxy– 5–methyl–, [1aS–(1aalpha, 8beta,8aalpha,8balpha)]–	50–07–7	U010
MNNG	Guanidine, N–methyl–N′– nitro–N–nitroso–	70–25–7	U163
Molinate	1H–Azepine–1–carbothioic acid, hexahydro–, S–ethyl ester	2212–67–1	none
Mustard gas	Ethane, 1,1′–thiobis[2– chloro–	505–60–2	
Naphthalene	Same	91–20–3	U165
1,4–Naphthoquinone	1,4–Naphthalenedione	130–15–4	U166
alpha–Naphthylamine	1–Naphthalenamine	134–32–7	U167
beta–Naphthylamine	2–Naphthalenamine	91–59–8	U168
alpha–Naphthylthiourea	Thiourea, 1–naphthalenyl–	86–88–4	P072
Nickel	Same	7440–02–0	
Nickel compounds, N.O.S.[1]			
Nickel carbonyl	Nickel carbonyl $Ni(CO)_4$, (T–4)–	13463–39–3	P073
Nickel cyanide	Nickel cyanide $Ni(CN)_2$	557–19–7	P074
Nicotine	Pyridine, 3–(1–methyl–2– pyrrolidinyl)–, (S)–	54–11–5	P075
Nicotine salts			P075
Nitric oxide	Nitrogen oxide NO	10102–43–9	P076
p–Nitroaniline	Benzenamine, 4–nitro–	100–01–6	P077
Nitrobenzene	Benzene, nitro–	98–95–3	U169
Nitrogen dioxide	Nitrogen oxide NO_2	10102–44–0	P078
Nitrogen mustard	Ethanamine, 2–chloro–N– (2–chloroethyl)–N–methyl–	51–75–2	
Nitrogen mustard, hydrochloride salt			
Nitrogen mustard N–oxide	Ethanamine, 2–chloro–N– (2–chloroethyl)–N–methyl–, N–oxide	126–85–2	
Nitrogen mustard, N–oxide, hydrochloride salt			
Nitroglycerin	1,2,3–Propanetriol, trinitrate	55–63–0	P081
p–Nitrophenol	Phenol, 4–nitro–	100–02–7	U170
2–Nitropropane	Propane, 2–nitro–	79–46–9	U171
Nitrosamines, N.O.S.[1]		35576–91–1	
N–Nitrosodi–n– butylamine	1–Butanamine, N–butyl–N– nitroso–	924–16–3	U172
N–Nitrosodiethanol– amine	Ethanol, 2,2′–(nitroso– imino)bis–	1116–54–7	U173
N–Nitrosodiethylamine	Ethanamine, N–ethyl–N– nitroso–	55–18–5	U174
N–Nitrosodimethyl– amine	Methanamine, N–methyl–N– nitroso–	62–75–9	P082
N–Nitroso–N–ethylurea	Urea, N–ethyl–N–nitroso–	759–73–9	U176
N–Nitrosomethylethyl– amine	Ethanamine, N–methyl–N– nitroso–	10595–95–6	
N–Nitroso–N–methyl– urea	Urea, N–methyl–N– nitroso	684–93–5	U177
N–Nitroso–N–methyl– urethane	Carbamic acid, methylnitroso–, ethyl ester	615–53–2	U178
N–Nitrosomethylvinyl– amine	Vinylamine, N–methyl–N– nitroso–	4549–40–0	P084

Common Name	Chemical Abstracts Name	Chemical Abstracts No.	EPA Haz. Waste No.
N–Nitrosomorpholine	Morpholine, 4–nitroso–	59–89–2	
N–Nitrosonornicotine	Pyridine, 3–(1–nitroso–2–pyrrolidinyl)–, (S)–	16543–55–8	
N–Nitrosopiperidine	Piperidine, 1–nitroso–	100–75–4	U179
N–Nitrosopyrrolidine	Pyrrolidine, 1–nitroso–	930–55–2	U180
N–Nitrososarcosine	Glycine, N–methyl–N–nitroso–	13256–22–9	
5–Nitro–o–toluidine	Benzenamine, 2–methyl–5–nitro–	99–55–8	U181
Octachlorodibenzo–p–dioxin (OCDD)	1,2,3,4,6,7,8,9–Octachlorodibenzo–p–dioxin	3268–87–9	None
Octachlorodibenzofuran (OCDF)	1,2,3,4,6,7,8,9–Octachlorodibenofuran	39001–02–0	None
Octamethylpyrophosphoramide	Diphosphoramide, octamethyl–	152–16–9	P085
Osmium tetroxide	Osmium oxide OsO_4, (T–4)–	20816–12–0	P087
Oxamyl	Ethanimidothioc acid, 2–(dimethylamino)–N–[[(methylamino)carbonyl]oxy]–2–oxo–, methyl ester	23135–22–0	P194
Paraldehyde	1,3,5–Trioxane, 2,4,6–trimethyl–	123–63–7	U182
Parathion	Phosphorothioic acid, 0,0–diethyl 0–(4–nitrophenyl) ester	56–38–2	P089
Pebulate	Carbamothioic acid, butylethyl–, S–propyl ester	1114–71–2	none
Pentachlorobenzene	Benzene, pentachloro–	608–93–5	U183
Pentachlorodibenzo–p–dioxins			
Pentachlorodibenzofurans			
Pentachloroethane	Ethane, pentachloro–	76–01–7	U184
Pentachloronitrobenzene (PCNB)	Benzene, pentachloronitro–	82–68–8	U185
Pentachlorophenol	Phenol, pentachloro–	87–86–5	See F027
Phenacetin	Acetamide, N–(4–ethoxyphenyl)–	62–44–2	U187
Phenol	Same	108–95–2	U188
Phenylenediamine	Benzenediamine	25265–76–3	
Phenylmercury acetate	Mercury, (acetato–O) phenyl	62–38–4	P092
Phenylthiourea	Thiourea, phenyl–	103–85–5	P093
Phosgene	Carbonic dichloride	75–44–5	P095
Phosphine	Same	7803–51–2	P096
Phorate	Phosphorodithioic acid, O,O–diethyl S–[(ethylthio)methyl] ester	298–02–2	P094
Phthalic acid esters, N.O.S.[1]			
Phthalic anhydride	1,3–Isobenzofurandione	85–44–9	U190
2–Picoline	Pyridine, 2–methyl–	109–06–8	U191
Physostigmine	Pyrrolo[2,3–b]indol–5–01,1,2,3,3a,8,8a–hexahydro–1,3a,8–trimethyl–, methylcarbamate (ester), (3aS–cis)–	57–47–6	P204
Physostigmine Salicylate	Benzoic acid, 2–hydroxy–, compd. with (3aS–cis)—1,2,3,3a,8,8a–hexahydro–1,3a,8–trimethylpyrrolo[2,3–b]indol–5–yl methylcarbamate ester (1:1).	57–64–7	P188
Polychlorinated biphenyls, N.O.S.[1]			
Potassium cyanide	Potassium cyanide K(CN)	151–50–8	P098
Potassium dimethyldithiocarbamate	Carbamodithioic acid, dimethyl, potassium salt	128–03–0	none
Potassium n–hydroxymethyl – n–methyl–dithiocarbamate	Carbamodithioic acid, (hydroxyymethyl)methyl–, monopotassium salt	51026–28–9	none
Potassium n–methyldithiocarbamate	Carbamodithioic acid, methyl–monopotassium salt	137–41–7	none
Potassium pentachlorophenate	Pentachlorophenol, potassium salt	7778736	none
Potassium silver cyanide	Argentate(1–), bis(cyano–C)–, potassium	506–61–6	P099
Promecarb	Phenol, 3–methyl–5–(1–methylethyl)–, methyl carbamate	2631–37–0	P201
Pronamide	Benzamide, 3,5–dichloro–N–(1,1–dimethyl–2–propynyl)–	23950–58–5	U192
1,3–Propane sultone	1,2–Oxathiolane, 2,2–dioxide	1120–71–4	U193
n–Propylamine	1–Propanamine	107–10–8	U194
Propargyl alcohol	2–Propyn–1–ol	107–19–7	P102
Propham	Carbamic acid, phenyl–, 1–methylethyl ester	122–42–9	U373
Propoxur	Phenol, 2–(1–methylethoxy)–, methylcarbamate	114–26–1	U411
Propylene dichloride	Propane, 1,2–dichloro–	78–87–5	U083
1,2–Propylenimine	Aziridine, 2–methyl–	75–55–8	P067
Propylthiouracil	4(1H)–Pyrimidinone, 2,3–dihydro–6–propyl–2–thioxo–	51–52–5	
Prosulfocarb	Carbamothioic acid, dipropyl–,S–(phenylmethyl) ester	52888–80–9	U387
Pyridine	Same	110–86–1	U196
Reserpine	Yohimban–16–carboxylic acid, 11,17–dimethoxy–18–[(3,4,5–trimethoxybenzoyl)oxy]–methyl ester, (3beta,16beta,17alpha,18beta,20alpha)–	50–55–5	U200
Resorcinol	1,3–Benzenediol	108–46–3	U201
Saccharin	1,2–Benzisothiazol–3(2H)–one, 1,1–dioxide	81–07–2	U202
Saccharin salts			U202
Safrole	1,3–Benzodioxole, 5–(2–propenyl)–	94–59–7	U203
Selenium	Same	7782–49–2	
Selenium compounds, N.O.S.[1]			
Selenium dioxide	Selenious acid	7783–00–8	U204
Selenium sulfide	Selenium sulfide SeS_2	7488–56–4	U205
Selenium, tetrakis (dimethyldithiocarbamate)	Carbamodithioic acid, dimethyl–, tetraanhydrosulfide with orthothioselenious acid	144–34–3	none
Selenourea	Same	630–10–4	P103
Silver	Same	7440–22–4	
Silver compounds, N.O.S.[1]			
Silver cyanide	Silver cyanide Ag(CN)	506–64–9	P104
Silvex (2,4,5–TP)	Propanoic acid, 2–(2,4,5–trichlorophenoxy)–	93–72–1	See F027
Sodium cyanide	Sodium cyanide Na(CN)	143–33–9	P106
Sodium dibutyldithiocarbamate	Carbamodithioic acid, dibutyl, sodium salt	136–30–1	none
Sodium diethyldithiocarbamate	Carbamodithioic acid, diethyl–, sodium salt	148–18–5	none
Sodium dimethyldithiocarbamate	Carbamodithioic acid, dimethyl–, sodium salt	128–04–1	none
Sodium pentachlorophenate	Pentachlorophenol, sodium salt	131522	none
Streptozotocin	D–Glucose, 2–deoxy–2–[[(methylnitrosoamino)carbonyl]amino]–	18883–66–4	U206
Strychnine	Strychnidin–10–one	57–24–9	P108
Strychnine salts			P108
Sulfallate	Carbamodithioic acid, diethyl–, 2–chloro–2–propenyl ester	95–06–7	none
TCDD	Dibenzo[b,e][1,4]dioxin, 2,3,7,8–tetrachloro–	1746–01–6	
Tetrabutylthiuram disulfide	Thioperoxydicarbonic diamide, tetrabutyl	1634–02–2	none
1,2,4,5–Tetrachlorobenzene	Benzene, 1,2,4,5–tetrachloro	95–94–3	U207
Tetrachlorodibenzo–p–dioxins			
Tetrachlorodibenzofurans			
Tetrachloroethane, N.O.S.[1]	Ethane, tetrachloro–, N.O.S.	25322–20–7	

Common Name	Chemical Abstracts Name	Chemical Abstracts No.	EPA Haz. Waste No.
1,1,1,2–Tetrachloro–ethane	Ethane, 1,1,1,2–tetra–chloro	630–20–6	U208
1,1,2,2–Tetrachloro–ethane	Ethane, 1,1,2,2–tetra–chloro	79–34–5	U209
Tetrachloroethylene	Ethene, tetrachloro–	127–18–4	U210
2,3,4,6–Tetrachloro–phenol	Phenol, 2,3,4,6–tetra–chloro–	58–90–2	See F027
2,3,4,6–tetrachlorophenol, potassium salt	same	53535276	none
2,3,4,6–tetrachlorophenol, sodium salt	same	25567559	none
Tetraethyldithiopyro–pyrophosphate	Thiodophosphoric acid, tetraethyl ester	3689–24–5	P109
Tetramethylthiuram monosulfide	Bis(dimethylthiocarbamoyl) sulfide	97–74–5	none
Tetranitromethane	Methane, tetranitro–	509–14–8	P112
Thallium	Same	7440–28–0	
Thallium compounds, N.O.S.[1]			
Thallic oxide	Thallium oxide Tl_2O_3	1314–32–5	P113
Thallium (I) acetate	Acetic acid, thallium (1+) salt	563–68–8	U214
Thallium (I) carbonate	Carbonic acid, dithallium (1+) salt	6533–73–9	U215
Thallium (I) chloride	Thallium chloride TlCl	7791–12–0	U216
Thallium (I) nitrate	Nitric acid, thallium (1+) salt	10102–45–1	U217
Thallium selenite	Selenious acid, dithallium (1+) salt	12039–52–0	P114
Thallium (I) sulfate	Sulfuric acid, dithallium (1+) salt	7446–18–6	P115
Thioacetamide	Ethanethioamide	62–55–5	U218
Thiodicarb	Ethanimidothioic acid, N,N′–[thiobis [(methylimino) carbonyloxy]] bis–, dimethyl ester.	59669–26–0	U410
Thiofanox	2–Butanone, 3,3–dimethyl–1–(methylthio)–,O–[(methyl–amino)carbonyl]oxime	39196–18–4	P045
Thiomethanol	Methanethiol	74–93–1	U153
Thiophanate–methyl	Carbamic acid, [1,2–phyenylenebis (iminocarbonothioyl)] bis–, dimethyl ester	23564–05–8	U409
Thiophenol	Benzenethiol	108–98–5	P014
Thiosemicarbazide	Hydrazinecarbothioamide	79–19–6	P116
Thiourea	Same	62–56–6	U219
Thiram	Thioperoxydicarbonic diamide $[(H_2N)C(S)]_2S_2$, tetramethyl–	137–26–8	U244
Tirpate	1,3–Dithiolane–2–carboxaldehyde, 2,4,–dimethyl–, O–[(methylamino) carbonyl] oxime.	26419–73–8	P185
Toluene	Benzene, methyl–	108–88–3	U220
Toluenediamine	Benzenediamine, ar–methyl–	25376–45–8	U221
Toluene–2,4–diamine	1,3–Benzenediamine, 4–methyl	95–80–7	
Toluene–2,6–diamine	1,3–Benzenediamine, 2–methyl	823–40–5	
Toluene–3,4–diamine	1,2–Benzenediamine, 4–methyl	496–72–0	
Toluene diisocyanate	Benzene, 1,3–diisocyanato–methyl–	26471–62–5	U223
o–Toluidine	Benzenamine, 2–methyl–	95–53–4	U328
o–Toluidine hydrochloride	Benzenamine, 2–methyl–, hydrochloride	636–21–5	U222
p–Toluidine	Benzenamine, 4–methyl	106–49–0	U353
Toxaphene	Same	8001–35–2	P123
Triallate	Carbamothioic acid, bis(1–methylethyl)–, S–(2,3,3–trichloro–2–propenyl) ester	2303–17–5	U389
1,2,4–Trichlorobenzene	Benzene, 1,2,4–trichloro	120–82–1	
1,1,2–Trichloroethane	Ethane, 1,1,2–trichloro	79–00–5	U227
Trichloroethylene	Ethene, trichloro	79–01–6	U228
Trichloromethanethiol	Methanethiol, trichloro–	75–70–7	P118
Trichloromonofluoro–methane	Methane, trichlorofluoro–	75–69–4	U121
2,4,5–Trichlorophenol	Phenol, 2,4,5–trichloro–	95–95–4	See F027
2,4,6–Trichlorophenol	Phenol, 2,4,6–trichloro–	88–06–2	See F027
2,4,5–T	Acetic acid, (2,4,5–trichlorophenoxy)–	93–76–5	See F027
Trichloropropane, N.O.S.[1]		25735–29–9	
1,2,3–Trichloropropane	Propane, 1,2,3–trichloro–	96–18–4	
O,O,O–Triethyl phos–phorothioate	Phosphorothioic acid, 0,0,O–triethyl ester	126–68–1	
Triethylamine	Ethanamine, N,N–diethyl–	121–44–8	U404
1,3,5–Trinitrobenzene	Benzene, 1,3,5,–trinitro	99–35–4	U234
Tris(1–aziridinyl) phosphine sulfide	Aziridine, 1,1′,1′–phos–phinothioylidynetris–	52–24–4	
Tris(2,3–dibromo–propyl) phosphate	1–Propanol, 2,3–dibromo–, phosphate (3:1)	126–72–7	U235
Trypan blue	2,7–Naphthalenedisulfonic acid, 3,3′–[(3,3′–dimethyl[1,1′–biphenyl]–4,4′–diyl)bis(azo)]bis [5–amino–4–hydroxy–, tetrasodium salt]	72–57–1	U236
Uracil mustard	2,4–(1H,3H)–Pyrimidine–dione,5–[bis(2–chloroethyl) amino]–	66–75–1	U237
Vanadium pentoxide	Vanadium oxide V_2O_5	1314–62–1	P120
Vernolate	Carbamothioic acid, dipropyl–, S–propyl ester	1929–77–7	none
Vinyl chloride	Ethene, chloro–	75–01–4	U043
Warfarin	2H–1–Benzopyran–2–one, 4–hydroxy–3–(3–oxo–1–phenylbutyl)–, when present at concentrations of 0.3 or less	81–81–2	U248
Warfarin	2H–1–Benzopyran–2–one, 4–hydroxy–3–(3–oxo–1–phenylbutyl)–, when present at concentrations greater than 0.3	81–81–2	P001
Warfarin salts when present at concen–trations of 0.3% or less			U248
Warfarin salts when present at concen–trations greater than 0.3			P001
Zinc cyanide	Zinc cyanide $Zn(CN)_2$	557–21–1	P121
Zinc phosphide	Zinc phosphide Zn_3P_2, when present at concentra–tions greater than 10	1314–84–7	P122
Zinc phosphide	Zinc phosphide Zn_3P_2 when present at concentra–tions of 10% or less	1314–84–7	U249
Ziram	Zinc, bis(dimethylcarbamodithioato–S,S′)–, (T–4)–	137–30–4	P205

[1]The abbreviation N.O.S. (not otherwise specified) signifies those members of the general class not specifically listed by name in this appendix.

NOTE: Authority cited: Sections 25140, 25150, 25159 and 58012, Health and Safety Code. Reference: Sections 25140, 25150 and 25159, Health and Safety Code; and 40 CFR Part 261 Appendix VIII.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Amendment adding Benzo(k)fluoranthene, Heptachlorodibenzofurans and Heptachlorodibenzo–p–dioxins and amendment of NOTE filed 7–29–94; operative 8–29–94 (Register 94, No. 30).
3. Change without regulatory effect amending Benzo(k)fluoranthene entry filed 12–28–95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 52).
4. Amendment of appendix VIII and NOTE filed 10–13–98; operative 11–12–98 (Register 98, No. 42).

5. Change without regulatory effect adding new listing U408 filed 5–17–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 21).
6. Change without regulatory effect removing listing U408 (2,4,6–Tribromophenol), adding listings for Octachlorodibenzo–p–dioxin and Octachlorodibenzofuran and amending NOTE filed 7–3–2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 27).

Appendix X

List of Chemical Names and Common Names for Hazardous Wastes and Hazardous Materials

(a) This subdivision sets forth a list of chemicals which create a presumption that a waste is a hazardous waste.If a waste consists of or contains a chemical listed in this subdivision, the waste is presumed to be a hazardous waste unless it is determined that the waste is not a hazardous waste pursuant to the procedures set forth in section 66262.11. The hazardous characteristics which serve as a basis for listing the chemicals are indicated in the list as follows:(X) toxic, (C) corrosive, (I) ignitable and (R) reactive.A chemical denoted with an asterisk is presumed to be an extremely hazardous waste unless it does not exhibit any of the criteria set forth in section 66261.110 and section 66261.113. Trademark chemical names are indicated by all capital letters.

1. Acetaldehyde (X,I)
2. Acetic acid (X,C,I)
3. Acetone, Propanone (I)
4. Acetone cyanohydrin (X)
5. Acetonitrile (X,I)
6. * 2–Acetylaminofluorene, 2–AAF (X)
7. Acetyl benzoyl peroxide (X,I,R)
8. * Acetyl chloride (X,C,R)
9. Acetyl peroxide (X,I,R)
10. Acridine (X)
11. * Acrolein, Aqualin (X,I)
12. * Acrylonitrile (X,I)
13. * Adiponitrile (X)
14. * Aldrin; 1,2,3,4,10,10–Hexachloro–1,4,4a,5,8,8a–hexahydro–1,4,5,8–endo–exodimethanonaphthalene (X)
15. * Alkyl aluminum chloride (C,I,R)
16. * Alkyl aluminum compounds (C,I,R)
17. Allyl alcohol, 2–Propen–1–ol (X,I)
18. Allyl bromide, 3–Bromopropene (X,I)
19. Allyl chloride, 3–Chloropropene (X,I)
20. Allyl chlorocarbonate, Allyl chloroformate (X,I)
21. * Allyl trichlorosilane (X,C,I,R)
22. Aluminum (powder) (I)

23A. Aluminum chloride (X,C)

23B. * Aluminum chloride (anhydrous) (X,C,R)

24. Aluminum fluoride (X,C)
25. Aluminum nitrate (X,I)
26. * Aluminum phosphide, PHOSTOXIN (X,I,R)
27. * 4–Aminodiphenyl, 4–ADP (X)
28. * 2–Aminopyridine (X)
29. * Ammonium arsenate (X)
30. * Ammonium bifluoride (X,C)
31. Ammonium chromate (X,I)
32. Ammonium dichromate, Ammonium bichromate (X,C,I)
33. Ammonium fluoride (X,C)
34. Ammonium hydroxide (X,C)
35. Ammonium molybdate (X)
36. Ammonium nitrate (I,R)
37. Ammonium perchlorate (I,R)
38. Ammonium permanganate (X,I,R)
39. Ammonium persulfate (I,R)
40. Ammonium picrate (I,R)
41. Ammonium sulfide (X,C,I,R)
42. n–Amyl acetate, 1–Acetoxypentane (and isomers) (X,I)
43. n–Amylamine, 1–Aminopentane (and isomers) (X,I)
44. n–Amyl chloride, 1–Chloropentane (and isomers) (X,I)
45. n–Amylene, 1–Pentene (and isomers) (X,I)
46. n–Amyl mercaptan, 1–Pentanethiol (and isomers) (X,I)
47. n–Amyl nitrite, n–Pentyl nitrite (and isomers) (X,I)
48. * Amyl trichlorosilane (and isomers) (X,C,R)
49. Aniline, Aminobenzene (X)
50. Anisoyl chloride (X,C)
51. Anthracene (X)
52. Antimony (X)
53. Antimony compounds (X)
54. * Antimony pentachloride (X,C,R)
55. * Antimony pentafluoride (X,C,R)
56. Antimony pentasulfide (X,I)
57. Antimony potassium tartrate (X)
58. Antimony sulfate, Antimony trisulfate (X,I)
59. Antimony trichloride, Antimony chloride (X,C)
60. Antimony trifluoride, Antimony fluoride (X,C)
61. Antimony trioxide, Antimony oxide (X)
62. Antimony trisulfide, Antimony sulfide (X,I,R)
63. * Arsenic (X)
64. * Arsenic acid and salts (X)
65. * Arsenic compounds (X)
66. * Arsenic pentaselenide (X)
67. * Arsenic pentoxide, Arsenic oxide (X)
68. * Arsenic sulfide, Arsenic disulfide (X)
69. * Arsenic tribromide, Arsenic bromide (X)
70. * Arsenic trichloride, Arsenic chloride (X)
71. * Arsenic triiodide, Arsenic iodide (X)
72. * Arsenic trioxide, Arsenious oxide (X)
73. * Arsenious acid and salts (X)
74. * Arsines (X)
75. Asbestos (including chrysotile, amosite, crocidolite, tremolite, anthophyllite, and actinolite) (X)
76. * AZODRIN, 3–Hydroxy–N–cis–crotonamide (X)
77. Barium (X,I)
78. Barium azide (I,R)
79. Barium bromide (X)
80. Barium carbonate (X)
81. Barium chlorate (X,C,I,R)
82. Barium chloride (X)
83. Barium chromate (X)
84. Barium citrate (X)
85. Barium compounds (soluble) (X)
86. * Barium cyanide (X)
87. Barium fluoride (X)
88. Barium fluosilicate (X)
89. Barium hydroxide (X)
90. Barium iodide (X)
91. Barium manganate (X)
92. Barium nitrate (X,I)
93. Barium oxide, Barium monoxide (X)
94. Barium perchlorate (X,I,R)
95. Barium permanganate (X,I,R)
96. Barium peroxide (X,I,R)
97. Barium phosphate (X)
98. Barium stearate (X)
99. Barium sulfide (X)
100. Barium sulfite (X)
101. Benzene (X,I)
102. * Benzene hexachloride, BHC; 1,2,3,4,5,6–Hexachlorocyclohexane (X)
103. * Benzenephosphorous dichloride (I,R)
104. Benzenesulfonic acid (X)
105. * Benzidine and salts (X)
106. * Benzotrifluoride, Trifluoromethylbenzene (X,I)
107. * Benzoyl chloride (X,C,R)
108. Benzoyl peroxide, Dibenzoyl peroxide (X,I,R)
109. Benzyl bromide, alpha–Bromotoluene (X,C)
110. Benzyl chloride, alpha–Chlorotoluene (X)
111. * Benzyl chlorocarbonate, Benzyl chloroformate (X,C,R)
112. * Beryllium (X,I)
113. * Beryllium chloride (X)
114. * Beryllium compounds (X)
115. * Beryllium copper (X)
116. * Beryllium fluoride (X)
117. * Beryllium hydride (X,C,I,R)
118. * Beryllium hydroxide (X)
119. * Beryllium oxide (X)
120. * BIDRIN, Dicrotophos, 3–(Dimethylamino)–1–methyl–3–oxo–1–propenyldimethyl phosphate (X)

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121. *bis (Chloromethyl) ether, Dichloromethylether, BCME (X)
122. Bismuth (X,I)
123. *bis (Methylmercuric) sulfate, CEREWET, Ceresan liquid (X)
124. Bismuth chromate (X)
125. *BOMYL, Dimethyl 3–hydroxyglutaconate dimethyl phosphate (X)
126. *Boranes (X,I,R)
127. *Bordeaux arsenites (X)
128. *Boron trichloride, Trichloroborane (X,C,R)
129. *Boron trifluoride (X,C,R)
130. Bromic acid (X)
131. *Bromine (X,C,I)
132. *Bromine pentafluoride (X,C,I,R)
133. *Bromine trifluoride (X,C,I,R)
134. *Brucine, Dimethoxystrychnine (X)
135. 1,2,4–Butanetriol trinitrate (R)
136. n–Butyl acetate, 1–Acetoxybutane (and isomers) (X)
137. n–Butyl alcohol, 1–Butanol (and isomers) (X)
138. n–Butyl amine, 1–Aminobutane (and isomers) (X)
139. n–Butyl formate (and isomers) (X)
140. tert–Butyl hydroperoxide (and isomers) (X,I)
141. *n–Butyllithium (and isomers) (X,C,I,R)
142. n–Butyl mercaptan, 1–Butanethiol (and isomers) (X,I)
143. tert–Butyl peroxyacetate, tert–Butyl peracetate (I,R)
144. tert–Butyl peroxybenzoate, tert–Butyl perbenzoate (I,R)
145. tert–Butyl peroxypivalate (I,R)
146. *n–Butyltrichlorosilane (C,I,R)
147. para–tert–Butyl toluene (X)
148. n–Butyraldehyde, n–Butanal (and isomers) (X,I)
149. *Cacodylic acid, Dimethylarsinic acid (X)
150. *Cadmium (powder) (X,I)
151. Cadmium chloride (X)
152. *Cadmium compounds (X)
153. *Cadmium cyanide (X)
154. Cadmium fluoride (X)
155. Cadmium nitrate (X,I,R)
156. Cadmium oxide (X)
157. Cadmium phosphate (X)
158. Cadmium sulfate (X)
159. *Calcium (I,R)
160. *Calcium arsenate, PENSAL (X)
161. *Calcium arsenite (X)
162. *Calcium carbide (C,I,R)
163. Calcium chlorate (I,R)
164. Calcium chlorite (I)
165. Calcium fluoride (X)
166. *Calcium hydride (C,I,R)
167. Calcium hydroxide, Hydrated lime (C)
168. *Calcium hypochlorite, Calcium oxychloride (dry) (X,C,I,R)
169. Calcium molybdate (X)
170. Calcium nitrate, Lime nitrate, Nitrocalcite (I,R)
171. Calcium oxide, Lime (C)
172. Calcium permanganate (X,I)
173. Calcium peroxide, Calcium dioxide (C,I)
174. *Calcium phosphide (X,I,R)
175. Calcium resinate (I)
176. Caprylyl peroxide, Octyl peroxide (I)
177. *Carbanolate, BANOL, 2–Chloro–4,5–dimethylphenyl methylcarbamate (X)
178. Carbon disulfide, Carbon bisulfide (X,I)
179. Carbon tetrachloride, Tetrachloromethane (X)
180. *Carbophenothion, TRITHION, S[[(4–Chlorophenyl) thio]methyl] 0,0–diethyl phosphorodithioate (X)
181. Chloral hydrate, Trichloroacetaldehyde (hydrated) (X)
182. *Chlordane; 1,2,4,5,6,7,8,8–Octachloro–4,7–methano–3a,4,7,7a–tetra– hydro– indane; (X)
183. *Chlorfenvinphos, Compound 4072, 2–Chloro–1–(2,4–dichlorophenyl) vinyl diethyl phosphate (X)
184. *Chlorine (X,C,I,R)
185. *Chlorine dioxide (X,C,I,R)
186. *Chlorine pentafluoride (X,C,I,R)
187. *Chlorine trifluoride (X,C,I,R)
188. *Chloroacetaldehyde (X,C)
189. *alpha–Chloroacetophenone, Phenyl chloromethyl ketone (X)
190. *Chloroacetyl chloride (X,C,R)
191. Chlorobenzene (X,I)
192. para–Chlorobenzoyl peroxide (I,R)
193. *ortho–Chlorobenzylidene malonitrile, OCMB (X)
194. Chloroform, Trichloromethane (X)
195. *Chloropicrin, Chlorpicrin, Trichloronitromethane (X)
196. *Chlorosulfonic acid (X,C,I,R)
197. Chloro–ortho–toluidine, 2–Amino–4–chlorotoluene (X)
198. Chromic acid, Chromium trioxide, Chromic anhydride (X,C,I)
199. Chromic chloride, Chromium trichloride (X)
200. Chromic fluoride, Chromium trifluoride (X)
201. Chromic hydroxide, Chromium hydroxide (X)
202. Chromic oxide, Chromium oxide (X)
203. Chromic sulfate, Chromium sulfate (X)
204. Chromium compounds (X,C,I)
205. *Chromyl chloride, Chlorochromic anhydride (X,C,I,R)
206. Cobalt (powder) (X,I)
207. Cobalt compounds (X)
208. Cobaltous bromide, Cobalt bromide (X)
209. Cobaltous chloride, Cobalt chloride (X)
210. Cobaltous nitrate, Cobalt nitrate (X,I)
211. Cobaltous resinate, Cobalt resinate (X,I)
212. Cobaltous sulfate, Cobalt sulfate (X)
213. Cocculus, Fishberry, Picrotoxin (X)
215. *Copper acetoarsenite, Paris green (X)
216. Copper acetylide (I,R)
217. *Copper arsenate, Cupric arsenate (X)
218. *Copper arsenite, Cupric arsenite (X)
219. Copper chloride, Cupric chloride (X)
220. Copper chlorotetrazole (I,R)
221. Copper compounds (X)
222. *Copper cyanide, Cupric cyanide (X)
223. Copper nitrate, Cupric nitrate (X,I,R)
224. Copper sulfate, Cupric sulfate, Blue vitriol (X)
225. *Coroxon; ortho,ortho–Diethyl–ortho–(3–chloro–4–methylcoumarin–7–yl) phosphate (X)
226. *Coumafuryl, FUMARIN, 3–[1–(2–Furanyl)–3–oxobutyl] 1–4–hydroxy–2H–1–benzopyran–2–one (X)
227. *Coumatetralyl, BAYER 25634, RACUMIN 57, 4–Hydroxy–3–(1,2,3,4–tetrahydro–1–naphthalenyl)–2H–1–benzopyran–2–one (X)
228. *Crimidine, CASTRIX, 2–Chloro–4–dimethylamino–6–methyl–pyrimidine (X)
229. *Crotonaldehyde, 2–Butenal (X)
230. Cumene, Isopropyl benzene (X,I)
231. Cumene hydroperoxide; alpha,alpha–Dimethylbenzyl hydro–peroxide (X,I)
232. Cupriethylene diamine (X)
233. *Cyanide salts (X)
234. Cyanoacetic acid, Malonic nitrile (X)
235. *Cyanogen (X,I,R)
236. Cyanogen bromide, Bromine cyanide (X)
237. Cyanuric triazide (I,R)
238. Cycloheptane (X,I)
239. Cyclohexane (X,I)
240. Cyclohexanone peroxide (I)
241. *Cyclohexenyltrichlorosilane (X,C,R)
242. *Cycloheximide, ACTIDIONE (X)
243. *Cyclohexyltrichlorosilane (X,C,R)
244. Cyclopentane (X,I)
245. Cyclopentanol (I)
246. Cyclopentene (X,I)
247. DDT; 1,1,1–Trichloro–2,2–bis(chlorophenyl) ethane (X)
248. *DDVP, Dichlorvos, VAPONA, Dimethyl dichlorovinyl phosphate (X)
249. *Decaborane (X,I,R)
250. DECALIN, Decahydronaphthalene (X)
251. *Demeton, SYSTOX (X)
252. *Demeton–S–methyl sulfone, METAISOSYSTOX–SULFON, S–[2–(ethyl–sulfonyl) ethyl] O,O–dimethyl phosphorothioate (X)
253. Diazodinitrophenol, DDNP, 2–Diazo–4,6–dinitrobenzene–1–oxide (I,R)
254. *Diborane, Diboron hexahydride (I,R)
255. *1,2–Dibromo–3–chloropropane, DBCP, Fumazone, nemagon (X)
256. n–Dibutyl ether, Butyl ether (and isomers) (X,I)
257. Dichlorobenzene (ortho, meta, para) (X)
258. *3,3–Dichlorobenzidine and salts, DCB (X)
259. 1,2–Dichloroethylene; 1,2–Dichloroethene (X,I)

260. Dichloroethyl ether, Dichloroether (X,I)
261. Dichloroisocyanuric acid, Dichloro-S-triazine-2,4,6-trione (X,I)
262. Dichloromethane, Methylene chloride (X)
263. *2,4-Dichlorophenoxyacetic acid; 2,4-D (X)
264. 1,2-Dichloropropane, Propylene dichloride (X,I)
265. 1,3-Dichloropropylene; 1,3-Dichloropropene (X,I)
266. Dicumyl peroxide (I,X)
267. *Dieldrin; 1,2,3,4,10,10-Hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-1,4-endo, exo-5,8-dimethanonaphthalene (X)
268. *Diethylaluminum chloride, Aluminum diethyl monochloride, DEAC (I,R)
269. Diethylamine (X,I)
270. *Diethyl chlorovinyl phosphate, Compound 1836 (X)
271. *Diethyldichlorosilane (X,C,I,R)
272. Diethylene glycol dinitrate (I,R)
273. Diethylene triamine (X)
274. *O,O-Diethyl-S-(isopropylthiomethyl) phosphorodithioate (X)
275. *Diethylzinc, Zinc ethyl (C,I,R)
276. *Difluorophosphoric acid (X,C,R)
277. *Diglycidyl ether, bis(2,3-Epoxypropyl) ether (X)
278. Diisopropylbenzene hydroperoxide (X,I)
279. Diisopropyl peroxydicarbonate, Isopropyl percarbonate (X,C,I,R)
280. *Dimefox, Hanane, Pextox 14, Tetramethylphosphorodiamidic fluoride (X)
281. Dimethylamine, DMA (X,I)
282. *Dimethylaminoazobenzene, Methyl yellow (X)
283. *Dimethyldichlorosilane, Dichlorodimethylsilane (X,C,I,R)
284. 2,5-Dimethylhexane-2,5-Dihydroperoxide (I)
285. *1,1-Dimethylhydrazine, UDMH (X,I)
286. *Dimethyl sulfate, Methyl sulfate (X)
287. *Dimethyl sulfide, Methyl sulfide (X,I,R)
288. 2,4-Dinitroaniline (X)
289. *Dinitrobenzene (ortho, meta, para) (I,R)
290. Dinitrochlorobenzene, 1-Chloro-2,4-dinitrobenzene (I,R)
291. *4,6-Dinitro-ortho-cresol, DNPC, SINOX, E
292. *Dinitrophenol(2,3-;2,4-;2,6-isomers) (I,R)
293. 2,4-Dinitrophenylhydrazine (X,I,R)
294. Dinitrotoluene (2,4-;3,4-;3,5-isomers) (X,I,R)
295. *DINOSEB; 2,4-Dinitro-6-sec-butylphenol (X)
296. 1,4-Dioxane; 1,4-Diethylene dioxide (X,I,R)
297. *Dioxathion, DELNAV; S,S-1,4-dioxane-2,3-diyl bis(O,O-diethyl phosphorodithioate) (X)
298. Dipentaerythritol hexanitrate (R)
299. *Diphenyl, Biphenyl, Phenylbenzene (X)
300. Diphenylamine, DPA, N-Phenylaniline (X)
301. *Diphenylamine chloroarsine, Phenarsazine chloride (X)
302. *Diphenyldichlorosilane (X,C,R)
303. Dipicrylamine, Hexanitrodiphenyl amine (I,R)
304. Dipropyl ether (X,I)
305. *Disulfoton, DI-SYSTON; O,O-Diethyl S-[2-(ethylthio) ethyl] phosphorodithioate (X)
306. *Dodecyltrichlorosilane (X,C,R)
307. *DOWCO-139, ZECTRAM, Mexacarbate, 4-(Dimethylamino)-3,5-dimethylphenyl methylcarbamate (X)
309. *DYFONATE, Fonofos, O-Ethyl-S-phenylethyl phosphonodithioate (X)
310. *Endosulfan, THIODAN; 6,7,8,9,10,10-Hexachlor-1,5,5a,6,9,9a-hexa-hydro-6,9-methano-2,4,3-benzo-dioxathiepin-3-oxide (X)
311. *Endothal, 7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid (X)
312. *Endothion, EXOTHION, S-[(5-Methoxy-4-oxo-4H-pyran-2-yl)-methyl] O,O-dimethyl phosphorothioate (X)
313. *Endrin; 1,2,3,4,10,10-Hexachloro-6,7-epoxy-1,4,4,4a,5,6,7,8,8a-octahydro-1,4-endo-endo-5,8-dimethanonaphthalene (X)
314. Epichlorohydrin, Chloropropylene oxide (X,I)
315. *EPN; O-Ethyl O-para-nitrophenyl phenylphosphonothioate (X)
316. *Ethion, NIALATE; O,O,O′,O′-Tetraethyl-S,S-methylenediphos-phorodithioate (X)
317. Ethyl acetate (X,I)
318. Ethyl alcohol, Ethanol (X,I)
319. Ethylamine, Aminoethane (X,I)
320. Ethylbenzene, Phenylethane (X,I)
321. Ethyl butyrate, Ethyl butanoate (I)
322. Ethyl chloride, Chloroethane (X,I)
323. *Ethyl chloroformate, Ethyl chlorocarbonate (X,C,I,R)
324. *Ethyldichloroarsine, Dichloroethylarsine (I,R)
325. *Ethyldichlorosilane (X,C,I,R)
326. *Ethylene cyanohydrin, beta-Hydroxypropionitrile (I,R)
327. Ethylene diamine (X)
328. Ethylene dibromide; 1,2-Dibromoethane (X)
329. Ethylene dichloride; 1,2-Dichloroethane (X,I)
330. *Ethyleneimine, Aziridine, EI (X,I,R)
331. Ethylene oxide, Epoxyethane (X,I,R)
332. Ethyl ether, Diethyl ether (I,R)
333. Ethyl formate (X,I)
334. *Ethyl mercaptan, Ethanethiol (X,I,R)
335. Ethyl nitrate (I,R)
336. Ethyl nitrite (I,R)
337. *Ethylphenyldichlorosilane (X,C,R)
338. Ethyl propionate (I)
339. *Ethyltrichlorosilane (I,R)
340. *Fensulfothion, BAYER 25141, DASANIT, O,O-Diethyl-0-[4-(methyl—sulfinyl)phenyl] phosphorothioate (X)
341. *Ferric arsenate (X)
342. Ferric chloride, Iron (III) chloride (X,C)
343. *Ferrous arsenate, Iron arsenate (X)
344. *Fluoboric acid, Fluoroboric acid (X,C)
345. Fluoride salts (X)
346. *Fluorine (X,C,R)
347. *Fluoroacetanilide, AFL 1082 (X)
348. *Fluoroacetic acid and salts, Compound 1080 (X)
349. *Fluorosulfonic acid, Fluosulfonic acid (X,C,R)
350. Formaldehyde, Methanal (X,I)
351. Formic acid, Methanoic acid (X,C)
352. Fulminate of mercury, Mercuric cyanate (I,R)
353. *FURADAN, NIA 10,242, Carbofuran; 2,3-Dihydro-2,2-dimethyl-7-benzofuranylmethylcarbamate (X)
354. Furan, Furfuran (X,I,R)
355. Gasoline (I)
356. *GB, O-Isopropyl methyl phosphoryl fluoride (X)
357. Glutaraldehyde (X)
358. Glycerolmonolactate trinitrate (R)
359. Glycol dinitrate, Ethylene glycol dinitrate (R)
360. Gold fulminate, Gold cyanate (R)
361. Guanidine nitrate (I,R)
362. Guanyl nitrosaminoguanylidene hydrazine (R)
363. *Guthion; O,O-Dimethyl-S-4-oxo-1,2,3-benzotriazin-3(4H)-ylmethyl phosphorodithioate (X)
364. Hafnium (I,X,R)
365. *Heptachlor; 1,4,5,6,7,8,8-Heptachloro-3a,4,7,7a-tetra-hydro-4,7-methanoindene (X)
366. n-Heptane (and isomers) (X,I)
367. 1-Heptene (and isomers) (X,I)
368. *Hexadecyltrichlorosilane (X,C,R)
369. Hexaethyl tetraphosphate, HETP (X)
370. Hexafluorophosphoric acid (X,C)
371. Hexamethylenediamine; 1,6-Diaminohexane (X)
372. n-Hexane (and isomers) (X,I)
373. 1-Hexene (and isomers) (X,I)
374. n-Hexylamine, 1-Aminohexane (and isomers) (X,I)
375. *Hexyltrichlorosilane (X,C,R)
376. *Hydrazine, Diamine (X,I)
377. Hydrazine azide (I,R)
378. Hydrazoic acid, Hydrogen azide (I,R)
379. *Hydriodic acid, Hydrogen iodide (X,C,R)
380. *Hydrobromic acid, Hydrogen bromide (X,C,R)
381. *Hydrochloric acid, Hydrogen chloride, Muriatic Acid (X,C,R)
382. *Hydrocyanic acid, Hydrogen cyanide (X,I,R)
383. *Hydrofluoric acid, Hydrogen fluoride (X,C,R)
384. Hydrofluosilicic acid, Fluosilicic acid (X,C)
385. Hydrogen peroxide (X,C,I,R)
386. *Hydrogen selenide (X,I)
387. *Hydrogen sulfide (X,I)
388. *Hypochlorite compounds (X,C,I,R)

389. Indium (X)
390. Indium compounds (X)
391. Iodine monochloride (X,C,R)
392. Isooctane; 2,2,4–Trimethylpentane (X,I)
393. Isooctene (mixture of isomers) (I)
394. Isopentane, 2–Methylbutane (I)
395. Isoprene, 2–Methyl–1,3–butadiene (X,I,R)
396. Isopropanol, Isopropyl alcohol, 2–Propanol (X,I)
397. Isopropyl acetate (X,I)
399. Isopropylamine, 2–Aminopropane (X,I)
400. Isopropyl chloride, 2–Chloropropane (I)
401. Isopropyl ether, Diisopropyl ether (I,R)
402. Isopropyl mercaptan, 2–Propanethiol (X,I)
404. * meta–Isopropylphenyl–N–methylcarbamate, Ac 5,727 (X)
405A. * Kepone; 1,1a,3,3a,4,5,5,5a,5b,6–Decachloro–octahydro–1,2,4–metheno–2H–cyclobuta (cd) pentalen–2–one, Chlorecone (X)
405B. Lauroyl peroxide, Di–n–dodecyl peroxide (X,C,I,R)
406. Lead compounds (X)
407. Lead acetate (X)
408. * Lead arsenate, Lead orthoarsenate (X)
409. * Lead arsenite (X)
410. Lead azide (I,R)
411. Lead carbonate (X)
412. Lead chlorite (I,R)
413. * Lead cyanide (X)
414. Lead 2,4–dinitroresorcinate (I,R)
415. Lead mononitroresorcinate (I,R)
416. Lead nitrate (X,I)
417. Lead oxide (X)
418. Lead styphnate, Lead trinitroresorcinate (I,R)
419. * Lewisite, beta–Chlorovinyldichloroarsine (X)
420. * Lithium (C,I,R)
421. * Lithium aluminum hydride, LAH (C,I.R)
422. * Lithium amide (C,I,R)
423. * Lithium ferrosilicon (I,R)
424. * Lithium hydride (C,I,R)
425. * Lithium hypochlorite (X,C,I,R)
426. Lithium peroxide (C,I,R)
427. Lithium silicon (I,R)
428. * London purple, Mixture of arsenic trioxide, aniline, lime, and ferrous oxide (X)
429. * Magnesium (I,R)
430. * Magnesium arsenate (X)
431. * Magnesium arsenite (X)
432. Magnesium chlorate (I,R)
433. Magnesium nitrate (I,R)
434. Magnesium perchlorate (X,I,R)
435. Magnesium peroxide, Magnesium dioxide (I)
436. * Maleic anhydride (X)
437. Manganese (powder) (I)
438. Manganese acetate (X)
439. * Manganese arsenate, Manganous arsenate (X)
440. Manganese bromide, Manganous bromide (X)
441. Manganese chloride, Manganous chloride (X)
442. Manganese methylcyclopentadienyl tricarbonyl (X)
443. Manganese nitrate, Manganous nitrate (X,I)
444. Mannitol hexanitrate, Nitromannite (R)
445. *MECARBAM; O,O–Diethyl S–(N–ethoxycarbonyl N–methylcarba–moyl–methyl) phosphorodithioate (X)
446. * Medinoterb acetate, 2–tert–Butyl–5–methyl–4,6–dinitro–phenyl acetate (X)
447. para–Menthane hydroperoxide, Paramenthane hydroperoxide (I)
448. Mercuric acetate, Mercury acetate (X)
449. Mercuric ammonium chloride, Mercury ammonium chloride (X)
450. Mercuric benzoate, Mercury benzoate (X)
451. Mercuric bromide, Mercury bromide (X)
452. * Mercuric chloride, Mercury chloride (X)
453. * Mercuric cyanide, Mercury cyanide (X)
454. Mercuric iodide, Mercury iodide (X)
455. Mercuric nitrate, Mercury nitrate (X,I)
456. Mercuric oleate, Mercury oleate (X)
457. Mercuric oxide (red and yellow) (X,I)
458. Mercuric oxycyanide (I,R)
459. Mercuric–potassium iodide, Mayer's reagent (X)
460. Mercuric salicylate, Salicylated mercury (X)
461. Mercuric subsulfate, Mercuric dioxysulfate (X)
462. Mercuric sulfate, Mercury sulfate (X)
463. Mercuric thiocyanide, Mercury thiocyanate (X)
464. Mercurol, Mercury nucleate (X)
465. Mercurous bromide (X)
466. Mercurous gluconate (X)
467. Mercurous iodide (X)
468. Mercurous nitrate (I,R)
469. Mercurous oxide (X)
470. Mercurous sulfate, Mercury bisulfate (X)
472. * Mercury (X)
473. * Mercury compounds (X)
474. Metal carbonyls (X)
475. * Metal hydrides (I,R)
476. Metal powders (X,I)
477A. * Methomyl, LANNATE, S–Methyl–N–((methyl–carbamoyl) oxy) thioacetimidate (X)
477B. * Methoxychlor; 1,1,1–Trichloro–2, –bis(p–methoxyphenyl) ethane, CHEMFLORM, MARLATE (X)
478. * Methoxyethylmercuric chloride, AGALLOL, ARETAN (X)
479. Methyl acetate (X,I)
480. Methyl acetone (Mixture of acetone, methyl acetate, and methyl alcohol) (X,I)
481. Methyl alcohol, Methanol (X,I)
482. * Methylaluminum sesquibromide (I,R)
483. * Methylaluminum sesquichloride (I,R)
484. Methylamine, Aminomethane (X,I)
485. n–Methylaniline (X)
486. * Methyl bromide, Bromomethane (X)
487. 2–Methyl–1–butene (I)
488. 3–Methyl–1–butene (I)
489. Methyl butyl ether (and isomers) (X,I)
490. Methyl butyrate (and isomers) (X,I)
491. Methyl chloride, Chloromethane (X,I)
492. * Methyl chloroformate, Methyl chlorocarbonate (X,I,R)
493. * Methyl chloromethyl ether, CMME (X,I)
494. Methylcyclohexane (X,I)
495. * Methyldichloroarsine (X)
496. * Methyldichlorosilane (X,I,R)
497. * 4,4–Methylene bis(2–chloroaniline), MOCA (X)
498. Methyl ethyl ether (X,I)
499. Methyl ethyl ketone, 2–Butanone (X,I)
500. Methyl ethyl ketone peroxide (X,I)
501. Methyl formate (X,I)
502. * Methyl hydrazine, Monomethyl hydrazine, MMH (X,I)
503. * Methyl isocyanate (X,I)
504. Methyl isopropenyl ketone, 3–Methyl–3–butene–2–one (X,I)
505. * Methylmagnesium bromide (C,I,R)
506. * Methylmagnesium chloride (C,I,R)
507. * Methylmagnesium iodide (C,I,R)
508. Methyl mercaptan, Methanethiol (X,I)
509. Methyl methacrylate (monomer) (X,I)
510. * Methyl parathion; O,O–Dimethyl–O–para–nitrophenyl–phosphorothioate (X)
511. Methyl propionate (I)
512. * Methyltrichlorosilane (X,C,I,R)
513. Methyl valerate, Methyl pentanoate (and isomers) (I)
514. Methyl vinyl ketone, 3–Butene–2–one (X,I)
515A. * Mevinphos, PHOSDRIN, 2–Carbomethoxy–1–methylvinyl dimethylphosphate (X)
515B. * Mirex; 1,1a,2,2,3,3a,4,5,5,5a,5b,6–Dodecachlorooctahydro–1,3,4–metheno–1H–cyclobuta (cd) pentalene, Dechlorane (X)
516. * MOCAP, O–Ethyl–S,S–dipropyl phosphorodithioate (X)
517. Molybdenum (powder) (I)
518. Molybdenum trioxide, Molybdenum anhydride (X)
519. Molybdic acid and salts (X)
520. Monochloroacetic acid, Chloracetic acid, MCA (X,C)
521. Monochloroacetone, Chloroacetone, 1–Chloro–2–propanone (X)
522. Monofluorophosphoric acid (X,C)
523. Naphtha (of petroleum or coal tar origin), Petroleum ether, Petroleum naphtha (X,I)
524. Naphthalene (X)
525. * alpha–Naphthylamine, 1–NA (X)
526. * beta–Naphthylamine, 2–NA (X)

527. Neohexane; 2,2–Dimethylbutane (X,I)
528. Nickel (powder) (X,I)
529. Nickel acetate (X)
530. Nickel antimonide (X)
531. * Nickel arsenate, Nickelous arsenate (X)
532. * Nickel carbonyl, Nickel tetracarbonyl (X)
533. Nickel chloride, Nickelous chloride (X)
534. * Nickel cyanide (X)
535. Nickel nitrate, Nickelous nitrate (X,I,R)
536. Nickel selenide (X)
537. Nickel sulfate (X)
538. Nicotine, beta–pyridyl–alpha–N–methyl pyrrolidine (X)
539. Nicotine salts (X)
540. Nitric acid (X,C,I)
541. Nitroaniline, Nitraniline (ortho, meta, para) (I,R)
542. * Nitrobenzol, Nitrobenzene (X)
543. * 4–Nitrobiphenyl, 4–NBP (X)
544. Nitro carbo nitrate (I,R)
545. Nitrocellulose, Cellulose nitrate, Guncotton, Pyroxylin, Collodion, Pyroxylin (nitrocellulose) in ether and alcohol (I,R)
546. Nitrochlorobenzene, Chloronitrobenzene (ortho,meta,para) (X)
547. Nitrogen mustard (X,C)
548. Nitrogen tetroxide, Nitrogen dioxide (X,I)
549. Nitroglycerin, Trinitroglycerin (X,I,R)
550. Nitrohydrochloric acid, Aqua regia (X,C,I)
551. * Nitrophenol (ortho, meta, para) (X)
552. * N–Nitrosodimethylamine, Dimethyl nitrosoamine (X)
553. Nitrosoguanidine (R)
554. Nitrostarch, Starch nitrate (I,R)
555. Nitroxylol, Nitroxylene, Dimethylnitrobenzene (2,4–;3,4–; 2,5–isomers) (X)
556. 1–Nonene, 1–Nonylene (and isomers) (X,I)
557. * Nonyltrichlorosilane (I,R)
558. * Octadecyltrichlorosilane (I,R)
559. n–Octane (and isomers) (X,I)
560. 1–Octene, 1–Caprylene (X,I)
561. * Octyltrichlorosilane (I,R)
563. * Oleum, Fuming sulfuric acid (X,C,R)
565. Osmium compounds (X)
566. Oxalic acid (X)
567. * Oxygen difluoride (X,C,R)
568. * Para–oxon, MINTACOL; O,O–Diethyl–O–para–nitrophenyl phosphate (X)
569. * Parathion; O,O–Diethyl–O–para–nitrophenyl phosphorothioate (X)
570A. * Pentaborane (X,I,R)
570B. Pentachlorophenol, PCP, DOWICIDE 7 (X)
571. Pentaerythrite tetranitrate, Pentaerythritol tetranitrate (R)
572. n–Pentane (and isomers) (X,I)
573. 2–Pentanone, Methyl propyl ketone (and isomers) (X,I)
574. Peracetic acid, Peroxyacetic acid (X,C,I,R)
575. Perchloric acid (X,C,I,R)
576. Perchloroethylene, Tetrachloroethylene (X)
577. * Perchloromethyl mercaptan, Trichloromethylsulfenyl chloride (X)
578. Perchloryl fluoride (X,C,I)
580. Phenol, Carbolic acid (X,C)
581. * Phenyldichloroarsine (X)
582. Phenylenediamine, Diaminobenzene (ortho,meta,para) (X)
583. Phenylhydrazine hydrochloride (X)
584. * Phenylphenol, Orthozenol, DOWICIDE I (X)
585. * Phenyltrichorosilane (I,R)
586. * Phorate, THIMET; O,O–Diethyl–S–[(Ethylthio)methyl] phosphorodithioate (X)
587. * Phosfolan, CYOLAN, 2–(Diethoxyphosphinylimino)–1,3–dithio–lane (X)
588. * Phosgene, Carbonyl chloride (I,R)
589. * Phosphamidon, DIMECRON, 2–Chloro–2–diethyl-carbamoyl–1–methylvinyl dimethyl phosphate (X)
590. * Phosphine, Hydrogen phosphide (X,I)
591. Phosphoric acid (C)
592. Phosphoric anhydride, Phosphorus pentoxide (C,I)
593. Phosphorus (amorphous, red) (X,I,R)
594. * Phosphorus (white or yellow) (X,I,R)
595. * Phosphorus oxybromide, Phosphoryl bromide (X,C,R)
596. * Phosphorus oxychloride, Phosphoryl chloride (X,C,R)
597. * Phosphorus pentachloride, Phosphoric chloride (X,C,I,R)
598. * Phosphorus pentasulfide, Phosphoric sulfide (X,C,I,R)
599. * Phosphorus sesquisulfide, tetraphosphorus trisulfide (X,C,I,R)
600. * Phosphorus tribromide (X,C,R)
601. * Phosphorus trichloride (X,C,R)
602. Picramide, Trinitroaniline (I,R)
603. Picric acid, Trinitrophenol (I,R)
604. Picryl chloride, 2–Chloro–1,3,5–trinitrobenzene (I,R)
605. * Platinum compounds (X)
606. * Polychlorinated biphenyls, PCB, Askarel, aroclor, chlorextol, inerteen, pyranol (X)
607. Polyvinyl nitrate (I,R)
608. Potasan; O,O–Diethyl–0–(4–methylumbelliferone) phosphoro–thioate (X)
609. * Potassium (C,I,R)
610. * Potassium arsenate (X)
611. * Potassium arsenite (X)
612. * Potassium bifluoride, Potassium acid fluoride (X,C)
613. Potassium binoxalate, Potassium acid oxalate (X)
614. Potassium bromate (X,I)
615. * Potassium cyanide (X)
616. Potassium dichloroisocyanurate (X,I)
617. Potassium dichromate, Potassium bichromate (X,C,I)
619. Potassium fluoride (X)
620. * Potassium hydride (C,I,R)
621. Potassium hydroxide, Caustic potash (X,C)
622. Potassium nitrate, Saltpeter (I,R)
623. Potassium nitrite (I,R)
624. Potassium oxalate (X)
625. Potassium perchlorate (X,I,R)
626. Potassium permanganate (X,C,I)
627. Potassium peroxide (C,I,R)
628. Potassium sulfide (X,I)
629. * Propargyl bromide, 3–Bromo–1–propyne (X,I)
630. * beta–Propiolactone, BPL (X)
631. Propionaldehyde, Propanal (X,I)
632. Propionic acid, Propanoic acid (X,C,I)
633. n–Propyl acetate (X,I)
634. n–Propyl alcohol, 1–Propanol (X,I)
635. n–Propylamine (and isomers) (X,I)
636. * Propyleneimine, 2–Methylaziridine (X,I)
637. Propylene oxide (X,I)
638. n–Propyl formate (X,I)
639. n–Propyl mercaptan, 1–Propanethiol (X,I)
640. * n–Propyltrichlorosilane (X,C,I,R)
641. * Prothoate, FOSTION, FAC; O,O–Diethyl–S–carboethoxy-ethyl phosphorodithioate (X)
642. Pyridine (X,I)
643. * Pyrosulfuryl chloride, Disulfuryl chloride (X,C,R)
644. * Quinone; 1,4–Benzoquinone (X)
645. Raney nickel (I)
646. * Schradan, Octamethyl pyrophosphoramide, OMPA (X)
647A. * Selenium (X)
647B. * Selenium compounds (X)
648. * Selenium fluoride (X)
649. * Selenous acid, Selenious acid and salts (X)
650. * Silicon tetrachloride, Silicon chloride (X,C,R)
651. * Silver acetylide (I,R)
652. Silver azide (I,R)
653. Silver compounds (X)
654. Silver nitrate (X)
655. Silver styphnate, Silver trinitroresorcinate (I,R)
656. Silver tetrazene (I,R)
657. * Sodium (C,I,R)
658. Sodium aluminate (C)
659. * Sodium aluminum hydride (C,I,R)
660. * Sodium amide, Sodamide (C,I,R)
661. * Sodium arsenate (X)
662. * Sodium arsenite (X)
663. Sodium azide (I,R)
664. * Sodium bifluoride, Sodium acid fluoride (X,C)
665. Sodium bromate (X,I)
666. * Sodium cacodylate, Sodium dimethylarsenate (X)
667. Sodium carbonate peroxide (I)
668. Sodium chlorate (X,I)

669. Sodium chlorite (X,I)
670. Sodium chromate (X,C)
671. * Sodium cyanide (X)
672. Sodium dichloroisocyanurate (I)
673. Sodium dichromate, Sodium bichromate (X,C,I)
674. Sodium fluoride (X)
675. * Sodium hydride (X,C,I,R)
676. Sodium hydrosulfite, Sodium hyposulfite (I)
677. Sodium hydroxide, Caustic soda, Lye (X,C)
678. * Sodium hypochlorite (X,I,R)
679. * Sodium methylate, Sodium methoxide (C,I,R)
680. Sodium molybdate (X)
681. Sodium nitrate, Soda niter (X,I,R)
682. Sodium nitrite (X,I,R)
683. Sodium oxide, Sodium monoxide (X,C)
684. Sodium perchlorate (X,I,R)
685. Sodium permanganate (X,I)
686. * Sodium peroxide (X,I,R)
687. Sodium picramate (X,I,R)
688. * Sodium potassium alloy, NaK, Nack (C,I,R)
689. * Sodium selenate (X)
690. Sodium sulfide, Sodium hydrosulfide (X,I)
691. Sodium thiocyanate, Sodium sulfocyanate (X)
692. Stannic chloride, Tin tetrachloride (X,C)
693. * Strontium arsenate (X)
694. Strontium nitrate (X,I,R)
695. Strontium peroxide, Strontium dioxide (I,R)
696. * Strychnine and salts (X)
697. Styrene, Vinylbenzene (X,I)
698. Succinic acid peroxide (X,I)
699. Sulfide salts (soluble) (X)
700. * Sulfotepp, DITHIONE, BLACAFUM, Tetraethyldithio-pyrophosphate, TEDP (X)
701. * Sulfur chloride, Sulfur monochloride (X,C,R)
702. * Sulfur mustard (X,C,R)
703. * Sulfur pentafluoride (X,C)
704. Sulfur trioxide, Sulfuric anhydride (X,C,I)
705. Sulfuric acid, Oil of vitriol, Battery acid (X,C)
706. Sulfurous acid (X,C)
707. * Sulfuryl chloride, Sulfonyl chloride (X,C,R)
708. * Sulfuryl fluoride, Sulfonyl fluoride (X,C,R)
709. * SUPRACIDE, ULTRACIDE, S-[(5-Methoxy-2-oxo-1,3,4-thia-diazol3(2H)-yl) methyl] -O,O-dimethyl phosphorodithioate (X)
710. * SURECIDE, Cyanophenphos, O-para-Cyanophenyl-O-ethyl phenyl phosphonothioate (X)
711. * Tellurium hexafluoride (X,C)
712. * TELODRIN, Isobenzan; 1,3,4,5,6,7,8,8-Octachloro-1,3,3a,4,7,7a-hexahydro-4,7-methanoisobenzofuran (X)
713. * TEMIK, Aldicarb, 2-Methyl-2(methylthio) propionaldehyde-O-(methylcarbamoyl) oxime (X)
714. * 2,3,7,8-Tetrachlorodibenzo-para-dioxin, TCDD, Dioxin (X)
715. sym-Tetrachloroethane (X)
717. * Tetraethyl lead, TEL (and other organic lead) (X,I)
718. * Tetraethyl pyrophosphate, TEPP (X)
719A. Tetrahydrofuran, THF (X,I)
719B. Tetrahydrophthalic anhydride, Memtetrahydrophthalic anhydride (X)
720. TETRALIN, Tetrahydronaphthalene (X)
721. Tetramethyl lead, TML (X,I)
722. * Tetramethyl succinonitrile (X)
723. * Tetranitromethane (X,I,R)
724. * Tetrasul, ANIMERT V-101, S-para-Chlorophenyl-2,4,5-trichlorophenyl sulfide (X)
725. Tetrazene, 4-Amidino-1-(nitrosamino-amidino)-1-tetra-zene (I,R)
726. * Thallium (X)
727. * Thallium compounds (X)
728. * Thallous sulfate, Thallium sulfate, RATOX (X)
729. * Thiocarbonylchloride, Thiophosgene (X,C,R)
730. * Thionazin, ZINOPHOS; O,O-Tetramethylthiuram monosulfide (X)
731. * Thionyl chloride, Sulfur oxychloride (X,C,R)
732. * Thiophosphoryl chloride (X,C,R)
733. Thorium (powder) (I)
734. Tin compounds (organic) (X)
735. Titanium (powder) (I)
736. Titanium sulfate (X)
737. * Titanium tetrachloride, Titanic chloride (X,C,R)
738. Toluene, Methylbenzene (X,I)
739. * Toluene-2,4-diisocyanate, TDI (I,R)
740A. Toluidine, Aminotoluene (ortho,meta,para) (X)
740B. * Toxaphene, Polychlorocamphene (X)
741. * TRANID, exo-3-Chloro-endo-6-cyano-2-norbornanone-O- (methylcarbamoyl) oxime (X)
743. 1,1,2-Trichloroethane (X)
744. Trichloroethylene; Trichlorethene (X)
745. Trichloroisocyanuric acid (X,I)
746. * 2,4,5-Trichlorophenoxyacetic acid; 2,4,5-T (X)
747. * Trichlorosilane, Silicochloroform (X,C,I,R)
748. Trimethylamine, TMA (X,I)
749. Trinitroanisole; 2,4,6-Trinitrophenyl methyl ether (I,R)
750. 1,3,5-Trinitrobenzene, TNB (I,R)
751. 2,4,6-Trinitrobenzoic acid (I,R)
752. Trinitronaphthalene, Naphtite (I,R)
753. 2,4,6-Trinitroresorcinol, Styphnic acid (I,R)
754. 2,4,6-Trinitrotoluene, TNT (X,I,R)
755. * tris(1-Aziridinyl) phosphine oxide, Triethylenephosphoramide, TEPA (X)
756. Tungstic acid and salts (X)
757. Turpentine (X,I)
758. Uranyl nitrate, Uranium nitrate (X,I,R)
759. Urea nitrate (X,I,R)
760. n-Valeraldehyde, n-Pentanal (and isomers) (X,I)
761. Vanadic acid salts (X)
762. Vanadium oxytrichloride (X,C)
763. * Vanadium pentoxide, Vanadic acid anhydride (X)
764. Vanadium tetrachloride (X,C)
765. Vanadium tetraoxide (X)
766. Vanadium trioxide, Vanadium sesquioxide (X)
767. Vanadyl sulfate, Vanadium sulfate (X)
768. Vinyl acetate (I,X)
769. * Vinyl chloride (X,I)
770. Vinyl ethyl ether (I)
771. Vinylidene chloride, VC (X,I)
772. Vinyl isopropyl ether (I)
773. * Vinyltrichlorosilane (X,C,I,R)
774. VX, O-Ethyl methyl phosphoryl N,N-diisopropyl thiocholine (X)
775. * WEPSYN 155, WP 155, Triamiphos, para-(5-Amino-3-phenyl-1H-1,2,4-triazol-1-yl)-N,N,N′,N′-tetramethyl phosphonic diamide (X)
776. Xylene, Dimethylbenzene (ortho,meta,para) (X,I)
777. Zinc (powder) (I)
778. Zinc ammonium nitrate (X,I)
779. * Zinc arsenate (X)
780. * Zinc arsenite (X)
781. Zinc chloride (X,C)
782. Zinc compounds (X)
783. * Zinc cyanide (X)
784. Zinc nitrate (X,I,R)
785. Zinc permanganate (X,I)
786. Zinc peroxide, Zinc dioxide (X,I,R)
787. * Zinc phosphide (X,I,R)
788. Zinc sulfate (X)
789. Zirconium (powder) (I)
790. * Zirconium chloride, Zirconium tetrachloride (X,C,R)
791. Zirconium picramate (I)

(b) This subdivision sets forth a list of common names of wastes which are presumed to be hazardous wastes unless it is determined that the waste is not a hazardous waste pursuant to the procedures set forth in section 66262.11. The hazardous characteristics which serve as a basis for listing the common names of wastes are indicated in the list as follows:

(X) toxic, (C) corrosive, (I) ignitable and (R) reactive.

Acetylene sludge (C)
Acid and water (C)
Acid sludge (C)
AFU Floc (X)
Alkaline caustic liquids (C)
Alkaline cleaner (C)
Alkaline corrosive battery fluid (C)

Alkaline corrosive liquids (C)
Asbestos waste (X)
Ashes (X,C)
Bag house wastes (X)
Battery acid (C)
Beryllium waste (X)
Bilge water (X)
Boiler cleaning waste (X,C)
Bunker Oil (X,I)
Catalyst (X,I,C)
Caustic sludge (C)
Caustic wastewater (C)
Cleaning solvents (I)
Corrosion inhibitor (X,C)
Data processing fluid (I)
Drilling fluids (X,C)
Drilling mud (X)
Dyes (X)
Etching acid liquid or solvent (C,I)
Fly ash (X,C)
Fuel waste (X,I)
Insecticides (X)
Laboratory waste (X,C,R,I)
Lime and sulfur sludge (C)
Lime and water (C)
Lime sludge (C)
Lime wastewater (C)
Liquid cement (I)
Mine tailings (X,R)
Obsolete explosives (R)
Oil and water (X)
Oil Ash (X,C)
Paint (or varnish) remover or stripper (I)
Paint thinner (X,I)
Paint waste (or slops) (X,I)
Pickling liquor (C)
Pigments (X)
Plating waste (X,C)
Printing Ink (X)
Retrograde explosives (R)
Sludge acid (C)
Soda ash (C)
Solvents (I)
Spent acid (C)
Spent caustic (C)
Spent (or waste) cyanide solutions (X,C)
Spent mixed acid (C)
Spent plating solution (X,C)
Spent sulfuric acid (C)
Stripping solution (X,I)
Sulfonation oil (I)
Tank bottom sediment (X)
Tanning sludges (X)
Toxic chemical toilet wastes (X)
Unrinsed pesticide containers (X)
Unwanted or waste pesticides—an unusable portion of active ingredient or undiluted formulation (X)
Waste epoxides (X,I)
Waste (or slop) oil (X)
Weed Killer (X)

(c) This subdivision sets forth a list of electronic wastes that are presumed to be hazardous wastes unless it is determined that the electronic waste is not a hazardous waste pursuant to the procedures set forth in section 66262.11. The hazardous characteristics that serve as a basis for listing the common names of electronic wastes are indicated in the list as follows: (X) toxic, (C) corrosive, (I) ignitable, (R) reactive. For purposes of Health and Safety Code section 25214.10.1, devices marked with a pound symbol (#) were listed herein on or before July 1, 2004. Notwithstanding section 66260.202, subsections (a) and (b), the prohibition described in subsection (a) of section 66260.202 shall not be applied to devices in this list marked with a delta (Δ) symbol until July 1 of the year subsequent to the year in which the devices were added to the list, as specified in parentheses below, and then it shall apply only to those devices that are manufactured on or after that July 1 date:

Cathode ray tube containing devices (CRT devices) with CRTs greater than four inches measured diagonally (X)

Cathode ray tubes (CRTs) greater than four inches measured diagonally (X);

Computer monitors containing cathode ray tubes greater than four inches measured diagonally (X)

Laptop computers with liquid crystal display (LCD) screens greater than four inches measured diagonally (X)

LCD containing desktop monitors greater than four inches measured diagonally (X)

Televisions containing cathode ray tubes greater than four inches measured diagonally (X)

Televisions containing liquid crystal display (LCD) screens greater than four inches measured diagonally (X) (added December 2004)

Plasma televisions with screens greater than four inches measured diagonally (X) (added December 2004)

Δ Portable DVD players with liquid crystal display (LCD) screens greater than four inches measured diagonally (X) (added December 2006)

NOTE: Authority cited: Sections 25140, 25141, 25214.9, 25214.10, 25214.10.1, 25214.10.2 and 58012, Health and Safety Code; and Sections 42475 and 42475.2, Public Resources Code. Reference: Sections 25117, 25140, 25141, 25214.9, 25214.10 and 25214.10.1, Health and Safety Code; and Sections 42463 and 42465.2, Public Resources Code.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. New subsection (c) and amendment of NOTE filed 6–7–2004 as an emergency; operative 6–7–2004 (Register 2004, No. 24). Pursuant to Public Resources Code section 42475.2, a Certificate of Compliance must be transmitted to OAL by 6–7–2006 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsection (c) and amendment of NOTE filed 12–27–2004 as an emergency; operative 12–27–2004 (Register 2004, No. 53). Pursuant to Public Resources Code section 42475.2, a Certificate of Compliance must be transmitted to OAL by 1–1–2007 or emergency language will be repealed by operation of law on the following day.
4. New subsection (c) and NOTE, including subsequent emergency amendments, refiled 6–5–2006 as an emergency; operative 6–5–2006 (Register 2006, No. 23). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.
5. Amendment of subsection (c) and NOTE filed 12–29–2006 as an emergency; operative 12–29–2006 (Register 2006, No. 52). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.
6. New subsection (c) and NOTE refiled 5–8–2008 as an emergency; operative 5–8–2008 (Register 2008, No. 19). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.

Appendix XI
Organic Lead Test Method

1.0 Scope and Application.

1.1 This method is used to determine the sum of organic lead compounds ("organolead") in liquids, solids or sludges. The method detection limit for a 50 g sample is 0.5 μg/g (as lead); the method detection limit for 200 ml water samples is 0.1 mg/l (as lead).

2.0 Summary of Method.

2.1 Organolead is separated from the sample matrix by extraction with xylene. The organolead in the extract is reacted with Aliquat 336 and iodine and the solution is made up to volume with MIBK. Lead contained in this mixture is determined by flame atomic absorption spectrometry (FAAS). If the original sample is completely soluble in xylene, the extraction step is omitted.

3.0 Safety.

3.1 Some organic lead compounds are volatile and toxic. Therefore, samples must be processed in a well–ventilated hood. Antiknock lead compounds are particularly poisonous and must not be inhaled or ingested or come into contact with the skin. Antiknock lead compounds should never be exposed to elevated temperatures (above 50°C) or to acids and oxidizing agents. Whenever organic lead compounds are handled outside of a well–ventilated hood, protective respiratory equipment, protective clothing and rubber gloves must be worn. The material safety data sheets (MSDS) for organolead standards must be read.

3.2 The solvents used in this method are flammable. Proper precautions must be taken to prevent contact with sparks or open flames (other than the AAS flame).

4.0 Interferences.

4.1 To reduce loss of organic lead compounds which are very volatile and sensitive to oxygen, samples must not be exposed to elevated temperatures or to air for extended periods of time. Such losses shall be minimized by adhering to the sample collection, preservation and handling procedures in subdivisions 7.2 – 7.4 and 8.1.1 of this appendix.

4.2 If the samples are moist, there may be poor wettability with xylene.

5.0 Apparatus and Materials.

5.1 flame atomic absorption spectrometer (FAA spectrometer) with background corrector and recorder or integrator;

5.2 lead hollow cathode lamp or electrodeless discharge lamp;

[The next page is 689.]

5.3 nebulizer with impact bead; the standard rubber gasket in the nebulizer must be replaced with a cork gasket because the organic solvents used in this method attack rubber;

5.4 air, acetylene and appropriate AAS burner head;

5.5 erlenmeyer flasks, 250 ml and 100 ml, with ground glass stoppers;

5.6 mechanical shaker;

5.7 glass filter funnel and filter paper (Whatman #40, #42 or equivalent);

5.8 separatory funnels, 250 ml capacity;

5.9 volumetric flasks, 250 ml, 100 ml, and 50 ml.

6.0 Reagents.

All solvents and reagents must be at least analytical reagent grade, if available.

6.1 xylene (use p–xylene if available);

6.2 methyl isobutyl ketone (MIBK, 4–methyl–2–pentanone);

6.3 iodine solution: dissolve 3.0 g of elemental iodine in toluene and make up to 100 ml with the same solvent. Store in a brown bottle in a refrigerator;

6.4 Aliquat 336 (Tri–capryl methyl ammonium chloride), available from Aldrich, Milwaukee, WI, or from McKesson Co., Minneapolis, MN. Aliquat is a registered trademark of Henkel Corporation. Prepare two solutions, one containing 10 percent weight to volume ratio (w/v) and one containing 1 percent (w/v) in MIBK. Store in a refrigerator;

6.5 anhydrous sodium sulfate, granular;

6.6 lead chloride, crystals. Dry at 105°C for 3 hours before use.

6.6.1 Prepare a stock solution containing 1000 mg/l of lead (Pb) by dissolving 0.3356 g of lead chloride in 10 percent Aliquat 336 in MIBK and dilute to 250 ml. Store in a brown bottle in a refrigerator.

6.6.2 Prepare an intermediate Pb standard by pipetting 10 ml of the stock standard into a volumetric flask and diluting to 100 ml with a 40 percent volume to volume ratio (v/v) solution of xylene in MIBK. Store in a brown bottle in a refrigerator;

6.7 sodium chloride (NaCl).

7.0 Sample Collection, Preservation, and Handling.

7.1 For safety precautions, see subdivision 3.0 of this appendix.

7.2 Liquid samples must be collected in amber glass bottles (preferably 500 ml size) with Teflon–lined caps without leaving any headspace. During sampling, contact of the sample with air must be minimized.

7.3 Solid samples must be collected in glass jars (preferably 250 ml size) with airtight, Teflon–lined lids. The jars must be filled to capacity.

7.4 All samples must be transported and stored at refrigerator temperature (approximately 5°C.).

8.0 Procedure.The order of addition of the reagents must be followed explicitly. Aliquat 336 must not be added before the addition of iodine because it retards the formation of the alkyl lead iodide–Aliquat 336 complex, giving erroneous results.

8.1 Extraction of Solid and Sludge Samples.

8.1.1 Weigh out (to the nearest 0.1 g) about 50 g of homogenized sample into an Erlenmeyer flask, add 100 ml of xylene, stopper the flask and shake on a mechanical shaker for 30 minutes (min). The extraction efficiency may vary depending on the moisture content of the sample. Stirring of the sample with a mechanical or magnetic stirrer must not be substituted for shaking since it can result in loss of organolead due to oxidation by air oxygen. For the same reason, extraction times of more than 30 min must be avoided.

8.1.2 After extraction, filter the xylene phase through filter paper holding about 10 g of anhydrous sodium sulfate.

8.1.3 Pipet 20 ml of MIBK and 20 ml of the filtered extract into a 50 ml volumetric flask and mix.

8.1.4 To the same flask, add 0.1 ml of iodine solution and mix again. Let react for approximately 1 min.

8.1.5 To the same flask, add 5 ml of 1 percent Aliquat 336 in MIBK, dilute to volume with MIBK and mix.

8.2 Extraction of Liquid Samples.

8.2.1 Place 200 ml of the sample and 50 ml of xylene into a separatory funnel, close the funnel and shake for 1 – 2 min. Allow 5 – 10 min for phase separation. If less than 200 ml of sample is available, the miscibility with xylene may be tested with a smaller aliquot.

8.2.2 If a single liquid phase is obtained (i.e., if the sample is completely soluble in xylene), discard the sample/xylene mixture and pipet 20 ml of neat sample into a 50 ml volumetric flask, add 20 ml of MIBK, mix, and continue as described in subdivision 8.1.4 above.

8.2.3 If an emulsion is obtained which requires more time for phase separation, add about 5 g of NaCl to the separatory funnel, shake briefly, and let the mixture settle for 20 min.

8.2.4 After separation of the xylene phase from the sample solvent phase (e.g., water), drain off the lower phase into a second separatory funnel and collect the xylene extract in a 100 ml flask with ground glass stopper.

8.2.5 Add 25 ml of xylene to the sample solvent phase, shake for 1–2 min and allow 5 – 10 min for phase separation.

8.2.6 Repeat subdivision 8.2.4, adding the xylene phase to the first extract. Then repeat sudivisions 8.2.5 and 8.2.4 with another 25 ml of xylene.

8.2.7 Filter the combined extract through filter paper holding about 10 g of anhydrous sodium sulfate.

8.2.8 Pipet 20 ml of MIBK and 20 ml of the filtered extract into a 50 ml volumetric flask and mix. Continue as described in subdivision 8.1.4 above.

8.3 Standard and Blank Preparation.

Prepare a blank and a minimum of three appropriate working standards from the intermediate organolead standard containing 100 mg/l as Pb.

8.3.1 Place 40 ml of xylene into a 100 ml volumetric flask and add the correct amount of the 100 mg/l standard to prepare the desired concentration.

8.3.2 Immediately add 0.2 ml of iodine solution and mix well.

8.3.3 Add 10 ml of 1 percent Aliquat 336 solution, dilute to volume with MIBK and mix well.

8.3.4 The blank is prepared in the same way as the calibration standards (subdivisions 8.3.1 – 8.3.3 of this appendix), except that no organolead intermediate standard is added.

8.4 Flame Atomic Absorption Measurements.

Since certain organolead compounds are very volatile, their vapors may remain in the nebulizer or drain tube for considerable periods of time and affect subsequent readings. Therefore, sufficient time must be allowed between readings for all vapors to clear the system. Analyzing a blank between samples can check on the system.

8.4.1 The FAA spectrometer is set up according to the manufacturer's instructions. The nebulizer is equipped with the impact bead and a cork gasket is installed. Ensure that the drain tube to the waste container drains properly. Tygon tubing is affected by the organic solvents used in this method and drainage properties will be different from those observed with aqueous samples. If desired, a waste container dedicated to receive organolead waste may be connected.

8.4.2 While aspirating water into the flame, adjust the acetylene flow to 8.5 l/min and the air flow to 25 l/min.

8.4.3 Aspirate MIBK containing 40 percent xylene into the flame, reduce the acetylene flow to approximately 4.8 l/min and fine adjust to produce an even flame with no yellow luminescence.

8.4.4 Measure the absorbance of the method blank, working standards, and samples.

8.4.5 If sample readings fall outside the calibrated range, the solutions to be aspirated into the nebulizer must be diluted with a 40 percent (v/v) solution of xylene in MIBK and analyzed again.

9.0 Calculations.

Depending on the type of sample analyzed and the method of sample preparation, one of the following three formulas is used to calculate the concentration of organolead in the sample:

9.1 solid and sludge samples:

$$\text{Conc } (\mu g/g) = \text{FAA–Result (mg/l)} \times \frac{100ml}{W\ (g)} \times \frac{50ml}{20ml} \times F$$

where W (g) is the sample mass in grams (usually 50 g) and F is the dilution factor;

9.2 liquid samples not soluble in xylene:

$$\text{Conc (mg/l)} = \text{FAA–Result (mg/l)} \times \frac{100ml}{V\ (ml)} \times \frac{50ml}{20ml} \times F$$

where V (ml) is the sample volume in ml (usually 200 ml) and F is the dilution factor;

9.3 xylene–soluble liquid samples:

$$\text{Conc (mg/l)} = \text{FAA–Result (mg/l)} \times \frac{100ml}{V\ (ml)} \times \frac{50ml}{20ml} \times F$$

where V (ml) is the sample volume in ml (usually 20 ml) and F is the dilution factor.

10.0 Quality Control.

10.1 Analyze a method blank along with each batch of ten samples (or less). If the blank indicates a significant contamination (more than twice the method detection limit), repeat all procedures with samples and blank.

10.2 Analyze a duplicate sample with each batch of ten samples or less.

10.3 Analyze a spiked sample with each batch of ten samples or less. The level of spiking must be about twenty times the method detection limit. If the sample contains measurable organic lead, the spike level must be at least four times the measured level.

10.4 Leaded gasoline with known concentration of organolead must be used as spiking solution for all sample types.

11.0 Method Performance.

11.1 The analysis of four replicates of water samples spiked with leaded gasoline gave a mean result of 3.23 mg/l, a standard deviation of 0.032 mg/l, and a relative standard deviation (RSD) of 0.99%. The mean recovery was 3.23 mg/l for a recovery of 67.7%.

11.2 The instrument detection limit (IDL) was determined by the analysis of eleven replicates, blanks and standards. The IDL was based on three times the standard deviation which was 0.09 mg/l.

11.3 The analysis of six replicates of soil samples spiked with gasoline gave a mean result of 3.16 mg/kg, a standard deviation of 0.025 mg/kg, and a RSD of 0.80%. The mean recovery was 3.16 mg/kg for a 66.2% recovery.

NOTE: Authority cited: Sections 208 and 25141, Health and Safety Code. Reference: Section 25141, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

Appendix XII

California Hazardous Waste Codes

(a) Subdivisions (b) and (c) of this appendix establish the California Hazardous Waste Code Numbers assigned to wastes which have been identified as hazardous wastes pursuant to the characteristics of hazardous waste as set forth in article 3 of this chapter or pursuant to the lists of hazardous wastes in article 4 of this chapter. These Waste Code Numbers shall be used in complying with the notification requirements of Health and Safety Code section 25153.6 and, where applicable, in the recordkeeping and reporting requirements under chapters 12 through 15, 18, and 20 of this division.

(1) In cases where hazardous wastes may have both an EPA Hazardous Waste Number and a California Hazardous Waste Code Number, both numbers shall be used in complying with the notification requirements of Health and Safety Code section 25153.6 and the recordkeeping and reporting requirements under chapters 12 through 15, 18, and 20 of this division.

(2) If both a California Hazardous Waste Code from the "California Restricted Wastes" category and a code from another category of California Hazardous Waste Codes apply to a specific hazardous waste, the code from the "California Restricted Wastes" category shall be used.

(b) List of California Hazardous Waste Codes arranged in numerical order:

Waste Code Number	*Waste Description*
	(1) Inorganics:
121	Alkaline solution (pH ≤ 12.5) with metals (antimony, arsenic, barium, beryllium, cadmium, chromium, cobalt, copper, lead, mercury, molybdenum, nickel, selenium, silver, thallium, vanadium, and zinc)
122	Alkaline solution without metals (pH > 12.5)
123	Unspecified alkaline solution
131	Aqueous solution (2 < pH < 12.5) containing reactive anions (azide, bromate, chlorate, cyanide, fluoride, hypochlorite, nitrite, perchlorate, and sulfide anions)
132	Aqueous solution with metals (restricted levels and see waste code 121 for a list of metals)
133	Aqueous solution with 10% or more total organic residues
134	Aqueous solution with less than 10% total organic residues
135	Unspecified aqueous solution
141	Off–specification, aged, or surplus inorganics
151	Asbestos–containing waste
161	Fluid–cracking catalyst (FCC) waste
162	Other spent catalyst
171	Metal sludge (see 121)
172	Metal dust (see 121) and machining waste
181	Other inorganic solid waste
	(2) Organics:
211	Halogenated solvents (chloroform, methyl chloride, perchloroethylene, etc.)
212	Oxygenated solvents (acetone, butanol, ethyl acetate, etc.)
213	Hydrocarbon solvents (benzene, hexane, Stoddard, etc.)
214	Unspecified solvent mixture
221	Waste oil and mixed oil
222	Oil/water separation sludge
223	Unspecified oil–containing waste
231	Pesticide rinse water
232	Pesticides and other waste associated with pesticide production
241	Tank bottom waste
251	Still bottoms with halogenated organics
252	Other still bottom waste
261	Polychlorinated biphenyls and material containing PCB's
271	Organic monomer waste (includes unreacted resins)
272	Polymeric resin waste
281	Adhesives
291	Latex waste
311	Pharmaceutical waste
321	Sewage sludge
322	Biological waste other than sewage sludge
331	Off–specification, aged, or surplus organics
341	Organic liquids (nonsolvents) with halogens
342	Organic liquids with metals (see 121)
343	Unspecified organic liquid mixture
351	Organic solids with halogens
352	Other organic solids
	(3) Sludges:
411	Alum and gypsum sludge
421	Lime sludge
431	Phosphate sludge
441	Sulfur sludge
451	Degreasing sludge
461	Paint sludge
471	Paper sludge/pulp
481	Tetraethyl lead sludge
491	Unspecified sludge waste

Waste Code Number	*Waste Description*
	(4) Miscellaneous:
511	Empty pesticide containers 30 gallons or more
512	Other empty containers 30 gallons or more
513	Empty containers less than 30 gallons
521	Drilling mud
531	Chemical toilet waste
541	Photochemicals/photoprocessing waste
551	Laboratory waste chemicals
561	Detergent and soap
571	Fly ash, bottom ash, and retort ash
581	Gas scrubber waste
591	Baghouse waste
611	Contaminated soil from site clean–ups
612	Household waste
613	Auto shredder waste
614	Treated wood waste
	(5) California Restricted Wastes:
711	Liquids with cyanides ≥ 1000 mg/l
721	Liquids with arsenic ≥ 500 mg/l
722	Liquids with cadmium ≥ 100 mg/l
723	Liquids with chromium (VI) ≥ 500 mg/l
724	Liquids with lead ≥ 500 mg/l
725	Liquids with mercury ≥ 20 mg/l
726	Liquids with nickel ≥ 134 mg/l
727	Liquids with selenium ≥ 100 mg/l
728	Liquids with thallium ≥ 130 mg/l
731	Liquids with polychlorinated biphenyls ≥ 50 mg/l
741	Liquids with halogenated organic compounds ≥ 1000 mg/l
751	Solids or sludges with halogenated organic compounds ≥ 1000mg/kg
791	Liquids with pH ≤ 2
792	Liquids with pH ≤ 2 with metals
801	Waste potentially containing dioxins

(c) List of California Hazardous Waste Codes arranged alphabetically within each numbered category in this subdivision:

Waste Code Number	*Waste Description*
	(1) Inorganics:
121	Alkaline solution (pH ≥ 12.5) with metals (antimony, arsenic, barium, beryllium, cadmium, chromium, cobalt, copper, lead, mercury, molybdenum, nickel, selenium, silver, thallium, vanadium, and zinc)
122	Alkaline solution without metals (pH ≥ 12.5)
131	Aqueous solution (2 < pH < 12.5) containing reactive anions (azide, bromate, chlorate, cyanide, fluoride, hypochlorite, nitrite, perchlorate, and sulfide anions)
133	Aqueous solution with 10% or more total organic residues
134	Aqueous solution with less than 10% total organic residues
132	Aqueous solution with metals (restricted levels and see waste code 121 for a list of metals)
151	Asbestos–containing waste
161	Fluid–cracking catalyst (FCC) waste
172	Metal dust (see 121) and machining waste
171	Metal sludge (see 121)
141	Off–specification, aged, or surplus inorganics
181	Other inorganic solid waste
162	Other spent catalyst
123	Unspecified alkaline solution
135	Unspecified aqueous solution
	(2) Organics:
281	Adhesives
322	Biological waste other than sewage sludge
211	Halogenated solvents (chloroform, methyl chloride, perchloroethylene, etc.)
213	Hydrocarbon solvents (benzene, hexane, Stoddard, etc.)
291	Latex waste
331	Off–specification, aged, or surplus organics
222	Oil/water separation sludge
341	Organic liquids (nonsolvents) with halogens
342	Organic liquids with metals (see 121)
271	Organic monomer waste (includes unreacted resins)
351	Organic solids with halogens
352	Other organic solids
252	Other still bottom waste
212	Oxygenated solvents (acetone, butanol, ethyl acetate, etc.)
231	Pesticide rinse water
232	Pesticides and other waste associated with pesticide production
311	Pharmaceutical waste
261	Polychlorianted biphenyls and material containing PCBs
272	Polymeric resin waste
321	Sewage sludge
251	Still bottoms with halogenated organics
241	Tank bottom waste
223	Unspecified oil–containing waste
343	Unspecified organic liquid mixture
214	Unspecified solvent mixture
221	Waste oil and mixed oil
	(3) Sludges:
411	Alum and gypsum sludge
451	Degreasing sludge
421	Lime sludge
461	Paint sludge
471	Paper sludge/pulp
431	Phosphate sludge
441	Sulfur sludge
481	Tetraethyl lead sludge
491	Unspecified sludge waste
	(4) Miscellaneous:
613	Auto shredder waste
591	Baghouse waste
531	Chemical toilet waste
611	Contaminated soil from site clean–ups
561	Detergent and soap
521	Drilling mud
513	Empty containers less than 30 gallons
511	Empty pesticide containers 30 gallons or more
571	Fly ash, bottom ash, ad retort ash
581	Gas scrubber waste
612	Household waste
551	Laboratory waste chemicals
512	Other empty containers 30 gallons or more
541	Photochemical/photoprocessing waste
614	Treated wood waste
	(5) California Restricted Wastes:
721	Liquids with arsenic ≥ 500 mg/l
722	Liquids with cadmium ≥ 100 mg/l
723	Liquids with chromium (VI) ≥ 500 mg/l)
711	Liquids with cyanides ≥ 1000 mg/l
741	Liquids with halogenated organic compounds ≥ 1000 mg/l
724	Liquids with lead ≥ 500 mg/l
725	Liquids with mercury ≥ 20 mg/l
726	Liquids with nickel ≥ 134 mg/l
791	Liquids with pH ≤ 2
792	Liquids with pH ≤ 2 with metals
731	Liquids with polychlorinated biphenyls ≥ 50 mg/l
727	Liquids with selenium ≥ 100 mg/l
728	Liquids with thallium ≥ 130 mg/l
751	Solids or sludges with halogenated organic compounds ≥ 1000 mg/l
801	Waste potentially containing dioxins

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25117.9, 25122.7, and 25150, Health and Safety Code.

HISTORY
1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Amendment of subsections (b)(4) and (c)(4) and NOTE filed 6–18–2007; operative 7–1–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 25).

Chapter 12. Standards Applicable to Generators of Hazardous Waste

Article 1. Applicability

§ 66262.10. Purpose, Scope, and Applicability.

(a) This chapter establishes standards for generators of hazardous waste located in California.

(b) A generator who treats, stores, or disposes of hazardous waste on–site shall comply with the following sections of this chapter with respect to that waste: section 66262.11 for determining whether or not the generator has a hazardous waste, section 66262.12 for obtaining an identification number, section 66262.34 for accumulation of hazardous waste, section 66262.40(c) and (d) for recordkeeping, section 66262.43 for additional reporting, section 66262.44 for hazardous waste of concern reporting, and if applicable, section 66262.70 for farmers.

(c) Any person who imports hazardous waste into the State to a designated facility within the State from outside the United States shall comply with the standards applicable to generators established in this chapter.

(d) Any person who exports or imports hazardous waste subject to the Federal manifesting requirements of 40 CFR Part 262, or to the universal waste management standards of 40 CFR Part 273, to or from the countries listed in 40 CFR section 262.58(a)(1) or section 66262.58(a)(1) for recovery of hazardous waste, shall comply with 40 CFR Part 262, Subpart H or this article.

(e) A farmer who generates waste pesticides which are hazardous waste and who complies with all of the requirements of section 66262.70 is not required to comply with other standards in this chapter or chapters 2014, 15, or 18 of this division with respect to such pesticides.

(f) A person who generates a hazardous waste as defined by chapter 11 of this division is subject to the compliance requirements and penalties prescribed in chapter 6.5 of division 20 of the Health and Safety Code (commencing with section 25100) if the generator does not comply with the requirements of this chapter.

(g) An owner or operator who initiates a shipment of hazardous waste from a treatment, storage, or disposal facility shall comply with the generator standards established in this chapter. The provisions of section 66262.34 shall be applicable to the on–site accumulation of hazardous waste by generators. Therefore, the provisions of section 66262.34 shall apply only to owners or operators who are shipping hazardous waste which they generated at that facility.

(h) A generator who treats, stores, or disposes of hazardous waste on–site shall comply with the applicable standards and permit requirements set forth in chapters 14, 15, 16, 18 and 20 of this division.

(i) This article does not apply to generators handling only hazardous waste produced incidental to owning and maintaining their own place of residence.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5, 25169.7 and 58012, Health and Safety Code; and 40 Code of Federal Regulations section 262.10.

HISTORY
1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Amendment of subsection (g) and NOTE filed 10–24–94 as an emergency; operative 10–24–94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–20–95 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsection (g) and NOTE refiled 2–21–95 as an emergency; operative 2–21–95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–21–95 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsection (g) and NOTE refiled 6–19–95 as an emergency; operative 6–19–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–95 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsection (g) and NOTE refiled 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 10–24–94 order transmitted to OAL 12–15–95 and filed 1–31–96 (Register 96, No. 5).
7. Change without regulatory effect adding new subsection (d) and relettering subsections filed 8–20–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).
8. Amendment of subsections (b), (e) and (g) and amendment of NOTE filed 12–27–2005; operative 1–26–2006 (Register 2005, No. 52).

§ 66262.11. Hazardous Waste Determination.

A person who generates a waste, as defined in section 66261.2, shall determine if that waste is a hazardous waste using the following method:

(a) the generator shall first determine if the waste is excluded from regulation under section 66261.4 or section 25143.2 of the Health and Safety Code;

(b) the generator shall then determine if the waste is listed as a hazardous waste in articles 4 or 4.1 of chapter 11 or in Appendix X of chapter 11 of this division. If the waste is listed in Appendix X and is not listed in articles 4 or 4.1 of chapter 11, the generator may determine that the waste from his particular facility or operation is not a hazardous waste by either:

(1) testing the waste according to the methods set forth in article 3 of chapter 11 of this division, or according to an equivalent method approved by the Department pursuant to section 66260.21; or

(2) applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used and the characteristics set forth in article 3 of chapter 11 of this division.

(c) For purposes of compliance with chapter 18 of this division (commencing with section 66268.1), or if the waste is not listed as a hazardous waste in article 4 (commencing with section 66261.30), in article 4.1 (commencing with section 66261.50), or in Appendix X of chapter 11 of this division, the generator shall determine whether the waste exhibits any of the characteristics set forth in article 3 of chapter 11 of this division by either:

(1) testing the waste according to the methods set forth in article 3 (commencing with section 66261.20) of chapter 11 of this division, or according to an equivalent method approved by the Department under section 66260.21; or

(2) applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.

(d) If the waste is determined to be hazardous, the generator shall refer to chapters 14, 15, 18, and 23 of this division for possible exclusions or restrictions pertaining to management of the specific waste.

NOTE: Authority cited: Sections 25150, 25159 and 58012, Health and Safety Code. Reference: Sections 25115, 25117, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 262.11.

HISTORY
1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Amendment of subsection (d) and NOTE filed 2–8–2002; operative 2–8–2002 (Register 2002, No. 6).
3. Amendment of subsections (b) and (c) filed 2–13–2003; operative 3–15–2003 (Register 2003, No. 7).

§ 66262.12. Identification Numbers for the Generator.

(a) Except as specified in (d), a generator shall not treat, store, dispose of, transport or offer for transportation, hazardous waste without having received an Identification Number.

(b) A generator who has not received an Identification Number may obtain one by applying to the Administrator or to the Department using EPA form 8700–12 (Revised 12/99). Following receipt of the request, the generator will be assigned an identification number.

(c) A generator shall not offer the hazardous waste to transporters or to transfer, treatment, storage or disposal facilities that have not received an Identification Number.

(d) Generators who generate no more than 100 kilograms of waste per month that is hazardous solely due to the presence of silver in the waste pursuant to Health and Safety Code section 25143.13 are not required to obtain an Identification Number.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25143.13, 25159, 25159.5 and 25160.2, Health and Safety Code; and 40 CFR Sections 261.5 and 262.12.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect amending subsection (a) and adding subsections (d)–(d)(2) filed 1–5–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 2).
3. Change without regulatory effect amending subsection (b), repealing subsections (d)–(d)(2), adopting new subsection (d) and amending NOTE filed 12–31–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 1).

Article 2. The Manifest

§ 66262.20. General Requirements.

(a) For shipments initiated before September 5, 2006, a generator, except those generators identified in subsection (a)(1), who transports, or offers for transportation, hazardous waste for off–site transfer, treatment, storage, or disposal shall prepare a Manifest, DTSC Form 8022A (4/97), and if necessary, the EPA continuation Form 8700–22A, according to the instructions included in the Appendix to chapter 12 of this division before the waste is transported off–site. Before September 5, 2006, all manifest requests should be submitted to the following agency:

LEGISLATIVE BILL ROOM
STATE CAPITOL ROOM B–32
SACRAMENTO, CA 95814

For further information with regard to manifest ordering and associated fees, contact (916) 445–5357.

For shipments initiated on and after September 5, 2006, a generator, except those generators identified in subsection (a)(1), who transports, or offers for transport a hazardous waste for off–site transfer, treatment, storage, or disposal, or a treatment, storage, and disposal facility who offers for transport a rejected hazardous waste load, shall prepare a Uniform Hazardous Waste Manifest (OMB Control number 2050–0039) on EPA Form 8700–22, and, if necessary, a Continuation Sheet on EPA Form 8700– 22A, according to the instructions included in the Appendix to chapter 12 of this division before the waste is transported off–site.

Compliance with the revisions to the Manifest form and procedures announced in the regulations published by EPA on March 4, 2005 as modified by regulations adopted on June 16, 2005 and these regulations adopted by the department on August 24, 2006, shall not be required until on and after September 5, 2006.

(1) A generator who qualifies as a contributing school, as defined in section 67450.41(a)(3) of chapter 45, is not subject to the provisions of this article for transportation of hazardous wastes to a K–12 schools hazardous waste collection, consolidation, and accumulation facility (SHWCCAF) in accordance with article 5 of chapter 45 as long as the generator also maintains compliance with the provisions of article 5 of chapter 45 (commencing with section 67450.40) that are applicable to contributing schools.

(b) A generator shall designate on the manifest one facility which is permitted to handle the waste described on the manifest.

(c) A generator may also designate on the manifest one alternate facility which is permitted to handle the waste in the event an emergency prevents delivery of the waste to the primary designated facility.

(d) If the transporter is unable to deliver the hazardous waste to the designated facility or the alternate facility, the generator shall either designate another facility or instruct the transporter to return the waste.

NOTE: Authority cited: Sections 208, 25150, 25150.6, 25159 and 25161, Health and Safety Code. Reference: Sections 25150.6, 25159, 25159.5, 25160 and 25200, Health and Safety Code; 40 Code of Federal Regulations Sections 262.20 and 262.60.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect amending subsection (a) filed 8–27–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 35).
3. Amendment of subsection (a), new subsection (a)(1) and amendment of NOTE filed 1–30–2002; operative 1–30–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 5).
4. Change without regulatory effect amending section and NOTE filed 8–24–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 34).

§ 66262.21. Acquisition and Submission of Manifests.

(a) If the state to which the shipment is manifested (consignment state) supplies the manifest and requires its use, then the generator shall use that manifest. This subsection is repealed on September 5, 2006.

(b) If the consignment state does not supply the manifest, the generator shall use the California Uniform Hazardous Waste manifest, EPA 8700–22/DTSC 8022A (4/97). This subsection is repealed on September 5, 2006.

(c) For shipments initiated on and after September 5, 2006, a generator shall use the Uniform Hazardous Waste Manifest, EPA Form 8700–22, and, if necessary, a Continuation Sheet, EPA Form 8700–22A, printed by a registrant in accordance with 40 Code of Federal Regulations section 262.21. No previous manifest form versions may be used for shipments initiated on and after September 5, 2006. A registrant may not print, or have printed, the manifest for use or distribution unless it has received approval from the U.S. EPA Director of the Office of Solid Waste pursuant to 40 Code of Federal Regulations section 262.21 (c) and (e).

(d) Each copy of the manifest and continuation sheet shall indicate how the copy shall be distributed, as follows:

Page 1 (top copy): "Designated facility to destination State (if required)".

Page 2: "Designated facility to generator State (if required)".

Page 3: "Designated facility to generator".

Page 4: "Designated facility's copy".

Page 5: "Transporter's copy".

Page 6 (bottom copy): "Generator's initial copy".

(e)(1) A generator may use manifests printed by any source so long as the source of the printed form has received approval from U.S. EPA to print the manifest under 40 Code of Federal Regulations section 262.21 (c) and (e). A registered source may be a:

(A) State agency;

(B) Commercial printer;

(C) Hazardous waste generator, transporter or TSDF; or

(D) Hazardous waste broker or other preparer who prepares or arranges shipments of hazardous waste for transportation.

(2) A generator shall determine whether the generator state or the consignment state for a shipment regulates any additional wastes (beyond those regulated federally) as hazardous wastes under these states' authorized programs.

(3) Generators also shall determine whether the consignment state or generator state requires the generator to submit any copies of the manifest to these states. In cases where the generator shall supply copies to either the generator's state or the consignment state, the generator is responsible for supplying legible photocopies of the manifest to these states.

(f) Manifests shall be submitted to the department by any generator when the waste is generated in California or is transported to a designated facility located in California. The generator manifest copy shall be submitted to the department for every shipment on a manifest when California is either the generator state or the destination or consignment state. The generator manifest copy shall be mailed to:

DTSC GENERATOR MANIFESTS
P.O. BOX 400
SACRAMENTO, CA 95812–0400

NOTE: Authority cited: Sections 25150, 25159 and 25161, Health and Safety Code. Reference: Sections 25159, 25159.5 and 25160, Health and Safety Code; 40 Code of Federal Regulations Section 262.21.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect amending subsection (b) filed 8–27–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 35).

3. Change without regulatory effect amending section heading, section and NOTE filed 8–24–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 34).

§ 66262.22. Number of Copies.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25161, Health and Safety Code. Reference: Sections 25159, 25159.5 and 25160, Health and Safety Code; 40 CFR Section 262.22.

HISTORY

1. New section filed 5–28–91; operative 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect repealing section filed 8–24–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 34).

§ 66262.23. Use of the Manifest.

(a) The generator of any hazardous or extremely hazardous waste to be transported off–site or into California shall:

(1) complete the generator and waste section and sign the manifest certification according to the instructions in the Appendix to this chapter; and

(2) obtain the handwritten signature of the initial transporter and date of acceptance on the manifest; and

(3) retain one copy, in accordance with section 66262.40(a); and

(4) within 30 days of each shipment of hazardous waste submit to the Department a legible copy of each manifest used; and

(5) on or after September 5, 2006, for hazardous waste that is not regulated as a hazardous waste by the U.S. EPA (non–RCRA waste), describe these wastes in Item 9b of the manifest or Item 27b of the continuation sheet as follows:

(A) describe non–RCRA hazardous wastes which do not have a U.S. DOT description indicating a generic name of the waste and the phrase "Non–RCRA Hazardous Waste, Solid" or "Non–RCRA Hazardous Waste, Liquid" for solid or liquid wastes, respectively. When possible, the generic name shall be obtained from chapter 11, Appendix X, subsection (b) of this division. If not listed in chapter 11, Appendix X, subsection (b) of this division, the commonly recognized industrial name of the waste shall be used.

(B) describe non–RCRA hazardous wastes which have a U.S. DOT description by the U.S. DOT description, and

(6) The EPA hazardous waste number, if applicable, can be found in chapter 11, articles 3 and 4 and the California Hazardous Waste Code Number can be found in chapter 11, Appendix XII.

(b) The generator shall give the transporter the remaining copies of the manifest.

(c) For shipments of hazardous waste within the United States solely by water (bulk shipments only), the generator shall send three copies of the manifest dated and signed in accordance with this section to the owner or operator of the designated facility or the last water (bulk shipment) transporter to handle the waste in the United States if exported by water. Copies of the manifest are not required for each transporter.

(d) For rail shipments of hazardous waste within the United States which originate at the site of generation, the generator shall send at least three copies of the manifest dated and signed in accordance with this section to:

(1) the next non–rail transporter, if any; or

(2) the designated facility if transported solely by rail; or

(3) the last rail transporter to handle the waste in the United States if exported by rail.

(e) For shipments of hazardous waste to a designated facility in an authorized State which has not yet obtained authorization to regulate that particular waste as hazardous, the generator shall assure that the designated facility agrees to sign and return the manifest to the generator, and that any out–of–state transporter signs and forwards the manifest to the designated facility.

NOTE: Authority cited: Sections 25150, 25159, 25161 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5 and 25160, Health and Safety Code; 40 Code of Federal Regulations Section 262.23.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect adding new subsection (e) and amending NOTE filed pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 18).
3. Change without regulatory effect amending subsections (a) and (a)(3), adding subsections (a)(5)–(6) and amending subsection (e) and NOTE filed 8–24–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 34).

§ 66262.27. Waste Minimization Certification.

A generator who initiates a shipment of hazardous waste shall certify to one of the following statements in Item 15 of the uniform hazardous waste manifest:

(a) "I am a large quantity generator. I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment;" or

(b) "I am a small quantity generator. I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford."

(c) This section is effective on and after September 5, 2006.

NOTE: Authority cited: Sections 25150, 25159 and 25161, Health and Safety Code. Reference: Sections 25159, 25159.5 and 25160, Health and Safety Code; and 40 Code of Federal Regulations Section 262.27.

HISTORY

1. Change without regulatory effect adding section filed 8–24–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 34).

Article 3. Pre–Transport Requirements

§ 66262.30. Packaging.

Before transporting hazardous waste or offering hazardous waste for transportation off–site, a generator shall package the waste in accordance with the applicable Department of Transportation regulations on packaging under Title 49 CFR Parts 173, 178, and 179.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25161, Health and Safety Code. Reference: Sections 25159, 25159.5 and 25160, Health and Safety Code; 40 CFR Section 262.30.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66262.31. Labeling.

Before transporting or offering hazardous waste for transportation off–site, a generator shall label each package in accordance with the applicable Department of Transportation regulations on hazardous materials under Title 49 CFR Part 172.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25161, Health and Safety Code. Reference: Sections 25159, 25159.5 and 25160, Health and Safety Code; 40 CFR Section 262.31.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66262.32. Marking.

(a) Before transporting or offering hazardous waste for transportation off–site, a generator shall mark each package of hazardous waste in accordance with the applicable Department of Transportation regulations on hazardous materials under Title 49 Code of Federal Regulations Part 172;

(b)(1) Before September 5, 2006, and before transporting hazardous waste or offering hazardous waste for transportation off–site, a generator shall mark each container of 110 gallons or less used in such transportation with the following words and information displayed in accordance with the requirements of Title 49 Code of Federal Regulations section 172.304:

HAZARDOUS WASTE–State and Federal Law Prohibit Improper Disposal. If found, contact the nearest police or public safety authority, the U.S. Environmental Protection Agency or the California Department of Toxic Substances Control.

Generator's Name and Address_____.

Manifest Document Number_____.

(2) On and after September 5, 2006, before transporting hazardous waste or offering hazardous waste for transportation off–site, a generator

shall mark each container of 119 gallons or less used in such transportation with the following words and information displayed in accordance with the requirements of 49 Code of Federal Regulations section 172.304:

HAZARDOUS WASTE–State and Federal Law Prohibit Improper Disposal. If found, contact the nearest police or public safety authority, the U.S. Environmental Protection Agency or the California Department of Toxic Substances Control.

Generator's Name and Address _____.

Generator's EPA Identification Number _____.

Manifest Tracking Number _____.

NOTE: Authority cited: Sections 25150, 25159, 25161 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5 and 25160, Health and Safety Code; 40 Code of Federal Regulations Section 262.32; 49 Code of Federal Regulations section 172.304; and 49 Code of Federal Regulations Part 172.

HISTORY

1. New section filed 5–28–91; operative 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect amending subsection (b) and NOTE filed 12–9–2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 50).
3. Change without regulatory effect amending subsection (b) filed 6–7–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 24).
4. Change without regulatory effect amending section and NOTE filed 8–24–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 34).

§ 66262.33. Placarding.

Before transporting hazardous waste or offering hazardous waste for transportation off–site, a generator shall placard or offer the initial trasportor the appropriate placards according to Department of Transportation regulations for hazardous materials under 49 Code of Federal Regulations Part 172, Subpart F.

NOTE: Authority cited: Sections 25150, 25159 and 25161, Health and Safety Code. Reference: Sections 25159, 25159.5 and 25160, Health and Safety Code; 40 Code of Federal Regulations Section 262.33.; 49 Code of Federal Regulations Section 171.3; and 49 Code of Federal Regulations Part 172, Subpart F.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect amending section and NOTE filed 8–24–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 34).

§ 66262.34. Accumulation Time.

(a) Except as provided in subsections (c) and (d) of this section and section 66262.35, a generator may accumulate hazardous waste on–site for 90 days or less without a permit or grant of interim status, provided that:

(1)(A) the waste is placed in containers and the generator complies with the applicable requirements of articles 9, 27, 28 and 28.5 of chapter 15 of this division, or the waste is placed in tanks and the generator complies with articles 10, 27, 28, and 28.5 of chapter 15 of this division, except sections 66265.197(c) and 66265.200. In addition, such a generator is exempt from all the requirements in articles 7 and 8 of chapter 15 of this division, except for sections 66265.111 and 66265.114; or

(B) the waste is placed on drip pads and the generator complies with the applicable requirements of articles 17.5, 27, 28 and 28.5 of chapter 15 and maintains the following records at the facility:

1. a description of procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and

2. documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal; and/or

(C) the waste is placed in containment buildings and the generator complies with article 29 of Chapter 15 of this division, has placed its professional engineer (PE) certification that the building complies with the design standards specified in 66265.1101 in the facility's operating record no later than 60 days after the date of initial operation of the unit. After February 18, 1993, PE certification will be required prior to operation of the unit. The owner or operator shall maintain the following records at the facility:

1. a written description of procedures to ensure that each waste volume remains in the unit for no more than 90 days, a written description of the waste generation and management practices for the facility showing that they are consistent with respecting the 90 day limit, and documentation that the procedures are complied with; or

2. documentation that the unit is emptied at least once every 90 days; and

(2) the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container; and

(3) the generator complies with the requirements of subsection (f) of this section; and

(4) the generator complies with the requirements for owners or operators in articles 3 and 4 of chapter 15 of this division and with section 66265.16, and with section 66268.7(a)(5).

(b) The beginning of the 90 day period specified in subsections (a) and (c) of this section is determined as follows:

(1) if the generator does not generate more than 100 kilograms of hazardous waste or one kilogram of acutely hazardous waste (listed in section 66261.33(e)) or one kilogram of extremely hazardous waste during any calendar month, the 90 day period begins on the date the generator has accumulated 100 kilograms of hazardous waste or one kilogram of acutely hazardous waste or one kilogram of extremely hazardous waste;

(2) if the generator generates more than 100 kilograms of hazardous waste or one kilogram of acutely hazardous waste or one kilogram of extremely hazardous waste during any calendar month, the 90–day period begins on the first date on which any amount of hazardous waste begins to accumulate during that month.

(c) A generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of chapters 14 and 15 of this division and the permit requirements of chapter 20 of this division, unless the generator has been granted an extension to the 90–day period or meets the requirements of subsection (d) or (e) of this section. An extension may be granted pursuant to section 66262.35 if non–RCRA or RCRA exempt hazardous wastes must remain on–site for longer than 90 days. An extension may be granted by the Department if RCRA hazardous wastes must remain onsite for longer than 90 days due to unforeseeable, temporary, and uncontrollable circumstances. An extension of up to 30 days for RCRA hazardous waste may be granted at the discretion of the Department on a case–by–case basis.

(d) Notwithstanding subsections (a) and (c) of this section and section 66262.35, a generator of less than 1,000 kilograms of hazardous waste in any calendar month who accumulates hazardous waste onsite for 180 days or less, or 270 days or less if the generator transports the generator's own waste, or offers the generator's waste for transportation, over a distance of 200 miles or more, for offsite treatment, storage, or disposal, is not a storage facility if all of the following apply:

(1) The quantity of hazardous waste accumulated onsite never exceeds 6,000 kilograms.

(2) The generator complies with the requirements of 40 Code of Federal Regulations section 262.34(d), (e) and (f).

(3) The generator does not hold acutely hazardous waste or extremely hazardous waste in an amount greater than one kilogram for more than 90 days.

(e)(1) A generator may accumulate as much as 55 gallons of hazardous waste, one quart of acutely hazardous waste (listed in section 66261.33(e)) or one quart of extremely hazardous waste at or near any point of generation, without a permit or grant of interim status, without complying with subsections (a), (b) and (c) of this section, if all of the following requirements are met with respect to this waste:

(A) the waste is accumulated in containers, other than tanks, at the initial accumulation point which is at or near the area where the waste is generated and which is under the control of the operator of the process generating the waste;

(B) the generator does not hold the waste onsite for more than one year from the initial date of accumulation, or for longer than the applicable accumulation period specified in subdivision (a) or (d), whichever occurs first. For purposes of this subdivision, the applicable accumulation period specified in subdivision (a) or (d) shall start on the date the quantity limitation specified in paragraph 1 of subsection (e) of this section is reached:

(C) the initial date of waste accumulation is clearly marked and visible for inspection on each container used for accumulation of hazardous waste;

(D) the generator complies with sections 66265.171, 66265.172, and 66265.173(a) of this division; and

(E) the generator complies with subsections (e)(2), (e)(3) and (f)(3) of this section.

(2) Except as provided in subsections (e)(2)(A) and (e)(2)(B) of this section, a process or group of processes meeting the requirements of subsection (e)(1) of this section, shall be subject to a single 55 gallon or one quart accumulation limit for that process or group of processes.

(A) If not all of the wastestreams generated by a single process or group of processes located within the same physical area are compatible, a separate 55 gallon or one quart limit shall apply to each group of wastestreams that are compatible.

(B) If the generator determines that using only one 55–gallon or one–quart container to initially accumulate specific compatible wastestreams is not practical (e.g., prevents recycling or requires unreasonable accumulation procedures) or safe from an environmental or worker/public health and safety standpoint, the generator may use a separate 55–gallon or one–quart container for those specific compatible wastestreams. The generator's determination shall be subject to review and approval by the Department at any time.

(3) A generator who has accumulated an amount of hazardous waste, acutely hazardous waste or extremely hazardous waste equal to any applicable quantity limitation listed in subsection (e)(1) of this section at or near any point of generation shall, with respect to that waste, comply within three days with subsection (a) of this section and other applicable provisions of this division. During the three day period the generator shall continue to comply with subsection (e)(1) of this section. Within the three day period, the generator shall mark the container holding the hazardous waste with the date the applicable quantity limitation was reached.

(f) Generators who accumulate hazardous waste on site without a permit or grant of interim status shall comply with the following requirements:

(1) the date upon which each period of accumulation begins shall be clearly marked and visible for inspection on each container and portable tank;

(2) the date the applicable accumulation period specified in subsection (a) or (d) of this section begins, for purposes of subsections (a) and (b) of this section, shall be clearly marked and visible for inspection on each container and tank; and

(3) each container and tank used for onsite accumulation of hazardous waste shall be labeled or marked clearly with the words, "Hazardous Waste." Additionally, all containers and portable tanks shall be labeled with the following information:

(A) composition and physical state of the wastes;

(B) statement or statements which call attention to the particular hazardous properties of the waste (e.g., flammable, reactive, etc.);

(C) name and address of the person producing the waste.

(g) This subsection takes effect on September 5, 2006. Except as provided in Health and Safety Code section 25160.6, subdivision (e), a generator who sends a shipment of hazardous waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of sections 66264.72 or 66265.72 may accumulate the returned waste onsite for 90 days or less, in accordance with the requirements of paragraph (1) of subsection (a) of this section. Upon receipt of the returned shipment, the generator shall:

(1) sign Item 18c of the manifest, if the transporter returned the shipment using the original manifest; or

(2) sign Item 20 of the manifest, if the transporter returned the shipment using a new manifest;

(3) submit a copy of the signed manifest to the department within 30 days of receipt. Mail the legible manifest copy, specifically the Designated Facility–to– Destination State manifest copy (Page 1 of the manifest as provided in section 66262.21, subsection (d)) to:

DTSC FACILITY MANIFESTS
P.O. BOX 3000, SACRAMENTO, CA
95812–3000

(h) The generator of the rejected hazardous waste shall label or mark the hazardous waste in a manner that indicates that it is rejected hazardous waste and shall include the date it was received by the generator. If the generator of the rejected hazardous waste commingles it with other hazardous wastes, the shorter of any applicable accumulation time limits shall apply to the commingled hazardous waste.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25160.6, 25179.6 and 58012, Health and Safety Code. Reference: Sections 25123.3, 25150, 25159, 25159.5, 25160.6 and 58012, Health and Safety Code; and 40 Code of Federal Regulations Section 262.34.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Designation and amendment of subsection (a)(1)(A), new subsections (a)(1)(B)–(C) and amendment of NOTE filed 7–29–94; operative 8–29–94 (Register 94, No. 30).
3. Amendment of subsection (a)(1)(B)2, new subsections (a)(1)(C)–(C)ii, subsection redesignation and amendment of NOTE filed 10–24–94 as an emergency; operative 10–24–94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–20–95 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsections (a)(1)(B)2., new subsections (a)(1)(C)–(C)ii, subsection redesignation and amendment of NOTE refiled 2–21–95 as an emergency; operative 2–21–95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–21–95 or emergency language will be repealed by operation of law on the following day.
5. Editorial correction adding HISTORY 4 (Register 95, No. 10).
6. Amendment of subsection (a)(1)(B)2., new subsections (a)(1)(C)–(C)(ii), subsection relettering and amendment of NOTE refiled 6–19–95 as an emergency; operative 6–19–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–95 or emergency language will be repealed by operation of law on the following day.
7. Amendment of subsection (a)(1)(B)2., new subsections (a)(1)(C)–(C)(ii), subsection relettering and amendment of NOTE refiled 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.
8. Change without regulatory effect amending subsection (a)(1)(B) filed 12–28–95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 52).
9. Certificate of Compliance as to 10–24–94 order including amendment of subsection (a)(1)(C) and new designation of subsections (a)(1)(C)(i)–(ii) to (a)(1)(C)1.–2., transmitted to OAL 12–15–95 and filed 1–31–96 (Register 96, No. 5).
10. Change without regulatory effect amending subsections (a) and (c), repealing subsections (d)–(d)(2) and adding new sections (d)–(d)(3), and amending subsections (e)(1)(B) and (f)(2) filed 4–3–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
11. Change without regulatory effect amending subsection (a)(1)(C) filed 2–3–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 6).
12. Change without regulatory effect redesignating former subsections (a)(1)(D), (a)(2) and (a)(3) as subsections (a)(2), (a)(3), and (a)(4), respectively, amending newly designated subsection (a)(4), and repealing former subsection (a)(4) filed 8–15–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 33).
13. Change without regulatory effect amending subsection (a)(4) filed 10–28–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 44).
14. Amendment of subsections (a), (c) and (d) filed 10–1–98; operative 10–31–98 (Register 98, No. 40).
15. Change without regulatory effect amending subsections (a)(1)(A)–(B) filed 8–3–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 31).

16. Change without regulatory effect amending subsection (a)(4) filed 9–11–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 37).
17. Change without regulatory effect amending subsections (a)(1)(A) and (c) filed 1–13–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 2).
18. Change without regulatory effect amending subsection (d)(2), adding subsections (g)–(h) and amending NOTE filed 8–24–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 34).

§ 66262.35. Extension(s) to Accumulation Time.

(a) A generator may accumulate non–RCRA or RCRA exempt hazardous waste for longer than the time periods specified in Section 66262.34(a) or (d) under the following conditions:

(1) if hazardous wastes must remain onsite for longer than the applicable time specified in section 66262.34(a) or (d) due to unforeseeable, temporary, and uncontrollable circumstances, a one–time extension of up to 90 days is automatically granted if all of the following conditions are met.

(A) The generator submits a letter, by certified mail with return receipt requested, to the Certified Unified Program Agency (CUPA) notifying the CUPA of the extension. If the generator is located in a jurisdiction with no CUPA, then the notification letter shall be submitted to the officer or agency authorized pursuant to subdivision (f) of Health and Safety Code Section 25404.3 to implement and enforce the requirements of Health and Safety Code Section 25404(c)(1). The letter shall be received by the CUPA or authorized officer or agency prior to the generator exceeding the applicable time specified in section 66262.34(a) or (d). In the letter the generator shall provide all of the following information:

1. A certification signed by the generator certifying that:

a. the eligibility requirements and the conditions for the extension are met; and

b. hazardous waste is not accumulated in waste piles; and

c. where hazardous waste is accumulated in tank systems, the generator complies with Title 22, CCR, chapter 15, article 10, sections 66265.190 through 66265.200, except 66265.197(c); and

d. where hazardous waste is accumulated in containers, the generator complies with Title 22, CCR, chapter 15, article 9, sections 66265.170 through 66265.177; and

e. where hazardous waste is accumulated on drip pads, the generator complies with Title 22, CCR, chapter 15, article 17.5 sections 66265.440 through 66265.445; and

f. where hazardous waste is accumulated in containment buildings, the generator complies with Title 22, CCR, chapter 15, article 29, sections 66265.1100 through 66265.1102; and

g. hazardous waste will be managed in accordance with all requirements of chapters 14 and 15 of this Division applicable to generators, except those specifically excluded elsewhere in this section.

2. Name, mailing address, and telephone number of the generator or the facility owner or operator.

3. Generator or the facility owner/operator name and address or legal description of the site location, and EPA ID number.

4. A detailed explanation of why the extension is needed. This shall include at a minimum: a description of the hazardous wastestream(s) for which the extension is being requested, the maximum quantity to be stored over the applicable time limits specified in Section 66262.34(a) or (d), an explanation of how the wastestream is generated, and the start and end dates of the 90 day extension period.

(B) All generators authorized by the Department with a permit, Standardized Permit, or grant of Interim Status shall simultaneously submit to the Department a copy of the letter submitted to the CUPA, or, if there is no CUPA, to the agency authorized pursuant to subdivision (f) of HSC Section 25404.3. The letter shall certify that the eligibility requirements and the conditions for the extension are met and that the hazardous waste will be managed in accordance with the applicable requirements of Title 22.

(C) Upon request by a CUPA, or the authorized officer or agency, the generator shall provide all documents, operating logs, reports, or any other information that supports the claim of necessity for the extension or relates to the management of the hazardous waste for which the extension is requested.

(2) One or more 90–day extension(s) may be granted at the discretion of the CUPA, or if no CUPA then at the discretion of the authorized officer or agency in that jurisdiction, on a case–by–case basis if all of the following conditions are met:

(A) The generator submits a letter, by certified mail with return receipt requested, to the CUPA, or if no CUPA then to the authorized officer or agency in that jurisdiction, requesting the extension. The letter shall be received by the CUPA or authorized officer or agency prior to the generator exceeding the accumulation time specified in Section 66262.34(a) or (d). In the letter the generator shall provide the information and certification listed in (a)(1)(A).

(B) The hazardous waste is not accumulated in waste piles.

(C) The generator meets one of the following circumstances:

1. There is a lack of offsite treatment capacity, offsite disposal capacity, or a treatment process for the generator's hazardous waste. The generator must submit documentation to the CUPA, or if no CUPA then to the authorized officer or agency in that jurisdiction, verifying attempts to locate an appropriate offsite treatment or disposal facility for the hazardous waste and list the names, addresses, and phone numbers of all the disposal and or treatment facilities that have been contacted.

2. Longer accumulation time is needed by the generator to treat its hazardous waste onsite. The speculative accumulation of hazardous waste is not sufficient reason for an extension.

3. An extension is needed because the onsite cleanup activity requires longer accumulation time (e.g., delays in clean up due to weather conditions).

4. An extension is needed because there was an emergency (e.g., mechanical failure, fire, etc.) at the business.

5. Generators that have already qualified for one 90–day extension beyond the applicable time specified in Section 66262.34(a) or (d) under section (a)(1)(A) above, but still require more time due to unforeseeable, temporary, and uncontrollable circumstances.

6. Other good cause as determined by the CUPA, or if no CUPA then by the authorized officer or agency in that jurisdiction.

(D) Upon request by a CUPA, or if no CUPA then by the authorized officer or agency in that jurisdiction, the generator shall provide all documents, operating logs, reports, or any other information that supports the claim of necessity for the extension or relates to the management of the hazardous waste for which the extension is requested.

(3) In the event of a disaster, the Department may grant an emergency waiver allowing a 90–day extension to the generators within the geographic location of the disaster if the following conditions are met:

(A) The hazardous waste must be accumulated in tank systems that comply with the technical standards of Title 22, CCR, chapter 15, article 10, or containers that comply with the technical standards of Title 22, CCR, chapter 15, article 9, or placed on drip pads and the generator complies with Title 22, CCR, chapter 15, article 17.5, or placed in containment buildings and the generator complies with article 29 of chapter 15 of Title 22, CCR. Hazardous waste accumulated in waste piles shall not be eligible for this extension.

(B) The emergency waiver shall only be activated when there has been a proclamation of a state of emergency by the federal, state, or local government for the geographic location (e.g., city or county).

(C) The Department shall issue a press release specifying which particular geographic location (e.g., city, county) will be granted an emergency waiver.

(D) The Department may further extend the effective period of the emergency waiver, as necessary, to assist the recovery process from the disaster. This extension shall also be announced through a press release.

(E) Upon request by the Department, a CUPA, or if no CUPA then by the authorized officer or agency in that jurisdiction, the generator shall provide all documents, operating logs, reports, or any other information

that supports the claim of necessity for the extension or relates to the management of the hazardous waste for which the extension is requested.

NOTE: Authority cited: Sections 25150, 25159, 25159.5 and 58012, Health and Safety Code. Reference: Sections 25123.3, 25150, 25159, 25159.5 and 58012, Health and Safety Code.

HISTORY

1. New section filed 10–1–98; operative 10–31–98 (Register 98, No. 40).

Article 4. Recordkeeping and Reporting

§ 66262.40. Recordkeeping.

(a) A generator shall keep a copy of each manifest signed in accordance with section 66262.23(a) for three years or until the generator receives a signed copy from the designated facility which received the waste. This signed copy shall be retained as a record for at least three years from the date the waste was accepted by the initial transporter.

(b) A generator shall keep a copy of each Biennial Report and Exception Report for a period of at least three years from the due date of the report.

(c) A generator shall keep records of any test results, waste analyses, or other determinations made in accordance with section 66262.11 for at least three years from the date that the waste was last sent to on–site or off–site treatment, storage, or disposal.

(d) The periods or retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the USEPA Administrator or the Department.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25161, Health and Safety Code. Reference: Sections 25159, 25159.5 and 25160, Health and Safety Code; 40 CFR Section 262.40.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66262.41. Biennial Report.

(a) For the Biennial report on 1995 activities, only generators that are required under Title 40 of the Code of Federal Regulations (CFR), section 262.41 to prepare and submit this report are subject to this section. This report, due on March 1, 1996 is to be submitted on U.S. EPA form 8700–13A/B (5–80) (8–95) provided by the Department. Generators required to submit this report for activities conducted during 1995 are generators which meet any of the following criteria:

(1) The site generated in any single month 1,000 kg (2,200 lbs) or more of RCRA hazardous waste; or

(2) The site generated in any single month, or accumulated at any time, 1 kg (2.2 lbs) of RCRA acute hazardous waste; or

(3) The site generated or accumulated at any time more than 100 kg (220 lbs) of spill cleanup materials contaminated with RCRA acute hazardous waste; or

(4) The site treated, stored, or disposed of RCRA hazardous waste on site in units subject to RCRA permitting requirements during 1995.

(b) A generator who ships any hazardous waste offsite to a transfer, treatment, storage or disposal facility within the United States shall prepare and submit a single copy of a Biennial Report, EPA Form 8700–13A/B, 5–80, (Revised 11–89) to the Department by March 1 of each even–numbered year. The Biennial Report shall be submitted on forms provided by the Department and shall cover generator activities during the previous calendar year, and shall include the following information:

(1) the identification number, name and address of the generator;

(2) the calendar year covered by the report;

(3) the identification number, name and address for each off–site transfer, treatment, storage or disposal facility in the United States to which waste was shipped during the year;

(4) the name and Identification Number of each transporter used during the reporting year for shipments to a transfer, treatment, storage or disposal facility within the United States;

(5) a description, EPA hazardous waste number (from chapter 11, articles 3 or 4 of this division), California Hazardous Waste Category Number, from chapter 11, Appendix XII, DOT hazard class, and quantity of each hazardous waste shipped offsite to a transfer, treatment, storage or disposal facility within the United States. This information shall be listed by identification number of each such offsite facility to which waste was shipped. Wastes that are classified as non–RCRA hazardous wastes can be properly described by indicating a generic name of the waste and the phrase "Non–RCRA Hazardous Waste, Solid" or "Non–RCRA Hazardous Waste, Liquid" for solid or liquid wastes, respectively. When possible, the generic name shall be obtained from chapter 11, Appendix X, subdivision (e) of this division. If not listed, the commonly recognized industrial name of the waste shall be used;

(6) a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated;

(7) a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984;

(8) the certification signed by the generator or authorized representative.

(c) Any generator who treats, stores or disposes of hazardous waste onsite shall submit an annual report covering those wastes in accordance with the provisions of chapters 20, 14, 15 and 16 of this division. Reporting for exports of hazardous waste is not required on the Biennial Report form. A separate annual report requirement is set forth in section 66262.56.

(d) Additional information concerning the quantities and disposition of wastes identified or listed in chapter 11 shall be required as needed by the Department or USEPA Administrator.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25161, Health and Safety Code. Reference: Sections 25159, 25159.5, 25160 and 25244.4, Health and Safety Code; 40 CFR Section 262.41.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Editorial correction of printing error in subsection (a)(5) (Register 92, No. 49).
3. New subsections (a)–(a)(4) and subsection relettering filed 3–5–97; operative 4–4–97 (Register 97, No. 10).
4. Change without regulatory effect amending subsection (a) filed 6–7–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 24).

§ 66262.42. Exception Reporting.

(a) A generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter shall contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste.

(b) A generator shall submit an Exception Report to the Department if the generator has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter. The Exception Report shall include:

(1) a legible copy of the manifest for which the generator does not have confirmation of delivery;

(2) a cover letter signed by the generator or the generator's authorized representative explaining the efforts taken to locate the hazardous waste and the results of those efforts.

(c) A generator meeting the requirements of paragraph (1) of Health and Safety Code section 25123.3, subdivision (h) who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the facility to which the generator's waste is submitted, within 60 days from the date that the hazardous waste was accepted by the initial transporter, shall submit to the department a legible copy of the manifest, with some indication that the generator has not received confirmation of delivery.

(d) Generators shall submit the exception report or information to the department at:

DTSC REPORT REPOSITORY
GENERATOR INFORMATION SERVICES SECTION
P.O. BOX 806
SACRAMENTO, CA 95812-0806

NOTE: Authority cited: Sections 25150, 25159 and 25161, Health and Safety Code. Reference: Sections 25123.3(h), 25159, 25159.5 and 25160, Health and Safety Code; and 40 Code of Federal Regulations Section 262.42.

HISTORY

1. New section filed 5-24-91; effective 7-1-91 (Register 91, No. 22).
2. Change without regulatory effect adding subsections (c)-(d) and amending NOTE filed 8-24-2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 34).

§ 66262.43. Additional Reporting.

The Department may require generators to furnish additional reports concerning the quantities and disposition of wastes identified or listed in chapter 11 of this division.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 262.43.

HISTORY

1. New section filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 66262.44. Reporting Hazardous Wastes of Concern Discovered by the Generator to be Missing.

(a) Generators, including those operating under a Permit by Rule, Conditional Authorization, or Conditional Exemption, shall comply with reporting requirements set forth in this section, in the event that a hazardous waste of concern, as defined in section 66261.111(a), is discovered to be missing during storage including generator accumulation areas within the facility, and the waste at issue represents a reportable quantity or a reportable difference in type, as specified in section 66261.111(b) and (c).

(b) Upon discovering that a hazardous waste of concern is missing, and the waste at issue represents a reportable quantity or a reportable difference in type, the generator shall immediately attempt to reconcile the reportable quantity or difference (e.g., by reviewing facility records). If the reportable quantity or difference is not reconciled within 24 hours after it was discovered, the owner or operator shall immediately notify the Department by calling 1-800-69-TOXIC (1-800-698-6942) and provide the following information:

(1) Generator name and identification number;

(2) Waste information (information that is typically provided on the manifest or as detailed on a material safety data sheet), including proper shipping name, hazard class or division, identification number, packing group, number of containers, container type (as listed in Table I of the Appendix to Chapter 12), quantity or volume of waste at issue, weight or volume units, and waste codes; and

(3) Potential locations or transportation routes where the hazardous waste of concern may have become missing (e.g., areas at the facility where the waste was handled, stored or transported within the facility).

(c) If the reportable quantity or difference is not reconciled within 24 hours after it was discovered, in addition to complying with subsection (b), within 5 days after the reportable quantity or difference was discovered, the generator shall submit to the Department a letter describing the reportable quantity or difference and attempts to reconcile it, and a copy of the manifest.

(1) If the hazardous waste generator is located in the counties of Los Angeles, Ventura, Santa Barbara, San Bernardino, Orange, Riverside, San Diego, or Imperial, submit the letter to the Complaint Coordinator, Department of Toxic Substances Control, Statewide Compliance Division, Glendale Branch, 1011 North Grandview Avenue, Glendale, California 91201-2205.

(2) If the hazardous waste generator is located in any other county, submit the letter to the Complaint Coordinator, Department of Toxic Substances Control, Statewide Compliance Division, Northern California Branch, 8800 Cal Center Drive, Sacramento, California 95826-3200.

(d) Generators that handle hazardous wastes of concern will identify themselves as such when complying with Health and Safety Code section 25205.16.

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25150, 25169.7 and 58012, Health and Safety Code.

HISTORY

1. New section filed 12-27-2005; operative 1-26-2006 (Register 2005, No. 52).

§ 66262.45. Certification Requirements for the Generator.

(a) A generator who operates or authorizes the operation of a transportable treatment unit (TTU) to treat hazardous waste on-site as specified in section 67450.3(a)(8)(A) shall sign a certification stating:

(1) The generator of the waste has established a program to reduce the volume, quantity and toxicity of the hazardous waste to the degree, determined by the generator, to be economically practicable; and

(2) The proposed method of treatment is that practicable method currently available to the generator which minimizes the present and future threat to human health and the environment.

(b) A generator who operates a TTU to treat waste on-site shall include the certification with each notification required by section 67450.3(a)(3). A generator who authorizes an independent TTU owner or operator to treat waste on-site shall provide the certification to the TTU owner or operator.

(c) A generator who operates a fixed treatment (FTU) to treat hazardous waste on-site as specified in section 67450.3 shall sign, and provide with each notification required in sections 67450.2(b)(3)(H) and 67450.3(c), a certification stating:

(1) The generator of the waste has established a program to reduce the volume and quantity and toxicity of the hazardous waste to the degree, determined by the generator, to be economically practicable; and

(2) The proposed method of treatment is that practicable method currently available to the generator which minimizes the present and future threat to human health and the environment.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Sections 25150 and 25202.9, Health and Safety Code.

HISTORY

1. New section filed 10-23-91; operative 1-1-92 (Register 92, No. 12).

§ 66262.47. Operating Limits for Generators Using Transportable Treatment Units Operating Pursuant to a Permit by Rule.

A generator who treats or authorizes the treatment of hazardous waste with a transportable treatment unit (TTU) pursuant to section 67450.3(a)(8)(A) shall not allow any TTU or combination of TTUs to be operated on-site for more than one year, unless DTSC authorizes an extension to the TTU company pursuant to section 67450.3(a)(8)(A).

NOTE: Authority cited: Sections 25150, 58004 and 58012, Health and Safety Code. Reference: Section 25150, Health and Safety Code.

HISTORY

1. New section filed 10-23-91; operative 1-1-92 (Register 92, No. 12).
2. Change without regulatory effect amending section and NOTE filed 3-26-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 13).

Article 5. Exports of Hazardous Waste

§ 66262.50. Applicability.

This article establishes requirements applicable to exports of hazardous waste to a foreign country from the State. Except to the extent 40 CFR section 262.58 provides otherwise, a primary exporter of hazardous waste shall comply with the requirements of this article and a transporter transporting hazardous waste for export shall comply with applicable requirements of chapter 13 of this division.

NOTE: Authority cited: Sections 208, 25150.2 and 25159, Health and Safety Code. Reference: Sections 25150.2, 25159, 25159.5 and 25162, Health and Safety Code, 40 CFR Section 262.50.

HISTORY

1. New section filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 66262.52. General Requirements.

Exports of hazardous waste to a foreign country from the State are prohibited except in compliance with the applicable requirements of this article and of chapter 13 of this division. Exports of hazardous waste are prohibited unless:

(a) notification in accordance with section 66262.53 has been provided;

(b) for RCRA hazardous waste, the receiving country has consented to accept the hazardous waste;

(c) for RCRA hazardous waste, a copy of the EPA Acknowledgment of Consent to the shipment accompanies the hazardous waste shipment and, unless exported by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment));

(d) for RCRA hazardous waste, the hazardous waste shipment conforms to the terms of the receiving country's written consent as reflected in the EPA Acknowledgment of Consent.

NOTE: Authority cited: Sections 208, 25150.2 and 25159, Health and Safety Code. Reference: Sections 25150.2, 25159, 25159.5 and 25162, Health and Safety Code, 40 CFR Section 262.52.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66262.53. Notification of Intent to Export.

(a) A primary exporter of RCRA hazardous waste shall concurrently notify U.S. EPA and send a copy of that notification to the Department of an intended export before such waste is scheduled to leave the United States. A complete notification shall be submitted sixty (60) days before the initial shipment is intended to be shipped off site. This notification shall cover export activities extending over a twelve (12) month or lesser period. The notification shall be in writing, signed by the primary exporter, and include the following information:

(1) name, mailing address, telephone number and ID number of the primary exporter;

(2) by consignee, for each hazardous waste type:

(A) a description of the hazardous waste and the EPA hazardous waste number, if applicable, (from chapter 11, articles 3 and 4), California Hazardous Waste Code Number (from chapter 11, Appendix XII), U.S. DOT proper shipping name, hazard class and ID number (UN/NA) for each hazardous waste as identified in 49 Code of Federal Regulations Parts 171 through 177;

(B) the estimated frequency or rate at which such waste is to be exported and the period of time over which such waste is to be exported;

(C) the estimated total quantity of the hazardous waste in units as specified in the instructions to the Uniform Hazardous Waste Manifest Form in the appendix to chapter 12;

(D) all points of entry to and departure from each foreign country through which the hazardous waste will pass;

(E) a description of the means by which each shipment of the hazardous waste will be transported (e.g., mode of transportation vehicle (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.));

(F) a description of the manner in which the hazardous waste will be treated, stored or disposed of in the receiving country (e.g., land or ocean incineration, other land disposal, ocean dumping, recycling);

(G) the name and site address of the consignee and any alternate consignee; and

(H) the name of any transit countries through which the hazardous waste will be sent and a description of the approximate length of time the hazardous waste will remain in such country and the nature of its handling while there.

(b) A primary exporter of non–RCRA hazardous waste shall notify the Department of an intended export before such waste is scheduled to leave the United States. A complete notification shall be submitted four weeks before the initial shipment is intended to be shipped off site. This notification shall cover export activities extending over a twelve (12) month or lesser period. The notification shall be in writing, signed by the primary exporter, and include all the information required by subsections 66262.53(a)(1) and (2).

(c) Notifications submitted by mail for RCRA hazardous waste exports shall be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting, and Data Division (2222A), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Hand delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting, and Data Division (2222A), Environmental Protection Agency, Ariel Rios Bldg., 12th Street and Pennsylvania Avenue, NW, Washington, DC 20460. In both cases the following shall be prominently displayed on the front of the envelope: "Attention: Notification for Intent to Export." In addition, a copy of the notification shall be sent to the Import/Export Coordinator, Department of Toxic Substances Control, Hazardous Waste Management Program, Statewide Compliance Division, Glendale Branch, 1011 North Grandview Avenue, Glendale, California 91201–2205. Notwithstanding any other provision of law or regulation, notifications for non–RCRA hazardous waste exports shall only be sent to the Department.

(d) When the conditions specified on the original notification change (including any exceedance of the estimate of the quantity of hazardous waste specified in the original notification), the primary exporter shall provide EPA and the Department with a written renotification of the change, except for changes to the telephone number in subsection (a)(1) of this section, changes to subsection (a)(2)(E) of this section and decreases in the quantity indicated pursuant to subsection (a)(2)(C) of this section. The shipment cannot take place until consent of the receiving country to the changes (except for changes to subsection (a)(2)(H) of this section and in the ports of entry to and departure from transit countries pursuant to subsection (a)(2)(D) of this section) has been obtained and the primary exporter receives an EPA Acknowledgment of Consent reflecting the receiving country's consent to the changes.

(e) Upon request by EPA, a primary exporter shall furnish to EPA any additional information which a receiving country requests in order to respond to a notification.

(f) In conjunction with the Department of State, EPA will provide a complete notification to the receiving country and any transit countries. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of section 66262.53(a). Where a claim of confidentiality is asserted with respect to any notification information required by section 66262.53(a), EPA may find the notification not complete until any such claim is resolved in accordance with section 66260.2.

(g) Where the receiving country consents to the receipt of the hazardous waste, EPA will forward an EPA Acknowledgment of Consent to the primary exporter for purposes of section 66262.54(h). Where the receiving country objects to receipt of the hazardous waste or withdraws a prior consent, EPA will notify the primary exporter in writing. EPA will also notify the primary exporter of any responses from transit countries.

NOTE: Authority cited: Sections 25150.2 and 25159, Health and Safety Code. Reference: Sections 25150.2, 25159, 25159.5 and 25162, Health and Safety Code; and 40 Code of Federal Regulations Section 262.53.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Editorial correction of printing error in subsection (c) (Register 92, No. 49).
3. Change without regulatory effect amending subsection (c) filed 3–12–93; operative 3–12–93 pursuant to title 1, section 100, California Code of Regulations (Register 93, No. 11).
4. Change without regulatory effect amending subsection (c) filed 8–20–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).
5. Change without regulatory effect amending subsection (a) (2)(C) filed 8–27–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 35).
6. Change without regulatory effect amending subsection (b) filed 6–7–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 24).

7. Change without regulatory effect amending subsections (a), (a)(2)(A), (a)(2)(C) and (c) and amending NOTE filed 8–24–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 34).

§ 66262.54. Special Manifest Requirements.

A primary exporter shall comply with the manifest requirements of sections 66262.20 through 66262.23 except that:

(a) in lieu of the name, site address and ID number of the designated permitted facility, the primary exporter shall enter the name and site address of the consignee;

(b) in lieu of the name, site address and ID number of a permitted alternate facility, the primary exporter may enter the name and site address of any alternate consignee;

(c) for shipments initiated before September 5, 2006, in Special Handling Instructions and Additional Information, the primary exporter shall identify the point of departure from the United States.

For shipments initiated on and after September 5, 2006, in the International Shipments block, the primary exporter shall check the export box and enter the point of exit (city and State) from the United States.

(d) for shipments initiated before September 5, 2006, for RCRA hazardous waste, the following statement shall be added to the end of the first sentence of the certification set forth in Item 16 of the Uniform Hazardous Waste Manifest Form: "and conforms to the terms of the attached EPA Acknowledgment of Consent".

For shipments initiated on and after September 5, 2006, this statement will be entered in Item 15;

(e) for shipments initiated before September 5, 2006, in lieu of the requirements of section 66262.21, the primary exporter shall obtain the manifest form from the Department.

For shipments initiated on and after September 5, 2006, the primary exporter may obtain the manifest from any source that is registered with the U.S. EPA as a supplier of manifests (e.g., states, waste handlers, and/or commercial forms printers).

(f) the primary exporter shall require the consignee to confirm in writing the delivery of the hazardous waste to that facility and to describe any significant discrepancies (as defined in section 66264.72(a)) between the manifest and the shipment. A copy of the manifest signed by such facility may be used to confirm delivery of the hazardous waste;

(g) in lieu of the requirements of section 66262.20(d), where a shipment cannot be delivered for any reason to the designated or alternate consignee, the primary exporter shall:

(1) renotify US EPA for RCRA hazardous waste and the Department for both RCRA hazardous waste and non–RCRA hazardous waste of a change in the conditions of the original notification to allow shipment to a new consignee in accordance with section 66262.53(c) or

(2) instruct the transporter to return the waste to the primary exporter in the United States or designate another facility within the United States; and

(3) instruct the transporter to revise the manifest in accordance with the primary exporter's instructions;

(h) for RCRA hazardous waste, the primary exporter shall attach a copy of the EPA Acknowledgment of Consent to the shipment to the manifest which shall accompany the hazardous waste shipment. For exports by rail or water (bulk shipment), the primary exporter shall provide the transporter with an EPA Acknowledgment of Consent which shall accompany the hazardous waste but which need not be attached to the manifest except that for exports by water (bulk shipment) the primary exporter shall attach the copy of the EPA Acknowledgment of Consent to the shipping paper;

(i) for RCRA hazardous waste, the primary exporter shall provide the transporter with an additional copy of the manifest for delivery to the U.S. Customs official at the point the hazardous waste leaves the United States in accordance with section 66263.20(j)(4).

NOTE: Authority cited: Sections 25150.2, 25159 and 58012, Health and Safety Code. Reference: Sections 25150.2, 25159, 25159.5 and 25162, Health and Safety Code; and 40 Code of Federal Regulations Section 262.54.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Amendment of subsection (f) filed 4–4–2002 as an emergency; operative 4–4–2002 (Register 2002, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–2–2002 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsection (f) refiled 8–1–2002 as an emergency; operative 8–1–2002 (Register 2002, No. 31). A Certificate of Compliance must be transmitted to OAL by 12–2–2002 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsection (f) refiled 12–2–2002 as an emergency; operative 12–3–2002 (Register 2002, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–2003 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsection (f) refiled 4–1–2003 as an emergency; operative 4–3–2003 (Register 2003, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2003 or emergency language will be repealed by operation of law on the following day.
6. Repealer of 4–1–2003 order and amendment of NOTE filed 7–10–2003 as an emergency; operative 7–10–2003 (Register 2003, No. 28). Pursuant to Health and Safety Code section 25169.8, this is a deemed emergency and stays effective until revised by the agency.
7. Change without regulatory effect amending subsections (c)–(e) and amending NOTE filed 8–24–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 34).

§ 66262.55. Exception Reports for Exportors.

(a) In lieu of the requirements of section 66262.42, a primary exporter shall file an exception report with the U.S. EPA Administrator and the Department for RCRA hazardous waste, or with the Department for non–RCRA hazardous waste, if:

(1) the primary exporter has not received a copy of the manifest signed by the transporter stating the date and place of departure from the United States within forty–five (45) days from the date it was accepted by the initial transporter;

(2) within ninety (90) days from the date the waste was accepted by the initial transporter, the primary exporter has not received written confirmation from the consignee that the hazardous waste was received;

(3) the waste is returned to the United States.

(b) For exports by water to foreign countries, if the generator has not received a copy of the manifest signed by all transporters and the facility operator 60 days after the initial shipment, the generator shall contact the owner or operator of the designated facility to determine the status of the hazardous waste and to request that the owner or operator immediately provide a signed copy of the manifest to the generator.

(c) The primary exporter shall submit the exception report to the department at:

DTSC REPORT REPOSITORY
GENERATOR INFORMATION SERVICES SECTION
P.O. BOX 806
SACRAMENTO, CA 95812–0806

NOTE: Authority cited: Sections 25150.2 and 25159, Health and Safety Code. Reference: Sections 25150.2, 25159, 25159.5, 25160 and 25162, Health and Safety Code; and 40 Code of Federal Regulations Section 262.55.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect amending section heading, section and NOTE filed 8–24–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 34).

§ 66262.56. Annual Export Reports.

(a) Primary exporters of hazardous waste shall file with the U.S. EPA Administrator and the Department no later than March 1 of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all hazardous waste exported to a foreign country from the State during the previous calendar year. Such reports shall include the following:

(1) the Identification Number, name, and mailing and site address of the exporter;

(2) the calendar year covered by the report;

(3) the name and site address of each consignee;

(4) by consignee, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number, if applicable (from chapter 11, articles 3 and 4), the California Hazardous Waste Code Number (from chapter 11, Appendix XII), DOT hazard class, the name and ID Number (where applicable) for each transporter used, the total

amount of waste shipped and number of shipments pursuant to each notification;

(5) unless provided pursuant to section 66262.41, in even numbered years:

(A) a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and

(B) a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984;

(6) a certification signed by the primary exporter which states:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.

(b) Annual reports submitted by mail shall be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting, and Data Division (2222A), Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460. Hand delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting, and Data Division (2222A), Environmental Protection Agency, Ariel Rios Bldg., 12th Street and Pennsylvania Avenue, NW, Washington, DC 20460. A copy of each report shall be sent to the Department at the following address: Import/Export Coordinator, Department of Toxic Substances Control, Hazardous Waste Management Program, Statewide Compliance Division, Glendale Branch, 1011 North Grandview Avenue, Glendale, California 91201–2205.

NOTE: Authority cited: Sections 25150.2 and 25159, Health and Safety Code. Reference: Sections 25150.2, 25159, 25159.5 and 25162, Health and Safety Code; and 40 Code of Federal Regulations Section 262.56.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect amending subsection (b) filed 4–19–93 pursuant to title 1, section 100, California Code of Regulations (Register 93, No. 17).
3. Change without regulatory effect amending subsection (b) filed 8–20–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).
4. Change without regulatory effect amending section heading, subsections (a), (a)(4) and (b) and NOTE filed 8–24–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 34).

§ 66262.57. Recordkeeping.

(a) For all hazardous waste exports to a foreign country from the State a primary exporter shall:

(1) keep a copy of each notification of intent to export for both RCRA hazardous waste and non–RCRA hazardous waste for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

(2) for RCRA hazardous waste, keep a copy of each EPA Acknowledgment of Consent for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

(3) keep a copy of each confirmation of delivery of the hazardous waste from the consignee for at least three years from the date the hazardous waste was accepted by the initial transporter; and

(4) keep a copy of each annual report for a period of at least three years from the due date of the report.

(b) The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the USEPA Administrator or the Department.

NOTE: Authority cited: Sections 208, 25150.2 and 25159, Health and Safety Code. Reference: Sections 25150.2, 25159, 25159.5 and 25162, Health and Safety Code, 40 CFR Section 262.57.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66262.58. International Agreements.

(a) Any person who exports or imports hazardous waste subject to the Federal manifesting requirements of 40 CFR Part 262, or subject to universal waste management standards of 40 CFR Part 273, to or from designated member countries of the Organization for Economic Cooperation and Development (OECD) as defined in 40 CFR section 262.58(a)(1) or subsection (a)(1) of this section for purposes of recovery of hazardous waste is subject to the requirements of 40 CFR Part 262, Subpart H or this article. The requirements of 40 CFR Part 262, Subparts E and F or articles 5 and 6 of this chapter do not apply.

(1) For the purposes of 40 CFR Part 262, Subpart H or this article, the designated OECD countries consist of Australia, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom, and the United States.

(2) For the purposes of 40 CFR Part 262, Subpart H or this article, Canada and Mexico are considered OECD member countries only for the purposes of transit.

(b) Any person who exports hazardous waste to or imports hazardous waste from: a designated OECD member country for purposes other than recovery (e.g., incineration, disposal), Mexico (for any purpose), or Canada (for any purpose) remains subject to the requirements of 40 CFR Part 262, Subparts E and F or articles 4 and 5 of this chapter.

NOTE: Authority cited: Sections 25150, 25159, 25159.5 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5 and 58012, Health and Safety Code; and 40 CFR Section 262.58.

HISTORY

1. Change without regulatory effect adding new section filed 8–20–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).
2. Change without regulatory effect amending subsection (a) and NOTE filed 11–30–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 49).

Article 6. Imports of Hazardous Waste

§ 66262.60. Imports of Hazardous Waste.

(a) Any person who imports hazardous waste from a foreign country to a designated facility within the State shall comply with the requirements of this chapter and the special requirements of this article.

(b) When importing hazardous waste, a person shall meet all the requirements of section 66262.20(a) for the manifest except that:

(1) in place of the generator's name, address and Identification Number, the name and address of the foreign generator and the importer's name, address and Identification Number shall be used;

(2) in place of the generator's signature on the certification statement, the U.S. importer or the importer's agent shall sign and date the certification and obtain the signature of the initial transporter;

(3) for shipments initiated before September 5, 2006, a person importing hazardous waste into California for shipment to a facility outside of the State shall use:

(A) for persons importing RCRA hazardous waste or material regulated as hazardous waste in the receiving state, the Uniform Hazardous Waste Manifest required by the receiving state; or

(B) for non–RCRA hazardous waste not regulated as hazardous waste by the receiving state, the California Uniform Hazardous Waste Manifest (DTSC 8022A, revised 4/97).

(c) For shipments initiated before September 5, 2006, a person who imports hazardous waste shall obtain the manifest form from the Department.

For shipments initiated on and after September 5, 2006, a person who imports hazardous waste may obtain the manifest form from any source that is registered with the U.S. EPA as a supplier of manifests (e.g., states, waste handlers, and/or commercial forms printers).

(d) For shipments initiated on and after September 5, 2006, in the International Shipments block, the importer shall check the import box and enter the point of entry (city and State) into the United States.

(e) The importer shall provide the transporter with an additional copy of the manifest to be submitted by the receiving facility to U.S. EPA in

accordance with sections 66264.71 subsection (a)(3) and 66265.71 subsection (a)(3) of this division and 40 Code of Federal Regulations sections 264.71(a)(3) and 265.71(a)(3).

NOTE: Authority cited: Sections 25150.2 and 25159, Health and Safety Code. Reference: Sections 25150.2, 25159, and 25159.5, Health and Safety Code; and 40 Code of Federal Regulations Section 262.60.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect amending subsection (b)(3)(B) filed 8–27–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 35).
3. Change without regulatory effect amending subsections (b)(3) and (c), adding subsections (d)–(e) and amending NOTE filed 8–24–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 34).

Article 7. Farmers

§ 66262.70. Farmers.

(a) Waste pesticide, which meets the definition of hazardous waste, including rinsate generated pursuant to subsection (b) of this section, generated as part of a commercial farming operation is not required to be managed in compliance with the standards in this chapter or chapters 14, 15, 18 or 20 of this division, provided the waste pesticide is applied as part of a commercial farming operation in a manner consistent with the use instructions on the pesticide label.

(b) Pesticide containers, or inner liners from pesticide containers, generated by a commercial farming operation shall not be regulated as hazardous waste if the container or inner liner is emptied by removing all of the contents that can be removed by draining, pouring, pumping or aspirating, and the container or inner liner is triple rinsed with a liquid capable of dissolving the pesticide which the container held; and

(1) the container or inner liner is punctured, shredded, crushed or otherwise similarly changed so as to prevent subsequent use or reuse, and is disposed of; or

(2) the container is punctured, shredded, crushed or otherwise similarly changed so as to prevent subsequent use or reuse, and is recycled by reclaiming its scrap value; or

(3) the container is reused in accordance with the provision of Health and Safety Code section 25143.2(d)(6).

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code, 40 CFR section 262.70 and 40 CFR section 261.7.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect relocating appendix to end of chapter filed 4–21–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 16).

Article 8. Transfrontier Shipments of Hazardous Waste for Recovery Within the OECD

§ 66262.80. Applicability.

(a) The requirements of 40 CFR Part 262, Subpart H or this article apply to imports and exports of wastes that are considered hazardous under U.S. national procedures and are destined for recovery operations in the countries listed in 40 CFR section 262.58(a)(1) or section 66262.58(a)(1). A waste is considered hazardous under U.S. national procedures if it meets the federal definition of hazardous waste in 40 CFR section 261.3 and it is subject to either the Federal manifesting requirements of 40 CFR Part 262, or to the universal waste management standards of 40 CFR Part 273.

(b) Any person (notifier, consignee, or recovery facility operator) who mixes two or more wastes (including hazardous and non–hazardous wastes) or otherwise subjects two or more wastes (including hazardous and non–hazardous wastes) to physical or chemical transformation operations, and thereby creates a new hazardous waste, becomes a generator and assumes all subsequent generator duties under RCRA and any notifier duties, if applicable, under 40 CFR Part 262, Subpart H or this article.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 58004 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5 and 58012, Health and Safety Code; and 40 CFR Section 262.80.

HISTORY

1. Change without regulatory effect adding new article 8 (sections 66262.80–66262.89) and section filed 8–20–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

§ 66262.81. Definitions.

The following definitions apply to 40 CFR Part 262, Subpart H or this article.

(a) "Competent authorities" means the regulatory authorities of concerned countries having jurisdiction over transfrontier movements of wastes destined for recovery operations.

(b) "Concerned countries" means the exporting and importing OECD member countries and any OECD member countries of transit.

(c) "Consignee" means the person to whom possession or other form of legal control of the waste is assigned at the time the waste is received in the importing country.

(d) "Country of transit" means any designated OECD country in 40 CFR sections 262.58(a)(1) and (a)(2) or sections 66262.58(a)(1) and (a)(2) other than the exporting or importing country across which a transfrontier movement of wastes is planned or takes place.

(e) "Exporting country" means any designated OECD member country in 40 CFR section 262.58(a)(1) or section 66262.58(a)(1) from which a transfrontier movement of wastes is planned or has commenced.

(f) "Importing country" means any designated OECD country in 40 CFR section 262.58(a)(1) or 66262.58(a)(1) to which a transfrontier movement of wastes is planned or takes place for the purpose of submitting the wastes to recovery operations therein.

(g) "Notifier" means the person under the jurisdiction of the exporting country who has, or will have at the time the planned transfrontier movement commences, possession or legal control of the wastes and who proposes their transfrontier movement for the ultimate purpose of submitting them to recovery operations. When the United States (U.S.) is the exporting country, notifier is interpreted to mean a person domiciled in the U.S.

(h) "OECD area" means all land or marine areas under the national jurisdiction of any designated OECD member country in 40 CFR section 262.58 or section 66262.58. When the regulations refer to shipments to or from an OECD country, this means OECD area.

(i) "Recognized trader" means a person who, with appropriate authorization of concerned countries, acts in the role of principal to purchase and subsequently sell wastes; this person has legal control of such wastes from time of purchase to time of sale; such a person shall act to arrange and facilitate transfrontier movements of wastes destined for recovery operations.

(j) "Recovery facility" means an entity which, under applicable domestic law, is operating or is authorized to operate in the importing country to receive wastes and to perform recovery operations on them.

(k) "Recovery operations" means activities leading to resource recovery, recycling, reclamation, direct re–use or alternative uses as listed in Table 2.B of the Annex of OECD Council Decision C(88)90(Final) of May 27, 1988, (available from the Environmental Protection Agency, RCRA Information Center (RIC), 1235 Jefferson–Davis Highway, first floor, Arlington, VA 22203 (Docket # F–94–IEHF–FFFFF) and the Organization for Economic Co–operation and Development, Environment Directorate, 2 rue Andre Pascal, 75775 Paris Cedex 16, France) which include:

R1 Use as a fuel (other than in direct incineration) or other means to generate energy;

R2 Solvent reclamation/regeneration;

R3 Recycling/reclamation of organic substances which are not used as solvents;

R4 Recycling/reclamation of metals and metal compounds;

R5 Recycling/reclamation of other inorganic materials;

R6 Regeneration of acids or bases;

R7 Recovery of components used for pollution control;

R8 Recovery of components from catalysts;

R9 Used oil re–refining or other reuses of previously used oil;

R10 Land treatment resulting in benefit to agriculture or ecological improvement;

R11 Uses of residual materials obtained from any of the operations numbered R1–R10;

R12 Exchange of wastes for submission to any of the operations numbered R1–R11;

R13 Accumulation of material intended for any operation in Table 2.B;

(*l*) "Transfrontier movement" means any shipment of wastes destined for recovery operations from an area under the national jurisdiction of one OECD member country to an area under the national jurisdiction of another OECD member country.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 58004 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5 and 58012, Health and Safety Code; and 40 CFR Section 262.81.

HISTORY

1. Change without regulatory effect adding new section filed 8–20–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

§ 66262.82. General Conditions.

(a) Scope. The level of control for exports and imports of waste is indicated by assignment of the waste to a green–, amber–, or red–list and by U.S. national procedures as defined in 40 CFR section 262.80(a) or section 66262.80(a). The green– , amber–, and red–lists are incorporated by reference in 40 CFR section 262.89(e) or section 66262.89(e).

(1) Wastes on the green–list are subject to existing controls normally applied to commercial transactions, except as provided below:

(A) Green–list wastes that are considered hazardous under U.S. national procedures are subject to amber–list controls.

(B) Green–list wastes that are sufficiently contaminated or mixed with amber–list wastes, such that the waste or waste mixture is considered hazardous under U.S. national procedures, are subject to amber–list controls.

(C) Green–list wastes that are sufficiently contaminated or mixed with other wastes subject to red–list controls such that the waste or waste mixture is considered hazardous under U.S. national procedures shall be handled in accordance with the red–list controls.

(2) Wastes on the amber–list that are considered hazardous under U.S. national procedures as defined in 40 CFR section 262.80(a) or section 66262.80(a) are subject to the amber–list controls of 40 CFR Part 262, Subpart H or this article.

(A) If amber–list wastes are sufficiently contaminated or mixed with other wastes subject to red–list controls such that the waste or waste mixture is considered hazardous under U.S. national procedures, the wastes shall be handled in accordance with the red–list controls.

(B) [Reserved].

(3) Wastes on the red–list that are considered hazardous under U.S. national procedures as defined in 40 CFR section 262.80(a) or section 66262.80(a) are subject to the red–list controls of 40 CFR Part 262, Subpart H or this article. Some wastes on the amber– or red–lists are not listed or otherwise identified as hazardous under RCRA (e.g., polychlorinated biphenyls) and therefore are not subject to the amber– or red–list controls of 40 CFR Part 262, Subpart H or this article. Regardless of the status of the waste under RCRA, however, other federal environmental statutes (e.g., the federal Toxic Substances Control Act) shall restrict certain waste imports or exports. Such restrictions continue to apply without regard to 40 CFR Part 262, Subpart H or this article.

(4) Wastes not yet assigned to a list are eligible for transfrontier movements, as follows:

(A) If such wastes are considered hazardous under U.S. national procedures as defined in 40 CFR section 262.80(a) or section 66262.80(a), these wastes are subject to the red–list controls; or

(B) If such wastes are not considered hazardous under U.S. national procedures as defined in 40 CFR section 262.80(a) or section 66262.80(a), such wastes shall move as though they appeared on the green–list.

(b) General conditions applicable to transfrontier movements of hazardous waste.

(1) The waste shall be destined for recovery operations at a facility that, under applicable domestic law, is operating or is authorized to operate in the importing country;

(2) The transfrontier movement shall be in compliance with applicable international transport agreements. These international agreements include, but are not limited to, the Chicago Convention (1944), ADR (1957), ADNR (1970), MARPOL Convention (1973/1978), SOLAS Convention (1974), IMDG Code (1985), COTIF (1985), and RID (1985).

(3) Any transit of waste through a non–OECD member country shall be conducted in compliance with all applicable international and national laws and regulations.

(c) Provisions relating to re–export for recovery to a third country.

(1) Re–export of wastes subject to the amber–list control system from the U.S., as the importing country, to a third country listed in 40 CFR section 262.58(a)(1) or section 66262.58(a)(1) shall occur only after a notifier in the U.S. provides notification to and obtains consent of the competent authorities in the third country, the original exporting country, and new transit countries. The notification shall comply with the notice and consent procedures in 40 CFR section 262.83 or section 66262.83 for all concerned countries and the original exporting country. The competent authorities of the original exporting country as well as the competent authorities of all other concerned countries have 30 days to object to the proposed movement.

(A) The 30–day period begins once the competent authorities of both the initial exporting country and new importing country issue Acknowledgements of Receipt of the notification.

(B) The transfrontier movement shall commence if no objection has been lodged after the 30–day period has passed or immediately after written consent is received from all relevant OECD importing and transit countries.

(2) Re–export of waste subject to the red–list control system from the original importing country to a third country listed in 40 CFR section 262.58(a)(1) or section 66262.58(a)(1) shall occur only following notification of the competent authorities of the third country, the original exporting country, and new transit countries by a notifier in the original importing country in accordance with 40 CFR section 262.83 or section 66262.83. The transfrontier movement shall not proceed until receipt by the original importing country of written consent from the competent authorities of the third country, the original exporting country, and new transit countries.

(3) In the case of re–export of amber– or red–list wastes to a country other than those in 40 CFR section 262.58(a)(1) or section 66262.58(a)(1), notification to and consent of the competent authorities of the original OECD member country of export and any OECD member countries of transit is required as specified in 40 CFR sections 262.82(c)(1) and (c)(2) or subsections (c)(1) and (c)(2) of this section in addition to compliance with all international agreements and arrangements to which the first importing OECD member country is a party and all applicable regulatory requirements for exports from the first importing country.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 58004 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5 and 58012, Health and Safety Code; and 40 CFR Section 262.82.

HISTORY

1. Change without regulatory effect adding new section filed 8–20–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

§ 66262.83. Notification and Consent.

(a) Applicability. Consent shall be obtained from the competent authorities of the relevant OECD importing and transit countries prior to exporting hazardous waste destined for recovery operations subject to 40

CFR Part 262, Subpart H or this article. Hazardous wastes subject to amber–list controls are subject to the requirements of 40 CFR section 262.83(b) or subsection (b) of this section; hazardous wastes subject to red–list controls are subject to the requirements of 40 CFR section 262.83(c) or subsection (c) of this section; and wastes not identified on any list are subject to the requirements of 40 CFR section 262.83(d) or subsection (d) of this section.

(b) Amber–list wastes. The export from the U.S. of hazardous wastes as described in 40 CFR section 262.80(a) or section 66262.80(a) that appear on the amber–list is prohibited unless the notification and consent requirements of 40 CFR section 262.83(b)(1) or section 262.83(b)(2) or subsection (b)(1) or subsection (b)(2) of this section are met.

(1) Transactions requiring specific consent:

(A) Notification. At least forty–five (45) days prior to commencement of the transfrontier movement, the notifier shall provide written notification in English of the proposed transfrontier movement to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, with the words "Attention: OECD Export Notification" prominently displayed on the envelope. This notification shall include all of the information identified in 40 CFR section 262.83(e) or subsection (e) of this section. In cases where wastes having similar physical and chemical characteristics, the same United Nations classification, and the same RCRA waste codes are to be sent periodically to the same recovery facility by the same notifier, the notifier shall submit one notification of intent to export these wastes in multiple shipments during a period of up to one year.

(B) Tacit consent. If no objection has been lodged by any concerned country (i.e., exporting, importing, or transit countries) to a notification provided pursuant to 40 CFR section 262.83(b)(1)(i) or subsection (b)(1)(A) of this section within 30 days after the date of issuance of the Acknowledgment of Receipt of notification by the competent authority of the importing country, the transfrontier movement shall commence. Tacit consent expires one calendar year after the close of the 30–day period; renotification and renewal of all consents is required for exports after that date.

(C) Written consent. If the competent authorities of all the relevant OECD importing and transit countries provide written consent in a period less than 30 days, the transfrontier movement shall commence immediately after all necessary consents are received. Written consent expires for each relevant OECD importing and transit country one calendar year after the date of that country's consent unless otherwise specified; renotification and renewal of each expired consent is required for exports after that date.

(2) Shipments to facilities pre–approved by the competent authorities of the importing countries to accept specific wastes for recovery:

(A) The notifier shall provide USEPA the information identified in 40 CFR section 262.83(e) or subsection (e) of this section in English, at least 10 days in advance of commencing shipment to a pre–approved facility. The notification should indicate that the recovery facility is pre–approved, and shall apply to a single specific shipment or to multiple shipments as described in 40 CFR section 262.83(b)(1)(i) or subsection (b)(1)(A) of this section. This information shall be sent to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, with the words "OECD Export Notification — Pre–approved Facility" prominently displayed on the envelope.

(B) Shipments shall commence after the notification required in 40 CFR section 262.83(b)(1)(i) or subsection (b)(1)(A) of this section has been received by the competent authorities of all concerned countries, unless the notifier has received information indicating that the competent authorities of one or more concerned countries objects to the shipment.

(c) Red–list wastes. The export from the U.S. of hazardous wastes as described in 40 CFR section 262.80(a) or section 66262.80(a) that appear on the red–list is prohibited unless notice is given pursuant to 40 CFR section 262.83(b)(1)(i) or subsection (b)(1)(A) of this section and the notifier receives written consent from the importing country and any transit countries prior to commencement of the transfrontier movement.

(d) Unlisted wastes. Wastes not assigned to the green–, amber–, or red–list that are considered hazardous under U.S. national procedures as defined in 40 CFR section 262.80(a) or section 66262.80(a) are subject to the notification and consent requirements established for red–list wastes in accordance with 40 CFR section 262.83(c) or subsection (c) of this section. Unlisted wastes that are not considered hazardous under U.S. national procedures as defined in 40 CFR section 262.80(a) or section 66262.80(a) are not subject to amber or red controls when exported or imported.

(e) Notification information. Notifications submitted under 40 CFR section 262.83 or this section shall include:

(1) Serial number or other accepted identifier of the notification form;

(2) Notifier name and USEPA identification number (if applicable), address, and telephone and telefax numbers;

(3) Importing recovery facility name, address, telephone and telefax numbers, and technologies employed;

(4) Consignee name (if not the owner or operator of the recovery facility) address, and telephone and telefax numbers; whether the consignee will engage in waste exchange or storage prior to delivering the waste to the final recovery facility and identification of recovery operations to be employed at the final recovery facility;

(5) Intended transporters or their agents;

(6) Country of export and relevant competent authority, and point of departure;

(7) Countries of transit and relevant competent authorities and points of entry and departure;

(8) Country of import and relevant competent authority, and point of entry;

(9) Statement of whether the notification is a single notification or a general notification. If general, include period of validity requested;

(10) Date foreseen for commencement of transfrontier movement;

(11) Designation of waste type(s) from the appropriate list (amber or red and waste list code), descriptions of each waste type, estimated total quantity of each, RCRA waste code, and United Nations number for each waste type; and

(12) Certification/Declaration signed by the notifier that states:

I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally– enforceable written contractual obligations have been entered into, and that any applicable insurance or other financial guarantees are or shall be in force covering the transfrontier movement.

Name: _____

Signature: _____

Date: _____

The U.S. does not currently require financial assurance; however, U.S. exporters may be asked by other governments to provide and certify to such assurance as a condition of obtaining consent to a proposed movement.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 58004 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5 and 58012, Health and Safety Code; and 40 CFR Section 262.83.

HISTORY

1. Change without regulatory effect adding new section filed 8–20–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

§ 66262.84. Tracking Document.

(a) All U.S. parties subject to the contract provisions of 40 CFR section 262.85 or section 66262.85 shall ensure that a tracking document meeting the conditions of 40 CFR section 262.84(b) or section 66262.84(b) accompanies each transfrontier shipment of wastes subject to amber–list or red–list controls from the initiation of the shipment until it reaches the final recovery facility, including cases in which the waste is stored and/or exchanged by the consignee prior to shipment to the final recovery facil-

ity, except as provided in 40 CFR sections 262.84(a)(1) and (2) or subsections (a)(1) and (a)(2) of this section.

(1) For shipments of hazardous waste within the U.S. solely by water (bulk shipments only) the generator shall forward the tracking document with the manifest to the last water (bulk shipment) transporter to handle the waste in the U.S. if exported by water, (in accordance with the manifest routing procedures of 40 CFR section 262.23(c) or section 66262.23(c)).

(2) For rail shipments of hazardous waste within the U.S. which originate at the site of generation, the generator shall forward the tracking document with the manifest (in accordance with the routing procedures for the manifest in 40 CFR section 262.23(d) or section 66262.23(d)) to the next non–rail transporter, if any, or the last rail transporter to handle the waste in the U.S. if exported by rail.

(b) The tracking document shall include all information required under 40 CFR section 262.83 or section 66262.83 (for notification), and the following:

(1) Date shipment commenced.

(2) Name (if not notifier), address, and telephone and telefax numbers of primary exporter.

(3) Company name and USEPA identification number of all transporters.

(4) Identification (license, registered name or registration number) of means of transport, including types of packaging.

(5) Any special precautions to be taken by transporters.

(6) Certification/declaration signed by notifier that no objection to the shipment has been lodged as follows:

I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally– enforceable written contractual obligations have been entered into, that any applicable insurance or other financial guarantees are or shall be in force covering the transfrontier movement, and that:

1. All necessary consents have been received; OR

2. The shipment is directed at a recovery facility within the OECD area and no objection has been received from any of the concerned countries within the 30 day tacit consent period; OR

3. The shipment is directed at a recovery facility pre–authorized for that type of waste within the OECD area; such an authorization has not been revoked, and no objection has been received from any of the concerned countries.

Name: _____

Signature: _____

Date: _____

(7) Appropriate signatures for each custody transfer (e.g., transporter, consignee, and owner or operator of the recovery facility).

(c) Notifiers also shall comply with the special manifest requirements of 40 CFR section 262.54(a), (b), (c), (e), and (i) or sections 66262.54(a), (b), (c), (e), and (i) and consignees shall comply with the import requirements of 40 CFR Part 262, Subpart F or section 66262.60.

(d) Each U.S. person that has physical custody of the waste from the time the movement commences until it arrives at the recovery facility shall sign the tracking document (e.g., transporter, consignee, and owner or operator of the recovery facility).

(e) Within three (3) working days of the receipt of imports subject to 40 CFR Part 262, Subpart H or this article, the owner or operator of the U.S. recovery facility shall send signed copies of the tracking document to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, and to the competent authorities of the exporting and transit countries.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 58004 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5 and 58012, Health and Safety Code; and 40 CFR Section 262.84.

HISTORY

1. Change without regulatory effect adding new section filed 8–20–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

§ 66262.85. Contracts.

(a) Transfrontier movements of hazardous wastes subject to amber or red control procedures are prohibited unless they occur under the terms of a valid written contract, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Such contracts or equivalent arrangements shall be executed by the notifier and the owner or operator of the recovery facility, and shall specify responsibilities for each. Contracts or equivalent arrangements are valid for the purposes of 40 CFR section 262.85 or this section only if persons assuming obligations under the contracts or equivalent arrangements have appropriate legal status to conduct the operations specified in the contract or equivalent arrangement.

(b) Contracts or equivalent arrangements shall specify the name and USEPA ID number, where available, of:

(1) The generator of each type of waste;

(2) Each person who will have physical custody of the wastes;

(3) Each person who will have legal control of the wastes;

(4) The recovery facility.

(c) Contracts or equivalent arrangements shall specify which party to the contract will assume responsibility for alternate management of the wastes if its disposition cannot be carried out as described in the notification of intent to export. In such cases, contracts shall specify that:

(1) The person having actual possession or physical control over the wastes will immediately inform the notifier and the competent authorities of the exporting and importing countries and, if the wastes are located in a country of transit, the competent authorities of that country; and

(2) The person specified in the contract will assume responsibility for the adequate management of the wastes in compliance with applicable laws and regulations including, if necessary, arranging their return to the original country of export.

(d) Contracts shall specify that the consignee will provide the notification required in 40 CFR section 262.82(c) or section 66262.82(c) prior to re–export of controlled wastes to a third country.

(e) Contracts or equivalent arrangements shall include provisions for financial guarantees, if required by the competent authorities of any concerned country, in accordance with applicable national or international law requirements. Financial guarantees so required are intended to provide for alternate recycling, disposal or other means of sound management of the wastes in cases where arrangements for the shipment and the recovery operations cannot be carried out as foreseen. The U.S. does not require such financial guarantees at this time; however, some OECD countries do. It is the responsibility of the notifier to ascertain and comply with such requirements; in some cases, transporters or consignees may refuse to enter into the necessary contracts absent specific references or certifications to financial guarantees.

(f) Contracts or equivalent arrangements shall contain provisions requiring each contracting party to comply with all applicable requirements of 40 CFR Part 262, Subpart H or this article.

(g) Upon request by USEPA, U.S. notifiers, consignees, or recovery facilities shall submit to USEPA copies of contracts, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Information contained in the contracts or equivalent arrangements for which a claim of confidentiality is asserted accordance with 40 CFR section 2.203(b) will be treated as confidential and will be disclosed by USEPA only as provided in 40 CFR section 260.2. Although the U.S. does not require routine submission of contracts at this time, OECD Council Decision C(92)39/FINAL allows members to impose such requirements. When other OECD countries require submission of partial or complete copies of the contract as a condition to granting consent to proposed movements, USEPA will

request the required information; absent submission of such information, some OECD countries may deny consent for the proposed movement.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 58004 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5 and 58012, Health and Safety Code; and 40 CFR Section 262.85.

HISTORY

1. Change without regulatory effect adding new section filed 8–20–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

§ 66262.86. Provisions Relating to Recognized Traders.

(a) A recognized trader who takes physical custody of a waste and conducts recovery operations (including storage prior to recovery) is acting as the owner or operator of a recovery facility and shall be so authorized in accordance with all applicable federal laws.

(b) A recognized trader acting as a notifier or consignee for transfrontier shipments of waste shall comply with all the requirements of 40 CFR Part 262, Subpart H or this article associated with being a notifier or consignee.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 58004 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5 and 58012, Health and Safety Code; and 40 CFR Section 262.86.

HISTORY

1. Change without regulatory effect adding new section filed 8–20–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

§ 66262.87. Reporting and Recordkeeping.

(a) Annual reports. For all waste movements subject to 40 CFR Part 262, Subpart H or this article, persons (e.g., notifiers, recognized traders) who meet the definition of primary exporter in 40 CFR section 262.51 shall file an annual report with the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, no later than March 1 of each year summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year. (If the primary exporter is required to file an annual report for waste exports that are not covered under 40 CFR Part 262, Subpart H or this article, the primary exporter may include all export information in one report provided the following information on exports of waste destined for recovery within the designated OECD member countries is contained in a separate section). Such reports shall include the following:

(1) The USEPA identification number, name, and mailing and site address of the notifier filing the report;

(2) The calendar year covered by the report;

(3) The name and site address of each final recovery facility;

(4) By final recovery facility, for each hazardous waste exported, a description of the hazardous waste, the USEPA hazardous waste number (from 40 CFR Part 261, Subpart C or D), designation of waste type(s) from OECD waste list and applicable waste code from the OECD lists, Department of Transportation (DOT) hazard class, the name and USEPA identification number (where applicable) for each transporter used, the total amount of hazardous waste shipped pursuant to 40 CFR Part 262, Subpart H or this article, and number of shipments pursuant to each notification;

(5) In even numbered years, for each hazardous waste exported, except for hazardous waste produced by exporters of greater than 100 kilograms (kg) but less than 1000 kg in a calendar month, and except for hazardous waste for which information was already provided pursuant to 40 CFR section 262.41:

(A) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and

(B) A description of the changes in volume and toxicity of the waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984; and

(6) A certification signed by the person acting as primary exporter that states:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.

(b) Exception reports. Any person who meets the definition of primary exporter in 40 CFR section 262.51 shall file an exception report in lieu of the requirements of 40 CFR section 262.42 with the USEPA Administrator if any of the following occurs:

(1) The primary exporter has not received a copy of the tracking documentation signed by the transporter stating point of departure of the waste from the United States, within forty–five (45) days from the date it was accepted by the initial transporter;

(2) Within ninety (90) days from the date the waste was accepted by the initial transporter, the notifier has not received written confirmation from the recovery facility that the hazardous waste was received;

(3) The waste is returned to the United States.

(c) Recordkeeping.

(1) Persons who meet the definition of primary exporter in 40 CFR section 262.51 shall keep the following records:

(A) A copy of each notification of intent to export and all written consents obtained from the competent authorities of concerned countries for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

(B) A copy of each annual report for a period of at least three years from the due date of the report; and

(C) A copy of any exception reports and a copy of each confirmation of delivery (i.e., tracking documentation) sent by the recovery facility to the notifier for at least three years from the date the hazardous waste was accepted by the initial transporter or received by the recovery facility, whichever is applicable.

(2) The periods of retention referred to in 40 CFR section 262.87 or this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the USEPA Administrator.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 58004 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5 and 58012, Health and Safety Code; and 40 CFR Section 262.87.

HISTORY

1. Change without regulatory effect adding new section filed 8–20–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

§ 66262.88. Pre–Approval for U.S. Recovery Facilities.

[Reserved.]

§ 66262.89. OECD Waste Lists.

(a) General. For the purposes of 40 CFR Part 262, Subpart H or this article, a waste is considered hazardous under U.S. national procedures, and hence subject to 40 CFR Part 262, Subpart H or this article, if the waste:

(1) Meets the Federal definition of hazardous waste in 40 CFR section 261.3; and

(2) Is subject to either the Federal manifesting requirements of 40 CFR Part 262, subpart B, or to the universal waste management standards of 40 CFR Part 273.

(b) If a waste is hazardous under 40 CFR section 262.89(a) or subsection (a) of this section and it appears on the amber– or red–list, it is subject to amber– or red–list requirements respectively;

(c) If a waste is hazardous under 40 CFR 262.89(a) or subsection (a) of this section and it does not appear on either amber– or red–lists, it is subject to red–list requirements.

(d) The appropriate control procedures for hazardous wastes and hazardous waste mixtures are addressed in 40 CFR section 262.82 or section 66262.82.

(e) The OECD Green–List of Wastes (revised May 1994), Amber–List of Wastes, and Red–List of Wastes (both revised May 1993) as set forth in Appendix 3, Appendix 4 and Appendix 5, respectively, to the OECD Council Decision C(92)39/FINAL (Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery Operations)

are incorporated by reference. These incorporations by reference in federal regulations were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51, on July 11, 1996. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the Federal Register. The materials are available for inspection at: the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC; Environmental Protection Agency, RCRA Information Center (RIC), 1235 Jefferson–Davis Highway, first floor, Arlington, VA 22203 (Docket #F–94–IEHF–FFFFF) and may be obtained from the Organization for Economic Co–operation and Development, Environment Directorate, 2 rue Andre Pascal, 75775 Paris Cedex 16, France.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 58004 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5 and 58012, Health and Safety Code; and 40 CFR Section 262.89.

HISTORY

1. Change without regulatory effect adding new section filed 8–20–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

Appendix

Uniform Hazardous Waste Manifest,
Continuation Sheet and Instructions
(EPA Forms 8700–22 and 8700–22A and Their Instructions)

U.S. EPA Form 8700–22

Read all instructions before completing this form.

1. This form has been designed for use on a 12–pitch (elite) typewriter which is also compatible with standard computer printers; a firm point pen may also be used — press down hard.

2. Federal regulations require generators and transporters of hazardous waste and owners or operators of hazardous waste treatment, storage, and disposal facilities to complete this form (FORM 8700–22) and, if necessary, the continuation sheet (FORM 8700–22A) for both inter– and intrastate transportation of hazardous waste.

MANIFEST 8700–22

The following statement must be included with each Uniform Hazardous Waste Manifest, either on the form, in the instructions to the form, or accompanying the form:

Public reporting burden for this collection of information is estimated to average: 30 minutes for generators, 10 minutes for transporters, and 25 minutes for owners or operators of treatment, storage, and disposal facilities. This includes time for reviewing instructions, gathering data, completing, reviewing and transmitting the form. Any correspondence regarding the PDA burden statement for the manifest must be sent to the Director of the Collection Strategies Division in EPA's Office of Information Collection at the following address: U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW., Washington, D.C. 20460.

I. INSTRUCTIONS FOR GENERATORS

Item 1. Generator's U.S. EPA Identification Number

Enter the generator's U.S. EPA twelve digit identification number, or the State generator identification number if the generator site does not have an EPA identification number.

Item 2. Page 1 of _____

Enter the total number of pages used to complete this Manifest (i.e., the first page (EPA Form 8700–22) plus the number of Continuation Sheets (EPA Form 8700–22A), if any).

Item 3. Emergency Response Phone Number

Enter a phone number for which emergency response information can be obtained in the event of an incident during transportation. The emergency response phone number must:

1. Be the number of the generator or the number of an agency or organization who is capable of and accepts responsibility for providing detailed information about the shipment;

2. Reach a phone that is monitored 24 hours a day at all times the waste is in transportation (including transportation related storage); and

3. Reach someone who is either knowledgeable of the hazardous waste being shipped and has comprehensive emergency response and spill cleanup/incident mitigation information for the material being shipped or has immediate access to a person who has that knowledge and information about the shipment.

Note: Emergency Response phone number information should only be entered in Item 3 when there is one phone number that applies to all the waste materials described in Item 9b. If a situation (e.g., consolidated shipments) arises where more than one Emergency Response phone number applies to the various wastes listed on the manifest, the phone numbers associated with each specific material should be entered after its description in Item 9b.

Item 4. Manifest Tracking Number

This unique tracking number must be pre–printed on the manifest by the forms printer.

Item 5. Generator's Mailing Address, Phone Number and Site Address

Enter the name of the generator, the mailing address to which the completed manifest signed by the designated facility should be mailed, and the generator's telephone number. Note, the telephone number (including area code) should be the normal business number for the generator, or the number where the generator or his authorized agent may be reached to provide instructions in the event the designated and/or alternate (if any) facility rejects some or all of the shipment. Also enter the physical site address from which the shipment originates only if this address is different than the mailing address.

Item 6. Transporter 1 Company Name, and U.S. EPA ID Number

Enter the company name and U.S. EPA ID number of the first transporter who will transport the waste. Vehicle or driver information may not be entered here.

Item 7. Transporter 2 Company Name and U.S. EPA ID Number

If applicable, enter the company name and U.S. EPA ID number of the second transporter who will transport the waste. Vehicle or driver information may not be entered here. If more than two transporters are needed, use a Continuation Sheet(s) (EPA Form 8700–22A).

Item 8. Designated Facility Name, Site Address, and U.S. EPA ID Number

Enter the company name and site address of the facility designated to receive the waste listed on this manifest. Also enter the facility's phone number and the U.S. EPA twelve digit identification number of the facility.

Item 9. U.S. DOT Description (Including Proper Shipping Name, Hazard Class or Division, Identification Number, and Packing Group)

Item 9a. If the wastes identified in Item 9b consist of both hazardous and nonhazardous materials, then identify the hazardous materials by entering an "X" in this Item next to the corresponding hazardous material identified in Item 9b.

If applicable, enter the name of the person accepting the waste on behalf of the second transporter. That person must acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt.

Note: Transporters carrying imports, who are acting as importers, may have responsibilities to enter information in the International Shipments Block. Transporters carrying exports may also have responsibilities to enter information in the International Shipments Block. See above instructions for Item 16.

Item 9b. Enter the U.S. DOT Proper Shipping Name, Hazard Class or Division, Identification Number (UN/NA) and Packing Group for each waste as identified in 49 CFR 172. Include technical name(s) and reportable quantity references, if applicable.

Note: If additional space is needed for waste descriptions, enter these additional descriptions in Item 27 on the Continuation Sheet (EPA Form

8700–22A). Also, if more than one Emergency Response phone number applies to the various wastes described in either Item 9b or Item 27, enter applicable Emergency Response phone numbers immediately following the shipping descriptions for those Items.

Item 10. Containers (Number and Type)

Enter the number of containers for each waste and the appropriate abbreviation from Table I (below) for the type of container.

TABLE I. TYPES OF CONTAINERS

BA = Burlap, cloth, paper, or plastic bags
CF = Fiber or plastic boxes, cartons, cases
CM = Metal boxes, cartons, cases (including roll–offs)
CW = Wooden boxes, cartons, cases
CY = Cylinders
DF = Fiberboard or plastic drums, barrels, kegs
DM = Metal drums, barrels, kegs
DT = Dump truck
DW = Wooden drums, barrels, kegs
HG = Hopper or gondola cars
TC = Tank cars
TP = Portable tanks
TT = Cargo tanks (tank trucks)

Item 11. Total Quantity

Enter, in designated boxes, the total quantity of waste. Round partial units to the nearest whole unit, and *do not* enter decimals or fractions. To the extent practical, report quantities using appropriate units of measure that will allow you to report quantities with precision. Waste quantities entered should be based on actual measurements or reasonably accurate estimates of actual quantities shipped. Container capacities are generally not acceptable as estimates.

Item 12. Units of Measure (Weight/Volume)

Enter, in designated boxes, the appropriate abbreviation from Table II (below) for the unit of measure.

TABLE II. UNITS OF MEASURE

G = Gallons (liquids only)
K = Kilograms
L = Liters (liquids only)
M = Metric Tons (1000 kilograms)
N = Cubic Meters
P = Pounds
T = Tons (2000 pounds)
Y = Cubic Yards

Note: Tons, Metric Tons, Cubic Meters, and Cubic Yards should only be reported in connection with very large bulk shipments, such as rail cars, tank trucks, or barges.

Item 13. Waste Codes

Enter up to six federal and state waste codes to describe each waste stream identified in Item 9b. State waste codes that are not redundant with federal codes must be entered here, in addition to the federal waste codes which are most representative of the properties of the waste.

Item 14. Special Handling Instructions and Additional Information.

1. Generators may enter any special handling or shipment–specific information necessary for the proper management or tracking of the materials under the generator's or other handler's business processes, such as waste profile numbers, container codes, bar codes, or response guide numbers. Generators also may use this space to enter additional descriptive information about their shipped materials, such as chemical names, constituent percentages, physical state, or specific gravity of wastes identified with volume units in Item 12.

2. This space may be used to record limited types of federally required information for which there is no specific space provided on the manifest, including any alternate facility designations; the manifest tracking number of the original manifest for rejected wastes and residues that are re–shipped under a second manifest; and the specification of PCB waste descriptions and PCB out–of–service dates required under 40 CFR 761.207. Generators, however, cannot be required to enter information in this space to meet state regulatory requirements.

Item 15. Generator's/Offeror's Certifications

1. The generator must read, sign, and date the waste minimization certification statement. In signing the waste minimization certification statement, those generators who have not been exempted by statute or regulation from the duty to make a waste minimization certification under section 3002(b) of RCRA are also certifying that they have complied with the waste minimization requirements. The Generator's Certification also contains the required attestation that the shipment has been properly prepared and is in proper condition for transportation (the shipper's certification). The content of the shipper's certification statement is as follows: "I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name, and are classified, packaged, marked, and labeled/placarded, and are in all respects in proper condition for transport by highway according to applicable international and national governmental regulations. If export shipment and I am the Primary Exporter, I certify that the contents of this consignment conform to the terms of the attached EPA Acknowledgment of Consent." When a party other than the generator prepares the shipment for transportation, this party may also sign the shipper's certification statement as the offeror of the shipment.

2. Generator or Offeror personnel may preprint the words, "On behalf of" in the signature block or may hand write this statement in the signature block prior to signing the generator/offeror certification, to indicate that the individual signs as the employee or agent of the named principal.

Note: All of the above information except the handwritten signature required in Item 15 may be pre–printed.

II. INSTRUCTIONS FOR INTERNATIONAL SHIPMENT BLOCK

Item 16. International Shipments

For export shipments, the primary exporter must check the export box, and enter the point of exit (city and state) from the United States. For import shipments, the importer must check the import box and enter the point of entry (city and state) into the United States. For exports, the transporter must sign and date the manifest to indicate the day the shipment left the United States. Transporters of hazardous waste shipments must deliver a copy of the manifest to the U.S. EPA when importing or exporting the waste across U.S. borders.

III. INSTRUCTIONS FOR TRANSPORTERS

Item 17. Transporters' Acknowledgments of Receipt

Enter the name of the person accepting the waste on behalf of the first transporter. That person must acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt. Only one signature per transportation company is required.

Signatures are not required to track the movement of wastes in and out of transfer facilities, unless there is a change of custody between transporters.

If applicable, enter the name of the person accepting the waste on behalf of the second transporter. That person must acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt.

Note: Transporters carrying imports or exports of hazardous waste may also have responsibilities to enter information in the International Shipments Block. See above instructions for Item 16.

IV. INSTRUCTIONS FOR OWNERS AND OPERATORS OF TREATMENT, STORAGE, AND DISPOSAL FACILITIES

Item 18 Discrepancy

Item 18a. Discrepancy Indication Space

1. The authorized representative of the designated (or alternate) facility's owner or operator must note in this space any discrepancies between the waste described on the Manifest and the waste actually received at the

facility. Manifest discrepancies are: significant differences (as defined by §§ 264.72(b) and 265.72(b)) between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity and type of hazardous waste a facility actually receives, rejected wastes, which may be a full or partial shipment of hazardous waste that the TSDF cannot accept, or container residues, which are residues that exceed the quantity limits for "empty" containers set forth in 40 CFR 261.7(b).

2. For rejected loads and residues (40 CFR 264.72(d), (e), and (f), or 40 CFR 265.72(d), (e), or (f)), check the appropriate box if the shipment is a rejected load (*i.e.*, rejected by the designated and/or alternate facility and is sent to an alternate facility or returned to the generator) or a regulated residue that cannot be removed from a container. Enter the reason for the rejection or the inability to remove the residue and a description of the waste. Also, reference the manifest tracking number for any additional manifests being used to track the rejected waste or residue shipment on the original manifest. Indicate the original manifest tracking number in Item 14, the Special Handling Block and Additional Information Block of the additional manifests.

3. Owners or operators of facilities located in unauthorized States (*i.e.*, states in which the U.S. EPA administers the hazardous waste management program) who cannot resolve significant differences in quantity or type within 15 days of receiving the waste must submit to their Regional Administrator a letter with a copy of the Manifest at issue describing the discrepancy and attempts to reconcile it (40 CFR 264.72(c) and 265.72(c)).

4. Owners or operators of facilities located in authorized States (*i.e.*, those States that have received authorization from the U.S. EPA to administer the hazardous waste management program) should contact their State agency for information on where to report discrepancies involving "significant differences" to state officials.

Item 18b. Alternate Facility (or Generator) for Receipt of Full Load Rejections

Enter the name, address, phone number, and EPA Identification Number of the Alternate Facility which the rejecting TSDF has designated, after consulting with the generator, to receive a fully rejected waste shipment. In the event that a fully rejected shipment is being returned to the generator, the rejecting TSDF may enter the generator's site information in this space. This field is not to be used to forward partially rejected loads or residue waste shipments.

Item 18c. Alternate Facility (or Generator) Signature.

The authorized representative of the alternate facility (or the generator in the event of a returned shipment) must sign and date this field of the form to acknowledge receipt of the fully rejected wastes or residues identified by the initial TSDF.

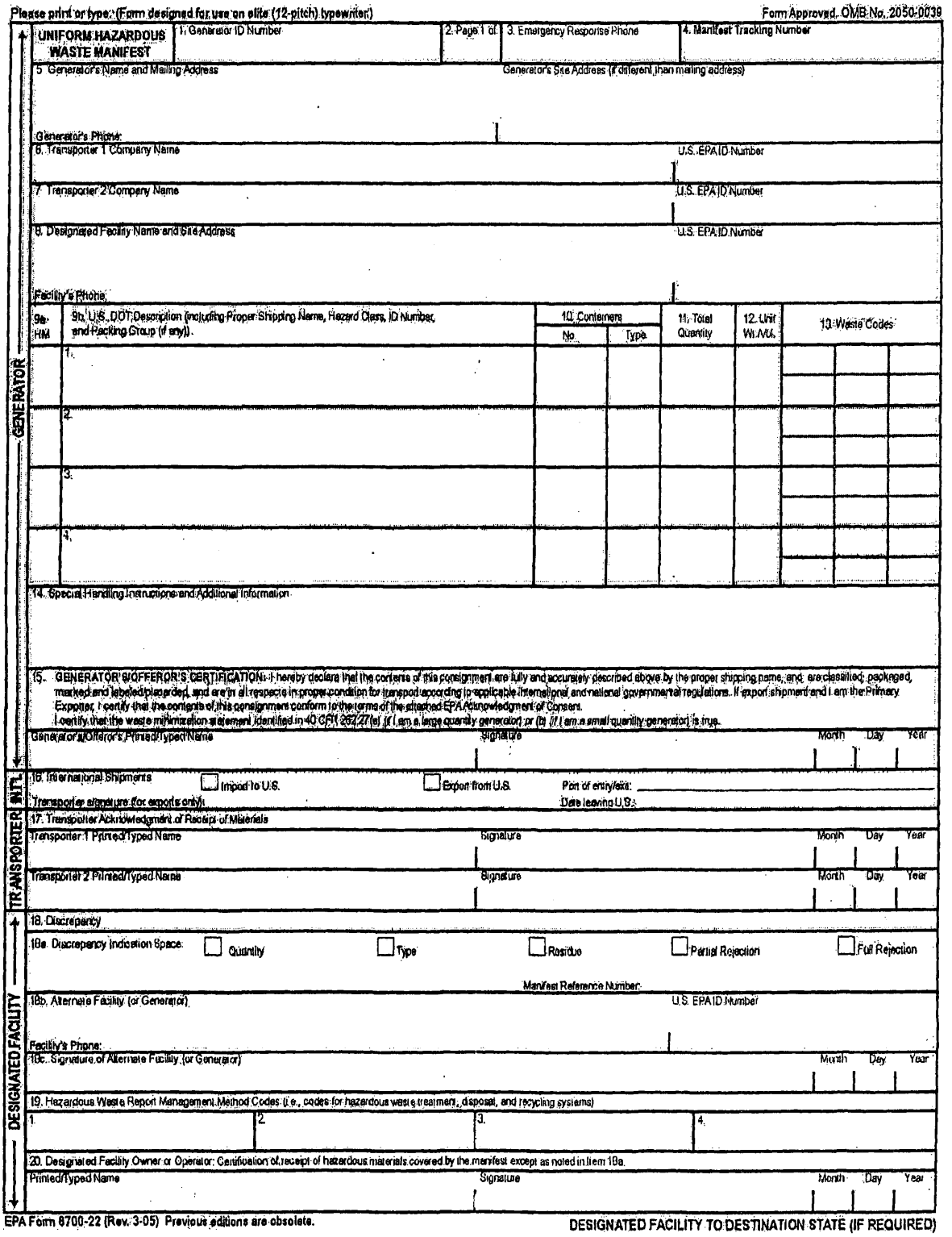
Item 19. Hazardous Waste Report Management Method Codes

Enter the most appropriate Hazardous Waste Report Management Method code for each waste listed in Item 9. The Hazardous Waste Report Management Method code is to be entered by the first treatment, storage, or disposal facility (TSDF) that receives the waste and is the code that best describes the way in which the waste is to be managed when received by the TSDF.

Item 20. Designated Facility Owner or Operator Certification of Receipt (Except As Noted in Item 18a)

Enter the name of the person receiving the waste on behalf of the owner or operator of the facility. That person must acknowledge receipt or rejection of the waste described on the Manifest by signing and entering the date of receipt or rejection where indicated. Since the Facility Certification acknowledges receipt of the waste except as noted in the Discrepancy Space in Item 18a, the certification should be signed for both waste receipt and waste rejection, with the rejection being noted and described in the space provided in Item 18a. Fully rejected wastes may be forwarded or returned using Item 18b after consultation with the generator. Enter the name of the person accepting the waste on behalf of the owner or operator of the alternate facility or the original generator. That person must acknowledge receipt or rejection of the waste described on the Manifest by signing and entering the date they received or rejected the waste in Item 18c. Partially rejected wastes and residues must be re–shipped under a new manifest, to be initiated and signed by the rejecting TSDF as offeror of the shipment.

Illustration # 115: Refer to EPA Form # 8700–22, Uniform Hazardous Waste Manifest



Please print or type. (Form designed for use on elite (12-pitch) typewriter) Form Approved. OMB No. 2050-0039

UNIFORM HAZARDOUS WASTE MANIFEST

1. Generator ID Number | 2. Page 1 of | 3. Emergency Response Phone | 4. Manifest Tracking Number

GENERATOR

5. Generator's Name and Mailing Address | Generator's Site Address (if different than mailing address)

Generator's Phone:

6. Transporter 1 Company Name | U.S. EPA ID Number

7. Transporter 2 Company Name | U.S. EPA ID Number

8. Designated Facility Name and Site Address | U.S. EPA ID Number

Facility's Phone:

9a. HM	9b. U.S. DOT Description (including Proper Shipping Name, Hazard Class, ID Number, and Packing Group (if any))	10. Containers No.	10. Containers Type	11. Total Quantity	12. Unit Wt./Vol.	13. Waste Codes
	1.					
	2.					
	3.					
	4.					

14. Special Handling Instructions and Additional Information

15. GENERATOR'S/OFFEROR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name, and are classified, packaged, marked and labeled/placarded, and are in all respects in proper condition for transport according to applicable international and national governmental regulations. If export shipment and I am the Primary Exporter, I certify that the contents of this consignment conform to the terms of the attached EPA Acknowledgment of Consent.
I certify that the waste minimization statement identified in 40 CFR 262.27(a) (if I am a large quantity generator) or (b) (if I am a small quantity generator) is true.

Generator's/Offeror's Printed/Typed Name | Signature | Month | Day | Year

TRANSPORTER INT'L

16. International Shipments ☐ Import to U.S. ☐ Export from U.S. Port of entry/exit:
Transporter signature (for exports only): Date leaving U.S.:

17. Transporter Acknowledgment of Receipt of Materials

Transporter 1 Printed/Typed Name | Signature | Month | Day | Year

Transporter 2 Printed/Typed Name | Signature | Month | Day | Year

DESIGNATED FACILITY

18. Discrepancy

18a. Discrepancy Indication Space ☐ Quantity ☐ Type ☐ Residue ☐ Partial Rejection ☐ Full Rejection

Manifest Reference Number:

18b. Alternate Facility (or Generator) | U.S. EPA ID Number

Facility's Phone:

18c. Signature of Alternate Facility (or Generator) | Month | Day | Year

19. Hazardous Waste Report Management Method Codes (i.e., codes for hazardous waste treatment, disposal, and recycling systems)

1. | 2. | 3. | 4.

20. Designated Facility Owner or Operator: Certification of receipt of hazardous materials covered by the manifest except as noted in Item 18a

Printed/Typed Name | Signature | Month | Day | Year

EPA Form 8700-22 (Rev. 3-05) Previous editions are obsolete. DESIGNATED FACILITY TO DESTINATION STATE (IF REQUIRED)

Manifest Continuation Sheet

Instructions—Continuation Sheet, U.S. EPA Form 8700–22A

Read all instructions before completing this form. This form has been designed for use on a 12–pitch (elite) typewriter; a firm point pen may also be used—press down hard.

This form must be used as a continuation sheet to U.S. EPA Form 8700–22 if:

- More than two transporters are to be used to transport the waste; or
- More space is required for the U.S. DOT descriptions and related information in Item 9 of U.S. EPA Form 8700–22.

Federal regulations require generators and transporters of hazardous waste and owners or operators of hazardous waste treatment, storage, or disposal facilities to use the uniform hazardous waste manifest (EPA Form 8700–22) and, if necessary, this continuation sheet (EPA Form 8700–22A) for both interstate and intrastate transportation.

Item 21. Generator's ID Number

Enter the generator's U.S. EPA twelve digit identification number or, the State generator identification number if the generator site does not have an EPA identification number.

Item 22. Page —

Enter the page number of this Continuation Sheet.

Item 23. Manifest Tracking Number

Enter the Manifest Tracking number from Item 4 of the Manifest form to which this continuation sheet is attached.

Item 24. Generator's Name—

Enter the generator's name as it appears in Item 5 on the first page of the Manifest.

Item 25. Transporter—Company Name

If additional transporters are used to transport the waste described on this Manifest, enter the company name of each additional transporter in the order in which they will transport the waste. Enter after the word "Transporter" the order of the transporter. For example, Transporter 3 Company Name. Also enter the U.S. EPA twelve digit identification number of the transporter described in Item 25.

Item 26. Transporter—Company Name

If additional transporters are used to transport the waste described on this Manifest, enter the company name of each additional transporter in the order in which they will transport the waste. Enter after the word "Transporter" the order of the transporter. For example, Transporter 4 Company Name. Each Continuation Sheet can record the names of two additional transporters. Also enter the U.S. EPA twelve digit identification number of the transporter named in Item 26.

Item 27. U.S. D.O.T. Description Including Proper Shipping Name, Hazardous Class, and ID Number (UN/NA)

For each row enter a sequential number under Item 27b that corresponds to the order of waste codes from one continuation sheet to the next, to reflect the total number of wastes being shipped. Refer to instructions for Item 9 of the manifest for the information to be entered.

Item 28. Containers (No. And Type)

Refer to the instructions for Item 10 of the manifest for information to be entered.

Item 29. Total Quantity

Refer to the instructions for Item 11 of the manifest form.

Item 30. Units of Measure (Weight/Volume)

Refer to the instructions for Item 12 of the manifest form.

Item 31. Waste Codes

Refer to the instructions for Item 13 of the manifest form.

Item 32. Special Handling Instructions and Additional Information

Refer to the instructions for Item 14 of the manifest form.

TRANSPORTERS

Item 33. Transporter—Acknowledgment of Receipt of Materials

Enter the same number of the Transporter as identified in Item 25. Enter also the name of the person accepting the waste on behalf of the Transporter (Company Name) identified in Item 25. That person must acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt.

Item 34. Transporter—Acknowledgment of Receipt of Materials

Enter the same number of the Transporter as identified in Item 26. Enter also the name of the person accepting the waste on behalf of the Transporter (Company Name) identified in Item 26. That person must acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt.

OWNER AND OPERATORS OF TREATMENT, STORAGE, OR DISPOSAL FACILITIES

Item 35. Discrepancy Indication Space

Refer to Item 18. This space may be used to more fully describe information on discrepancies identified in Item 18a of the manifest form.

Item 36. Hazardous Waste Report Management Method Codes

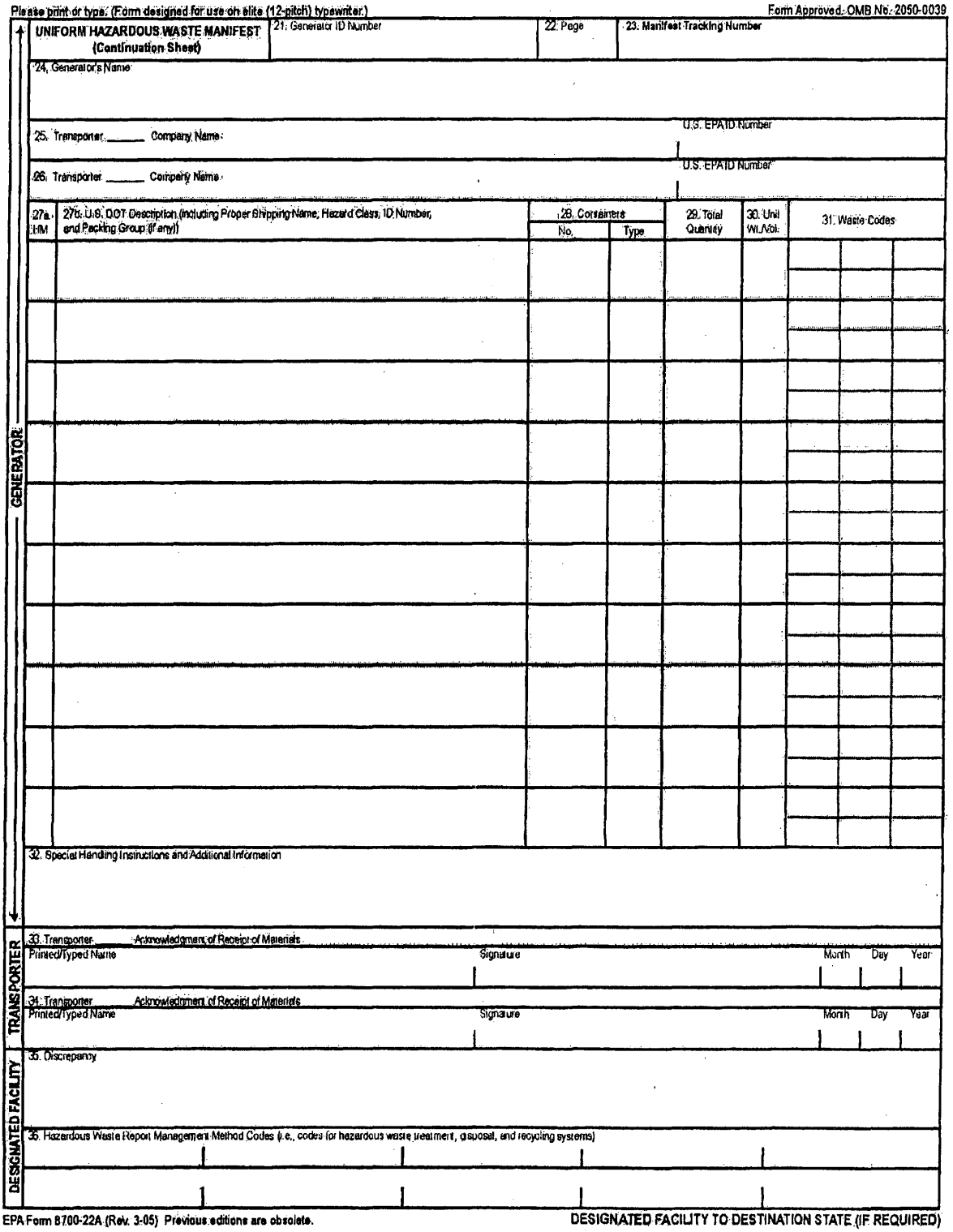
For each field here, enter the sequential number that corresponds to the waste materials described under Item 27, and enter the appropriate process code that describes how the materials will be processed when received. If additional continuation sheets are attached, continue numbering the waste materials and process code fields sequentially, and enter on each sheet the process codes corresponding to the waste materials identified on that sheet.

NOTE: Authority cited: Sections 25150, 25159 and 58012, Health and Safety Code. References: Sections 25159, 25159.5 and 58012, Health and Safety Code; 40 Code of Federal Regulations 262 Appendix; and *Hazardous Waste Report, Instructions and Forms* (EPA Form 8700–13A/B); and 70 Fed. Reg. 10776 (Mar. 4, 2005), p. 10786–10787.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect amending form DHS 8022A filed 8–27–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 35).
3. Change without regulatory effect amending appendix filed 9–29–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 40).
4. Amendment of appendix filed 4–4–2002 as an emergency; operative 4–4–2002 (Register 2002, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–2–2002 or emergency language will be repealed by operation of law on the following day.
5. Amendment of appendix refiled 8–1–2002 as an emergency; operative 8–1–2002 (Register 2002, No. 31). A Certificate of Compliance must be transmitted to OAL by 12–2–2002 or emergency language will be repealed by operation of law on the following day.
6. Amendment of appendix refiled 12–2–2002 as an emergency; operative 12–3–2002 (Register 2002, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–2003 or emergency language will be repealed by operation of law on the following day.
7. Amendment of appendix refiled 4–1–2003 as an emergency; operative 4–3–2003 (Register 2003, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2003 or emergency language will be repealed by operation of law on the following day.
8. Repealer of 4–1–2003 order and amendment appendix and NOTE filed 7–10–2003 as an emergency; operative 7–10–2003 (Register 2003, No. 28). Pursuant to Health and Safety Code section 25169.8, this is a deemed emergency and stays effective until revised by the agency.
9. Change without regulatory effect amending appendix filed 6–7–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 24).
10. Change without regulatory effect relocating appendix from following section 66262.70 to end of chapter filed 4–21–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 16).
11. Change without regulatory effect repealing and adopting new appendix filed 8–24–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 34).

Illustration # 116: EPA Form Number 8700–22A Manifest Continuation Form



Please print or type. (Form designed for use on elite (12-pitch) typewriter.)

Form Approved. OMB No. 2050-0039

UNIFORM HAZARDOUS WASTE MANIFEST (Continuation Sheet)

21. Generator ID Number

22. Page

23. Manifest Tracking Number

24. Generator's Name

25. Transporter _____ Company Name

U.S. EPA ID Number

26. Transporter _____ Company Name

U.S. EPA ID Number

27a. HM	27b. U.S. DOT Description (including Proper Shipping Name, Hazard Class, ID Number, and Packing Group (if any))	28. Containers No.	28. Containers Type	29. Total Quantity	30. Unit Wt./Vol.	31. Waste Codes		

GENERATOR

32. Special Handling Instructions and Additional Information

TRANSPORTER

33. Transporter Acknowledgment of Receipt of Materials

Printed/Typed Name | Signature | Month | Day | Year

34. Transporter Acknowledgment of Receipt of Materials

Printed/Typed Name | Signature | Month | Day | Year

DESIGNATED FACILITY

35. Discrepancy

36. Hazardous Waste Report Management Method Codes (i.e., codes for hazardous waste treatment, disposal, and recycling systems)

EPA Form 8700-22A (Rev. 3-05) Previous editions are obsolete.

DESIGNATED FACILITY TO DESTINATION STATE (IF REQUIRED)

Chapter 13. Standards Applicable to Transporters of Hazardous Waste

Article 1. General

§ 66263.10. Applicability.

(a) These regulations establish standards which apply to persons transporting hazardous waste within, into, out of or through the State if the transportation requires a manifest under section 25160 of the Health and Safety Code.

(b) These regulations do not apply to on-site transportation of hazardous waste by generators or by owners or operators of permitted hazardous waste management facilities.

(c) A transporter of hazardous waste shall also comply with standards applicable to generators of hazardous waste under chapter 12 of this division if the transporter:

(1) transports hazardous waste to a designated facility within the State from outside the United States; or

(2) mixes hazardous wastes of different Federal Department of Transportation (DOT) shipping descriptions by placing them into a single container.

(d) A transporter of hazardous waste subject to the Federal manifesting requirements of 40 CFR Part 262, or subject to the universal waste management standards of 40 CFR Part 273, that is being imported from or exported to any of the countries listed in 40 CFR section 262.58(a)(1) or section 66262.58(a)(1) for purposes of recovery is subject to 40 CFR Part 262, Subpart H or this article and to all other relevant requirements of 40 CFR Part 262, Subpart H or this article, including, but not limited to, 40 CFR section 262.84 or section 66262.84 for tracking documents.

NOTE: Authority cited: Sections 208, 25150, 25159, 25159.5 and 25160, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code, 40 CFR Section 263.10.

HISTORY

1. New section filed 5-24-91; effective 7-1-91 (Register 91, No. 22).
2. Change without regulatory effect adding new subsection (d) filed 8-20-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

§ 66263.11. Application for Registration As a Hazardous Waste Transporter.

(a) A person desiring registration as a hazardous waste transporter shall apply to the Department by submitting each of the following:

(1) a completed and signed Hazardous Waste Hauler Application form (Form DTSC 187, Rev. 2/92), provided by the Department, which contains a statement certifying that the applicant understands and will comply with the applicable requirements of this chapter;

(2) proof of ability to provide adequate response in damages resulting from the operation of the person's business. For the purpose of this section, adequate response means protection against liability for the payment of damages equivalent to protection required by section 34630, et seq., of the California Vehicle Code. Both of the following are required:

(A) a copy of the insurance policy, if insured, for the required coverage shall be maintained at the transporter's principal place of business within California; and

(B) a Certificate of Insurance, a bond of a California licensed surety company, or evidence of qualification as a self-insurer, shall be provided to the Department which indicates that the minimum coverage has been obtained;

(b) If previously registered, the applicant shall submit an application to the Department at least 45 days prior to the expiration date of the current registration.

(c) The Department shall review applications under section 66263.11 for completeness and shall inform the applicant in writing either that the application is complete and accepted for filing, or that the application is deficient and what specific information, documentation or fees, if any, shall be required to complete the application. The Department shall inform the applicant within fourteen calendar days of receipt of an application for hazardous waste transporter registration. Registration shall be denied unless a complete application is submitted.

(d) The Department shall notify the applicant, in writing, of the Department's decision regarding the completeness of an application. The notification shall be within fourteen calendar days after the date on which the Department determines the application to be complete and accepted for filing pursuant to subsection (c) of this section for hazardous waste transporter registration applications.

NOTE: Authority cited: Sections 208, 25150, 25168.1, 25186 and 58012, Health and Safety Code; Section 15376, Government Code. Reference: Section 15376, Government Code; Sections 25112.5, 25115.5, 25159, 25163, 25165, 25165.1, 25166, 25166.5, 25167, 25168, 25169 and 58012, Health and Safety Code; Section 2560, Vehicle Code; and 49 CFR section 396.17

HISTORY

1. New section filed 5-24-91; effective 7-1-91 (Register 91, No. 22).
2. Change without regulatory effect amending subsections (a)(1) and (a)(2) filed 6-1-93 pursuant to section 100, title 1, California Code of Regulations (Register 93, No. 23).
3. Change without regulatory effect repealing subsections (a)(2) and (a)(4)-(a)(6), renumbering subsections, amending newly designated subsection (a)(2) and amending NOTE filed 9-29-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 40).

§ 66263.12. Term of Registration.

Registration as a Hazardous Waste Transporter shall expire one year from the date of issuance.

NOTE: Authority cited: Sections 208, 25150 and 25168.1, Health and Safety Code. Reference: Sections 25159, 25163, 25165, 25166 and 25167, Health and Safety Code.

HISTORY

1. New section filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 66263.13. Inspection of Transporter.

(a) Any person who transports or proposes to transport hazardous waste on a highway shall do all of the following in order to ensure compliance with this chapter:

(1) allow the Department of California Highway Patrol to randomly inspect the person's trucks, trailers, semitrailers, vacuum tanks, cargo tanks and containers;

(2) make vehicles and containers available for inspection at a safe work location when a random inspection is conducted onsite by the Department of California Highway Patrol;

(3) allow the Department to inspect manifests, reports, permits, licenses, billing records and other documents related to the handling or transporting of hazardous wastes;

(4) make available to the Department and the Department of California Highway Patrol, when requested, all records of inspection required by section 1163(e), Title 13, California Code of Regulations.

(b) Hazardous waste transporters, their trucks, trailers, semitrailers, vacuum tanks, cargo tanks and containers shall at all times comply with the Vehicle Code; with regulations adopted by the Department of California Highway Patrol, Subchapter 2, commencing with section 620, Subchapter 4, commencing with section 930, Subchapter 6, commencing with section 1150, and Subchapter 6.5, commencing with section 1200, chapter 2, Title 13, California Code of Regulations; and with this chapter. Notwithstanding the provisions of section 1200, chapter 2, Title 13, California Code of Regulations, all vehicles used for transporting hazardous waste on a highway shall be subject to the provisions of Subchapter 6.5, commencing with section 1200, chapter 2, Title 13, California Code of Regulations.

(c) The Department of California Highway Patrol or the Department may require testing, under prescribed conditions, of trucks, trailers, semitrailers, vacuum tanks, cargo tanks or containers used to transport hazardous wastes, in order to ensure compliance with this chapter.

(d) When so requested by the Department of California Highway Patrol or the Department, a hazardous waste transporter shall, within a reasonable period of time, perform any or all of the following actions:

(1) remove hazardous wastes or materials from the tank's containers, pipes, hoses or other appurtenances of a truck, trailer, semitrailer, vacuum tank, cargo tank or container in order to make it safe to inspect;

(2) remove covers and take other steps necessary to allow inspection;

(3) present the manifest for the waste last held in each truck, trailer, semitrailer, vacuum tank, cargo tank or container to be inspected.

(e) All vehicles and containers and any attached equipment used for the transportation of hazardous waste must be in sound condition and containers must be designed or maintained to contain hazardous waste.

NOTE: Authority cited: Sections 208, 25150, 25168.1 and 58012, Health and Safety Code. Reference: Sections 25159, 25168, 25169.1, 25185, 25186 and 58012, Health and Safety Code; and Sections 34001 to 34102, Vehicle Code.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect amending subsections (a)(1) and (a)(2), repealing subsection (e), relettering subsections, amending newly designated subsection (e) and amending NOTE filed 9–29–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 40).

§ 66263.14. [Reserved].

NOTE: Authority cited: Sections 208, 25150 and 25168.1, Health and Safety Code. Reference: Sections 25159, 25168, 25168.3 and 25169.1, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect repealing section filed 9–29–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 40).

§ 66263.15. Transporter Registration Reporting Requirements.

(a) A registered hazardous waste transporter shall notify the Department in writing within 30 days of the following occurrences:

(1) the transporter changes majority ownership, name or location;

(2) ownership or control of a vehicle or container certified by the Department is changed;

(3) a truck, trailer, semitrailer, vacuum tank, cargo tank, or container certified by the Department is involved in any spill, or in an accident which renders or may have rendered the vehicle or container in noncompliance with the requirements of this chapter.

(b) A registered hazardous waste transporter shall notify the Department in writing immediately upon notice of loss of the liability coverage specified in section 66263.11. A transporter shall cease to transport hazardous waste upon loss of liability coverage.

NOTE: Authority cited: Sections 208, 25150 and 25168.1, Health and Safety Code. Reference: Sections 25159, 25163, 25169 and 25186, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66263.16. Hazardous Waste Containers.

(a) Each truck, trailer, semitrailer, vacuum tank, cargo tank or container used for shipping hazardous waste shall be so designed and constructed, and its contents so limited, that under conditions normally incident to transportation, there shall be no release of hazardous waste to the environment.

(b) Any truck, trailer, semitrailer, vacuum tank, cargo tank or container used for shipping hazardous waste shall be free from leaks and all discharge openings shall be securely closed during transportation.

NOTE: Authority cited: Sections 208, 25150 and 25168.1, Health and Safety Code. Reference: Sections 25163 and 25168.1, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66263.17. Identification Number for Transporters.

(a) A transporter shall not transport hazardous wastes without first receiving an Identification Number and a registration certificate from the Department.

(b) A transporter who has not received an Identification Number may obtain one by applying to the USEPA Administrator or to the Department using EPA Form 8700–12 (Rev. 11/85). Upon receiving the request, the Department or the USEPA Administrator will assign an Identification Number to the transporter.

NOTE: Authority cited: Sections 208, 25150, 25159, 25159.5, 25165 and 25168.1, Health and Safety Code. Reference: Sections 25159, 25159.5 and 25165, Health and Safety Code, 40 CFR Section 263.11.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66263.18. Exempt Transfer Facility.

(a) A transfer facility, as defined in section 25123.3(a)(3) of the Health and Safety Code, is not subject to the requirements of chapters 14, 15, 18 and 20 regarding a permit for waste storage when, during the normal course of transportation, hazardous waste is held as specified in subsection (b), and:

(1) manifested shipments of packaged or containerized hazardous wastes meeting the packaging requirements of section 66262.30 are only transferred from one vehicle to another; and

(2) the packages or containers used in this transfer shall be the same packages or containers used for transporting the hazardous wastes and no additional handling shall take place.

(b) Hazardous waste is held at a transfer facility and any one of the following apply:

(1) if located in an area zoned by the local planning authority for industrial or agricultural land use, and hazardous wastes is held for 10 days or less, unless subject to subsection (b)(2).

(2) if located in an area zoned agricultural by the local planning authority that commenced initial operations before January 1, 2005 and is located within 500 feet of a structure identified in subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (b) of Section 25232 of the Health and Safety Code, and hazardous waste is held for six days or less.

(3) if located on land zoned by the local planning authority for other land use, unless subject to paragraph (1) and (2) of subsection (b) or not prohibited by subsection (c), and hazardous waste is held for six days or less.

(c) The transfer facility exemption of this section does not apply and is prohibited as follows:

(1) on property zoned residential by the local planning authority; or

(2) at a transfer facility that commenced initial operations on and after January 1, 2005 and is located within 500 feet of a structure identified in subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (b) of section 25232 of the Health and Safety Code.

NOTE: Authority cited: Sections 25150, 25159, 25159.5 and 25168.1, Health and Safety Code. Reference: Sections 25123.3, 25159, 25159.5 and 25232, Health and Safety Code; and 40 Code of Federal Regulations Section 263.12.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect amending first paragraph filed 4–3–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
3. Change without regulatory effect amending section heading, section and NOTE filed 8–24–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 34).

Article 2. Compliance with the Manifest System and Recordkeeping

§ 66263.20. Manifest Procedures for the Transporter.

(a) A transporter shall not accept hazardous waste from a generator unless it is accompanied by a manifest completed and signed in accordance with the provisions of article 2, chapter 12 of this division. In the case of RCRA hazardous waste exports other than those subject to Subpart H of 40 Code of Federal Regulations Part 262 or this article, a transporter shall not accept such waste from a primary exporter or other person (1) if the transporter knows the shipment does not conform to the U.S. EPA Acknowledgment of Consent; and (2) unless, in addition to a manifest signed in accordance with the provisions of article 2, chapter 12 of this division, such waste is also accompanied by an U.S. EPA Acknowledgment of Consent which, except for shipment by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment)). For exports of hazardous waste subject to the requirements of Subpart H of 40 Code of Federal Regulations Part 262, or this article, a transporter

shall not accept hazardous waste without a tracking document that includes all information required by 40 Code of Federal Regulations section 262.84 or section 66262.84 of this division.

(b) Before transporting the hazardous waste, the transporter shall complete, sign and date the Transporter of Waste section of the manifest acknowledging acceptance of the hazardous waste from the generator. The transporter shall return a signed copy to the generator prior to removal of the waste from the generator's facility.

(c) The transporter shall ensure that the manifest accompanies the hazardous waste. In the case of RCRA hazardous waste exports, the transporter shall ensure that a copy of the U.S. EPA Acknowledgment of Consent also accompanies the hazardous waste.

(d) The transporter shall have a manifest in the transporter's possession while transporting the hazardous waste and shall release the manifest to another transporter or to the owner or operator of the designated hazardous waste facility accepting the waste.

(e) A transporter transporting hazardous wastes into or out of the State shall have in their possession a manifest with the Generator of Waste and Transporter of Waste sections completed.

(f) The transporter shall submit to the Department a legible copy of the manifest completed by the generator, transporter and hazardous waste facility owner or operator for each load of hazardous waste transported out of the State, within 15 days of the date that the load is accepted by the designated facility on the manifest. The manifest shall state the name and complete address of the hazardous waste facility to which the waste is transported. The transporter shall submit this copy to the Department at:

DTSC FACILITY MANIFESTS (TRANSPORTER COPY)
P.O. BOX 3000
SACRAMENTO, CA 95812-3000

(g) A transporter who delivers a hazardous waste to another transporter or to the designated facility shall:

(1) obtain the date of delivery and the handwritten signature of that transporter or of the owner or operator of the designated facility on the manifest; and

(2) retain one copy of the manifest in accordance with section 66263.22; and

(3) give the remaining copies of the manifest to the accepting transporter or designated facility.

(h) The requirements of subsections (c), (g) and (i) of this section do not apply to water (bulk shipment) transporters if:

(1) the hazardous waste is delivered by water (bulk shipment) to the designated facility; and

(2) a shipping paper containing all the information required on the manifest (excluding the Identification Numbers, generator certification, and signatures) and, for RCRA hazardous waste exports, an U.S. EPA Acknowledgment of Consent accompanies the hazardous waste; and

(3) the delivering transporter obtains the date of delivery and handwritten signature of the owner or operator of the designated facility on either the manifest or the shipping paper; and

(4) the person delivering the hazardous waste to the initial water (bulk shipment) transporter obtains the date of delivery and signature of the water (bulk shipment) transporter on the manifest and forwards it to the designated facility; and

(5) a copy of the shipping paper or manifest is retained by each water (bulk shipment) transporter in accordance with section 66263.22.

(i) For shipments involving rail transportation, the requirements of subsections (c), (e), (g) and (h) do not apply and the following requirements do apply:

(1) when accepting hazardous waste from a non-rail transporter, the initial rail transporter shall:

(A) sign and date the manifest acknowledging acceptance of the hazardous waste;

(B) return a signed copy of the manifest to the non-rail transporter;

(C) forward at least three copies of the manifest to:

1. the next non-rail transporter, if any; or,

2. the designated facility, if the shipment is delivered to that facility by rail; or

3. the last rail transporter designated to handle the waste in the United States;

(D) retain one copy of the manifest and rail shipping paper in accordance with section 66263.22.

(2) Rail transporters shall ensure that a shipping paper containing all the information required on the manifest (excluding the Identification Numbers, generator certification, and signatures) and, for exports of RCRA hazardous waste an U.S. EPA Acknowledgment of Consent accompanies the hazardous waste at all times. Intermediate rail transporters are not required to sign either the manifest or shipping paper.

(3) When delivering hazardous waste to the designated facility, a rail transporter shall:

(A) obtain the date of delivery and handwritten signature of the owner or operator of the designated facility on the manifest or the shipping paper (if the manifest has not been received by the facility); and

(B) retain a copy of the manifest or signed shipping paper in accordance with section 66263.22.

(4) When delivering hazardous waste to a non-rail transporter a rail transporter shall:

(A) obtain the date of delivery and the handwritten signature of the next non-rail transporter on the manifest; and

(B) retain a copy of the manifest in accordance with section 66263.22.

(5) Before accepting hazardous waste from a rail transporter, a non-rail transporter shall sign and date the manifest and provide a copy to the rail transporter.

(j) Transporters who transport hazardous waste out of the United States shall:

(1) for shipments initiated before September 5, 2006, indicate on the manifest the date the hazardous waste left the United States from the State.

For shipments initiated on and after September 5, 2006, sign and date the manifest in the International Shipments block (Item 16) to indicate the date that the shipment left the United States; and

(2) for shipments initiated before September 5, 2006, sign the manifest and retain one copy in accordance with section 66263.22(c).

For shipments initiated on and after September 5, 2006, retain one copy in accordance with section 66263.22, subsection (d); and

(3) return a signed copy of the manifest to the generator; and

(4) for RCRA-regulated hazardous waste, give a copy of the manifest to a U.S. Customs official at the point of departure from the United States.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25160, 25161 and 25162, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5, 25160 and 25162, Health and Safety Code; and 40 Code of Federal Regulations Section 263.20.

HISTORY

1. New section filed 5-24-91; effective 7-1-91 (Register 91, No. 22).
2. Change without regulatory effect amending subsection (a) filed 8-20-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).
3. Change without regulatory effect amending section and NOTE filed 8-24-2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 34).

§ 66263.21. Transporter Compliance with the Manifest.

(a) The transporter shall deliver the entire quantity of hazardous waste which that transporter has accepted from a generator or a transporter to:

(1) the designated facility listed on the manifest; or

(2) the alternate designated facility, if the hazardous waste cannot be delivered to the designated facility because an emergency prevents delivery; or

(3) the next designated transporter; or

(4) the place outside the United States designated by the generator.

(b) For shipments initiated before September 5, 2006, if the hazardous waste cannot be delivered in accordance with paragraph (a) of this section, the transporter shall contact the generator for further directions and shall revise the manifest according to the generator's instructions.

(1) For shipments initiated on and after September 5, 2006, if the hazardous waste cannot be delivered in accordance with paragraph (a) of this section because of an emergency condition other than rejection of the waste by the designated facility, then the transporter shall contact the generator for further directions and shall revise the manifest according to the generator's instructions.

(2) If hazardous waste is rejected by the designated facility while the transporter is on the facility's premises, then the transporter shall obtain the following:

(A) For a partial load rejection or for regulated quantities of container residues, a copy of the original manifest that includes the facility's date and signature, and the Manifest Tracking Number of the new manifest that will accompany the shipment, and a description of the partial rejection or container residue in the discrepancy block of the original manifest. The transporter shall retain a copy of this manifest in accordance with 66263.22, and give the remaining copies of the original manifest to the rejecting designated facility. If the transporter is forwarding the rejected part of the shipment or a regulated container residue to an alternate facility or returning it to the generator, the transporter shall obtain a new manifest from the facility to accompany the shipment, and the new manifest shall include all of the information required in sections 66264.72 subsections (e)(1)–(6) or (f)(1)–(6) or 66265.72 subsections (e)(1)–(6) or (f)(1)–(6).

(B) For a full load rejection that will be taken back by the transporter, a copy of the original manifest that includes the rejecting facility's signature and date attesting to the rejection, the description of the rejection in the discrepancy block of the manifest, and the name, address, phone number, and Identification Number for the alternate facility or generator to whom the shipment shall be delivered. The transporter shall retain a copy of the manifest in accordance with section 66263.22, and give a copy of the manifest containing this information to the rejecting designated facility. If the original manifest is not used, then the transporter shall obtain a new manifest from the facility for the shipment and comply with sections 66264.72 subsections (e)(1)–(6) or 66265.72 subsections (e)(1)–(6).

(c) Whenever hazardous waste is received by a facility from a transporter in a vehicle or bulk container that will be removed from the facility after emptying, the transporter shall determine by inspection whether the vehicle or bulk container is empty pursuant to section 66261.7 prior to the removal of the container from the facility.

(d) If the vehicle or bulk container cannot be rendered empty pursuant to section 66261.7 by equipment and methods available at the facility, the transporter shall contact the generator pursuant to subsection (b), prior to removing the vehicle or bulk container from the facility. If the vehicle or bulk container is not empty, the transporter shall not move the vehicle or bulk container without a new manifest prepared pursuant to sections 66264.72 or 66265.72 or, if the facility is out of state, 40 Code of Federal Regulations sections 264.72 or 265.72.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25160 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5, 25160 and 25162, Health and Safety Code; and 40 Code of Federal Regulations Section 263.21.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. New subsections (c)–(d) and amendment of NOTE filed 10–19–2000; operative 11–18–2000 (Register 2000, No. 42).
3. Change without regulatory effect amending subsection (b), adding subsections (b)(1)–(b)(2)(B) and amending subsection (d) and NOTE filed 8–24–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 34).

§ 66263.22. Recordkeeping Requirements for the Transporter.

(a) A transporter of hazardous waste shall sign and keep a copy of the manifest signed by the generator and the next designated transporter or the owner or operator of the designated facility for a period of three years from the date the hazardous waste was accepted by the initial transporter.

(b) For shipments delivered to the designated facility by water (bulk shipment), each water (bulk shipment) transporter must retain a copy of the shipping paper containing all the information required in section 66263.20(g)(2) for a period of three years from the date the hazardous waste was accepted by the initial transporter.

(c) For shipments of hazardous waste by rail within, into, out of or through the State:

(1) the initial rail transporter within the State shall keep a copy of the manifest and shipping paper with all the information required in section 66263.20(h)(2) for a period of three years from the date the hazardous waste was accepted by the initial transporter; and

(2) the final rail transporter within the State shall keep a copy of the signed manifest (or the shipping paper if signed by the designated facility in lieu of the manifest) for a period of three years from the date the hazardous waste was accepted by the initial transporter. Intermediate rail transporters are not required to keep records pursuant to these regulations.

(d) A transporter who transports hazardous waste out of the United States from the State of California shall keep a copy of the manifest indicating that the hazardous waste left the United States for a period of three years from the date the hazardous waste was accepted by the initial transporter.

(e) The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Department.

NOTE: Authority cited: Sections 208, 25150, 25159, 25159.5, 25160 and 25161, Health and Safety Code. Reference: Sections 25159, 25159.5 and 25160, Health and Safety Code, 40 CFR Section 263.22.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66263.23. Operation Requirements for the Transporter.

(a) The transporter of a hazardous waste shall comply with requirements of this division and with applicable provisions of hazardous materials regulations adopted by the Department of California Highway Patrol, article 3, commencing with section 1160, subchapter 6, chapter 2, title 13, California Code of Regulations, pursuant to sections 34500 and 34501, Vehicle Code, governing containers, packing, labels, marking, vehicle placards, shipping papers, loading, shipping certificates and incident reporting.

(b) No transporter shall deliver hazardous waste to other than a hazardous waste facility which has an appropriate and valid Hazardous Waste Facility Permit or which is otherwise authorized by the Department to receive the waste.

(c) The transporter shall use a covered container to transport hazardous wastes that are subject to volatilization or dispersal by wind.

(d) Every vehicle used by a transporter to transport hazardous waste shall have the name or trademark of the firm on each side of the vehicle or container. The lettering shall be a color contrasting with the background so as to be readily legible during daylight from a distance of 50 feet.

NOTE: Authority cited: Sections 208, 25150, 25168.1 and 58012, Health and Safety Code. Reference: Sections 25162, 25163, 25168, 25169.1, 25186 and 58012, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect repealing subsection (d), relettering subsections and amending NOTE filed 9–29–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 40).

§ 66263.24. Load Rejection and Consolidated Manifesting.

(a) This section applies to registered transporters operating pursuant to Health and Safety Code section 25160.2 and that are authorized by the department to operate as a consolidated transporter.

(b) When a consolidated shipment is rejected by an offsite hazardous waste facility, the consolidated transporter may hold that shipment on the transport vehicle at the transporter's facility for no more than 10 days from the date the shipment is rejected, consistent with paragraph (3) of subdivision (b) of section 25123.3 of the Health and Safety Code. The

transporter may not commingle the consolidated shipment with any other waste.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25160 and 58012, Health and Safety Code. Reference: Sections 25123.3, 25160.2, 25160.6(e) and 25162, Health and Safety Code; and 40 Code of Federal Regulations Section 263.21.

HISTORY

1. Change without regulatory effect adding section filed 8–24–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 34).

Article 3. Hazardous Waste Discharges

§ 66263.30. Immediate Action by the Transporter in the Case of a Hazardous Waste Discharge.

(a) In the event of a discharge of hazardous waste during transportation, the transporter shall take appropriate immediate action to protect human health and the environment (e.g., notify local authorities, dike the discharge area).

(b) If a discharge of hazardous waste occurs during transportation and a representative of the Department, any local health officer or any local public officer as designated by the Department, or any federal agency official, acting within the scope of that person's official responsibilities determines that immediate removal of the waste is necessary to protect human health or the environment, that official may authorize the removal of the waste by transporters who do not have Identification Numbers, are not registered, and without the preparation of a manifest.

(c) An air, rail, highway, or water transporter who has discharged hazardous waste shall:

(1) give notice, if required by Title 49 CFR section 171.15, (as amended October 1, 1987,) to the National Response Center (800–424–8802 or 202–426–2675); and

(2) report in writing as required by Title 49 CFR section 171.16 (as amended April 1, 1984) to the Director, Office of Hazardous Materials Regulations, Materials Transportation Bureau, Department of Transportation, Washington, DC 20590, and the Department as required by section 66263.15(a)(3).

(d) A water (bulk shipment) transporter who has discharged hazardous waste shall give the same notice as required by Title 33 CFR section 153.203 (as amended July 1, 1988) for oil and hazardous substances.

NOTE: Authority cited: Sections 208, 25150, 25159, 25159.5, 25160 and 25161, Health and Safety Code. Reference: Sections 25159, 25159.5, and 25180, Health and Safety Code, 40 CFR Section 263.30.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66263.31. Discharge Clean Up.

A transporter shall clean up any hazardous waste discharge that occurs during transportation or take such action as may be required or approved by Federal, State, or local officials so that the hazardous waste discharge no longer presents a hazard to human health or the environment.

NOTE: Authority cited: Sections 208, 25150, 25159, 25159.5 and 25168.1, Health and Safety Code. Reference: Sections 25159, 25159.5 and 25169, Health and Safety Code; 40 CFR Section 263.31.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66263.32. Transporter Reporting Requirements for Missing Hazardous Waste of Concern.

(a) The provisions of this section apply to the transporter of a hazardous waste of concern, as defined in section 66261.111(a).

(b) Upon discovering that a hazardous waste of concern is missing during transportation of that waste, and the waste at issue represents a reportable quantity or a reportable difference in type, as specified in section 66261.111(b) and (c), the transporter shall immediately attempt to reconcile the reportable quantity or difference with the generator (e.g., with telephone conversations). If the reportable quantity or difference is not reconciled within 24 hours after it was discovered, the transporter shall immediately notify the Department by calling 1–800–69–TOXIC (1–800–698–6942) and provide the following information:

(1) Generator name and identification number;

(2) Transporter(s) name(s), identification number(s), and, if available, transporter(s) registration number(s);

(3) Destination facility name and identification number;

(4) Manifest number;

(5) Waste information (lines 11, 12, 13, and 14 of the manifest), including proper shipping name, hazard class or division, identification number, packing group, number of containers, container type (as listed in Table I of the Appendix to Chapter 12, Article 7), quantity or volume of waste at issue, weight or volume units, and waste codes.

For shipments initiated on and after September 5, 2006, waste information (Items 9b, 10, 11, 12, and 13 of the manifest), including proper shipping name, hazard class or division, identification number, packing group, number of containers, container type (found in the manifest Instructions in the Appendix to chapter 12, article 8), quantity or volume of waste at issue, weight or volume units, and waste codes; and

(6) Potential locations or transportation routes where the hazardous waste of concern may have become missing (e.g., on highway or roads, rail line, transfer station, truck stop, etc.).

(c) If the reportable quantity or difference is not reconciled within 24 hours after it was discovered, in addition to complying with subsection (b), within 5 days after the reportable quantity or difference was discovered, the transporter shall submit to the Department a letter describing the reportable quantity or difference and attempts to reconcile it, and a copy of the manifest.

(1) If the hazardous waste generator where the shipment originated is located in the counties of Los Angeles, Ventura, Santa Barbara, San Bernardino, Orange, Riverside, San Diego, or Imperial, the transporter shall submit the letter to the Complaint Coordinator, Department of Toxic Substances Control, Statewide Compliance Division, Glendale Branch, 1011 North Grandview Avenue, Glendale, California 91201–2205.

(2) If the hazardous waste generator where the shipment originated is located in any other county, or outside California, the transporter shall submit the letter to the Complaint Coordinator, Department of Toxic Substances Control, Statewide Compliance Division, Northern California Branch, 8800 Cal Center Drive, Sacramento, California 95826–3200.

(d) This section shall not be interpreted or applied to require that any written report required to be made pursuant to 49 Code of Federal Regulations section 171.16 (as revised October 1, 2002) also be made, copied, or delivered by the transporter to the Department.

NOTE: Authority cited: Sections 25169.6, 25169.7 and 25169.8, Health and Safety Code. Reference: Sections 25169.5, 25169.6, 25169.7 and 25169.8, Health and Safety Code.

HISTORY

1. New section filed 7–10–2003 as an emergency; operative 7–10–2003 (Register 2003, No. 28). Pursuant to Health and Safety Code section 25169.8, this is a deemed emergency and stays effective until revised by the agency.
2. Change without regulatory effect amending subsection (b)(5) filed 8–24–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 34).

Article 4. Regulatory Exemptions for Certain Transportation Operations

§ 66263.40. Applicability.

(a) This article establishes four special categories of variances for generators and transporters, and procedures for applying those variances. Each variance category corresponds to a type of hazardous waste transportation operation which, if conducted in accordance with the provisions of this article, poses an insignificant risk to human health or to the environment. These transportation operations, and the variance categories which apply to them, are defined in succeeding sections of this article as Emergency Response Incident (section 66263.43), PCB Waste (section 66263.44), Consolidation (section 66263.45) and Small Load (section 66263.46). Each specific variance category section has a specific applicability and set of requirements. The following general requirements shall apply to all sections, except where specifically exempted.

(b) RCRA hazardous waste shall not be transported under the provisions of this article, except as specifically provided.

(c) Except as provided in section 66263.44 for polychlorinated biphenyl (PCB) waste, extremely hazardous waste shall not be transported under the provisions of this article.

NOTE: Authority cited: Sections 208, 25143, 25150, 25159,25161 and 25205.7, Health and Safety Code. Reference: Sections 25143, 25160, 25168, 25169 and 25169.1, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect amending subsections (a) and (c) filed 12–31–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 1).

§ 66263.41. General Requirements.

(a) A transporter shall not transport hazardous waste under the provisions of this article without being registered with the Department.

(b) A transporter who is granted a variance under the provisions of this article is exempt from the requirements of sections 25160, 25168 and 25169.1 of the Health and Safety Code regarding the use of the manifest, certification of vehicles and containers, and transporter insurance and from the requirements of this division adopted pursuant to those sections. In lieu of those requirements, the requirements of this article shall apply.

(c) The hazardous waste shall be transported in accordance with the regulations of the Department of California Highway Patrol (title 13, California Code of Regulations, article 3, commencing with section 1160, subchapter 6, chapter 2), the regulations of the U. S. Department of Transportation (DOT) (Code of Federal Regulations, Title 49, Parts 172, commencing with section 172.1, and 173, commencing with section 173.1), and the regulations of the EPA (Code of Federal Regulations, Title 40, Part 263, commencing with section 263.10). This paragraph shall not be construed to exempt the transporter from any other regulation unless expressly stated.

(d) A transporter who intends to operate under a variance category defined by this article shall apply to the Department by submitting a Transporter Regulatory Exemption Application/Variance form (Form DHS 8463, Rev. 1/91), provided by the Department, before initiating the operation and at each renewal of their Hazardous Waste Transporter Registration. The application shall be signed by the transporter and shall include the following information:

(1) name, mailing address, telephone number, EPA or State ID number and the Hazardous Waste Transporter Registration Number;

(2) the type or types and the physical characteristics and chemical composition of hazardous wastes to be transported under each variance;

(3) the specific section of this article corresponding to the variance category that best describes the transporter's intended operation(s) during the subsequent year;

(4) the estimated quantities of hazardous wastes listed pursuant to subparagraph (2) of this subsection.

(e) The Department shall review the application/variance form for completeness and for applicability of the provisions of this article to the intended transportation operation. A variance granted pursuant to this article shall be effective upon completion of the application/variance form by the Department and issuance to the transporter, in accordance with Health and Safety Code section 25143 and section 66260.210 of this division.

(f) Any transporter applying for and receiving a variance under this article shall be exempt from the variance fee prescribed in subdivision (g) of the Health and Safety Code, section 25205.7, provided such exemption is specifically requested in the application and specifically authorized by the Department.

(g) The transporter shall send a copy of the variance to the generator prior to operating under the variance to evidence authority for such operation.

(h) An accident report regarding any hazardous waste transported pursuant to this article shall be submitted to the Department by the transporter within 10 days of an incident which results in a spill or release to the environment.

(i) Failure to comply with any applicable term of this article shall automatically nullify the exemption.

NOTE: Authority cited: Sections 208, 25143, 25159 and 25205.7, Health and Safety Code. Reference: Section 25143, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66263.42. Specific Requirements for Milkrun Operations.

NOTE: Authority cited: Sections 208, 25143, 25150 and 25161, Health and Safety Code. Reference: Sections 25117.9, 25143, 25160, 25168, 25169 and 25169.1, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect amending subsection (d) filed 8–27–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 35).
3. Change without regulatory effect repealing section filed 12–31–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 1).

§ 66263.43. Specific Requirements for Emergency Response Incident Operations.

(a) A transporter operating in accordance with this section shall be a state, local or county governmental agency emergency response incident unit.

(b) There shall be no restriction on the types of hazardous waste transported by the transporter specified in subsection (a).

(c) The total quantity shall not exceed five 85–gallon drums of hazardous waste from any incident site transported to the transporter's central collection facility.

(d) The transporter is exempt from the requirements of sections 66263.11(a)(1)(B), 66263.11(a)(3) and 66263.13 regarding the vehicles and containers used to transport the hazardous wastes pursuant to this section.

(e) The transporter is exempt from the requirements of sections 66263.20 and 66263.21 regarding the use of the manifest. In lieu of the manifest, the transporter shall use a shipping paper which contains all the information required pursuant to Title 49, Code of Federal Regulations, Part 172, Subpart C. The shipping paper must accompany the hazardous waste when transported from the incident site to the transporter's central collection facility.

(f) Transportation of the hazardous waste from the transporter's central collection facility to a hazardous waste facility shall be performed by a registered hazardous waste transporter using certified vehicles and/or containers. The hazardous waste shall be delivered to a permitted facility or to a facility which has been granted interim status, or to a facility which has been otherwise authorized to receive hazardous waste pursuant to chapter 6.5 of the division 20 of the Health and Safety Code and implementing regulations. The hazardous waste shall be properly manifested in accordance with the requirements of this chapter on the use of the Uniform Hazardous Waste Manifest.

(g) In addition to the information required in the application submitted pursuant to section 66263.40(a)(3), the transporter shall provide the location of the central collection facility.

(h) Hazardous waste at the transporter's central collection facility shall be stored for no longer than 90 days and managed in accordance with section 66262.34.

(i) The transporter shall keep records of the types and quantities of hazardous wastes handled under this section at the central collection facility on an annual basis. These records shall be retained for a period of three years from the date the record was completed.

(j) The period of retention referred to in this section is extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Department.

NOTE: Authority cited: Sections 208, 25143, 25150 and 25161, Health and Safety Code. Reference: Sections 25143, 25160, 25168, 25169 and 25169.1, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66263.44. Specific Requirements for PCB Waste Operations.

(a) A transporter operating in accordance with this section shall be any governmental agency or public utility that transports polychlorinated biphenyl (PCB) wastes generated within the transporter's service area. The transporter shall also be the generator of the PCB wastes.

(b) The transporter is exempt from the requirements of sections 66263.11(a)(1)(B), 66263.11(a)(3) and 66263.13 regarding the vehicles and containers used to transport the PCB wastes pursuant to this section.

(c) In addition to the information required in the application submitted pursuant to section 66263.40(a)(3), the transporter shall provide the location of the central collection facility.

(d) The transporter is exempt from the requirements of sections 66263.20 and 66263.21 regarding the use of the manifest. In lieu of the manifest, the transporter shall use a shipping paper which contains all the information required pursuant to Title 49, Code of Federal Regulations, Part 172, Subpart C. The shipping paper must accompany the PCB wastes when transported from the transporter's service area to the transporter's central collection facility.

(e) Transportation of the PCB wastes from the transporter's central collection facility to a hazardous waste facility shall be performed by a registered hazardous waste transporter using certified vehicles and/or containers. The PCB wastes shall be delivered to a permitted facility or to a facility which has been granted interim status, or to a facility which has been otherwise authorized to receive hazardous waste pursuant to chapter 6.5 of division 20 of the Health and Safety Code and implementing regulations. The PCB wastes shall be properly manifested in accordance with the requirements of this chapter on the use of the Uniform Hazardous Waste Manifest.

(f) Handling practices and storage time of the PCB wastes shall be allowed the same exemptions described in section 66263.18 of this chapter, when applied to handling and storage at transfer facilities.

(g) The transporter shall keep records of the total quantities of PCB wastes handled at the central collection facility on an annual basis. These records shall be retained for a period of three years from the date the record was completed.

(h) The period of retention referred to in this section is extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Department.

NOTE: Authority cited: Sections 208, 25143, 25150 and 25161, Health and Safety Code. Reference: Sections 25143, 25160, 25168, 25169 and 25169.1, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66263.45. Specific Requirements for Consolidation Operations.

(a) A transporter operating in accordance with this section shall be any person that transports hazardous waste to a nonpermitted, temporary, hazardous waste storage facility in accordance with section 66263.18 for the purpose of consolidation of waste loads. The transporter shall also be the generator of the hazardous waste.

(b) The transporter is exempt from the requirements of sections 66263.11(a)(1)(B), 66263.11(a)(3) and 66263.13 regarding the vehicles and containers used to transport the hazardous waste pursuant to this section.

(c) In addition to the information required in the application submitted pursuant to section 66263.40(a)(3), the transporter shall provide the location of the temporary hazardous waste storage facility.

(d) The transporter is exempt from the requirements of sections 66263.20 and 66263.21 regarding the use of the manifest. In lieu of the manifest, the transporter shall use a shipping paper which contains all the information required pursuant to Title 49, Code of Federal Regulations, Part 172, Subpart C. The shipping paper must accompany the hazardous wastes when transported from the place of generation to the transporter's temporary storage facility.

(e) This section applies only to hazardous wastes that are either:

(1) collected from generators who meet the requirements of title 40 of the Code of Federal Regulations, section 261.5(a) and 261.5(g), as of July 1, 1988; or

(2) collected from generators of non–RCRA hazardous wastes totaling less than 100 kilograms per calendar month.

(f) The total quantity of each load of hazardous waste transported from the original generation location(s) to the temporary storage facility shall not exceed 100 kilograms.

(g) Transportation of the hazardous wastes from the temporary storage facility to a hazardous waste facility shall be performed by a registered hazardous waste transporter using a certified vehicle and/or containers. The hazardous waste shall be delivered to a permitted facility or to a facility which has been granted interim status, or to a facility which has been otherwise authorized to receive hazardous wastes pursuant to chapter 6,.5 of division 20 of the Health and Safety Code and implementing regulations. The hazardous waste shall be properly manifested in accordance with the requirements of this chapter on the use of the Uniform Hazardous Waste Manifest.

(h) Handling practices and storage time of the hazardous wastes shall be allowed the same exemptions described in section 66263.18 of this chapter, when applied to handling and storage at transfer facilities.

NOTE: Authority cited: Sections 208, 25143, 25150 and 25161, Health and Safety Code. Reference: Sections 25143, 25160, 25168, 25169 and 25169.1, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66263.46. Specific Requirements for Small Load Operations.

(a) A transporter operating in accordance with this section shall only transport hazardous wastes in amounts no greater than 100 kilograms per load and no greater than 1,000 kilograms per calendar month, which is the total quantity of hazardous waste which shall be hauled by the transporter.

(b) This section applies only to hazardous wastes that are either:

(1) subject to reclamation agreements with generators of greater than 100 kilograms per month but less than 1,000 kilograms per month pursuant to the requirements of Title 40 of the Code of Federal Regulations, sections 262.20(e) and 263.20(h), as of July 1, 1988; or

(2) collected from generators who meet the requirements of Title 40 of the Code of Federal Regulations, sections 261.5(a) and 261.5(g), as of July 1, 1988; or

(3) collected from generators of non–RCRA hazardous wastes totaling less than 100 kilograms per calendar month.

(c) The transporter is exempt from the requirement to provide proof of ability to provide adequate response to damages pursuant to section 66263.11(a)(2).

(d) The transporter is exempt from the requirements of sections 66263.11(a)(1)(B), 66263.11(a)(3) and 66263.13 regarding the vehicles and containers used to transport the hazardous wastes pursuant to this section.

(e) The transporter shall only deliver the hazardous waste to a permitted facility or to a facility which has been granted interim status, or to a facility which has been otherwise authorized to receive hazardous wastes pursuant to chapter 6.5 of division 20 of the Health and Safety Code and implementing regulations.

(f) The transporter is exempt from the requirements of sections 66263.20 and 66263.21 regarding the use of the manifest. In lieu of the manifest, the transporter shall use a shipping paper which contains all the information required pursuant to Title 49, Code of Federal Regulations, Part 172, Subpart C. The shipping paper must accompany the hazardous wastes when transported from the place of generation to the facility designated pursuant to subsection (e). In addition, the transporter shall include the name, address and EPA Identification Number of the designated facility on the shipping paper.

NOTE: Authority cited: Sections 208, 25143, 25150 and 25161, Health and Safety Code. Reference: Sections 25143, 25160, 25168, 25169 and 25169.1, Health and Safety Code.

HISTORY
1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

Article 5. Railroad Accident Prevention and Immediate Deployment (RAPID) Force

§ 66263.50. Fee Requirements.

(a) The fees collected pursuant to this section shall be deposited in the Hazardous Spill Prevention Account in the Railroad Accident Prevention and Response Fund.

(b) Surface transporters, for purposes of this section, means any railroad as defined under Section 229 of the Public Utilities Code which is subject to regulation under Section 421 of the Public Utilities Code and which transports hazardous materials; any motor carrier as defined in Section 508 of the Vehicle Code which is licensed or required to be licensed to transport hazardous materials pursuant to Section 32000.5 of the Vehicle Code; and, any motor carriers registered or required to be registered pursuant to Section 25163 of the Health and Safety Code.

(c) Hazardous material means any of the following:

(1) A hazardous material as defined in Section 172 of Title 49 of the Code of Federal Regulations.

(2) A hazardous material as defined in Section 25501 of the Health and Safety Code, including but not limited to, "hazardous materials" as defined in Section 1160.3 of Title 13 of the California Code of Regulations and "hazardous materials" as defined in Section 2402.7 of the Vehicle Code.

(d) Fees due under this section shall be paid each fiscal year by surface transporters who transport on California highways pursuant to Section (h) or by railroad lines pursuant to Section (k). The fees are due and payable to the Board of Equalization on December 31 of the State fiscal year beginning with 1992/93, or on such later date as notified by the Board of Equalization. The fees imposed by this regulation shall be paid in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code.

(e) The total fees to be collected each fiscal year, under this section, shall be the amount appropriated by the Legislature for expenditure, plus an amount sufficient to maintain a two month reserve, less the fund balance carried over from the prior fiscal year. The reserve shall equal one-sixth of the total appropriation.

(f) The Department shall allocate the total amount to be collected each year equally between types of surface transporters, except that, to the extent practicable, any amounts which are attributable solely to one mode shall be allocated only to that mode.

(g) The Department shall determine the fee for each motor carrier by dividing the motor carriers' allocation of the total fees to be collected pursuant to subsection (f) by the number of motor carrier companies subject to the fee pursuant to subsection (h).

(h) A motor carrier is liable for the fees to be collected under these regulations if on July 1 of the fiscal year in which the fee is due, it possessed or was required to possess a hazardous materials transportation license or a hazardous waste registration.

(i) The total fees paid by all ICC Class I railroads which transport hazardous materials shall be 99.4 percent of the amount allocated to all railroads in subsection (f).

(j) The fee for each ICC Class I railroad shall be determined by applying the percentage rate applicable to each ICC Class I railroad in the most recent fee structure set for railroads by the PUC under Section 421 of the Public Utilities Code, to the total amount of fees to be collected from all ICC Class I railroads as determined in subsection (i).

(k) A railroad is liable for the fees due under these regulations if on July 1 of the fiscal year in which the fee is due it was regulated by the PUC and has transported a hazardous material during the preceding twelve months.

(l) Individual Interstate Commerce Commission (ICC) Class I railroads which transport hazardous materials within California may develop a schedule for allocating the fees to be collected from ICC Class I railroads among all ICC Class I railroads which transport hazardous materials and submit that schedule to the Department by June 30 of each year. The Department may grant an extension of the June 30 submission date if a written request is provided giving justification for the extension.

The schedule must clearly allocate the total amount to be collected from all ICC Class I railroads which transport hazardous materials to each railroad by assigning a percentage of the total to each railroad. The Department will adopt the schedule developed by the ICC Class I railroads and waive the schedule for ICC Class I railroads developed by the PUC under Section 421 of the Public Utilities Code, provided that all ICC Class I railroads agree to the proposed schedule and certify their agreement to the Department in writing through a letter which has been signed by representatives of all ICC Class I railroads.

(m) The fee for each ICC Class II and ICC Class III railroad which transports hazardous materials shall be the greater of .115 percent of gross revenues generated in California or $250. Each railroad's gross revenues shall be from their most recent fiscal year which ended prior to July 1 of the State's fiscal year (July 1 through June 30) in which the fees are due.

(n) Class II and Class III railroads may also develop a schedule of rates using the same procedure described in subsection (l).

(o) Acceptance of materials or services from individual railroads and motor carriers in lieu of paying part or all of the fees assessed shall be based upon the Department's judgement of its budget needs and the market value of the materials or services offered. The Department will inform the Board of Equalization of the amount, if any, to be credited against any railroad or motor carrier's account.

(p) Federal, state, county, city, city and county agencies, and other political subdivisions of the State, including but not limited to, school, irrigation and fire protection districts are exempt from the fees set forth in this section.

NOTE: Authority cited: Sections 7713 and 7714.5, Public Utilities Code. Reference: Sections 25163 and 25501, Health and Safety Code, Section 229 and 421, Public Utilities Code; Section 2402.7 and 32000.5, Vehicle Code; Section 1160.3, Title 13 CCR; 49 CFR Section 171.8, 49.

HISTORY
1. New article heading and section filed 11–20–92 as an emergency; operative 11–20–92 (Register 92, No. 47). No Certificate of Compliance is required. Pursuant to the provisions of Public Utilities Code section 7713, this emergency regulation shall not be repealed by the Office of Administrative Law and shall remain in effect until revised or repealed by the Secretary of the California Environmental Protection Agency.
2. Change without regulatory effect amending subsection (m) filed 1–11–93 pursuant to title 1, section 100, California Code of Regulations (Register 93, No. 3).
3. New section refiled 3–30–93 as an emergency (Register 93, No. 14). No Certificate of Compliance is required, pursuant to the provisions of Public Utilities Code section 7713.
4. New section refiled 7–26–93 as an emergency; operative 7–26–93 (Register 93, No. 31). No Certificate of Compliance is required, pursuant to the provisions of Public Utilities Code section 7713.
5. Editorial correction amending HISTORY 1, 3 and 4 (Register 93, No. 48).

Chapter 14. Standards for Owners and Operators of Hazardous Waste Transfer, Treatment, Storage, and Disposal Facilities

Article 1. General

§ 66264.1. Purpose, Scope and Applicability.

(a) The purpose of this chapter is to establish minimum standards which define the acceptable management of hazardous waste.

(b) The standards in this chapter apply to owners and operators of all facilities which transfer, treat, store, or dispose of hazardous waste, except as specifically provided otherwise in this chapter or chapters 11, 12 or 13 of this division.

(c) The requirements of this chapter apply to a person disposing of hazardous waste by means of ocean disposal subject to a permit issued under the Federal Marine Protection, Research, and Sanctuaries Act (33 U.S.C. section 1401, et seq.) only to the extent they are included in a permit by rule granted to such a person under chapter 20 of this division. Such person shall comply with the requirements of chapter 14 of this division when transferring, treating or storing hazardous waste before it is loaded onto an ocean vessel for incineration or disposal at sea.

(d) (Reserved)

(e) The requirements of this chapter apply to the owner or operator of a POTW which transfers, treats, stores, or disposes of hazardous waste only to the extent they are included in a permit by rule granted to such a person under chapter 20 of this division.

(f) (Reserved)

(g) The requirements of this chapter do not apply to:

(1) (reserved);

(2) the owner or operator of a facility managing recyclable materials described in section 66261.6(a)(2)(B) of this division (except to the extent they are referred to in article 8 of chapter 16 of this division);

(3) a generator accumulating waste on-site in compliance with section 66262.34 of this division;

(4) a farmer disposing of waste pesticides from the farmer's own use in compliance with section 66262.70 of this division;

(5) (reserved);

(6) (reserved);

(7) (reserved);

(8)(A) except as provided in subsection (g)(8)(B) of this section, a person engaged in treatment or containment activities during immediate response to any of the following situations:

1. a discharge of a hazardous waste;

2. an imminent and substantial threat of a discharge of hazardous waste;

3. a discharge of a material which, when discharged, becomes a hazardous waste;

(B) an owner or operator of a facility otherwise regulated by this chapter shall comply with all applicable requirements of articles 3 and 4 of this chapter;

(C) any person who is covered by subsection (g)(8)(A) of this section and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this chapter and chapter 21 of this division for those activities;

(D) In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit shall retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition. For the purposes of this subsection, the term "military munitions" is as defined in 40 Code of Federal Regulations section 260.10. The requirements of this subsection apply only to military munitions that are regulated under the federal act, as defined in Health and Safety Code section 25115.1;

(9) a transporter storing manifested shipments of hazardous waste in containers at a transfer facility, or a transfer facility storing manifested shipments of hazardous waste in containers, for six days or less, or 10 days or less for transfer facilities in areas zoned industrial by the local planning authority, and meeting the requirements of sections 66262.30 and 66263.18;

(10) the addition of absorbent material to waste in a container (as defined in section 66260.10 of this division) or the addition of waste to absorbent material in a container, provided that these actions occur at the time waste is first placed in the container; and sections 66264.17(b), 66264.171, and 66264.172 are complied with;

(11) persons managing hazardous waste in a hazardous waste management unit not subject to 40 Code of Federal Regulations Part 264 (incorporated by reference in section 66260.11 of this division) pursuant to an exemption in 40 Code of Federal Regulations Section 264.1(g), if the waste managed in that unit is identified as a hazardous waste solely because it exhibits the characteristic of toxicity set forth in section 66261.24(a)(1) of this division.

(12) Persons who manage universal waste. These persons are subject to regulation under chapter 23 when managing universal wastes listed in section 66261.9 of this division.

(h) The requirements of this chapter apply to owners or operators of all facilities that transfer, treat, store, or dispose of hazardous wastes referred to in chapter 18 of this division.

NOTE: Authority cited: Sections 25141, 25150, 25150.6, 25159, 25219.1 and 58012, Health and Safety Code. Reference: Sections 25115.1, 25118, 25141, 25159, 25159.5, 25219, 25219.1 and 25219.2, Health and Safety Code; and 40 Code of Federal Regulations Sections 260.10 and 264.1.

HISTORY

1. New section filed 5-24-91; effective 7-1-91 (Register 91, No. 22).
2. Change without regulatory effect amending subsections (b) and (g)(9) filed 4-3-96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
3. Change without regulatory effect adding new subsection (g)(2) filed 6-12-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 24).
4. New subsections (g)(12)-(g)(12)(C) and amendment of NOTE filed 3-6-2000 as an emergency; operative 3-6-2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by 7-5-2000 or emergency language will be repealed by operation of law on the following day.
5. New subsections (g)(12)-(g)(12)(C) and amendment of NOTE refiled 6-29-2000 as an emergency; operative 7-6-2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 11-3-2000 or emergency language will be repealed by operation of law on the following day.
6. New subsections (g)(12)-(g)(12)(C) and amendment of NOTE refiled 11-1-2000 as an emergency; operative 11-4-2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 3-5-2001 or emergency language will be repealed by operation of law on the following day.
7. New subsections (g)(12)-(g)(12)(C) and amendment of NOTE refiled 3-6-2001 as an emergency; operative 3-6-2001 (Register 2001, No. 10). A Certificate of Compliance must be transmitted to OAL by 7-5-2001 or emergency language will be repealed by operation of law on the following day.
8. New subsections (g)(12)-(g)(12)(C) and amendment of NOTE refiled 6-26-2001 as an emergency; operative 7-5-2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 11-2-2001 or emergency language will be repealed by operation of law on the following day.
9. New subsections (g)(12)-(g)(12)(C) and amendment of NOTE refiled 11-2-2001 as an emergency; operative 11-3-2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3-4-2002 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 11-2-2001 order, including further amendment of NOTE, transmitted to OAL 12-27-2001 and filed 2-8-2002 (Register 2002, No. 6).
11. Amendment of subsection (g)(12), repealer of subsections (g)(12)(A)-(C) and amendment of subsection (h) filed 2-3-2003; operative 2-3-2003 (Register 2003, No. 6).
12. Amendment of NOTE filed 2-13-2003; operative 3-15-2003 (Register 2003, No. 7).
13. Change without regulatory effect adding subsection (g)(8)(D) and amending subsection (g)(11) and NOTE filed 4-13-2007 pursuant to Health and Safety Code section 25159.1 (Register 2007, No. 15).

§ 66264.2. Compliance Schedule for Permit Modifications.

The owner or operator of a hazardous waste facility who has received a hazardous waste facility permit on or before the effective date of this division and who is required to comply with the provisions of this chapter, shall submit a permit modification request pursuant to chapter 20, article 4 of this division to the Department within 180 days of July 1, 1991. The modification request shall describe the exact change(s) to be made to the facility to comply with the provisions of this chapter. The owner or operator of such a facility shall implement the approved modification(s) according to a schedule of compliance established by the Department.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25200, Health and Safety Code.

HISTORY

1. New section filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 66264.3. Relationship to Interim Status Standards.

A facility owner or operator who has fully complied with the requirements for interim status, as defined in Health and Safety Code section 25200.5 and regulations under section 66270.70, shall comply with the

regulations specified in chapter 15 of this division in lieu of the regulations in this chapter, until final administrative disposition of the facility's permit application is made, except as provided under article 15.5 of this chapter.

NOTE: Authority cited: Sections 58012 of the Governor's Reorganizational Plan # 1 of 1991, 25150, 25159, 25187, 25200.10, 25358.9, 58004 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5, 25187, 25200, 25200.10, 25355.5, 25356.9, 25358.3 and 25358.9, Health and Safety Code; 40 CFR Section 264.3.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Amendment of section and NOTE filed 12–23–93 as an emergency; operative 12–23–93 (Register 93, No. 52). A Certificate of Compliance must be trans-

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mitted to OAL by 5–9–94 or emergency language will be repealed by operation of law on the following day.
3. Amendment of section and NOTE refiled 4–25–94 as an emergency; operative 4–25–94 (Register 94, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–23–94 or emergency language will be repealed by operation of law on the following day.
4. Amendment of section and NOTE refiled 8–22–94 as an emergency; operative 8–22–94 (Register 94, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–20–94 or emergency language will be repealed by operation of law on the following day.
5. Amendment of section refiled 12–22–94 as an emergency; operative 12–22–94 (Register 94, No. 51). A Certificate of Compliance must be transmitted to OAL 4–21–95 or emergency language will be repealed by operation of law on the following day.
6. Amendment of section refiled 6–29–95 as an emergency; operative 6–29–95 (Register 95, No. 26). A Certificate of Compliance must be transmitted to OAL by 10–27–95 or emergency language will be repealed by operation of law on the following day.
7. Amendment of section and NOTE refiled 10–26–95 as an emergency; operative 10–26–95 (Register 95, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–23–96 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 10–26–95 order transmitted to OAL 11–30–95 and filed 1–16–96 (Register 96, No. 3).

§ 66264.4. Enforcement Actions.

In addition to bringing an enforcement action pursuant to chapter 6.5 of division 20 commencing with section 25100 of the Health and Safety Code, the Department may take or secure actions pursuant to Health and Safety Code section 25358.3.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159, 25159.5, 25180.5 through 25196.6 and 25358.3, Health and Safety Code; 40 CFR Section 264.4.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

Article 2. General Facility Standards

§ 66264.10. Applicability.

The regulations in this article apply to owners and operators of all hazardous waste facilities, except as provided in section 66264.1.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.10.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66264.11. Identification Number.

Every facility owner or operator shall apply to the Department for an Identification Number in accordance with the following notification procedure:

(a) For facilities required to obtain an identification number pursuant to 40 CFR Parts 250 to 270 (incorporated by reference in section 66260.11 of this division), by notifying the USEPA pursuant to 40 CFR Section 264.11; or

(b) For any other facility which treats, stores, transfers, or disposes of hazardous waste, by notifying the Department pursuant to Health and Safety Code section 25158.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.11.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66264.12. Required Notices.

(a)(1) The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source shall notify the Department in writing at least four weeks in advance of the date the waste is expected to arrive at the facility. Notice of subsequent shipments of the same waste from the same foreign source is not required. The notification shall be sent to the Import /Export Coordinator, Department of Toxic Substances Control, Hazardous Waste Management Program, Statewide Compliance Division, Glendale Branch, 1011 North Grandview Avenue, Glendale, California 91201–2205.

(2) The owner or operator of a recovery facility that has arranged to receive hazardous waste subject to 40 CFR Part 262, Subpart H or this article shall provide a copy of the tracking document bearing all required signatures to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and to the competent authorities of all other concerned countries within three working days of receipt of the shipment. The original of the signed tracking document shall be maintained at the facility for at least three years.

(b) The owner or operator of a facility that receives hazardous waste from an off–site source (except where the owner or operator is also the generator) shall inform the generator in writing that the owner or operator has the appropriate permit(s) for, and will accept, the waste the generator is shipping. The owner or operator shall keep a copy of this written notice as part of the operating record.

(c) Before transferring ownership or operation of a facility during its operating life, or of a disposal facility during the post–closure care period, the owner or operator shall notify the new owner or operator in writing of the requirements of this chapter and chapter 20 of this division. An owner's or operator's failure to notify the new owner or operator of the requirements of this chapter shall not relieve the new owner or operator of the obligation to comply with all applicable requirements.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 Code of Federal Regulations Section 264.12.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect redesignating subsection (a) as new subsection (a)(1) and adding new subsection (a)(2) filed 8–20–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).
3. Change without regulatory effect amending subsection (a)(1) and NOTE filed 8–24–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 34).

§ 66264.13. General Waste Analysis.

(a)(1) Before an owner or operator transfers, treats, stores, or disposes of any hazardous waste, or non–hazardous waste if applicable under section 66264.113(d), the owner or operator shall obtain a detailed chemical and physical analysis of a representative sample of the waste. At a minimum, this analysis shall contain all the information which must be known to transfer, treat, store, or dispose of the waste in accordance with the requirements of this chapter and chapter 18 of this division and with the conditions of a permit issued under chapter 20 and chapter 21 of this division.

(2) The analysis may include data developed under chapter 11 of this division, and existing published or documented data on the hazardous waste or on hazardous waste generated from similar processes.

(A) The facility's records of analyses performed on the waste before the effective date of these regulations, or studies conducted on hazardous waste generated from processes similar to that which generated the waste to be managed at the facility, may be included in the data base required to comply with subsection (a)(1) of this section.

(B) The owner or operator of an off–site facility may arrange for the generator of the hazardous waste to supply part of the information required by subsection (a)(1) of this section, except as otherwise specified in section 66268.7(b) and (c).

(3) If the generator does not supply the information as specified in subsection (a)(2)(B) of this section, and the owner or operator chooses to accept a hazardous waste, the owner or operator shall obtain the information required to comply with this section.

(4) The analysis shall be repeated as necessary to ensure that it is accurate and up to date. At a minimum, the analysis shall be repeated:

(A) when the owner or operator is notified, or has reason to believe, that the process or operation generating the hazardous waste, or non–hazardous waste if applicable under section 66264.113(d), has changed; and

(B) for off–site facilities, when the results of the inspection required in subsection (a)(5) of this section indicate that the hazardous waste received at the facility does not match the waste designated on the accompanying manifest or shipping paper.

(5) The owner or operator of an off-site facility shall inspect and, if necessary, analyze each hazardous waste movement received at the facility to determine whether it matches the identity of the waste specified on the accompanying manifest or shipping paper.

(b) The owner or operator shall develop and follow a written waste analysis plan which describes the procedures which the owner or operator will carry out to comply with subsection (a) of this section. The owner or operator shall keep this plan at the facility. At a minimum, the plan shall specify:

(1) the parameters for which each hazardous waste, or non-hazardous waste if applicable under section 66264.113(d), will be analyzed and the rationale for the selection of these parameters (i.e., how analysis for these parameters will provide sufficient information on the waste's properties to comply with subsection (a) of this section);

(2) the test methods which will be used to test for these parameters;

(3) the sampling and sampling management methods which will be used to obtain a representative sample of the waste to be analyzed. The sampling, planning, methodology, equipment, sample processing, documentation and custody procedures shall be in accordance with either:

(A) one of the sampling methods described in Appendix I of chapter 11 of this division; or

(B) an equivalent sampling method;

(4) the frequency with which the initial analysis of the waste will be reviewed or repeated to ensure that the analysis is accurate and up to date; and

(5) for off-site facilities, the waste analyses that hazardous waste generators have agreed to supply;

(6) where applicable, the methods which will be used to meet the additional waste analysis requirements for specific waste management methods as specified in sections 66264.17, 66264.314, 66264.341, 66264.1034(d), 66264.1063(d), 66264.1083 and 66268.7 of this division.

(7) for owners and operators seeking an exemption to the air emission standards of article 28.5 in accordance with section 66264.1082:

(A) if direct measurement is used for the waste determination, the procedures and schedules for waste sampling and analysis, and the results of the analysis of test data to verify the exemption.

(B) if knowledge of the waste is used for the waste determination, any information prepared by the facility owner or operator or by generator of the hazardous waste, if the waste is received from offsite, that is used as the basis for knowledge of the waste.

(c) For off site facilities, the waste analysis plan required in subsection (b) of this section shall also specify the procedures which will be used to inspect and, if necessary, analyze each movement of hazardous waste received at the facility to ensure that it matches the identity of the waste designated on the accompanying manifest or shipping paper. At a minimum, the plan shall describe:

(1) the procedures which will be used to determine the identity of each movement of waste managed at the facility; and

(2) the sampling method which will be used to obtain a representative sample of the waste to be identified, if the identification method includes sampling.

(3) The procedures that the owner or operator of an off-site landfill receiving containerized hazardous waste will use to determine whether a hazardous waste generator or treater has added a biodegradable sorbent to the waste in the container.

NOTE: Authority cited: Sections 25150, 25159, 58004 and 58012, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 264.13.

HISTORY

1. *New section filed 5-24-91*; effective 7-1-91 (Register 91, No. 22).
2. Amendment of subsection (b)(6) filed 12-23-92; operative 1-22-93 (Register 93, No. 2).
3. New subsection (c)(3) and amendment of NOTE filed 8-8-95 as an emergency; operative 8-8-95 (Register 95, No. 32). A Certificate of Compliance must be transmitted to OAL by 12-6-95 or emergency language will be repealed by operation of law on the following day.
4. Reinstatement of section as it existed prior to emergency amendment filed 9-15-95 by operation of Government Code section 11346.1(f) (Register 95, No. 37).
5. Amendment of subsection (a)(2)(B) filed 1-31-96; operative 1-31-96 (Register 96, No. 5).
6. Amendment of subsections (a)(1), (a)(4)(A) and (b)(1) and NOTE filed 6-20-96; operative 7-20-96 (Register 96, No. 25).
7. Change without regulatory effect amending subsection (a)(1) filed 10-22-96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 43).
8. New subsection (c)(3) and amendment of NOTE filed 10-13-98; operative 11-12-98 (Register 98, No. 42).
9. Change without regulatory effect amending subsection (b)(6) and adding subsections (b)(7)-(b)(7)(B) filed 6-11-99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).

§ 66264.14. Security.

(a) The owner or operator shall prevent the unknowing entry, and minimize the possibility for the unauthorized entry, of persons or livestock onto the active portion of the facility, unless the owner or operator can demonstrate to the Department as required in section 66270.14(b)(4) of chapter 20 that:

(1) physical contact with the waste, structures, or equipment within the active portion of the facility will not injure unknowing or unauthorized persons or livestock which may enter the active portion of a facility; and

(2) disturbance of the waste or equipment, by the unknowing or unauthorized entry of persons or livestock onto the active portion of a facility, will not cause a violation of the requirements of this chapter.

(b) Unless the owner or operator has made a successful demonstration under subsections (a)(1) and (2) of this section, a facility shall have:

(1) a 24-hour surveillance system (e.g., television monitoring or surveillance by guards or facility personnel) which continuously monitors and controls entry onto the active portion of the facility; or

(2)(A) an artificial or natural barrier (e.g., a fence in good repair or a fence combined with a cliff), which completely surrounds the active portion of the facility; and

(B) a means to control entry, at all times, through the gates or other entrances to the active portion of the facility (e.g., an attendant, television monitors, locked entrance, or controlled roadway access to the facility);

(3) the requirements of subsection (b) of this section shall be satisfied if the facility or plant within which the active portion is located itself has a surveillance system, or a barrier and a means to control entry, which complies with the requirements of subsection (b)(1) or (2) of this section.

(c) Unless the owner or operator has made a successful demonstration under subsections (a)(1) and (2) of this section, a sign with the legend, "Danger Hazardous Waste Area—Unauthorized Personnel Keep Out," shall be posted at each entrance to the active portion of a facility, and at other locations, in sufficient numbers to be seen from any approach to this active portion. The legend shall be written in English, Spanish and in any other language predominant in the area surrounding the facility, and shall be legible from a distance of at least 25 feet. Existing signs with a legend other than "Danger Hazardous Waste Area—Unauthorized Personnel Keep Out" may be used if the legend on the sign indicates that only authorized personnel are allowed to enter the active portion, and that entry onto the active portion can be dangerous.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.14.

HISTORY

1. New section filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 66264.15. General Inspection Requirements.

(a) The owner or operator shall inspect the facility for malfunctions and deterioration, operator errors, and discharges which may be causing or may lead to: (1) release of hazardous waste constituents to the environment; or (2) a threat to human health. The owner or operator shall conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment.

(b)(1) The owner or operator shall develop and follow a written schedule for inspecting monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment (such as

dikes and sump pumps) that are important to preventing, detecting, or responding to environmental or human health hazards.

(2) The owner or operator shall keep this schedule at the facility.

(3) The schedule shall identify the types of problems (e.g., malfunctions or deterioration) which are to be looked for during the inspection (e.g., inoperative sump pump, leaking fitting, eroding dike, etc.).

(4) The frequency of inspection may vary for the items on the schedule. However, it should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, shall be inspected daily when in use. At a minimum, the inspection schedule shall include the items and frequencies called for in sections 66264.174, 66264.193, 66264.195, 66264.226, 66264.254, 66264.278, 66264.303, 66264.347, 66264.602, 66264.1033, 66264.1052, 66264.1053, 66264.1058, and 66264.1083 through 66264.1089, where applicable.

(5) In accordance with chapter 20 of this division, the inspection schedule shall be submitted with Part B of the permit application. The Department will evaluate the schedule along with the rest of the application to ensure that it adequately protects human health and the environment. As part of this review, the Department may modify or amend the schedule as may be necessary.

(c) The owner or operator shall remedy any deterioration or malfunction of equipment or structures which the inspection reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard. Where a hazard is imminent or has already occurred, remedial action shall be taken immediately.

(d) The owner or operator shall record inspections in an inspection log or summary. The owner or operator shall keep these records for at least three years from the date of inspection. At a minimum, these records shall include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 264.15.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Amendment of subsection (b)(4) and NOTE filed 12–23–92; operative 1–22–93 (Register 93, No. 2).
3. Amendment of subsection (b)(4) and NOTE filed 7–19–95; operative 8–18–95 (Register 95, No. 29).
4. Change without regulatory effect amending subsection (b)(4) and amending NOTE filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).

§ 66264.16. Personnel Training.

(a)(1) Facility personnel shall successfully complete a program of classroom instruction or on–the–job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this chapter. The owner or operator shall ensure that this program includes all the elements described in the document required under subsection (d)(3) of this section.

(2) This program shall be directed by a person trained in hazardous waste management procedures, and shall include instruction which teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed.

(3) At a minimum, the training program shall be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, including, where applicable:

(A) procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment;

(B) key parameters for automatic waste feed cut–off systems;

(C) communications or alarm systems;

(D) response to fires or explosions;

(E) response to groundwater contamination incidents; and

(F) shutdown of operations.

(b) Facility personnel shall successfully complete the program required in subsection (a) of this section within six months after the date of their employment or assignment to a facility, or to a new position at a facility. Employees hired after the effective date of these regulations shall not work in unsupervised positions until they have completed the training requirements of subsection (a) of this section.

(c) Facility personnel shall take part in an annual review of the initial training required in subsection (a) of this section.

(d) The owner or operator shall maintain the following documents and records at the facility:

(1) the job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;

(2) a written job description for each position listed under subsection (d)(1) of this section. This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but shall include the requisite skill, education, or other qualifications, and duties of employees assigned to each position;

(3) a written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under paragraph (d)(1) of this section;

(4) records that document that the training or job experience required under subsections (a), (b), and (c) of this section has been given to, and completed by, facility personnel.

(e) Training records on current personnel shall be kept until closure of the facility; training records on former employees shall be kept for at least three years from the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.16.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66264.17. General Requirements for Ignitable, Reactive, or Incompatible Wastes.

(a) The owner or operator shall take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. This waste shall be separated and protected from sources of ignition or reaction including but not limited to: open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (e.g., from heat–producing chemical reactions), and radiant heat. While ignitable or reactive waste is being handled, the owner or operator shall confine smoking and open flame to specially designated locations. "No Smoking" signs shall be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

(b) Where specifically required by other sections of this chapter, the owner or operator of a facility that transfers, treats, stores or disposes ignitable or reactive waste, or mixes incompatible waste or incompatible wastes and other materials, shall take precautions to prevent reactions which:

(1) generate extreme heat or pressure, fire or explosions, or violent reactions;

(2) produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health or the environment;

(3) produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions;

(4) damage the structural integrity of the device or facility;

(5) through other like means threaten human health or the environment.

(c) When required to comply with subsection (a) or (b) of this section, the owner or operator shall document that compliance. This documentation may be based on references to published scientific or engineering literature, data from trial tests (e.g., bench scale or pilot scale tests), waste analyses (as specified in section 66264.13), or the results of the treatment

of similar wastes by similar treatment processes and under similar operating conditions.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.17.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66264.18. Location Standards.

(a) Seismic considerations. (1) Portions of new facilities or facilities undergoing substantial modification where transfer, treatment, storage or disposal of hazardous waste will be conducted shall not be located within 61 meters (200 feet) of a fault which has had displacement in Holocene time.

(2) As used in subsection (a)(1) of this section:

(A) "fault" means a fracture along which rocks on one side have been displaced with respect to those on the other side;

(B) "displacement" means the relative movement of any two sides of a fault measured in any direction;

(C) "holocene" means the most recent epoch of the Quarternary period, extending from the end of the Pleistocene to the present.

(b) Floodplains.

(1) A facility located in a 100–year floodplain or within the maximum high tide shall be designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100–year flood or maximum high tide, unless the owner or operator can demonstrate to the Department's satisfaction that procedures are in effect which will cause the waste to be removed safely, before flood or tide waters can reach the facility, to a location where the wastes will not be vulnerable to flood waters. If wastes are moved to a location within California, that location shall be a facility which is either permitted by the Department under chapter 20 of this division or in interim status under chapters 20 and 15 of this division.

(2) As used in subsection (b)(1) of this section:

(A) "100–year floodplain" means any land area which is subject to a one percent or greater chance of flooding in any given year from any source;

(B) "washout" means the movement of hazardous waste from the active portion of the facility as a result of flooding;

(C) "100–year flood" means a flood that has a one percent chance of being equalled or exceeded in any given year.

(c) Salt dome formations, salt bed formations, underground mines and caves.

The placement of any noncontainerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine or cave is prohibited.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.18.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66264.19. Construction Quality Assurance Program.

(a) Construction Quality Assurance Program (CQA):

(1) A CQA program is required for all surface impoundment, waste pile, and landfill units that are required to comply with sections 66264.221(c) and (f), 66264.251(c) and (*l*), and 66264.301(c) and (d). The program shall ensure that the constructed unit meets or exceeds all design criteria and specifications in the permit. The program shall be developed and implemented under the direction of a CQA officer who is a California State registered professional Civil engineer.

(2) The CQA program shall address the following physical components, where applicable:

(A) Foundations;

(B) Dikes;

(C) Low–permeability soil liners;

(D) Geomembranes (flexible membrane liners);

(E) Leachate collection and removal systems and leak detection systems; and

(F) Final cover systems.

(b) Written CQA plan. The owner or operator of units subject to the CQA program under subsection (a) of this section shall develop and implement a written CQA plan. The plan shall identify steps that will be used to monitor and document the quality of materials and the condition and manner of their installation. The CQA plan shall include:

(1) Identification of applicable units, and a description of how they will be constructed.

(2) Identification of key personnel in the development and implementation of the CQA plan, and CQA officer qualifications.

(3) A description of inspection and sampling activities for all unit components identified in subsection (a)(2) of this section, including observations and tests that will be used before, during, and after construction to ensure that the construction materials and the installed unit components meet the design specifications. The description shall cover: Sampling size and locations; frequency of testing; data evaluation procedures; acceptance and rejection criteria for construction materials; plans for implementing corrective measures; and data or other information to be recorded and retained in the operating record under section 66264.73.

(c) Contents of program. (1) The CQA program shall include observations, inspections, tests, and measurements sufficient to ensure:

(A) Structural stability and integrity of all components of the unit identified in subsection (a)(2) of this section;

(B) Proper construction of all components of the liners, leachate collection and removal system, leak detection system, and final cover system, according to permit specifications and good engineering practices, and proper installation of all components (e.g., pipes) according to design specifications;

(C) Conformity of all materials used with design and other material specifications under sections 66264.221, 66264.251, and 66264.301.

(2) The CQA program shall include test fills for compacted soil liners, using the same compaction methods as in the full–scale unit, to ensure that the liners are constructed to meet the hydraulic conductivity requirements of sections 66264.221(c)(1)(A)2., 66264.251(c)(1)(A)2., and 66264.301(c)(1)(A)2. in the field. Compliance with the hydraulic conductivity requirements shall be verified by using in–situ testing on the constructed test fill. The Department may accept an alternative demonstration, in lieu of a test fill, where data are sufficient to show that a constructed soil liner will meet the hydraulic conductivity requirements of sections 66264.221(c)(1)(A)2., 66264.251(c)(1)(A)2., and 66264.301(c)(1)(A)2. in the field.

(d) Certification. Waste shall not be received in a unit subject to section 66264.19 until the owner or operator has submitted to the Department by certified mail or hand delivery a certification signed by the CQA officer that the approved CQA plan has been successfully carried out and that the unit meets the requirements of sections 66264.221(c) or (f), 66264.251(c) or (*l*), or 66264.301(c) or (d); and the procedure in section 66270.30(*l*)(2)(B) of this chapter has been completed. Documentation supporting the CQA officer's certification shall be furnished to the Department upon request.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code; and Governor's Reorganization Plan Number 1 of 1991. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 264.19.

HISTORY

1. New section filed 7–19–95; operative 8–18–95 (Register 95, No. 29).
2. Change without regulatory effect amending subsections (a)(1) and (d) filed 6–30–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 27).

§ 66264.25. Seismic and Precipitation Design Standards.

(a) Except as provided by sections 66264.175 and 66264.192, facilities subject to this chapter and all cover systems and drainage control systems required by this chapter shall be designed to function without failure when subjected to capacity, hydrostatic and hydrodynamic loads resulting from a 24–hour probable maximum precipitation storm.

(b) The following shall be designed, constructed and maintained to withstand the maximum credible earthquake without the level of public health and environmental protection afforded by the original design being decreased:

(1) all surface impoundments, waste piles, landfills and land treatment facilities subject to this chapter; and

(2) all covers and cover systems required by this chapter and all containment and control features which will remain after closure at permanent hazardous waste disposal areas.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Section 25150, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

Article 3. Preparedness and Prevention

§ 66264.30. Applicability.

The regulations in this article apply to owners and operators of all hazardous waste facilities, except as section 66264.1 provides otherwise.

NOTE: Authority cited: Sections 208, 25150, and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.30.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66264.31. Design and Operation of Facility.

Facilities shall be located, designed, constructed, maintained, and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non–sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.31.41

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66264.32. Required Equipment.

All facilities shall be equipped with the following, unless it can be demonstrated to the Department that none of the hazards posed by waste handled at the facility could require a particular kind of equipment specified below:

(a) an internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;

(b) a device, such as a telephone (immediately available at the scene of operations) or a hand–held two–way radio, capable of summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams;

(c) portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment, and decontamination equipment; and

(d) water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.32.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66264.33. Testing and Maintenance of Equipment.

All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, shall be tested and maintained as necessary to assure its proper operation in time of emergency.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.33.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66264.34. Access to Communications or Alarm System.

(a) Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation shall have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless the Department has ruled that such a device is not required under section 66264.32.

(b) If there is ever just one employee on the premises while the facility is operating, the employee shall have immediate access to a device, such as a telephone (immediately available at the scene of operation) or a hand–held two–way radio, capable of summoning external emergency assistance, unless the Department has ruled that such a device is not required under section 66264.32.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.34.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66264.35. Required Aisle Space.

The owner or operator shall maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless it is demonstrated pursuant to section 66270.14(b)(6) to the Department that aisle space is not needed for any of these purposes.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.35.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66264.37. Arrangements with Local Authorities.

(a) The owner or operator shall attempt to make the following arrangements, as appropriate, for the type of waste handled at the facility and the potential need for the services of these organizations:

(1) arrangements to familiarize police, fire departments, emergency response teams and the local Office of Emergency Services with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to and roads inside the facility, and possible evacuation routes;

(2) where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;

(3) agreements with State emergency response teams, emergency response contractors, and equipment suppliers; and

(4) arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

(b) Where State or local authorities decline to enter into such arrangements, the owner or operator shall document the refusal in the operating record.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.37.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

Article 4. Contingency Plan and Emergency Procedures

§ 66264.50. Applicability.

The regulations in this article apply to owners and operators of all hazardous waste facilities, except as section 66264.1 provides otherwise.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.50.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66264.51. Purpose and Implementation of Contingency Plan.

(a) Each owner or operator shall have a contingency plan for the facility. The contingency plan shall be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non–sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

(b) The provisions of the plan shall be carried out immediately whenever there is a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.51.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66264.52. Content of Contingency Plan.

(a) The contingency plan shall describe the actions facility personnel shall take to comply with sections 66264.51 and 66264.56 in response to fires, explosions, or any unplanned sudden or non–sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.

(b) If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with Title 40 CFR Part 112, or Part 1510, or some other emergency or contingency plan, the owner or operator need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this chapter.

(c) The plan shall describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, pursuant to section 66264.37.

(d) The plan shall list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see section 66264.55), and this list shall be kept up to date. Where more than one person is listed, one shall be named as primary emergency coordinator and others shall be listed in the order in which they will assume responsibility as alternates. For new facilities, this information shall be supplied to the Department at the time of certification (see section 66270.14), rather than at the time of permit application.

(e) The plan shall include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list shall be kept up to date. In addition, the plan shall include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(f) The plan shall include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan shall describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).

(g) The plan shall include the current telephone number of the State Office of Emergency Services.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.52.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66264.53. Copies of Contingency Plan.

(a) A copy of the contingency plan and all revisions to the plan shall be:

(1) maintained at the facility; and

(2) submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

(b) The contingency plan shall be submitted to the Department with Part B of the permit application under chapter 20, of this division and, after modification or approval, will become a condition of any permit issued.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.53.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66264.54. Amendment of Contingency Plan.

The contingency plan shall be reviewed, and immediately amended, if necessary, whenever:

(a) the facility permit is revised;

(b) the plan fails in an emergency;

(c) the facility changes in its design, construction, operation, maintenance, or other circumstances in a way that materially increases the potential for fires, explosions, or releases of hazardous waste or hazardous waste constituents, or changes the response necessary in an emergency;

(d) the list of emergency coordinators changes; or

(e) the list of emergency equipment changes.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.54.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66264.55. Emergency Coordinator.

At all times, there shall be at least one employee either on the facility premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures. This emergency coordinator shall be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person shall have the authority to commit the resources needed to carry out the contingency plan.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.55.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66264.56. Emergency Procedures.

(a) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or the emergency coordinator's designee when the emergency coordinator is on call) shall immediately:

(1) activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(2) notify appropriate State or local agencies with designated response roles if their help is needed.

(b) Whenever there is a release, fire, or explosion, the emergency coordinator shall immediately identify the character, exact source, amount, and areal extent of any released materials. The emergency coordinator may do this by observation or review of facility records or manifests, and, if necessary, by chemical analysis.

(c) Concurrently, the emergency coordinator shall assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment shall consider both direct and indirect effects of the release, fire, or explosion (e.g., the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run–off from water or chemical agents used to control fire and heat–induced explosions).

(d) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the en-

vironment, outside the facility, the emergency coordinator shall report the findings as follows:

(1) if the emergency coordinator's assessment indicates that evacuation of local areas may be advisable, the emergency coordinator shall immediately notify appropriate local authorities. The emergency coordinator shall be available to help appropriate officials decide whether local areas should be evacuated; and

(2) the emergency coordinator shall, in every situation, immediately notify the State Office of Emergency Services. The report shall include:

(A) name and telephone number of reporter;

(B) name and address of facility;

(C) time and type of incident (e.g., release, fire);

(D) name and quantity of material(s) involved, to the extent known;

(E) the extent of injuries, if any; and

(F) the possible hazards to human health, or the environment, outside the facility.

(e) During an emergency, the emergency coordinator shall take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous waste at the facility. These measures shall include, where applicable, stopping processes and operations, collecting and containing release waste, and removing or isolating containers.

(f) If the facility stops operations in response to a fire, explosion, or release, the emergency coordinator shall monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(9) Immediately after an emergency, the emergency coordinator shall provide for treating, storing, or disposing of recovered waste, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility. Unless the owner or operator can demonstrate, in accordance with section 66261.3(c) or (d) of this division, that the recovered material is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and shall manage it in accordance with all applicable requirements of chapters 12, 13, and 14 of this division.

(h) The emergency coordinator shall ensure that, in the affected area(s) of the facility:

(1) no waste that may be incompatible with the released material is transferred, treated, stored, or disposed of until cleanup procedures are completed; and

(2) all emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(i) The owner or operator shall notify the Department, and appropriate State and local authorities, that the facility is in compliance with subsection (h) of this section before operations are resumed in the affected area(s) of the facility.

(j) The owner or operator shall note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, the owner or operator shall submit a written report on the incident to the Department. The report shall include:

(1) name, address, and telephone number of the owner or operator;

(2) name, address, and telephone number of the facility;

(3) date, time, and type of incident (e.g., fire, explosion);

(4) name and quantity of material(s) involved;

(5) the extent of injuries, if any;

(6) an assessment of actual or potential hazards to human health or the environment, where this is applicable; and

(7) estimated quantity and disposition of recovered material that resulted from the incident.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.56.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

Article 5. Manifest System, Recordkeeping, and Reporting

§ 66264.70. Applicability.

(a) The regulations in this article apply to owners and operators of both on–site and off–site facilities, except as section 66264.1 provides otherwise. Sections 66264.71, 66264.72, and 66264.76 do not apply to owners and operators of on–site facilities that do not receive any hazardous waste from off–site sources.

(b) Compliance with the revisions to the Manifest form and procedures announced in the regulation published by U.S. EPA on March 4, 2005 and by the department on August 24, 2006, shall not be required until on and after September 5, 2006.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 Code of Federal Regulations Section 264.70.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect designating existing section as subsection (a), adding subsection (b) and amending NOTE filed 8–24–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 34).

§ 66264.71. Use of Manifest System.

(a)(1) If a facility receives hazardous waste accompanied by a manifest, the owner or operator, or the facility's agent, shall sign and date each copy of the manifest as indicated in paragraph (a)(2) of this section to certify that the hazardous waste covered by the manifest was received, that the hazardous waste was received except as noted in the discrepancy space of the manifest, or that the hazardous waste was rejected as noted in the manifest discrepancy space.

(2) If a facility receives a hazardous waste shipment accompanied by a manifest, including a facility located out of state, the owner, operator or the facility's agent shall:

(A) sign and date, by hand, each copy of the manifest;

(B) note any significant discrepancies in the manifest (as defined in section 66264.72 subsection (a)) on each copy of the manifest, and enter the most appropriate Hazardous Waste Report Management Method codes for each waste listed on the manifest from the list published in the most recent *Hazardous Waste Report, Instructions and Forms* (EPA Form 8700–13A/B) and shown in Appendix II of chapter 14.

(C) immediately give the transporter at least one copy of the signed manifest;

(D) within 30 days after the delivery, send a copy of the manifest to the generator;

(E) retain at the facility a copy of each manifest for at least three years from the date of delivery;

(F) within 30 days of each receipt of hazardous waste submit to the Department a legible copy of each manifest used. The facility manifest copy shall be submitted to the department for every shipment on a manifest when California is either the generator state or the destination state. The facility manifest copy shall be mailed to:

DTSC FACILITY MANIFESTS
P.O. BOX 3000
SACRAMENTO, CA 95812-3000

; and

(G) a facility shall determine whether the consignment state for a shipment regulates any additional wastes (beyond those regulated federally) as hazardous wastes under its state hazardous waste program. Facilities shall also determine whether the consignment state or generator state requires the facility to submit any copies of the manifest to these states.

(b) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest (excluding the Identification Numbers, generator's certification, and signatures), the owner or operator, or the facility's agent, shall:

(1) sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste covered by the manifest or shipping paper was received:

(2) note any significant discrepancies as defined in section 66264.72(a) in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper;

(3) immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received);

(4) within 30 days after the delivery, send a copy of the signed and dated manifest or a signed and dated copy of the shipping paper (if the manifest has not been received within 30 days after delivery) to the generator;

(5) within 30 days of each receipt of hazardous waste submit to the Department a legible copy of each manifest or shipping paper (if the manifest has not been received) used; and

(6) retain at the facility a copy of the manifest and shipping paper (if signed in lieu of the manifest at the time of delivery) for at least three years from the date of delivery.

(c) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility shall comply with the requirements of chapter 12 of this division.

(d) In addition to submitting a copy of the manifest to the department, if a facility receives federally regulated hazardous waste imported from a foreign source, the receiving facility shall mail a copy of the manifest to the following address within 30 days of delivery: International Compliance Assurance Division, OFA/OECA (2254A), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

(e) Within three working days of the receipt of a shipment subject to the requirements of 40 Code of Federal Regulations Part 262, Subpart H or this article, the owner or operator of the facility shall provide a copy of the tracking document bearing all required signatures to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and to competent authorities of all other concerned countries. The original copy of the tracking document shall be maintained at the facility for at least three years from the date of signature.

(f) Whenever hazardous waste is received by a facility from a transporter in a vehicle or bulk container that will be removed from the facility after emptying, the transporter shall determine by inspection whether the vehicle or bulk container is empty pursuant to section 66261.7 prior to the removal of the vehicle or bulk container from the facility.

(g) If a vehicle or bulk container cannot be rendered empty pursuant to section 66261.7 by equipment and methods available at the facility, the transporter shall follow the procedure in subsection (b) of section 66263.21. If the vehicle or bulk container is not empty, the transporter shall not move the vehicle or bulk container without the designated facility preparing a new manifest pursuant to section 66264.72 or 40 Code of Federal Regulations section 264.72 if located out of state.

(h) The provisions of section 66262.34 are applicable to the on-site accumulation of hazardous wastes by generators. Therefore, the provisions of section 66262.34 only apply to owners or operators who are shipping hazardous waste which they generated at that facility.

NOTE: Authority cited: Sections 25150, 25159, 25159.5 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 Code of Federal Regulations Section 264.71; *Hazardous Waste Report, Instructions and Forms* (EPA Form 8700-13A/B); and 70 Fed. Reg. 10776 (Mar. 4, 2005), p. 10786-10787.

HISTORY

1. New section filed 5-24-91; effective 7-1-91 (Register 91, No. 22).
2. Change without regulatory effect adding new subsection (d) filed 8-20-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).
3. New subsections (e)-(g) and amendment of NOTE filed 10-19-2000; operative 11-18-2000 (Register 2000, No. 42).
4. Amendment of subsections (a)(2) and (b)(2) and amendment of NOTE filed 4-4-2002 as an emergency; operative 4-4-2002 (Register 2002, No. 14). A Certificate of Compliance must be transmitted to OAL by 8-2-2002 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsections (a)(2) and (b)(2) and amendment of NOTE refiled 8-1-2002 as an emergency; operative 8-1-2002 (Register 2002, No. 31). A Certificate of Compliance must be transmitted to OAL by 12-2-2002 or emergency language will be repealed by operation of law on the following day.
6. Amendment of subsections (a)(2) and (b)(2) and amendment of NOTE refiled 12-2-2002 as an emergency; operative 12-3-2002 (Register 2002, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-2003 or emergency language will be repealed by operation of law on the following day.
7. Amendment of subsections (a)(2) and (b)(2) and amendment of NOTE refiled 4-1-2003 as an emergency; operative 4-3-2003 (Register 2003, No. 14). A Certificate of Compliance must be transmitted to OAL by 8-1-2003 or emergency language will be repealed by operation of law on the following day.
8. Repealer of 4-1-2003 order and amendment of NOTE filed 7-10-2003 as an emergency; operative 7-10-2003 (Register 2003, No. 28). Pursuant to Health and Safety Code section 25169.8, this is a deemed emergency and stays effective until revised by the agency.
9. Change without regulatory effect amending section and NOTE filed 8-24-2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 34).

§ 66264.72. Manifest Discrepancies.

(a) Manifest discrepancies are:

(1) Significant differences (as defined by paragraph (b) of this section) between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste a facility actually receives.

(2) Rejected wastes, which may be a full or partial shipment of hazardous waste that the TSDF cannot accept; or

(3) Container residues, which are residues that exceed the quantity limits for "empty" containers set forth in 40 Code of Federal Regulations section 261.7(b) or section 66261.7 of this division.

(b) Significant discrepancies in quantity are: For bulk waste, variations greater than 10 percent in weight; for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload. Significant discrepancies in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid or toxic constituents not reported on the manifest or shipping paper.

(c) Upon discovering a significant discrepancy in quantity or type, the owner or operator shall attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator shall immediately submit to the Department a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue. Significant Discrepancy Reports should be mailed to:

DTSC REPORT REPOSITORY
GENERATOR INFORMATION SERVICES SECTION
P.O. BOX 806
SACRAMENTO, CA 95812-0806

(d)(1) Upon rejecting waste or identifying a container residue that exceeds the quantity limits for "empty" containers set forth in 40 Code of Federal Regulations section 261.7(b) or section 66261.7 of this division, the facility shall consult with the generator prior to forwarding the waste to another facility that can manage the waste. If it is impossible to locate an alternative facility that can receive the waste, the facility may return the rejected waste or residue to the generator. The facility shall send the waste to the alternative facility or to the generator within the time frame specified in the permit or 60 days, whichever is shorter, of the rejection or the container residue identification. The waste shall be managed consistent with any applicable permit conditions. The waste shall be handled consistent with the requirements of section 25200.19 of the Health and Safety Code.

(2) While the facility is making arrangements for forwarding rejected wastes or residues to another facility under this section, it shall ensure that either the delivering transporter retains custody of the waste, or, the facility shall provide for secure, temporary custody of the waste, pending delivery of the waste to the first transporter designated on the manifest prepared under paragraph (e) or (f) of this section.

(e) Except as provided in paragraph (e)(7) of this section, for full or partial load rejections and residues that are to be sent off-site to an alternate facility, the facility is required to prepare a new manifest in accordance with section 66262.20, subsection (a) of this division or 40 Code of Federal Regulations section 262.20(a), if located out of state, and the following instructions:

(1) Write the generator's EPA ID number in Item 1 of the new manifest. Write the generator's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the generator's site address, then write the generator's site address in the designated space for Item 5.

(2) Write the name of the alternate designated facility and the facility's EPA ID number in the designated facility block (Item 8) of the new manifest.

(3) Copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

(4) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a).

(5) Write the U.S. Department of Transportation description for the rejected load or the residue in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

(6) Sign the Generator's/Offeror's Certification to certify, as the offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation.

(7) For full load rejections that are made while the transporter remains present at the facility, the facility may forward the rejected shipment to the alternate facility by completing Item 18b of the original manifest and supplying the information on the next destination facility in the Alternate Facility space. The facility shall retain a copy of this manifest for its records, and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility shall use a new manifest and comply with paragraphs (e)(1), (2), (3), (4), (5), and (6) of this section.

(f) Except as provided in paragraph (f)(7) of this section, for rejected wastes and residues that shall be sent back to the generator, the facility is required to prepare a new manifest in accordance with section 66262.20, subsection (a) of this division or 40 Code of Federal Regulations section 262.20(a), if located out of state, and the following instructions:

(1) Write the facility's EPA ID number in Item 1 of the new manifest. Write the generator's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the generator's site address, then write the generator's site address in the designated space for Item 5.

(2) Write the name of the initial generator and the generator's U.S. EPA ID number in the designated facility block (Item 8) of the new manifest.

(3) Copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

(4) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a).

(5) Write the U.S. DOT description for the rejected load or the residue in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

(6) Sign the Generator's/Offeror's Certification to certify, as offeror of the shipment, that the waste has been properly packaged, marked and labeled, and is in proper condition for transportation.

(7) For full load rejections that are made while the transporter remains at the facility, the facility may return the shipment to the generator with the original manifest by completing Item 18a and 18b of the manifest and supplying the generator's information in the Alternate Facility space. The facility shall retain a copy for its records and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility shall use a new manifest and comply with paragraphs (f)(1), (2), (3), (4), (5), and (6) of this section.

(g) If a facility rejects a waste or identifies a container residue that exceeds the quantity limits for "empty" containers set forth in 40 Code of Federal Regulations section 261.7(b) or section 66261.7 of this division, after it has signed, dated, and returned a copy of the manifest to the delivering transporter or to the generator, the facility shall amend its copy of the manifest to indicate the rejected wastes or residues in the discrepancy space of the amended manifest. The facility shall also copy the manifest tracking number from Item 4 of the new manifest to the Discrepancy space of the amended manifest, and shall re-sign and date the manifest to certify to the information as amended. The facility shall retain the amended manifest for at least three years from the date of amendment, and shall within 30 days, send a copy of the amended manifest to the transporter and generator that received copies prior to their being amended. The facility shall submit a copy of the amended manifest within 30 days to the department at the address provided in section 66264.71, subsection (a)(2)(F).

(h) Upon discovering a discrepancy involving a hazardous waste of concern, as defined in section 66261.111(a), and the waste at issue represents a reportable quantity or a reportable difference in type, as specified in section 66261.111(b) and (c), the owner or operator shall attempt to reconcile the reportable quantity or difference with the waste generator or transporter. If the reportable quantity or difference is not reconciled within 24 hours after it was discovered, the owner or operator shall immediately notify the Department by calling 1-800-69-TOXIC (1-800-698-6942) and providing the following information:

(1) Facility name and identification number;

(2) Generator name and identification number;

(3) Transporter(s) name(s), identification number(s), and, if available, transporter(s) registration number(s);

(4) Manifest number;

(5) Waste information (lines 11, 12, 13, and 14 of the manifest), including proper shipping name, hazard class or division, identification number, packing group, number of containers, container type (as listed in Table I of the Appendix to Chapter 12, Article 7), quantity or volume of waste at issue, weight or volume units, and waste codes.

For shipments initiated on and after September 5, 2006, waste information (Items 9b, 10, 11, 12, and 13 of the manifest), including proper shipping name, hazard class or division, identification number, packing group, number of containers, container type (found in the manifest instructions in the Appendix to chapter 12, article 8), quantity or volume of waste at issue, weight or volume units, and waste codes; and

(6) Potential locations or transportation routes where the hazardous waste of concern may have become missing (e.g., on highway or roads, rail line, transfer station, truck stop, etc.).

(i) If the reportable quantity or difference is not reconciled within 24 hours after it was discovered, in addition to complying with subsection (h), within 5 days after discovering the reportable quantity or difference, the owner or operator shall submit to the Department a letter describing the reportable quantity or difference and attempts to reconcile it, and a copy of the manifest at issue.

(1) Owners or operators of facilities located in the counties of Los Angeles, Ventura, Santa Barbara, San Bernardino, Orange, Riverside, San Diego, or Imperial shall submit the letter to the Complaint Coordinator, Department of Toxic Substances Control, Statewide Compliance Division, Glendale Branch, 1011 North Grandview Avenue, Glendale, California 91201-2205.

(2) Owners or operators of facilities located in any other county, or out of state, shall submit the letter to the Complaint Coordinator, Department of Toxic Substances Control, Statewide Compliance Division, Northern California Branch, 8800 Cal Center Drive, Sacramento, California 95826-3200.

NOTE: Authority cited: Sections 25150, 25159, 25169.6, 25169.7 and 25169.8, Health and Safety Code. Reference: Sections 25159, 25159.5, 25160.6, 25169.5, 25169.6, 25169.7 and 25200.19, Health and Safety Code; 40 Code of Federal Regulations Section 264.72; *2005 Hazardous Waste Report, Instructions and Forms* (EPA Form 8700-13A/B); and 70 Fed. Reg. 10776 (Mar. 4, 2005), p. 10786-10787.

HISTORY

1. New section filed 5-24-91; effective 7-1-91 (Register 91, No. 22).
2. Amendment of section and NOTE filed 4-4-2002 as an emergency; operative 4-4-2002 (Register 2002, No. 14). A Certificate of Compliance must be transmitted to OAL by 8-2-2002 or emergency language will be repealed by operation of law on the following day.
3. Amendment of section and NOTE refiled 8-1-2002 as an emergency; operative 8-1-2002 (Register 2002, No. 31). A Certificate of Compliance must be transmitted to OAL by 12-2-2002 or emergency language will be repealed by operation of law on the following day.
4. Amendment of section and NOTE refiled 12-2-2002 as an emergency; operative 12-3-2002 (Register 2002, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-2003 or emergency language will be repealed by operation of law on the following day.
5. Amendment of section and NOTE refiled 4-1-2003 as an emergency; operative 4-3-2003 (Register 2003, No. 14). A Certificate of Compliance must be transmitted to OAL by 8-1-2003 or emergency language will be repealed by operation of law on the following day.
6. Repealer of 4-1-2003 order, new subsections (c)-(d)(2) and amendment of NOTE filed 7-10-2003 as an emergency; operative 7-10-2003 (Register 2003, No. 28). Pursuant to Health and Safety Code section 25169.8, this is a deemed emergency and stays effective until revised by the agency.
7. Change without regulatory effect amending section and NOTE filed 8-24-2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 34).

§ 66264.73. Operating Record.

(a) The owner or operator shall keep a written operating record at the facility.

(b) The following information shall be recorded, as it becomes available, and maintained in the operating record until closure of the facility:

(1) a description and the quantity of each hazardous waste received, and the method(s) and date(s) of its transfer, treatment, storage, or disposal at the facility as required by Appendix I, of this chapter;

(2) the location of each hazardous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each hazardous waste shall be recorded on a map or diagram of each cell or disposal area. For all facilities, this information shall include cross-references to specific manifest document numbers, if the waste was accompanied by a manifest;

(3) records and results of waste analyses and waste determinations performed as specified in sections 66264.13, 66264.17, 66264.314, 66264.341, 66264.1034, 66264.1063, 66264.1083, and 66268.7 of this division;

(4) summary reports and details of all incidents that require implementing the contingency plan as specified in section 66264.56(j);

(5) records and results of inspections as required by section 66264.15(d) (except these data need be kept only three years);

(6) monitoring, testing, or analytical data and corrective action where required by article 6 and sections 66264.19, 66264.191, 66264.193, 66264.195, 66264.222, 66264.223, 66264.226, 66264.252, 66264.253, 66264.254, 66264.276, 66264.278, 66264.280, 66264.302, 66264.303, 66264.304, 66264.309, 66264.347, 66264.602, 66264.1034(c) through 66264.1034(f), 66264.1035, 66264.1063(d) through 66264.1063(i), 66264.1064, and 66264.1082 through 66264.1090;

(7) for off-site facilities, notices to generators as specified in section 66264.12(b); and

(8) all closure cost estimates under section 66264.142, and, for disposal facilities, all post-closure cost estimates under section 66264.144;

(9) a certification by the permittee no less often than annually, that the permittee has a program in place to reduce the volume and toxicity of hazardous waste that the permittee generates to the degree determined by the permittee to be economically practicable; and the proposed method of transfer, treatment, storage or disposal is that practicable method currently available to the permittee which minimizes the present and future threat to human health and the environment;

(10) records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to section 66268.5 and the applicable notice required by a generator under section 66268.7(a);

(11) for an off-site treatment facility, a copy of the notice, and the certification if applicable, required by the generator or the owner or operator under section 66268.7;

(12) for an on-site treatment facility, the information contained in the notice (except the manifest number), and the certification if applicable, required by the generator or the owner or operator under section 66268.7;

(13) for an off-site land disposal facility, a copy of the notice, and the certification if applicable, required by the generator or the owner or operator of a treatment facility under section 66268.7; and

(14) for an on-site land disposal facility, the information contained in the notice required by the generator or owner or operator of a treatment facility under section 66268.7, except for the manifest number, and the certification if applicable;

(15) for an off-site storage facility, a copy of the notice, and the certification if applicable, required by the generator or the owner or operator under section 66268.7; and

(16) for an on-site storage facility, the information contained in the notice (except the manifest number), and the certification if applicable, required by the generator or the owner or operator under section 66268.7.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code. Reference: Sections 25159, 25159.5 and 25208.4(c), Health and Safety Code; and 40 CFR Section 264.73.

HISTORY

1. New section filed 5-24-91; effective 7-1-91 (Register 91, No. 22).
2. Amendment of subsections (b)(3) and (b)(6) and NOTE filed 12-23-92; operative 1-22-93 (Register 93, No. 2).
3. Amendment of subsection (b)(6) and NOTE filed 7-19-95; operative 8-18-95 (Register 95, No. 29).
4. Amendment of subsections (b)(3) and (b)(10)-(16) filed 1-31-96; operative 1-31-96 (Register 96, No. 5).
5. Change without regulatory effect amending subsections (b)(3) and (b)(6) and amending NOTE filed 6-11-99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).
6. Change without regulatory effect amending subsection (a)(10) filed 6-7-2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 24).
7. Change without regulatory effect amending subsection (b)(10) filed 7-1-2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 27).

§ 66264.74. Availability, Retention, and Disposition of Records.

(a) All records, including plans, required under this chapter shall be furnished upon request, and made available at all reasonable times for inspection, by any officer, employee, or representative of EPA who is duly designated by the USEPA Administrator, the Department, the State Water Resources Control Board, or a regional water quality control board.

(b) The retention period for all records required under this chapter is extended automatically during the course of any unresolved enforcement action regarding the facility or as requested by the Department or the USEPA Administrator.

(c) A copy of records of waste disposal locations and quantities under section 66264.73(b)(2) shall be submitted to the Department, the appropriate regional water quality control board, and local land authority upon closure of the facility.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.74.

HISTORY

1. New section filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 66264.75. Annual Report.

For the Annual report on activities for 1995, only facilities that are required under Title 40 of the Code of Federal of Regulations (CFR), section 264.75 to prepare and submit this report are subject to this section for the report. This Report, due on March 1, 1996 is to be submitted on

U.S. EPA form 8700–13A/B (5–80) (8–95) provided by the Department. Facilities required to submit this report for activities conducted during 1995 are facilities which treated, stored, or disposed of RCRA hazardous waste on site in units subject to RCRA permitting requirements during 1995.

The owner or operator shall prepare and submit single copies of an annual report to the Department and the appropriate regional water quality control board by March 1 of each year. The annual report shall be submitted on forms provided by the Department, EPA Form 8700–13A/B, 5–80, (Revised 11–89). The report shall cover facility activities during the previous calendar year and shall include:

(a) the Identification Number, name, and address of the facility;

(b) the calendar year covered by the report;

(c) for off–site facilities, the Identification Number of each hazardous waste generator from which the facility received a hazardous waste during the year; for imported shipments, the report shall give the name and address of the foreign generator;

(d) a description, including any applicable EPA hazardous waste number from chapter 11, articles 3 or 4 of this division, California Hazardous Waste Number from chapter 11, Appendix XII of this division, and DOT hazard class, and the quantity of each hazardous waste the facility received during the year. Wastes that are classified as non–RCRA wastes shall be described by indicating a generic name of the waste and the phrase "Non–RCRA Hazardous Waste." When possible, the generic name shall be obtained from chapter 11, Appendix X, subdivision (e) of this division. If the generic name is not listed in chapter 11, Appendix X, subdivision (e) the commonly recognized industrial name of the waste shall be used. For off–site facilities, this information shall be listed by Identification Number of each generator;

(e) the method of transfer, treatment, storage, or disposal for each hazardous waste;

(f) reserved;

(g) the most recent closure cost estimate under section 66264.142, and, for disposal facilities, the most recent post–closure cost estimate under section 66264.144; and

(h) for generators who transfer, treat, store, or dispose of hazardous waste on–site, a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated;

(i) for generators who transfer, treat, store, or dispose of hazardous waste on–site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984;

(j) the certification signed by the owner or operator of the facility or the facility's authorized representative;

(k) the environmental monitoring data specified in section 66264.73;

(*l*) the owner or operator shall certify the following in writing for waste shipped offsite after January 1, 1990. The certification shall be attached to the Annual Report and include the following:

(1) whether the hazardous waste shipped offsite has a heating value of 3,000 British Thermal Units per pound of waste or less, and a volatile organic compound (VOC) content of one percent or less by weight; and

(2) if the waste had a heating value or VOC content greater than that specified in subsection (*l*)(1), that:

(A) the waste was incinerated or treated by any method that has been authorized by the Department as part of a hazardous waste facility permit issued pursuant to Health and Safety Code section 25200; or

(B) the waste is exempted from the requirements of chapter 18, article 12; or

(C) the waste was recycled; or

(D) the waste was shipped out of California for incineration, treatment, disposal or recycling.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25155.5, 25159, 25159.5 and 25202.9, Health and Safety Code; 40 CFR Section 264.75.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. New first paragraph filed 3–5–97; operative 4–4–97 (Register 97, No. 10).
3. Change without regulatory effect amending subsection (a)(10) filed 6–7–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 24).

§ 66264.76. Unmanifested Waste Report.

(a) If a facility accepts for transfer, treatment, storage, or disposal any hazardous waste from an off–site source without an accompanying manifest, or without an accompanying shipping paper as described in section 66263.20(e)(2) of this division, and if the waste is not excluded from the manifest requirement of this chapter, then the owner or operator shall prepare and submit a single copy of a report to the Department within fifteen days after receiving the waste. The unmanifested waste report shall be submitted in the form of a letter to the Department at:

DTSC REPORT REPOSITORY
GENERATOR INFORMATION SERVICES SECTION
P.O. BOX 806
SACRAMENTO, CA 95812–0806

Such report shall be designated 'Unmanifested Waste Report' and include the following information:

(1) the Identification Number, name, and address of the facility;

(2) the date the facility received the waste;

(3) the Identification Number, name, and address of the generator and the transporter, if available;

(4) a description and the quantity of each unmanifested hazardous waste the facility received;

(5) the method of transfer, treatment, storage, or disposal for each hazardous waste;

(6) the certification signed by the owner or operator of the facility or the facility's authorized representative; and

(7) a brief explanation of why the waste was unmanifested, if known.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 Code of Federal Regulations Section 264.76.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect amending section and NOTE filed 8–24–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 34).

§ 66264.77. Additional Reports.

In addition to submitting the annual reports and unmanifested waste reports described in sections 66264.75 and 66264.76, the owner or operator shall also report to the Department:

(a) releases, fires, and explosions as specified in section 66264.56(j);

(b) facility closures specified in section 66264.115; and

(c) as otherwise required by chapter 14, articles 6, 7 through 14, 27, 28 and 28.5 of this division.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 264.77.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Amendment of subsection (c) and NOTE filed 12–23–92; operative 1–22–93 (Register 93, No. 2).
3. Change without regulatory effect amending subsection (c) filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).

§ 66264.78. Reporting Hazardous Wastes of Concern Discovered To Be Missing While in Storage.

(a) The owner or operator of a hazardous waste facility, except a facility operating under a Permit by Rule, Conditional Authorization, or Conditional Exemption, shall comply with reporting requirements set forth in this section, in the event that a hazardous waste of concern, as defined in section 66261.111(a), is discovered to be missing during storage at the facility, and the waste at issue represents a reportable quantity or a reportable difference in type, as specified in section 66261.111(b) and (c).

(b) Upon discovering that a hazardous waste of concern is missing, and the waste at issue represents a reportable quantity or a reportable difference in type, the owner or operator shall immediately attempt to reconcile the reportable quantity or difference (e.g., by reviewing facility records). If the reportable quantity or difference is not reconciled within 24

hours after it was discovered, the owner or operator shall immediately notify the Department by calling 1–800–69–TOXIC (1–800–698–6942) and providing the following information:

(1) Facility name and identification number;

(2) Generator name and identification number, if available;

(3) Transporter name, identification number, and transporter registration number, if available;

(4) Manifest number, if available;

(5) Waste information (lines 11, 12, 13, and 14 of the manifest), including proper shipping name, hazard class or division, identification number, packing group, number of containers, container type (as listed in Table I of the Appendix to Chapter 12, Article 7), quantity or volume of waste at issue, weight or volume units, and waste codes.

For shipments initiated on and after September 5, 2006, waste information (Items 9b, 10, 11, 12, and 13 of the manifest), including proper shipping name, hazard class or division, identification number, packing group, number of containers, container type (found in the manifest instructions in the Appendix to chapter 12, article 8), quantity or volume of waste at issue, weight or volume units, and waste codes; and

(6) Potential locations or transportation routes where the hazardous waste of concern may have become missing (e.g., areas at the facility the waste was handled or stored or during transportation to the facility on highway or roads, by rail line, transfer station, truck stop, etc.).

(c) If the reportable quantity or difference is not reconciled within 24 hours after it was discovered, in addition to complying with subsection (b), within 5 days after discovering the reportable quantity or difference, the owner or operator shall submit to the Department a letter describing the reportable quantity or difference and attempts to reconcile it. The owner or operator shall mail the letter to the appropriate address for the county in which the facility is located, as specified in section 66264.72(i).

NOTE: Authority cited: Sections 25169.6, 25169.7 and 25169.8, Health and Safety Code. Reference: Sections 25169.5, 25169.6 and 25169.7, Health and Safety Code; and 40 Code of Federal Regulations 262 Appendix.

HISTORY

1. New section filed 7–10–2003 as an emergency; operative 7–10–2003 (Register 2003, No. 28). Pursuant to Health and Safety Code section 25169.8, this is a deemed emergency and stays effective until revised by the agency.
2. Change without regulatory effect amending subsection (b)(5) and NOTE filed 8–24–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 34).

Appendix II — Hazardous Waste Report Management Method Codes

The following Hazardous Waste Report Management Codes established by U.S. EPA are to be used by Designated Facilities in completing Item 19 on the manifest and Item 36 on the manifest continuation sheet on and after September 5, 2006.

Hazardous Waste Report Management Method Codes and Code Groups

Codes	*Description*
	Reclamation and Recovery
H010	Metals recovery including retorting, smelting, chemicals, etc.
H020	Solvents recovery
H039	Other recovery of reclamation for reuse including acid regeneration, organics recovery, etc.
H050	Energy recovery at this site — use as fuel (includes on–site fuel blending)
H061	Fuel blending prior to energy recovery at another site
	Destruction or Treatment Prior to Disposal at Another Site
H040	Incineration—thermal destruction other than use as a fuel
H071	Chemical reduction with or without precipitation
H073	Cyanide destruction with or without precipitation
H075	Chemical oxidation
H076	Wet air oxidation
H077	Other chemical precipitation with or without pre–treatment
H081	Biological treatment with or without precipitation
H082	Adsorption
H083	Air or steam stripping
H101	Sludge treatment and/or dewatering
H103	Absorption
H111	Stabilization or chemical fixation prior to disposal at another site
H112	Macro–encapsulation prior to disposal at another site
H121	Neutralization only
H122	Evaporation
H123	Settling or clarification
H124	Phase separation
H129	Other treatment
	Disposal
H131	Land treatment or application (to include on–site treatment and/or stabilization)
H132	Landfill or surface impoundment that will be closed as landfill (to include onsite treatment and/or stabilization)
H134	Deepwell or underground injection (with or without treatment)
H135	Discharge to sewer/POTW or NPDES (with prior storage—with or without treatment)
	Storage and Transfer
H141	Storage, bulking, and/or transfer off site—no treatment/recovery (H010–H129), fuel blending (H061), or disposal (H131–H135) at this site

NOTE: Authority cited: Sections 25150, 25159, 25159.5 and 25168.1, Health and Safety Code. Reference: Sections 25123.3, 25159 and 25159.5, Health and Safety Code; *2005 Hazardous Waste Report, Instructions and Forms* (EPA Form 8700–13A/B); and 70 Fed. Reg. 10776 (Mar. 4, 2005), p. 10786–10787.

HISTORY

1. Change without regulatory effect adding Appendix II filed 8–24–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 34).

Article 6. Water Quality Monitoring and Response Programs for Permitted Facilities

§ 66264.90. Applicability.

(a) The regulations in this article apply to owners or operators of permitted hazardous waste facilities. A surface impoundment, waste pile, land treatment unit or landfill that receives or has received hazardous waste after July 26, 1982 shall comply with the requirements of this article for purposes of detecting, characterizing, and responding to releases to groundwater, surface water or the unsaturated zone. The Department shall require an owner or operator of a surface impoundment, waste pile, land treatment unit or landfill that ceased receiving hazardous waste by July 26, 1982 to comply with the requirements of this article if the Department determines that constituents in or derived from waste placed in the surface impoundment, waste pile, land treatment unit or landfill may pose a threat to human health or the environment. A surface impoundment, waste pile, land treatment unit or landfill required to comply with the provisions of this article is hereinafter referred to as a "regulated unit."

(b) The facility permit shall contain assurances of financial responsibility for completing corrective action for all releases from any regulated unit at the facility.

(c) The regulations under this article apply during the active life of the regulated unit (including the closure period). After closure of the regulated unit, the regulations in this article apply during the postclosure care period under section 66264.117 of article 7 of this chapter and during any compliance period under section 66264.96 unless:

(1) the regulated unit has been in compliance with the water quality protection standard for a period of three consecutive years; and

(2) all waste, waste residues, contaminated containment system components, contaminated subsoils and all other contaminated geologic materials are removed or decontaminated at closure.

(d) Regulations in this article apply to miscellaneous units when necessary to comply with sections 66264.601 through 66264.603 of article 16 of this chapter.

(e) For all regulated units which are operating, have operated or have received all permits necessary for construction or operation on or before July 1, 1991, the owner or operator shall prepare an application for a permit modification pursuant to chapter 21 of this division to establish moni-

toring programs that comply with the provisions of this article and submit this application to the Department within 180 days of July 1, 1991. The owner or operator of such regulated units shall begin any necessary construction within 30 days of receiving approval from the Department and shall implement the approved monitoring programs according to a schedule of compliance established by the Department.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.90.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66264.91. Required Programs.

(a) An owner or operator subject to this article shall conduct a monitoring and response program for each regulated unit at the facility as follows:

(1) the owner or operator shall institute a detection monitoring program under section 66264.98 except as required under subsections (a)(2), (a)(3) and (a)(4) of this section;

(2) the owner or operator shall institute an evaluation monitoring program under section 66264.99 whenever there is statistically significant evidence of a release, pursuant to section 66264.98(g) or (i), from the regulated unit during a detection monitoring program;

(3) the owner or operator shall institute an evaluation monitoring program under section 66264.99 whenever there is significant physical evidence of a release from the regulated unit. Significant physical evidence of a release includes unexplained volumetric changes in surface impoundments, unexplained stress in biological communities, unexplained changes in soil coloration, visible signs of leachate migration, unexplained water table mounding beneath or adjacent to the regulated unit, and any other change to the environment that could reasonably be expected to be the result of a release from the regulated unit; and

(4) the owner or operator shall institute a corrective action program under section 66264.100 when the Department determines pursuant to section 66264.99 that the assessment of the nature and extent of the release and the design of the corrective action program have been satisfactorily completed and the Department approves the application for a permit modification for corrective action submitted by the owner or operator during an evaluation monitoring program pursuant to section 66264.99(d) or section 66265.99(d).

(b) The Department shall specify in the facility permit the specific elements of each monitoring and response program. For each regulated unit, the Department shall include one or more of the programs identified in subsection (a) of this section in the facility permit as may be necessary to protect human health or the environment and shall specify the circumstances under which each of the programs will be required. In deciding whether to require the owner or operator to be prepared to institute a particular program, the Department shall consider the potential adverse effects on human health or the environment that might occur before final administrative action on a permit modification application to incorporate such a program could be taken.

(c) In conjunction with an evaluation monitoring program or a corrective action program, the owner or operator shall continue to conduct a detection monitoring program under section 66264.98 as necessary to provide the best assurance of the detection of subsequent releases from the regulated unit.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.91.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66264.92. Water Quality Protection Standard.

(a) For each regulated unit, the Department shall establish a water quality protection standard in the facility permit. This water quality protection standard shall consist of the list of constituents of concern under section 66264.93, the concentration limits under section 66264.94, and the point of compliance and all monitoring points under section 66264.95. This water quality protection standard shall apply during the active life of the regulated unit, the post–closure care period under section 66264.117 of article 7 of this chapter, and any compliance period under section 66264.96.

(b) If an owner or operator is conducting a detection monitoring program in conjunction with an evaluation monitoring program or a corrective action program for a regulated unit pursuant to section 66264.91(c), the Department may establish separate water quality protection standards for each program.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.92.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66264.93. Constituents of Concern.

For each regulated unit, the Department shall specify in the facility permit the constituents of concern to which the water quality protection standard of section 66264.92 applies. Constituents of concern are the waste constituents, reaction products, and hazardous constituents that are reasonably expected to be in or derived from waste contained in the regulated unit.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.93.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66264.94. Concentration Limits.

(a) For each constituent of concern specified pursuant to section 66264.93, the owner or operator shall propose one of the following for each medium (groundwater, surface water and the unsaturated zone) monitored pursuant to section 66264.97:

(1) a concentration limit not to exceed the background value of that constituent as determined under section 66264.97(e)(11)(A);

(2) that the permit include a statement that, at any given time, the concentration limit for that constituent will be equal to the background value of that constituent, as determined pursuant to section 66264.97(e)(11)(B); or

(3) a concentration limit greater than background established pursuant to this section for a corrective action program.

(b) The Department shall review the proposed concentration limits and statements and shall approve, modify or disapprove each proposed limit and each proposed statement. Upon final approval by the Department, each concentration limit and each statement shall be specified in the facility permit. The Department shall only approve different concentration limits for different monitoring points in the same medium where necessary:

(1) to describe background conditions in multiple surface water bodies, multiple aquifers or geochemically dissimiliar zones in the same aquifer;

(2) because the statistical method approved for a constituent uses intrawell comparisons procedures; or

(3) because concentration limits greater than background have been established for a corrective action program at the monitoring points in the zone affected by a release from the regulated unit.

(c) For a corrective action program, the Department shall establish a concentration limit for a constituent of concern that is greater than the background value of that constituent only if the owner or operator demonstrates and the Department finds that it is technologically or economically infeasible to achieve the background value for that constituent and that the constituent will not pose a substantial present or potential hazard to human health or the environment as long as the concentration limit greater than background is not exceeded. In making this finding, the Department shall consider the factors specified in subsection (d) of this section, the results of the engineering feasibility study submitted pursuant to section 66264.99(c), data submitted by the owner or operator pursuant to section 66264.99(d)(2) to support the proposed concentration limit

greater than background, public testimony on the proposal and any additional data obtained during the evaluation monitoring program.

(d) In establishing a concentration limit greater than background for a constituent of concern, the Department shall consider the following factors:

(1) potential adverse effects on groundwater quality, considering:

(A) the physical and chemical characteristics of the waste in the regulated unit;

(B) the hydrogeologic characteristics of the facility and surrounding land;

(C) the quantity of groundwater and the direction of groundwater flow;

(D) the proximity and withdrawal rates of groundwater users;

(E) the current and potential future uses of groundwater in the area;

(F) the existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;

(G) the potential for health risks caused by human exposure to waste constituents;

[The next page is 721.]

(H) the potential damage to wildlife, crops, vegetation and physical structures caused by exposure to waste constituents; and

(I) the persistence and permanence of the potential adverse effects; and

(2) potential adverse effects on surface water quality, considering:

(A) the volume and physical and chemical characteristics of the waste in the regulated unit;

(B) the hydrogeologic characteristics of the facility and surrounding land;

(C) the quantity and quality of groundwater, and the direction of groundwater flow;

(D) the patterns of precipitation in the region;

(E) the proximity of the regulated unit to surface waters;

(F) the current and potential future uses of surface waters in the area;

(G) the existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality;

(H) the potential for health risks caused by human exposure to waste constituents;

(I) the potential damage to wildlife, crops, vegetation and physical structures caused by exposure to waste constituents; and

(J) the persistence and permanence of the potential adverse effects.

(3) In making any determination under subsection (d) of this section about the use of groundwater in the area around the facility the Department shall consider any identification of underground sources of drinking water made under 40 CFR chapter 1 section 144.7.

(4) For groundwater, in evaluating risk pursuant to subsection (d) of this section to any biological receptor, the risk shall be evaluated as if exposure would occur at the point of compliance.

(e) In no event shall a concentration limit greater than background established under this section for a constituent of concern exceed any of the following:

(1) other applicable statutes or regulations (e.g., a maximum contaminant level (MCL) for that constituent promulgated under section 141.2 of the Safe Drinking Water Act (40 CFR Part 141 Subpart B) [P.L. 93–523, codified as Subchapter XII of the Public Health Service Act at 42 U.S.C. 300f; regulations establishing MCLs are located in 40 CFR Part 141, Subpart B]);

(2) the lowest concentration that the owner or operator demonstrates and the Department finds is technologically and economically achievable.

(f) Proposals for concentration limits greater than background shall include a demonstration that the aggregate of hazardous constituents in the environment will not result in excessive exposure to a sensitive biological receptor. In the absence of scientifically valid data to the contrary, theoretical risks from chemicals associated with the release from the regulated unit shall be considered additive across all media of exposure, and shall be considered additive for all chemicals having similar toxicological effects or having carcinogenic effects.

(g) A concentration limit greater than background may only be applied during corrective action, or during detection monitoring following corrective action, at monitoring points at which statistically significant evidence of the release has been determined.

(h) When an owner or operator is conducting a detection monitoring program after a corrective action program has been terminated, each concentration limit greater than background shall be re–evaluated during each permit review. If the Department, upon re–evaluation, determines that the concentration of a constituent of concern in groundwater, surface water or the unsaturated zone is lower than its associated concentration limit by a statistically significant amount, the concentration limit for that constituent shall be lowered to reflect current water quality.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.94.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66264.95. Monitoring Points and the Point of Compliance.

(a) For each regulated unit, the Department shall specify in the facility permit the point of compliance at which the water quality protection standard of section 66264.92 applies. The point of compliance is a vertical surface, located at the hydraulically downgradient limit of the waste management area that extends through the uppermost aquifer underlying the regulated unit. For each regulated unit, the Department shall specify monitoring points at the point of compliance and additional monitoring points at locations determined pursuant to section 66264.97 at which the water quality protection standard under section 66264.92 applies and at which monitoring shall be conducted.

(b) The waste management area is the limit projected in the horizontal plane of the area on which waste will be placed during the active life of the regulated unit.

(1) The waste management area includes horizontal space taken up by any liner, dike or other barrier designed to contain waste in the regulated unit.

(2) If the facility contains contiguous regulated units and monitoring along a shared boundary would impair the integrity of a containment or structural feature of any of the units, the waste management area may be described by an imaginary line along the outer boundary of the contiguous regulated units. This provision only applies to contiguous regulated units that have operated or have received all permits necessary for construction and operation before the July 1, 1991.

NOTE: Authority cited: Section 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.95.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66264.96. Compliance Period.

(a) The Department shall specify in the facility permit the compliance period for each regulated unit. The compliance period is the number of years equal to the active life of the regulated unit (including any waste management activity prior to permitting, and the closure period) and constitutes the minimum period of time during which the owner or operator shall conduct a water quality monitoring program subsequent to a release from the regulated unit.

(b) The compliance period begins each time the owner or operator initiates an evaluation monitoring program meeting the requirements of section 66264.99.

(c) If the owner or operator is engaged in a corrective action program at the scheduled end of the compliance period specified under subsection (a) of this section, the compliance period is extended until the owner or operator can demonstrate that the regulated unit has been in compliance with the water quality protection standard of section 66264.92 for a period of three consecutive years.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.96.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66264.97. General Water Quality Monitoring and System Requirements.

(a) The owner or operator shall comply with the requirements of this section for any water quality monitoring program developed to satisfy sections 66264.98, 66264.99 or 66264.100.

(b) Groundwater Monitoring System.

(1) Except as provided under subsection (e)(3) of this section, the owner or operator shall establish a groundwater monitoring system for each regulated unit. This groundwater monitoring system shall include:

(A) a sufficient number of background monitoring points installed at appropriate locations and depths to yield groundwater samples from the

uppermost aquifer that represent the quality of groundwater that has not been affected by a release from the regulated unit;

(B) for a detection monitoring program under section 66264.98:

1. a sufficient number of monitoring points installed at appropriate locations and depths to yield groundwater samples from the uppermost aquifer that represent the quality of groundwater passing the point of compliance and to allow for the detection of a release from the regulated unit;

2. a sufficient number of monitoring points installed at additional locations and depths to yield groundwater samples from the uppermost aquifer as necessary to provide the best assurance of the earliest possible detection of a release from the regulated unit; and

3. a sufficient number of monitoring points and background monitoring points installed at appropriate locations and depths to yield groundwater samples from other aquifers, low–yielding saturated zones and from zones of perched water as necessary to provide the best assurance of the earliest possible detection of a release from the regulated unit;

(C) for an evaluation monitoring program under section 66264.99:

1. a sufficient number of monitoring points installed at appropriate locations and depths to yield groundwater samples from the uppermost aquifer that represent the quality of groundwater passing the point of compliance, and at other locations in the uppermost aquifer as necessary, to provide the data needed to evaluate changes in water quality due to the release from the regulated unit; and

2. a sufficient number of monitoring points and background monitoring points installed at appropriate locations and depths to yield groundwater samples from other aquifers, low–yielding saturated zones and zones of perched water as necessary to provide the data needed to evaluate changes in water quality due to the release from the regulated unit;

(D) for a corrective action program under section 66264.100 of this article:

1. a sufficient number of monitoring points installed at appropriate locations and depths to yield groundwater samples from the uppermost aquifer that represent the quality of groundwater passing the point of compliance, and at other locations in the uppermost aquifer as necessary, to provide the data needed to evaluate compliance with the water quality protection standard and to evaluate the effectiveness of the corrective action program; and

2. a sufficient number of monitoring points and background monitoring points installed at appropriate locations and depths to yield groundwater samples from other aquifers, low–yielding saturated zones and zones of perched water as necessary to provide the data needed to evaluate compliance with the water quality protection standard and to evaluate the effectiveness of the corrective action program.

(2) The groundwater monitoring system may include background monitoring points that are not hydraulically upgradient of the regulated unit if the owner or operator demonstrates to the satisfaction of the Department that sampling at other monitoring points will provide samples that are representative of the background quality of groundwater or are more representative than those provided by the upgradient monitoring points.

(3) A copy of drillers' logs shall be filed with the Department on Department of Water Resources form DWR 188–Rev 12–86, available from the Department of Water Resources, 3251 S Street, Sacramento, CA 95816–7017, or by phone at (916) 322–7171.

(4) All monitoring wells shall be cased and constructed in a manner that maintains the integrity of the monitoring well bore hole and prevents the bore hole from acting as a conduit for contaminant transport.

(5) The sampling interval of each monitoring well shall be appropriately screened and fitted with an appropriate filter pack to enable collection of representative groundwater samples.

(6) For each monitoring well the annular space (i.e., the space between the bore hole and well casing) above and below the sampling interval shall be appropriately sealed to prevent entry of contaminants from the surface, entry of contaminants from the unsaturated zone, cross contamination of saturated zones and contamination of samples.

(7) All monitoring wells shall be adequately developed to enable collection of representative groundwater samples.

(c) Surface Water Monitoring System.

(1) The owner or operator shall establish a surface water monitoring system to monitor each surface water body that could be affected by a release from the regulated unit.

(2) Each surface water monitoring system shall include:

(A) a sufficient number of background monitoring points established at appropriate locations and depths to yield samples from each surface water body to represent the quality of the surface water that has not been affected by a release from the regulated unit;

(B) for a detection monitoring program under section 66264.98, a sufficient number of monitoring points established at appropriate locations and depths to yield samples from each surface water body to that provide the best assurance of the earliest possible detection of a release from the regulated unit;

(C) for an evaluation monitoring program under section 66264.99, a sufficient number of monitoring points established at appropriate locations and depths to yield samples from each surface water body that provide the data necessary to evaluate changes in water quality due to the release from the regulated unit; and

(D) for a corrective action program under section 66264.100, a sufficient number of monitoring points established at appropriate locations and depths to yield samples that provide the data necessary to evaluate compliance with the water quality protection standard and to evaluate the effectiveness of the corrective action program.

(d) Unsaturated Zone Monitoring System.

(1) Except as otherwise provided in subsection (d)(5) of this section, the owner or operator shall establish an unsaturated zone monitoring system for each regulated unit.

(2) The unsaturated zone monitoring system shall include:

(A) a sufficient number of background monitoring points established at appropriate locations and depths to yield soil–pore liquid samples or soil–pore liquid measurements that represent the quality of soil–pore liquid that has not been affected by a release from the regulated unit;

(B) for a detection monitoring program under section 66264.98, a sufficient number of monitoring points established at appropriate locations and depths to yield soil–pore liquid samples or soil–pore liquid measurements that provide the best assurance of the earliest possible detection of a release from the regulated unit;

(C) for an evaluation monitoring program under section 66264.99, a sufficient number of monitoring points established at appropriate locations and depths to yield soil–pore liquid samples or soil–pore liquid measurements as necessary to provide the data needed to evaluate changes in water quality due to the release from the regulated unit; and

(D) for a corrective action program under section 66264.100, a sufficient number of monitoring points established at appropriate locations and depths to yield soil–pore liquid samples or soil–pore liquid measurements as necessary to provide the data needed to evaluate compliance with the water quality protection standard and to evaluate the effectiveness of the corrective action program.

(3) Background monitoring points shall be installed at a background plot having soil characteristics similar to those of the soil underlying the regulated unit.

(4) Liquid recovery types of unsaturated zone monitoring (e.g., the use of lysimeters) are required unless the owner or operator demonstrates to the satisfaction of the Department that such methods of unsaturated zone monitoring cannot provide an indication of a release from the regulated unit. The Department shall require complementary or alternative (non–liquid recovery) types of unsaturated zone monitoring as necessary to provide the best assurance of the earliest possible detection of a release from the regulated unit.

(5) Unsaturated zone monitoring is required at all new regulated units unless the owner or operator demonstrates to the satisfaction of the Department that no method for unsaturated zone monitoring can provide any indication of a release from that regulated unit. For a regulated unit that has operated or has received all permits necessary for construction and operation before July 1, 1991, unsaturated zone monitoring is required unless the owner or operator demonstrates to the satisfaction of the Department that either there is no unsaturated zone monitoring device or method designed to operate under the subsurface conditions existant at that waste management unit or the installation of unsaturated zone monitoring devices would require unreasonable dismantling or relocating of permanent structures.

(6) The owner or operator of a land treatment unit shall comply with the unsaturated zone monitoring and response requirements for that unit in article 13 of this chapter, in addition to the unsaturated zone monitoring requirements of this article.

(e) General Monitoring Requirements.

(1) All monitoring systems shall be designed and certified by a registered geologist or a registered civil engineer.

(2) All monitoring wells and all other borings drilled to satisfy the requirements of this article shall be logged during drilling under the direct supervision of a registered geologist. These logs shall be submitted to the Department upon completion of drilling.

(A) Soil shall be described in the geologic log according to the Unified Soil Classification System as presented in Geotechnical Branch Training Manuals nos. 4, 5 and 6, published by the United States Bureau of Reclamation, January 1986 incorporated by reference in section 66260.11 of this division.

(B) Rock shall be described in the geologic log in a manner appropriate for the purpose of the investigation.

(C) Where possible, the depth and thickness of saturated zones shall be recorded in the geologic log.

(3) If a facility contains contiguous regulated units, separate groundwater monitoring systems are not required for each such unit if the owner or operator demonstrates to the satisfaction of the Department that the water quality monitoring program for each unit will enable the earliest possible detection and measurement of a release from that unit.

(4) The water quality monitoring program shall include consistent sampling and analytical procedures that are designed to ensure that monitoring results provide a reliable indication of water quality at all monitoring points and background monitoring points. At a minimum the program shall include a detailed description of the procedures and techniques for:

(A) sample collection (e.g., purging techniques, sampling equipment and decontamination of sampling equipment);

(B) sample preservation and shipment;

(C) analytical procedures; and

(D) chain of custody control.

(5) The water quality monitoring program shall include appropriate sampling and analytical methods for groundwater, surface water and the unsaturated zone that accurately measure the concentration of each constituent of concern and the concentration or value of each monitoring parameter.

(6) For each regulated unit, the owner or operator shall collect all data necessary for selecting the appropriate statistical method pursuant to subsections (e)(7), (e)(8) and (e)(9) of this section and for establishing the background values pursuant to subsection (e)(11) of this section. At a minimum, this data shall include analytical data obtained during quarterly sampling of all background monitoring points for a period of one year, including the times of expected highest and lowest annual elevations of the groundwater surface. For a new regulated unit, this data shall be collected before wastes are discharged at the unit and background soil pore liquid data shall be collected from beneath the unit before the unit is constructed.

(7) Based on data collected pursuant to subsection (e)(6) of this section, the owner or operator shall propose one of the statistical methods specified in subsection (e)(8) of this section for each constituent of concern and for each monitoring parameter. These methods, upon approval by the Department, shall be specified in the facility permit and shall be used in evaluating water quality monitoring data. The specifications for each statistical method shall include a detailed description of the criteria to be used for determining statistically significant evidence of any release from the regulated unit and for determining compliance with the water quality protection standard. Each statistical test specified for a particular constituent of concern or monitoring parameter shall be conducted separately for that constituent of concern or monitoring parameter at each monitoring point. Where practical quantitation limits are used in any of the following statistical methods to comply with subsection (e)(9)(E) of this section, the practical quantitation limit shall be proposed by the owner or operator for approval by the Department. The owner or operator shall demonstrate that use of the proposed statistical methods will be protective of human health and the environment and will comply with the performance standards outlined in subsection (e)(9) of this section.

(8) The owner or operator shall propose one of the following statistical methods:

(A) a parametric analysis of variance (ANOVA) followed in all instances by a multiple comparisons procedure to identify statistically significant evidence of a release from the regulated unit. The method shall include estimation and testing of the contrasts between each monitoring point's mean and the background mean value for each constituent of concern or monitoring parameter;

(B) an ANOVA based on ranks followed in all instances by a multiple comparisons procedure to identify statistically significant evidence of a release from the regulated unit. The method shall include estimation and testing of the contrasts between each monitoring point's median and the background median values for each constituent of concern or monitoring parameter;

(C) a tolerance or prediction interval procedure in which an interval for each constituent of concern or monitoring parameter is established from the distribution of the background data, and the value for each constituent of concern or monitoring parameter at each monitoring point is compared to the upper tolerance or prediction limit;

(D) a control chart approach that gives control limits for each constituent of concern or monitoring parameter; or

(E) another statistical test method submitted by the owner or operator for approval by the Department including, but not limited to, any statistical method which includes a procedure to verify that there is statistically significant evidence of a release from the regulated unit. If the statistical test method includes a verification procedure, this procedure shall consist of either a single composite retest (i.e., a statistical analysis of the original data combined with newly-acquired data from the monitoring point at which evidence of a release has been indicated) or shall consist of at least two discrete retests (i.e., statistical analyses which analyze only newly-acquired data from the monitoring point at which evidence of a release has been indicated). The verification procedure shall comply with the following requirements in addition to the statistical performance standards under subsection (e)(9) of this section.

1. If the verification procedure consists of discrete retests, rejection of the null hypothesis for any one of the retests shall be considered confirmation of significant evidence of a release.

2. The number of additional samples collected and analyzed for use in the verification procedure shall be appropriate for the form of statistical test specified in the facility permit for that constituent of concern or monitoring parameter pursuant to subsection (e)(7) of this section. This number shall be greater than or equal to the number of samples specified in the facility permit for that constituent of concern or monitoring parameter pursuant to subsection (e)(12)(A) of this section.

3. If resampling at the interval identified for use in the initial statistical test pursuant to subsection (e)(12)(B) of this section would cause the entire resampling effort to take longer than 30 days, the sampling interval for use in the verification procedure shall be reduced to ensure that all

samples are collected and submitted for laboratory analysis within 30 calendar days from the time that the owner or operator determines statistically significant evidence of a release pursuant to subsection 66264.98(g) or (i).

4. For a verification procedure consisting of a composite retest, the statistical verification procedure shall be based on all data obtained from the initial sampling event combined with all data obtained during the resampling event. For a verification procedure containing discrete retests, each retest shall analyze data obtained during its respective resampling event(s) and no data shall be shared between retests.

5. For a verification procedure consisting of a composite retest, the statistical test method used in the verification procedure shall be the same as the method used in the initial statistical comparison, except that the statistical test used in the verification procedure shall be conducted at a Type I error level of no less than 0.05 for both the experiment–wise analysis (if any) and the individual monitoring point comparisons; therefore, if a control chart approach is used to evaluate water quality monitoring data, the upper limit on an X–Bar or R–Chart must be set at no more than 1.645 standard deviations of the statistic plotted for a one–sided statistical comparison or at no more than 1.96 standard deviations of the statistic plotted for a two–sided statistical comparison.

6. For a verification procedure consisting of discrete retests, the statistical method used shall be the same as the method used in the initial statistical comparison. Notwithstanding any provision of subsection (e)(9) of this section, the critical value for the tests shall be chosen so that the Type I error rate for all individual monitoring point comparisons is the same, whether for an initial test or for a retest, and is equal–to–or–greater–than either

$$(1-0.95^{1/(mws)})^{0.5} \quad x \quad (1/r)^{0.5}$$

or

$$1-(.99)^{1/6}$$

whichever is larger, where: m = the number of monitoring parameters; w = the number of monitoring points at the waste management units; s = the number of times that suites of monitoring data from the waste management unit are subjected to initial statistical analysis within a period of six months (i.e., $s \geq 1$); and r = the number of discrete retests that are to be conducted at a monitoring point whose initial statistical analysis for a given constituent of concern or monitoring paramenter has indicated the presence of a release (i.e., $r \geq 2$).

7. The owner or operator shall report to the Department by certified mail the results of both the initial statistical test and the results of the verification procedure as well as all concentration data collected for use in these tests within seven days of the last laboratory analysis of the samples collected for the verification procedure.

8. The verification procedure shall only be performed for the constituent(s) which has shown statistically significant evidence of a release, and shall only be performed for that (those) monitoring point at which a release has been indicated.

(9) Each statistical method chosen under subsection (e)(7) of this section for specification in the facility permit shall comply with the following performance standards for each six–month period.

(A) The statistical method used to evaluate water quality monitoring data shall be appropriate for the distribution of the constituent of concern or monitoring parameter to which it is applied and shall be the least likely of the appropriate methods to fail to identify a release from the regulated unit. If the distribution of a constituent of concern or monitoring parameter is shown by the owner or operator to be inappropriate for a normal theory test, then the data shall be either transformed so that the distribution of the transformed data is appropriate for a normal theory test or a distribution–free theory test shall be used. If the distributions for the constituents of concern or monitoring parameters differ, more than one statistical method may be needed.

(B) If an individual monitoring point comparison procedure is used to compare an individual monitoring point constituent concentration or monitoring parameter value with a concentration limit in the water quality protection standard or with a background monitoring parameter value, the test shall be done at a Type I error level no less than 0.01. If a multiple comparisons procedure is used, the Type I experiment–wise error rate shall be no less than 0.05; however, the Type I error of no less than 0.01 for individual monitoring point comparison shall be maintained. This performance standard does not apply to tolerance intervals, prediction intervals or control charts.

(C) If a control chart approach is used to evaluate water quality monitoring data, the specific type of control chart and its associated statistical parameter values (e.g., the upper control limit) shall be proposed by the owner or operator and approved by the Department if the Department finds it to be protective of human health and the environment. Any control charting procedure must have a false–positive rate of no less than one percent for each monitoring point charted (e.g., upper control limits on X–bar or R–charts, used only once every six months, must be set at no more than 2.327 standard deviations of the statistic plotted for a one–sided statistical comparison or at no more than 2.576 standard deviations of the statistic plotted for a two–sided statistical comparison).

(D) If a tolerance interval or a prediction interval is used to evaluate water quality monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain shall be proposed by the owner or operator and approved by the Department if the Department finds these statistical parameters to be protective of human health and the environment. These statistical parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentrations or values for each constituent of concern or monitoring parameter. The coverage of any tolerance interval used must be no more than 95 percent and the confidence coefficient must be no more than 95 percent for a six–month period. Prediction intervals shall be constructed with an experimentwise error rate of no less than five percent and an individual monitoring point error rate of no less than one percent.

(E) The statistical method shall account for data below the practical quantitation limit with one or more statistical procedures that are protective of human health and the environment. Any practical quantitation limit approved by the Department pursuant to subsection (e)(7) of this section that is used in the statistical method shall be the lowest concentration (or value) that can be reliably achieved within limits of precision and accuracy specified in the facility permit for routine laboratory operating conditions that are available to the facility. The Department shall consider the practical quantitation limits listed in Appendix IX to chapter 14 for guidance purposes when specifying limits of precision and accuracy in the facility permit.

(F) If necessary, the statistical methods shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

(G) Any quality control procedure that is approved by the Department for application to water quality data from downgradient monitoring points for a monitored medium shall also be applied to all newly–acquired background data from that medium. Any newly–acquired background monitoring datum that is rejected by an approved quality control procedure shall be maintained in the facility record but shall be excluded from use in statistical comparisons with downgradient water quality data.

(10) Based on the data collected pursuant to subsection (e)(6) of this section and the statistical methods proposed under subsection (e)(7) of this section, the owner or operator shall propose and justify the use of a procedure for determining a background value for each constituent of concern and for each monitoring parameter specified in the facility permit. These procedures shall be proposed for groundwater, surface water and the unsaturated zone. The owner or operator shall propose one of the following for approval by the Department:

(A) a procedure for determining the background value for each constituent or parameter that does not display appreciable natural variation; or

(B) a procedure for establishing and updating the background value for a constituent or parameter to reflect changes in the background water

quality if the use of contemporaneous or pooled data provides the greatest power to the statistical method for that constituent or paramenter.

(11) Upon approval of the procedures for determining background values proposed pursuant to subsection (e)(10) of this section, the Department shall specify in the facility permit one of the following for each constituent of concern and for each monitoring parameter:

(A) the background value established by the owner or operator using the procedure proposed pursuant to subsection (e)(10)(A) of this section; or

(B) a detailed description of the procedure to be used by the owner or operator for establishing and updating the background value as proposed pursuant to subsection (e)(10)(B) of this section.

(12) For each constituent of concern and monitoring parameter listed in the facility permit, the owner or operator shall propose, for approval by the Department, the sampling methods to be used to establish background values and the sampling methods to be used for monitoring pursuant to this article. Upon final approval by the Department, sampling methods consistent with the following shall be specified in the facility permit.

(A) The number and kinds of samples collected shall be appropriate for the form of statistical test employed, following generally accepted statistical principles. The sample size shall be as large as necessary to ensure with reasonable confidence that:

1. for a detection monitoring program, a release from the regulated unit will be detected;

2. for an evaluation monitoring program, changes in water quality due to a release from the regulated unit will be recognized; and

3. for a corrective action program, compliance with the water quality protection standard and effectiveness of the corrective action program will be determined.

(B) The sampling method (including the sampling freqency and the interval of time between successive samples) shall be appropriate for the medium from which samples are taken (e.g., groundwater, surface water and soil–pore liquid). The sampling method shall include either:

1. a sequence of at least four samples collected at least semiannually from each monitoring point and each background monitoring point and statistical analysis performed at least semi–annually. Samples shall be taken at an interval that assures, to the greatest extent possible, that an independent sample is obtained. The Department shall require more frequent sampling and statistical analysis when necessary to protect human health and the environment. For groundwater, the sampling frequency and the interval between successive sampling events shall be based upon the rate of groundwater flow, and upon any variation in groundwater flow rate and direction. The rate of groundwater movement shall be calculated by reference to the aquifer's effective porosity, hydraulic conductivity and hydraulic gradient; or

2. an alternate sampling method. The alternate method shall provide for the collection of not less than one sample quarterly from each monitoring point and background monitoring point and statistical analysis performed at least quarterly.

(13) The groundwater portion of the monitoring program shall include an accurate determination of the groundwater surface elevation and field parameters (temperature, electrical conductivity, turbidity and pH) at each well each time groundwater is sampled.

(14) The owner or operator shall graph all analytical data from each monitoring point and background monitoring point and shall submit these graphs to the Department at least annually. Unless the owner or operator receives written approval from the Department to use an alternate procedure, each graph shall represent data from one monitoring point or background monitoring point and one constituent of concern or monitoring parameter. Graphs shall be at a scale appropriate to show trends or variations in water quality. All graphs for a given constituent shall be plotted at the same scale to facilitate visual comparison of monitoring data.

(15) In addition to the water quality sampling conducted pursuant to the requirements of this article, the owner or operator shall measure the water level in each well and determine groundwater flow rate and direction in the uppermost aquifer and in any zones of perched water and in any additional aquifers monitored pursuant to subsection (b)(1) of this section at least quarterly, including the times of expected highest and lowest elevations of the water levels in the wells.

(16) Water quality monitoring data collected in accordance with this article, including actual values of constituents and parameters, shall be maintained in the facility operating record. The Department shall specify in the permit when the data shall be submitted for review.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.97.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Editorial correction of printing errors in subsections (c)(2)(A) and (d)(4) (Register 92, No. 49).
3. Editorial correction restoring inadvertently omitted subsection (e)(8) (Register 97, No. 34).

§ 66264.98. Detection Monitoring Program.

(a) An owner or operator required, pursuant to section 66264.91, to establish a detection monitoring program for a regulated unit shall, at a minimum, comply with the requirements of this section for that unit.

(b) The owner or operator shall install water quality monitoring systems that are appropriate for detection monitoring and that comply with the provisions of section 66264.97.

(c) The owner or operator shall establish a background value pursuant to section 66264.97(e)(11) for each monitoring parameter specified under subsection (e) of this section and for each constituent of concern specified under section 66264.93.

(d) The Department shall specify the water quality protection standard under section 66264.92 in the facility permit.

(e) The owner or operator shall propose for approval by the Department a list of monitoring parameters for each medium (groundwater, surface water, and the unsaturated zone) to be monitored pursuant to section 66264.97. The list for each medium shall include those physical parameters, hazardous constituents, waste constituents and reaction products that provide a reliable indication of a release from the regulated unit to that medium. The Department shall specify each list of monitoring parameters in the facility permit after considering the following factors:

(1) the types, quantities and concentrations of constituents in wastes managed at the regulated unit;

(2) the expected or demonstrated correlation between the proposed monitoring parameters and the constituents of concern specified for the unit under section 66264.93;

(3) the mobility, stability and persistence of waste constituents or their reaction products;

(4) the detectability of physical parameters, waste constituents and reaction products; and

(5) the background values and the coefficients of variation of proposed monitoring parameters in groundwater, surface water and the unsaturated zone.

(f) The owner or operator shall conduct sampling and analyses for the monitoring parameters listed in the facility permit pursuant to subsection (e) of this section. The Department shall specify the frequencies for collecting samples and conducting statistical analyses pursuant to section 66264.97(e)(12). For groundwater, sampling shall be scheduled to include the times of expected highest and lowest annual elevations of the groundwater surface.

(g) In addition to monitoring for the monitoring parameters specified under subsection (e) of this section, the owner or operator shall periodically monitor for all constituents of concern specified in the facility permit and determine whether there is statistically significant evidence of a release for any constituent of concern using the statistical procedure spe–

cified pursuant to section 66264.97(e)(7). The Department shall specify in the facility permit the frequencies and locations for monitoring pursuant to this subsection after considering the degree of certainty associated with the expected or demonstrated correlation between values for monitoring parameters and values for the constituents of concern. Monitoring pursuant to this subsection shall be conducted at least every five years.

(h) The owner or operator shall maintain a record of water quality analytical data as measured and in a form necessary for the determination of statistical significance under subsections (g) and (i) of this section.

(i) For each monitoring point, the owner or operator shall determine whether there is statistically significant evidence of a release from the regulated unit for any monitoring parameter specified in the permit pursuant to subsection (e) of this section at a frequency specified pursuant to subsection (f) of this section.

(1) In determining whether statistically significant evidence of a release from the regulated unit exists, the owner or operator shall use the method(s) specified in the permit under section 66264.97(e)(7). This

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method(s) shall be used to compare data collected at the monitoring point(s) with the background water quality data.

(2) The owner or operator shall determine whether there is statistically significant evidence of a release from the regulated unit at each monitoring point within a reasonable period of time after completion of sampling. The Department shall specify in the facility permit what period of time is reasonable, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of samples.

(3) The provisions of this section shall not preclude the Department from making an independent finding that there is statistically significant evidence of a release from the regulated unit. If the Department makes such a finding, the owner or operator shall comply with the provisions of this section that are required in response to statistically significant evidence of a release from the regulated unit.

(j) If the owner or operator determines pursuant to subsection (g) or (i) of this section that there is statistically significant evidence of a release from the regulated unit for any monitoring parameter or constituent of concern at any monitoring point, the owner or operator:

(1) shall notify the Department of the finding by certified mail within seven days of such determination. The notification shall identify for each affected monitoring point the monitoring parameters and constituents of concern that have indicated statistically significant evidence of a release from the regulated unit; and

(2) may immediately initiate a procedure to verify that there is statistically significant evidence of a release from the regulated unit for a parameter or constituent which has indicated a release at a monitoring point if that verification procedure has been specified for that constituent or parameter in the facility permit pursuant to section 66264.97(e)(8)(E).

(k) If the resampling pursuant to subsection (j)(2) of this section confirms that there is statistically significant evidence of a release from the regulated unit or if the owner or operator does not resample pursuant to subsection (j)(2) of this section, then the owner or operator shall do the following.

(1) For that regulated unit, immediately sample all monitoring points in the affected medium (groundwater, surface water or the unsatuated zone) and determine the concentration of all constituents of concern.

(2) For that regulated unit, immediately sample all monitoring points in the affected medium (groundwater, surface water or the unsaturated zone) and determine whether constituents in the list of Appendix IX to chapter 14 are present, and if so, in what concentration(s).

(3) For any Appendix IX constituents found in the analysis pursuant to subsection (k)(2) of this section that are not specified in the list of constituents of concern for that unit, the owner or operator may resample within one month and repeat the analysis for those constituents. Each constituent detected in both analyses shall be added to the list of constituents of concern specified in the facility permit for evaluation monitoring unless the owner or operator demonstrates to the satisfaction of the Department that the constituent is not reasonably expected to be in or derived from waste in the regulated unit. If the owner or operator does not resample for the constituents found pursuant to subsection (k)(2) of this section, the constituents found during this initial Appendix IX analysis will be added to the list of constituents of concern specified in the facility permit for evaluation monitoring unless the owner or operator demonstrates to the satisfaction of the Department that the constituent is not reasonably expected to be in or derived from waste in the regulated unit.

(4) For each Appendix IX constituent added to the list of constituents of concern pursuant to subsection (k)(3) of this section, the owner or operator shall:

(A) collect all data necessary for establishing the background concentration for that constituent and for selecting an appropriate statistical procedure pursuant to section 66264.97(e)(6);

(B) propose an appropriate statistical procedure pursuant to section 66264.97(e)(7);

(C) propose a procedure to establish the background concentration for that constituent pursuant to section 66264.97(e)(10); and

(D) establish the background concentration pursuant to section 66264.97(e)(11).

(5) Within 90 days of determining statistically significant evidence of a release, the owner or operator shall submit to the Department an application for a permit modification to establish an evaluation monitoring program meeting the provisions of section 66264.99. The application shall include the following information:

(A) an identification of the concentration of each constituent of concern at each monitoring point as determined during the most recent sampling events, and an identification of the concentration of each Appendix IX constituent at each monitoring point for the regulated unit in the affected medium (groundwater, surface water or the unsaturated zone);

(B) any proposed changes to the water quality monitoring systems at the facility necessary to meet the requirements of section 66264.99;

(C) any proposed additions or changes to the monitoring frequency, sampling and analytical procedures or methods or statistical methods used at the facility necessary to meet the requirements of section 66264.99;

(D) a detailed description of the measures to be taken by the owner or operator to assess the nature and extent of the release from the regulated unit.

(6) Within 180 days of determining statistically significant evidence of a release, the owner or operator shall submit to the Department an engineering feasibility study for a corrective action program necessary to meet the requirements of section 66264.100. At a minimum, the feasibility study shall contain a detailed description of the corrective action measures that could be taken to achieve background concentrations for all constituents of concern.

(7) If the owner or operator determines, pursuant to subsection (g) or (i) of this section, that there is statistically significant evidence of a release from the regulated unit at any monitoring point, the owner or operator may demonstrate that a source other than the regulated unit caused the evidence of a release or that the evidence is an artifact caused by an error in sampling, analysis or statistical evaluation, or by natural variation in the groundwater, surface water or the unsaturated zone. The owner or operator may make a demonstration pursuant to this subsection in addition to, or in lieu of, submitting both a permit modification application pursuant to subsection (k)(5) of this section and an engineering feasibility study pursuant to subsection (k)(6) of this section; however, the owner or operator is not relieved of the requirements specified in subsections (k)(5) and (k)(6) of this section unless the demonstration made under this subsection successfully shows that a source other than the regulated unit caused the evidence of a release or that the evidence resulted from error in sampling, analysis or evaluation or from natural variation in groundwater, surface water or the unsaturated zone. In making a demonstration pursuant to this subsection, the owner or operator shall:

(A) within seven days of determining statisically significant evidence of a release, notify the Department by certified mail that the owner or operator intends to make a demonstration pursuant to this subsection;

(B) within 90 days of determining statistically significant evidence of a release, submit a report to the Department that demonstrates that a source other than the regulated unit caused the evidence, or that the evidence resulted from error in sampling, analysis or evaluation or from natural variation in groundwater, surface water or the unsaturated zone;

(C) within 90 days of determining statistically significant evidence of a release, submit to the Department an application for a permit modification to make any appropriate changes to the detection monitoring program; and

(D) continue to monitor in accordance with the detection monitoring program established under this section.

(*l*) If the owner or operator determines that there is significant physical evidence of a release as described in section 66264.91(a)(3) or that the detection monitoring program does not satisfy the requirements of this section, the owner or operator shall:

(1) notify the Department by certified mail within seven days of such determination; and

(2) within 90 days of such determination, submit an application for a permit modification to make any appropriate changes to the program.

(m) Any time the Department determines that the detection monitoring program does not satisfy the requirements of this section, the Department shall send written notification of such determination to the owner or operator by certified mail, return receipt requested. The owner or operator shall, within 90 days after receipt of such notification by the Department, submit an application for a permit modification to make any appropriate changes to the program.

(n) For any regulated unit for which a detection monitoring program is established after the successful completion of a corrective action program pursuant to section 66264.100(g):

(1) the Department shall include in the list of monitoring parameters for each medium (groundwater, surface water and the unsaturated zone) all hazardous constituents that have been detected in that medium due to a release from that regulated unit;

(2) the owner or operator shall analyze samples from all groundwater monitoring points at the point of compliance for that regulated unit and determine the concentration of each constituent contained in Appendix IX to chapter 14 at least annually during any remaining years of the compliance period. If the owner or operator finds either an Appendix IX constituent at a concentration above the concentration limit established in the permit for that constituent or one that is not already identified in the permit as a monitoring parameter, the owner or operator may resample within one month of the original sample and repeat the analysis for those constituents. If the owner or operator does not resample, or if the resampling confirms that the concentration limit for a constituent has been exceeded or that a new constituent is present:

(A) the owner or operator shall report the concentration of each such constituent to the Department within seven days of the latest analysis;

(B) the Department shall add each such constituent to the list of monitoring parameters specified in the facility permit for groundwater unless the owner or operator demonstrates to the satisfaction of the Department that the constituent is not reasonably expected to be in or derived from waste in the regulated unit; and

(C) if a constituent is added to the list of monitoring parameters pursuant to subsection (n)(2)(B) of this section, the owner or operator shall immediately collect samples and conduct statistical tests for each monitoring parameter to determine whether there is statistically significant evidence of a release from the regulated unit.

NOTE: Authority cited: Sections 208, 25150, and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.98.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66264.99. Evaluation Monitoring Program.

(a) An owner or operator required pursuant to section 66264.91 to establish an evaluation monitoring program for a regulated unit shall, at a minimum, comply with the requirements of this section for that unit. The evaluation monitoring program shall be used to assess the nature and extent of the release from the regulated unit and to design a corrective action program meeting the requirements of section 66264.100.

(b) The owner or operator shall collect and analyze all data necessary to assess the nature and extent of the release from the regulated unit. This assessment shall include a determination of the spatial distribution and concentration of each constituent of concern throughout the zone affected by the release. The owner or operator shall complete and submit this assessment to the Department within 90 days of establishing an evaluation monitoring program.

(c) Based on the data collected pursuant to subsections (b) and (e) of this section, the owner or operator shall update the engineering feasibility study required under section 66264.98(k)(6). The owner or operator shall submit this engineering feasibility study to the Department within 90 days of establishing an evaluation monitoring program.

(d) Based on the data collected pursuant to subsections (b) and (e) of this section and on the engineering feasibility study submitted pursuant to subsection (c) of this section, the owner or operator shall submit an application for a permit modification to establish a corrective action program meeting the requirements of section 66264.100. The owner or operator shall submit this application for a permit modification to the Department within 90 days of establishing an evaluation monitoring program. The application shall at a minimum include the following information:

(1) a detailed assessment of the nature and extent of the release from the regulated unit;

(2) a proposed water quality protection standard, including any proposed concentration limits greater than background under section 66264.94, and all data necessary to justify each such limit;

(3) a detailed description of proposed corrective action measures that will be taken to achieve compliance with the water quality protection standard proposed for a corrective action program; and

(4) a plan for a water quality monitoring program that will demonstrate the effectiveness of the proposed corrective action.

(e) In conjunction with the assessment conducted pursuant to subsection (b) of this section, and while awaiting final approval of the application for a permit modification submitted pursuant to subsection (d) of this section, the owner or operator shall monitor groundwater, surface water and the unsaturated zone to evaluate changes in water quality resulting from the release from the regulated unit. In conducting this monitoring, the owner or operator shall comply with the following requirements:

(1) the owner or operator shall install water quality monitoring systems that are appropriate for evaluation monitoring and that comply with the provisions of section 66264.97. These water quality monitoring systems may include all or part of existing monitoring systems;

(2) the owner or operator shall propose for approval by the Department a list of monitoring parameters for each medium (groundwater, surface water and the unsaturated zone) to be monitored pursuant to section 66264.97. The list for each medium shall include all hazardous constituents that have been detected in that medium and shall include those physical parameters, waste constituents and reaction products that provide a reliable indication of changes in water quality resulting from the release from the regulated unit to that medium. The Department shall specify each list of monitoring parameters in the facility permit after considering the following factors:

(A) the types, quantities and concentrations of constituents in wastes managed at the regulated unit;

(B) information that demonstrates, to the satisfaction of the Department, a sufficient correlation between the proposed monitoring parameters and the constituents of concern specified for the unit;

(C) the mobility, stability and persistence of waste constituents or their reaction products;

(D) the detectability of physical parameters, waste constituents and reaction products; and

(E) the background values and the coefficients of variation of proposed monitoring parameters in groundwater, surface water and the unsaturated zone;

(3) the owner or operator shall conduct sampling and analyses for the monitoring parameters listed in the facility permit pursuant to subsection (e)(2) of this section. The Department shall specify in the facility permit the frequencies for collecting samples and for conducting statistical analyses pursuant to section 66264.97(e)(12) to evaluate changes in water quality due to the release from the regulated unit. For groundwater, sampling shall be scheduled to include the times of expected highest and lowest annual elevations of the groundwater surface;

(4) in addition to monitoring for the monitoring parameters specified pursuant to subsection (e)(2) of this section, the owner or operator shall periodically monitor for all constituents of concern specified in the facility permit and evaluate changes in water quality due to the release from

the regulated unit. The Department shall specify the frequencies for monitoring pursuant to this subsection after considering the degree of certainty associated with the demonstrated correlation between values for monitoring parameters and values for the constituents of concern;

(5) the owner or operator shall conduct water quality monitoring for each monitoring parameter and each constituent of concern in accordance with section 66264.97(e)(12). The owner or operator shall maintain a record of water quality analytical data as measured and in a form necessary for the evaluation of changes in water quality due to the release from the regulated unit;

(6) the owner or operator shall analyze samples from all monitoring points in the affected medium (groundwater, surface water or the unsaturated zone) for all constituents contained in Appendix IX to chapter 14 at least annually to determine whether additional hazardous constituents are present and, if so, at what concentration(s). If the owner or operator finds Appendix IX constituents in the groundwater, surface water or the unsaturated zone that are not already identified in the permit as constituents of concern, the owner or operator may resample within one month and repeat the analysis for those constituents. If the second analysis confirms the presence of new constituents, the owner or operator shall report the concentration of these additional constituents to the Department by certified mail within seven days after the completion of the second analysis and the Department shall add them to the list of constituents of concern specified in the facility permit unless the owner or operator demonstrates to the satisfaction of the Department that the constituent is not reasonably expected to be in or derived from waste in the regulated unit. If the owner or operator does not resample, then the owner or operator shall report the concentrations of these additional constituents to the Department by certified mail within seven days after completion of the initial analysis and the Department shall add them to the list of constituents of concern specified in the facility permit unless the owner or operator demonstrates to the satisfaction of the Department that the constituent is not reasonably expected to be in or derived from waste in the regulated unit; and

(7) while awaiting final approval of the application for a permit modification to establish a corrective action program, the owner or operator shall evaluate all water quality data obtained pursuant to subsection (e) of this section with respect to the design criteria for the corrective action program. If the evaluation indicates that the plan for corrective action is insufficient, the owner or operator shall:

(A) notify the Department by certified mail within seven days of such determination; and

(B) within 90 days of such determination, submit for approval by the Department any appropriate changes to the application for a permit modification.

(f) If the owner or operator demonstrates to the satisfaction of the Department that a source other than the regulated unit caused the evidence of a release or that the evidence is an artifact caused by an error in sampling, analysis or statistical evaluation, or by natural variation in groundwater, surface water or the unsaturated zone, the owner or operator shall submit an application for a permit modification to reinstitute a detection monitoring program meeting the requirements of section 66264.98. This application shall include specifications for all appropriate changes to the monitoring program. In making a demonstration under this subsection, the owner or operator shall:

(1) notify the Department by certified mail that the owner or operator intends to make a demonstration pursuant to this subsection;

(2) submit a report to the Department that demonstrates that a source other than the regulated unit caused the evidence of a release or that the evidence resulted from error in sampling, analysis or evaluation, or from natural variation in groundwater, surface water or the unsaturated zone; and

(3) continue to monitor in accordance with the evaluation monitoring program established pursuant to this section until the permit is modified.

(g) The Department shall require interim corrective action measures where necessary to protect human health or the environment.

(h) If the owner or operator determines that the evaluation monitoring program does not satisfy the requirements of this section, the owner or operator shall, within 90 days, submit an application for a permit modification to make any appropriate changes to the program.

(i) Any time the Department determines that the evaluation monitoring program does not satisfy the requirements of this section, the Department shall send written notification of such determination to the owner or operator by certified mail, return receipt requested. The owner or operator shall, within 90 days of such notification by the Department, submit an application for a permit modification to make appropriate changes to the program.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159, and 25159.5, Health and Safety Code; 40 CFR Section 264.99.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66264.100. Corrective Action Program.

(a) An owner or operator required pursuant to section 66264.91 to establish a corrective action program for a regulated unit shall, at a minimum, comply with the requirements of this section for that unit.

(b) The owner or operator shall take corrective action to remediate releases from the regulated unit and to ensure that the regulated unit achieves compliance with the water quality protection standard under section 66264.92. The Department shall specify the water quality protection standard for corrective action in the facility permit.

(c) The owner or operator shall implement corrective action measures that ensure that constituents of concern achieve their respective concentration limits at all monitoring points and throughout the zone affected by the release, including any portions of the affected zone that extend beyond the facility boundary, by removing the waste constituents or treating them in place. The owner or operator shall take other action specified by the Department to prevent noncompliance with those limits due to a continued or subsequent release from the regulated unit including, but not limited to, source control. The permit shall specify the specific measures that will be taken.

(d) In conjunction with the corrective action measures, the owner or operator shall establish and implement a water quality monitoring program to demonstrate the effectiveness of the corrective action program. Such a monitoring program may be based on the requirements for an evaluation monitoring program under section 66264.99, and shall be effective in determining compliance with the water quality protection standard under section 66264.92 and in determining the success of the corrective action measures under subsection (c) of this section.

(e) Corrective action measures taken pursuant to this section shall be initiated and completed by the owner or operator within a period of time specified by the Department in the facility permit.

(f) Corrective action measures taken pursuant to this section may be terminated when the owner or operator demonstrates to the satisfaction of the Department that the concentrations of all constituents of concern are reduced to levels below their respective concentration limits.

(g) After terminating the corrective action measures pursuant to subsection (f) of this section, the owner or operator shall remain in the corrective action program until:

(1) the owner or operator demonstrates to the satisfaction of the Department that the regulated unit is in compliance with the water quality protection standard. This demonstration shall be based on the results of sampling and analysis for all constituents of concern for a period of one year; and

(2) the owner or operator submits and the Department approves an application for a permit modification to establish a detection monitoring program meeting the requirements of section 66264.98.

(h) The owner or operator shall report, in writing, to the Department on the effectiveness of the corrective action program. The owner or operator shall submit these reports at least semiannually. More frequent reporting shall be required by the Department as necessary to ensure the protection of human health or the environment.

(i) If the owner or operator determines that the corrective action program does not satisfy the requirements of this section, the owner or operator shall, within 90 days of making the determination, submit an applica-

tion for a permit modification to make any appropriate changes to the program.

(j) Any time the Department determines that the corrective action program does not satisfy the requirements of this section, the owner or operator shall, within 90 days of notification of such determination by the Department, submit an application for a permit modification to make any appropriate changes to the program.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159, and 25159.5, Health and Safety Code; 40 CFR Section 66264.100.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66264.101. Corrective Action for Waste Management Units.

(a) The owner or operator of a facility seeking a permit for the transfer, treatment, storage, or disposal of hazardous waste shall institute corrective action as necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid or hazardous waste management unit at the facility, regardless of the time at which waste was placed in such unit.

(b) Corrective action will be specified in the permit or order in accordance with this article, article 15.5, or article 17, and Health and Safety Code sections 25200.10, 25187, or 25200.14, or section 25358.9 where as provided for under the provisions of that section the Department has excluded the removal or remedial action at a site from the hazardous waste facilities permit required by Health and Safety Code section 25201. The permit or order will contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing such corrective action.

(c) The owner or operator shall implement corrective actions beyond the facility boundary, where necessary to protect human health or the environment, unless the owner or operator demonstrates to the satisfaction of the Department, that despite the owner or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such actions. The owner or operator is not relieved of all responsibility to cleanup a release that has migrated beyond the facility boundary where off–site access is denied. On–site measures to address such release will be determined on a case–by–case basis. Assurance of financial responsibility for such corrective action shall be provided.

NOTE: Authority cited: Sections 25150, 25159, 25187, 25200.10, 25355.5, 25356.9, 25358.3, 25358.9, 58004 and 58012, Health and Safety Code. Reference: Sections 25150, 25159.5, 25187, 25200, 25200.10, 25355.5, 25356.9, 25358.3 and 25358.9, Health and Safety Code; 40 CFR Section 264.101.

HISTORY

1. New section filed 12–23–93 as an emergency; operative 12–23–93 (Register 93, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–9–94 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–25–94 as an emergency; operative 4–25–94 (Register 94, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–23–94 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–22–94 as an emergency; operative 8–22–94 (Register 94, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–20–94 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 12–22–94 as an emergency, including amendment of subsection (b) and (c) and NOTE; operative 12–22–94 (Register 94, No. 51). A Certificate of Compliance must be transmitted to OAL 4–21–95 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 6–29–95 as an emergency; operative 6–29–95 (Register 95, No. 26). A Certificate of Compliance must be transmitted to OAL by 10–27–95 or emergency language will be repealed by operation of law on the following day.
6. New section, including amendment of NOTE, refiled 10–26–95 as an emergency; operative 10–26–95 (Register 95, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–23–96 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 10–26–95 order transmitted to OAL 11–30–95 and filed 1–16–96 (Register 96, No. 3).
8. Amendment of subsections (a) and (b), repealer of subsection (c) and amendment of NOTE filed 11–19–98 as an emergency; operative 11–19–98 (Register 98, No. 47). A Certificate of Compliance must be transmitted to OAL by 3–19–99 or emergency language will be repealed by operation of law on the following day.
9. Reinstatement of subsections (a)–(c) and NOTE as they existed prior to 11–19–98 emergency amendment by operation of Government Code section 11346.1(f) (Register 99, No. 12).

Article 7. Closure and Post–Closure

§ 66264.110. Applicability.

Except as section 66264.1 provides otherwise:

(a) sections 66264.111 through 66264.115 (which concern closure) apply to the owners and operators of all hazardous waste management facilities; and

(b) sections 66264.116 through 66264.120 (which concern post–closure care) apply to the owners and operators of:

(1) all hazardous waste disposal facilities;

(2) waste piles and surface impoundments from which the owner or operator intends to remove the wastes at closure to the extent that these sections are made applicable to such facilities in sections 66264.228 or 66264.258;

(3) tank systems that are required under section 66264.197 to meet the requirements for landfills; and

(4) containment buildings that are required under section 66264.1102 to meet the requirement for landfills.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6, 25245 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5, 25245, 25246 and 58012, Health and Safety Code; 40 CFR Section 264.110.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Amendment of subsection (b)(3), new subsection (b)(4) and amendment of NOTE filed 10–24–94 as an emergency; operative 10–24–94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–20–95 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsection (b)(3), new subsection (b)(4) and amendment of NOTE refiled 2–21–95 as an emergency; operative 2–21–95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–21–95 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsections (b)(2)–(3), new subsection (b)(4) and amendment of NOTE refiled 6–19–95 as an emergency; operative 6–19–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–95 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsections (b)(2)–(3), new subsection (b)(4) and amendment of NOTE refiled 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 10–24–94 order transmitted to OAL 12–15–95 and filed 1–31–96 (Register 96, No. 5).

§ 66264.111. Closure Performance Standard.

The owner or operator shall close the facility in a manner that:

(a) minimizes the need for further maintenance; and

(b) controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, post–closure escape of hazardous waste, hazardous constituents, leachate, contaminated rainfall or run–off, or waste decomposition products to the ground or surface waters or to the atmosphere; and

(c) complies with the closure requirements of this chapter including, but not limited to, the requirements of sections 66264.178, 66264.197, 66264.228, 66264.258, 66264.280, 66264.310, 66264.351, 66264.601 through 66264.603, and 66264.1102.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6, 25245 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5, 25245 and 58012, Health and Safety Code; 40 CFR Section 264.111.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Amendment of subsection (c) and NOTE filed 10–24–94 as an emergency; operative 10–24–94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–20–95 or emergency language will be repealed by operation of law on the following day.

3. Amendment of subsection (c) and NOTE refiled 2–21–95 as an emergency; operative 2–21–95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–21–95 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsection (c) and NOTE refiled 6–19–95 as an emergency; operative 6–19–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–95 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsection (c) and NOTE refiled 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.

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6. Certificate of Compliance as to 10–24–94 order transmitted to OAL 12–15–95 and filed 1–31–96 (Register 96, No. 5).

§ 66264.112. Closure Plan; Amendment of Plan.

(a) Written plan.

(1) The owner or operator of a hazardous waste management facility shall have a written closure plan. In addition, certain surface impoundments and waste piles from which the owner or operator intends to remove or decontaminate the hazardous waste at partial or final closure are required by sections 66264.228(c)(1)(A) and 66264.258(c)(1)(A) to have contingent closure plans. The plan shall be submitted with the permit application, in accordance with section 66270.14(b)(13) of this division, or when otherwise requested by the Department. The plan shall be approved by the Department as part of the permit issuance procedures un-der chapter 21 of this division. In accordance with section 66270.32 of this division, the approved closure plan will become a condition of any permit.

(2) The Department's approval of the plan shall ensure that the approved closure plan is consistent with sections 66264.111 through 66264.115 and the applicable requirements of article 6 of this chapter and sections 66264.178, 66264.197, 66264.228, 66264.258, 66264.280, 66264.310, 66264.351, 66264.601 and 66264.1102. Until final closure is completed and certified in accordance with section 66264.115, a copy of the approved plan and all approved revisions shall be kept at the facility and furnished to the Department upon request, including request by mail.

(b) Content of plan. The plan shall identify steps necessary to perform partial or final closure of the facility at any point during its active life and to perform final closure of the facility at the end of its active life. The closure plan shall include, at least:

(1) a description of how and when each hazardous waste management unit at the facility will be closed in accordance with section 66264.111;

(2) a description of how and when final closure of the facility will be conducted in accordance with section 66264.111. The description shall identify the maximum extent of the operations which will be unclosed during the active life of the facility;

(3) an estimate of the maximum inventory of hazardous wastes ever on–site over the active life of the facility and a detailed description of the methods to be used during partial closures and final closure, including, but not limited to, methods for removing, transporting, treating, storing, or disposing of all hazardous wastes, and identification of the type(s) of the off–site hazardous waste management units to be used, if applicable;

(4) a detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, equipment, structures, and soils during partial and final closure, including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to satisfy the closure performance standard;

(5) a detailed description of other activities necessary during the closure period to ensure that all partial closures and final closure satisfy the closure performance standards, including, but not limited to, ground–water monitoring, leachate collection, and run–on and run–off control;

(6) a schedule for closure of each hazardous waste management unit and for final closure of the facility. The schedule shall include, at a minimum, the total time required to close each hazardous waste management unit and the time required for intervening closure activities which will allow tracking of the progress of partial and final closure. (For example, in the case of a landfill unit, estimates of the time required to treat or dispose of all hazardous waste inventory and of the time required to place a final cover shall be included);

(7) an estimate of the expected year of final closure.

(c) Amendment of plan. The owner or operator shall submit a written notification of or request for a permit modification to authorize a change in the approved closure plan in accordance with the applicable procedures in chapters 20 and 21 of this division. The written notification request shall include a copy of the amended closure plan for review or approval by the Department.

(1) The owner or operator may submit a written notification or request to the Department for a permit modification to amend the closure plan at any time prior to the notification of partial or final closure of the facility.

(2) The owner or operator shall submit a written notification or request for a permit modification to authorize a change in the approved closure plan whenever:

(A) changes in operating plans or facility design affect the closure plan, or

(B) there is a change in the expected year of closure, or

(C) in conducting partial or final closure activities, unexpected events require a modification of the approved closure plan.

(3) The owner or operator shall submit a written request for a permit modification including a copy of the amended closure plan for approval at least 60 days prior to the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred which has affected the closure plan. If an unexpected event occurs during the partial or final closure period, the owner or operator shall request a permit modification no later than 30 days after the unexpected event. The Department will approve, disapprove, or modify this amended plan in accordance with the procedures in chapters 20 and 21 of this division. In accordance with section 66270.32 of this division, the approved closure plan will become a condition of any permit issued.

(4) The Department may request modifications to the plan under the conditions described in section 66264.112(c)(2). The owner or operator shall submit the modified plan within 60 days of the Department's request, or within 30 days if the change in facility conditions occurs during partial or final closure. Any modifications requested by the Department will be approved in accordance with the procedures in chapters 20 and 21 of this division.

(d) Notification of partial closure and final closure.

(1) The owner or operator shall notify the Department in writing at least 60 days prior to the date on which the owner or operator expects to begin closure of a surface impoundment, waste pile, land treatment or landfill unit, or final closure of a facility with such a unit. The owner or operator shall notify the Department in writing at least 45 days prior to the date on which the owner or operator expects to begin final closure of a facility with only tanks or containers used for transfer, treatment or storage, or incinerator units to be closed. The owner or operator shall notify the Department in writing at least 45 days prior to the date on which the owner or operator expects to begin partial or final closure of a boiler or industrial furnace, whichever is earlier. The Department may require a longer notice period of up to 180 days for any facility or unit by giving written notice of the longer period if the Department determines that additional time would be required to review and make necessary amendments to the closure plan prior to the initiation of closure. Within 90 days after receiving a notification, the Department may review the closure plan to determine whether any factor has significantly changed since a prior review was undertaken, or determine whether the plan is otherwise adequate or inadequate, and may prescribe additional requirements or request modifications to the plan.

(2) The date when the owner or operator "expects to begin closure" shall be either no later than the date on which any hazardous waste management unit receives the known final volume of hazardous wastes or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous waste. The Department may approve an extension to this one–year limit if the owner or operator of a hazardous waste management unit demonstrates to the satisfaction of the Department that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes.the owner or operator has taken, and will continue to take, all steps necessary to comply with all applicable permit requirements, and the extension will not pose a threat to human health and the environment.

(3) For units meeting the requirements of section 66264.113(d), the date when the owner or operator "expects to begin closure" shall be no later than the date on which the hazardous waste management unit receives the known final volume of non–hazardous wastes, or if there is a reasonable possibility that the hazardous waste management unit will receive additional non–hazardous wastes, no later than one year after the date on which the unit received the most recent volume of non–hazardous wastes. If the owner or operator can demonstrate to the Department that the hazardous waste management unit has the capacity to receive additional non–hazardous wastes and the owner or operator has taken, and will continue to take, all steps to prevent threats to human health and threats to the environment, including compliance with all applicable permit requirements, the Department may approve an extension to this one–year limit. A facility operating under the requirements of section 66264.113(d) shall be subject to the facility fee specified in Health and Safety Code, Division 20, section 25205.2(d), until the facility has complied with the requirements of section 66264.113(a). Health and Safety Code, Division 20, section 25205.2(d)(4) shall not apply to a facility operating pursuant to section 66264.113(d).

(4) If the facility's permit is terminated, or if the facility is otherwise ordered, by judicial decree or final order under Health and Safety Code section 25358.3 or article 8 of chapter 6.5 of division 20 of the Health and Safety Code, to cease receiving hazardous wastes or to close, then the requirements of this section do not apply. However, the owner or operator shall close the facility in accordance with the deadlines established in section 66264.113.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6, 25205.2, 25245, 58004 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5, 25245 and 25246, Health and Safety Code; 40 CFR Section 264.112.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Amendment of subsection (a)(2) and NOTE filed 10–24–94 as an emergency; operative 10–24–94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–20–95 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsection (a)(2) and NOTE refiled 2–21–95 as an emergency; operative 2–21–95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–21–95 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsection (a)(2) and NOTE refiled 6–19–95 as an emergency; operative 6–19–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–95 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsection (a)(2) and NOTE refiled 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 10–24–94 order transmitted to OAL 12–15–95 and filed 1–31–96 (Register 96, No. 5).
7. New subsection (d)(3), subsection renumbering, and amendment of newly designated subsection (d)(4) and NOTE filed 6–20–96; operative 7–20–96 (Register 96, No. 25).
8. Amendment of subsection (d)(1) and NOTE filed 7–1–96; operative 7–31–96 (Register 96, No. 27).
9. Change without regulatory effect amending subsection (d)(2) filed 10–22–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 43).
10. Change without regulatory effect amending subsection (d)(3) filed 12–23–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 52).
11. Change without regulatory effect amending subsection (d)(3) filed 1–7–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 2).
12. Change without regulatory effect amending subsection (a)(2) filed 8–15–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 33).

§ 66264.113. Closure; Time Allowed for Closure.

(a) Within 90 days after receiving the final volume of hazardous wastes, or the final volume of non–hazardous wastes if the owner or operator complies with all applicable requirements in subsections (d) and (e) of this section, at a hazardous waste management unit or facility, the owner or operator shall treat, remove from the unit or facility, or dispose of on–site, all hazardous wastes in accordance with the approved closure plan. The Department may approve a longer period if the owner or operator complies with all applicable requirements for requesting a modification to the permit and demonstrates to the satisfaction of the Department that:

(1)(A) the activities required to comply with this subsection will, of necessity, take longer than 90 days to complete; or

(B) 1. the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes, or has the capacity to receive non–hazardous wastes if the owner or operator complies with subsections (d) and (e) of this section; and

2. there is a reasonable likelihood that a person other than the owner or operator will recommence operation of the hazardous waste management unit or the facility within one year; and

3. closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

(2) the owner or operator has taken and will continue to take all steps to comply with all applicable permit requirements and the longer period will not pose a threat to human health and the environment.

(b) The owner or operator shall complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous wastes, or the final volume of non–hazardous wastes if the owner or operator complies with all applicable requirements in subsections (d) and (e) of this section, at the hazardous waste management unit or facility. The Department may approve an extension to the closure period if the owner or operator complies with all applicable requirements for requesting a modification to the permit and demonstrates that:

(1)(A) the partial or final closure activities will, of necessity, take longer than 180 days to complete; or

(B) 1. the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes, or has the capacity to receive non–hazardous wastes if the owner or operator complies with subsections (d) and (e) of this section; and

2. there is reasonable likelihood that a person other than the owner or operator will recommence operation of the hazardous waste management unit or the facility within one year; and

3. closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

(2) the owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed, but not operating, hazardous waste management unit or facility, including compliance with all applicable permit requirements.

(c) The demonstrations referred to in subsections (a) and (b) of this section shall be made as follows:

(1) The demonstrations in subsection (a) of this section shall be made at least 30 days prior to the expiration of the 90–day period in subsection (a); and

(2) the demonstration in subsection (b) shall be made at least 30 days prior to the expiration of the 180–day period in subsection (b) of this section, unless the owner or operator is otherwise subject to the deadlines in subsection (d) of this section.

(d) The Department may allow an owner or operator to receive only non–hazardous wastes in a landfill, land treatment, or surface impoundment unit after the final receipt of hazardous wastes at that unit, if:

(1) The owner or operator requests a permit modification in compliance with all applicable requirements in chapters 20 and 21 of this division and in the permit modification request demonstrates to the Department that:

(A) the unit has the existing design capacity as indicated on the Part A application to receive non–hazardous wastes; and

(B) there is a reasonable likelihood that the owner or operator or another person will receive non–hazardous wastes in the unit within one year after the final receipt of hazardous wastes; and

(C) the non–hazardous wastes will not be incompatible with any remaining wastes in the unit, or with the facility design and operating requirements of the unit or facility under this chapter; and

(D) closure of the hazardous waste management unit would be incompatible with continued operation of the unit or facility; and

(E) the owner or operator is operating and will continue to operate in compliance with all applicable permit requirements of this chapter and with all applicable regulations promulgated by other state agencies governing discharges of hazardous or non–hazardous wastes to land and water, including, but not limited to, regulations promulgated by the California Integrated Waste Management Board and the State Water Resources Control Board; and

(2) The request to modify the permit includes an amended waste analysis plan, monitoring and response program for groundwater, air, soil, and soil–pore gas required under articles 6 and 17 of this chapter, human exposure assessment required under Title 42, U.S.C., Section 6939a, and closure and post–closure plans, and updated cost estimates and demonstrations of financial assurance for closure and post–closure care as necessary and appropriate, to reflect any changes due to the presence of hazardous constituents in the non–hazardous wastes, and changes in closure activities, including the expected year of closure, if applicable, under Title 22, CCR, section 66264.112(b)(7), as a result of the receipt of non–hazardous wastes following the final receipt of hazardous wastes; and

(3) The request to modify the permit includes revisions, as necessary and appropriate, to affected conditions of the permit to account for the receipt of non–hazardous wastes following receipt of the final volume of hazardous wastes; and

(4) The request to modify the permit and the demonstrations referred to in subsections (d)(1) and (d)(2) of this section are submitted to the Department no later than 180 days prior to the date on which the owner or operator of a facility receives the known final volume of hazardous wastes at the unit, or no later than 90 days after the effective date of this rule, whichever is later.

(e) In addition to the requirements in subsection (d) of this section, an owner or operator of a hazardous waste surface impoundment that is not in compliance with the liner and leachate collection system requirements pursuant to Title 22, CCR, Division 4.5, Chapter 14, Article 11 shall:

(1) Submit with the request to modify the permit:

(A) a contingent corrective measures plan, unless a corrective action program has already been submitted under sections 66264.99, 66264.100 and 66264.708; and

(B) a plan for removing hazardous wastes in compliance with subsection (e)(2) of this section; and

(2) Remove all hazardous wastes from the unit by removing all hazardous liquids, and by removing all hazardous sludges to the extent practicable without impairing the integrity of the liner(s), if any.

(3) Removal of hazardous wastes shall be completed no later than 90 days after the final receipt of hazardous wastes. The Department may approve an extension to this deadline if the owner or operator demonstrates that the removal of hazardous wastes will, of necessity, take longer than the allotted period to complete and that an extension will not pose a threat to human health or the environment.

(4) If a release that is a statistically significant increase (or decrease in the case of pH) over background values for detection monitoring parameters or constituents specified in the permit or that exceeds the facility's protection standards for groundwater, air, soil, or soil–pore gas at the points of compliance, if applicable, is detected in accordance with the requirements in articles 6, 15.5, or 17 of this chapter, the owner or operator of the unit:

(A) shall implement corrective measures in accordance with the approved contingent corrective measures plan required by subsection (e)(1) of this section no later than one year after detection of the release, or approval of the contingent corrective measures plan, whichever is later;

(B) may continue to receive wastes at the unit following detection of the release only if the approved corrective measures plan includes a demonstration that continued receipt of wastes will not impede corrective action; and

(C) may be required by the Department to implement corrective measures in less than one year or to cease receipt of wastes until corrective measures have been implemented if necessary to protect human health or the environment.

(5) During the period of corrective action, the owner or operator shall provide semi–annual reports to the Department that describe the progress of the corrective action program, compile all monitoring data for groundwater, air, soil, and soil–pore gas, and evaluate the effect of the continued receipt of non–hazardous wastes on the effectiveness of the corrective action.

(6) The Department may require the owner or operator to commence closure of the unit if the owner or operator fails to implement corrective action measures in accordance with the approved contingent corrective measures plan within one year as required in subsection (e)(4) of this section, or fails to make substantial progress in implementing corrective action and achieving the facility's protection standards for groundwater, air, soil, or soil–pore gas, or background levels if the facility has not yet established a protection standard for groundwater, air, soil or soil–pore gas.

(7) If the owner or operator fails to implement corrective measures as required in subsection (e)(4) of this section, or if the Department determines that substantial progress has not been made pursuant to subsection (e)(6) of this section, the Department shall:

(A) notify the owner or operator in writing that the owner or operator shall begin closure in accordance with the deadlines in subsections (a) and (b) of this section and provide a detailed statement of reasons for this determination, and

(B) provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the decision no later than 20 days after the date of the notice.

(C) If the Department receives no written comments, the decision will become final five days after the close of the comment period. The Department shall notify the owner or operator that the decision is final, and that a revised closure plan, if necessary, shall be submitted within 15 days of the final notice and that closure shall begin in accordance with the deadlines in subsections (a) and (b) of this section.

(D) If the Department receives written comments on the decision, the Department shall make a final decision within 30 days after the end of the comment period, and shall provide the owner or operator in writing, and the public through a newspaper notice, a detailed statement of reasons for the final decision. If the Department determines that substantial progress has not been made, closure shall be initiated in accordance with the deadlines in subsections (a) and (b) of this section.

(E) The final determinations made by the Department under subsections (e)(7)(C)–(D) of this section are not subject to administrative appeal.

NOTE: Authority cited: Sections 25150, 25159, 25245, 58004 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5, 25200.10, 25245 and 25246, Health and Safety Code; 40 CFR Section 264.113.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Amendment of subsections (a), (a)(1)(B)1., (b), (b)(1)(B)1. and (c)(1)–(2), new subsections (d)–(e)(7)(E), and amendment of NOTE filed 6–20–96; operative 7–20–96 (Register 96, No. 25).
3. Change without regulatory effect amending subsections (a), (b), (e)(1)(A) and (e)(5) filed 10–22–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 43).
4. Change without regulatory effect amending subsections (d)(2) and (e)(1)(A) filed 12–23–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 52).
5. Change without regulatory effect amending subsection (e)(3) filed 6–7–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 24).

§ 66264.114. Disposal or Decontamination of Equipment, Structures and Soils.

During the partial and final closure periods, all contaminated equipment, structures and soils shall be properly disposed of or decontami-

nated by removing all hazardous waste and residues, unless otherwise specified in sections 66264.197, 66264.228, 66264.258, 66264.280, or 66264.310. By removing all hazardous wastes and residues or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and shall handle that waste in accordance with all applicable requirements of chapter 12 of this division.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25245, Health and Safety Code. Reference: Sections 25159, 25159.5, 25245 and 25246, Health and Safety Code; 40 CFR Section 264.114.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66264.115. Certification of Closure.

Within 60 days of completion of partial closure, and within 60 days of the completion of final closure, the owner or operator shall submit to the Department, by registered mail, a certification that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. The certification shall be signed by the owner or operator and by an independent qualified professional engineer, registered in California. Documentation supporting the independent qualified registered professional engineer's certification shall be furnished to the Department upon request until the Department releases the owner or operator from the financial assurance requirements for closure under section 66264.143, subsection (j).

NOTE: Authority cited: Sections 25150, 25159 and 25245, Health and Safety Code. Reference: Sections 25159, 25159.5, 25245 and 25246, Health and Safety Code; 40 CFR Section 264.115.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect amending section and NOTE filed 12–19–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 51).

§ 66264.116. Survey Plat.

No later than the submission of the certification of closure of each hazardous waste disposal unit, the owner or operator shall submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Department, a survey plat indicating the location and dimensions of landfill cells or other hazardous waste disposal units with respect to permanently surveyed vertical and horizontal benchmarks. This plat shall be prepared and certified by a professional land surveyor licensed in California. The plat filed with the local zoning authority, or the authority with jurisdiction over local land use, shall contain a note, prominently displayed, which states the owner's or operator's obligation to restrict disturbance of the hazardous waste disposal unit in accordance with the applicable regulations of this article.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25245, Health and Safety Code. Reference: Sections 25259, 25159.5, 25245 and 25246, Health and Safety Code; 40 CFR Section 264.116.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66264.117. Post–Closure Care and Use of Property.

(a) This section pertains to facilities at which all hazardous wastes, waste residues, contaminated materials and contaminated soils will not be removed during closure. Additional requirements for such facilities are cited in title 23 of the California Code of Regulations.

(b)(1) Post–closure care for each hazardous waste management unit subject to the requirements of sections 66264.117 through 66264.120 shall begin after completion of closure of the unit and, except as provided in subsections (b)(2)(A) and (b)(2)(B), continue for 30 years after that date and shall consist of at least the following:

(A) monitoring and reporting in accordance with the requirements of articles 6, 11, 12, 13, 14, and 16 of this chapter; and

(B) maintenance and monitoring of waste containment systems in accordance with the requirements of articles 6, 11, 12, 13, 14, and 16 of this chapter.

(2) Any time preceding partial closure of a hazardous waste management unit subject to post–closure care requirements or final closure, or any time during the post–closure period for a particular unit, the Department shall, in accordance with the permit modification procedures in chapters 20 and 21 of this division:

(A) shorten the post–closure care period applicable to the hazardous waste management unit, or facility, if all disposal units have been closed, if the owner or operator demonstrates to the satisfaction of the Department and the Department finds that the reduced period is sufficient to protect human health and the environment (e.g., leachate or ground–water monitoring results, characteristics of the hazardous wastes, application of advanced technology, or alternative disposal, treatment, or re–use techniques indicate that the hazardous waste management unit or facility is secure); or

(B) extend the post–closure care period applicable to the hazardous waste management unit or facility if the Department finds that the extended period is necessary to protect human health and the environment (e.g., leachate or ground–water monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).

(c) The Department shall require, at partial and final closure, continuation of any of the security requirements of section 66264.14 during part or all of the post–closure period when:

(1) hazardous wastes may remain exposed after completion of partial or final closure; or

(2) access by the public or domestic livestock may pose a hazard to human health.

(d) Post–closure use of property on or in which hazardous wastes remain after partial or final closure shall never be allowed to disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the facility's monitoring systems, unless the Department finds that the disturbance:

(1) is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or

(2) is necessary to reduce a threat to human health or the environment.

(e) All post–closure care activities shall be in accordance with the provisions of the approved post–closure plan as specified in section 66264.118.

(f) Upon closure of a hazardous waste facility wherein hazardous wastes remain on–site, no construction, filling, grading, excavating or mining shall occur without the issuance of a variance by the Department. No variance may be granted which is inconsistent with subsection (d) of this section.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25245, Health and Safety Code. Reference: Sections 25159, 25159.5, 25245 and 25246, Health and Safety Code; 40 CFR Section 264.117.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66264.118. Post–Closure Plan; Amendment of Plan.

(a) Written Plan. The owner or operator of a hazardous waste disposal unit shall have a written post–closure plan. In addition, certain surface impoundments and waste piles from which the owner or operator intends to remove or decontaminate the hazardous wastes at partial or final closure are required by sections 66264.228(c)(1)(B) and 66264.258(c)(1)(B) to have contingent post–closure plans. The plan shall be submitted with the permit application, in accordance with section 66270.14(b)(13) of this division, or when otherwise requested by the Department. The plan shall be approved by the Department as part of the permit issuance procedures under chapter 21 of this division. In accordance with section 66270.32 of this division, the approved post–closure plan will become a condition of any permit issued.

(b) For each hazardous waste management unit subject to the requirements of this section, the post–closure plan shall identify the activities that will be carried on after closure of each disposal unit and the frequency of these activities, and include at least:

(1) a description of the planned monitoring activities and frequencies at which they will be performed to comply with articles 6, 11, 12, 13, 14, and 16 of this chapter during the post–closure care period; and

(2) a description of the planned maintenance activities, and frequencies at which they will be performed, to ensure:

(A) the integrity of the cap and final cover and other containment systems in accordance with the requirements of articles 11, 12, 13, 14, and 16 of this chapter; and

(B) the function of the monitoring equipment in accordance with the requirements of articles 6, 11, 12, 13, 14, and 16 of this chapter; and

(3) the name, address, and phone number of the person or office to contact about the hazardous waste disposal unit or facility during the post-closure care period.

(c) Until final closure of the facility, a copy of the approved post-closure plan and all revisions shall be kept at the facility and furnished to the Department upon request, including request by mail. After final closure, the person or office specified in section 66264.118(b)(3) shall keep an updated and approved post-closure plan during the remainder of the post-closure period.

(d) Amendment of plan. The owner or operator shall submit a written notification of or request for a permit modification to authorize a change in the approved post-closure plan in accordance with the applicable requirements of chapters 20 and 21 of this division. The written notification or request shall include a copy of the amended post-closure plan for review or approval by the Department.

(1) The owner or operator may submit a written notification or request to the Department for a permit modification to amend the post-closure plan at any time during the active life of the facility or during the post-closure care period.

(2) The owner or operator shall submit a written notification of or request for a permit modification to authorize a change in the approved post-closure plan whenever:

(A) changes in operating plans or facility design affect the approved post-closure plan, or

(B) there is a change in the expected year of final closure, if applicable, or

(C) events which occur during the active life of the facility or the post-closure care period, including partial and final closures, affect the approved post-closure plan.

(3) The owner or operator shall submit a written request for a permit modification at least 60 days prior to the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred which has affected the post-closure plan. The Department will approve, disapprove or modify this amended plan in accordance with the procedures in chapters 20 and 21 of this division. In accordance with section 66270.32 of this division, the approved post-closure plan will become a permit condition.

(4) The Department shall modify or request modifications to the plan under the conditions described in section 66264.118(d)(2) or for other causes if deemed necessary to prevent threats to human health and the environment. The owner or operator shall submit the modified plan no later than 60 days after the Department's request. Any modifications requested by the Department will be approved, disapproved, or modified in accordance with the procedures in chapters 20 and 21 of this division.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25245, Health and Safety Code. Reference: Sections 25159, 25159.5, 25245 and 25246, Health and Safety Code; 40 CFR Section 264.118.

HISTORY

1. New section filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 66264.119. Post-Closure Notices.

(a) No later than 60 days after certification of closure of each hazardous waste disposal unit, the owner or operator shall submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Department a record of the type, location, and quantity of hazardous wastes disposed of within each cell or area (not limited to only hazardous waste disposal unit) of the facility. For hazardous wastes disposed of before January 12, 1981, the owner or operator shall identify the type, location, and quantity of the hazardous wastes to the best of the owner's or operator's knowledge and in accordance with any records the owner or operator has kept. Any changes in the type, location or quantity of hazardous wastes disposed of within each cell or area of the facility that occur after the survey plat and record of wastes have been filed shall be reported to the local zoning authority or the authority with jurisdiction over local land use and to the Department.

(b) Within 60 days of certification of closure of the first hazardous waste disposal unit and within 60 days of certification of closure of the last hazardous waste disposal unit, the owner or operator shall:

(1) record, in accordance with State law, a notation on the deed to the facility property, or on some other instrument which is normally examined during title search, that will in perpetuity notify any potential purchaser of the property that:

(A) the land has been used to manage hazardous wastes; and

(B) its use is restricted under article 7 of this chapter; and

(C) the survey plat and record of the type, location, and quantity of hazardous wastes disposed of within each cell or area (not limited to only hazardous waste disposal unit) of the facility required by sections 66264.116 and 66264.119(a) have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the Department; and

(2) submit, to the Department, a certification, signed by the owner, that the notation specified in subsection (b)(1) of this section has been recorded, including a copy of the document in which the notation has been placed.

(c) If at any time the owner or operator or any subsequent owner or operator of the land upon which a hazardous waste disposal unit is located wishes to remove hazardous wastes and hazardous waste residues, the liner, if any, or contaminated underlying and surrounding soils, the owner or operator shall request a modification to the post-closure permit in accordance with the applicable requirements in chapters 20 and 21 of this division. The owner or operator shall demonstrate that the removal of hazardous wastes will satisfy the criteria of section 66264.117(d). By removing hazardous waste, the owner or operator may become a generator of hazardous waste and shall manage it in accordance with all applicable requirements of this chapter. If the Department grants a permit modification or otherwise grants approval to conduct such removal activities, and the removal activities are completed to the satisfaction of the Department the owner or operator may request that the Department approve either:

(1) the removal of the notation on the deed to the facility property or other instrument normally examined during title search; or

(2) the addition of a notation to the deed or instrument indicating the removal of the hazardous waste.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25245, Health and Safety Code. Reference: Sections 25159, 25159.5, 25245 and 25246, Health and Safety Code; 40 CFR Section 264.119.

HISTORY

1. New section filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 66264.120. Certification of Completion of Post-Closure Care.

No later than 60 days after completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator shall submit to the Department, by registered mail, a certification that the post-closure care period for the hazardous waste disposal unit was performed in accordance with the specifications in the approved post-closure plan. The certification shall be signed by the owner or operator and an independent qualified professional engineer, registered in California. Documentation supporting the independent qualified registered professional engineer's certification shall be furnished to the Department upon request until the Department releases the owner or operator from the financial assurance requirements for post-closure care under section 66264.145, subsection (j).

NOTE: Authority cited: Sections 25150, 25159 and 25245, Health and Safety Code. Reference: Sections 25159, 25159.5, 25245 and 25246, Health and Safety Code; 40 CFR Section 264.120.

HISTORY

1. New section filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect amending section and NOTE filed 12–19–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 51).

Article 8. Financial Requirements

§ 66264.140. Applicability.

(a) The requirements of sections 66264.142, 66264.143 and 66264.147 apply to owners and operators of all hazardous waste facilities, as defined in section 66260.10, except as provided otherwise in this article.

(b) The requirements of sections 66264.144 and 66264.145 apply only to owners and operators of:

(1) hazardous waste facilities, which are disposal facilities, as defined in section 66260.10;

(2) for purposes of this article, a facility which utilizes a temporary waste pile, as defined in section 66260.10, and surface impoundments as defined in section 66260.10, shall be considered as a disposal site until the owner or operator has demonstrated to the satisfaction of the Department that all wastes have been removed from the site;

(3) tank systems that are required under section 66264.197 to meet the requirements for landfills; and

(4) Containment buildings that are required under section 66264.1102 to meet the requirements for landfills.

(c) States and the Federal government are exempt from the requirements of this article.

(d) For purposes of this article, state government shall not include municipal, local, city, county, city–county special district government or any subdivisions thereof.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6, 25245 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5, 25245 and 58012, Health and Safety Code; 40 CFR Section 264.140.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of subsection (b)(3), new subsection (b)(4) and amendment of NOTE filed 10–24–94 as an emergency; operative 10–24–94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–20–95 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsection (b)(3), new subsection (b)(4) and amendment of NOTE refiled 2–21–95 as an emergency; operative 2–21–95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–21–95 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsection (b)(3), new subsection (b)(4) and amendment of NOTE refiled 6–19–95 as an emergency; operative 6–19–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–95 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsection (b)(3), new subsection (b)(4) and amendment of NOTE refiled 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 10–24–94 order including amendment of subsection (b)(3), transmitted to OAL 12–15–95 and filed 1–31–96 (Register 96, No. 5).
7. Change without regulatory effect amending subsection (b)(1) filed 8–15–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 33).
8. Editorial correction of HISTORY 7 (Register 98, No. 42).
9. Change without regulatory effect redesignating subsection (c)(1) as subsection (d) filed 11–6–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 45).

§ 66264.141. Definition of Terms As Used in This Article.

(a) The following terms, as defined in section 66260.10 are used in the specifications for the financial tests for closure, post–closure care, and liability coverage. The definitions are intended to assist in the understanding of these regulations and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices.

"Assets"
"Current assets"
"Current liabilities"
"Current plugging and abandonment cost estimate"
"Independently audited"
"Liabilities"
"Net working capital"
"Net worth"
"Substantial business relationship"
"Tangible net worth"

(b) In the liability coverage requirements the terms "bodily injury" and "property damage" as defined in section 66260.10 shall have the meanings given these terms by applicable State law. However, these terms do not include those liabilities which, consistent with standard industry practices, are excluded from coverage in liability policies for bodily injury and property damage. The Department intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry. The definitions given below and defined in section 66260.10 are intended to assist in the understanding of these regulations and are not intended to limit their meanings in a way that conflicts with general insurance industry usage.

"Accidental occurrence"
"Legal defense costs"
"Nonsudden accidental occurrence"
"Sudden accidental occurrence"

NOTE: Authority cited: Sections 208, 25150, 25159, 25159.5 and 25245, Health and Safety Code. Reference: Section 25245, Health and Safety Code; 40 CFR Section 264.141.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.142. Cost Estimate for Closure.

(a) The owner or operator shall prepare and submit to the Department a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in sections 66264.111 through 66264.115 and applicable closure requirements in sections 66264.178, 66264.197, 66264.228, 66264.258, 66264.280, 66264.310, 66264.351, 66264.601 through 66264.603, and 66264.1102.

(1) The estimate shall be submitted in accordance with sections 66270.10 and 66270.14. The estimate shall equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (see section 66264.112(b)).

(2) The closure cost estimate shall be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of parent corporation in section 66260.10.) The owner or operator may use costs for on–site disposal if it can be demonstrated that on–site disposal capacity will exist at all times over the life of the facility.

(3) The closure cost estimate shall not incorporate any salvage value that may be realized with the sale of hazardous wastes, or non–hazardous wastes if applicable under section 66264.113(d), facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

(4) The owner or operator shall not incorporate a zero cost for hazardous wastes, or non–hazardous wastes if applicable under section 66264.113(d), that might have economic value.

(b) During the active life of the facility, the owner or operator shall adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with section 66264.143. For owners and operators using the financial test or corporate guarantee, the closure cost estimate shall be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Department as specified in section 66264.143(f)(3). The adjustment shall be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce

in its Survey of Current Business, as specified in subsections (b)(1) and (2) of this section. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

(1) The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

(c) During the active life of the facility, the owner or operator shall revise the closure cost estimate no later than 30 days after the Department has approved the request to modify the closure plan, if the change in the closure plan increases the cost of closure. The revised closure cost estimate shall be adjusted for inflation as specified in subsection (b) of this section.

(d) The owner or operator shall keep the following at the facility during the operating life of the facility: the latest closure cost estimate prepared in accordance with subsections (a) and (c) of this section and, when this estimate has been adjusted in accordance with subsection (b) of this section, the latest adjusted closure cost estimate.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6, 25245, 58004 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5 and 25245, Health and Safety Code; 40 CFR Section 264.142.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of subsection (a) and NOTE filed 10–24–94 as an emergency; operative 10–24–94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–20–95 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsection (a) and NOTE refiled 2–21–95 as an emergency; operative 2–21–95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–21–95 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsection (a) and NOTE refiled 6–19–95 as an emergency; operative 6–19–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–95 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsection (a) and NOTE refiled 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 10–24–94 order transmitted to OAL 12–15–95 and filed 1–31–96 (Register 96, No. 5).
7. Amendment of subsections (a)(3)–(4) and NOTE filed 6–20–96; operative 7–20–96 (Register 96, No. 25).

§ 66264.143. Financial Assurance for Closure.

An owner or operator of each facility shall establish and demonstrate to the Department financial assurance for closure of the facility. The owner or operator shall choose from the options as specified in subsections (a) through (f) and (i) of this section or section 66264.146 of this article.

(a) Closure trust fund.

(1) An owner or operator may satisfy the requirements of this section by establishing a closure trust fund which conforms to the requirements of this subsection and submitting an originally signed duplicate of the trust agreement to the Department. An owner or operator of a new facility shall submit the originally signed duplicate of the trust agreement to the Department at least 60 days before the date on which hazardous waste is first received for transfer, treatment, storage or disposal. The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(2) The wording of the trust agreement shall be identical to the wording specified in section 66264.151, subsection (a)(1), shall contain original signatures and shall be accompanied by a formal certification of acknowledgment (for example, see section 66264.151, subsection (a)(2)). Schedule A of the trust agreement shall be updated within 60 days after a change in the amount of the current closure cost estimate covered by the trust agreement.

(3) Payments into the trust fund shall be made annually by the owner or operator over the term of the initial RCRA permit, or ten (10) years beginning with the establishment of the trust fund or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereafter referred to as the "pay–in period." The payments into the closure trust fund shall be made as follows:

(A) For existing facilities, the first payment shall be made at the time the trust fund is established; a receipt from the trustee for this payment shall be submitted by the owner or operator to the Department. The first payment shall be at least equal to the current closure cost estimate, except as provided in subsection (g) of this section, divided by the number of years in the pay–in period. Subsequent payments shall be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment shall be determined by this formula:

$$\text{Next payment} = \frac{CE - CV}{Y}$$

where CE is the current closure cost estimate, CV is the current value of the trust fund and Y is the number of years remaining in the pay–in period.

(B) For a new facility, the first payment shall be made before the initial receipt of hazardous waste for transfer, treatment, storage or disposal. A receipt from the trustee for this payment shall be submitted by the owner or operator to the Department before this initial receipt of hazardous waste. The first payment shall be at least equal to the current closure cost estimate, except as provided in subsection (g) of this section, divided by the number of years in the pay–in period. Subsequent payments shall be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment shall be determined by this formula:

$$\text{Next payment} = \frac{CE - CV}{Y}$$

where CE is the current closure cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay–in period.

(C) If an owner or operator establishes a trust fund as specified in section 66265.143(a) of this division, and the value of that trust fund is less than the current closure cost estimate when a permit is awarded for the facility, the amount of the current closure cost estimate still to be paid into the trust fund shall be paid in over the pay–in period as defined in subsection (a)(3) of this section. Payments shall continue to be made no later than 30 days after each anniversary date of the first payment made pursuant to chapter 15 of this division. The amount of each payment must be determined by this formula:

$$\text{Next payment} = \frac{CE - CV}{Y}$$

where CE is the current closure cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay–in period.

(4) The owner or operator may accelerate payments into the trust fund or the full amount of the current closure cost estimate may be deposited at the time the fund is established. However, the value of the fund shall be maintained at no less than the value that the fund would have if annual payments were made as specified in subsection (a)(3) of this section.

(5) If the owner or operator establishes a closure trust fund after having used one or more alternate mechanisms specified in this section or in section 66265.143 of this division, the first payment shall be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to specifications of this subsection and section 66265.143, subsection (a) of this division, as applicable.

(6) After the pay–in period is completed, whenever the current closure cost estimate changes, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain

other financial assurance as specified in this section to cover the difference.

(7) If the value of the trust fund is greater than the total amount of the current closure cost estimate, the owner or operator may submit a written request to the Department for release of the amount in excess of the current closure cost estimate.

(8) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the trust fund, a written request may be submitted to the Department for release of the amount in excess of the current closure cost estimate covered by the trust fund.

(9) Within 60 days after receiving a request from the owner or operator for release of funds as specified in subsections (a)(7) or (8) of this section, the Department will instruct the trustee to release to the owner or operator such funds as the Department specifies in writing.

(10) Before beginning final closure, the value of the trust fund shall equal the amount of the current closure cost estimate. If the value of the fund is less than the amount of the current estimate, the owner or operator shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance, as specified in this section, to cover the difference.

(11) After beginning partial or final closure, an owner or operator or another person authorized to conduct partial or final closure may request reimbursements for partial or final closure expenditures by submitting itemized bills to the Department. The owner or operator may request reimbursements for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for partial or final closure activities, the Department shall instruct the trustee to make reimbursements in those amounts as the Department specifies in writing, if the Department determines that the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified. If the Department has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, reimbursements of such amounts may be withheld until the Department determines, in accordance with subsection (j) of this section that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Department does not instruct the trustee to make such reimbursements, the Department shall provide the owner or operator with a detailed written statement of reasons.

(12) The Department shall agree to termination of the trust when:

(A) an owner or operator substitutes alternate financial assurance as specified in this section; or

(B) the Department releases the owner or operator from the requirements in accordance with subsection (j) of this section.

(b) Surety bond guaranteeing payment into a closure trust fund.

(1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this subsection and submitting the bond to the Department. An owner or operator of a new facility shall submit the bond to the Department at least 60 days before the date on which hazardous waste is first received for transfer, treatment, storage or disposal. The bond shall be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

(2) The wording of the surety bond shall be identical to the wording specified in section 66264.151, subsection (b). The surety bond shall contain original signatures and shall be accompanied by the documents specified in this subsection.

(3) The owner or operator who uses a surety bond to satisfy the requirements of this section shall also establish a standby trust fund. Under the terms of the bond, all payments made thereunder shall be deposited by the surety directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund shall meet the requirements specified in subsection (a) of this section, except that:

(A) an originally signed duplicate of the standby trust agreement shall be submitted to the Department with the surety bond; and

(B) until the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

1. payments into the trust fund as specified in subsection (a) of this section;

2. updating of Schedule A of the trust agreement (see section 66264.151, subsection (a)) to show current closure cost estimates as required by subsection (a)(2) of this section;

3. annual valuations as required by the trust agreement; and

4. notices of nonpayment as required by the trust agreement.

(4) The bond shall guarantee that the owner or operator shall:

(A) fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility; or

(B) fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin final closure issued by the Department becomes final, or within 15 days after an order to begin final closure is issued by a U.S. district court or other court of competent jurisdiction; or

(C) provide alternate financial assurance as specified in this section, and obtain the Department's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(6) The penal sum of the bond shall be in an amount at least equal to the current closure cost estimate, except as provided in subsection (g) of this section.

(7) Whenever the current closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, shall either cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the Department.

(8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation shall not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipt.

(9) The owner or operator may cancel the bond with prior written consent from the Department based on receipt of evidence of alternate financial assurance as specified in this section.

(c) Surety bond guaranteeing performance of closure.

(1) An owner or operator of a permitted facility, as defined in section 66260.10, may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this subsection and submitting the bond to the Department. An owner or operator of a new facility shall submit the bond to the Department at least 60 days before the date on which hazardous waste is first received for transfer, treatment, storage or disposal. The bond shall be effective before this initial receipt of hazardous waste. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

(2) The wording of the surety bond shall be identical to the wording specified in section 66264.151, subsection (c). The surety bond shall contain original signatures and shall be accompanied by the documents specified in this subsection.

(3) The owner or operator who uses a surety bond to satisfy the requirements of this section shall also establish a standby trust fund. Under the terms of the bond, all payments made thereunder shall be deposited by the surety directly into the standby trust fund in accordance with instruc-

tions from the Department. This standby trust must meet the requirements specified in subsection (a) of this section, except that:

(A) an originally signed duplicate of the standby trust agreement shall be submitted to the Department with the surety bond; and

(B) unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

1. payments into the trust fund as specified in subsection (a) of this section;

2. updating of Schedule A of the trust agreement to show current closure cost estimates as required by subsection (a)(2) of this section;

3. annual valuations as required by the trust agreement; and

4. notices of nonpayment as required by the trust agreement.

(4) The bond shall guarantee that the owner or operator will:

(A) perform final closure in accordance with the closure plan and other requirements of the permit for the facility whenever required to do so; or

(B) provide alternate financial assurance as specified in this section, and obtain the Department's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a determination by the Department that the owner or operator has failed to perform final closure in accordance with the approved closure plan and other permit requirements when required to do so, under the terms of the bond the surety shall perform final closure as guaranteed by the bond or shall deposit the amount of the penal sum into the standby trust fund. For facilities that require a RCRA permit, the determination shall be made pursuant to Health and Safety Code Section 25187.

(6) The penal sum of the bond shall be in an amount at least equal to the current closure cost estimate.

(7) Whenever the current closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, shall either cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section. Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval from the Department.

(8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation shall not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts.

(9) The owner or operator may cancel the bond if the Department has given prior written consent. The Department will provide such written consent when:

(A) an owner or operator substitutes alternate financial assurance as specified in this section; or

(B) the Department releases the owner or operator from the requirements of this section in accordance with subsection (j) of this section.

(10) The surety shall not be liable for deficiencies in the performance of closure by the owner or operator after the Department releases the owner or operator from the requirements of this section in accordance with subsection (j) of this section.

(d) Closure letter of credit.

(1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this subsection and submitting the letter to the Department. An owner or operator of a new facility shall submit the letter of credit to the Department at least 60 days before the date on which hazardous waste is first received for transfer, treatment, storage or disposal. The letter of credit shall be effective before this initial receipt of hazardous waste. The issuing institution shall be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency.

(2) The wording of the letter of credit shall be identical to the wording specified in section 66264.151, subsection (d). The letter of credit shall contain original signatures and shall be accompanied by the documents specified in (3) and (4) of this subsection.

(3) An owner or operator who uses a letter of credit to satisfy the requirements of this section shall also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Department shall be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund shall meet the requirements of the trust fund specified in subsection (a) of this section, except that:

(A) an originally signed duplicate of the standby trust agreement shall be submitted to the Department with the letter of credit; and

(B) unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

1. payments into the trust fund as specified in subsection (a) of this section;

2. updating of Schedule A of the trust agreement (see section 66264.151, subsection (a)) to show current closure cost estimates;

3. annual valuations as required by the trust agreement; and

4. notices of nonpayment as required by the trust agreement.

(4) The letter of credit shall be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date and providing the following information: the hazardous waste facility Identification Number, name, and address of the facility, and the amount of funds assured for closure of the facility by the letter of credit.

(5) The letter of credit shall be irrevocable and issued for a period of at least one (1) year. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one (1) year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Department by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days shall begin on the date when both the owner or operator and the Department have received the notice, as evidenced by the return receipts.

(6) The letter of credit shall be issued in an amount at least equal to the current closure cost estimate, except as provided in subsection (g) of this section.

(7) Whenever the current closure cost estimate increases to an amount greater than the amount of the letter of credit, the owner or operator, within 60 days after the increase, shall either cause the amount of the letter of credit to be increased so that it at least equals the current closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current closure cost estimate decreases, the amount of the letter of credit may be reduced to the amount of the current closure cost estimate following written approval from the Department.

(8) Following a determination by the Department that the owner or operator has failed to perform final closure in accordance with the closure plan and other permit requirements when required to do so, the Department may draw on the letter of credit. For facilities that require a RCRA permit, the determination shall be made pursuant to Health and Safety Code Section 25187.

(9) If the owner or operator does not establish alternate financial assurance as specified in this section, and obtain written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Department shall draw on the letter of credit. The Department shall delay drawing on the letter of credit in accordance with the provisions of this paragraph, if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the Department shall draw on the letter of credit if the owner

or operator has failed to provide alternate financial assurance as specified in this section and obtain written approval of such assurance from the Department.

(10) The Department shall return the letter of credit to the issuing institution for termination when:

(A) an owner or operator substitutes alternate financial assurance as specified in this section; or

(B) the Department releases the owner or operator from the requirements of this section in accordance with subsection (j) of this section.

(e) Closure insurance.

(1) An owner or operator may satisfy the requirements of this section by obtaining closure insurance which conforms to the requirements of this section and submitting a certificate of such insurance to the Department. An owner or operator of a new facility shall submit the certificate of insurance to the Department at least 60 days before the date on which hazardous waste is first received for transfer, treatment, storage or disposal. The insurance shall be effective before this initial receipt of hazardous waste. At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

(2) The wording of the certificate of insurance shall be identical to the wording specified in section 66264.151, subsection (e). The certificate of insurance shall contain original signatures.

(3) The closure insurance policy shall be issued for a face amount at least equal to the current closure cost estimate, except as provided in subsection (g) of this section. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer shall not change the face amount, although the insurer's future liability shall be lowered by the amount of the payments.

(4) The closure insurance policy shall guarantee that funds shall be available to close the facility whenever final closure occurs. The policy shall also guarantee that once final closure begins, the insurer shall be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon direction from the Department, to such party or parties as the Department specifies.

(5) After beginning partial or final closure, an owner or operator or any other person authorized to conduct closure may request reimbursements for closure expenditures by submitting itemized bills to the Department. The owner or operator may request reimbursements for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for closure activities, the Department shall instruct the insurer to make reimbursements in such amounts as the Department specifies in writing, if the Department determines that the partial or final closure expenditures are in accordance with the approved closure plan or are otherwise justified. If the Department has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the face amount of the policy, the Department may withhold reimbursements of such amounts as it deems prudent until it is determined, in accordance with subsection (j) of this section, that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Department does not instruct the insurer to make such reimbursements, the owner or operator will be provided a detailed written statement of reasons.

(6) The owner or operator shall maintain the policy in full force and effect until the Department consents to termination of the policy by the owner or operator as specified in subsection (e)(10) of this section. Failure to pay the premium, without substitution of alternate financial assurance as specified in this section, shall constitute a significant violation of these regulations, warranting such remedy as the Department deems necessary. Such violation will be deemed to begin upon receipt by the Department of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

(7) Each policy shall contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

(8) The policy shall provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the Department. Cancellation, termination or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Department and the owner or operator, as evidenced by the return receipts. Cancellation, termination or failure to renew shall not occur and the policy shall remain in full force and effect in the event that on or before the date of expiration:

(A) the Department deems the facility abandoned; or

(B) the permit is denied, terminated or revoked or a new permit is denied; or

(C) closure is ordered by the Department or any other State or Federal agency, U.S. district court or other court of competent jurisdiction; or

(D) the owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or

(E) the premium due is paid.

(9) Whenever the current closure cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within 60 days after the increase, shall either cause the face amount to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current closure cost estimate decreases, the face amount may be reduced to the amount of the current closure cost estimate following written approval by the Department.

(10) The Department shall give written consent to the owner or operator to terminate the insurance policy when:

(A) an owner or operator substitutes alternate financial assurance as specified in this section; or

(B) the Department releases the owner or operator from the requirements of this section in accordance with subsection (j) of this section.

(f) Financial test and guarantee for closure.

(1) An owner or operator may satisfy the requirements of this section by demonstrating that he or she passes a financial test as specified in this subsection. To pass this test the owner or operator shall meet the criteria of either subsection (f)(1)(A) or (B) of this section.

(A) The owner or operator shall have:

1. two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

2. net working capital and tangible net worth each at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates; and

3. tangible net worth of at least $10 million; and

4. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates.

(B) The owner or operator shall have:

1. a current rating for his or her most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

2. tangible net worth at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates; and

3. tangible net worth of at least $10 million; and

4. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-

closure cost estimates and the current plugging and abandonment cost estimates.

(2) The phrase "current closure and postclosure cost estimates" as used in subsection (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1 through 4 of the letter from the owner's or operator's chief financial officer. The phrase "current plugging and abandonment cost estimates" as used in subsection (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1 through 4 of the letter from the owner's or operator's chief financial officer.

(3) To demonstrate that this test has been met, the owner or operator shall submit the following items to the Department:

(A) a letter signed by the owner's or operator's chief financial officer. The letter shall be on the owner or operator's official letterhead stationery, shall contain an original signature and shall be completed as specified in section 66264.151, subsection (f); and

(B) a copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(C) a special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

1. the independent certified public accountant has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year–end financial statements for the latest fiscal year with the amounts in such financial statements; and

2. in connection with that procedure, no matters came to the independent certified public accountant's attention which caused that accountant to believe that the specified data should be adjusted.

(4) An owner or operator of a new facility shall submit the items specified in subsection (f)(3) of this section to the Department at least 60 days before the date on which hazardous waste is first received for transfer, treatment, storage or disposal.

(5) After the initial submission of items specified in subsection (f)(3) of this section, the owner or operator shall send updated information to the Department within 90 days after the close of each succeeding fiscal year. This information shall consist of all three items specified in subsection (f)(3) of this section.

(6) If the owner or operator no longer meets the requirements of subsection (f)(1) of this section, the owner or operator shall send notice to the Department of intent to establish alternate financial assurance as specified in this section. The notice shall be sent by certified mail within 90 days after any occurrence that prevents the owner or operator from meeting the requirements. The owner or operator shall provide the alternate financial assurance within 120 days after the end of the company's latest completed fiscal year.

(7) The Department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subsection (f)(1) of this section, require reports of financial condition at any time from the owner or operator in addition to those specified in subsection (f)(3) of this section. If the Department finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subsection (f)(1) of this section, the owner or operator shall provide alternate financial assurance as specified in this section within 30 days after notification of such a finding.

(8) The Department may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his or her report on examination of the owner's or operator's financial statements (see subsection (f)(3)(B) of this section). An adverse opinion or a disclaimer of opinion shall be cause for disallowance. The Department shall evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in this section within 30 days after notification of the disallowance.

(9) The owner or operator is no longer required to submit the items specified in subsection (f)(3) of this section when:

(A) an owner or operator substitutes alternate financial assurance as specified in this section; or

(B) the Department releases the owner or operator from the requirements in accordance with subsection (j) of this section.

(10) An owner or operator may meet the requirements of this section by obtaining a written guarantee. The guarantor shall be the direct or higher–tier parent corporation as defined in section 66260.10 of the owner or operator, a firm whose parent corporations is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor shall meet and comply with the requirements for owners or operators in subsections (f)(1) through (f)(8) of this section and shall comply with the terms of the guarantee. The guarantee shall be on the official letterhead stationery of the parent corporation. The guarantee shall contain an original signature which shall be formally witnessed or notarized, and the wording shall be identical to the wording specified in section 66264.151, subsection (h). A certified copy of the guarantee shall accompany the items sent to the Department as specified in subsection (f)(3) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee shall provide that:

(A) if the owner or operator fails to perform final closure of a facility covered by the guarantee in accordance with the closure plan and other permit requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in subsection (a) of this section in the name of the owner or operator;

(B) the guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation shall not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts;

(C) if the owner or operator fails to provide alternate financial assurance as specified in this section and obtain the written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the guarantee from the guarantor, the guarantor shall provide such alternative financial assurance in the name of the owner or operator.

(g) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this section by establishing more than one financial mechanism per facility. The mechanisms shall be as specified in subsections (a), (b), (d), (e), and (i) of this section, except that it is the combination of mechanisms, rather than the single mechanism, which shall provide financial assurance for an amount at least equal to the current closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, the trust fund may be used as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this subsection, the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify the other as "excess" coverage. The Department may use any or all of the mechanisms to provide for closure of the facility.

(h) Use of a financial mechanism for multiple facilities.

An owner or operator may use one or more of the financial assurance mechanisms specified in this section to meet the requirements of this section for more than one facility. Evidence of financial assurance submitted to the Department shall include a list showing, for each facility, the Hazardous Waste Facility Identification Number, name, address and the amount of funds for closure assured by the mechanism. The amount of funds available through the mechanism shall be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for closure of any of the facilities covered by the

mechanism, the Department may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

(i) Alternative Financial Mechanism for Closure Costs.

(1) An owner or operator of facilities which manage solely non–RCRA hazardous waste may establish financial assurance for closure by means of a financial mechanism other than as specified in subsections (a) through (f) of this section, provided that prior to its use the mechanism has been submitted to and approved by the Department. The mechanism shall be at least equivalent to the financial mechanisms specified in subsections (a) through (f) of this section. The Department shall evaluate the equivalency of a mechanism principally in terms of:

(A) Certainty of the availability of funds for the required closure activities; and

(B) The amount of funds that will be made available. The Department may also consider other factors deemed to be appropriate, and may require the owner or operator to submit additional information as is deemed necessary to make the determination.

(2) The owner or operator shall submit to the Department the proposed mechanism together with a letter requesting that the proposed mechanism be considered acceptable for meeting the requirements of section 66264.143. The submission shall include the following information:

(A) name, address and telephone number of issuing institution; and

(B) hazardous waste facility identification number, name, address and closure cost estimate for each facility; and

(C) the amount of funds for closure to be assured for each facility by the proposed mechanism; and

(D) the terms of the proposed mechanism (period covered, renewal/extension, cancellation).

(3) The Department shall notify the owner or operator in writing of the determination made regarding the proposed mechanism's acceptability in lieu of the financial mechanisms specified in subsections (a) through (f) of this section.

(4) If a proposed mechanism is found acceptable, the owner or operator shall submit a fully executed document to the Department. The document shall contain original signatures and shall be accompanied by a formal certification of acknowledgment.

(5) If a proposed mechanism is found acceptable except for the amount of funds, the owner or operator shall either increase the amount of the mechanism or obtain other financial assurance as specified in subsections (a) through (f) of this section. The amount of funds available through the combination of mechanisms shall at least equal the current closure cost estimate.

(j) Release of the owner or operator from the requirements of this section.

(1) Within 60 days after receiving certifications from the owner or operator and an independent professional engineer, registered in California, that final closure has been completed in accordance with the approved closure plan, the Department shall notify the owner or operator in writing that they are no longer required by this section to maintain financial assurance for final closure of the facility, unless the Department has reason to believe that final closure has not been in accordance with the approved closure plan. The Department shall provide the owner or operator a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan.

(2) When transfer of ownership or operational control of a facility occurs, and the new owner or operator has demonstrated to the satisfaction of the Department that they are complying with the financial requirements of this section, the Department shall notify the previous owner or operator in writing that they are no longer required to maintain financial assurance for closure of that particular facility.

NOTE: Authority cited: Sections 25150, 25159, 25159.5 and 25245, Health and Safety Code. Reference: Section 25245, Health and Safety Code; 40 CFR Section 264.143.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect amending subsections (a)(2), (b)(2), (b)(3)(A), (c)(2), (c)(3)(A), (d)(2), (d)(3)(A), (e)(2), (f), (f)(3)(A), and (f)(10)–(f)(10)(C) filed 8–17–95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 33).
3. Change without regulatory effect amending subsections (a)(1)–(3), (b)(2), (b)(3)(A), (c)(2), (c)(3)(A), (c)(5), (d)(1)–(2), (d)(3)(A), (d)(8), (e)(2), (e)(8)(C), (f)(2), (f)(3)(A) and (f)(10) filed 11–6–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 45).
4. Change without regulatory effect amending subsection (e)(2) filed 10–22–2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 43).
5. Change without regulatory effect amending section and NOTE filed 12–19–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 51).

§ 66264.144. Cost Estimate for Postclosure Care.

(a) The owner or operator of a disposal surface impoundment, disposal miscellaneous unit, land treatment unit, or landfill unit, or of a surface impoundment or waste pile required under section 66264.228 and section 66264.258 to prepare a contingent closure and postclosure plan, shall prepare and submit to the Department a detailed written estimate, in current dollars, of the annual cost of postclosure monitoring and maintenance of the facility in accordance with the applicable postclosure regulations in sections 66264.117 through 66264.120, 66264.228, 66264.258, 66264.280, 66264.310 and 66264.603.

(1) The postclosure cost estimate shall be based on the costs to the owner or operator of hiring a third party to conduct postclosure care activities. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of parent corporation in section 66260.10).

(2) The postclosure cost estimate is calculated by multiplying the annual postclosure cost estimate by the number of years of postclosure care required under section 66264.117.

(b) During the active life of the facility, the owner or operator shall adjust the postclosure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with section 66264.145. For owners or operators using the financial test or corporate guarantee, the postclosure cost estimate shall be updated for inflation within 30 days after the close of the firm's fiscal year and before the submission of updated information to the Department as specified in section 66264.145(f)(5). The adjustment shall be made by recalculating the postclosure cost estimate in current dollars or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business as specified in subsections (b)(1) and (b)(2) of this section. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

(1) The first adjustment is made by multiplying the postclosure cost estimate by the inflation factor. The result is the adjusted postclosure cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted postclosure cost estimate by the latest inflation factor.

(c) During the active life of the facility, the owner or operator shall revise the postclosure cost estimate within 30 days after the Department has approved the request to modify the postclosure plan, if the change in the postclosure plan increases the cost of postclosure care. The revised postclosure cost estimate shall be adjusted for inflation as specified in section 66264.144(b).

(d) The owner or operator shall keep the following at the facility during the operating life of the facility: the latest postclosure cost estimate prepared in accordance with section 66264.144(a) and (c) and, when this estimate has been adjusted in accordance with section 66264.144(b), the latest adjusted postclosure cost estimate.

NOTE: Authority cited: Sections 208, 25150, 25159, 25159.5 and 25245, Health and Safety Code. Reference: Section 25245, Health and Safety Code; 40 CFR Section 264.144.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.145. Financial Assurance for Postclosure Care.

The owner or operator of a hazardous waste management unit subject to the requirements of section 66264.144 shall establish and demonstrate to the Department financial assurance for postclosure care in accordance with the approved postclosure plan for the facility 60 days prior to the initial receipt of hazardous waste or the effective date of the regulation, whichever is later. The owner or operator shall choose from the following options as specified in subsections (a) through (f) and (i) of this section.

(a) Postclosure trust fund.

(1) An owner or operator may satisfy the requirements of this section by establishing a postclosure trust fund which conforms to the requirements of this subsection and submitting an originally signed duplicate of the trust agreement to the Department. An owner or operator of a new facility shall submit the originally signed duplicate of the trust agreement to the Department at least 60 days before the date on which hazardous waste is first received for disposal. The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(2) The wording of the trust agreement shall be identical to the wording specified in section 66264.151, subsection (a)(1). The trust agreement shall contain original signatures and shall be accompanied by a formal certification of acknowledgment (for example, see section 66264.151, subsection (a)(2)). Schedule A of the trust agreement shall be updated within 60 days after a change in the amount of the current postclosure cost estimate covered by the agreement.

(3) Payments into the trust fund shall be made annually by the owner or operator over the ten (10) years beginning with the establishment of the trust fund, or the term of the initial RCRA permit or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereafter referred to as the "pay–in period." The payments into the postclosure trust fund shall be made as follows.

(A) for an existing facility, the first payment shall be made at the time the trust fund is established; a receipt from the trustee for this payment shall be submitted by the owner or operator to the Department. The first payment shall be at least equal to the current postclosure cost estimate, except as provided in subsection (g) of this section, divided by the number of years in the pay–in period. Subsequent payments shall be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment shall be determined by this formula:

$$\text{Next payment} = \frac{CE - CV}{Y}$$

where CE is the current postclosure cost estimate, CV is the current value of the trust fund and Y is the number of years remaining in the pay–in period.

(B) for a new facility, the first payment shall be made before the initial receipt of hazardous waste for disposal. A receipt from the trustee for this payment shall be submitted by the owner or operator to the Department before this initial receipt of hazardous waste. The first payment shall be at least equal to the current postclosure cost estimate, except as provided in subsection (g) of this section, divided by the number of years in the pay–in period. Subsequent payments shall be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment shall be determined by this formula:

$$\text{Next payment} = \frac{CE - CV}{Y}$$

where CE is the current postclosure cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay–in period.

(C) if an owner or operator establishes a trust fund as specified in section 66265.145, subsection (a) of this division, and the value of that trust fund is less than the current postclosure cost estimate when a permit is awarded for the facility, the amount of the current postclosure cost estimate still to be paid into the fund shall be paid in over the pay–in period as defined in subsection (a)(3) of this section. Payments shall continue to be made no later than 30 days after each anniversary date of the first payment made pursuant to chapter 15 of this division. The amount of each payment shall be determined by this formula:

$$\text{Next payment} = \frac{CE - CV}{Y}$$

where CE is the current postclosure cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay–in period.

(4) The owner or operator may accelerate payments into the trust fund or deposit the full amount of the current postclosure cost estimate at the time the fund is established. However, the value of the fund shall be maintained at no less than the value that the fund would have if annual payments were made as specified in subsection (a)(3) of this section.

(5) If the owner or operator establishes a postclosure trust fund after having used one or more alternate mechanisms specified in this section or in section 66265.145 of this division, the first payment shall be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to specifications of this subsection as applicable.

(6) After the pay–in period is completed, whenever the current postclosure cost estimate changes during the operating life of the facility, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current postclosure cost estimate, or obtain other financial assurance as specified in this section to cover the difference.

(7) During the operating life of the facility, if the value of the trust fund is greater than the total amount of the current postclosure cost estimate, the owner or operator may submit a written request to the Department for release of the amount in excess of the current postclosure cost estimate.

(8) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the trust fund, the owner or operator may submit a written request to the Department for release of the amount in excess of the current postclosure cost estimate covered by the trust fund.

(9) Within 60 days after receiving a request from the owner or operator for release of funds as specified in subsection (a)(7) or (a)(8) of this section, the Department will instruct the trustee to release to the owner or operator such funds as the Department specifies in writing.

(10) Before final postclosure occurs, the value of the trust fund shall equal the amount of the current postclosure cost estimate. If the value of the fund is less than the amount of the current estimate, the owner or operator shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current postclosure cost estimate, or obtain other financial assurance, as specified in this section, to cover the difference.

(11) During the period of postclosure care, the Department shall approve a release of funds if the owner or operator demonstrates to the satisfaction of the Department that the value of the trust fund exceeds the remaining cost of postclosure care.

(12) An owner or operator or any other person authorized to conduct postclosure care may request reimbursements for postclosure care expenditures by submitting itemized bills to the Department. Within 60 days after receiving bills for postclosure care activities, the Department shall instruct the trustee to make reimbursements in those amounts as the Department specifies in writing, if the Department determines that the postclosure care expenditures are in accordance with the approved postclosure plan or otherwise justified. If the Department does not instruct the trustee to make such reimbursements, the owner or operator shall be provided with a detailed written statement of reasons.

(13) The Department shall agree to termination of the trust when:

(A) an owner or operator substitutes alternate financial assurance as specified in this section; or

(B) the Department releases the owner or operator from the requirements in accordance with subsection (j) of this section.

(b) Surety bond guaranteeing payment into a postclosure trust fund.

(1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this subsection and submitting the bond to the Department. An owner or operator of a new facility shall submit the bond to the Department at least 60 days before the date on which hazardous waste is first received for disposal. The bond shall be effective before this initial receipt of hazardous waste. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

(2) The wording of the surety bond shall be identical to the wording specified in section 66264.151, subsection (b). The surety bond shall contain original signatures and shall be accompanied by the documents specified in this subsection.

(3) The owner or operator who uses a surety bond to satisfy the requirements of this section shall also establish a standby trust fund. Under the terms of the bond, all payments made thereunder shall be deposited by the surety directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund shall meet the requirements specified in subsection (a) of this section, except that:

(A) an originally signed duplicate of the standby trust agreement shall be submitted to the Department with the surety bond; and

(B) until the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

1. payments into the trust fund as specified in subsection (a) of this section;

2. updating of Schedule A of the trust agreement (see section 66264.151, subsection (a)) to show current postclosure cost estimates;

3. annual valuations as required by the trust agreement; and

4. notices of nonpayment as required by the trust agreement.

(4) The bond shall guarantee that the owner or operator will:

(A) fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility; or

(B) fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin final closure issued by the Department becomes final, or within 15 days after an order to begin final closure is issued by a U.S. district court or other court of competent jurisdiction; or

(C) provide alternate financial assurance as specified in this section to the Department for written approval within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(6) The penal sum of the bond shall be in an amount at least equal to the current postclosure cost estimate, except as provided in subsection (g) of this section.

(7) Whenever the current postclosure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, shall either cause the penal sum to be increased to an amount at least equal to the current postclosure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current postclosure cost estimate decreases, the Department shall approve, in writing, a reduction of the penal sum to the amount of the current postclosure cost estimate if the owner or operator demonstrates to the satisfaction of the Department that the penal sum exceeds the current postclosure cost estimate.

(8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation shall not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts.

(9) The owner or operator may cancel the bond if the Department has given prior written consent based on receipt of evidence of alternate financial assurance as specified in this section.

(c) Surety bond guaranteeing performance of postclosure care.

(1) An owner or operator of a permitted facility, as defined in section 66260.10, may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this subsection and submitting the bond to the Department. An owner or operator of a new facility shall submit the bond to the Department at least 60 days before the date on which hazardous waste is first received for disposal. The bond shall be effective before this initial receipt of hazardous waste. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

(2) The wording of the surety bond shall be identical to the wording specified in section 66264.151, subsection (c). The surety bond shall contain original signatures and shall be accompanied by the documents specified in this subsection .

(3) The owner or operator who uses a surety bond to satisfy the requirements of this section shall also establish a standby trust fund. Under the terms of the bond, all payments made thereunder shall be deposited by the surety directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund shall meet the requirements specified in subsection (a) of this section, except that:

(A) an originally signed duplicate of the standby trust agreement shall be submitted to the Department with the surety bond; and

(B) unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

1. payments into the trust fund as specified in subsection (a) of this section;

2. updating of Schedule A of the trust agreement (see section 66264.151, subsection (a)) to show current postclosure cost estimates;

3. annual valuations as required by the trust agreement; and

4. notices of nonpayment as required by the trust agreement.

(4) The bond shall guarantee that the owner or operator will:

(A) perform postclosure care in accordance with the postclosure plan and other requirements of the permit for the facility; or

(B) provide alternate financial assurance as specified in this section to the Department for written approval within 90 days of receipt by both the owner or operator and the Department of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a determination by the Department that the owner or operator has failed to perform postclosure care in accordance with the approved postclosure plan and other permit requirements, under the terms of the bond the surety shall perform postclosure care in accordance with the postclosure plan and other permit requirements or shall deposit the amount of the penal sum into the standby trust fund.

(6) The penal sum of the bond shall be in an amount at least equal to the current postclosure cost estimate.

(7) Whenever the current postclosure cost estimate increases to an amount greater than the penal sum during the operating life of the facility, the owner or operator, within 60 days after the increase, shall either cause the penal sum to be increased to an amount at least equal to the current postclosure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section. Whenever the current postclosure cost estimate decreases during the operating life of the facility, the Department shall approve, in writing, a reduction of the penal sum to the amount of the current postclosure cost estimate if the owner or operator demonstrates to the satisfaction of the Department that the amount exceeds the current postclosure estimate.

(8) During the period of postclosure care, the Department may approve a decrease in the penal sum if the owner or operator demonstrates to the satisfaction of the Department that the amount exceeds the remaining cost of postclosure care.

(9) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation shall not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts.

(10) The owner or operator may cancel the bond if the Department has given prior written consent. The Department shall provide such written consent when:

(A) an owner or operator substitutes alternate financial assurance as specified in this section; or

(B) the Department releases the owner or operator from the requirements of this section in accordance with subsection (j) of this section.

(11) The surety shall not be liable for deficiencies in the performance of postclosure care by the owner or operator after the Department releases the owner or operator from the requirements in accordance with subsection (j) of this section.

(d) Postclosure letter of credit.

(1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this subsection and submitting the letter to the Department. An owner or operator of a new facility shall submit the letter of credit to the Department at least 60 days before the date on which hazardous waste is first received for disposal. The letter of credit shall be effective before this initial receipt of hazardous waste. The issuing institution shall be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency.

(2) The wording of the letter of credit shall be identical to the wording specified in section 66264.151, subsection (d). The letter of credit shall contain original signatures and shall be accompanied by the documents specified in this subsection.

(3) An owner or operator who uses a letter of credit to satisfy the requirements of this section shall also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Department shall be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund shall meet the requirements of the trust fund specified in subsection (a) of this section, except that:

(A) an originally signed duplicate of the trust agreement shall be submitted to the Department with the letter of credit; and

(B) unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

1. payments into the trust fund as specified in subsection (a) of this section;

2. updating of Schedule A of the trust agreement (see section 66264.151, subsection (a)) to show current postclosure cost estimates;

3. annual valuations as required by the trust agreement; and

4. notices of nonpayment as required by the trust agreement.

(4) The letter of credit shall be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date and providing the following information: the Hazardous Waste Facility Identification Number, name, and address of the facility and the amount of funds assured for postclosure care of the facility by the letter of credit.

(5) The letter of credit shall be irrevocable and issued for a period of at least one (1) year. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one (1) year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Department by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days shall begin on the date when both the owner or operator and the Department have received the notice, as evidenced by the return receipts.

(6) The letter of credit shall be issued in an amount at least equal to the current postclosure cost estimate, except as provided in subsection (g) of this section.

(7) Whenever the current postclosure cost estimate increases to an amount greater than the amount of the letter of credit during the operating life of the facility, the owner or operator, within 60 days after the increase, shall either cause the amount of the letter of credit to be increased so that it at least equals the current postclosure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current postclosure cost estimate decreases during the operating life of the facility, the amount of the letter of credit may be reduced to the amount of the current postclosure cost estimate following written approval from the Department.

(8) During the period of postclosure care, the Department shall approve a decrease in the amount of the letter of credit if the owner or operator demonstrates to the Department that the amount exceeds the remaining cost of postclosure care.

(9) Following a determination by the Department that the owner or operator has failed to perform postclosure care in accordance with the approved postclosure plan and other permit requirements, the Department may draw on the letter of credit.

(10) If the owner or operator does not establish alternate financial assurance as specified in this section and obtain written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Department shall draw on the letter of credit. The Department shall delay drawing on the letter of credit in accordance with the provisions of this paragraph, if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the Department shall draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this section and obtain written approval of such assurance from the Department.

(11) The Department shall return the letter of credit to the issuing institution for termination when:

(A) an owner or operator substitutes alternate financial assurance as specified in this section; or

(B) the Department releases the owner or operator from the requirements of this section in accordance with subsection (j) of this section.

(e) Postclosure insurance.

(1) An owner or operator may satisfy the requirements of this section by obtaining postclosure insurance which conforms to the requirements of this subsection and submitting a certificate of such insurance to the Department. An owner or operator of a new facility shall submit the certificate of insurance to the Department at least 60 days before the date on which hazardous waste is first received for disposal. The insurance shall be effective before this initial receipt of hazardous waste. At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

(2) The wording of the certificate of insurance shall be identical to the wording specified in section 66264.151, subsection (e). The certificate of insurance shall contain original signatures.

(3) The postclosure insurance policy shall be issued for a face amount at least equal to the current postclosure cost estimate, except as provided in subsection (g) of this section. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer shall not change the face amount, although the insurer's future liability shall be lowered by the amount of the payments.

(4) The postclosure insurance policy shall guarantee that funds shall be available to provide postclosure care of the facility whenever the postclosure period begins. The policy shall also guarantee that once postclo-

sure care begins, the insurer shall be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Department, to such party or parties as the Department specifies.

(5) An owner or operator or any other person authorized to conduct postclosure care may request reimbursements for postclosure care expenditures by submitting itemized bills to the Department. Within 60 days after receiving bills for postclosure care activities, the Department shall instruct the insurer to make reimbursements in those amounts as the Department specifies in writing, if the Department determines that the postclosure care expenditures are in accordance with the approved postclosure plan or otherwise justified. If the Department does not instruct the insurer to make such reimbursements, a detailed written statement of reasons will be provided to the owner or operator.

(6) The owner or operator shall maintain the policy in full force and effect until the Department consents to termination of the policy by the owner or operator as specified in subsection (e)(11) of this section. Failure to pay the premium, without substitution of alternate financial assurance as specified in this section, shall constitute a significant violation of these regulations, warranting such remedy as the Department deems necessary. Such violation shall be deemed to begin upon receipt by the Department of a notice of future cancellation, termination or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

(7) Each policy shall contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

(8) The policy shall provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate or fail to renew the policy by sending notice by certified mail to the owner or operator and the Department. Cancellation, termination or failure to renew shall not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Department and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew shall not occur and the policy shall remain in full force and effect in the event that on or before the date of expiration:

(A) the Department deems the facility abandoned; or

(B) the permit is denied, terminated or revoked or a new permit is denied; or

(C) closure is ordered by the Department or by any other state or federal agency, U.S. district court or other court of competent jurisdiction; or

(D) the owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or

(E) the premium due is paid.

(9) Whenever the current postclosure cost estimate increases to an amount greater than the face amount of the policy during the operating life of the facility, the owner or operator, within 60 days after the increase, shall either cause the face amount to be increased to an amount at least equal to the current postclosure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current postclosure cost estimate decreases during the operating life of the facility, the face amount may be reduced to the amount of the current postclosure cost estimate following written approval by the Department.

(10) Commencing on the date that liability to make payments pursuant to the policy accrues, the insurer shall thereafter annually increase the face amount of the policy. Such increase shall be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon–issue yield announced by the U.S. Treasury for 26–week Treasury securities.

(11) The Department shall give written consent to the owner or operator that the insurance policy may be terminated when:

(A) an owner or operator substitutes alternate financial assurance as specified in this section; or

(B) the Department releases the owner or operator from the requirements in accordance with subsection (j) of this section.

(f) Financial test and guarantee for postclosure care.

(1) An owner or operator may satisfy the requirements of this section by demonstrating that he or she passes a financial test as specified in this section. To pass this test the owner or operator shall meet the criteria of either subsections (f)(1)(A) or (f)(1)(B) of this section.

(A) the owner or operator shall have:

1. two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

2. net working capital and tangible net worth each at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates; and

3. tangible net worth of at least $10 million; and

4. assets in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates.

(B) the owner or operator shall have:

1. a current rating for his or her most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

2. tangible net worth at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates; and

3. tangible net worth of at least $10 million; and

4. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates.

(2) The phrase "current closure and postclosure cost estimates" as used in subsection (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1 through 4 of the letter from the owner's or operator's chief financial officer (section 66265.151, subsection (f)). The phrase "current plugging and abandonment cost estimates" as used in subsection (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1 through 4 of the letter from the owner's or operator's chief financial officer.

(3) To demonstrate that this test has been met, the owner or operator shall submit the following items to the Department:

(A) a letter signed by the owner's or operator's chief financial officer and worded as specified in section 66264.151, subsection (f). The letter shall be on the owner or operator's official letterhead stationery, and shall contain an original signature; and

(B) a copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(C) a special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

1. the independent certified public accountant has compared the data which the letter from the chief financial officer specified as having been derived from the independently audited, year–end financial statements for the latest fiscal year with the amounts in such financial statements; and

2. in connection with that procedure, no matters came to the independent certified public accountant's attention which caused a belief that the specified data should be adjusted.

(4) An owner or operator of a new facility shall submit the items specified in subsection (f)(3) of this section to the Department at least 60 days before the date on which hazardous waste is first received for disposal.

(5) After the initial submission of items specified in subsection (f)(3) of this section, the owner or operator shall send updated information to the Department within 90 days after the close of each succeeding fiscal

year. This information shall consist of all three items specified in subsection (f)(3) of this section.

(6) If the owner or operator no longer meets the requirements of subsection (f)(1) of this section, the owner or operator shall send notice to the Department of the intent to establish alternate financial assurance as specified in this section. The notice shall be sent by certified mail within 90 days after any occurrence that prevents the owner or operator from meeting the requirements. The owner or operator shall provide the alternate financial assurance within 120 days after such occurrence.

(7) The Department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subsection (f)(1) of this section, require reports of financial condition at any time from the owner or operator in addition to those specified in subsection (f)(3) of this section. If the Department finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subsection (f)(1) of this section, the owner or operator shall provide alternate financial assurance as specified in this section within 30 days after notification of such a finding.

(8) The Department may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his or her report on examination of the owner's or operator's financial statements (see subsection (f)(3)(B) of this section). An adverse opinion or a disclaimer of opinion shall be cause for disallowance. The Department shall evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in this section within 30 days after notification of the disallowance.

(9) During the period of postclosure care, the Department shall approve a decrease in the current postclosure cost estimate for which this test demonstrates financial assurance if the owner or operator demonstrates to the Department that the amount of the cost estimate exceeds the remaining cost of postclosure care.

(10) The owner or operator is no longer required to submit the items specified in subsection (f)(3) of this section when:

(A) an owner or operator substitutes alternate financial assurance as specified in this section; or

(B) the Department releases the owner or operator from the requirements of this section in accordance with subsection (j) of this section.

(11) An owner or operator may meet the requirements for this section by obtaining a written guarantee. The guarantor shall be the direct or higher–tier parent corporation as defined in section 66260.10, of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner of operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor shall meet the requirements for owners or operators in subsections (f)(1) through (f)(9) of this section and shall comply with the terms of the guarantee. The guarantee shall contain an original signature which shall be formally witnessed or notarized and the wording of the guarantee shall be identical to the wording specified in section 66264.151, subsection (h). A certified copy of the guarantee shall accompany the items sent to the Department as specified in subsection (f)(3) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee shall provide that:

(A) if the owner or operator fails to perform postclosure care of a facility covered by the guarantee in accordance with the postclosure plan and other permit requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in subsection (a) of this section in the name of the owner or operator;

(B) the guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation shall not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts;

(C) if the owner or operator fails to provide alternate financial assurance as specified in this section and obtain the written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the guarantee from the guarantor, the guarantor shall provide such alternate financial assurance in the name of the owner or operator.

(g) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this section by establishing more than one financial mechanism per facility. The mechanisms shall be as specified in subsections (a), (b), (d), (e), and (i) of this section, except that it is the combination of mechanisms, rather than the single mechanism, which shall provide financial assurance for an amount at least equal to the current postclosure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he or she may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this subsection, the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify the other as "excess" coverage. The Department may use any or all of the mechanisms to provide for postclosure care of the facility.

(h) Use of a financial mechanism for multiple facilities for postclosure care. An owner or operator may use one or more of the financial assurance mechanisms specified in this section to meet the requirements of this section for more than one facility. Evidence of financial assurance submitted to the Department shall include a list showing, for each facility, the Hazardous Waste Facility Identification Number, name, address and the amount of funds for postclosure care assured by the mechanism. The amount of funds available through the mechanism shall be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for postclosure care of any of the facilities covered by the mechanism, the Department may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

(i) Alternative Financial Mechanism for Postclosure Care.

(1) The owner or operator of facilities which solely manage non–RCRA hazardous waste may establish financial assurance for postclosure care by means of a financial mechanism other than as specified in subsections (a) through (f) of this section, provided that prior to its use the mechanism has been submitted to and approved by the Department. The mechanism shall be at least equivalent to the financial mechanisms specified in subsections (a) through (f) of this section. The Department shall evaluate the equivalency of a mechanism principally in terms of:

(A) certainty of the availability of funds for the required postclosure care activities; and

(B) the amount of funds that will be made available;

(C) the Department may also consider other factors deemed to be appropriate, and may require the owner or operator to submit additional information as is deemed necessary to make the determination.

(2) The owner or operator shall submit to the Department the proposed mechanism together with a letter requesting that the proposed mechanism be considered acceptable for meeting the requirements of section 66264.145. The submission shall include the following information:

(A) name, address and phone number of the issuing institution; and

(B) hazardous waste facility identification number, name, address and postclosure cost estimate for each facility; and

(C) the amount of funds for postclosure care to be assured for each facility by the proposed mechanism; and

(D) the terms of the proposed mechanism (period covered, renewal/extension, cancellation).

(3) The Department shall notify the owner or operator in writing of the determination made regarding the proposed mechanism's acceptability in lieu of the financial assurance mechanisms specified in subsections (a) through (f) of this section.

(4) If a proposed mechanism is found acceptable, the owner or operator shall submit a fully executed document to the Department. The document shall contain original signatures and shall be accompanied by a formal certification of acknowledgment.

(5) If a proposed mechanism is found acceptable except for the amount of funds, the owner or operator shall either increase the amount of the mechanism or obtain other financial assurance as specified in subsections (a) through (f) of this section. The amount of funds available through the combination of mechanisms shall at least equal the current postclosure cost estimate.

(j) Release of the owner or operator from financial assurance requirements for postclosure care.

(1) Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that all postclosure care requirements have been completed for a hazardous waste disposal unit in accordance with the approved postclosure plan, the Department, at the request of the owner or operator, shall notify the owner or operator in writing that maintenance of financial assurance is no longer required for postclosure care of that unit, unless the Department has reason to believe that postclosure care has not been in accordance with the approved postclosure plan. The Department shall provide the owner or operator with a detailed written statement of any such reason to believe that postclosure care has not been in accordance with the approved postclosure plan.

(2) When transfer of ownership or operational control of a facility occurs, and the new owner or operator has demonstrated to the satisfaction of the Department that the owner or operator is complying with the financial requirements of this section, the Department shall notify the previous owner or operator in writing that they are no longer required to maintain financial assurance for postclosure care of that particular facility.

NOTE: Authority cited: Sections 25150, 25159, 25159.5 and 25245, Health and Safety Code. Reference: Section 25245, Health and Safety Code; 40 CFR Section 264.145.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect amending subsections (a)(2), (b)(2), (b)(3)(A), (c)(2), (c)(3)(A), (d)(2), (d)(3)(A), (e)(2), (f), (f)(3)(A), and (f)(11)–(f)(11)(C) filed 8–17–95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 33).
3. Change without regulatory effect amending subsections (a)(2), (b)(2), (b)(3)(A), (c)(2), (c)(3)(A), (d)(2), (d)(3)(A), (e)(2), (f)(1), (f)(2), (f)(3)(A) and (f)(11) filed 11–6–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 45).
4. Change without regulatory effect amending subsection (e)(2) filed 10–22–2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 43).
5. Change without regulatory effect amending subsection (f)(11) filed 1–13–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 2).
6. Change without regulatory effect amending section and NOTE filed 12–19–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 51).

§ 66264.146. Use of a Mechanism for Financial Assurance of Both Closure and Post–Closure Care.

An owner or operator may satisfy the requirements for financial assurance for both closure and post–closure care for one or more facilities by using a trust fund, surety bond, letter of credit, insurance, financial test, corporate guarantee, or alternative mechanism, that meets the specifications for the mechanism in both section 66264.143 and section 66264.145. The amount of funds available through the mechanism shall be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for financial assurance of closure and of post–closure care.

NOTE: Authority cited: Sections 208, 25150, 25159, 25159.5 and 25245, Health and Safety Code. Reference: Section 25425, Health and Safety Code; 40 CFR Section 264.146.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.147. Liability Requirements.

(a) Coverage for sudden accidental occurrences. An owner or operator of a hazardous waste transfer, treatment, storage or disposal facility or a group of such facilities, shall demonstrate to the Department financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for sudden accidental occurrences in the amount of at least $1 million per occurrence with an annual aggregate of at least $2 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in subsections (a)(1) through (7) of this section.

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this subsection.

(A) At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.

(B) Each insurance policy shall be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. If requested by the Department, the owner or operator shall provide a copy of the insurance policy; the copy of the insurance policy shall contain original signatures.

(C) The wording of the liability endorsement shall be identical to the wording specified in section 66264.151, subsection (i). The liability endorsement shall contain original signatures and shall be submitted to the Department.

(D) The wording of the certificate of insurance shall be identical to the wording specified in section 66264.151, subsection (j). The certificate of insurance shall contain original signatures and shall be submitted to the Department.

(E) An owner or operator of a new facility shall submit the liability endorsement or certificate of insurance to the Department at least 60 days before the date on which hazardous waste is first received for transfer, treatment, storage or disposal. The insurance shall be effective before this initial receipt of hazardous waste.

(2) An owner or operator may meet the requirements of this section by passing a financial test or using the guarantee for liability coverage as specified in subsections (f) and (g) of this section.

(3) An owner or operator may meet the requirements of this section by obtaining a letter of credit for liability coverage as specified in subsection (h) of this section.

(4) An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in subsection (i) of this section.

(5) An owner or operator may meet the requirements of this section by obtaining a trust fund for liability coverage as specified in subsection (j) of this section.

(6) An owner or operator may demonstrate the required liability coverage through use of combinations of insurance, financial test, guarantee, letter of credit, payment bond and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated shall total at least the minimum amounts required by this section. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this subsection, the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify the other assurance as "excess" coverage.

(7) An owner or operator may meet the requirements of this section by obtaining an alternative financial mechanism, as described in subsection (k) of this section; or

(8) An owner or operator shall notify the Department in writing within 30 days whenever:

(A) a claim results in a reduction in the amount of financial assurance for liability provided by a financial instrument authorized by subsections (a)(1) through (a)(7) of this section, or

(B) a Certification of Valid Claim for bodily injury or property damages caused by a sudden or non–sudden accidental occurrence arising from the operation of a hazardous waste transfer, treatment, storage or disposal facility is entered between the owner or operator and third–party claimant for liability coverage under subsections (a)(1) through (a)(7) of this section; or

(C) a final court order establishing a judgment for bodily injury or property damage caused by a sudden or non–sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under subsection (a)(1) through (a)(7) of this section.

(b) Coverage for nonsudden accidental occurrences. An owner or operator of a surface impoundment, as defined in section 66260.10, landfill, as defined in section 66260.10, land treatment facility, as defined in section 66260.10 or disposal miscellaneous unit which is used to manage hazardous waste, or a group of such facilities, shall demonstrate to the Department financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least $3 million per occurrence, as defined in section 66260.10, with an annual aggregate of at least $6 million, exclusive of legal defense costs. An owner or operator who must meet the requirements of this section may combine the required per–occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per–occurrence level, and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and nonsudden accidental occurrences must maintain liability coverage in the amount of at least $4 million per occurrence and $8 million annual aggregate. This liability coverage may be demonstrated, as specified in subsections (b)(1) through (b)(7) of this section.

(1) An owner or operator may demonstrate the required liability coverage by obtaining liability insurance as specified in this subsection.

(A) At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.

(B) Each insurance policy shall be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. If requested by the Department, the owner or operator shall provide a copy of the insurance policy; the copy of the insurance policy shall contain original signatures.

(C) The wording of the liability endorsement shall be identical to the wording specified in section 66264.151, subsection (i). The liability endorsement shall contain original signatures and shall be submitted to the Department.

(D) The wording of the certificate of insurance shall be identical to the wording specified in section 66264.151, subsection (j). The certificate of insurance shall contain original signatures and shall be submitted to the Department.

(E) An owner or operator of a new facility shall submit the liability endorsement or certificate of insurance to the Department at least 60 days before the date on which hazardous waste is first received for transfer, treatment, storage or disposal. The insurance shall be effective before this initial receipt of hazardous waste.

(2) An owner or operator may meet the requirements of this section by passing a financial test or using the guarantee for liability coverage as specified in subsections (f) and (g) of this section.

(3) An owner or operator may meet the requirements of this section by obtaining a letter of credit for liability coverage as specified in subsection (h) of this section.

(4) An owner or operator may meet the requirements of this section by obtaining a payment bond for liability coverage as specified in subsection (i) of this section.

(5) An owner or operator may meet the requirements of this section by obtaining a trust fund for liability coverage as specified in subsection (j) of this section.

(6) An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, payment bond and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated shall total at least the minimum amount required by this section. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this subsection, the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify another assurance as "excess" coverage.

(7) An owner or operator may meet the requirements of this section by obtaining an alternative financial mechanism, as described in subsection (k) of this section.

(8) An owner or operator shall notify the Department in writing within 30 days whenever:

(A) a claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized by subsections (b)(1) through (b)(7) of this section, or

(B) a Certification of Valid Claim for bodily injury or property damages caused by a sudden or non–sudden accidental occurrence arising from the operation of a hazardous waste transfer, treatment, storage or disposal facility is entered between the owner or operator and third–party claimant for liability coverage under subsections (b)(1) through (b)(7) of this section; or

(C) a final court order establishing a judgment for bodily injury or property damage caused by a sudden or non–sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under subsections (b)(1) through (b)(7) of this section.

(c) Request for variance. If an owner or operator can demonstrate to the satisfaction of the Department that the levels of financial responsibility required by subsection (a) or (b) of this section are not consistent with the degree and duration of risk associated with transfer, treatment, storage or disposal at the facility or group of facilities, the owner or operator may obtain a variance from the Department. The request for a variance shall be submitted to the Department as part of the application under section 66270.14 of this division for a facility that does not have a permit, or pursuant to the procedures for permit modification under section 66271.4 of this division for a facility that has a permit. If granted, the variance shall take the form of an adjusted level of required liability coverage, such level to be based on the Department's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. The Department may require an owner or operator who requests a variance to provide such technical and engineering information as is deemed necessary by the Department to determine a level of financial responsibility other than that required by subsection (a) or (b) of this section. Any request for a variance for a permitted facility will be treated as a request for a permit modification under section 66270.41, subsection (a)(5) and section 66271.4.

(d) Adjustments by the Department. If the Department determines that the levels of financial responsibility required by subsection (a) or (b) of this section are not consistent with the degree and duration of risk associated with transfer, treatment, storage or disposal at the facility or group of facilities, the Department may adjust the level of financial responsibility required under subsection (a) or (b) of this section as may be necessary to protect human health and the environment. This adjusted level shall be based on the Department's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. In addition, if the Department determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from the operations of a facility that is not a surface impoundment, landfill or land treatment facility, the Department shall require that an owner or operator of the facility comply with subsection (b) of this section. An owner or operator shall furnish to the Department, within a reasonable time, any information which the Department requests to determine whether cause exists for such adjustments of level or type of coverage. Any adjustment of the level or type of coverage for a facility that has a permit will be treated as a permit modification under section 66270.41, subsection (a)(5) and section 66271.4.

(e) Period of coverage. Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Department shall notify the owner or operator in writing that he or she is no longer required by this section to maintain liability coverage for that facility, unless the Department has reason to believe that closure has not been in accordance with the approved closure plan.

(f) Financial test for liability coverage.

(1) An owner or operator may satisfy the requirements of this section by demonstrating that he or she passes a financial test as specified in this subsection. To pass this test the owner or operator shall meet the criteria of subsection (f)(1)(A) or (B).

(A) The owner or operator shall have:

1. net working capital and tangible net worth each at least six times the amount of liability coverage to be demonstrated by this test; and

2. tangible net worth of at least $10 million; and

3. assets in the United States amounting to either:

a. at least 90 percent of total assets; or

b. at least six times the amount of liability coverage to be demonstrated by this test.

(B) The owner or operator shall have:

1. a current rating for the most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's, or Aaa, Aa, A or Baa as issued by Moody's; and

2. tangible net worth of at least $10 million; and

3. tangible net worth at least six times the amount of liability coverage to be demonstrated by this test; and

4. assets in the United States amounting to either:

a. at least 90 percent of total assets; or

b. at least six times the amount of liability coverage to be demonstrated by this test.

(2) The phrase "amount of liability coverage" as used in subsection (f)(1) of this section refers to the annual aggregate amounts for which coverage is required under subsections (a) and (b) of this section.

(3) To demonstrate that this test can be met, the owner or operator shall submit the following items to the Department:

(A) a letter signed by the owner's or operator's chief financial officer and worded as specified in section 66264.151, subsection (g). The letter shall be on the official letterhead stationary of the owner or operator, and shall contain an original signature. An owner or operator may use the financial test to demonstrate both assurance for closure or postclosure care, as specified by sections 66264.143, subsection (f), 66264.145, subsection (f), 66265.143, subsection (e) and 66265.145, subsection (e), and liability coverage as specified in subsections (a) and (b) of this section. If an owner or operator is using the financial test to cover both forms of financial responsibility, a separate letter is not required;

(B) a copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year;

(C) a special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

1. the independent certified public accountant has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year–end financial statements for the latest fiscal year with the amounts in such financial statements; and

2. in connection with that procedure, no matters came to the independent certified public accountant's attention which caused him or her to believe that the specified data should be adjusted.

(4) An owner or operator of a new facility shall submit the items specified in subsection (f)(3) of this section to the Department at least 60 days before the date on which hazardous waste is first received for transfer, treatment, storage or disposal.

(5) After the initial submission of items specified in subsection (f)(3) of this section, the owner or operator shall send updated information to the Department within 90 days after the close of each succeeding fiscal year. This information shall consist of all items specified in subsection (f)(3) of this section.

(6) If the owner or operator no longer meets the requirements of subsection (f)(1) of this section, liability coverage shall be obtained for the entire amount of coverage as described in this section by use of the financial mechanisms described in this section. Notice shall be sent to the Department of the owner's or operator's intent to obtain the required coverage; notice shall be sent by either registered mail or by certified mail within 90 days after any occurence that prevents the owner or operator from meeting the test requirements. Evidence of liability coverage shall be submitted to the Department within 90 days after any occurrence that prevents the owner or operator from meeting the requirements.

(7) The Department may, based on a reasonable belief that the owner or operator no longer meets the requirements of subsection (f)(1) of this section, require reports of financial condition at any time from the owner or operator in addition to those specified in subsection (f)(3) of this section. If the Department finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subsection (f)(1) of this section, the owner or operator shall provide alternate financial assurance for closure and postclosure care and evidence of the required liability coverage as specified in this section within 30 days after notification of such a finding.

(8) The Department may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his or her report on examination of the owner's or operator's financial statements (see subsection (f)(3)(B) of this section). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Department will evaluate other qualifications on an individual basis. The owner or operator shall provide evidence of liability coverage for the amount required as specified in this section within 30 days after notification of disallowance.

(9) The owner or operator is no longer required to submit the items specified in subsection (f)(3) of this section when:

(A) an owner or operator substitutes alternate financial assurance for closure and postclosure care and evidence of liability insurance as specified in this section; or

(B) the Department releases the owner or operator from the requirements of this section in accordance with sections 66264.143, subsection (j), 66264.145, subsection (j) and 66264.147, subsection (e).

(g) Guarantee for liability coverage.

(1) Subject to subsection (g)(2) of this section, an owner or operator may meet the requirements of this section by obtaining a written guarantee, hereafter referred to as "guarantee." The guarantor shall be the direct

or higher–tier parent corporation of the owner or operator, or a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor shall meet the requirements for owners or operators in subsections (f)(1) through (f)(6) of this section. The wording of the guarantee shall be identical to the wording specified in section 66264.151, subsection (h)(2) and shall have original signatures. A certified copy of the guarantee shall accompany the items sent to the Department as specified in subsection (f)(3) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, this letter shall describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter shall describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee shall provide that:

(A) if the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden or nonsudden accidental occurrences (or both as the case may be), arising from the operation of facilities covered by this guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor shall do so up to the limits of coverage;

(B) the guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Department. This guarantee shall not be terminated unless and until the Department approve(s) alternate liability coverage complying with section 66264.147 and/or section 66265.147.

(2)(A) In the case of corporations incorporated in states other than California, a guarantee may be used to satisfy the requirements of this section only if the Attorney General or Insurance Commissioner of;

1. the State in which the guarantor is incorporated, and

2. each state in which a facility covered by the guarantee is located have submitted a written statement to the Department that a guarantee executed as described in this section is a legally valid and enforceable obligation in that State.

(B) In the case of corporations incorporated outside the United States, a guarantee may be used to satisfy the requirements of this section only if;

1. the non–U.S. corporation has identified a registered agent for service of process in the State in which a facility covered by the guarantee is located and in the State in which it has its principal place of business, and

2. the Attorney General or Insurance Commissioner of the State in which a facility covered by the guarantee is located and the State in which the guarantor corporation has its principal place of business, has submitted a written statement to the Department that a guarantee executed as described in this section is a legally valid and enforceable obligation in this State.

(h) Letter of credit for liability coverage.

(1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit that conforms to the requirements of this subsection and submitting a copy of the letter of credit to the Department.

(2) The financial institution issuing the letter of credit must be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency.

(3) The wording of the letter of credit shall be identical to the wording specified in section 66264.151, subsection (k) of this article. The letter of credit shall contain original signatures and shall be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, effective date, and providing the following information; the hazardous waste facility identification number, name and address of the facility, and the amount of funds assured for valid third party liability claims of the facility by the letter of credit.

(4) An owner or operator who uses a letter of credit to satisfy the requirements of this section may also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the trustee of the standby trust shall be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the trustee. The trustee of the standby trust fund shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency. This standby trust fund shall meet all of the requirements of the trust fund specified in subsection (j) of this section.

(5) The wording of the standby trust fund shall be identical to the wording specified in section 66264.151, subsection (n).

(6) The letter of credit shall be irrevocable and issued for a period of at least one (1) year. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one (1) year, unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Department by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days shall begin on the date when both the owner or operator and the Department have received the notice, as evidenced by the return receipts.

(7) The letter of credit shall be issued in an amount at least equal to the required per occurrence and annual aggregate amount for sudden, or nonsudden, or sudden and nonsudden liability coverage, except as provided in subsection (b)(7) of this section.

(i) Payment bond for liability coverage.

(1) An owner or operator may satisfy the requirements of this section by obtaining a payment bond that conforms to the requirements of this subsection and submitting a copy of the bond to the Department.

(2) The surety company issuing the bond shall be among those listed as acceptable sureties on Federal bonds in the most recent Circular 570 of the U.S. Department of the Treasury.

(3) The wording of the payment bond shall be identical to the wording specified in section 66264.151, subsection (*l*). The payment bond shall contain original signatures.

(4) A payment bond may be used to satisfy the requirements of this section only if the Attorney General or Insurance Commissioner of

(A) the State in which the surety is incorporated, and

(B) each State in which a facility covered by the payment bond is located have submitted a written statement to the Department that a payment bond executed as described in this section is a legally valid and enforceable obligation in that State.

(j) Trust fund for liability coverage.

(1) An owner or operator may satisfy the requirements of this section by establishing a trust fund that conforms to the requirements of this subsection by submitting an originally signed duplicate of the trust agreement and a formal certification of acknowledgment to the Department.

(2) The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(3) The trust fund for liability coverage shall be funded for the full amount of the liability coverage to be provided by the trust fund before it may be relied upon to satisfy the requirements of this section. If at any time after the trust fund is created the amount of funds in the trust fund is reduced below the full amount of the liability coverage to be provided, the owner or operator, by the anniversary date of the establishment of the fund, shall either add sufficient funds to the trust fund to cause its value to equal the full amount of liability coverage to be provided, or obtain other financial assurance as specified in this section to cover the difference. For purposes of this subsection, "the full amount of the liability coverage to be provided" means the amount of coverage for sudden and/or nonsudden occurrences required to be provided by the owner or operator by this section, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(4) The wording of the trust agreement shall be identical to the wording specified in section 66264.151, subsection (m).

(k) Liability Coverage—Alternative Mechanism.

(1) An owner or operator of facilities which manage solely non-RCRA hazardous waste may demonstrate the required liability coverage by means of a mechanism other than as specified provided that prior to its use the proposed mechanism has been submitted to and approved by the Department. The mechanism shall be at least equivalent to the mechanisms specified in subsections (a), (b), (f) through (j) of this section. The Department shall evaluate the equivalency of a mechanism principally in terms of:

(A) certainty of the availability of funds for the required liability coverage; and

(B) the amount of funds that will be made available; and

(C) the Department may also consider other factors deemed to be appropriate, and may require the owner or operator to submit additional information as is deemed necessary to make the determination.

(2) The owner or operator shall submit to the Department the proposed mechanism together with a letter requesting that the alternate mechanism be considered acceptable for meeting the requirements of subsections (a) and (b) of this section. The submission shall include the following information:

(A) the name, address and phone number of the issuing institution; and

(B) hazardous waste facility identification number, name, address and the amount of liability coverage to be provided for each facility; and

(C) the terms of the proposed mechanism (period of coverage, renewal/extension, cancellation).

(3) The Department shall notify the owner or operator in writing of the determination made regarding the proposed mechanism's acceptability in lieu of the other mechanisms specified in subsections (a), (b), (f) through (j) of this section.

(4) If a proposed mechanism is found acceptable, the owner or operator shall submit a fully executed document to the Department. The document shall contain original signatures and shall be accompanied by a formal certification of acknowledgment.

(5) If a proposed mechanism is found acceptable except for the amount of coverage, the owner or operator shall either increase the coverage or obtain other liability coverage as specified in subsections (a) and (b) of this section. The amount of coverage available through the combination of mechanisms shall at least equal the amounts required by subsections (a) and (b) of this section.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245, 58004 and 58012, Health and Safety Code. Reference: Sections 25200.1 and 25245, Health and Safety Code; 40 CFR Section 264.147.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect amending section filed 8–17–95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 33).
3. Amendment of NOTE filed 10–13–98; operative 11–12–98 (Register 98, No. 42).
4. Amendment of subsections (a) and (b) and amendment of NOTE filed 10–19–98; operative 11–18–98 (Register 98, No. 43).
5. Change without regulatory effect amending subsections (b)(3), (f)(3)–(f)(3)(B), (g)(3)(A), (g)(8), (g)(10)(B), (h)(1), (h)(2)(A)–(B), (i)(2)–(3), (i)(4)(A), (i)(5), (j)(3)–(4), (k)(4), (*l*)(1), (*l*)(1)(B) and (*l*)(3) filed 11–6–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 45).
6. Change without regulatory effect amending subsection (b)(3) filed 7–1–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 27).
7. Change without regulatory effect amending section filed 12–19–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 51).
8. Change without regulatory effect amending subsection (g)(1) filed 3–20–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 12).

§ 66264.148. Incapacity of Owners or Operators, Guarantors, or Financial Institutions.

(a) An owner or operator shall notify the Department by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within 10 days after commencement of the proceeding. A guarantor of a corporate guarantee as specified in section 66264.143(f) and section 66264.145(f) shall make such a notification if named as debtor, as required under the terms of the corporate guarantee (section 66264.151(h)).

(b) An owner or operator who fulfills the financial assurance or liability coverage requirements by obtaining a trust fund, surety bond, letter of credit, or insurance policy shall be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments. The owner or operator shall establish other financial assurance or liability coverage within 60 days after such an event.

NOTE: Authority cited: Sections 208, 25150, 25159, 25159.5 and 25245, Health and Safety Code. Reference: Section 25245, Health and Safety Code; 40 CFR Section 264.148.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.151. Wording of the Instruments.

(a)(1) A trust agreement for a trust fund, as specified in section 66264.143, subsection (a) or section 66264.145, subsection (a) or section 66265.143, subsection (a) or section 66265.145, subsection (a) of this division, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the State of [name of State]" or "a national bank"], the "Trustee."

WHEREAS, the Department of Toxic Substances Control (DTSC), a department of the State of California, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility/transportable treatment unit (TTU) shall provide assurance that funds will be available when needed for closure and/or postclosure care of the facility/TTU,

WHEREAS, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities/TTUs identified herein,

WHEREAS, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

NOW, THEREFORE, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successor or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) The term "Beneficiary" means the State of California, Department of Toxic Substances Control.

Section 2. Identification of Facilities/TTUs and Cost Estimates. This Agreement pertains to the facilities/TTUs and cost estimates identified on attached Schedule A. [on Schedule A for each facility/TTU list the hazardous waste facility/TTU EPA Identification Number, name, address, and the current closure and/or postclosure cost estimates (Indicate the closure and postclosure amounts separately), or portions thereof, for which financial assurance is demonstrated by this Agreement.]

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund" for the benefit of the Beneficiary. The Grantor and the Trustee intend that no third party has access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be respon-

sible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Beneficiary.

Section 4. Payment for Closure and Postclosure Care. The Trustee shall make payments from the Fund as the Beneficiary shall direct, in writing, to provide for the payment of the costs of closure and/or postclosure care of the facilities/TTUs covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the Beneficiary from the Fund for closure and postclosure expenditures in such amounts as the Beneficiary shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Beneficiary specifies in writing. Upon refund, such funds shall not constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his or her duties with respect to the trust fund solely in the interest of the Beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities/TTUs, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 United States Code section 80a–2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 United States Code section 80a–1 et seq., including one which may be created, managed, underwritten or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest–bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the Beneficiary a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and Beneficiary shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer and pay over to the successor trustee the funds and properties then constituting the Fund. If, for any reason, the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, Beneficiary, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests and instructions by the Beneficiary to the Trustee shall be in writing, signed by the Beneficiary designees, and the Trustee shall act and shall

be fully protected in acting in accordance with such orders, requests and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Beneficiary hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or Beneficiary, except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor and the Beneficiary, by certified mail within 10 days following the expiration for the 30–day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay–in period is completed, the Trustee shall not be required to send a notice of nonpayment.

Section 16. Amendment of Agreement. This agreement may be amended by an instrument in writing executed by the Grantor, the Trustee and the Beneficiary, or by the Trustee and the Beneficiary, if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Beneficiary, or by the Trustee and the Beneficiary, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Beneficiary issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed and enforced according to the laws of the State of California.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written: The parties below certify that the wording of this Agreement is identical to the wording specified in California Code of Regulations, title 22, section 66264.151, subsection (a)(1) and is being executed in accordance with the requirements of California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.140 through 66264.148 and sections 66265.140 through 66265.148.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

(2) The following is an example of the certification of acknowledgment which shall accompany the trust agreement for a trust fund as specified in section 66264.143, subsection (a) and section 66264.145, subsection (a) or section 66265.143, subsection (a) or section 66265.145, subsection (a) of this division. State requirements may differ on the proper content of this acknowledgment.

State of

County of

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

(b) A surety bond guaranteeing payment into a trust fund, as specified in section 66264.143, subsection (b) or section 66264.145, subsection (b) or section 66265.143, subsection (b) or section 66265.145, subsection (b) of this division, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

FINANCIAL GUARANTEE BOND

Date bond executed:

Effective date:

Principal: [legal name and business address of owner or operator]

Type of Organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation:

Surety(ies): [name(s) and business address(es)]

EPA Identification Number, name, address and closure and/or postclosure amount(s) for each facility/transportable treatment unit (TTU) guaranteed by this bond [indicate closure and postclosure amounts separately]:

Total penal sum of bond: $

Surety's bond number:

KNOW ALL PERSONS BY THESE PRESENTS, THAT WE, the Principal and Surety(ies) hereto are firmly bound to the Department of Toxic Substances Control, of the State of California (hereinafter called DTSC) in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co–sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS said Principal is required, under state regulations, to have a permit or interim status in order to own or operate each hazardous waste management facility/TTU identified above, and

WHEREAS said Principal is required to provide financial assurance for closure, or closure and postclosure care, as a condition of the permit or interim status, and

WHEREAS said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

NOW, THEREFORE, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of each facility/TTU identified above, fund the standby trust fund in the amount(s) identified above for the facility/TTU,

OR, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after a final order to begin closure is issued by DTSC or a U. S. District Court or other court of competent jurisdiction,

OR, if the Principal shall provide alternate financial assurance, as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, as applicable, and obtain written approval from DTSC of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the Director of DTSC, or designee, from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon

notification by DTSC that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies)/TTU(s) into the standby trust fund as directed by DTSC.

The liability of the Surety(ies) shall not be discharged by any payment of or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to DTSC, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and DTSC, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond from DTSC.

[The following paragraph is an optional rider that may be included, but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure and/or postclosure amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of DTSC.

IN WITNESS WHEREOF, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies), that the wording of this surety bond is identical to the wording specified in California Code of Regulations, title 22, section 66264.151, subsection (b), and is being executed in accordance with the requirements of California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8.

Principal

[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate seal]

Corporate Surety(ies)

[Name and address]
State of incorporation:
Liability limit: $
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]

[For every co–surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: $

(c) A surety bond guaranteeing performance of closure and/or postclosure care, as specified in section 66264.143, subsection (c) or section 66264.145, subsection (c), shall be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

PERFORMANCE BOND

Date bond executed:
Effective date:
Principal: [legal name and business address of owner or operator]
Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]
State of incorporation:
Surety(ies): [name(s) and business address(es)]
EPA Identification Number, name, address, and closure and/or postclosure amount(s) for each facility/transportable treatment unit (TTU) guaranteed by this bond [indicate closure and postclosure amounts separately]:
Total penal sum of bond: $
Surety's bond number:

KNOW ALL PERSONS BY THESE PRESENTS, THAT WE, the Principal and Surety(ies) hereto are firmly bound to the Department of Toxic Substances Control of the State of California (hereinafter called DTSC), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co–sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS said Principal is required, under state regulations, to have a permit in order to own or operate each hazardous waste management facility/TTU identified above, and

WHEREAS said Principal is required to provide financial assurance for closure, or closure and postclosure care, as a condition of the permit, and

WHEREAS said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

NOW, THEREFORE the conditions of this obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of each facility/TTU for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

AND, if the Principal shall faithfully perform postclosure care of each facility/TTU for which this bond guarantees postclosure care, in accordance with the postclosure plan and other requirements of the permit, as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

OR, if the Principal shall provide alternate financial assurance as specified in California Code of Regulations, title 22, division 4.5, chapter 14, article 8, and obtain written approval from DTSC of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the Director of DTSC, or designee, from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by DTSC that the Principal has been found in violation of applicable closure requirements, as specified in California Code of Regulations, title 22, division 4.5, chapter 14, article 8, for a facility/TTU for which this bond guarantees performances of closure, the Surety(ies) shall either perform closure in accordance with the closure plan and other permit requirements or place the closure amount guaranteed for the facility/TTU into the standby trust fund as directed by DTSC.

Upon notification by DTSC that the Principal has been found in violation of the postclosure requirements, as specified in California Code of Regulations, title 22, division 4.5, chapter 14, article 8, for a facility/TTU for which this bond guarantees performance of postclosure care, the Surety(ies) shall either perform postclosure care in accordance with the postclosure plan and other permit requirements or place the postclosure amount guaranteed for the facility/TTU into the standby trust fund as directed by DTSC.

Upon notification by DTSC that the Principal has failed to provide alternate financial assurance as specified in California Code of Regulations, title 22, division 4.5, chapter 14, article 8, and obtain written approval of such assurance from DTSC during the 90 days following

receipt by both the Principal and DTSC of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies)/TTU(s) into the standby trust fund as directed by DTSC.

The Surety(ies) hereby waive(s) notification of amendments to closure plans, permits, applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to DTSC provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and DTSC, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by DTSC.

[The following paragraph is an optional rider that may be included, but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure and/or postclosure amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission from DTSC.

IN WITNESS WHEREOF, the Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies), that the wording of this surety bond is identical to the wording specified in California Code of Regulations, title 22, section 66264.151, subsection (c) and is being executed in accordance with the requirements of California Code of Regulations, title 22, division 4.5, chapter 14, article 8, sections 66264.143 and 66264.145.

Principal

[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate seal]

Corporate Surety(ies)

[Name and address]
State of incorporation:
Liability limit: $
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]

[For every co–surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: $

(d) A letter of credit, as specified in section 66264.143, subsection (d) or section 66264.145, subsection (d) or section 66265.143, subsection (c) or section 66265.145, subsection (c) of this division, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

IRREVOCABLE STANDBY LETTER OF CREDIT

Date:
Irrevocable Standby Letter of Credit No.:

Department of Toxic Substances Control
Financial Responsibility Section
8800 Cal Center Drive
Sacramento, California 95826

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. [insert number] in your favor at the request and for the account of [insert owner's or operator's name and address] up to the aggregate amount of [amount in words] U.S. dollars $ [insert dollar amount], available upon presentation of:

1. your sight draft bearing reference to this letter of credit No. [insert number], and

2. your signed statement reading as follows:

"I certify that the amount of the draft is payable pursuant to regulations issued under authority of the California Hazardous Waste Control Law."

An owner or operator who uses a letter of credit to satisfy the requirements of California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, shall also establish a standby trust agreement.

Each draft shall be marked "Drawn under [insert name of issuing institution] letter of credit No. [insert number] dated [insert date]".

Each draft shall also be accompanied by the original of this letter of credit upon which we may endorse our payment.

This letter of credit is effective as of [insert date] and shall expire on [insert date at least one year from effective date], but such expiration date shall be automatically extended for a period of at least [insert at least one year] on [insert date] and on each successive expiration date, unless at least 120 days before the current expiration date, we notify both you and [insert owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both you and [insert owner's or operator's name], as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [insert owner's or operator's name] or in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in California Code of Regulations, title 22, section 66264.151, subsection (d) and is being executed in accordance with the requirements of California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8 on the date shown below.

[Signature(s) of official(s) of issuing institution]
[Title(s) of official(s) of issuing institution]
[Address of official(s) of issuing institution]
[Date official(s) of issuing institution sign]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce" or "the Uniform Commercial Code"].

(e) A certificate of insurance, as specified in section 66264.143, subsection (e) or section 66264.145, subsection (e) or section 66265.143, subsection (d) or section 66265.145, subsection (d) of this division, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATE OF INSURANCE FOR CLOSURE OR POSTCLOSURE CARE

Name and Address of Insurer (herein called the "Insurer"):
Name and Address of Insured (herein called the "Insured"):
Facilities Covered: [List for each facility/transportable treatment unit (TTU): The EPA Identification Number, name, address, and the amount of insurance for closure and/or the amount for postclosure care (these amounts for all facilities covered shall total the face amount shown below).]
Face Amount:
Policy Number:
Effective Date:

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for [insert "closure" or "closure and postclosure care" or "postclosure care"] for the facilities/TTU(s) identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, section 66264.143, subsection (e), section 66264.145, subsection (e), section 66265.143, subsection (d) and section 66265.145, subsection (d) as applicable and as such regulations were constituted on the date shown below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

The Insurer certifies that it will not cancel, terminate, or fail to renew this policy except for failure to pay the premium, and that the automatic renewal of the policy provides the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium and the Insurer elects to cancel, terminate, or not renew the policy, the Insurer will send notice by either registered or certified mail to the owner or operator and the Department of Toxic Substances Control (DTSC). Cancellation, termination, or failure to renew may not occur, however, during the one hundred twenty (120) days beginning with the date of receipt of the notice by the owner or operator and the DTSC as evidence by the return receipt. Cancellation, termination or failure to renew will not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:

(1) The DTSC deems the facility/TTU abandoned; or

(2) The permit is terminated or revoked or a new permit is denied by the DTSC; or

(3) Closure is ordered by the DTSC; or any other State or Federal agency, or a court of competent jurisdiction; or

(4) The owner or operator is named as a debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy) U. S. Code; or

(5) The premium due is paid.

Whenever requested by the Department of Toxic Substances Control (DTSC) of the State of California, the Insurer agrees to furnish to DTSC a duplicate original of the original policy listed above, including all endorsements thereon.

In the event this policy is used in combination with another mechanism, this policy shall be considered [insert "primary" or "excess"] coverage.

The parties below certify that the wording of this certificate is identical to the wording specified in California Code of Regulations, title 22, section 66264.151, subsection (e) and is being executed in accordance with the requirements of California Code of Regulations, title 22, division 4.5, chapters 14 and 15, article 8.

[Authorized signature for Insurer]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

[Date]

(f) A letter from the chief financial officer, as specified in section 66264.143, subsection (f) or section 66264.145, subsection (f), or section 66265.143, subsection (e) or section 66265.145, subsection (e) of this division, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

Department of Toxic Substances Control
Financial Responsibility Section
8800 Cal Center Drive
Sacramento, California 95826

I am the chief financial officer of [insert name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance for closure and/or postclosure costs, as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8.

[Fill out the following paragraphs regarding facilities/transportable treatment units (TTU) and associated cost estimates. If your firm has no facilities/TTUs that belong in a particular paragraph, write "None" in the space indicated. For each facility/TTU, include its EPA Identification Number, name, address and current closure and/or postclosure cost estimates. Identify each cost estimate separately as to whether it is for closure or postclosure care.]

1. This firm is the owner or operator of the following facilities/TTUs for which financial assurance for closure or postclosure care is demonstrated through the financial test specified in section 66264.143, subsection (f), section 66264.145, subsection (f), section 66265.143, subsection (e), and section 66265.145, subsection (e) of California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8. The current closure and/or postclosure cost estimates covered by the test are shown for each facility/TTU:_____.

2. This firm guarantees, through the guarantee specified in section 66264.143, subsection (f), section 66264.145, subsection (f), section 66265.143, subsection (e), and section 66265.145, subsection (e) of California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, the closure and/or postclosure care of the following facilities/TTUs owned or operated by the guaranteed party. The current cost estimates for the closure or postclosure care so guaranteed are shown for each facility/TTU:_____.

The firm identified above is [insert one or more: (1) The direct or higher–tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee [insert dollars]; or (3) engaged in the following substantial business relationship with the owner or operator [insert business relationship], and receiving the following value in consideration of the guarantee [insert dollars]]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.]

3. In states where the U.S. Environmental Protection Agency is not administering the financial requirements of subpart H of 40 CFR parts 264 and 265, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or postclosure care of the following facilities/TTUs through the use of a test equivalent or substantially equivalent to the financial test specified in subpart H of 40 CFR parts 264 and 265 or California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8. The current closure and/or postclosure cost estimates covered by such a test are shown for each facility/TTU:_____.

4. This firm is the owner or operator of the following hazardous waste management facilities/TTUs for which financial assurance for closure or, if a disposal facility, postclosure care, is not demonstrated either to U.S. Environmental Protection Agency or a State through the financial test or any other financial assurance mechanism specified in subpart H of 40 CFR parts 264 and 265, California Code of Regulations, title 22, division 4.5, chapter 14 or 15, article 8 or equivalent or substantially equivalent State mechanisms. The current closure and/or postclosure cost estimates not covered by such financial assurance are shown for each facility/TTU:_____.

5. This firm is the owner or operator of the following Underground Injection Control facilities for which financial assurance for plugging and abandonment is required under 40 CFR part 144. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility:_____.

This firm [insert "is" or "is not"] required to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [insert month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year–end financial statements for the latest completed fiscal year, ended [insert date].

This firm is using [insert "Alternative I" or "Alternative II"].

[Fill in Alternative I if the criteria of paragraph (f)(1)(A) of sections 66264.143 and 66264.145, or of paragraph (e)(1)(A) of sections 66265.143 and 66265.145 of this division are used. Fill in Alternative II

of the criteria of paragraph (f)(1)(B) of sections 66264.143 and 66265.145, or of paragraph (e)(1)(B) of sections 66265.143 and 66265.145 of this division are used.]

ALTERNATIVE I

1. Sum of current closure and postclosure cost estimate (total of all cost estimates shown in the five paragraphs above) $_____
*2. Total liabilities (if any portion of the closure or postclosure cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4) $_____
*3. Tangible net worth $_____
*4. Net worth $_____
*5. Current assets $_____
*6. Current liabilities $_____
7. Net working capital (line 5 minus line 6) $_____
*8. The sum of net income plus depreciation, depletion, and amortization $_____
*9. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) $_____
10. Is line 3 at least $10 million? [Yes/No]
11. Is line 3 at least 6 times line 1? [Yes/No]
12. Is line 7 at least 6 times line 1? [Yes/No]
*13. Are at least 90% of firm's assets located in the U.S.? If not, complete line 14 [Yes/No]
14. Is line 9 at least 6 times line 1? [Yes/No]
15. Is line 2 divided by line 4 less than 2.0? [Yes/No]
16. Is line 8 divided by line 2 greater than 0.1? [Yes/No]
17. Is line 5 divided by line 6 greater than 1.5? [Yes/No]

ALTERNATIVE II

1. Sum of current closure and postclosure cost estimates [total of all cost estimates shown in the five paragraphs above] $_____
2. Current bond rating of most recent issuance of this firm and name of rating service _____
3. Date of issuance of bond _____
4. Date of maturity of bond _____
*5.Tangible net worth [if any portion of the closure and postclosure cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line] $_____
*6.Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) $_____
7. Is line 5 at least $10 million? [Yes/No]
8. Is line 5 at least 6 times line 1? [Yes/No]
*9. Are at least 90% of firm's assets located in the U.S.? If not, complete line 10 [Yes/No]
10. Is line 6 at least 6 times line 1? [Yes/No]

I hereby certify that the wording of this letter is identical to the wording as specified in California Code of Regulations, title 22, section 66264.151, subsection (f) and is being executed in accordance with the requirements of California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8.

[Signature]
[Name]
[Title]
[Date]

(g) A letter from the chief financial officer, as specified in section 66264.147, subsection (f) or section 66265.147, subsection (f) of this division, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

LETTER FROM CHIEF FINANCIAL OFFICER

Department of Toxic Substances Control
Financial Responsibility Section
8800 Cal Center Drive
Sacramento, California 95826

I am the chief financial officer of [insert firm's name and address]. This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage [insert "and closure and/or postclosure care" if applicable] as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8.

[Fill out the following paragraphs regarding facility(ies)/transportable treatment unit (TTU) and liability coverage. If there are no facility(ies)/TTU(s) that belong in a particular paragraph, write "None" in the space indicated. For each facility/TTU, include the hazardous waste facility/TTU EPA Identification Number, name, and address, and current liability coverage (indicate sudden and nonsudden coverage amounts separately)].

The firm identified above is the owner or operator of the following facility(ies)/TTU(s) for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.147 and 66265.147:

The firm identified above guarantees, through the guarantee specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.147 and 66265.147, liability coverage for [insert "sudden" or "nonsudden" or both "sudden and nonsudden"] accidental occurrences at the following facility(ies)/TTU(s) owned or operated by the following:

The firm identified above is [insert one or more: (1) the direct or higher tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of the guarantee [insert dollars]; or (3) engaged in the following substantial business relationship with the owner or operator [insert business relationship], and receiving the following value in consideration of the guarantee [insert dollars]]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.]

[If you are using the financial test to demonstrate coverage of both liability and financial assurance for closure and/or postclosure care, fill in the following five paragraphs regarding facilities and associated closure and postclosure cost estimates. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility/TTU, include its hazardous waste facility/TTU EPA Identification Number, name, address and current closure and/or postclosure cost estimates. Identify each cost estimate separately as to whether it is for closure or postclosure care.]

1. The firm identified above is the owner or operator of the following facilities/TTUs for which financial assurance for closure and/or postclosure or liability coverage is demonstrated through the financial test as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, section 66264.143, subsection (f), section 66264.145, subsection (f), section 66265.143, subsection (e), and section 66265.145, subsection (e). The current closure and/or postclosure cost estimates covered by the test are shown for each facility/TTU:

2. The firm identified above guarantees, through the guarantee as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, section 66264.143, subsection (f), section 66264.145, subsection (f), section 66265.143, subsection (e), and section 66265.145, subsection (e), the closure and/or postclosure care or liability coverage of the following facilities/TTUs owned or operated by the guaranteed party. The current cost estimates for the closure or postclosure care so guaranteed are shown for each facility/TTU:

3. In States where the U.S. Environmental Protection Agency is not administering the financial requirements of subpart H of 40 CFR parts 264 and 265, this firm as owner, operator or guarantor is demonstrating financial assurance for the closure or postclosure care of the following facilities/TTUs through the use of a financial test equivalent or substantially equivalent to the financial test specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, section 66264.143, subsection (f), section 66264.145, subsection (f), section

66265.143, subsection (e), and section 66265.145, subsection (e). The current closure and/or postclosure cost estimates covered by such a test are shown for each facility/TTU:

4. The firm identified above is the owner or operator of the following facilities/TTUs for which financial assurance for closure or, if a disposal facility, postclosure care, is not demonstrated either to U.S. Environmental Protection Agency or a State through the financial test or any other financial assurance mechanism as specified in California Code of Regulations, title 22, division 4.5, chapters 14 and 15, article 8 or equivalent or substantially equivalent State mechanisms. The current closure and/or postclosure cost estimates not covered by such financial assurance are shown for each facility/TTU:

5. The firm is the owner or operator or guarantor of the following Underground Injection Control facilities for which financial assurance for plugging and abandonment is required under 40 CFR part 144 and is assured through a financial test. The current closure cost estimates as specified in 40 CFR144.62 are shown for each facility:

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [insert date]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year–end financial statements for the latest completed fiscal year, ended [insert date].

This firm is using [insert "Alternative I" or "Alternative II"] for Part A [and [if this financial test includes closure and/or postclosure care, insert "Alternative I" or "Alternative II"] for Part B].

Part A. Liability Coverage for Accidental Occurrences

[Fill in Alternative I if the criteria of paragraph (f)(1)(A) of section 66264.147 or section 66265.147 are used. Fill in Alternative II if the criteria of paragraph (f)(1)(B) of section 66264.147 or section 66265.147 are used.]

ALTERNATIVE I

1. Amount of annual aggregate liability coverage to be demonstrated $_____
*2. Current assets $_____
*3. Current liabilities $_____
4. Net working capital [line 2 minus line 3] $_____
*5. Tangible net worth $_____
*6. If less than 90 percent of assets are located in the United States, give total United States assets $_____
7. Is line 5 at least $10 million? [Yes/No]
8. Is line 4 at least 6 times line 1? [Yes/No]
9. Is line 5 at least 6 times line 1? [Yes/No]
10. Are at least 90 percent of assets located in the United States? If not, complete line 11. [Yes/No]
11. Is line 6 at least 6 times line 1? [Yes/No]

ALTERNATIVE II

1. Amount of annual aggregate liability coverage to be demonstrated $_____
2. Current bond rating of most recent issuance and name of rating service $_____
3. Date of issuance of bond $_____
4. Date of maturity of bond $_____
*5. Tangible net worth $_____
*6. Total assets in the United States [required only if less than 90 percent of assets are located in the United States] $_____
7. Is line 5 at least $10 million? [Yes/No]
8. Is line 5 at least 6 times line 1? [Yes/No]
*9. Are at least 90 percent of assets located in the United States? [Yes/No]
10. Is line 9 at least 6 times line 1? [Yes/No]

[Fill in Part B if you are using the financial test to demonstrate assurance of both liability coverage and closure or postclosure care.]

Part B. Closure or Postclosure Care and Liability Coverage

[Fill in Alternative I if the criteria of paragraphs (f)(1)(A) of 66264.143 or 66264.145 and/or (f)(1)(A) of 66264.147 are used or if the criteria of paragraphs (e)(1)(A) of 66265.143 or 66265.145 and/or (f)(1)(A) of 66265.147 are used. Fill in Alternative II if the criteria of paragraphs (f)(1)(B) of 66264.143 or 66264.145 and/or (f)(1)(B) of 66264.147 are used or if the criteria of paragraphs (e)(1)(B) of 66265.143 or 66265.145 and (f)(1)(B) of 66265.147 are used.]

ALTERNATIVE I

1. Sum of current closure and postclosure cost estimates (Total of all cost estimates shown in the paragraphs of the letter to the Director of the Department of Toxic Substances Control) $_____
2. Amount of annual aggregate liability coverage to be demonstrated $_____
3. Sum of lines 1 and 2 $_____
*4. Total liabilities (if any portion of your closure or postclosure cost estimate is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6) $_____
*5. Tangible net worth $_____
*6. Net worth $_____
*7. Current assets $_____
*8. Current liabilities $_____
9. Net working capital (line 7 minus line 8) $_____
10. The sum of net income plus depreciation, depletion, and amortization $_____
*11. Total assets in the United States (required only if less than 90 percent of firm's assets are located in the United States) $_____
12. Is line 5 at least $10 million? [Yes/No]
13. Is line 5 at least 6 times line 3? [Yes/No]
14. Is line 9 at least 6 times line 3? [Yes/No]
*15. Are at least 90 percent of the firm's assets located in the United States? If not, complete line 16 [Yes/No]
16. Is line 11 at least 6 times line 3? [Yes/No]
17. Is line 4 divided by line 6 less than 2.0? [Yes/No]
18. Is line 10 divided by line 4 greater than 0.1? [Yes/No]
19. Is line 7 divided by line 8 greater than 1.5? [Yes/No]

ALTERNATIVE II

1. Sum of current closure and postclosure cost estimates (Total of all cost estimates shown in the paragraphs of the letter to the Director of the Department of Toxic Substances Control $_____
2. Amount of annual aggregate liability coverage to be demonstrated $_____
3. Sum of lines 1 and 2 $_____
4. Current bond rating of most recent issuance and name of rating service: _____
5. Date of issuance of bond: _____
6. Date of maturity of bond: _____
*7. Tangible net worth (if any portion of the closure and post closure cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line.) _____
*8. Total assets in the United States (required only if less than 90 percent of firm's assets are located in the United States) $_____
9. Is line 7 at least $10 million? [Yes/No]
10. Is line 7 at least 6 times line 3? [Yes/No]
*11. Are at least 90 percent of the firm's assets located in the United States? If not, complete line 12. [Yes/No]
12. Is line 8 at least 6 times line 3? [Yes/No]

I hereby certify that the wording of this letter is identical to the wording as specified in California Code of Regulations, title 22, section 66264.151, subsection (g) and is being executed in accordance with the requirements of California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8.

[Signature]

[Name]

[Title]

[Date]

(h)(1) A corporate guarantee, as specified in section 66264.143, subsection (f) or section 66264.145, subsection (f), or section 66265.143, subsection (e) or section 66265.145, subsection (e) of this division, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CORPORATE GUARANTEE FOR CLOSURE OR POSTCLOSURE CARE

Department of Toxic Substances Control
Financial Responsibility Section
8800 Cal Center Drive
Sacramento, California 95826

Guarantee made this [insert date] by [insert name of guaranteeing entity], a business corporation organized under the laws of the State of [insert name of State], herein referred to as guarantor, to the Department of Toxic Substances Control (DTSC), obligee, on behalf of our subsidiary [insert owner or operator name and business address].

This guarantee is made on behalf of the [insert owner or operator name], which is [one of the following: "our subsidiary"; "a subsidiary of (name and address of common parent corporation) of which guarantor is a subsidiary"; or "an entity with which the guarantor has a substantial business relationship, as defined in California Code of Regulations, title 22, division 4.5, chapter 10, article 2, section 66260.10"] to the DTSC.

RECITALS

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, section 66264.143, subsection (f), section 66264.145, subsection (f), section 66265.143, subsection (e), and section 66265.145, subsection (e).

2. [Insert owner or operator's name] owns at least 50 percent of the voting stock of and/or operates the following hazardous waste management facility(ies)/transportable treatment unit(s) (TTU) covered by this guarantee: [List for each facility/TTU: EPA Identification Number, name, and address. Indicate for each whether guarantee is for closure, postclosure care, or both. Include closure and postclosure amounts, shown separately.]

3. "Closure plans" and "postclosure plans" as used below refer to the plans maintained as required by California Code of Regulations, title 22, division 4.5, chapters 14 and 15, article 7, for the closure and postclosure care of facilities/TTU(s) as identified above.

4. For value received from [insert owner or operator name], guarantor guarantees to DTSC that in the event that [insert owner or operator name] fails to perform [insert "closure", "postclosure care" or "closure and postclosure care"] of the above facility(ies)/TTU(s) in accordance with the closure or postclosure plans and other permit or interim status requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, as applicable, in the name of [insert owner or operator name] in the amount of the current closure or postclosure cost estimates as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8.

5. Guarantor agrees that if, at any time during or at the end of any fiscal year before the termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to DTSC and to [insert owner or operator name] that he or she intends to provide alternate financial assurance as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8 as applicable, in the name of [insert owner or operator name]. Within 120 days after the end of such fiscal year or other occurrence, the guarantor shall establish such alternate financial assurance unless [insert owner or operator name] has done so.

6. The guarantor agrees to notify DTSC by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code, naming guarantor as debtor within ten (10) days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by DTSC of a determination that guarantor no longer meets the financial test criteria or that he or she is disallowed from continuing as a guarantor of closure or postclosure care, he or she shall establish alternate financial assurance as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, as applicable, in the name of [insert owner or operator name] unless [insert owner or operator name] has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure or postclosure plan, amendment or modification of the permit, the extension or reduction of the time of performance of closure or postclosure, or any other modification or alteration of an obligation of the owner or operator pursuant to California Code of Regulations, title 22, division 4.5.

9. Guarantor agrees to remain bound under this guarantee for as long as [insert owner or operator name] shall comply with the applicable financial assurance requirements of California Code of Regulations, title 22, division 4.5 for the above listed facilities/TTUs, except as provided in paragraph 10 of this agreement.

10. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]:

Guarantor may terminate this guarantee by sending notice by certified mail to DTSC and to [insert owner or operator name], provided that this guarantee may not be terminated unless and until the [insert owner or operator name] obtains, and DTSC approve(s), alternate closure and/or postclosure care coverage complying with California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with its owner or operator.]

Guarantor may terminate this guarantee 120 days following the receipt of notification, through either registered or certified mail, by DTSC and by [insert owner or operator name].

11. Guarantor agrees that if [insert owner or operator name] fails to provide alternate financial assurance as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, as applicable, and obtain written approval of such assurance from DTSC within 90 days after a notice of cancellation by the guarantor is received by DTSC from guarantor, guarantor shall provide such alternate financial assurance in the name of [insert owner or operator name].

12. Guarantor expressly waives notice of acceptance of this guarantee by DTSC or by [insert owner or operator name]. Guarantor also expressly waives notice of amendments or modifications of the closure and/or postclosure plan and of amendments or modifications of the facility/TTU permit(s).

The parties hereby certify that the wording of this guarantee is identical to the wording specified in California Code of Regulations, title 22, section 66264.151, subsection (h)(1) and is being executed in accordance with the requirements of California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

(2) A guarantee, as specified in section 66264.147, subsection (f) or section 66265.147, subsection (f) of this division, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

GUARANTEE FOR LIABILITY COVERAGE

Department of Toxic Substances Control
Financial Responsibility Section
8800 Cal Center Drive
Sacramento, California 95826

Guarantee made by this [insert date] by [insert name of guaranteeing entity] a business corporation organized under the laws of [if incorporated within the United States, insert "the State of [insert name of State]"; if incorporated outside the United States, insert the name of the country in which incorporated, the principal place of business within the United States, and the name and address of the registered agent in the State of the principal place of business], herein referred to as guarantor. This guarantee is made on behalf of [insert owner or operator name] of [insert business address] which is one of the following: [insert "our subsidiary"; "a subsidiary of [insert name and address of common parent corporation] of which guarantor is a subsidiary"; or "an entity with which guarantor has a substantial business relationship, as defined in California Code of Regulations, title 22, division 4.5, chapter 10, article 2, section 66260.10"], to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [insert "sudden" and/or "nonsudden"] accidental occurrences arising from operation of the facility(ies)/transportable treatment unit(s) (TTU) covered by this guarantee.

RECITALS

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.147 and 66265.147.

2. [Insert owner or operator name] owns or operates the following hazardous waste management facility(ies)/TTU(s) covered by this guarantee: [List for each facility/TTU: EPA Identification Number, name, and address; and if guarantor is incorporated outside the United States, list the name and address of the guarantor's registered agent in each State.]. This corporate guarantee satisfies California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, third–party liability requirements for [insert "sudden", "nonsudden" or "both sudden and nonsudden"] accidental occurrences in the above–named owner or operator facility(ies)/TTU(s) for coverage in the amount of $ [insert dollar amount] per facility/TTU per occurrence and $ [insert dollar amount] annual aggregate.

3. For value received from [insert owner or operator name], guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [insert "sudden" and/or "nonsudden"] accidental occurrences arising from operations of the facility(ies)/TTU(s) covered by this guarantee that in the event that [insert owner or operator name] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [insert "sudden" and/or "nonsudden"] accidental occurrences, arising from the operation of the above–named facility(ies)/TTU(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage identified above.

4. Such obligation does not apply to the following:

(a) Bodily injury or property damage for which [insert owner or operator name] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert owner or operator name] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert owner or operator name] under a workers' compensation, disability benefits, or unemployment compensation law or any similar laws.

(c) Bodily injury to:

(1) An employee of [insert owner or operator name] arising from, and in the course of, employment by [insert owner or operator name]; or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert owner or operator name]. This exclusion applies:

(A) Whether [insert owner or operator name] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who shall pay damages because of the injury to persons identified in paragraphs (A) and (B).

(d) Bodily injury or property, damages arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert owner or operator name];

(2) Premises that are sold, given away, or abandoned by [insert owner or operator name] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert owner or operator name];

(4) Personal property in the care, custody, or control of [insert owner or operator name];

(5) That particular part of real property on which the [insert owner or operator name] or any contractor or subcontractors working directly or indirectly on behalf of the [insert owner or operator name] are performing operations, if the property damage arises out of these operations.

5. Guarantor agrees that if, at any time during or at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within ninety (90) days, by certified mail, notice to the Department of Toxic Substances Control (DTSC) and to [insert owner or operator name] that he or she intends to provide alternate liability coverage as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.147 and 66265.147, as applicable, in the name of [insert owner or operator name]. Within 90 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless [insert owner or operator name] has done so.

6. The guarantor agrees to notify the DTSC by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code, naming guarantor as debtor, within ten (10) days after commencement of the proceedings.

7. Guarantor agrees that within thirty (30) days after being notified by the DTSC of a determination that the guarantor no longer meets the financial test criteria or that he or she is disallowed from continuing as a guarantor, he or she shall establish alternate liability coverage as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.147 and 66265.147 in the name of [insert owner/operator name], unless the [insert owner or operator name name] has done so.

8. Guarantor reserves the right to modify this agreement to take into account amendment or modification of the liability requirements set by California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.147 and 66265.147, provided that such modification shall become effective only if DTSC does not disapprove the modification within thirty (30) days of receipt of notification of the modification.

9. Guarantor agrees to remain bound under this guarantee for so long as [insert owner/operator name] shall comply with the applicable requirements of California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.147 and 66265.147 for the above–listed facility(ies)/TTU(s), except as provided in paragraph 10 of this agreement.

10. [Insert the following language if the guarantor is (a) a direct or higher–tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator name]:

Guarantor may terminate this guarantee by sending notice by certified mail to DTSC, and to [insert owner or operator name], provided that this guarantee may not be terminated unless and until the [insert owner or operator name] obtains, and DTSC approves alternate liability coverage complying with California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.147 and 66265.147.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator].

Guarantor may terminate this guarantee 120 days following receipt of notification, through certified mail, by DTSC and by [insert owner or operator name].

11. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.

12. Guarantor agrees that this guarantee is in addition to and does not affect any other responsibility or liability of the guarantor with respect to the covered facility(ies)/TTU(s).

13. The guarantor shall satisfy a third–party liability claim only on receipt of one of the following documents:

(a) Certification from the Principal and the third–party liability claimant(s) that the liability claim should be paid. The certification shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATION OF VALID CLAIM

The undersigned, as parties [insert principal name] and [insert name and address of third–party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [insert "sudden" and/or "nonsudden"] accidental occurrence arising from operating [insert Principal's name and facility type(s) hazardous waste "treatment", "storage" or disposal" facility/transportable treatment unit (TTU)] should be paid in the amount of $ [insert dollars].

[Signatures]
Principal
(Notary) Date
[Signatures]
Claimant(s)
(Notary) Date

(b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility/TTU or group of facility(ies)/TTU(s).

14. In the event of combination of this guarantee with another mechanism to meet liability requirements, this guarantee will be considered [insert "primary" or "excess"] coverage.

I hereby certify that the wording of this guarantee is identical to the wording as specified in California Code of Regulations, title 22, section 66264.151, subsection (h)(2) and is being executed in accordance with the requirements of California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8.

Effective date:
[Name of guarantor]
[Authorized signature for guarantor]
[Name of person signing]
[Title of person signing]
Signature of witness of notary:

(i) A hazardous waste facility liability endorsement as required in section 66264.147 or section 66265.147 shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

HAZARDOUS WASTE FACILITY LIABILITY ENDORSEMENT

1. This endorsement certifies that the Insurer has issued liability insurance covering bodily injury and property damage to [name of insured], [address of insured] in connection with the insured's obligation to demonstrate financial responsibility under California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.147 and 66265.147. The coverage applies at [list EPA Identification Number, name, and address for each facility/transportable treatment unit (TTU)] for [insert "sudden accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs. The coverage provided by the above policy is [insert "primary" or "excess"]. If excess coverage, the primary coverage mechanism shall also be demonstrated.

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with subsections (a) through (e) of this Paragraph 1 are hereby amended to conform with subsections (a) through (e). The Insurer certifies the following with respect to the insurance described above:

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.147 and 66265.147.

(c) Whenever requested by the Department of Toxic Substances Control (DTSC), the Insurer agrees to furnish to DTSC a signed duplicate original of the policy and all endorsements.

(d) Cancellation of the insurance, whether by the Insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility/TTU, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by DTSC as evidenced by the return receipt.

(e) Any other termination of the insurance will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by DTSC as evidenced by the return receipt.

Attached to and forming part of policy No. [insert policy number] issued by [insert name of Insurer], herein called the Insurer, of [insert address of Insurer] to [insert name of insured] of [insert address of insured] this [insert day] day of [insert month] , [insert year] . The effective date of said policy is [insert day] day of [insert month].

I hereby certify that the wording of this endorsement is identical to the wording specified in California Code of Regulations, title 22, section 66264.151, subsection (i), is being executed in accordance with the requirements of California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.

[Signature of Authorized Representative of Insurer]
[Type name]
[Title], Authorized Representative of [name of Insurer]
[Address of Representative]

(j) A certificate of liability insurance as required in section 66264.147 or section 66265.147 shall be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

HAZARDOUS WASTE FACILITY CERTIFICATE OF LIABILITY INSURANCE

1. [Insert name of Insurer], (the "Insurer"), of [insert address of Insurer] hereby certifies that it has issued liability insurance covering bodily injury and property damage to [insert name of insured], (the "insured"),

of [insert address of insured] in connection with the insured's obligation to demonstrate financial responsibility under California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.147 and 66265.147. The coverage applies at the facilities/transportable treatment units (TTU) [list EPA Identification Number, name, and address for each facility/TTU] for [insert "sudden accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs. The coverage is provided under policy number [insert policy number], issued on [insert date]. The effective date of said policy is [insert date]. The coverage provided by the above policy is [insert "primary" or "excess"]. If excess coverage, the primary coverage mechanism shall also be demonstrated.

2. The Insurer further certifies the following with respect to the insurance described above:

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, section 66264.147 and 66265.147.

(c) Whenever requested by the Department of Toxic Substances Control (DTSC), the Insurer agrees to furnish to DTSC a signed duplicate of the original of the policy and all endorsements.

(d) Cancellation of the insurance, whether by the Insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility/TTU will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by DTSC as evidenced by the return receipt.

(e) Any other termination of the insurance will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the DTSC as evidenced by the return receipt.

I hereby certify that the wording of this instrument is identical to the wording specified in California Code of Regulations, title 22, section 66264.151, subsection (j), is being executed in accordance with California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.

[Signature of authorized representative of Insurer]

[Type name]

[Title], Authorized Representative of [name of Insurer]

[Address of Representative]

(k) A letter of credit, as specified in section 66264.147, subsection (h) or section 66265.147, subsection (h) of this division, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

IRREVOCABLE STANDBY LETTER OF CREDIT

Date:

Irrevocable Standby Letter of Credit No.:

Department of Toxic Substances Control
Financial Responsibility Section
8800 Cal Center Drive
Sacramento, California 95826

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. [insert number] in favor of ["any and all third-party liability claimants" or insert name of trustee of the standby trust fund], at the request and for the account of [insert owner or operator's name and address] for third-party liability awards or settlements up to [in words] U.S. dollars $ [insert dollar amount] per occurrence, and the annual aggregate amount of [in words] U.S dollars $ [insert dollar amount] for sudden accidental occurrences and/or for third-party liability awards or settlements up to the amount of [in words] U.S. dollars $ [insert dollar amount] per occurrence, and the annual aggregate amount of [in words] U.S dollars $ [insert dollar amount] for nonsudden accidental occurrences available upon presentation of a sight draft bearing reference to this letter of credit No. [insert letter of credit number], and

[insert the following language if the letter of credit is being used without a standby trust fund:] "(1) A signed certificate reading as follows:

CERTIFICATE OF VALID CLAIM

The undersigned, as parties [insert principal name] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury [insert and/or] property damage caused by a [insert "sudden" or "nonsudden"] accidental occurrence arising from operations of [insert principal name] hazardous waste transfer, treatment, storage, or disposal facility should be paid in the amount of $ [insert dollar amount]. We hereby certify that the claim does not apply to any of the following:

(a) Bodily injury or property damage for which [insert principal name] is obligated to pay damages by reason of assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert principal name] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert principal name] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert principal name] arising from, and in the course of, employment by [insert principal name]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert principal name]. This exclusion applies:

(A) Whether [insert principal name] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who shall pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented or occupied by [insert principal name];

(2) Premises that are sold, given away, or abandoned by [insert principal name] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert principal name];

(4) Personal property in the care, custody or control of [insert principal name];

(5) That particular part of real property on which [insert principal name] or any contractors or subcontractors working directly or indirectly on behalf of [insert principal name] are performing operations, if the property damage arises out of these operations.

[Signatures]

Grantor

[Signatures]

Claimant(s)

or (2) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or non-

sudden accidental occurrences arising from operation of the Grantor's facility/transportable treatment unit (TTU) or group of facilities/TTUs.

This letter of credit is effective as of [insert date] and shall expire on [insert date at least one year from effective date], but such expiration date shall be automatically extended for a period of [at least one year] on [insert date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you, the Director of the Department of Toxic Substances Control, and [insert owner or operator name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us.

[Include the following language if a standby trust fund is not being used: "In the event that this letter of credit is used in combination with another mechanism for liability coverage, this letter of credit shall be considered [insert "primary" or "excess" coverage]."]

We certify that the wording of this letter of credit is identical to the wording as specified in California Code of Regulations, title 22, section 66264.151, subsection (k) and is being executed in accordance with the requirements of California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8 on the date shown below.

[Signature[s] of official[s] of issuing institution]

[Title[s] of official[s] of issuing institution]

[Address of official[s] of issuing institution]

[Date official[s] of issuing institution sign]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code"].

(*l*) A surety bond, as specified in section 66264.147, subsection (i) or section 66265.147, subsection (i) of this division, shall be worded as follows: except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

PAYMENT BOND

Surety Bond No. [insert number]

Parties [insert name and address of owner or operator], Principal, incorporated in [insert State of incorporation] of [insert city and State of principal place of business] and [insert name and address of surety company(ies)], Surety Company(ies), of [insert surety(ies) place of business].

EPA Identification Number, name, and address for each facility/transportable treatment unit (TTU) guaranteed by this bond: [insert EPA Identification Number, name, and address for each facility/transportable treatment unit]

	Sudden accidental occurrences	*Nonsudden accidental occurrences*
Penal Sum Per Occurrence	[insert dollar amount]	[insert dollar amount]
Annual Aggregate	[insert dollar amount]	[insert dollar amount]

Purpose: This is an agreement between the Surety(ies) and the Principal under which the Surety(ies), its (their) successors and assignees, agree to be responsible for the payment of claims against the Principal for bodily injury and/or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental occurrences (as identified above) arising from the operations of the facility/TTU or group of facilities/TTUs in the sums prescribed herein; subject to the governing provisions and the following conditions.

Governing Provisions:

(1) Section 25205 of the California Health and Safety Code.

(2) Rules and regulations of the Department of Toxic Substances Control (DTSC), California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, particularly sections 66264.147 or 66265.147.

Conditions:

(1) The Principal is subject to the applicable governing provisions that require the Principal to have and maintain liability coverage for bodily injury and property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental occurrences (as identified above) arising from operations of the facility/TTU or group of facilities/TTUs. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which [insert principal name] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert principal name] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert principal name] under a workers' compensation, disability benefits, or unemployment compensation law or similar law.

(c) Bodily injury to:

1. An employee of [insert principal name] arising from, and in the course of, employment by [insert principal name]; or

2. The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert principal name]. This exclusion applies:

A. Whether [insert principal name] may be liable as an employer or in any other capacity; and

B. To any obligation to share damages with or repay another person who shall pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

1. Any property owned, rented, or occupied by [insert principal name];

2. Premises that are sold, given away or abandoned by [insert principal name] if the property damage arises out of any part of those premises;

3. Property loaned to [insert principal name];

4. Personal property in the care, custody or control of [insert principal name];

5. That particular part of real property on which [insert principal name] or any contractors or subcontractors working directly or indirectly on behalf of [insert principal name] are performing operations, if the property damage arises out of these operations.

(2) This bond assures that the Principal will satisfy valid third–party liability claims, as described in condition 1.

(3) If the Principal fails to satisfy a valid third–party liability claim, as described above, the Surety(ies) becomes liable on this bond obligation.

(4) The Surety(ies) shall satisfy a third–party liability claim only upon the receipt of one of the following documents:

(a) Certification from the Principal and the third party claimant(s) that the liability claim should be paid. The certification shall be worded as follows, except that instructions in brackets to be replaced with the relevant information and the brackets deleted:

CERTIFICATION OF VALID CLAIM

The undersigned, as parties [insert name of principal] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a ["sudden" or "nonsudden"] accidental occurrence arising from operating [principal's] hazardous waste transfer, treatment, storage, or disposal facility/TTU should be paid in the amount of $ [insert dollar amount].

[Signature]

Principal

[Notary]: Date:

[Signature]

Claimant(s):

[Notary]: Date:

or (b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or non-

sudden accidental occurrences arising from the operation of the Principal's facility/TTU or group of facilities/TTUs.

(5) In the event of combination of this bond with another mechanism for liability coverage, this bond will be considered [insert "primary" or "excess"] coverage.

(6) The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond. In no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum, provided that the Surety(ies) furnish(es) notice to DTSC forthwith of all claims filed and payments made by the Surety(ies) under this bond.

(7) The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and the DTSC, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal and the DTSC, as evidenced by the return receipt.

(8) The Principal may terminate this bond by sending written notice to the Surety(ies) and to the DTSC.

(9) The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agree(s) that no such amendment shall in any way alleviate its (their) obligation on this bond.

(10) This bond is effective from [insert date] (12:01 a.m., standard time, at the address of the Principal as stated herein) and shall continue until terminated as described above.

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies), that the wording of this surety bond is identical to the wording specified in California Code of Regulations, title 22, section 66264.151, subsection (*l*), and is being executed in accordance with the requirements of California Code of Regulations, title 22, division 4.5, chapters 14 and 15, article 8.

PRINCIPAL

[Signature(s)]:
[Name(s)]:
[Title(s)]:
[Corporate Seal]:

CORPORATE SURETY(IES)

[Name and address]:
State of Incorporation:
Liability Limit:
[Signature(s)]:
[Name(s) and title(s)]:
[Corporate Seal]:

[For every co–surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: $

(m)(1) A trust agreement, as specified in section 66264.147, subsection (j) or section 66265.147, subsection (j) of this division, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the State of [name of State]" or "a national bank"], the "Trustee."

WHEREAS, the Department of Toxic Substances Control (DTSC), a department of the State of California, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility/transportable treatment unit (TTU) or group of facilities/TTUs shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from the operations of the facility/TTU or group of facilities/TTUs.

WHEREAS, the Grantor has elected to establish a trust to assure all or part of such financial responsibility for the facilities/TTUs identified herein.

WHEREAS, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

NOW, THEREFORE, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successor or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) The term "Beneficiary" means the State of California, Department of Toxic Substances Control.

Section 2. Identification of Facilities/TTUs. This agreement pertains to the facilities/TTUs identified on the attached Schedule A [on Schedule A for each facility/TTU, list the EPA Identification Number, name, and address of the facility(ies)/TTU(s) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and Trustee hereby establish a trust fund, hereinafter the "Fund," for the benefit of any and all third parties injured or damaged by ["sudden" and/or "nonsudden"] accidental occurrences arising from operation of the facility(ies)/TTU(s) covered by this Guarantee, in the amounts of [up to one million dollars] per occurrence _____ and [up to two million dollars] annual aggregate for sudden accidental occurrences and _____ [up to three million dollars] per occurrence and _____ [up to six million dollars] annual aggregate for non sudden occurrences, except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which [insert grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert grantor] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert grantor] under a workers' compensation, disability benefit, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert grantor] arising from, and in the course of, employment by [insert grantor]; or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert grantor].

This exclusion applies:

(A) Whether [insert grantor] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who shall pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert grantor];

(2) Premises that are sold, given away or abandoned by [insert grantor] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert grantor];

(4) Personal property in the care, custody or control of [insert grantor];

(5) That particular part of real property on which [insert grantor] or any contractors or subcontractors working directly or indirectly on behalf of [insert grantor] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the fund shall be considered [insert "primary" or "excess"] coverage.

The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Beneficiary.

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by making payments from the Fund only upon receipt of one of the following documents:

(a) Certification from the Grantor and the third party claimants(s) that the liability claim should be paid. The certification shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

CERTIFICATION OF VALID LIABILITY CLAIM

The undersigned, as parties [insert name of grantor] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by ["sudden" or "nonsudden"] accidental occurrence arising from operating hazardous waste transfer, treatment, storage, or disposal facility/TTU should be paid in the amount of $ [insert dollar amount].

[Signature]
[Grantor]
[Signature]
[Claimant(s)]

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility/TTU or group of facilities/TTUs.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his or her duties with respect to the trust fund solely in the interest of the Beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities/TTUs, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 United States Code section 80a–2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 United States Code section 80a–1 et seq., including one which may be created, managed, underwritten or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest–bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the Beneficiary a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and Beneficiary shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If, for any reason, the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, Beneficiary, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests, and instructions by the Beneficiary to the Trustee shall be in writing, signed by the Beneficiary designees, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Beneficiary hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or Beneficiary, except as provided for herein.

Section 15. Notice of Nonpayment. If a payment for bodily injury or property damage is made under Section 4 of this Trust, the Trustee shall notify the Grantor of such payment and the amount(s) thereof within five (5) working days. The Grantor shall, on or before the anniversary date of the establishment of the Fund following such notice, either make payments to the Trustee in amounts sufficient to cause the Trust to return to its value immediately prior to the payment of claims under Section 4, or shall provide written proof to the Trustee that other financial assurance for liability coverage has been obtained equaling the amount necessary to return the Trust to its value prior to the payment of claims. If the Grantor does not either make payments to the Trustee or provide the Trustee with such proof, the Trustee shall within 10 working days after the anniversary date of the establishment of the Fund provide a written notice of nonpayment to the Beneficiary.

Section 16. Amendment of Agreement. This agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Beneficiary, or by the Trustee and the Beneficiary, if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Beneficiary, or by the Trustee and the Beneficiary, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

The Beneficiary will agree to termination of the Trust when the owner or operator substitutes alternate financial assurance as specified in this section.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Beneficiary issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed and enforced according to the laws of the State of California.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

Section 21. Primary or Excess Coverage. In the event of combination with another mechanism for liability coverage, the fund shall be considered [insert "primary" or "excess"] coverage.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in California Code of Regulations, title 22, section 66264.151, subsection (m) and is being executed in accordance with the requirements of California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8.

[Signature of Grantor]
[Title]
Attest:
[Title]
[Seal]
[Signature of Trustee]
Attest:
[Title]
[Seal]

(2) The following is an example of the certification of acknowledgement which shall accompany the trust agreement for a trust fund as specified in section 66264.147, subsection (j) or section 66265.147, subsection (j) of this division. State requirements may differ on the proper content of this acknowledgement.

State of
County of

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

(n)(1) A standby trust agreement, as specified in section 66264.147, subsection (h) or section 66265.147, subsection (h) of this division, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

STANDBY TRUST AGREEMENT

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator] a [name of a state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert, "incorporated in the State of [name of State]" or "a national bank"], the "Trustee."

WHEREAS, the Department of Toxic Substances Control (DTSC), a department of the State of California, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility/transportable treatment unit (TTU) or group of facilities/TTUs shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from the operations of the facility/TTU or group of facilities/TTUs.

WHEREAS, the Grantor has elected to establish a standby trust into which the proceeds from a letter of credit may be deposited to assure all

or part of such financial responsibility for the facilities/TTUs identified herein.

WHEREAS, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

NOW, THEREFORE, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successor or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) The term "Beneficiary" means the State of California, Department of Toxic Substances Control.

Section 2. Identification of Facilities/TTUs. This agreement pertains to the facilities/TTUs identified on the attached Schedule A [on Schedule A for each facility/TTU, list the EPA Identification Number, name, and address of the facility(ies)/TTU(s) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement]

Section 3. Establishment of Fund. The Grantor and Trustee hereby establish a standby trust fund, hereinafter the "Fund," for the benefit of any and all third parties injured or damaged by ["sudden" and/or "nonsudden"] accidental occurrences arising from operation of the facility(ies)/TTU(s) covered by this Guarantee, in the amounts of [up to one million dollars] per occurrence and _____ [up to two million dollars] annual aggregate for sudden accidental occurrences and _____ [up to three million dollars] per occurrence and _____ [up to six million dollars] annual aggregate for non sudden occurrences, except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which [insert grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert grantor] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert grantor] under a workers' compensation, disability benefit, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert grantor] arising from, and in the course of, employment by [insert grantor]; or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert grantor].

This exclusion applies:

(A) Whether [insert grantor] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who shall pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert grantor];

(2) Premises that are sold, given away or abandoned by [insert grantor] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert grantor];

(4) Personal property in the care, custody or control of [insert grantor];

(5) That particular part of real property on which [insert grantor] or any contractors or subcontractors working directly or indirectly on behalf of [insert grantor] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the fund shall be considered [insert "primary" or "excess"] coverage.

The Fund is established initially as consisting of the proceeds of the letter of credit deposited into the Fund. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities for of the Grantor established by the Beneficiary.

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by drawing on the letter of credit described in Schedule B and by making payments from the Fund only upon receipt of one of the following documents:

(a) Certification from the Grantor and the third party claimant(s) that the liability claim should be paid. The certification shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

CERTIFICATION OF VALID LIABILITY CLAIM

The undersigned, as parties [insert name of grantor] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by ["sudden" or "nonsudden"] accidental occurrence arising from operating [insert name of grantor]'s hazardous waste treatment, storage, or disposal facility/TTU should be paid in the amount of $[insert dollar amount].

[Signature]

Grantor

[Signature]

Claimant(s)

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility/TTU or group of facilities/TTUs.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of the proceeds from the letter of credit drawn upon by the Trustee in accordance with the requirements of title 22, California Code of Regulations, section 66264.151, subsection (k) and Section 4 of this Agreement.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his or her duties with respect to the trust fund solely in the interest of the Beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities/TTUs, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 United States Code section 80a–2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 United States Code section 80a–1 et seq., including one which may be created, managed, underwritten or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest–bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements to the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment; the Trustee shall assign, transfer and pay over to the successor trustee the funds and properties then constituting the Fund. If, for any reason, the Grantor cannot or does not act in the event of the resignation of the Trustee; the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, Beneficiary, and the present Trustee by certified mail ten days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee. All orders, requests, certifications of valid claims and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests and instructions by the Beneficiary to the Trustee shall be in writing, signed by the Beneficiary designees, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Beneficiary hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or Beneficiary, except as provided for herein.

Section 14. Amendment of Agreement. This agreement may be amended by an instrument in writing executed by the Grantor, the Trustee and the Beneficiary, or by the Trustee and the Beneficiary, if the Grantor ceases to exist.

Section 15. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Beneficiary, or by the Trustee and the Beneficiary, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 16. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Beneficiary issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law. This Agreement shall be administered, construed and enforced according to the laws of the State of California.

Section 18. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

Section 19. Primary or Excess Coverage. In the event of combination with another mechanism for liability coverage, the fund shall be considered [insert "primary" or "excess"] coverage.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in California Code of Regulations, title 22, section 66264.151, subsection (n) and is being executed in accordance with the requirements of California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]
Attest:
[Title]
[Seal]

(2) The following is an example of the certification of acknowledgement which shall accompany the trust agreement for a standby trust fund as specified in section 66264.147, subsection (h) or section 66265.147, subsection (h) of this division. State requirements may differ on the proper content of this acknowledgement.

State of
County of

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

NOTE: Authority cited: Sections 25150, 25159, 25159.5 and 25245, Health and Safety Code. Reference: Section 25245, Health and Safety Code; and 40 CFR Section 264.151.

HISTORY

1. Change without regulatory effect adopting section filed 12–19–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 51).
2. Change without regulatory effect amending subsection (c) filed 3–20–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 12).

Article 9. Use and Management of Containers

§ 66264.170. Applicability.

The regulations in this article apply to owners and operators of all hazardous waste facilities that transfer or store containers of hazardous waste, except as section 66264.1 provides otherwise.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.170.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.171. Use and Management of Containers.

If a container holding hazardous waste is not in good condition (e.g., severe rusting, apparent structural defects) or if it begins to leak, the owner or operator shall transfer the hazardous waste from this container to a container that is in good condition or manage the waste in some other way that complies with the requirements of this chapter.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.171.

[The next page is 751.]

HISTORY
1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.172. Compatibility of Waste with Containers.

The owner or operator shall use a container made of or lined with materials which will not react with, and are otherwise compatible with, the hazardous waste to be transferred or stored, so that the ability of the container to contain the waste is not impaired.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.172.

HISTORY
1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.173. Management of Containers.

(a) A container holding hazardous waste shall always be closed during transfer and storage, except when it is necessary to add or remove waste.

(b) A container holding hazardous waste shall not be opened, handled, transferred or stored in a manner which may rupture the container or cause it to leak. Reuse of containers for transportation shall comply with the requirements of the U.S. Department of Transportation regulations including those set forth in 49 CFR section 173.28.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.173.

HISTORY
1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.174. Inspections.

At least weekly, the owner or operator shall inspect areas used for container storage or transfer, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25195.5, Health and Safety Code; 40 CFR Section 264.174.

HISTORY
1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.175. Containment.

(a) Container transfer and storage areas shall have a containment system that is designed and operated in accordance with subsection (b) of this section.

(b) A containment system shall be designed and operated as follows:

(1) a base shall underlie the containers which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed;

(2) the base shall be sloped or the containment system shall be otherwise designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids;

(3) the containment system shall have sufficient capacity to contain precipitation from at least a 24–hour, 25–year storm plus 10 % of the aggregate volume of all containers or the volume of the largest container, whichever is greater. Containers that do not contain free liquids need not be considered in this determination;

(4) run–on into the containment system shall be prevented unless the collection system has sufficient excess capacity in addition to that required in subsection (b)(3) of this section to contain any run–on which might enter the system; and

(5) spilled or leaked waste and accumulated precipitation shall be removed from the sump or collection area in as timely a manner as is necessary to prevent overflow of the collection system. If the collected material is a hazardous waste under chapter 11 of this division, it shall be managed as a hazardous waste in accordance with all applicable requirements of chapters 12 through 16 of this division. If the collected material is discharged through a point source to waters of the United States, it is subject to the requirements of section 402 of the Federal Clean Water Act, as amended (33 U.S.C. section 1342).

(c) The owner or operator shall submit to the Department with the application for a hazardous waste facility permit a written statement signed by an independent, qualified professional engineer, registered in California, that indicates that the containment system is suitably designed to achieve the requirements of this section.

(d) Storage areas that store containers holding only hazardous wastes that do not contain free liquids need not have a containment system as specified by subsection (b) of this section, except as provided by subsection (e) of this section or provided that:

(1) The storage area is sloped or is otherwise designed and operated to collect and remove liquid resulting from precipitation, or

(2) The containers are elevated or are otherwise protected from contact with accumulated liquid.

(e) Storage areas that store containers holding the following wastes listed that do not contain free liquids must have a containment system as specified by subsection (b) of this section: F020, F021, F022, F023, F026, and F027.

NOTE: Authority cited: Sections 25150, 25159, 58004 and 58012, Health and Safety Code. Reference: Sections 25150(a), 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.175.

HISTORY
1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. New subsections (d)–(e) and amendment of NOTE filed 7–24–97; operative 7–24–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 30).

§ 66264.176. Special Requirements for Ignitable or Reactive Waste.

Containers holding ignitable or reactive waste shall be located at least 15 meters (50 feet) from the facility's property line.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.176.

HISTORY
1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.177. Special Requirements for Incompatible Wastes.

(a) Incompatible wastes, or incompatible wastes and materials (see Appendix V for examples), shall not be placed in the same container, unless section 66264.17(b) is complied with.

(b) Hazardous waste shall not be placed in an unwashed container that previously held an incompatible waste or material.

(c) A container holding a hazardous waste that is incompatible with any waste or other materials transferred or stored nearby in other containers, piles, open tanks, or surface impoundments shall be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.177.

HISTORY
1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.178. Closure.

At closure, all hazardous waste and hazardous waste residues shall be removed from the containment system. Remaining containers, liners, bases, and soil containing or contaminated with hazardous waste or hazardous waste residues shall be decontaminated or removed. At closure, as throughout the operating period, unless the owner or operator can demonstrate in accordance with section 66261.3(e) of this division that the solid waste removed from the containment system is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and shall manage it in accordance with all applicable requirements of chapters 12 through 16 of this division.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159, 25159.5 and 25245, Health and Safety Code; 40 CFR Section 264.178.

HISTORY
1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.179. Air Emission Standards.

The owner or operator shall manage all hazardous waste placed in a container in accordance with the applicable requirements of Articles 27, 28, and 28.5 of this Chapter.

NOTE: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR section 264.179.

HISTORY

1. Change without regulatory effect adding new section filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).

Article 10. Tank Systems

§ 66264.190. Applicability.

The requirements of this article apply to owners and operators of facilities that use tank systems for transferring, storing or treating hazardous waste except as otherwise provided in subsections (a), (b) and (c) of this section or in section 66264.1 of this chapter.

(a) Tank systems that are used to transfer, store or treat hazardous waste which contains no free liquids and are situated inside a building with an impermeable floor are exempted from the requirements in section 66264.193. To demonstrate the absence or presence of free liquids in the transferred/stored/treated waste, EPA Method 9095 (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Publication No. SW–846 Third Edition and Updates, (incorporated by reference in section 66260.11 of this chapter) shall be used.

(b) Tank systems, including sumps, as defined in section 66260.10, that serve as part of a secondary containment system to collect or contain releases of hazardous wastes are exempted from the requirements in section 66264.193(a) of this article.

(c) Tanks, sumps, and other such collection devices or systems used in conjunction with drip pads, as defined in 66260.10 of this chapter and regulated under Chapter 14, Article 15.7, shall meet the requirements of this article.

NOTE: Authority cited: Sections 25150, 25159, 58004 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.190.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of first paragraph, new subsection (c) and amendment of NOTE filed 7–29–94; operative 8–29–94 (Register 94, No. 30).
3. Amendment of subsection (c) and NOTE filed 7–24–97; operative 7–24–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 30).
4. Amendment of subsection (a) and NOTE filed 10–13–98; operative 11–12–98 (Register 98, No. 42).

§ 66264.191. Assessment of Existing Tank System's Integrity.

(a) Tanks shall have sufficient shell strength and, for closed tanks, pressure controls (e.g., vents) to assure that they do not collapse or rupture. The Department will review the design of the tanks, including the foundation, structural support, seams and pressure controls and seismic considerations. The Department shall require that a minimum shell thickness be maintained at all times to ensure sufficient shell strength. Factors to be considered in establishing minimum thickness include the width, height and materials of construction of the tank, and the specific gravity of the waste which will be placed in the tank. In reviewing the design of the tank and approving a minimum thickness, the Department shall rely upon appropriate industrial design standards and other available information.

(b) For each existing tank system that does not have secondary containment meeting the requirements of section 66264.193, the owner or operator shall determine that the tank system is not leaking or is unfit for use. Except as provided in subsections (d) and (g) of this section, and in addition to the requirements of subsection (f) of this section, the owner or operator shall obtain and keep on file at the facility a written assessment reviewed and certified by an independent, qualified professional engineer, registered in California, in accordance with section 66270.11(d), that attests to the tank system's integrity.

(c) This assessment shall determine that the tank system is adequately designed and has sufficient structural strength and compatibility with the waste(s) to be transferred, stored or treated, to ensure that it will not collapse, rupture, or fail. At a minimum, this assessment shall consider the following:

(1) design standard(s), if available, according to which the tank and ancillary equipment were constructed;

(2) hazardous characteristics of the waste(s) that have been and will be handled;

(3) existing corrosion protection measures;

(4) documented age of the tank system, if available (otherwise, an estimate of the age);

(5) results of a leak test, internal inspection, or other tank integrity examination such that:

(A) for non–enterable underground tanks, the assessment shall include a leak test that is capable of taking into account the effects of temperature variations, tank end deflection, vapor pockets, and high water table effects, and

(B) for other than non–enterable underground tanks and for ancillary equipment, this assessment shall include either a leak test, as described above, or other integrity examination, that is certified by an independent, qualified, professional engineer, registered in California, in accordance with section 66270.11(d), that addresses cracks, leaks, corrosion, and erosion; and

(6) those design requirements and factors listed in subsection (a) of this section.

(d) For tank systems that transfer, store or treat materials that become hazardous wastes this assessment shall be conducted within 12 months after the date that the waste becomes a hazardous waste, except as provided in subsection (g) of this section.

(e) If, as a result of the assessment conducted in accordance with subsection (b) or (g) of this section, a tank system is found to be leaking or unfit for use, the owner or operator shall comply with the requirements of section 66264.196.

(f) Owners or operators of all existing tank systems shall submit to the Department with Part B of the application for a hazardous waste facility permit, a written statement, signed by an independent, qualified professional engineer, registered in California, in accordance with section 66270.11(d), attesting that the tanks and containment system are suitably designed to achieve the requirements of this article.

(g)(1) Notwithstanding subsections (b) through (d) of this section, for each existing tank system that does not have secondary containment meeting the requirements of section 66264.193 and which meets the criteria specified in subsection (g)(2) of this section, the assessment specified in subsection (i) of this section shall be conducted by January 24, 1998. This assessment shall be reviewed and certified by an independent, qualified, professional engineer, registered in California, in accordance with section 66270.11(d), that attests to the tank system's integrity. The assessment shall be kept on file at the facility until closure of the facility and shall be valid for a period of one year from the date the assessment was certified.

(2) The provisions of subsection (g)(1) of this section apply only to:

(A) onground or aboveground tank systems containing only non–RCRA hazardous wastes generated onsite, and tank systems authorized under Permit–by–Rule pursuant to Chapter 45 of this division, Conditional Authorization pursuant to HSC 25200.3, and Conditional Exemption pursuant to HSC 25201.5, and

(B) onground or aboveground tank systems containing RCRA hazardous wastes generated onsite, if:

1. the owner or operator is a conditionally exempt small quantity generator as defined in 40 CFR section 261.5, or a small quantity generator of more than 100 kg but less than 1000 kg per month as defined in 40 CFR section 265.201, or

2. the owner or operator is not subject to regulation in 40 CFR part 264 pursuant to an exemption in 40 CFR section 264.1, but the owner or operator is subject to the standards of this article.

(h) A generator or owner or operator authorized pursuant to Permit–by–Rule pursuant to Chapter 45 of this division, Conditional Authorization pursuant to HSC 25200.3, or Conditional Exemption pursuant to

HSC 25201.5, operating a non–RCRA underground tank system or an underground tank system otherwise exempt from permitting requirements pursuant to the federal act, shall comply with the applicable standards of Title 23 of the California Code of Regulations relating to underground tank systems.

(i) The tank system assessment shall include all of the following information:

(1) tank configuration (i.e., horizontal, vertical), and gross capacity (in gallons);

(2) design standard(s), if available, according to which the tank and ancillary equipment were constructed, and all of the following information:

(A) material of construction;

(B) material thickness and the method used to determine the thickness;

(C) description of tank system piping (material, diameter);

(D) description of any internal and external pumps; and

(E) sketch or drawing of tank including dimensions.

(3) documented age of the tank system, if available, otherwise, an estimate of the age based on owner or operator knowledge;

(4) description and evaluation of the adequacy of any leak detection equipment;

(5) description and evaluation of any corrosion protection equipment;

(6) description and evaluation of any spill prevention or overfill equipment;

(7) hazardous characteristics of the waste(s) that have been or will be handled;

(8) description of any structural damage or inadequate construction or installation such as cracks, punctures, or damaged fittings. All discrepancies shall be documented in the assessment and remedied before the tank system is certified for use.

(9) results of a leak test, internal inspection, or other tank system integrity examination including the type of integrity examination performed (i.e., ultrasonic, internal examination, volumetric tank test, pipeline pressure test). Tank system integrity or leak test requirements must be in compliance with all local requirements. Prior to conducting a tank system integrity test or leak test, contact local agency staff for local requirements.

(10) estimated remaining service life of the tank system based on findings of subsection (i)(1) through (i)(9).

NOTE: Authority cited: Sections 25150, 25159 and 58012, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.191.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of section and NOTE filed 6–19–95 as an emergency; operative 6–19–95 (Register 95, No. 25). A Certificate of Complaince must be transmitted to OAL by 10–17–95 or emergency language will be repealed by operation of law on the following day.
3. Amendment of section and NOTE refiled 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.
4. Amendment of section and NOTE refiled 2–16–96 as an emergency; operative 2–16–96 (Register 96, No. 7). A Certificate of Compliance must be transmitted to OAL by 6–15–96 or emergency language will be repealed by operation of law on the following day.
5. Amendment of section and NOTE refiled 6–17–96 as an emergency; operative 6–17–96 (Register 96, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–15–96 or emergency language will be repealed by operation of law on the following day.
6. Amendment of section and NOTE refiled 10–15–96 as an emergency; operative 10–15–96 (Register 96, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–12–97 or emergency language will be repealed by operation of law on the following day.
7. Amendment of section and NOTE refiled 2–11–97 as an emergency, including additional amendment of NOTE; operative 2–11–97 (Register 97, No. 7). A Certificate of Compliance must be transmitted to OAL by 6–11–97 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 2–11–97 order transmitted to OAL 6–10–97; disapproved by OAL and order of repeal as to 2–11–97 filed on 7–24–97 (Register 97, No. 30).
9. Certificate of Compliance as to 2–11–97 order, including amendment of section and NOTE, resubmitted to OAL and approved on 7–24–97 (Register 97, No. 30).
10. Amendment of subsection (b), repealer of subsections (b)(1)–(b)(2)(B)2., amendment of subsection (d), repealer of subsections (d)(1)–(d)(2)(B)2. and amendment of NOTE filed 9–8–2006; operative 10–8–2006 (Register 2006, No. 36).

§ 66264.192. Design and Installation of New Tank Systems or Components.

(a) Tanks shall have sufficient shell strength and, for closed tanks, pressure controls (e.g., vents) to assure that they do not collapse or rupture. The Department will review the design of the tanks, including the foundation, structural support, seams and pressure controls and seismic considerations. The Department shall require that a minimum shell thickness be maintained at all times to ensure sufficient shell strength. Factors to be considered in establishing minimum thickness include the width, height and materials of construction of the tank, and the specific gravity of the waste which will be placed in the tank. In reviewing the design of the tank and approving a minimum thickness, the Department shall rely upon appropriate industrial design standards and other available information.

(b) Owners or operators of new tank systems or components shall obtain and submit to the Department, at time of submittal of Part B information, a written assessment, reviewed and certified by an independent, qualified professional engineer, registered in California, in accordance with section 66270.11(d), attesting that the tank system has sufficient structural integrity and is acceptable for the transferring, storing and treating of hazardous waste and that the tanks and containment system are suitably designed to achieve the requirements in this article. The assessment shall show that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be transferred, stored or treated, and corrosion protection to ensure that it will not collapse, rupture, or fail. This assessment, which will be used by the Department to review and approve or disapprove the acceptability of the tank system design, shall also include, at a minimum, the following information:

(1) design standard(s) according to which tank(s) and/or the ancillary equipment are constructed;

(2) hazardous characteristics of the waste(s) to be handled;

(3) for new tank systems or components in which the external shell of a metal tank or any external metal component of the tank system will be in contact with the soil or with water, a determination by a corrosion expert of:

(A) factors affecting the potential for corrosion, including but not limited to:

1. soil moisture content;
2. soil pH;
3. soil sulfides level;
4. soil resistivity;
5. structure to soil potential;
6. influence of nearby underground metal structures (e.g., piping);
7. existence of stray electric current;
8. existing corrosion–protection measures (e.g., coating, cathodic protection), and

(B) the type and degree of external corrosion protection that are needed to ensure the integrity of the tank system during the use of the tank system or component, consisting of one or more of the following:

1. corrosion–resistant materials of construction such as special alloys, fiberglass reinforced plastic, etc.;

2. corrosion–resistant coating (such as epoxy, fiberglass, etc.) with cathodic protection (e.g., impressed current or sacrificial anodes); and

3. electrical isolation devices such as insulating joints, flanges, etc.;

(4) for underground tank system components that are likely to be adversely affected by vehicular traffic, a determination of design or operational measures that will protect the tank system against potential damage;

(5) design considerations to ensure that:

(A) tank foundations will maintain the load of a full tank;

(B) tank systems will be anchored to prevent flotation or dislodgment where the tank system is placed in a saturated zone, or is located within a seismic fault zone subject to the standards of section 66264.18(a); and

(C) tank systems will withstand the effects of frost heave; and

(6) those design requirements and factors listed in subsection (a) of this section.

(c) The owner or operator of a new tank system shall ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing, or placing a new tank system or component in use, an independent, qualified installation inspector or an independent, qualified, professional engineer, registered in California, either of whom is trained and experienced in the proper installation of tank systems or components, shall inspect the system for the presence of any of the following items:

(1) weld breaks;

(2) punctures;

(3) scrapes of protective coatings;

(4) cracks;

(5) corrosion;

(6) other structural damage or inadequate construction/installation.

All discrepancies shall be remedied before the tank system is covered, enclosed, or placed in use.

(d) New tank systems or components that are placed underground and that are back filled shall be provided with a backfill material that is a noncorrosive, porous, homogeneous substance and that is installed so that the backfill is placed completely around the tank and compacted to ensure that the tank and piping are fully and uniformly supported.

(e) All new tanks and ancillary equipment shall be tested for tightness prior to being covered, enclosed, or placed in use. If a tank system is found not to be tight, all repairs necessary to remedy the leak(s) in the system shall be performed prior to the tank system being covered, enclosed, or placed into use.

(f) Ancillary equipment shall be supported and protected against physical damage and excessive stress due to settlement, vibration, expansion, or contraction.

(g) The owner or operator shall provide the type and degree of corrosion protection recommended by an independent corrosion expert, based on the information provided under subsection (b)(3) of this section, or other corrosion protection if the Department believes other corrosion protection is necessary to ensure the integrity of the tank system during use of the tank system. The installation of a corrosion protection system that is field fabricated shall be supervised by an independent corrosion expert to ensure proper installation.

(h) The owner or operator shall obtain and keep on file at the facility written statements by those persons required to certify the design of the tank system and supervise the installation of the tank system in accordance with the requirements of subsections (c) through (g) of this section, that attest that the tank system was properly designed and installed and that repairs, pursuant to subsections (c) and (e) of this section, were performed. These written statements shall also include the certification statement as required in section 66270.11(d) of this division.

(i)(1) Notwithstanding subsections (b) through (h) of this section, design and installation of new tank systems or components used to manage hazardous waste, and which meet the criteria specified in subsection (i)(2) of this section, are not subject to the requirements of subsections (i) through (n) of this section until January 24, 1998. The assessment specified in subsection (*l*) of this section shall be obtained prior to placing a new tank system in service and shall be kept on file at the facility. This assessment shall be reviewed and certified by an independent, qualified, professional engineer, registered in California, in accordance with section 66270.11(d), attesting that the tank system has sufficient structural integrity and is acceptable for the transferring, storing and treating of hazardous waste. The assessment shall be valid for a maximum period of five (5) years or the remaining service life of the tank system, as stated in the engineer's assessment, whichever is less. New tank systems that have been assessed pursuant to subsections (b) through (h) of this section prior to June 1, 1995 are not required to be reassessed pursuant to subsection (*l*) for a period of five years from the date of the assessment or June 1, 2000, whichever is the earlier date. If changes have been made to the tank system or new components have been added to the tank system subsequent to an assessment conducted prior to June 1, 1995, the tank system shall be reassessed pursuant to subsection (*l*).

(2) The provisions of subsection (i)(1) of this section apply only to:

(A) onground or aboveground tank systems containing only non–RCRA hazardous waste generated onsite, and tank systems authorized under Permit–by–Rule pursuant to Chapter 45 of this division, Conditional Authorization pursuant to HSC 25200.3, and Conditional Exemption pursuant to HSC 25201.5, and

(B) onground or aboveground tank systems containing RCRA hazardous waste generated onsite, if:

1. the owner or operator is a conditionally exempt small quantity generator as defined in 40 CFR section 261.5, or a small quantity generator of more than 100 kg but less than 1000 kg per month as defined in 40 CFR section 265.201, or

2. the owner or operator is not subject to regulation in 40 CFR part 264 pursuant to an exemption in 40 CFR section 264.1, but the owner or operator is subject to the standards of this article.

(j) A generator or owner or operator authorized pursuant to Permit–by–Rule pursuant to Chapter 45 of this division, Conditional Authorization pursuant to HSC 25200.3, or Conditional Exemption pursuant to HSC 25201.5, operating a non–RCRA underground tank system or an underground tank system otherwise exempt from permitting requirements pursuant to the federal act, shall comply with the applicable standards of Title 23 of the California Code of Regulations relating to underground tank systems.

(k) New, onground or aboveground non–RCRA tank systems or tank systems otherwise exempt from permitting requirements pursuant to the federal act, with secondary containment, whose design and installation have been approved by a local agency or agencies, may, at the discretion of the CUPA, be exempt from the engineering assessment specified in subsection (*l*) of this section, provided minimum criteria specified in subsections (k)(1) through (k)(3) of this section are met. If the CUPA determines to exempt a new tank system from the assessment required pursuant to this subsection, the exemption shall be for a period of not more than three (3) years from the date the exemption was granted. The tank system owner or operator shall submit documentation of local agency approval to the applicable CUPA for review and possible acceptance in lieu of the assessment specified in subsection (*l*) of this section. If there is no CUPA or the CUPA requests that the Department make a determination, the documentation shall be submitted to the Department.

(1) tank system must have secondary containment capable of containing 100 percent of the contents of the tank and ancillary piping volume; and

(2) if the tank system is exposed to precipitation, the secondary containment system must have sufficient capacity, in addition to that required in subsection (k)(1) of this section, to contain run–on and infiltration from a 25–year, 24–hour rainfall event;

(3) tank system secondary containment shall be provided with a leak detection system that is designed and operated so that it will detect either the failure of the primary and secondary containment structure or any release of hazardous waste or accumulated liquid in the secondary containment system within 24 hours, or at the earliest practicable time if the existing detection technology or site conditions will not allow detection of a release within 24 hours.

(*l*) The tank system assessment shall include all of the following information:

(1) tank configuration (i.e., horizontal, vertical), and gross capacity (in gallons);

(2) design standard(s), if available, according to which the tank and ancillary equipment were constructed, and all of the following information;

(A) material of construction;

(B) material thickness and the method used to determine the thickness;

(C) description of tank system piping (material, diameter);

(D) description of any internal and external pumps; and

(E) sketch or drawing of tank including dimensions.

(3) documented age of the tank system (if tank was previously used), if available, (otherwise, an estimate of the age);

(4) description and evaluation of any leak detection equipment;

(5) description and evaluation of any corrosion protection equipment, devices, or material;

(6) description and evaluation of any spill prevention or overfill equipment;

(7) description and evaluation of secondary containment for the tank system (secondary containment must meet minimum standards as specified in subsections (k)(1) through (k)(3) of this section) including applicable secondary containment for ancillary equipment as required in subsection 66265.193(f);

(8) hazardous characteristics of the waste(s) that have been or will be handled;

(9) prior to placing a new tank system or component in use, an independent, qualified installation inspector or an independent, qualified, professional engineer, registered in California, either of whom is trained and experienced in the proper installation of tank systems, shall inspect the system or component for the presence of any of the following items and document in writing the results of the inspection:

(A) weld cracks or breaks;

(B) scrapes of protective coatings;

(C) corrosion;

(D) any structural damage or inadequate construction or installation such as cracks, punctures, damaged fittings. All discrepancies shall be documented in the assessment and remedied before the tank system is placed in use.

(10) all new tanks and ancillary equipment shall be tested for tightness prior to being placed in use. The results of the test(s) shall be documented in this assessment. Tank system integrity or leak test requirements must be in compliance with all local requirements. Prior to conducting a tank system integrity test or leak test, contact local agency staff for local requirements.

(11) estimated remaining service life of the tank system based on findings of subsections (*l*)(1) through (*l*)(10).

(m) The assessment specified in subsection (*l*) of this section is not required for the replacement of the following identical or functionally equivalent tank system parts or components:

(1) pumps (same type and capacity);

(2) plumbing or piping components such as unions, elbows, tees and gaskets;

(3) valves and check valves;

(4) piping and valve hangers and supports;

(n) Replacement of identical or functionally equivalent tank system parts or components not listed in subsection (m) of this section shall be approved by the CUPA prior to replacement or changeout. If the tank system part or component is determined to be identical or functionally equivalent by the CUPA, the assessment specified in subsection (*l*) of this section is not required. The owner or operator shall provide the CUPA, or the Department if there is no CUPA or the CUPA requests that the Department make a determination, with the following information in writing so that a determination can be made:

(1) name, address, and EPA identification number of the facility;

(2) date of planned replacement;

(3) description part or component to be replaced;

(4) description of the tank system and type of waste(s) handled;

(5) description of how the part or component is identical or functionally equivalent to the part or component to be replaced.

NOTE: Authority cited: Sections 25150, 25159, 58004 and 58012, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.192.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. New subsections (i)(1)–(i)(2)(B)2. filed 6–19–95 as an emergency; operative 6–19–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–95 or emergency language will be repealed by operation of law on the following day.
3. New subsections (i)(1)–(i)(2)(B)2. refiled 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.
4. New subsections (i)(1)–(i)(2)(B)2 refiled 2–16–96 as an emergency; operative 2–16–96 (Register 96, No. 7). A Certificate of Compliance must be transmitted to OAL by 6–15–96 or emergency language will be repealed by operation of law on the following day.
5. New subsections (i)(1)–(i)(2)(B)2 refiled 6–17–96 as an emergency; operative 6–17–96 (Register 96, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–15–96 or emergency language will be repealed by operation of law on the following day.
6. New subsections (i)(1)–(i)(2)(B)2. refiled 10–15–96 as an emergency; operative 10–15–96 (Register 96, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–12–97 or emergency language will be repealed by operation of law on the following day.
7. New subsections (i)(1)–(i)(2)(B)2. refiled 2–11–97 as an emergency, including amendment of NOTE; operative 2–11–97 (Register 97, No. 7). A Certificate of Compliance must be transmitted to OAL by 6–11–97 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 2–11–97 order transmitted to OAL 6–10–97; disapproved by OAL and order of repeal as to 2–11–97 filed on 7–24–97 (Register 97, No. 30).
9. Certificate of Compliance as to 2–11–97 order, including amendment of section and NOTE, resubmitted to OAL and approved on 7–24–97 (Register 97, No. 30).
10. Change without regulatory effect amending subsections (i)(1), (*l*)(10) and (n) filed 7–1–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 27).

§ 66264.193. Containment and Detection of Releases.

(a) In order to prevent the release of hazardous waste or hazardous constituents to the environment, secondary containment that meets the requirements of this section shall be provided (except as provided in subsections (f) and (g) of this section):

(1) for all new tank systems or components, prior to the tank system or component being put into service.

(2) for all existing tank systems.

(3) for tank systems that transfer, store or treat materials that subsequently become hazardous wastes within two years after the materials become hazardous waste unless the owner or operator complies with section 40 CFR 265.201 and is one of the following:

(A) the owner or operator is a conditionally exempt small quantity generator or a 100 to 1,000 kg per month generator, or

(B) the owner or operator is not subject to regulation in 40 CFR part 264 pursuant to an exemption in 40 CFR section 264.1, but the owner or operator is subject to the standards of this article.

(b) Secondary containment systems shall be:

(1) designed, installed, and operated to prevent any migration of wastes or accumulated liquid out of the system to the soil, groundwater or surface water at any time during the use of the tank system; and

(2) capable of detecting and collecting releases and accumulated liquids until the collected material is removed.

(c) To meet the requirements of subsection (b) of this section, secondary containment systems shall be at a minimum:

(1) constructed of or lined with materials that are compatible with the wastes(s) to be placed in the tank system and shall have sufficient strength and thickness to prevent failure owing to pressure gradients (including static head and external hydrological forces), physical contact with the waste to which it is exposed, climatic conditions and the stress of daily operation (including stresses from nearby vehicular traffic);

(2) provided with a foundation or base underlying the tanks capable of providing support to the secondary containment system, resistance to pressure gradients above and below the system and capable of preventing failure due to settlement, compression or uplift. This base shall be free of cracks or gaps and sufficiently impervious to contain leaks, spills and accumulated precipitation until the collected material is detected and removed;

(3) provided with a leak–detection system that is designed and operated so that it will detect the failure of either the primary or secondary

containment structure or the presence of any release of hazardous waste or accumulated liquid in the secondary containment system within 24 hours, or at the earliest practicable time if the owner or operator can demonstrate to the Department that existing detection technologies or site conditions will not allow detection of a release within 24 hours; and

(4) sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills or precipitation. Spilled or leaked waste and accumulated precipitation shall be removed from the secondary containment system within as timely a manner as is necessary to prevent overflow of the containment system, but within no more than 24 hours, or in as timely a manner as possible to prevent harm to human health and the environment, if the owner or operator can demonstrate to the Department that removal of the released waste or accumulated precipitation cannot be accomplished within 24 hours and that overflow of the containment system will not occur.

(A) If the collected material is a hazardous waste under chapter 11 of this division, it shall be managed as a hazardous waste in accordance with all applicable requirements of chapters 12 through 15 of this division.

(B) If the collected material is discharged through a point source to waters of the United States, the owner or operator shall comply with the requirements of sections 301, 304, and 402 of the Federal Clean Water Act, as amended (33 U.S.C. sections 1311, 1314 and 1342, respectively).

(C) If the collected material is discharged to a Publicly Owned Treatment Works (POTW), the owner or operator shall comply with the requirements of section 307 of the Federal Clean Water Act, as amended (33 U.S.C. section 1317).

(D) If the collected material is released to the environment, the owner or operator shall comply with the applicable reporting requirements of Title 40 CFR Part 302.

(d) Secondary containment for tanks shall include one or more of the following devices:

(1) a liner (external to the tank);

(2) a vault;

(3) a double–walled tank; or

(4) an equivalent device as approved by the Department.

(e) In addition to the requirements of subsections (b), (c) and (d) of this section, secondary containment systems shall satisfy the following requirements.

(1) External liner systems shall be:

(A) designed or operated to contain precipitation from a 24–hour, 25–year storm event plus the greater of 10 percent of the aggregate volume of all tanks or 100 percent of the capacity of the largest tank within its boundary, whichever is greater;

(B) designed or operated to prevent run–on and infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity, in addition to that required in subsection (e)(1)(A) of this section, to contain run–on and infiltration from a 25–year, 24–hour rainfall event;

(C) free of cracks or gaps; and

(D) designed and installed to surround the tank completely and to cover all surrounding earth likely to come into contact with the waste if the waste is released from the tank(s) (i.e., capable of preventing lateral as well as vertical migration of the waste).

(2) Vault systems shall be:

(A) designed or operated to contain precipitation from a 24–hour, 25–year storm event plus the greater of 10 percent of the aggregate volume of all tanks or 100 percent of the capacity of the largest tank within its boundary, whichever is greater;

(B) designed or operated to prevent run–on and infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity, in addition to that required in subsection (e)(2)(A) of this section, to contain run–on and infiltration from a 25–year, 24–hour rainfall event;

(C) constructed with chemical–resistant water stops in place at all joints (if any);

(D) provided with an impermeable interior coating or lining that is compatible with the waste being transferred, stored or treated and that will prevent migration of waste into the concrete;

(E) provided with a means to protect against the formation of and ignition of vapors within the vault, if the waste being transferred, stored or treated:

1. meets the definition of ignitable waste under section 66261.21 of this division; or

2. meets the definition of reactive waste under section 66261.23 of this division, and may form an ignitable or explosive vapor; and

(F) provided with an exterior moisture barrier or be otherwise designed or operated to prevent migration of moisture into the vault if the vault is subject to hydraulic pressure.

(3) Double–walled tanks shall be:

(A) designed as an integral structure (i.e., an inner tank completely enveloped within an outer shell) so that any release from the inner tank is contained by the outer shell;

(B) protected, if constructed of metal, from both corrosion of the primary tank interior and of the external surface of the outer shell; and

(C) provided with a built–in continuous leak detection system capable of detecting a release within 24 hours, or at the earliest practicable time, if the owner or operator can demonstrate to the Department, and the Department concludes, that the existing detection technology or site conditions would not allow detection of a release within 24 hours.

(f) Ancillary equipment shall be provided with secondary containment (e.g., trench, jacketing, double–walled piping) that meets the requirements of subsections (b) and (c) of this section except for:

(1) aboveground piping (exclusive of flanges, joints, valves and other connections) that are visually inspected for leaks on a daily basis;

(2) welded flanges, welded joints and welded connections, that are visually inspected for leaks on a daily basis;

(3) sealless or magnetic coupling pumps and sealless valves, that are visually inspected for leaks on a daily basis; and

(4) pressurized aboveground piping systems with automatic shut–off devices (e.g., excess flow check valves, flow metering shutdown devices, loss of pressure actuated shut–off devices) that are visually inspected for leaks on a daily basis.

(g) The owner or operator may obtain a variance from the requirements of this section for existing above–ground tanks in place, if the Department finds, as a result of a demonstration by the owner or operator that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous waste or hazardous constituents into the groundwater or surface water at least as effectively as secondary containment during the active life of the tank system, or that in the event of a release that does migrate to groundwater or surface water, no substantial present or potential hazard will be posed to human health or the environment.

(1) In deciding whether to grant a variance based on a demonstration of equivalent protection of groundwater and surface water, the Department will consider:

(A) the nature and quantity of the wastes;

(B) the proposed alternate design and operation;

(C) the hydrogeologic setting of the facility, including the thickness of soils present between the tank system and groundwater, and

(D) all other factors that would influence the quality and mobility of the hazardous constituents and the potential for the constituents to migrate to groundwater or surface water.

(2) In deciding whether to grant a variance based on a demonstration of no substantial present or potential hazard, the Department will consider:

(A) the potential adverse effects on groundwater, surface water and land quality taking into account:

1. the physical and chemical characteristics of the waste in the tank system, including its potential for migration;

2. the hydrogeological characteristics of the facility and surrounding land;

3. the potential for health risks caused by human exposure to waste constituents;

4. the potential for damage to wildlife, crops, vegetation and physical structures caused by exposure to waste constituents; and

5. the persistence and permanence of the potential adverse effects;

(B) the potential adverse effects of a release on groundwater quality, taking into account:

1. the quantity and quality of groundwater and the direction of groundwater flow;

2. the proximity and withdrawal rates of groundwater users;

3. the current and future uses of groundwater in the area; and

4. the existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;

(C) the potential adverse effects of a release on surface water quality, taking into account:

1. the quantity and quality of groundwater and the direction of groundwater flow;

2. the patterns of rainfall in the region;

3. the proximity of the tank system to surface waters;

4. the current and future uses of surface waters in the area and any water quality standards established for those surface waters; and

5. the existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality; and

(D) the potential adverse effects of a release on the land surrounding the tank system, taking into account:

1. the patterns of rainfall in the region; and

2. the current and future uses of the surrounding land.

(3) The owner or operator of a tank system, for which a variance from secondary containment has been granted in accordance with the requirements of subsection (g)(1) of this section, at which a release of hazardous waste has occurred from the primary tank system but has not migrated beyond the zone of engineering control (as established in the variance), shall:

(A) comply with the requirements of section 66264.196, except subsection (b)(5); and

(B) decontaminate or remove contaminated soil to the extent necessary to:

1. enable the tank system for which the variance was granted to resume operation with the capability for the detection of releases at least equivalent to the capability it had prior to the release; and

2. prevent the migration of hazardous waste or hazardous constituents to groundwater or surface water; and

(C) if contaminated soil cannot be removed or decontaminated in accordance with subsection (g)(3)(B) of this section, comply with the requirements of section 66264.197(b).

(4) The owner or operator of a tank system, for which a variance from secondary containment has been granted in accordance with the requirements of subsection (g)(1) of this section, at which a release of hazardous waste has occurred from the primary tank system and has migrated beyond the zone of engineering control (as established in the variance), shall:

(A) comply with the requirements of section 66264.196(b); and

(B) prevent the migration of hazardous waste or hazardous constituents to groundwater or surface water, if possible, and decontaminate or remove contaminated soil. If contaminated soil cannot be decontaminated or removed or if groundwater has been contaminated, the owner or operator shall comply with the requirements of section 66264.197(b); and

(C) if repairing, replacing or reinstalling the tank system, provide secondary containment in accordance with the requirements of subsections (a) through (f) of this section or reapply for a variance from secondary containment and meet the requirements for new tank systems in section 66264.192 if the tank system is replaced. The owner or operator shall comply with these requirements even if contaminated soil can be decontaminated or removed and groundwater or surface water has not been contaminated.

(h) The following procedures shall be followed in order to request a variance from secondary containment.

(1) The Department shall be notified in writing by the owner or operator that the facility intends to conduct and submit a demonstration for a variance from secondary containment as allowed in subsection (g) of this section at least 24 months prior to the date that secondary containment is required to be provided in accordance with subsection (a) of this section; or, if a variance is sought from the requirements of section 66264.193(i)(1), the demonstration shall be submitted to the Department with Part B of the permit application.

(2) As part of the notification, the owner or operator shall also submit to the Department a description of the steps necessary to conduct the demonstration and a timetable for completing each of the steps. The demonstration shall address each of the factors listed in subsection (g)(1) or subsection (g)(2) of this section.

(3) The demonstration for a variance shall be completed within 180 days after notifying the Department of an intent to conduct the demonstration.

(4) If a variance is granted under this subsection, the Department will require the permittee to construct and operate the tank system in the manner that was demonstrated to meet the requirements for the variance.

(i) All tank systems, until such time as secondary containment that meets the requirements of this section is provided, shall comply with the following:

(1) subsections (c)(2), (c)(4), (e)(1)(A) or (e)(2)(A) (except for tanks that do not contain free liquids), and (e)(1)(B) or (e)(2)(B);

(2) for nonenterable underground tanks, a leak test that meets the requirements of section 66264.191(c)(5) or other tank integrity method, as approved or required by the Department, shall be conducted at least annually;

(3) for other than nonenterable underground tanks, the owner or operator shall either conduct a leak test as in subsection (i)(2) of this section or develop a schedule and procedure for an assessment of the overall condition of the tank system by an independent, qualified professional engineer, registered in California, in accordance with section 66270.11(d). The schedule and procedure shall be adequate to detect obvious cracks, leaks, and corrosion or erosion that may lead to cracks and leaks. The owner or operator shall remove the stored waste from the tank, if necessary, to allow the condition of all internal tank surfaces to be assessed. The frequency of these assessments shall be based on the material of construction of the tank and its ancillary equipment, the age of the system, the type of corrosion or erosion protection used, the rate of corrosion or erosion observed during the previous inspection and the characteristics of the waste being stored or treated;

(4) for ancillary equipment, a leak test or other integrity assessment as approved by the Department shall be conducted at least annually;

(5) the owner or operator shall maintain on file at the facility a record of the results of the assessments conducted in accordance with subsections (i)(2) through (i)(4) of this section;

(6) if a tank system or component is found to be leaking or unfit for use as a result of the leak test or assessment in subsections (i)(2) through (i)(4) of this section, the owner or operator shall comply with the requirements of section 66264.196.

(j)(1) Notwithstanding subsection (a) through (c) of this section, secondary containment that meets the requirements of subsections (*l*) and (m) shall be provided for tank systems used to manage hazardous wastes generated onsite, and which meet the criteria specified in subsection (j)(2) of this section:

(A) prior to the tank system or component being placed in service for new tank systems or components; or

(B) by January 24, 1998 for existing tank systems.

(2) The provisions of subsection (j)(1) of this section apply only to:

(A) onground or aboveground tank systems containing only non-RCRA hazardous wastes generated onsite, and tank systems authorized

under Permit–by–Rule pursuant to Chapter 45 of this division, Conditional Authorization pursuant to HSC 25200.3, and Conditional Exemption pursuant to HSC 25201.5, and

(B) onground or aboveground tank systems containing RCRA hazardous wastes generated onsite, if:

1. the owner or operator is a conditionally exempt small quantity generator as defined in 40 CFR section 261.5, or a small quantity generator of more than 100 kg but less than 1000 kg per month as defined in 40 CFR section 265.201, or

2. the owner or operator is not subject to regulation in 40 CFR part 264 pursuant to an exemption in 40 CFR section 264.1, but the owner or operator is subject to the standards of this article.

(k) A generator or owner or operator authorized pursuant to Permit–by–Rule pursuant to Chapter 45 of this division, Conditional Authorization pursuant to HSC 25200.3, or Conditional Exemption pursuant to HSC 25201.5, operating a non–RCRA underground tank system or an underground tank system otherwise exempt from permitting requirements pursuant to the federal act, shall comply with the applicable standards of Title 23 of the California Code of Regulations relating to underground tank systems.

(*l*) Secondary containment for onground or aboveground generator and onsite tier (Permit–by–Rule, Conditional Authorization, and Conditional Exemption), non–RCRA tank systems or tank systems otherwise exempt from permitting requirements pursuant to the federal act, shall consist of any of the devices listed in subsection (d) and satisfy the requirements of (e) of this section or any device or combination of devices as approved by the CUPA, or the Department if there is no CUPA or the CUPA requests that the Department makes a determination, which would satisfy the following minimum requirements:

(1) designed, installed, and operated to prevent any migration of wastes or accumulated liquid out of the system to the soil, ground water, surface water, or air at any time during the use of the tank system; and

(2) capable of detecting and collecting releases and accumulated liquids until the collected material is removed.

(m) Ancillary equipment shall be provided with secondary containment as specified in subsection (f) of this section or an alternative device or devices as approved in writing by the CUPA, or the Department if there is no CUPA or if the CUPA requests that the Department make a determination, which would prevent and/or detect any release of wastes out of the tank system before such wastes could migrate to the soil, ground water, or surface water at any time during the use of the tank system. The following are examples of tank system and ancillary equipment secondary containment alternatives or options that may be proposed for review and approval by the CUPA:

(1) traditional containment of entire system within a bermed containment area with visual and/or electronic leak detection monitoring;

(2) troughs or pipe runs with impermeable liners that incorporate the following:

(A) visual monitoring during hours of operation or;

(B) continuous electronic leak detection monitoring for releases; or

(C) sumps located at low elevations with leak detection monitors.

(3) double–walled piping with continuous interstitial monitoring or monitoring intervals located at low elevation points along pipeline;

(4) Double–walled piping with translucent or transparent sections located at low points or low endpoints so that visual monitoring is possible.

(n) A generator or owner or operator authorized pursuant to Permit–by–Rule pursuant to Chapter 45 of this division, Conditional Authorization pursuant to HSC 25200.3, and Conditional Exemption pursuant to HSC 25201.5, operating an onground or aboveground, non–RCRA tank system or a tank system otherwise exempt from permitting requirements pursuant to the federal act, that has 18 months or less remaining in service prior to planned closure of the tank system, may propose alternatives to retrofitting the tank system with secondary containment. Local agency requirements must be considered when proposing alternatives to secondary containment. The owner or operator shall provide the following information in writing to the CUPA, or the Department if there is no CUPA or the CUPA requests that the Department make a determination, so that a determination can be made whether the proposed alternative would be acceptable:

(1) name, address, and EPA identification number of the facility;

(2) date of planned closure;

(3) description of tank system to be closed and form of current authorization for the tank system;

(4) description of how the proposed alternative would provide adequate environmental protection such that the design, installation, and operation will be capable of detecting a release and preventing any migration of wastes or accumulated liquid out of the system to the soil, ground water, surface water, or air at any time during the remaining life of the tank system.

NOTE: Authority cited: Sections 25150, 25159 and 58012, Health and Safety Code. Reference: Sections 25143, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.193.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of section and NOTE filed 6–19–95 as an emergency; operative 6–19–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–95 or emergency language will be repealed by operation of law on the following day.
3. Amendment of section and NOTE refiled 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.
4. Amendment of section and NOTE refiled 2–16–96 as an emergency; operative 2–16–96 (Register 96, No. 7). A Certificate of Compliance must be transmitted to OAL by 6–15–96 or emergency language will be repealed by operation of law on the following day.
5. Amendment of section and NOTE refiled 6–17–96 as an emergency; operative 6–17–96 (Register 96, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–15–96 or emergency language will be repealed by operation of law on the following day.
6. Amendment of section and NOTE refiled 10–15–96 as an emergency; operative 10–15–96 (Register 96, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–12–97 or emergency language will be repealed by operation of law on the following day.
7. Amendment of section and NOTE refiled 2–11–97 as an emergency, including additional amendment of NOTE; operative 2–11–97 (Register 97, No. 7). A Certificate of Compliance must be transmitted to OAL by 6–11–97 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 2–11–97 order transmitted to OAL 6–10–97; disapproved by OAL and order of repeal as to 2–11–97 filed on 7–24–97 (Register 97, No. 30).
9. Certificate of Compliance as to 2–11–97 order, including amendment of section, resubmitted to OAL and approved on 7–24–97 (Register 97, No. 30).
10. Change without regulatory effect amending subsection (m)(3) filed 7–1–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 27).
11. Amendment of subsections (a)(1)–(2), repealer of subsections (a)(2)(A)–(a)(5)(B)2.b. and (a)(6)(A)–(a)(6)(B)2., renumbering and amendment of former subsection (a)(6) to subsection (a)(3), redesignation of former subsections (a)(6)(B)2.a.–b. to subsections (a)(3)(A)–(B) and amendment of NOTE filed 9–8–2006; operative 10–8–2006 (Register 2006, No. 36).

§ 66264.194. General Operating Requirements.

(a) Hazardous wastes or other materials (e.g., treatment reagents) shall not be placed in a tank system if they could cause the tank, its ancillary equipment or the containment system to rupture, leak, corrode, or otherwise fail.

(b) The owner or operator shall use appropriate controls and practices to prevent spills and overflows from tank or containment systems. These include at a minimum:

(1) spill prevention controls (e.g., check valves, dry disconnect couplings);

(2) overfill prevention controls (e.g., level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standby tank); and

(3) maintenance of sufficient freeboard in uncovered tanks to prevent overtopping by wave or wind action or by precipitation from at least a 24–hour, 25–year storm.

(c) The owner or operator shall comply with the requirements of section 66264.196 if a leak or spill occurs in the tank system.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.194.

HISTORY
1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.195. Inspections.

(a) The owner or operator shall develop and follow a schedule and procedure for inspecting overfill controls and shall inspect the overfill controls at least once each operating day to ensure that they are in good working order.

(b) The owner or operator shall inspect at least once each operating day:

(1) aboveground portions of the tank system, if any, to detect corrosion or releases of waste;

(2) data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design; and

(3) the construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (e.g., dikes) to detect corrosion, erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation);

(4) for uncovered tanks, the level of waste in the tank, to ensure compliance with section 66264.194(b)(3).

(c) The owner or operator shall inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly.

(1) The proper operation of the cathodic protection system shall be confirmed within six months after initial installation and annually thereafter.

(2) All sources of impressed current shall be inspected and/or tested, as appropriate, at least bimonthly (i.e., every other month).

(d) The owner or operator shall document in the operating record of the facility an inspection of those items in subsections (a) through (c) of this section.

(e) As part of the inspection schedule required in section 66264.15(b), and in addition to the specific requirements of subsection (a) of this section, the owner or operator shall develop a schedule and procedure for assessing the condition of the tank. The schedule and procedure shall be adequate to detect cracks, leaks, corrosion or erosion which may lead to cracks or leaks, or wall thinning to less than the thickness required under section 66264.191(a). Procedures for emptying a tank to allow entry and inspection of the interior shall be established, when necessary, to detect corrosion or erosion of the tank sides and bottom. The frequency of these assessments shall be based on the material of construction of the tank, type of corrosion or erosion observed during previous inspections and the characteristics of the waste being transferred, treated or stored.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.195.

HISTORY
1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.196. Response to Leaks or Spills and Disposition of Leaking or Unfit–for–Use Tank Systems.

(a) As part of the contingency plan required under this chapter, the owner or operator shall specify the procedures the facility intends to use to respond to tank spills or leakage, including procedures and timing for expeditious removal of leaked or spilled waste and repair of the tank.

(b) A tank system or secondary containment system from which there has been a leak or spill, or which is unfit for use, shall be removed from service immediately, and the owner or operator shall satisfy the following requirements.

(1) General emergency procedures. The owner or operator shall comply with applicable requirements of section 66264.56 of this division.

(2) Cessation of use; prevention of flow or addition of wastes. The owner or operator shall immediately stop the flow of hazardous waste into the tank system or secondary containment system and inspect the system to determine the cause of the release.

(3) Removal of waste from tank system or secondary containment system.

(A) If the release was from the tank system, the owner/operator shall, within 24 hours after detection of the leak or, if the owner/operator demonstrates that it is not possible, at the earliest practicable time, remove as much of the waste as is necessary to prevent further release of hazardous waste to the environment and to allow inspection and repair of the tank system to be performed.

(B) If the material released was to a secondary containment system, all released materials shall be removed within as timely a manner as is necessary to prevent overflow of the containment system, but within no more than 24 hours, or in as timely a manner as is possible to prevent harm to human health and the environment if the owner or operator provides the demonstration required by section 66264.193(c)(4).

(4) Containment of visible releases to the environment. The owner/operator shall immediately conduct a visual inspection of the release and, based upon that inspection:

(A) prevent further migration of the leak or spill to soils or surface water; and

(B) remove, and properly dispose of, any visible contamination of the soil or surface water.

(5) Notifications, reports.

(A) Any release to the environment, except as provided in subsection (b)(5)(B) of this section, shall be reported to the Department within 24 hours of its detection.

(B) A leak or spill of hazardous waste is exempted from the requirements of subsection (b)(5) of this section, but is not exempt from the requirements of section 66264.56, if it is:

1. less than or equal to a quantity of one (1) pound, and

2. immediately contained and cleaned up.

(C) Within 30 days of detection of a release to the environment, a report containing the following information shall be submitted to the Department:

1. likely route of migration of the release;

2. characteristics of the surrounding soil (soil composition, geology, hydrogeology, climate);

3. results of any monitoring or sampling conducted in connection with the release (if available). If sampling or monitoring data relating to the release are not available within 30 days, these data shall be submitted to the Department as soon as they become available;

4. proximity to downgradient drinking water, surface water, and populated areas; and

5. description of response actions taken or planned.

(6) Provision of secondary containment, repair, or closure.

(A) Unless the owner/operator satisfies the requirements of subsections (b)(6)(B) through (D) of this section, the tank system shall be closed in accordance with section 66264.197.

(B) If the cause of the release was a spill that has not damaged the integrity of the system, the owner/operator may return the system to service as soon as the released waste is removed and repairs, if necessary, are made.

(C) If the cause of the release was a leak from the primary tank system into the secondary containment system, the system shall be repaired prior to returning the tank system to service.

(D) If the source of the release was a leak to the environment from a component of a tank system without secondary containment, the owner/operator shall provide the component of the system from which the leak occurred with secondary containment that satisfies the requirements of section 66264.193 before it can be returned to service, unless the source of the leak is an aboveground portion of a tank system that can be inspected visually. If the source is an aboveground component that can be inspected visually, the component shall be repaired and may be returned to service without secondary containment as long as the requirements of subsection (b)(7) of this section are satisfied. If a component is replaced to comply with the requirements of this subsection, that component shall satisfy the requirements for new tank systems or components in sections 66264.192 and 66264.193. Additionally, if a leak has occurred in any portion of a tank system component that is not readily accessible for visu-

al inspection (e.g., the bottom of an inground or onground tank), the entire component shall be provided with secondary containment in accordance with section 66264.193 prior to being returned to use.

(7) Certification of major repairs. If the owner/operator has repaired a tank system in accordance with subsection (b)(6) of this section, and the repair has been extensive (e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system shall not be returned to service unless the owner/operator has obtained a certification by an independent, qualified, professional engineer, registered in California, in accordance with section 66270.11(d), that the repaired system is capable of handling hazardous wastes without release for the intended life of the system. This certification shall be submitted to the Department within seven days after returning the tank system to use.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.196.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.197. Closure and Post–Closure Care.

(a) At closure of a tank system, the owner or operator shall remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated soils, and structures and equipment contaminated with waste, and manage them as hazardous waste, unless section 66261.3(e) of this division applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for tank systems shall meet all of the requirements specified in articles 7 and 8 of this chapter.

(b) If the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required in subsection (a) of this section, then the owner or operator shall close the tank system and perform post–closure care in accordance with the closure and post–closure care requirements that apply to landfills section 66264.310. In addition, for the purposes of closure, post–closure, and financial responsibility, such a tank system is then considered to be a landfill, and the owner or operator shall meet all of the requirements for landfills specified in articles 7 and 8 of this chapter.

(c) If an owner or operator has a tank system that does not have secondary containment that meets the requirements of section 66264.193(b) through (f) and has not been granted a variance from the secondary containment requirements in accordance with section 66264.193(g), then:

(1) the closure plan for the tank system shall include both a plan for complying with subsection (a) of this section and a contingent plan for complying with subsection (b) of this section;

(2) a contingent post–closure plan for complying with subsection (b) of this section shall be prepared and submitted as part of the permit application;

(3) the cost estimates calculated for closure and post–closure care shall reflect the costs of complying with the contingent closure plan and the contingent post–closure plan, if those costs are greater than the costs of complying with the closure plan prepared for the expected closure under subsection (a) of this section;

(4) financial assurance shall be based on the cost estimates in subsection (c)(3) of this section;

(5) for the purposes of the contingent closure and post–closure plans, such a tank system is considered to be a landfill, and the contingent plans shall meet all of the closure, post–closure, and financial responsibility requirements for landfills under articles 7 and 8 of this chapter.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.197.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.198. Special Requirements for Ignitable or Reactive Wastes.

(a) Ignitable or reactive waste shall not be placed in tank systems, unless:

(1) the waste is treated, rendered, or mixed before or immediately after placement in the tank system so that:

(A) the resulting waste, mixture, or dissolved material no longer meets the definition of ignitable or reactive waste under sections 66261.21 or 66261.23 of this division, and

(B) section 66264.17(b) is complied with; or

(2) the waste is transferred, stored or treated in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or

(3) the tank system is used solely for emergencies.

(b) The owner or operator of a facility where ignitable or reactive waste is transferred, stored or treated in a tank shall comply with the requirements for the maintenance of protective distances between the waste management area and any public ways, streets, alleys, or an adjoining property line that can be built upon as required in Tables 2–1 through 2–6 of the National Fire Protection Association's "Flammable and Combustible Liquids Code," (1981), (incorporated by reference, see section 66260.11).

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Code; 40 CFR Section 264.198.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.199. Special Requirements for Incompatible Wastes.

(a) Incompatible wastes, or incompatible wastes and materials, shall not be placed in the same tank system, unless section 66264.17(b) is complied with.

(b) Hazardous waste shall not be placed in a tank system that has not been decontaminated and that previously held an incompatible waste or material, unless section 66264.17(b) is complied with.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.199.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.200. Air Emission Standards.

The owner or operator shall manage all hazardous waste placed in a tank in accordance with the applicable requirements of Articles 27, 28 and 28.5 of this Chapter.

NOTE: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR section 264.200.

HISTORY

1. Change without regulatory effect adding new section filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).

[The next page is 755.]

Article 11. Surface Impoundments

§ 66264.220. Applicability.

The regulations in this article apply to owners and operators of facilities that use surface impoundments to treat, store, or dispose of hazardous waste except as section 66264.1 of this chapter provides otherwise.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.220.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).

§ 66264.221. Design and Operating Requirements.

(a) Any surface impoundment that is not covered by subsection (c) of this section or section 66265.221 shall have a liner for all portions of the impoundment (except for existing portions of such impoundments). The liner shall be designed, constructed, and installed to prevent any migration of wastes out of the impoundment to the adjacent subsurface soil or ground water or surface water at any time during the active life (including the closure period) of the impoundment. The liner may be constructed of materials that may allow wastes to migrate into the liner (but not into the adjacent subsurface soil or ground water or surface water) during the active life of the facility, provided that the impoundment is closed in accordance with section 66264.228(a)(1). For impoundments that will be closed in accordance with section 66264.228(a)(2), the liner shall be constructed of materials that can prevent wastes from migrating into the liner during the active life of the facility. The liner shall be:

(1) constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(2) placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(3) installed to cover all surrounding earth likely to be in contact with the waste or leachate.

(b) The owner or operator will be exempted from the requirements of subsection (a) of this section if the Department finds, based on a demonstration by the owner or operator, that alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents into soil outside the impoundment or into the ground water or surface water at any future time. In deciding whether to grant an exemption, the Department will consider:

(1) the nature and quantity of the wastes;

(2) the proposed alternate design and operation;

(3) the hydrogeologic setting of the facility, including the alternative capacity and thickness of the liners and soils present between the impoundment and ground water or surface water; and

(4) all other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to ground water or surface water;

(5) the potential for lateral migration of hazardous constituents which could present a threat to public health or the environment;

(6) recommendations of the State Water Resources Control Board or the appropriate Regional Water Quality Control Board.

(c) The owner or operator of each new surface impoundment unit on which construction commences after January 29, 1992, each lateral expansion of a surface impoundment unit on which construction commences after July 29, 1992 and each replacement of an existing surface impoundment unit that is to commence reuse after July 29, 1992 shall install two or more liners and a leachate collection and removal system between such liners. "Construction commences" is as defined in section 66260.10 of this chapter under "existing facility". When an existing surface impoundment is expanded after January 29, 1992, the entire surface impoundment will be treated as a surface impoundment constructed after January 29, 1992. The requirements of this subsection shall not apply to surface impoundment units receiving only non-RCRA hazardous waste until February 18, 1996.

(1)(A) The liner system shall include:

1. A top liner designed and constructed of materials (e.g., a geomembrane) to prevent the migration of hazardous constituents into such liner during the active life and post-closure care period; and

2. A composite bottom liner, consisting of at least two components. The upper component shall be designed and constructed of materials (e.g., a geomembrane) to prevent the migration of hazardous constituents into this component during the active life and post-closure care period. The lower component shall be designed and constructed of materials to minimize the migration of hazardous constituents if a breach in the upper component were to occur. The lower component shall be constructed of at least 3 feet (91 cm) of compacted soil material with a hydraulic conductivity of no more than $1x10^{-7}$ cm/sec.

(B) The liners shall comply with subsections (a)(1), (2), and (3) of this section.

(2) The leachate collection and removal system between the liners, and immediately above the bottom composite liner in the case of multiple leachate collection and removal systems, is also a leak detection system. This leak detection system shall be capable of detecting, collecting, and removing leaks of hazardous constituents at the earliest practicable time through all areas of the top liner likely to be exposed to waste or leachate during the active life and post-closure care period. The requirements for a leak detection system in this subsection are satisfied by installation of a system that is, at a minimum:

(A) Constructed with a bottom slope of one percent or more;

(B) Constructed of granular drainage materials with a hydraulic conductivity of $1x10^{-1}$ cm/sec or more and a thickness of 1 foot (30.5 cm) or more; or constructed of synthetic or geonet drainage materials with a transmissivity of $3x10^{-4}$ m^2/sec or more. In cases where the leak detection system is composed of coarse granular material, there shall be a suitable interface (e.g., geotextile) between the leak detection system and any flexible membrane liner, as needed to prevent the coarse grains from causing a puncture in the flexible membrane liner under the high stress conditions caused by the overlying waste;

(C) Constructed of materials that are chemically resistant to the waste managed in the surface impoundment and the leachate expected to be generated, and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes and any waste cover materials or equipment used at the surface impoundment;

(D) Designed and operated to minimize clogging during the active life and post-closure care period; and

(E) Constructed with sumps and liquid removal methods (e.g., pumps) of sufficient size to collect and remove liquids from the sump and prevent liquids from backing up into the drainage layer. Each unit shall have its own sump(s). The design of each sump and removal system shall provide a method for measuring and recording the volume of liquids present in the sump and of liquids removed.

(3) The owner or operator shall collect and remove pumpable liquids in the sumps to minimize the head on the bottom liner.

(4) The liner system shall be designed, constructed and operated to ensure that leak detection system shall be a minimum of 5 feet above the highest anticipated elevation of groundwater.

(d) The liners shall be designed and constructed to contain the waste and leachate fluids when subjected to the maximum anticipated hydraulic head which will be imposed during disposal operations and the post-closure maintenance period.

(e) The leachate collection and removal system shall:

(1) be designed, constructed, maintained and operated to collect leachate from the area, and to ensure that there is no buildup of hydraulic

head on the liner. The depth of fluid in the collection sump shall be kept at a minimum needed to ensure sufficient pump operation;

(f) The Department may approve alternative design or operating practices to those specified in subsection (c) of this section if the owner or operator demonstrates to the Department that such design and operating practices, together with location characteristics:

(1) Will prevent the migration of any hazardous constituent into the groundwater or surface water at least as effectively as the liners and leachate collection and removal system specified in subsection (c) of this section; and

(2) Will allow detection of leaks of hazardous constituents through the top liner at least as effectively.

(g) The double liner requirement set forth in subsection (c) of this section shall be waived by the Department for any monofill, if:

(1) the monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes hazardous for reasons other than exceeding the soluble threshold limit concentration as described in section 66261.24; and

(2)(A) 1. the monofill has at least one liner for which there is no evidence that such liner is leaking. For the purposes of this subsection, the term "liner" means a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, ground water, or surface water at any time during the active life of the facility. In the case of any surface impoundment which has been exempted from the requirements of subsection (c) of this section on the basis of a liner designed, constructed, installed, and operated to prevent hazardous waste from passing beyond the liner, at the closure of such impoundment, the owner or operator shall remove or decontaminate all waste residues, all contaminated liner material, and contaminated soil to the extent practicable. If all contaminated soil is not removed or decontaminated, the owner or operator of such impoundment will comply with appropriate post–closure requirements, including but not limited to groundwater monitoring and corrective action;

2. the monofill is located more than one–quarter mile from an underground source of drinking water as defined in section 66260.10 of this chapter; and

3. the monofill is in compliance with generally applicable groundwater monitoring requirements for facilities with permits; or the owner or operator demonstrates that the monofill is located, designed and operated so as to assure that there will be no migration of any hazardous constituent into ground water or surface water at any future time.

(h) A surface impoundment shall be designed, constructed, maintained, and operated to prevent overtopping resulting from normal or abnormal operations; overfilling; wind and wave action; rainfall; run–on; malfunctions of level controllers, alarms, and other equipment; and human error.

(i) A surface impoundment shall have dikes that are designed, constructed, and maintained with sufficient structural integrity to prevent massive failure of the dikes. In ensuring structural integrity, it must not be presumed that the liner system will function without leakage during the active life of the unit.

(j) The Department will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

(k) The owner or operator of any replacement surface impoundment unit is exempt from subsection (c) of this section if:

(1) The existing unit was constructed in compliance with the design standards of 42 USC section 6924(o)(1)(A)(i) and 42 USC section 6924(o)(5); and

(2) There is reason to believe that the liner is functioning as designed.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code; and Governor's Reorganization Plan Number 1 of 1991. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR 40 section 264.221.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of section and NOTE filed 7–19–95; operative 8–18–95 (Register 95, No. 29).
3. Change without regulatory effect amending subsections (c), (f)(1) and (k)(1) filed 6–30–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 27).
4. Change without regulatory effect amending subsections (c) and (c)(4) filed 10–21–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 43).

§ 66264.222. Action Leakage Rate.

(a) The Department shall approve an action leakage rate for surface impoundment units subject to section 66264.221 (c) or (f). The action leakage rate is the maximum design flow rate that the leak detection system (LDS) can remove without the fluid pressure head on the bottom liner exceeding 1 foot (30.5 cm) at any given portion of the liner. The action leakage rate shall include an adequate safety margin to allow for uncertainties in the design (e.g., slope, hydraulic conductivity, thickness of drainage material), construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions (e.g., the action leakage rate shall consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.).

(b) To determine if the action leakage rate has been exceeded, the owner or operator shall convert the weekly or monthly flow rate from the monitoring data obtained under section 66264.226(d) to an average daily flow rate (gallons per acre per day) for each sump. Unless the Department approves a different calculation, the average daily flow rate for each sump shall be calculated weekly during the active life and closure period, and if the unit is closed in accordance with section 66264.228(b), monthly during the post–closure care period when monthly monitoring is required under section 66264.226(d).

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code; and Governor's Reorganization Plan Number 1 of 1991. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 264.222.

HISTORY

1. New section filed 7–19–95; operative 8–18–95 (Register 95, No. 29).
2. Change without regulatory effect amending subsection (a) filed 6–30–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 27).

§ 66264.223. Response Actions.

(a) The owner or operator of surface impoundment units subject to section 66264.221(c) or (f) shall have an approved response action plan before receipt of waste. The response action plan shall set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan shall describe the actions specified in subsection (b) of this section.

(b) If the flow rate into the leak detection system exceeds the action leakage rate for any sump, the owner or operator shall:

(1) Notify the Department in writing of the exceedence within 7 days of the determination;

(2) Submit a preliminary written assessment to the Department within 14 days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short–term actions taken and planned;

(3) Determine to the extent practicable the location size, and cause of any leak;

(4) Determine whether waste receipt should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether or not the unit should be closed;

(5) Determine any other short–term and longer–term actions to be taken to mitigate or stop any leaks; and

(6) Within 30 days after the notification that the action leakage rate has been exceeded, submit to the Department the results of the analyses specified in subsections (b)(3), (4) and (5) of this section, the results of actions taken, and actions planned. Monthly thereafter, as long as the flow

rate in the leak detection system exceeds the action leakage rate, the owner or operator shall submit to the Department a report summarizing the results of any remedial actions taken and actions planned.

(c) To make the leak and/or remediation determinations in subsections (b)(3), (4) and (5) of this section, the owner or operator shall:

(1)(A) Assess the source of liquids and amounts of liquids by source,

(B) Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the leak detection system to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and

(C) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

(2) Document why such assessments are not needed.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code; and Governor's Reorganization Plan Number 1 of 1991. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 264.223.

HISTORY

1. New section filed 7–19–95; operative 8–18–95 (Register 95, No. 29).

§ 66264.226. Monitoring and Inspection.

(a) During construction and installation, liners (except in the case of existing portions of surface impoundments exempt from section 66264.221(a)) and cover systems (e.g., membranes, sheets, or coatings) shall be inspected for uniformity, damage, and imperfections (e.g., holes, cracks, thin spots, or foreign materials). Immediately after construction or installation:

(1) synthetic liners and covers shall be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters; and

(2) soil–based and admixed liners and covers shall be inspected for imperfections including lenses, cracks, channels, root holes, or other structural non–uniformities that may cause an increase in the permeability of the liner or cover.

(b) While a surface impoundment is in operation, it shall be inspected weekly and after storms to detect evidence of any of the following:

(1) deterioration, malfunctions, or improper operation of overtopping control systems;

(2) sudden drops in the level of the impoundment's contents; and

(3) the presence of liquids in leak detection systems;

(4) severe erosion or other signs of deterioration in dikes or other containment devices.

(c) Prior to the issuance of a permit, and after any extended period of time (at least six months) during which the impoundment was not in service, the owner or operator shall obtain a certification from a qualified engineer, registered in California, that the impoundment's dike, including that portion of any dike which provides freeboard, has structural integrity. The certification must establish, in particular, that the dike:

(1) will withstand the stress of the pressure exerted by the types and amounts of wastes to be placed in the impoundment;

(2) will not fail due to scouring or piping, without dependence on any liner system included in the surface impoundment construction;

(3) will not fail due to external or internal forces from a maximum credible earthquake or landslide.

(d)(1) An owner or operator required to have a leak detection system under section 66264.221(c) or (f) shall record the amount of liquids removed from each leak detection system sump at least once each week during the active life and closure period.

(2) After the final cover is installed, the amount of liquids removed from each leak detection system sump shall be recorded at least monthly. If the liquid level in the sump stays below the pump operating level for two consecutive months, the amount of liquids in the sumps shall be recorded at least quarterly. If the liquid level in the sump stays below the pump operating level for two consecutive quarters, the amount of liquids in the sumps shall be recorded at least semi–annually. If at any time during the post–closure care period the pump operating level is exceeded at units on quarterly or semi–annual recording schedules, the owner or operator shall return to monthly recording of amounts of liquids removed from each sump until the liquid level again stays below the pump operating level for two consecutive months.

(3) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the Department based on pump activation level, sump dimensions, and level that avoids backup into drainage layer and minimizes head in the sump.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code; and Governor's Reorganization Plan Number 1 of 1991. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 264.226.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. New subsections (d)(1)–(3) and amendment of NOTE filed 7–19–95; operative 8–18–95 (Register 95, No. 29).

§ 66264.227. Emergency Repairs; Contingency Plans.

(a) A surface impoundment shall be removed from service in accordance with subsection (b) of this section when:

(1) the level of liquids in the impoundment suddenly drops and the drop is not known to be caused by changes in the flows into or out of the impoundment; or

(2) the dike leaks.

(b) When a surface impoundment must be removed from service as required by subsection (a) of this section, the owner or operator shall:

(1) immediately shut off the flow or stop the addition of wastes into the impoundment;

(2) immediately contain any surface leakage which has occurred or is occurring;

(3) immediately stop the leak;

(4) take any other necessary steps to stop or prevent catastrophic failure;

(5) if a leak cannot be stopped by any other means, empty the impoundment; and

(6) notify the Department of the problem in writing within seven days after detecting the problem.

(c) As part of the contingency plan required in article 4 of this chapter, the owner or operator shall specify a procedure for complying with the requirements of subsection (b) of this section.

(d) No surface impoundment that has been removed from service in accordance with the requirements of this section may be restored to service unless the portion of the impoundment which was failing is repaired and the following steps are taken.

(1) If the impoundment was removed from service as the result of actual or imminent dike failure, the dike's structural integrity must be recertified in accordance with section 66264.226(c).

(2) If the impoundment was removed from service as the result of a sudden drop in the liquid level, then:

(A) for any existing portion of the impoundment, a liner shall be installed in compliance with section 66264.221(a); and

(B) for any other portion of the impoundment, the repaired liner system shall be certified by a qualified engineer, registered in California, as meeting the design specifications approved in the permit.

(e) A surface impoundment that has been removed from service in accordance with the requirements of this section and that is not being repaired shall be closed in accordance with the provisions of section 66264.228.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.227.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.228. Closure and Postclosure Care.

(a) At closure, the owner or operator shall:

(1) remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless section 66261.3(d) applies; or

(2)(A) eliminate free liquids by removing liquid wastes or solidifying the remaining wastes and waste residues;

(B) stabilize remaining wastes to a bearing capacity sufficient to support final cover; and

(C) cover the surface impoundment with a final cover designed and constructed to:

1. prevent the downward entry of water into the closed impoundment throughout a period of at least 100 years;

2. function with minimum maintenance;

3. promote drainage and minimize erosion or abrasion of the final cover;

4. accommodate settling and subsidence so that the cover's integrity is maintained; and

5. have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present;

6. accommodate lateral and vertical shear forces generated by the maximum credible earthquake so that the integrity of the cover is maintained;

7. preclude ponding of rainfall and surface run–on over the closed area.

(b) If some waste residues, contaminated materials or contaminated soils are left in place at final closure, the owner or operator shall comply with all postclosure requirements contained in sections 66264.117 through 66264.120, including maintenance and monitoring throughout the postclosure care period (specified in the permit under section 66264.117). The owner or operator shall:

(1) close the facility in a manner that will minimize any chance of postclosure release of hazardous waste or discarded hazardous material; facilitate postclosure maintenance, monitoring and emergency response; and require minimum maintenance of containment structures, leachate collection systems and surface drainage collection or diversion systems;

(2) maintain the integrity and effectiveness of the final cover, including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion or other events;

(3) maintain and monitor the leachate collection and removal system which also serves as a leak detection system;

(4) maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of article 6 of this chapter;

(5) prevent run–on and run–off from eroding or otherwise damaging the final cover, and

(6) Maintain and monitor the leak detection system in accordance with sections 66264.221(c)(2)(D) and (c)(3) and 66264.226(d), and comply with all other applicable leak detection system requirements of this chapter;

(c)(1) If an owner or operator plans to close a surface impoundment in accordance with subsection (a)(1) of this section, then:

(A) the closure plan for the impoundment under section 66264.112 shall include both a plan for complying with subsection (a)(1) of this section and a contingent plan for complying with subsection (a)(2) of this section in case not all contaminated subsoils can be practicably removed at closure; and

(B) the owner or operator shall prepare a contingent postclosure plan under section 66264.118 for complying with subsection (b) of this section in case not all contaminated subsoils can be practicably removed at closure.

(2) The cost estimates calculated under sections 66264.142 and 66264.144 for closure and postclosure care of an impoundment subject to this paragraph shall include the cost of complying with the contingent closure plan and the contingent postclosure plan.

(d) During the postclosure care period, if liquids leak into a leak detection system, the owner or operator shall notify the Department of the leak in writing within seven (7) days after detecting the leak.

(e) If waste is to remain in a unit after closure, the owner or operator shall comply with, and plan for compliance with the following:

(1) The unit shall be compacted before any portion of the final cover is installed.

(2) (reserved).

(3) (reserved).

(4) A foundation layer shall be provided for the compacted barrier layer of the final cover. If needed, the foundation layer shall contain herbicide sufficient to prevent vegetative growth, and shall be free of decomposable organic matter. The layer shall be compacted at a moisture content sufficient to achieve the density required to provide adequate support for the nonearthen membrane.

(5) A compacted barrier layer of clean earth shall be provided above the foundation layer, and shall be provided around the unit to a depth as low as the level at which the owner or operator has deposited waste, to prevent lateral migration of waste and gas and vapor from the waste. The layer of earth shall be wholly below the average depth of frost penetration, and shall be compacted at a moisture content sufficient to achieve a percent compaction that has been demonstrated, with the specific cover material to be used, to prevent the downward entry of water into the foundation layer for a period of at least 100 years.

(6) The earthen material shall contain herbicide sufficient to prevent growth of vegetation. The slope of the final top surface of the compacted barrier layer shall be sloped after allowance for settling and subsidence to prevent the build up of hydraulic head.

(7) the owner or operator may use nonearthen materials for the barrier layer provided it is demonstrated to the satisfaction of the Department that a barrier layer of alternative composition will equally impede movement of fluid and be as durable as a compacted earthen barrier.

(8) If hazardous waste is underlain by a liner containing a synthetic membrane, then a synthetic membrane shall be provided in the final cover above the compacted barrier layer. The membrane shall be made of material chemically resistant to the waste at the facility, whether or not contact between the membrane and the waste is anticipated, and shall have thickness and strength sufficient to withstand the stresses to which it shall be including shear forces, puncture from rocks or penetration from roots.

(9) If a synthetic membrane is used in the final cover system, the owner or operator shall provide a layer of material above the synthetic membrane of the final cover, and a layer of material below this synthetic membrane, to protect the membrane from damage.

(10) The owner or operator shall provide a water drainage layer, blanket or channel above the compacted barrier layer of the final cover to provide a path for water to exit rapidly.

(11) The owner or operator shall provide a filter layer above the water drainage layer to prevent soils from clogging the drainage layer.

(12) The owner or operator shall provide a layer of top soil of thickness sufficient to support vegetation for erosion controlled deep enough to prevent root penetration into the filter layer. The top soil shall have characteristics to protect the compacted layer against drying that would lead to cracking, to resist erosion and to support vegetation growth.

(13) Permanent disposal areas shall be graded at closure so that with allowance for settling and subsidence, the slope of the land surface above all portions of the cover, shall be sufficient to prevent ponding of water. Such areas shall be graded to drain precipitation away from the disposal area. Portions of the land surface above the cover unavoidably slopes great enough to invite erosion which cannot be readily controlled by vegetation shall be protected by gunite, riprap or other material sufficient to provide erosion control.

(14) Unless vegetation on the cover would pose a significant fire hazard unacceptable to the fire prevention authority or would interfere with a planned postclosure use of the site that is acceptable to the Department, the owner or operator shall provide conditions favorable for hearty growth of vegetation that will provide erosion control without forming roots that would penetrate the compacted earth cover, and shall estimate the cost of providing such conditions and vegetation as part of the cost of closure. Vegetation for closed disposal areas shall be selected to require minimum watering and maintenance. Plantings shall not impair the integrity of containment structures or the final cover.

(15) At and after closure, permanent disposal areas shall have drainage systems capable of transporting water from the water drainage layer away from the closed facility and capable of diverting surface runoff away from or around disposal areas, containment structures, leachate collection systems and monitoring facilities. Drainage systems shall be capable of preventing erosion of containment structures. Drainage system components themselves shall be lined or otherwise protected against erosion.

(16)(A) When closing a permanent disposal site, the owner or which the horizontal location and elevation of the cover and other containment features, monitoring facilities and drainage features can be determined throughout the entire postclosure care period. All survey work shall conform to accepted survey practices and be performed and certified by a licensed land surveyor or registered professional engineer licensed to practice surveying.

(B) The owner or operator shall submit a copy of the surveyor's notes used to establish the benchmarks described in this subsection in accordance with section 66264.116.

(17) The owner or operator shall provide in the closure plan predictions of the magnitude of the drops in elevation that will occur at various portions of the top surface of the final cover as a result of settling and subsidence. The prediction shall account for compression of material underlying the liner (or underlying the waste if there is no liner) and compression of the liner, waste, fill and cover. The prediction of the drop in elevation due to compression shall account for immediate settlement, primary consolidation, secondary consolidation and creep, liquefaction and dynamic consolidation due to earthquake loads.

(18) If the following information has not already been submitted to the Department and if dikes and hazardous waste will remain at the site after closure, the owner or operator shall provide in the closure plan proof that the dikes have sufficient structural integrity to withstand forces to which they can be exposed during and after closure, including the following:

(A) descriptions of topography and site conditions as required by section 66270.14(b)(18);

(B) depiction of the design layout, sections and details of the impoundment and its components, including cover, dike, liner, drainage and leak detection system;

(C) a description of, and the results of, stability analyses for the following conditions:

1. foundation soil bearing failure;

2. failure in the dike slopes; and

3. build–up of hydrostatic pressure due to failure of drainage system and cover, considering the potential for piping and erosion;

(D) strength and compressibility test results pertaining to the dike material;

(E) descriptions of dike construction and postclosure maintenance procedures with schedules and specifications;

(F) descriptions of subsurface soil conditions, groundwater levels, bedrock conditions and seismic setting of the site;

(G) discussion of the occurrence or nonoccurrence of the following factors and the significance of those factors to the integrity of the dikes:

1. frost, freezing, wind, rain, temperature variations, effects of vegetation and animals and activities of humans;

2. adversely oriented joints, slickensides or fissured material, faults, seams of soft materials and weak layers;

3. potential for liquefaction during earthquakes coincident with existence of saturated conditions due to failure of drainage system and cover;

(H) a certification by a professional engineer registered in California that the dikes have sufficient structural integrity to withstand forces to which they can be exposed during and after closure, based on analyses, tests and inspections that include the following:

1. a review of all the geologic, geotechnical, geohydrologic and other pertinent design, construction and service data;

2. a review of all climatic data, and special geologic events, such as earthquakes, which occurred during the entire period the impoundment was in service;

3. a field inspection to detect signs of settlement, subsidence, cracks, scouring, erosion, slides, holes, piping, seepage, sloughing, condition of vegetation, etc.; and

4. a determination if the original design was adequate and a review of possible changes in parameters used in the original design.

(19) The owner or operator shall include in the closure plan an explanation of how the cover, construction procedures and planned postclosure care are designed to accommodate or avoid the effects of differential settlement and consolidation without loss of integrity of the cover.

(f) Before installing the compacted barrier layer of the final cover the owner or operator shall accurately establish the correlation between the desired permeability and the density at which that permeability is achieved. To accomplish this the owner or operator shall:

(1) provide a representative foundation area for a test compacted barrier layer having drainage conditions representative of the closed facility under the compacted barrier layer;

(2) install a compacted barrier layer over that test area that has the depth and materials of construction that the compacted barrier layer for the entire landfill is planned to have, and that is compacted in the manner planned for the compacted barrier layer for the entire landfill;

(3) undertake permeability tests in the test area saturated conditions that represent the maximum hydraulic could be exerted on the compacted barrier layer of the final cover. A sufficient number of tests shall be run to verify the results. A permeability test shall commence after the test apparatus has run for a time long enough to allow the required daily rate of replenishment water to maintain constant head or to follow an asymptotic or constant trend. The rate of evaporation from the test equipment used to determine permeability shall be established;

(4) undertake a sufficient number of tests in the test area to determine the average density at which permeability complying with subsection (e)(5) of this section is obtained.

(g) The owner or operator shall comply with the following when installing the compacted barrier layer of the final cover.

(1) In each day in which final cover material is compacted, the owner or operator shall establish a grid on the upper surface of each layer compacted that day and randomly conduct density tests. A sufficient number of tests shall be conducted to confirm the effectiveness and uniformity of the compaction.

(2) If the Department indicates areas where compaction tests will be needed, the owner or operator shall undertake such tests in those areas.

(3) If the average of the values of compaction from the tests is lower than the average density pursuant to subsection (f)(4) of this section, the entire layer installed on the day represented by the tests shall be removed and replaced with another layer compacted so that compaction tests taken indicate a density higher than the average density determined pursuant to subsection (f)(4) of this section.

(4) An independent, qualified person registered in California as a professional engineer or certified in California as an engineering geologist shall supervise the undertaking of all tests for permeability and percent compaction, shall supervise the construction of the final cover and shall prepare a report to be submitted to the Department which bears his or her signature and the date of the signature, and describes the results of all tests and indicates whether or not the cover, as installed, complies with the requirements of this chapter.

(5) Before starting compaction of earthen material to form the compacted barrier layer of the cover, the owner or operator shall submit to the Department the results of the following determinations, on material to be used for the compacted barrier layer of the final cover:

(A) percent fines;

(B) plastic limit, liquid limit, plasticity index and shrinkage factors;

(C) soil classification;
(D) carbon content;
(E) concentration of soluble salts in soil pore water.

(h) All slopes shall be designed and constructed to minimize the potential for failure. Any slope failure occurring within the site shall be promptly stabilized and the Department and the appropriate regional board shall be notified immediately by the owner or operator of such failure and the methods taken for stabilization.

(i) Adequate facilities shall be provided to ensure for a 100 year period that no leachate shall be discharged to surface waters or groundwater, except as authorized by the hazardous waste facility permit.

(j) Hazardous waste and discarded hazardous material contained in the closed facility shall be protected from washout and erosion as the result of tides or floods having a predicted frequency of once in 100 years.

(k) An inspection and monitoring program shall be established at every closed disposal area wherein an independent, qualified engineer registered in California shall annually evaluate and document the condition of all surface improvements, drainage facilities, erosion control facilities, vegetative cover, gas control facilities and monitoring facilities. This program shall also document the presence of any water or leachate flowing from the disposal area. The engineer shall evaluate the following and the effects of the following:

(1) condition of access control (fences and gates),
(2) condition of vegetation,
(3) erosion,
(4) cracking,
(5) disturbance by cold weather,
(6) seepage,
(7) slope stability,
(8) subsidence,
(9) settlement,
(10) monitoring the leak detection system, if there is one,
(11) operation of the leachate collection and removal system,
(12) monitoring the groundwater monitoring system,
(13) condition of run–on and run–off control systems, and
(14) condition of surveyed benchmarks.

The program shall be continued by the owner or operator of the disposal area throughout the postclosure care period. A copy of the annual report containing the above–cited observations shall be filed in a timely manner with the Department and the appropriate regional board.

(*l*) [Reserved]

(m) All constructed features which will remain at permanent disposal areas containing hazardous waste material shall be able to withstand the maximum credible earthquake without significant damage to foundations, structures, waste containment features and features which control leachate, surface drainage, erosion and gas.

(n) (Reserved)

(o) If monitoring equipment or other features which are required to be operable after closure of the facility pursuant to this chapter are rendered inoperable, the owner or operator shall render it operable or replace it with operable equipment or other features.

(p) Postclosure care which the owner or operator shall provide for shall include the conducting of surveys by a licensed land surveyor, to determine the horizontal location and elevation of the cover and other containment features, monitoring facilities and drainage features, and markers installed at the site pursuant to subsection (e)(16) of this section. Such surveys shall be taken annually.

(q) The owner or operator shall reconstruct the closed facility to restore slopes and other conditions to conform to the requirements of this chapter when movement at the site has caused them not to comply with such requirements.

(r) The owner or operator shall submit annual reports to the Department describing measures undertaken at the site during the postclosure maintenance period.

NOTE: Authority cited: Sections 208, 25150, 25159, 25159.5 and 25245, Health and Safety Code; and Governor's Reorganization Plan Number 1 of 1991. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 264.228.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of subsections (b)(4)–(5), new subsection (b)(6) and amendment of NOTE filed 7–19–95; operative 8–18–95 (Register 95, No. 29).

§ 66264.229. Special Requirements for Ignitable or Reactive Waste.

Ignitable or reactive waste shall not be placed in a surface impoundment unless the waste and impoundment satisfy all applicable requirements of chapter 18 of this division, and:

(a) the waste is treated, rendered, or mixed before or immediately after placement in the impoundment so that:

(1) the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under sections 66261.21 or 66261.23 of this chapter; and

(2) section 66264.17(b) is complied with; or

(b) the waste is managed in such a way that it is protected from any material or conditions which may cause it to ignite or react; or

(c) the surface impoundment is used solely for emergencies.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.229.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.230. Special Requirements for Incompatible Wastes.

Incompatible wastes, or incompatible wastes and materials, (see Appendix V of this chapter for examples) shall not be placed in the same surface impoundment, unless section 66264.17(b) is complied with.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.230.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.231. Special Requirements for Hazardous Wastes F020, F021, F022, F023, F026, and F027.

(a) Hazardous Wastes F020, F021, F022, F023, F026, and F027 shall not be placed in a surface impoundment unless the owner or operator operates the surface impoundment in accordance with a management plan for these wastes that is approved by the Department pursuant to the standards set out in this subsection, and in accord with all other applicable requirements of this chapter. The factors to be considered are:

(1) the volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) the attenuative properties of underlying and surrounding soils or other materials;

(3) the mobilizing properties of other materials co–disposed with these wastes; and

(4) the effectiveness of additional treatment, design, or monitoring techniques.

(b) The Department shall impose additional design, operating, and monitoring requirements for surface impoundments managing hazardous wastes F020, F021, F022, F023, F026, and F027 if necessary to reduce the possibility of migration of these wastes to ground water, surface water, or air so as to protect human health and the environment.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.231.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.232. Air Emission Standards.

The owner or operator shall manage all hazardous waste placed in a surface impoundment in accordance with the applicable requirements of Articles 28 and 28.5 this Chapter.

NOTE: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR section 264.232.

HISTORY

1. Change without regulatory effect adding new section filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).

Article 12. Waste Piles

§ 66264.250. Applicability.

(a) The regulations in this article apply to owners and operators of facilities that store or treat hazardous waste in piles, except as section 66264.1 provides otherwise.

(b) The regulations in this article do not apply to owners or operators of waste piles that are part of a permitted facility and are closed with wastes left in place. Such waste piles are subject to regulation under article 14 of this chapter (Landfills).

(c) The owner or operator of any waste pile that is inside or under a structure that provides protection from precipitation so that neither run–off nor leachate is generated is not subject to regulation under section 66264.251 or under article 6 of this chapter, provided that:

(1) liquids or materials containing free liquids are not placed in the pile;

(2) the pile is protected from surface water run–on by the structure or in some other manner;

(3) the pile is designed and operated to control dispersal of the waste by wind, where necessary, by means other than wetting; and

(4) the pile will not generate leachate through decomposition or other reactions.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.250.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.251. Design and Operating Requirements.

(a) A waste pile (except for an existing portion of a waste pile) shall have:

(1) a liner that is designed, constructed, and installed to prevent any migration of wastes out of the pile into the adjacent subsurface soil or ground water or surface water at any time during the active life (including the closure period) of the waste pile. The liner may be constructed of materials that may allow waste to migrate into the liner itself (but not into the adjacent subsurface soil or ground water or surface water) during the active life of the facility. The liner shall be:

(A) constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(B) placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(C) installed to cover all surrounding earth likely to be in contact with the waste or leachate; and

(2) a leachate collection and removal system immediately above the liner that is designed, constructed, maintained, and operated to collect and remove leachate from the pile. The Department shall specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed 30 cm (one foot). The leachate collection and removal system shall be:

(A) constructed of materials that are:

1. chemically resistant to the waste managed in the pile and the leachate expected to be generated; and

2. of sufficient strength and thickness to prevent collapse under the pressures exerted by overlaying wastes, waste cover materials, and by any equipment used at the pile; and

(B) designed and operated to function without clogging through the scheduled closure of the waste pile.

(b) If the liner is constructed of material that allows waste to migrate into the liner, it shall be designed and constructed in accordance with provisions of section 66264.221(d).

(c) The owner or operator of each new waste pile unit on which construction commences after January 29, 1992, each lateral expansion of a waste pile unit on which construction commences after July 29, 1992, and each replacement of an existing waste pile unit that is to commence reuse after July 29, 1992 shall install two or more liners and a leachate collection and removal system above and between such liners. The requirements of this subsection shall not apply to waste pile units receiving only non–RCRA hazardous waste until February 18, 1996. "Construction commences" is as defined in section 66260.10 under "existing facility".

(1)(A) The liner system shall include:

1. A top liner designed and constructed of materials (e.g., a geomembrane) to prevent the migration of hazardous constituents into such liner during the active life and post–closure care period; and

2. A composite bottom liner, consisting of at least two components. The upper component shall be designed and constructed of materials (e.g., a geomembrane) to prevent the migration of hazardous constituents into this component during the active life and post–closure care period. The lower component shall be designed and constructed of materials to minimize the migration of hazardous constituents if a breach in the upper component were to occur. The lower component shall be constructed of at least 3 feet (91 cm) of compacted soil material with a hydraulic conductivity of no more than $1x10^{-7}$ cm/sec.

(B) The liners shall comply with subsections (a)(1)(A), (B), and (C) of this section.

(2) The leachate collection and removal system immediately above the top liner shall be designed, constructed, operated, and maintained to collect and remove leachate from the waste pile during the active life and post–closure care period. The Department will specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed 1 foot (30 cm). The leachate collection and removal system shall comply with subsections (c)(3)(C) and (D) of this section.

(3) The leachate collection and removal system between the liners, and immediately above the bottom composite liner in the case of multiple leachate collection and removal systems, is also a leak detection system. This leak detection system shall be capable of detecting, collecting, and removing leaks of hazardous constituents at the earliest practicable time through all areas of the top liner likely to be exposed to waste or leachate during the active life and post–closure care period. The requirements for a leak detection system in this subsection are satisfied by installation of a system that is, at a minimum:

(A) Constructed with a bottom slope of one percent or more;

(B) Constructed of granular drainage materials with a hydraulic conductivity of $1x10^{-2}$ cm/sec or more and a thickness of 1 foot (30.5 cm) or more; or constructed of synthetic or geonet drainage materials with a transmissivity of $3x10^{-5}$ m^2 /sec or more. In cases where the leak detection system is composed of coarse granular material, there shall be a suitable interface (e.g., geotextile) between the leak detection system and any flexible membrane liner, as needed to prevent the coarse grains from causing a puncture in the flexible membrane liner under the high stress conditions caused by the overlying waste;

(C) Constructed of materials that are chemically resistant to the waste managed in the waste pile and the leachate expected to be generated, and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and equipment used at the waste pile;

(D) Designed and operated to minimize clogging during the active life and post-closure care period; and

(E) Constructed with sumps and liquid removal methods (e.g., pumps) of sufficient size to collect and remove liquids from the sump and prevent liquids from backing up into the drainage layer. Each unit shall have its own sump(s). The design of each sump and removal system shall provide a method for measuring and recording the volume of liquids present in the sump and of liquids removed.

(4) The owner or operator shall collect and remove pumpable liquids in the leak detection system sumps to minimize the head on the bottom liner.

(5) The liner system shall be designed, constructed and operated to ensure that leak detection system shall be a minimum of 5 feet above the highest anticipated elevation of groundwater.

(d) The collection and removal system shall conform to section 66264.221(e).

(e) The owner or operator will be exempted from the requirements of subsection (a) of this section, if the Department finds, based on a demonstration by the owner or operator, that alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents into the ground water or surface water at any future time. In deciding whether to grant an exemption, the Department will consider:

(1) the nature and quantity of the wastes;

(2) the proposed alternate design and operation;

(3) the hydrogeologic setting of the facility, including alternative capacity and thickness of the liners and soils present between the pile and ground water or surface water;

(4) all other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to ground water or surface water; and

(5) the potential for lateral migration of hazardous constituents which could present a threat to public health or the environment.

(f) The owner or operator shall design, construct, operate, and maintain a run-on control system capable of preventing flow onto the portion of the pile during peak discharge from at least a 25-year storm.

(g) The owner or operator shall design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(h) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems shall be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

(i) If the pile contains any particulate matter which may be subject to wind dispersal, the owner or operator shall cover or otherwise manage the pile to control wind dispersal.

(j) The Department will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

(k) If the Department determines that monitoring in the normally unsaturated zone as required pursuant to article 6 of this chapter is impracticable, the Department shall require the following when a waste pile is established:

(1) the pile shall be underlain by two liners which are designed and constructed in a manner that prevents the migration of liquids into or out of the space between the liners. Both liners shall meet all the specifications of subsection (a)(1) of this section;

(2) a leak detection system shall be designed, constructed, maintained and operated between the liners to detect any migration of liquids into the space between the liners;

(3) the pile shall have a leachate collection and removal system above the top liner that is designed, constructed, maintained and operated in accordance with subsection (a)(2) of this section.

(*l*) The Department may approve alternative design or operating practices to those specified in subsection (c) of this section if the owner or operator demonstrates to the Department that such design and operating practices, together with location characteristics:

(1) Will prevent the migration of any hazardous constituent into the ground water or surface water at least as effectively as the liners and leachate collection and removal systems specified in subsection (c) of this section; and

(2) Will allow detection of leaks of hazardous constituents through the top liner at least as effectively.

(m) Subsection (c) of this section does not apply to monofills that are granted a waiver by the Department in accordance with section 66264.221(g).

(n) The owner or operator of any replacement waste pile unit is exempt from subsection (c) of this section if:

(1) The existing unit was constructed in compliance with the design standards of 42 USC section 6924(o)(1)(A)(i) and 42 USC section 6924(o)(5); and

(2) There is reason to believe that the liner is functioning as designed.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code; and Governor's Reorganization Plan Number 1 of 1991. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 264.251.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).
2. Repealer of subsections (c) and (*l*)-(*l*)(2), new subsections (c)-(c)(5) and (*l*)-(n)(2) and amendment of NOTE filed 7-19-95; operative 8-18-95 (Register 95, No. 29).
3. Change without regulatory effect amending subsections (c), (c)(2), (d) and (n)(1) filed 6-30-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 27).
4. Change without regulatory effect amending subsections (c) and (c)(5) filed 10-21-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 43).

§ 66264.252. Action Leakage Rate.

(a) The Department shall approve an action leakage rate for waste pile units subject to section 66264.251(c) or (*l*). The action leakage rate is the maximum design flow rate that the leak detection system (LDS) can remove without the fluid pressure head on the bottom liner exceeding 1 foot (30.5 cm) at any given portion of the liner. The action leakage rate shall include an adequate safety margin to allow for uncertainties in the design (e.g., slope, hydraulic conductivity, thickness of drainage material), construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions (e.g., the action leakage rate shall consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.).

(b) To determine if the action leakage rate has been exceeded, the owner or operator shall convert the weekly flow rate from the monitoring data obtained under section 66264.254(c), to an average daily flow rate (gallons per acre per day) for each sump. Unless the Department approves a different calculation, the average daily flow rate for each sump shall be calculated weekly during the active life and closure period.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code; and Governor's Reorganization Plan Number 1 of 1991. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 264.252.

HISTORY

1. New section filed 7-19-95; operative 8-18-95 (Register 95, No. 29).
2. Change without regulatory effect amending subsection (a) filed 6-30-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 27).

§ 66264.253. Response Actions.

(a) The owner or operator of waste pile units subject to section 66264.251(c) or (*l*) shall have an approved response action plan before receipt of waste. The response action plan shall set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan shall describe the actions specified in subsection (b) of this section.

(b) If the flow rate into the leak detection system exceeds the action leakage rate for any sump, the owner or operator shall:

[The next page is 758.5.]

(1) Notify the Department in writing of the exceedance within 7 days of the determination;

(2) Submit a preliminary written assessment to the Department within 14 days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions taken and planned;

(3) Determine to the extent practicable the location, size, and cause of any leak;

(4) Determine whether waste receipt should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether or not the unit should be closed;

(5) Determine any other short-term and longer-term actions to be taken to mitigate or stop any leaks; and

(6) Within 30 days after the notification that the action leakage rate has been exceeded, submit to the Department the results of the analyses specified in subsections (b)(3), (4), and (5) of this section, the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator shall submit to the Department a report summarizing the results of any remedial actions taken and actions planned.

(c) To make the leak and/or remediation determinations in subsections (b)(3), (4), and (5) of this section, the owner or operator shall:

(1)(A) Assess the source of liquids and amounts of liquids by source,

(B) Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the leak detection system to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and

(C) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

(2) Document why such assessments are not needed.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code; and Governor's Reorganization Plan Number 1 of 1991. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 264.253.

HISTORY

1. New section filed 7-19-95; operative 8-18-95 (Register 95, No. 29).
2. Change without regulatory effect amending subsection (a) filed 6-30-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 27).

§ 66264.254. Monitoring and Inspection.

(a) During construction or installation, liners (except as exempted from section 66264.251(a)) and cover systems (e.g., membranes, sheets, or coatings) shall be inspected for uniformity, damage, and imperfections (e.g., holes, cracks, thin spots, or foreign materials). Immediately after construction or installation:

(1) synthetic liners and covers shall be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters; and

(2) soil-based and admixed liners and covers shall be inspected for imperfections including lenses, cracks, channels, root holes, or other structural non-uniformities that may cause an increase in the permeability of the liner or cover.

(b) While a waste pile is in operation, it shall be inspected weekly and after storms to detect evidence of any of the following:

(1) deterioration, malfunctions, or improper operation of run-on and run-off control systems;

(2) proper functioning of wind dispersal control systems, where present; and

(3) the presence of liquids in leak detection systems, where installed to comply with section 66264.251(k);

(4) the presence of leachate in and proper functioning of leachate collection and removal systems, where present.

(c) An owner or operator required to have a leak detection system under section 66264.251(c) shall record the amount of liquids removed from each leak detection system sump at least once each week during the active life and closure period.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code; and Governor's Reorganization Plan Number 1 of 1991. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).
2. New subsection (c) and amendment of NOTE filed 7-19-95; operative 8-18-95 (Register 95, No. 29).

§ 66264.256. Special Requirements for Ignitable or Reactive Waste.

Ignitable or reactive waste shall not be placed in a waste pile unless: the waste and waste pile satisfy all applicable requirements of chapter 18 of this division, and:

(a) the waste is treated, rendered, or mixed before or immediately after placement in the pile so that:

(1) the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under sections 66261.21 or 66261.23 of this chapter; and

(2) section 66264.17(b) is complied with; or

(b) the waste is managed in such a way that it is protected from any material or conditions which may cause it to ignite or react.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.256.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).

§ 66264.257. Special Requirements for Incompatible Wastes.

(a) Incompatible wastes, or incompatible wastes and materials, (see Appendix V of this part for examples) shall not be placed in the same pile, unless section 66264.17(b) is complied with.

(b) A pile of hazardous waste that is incompatible with any waste or other material stored nearby in containers, other piles, open tanks, or surface impoundments shall be separated from the other materials, or protected from them by means of a dike, berm, wall, or other device.

(c) Hazardous waste shall not be piled on the same base where incompatible wastes or materials were previously piled, unless the base has been decontaminated sufficiently to ensure compliance with section 66264.17(b).

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.257.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).

§ 66264.258. Closure and Post-Closure Care.

(a) At closure, the owner or operator shall remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless section 66261.3(d) applies.

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in subsection (a) of this section, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, the owner or operator shall close the facility and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills (section 66264.310).

(c)(1) The owner or operator of a waste pile shall:

(A) include in the closure plan for the pile under section 66264.112 both a plan for complying with subsection (a) of this section and a contingent plan for complying with subsection (b) of this section in case not all contaminated subsoils can be practicably removed at closure; and

(B) prepare a contingent post-closure plan under section 66264.118 for complying with subsection (b) of this section in case not all contaminated subsoils can be practicably removed at closure.

(2) The cost estimates calculated under sections 66264.142 and 66264.144 for closure and post-closure care of a pile subject to this subsection shall include the cost of complying with the contingent closure plan and the contingent post-closure plan.

NOTE: Authority cited: Sections 208, 25150, 25159, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5 and 25245, Health and Safety Code; 40 CFR Section 264.258.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.259. Special Requirements for Hazardous Wastes F020, F021, F022, F023, F026, and F027.

(a) Hazardous Wastes F020, F021, F022, F023, F026, and F027 shall not be placed in waste piles unless the owner or operator operates the waste pile in accordance with a management plan for these wastes that is approved by the Department pursuant to the standards set out in this subsection, and in accord with all other applicable requirements of this chapter. The factors to be considered are:

(1) the volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) the attenuative properties of underlying and surrounding soils or other materials;

(3) the mobilizing properties of other materials co–disposed with these wastes; and

(4) the effectiveness of additional treatment, design, or monitoring techniques.

(b) The Department shall impose additional design, operating, and monitoring requirements for piles managing hazardous wastes F020, F021, F022, F023, F026, and, F027 if necessary to reduce the possibility of migration of these wastes to ground water, surface water, or air so as to protect human health and the environment.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.259.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

Article 13. Land Treatment

§ 66264.270. Applicability.

The regulations in this article apply to owners and operators of facilities that treat or dispose of hazardous waste in land treatment units, except as section 66264.1 provides otherwise.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.270.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.271. Treatment Program.

(a) An owner or operator of a facility subject to this article shall establish a land treatment program that is designed to ensure that hazardous constituents placed in or on the treatment zone are degraded, transformed, or immobilized within the treatment zone. The Department will specify in the facility permit the elements of the treatment program, including:

(1) the wastes that are capable of being treated at the unit based on a demonstration under section 66264.272;

(2) design measures and operating practices necessary to maximize the success of degradation, transformation, and immobilization processes in the treatment zone in accordance with section 66264.273(a); and

(3) vadose zone monitoring provisions meeting the requirements of section 66264.278.

(b) The Department will specify in the facility permit the constituents of concern that shall be degraded, transformed, or immobilized under this article.

(c) The Department will specify the vertical and horizontal dimensions of the treatment zone in the facility permit. The treatment zone is the portion of the vadose zone below and including the land surface in which the owner or operator intends to maintain the conditions necessary for effective degradation, transformation, or immobilization of hazardous constituents. The maximum depth of the treatment zone shall be:

(1) no more than 1.5 meters (5 feet) from the initial soil surface; and

(2) more than 1.5 meters (5 feet) above the highest anticipated elevation of the water table.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5 and 25209.1, Health and Safety Code; 40 CFR Section 264.271.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.272. Treatment Demonstration.

(a) For each waste that will be applied to the treatment zone, the owner or operator shall demonstrate, prior to application of the waste, that constituents of concern in the waste can be completely degraded, transformed, or immobilized in the treatment zone.

(b) In making this demonstration, the owner or operator may use field tests, laboratory analyses, available data, or, in the case of existing units, operating data. If the owner or operator intends to conduct field tests or laboratory analyses in order to make the demonstration required under subsection (a) of this section, the owner or operator shall obtain a treatment or disposal permit under section 66270.63. The Department shall specify in this permit the testing, analytical, design, and operating requirements (including the duration of the tests and analyses, and, in the case of field tests, the horizontal and vertical dimensions of the treatment zone, monitoring procedures, closure and clean–up activities) necessary to meet the requirements in subsection (c) of this section.

(c) Any field test or laboratory analysis conducted in order to make a demonstration under subsection (a) of this section shall:

(1) accurately simulate the characteristics and operating conditions for the proposed land treatment unit including:

(A) the characteristics of the waste (including the presence of constituents listed in Appendix VIII of chapter 11);

(B) the climate in the area;

(C) the topography of the surrounding area;

(D) the characteristics of the soil in the treatment zone (including depth); and

(E) the operating practices to be used at the unit;

(2) be likely to show that constituents of concern in the waste to be tested will be completely degraded, transformed, or immobilized in the treatment zone of the proposed land treatment unit; and

(3) be conducted in a manner that protects human health and the environment considering:

(A) the characteristics of the waste to be tested;

(B) the operating and monitoring measures taken during the course of the test;

(C) the duration of the test;

(D) the volume of waste used in the test;

(E) in the case of field tests, the potential for migration of constituents of concern to ground water or surface water.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.272.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.273. Design and Operating Requirements.

The Department will specify in the facility permit how the owner or operator will design, construct, operate and maintain the land treatment unit in compliance with this section.

(a) The owner or operator shall design, construct, operate and maintain the unit to maximize the degradation, transformation and immobilization of constituents of concern in the treatment zone. The owner or operator shall design, construct, operate and maintain the unit in accord with all design and operating conditions that were used in the treatment demonstration under section 66264.272. At a minimum, the Department will specify the following in the facility permit:

(1) the rate and method of waste application to the treatment zone;

(2) measures to control soil pH;

(3) measures to enhance microbial or chemical reactions (e.g., fertilization, tilling); and

(4) measures to control the moisture content of the treatment zone.

(b) The owner or operator shall design, construct, operate and maintain the treatment zone to prevent run–off of constituents of concern during the active life of the land treatment unit.

(c) The owner or operator shall design, construct, operate and maintain a run–on control system capable of preventing flow onto the treatment zone during peak discharge from at least a 25–year storm.

(d) The owner or operator shall design, construct, operate and maintain a run–off management system to collect, control and properly manage at least the water volume resulting from a 24–hour, 25–year storm.

(e) Collection and holding facilities (e.g., tanks or basins) associated with run–on and run–off control systems shall be emptied or otherwise managed expeditiously after storms to maintain the design capacity of the system.

(f) If the treatment zone contains particulate matter which may be subject to wind dispersal, the owner or operator shall manage the unit to control wind dispersal.

(g) The owner or operator shall inspect the unit weekly and after storms to detect evidence of:

(1) deterioration, malfunctions or improper operation of run–on and run–off control systems; and

(2) improper functioning of wind dispersal control measures.

(h) The growth of food–chain crops in or on the treatment zone is prohibited.

(i) The owner or operator shall manage the unit to keep the release of airborne contaminants below nuisance levels or other levels necessary to protect human health or the environment.

(j)(1) Unless granted a variance pursuant to subsection (j)(2) of this section, or exempted pursuant to subsection (*l*) of this section, every new land treatment unit at a new or existing facility, every land treatment unit which replaces an existing land treatment unit, and every laterally expanded portion of an existing land treatment unit is required to be equipped with two or more liners and a leachate collection system meeting the requirements established in section 66264.301(c) for new landfills.

(2) The Department shall grant a variance from the requirements of subsection (j)(1) or subsection (k) of this section if the owner or operator demonstrates to the Department and the Department finds all of the following:

(A) the land treatment unit was an existing land treatment unit as of January 1, 1988, and no hazardous constituents identified in Appendix VIII to chapter 11 of this division have migrated from the treatment zone of the land treatment unit into the vadose zone or into the waters of the State, and no other hazardous constituents have migrated from the land treatment unit into the vadose zone or into the waters of the State in concentrations which pollute or threaten to pollute the vadose zone or the waters of the State. In making this demonstration the owner or operator shall take a sufficient number of core samples in, beneath and surrounding the treatment zone of the land treatment unit to characterize the chemical constituents in the.treatment zone, in the immediate area of the vadose zone surrounding the treatment zone, and in the area of the vadose zone beneath the treatment zone and shall submit groundwater monitoring data sufficient in scope to demonstrate that there has been no migration of hazardous constituents in the vadose zone or into the waters of the State in concentrations which pollute or threaten to pollute the waters of the State. The owner or operator, as an alternative to taking these core samples, may use the data obtained from any land treatment demonstration required by the department pursuant to section 66264.272 if the data were obtained not more than two years prior to the application for the variance and were sufficient in scope to demonstrate that there has been no migration of hazardous constituents into the vadose zone or into the waters of the State in concentrations which pollute or threaten to pollute the vadose zone or waters of the State.

(B) Notwithstanding the date that the land treatment unit commenced operations, the design and operating practices will prevent the migration of hazardous constituents identified in Appendix VIII to chapter 11 of this division from the treatment zone of the land treatment unit into the vadose zone or into the waters of the State, and no other hazardous constituents have migrated from the land treatment unit into the vadose zone or into the waters of the State in concentrations which pollute or threaten to pollute the vadose zone or the waters of the State.

(C) Notwithstanding the date that the land treatment unit commenced operations, the design and operating practices provide for rapid detection and removal or remediation of any hazardous consistuents that migrate from the treatment zone of the land treatment unit into the vadose zone or the waters of the State in concentrations that pollute or threaten to pollute the vadose zone or the waters of the State.

(3)(A) The Department shall renew a variance only in those cases where an owner or operator demonstrates to the Department and the Department finds, both of the following:

1. no hazardous constituents have migrated from the treatment zone of the land treatment unit into the vadose zone or into the waters of the State concentrations which pollute or threaten to pollute the vadose zone or the waters of the State;

2. continuing the operation of the land treatment unit does not pose a significant threat of hazardous constituents migrating from the land treatment unit into the vadose zone or into the waters of the State in concentrations which pollute or threaten to pollute the vadose zone or the waters of the State.

(B) In making the demonstration for the renewal of a variance pursuant to this subsection, the owner or operator may use field tests, laboratory analysis or operating data.

(4) A variance or a renewal of a variance may be issued for a period not to exceed three years.

(5) Neither the requirements of this section nor the variance provisions of subsection (j)(2) shall relieve the owner or operator from responsibility to comply with all other existing laws and regulations pertinent to land treatment units.

(k) Unless granted a variance pursuant to subsection (j)(2) or exempted under subsection (*l*) of this section, after January 1, 1990, no person shall discharge hazardous waste into a land treatment unit which has not been equipped with liners and a leachate collection and removal system which satisfy the requirements of subsection (j)(1) of this section.

(*l*) Land treatment of soil contaminated only with non–RCRA hazardous waste which has been excavated as part of a removal or remedial action at any hazardous substance release site is exempt from the requirements of subsection (j) of this section if all of the following apply:

(1) the Department determines that the land treatment does not pose a threat to public health or safety or the environment;

(2) the land treatment is conducted pursuant to a plan approved by the Department or a cleanup and abatement order issued by a regional water quality control board;

(3) the land treatment is not conducted at an offsite commercial facility;

(4) the land treatment is used only for purposes of removal or remedial action and, upon completion of the land treatment portion of the removal or remedial action, the land treatment unit is closed.

(m) For purposes of this section, the terms "removal," "remedial action," "hazardous substance" and "release" shall be defined in accordance with article 2 (commencing with section 25310) of chapter 6.8 division 20 of the Health and Safety Code.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5, 25209.2, 25209.3 and 25209.5, Health and Safety Code; 40 CFR Section 264.273.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.278. Vadose Zone Monitoring and Response.

In addition to the water quality monitoring and response requirements of article 6 and the environmental monitoring requirements of article 17 of this chapter, an owner or operator subject to this article shall establish a vadose zone monitoring program to discharge the following responsibilities.

(a) The owner or operator shall monitor the soil and soil–pore liquid to determine whether constituents of concern migrate out of the treatment zone.

(1) The Department will specify the constituents of concern to be monitored in the facility permit. The constituents of concern to be monitored are those specified under section 66264.271(b).

(2) The Department may require monitoring for principal constituents of concern in lieu of the constituents specified under section 66264.271(b). Principal constituents of concern are the constituents contained in the wastes to be applied at the unit that are the most difficult to treat, considering the combined effects of degradation, transformation, and immobilization. The Department may establish principal constituents of concern if it finds, based on waste analyses, treatment demonstrations, or other data, that effective degradation, transformation, or immobilization of the constituent will assure treatment at at least equivalent levels for the other constituents of concern in the wastes.

(b) The owner or operator shall install a vadose zone monitoring system that includes soil monitoring using soil cores and soil–pore liquid monitoring using devices such as lysimeters. The vadose zone monitoring system shall consist of a sufficient number of sampling points at appropriate locations and depths to yield samples that:

(1) represent the quality of background soil–pore liquid quality and the chemical make–up of soil that has not been affected by leakage from the treatment zone; and

(2) indicate the quality of soil–pore liquid and the chemical make–up of the soil below the treatment zone.

(c) The owner or operator shall establish a background concentration for each constituent of concern to be monitored under subsection (a) of this section. The permit will specify the background concentrations for each constituent or specify the procedures to be used to calculate the background concentrations.

(1) Background soil concentrations may be based on a one–time sampling at a background plot having characteristics similar to those of the treatment zone.

(2) Background soil–pore liquid concentrations shall be based on at least quarterly sampling for one year at a background plot having characteristics similar to those of the treatment zone.

(3) The owner or operator shall express all background concentrations in a form necessary for the determination of statistically significant increases under subsection (f) of this section.

(4) In taking samples used in the determination of all background concentrations, the owner. or operator shall use a vadose zone monitoring system that complies with subsection (b)(1) of this section.

(d) The owner or operator shall conduct soil monitoring and soil–pore liquid monitoring immediately below the treatment zone. The Department will specify the frequency and timing of soil and soil–pore liquid monitoring in the facility permit after considering the water quality monitoring requirements of article 6 of this chapter, the frequency, timing, and rate of waste application, and the soil permeability. The owner or operator shall express the results of soil and soil–pore liquid monitoring in a form necessary for the determination of statistically significant increases under subsection (f) of this section.

(e) The owner or operator shall use consistent sampling and analysis procedures that are designed to ensure sampling results that provide a reliable indication of soil–pore liquid quality and the chemical make–up of the soil below the treatment zone. At a minimum, the owner or operator must implement procedures and techniques for:

(1) sample collection;

(2) sample preservation and shipment;

(3) analytical procedures; and

(4) chain of custody control.

(f) The owner or operator shall determine whether there is a statistically significant change over background values concentrations for each constituent of concern to be monitored under subsection (a) of this section below the treatment zone each time the owner or operator conducts soil monitoring and soil–pore liquid monitoring under subsection (d) of this section.

(1) In determining whether a statistically significant increase has occurred, the owner or operator shall compare the value concentration of each constituent, as determined under subsection (d) of this section, to the background concentration for that constituent according to the statistical procedure specified in the facility permit under this subsection.

(2) The owner or operator shall determine whether there has been a statistically significant increase below the treatment zone within a reasonable time period after completion of sampling. The Department will specify that time period in the facility permit after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of soil and soil–pore liquid samples.

(3) The owner or operator shall determine whether there is a statistically significant increase below the treatment zone using a statistical procedure that provides reasonable confidence that migration from the treatment zone will be identified. The Department will specify a statistical procedure in the facility permit that it finds:

(A) is appropriate for the distribution of the data used to establish background concentrations; and

(B) provides a reasonable balance between the probability of falsely identifying migration from the treatment zone and the probability of failing to identify real migration from the treatment zone.

(g) Except as provided in section 66264.273(1), no person shall place or dispose of hazardous waste in a land treatment unit if any of the following conditions exist:

(1) hazardous constituents have migrated from the land treatment unit into the vadose zone beneath or surrounding the treatment zone or into the waters beneath or surrounding the treatment zone;

(2) there is evidence that a hazardous constituent in the waste discharged to the land treatment unit has not been or will not be completely degraded, transformed or immobilized in the treatment zone;

(3) there is a significant potential for hazardous constituents to migrate from the land treatment unit into a potential source of drinking water.

(h) The owner or operator shall periodically, at the request of the Department, and at least annually, submit information required by the Department to assure that the conditions set forth in subsections (g)(1) and (g)(2) of this section are not present. The information shall include, but is not limited to the results of soil and soil–pore liquid monitoring conducted under subsection (d) of this section.

(i) If the owner or operator determines pursuant to subsection (f) of this section, that there has been a statistically significant increase in the concentration of a hazardous constituent below the treatment zone, or that either of the conditions set forth in subsections (g)(1) or (g)(2) of this section are detected and confirmed, or that conditions exist that render the owner or operator unable to continue to satisfy the variance requirements of section 66264.273(j)(2), the owner or operator shall, within 72 hours, report to the Department describing the full extent of the owner's or operator's findings, including the identification of all constituents which have shown a statistically significant increase.

(j) Upon receiving notice pursuant to subsection (i) of this section, or upon independent confirmation by the Department, the Department shall order the owner or operator to cease operating the land treatment unit. The owner or operator shall not resume operating the land treatment unit and shall close the land treatment unit unless one of the following actions is taken:

(1) the owner or operator completes appropriate removal or remedial actions to the satisfaction of the Department, and the owner or operator submits to the Department, and the Department approves, an application

for a permit or a variance modification to modify the operating practices at the facility to maximize the success of degradation, immobilization, or transformation processes in the treatment zone; or

(2) the owner or operator completes appropriate removal or remedial actions, submits to the Department, and the Department approves, an application for a permit or a variance modification to modify the operating practices at the facility to maximize the success of degradation, immobilization, or transformation processes in the treatment zone, and equips the land treatment unit with liners and a leachate collection and removal system that satisfy the requirements of section 66264.273(j)(1).

(k) All actions taken by an owner or operator pursuant to subsections (j)(1) or (j)(2) of this section shall be completed within a time period specified by the Department, which shall not exceed 18 months after the Department receives notice pursuant to subsection (i) of this section. If the actions are not completed within this time period, the land treatment unit shall be closed, unless granted an extension by the Department due to exceptional circumstances beyond the control of the owner and operator.

(*l*) If the owner or operator determines, pursuant to subsection (f) of this section, that there is a statistically significant increase of hazardous constituents below the treatment zone, the owner or operator may demonstrate that a source other than the land treatment unit caused the increase or that the increase resulted from an error in sampling, analysis, or evaluation. While the owner or operator may make a demonstration under this subsection in addition to, or in lieu of the requirements under subsections (j)(1) or (j)(2) of this section, the owner or operator is not relieved of the requirements of subsections (j) and (k) of this section unless the demonstration made under this subsection successfully shows that a source other than the land treatment unit caused the increase or that the increase resulted from an error in sampling, analysis, or evaluation. In making a demonstration under this subsection, the owner or operator shall:

(1) notify the Department in writing within seven days of determining a statistically significant increase below the treatment zone that the owner or operator intends to make a determination under this subsection;

(2) within 90 days, submit a report to the Department demonstrating that a source other than the regulated units caused the increase or that the increase resulted from error in sampling, analysis, or evaluation;

(3) within 90 days, submit to the Department an application for a permit modification to make any appropriate changes to the vadose zone monitoring program at the facility; and

(4) continue to monitor in accordance with the vadose zone monitoring program established under this section.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5 and 25209.4, Health and Safety Code; 40 CFR Section 264.278.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.279. Recordkeeping.

The owner or operator shall include hazardous waste application dates and rates in the operating record required under section 66264.73.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.279.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.280. Closure and Post–Closure Care.

(a) During the closure period the owner or operator shall:

(1) continue all operations (including pH control) necessary to maximize degradation, transformation, or immobilization of constituents of concern within the treatment zone as required under section 66264.273(a), except to the extent such measures are inconsistent with subsection (a)(7) of this section;

(2) continue all operations in the treatment zone to prevent run–off of constituents of concern as required under section 66264.273(b);

(3) maintain the run–on control system required under section 66264.273(c);

(4) maintain the run–off management system required under section 66264.273(d);

(5) control wind dispersal of hazardous waste if required under section 264.273(f);

(6) continue vadose zone monitoring in compliance with section 66264.278, except that soil–pore liquid monitoring may be terminated after the waste added to the treatment zone has been shown to the satisfaction of the Department to have been completely degraded, immobilized or transformed, but in no event can monitoring be discontinued in less than 90 the last application of waste to the treatment zone; and

(7) control of the release of airborne contaminants to below hazardous or nuisance levels or other levels as necessary to protect human health or the environment;

(8) establish a vegetative cover on the portion of the facility being closed at such time that the cover will not substantially impede degradation, transformation, or immobilization of constituents of concern in the treatment zone. The vegetative cover shall be capable of maintaining growth without extensive maintenance.

(b) For the purpose of complying with section 66264.115, when closure is completed the owner or operator may submit to the Department certification by an independent qualified soil scientist or an independent, California Certified Engineering Geologist in lieu of an independent California registered professional engineer, that the facility has been closed in accordance with the specifications in the approved closure plan.

(c) During the post–closure care period the owner or operator shall:

(1) continue all operations (including pH control) necessary to enhance degradation and transformation and sustain immobilization of constituents of concern in the treatment zone to the extent that such measures are consistent with other post–closure care activities;

(2) maintain a vegetative cover over closed portions of the facility;

(3) maintain run–on control system required under section 66264.273(c);

(4) maintain the run–off management system required under section 66264.273(d);

(5) control wind dispersal of hazardous waste if required under section 66264.273(f);

(6) continue vadose zone monitoring in compliance with section 66264.278 and section 66264.280(a)(6); and

(7) control of the release of airborne contaminants to below hazardous or nuisance levels or other levels as necessary to protect human health or the environment.

(d) The owner or operator is not subject to regulation under subsections (a)(7) and (c) of this section if the Department finds that the level of constituents of concern in the treatment zone soil does not exceed the background value of those constituents by an amount that is statistically significant when using the test specified in subsection (d)(3) of this section and that the waste in the treatment zone has been shown to the satisfaction of the Department to have been completely degraded, transformed or immobilized. The owner or operator may submit such a demonstration to the Department at any time during the closure or post–closure care periods. For the purposes of this subsection:

(1) the owner or operator shall establish background soil values and determine whether there is a statistically significant increase over those values for all constituents of concern specified in the facility permit under section 66264.271(b);

(A) background soil concentrations may be based on a one–time sampling of a background plot having characteristics similar to those of the treatment zone where soil has not been contacted by constituents of waste;

(B) the owner or operator shall express background values and values for constituents of concern in the treatment zone in a form necessary for the determination of statistically significant increases under subsection (d)(3) of this section;

(2) in taking samples used in the determination of background and treatment zone concentrations, the owner or operator shall take samples

at a sufficient number of sampling points and at appropriate locations and depths to yield samples that represent the chemical make–up of soil that has not been affected by leakage from the treatment zone and the soil within the treatment zone, respectively;

(3) in determining whether a statistically significant increase has occurred, the owner or operator shall compare the concentration of each constituent in the treatment zone to the background concentration for that constituent using a statistical procedure that provides reasonable confidence that constituent presence in the treatment zone will be identified. The owner or operator shall use a statistical procedure that:

(A) is appropriate for the distribution of the data used to establish background concentrations; and

(B) provides a reasonable balance between the probability of falsely identifying a statistically significant increase for a constituent of concern in the treatment zone and the probability of failing to identify a statistically significant increase in the treatment zone.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5 and 25245, Health and Safety Code; 40 CFR Section 264.280.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.281. Special Requirements for Ignitable or Reactive Waste.

The owner or operator shall not apply ignitable or reactive waste to the treatment zone unless the waste and the treatment zone meet all applicable requirements of chapter 18 of this division, and:

(a) the waste is immediately incorporated into the soil so that:

(1) the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under sections 66261.21 or 66261.23 of this chapter; and

(2) section 66264.17(b) is complied with; or

(b) the waste is managed in such a way that it is protected from any material or conditions which may cause it to ignite or react.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.281.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.282. Special Requirements for Incompatible Wastes.

The owner or operator shall not place incompatible wastes, or incompatible wastes and materials (see Appendix V of this part for examples), in or on the same treatment zone, unless section 66264.17(b) is complied with.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.282.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.283. Special Requirements Hazardous Wastes F020, F021, F022, F023, F026, and F027.

(a) Hazardous Wastes F020, F021, F022, F023, F026 and, F027 shall not be placed in a land treatment unit unless the owner or operator operates the facility in accordance with a management plan for these wastes that is approved by the Department pursuant to the standards set out in this subsection, and in accord with all other applicable requirements of this chapter. The factors to be considered are:

(1) the volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) the attenuative properties of underlying and surrounding soils or other materials;

(3) the mobilizing properties of other materials co–disposed with these wastes; and

(4) the effectiveness of additional treatment, design, or monitoring techniques.

(b) The Department shall impose additional design, operating, and monitoring requirements for land treatment facilities managing hazardous wastes F020, F021, F022, F023, F026, and F027 if necessary to reduce the possibility of migration of these wastes to ground water, surface outside of the treatment zone, or air so as to protect human health and the environment.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.283.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

Article 14. Landfills

§ 66264.300. Applicability.

The regulations in this article apply to owners and operators of facilities that dispose of hazardous waste in landfills, except as section 66264.1 provides otherwise.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.300.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.301. Design and Operating Requirements.

(a) Any landfill that is not covered by subsection (c) of this section or 66265.301(a) of this chapter shall have a liner system for all portions of the landfill (except for existing portions). The liner system shall have:

(1) a liner that is designed, constructed, and installed to prevent any migration of wastes out of the landfill to the adjacent subsurface soil or ground water or surface water at anytime during the active life (including the closure period) and during post–closure care period of the landfill. The liner shall be constructed of materials that prevent wastes from passing into the liner during the active life of the facility. The liner shall be:

(A) constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(B) placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(C) installed to cover all surrounding earth likely to be in contact with the waste or leachate; and

(2) a leachate collection and removal system immediately above the liner that is designed, constructed, maintained, and operated to collect and remove leachate from the landfill. The Department will specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed 30 cm (one foot). The leachate collection and removal system shall be:

(A) constructed of materials that are:

1. chemically resistant to the waste managed in the landfill and the leachate expected to be generated; and

2. of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and by any equipment used at the landfill; and

(B) designed and operated to function without clogging through the scheduled closure and post–closure period of the landfill.

(b) The owner or operator shall be exempted from the requirements of paragraph (a) of this section if the Department finds, based on a demonstration by the owner or operator, that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents of concern (see section 66264.93) into the ground water or surface water at any future time. In deciding whether to grant an exemption, the Department will consider:

(1) the nature and quantity of the wastes;

(2) the proposed alternative design and operation;

(3) the hydrogeologic setting of the facility, including the attenuative capacity and thickness of the liners and soils present between the landfill and ground water or surface water;

(4) all other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to ground water or surface water; and

(5) the potential for lateral migration of hazardous constituents which could present a threat to public health or the environment;

(c) The owner or operator of each new landfill unit on which construction commences after January 29, 1992, each lateral expansion of a landfill unit on which construction commences after July 29, 1992, and each replacement of an existing landfill unit that is to commence reuse after July 29, 1992 shall install, two or more liners and a leachate collection and removal system above and between such liners. The requirements of this subsection shall not apply to landfill units receiving only non–RCRA hazardous waste until February 18, 1996. "Construction commences" is as defined in section 66260.10 of this chapter under "existing facility".

(1)(A) The liner system shall include:

1. A top liner designed and constructed of materials (e.g., a geomembrane) to prevent the migration of hazardous constituents into such liner during the active life and post–closure care period; and

2. A composite bottom liner, consisting of at least two components. The upper component shall be designed and constructed of materials (e.g., a geomembrane) to prevent the migration of hazardous constituents into this component during the active life and post–closure care period. The lower component shall be designed and constructed of materials to minimize the migration of hazardous constituents if a breach in the upper component were to occur. The lower component shall be constructed of at least 3 feet (91 cm) of compacted soil material with a hydraulic conductivity of no more than $1x10^{-7}$ cm/sec.

(B) The liners shall comply with subsections (a)(1)(A), (B), and (C) of this section.

(2) The leachate collection and removal system immediately above the top liner shall be designed, constructed, operated, and maintained to collect and remove leachate from the landfill during the active life and post–closure care period. The Department will specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed 1 foot (30 cm). The leachate collection and removal system shall comply with subsections (c)(3)(C) and (D) of this section.

(3) The leachate collection and removal system between the liners, and immediately above the bottom composite liner in the case of multiple leachate collection and removal systems, is also a leak detection system. This leak detection system shall be capable of detecting, collecting, and removing leaks of hazardous constituents at the earliest practicable time through all areas of the top liner likely to be exposed to waste or leachate during the active life and post–closure care period. The requirements for a leak detection system in this subsection are satisfied by installation of a system that is, at a minimum:

(A) Constructed with a bottom slope of one percent or more;

(B) Constructed of granular drainage materials with a hydraulic conductivity of $1x10^{-2}$ cm/sec or more and a thickness of 1 foot (30.5 cm) or more; or constructed of synthetic or geonet drainage materials with a transmissivity of $3x10^{-5}$ m^2/sec or more. In cases where the leak detection system is composed of coarse granular material, there shall be a suitable interface (e.g., geotextile) between the leak detection system and any flexible membrane liner, as needed to prevent the coarse grains from causing a puncture in the flexible membrane liner under the high stress conditions caused by the overlying waste;

(C) Constructed of materials that are chemically resistant to the waste managed in the landfill and the leachate expected to be generated, and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and equipment used at the landfill;

(D) Designed and operated to minimize clogging during the active life and post–closure care period; and

(E) Constructed with sumps and liquid removal methods (e.g., pumps) of sufficient size to collect and remove liquids from the sump and prevent liquids from backing up into the drainage layer. Each unit shall have its own sump(s). The design of each sump and removal system shall provide a method for measuring and recording the volume of liquids present in the sump and of liquids removed.

(4) The owner or operator shall collect and remove pumpable liquids in the leak detection system sumps to minimize the head on the bottom liner.

(5) The liner system shall be designed, constructed and operated to ensure that leak detection system shall be a minimum of 5 feet above the highest anticipated elevation of groundwater.

(d) The Department may approve alternative design or operating practices to those specified in paragraph (c) of this section if the owner or operator demonstrates to the Department that such design and operating practices, together with location characteristics:

(1) Will prevent the migration of any hazardous constituent into the ground water at least as effectively as the liners and leachate collection and removal systems specified in paragraph (c) of this section; and

(2) Will allow detection of leaks of hazardous constituents through the top liner at least as effectively.

(e) The double liner requirement set forth in subsection (c) of this section shall be waived by the Department for any monofill, if:

(1) the monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes hazardous for reasons other than exceeding the soluble threshold limit concentration as described in section 66261.24(a)(2) for non–RCRA hazardous wastes or the characteristic of toxicity as set forth in section 66261.24(a)(1) for wastes with hazardous wastes numbers D004 through D017 for RCRA hazardous wastes; and

(2)(A) 1. The monofill has at least one liner for which there is no evidence that such liner is leaking;

2. the monofill is located more than one–quarter mile from an underground source of drinking water as that term is defined in section 66260.10; and

3. the monofill is in compliance with generally applicable groundwater monitoring requirements for facilities with hazardous waste facility permits; or

(B) the owner or operator demonstrates to the satisfaction of the Department, that the monofill is located, designed and operated so as to assure that there will be no migration of any hazardous constituent into ground water, surface water, or surrounding soils at any future time.

(f) The owner or operator shall design, construct, operate, and maintain a run–on control system capable of preventing flow onto the active portion of the landfill during peak discharge from at least a 25–year storm.

(g) The owner or operator shall design, construct, operate, and maintain a run–off management system to collect and control at least the water volume resulting from a 24–hour, 25–year storm.

(h) Collection and holding facilities (e.g., tanks or basins) associated with run–on and run–off control systems shall be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

(i) If the landfill contains any particulate matter which may be subject to wind dispersal, the owner or operator shall cover or otherwise manage the landfill to control wind dispersal.

(j) The Department shall specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

(k) The landfill shall be designed, constructed, operated and maintained to enable the facility to meet the closure and post–closure requirements of section 66264.310.

(*l*) The owner or operator of any replacement landfill unit is exempt from subsection (c) of this section if:

(1) The existing unit was constructed in compliance with the design standards of 42 USC section 6924(o)(1)(A)(i) and 42 USC section 6924(o)(5); and

(2) There is reason to believe that the liner is functioning as designed.

NOTE: Authority cited: Sections 25150, 25159 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 264.301.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of subsections (b)–(c) and (d), new subsections (c)(1)(A)–(c)(5), (d)(6) and (*l*)–(*l*)(2), and amendment of NOTE filed 7–19–95; operative 8–18–95 (Register 95, No. 29).
3. Change without regulatory effect repealing subsection (b), adopting new subsections (b)–(b)(5), amending subsections (c) and (c)(2), repealing subsections (d)–(d)(6), adopting new subsections (d)–(d)(2) and amending subsection (*l*)(1) filed 6–30–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 27).
4. Change without regulatory effect amending subsections (c) and (c)(5) filed 10–21–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 43).
5. Amendment of subsection (e)(1) and NOTE filed 10–13–98; operative 11–12–98 (Register 98, No. 42).
6. Change without regulatory effect amending subsection (c) filed 7–1–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 27).

§ 66264.302. Action Leakage Rate.

(a) The Department shall approve an action leakage rate for landfill units subject to section 66264.301(c) or (d). The action leakage rate is the maximum design flow rate that the leak detection system (LDS) can remove without the fluid pressure head on the bottom liner exceeding 1 foot (30.5 cm) at any given portion of the liner. The action leakage rate shall include an adequate safety margin to allow for uncertainties in the design (e.g., slope, hydraulic conductivity, thickness of drainage material), construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions (e.g., the action leakage rate shall consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.).

(b) To determine if the action leakage rate has been exceeded, the owner or operator shall convert the weekly or monthly flow rate from the monitoring data obtained under section 66264.303(c) to an average daily flow rate (gallons per acre per day) for each sump. Unless the Department approves a different calculation, the average daily flow rate for each sump shall be calculated weekly during the active life and closure period, and monthly during the post–closure care period when monthly monitoring is required under section 66264.303(c).

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code; and Governor's Reorganization Plan Number 1 of 1991. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 264.302.

HISTORY

1. New section filed 7–19–95; operative 8–18–95 (Register 95, No. 29).
2. Change without regulatory effect amending subsection (a) filed 6–30–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 27).

§ 66264.303. Monitoring and Inspection.

(a) During construction or installation, liners (except in the case of existing portions of landfills exempt from 66264.301(a)) and cover systems (e.g., membranes, sheets, or coatings) shall be inspected for uniformity, damage, and imperfections (e.g., holes, cracks, thin spots, or foreign materials). Immediately after construction or installation:

(1) synthetic liners and covers shall be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters; and

(2) soil–based and admixed liners and covers shall be inspected for imperfections including lenses, cracks, channels, root holes, or other structural non–uniformities that may cause an increase in the permeability of the liner or cover.

(b) While a landfill is in operation, it shall be inspected weekly and after storms to detect evidence of any of the following:

(1) deterioration, malfunctions, or improper operation of run–on and run–off control systems;

(2) proper functioning of wind dispersal control systems, where present;

(3) the presence of liquids in leak detection systems; and

(4) the presence of leachate in and proper functioning of collection and removal systems, where present.

(c)(1) An owner or operator required to have a leak detection system under section 66264.301(c) or (d) shall record the amount of liquids removed from each leak detection system sump at least once each week during the active life and closure period.

(2) After the final cover is installed, the amount of liquids removed from each leak detection system sump shall be recorded at least monthly. If the liquid level in the sump stays below the pump operating level for two consecutive months, the amount of liquids in the sumps shall be recorded at least quarterly. If the liquid level in the sump stays below the pump operating level for two consecutive quarters, the amount of liquids in the sumps shall be recorded at least semi–annually. If at any time during the post–closure care period the pump operating level is exceeded at units on quarterly or semi–annual recording schedules, the owner or operator shall return to monthly recording of amounts of liquids removed from each sump until the liquid level again stays below the pump operating level for two consecutive months.

(3) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the Department based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code; and Governor's Reorganization Plan Number 1 of 1991. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 264.303.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. New subsections (c)(1)–(3) and amendment of NOTE filed 7–19–95; operative 8–18–95 (Register 95, No. 29).

§ 66264.304. Response Actions.

(a) The owner or operator of landfill units subject to section 66264.301(c) or (d) shall have an approved response action plan before receipt of waste. The response action plan shall set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan shall describe the actions specified in subsection (b) of this section.

(b) If the flow rate into the leak detection system exceeds the action leakage rate for any sump, the owner or operator shall:

(1) Notify the Department in writing of the exceedence within 7 days of the determination;

(2) Submit a preliminary written assessment to the Department within 14 days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short–term actions taken and planned;

(3) Determine to the extent practicable the location, size, and cause of any leak;

(4) Determine whether waste receipt should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether or not the unit should be closed;

(5) Determine any other short–term and longer–term actions to be taken to mitigate or stop any leaks; and

(6) Within 30 days after the notification that the action leakage rate has been exceeded, submit to the Department the results of the analyses specified in subsections (b)(3), (4), and (5) of this section, the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator shall submit to the Department a report summarizing the results of any remedial actions taken and actions planned.

(c) To make the leak and/or remediation determinations in subsections (b)(3), (4), and (5) of this section, the owner or operator shall:

(1)(A) Assess the source of liquids and amounts of liquids by source,

(B) Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the leak detection system to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and

(C) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

(2) Document why such assessments are not needed.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code; and Governor's Reorganization Plan Number 1 of 1991. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 264.304.

HISTORY

1. New section filed 7–19–95; operative 8–18–95 (Register 95, No. 29).

§ 66264.309. Surveying and Recordkeeping.

The owner or operator of a landfill shall maintain the following items in the operating record required under section 66264.73:

(a) on a map, the exact location and dimensions, including depth, of each cell with respect to permanently surveyed benchmarks with horizontal and vertical controls; and

(b) the contents of each cell and the approximate location of each hazardous waste type within each cell.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.309.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.310. Closure and Post–Closure Care.

(a) At final closure of the landfill or upon closure of any cell, the owner or operator shall cover the landfill or cell with a final cover designed and constructed to:

(1) prevent the downward entry of water into the closed landfill throughout a period of at least 100 years;

(2) function with minimum maintenance;

(3) promote drainage and minimize erosion or abrasion of the cover;

(4) accommodate settling and subsidence so that the cover's integrity is maintained;

(5) accommodate lateral and vertical shear forces generated by the maximum credible earthquake so that the integrity of the cover is maintained;

(6) have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present; and

(7) conform to the provisions of subsections (e) through (r) of section 66264.228, except that the Department shall grant a variance from any requirement of subsections (e) through (r) which the owner or operator demonstrates to the satisfaction of the Department is not necessary to protect public health, water quality or other environmental quality.

(b) After final closure, the owner or operator must comply with all post–closure requirements contained in sections 66264.117 through 66264.120, including maintenance and monitoring throughout the post–closure care period specified in the permit under section 66264.117. The owner or operator must:

(1) maintain the integrity and effectiveness of the final cover, including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion, or other events;

(2) continue to operate the leachate collection and removal system until leachate is no longer detected;

(3) maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of article 6 of this chapter;

(4) prevent run–on and run–off from eroding or otherwise damaging the final cover;

(5) protect and maintain surveyed benchmarks used in complying with section 66264.309, and

(6) maintain and monitor the leak detection system in accordance with Sections 66264.301(c)(3)(D) and (c)(4) and 66264.303(c), and comply with all other applicable leak detection system requirements of this part;

(c) Unless the owner or operator can demonstrate to the satisfaction of the Department that significant amounts of toxic or flammable gas or vapor will not be emitted by waste and that no gas will be emitted that is capable of disrupting the cover or causing other property damage, the owner or operator shall provide a control system designed to prevent migration of gas. The control system shall be designed to collect gases that are emitted from the buried waste and convey gas or vapor to a flare, incinerator or treatment device that will render the gas or vapor harmless to public health or safety, or to a collection system that allows gas to be exported for use or treatment elsewhere. Any gas collection system used shall be designed to withstand pressures that may result from overburden weight of structures that may overlie the cover, and traffic that may occur.

(d) If gas or vapor that can be expected to be emitted from buried waste after closure would be flammable or toxic, the owner shall describe in the closure plan measures to render such gases or vapors harmless, or export gas from the site, for as many years as they would be emitted from the waste, and shall estimate the cost of such measures as part of the cost of closure and post–closure care of the facility. In that case, the closure plan shall provide a map showing:

(1) the number, spacing and locations of wells to be used for gas extraction;

(2) the location and spacing of piping. Also in that case, the closure plan shall describe the equipment and capability of equipment, to be provided to render gases or vapor harmless or export gas for use or treatment elsewhere. If pumping would be needed to assure that such gas is withdrawn at a rate sufficient to avoid hazardous accumulation of gas or vapor or uncontrolled migration of such gas or vapor or uncontrolled migration of such gas or vapor from the facility, the owner or operator shall describe measures to provide such pumping for as many years as such gas or vapor will be emitted from the waste, and shall estimate the cost of such measures as part of the cost of closure and post–closure care of the facility. The closure plan shall in that case describe the type of pump, volume of gas the pump can move per unit time, and the estimated distances from the pump from which gas can be extracted from the landfill. The owner or operator shall provide such measures as needed.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code; and Governor's Reorganization Plan Number 1 of 1991. Reference: Sections 25159, 25159.5 and 25245, Health and Safety Code; and 40 CFR Section 264.310.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of subsections (b)(4)–(5), new subsection (b)(6) and amendment of NOTE filed 7–19–95; operative 8–18–95 (Register 95, No. 29).

§ 66264.312. Special Requirements for Ignitable or Reactive Waste.

(a) Except as provided in section 66264.316, ignitable or reactive waste shall not be placed in a landfill, unless the waste and landfill meet all applicable requirements of chapter 18 of this division, and the waste is treated, rendered, or mixed before or immediately after placement in a landfill so that:

(1) the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under 66261.21 or 66261.23 of this chapter; and

(2) section 66264.17(b) is complied with.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.312.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.313. Special Requirements for Incompatible Wastes.

Incompatible wastes, or incompatible wastes and materials, (see Appendix V of this chapter for examples) shall not be placed in the same landfill cell, unless subsection 66264.17(b) is complied with.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.313.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.314. Special Requirements for Bulk and Containerized Liquids.

(a) Effective February 2, 1985, the placement of bulk or non–containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

(b) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the facility shall use Method 9095 (as described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods—EPA publication SW–846, Third Edition, as incorporated by reference in section 66260.11).

(c) Containers holding free liquids shall not be placed in a landfill unless:

(1) all free–standing liquid: (A) has been removed by decanting or other methods; (B) has been mixed with absorbent or solidified so that free–standing liquid is no longer observed; or (C) has been otherwise eliminated; or

(2) the container is very small, such as an ampule; or

(3) the container is designed to hold free liquids for use other than storage, such as a battery or capacitor; or

(4) the container is a lab pack as defined in section 66264.316 and is disposed of in accordance with section 66264.316.

(d) Sorbents used to treat free liquids to be disposed of in landfills shall be nonbiodegradable. Nonbiodegradable sorbents are: materials listed or described in subsection (d)(1) of this section; materials that pass one of the tests in subsection (d)(2) of this section; or materials that are determined by USEPA to be nonbiodegradable through the 40 CFR part 260 petition process.

(1) Nonbiodegradable sorbents.

(A) Inorganic minerals, other inorganic materials, and elemental carbon (e.g., aluminosilicates, clays, smectites, Fuller's earth, bentonite, calcium bentonite, montmorillonite, calcined montmorillonite, kaolinite, micas (illite), vermiculites, zeolites; calcium carbonate (organic free limestone); oxides/hydroxides, alumina, lime, silica (sand), diatomaceous earth; perlite (volcanic glass); expanded volcanic rock; volcanic ash; cement kiln dust; fly ash; rice hull ash; activated charcoal/activated carbon); or

(B) High molecular weight synthetic polymers (e.g., polyethylene, high density polyethylene (HDPE), polypropylene, polystyrene, polyurethane, polyacrylate, polynorborene, polyisobutylene, ground synthetic rubber, cross–linked allylstyrene and tertiary butyl copolymers). This does not include polymers derived from biological material or polymers specifically designed to be degradable; or

(C) Mixtures of these nonbiodegradable materials.

(2) Tests for nonbiodegradable sorbents.

(A) The sorbent material is determined to be nonbiodegradable under ASTM Method G21–90–Standard Practice for Determining Resistance of Synthetic Polymer Materials to Fungi; or

(B) The sorbent material is determined to be nonbiodegradable under ASTM Method G22–76 (1984b)–Standard Practice for Determining Resistance of Plastics to Bacteria; or

(C) The sorbent material is determined to be non–biodegradable under OECD test 301B: (CO_2 Evolution (Modified Strum Test))

(e) Effective November 8, 1985 the placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the Department, or the Department determines, that:

(1) the only reasonably available alternative to the placement in such landfill is placement in a landfill or unlined surface impoundment, whether or not permitted or operating under interim status, which contains, or may reasonably be anticipated to contain, hazardous waste; and

(2) placement in such owner or operator's landfill will not present a risk of contamination of any underground source of drinking water (as that term is defined in section 66260.10).

NOTE: Authority cited: Sections 25150, 25159 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5 and 25179.5, Health and Safety Code; 40 CFR Section 264.314.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of subsections (a) and (c)(1), new subsections (d)–(d)(2)(B), subsection relettering and amendment of NOTE filed 8–8–95 as an emergency; operative 8–8–95 (Register 95, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–6–95 or emergency language will be repealed by operation of law on the following day.
3. Reinstatement of section as it existed prior to emergency amendment filed 9–15–95 by operation of Government Code section 11346.1(f) (Register 95, No. 37).
4. Amendment of subsections (a) and (b), new subsections (d)–(d)(2)(C), subsection relettering, and amendment of NOTE filed 10–13–98; operative 11–12–98 (Register 98, No. 42).
5. New subsection (d)(2)(A) and amendment of NOTE filed 3–17–99; operative 4–16–99 (Register 99, No. 12).

§ 66264.315. Special Requirements for Containers.

Unless they are very small, such as an ampule, containers shall be either:

(a) at least 90 percent full when placed in the landfill; or

(b) crushed, shredded, or similarly reduced in volume to the maximum practical extent before burial in the landfill.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.315.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.316. Disposal of Small Containers of Hazardous Waste in Overpacked Drums (Lab Packs).

Small containers of hazardous waste in overpacked drums (lab packs) may be placed in a landfill if the following requirements are met.

(a) hazardous waste shall be packaged in non–leaking inside containers. The inside containers shall be of a design and constructed of a material that will not react dangerously with, be decomposed by, or be ignited by the contained waste. Inside containers shall be tightly and securely sealed. The inside containers shall be of the size and type specified in the Department of Transportation (DOT) hazardous materials regulations (49 CFR Parts 173, 178, and 179), if those regulations specify a particular inside container for the waste.

(b) The inside containers must be overpacked in an open head DOT–specification metal shipping container (49 CFR Parts 178 and 179) of no more than 416–liter (110 gallon) capacity and surrounded by, at a minimum, a sufficient quantity of sorbent material, determined to be nonbiodegradable in accordance with section 66264.314(d), to completely sorb all of the liquid contents of the inside containers. The metal outer container shall be full after it has been packed with inside containers and sorbent material.

(c) The sorbent material used shall not be capable of reacting dangerously with, being decomposed by, or being ignited by the contents of the inside containers, in accordance with section 66264.17(b).

(d) Incompatible wastes, as defined in article 1 of this chapter, shall not be placed in the same outside container.

(e) Reactive wastes, other than cyanide– or sulfide–bearing waste as defined in section 66261.23(a)(5) of this chapter, shall be treated or rendered non–reactive prior to packaging in accordance with subsections (a) through (d) of this section. Cyanide and sulfide–bearing reactive waste may be packed in accordance with subsections (a) through (d) of this section without first being treated or rendered non–reactive provided that the cyanide concentration is less than 1000 mg/l.

(f) Such disposal is in compliance with the requirements of chapter 18 of the division. Persons who incinerate lab packs according to the requirements of section 66268.42(c)(1) may use fiber drums in place of metal outer containers. Such fiber drums shall meet DOT specifications in 49

CFR 173.12 and be overpacked according to the requirements of subsection (b) of this section.

NOTE: Authority cited: Sections 25150, 25159, 58004 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.316.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of subsections (b)–(c) and NOTE filed 8–8–95 as an emergency; operative 8–8–95 (Register 95, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–6–95 or emergency language will be repealed by operation of law on the following day.
3. Reinstatement of section as it existed prior to emergency amendment filed 9–15–95 by operation of Government Code section 11346.1(f) (Register 95, No. 37).
4. Amendment of section heading and subsection (f) filed 1–31–96; operative 1–31–96 (Register 96, No. 5).
5. Amendment of subsections (b) and (c) and amendment of NOTE filed 10–13–98; operative 11–12–98 (Register 98, No. 42).

§ 66264.317. Special Requirements for Hazardous Wastes F020, F021, F022, F023, F026, and F027.

(a) Hazardous Wastes F020, F021, F022, F023, F026, and F027 shall not be placed in a landfill unless the owner or operator operates the landfill in accord with a management plan for these wastes that is approved by the Department pursuant to the standards set out in this paragraph, and in accord with all other applicable requirements of this chapter. The factors to be considered are:

(1) the volume, physical, and chemical characteristics of the wastes, including their potential to migrate through the soil or to volatilize or escape into the atmosphere;

(2) the attenuative properties of underlying and surrounding soils or other materials;

(3) the mobilizing properties of other materials co–disposed with these wastes; and

(4) the effectiveness of additional treatment, design, or monitoring requirements.

(b) The Department shall impose additional design, operating, and monitoring requirements for landfills managing hazardous wastes F020, F021, F022, F023, F026, and F027 if necessary to reduce the possibility of migration of these wastes to ground water, surface water, or air so as to protect human health and the environment.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.317.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.318. Special Requirements for Nonliquid Waste.

(a)(1) Effective January 1, 1995 or the effective date of the applicable treatment standard found in chapter 18 of division 4.5 of Titles 22 and 26 of California Code of Regulations, whichever is later, all nonliquid hazardous waste, bulk or containerized, shall contain less than 50 percent moisture by weight prior to disposal in a hazardous waste a landfill.

(2) The requirements in (a)(1) cannot be met by adding material that acts solely as a sorbent, unless determined to be nonbiodegradable in accordance with section 66264.314(d) and waste is disposed in a container, or diluting agent.

The moisture content shall be determined by pulverizing the entire sample coarsely on a clean surface by hand, using rubber gloves. Twenty–five to 50 grams shall be placed in a prepared evaporating dish and weighed. The sample shall then be placed in an oven at 103 to 105 degrees centigrade for 1 hour. The dish shall be cooled in a desiccator to 20 degrees centigrade for 1 hour and then reweighed. The cycle of drying, cooling, and weighing shall be repeated until a constant weight is obtained or until the weight loss is less than 4 percent of the previous weight.

(b) The calculation in subsection (a) shall be in accordance with the following formula:

Percent Moisture = [(A–B)/(A–C)] x 100

Where:

A = Weight of evaporating dish and original sample, grams

B = Weight of evaporating dish and oven dried sample, grams

C = Weight of evaporating dish, grams.

(c)(1) Lab Packs as defined in section 66264.316 are exempt from section 66264.318(a).

(2) Asbestos–containing waste is exempt from section 66264.318(a) if the waste is disposed according to the requirements of the regional water quality control board in (1) a class I landfill, or (2) segregated areas within a nonclass I landfill.

NOTE: Authority cited: Sections 25150, 25179.5, 58004 and 58012, Health and Safety Code. Reference: Sections 25143.7, 25159, 25159.5, 25179.5(b) and 25179.9, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of subsections (a) and (c) filed 10–10–91 as an emergency; operative 10–10–91 (Register 91, No. 52). A Certificate of Compliance must be transmitted to OAL 2–7–92 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsections (a) and (c) refiled 2–7–92 as an emergency; operative 2–7–92 (Register 92, No. 12). A Certificate of Compliance must by transmitted to OAL 6–8–92 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsections (a) and (c) refiled 5–12–92 as an emergency; operative 6–5–92 (Register 92, No. 20). A Certificate of Compliance must be transmitted to OAL 9–9–92 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsections (a) and (c) refiled 9–14–92 as an emergency; operative 10–2–92 (Register 92, No. 38). A Certificate of Compliance must be transmitted to OAL 2–1–92 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 9–14–92 order including amendment of subsection (c)(2) and NOTE transmitted to OAL 12–23–92 and filed 2–8–93; (Register 93, No. 7).
7. Amendment of subsection (a)(1) filed 5–5–94 as an emergency; operative 5–5–94 (Register 94, No. 18). A Certificate of Compliance must be transmitted to OAL by 9–2–94 or emergency language will be repealed by operation of law on the following day.
8. Amendment of subsection (a)(1) refiled 8–22–94 as an emergency; operative 8–22–94 (Register 94, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–20–94 or emergency language will be repealed by operation of law on the following day.
9. Amendment of subsection (a)(1) refiled 12–22–94 as an emergency, including amendment of subsection (c)(1); operative 12–20–94 (Register 94, No. 51). A Certificate of Compliance must be transmitted to OAL 4–19–95 or emergency language will be repealed by operation of law on the following day.
10. Amendment of subsections (a)(1) and (c)(1) refiled 4–17–95 as an emergency; operative 4–17–95 (Register 95, No. 16). A Certificate of Compliance must be transmitted to OAL 8–15–95 or emergency language will be repealed by operation of law on the following day.
11. Amendment of subsections (a)(1)–(2), (c)(1) and NOTE refiled 8–8–95 as an emergency; operative 8–8–95 (Register 95, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–6–95 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 8–8–95 order transmitted to OAL 8–3–95 and filed 9–15–95 (Register 95, No. 37).
13. Reinstatement of subsection (a)(2) as it existed prior to emergency amendment filed 9–15–95 by operation of Government Code section 11346.1(f) (Register 95, No. 37).
14. Amendment of subsection (a)(2) and NOTE filed 10–13–98; operative 11–12–98 (Register 98, No. 42).

Article 14.5. Residuals Repositories

§ 66264.320. Applicability.

The regulations in this article apply to owners and operators of facilities that dispose of hazardous waste in residuals repositories at permitted facilities except as Section 66264.1 provides otherwise.

NOTE: Authority cited: Sections 208, 25150 and 25204, Health and Safety Code. Reference: Section 25204, Health and Safety Code.

HISTORY

1. New section filed 8–12–91; operative 9–11–91 (Register 91, No. 50).

§ 66264.321. General Requirements for Residuals Repositories at Permitted Facilities.

(a) Acceptable Wastes. Waste disposed in a residuals repository must be:

(1) Treated hazardous waste as defined in Health and Safety Code Section 25179.3(1); and,

(2) Non–liquid and containing less than 50 percent moisture by weight as determined in accordance with Section 66265.317 of this Division.

(b) Standards for siting, design, construction, operation, monitoring, maintenance, closure and post-closure maintenance. A residuals repository is subject to the requirements for land disposal of hazardous waste in landfills including the standards contained in:

(1) Articles 1 through 7 and 14 of Chapter 14, Chapter 20 and 21 of this Division;

(2) Articles 1, 3 through 5, 8, and 9 of Chapter 15, Division 3, Title 23, California Code of Regulations; and,

(3) Subparts B through G, and N of Part 264, Subchapter I, Chapter 1, Title 40, Code of Federal Regulations.

NOTE: Authority cited: Sections 208, 25150 and 25204, Health and Safety Code. Reference: Section 25204, Health and Safety Code.

HISTORY

1. New section filed 8-12-91; operative 9-11-91 (Register 91, No. 50).

Article 15. Incinerators

§ 66264.340. Applicability.

(a) The regulations in this article apply to owners or operators of facilities that incinerate hazardous waste, except as 66264.1 provides otherwise. The following facility owners or operators are considered to incinerate hazardous waste:

(1) owners or operators of hazardous waste incinerators (as defined in section 66260.10).

(b) After consideration of the waste analysis included with Part B of the permit application, the Department, in establishing the permit conditions, shall exempt the applicant from all requirements of this article except sections 66264.341 (Waste analysis) and 66264.351 (Closure):

(1) if the Department finds that the waste to be burned is:

(A) listed as a hazardous waste in article 4 of chapter 11 of this division solely because it is ignitable (Hazard Code I), corrosive (Hazard Code C), or both; or

(B) listed as a hazardous waste in article 4 of chapter 11 of this division solely because it is reactive (Hazard Code R) for characteristics other than those listed in section 66261.33(a)(4) and (a)(5), and will not be burned when other hazardous wastes are present in the combustion zone; or

(C) a hazardous waste solely because it possesses the characteristic of ignitability, corrosivity, or both, as determined by the test for characteristics of hazardous wastes under article 3 of chapter 11 of this division; or

(D) a hazardous waste solely because it possesses any of the reactivity characteristics described by section 66261.23 (a)(1), (a)(2), (a)(3), (a)(6), (a)(7), and (a)(8), and will not be burned when other hazardous wastes are present in the combustion zone; and

(2) if the waste analysis shows that the waste contains none of the hazardous constituents listed in Appendix VIII of chapter 11 of this division, which would reasonably be expected to be in the waste.

(c) If the waste to be burned is one which is described by subsections (b)(1)(A), (b)(1)(B), (b)(1)(C), or (b)(1)(D) of this section and contains insignificant concentrations of the hazardous constituents listed in Appendix VIII to chapter 11 of this division, then the Department shall, in establishing permit conditions, exempt the applicant from all requirements of this article, except sections 66264.341 (Waste analysis) and 66264.351 (Closure), after consideration of the waste analysis included with Part B of the permit application, unless the Department finds that the waste will pose a threat to human health and the environment when burned in an incinerator.

(d) The owner or operator of an incinerator may conduct trial burns subject only to the requirements of section 66270.62 (Short term and incinerator permits).

NOTE: Authority cited: Sections 25159, 25159.5, 58004 and 58012, Health and Safety Code. Reference: Sections 25159.5 and 25200, Health and Safety Code; 40 CFR Section 264.340.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).
2. Amendment of subsection (a)(1), repealer of subsection (a)(2), and amendment of NOTE filed 7-1-96; operative 7-31-96 (Register 96, No. 27).

§ 66264.341. Waste Analysis.

(a) As a portion of the trial burn plan required by section 66270.62, or with Part B of the permit application, the owner or operator shall have included an analysis of the waste feed sufficient to provide all information required by section 66270.62(b) or 66270.19. Owners or operators of new hazardous waste incinerators shall provide the information required by section 66270.62(c) or section 66270.19 to the greatest extent possible.

(b) Throughout normal operation, the owner or operator shall conduct sufficient waste analysis to verify that waste feed to the incinerator is within the physical and chemical composition limits specified in that owner or operator's permit (under section 66264.345(b)).

NOTE: Authority cited: Sections 208 and 25159, Health and Safety Code. Reference: Sections 25159.5 and 25200, Health and Safety Code; 40 CFR Section 264.341.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).

§ 66264.342. Principal Organic Hazardous Constituents (POHCs).

(a) Principal Organic Hazardous Constituents (POHCs) in the waste feed shall be treated to the extent required by the performance standard of section 66264.343.

(b)(1) One or more POHCs will be specified in the facility's permit, from among those constituents listed in Appendix VIII and Appendix X to chapter 11 of this division, for each waste feed to be burned. This specification will be based on the degree of difficulty of incineration of the organic constituents in the waste and on their concentration or mass in the waste feed, considering the results of waste analyses and trial burns or alternative data submitted with Part B of the facility's permit application. Organic constituents which represent the greatest degree of difficulty of incineration will be those most likely to be designated as POHCs. Constituents are more likely to be designated as POHCs if they are present in large quantities or concentrations in the waste.

(2) Trial POHCs will be designated for performance of trial burns in accordance with the procedure specified in section 66270.62 for obtaining trial burn permits.

NOTE: Authority cited: Sections 208 and 25159, Health and Safety Code. Reference: Sections 25159.5 and 25200, Health and Safety Code; 40 CFR Section 264.341.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).

§ 66264.343. Performance Standards.

An incinerator burning hazardous waste shall be designed, constructed, and maintained so that, when operated in accordance with operating requirements specified under section 66264.345, it will meet the following performance standards.

(a)(1) Except as provided in subsection (a)(2) of this section, an incinerator burning hazardous waste shall achieve a destruction and removal efficiency (DRE) of 99.99% for each principal organic hazardous constituent (POHC) designated (under section 66264.342) in its permit for each waste feed. DRE is determined for each POHC from the following equation:

$$DRE = \frac{(W_{in} - W_{out})}{W_{in}} \times 100\%$$

Where: W in = mass feed rate of one principal organic hazardous constituent (POHC) in the waste stream feeding the incinerator and W out = mass emission rate of the same POHC present in exhaust emissions prior to release to the atmosphere.

(2) An incinerator burning hazardous wastes F020, F021, F022, F023, F026, or F027 shall achieve a destruction and removal efficiency (DRE) of 99.9999% for each principal organic hazardous constituent (POHC) designated under section 66264.342 in its permit. This performance shall be demonstrated on POHCs that are more difficult to incinerate than tetra-, penta-, and hexachlorodibenzo-p-dioxins and dibenzofurans. DRE is determined for each POHC from the equation in section 66264.343(a)(1). In addition, the owner or operator of the incinerator

shall notify the Department of that owner or operator's intent to incinerate hazardous wastes F020, F021, F022, F023, F026, or F027.

(b) An incinerator burning hazardous waste and producing stack emissions of more than 1.8 kilograms per hour (4 pounds per hour) of hydrogen chloride (HCl) shall control HCl emissions such that the rate of emission is no greater than the larger of either 1.8 kilograms per hour or 1% of the HCl in the stack gas prior to entering any pollution control equipment.

(c) An incinerator burning hazardous waste shall not emit particulate matter in excess of 180 milligrams per dry standard cubic meter (0.08 grains per dry standard cubic foot) when corrected for the amount of oxygen in the stack gas according to the formula:

$$Pc = Pm \times \frac{14}{21-Y}$$

Where Pc is the corrected concentration of particulate matter, Pm is the measured concentration of particulate matter, and Y is the measured concentration of oxygen in the stack gas, using the Orsat method for oxygen analysis of dry flue gas, presented in Part 60, Appendix A (Method 3), of 40 CFR. This correction procedure is to be used by all hazardous waste incinerators except those operating under conditions of oxygen enrichment. For these facilities, the Department will select an appropriate correction procedure, to be specified in the facility permit.

(d) For purposes of permit enforcement, compliance with the operating requirements specified in the permit (under section 66264.345) will be regarded as compliance with this section. However, evidence that compliance with those permit conditions is insufficient to ensure compliance with the performance requirements of this section may be "information" justifying modification, revocation, or reissuance of a permit under section 66270.41.

[The next page is 758.13.]

NOTE: Authority cited: Sections 208 and 25159.5, Health and Safety Code. Reference: Sections 25159.5 and 25200, Health and Safety Code; 40 CFR Section 264.343.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.344. Hazardous Waste Incinerator Permits.

(a) The owner or operator of a hazardous waste incinerator may burn only wastes specified in the owner or operator's permit and only under operating conditions specified for those wastes under section 66264.345, except:

(1) in approved trial burns under section 66270.62; or

(2) under exemptions created by section 66264.340.

(b) Other hazardous wastes may be burned only after operating conditions have been specified in a new permit or a permit modification as applicable. Operating requirements for new wastes may be based on either trial burn results or alternative data included with Part B of a permit application under section 66270.19.

(c) The permit for a new hazardous waste incinerator shall establish appropriate conditions for each of the applicable requirements of this article, including but not limited to allowable waste feeds and operating conditions necessary to meet the requirements of section 66264.345, sufficient to comply with the following standards.

(1) For the period beginning with initial introduction of hazardous waste to the incinerator and ending with initiation of the trial burn, and only for the minimum time required to establish operating conditions required in subsection (c)(2) of this section, not to exceed a duration of 720 hours operating time for treatment of hazardous waste, the operating requirements shall be those most likely to ensure compliance with the performance standards of section 66264.343, based on the Department's engineering judgment. The Department may extend the duration of this period once for up to 720 additional hours when good cause for the extension is demonstrated by the applicant.

(2) For the duration of the trial burn, the operating requirements shall be sufficient to demonstrate compliance with the performance standards of section 66264.343 and shall be in accordance with the approved trial burn plan.

(3) For the period immediately following completion of the trial burn, and only for the minimum period sufficient to allow sample analysis, data computation, and submission of the trial burn results by the applicant, and review of the trial burn results and modification of the facility permit by the Department, the operating requirements shall be those most likely to ensure compliance with the performance standards of section 66264.343, based on the Department's engineering judgment.

(4) For the remaining duration of the permit, the operating requirements shall be those demonstrated, in a trial burn or by alternative data specified in section 66270.19(c), as sufficient to ensure compliance with the performance standards of section 66264.343.

NOTE: Authority cited: Sections 208 and 25159, Health and Safety Code. Reference: Sections 25159.5 and 25200, Health and Safety Code; 40 CFR Section 264.344.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.345. Operating Requirements.

(a) An incinerator shall be operated in accordance with operating requirements specified in the permit. These will be specified on a case–by–case basis as those demonstrated (in a trial burn or in alternative data as specified in section 66264.344(b) and included with Part B of a facility's permit application) to be sufficient to comply with the performance standards of section 66264.343.

(b) Each set of operating requirements will specify the composition of the waste feed (including acceptable variations in the physical or chemical properties of the waste feed which will not affect compliance with the performance requirement of section 66264.343) to which the operating requirements applynt of section 66264.343) to which the operating requirements apply. For each such waste feed, the permit will specify acceptable operating limits including the following conditions:

(1) carbon monoxide (CO) level in the stack exhaust gas;

(2) waste feed rate;

(3) combustion temperature;

(4) an appropriate indicator of combustion gas velocity;

(5) allowable variations in incinerator system design or operating procedures; and

(6) such other operating requirements as are necessary to ensure the performance standards of section 66264.343 are met.

(c) During start–up and shut–down of an incinerator, hazardous waste (except wastes exempted in accordance with section 66264.340) shall not be fed into the incinerator unless the incinerator is operating within the conditions of operation (temperature, air feed rate, etc.) specified in the permit.

(d) Fugitive emissions from the combustion zone shall be controlled by:

(1) keeping the combustion zone totally sealed against fugitive emissions; or

(2) maintaining a combustion zone pressure lower than atmospheric pressure; or

(3) an alternate means of control demonstrated (with Part B of the permit application) to provide fugitive emissions control equivalent to maintenance of combustion zone pressure lower than atmospheric pressure.

(e) An incinerator shall be operated with a functioning system to automatically cut off waste feed to the incinerator when operating conditions deviate from limits established under subsection (a) of this section.

(f) An incinerator shall cease operation when changes in waste feed, incinerator design, or operating conditions exceed limits designated in its permit.

NOTE: Authority cited: Sections 208 and 25159, Health and Safety Code. Reference: Sections 25159.5 and 25200, Health and Safety Code; 40 CFR Section 264.345.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.347. Monitoring and Inspections.

(a) The owner or operator shall conduct, as a minimum, the following monitoring while incinerating hazardous waste.

(1) Combustion temperature, waste feed rate, and the indicator of combustion gas velocity specified in the facility permit shall be monitored on a continuous basis.

(2) CO shall be monitored on a continuous basis at a point in the incinerator downstream of the combustion zone and prior to release to the atmosphere.

(3) Upon request by the Department, sampling and analysis of the waste and exhaust emissions shall be conducted to verify that the operating requirements established in the permit achieve the performance standards of section 66264.343.

(b) The incinerator and associated equipment (pumps, valves, conveyors, pipes, etc.) shall be subjected to thorough visual inspection, at least daily, for leaks, spills, fugitive emissions, and signs of tampering.

(c) The emergency waste feed cutoff system and associated alarms shall be tested at least weekly to verify operability, unless the applicant demonstrates to the Department that weekly inspections will unduly restrict or upset operations and that less frequent inspection will be adequate. At a minimum, operational testing shall be conducted at least monthly.

(d) This monitoring and inspection data shall be recorded and the records shall be placed in the operating log required by section 66264.73.

NOTE: Authority cited: Sections 208 and 25159, Health and Safety Code. Reference: Sections 25159.5 and 25200, Health and Safety Code; 40 CFR Section 264.347.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.351. Closure.

(a) At closure the owner or operator shall remove all hazardous waste and hazardous waste residues (including, but not limited to, ash, scrubber waters, and scrubber sludges) from the incinerator site.

(b) At closure, as throughout the operating period, unless the owner or operator can demonstrate, in accordance with section 66261.3(d), that the residue removed from the incinerator is not a hazardous waste, the owner

or operator becomes a generator of hazardous waste and shall manage it in accordance with applicable requirements of this division.

NOTE: Authority cited: Sections 208 and 25159, Health and Safety Code. Reference: Sections 25159.5 and 25200, Health and Safety Code; 40 CFR Section 264.351.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

Article 15.5. Corrective Action for Waste Management Units

§ 66264.500. [Reserved].

HISTORY

1. New article 15.5 filed 12–23–93 as an emergency; operative 12–23–93 (Register 93, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–9–94 or emergency language will be repealed by operation of law on the following day.
2. New article 15.5 refiled 4–25–94 as an emergency; operative 4–25–94 (Register 94, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–23–94 or emergency language will be repealed by operation of law on the following day.
3. New article 15.5 refiled 8–22–94 as an emergency; operative 8–22–94 (Register 94, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–20–94 or emergency language will be repealed by operation of law on the following day.
4. New article 15.5 refiled 6–29–95 as an emergency; operative 6–29–95 (Register 95, No. 26). A Certificate of Compliance must be transmitted to OAL by 10–27–95 or emergency language will be repealed by operation of law on the following day.
5. New article 15.5 refiled 10–26–95 as an emergency; operative 10–26–95 (Register 95, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–23–96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 10–26–95 order transmitted to OAL 11–30–95 and filed 1–16–96 (Register 96, No. 3).

§ 66264.550. Applicability of Corrective Action Management Unit (CAMU) Regulations.

(a) Except as provided in subsection (b) of this section, corrective action management units for RCRA hazardous waste, or for management of both RCRA and non–RCRA hazardous wastes in the same unit are subject to the requirements of section 66264.552. Corrective action management units for hazardous waste that is solely non–RCRA are subject to the requirements of section 66264.552.5.

(b) Corrective action management units for RCRA hazardous wastes that were approved before April 22, 2002, or for which substantially complete applications (or equivalents) were submitted to the Department on or before November 20, 2000, are subject to the requirements in section 66264.551 for grandfathered corrective action management units; corrective action management unit waste, activities, and design will not be subject to the standards in section 66264.552, so long as the waste, activities, and design remain within the general scope of the corrective action management unit as approved.

NOTE: Authority cited: Sections 25150, 25159, 25187, 25200.10, 25358.9 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5, 25187, 25200, 25200.10, 25200.14, 25316, 25355.5, 25356.9, 25358.3 and 25358.9, Health and Safety Code; and 40 CFR Section 264.550.

HISTORY

1. Change without regulatory effect adding section filed 7–19–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 30).

§ 66264.551. Grandfathered Corrective Action Management Units (CAMUs).

(a) For the purpose of implementing corrective action under this article, Health and Safety Code sections 25200.10, 25187, or 25200.14, or section 25358.9 where as provided for under the provisions of that section the Department has excluded the removal or remedial action at a site from the hazardous waste facilities permit required by Health and Safety Code section 25201, or federal RCRA section 3005 [Title 42, U.S.C., section 6925], the Department may designate an area at the facility as a corrective action management unit under the requirements in this section. Corrective action management unit means an area within a facility that is used only for managing remediation wastes for implementing corrective action or cleanup at the facility. A corrective action management unit shall be located within the contiguous property under the control of the owner or operator where the wastes to be managed in the corrective action management unit originated. One or more corrective action management units may be designated at a facility.

(1) Placement of remediation wastes into or within a corrective action management unit does not constitute land disposal of hazardous wastes.

(2) Consolidation or placement of remediation wastes into or within a corrective action management unit does not constitute creation of a unit subject to minimum technology requirements.

(b)(1) The Department may designate a regulated unit [as defined in section 66264.90(a)] as a corrective action management unit, or may incorporate a regulated unit into a corrective action management unit, if:

(A) The regulated unit is closed or closing, meaning it has begun the closure process under section 66264.113 of chapter 14 or section 66265.113 of chapter 15 of this division; and

(B) Inclusion of the regulated unit will enhance implementation of effective, protective and reliable corrective actions for the facility.

(2) The article 6, 7, 8, and 17 requirements of this chapter or article 6, 7, 8, and 18 requirements of chapter 15 and the unit–specific requirements of chapters 14 or 15 that applied to that regulated unit will continue to apply to that portion of the corrective action management unit after incorporation into the corrective action management unit.

(c) The Department shall designate a corrective action management unit in accordance with the following:

(1) The corrective action management unit shall facilitate the implementation of reliable, effective, protective, and cost–effective corrective action measures;

(2) Waste management activities associated with the corrective action management unit shall not create unacceptable risks to humans or to the environment resulting from exposure to RCRA hazardous wastes, hazardous substances, or hazardous constituents;

(3) The corrective action management unit shall include uncontaminated areas of the facility, only if including such areas for the purpose of managing remediation waste is more protective than management of such wastes at contaminated areas of the facility;

(4) Areas within the corrective action management unit, where wastes remain in place after closure of the corrective action management unit, shall be managed and contained so as to minimize future releases, to the extent practicable;

(5) The corrective action management unit shall expedite the timing of corrective action activity implementation, when appropriate and practicable;

(6) The corrective action management unit shall enable the use, when appropriate, of treatment technologies (including innovative technologies) to enhance the long–term effectiveness of corrective actions by reducing the toxicity, mobility, or volume of wastes that will remain in place after closure of the corrective action management unit; and

(7) The corrective action management unit shall, to the extent practicable, minimize the land area of the facility upon which wastes will remain in place after closure of the corrective action management unit.

(d) The owner or operator shall provide sufficient information to enable the Department to designate a corrective action management unit in accordance with the criteria in this section.

(e) The Department shall specify, in the permit or order, requirements for corrective action management units to include the following:

(1) The areal configuration of the corrective action management unit.

(2) Requirements for remediation waste management to include the specification of applicable design, operation and closure requirements.

(3) Requirements for ground water monitoring that are sufficient to:

(A) Continue to detect and to characterize the nature, extent, concentration, direction, and movement of existing releases of hazardous constituents in ground water from sources located within the corrective action management unit; and

(B) Detect and subsequently characterize releases of hazardous constituents to ground water that may occur from areas of the corrective ac-

tion management unit in which wastes will remain in place after closure of the corrective action management unit.

(4) Closure and post–closure requirements.

(A) Closure of corrective action management units shall:

1. Minimize the need for further maintenance; and

2. Control, minimize, or eliminate, to the extent necessary to protect human health and the environment, for areas where wastes remain in place, post–closure escape of RCRA hazardous waste, hazardous constituents, leachate, contaminated runoff, or RCRA hazardous waste decomposition products to the ground, to surface waters, or to the atmosphere.

(B) Requirements for closure of corrective action management units shall include the following, as appropriate and as deemed necessary by the Department for a given corrective action management unit:

1. Requirements for excavation, removal, treatment or containment of wastes;

2. For areas in which wastes will remain after closure of the corrective action management unit, requirements for capping of such areas; and

3. Requirements for removal and decontamination of equipment, devices, and structures used in remediation waste management activities within the corrective action management unit.

(C) In establishing specific closure requirements for corrective action management units under this subsection, the Department shall consider the following factors:

1. Corrective action management unit characteristics;

2. Volume of wastes which remain in place after closure;

3. Potential for releases from the corrective action management unit;

4. Physical and chemical characteristics of the waste;

5. Hydrogeological and other relevant environmental conditions at the facility which may influence the migration of any potential or actual releases; and

6. Potential for exposure of humans and environmental receptors if releases were to occur from the corrective action management unit.

(D) Post–closure requirements as necessary to protect human health and the environment, to include, for areas where wastes will remain in place, monitoring and maintenance activities, and the frequency with which such activities shall be performed to ensure the integrity of any cap, final cover, or other containment system.

(f) The Department shall document the rationale for designating corrective action management units and shall make such documentation available to the public.

(g) Incorporation of a corrective action management unit into an existing permit shall be approved by the Department according to the procedures for Department–initiated permit modifications under section 66270.41 of chapter 20 of this division, or according to the permit modification procedures of section 66270.42 of chapter 20 of this division.

(h) The designation of a corrective action management unit does not change the Department's existing authority to address clean–up levels, media–specific points of compliance to be applied to corrective action at a facility, or other corrective action selection decisions.

NOTE: Authority cited: Sections 25150, 25159, 25187, 25200.10, 25358.9 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5, 25187, 25200, 25200.10, 25200.14, 25316, 25355.5, 25356.9, 25358.3 and 25358.9, Health and Safety Code; and 40 CFR Section 264.551.

HISTORY

1. Change without regulatory effect adding section filed 7–19–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 30).

§ 66264.552. Corrective Action Management Units (CAMU) for RCRA Hazardous Waste.

(a) For the purpose of implementing corrective action under this article, Health and Safety Code sections 25200.10, 25187, or 25200.14, or section 25358.9 where as provided for under the provisions of that section the Department has excluded the removal or corrective action at a site from the hazardous waste facilities permit required by Health and Safety Code *section* 25201, or federal RCRA section 3005 [Title 42, U.S.C., section 6925], the Department may designate an area at the facility as a corrective action management unit under the requirements in this section. Corrective action management unit means an area within a facility that is used only for managing CAMU–eligible wastes for implementing corrective action or cleanup at the facility. A corrective action management unit shall be located within the contiguous property under the control of the owner or operator where the wastes to be managed in the corrective action management unit originated. One or more corrective action management units may be designated at a facility.

(1) CAMU–eligible waste means:

(A) All solid and RCRA hazardous wastes, and all media (including ground water, surface water, soils, and sediments) and debris, that are managed for implementing cleanup. As–generated wastes (either RCRA hazardous, non–RCRA hazardous or non–hazardous) from ongoing industrial operations at a site are not CAMU–eligible wastes.

(B) Wastes that would otherwise meet the description in subsection (a)(1)(A) of this section are not "CAMU–Eligible Wastes" where:

1. The wastes are RCRA hazardous wastes found during cleanup in intact or substantially intact containers, tanks, or other non–land–based units found above ground, unless the wastes are first placed in the tanks, containers or non–land–based units as part of cleanup, or the containers or tanks are excavated during the course of cleanup; or

2. The Department exercises the discretion in subsection (a)(2) of this section to prohibit the wastes from management in a corrective action management unit.

(C) Notwithstanding subsection (a)(1)(A) of this section, where appropriate, as–generated either non–RCRA hazardous or non–hazardous waste may be placed in a corrective action management unit where such waste is being used to facilitate treatment or the performance of the corrective action management unit.

(2) The Department may prohibit, where appropriate, the placement of waste in a corrective action management unit where the Department has or receives information that such wastes have not been managed in compliance with applicable land disposal treatment standards of California Code of Regulations, title 22, division 4.5, chapter 18, or applicable unit design requirements of California Code of Regulations, title 22, division 4.5, chapter 14, or applicable unit design requirements of California Code of Regulations, title 22, division 4.5, chapter 18, or that non–compliance with other applicable requirements of California Code of Regulations, title 22 likely contributed to the release of the waste.

(3) Prohibition against placing liquids in corrective action management units.

(A) The placement of bulk or noncontainerized liquid RCRA hazardous waste or free liquids contained in RCRA hazardous waste (whether or not sorbents have been added) in any corrective action management unit is prohibited except where placement of such wastes facilitates the remedy selected for the waste.

(B) The placement of containers holding free liquids in a corrective action management unit shall comply with the requirements in 40 Code of Federal Regulations part 264.314(d) for placement in landfills except where placement facilitates the remedy selected for the waste.

(C) The placement of any liquid which is not a RCRA hazardous waste in a corrective action management unit is prohibited unless such placement facilitates the remedy selected for the waste or a demonstration described in 40 Code of Federal Regulations part 264.314(f) is made. The administrative agency as used in part 264.314(f) includes the Department.

(D) The absence or presence of free liquids in either a containerized or a bulk waste shall be determined in accordance with 40 Code of Federal Regulations part 264.314(c). Sorbents used to treat free liquids in corrective action management units shall meet the requirements of 40 Code of Federal Regulations part 264.314(e).

(4) Placement of CAMU–eligible wastes into or within a corrective action management unit does not constitute land disposal of RCRA and/or non–RCRA hazardous wastes.

(5) Consolidation or placement of CAMU–eligible wastes into or within a corrective action management unit does not constitute creation of a unit subject to minimum technology requirements.

(b)(1) The Department may designate a regulated unit (as defined in 40 Code of Federal Regulations part 264.90(a)(2)) as a corrective action management unit, or may incorporate a regulated unit into a corrective action management unit, if:

(A) The regulated unit is closed or closing, meaning it has begun the closure process under section 66264.113 of chapter 14 or section 66265.113 of chapter 15 of this division; and

(B) Inclusion of the regulated unit will enhance implementation of effective, protective and reliable corrective actions for the facility.

(2) The article 6, 7, 8, and 17 requirements of this chapter or article 6, 7, 8, and 18 requirements of chapter 15 and the unit–specific requirements of chapter 14 or 15 that applied to the regulated unit will continue to apply to that portion of the corrective action management unit after incorporation into the corrective action management unit.

(c) The Department shall designate a corrective action management unit that will be used for storage and/or treatment only in accordance with subsection (f) of this section. The Department shall designate all other corrective action management units in accordance with the following:

(1) The corrective action management unit shall facilitate the implementation of reliable, effective, protective, and cost–effective remedies;

(2) Waste management activities associated with the corrective action management unit shall not create unacceptable risks to humans or to the environment resulting from exposure to RCRA or non–RCRA hazardous wastes or hazardous constituents;

(3) The corrective action management unit shall include uncontaminated areas of the facility, only if including such areas for the purpose of managing CAMU–eligible waste is more protective than management of such wastes at contaminated areas of the facility;

(4) Areas within the corrective action management unit, where wastes remain in place after closure of the corrective action management unit, shall be managed and contained so as to minimize future releases, to the extent practicable;

(5) The corrective action management unit shall expedite the timing of corrective action activity implementation, when appropriate and practicable;

(6) The corrective action management unit shall enable the use, when appropriate, of treatment technologies (including innovative technologies) to enhance the long–term effectiveness of corrective actions by reducing the toxicity, mobility, or volume of wastes that will remain in place after closure of the corrective action management unit; and

(7) The corrective action management unit shall, to the extent practicable, minimize the land area of the facility upon which wastes will remain in place after closure of the corrective action management unit.

(d) The owner or operator shall provide sufficient information to enable the Department to designate a corrective action management unit in accordance with the criteria in this section. This shall include, unless not reasonably available, information on:

(1) The origin of the waste and how it was subsequently managed (including a description of the timing and circumstances surrounding the disposal and/or release);

(2) Whether the waste was listed or identified as RCRA hazardous at the time of disposal and/or release; and

(3) Whether the disposal and/or release of the waste occurred before or after the land disposal requirements of 40 Code of Federal Regulations part 268 were in effect for the waste listing or characteristic.

(e) The Department shall specify, in the permit or order, requirements for corrective action management units to include the following:

(1) The areal configuration of the corrective action management unit.

(2) Except as provided in subsection (g) of this section, requirements for CAMU–eligible waste management to include the specification of applicable design, operation, treatment and closure requirements.

(3) Minimum design requirements. Corrective action management units, except as provided in subsection (f) of this section, into which wastes are placed shall be designed in accordance with the following:

(A) Unless the Department approves alternate requirements under subsection (e)(3)(B) of this section, corrective action management units that consist of new, replacement, or laterally expanded units shall include a composite liner and a leachate collection system that is designed and constructed to maintain less than a 30–cm depth of leachate over the liner. For purposes of this section, composite liner means a system consisting of two components; the upper component shall consist of a minimum 30–mil flexible membrane liner (FML), and the lower component shall consist of at least a two–foot layer of compacted soil with a hydraulic conductivity of no more than $1x10^{-7}$ cm/sec. FML components consisting of high density polyethylene (HDPE) shall be at least 60 mil thick. The FML component shall be installed in direct and uniform contact with the compacted soil component;

(B) Alternate requirements. The Department may approve alternate requirements if:

1. The Department finds that alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents into the ground water or surface water at least as effectively as the liner and leachate collection systems in subsection (e)(3)(A) of this section; or

2. The corrective action management unit is to be established in an area with existing significant levels of contamination, and the Department finds that an alternative design, including a design that does not include a liner, would prevent migration from the unit that would exceed long–term corrective action goals.

(4) Minimum treatment requirements: Unless the wastes will be placed in a corrective action management unit for storage and/or treatment only in accordance with subsection (f) of this section, CAMU–eligible wastes that, absent this section, would be subject to the treatment requirements of 40 Code of Federal Regulations part 268, and that the Department determines contain principal hazardous constituents, shall be treated to the standards specified in subsection (e)(4)(C) of this section.

(A) Principal hazardous constituents are those constituents that the Department determines pose a risk to human health and the environment substantially higher than the cleanup levels or goals at the site.

1. In general, the Department will designate as principal hazardous constituents:

a. Carcinogens that pose a potential direct risk from ingestion or inhalation at the site at or above 10^{-3}; and

b. Non–carcinogens that pose a potential direct risk from ingestion or inhalation at the site an order of magnitude or greater over their reference dose.

2. The Department will also designate constituents as principal hazardous constituents, where appropriate, when risks to human health and the environment posed by the potential migration of constituents in wastes to ground water are substantially higher than cleanup levels or goals at the site; when making such a designation, the Department may consider such factors as constituent concentrations, and fate and transport characteristics under site conditions.

3. The Department may also designate other constituents as principal hazardous constituents that the Department determines pose a risk to human health and the environment substantially higher than the cleanup levels or goals at the site.

(B) In determining which constituents are "principal hazardous constituents," the Department shall consider all constituents which, absent this section, would be subject to the treatment requirements in 40 Code of Federal Regulations part 268.

(C) Waste that the Department determines contains principal hazardous constituents shall meet treatment standards determined in accordance with subsection (e)(4)(D) or (e)(4)(E) of this section:

(D) Treatment standards for wastes placed in corrective action management units.

1. For non–metals, treatment shall achieve 90 percent reduction in total principal hazardous constituent concentrations, except as provided by subsection (e)(4)(D) 3 of this section.

2. For metals, treatment shall achieve 90 percent reduction in principal hazardous constituent concentrations as measured in leachate from the treated waste or media (tested according to the TCLP incorporated by reference in section 66264.24, subsection (a) of this division) or 90 percent reduction in total constituent concentrations (when a metal removal treatment technology is used), except as provided by subsection (e)(4)(D) 3 of this section.

3. When treatment of any principal hazardous constituent to a 90 percent reduction standard would result in a concentration less than 10 times the Universal Treatment Standard for that constituent, treatment to achieve constituent concentrations less than 10 times the Universal Treatment Standard is not required. Universal Treatment Standards are identified in 40 Code of Federal Regulations part 268.48 Table UTS.

4. For waste exhibiting the RCRA hazardous characteristic of ignitability, corrosivity or reactivity, the waste shall also be treated to eliminate these characteristics.

5. For debris, the debris shall be treated in accordance with California Code of Regulations, title 22, section 66268.45, or by methods or to levels established under subsections (e)(4)(D) 1 through 4, or subsection (e)(4)(E) of this section, whichever the Department determines is appropriate.

6. Alternatives to TCLP. For metal bearing wastes for which metals removal treatment is not used, the Department may specify a leaching test other than the TCLP (SW846 Method 1311, 40 C.F.R. § 260.11 (11)) to measure treatment effectiveness, provided the Department determines that an alternative leach testing protocol is appropriate for use, and that the alternative more accurately reflects conditions at the site that affect leaching.

(E) Adjusted standards. The Department may adjust the treatment level or method in subsection (e)(4)(D) of this section to a higher or lower level, based on one or more of the following factors, as appropriate. The adjusted level or method shall be protective of human health and the environment:

1. The technical impracticability of treatment to the levels or by the methods in subsection (e)(4)(D) of this section;

2. The levels or methods in subsection (e)(4)(D) of this section would result in concentrations of principal hazardous constituents (PHCs) that are significantly above or below cleanup standards applicable to the site (established either site–specifically, or promulgated under state or federal law);

3. The views of the affected local community on the treatment levels or methods in subsection (e)(4)(D) of this section as applied at the site, and, for treatment levels, the treatment methods necessary to achieve these levels;

4. The short–term risks presented by the on–site treatment method necessary to achieve the levels or treatment methods in subsection (e)(4)(D) of this section;

5. The long–term protection offered by the engineering design of the corrective action management unit and related engineering controls:

a. Where the treatment standards in subsection (e)(4)(D) of this section are substantially met and the principal hazardous constituents in the waste or residuals are of very low mobility; or

b. Where cost–effective treatment has been used and the corrective action management unit meets the RCRA subtitle C liner and leachate collection requirements for new land disposal units at 40 Code of Federal Regulations parts 264.301(c) and (d); or

c. Where, after review of appropriate treatment technologies, the Department determines that cost–effective treatment is not reasonably available, and the corrective action management unit meets the RCRA subtitle C liner and leachate collection requirements for new land disposal units at 40 Code of Federal Regulations parts 264.301(c) and (d); or

d. Where cost–effective treatment has been used and the principal hazardous constituents in the treated wastes are of very low mobility; or

e. Where, after review of appropriate treatment technologies, the Department determines that cost–effective treatment is not reasonably available, the principal hazardous constituents in the wastes are of very low mobility, and either the corrective action management unit meets or exceeds the liner standards for new, replacement, or laterally expanded corrective action management units in subsections (e)(3)(A) and (B) of this section, or the corrective action management unit provides substantially equivalent or greater protection.

(F) The treatment required by the treatment standards shall be completed prior to, or within a reasonable time after, placement in the corrective action management unit.

(G) For the purpose of determining whether wastes placed in corrective action management units have met site–specific treatment standards, the Department may, as appropriate, specify a subset of the principal hazardous constituents in the waste as analytical surrogates for determining whether treatment standards have been met for other principal hazardous constituents. This specification will be based on the degree of difficulty of treatment and analysis of constituents with similar treatment properties.

(5) Except as provided in subsection (f) of this section, requirements for ground water monitoring and corrective action that are sufficient to:

(A) Continue to detect and to characterize the nature, extent, concentration, direction, and movement of existing releases of hazardous constituents in ground water from sources located within the corrective action management unit; and

(B) Detect and subsequently characterize releases of hazardous constituents to ground water that may occur from areas of the corrective action management unit in which wastes will remain in place after closure of the corrective action management unit; and

(C) Require notification to the Department and corrective action as necessary to protect human health and the environment for releases to ground water from the corrective action management unit.

(6) Except as provided in subsection (f) of this section, closure and post–closure requirements:

(A) Closure of corrective action management units shall:

1. Minimize the need for further maintenance; and

2. Control, minimize, or eliminate, to the extent necessary to protect human health and the environment, for areas where wastes remain in place, post–closure escape of RCRA hazardous wastes, hazardous constituents, leachate, contaminated runoff, or RCRA hazardous waste decomposition products to the ground, to surface waters, or to the atmosphere.

(B) Requirements for closure of corrective action management units shall include the following, as appropriate and as deemed necessary by the Department for a given corrective action management unit:

1. Requirements for excavation, removal, treatment or containment of wastes; and

2. Requirements for removal and decontamination of equipment, devices, and structures used in CAMU–eligible waste management activities within the corrective action management unit.

(C) In establishing specific closure requirements for corrective action management units under subsection (e) of this section, the Department shall consider the following factors:

1. Corrective action management unit characteristics;

2. Volume of wastes which remain in place after closure;

3. Potential for releases from the corrective action management unit;

4. Physical and chemical characteristics of the waste;

5. Hydrological and other relevant environmental conditions at the facility which may influence the migration of any potential or actual releases; and

6. Potential for exposure of humans and environmental receptors if releases were to occur from the corrective action management unit.

(D) Cap requirements:

1. At final closure of the corrective action management unit, for areas in which wastes will remain after closure of the corrective action management unit, with constituent concentrations at or above corrective action levels or goals applicable to the site, the owner or operator shall cover the corrective action management unit with a final cover designed and constructed to meet the following performance criteria, except as provided in subsection (e)(6)(D) 2 of this section:

a. Provide long-term minimization of migration of liquids through the closed unit;

b. Function with minimum maintenance;

c. Promote drainage and minimize erosion or abrasion of the cover;

d. Accommodate settling and subsidence so that the cover's integrity is maintained; and

e. Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

2. The Department may determine that modifications to subsection (e)(6)(D) 1 of this section are needed to facilitate treatment or the performance of the corrective action management unit (e.g., to promote biodegradation).

(E) Post-closure requirements as necessary to protect human health and the environment, to include, for areas where wastes will remain in place, monitoring and maintenance activities, and the frequency with which such activities shall be performed to ensure the integrity of any cap, final cover, or other containment system.

(f) Corrective action management units used for storage and/or treatment only are corrective action management units in which wastes will not remain after closure. Such corrective action management units shall be designated in accordance with all of the requirements of this section, except as follows.

(1) Corrective action management units that are used for storage and/or treatment only and that operate in accordance with the time limits established in the staging pile regulations at 40 Code of Federal Regulations parts 264.554(d)(1)(iii), (h), and (i) are subject to the requirements for staging piles at 40 Code of Federal Regulations parts 264.554(d)(1)(i) and (ii), part 264.554(d)(2), parts 264.554(e) and (f), and parts 264.554(j) and (k) in lieu of the performance standards and requirements for corrective action management units in this section at subsections (c) and (e)(3) through (6).

(2) Corrective action management units that are used for storage and/or treatment only and that do not operate in accordance with the time limits established in the staging pile regulations at 40 Code of Federal Regulations parts 264.554(d)(1)(iii), (h), and (i):

(A) Shall operate in accordance with a time limit, established by the Department, that is no longer than necessary to achieve a timely remedy selected for the waste, and

(B) Are subject to the requirements for staging piles at 40 Code of Federal Regulations parts 264.554(d)(1)(i) and (ii), part 264.554(d)(2), parts 264.554(e) and (f), and parts 264.554(j) and (k) in lieu of the performance standards and requirements for corrective action management units in this section at subsections (c) and (e)(4) and (6).

(g) Corrective action management units into which wastes are placed where all wastes have constituent levels at or below corrective action levels or goals applicable to the site do not have to comply with the requirements for liners at subsection (e)(3)(A) of this section, caps at subsection (e)(6)(D) of this section, ground water monitoring requirements at subsection (e)(5) of this section or, for treatment and/or storage-only corrective action management units, the design standards at subsection (f) of this section.

(h) The Department shall provide public notice and a reasonable opportunity for public comment before designating a corrective action management unit. Such notice shall include the rationale for any proposed adjustments under subsection (e)(4)(E) of this section to the treatment standards in subsection (e)(4)(D) of this section.

(i) Notwithstanding any other provision of this section, the Department may impose additional requirements as necessary to protect human health and the environment.

(j) Incorporation of a corrective action management unit into an existing permit shall be approved by the Department according to the procedures for Department-initiated permit modifications under section 66270.41 of chapter 20 of this division, or according to the permit modification procedures of section 66270.42 of chapter 20 of this division.

(k) The designation of a corrective action management unit does not change the Department's existing authority to address clean-up levels, media-specific points of compliance to be applied to corrective action at a facility, or other remedy selection decisions.

NOTE: Authority cited: Sections 25150, 25159, 25187, 25200.10, 25358.9 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5, 25187, 25200, 25200.10, 25200.14, 25316, 25355.5, 25356.9, 25358.3 and 25358.9, Health and Safety Code; and 40 CFR Section 264.552.

HISTORY

1. New section filed 12-23-93 as an emergency; operative 12-23-93 (Register 93, No. 52). A Certificate of Compliance must be transmitted to OAL by 5-9-94 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4-25-94 as an emergency; operative 4-25-94 (Register 94, No. 17). A Certificate of Compliance must be transmitted to OAL by 8-23-94 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8-22-94 as an emergency; operative 8-22-94 (Register 94, No. 34). A Certificate of Compliance must be transmitted to OAL by 12-20-94 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 12-22-94 as an emergency; operative 12-22-94 (Register 94, No. 51). A Certificate of Compliance must be transmitted to OAL 4-21-95 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 6-29-95 as an emergency; operative 6-29-95 (Register 95, No. 26). A Certificate of Compliance must be transmitted to OAL by 10-27-95 or emergency language will be repealed by operation of law on the following day.
6. New section, including amendment of NOTE, refiled 10-26-95 as an emergency; operative 10-26-95 (Register 95, No. 43). A Certificate of Compliance must be transmitted to OAL by 2-23-96 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 10-26-95 order transmitted to OAL 11-30-95 and filed 1-16-96 (Register 96, No. 3).
8. Change without regulatory effect amending subsection (e)(4)(D) filed 6-18-96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).
9. Change without regulatory effect amending subsection (a) filed 6-2-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 23).
10. Change without regulatory effect renumbering former section 66264.552 to new section 66264.552.5 and adding new section 66264.552 filed 7-19-2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 30).

§ 66264.552.5. Corrective Action Management Units for Non-RCRA Hazardous Waste.

(a) For the purpose of implementing corrective actions under this article, Health and Safety Code sections 25200.10, 25187, or 25200.14, or section 25358.9 where as provided for under the provisions of that section the Department has excluded the removal or remedial action at a site from the hazardous waste facilities permit required by Health and Safety Code section 25201, or federal RCRA Section 3005 [Title 42, U.S.C., section 6925], the Department may designate an area at the facility as a corrective action management unit, as defined in section 66260.10, in accordance with the requirements of this section. One or more corrective action management units may be designated at a facility.

(1) Placement of remediation wastes into or within a corrective action management unit does not constitute land disposal of hazardous wastes.

(2) Consolidation or placement of remediation wastes into or within a corrective action management unit does not constitute creation of a unit subject to minimum technology requirements.

(b)(1) The Department may designate a regulated unit [as defined in section 66264.90(a)] as a corrective action management unit, or may incorporate a regulated unit into a corrective action management unit, if:

(A) the regulated unit is closed or closing, meaning it has begun the closure process under section 66264.113 of chapter 14 or section 66265.113 of chapter 15 of this division; and

(B) inclusion of the regulated unit will enhance implementation of effective, protective and reliable corrective actions for the facility.

(2) The article 6, 7, 8, and 17 requirements of this chapter or article 6, 7, 8, and 18 requirements of chapter 15 and the unit-specific requirements of chapters 14 or 15 that applied to that regulated unit will continue to apply to that portion of the corrective action management unit after incorporation into the corrective action management unit.

(c) The Department shall designate a corrective action management unit in accordance with the following:

(1) The corrective action management unit shall facilitate the implementation of reliable, effective, protective, and cost-effective corrective action measures;

(2) Waste management activities associated with the corrective action management unit shall not create unacceptable risks to humans or to the environment resulting from exposure to hazardous wastes, hazardous substances, or hazardous constituents;

(3) The corrective action management unit shall include uncontaminated areas of the facility, only if including such areas for the purpose of managing remediation waste is more protective than management of such wastes at contaminated areas of the facility;

(4) Areas within the corrective action management unit, where wastes remain in place after closure of the corrective action management unit, shall be managed and contained so as to minimize future releases, to the extent practicable;

(5) The corrective action management unit shall expedite the timing of corrective action activity implementation, when appropriate and practicable;

(6) The corrective action management unit shall enable the use, when appropriate, of treatment technologies (including innovative technologies) to enhance the long-term effectiveness of corrective actions by reducing the toxicity, mobility, or volume of wastes that will remain in place after closure of the corrective action management unit; and

(7) The corrective action management unit shall, to the extent practicable, minimize the land area of the facility upon which wastes will remain in place after closure of the corrective action management unit.

(d) The owner or operator shall provide sufficient information to enable the Department to designate a corrective action management unit in accordance with the criteria in this section.

(e) The Department shall specify, in the permit or order, requirements for corrective action management units to include the following:

(1) The areal configuration of the corrective action management unit.

(2) Requirements for remediation waste management to include the specification of applicable design, operation and closure requirements.

(3) Requirements for ground water monitoring that are sufficient to:

(A) continue to detect and to characterize the nature, extent, concentration, direction, and movement of existing releases of hazardous constituents in ground water from sources located within the corrective action management unit; and

(B) detect and subsequently characterize releases of hazardous constituents to ground water that may occur from areas of the corrective action management unit in which wastes will remain in place after closure of the corrective action management unit.

(4) Closure and post-closure requirements.

(A) closure of corrective action management units shall:

1. minimize the need for further maintenance; and

2. control, minimize, or eliminate, to the extent necessary to protect human health and the environment, for areas where wastes remain in place, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated runoff, or hazardous waste decomposition products to the ground, to surface waters, or to the atmosphere.

(B) requirements for closure of corrective action management units shall include the following, as appropriate and as deemed necessary by the Department for a given corrective action management unit:

1. requirements for excavation, removal, treatment or containment of wastes;

2. for areas in which wastes will remain after closure of the corrective action management unit, requirements for capping of such areas; and

3. requirements for removal and decontamination of equipment, devices, and structures used in remediation waste management activities within the corrective action management unit.

(C) in establishing specific closure requirements for corrective action management units under this subsection, the Department shall consider the following factors:

1. corrective action management unit characteristics;

2. volume of wastes which remain in place after closure;

3. potential for releases from the corrective action management unit;

4. physical and chemical characteristics of the waste;

5. hydrogeological and other relevant environmental conditions at the facility which may influence the migration of any potential or actual releases; and

6. potential for exposure of humans and environmental receptors if releases were to occur from the corrective action management unit.

(D) Post-closure requirements as necessary to protect human health and the environment, to include, for areas where wastes will remain in place, monitoring and maintenance activities, and the frequency with hich such activities shall be performed to ensure the integrity of any cap, final cover, or other containment system.

(f) The Department shall document the rationale for designating corrective action management units and shall make such documentation available to the public.

(g) Incorporation of a corrective action management unit into an existing permit shall be approved by the Department according to the procedures for Department-initiated permit modifications under section 66270.41 of chapter 20 of this division, or according to the permit modification procedures of section 66270.42 of chapter 20 of this division.

(h) The designation of a corrective action management unit does not change the Department's existing authority to address clean-up levels, media-specific points of compliance to be applied to corrective action at a facility, or other corrective action selection decisions.

NOTE: Authority cited: Sections 58102 of the Governor's Reorganizational Plan # 1 of 1991; and Sections 25150, 25159, 25187, 25200.10, 25358.9, 58004 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5, 25187, 25200, 25200.10, 25200.14, 25316, 25355.5, 25356.9, 25358.3 and 25358.9, Health and Safety Code; 40 CFR Section 264.552.

HISTORY

1. Change without regulatory effect renumbering former section 66264.552 to new section 66264.552.5, including amendment of section heading and NOTE, filed 7-19-2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 30).

§ 66264.553. Temporary Units.

(a) For temporary tanks and container storage areas used for treatment or storage of hazardous remediation wastes, during corrective action activities required under this article, Health and Safety Code sections 25200.10, 25187, or 25200.14, or section 25358.9 where as provided for under the provisions of that section the Department has excluded the removal or remedial action at a site from the hazardous waste facilities permit required by Health and Safety Code section 25201, or federal RCRA section 3005 [Title 42, U.S.C., section 6925], the Department may determine that a design, operating, or closure standard applicable to such units may be replaced by alternative requirements which are protective of human health or the environment.

(b) Any temporary unit to which alternative requirements are applied in accordance with subsection (a) of this section shall be:

(1) Located within the facility boundary; and

(2) Used only for treatment or storage of remediation wastes.

(c) In establishing standards to be applied to a temporary unit, the Department shall consider the following factors:

(1) Length of time such unit will be in operation;

(2) Type of unit;

(3) Volumes of wastes to be managed;

(4) Physical and chemical characteristics of the wastes to be managed in the unit;

(5) Potential for releases from the unit;

(6) Hydrogeological and other relevant environmental conditions at the facility which may influence the migration of any potential releases; and

(7) Potential for exposure of humans and environmental receptors if releases were to occur from the unit.

(d) The Department shall specify in the permit or order the length of time a temporary unit will be allowed to operate, to be no longer than a

period of one year. The Department shall also specify the design, operating, and closure requirements for the unit.

(e) The Department may extend the operational period of a temporary unit once for no longer than a period of one year beyond that originally specified in the permit or order, if the Department determines that:

(1) Continued operation of the unit will not pose a threat to human health or the environment; and

(2) Continued operation of the unit is necessary to ensure timely and efficient implementation of corrective actions at the facility.

(f) Incorporation of a temporary unit or a time extension for a temporary unit into an existing permit shall be:

(1) Approved in accordance with the procedures for Department-initiated permit modifications under section 66270.41 of chapter 20 of this division; or

(2) Requested by the owner or operator as a Class II modification according to the procedures under section 66270.42 of chapter 20 of this division.

(g) The Department shall document the rationale for designating a temporary unit and for granting time extensions for temporary units and shall make such documentation available to the public.

NOTE: Authority cited: Section 58102 of the Governor's Reorganizational Plan # 1 of 1991; and Sections 25150, 25159, 25187, 25200.10, 25358.9, 58004 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5, 25187, 25200, 25200.10, 25316, 25355.5, 25356.9, 25358.3 and 25358.9, Health and Safety Code; 40 CFR Section 264.553.

HISTORY

1. New section filed 12-23-93 as an emergency; operative 12-23-93 (Register 93, No. 52). A Certificate of Compliance must be transmitted to OAL by 5-9-94 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4-25-94 as an emergency; operative 4-25-94 (Register 94, No. 17). A Certificate of Compliance must be transmitted to OAL by 8-23-94 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8-22-94 as an emergency; operative 8-22-94 (Register 94, No. 34). A Certificate of Compliance must be transmitted to OAL by 12-20-94 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 12-22-94 as an emergency; operative 12-22-94 (Register 94, No. 51). A Certificate of Compliance must be transmitted to OAL 4-21-95 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 6-29-95 as an emergency; operative 6-29-95 (Register 95, No. 26). A Certificate of Compliance must be transmitted to OAL by 10-27-95 or emergency language will be repealed by operation of law on the following day.
6. New section, including amendment of NOTE, refiled 10-26-95 as an emergency; operative 10-26-95 (Register 95, No. 43). A Certificate of Compliance must be transmitted to OAL by 2-23-96 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 10-26-95 order transmitted to OAL 11-30-95 and filed 1-16-96 (Register 96, No. 3).
8. Change without regulatory effect amending subsection (c)(7) filed 6-18-96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).
9. Change without regulatory effect amending subsection (a) filed 6-2-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 23).

Article 15.7. Drip Pads

§ 66264.570. Applicability.

(a) The requirements of this article apply to owners and operators of facilities that use new or existing drip pads to convey treated wood drippage, precipitation, and/or surface water run-off to an associated collection system. Existing drip pads are those constructed before December 6, 1990 and those for which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to December 6, 1990. All other drip pads are new drip pads. The requirement at section 66264.573(b)(3) to install a leak collection system applies only to those drip pads that are constructed after December 24, 1992 except for those constructed after December 24, 1992 for which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to December 24, 1992.

(b) The owner or operator of any drip pad that is inside or under a structure that provides protection from precipitation so that neither run-off nor run-on is generated is not subject to regulation under sections 66264.573(e) or 66264.573(f), as appropriate.

(c) The requirements of this article are not applicable to the management of infrequent and incidental drippage in storage yards provided that:

(1) the owner or operator maintains and complies with a written contingency plan that describes how the owner or operator will respond immediately to the discharge of such infrequent and incidental drippage. At a minimum, the contingency plan shall describe how the owner or operator will do the following:

(A) cleanup the drippage;

(B) document the cleanup of the drippage;

(C) retain documents regarding cleanup for three years; and

(D) manage the contaminated media in a manner consistent with Department regulations.

NOTE: Authority cited: Sections 25150, 25159, 25159.5 and 25245, Health and Safety Code; and Section 58012, Governor's Reorganization Plan Number 1 of 1991. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 264.570.

HISTORY

1. New section filed 7-29-94; operative 8-29-94 (Register 94, No. 30).
2. Change without regulatory effect adding new article heading filed 9-13-94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 37).

§ 66264.571. Assessment of Existing Drip Pad Integrity.

(a) For each existing drip pad as defined in section 66264.570, the owner or operator shall evaluate the drip pad and determine that it meets all of the requirements of this article, except the requirements for liners and leak detection systems of section 66264.573(b). No later than the effective date of this rule, the owner or operator shall obtain and keep on file at the facility, a written assessment of the drip pad, reviewed and certified by an independent, qualified professional engineer registered in California that attests to the results of the evaluation. The assessment shall be reviewed, updated, and re-certified annually until all upgrades, repairs, or modifications necessary to achieve compliance with all of the standards of section 66264.573 are complete. The evaluation shall document the extent to which the drip pad meets each of the design and operating standards of section 66264.573, except the standards for liners and leak detection systems, specified in section 66264.573(b).

(b) The owner or operator shall develop a written plan for upgrading, repairing, and modifying the drip pad to meet the requirements of section 66264.573(b), and submit the plan to the Department no later than two years before the date that all repairs, upgrades, and modifications are complete. This written plan shall describe all changes to be made to the drip pad in sufficient detail to document compliance with all the requirements of section 66264.573. The plan shall be reviewed and certified by an independent qualified registered professional engineer.

(c) Upon completion of all upgrades, repairs, and modifications, the owner or operator shall submit to the Department, the as-built drawings for the drip pad together with a certification by an independent, qualified professional engineer registered in California attesting that the drip pad conforms to the drawings.

(d) If the drip pad is found to be leaking or unfit for use, the owner or operator shall comply with the provisions of section 66264.573(m) or close the drip pad in accordance with section 66264.575.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code; and Section 58012, Governor's Reorganization Plan Number 1 of 1991. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 264.571.

HISTORY

1. New section filed 7-29-94; operative 8-29-94 (Register 94, No. 30).

§ 66264.572. Design and Installation of New Drip Pads.

Owners and operators of new drip pads shall ensure that the pads are designed, installed, and operated in accordance with one of the following:

(a) All of the requirements of sections 66264.573 (except 66264.573(b), 66264.574 and 66264.575, or

(b) All of the requirements of sections 66264.573 (except section 66264.573(a)(4)(A) and (B)), 66264.574 and 66264.575.

NOTE: Authority cited: Sections 25150, 25159, 25159.5 and 25245, Health and Safety Code; and Section 58012, Governor's Reorganization Plan Number 1 of

1991. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 264.572.

HISTORY

1. New section filed 7–29–94; operative 8–29–94 (Register 94, No. 30).

§ 66264.573. Design and Operating Requirements.

(a) Drip pads shall:

(1) be constructed of non–earthen materials, excluding wood and non–structurally supported asphalt;

(2) be sloped to free–drain treated wood drippage, rain and other waters, or solutions of drippage and water or other wastes to the associated collection system;

(3) have a curb or berm around the perimeter;

(4)(A) have a hydraulic conductivity of less than or equal to $1x10^{-7}$ centimeters per second, e.g., existing concrete drip pads shall be sealed, coated, or covered with a surface material with a hydraulic conductivity of less than or equal to $1x10^{-7}$ centimeters per second such that the entire surface where drippage occurs or may run across is capable of containing such drippage and mixtures of drippage and precipitation, material, or other wastes while being routed to an associated collection system. This surface material shall be maintained free of cracks and gaps that could adversely affect its hydraulic conductivity, and the materials shall be chemically compatible with the preservatives that contact the drip pad. The requirements of this provision apply only to existing drip pads and those drip pads for which the owner or operator elects to comply with section 66264.572(a) instead of Section 66264.572(b).

(4)(B) the owner or operator shall obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by an independent, qualified registered professional engineer registered in California that attests to the results of the evaluation. The assessment shall be reviewed, updated and recertified annually. The evaluation shall document the extent to which the drip pad meets the design and operating standards of this section, except for paragraph (b) of this section.

(5) be of sufficient structural strength and thickness to prevent failure due to physical contact, climatic conditions, the stress of daily operations, e.g., variable and moving loads such as vehicle traffic, movement of wood, etc.

(b) If an owner or operator elects to comply with section 66264.572(b) instead of section 66264.572(a), the drip pad shall have:

(1) a synthetic liner installed below the drip pad that is designed, constructed, and installed to prevent leakage from the drip pad into the adjacent subsurface soil or groundwater or surface water at any time during the active life (including the closure period) of the drip pad. The liner shall be constructed of materials that will prevent waste from being absorbed into the liner and to prevent releases into the adjacent subsurface soil or groundwater or surface water during the active life of the facility. The liner shall be:

(A) constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or drip pad leakage to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation (including stresses from vehicular traffic on the drip pad);

(B) placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression or uplift; and

(C) installed to cover all surrounding earth that could come in contact with the waste or leakage; and

(2) a leakage detection system immediately above the liner that is designed, constructed, maintained, and operated to detect leakage from the drip pad. The leakage detection system shall be:

(A) constructed of materials that are:

[The next page is 758.17.]

1. chemically resistant to the waste managed in the drip pad and the leakage that might be generated; and

2. of sufficient strength and thickness to prevent collapse under the pressures exerted by overlaying materials and by any equipment used at the drip pad;

(B) designed and operated to function without clogging through the scheduled closure of the drip pad; and

(C) designed so that it will detect the failure of the drip pad or the presence of a release of hazardous waste or accumulated liquid at the earliest practicable time.

(3) a leakage collection system immediately above the liner that is designed, constructed, maintained and operated to collect leakage from the drip pad such that it can be removed from below the drip pad. The date, time, and quantity of any leakage collected in this system and removed shall be documented in the operating log.

(c) Drip pads shall be maintained such that they remain free of cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the drip pad.

(d) The drip pad and associated collection system shall be designed and operated to convey, drain, and collect liquid resulting from drippage or precipitation in order to prevent run–off.

(e) Unless protected by a structure, as described in section 66264.570(b), the owner or operator shall design, construct, operate, and maintain a run–on control system capable of preventing flow onto the drip pad during peak discharge from at least a 24–hour, 25–year storm, unless the system has sufficient excess capacity to contain any run–off that might enter the system.

(f) Unless protected by a structure or cover, as described in section 66264.570(b), the owner or operator shall design, construct, operate, and maintain a run–off management system to collect and control at least the water volume resulting from a 24–hour, 25–year storm.

(g) The drip pad shall be evaluated to determine that it meets the requirements of subsections (a) through (f) of this section and the owner or operator shall obtain a statement from an independent, qualified professional engineer registered in California certifying that the drip pad design meets the requirements of this section.

(h) Drippage and accumulated precipitation shall be removed from the associated collection system as necessary to prevent overflow onto the drip pad.

(i) The drip pad surface shall be cleaned thoroughly in a manner and frequency such that accumulated residues of hazardous waste or other materials are removed, with residues being properly managed as hazardous waste, so as to allow weekly inspections of the entire drip pad surface without interference or hindrance from accumulated residues of hazardous waste or other materials on the drip pad. The owner or operator shall document the date and time of each cleaning and the cleaning procedure used in the facility's operating log. The owner or operator shall determine if the residues are hazardous as per section 66262.11 and, if so, shall manage them under chapters 11 through 18 and 20.

(j) Drip pads shall be operated and maintained in a manner to minimize tracking of hazardous waste or hazardous waste constituents off the drip pad as result of activities by personnel or equipment.

(k) After being removed from the treatment vessel, treated wood from pressure and non–pressure processes shall be held on the drip pad until drippage has ceased. The owner or operator shall maintain records sufficient to document that all treated wood is held on the pad following treatment in accordance with this requirement.

(*l*) Collection and holding units associated with run–on and run–off control systems shall be emptied or otherwise managed as soon as possible after storms to maintain design capacity of the system.

(m) Throughout the active life of the drip pad and as specified in the permit, if the owner or operator detects a condition that may have caused or has caused a release of hazardous waste, the condition shall be repaired within a reasonably prompt period of time following discovery, in accordance with the following procedures:

(1) upon detection of a condition that may have caused or has caused a release of hazardous waste (e.g., upon detection of leakage in the leak detection system), the owner or operator shall:

(A) enter a record of the discovery in the facility operating log;

(B) immediately remove the portion of the drip pad affected by the condition from service;

(C) determine what steps shall be taken to repair the drip pad and clean up any leakage from below the drip pad, and establish a schedule for accomplishing the repairs;

(D) within 24 hours after discovery of the condition, notify the Department of the condition and, within ten working days, provide written notice to the Department with a description of the steps that will be taken to repair the drip pad and clean up any leakage, and the schedule for accomplishing this work;

(2) the Department will review the information submitted, make a determination regarding whether the pad shall be removed from service completely or partially until repairs and clean up are complete, and notify the owner or operator of the determination and the underlying rationale in writing;

(3) upon completing all repairs and clean up, the owner or operator shall notify the Department in writing and provide a certification signed by an independent, qualified professional engineer registered in California, that the repairs and clean up have been completed according to the written plan submitted in accordance with subsection (m)(1)(D) of this section.

(n) Should a permit be necessary, the Department will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

(o) The owner or operator shall maintain, as part of the facility operating log, documentation of past operating and waste handling practices. This shall include identification of preservative formulations used in the past, a description of drippage management practices, and a description of treated wood storage and handling practices.

NOTE: Authority cited: Sections 25150, 25159, 25159.5 and 25245, Health and Safety Code; and Section 58012, Governor's Reorganization Plan Number 1 of 1991. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 264.573.

HISTORY

1. New section filed 7–29–94; operative 8–29–94 (Register 94, No. 30).

2. Change without regulatory effect amending subsection (i) filed 12–28–95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 52).

§ 66264.574. Inspections.

(a) During preconstruction, construction, and operating phases, liners and cover systems (e.g., membranes, sheets, or coatings) shall be inspected for uniformity, damage, and imperfections (e.g., holes, cracks, thin spots, or foreign materials). Immediately after construction or installation, liners shall be inspected and certified as meeting the requirements of section 66264.573 by an independent, qualified professional engineer registered in California. The certification shall be maintained at the facility as part of the facility operating record. After installation, liners and covers shall be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.

(b) While a drip pad is in operation, it shall be inspected weekly and after storms to detect evidence of any of the following:

(1) deterioration, malfunctions or improper operation of run–on and run–off control systems;

(2) the presence of leakage in and proper functioning of leak detection system; or

(3) deterioration or cracking of the drip pad surface.

NOTE: Authority cited: Sections 25150, 25159, 25159.5 and 25245, Health and Safety Code; and Section 58012, Governor's Reorganization Plan Number 1 of 1991. Reference: Sections 25150 and 25245, Health and Safety Code; and 40 CFR Section 264.574.

HISTORY
1. New section filed 7–29–94; operative 8–29–94 (Register 94, No. 30).

§ 66264.575. Closure.

(a) At closure, the owner or operator shall remove or decontaminate all waste residues, contaminated containment system components (pad, liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leakage, and manage them as hazardous waste.

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in subsection (a) of this section, the owner or operator finds that not all contaminated subsoils can be practically removed or decontaminated, the owner or operator shall close the facility and perform post–closure care in accordance with closure and post–closure care requirements that apply to landfills (section 66264.310). For permitted units, the requirement to have a permit continues throughout the post–closure period. In addition, for the purposes of closure, post–closure, and financial responsibility, such a drip pad is then considered to be a landfill, and the owner or operator shall meet all of the requirements for landfills specified in articles 7 and 8 of this chapter.

(c)(1) The owner or operator of an existing drip pad, as defined in section 66264.570, that does not comply with the liner requirements of section 66264.573(b)(1) shall:

(A) include in the closure plan for the drip pad under section 66264.112 both a plan for complying with subsection (a) of this section and a contingent plan for complying with subsection (b) of this section in case not all contaminated subsoils can be practicably removed at closure; and

(B) prepare a contingent post–closure plan under section 66264.118 for complying with subsection (b) of this section in case not all contaminated subsoils can be practicably removed at closure;

(2) the cost estimates calculated under sections 66264.112 and 66264.144 for closure and post–closure care of a drip pad subject to this chapter shall include the cost of complying with the contingent closure plan and the contingent post–closure plan, but are not required to include the cost of expected closure under subsection (a) of this section.

NOTE: Authority cited: Sections 25150, 25159, 25159.5 and 25245, Health and Safety Code; and Section 58012, Governor's Reorganization Plan Number 1 of 1991. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 264.575.

HISTORY
1. New section filed 7–29–94; operative 8–29–94 (Register 94, No. 30).

Article 16. Miscellaneous Units

§ 66264.600. Applicability.

The requirements in this article apply to owners and operators of facilities that transfer, treat, store, or dispose of hazardous waste in miscellaneous units, except as section 66264.1 provides otherwise.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.600.

HISTORY
1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.601. Environmental Performance Standards.

A miscellaneous unit shall be located, designed, constructed, operated, maintained, and closed in a manner that will ensure protection of human health and the environment. Permits for miscellaneous units shall contain such terms and provisions as necessary to protect human health and the environment, including, but not limited to, as appropriate, design and operating requirements, detection and monitoring requirements, and requirements for responses to releases of hazardous waste or hazardous waste constituents from the unit. Permit terms and provisions shall include those requirements of articles 9 through 15 and articles 27, 28 and 28.5 of this chapter, chapter 20, 40 CFR Part 146, and article 5.5 of chapter 6.5 of division 20 of the Health and Safety Code (commencing with section 25100) that are appropriate for the miscellaneous unit being permitted. Protection of human health and the environment includes, but is not limited to:

(a) prevention of any releases that may have adverse effects on human health or the environment due to migration of waste constituents, hazardous constituents, or reaction products, in the ground water or subsurface environment, considering:

(1) the volume and physical and chemical characteristics of the waste in the unit, including its potential for migration through soil, liners, or other containing structures;

(2) the hydrologic and geologic characteristics of the unit and the surrounding area;

(3) the existing quality of ground water and soil–pore liquid and gas, including other sources of pollution and contamination and their cumulative impact on the ground water and the normally unsaturated zone;

(4) the quantity and direction of groundwater flow;

(5) the proximity to and withdrawal rate of current and potential groundwater users;

(6) the patterns of land use in the region;

(7) the potential for deposition or migration of waste constituents, hazardous constituents, or reaction products, into subsurface physical structures, and into the root zone of food–chain crops and other vegetation;

(8) the potential for health risks caused by human exposure to constituents of concern; and

(9) the potential for damage to domestic animals, wildlife, crops, vegetation, and physical structures caused by exposure to constituents of concern;

(b) prevention of any releases that may have adverse effects on human health or the environment due to migration of waste constituents, hazardous constituents, or reaction products, in surface water, or wetlands or on the soil surface considering:

(1) the volume and physical and chemical characteristics of the waste in the unit;

(2) the effectiveness and reliability of containing, confining, and collecting systems and structures in preventing migration;

(3) the hydrologic characteristics of the unit and the surrounding area, including the topography of the land around the unit;

(4) the patterns of precipitation in the region;

(5) the quantity, quality, and direction of ground–water flow;

(6) the proximity of the unit to surface waters;

(7) the current and potential uses of nearby surface waters and any water quality standards established for those surface waters;

(8) the existing quality of surface waters and surface soils, including other sources of pollution and contamination and their cumulative impact on surface waters and surface soils;

(9) the patterns of land use in the region;

(10) the potential for health risks caused by human exposure to constituents of concern; and

(11) the potential for damage to domestic animals, wildlife, crops, vegetation, and physical structures caused by exposure to constituents of concern;

(c) prevention of any release that may have adverse effects on human health or the environment due to migration of waste constituents, hazardous constituents, or reaction products, in the air, considering:

(1) the volume and physical and chemical characteristics of the waste in the unit, including its potential for the emission and dispersal of gases, aerosols, and particulates;

(2) the effectiveness and reliability of systems and structures to reduce or prevent emissions of hazardous constituents to the air;

(3) the operating characteristics of the unit;

(4) the atmospheric, meteorologic, and topographical characteristics of the unit and the surrounding area;

(5) the existing quality of the air, including other sources of pollution and contamination and their cumulative impact on the air;

(6) the potential for health risks caused by human exposure to constituents of concern; and

(7) the potential for damage to domestic animals, wildlife, crops, vegetation, and physical structures caused by exposure to constituents of concern.

NOTE: Authority cited: Sections 208, 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 264.601.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect amending first paragraph and NOTE filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).

§ 66264.602. Monitoring, Analysis, Inspection, Response, Reporting, and Corrective Action.

Monitoring, testing, analytical data, inspections, response, and reporting procedures and frequency shall ensure compliance with sections 66264.15, 66264.33, 66264.75, 66264.76, 66264.77, 66264.601 and 66264.801 as well as meet any additional requirements needed to protect human health and the environment as specified in the permit.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.602.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.603. Post–Closure Care.

A miscellaneous unit that is a disposal unit shall be maintained in a manner that complies with section 66264.601 during the post–closure care period. In addition, if a transfer, treatment, or storage unit has contaminated soils or ground water that cannot be completely removed or decontaminated during closure, then that unit shall also meet the requirements of section 66264.601 during post–closure care. The post–closure plan under section 66264.118 shall specify the procedures that will be used to satisfy this requirement.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 264.603.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

Article 17. Environmental Monitoring and Response Programs for Air, Soil, and Soil–Pore Gas for Permitted Facilities

§ 66264.700. Applicability to Permitted Facilities.

(a) The regulations in this article apply to owners and operators of permitted facilities that treat, store, recycle or dispose of hazardous waste. The owner or operator shall satisfy the requirements of this article for all wastes (or constituents thereof) contained in any regulated unit that receives hazardous waste after February 2, 1985. Any waste or waste constituent migrating beyond the regulated unit, as determined by monitoring at any monitoring point for air or soil–pore gas established in accordance with section 66264.705, is assumed to originate from a regulated unit unless the owner or operator demonstrates to the satisfaction of the Department that such waste or waste constituent originated from another source.

(b) The owner or operator is not subject to regulation under this article if the Department finds, pursuant to section 66264.280(d), that the treatment zone of a land treatment unit does not contain levels of hazardous constituents that are above background levels of those constituents by an amount that is statistically significant, and if an unsaturated zone monitoring program meeting the requirements of section 66264.278 has not shown a statistically significant increase in hazardous constituents below the treatment zone during the active life of the unit. An exemption under this subsection can only relieve an owner or operator of responsibility to meet the requirements of this article during the post–closure care period.

(c) The owner or operator is not subject to regulation under this article if the owner or operator demonstrates to the satisfaction of the Department that hazardous waste will not migrate from a regulated unit during the active life of the unit (including the closure period) and the post–closure care period specified under section 66264.117. The demonstration that liquid will not migrate shall be certified by an independent certified engineering geologist or civil engineer registered in California. The demonstration that gas or airborne solids will not migrate shall be certified by a scientist, or engineer registered in California, qualified to make such a demonstration. In order to provide an adequate margin of safety in the prediction of potential migration of liquid, the owner or operator shall base any predictions made under this subsection on assumptions that maximize the rate of liquid migration.

(d) The regulations under this article apply during the active life of the regulated unit (including the closure period). After closure of the regulated unit, the regulations in this article:

(1) do not apply if all waste, waste residues, contaminated containment system components and contaminated subsoils are removed or decontaminated at closure; or

(2) apply during the post closure care period under section 66264.117 of article 7 of this chapter and during any compliance period under section 66264.96 of article 6 of this chapter.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150(a), 25159, 25159.5 and 25245, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.701. Required Programs.

(a) Owners and operators subject to this article shall conduct a monitoring and response program as follows.

(1) Whenever there is a statistically significant increase under section 66264.707(b) for any hazardous constituents under section 66264.703 from a regulated unit at any monitoring point under section 66264.705, or at another location at which environmental monitoring is undertaken pursuant to state requirements, the owner or operator shall institute a compliance monitoring program under section 66264.708.

(2) Whenever the environmental protection standard under section 66264.702 is exceeded, or when a concentration specified for soil–pore gas or open–air downwind from the hazardous waste facility, is exceeded, the owner or operator shall institute a corrective action program under section 66264.708.

(3) In all other cases, the owner or operator shall institute a detection monitoring program under section 66264.706.

(b) The Department will specify in the facility permit the specific elements of the monitoring and response program. The Department shall include one or more of the programs identified in subsection (a) of this section in the facility permit as may be necessary to protect human health or the environment and will specify the circumstances under which each of the programs will be required. In deciding whether to require the owner or operator to be prepared to institute a particular program, the Department will consider the potential adverse effects on human health or the environment that might occur before final administrative action could be taken on a permit modification application to incorporate such a program.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150(a), 25159, 25159.5 and 25245, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.702. Environmental Protection Standard.

(a) The owner or operator shall comply with conditions specified in the facility permit that are designed to ensure that hazardous constituents, under section 66264.703 entering soil or air from a regulated unit, do not exceed the concentration limits under section 66264.704 cited by the Department as maximum acceptable concentrations in soil, soil–pore gas, air, or on the land surface.

(b) The owner or operator shall not cause the concentration of a hazardous constituent in soil, soil–pore gas or air outside the unit to exceed a concentration limit under section 66264.704 specified in the facility

permit as maximum acceptable concentrations in soil, soil–pore gas, air, or on the land surface.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150(a), 25159, 25159.5 and 25245, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.703. Hazardous Constituents.

(a) The Department will specify in the facility permit the hazardous constituents to which the environmental protection standard of section 66264.702 applies. Constituents specified in the permit will be limited to constituents reasonably expected to be in or derived from waste contained in a regulated unit.

(b) The Department shall not specify in the facility permit constituents the Department considers not capable of posing a substantial present or potential hazard to human health or the environment and that are not useful as an indicator of migration of hazardous waste. In deciding which constituents to cite in the facility permit, the Department will consider the following:

(1) potential effects on human health or the environment that can result from migration of waste constituents from a regulated unit considering:

(A) the volume, physical and chemical characteristics of the waste in the regulated unit, including its potential for migration;

(B) the hydrogeological characteristics of the facility and surrounding land;

(C) the current and estimated future uses of the area;

(D) any existing contamination or pollution, including other sources and their cumulative impact;

(E) the potential for health risks caused by human exposure to waste constituents;

(F) the potential damage to wildlife, crops, vegetation and physical structures caused by exposure to waste constituents; and

(G) the persistence and permanence of the potential adverse effects;

(2) potential adverse effects on surface and groundwater quality; and

(3) capability of the substance to act as an indicator of the possible presence of a hazardous constituent of hazardous waste.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150(a), 25159, 25159.5 and 25245, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.704. Concentration Limits.

(a) The facility permit shall specify concentration limits for soil, soil–pore gas, and open–air downwind from the regulated unit, for hazardous constituents established under section 66264.703.

(b) The concentration limit for a hazardous constituent in soil outside the regulated unit shall not exceed the background concentration of that constituent in the soil unless an alternate concentration limit that is higher than background concentration for soil is established by the Department under subsection (e) of this section.

(c) The concentration limit for a hazardous constituent in open–air immediately downwind from the regulated unit:

(1) shall not exceed an ambient air quality standard established by the California Air Resources Board; and

(2) shall not exceed a concentration limit for a hazardous constituent established by the Department to protect human health or the environment.

(d) The concentration limit for a hazardous constituent in soil–pore gas outside the regulated unit shall not exceed the background concentration in soil–pore gas unless a concentration limit greater than background is established for soil–pore gas by the Department under subsection (e) of this section.

(e) The Department shall establish an alternate concentration limit for a hazardous constituent if it is found that the constituent will not pose a substantial present or potential hazard to human health or the environment as long as the alternate concentration limit is not exceeded. In establishing alternate concentration limits, the Department will consider any or all of the factors listed under section 66264.703(b).

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150(a), 25159, 25159.5 and 25245, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.705. Monitoring Points.

The Department will specify in the facility permit the monitoring points at which monitoring must be conducted by the owner or operator and at which the environmental protection standard of section 66264.702 applies. Monitoring points shall be suitable for sampling any substance that may have migrated from the regulated unit, and shall be located close enough to the regulated unit to provide an early indication of contaminant migration.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150(a), 25159, 25159.5 and 25245, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.706. Detection Monitoring Program.

An owner or operator required to establish a detection monitoring program under this article shall, at a minimum, discharge the responsibilities specified in subsections (a) through (f) of this section concerning monitoring of air and soil–pore gas.

(a) The owner or operator shall assure that monitoring and corrective action measures necessary to achieve compliance with the environmental protection standard under section 66264.702 are taken as specified in the permit or in an order issued by the Department.

(b) The owner or operator of a regulated unit that contains hazardous waste or discarded hazardous material that contains a volatile toxic substance or a hazardous material that can become airborne, or that can decompose or react to form a volatile toxic substance or toxic gas, shall follow methods prescribed by the Department to provide for representative sampling and analysis of air upwind and at the disposal area, and of soil–pore gas at monitoring points under section 66264.705, established by the owner or operator to the satisfaction of the Department. Vapor and gas monitoring wells shall be covered with collection chambers approved by the Department. The owner or operator shall provide, inside the collection chambers, probes or equivalent methodologies that actively sense the concentration of substances specified by the Department. If specified by the Department, the owner or operator shall provide instrumentation that provides continuous recording of concentrations of substances in open air and in the atmosphere of vapor wells.

(c) Samples will be analyzed for those substances specified in the permit. Unless the Department specifies in the permit parameters and constituents for which samples described in subsection (b) of this section shall be analyzed, the owner or operator shall analyze the samples to determine the concentration of all constituents that cause waste at the regulated unit to be hazardous waste. The Department will specify for the regulated unit the location and frequency of monitoring and the type of statistical analysis that will be used. The owner or operator shall submit a report to the Department that indicates the results of the analysis and the concentrations of constituents in the air and soil–pore gas sampled. The report shall be submitted to the Department within 30 days of the date analyses are completed.

(d) If the owner or operator determines that there is an increase of hazardous constituents at any monitoring point under section 66264.705, the owner or operator shall:

(1) notify the Department of this finding in writing within seven days of the date such determination is made. The notification shall indicate what constituents have shown statistically significant increases;

(2) within 90 days of the determination, submit to the Department an application for a permit modification to modify the facility or operating practices at the facility.

(e) If the owner or operator determines that there is an increase of hazardous constituents at any monitoring point under section 66264.705, the owner or operator may demonstrate that a source other than the regulated unit caused the increase or that the increase resulted from an error in sampling, analysis or evaluation. While the owner or operator may make a demonstration under this subsection in addition to, or in lieu of, submitting a permit modification application under subsection (d)(2) of this section, the owner or operator is not relieved of the requirement to submit a permit modification application within the time specified in subsection (d)(2) of this section unless the demonstration made under this subsection shows to the satisfaction of the Department that a source other than the regulated unit caused the increase or that the increase resulted from an error in sampling, analysis or evaluation. In making a demonstration under this subsection, the owner or operator shall:

(1) notify the Department in writing within seven days of determining an increase at any monitoring point that the owner or operator intends to make a determination under this subsection;

(2) within 90 days of determining the increase, submit a report to the Department demonstrating that a source other than the regulated unit caused the increase or that the increase resulted from error in sampling, analysis or evaluation;

(3) within 90 days of determining the increase, submit to the Department an application for a permit modification to make any appropriate changes to the monitoring program at the facility; and

(4) continue to monitor in accordance with the monitoring program established under this section.

(f) If the owner or operator determines that the detection monitoring program under this article does not satisfy the requirements of this section, the owner or operator shall, within 90 days of determining the increase, submit an application for a permit modification to make any appropriate changes to the program.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150(a), 25159, 25159.5 and 25245, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.707. Compliance Monitoring Program.

An owner or operator required to establish a compliance monitoring program under this article shall, at a minimum, discharge the following responsibilities.

(a) The owner or operator shall perform monitoring the Department specifies to determine whether regulated units are in compliance with the environmental protection standard under section 66264.702, or to determine the vertical and horizontal extent to which a constituent of hazardous waste has migrated from a regulated unit. The Department will specify the environmental protection standard in the facility permit, including:

(1) a list of the hazardous constituents identified under section 66264.703;

(2) concentration limits under section 66264.704 for each of those hazardous constituents; and

(3) the monitoring points under section 66264.705.

(b) If stipulated by the Department, the owner or operator shall determine the concentration of hazardous constituents in the unsaturated zone or in the air. The owner or operator shall express the concentration at each sampling station in a form necessary for the determination of increases. The owner or operator shall submit data obtained from monitoring to the Department within 30 days after it is obtained.

(c) If the owner or operator determines that the environmental protection standard is being exceeded at any monitoring point established under section 66264.705 or any other type and location of sampling station, the owner or operator shall:

(1) notify the Department of this finding in writing within seven days of the determination. The notification shall indicate what concentration limits have been exceeded;

(2) submit to the Department an application for a permit modification to establish a corrective action program meeting the requirements of section 66264.708 within 180 days of the determination, or within 90 days if an engineering feasibility study has been previously submitted to the Department. The application shall, at a minimum, include the following information:

(A) a detailed description of corrective actions that will achieve compliance with the environmental protection standard specified in the permit under subsection (a) of this section;

(B) a plan for an environmental monitoring program that will demonstrate the effectiveness of the corrective action to the satisfaction of the Department. Such a monitoring program may be based on a compliance monitoring program developed to meet the requirements of this section.

(d) If the owner or operator determines that the environmental protection standard is being exceeded at any monitoring point established under section 66264.705, the owner or operator may demonstrate that a source other than a regulated unit caused the increase or that the increase resulted from error in sampling, analysis or evaluation. While the owner or operator may make a demonstration under this subsection in addition to, or in lieu of, submitting a permit modification application under subsection (c)(2) of this section, the owner or operator is not relieved of the requirement to submit a permit modification application within the time specified in subsection (c)(2) of this section unless the demonstration made under this subsection shows to the satisfaction of the Department that a source other than a regulated unit caused the increase or that the increase resulted from error in sampling, analysis or evaluation. In making a demonstration under this subsection, the owner or operator shall:

(1) notify the Department in writing within seven days of the determination that the owner or operator intends to make a demonstration under this subsection;

(2) within 90 days of the determination, submit a report to the Department which demonstrates that a source other than a regulated unit caused the standard to be exceeded or that the apparent noncompliance with the standard resulted from error in sampling, analysis or evaluation;

(3) within 90 days of the determination, submit to the Department an application for a permit modification to make any appropriate changes to the compliance monitoring program at the facility;

(4) continue to monitor in accord with the compliance monitoring program established under this section.

(e) If the owner or operator determines that the compliance monitoring program does not satisfy the requirements of this section, the owner or operator shall, within 90 days of the determination, submit an application for a permit modification to make any appropriate changes to the program.

(f) The owner or operator shall assure the Department that monitoring and corrective action measures are taken as necessary to achieve compliance with the environmental protection standard under section 66264.702 as specified in the permit or in an order issued by the Department.

(g) When the Department has determined that a constituent of hazardous waste has migrated from a regulated unit, the Department shall require the owner or operator to obtain samples of soil from specified depths and locations, and to chemically analyze such samples as necessary to determine the distances and depths through which constituents of hazardous waste have migrated from the regulated unit.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150(a), 25159, 25159.5 and 25245, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66264.708. Corrective Action Program.

An owner or operator required to establish a corrective action program under this article shall, at a minimum, discharge the following responsibilities.

(a) The owner or operator shall take corrective action to ensure that regulated units are in compliance with the environmental protection stan-

dard under section 66264.702. The Department will specify the environmental protection standard in the facility permit, including:

(1) a list of the hazardous constituents identified under section 66264.703;

(2) concentration limits under section 66264.704 for each of those hazardous constituents; and

(3) the monitoring points under section 66264.705.

(b) The owner or operator shall implement a corrective action program that prevents hazardous constituents from exceeding their respective concentration limits at the monitoring points established under section 66264.705 by removing the hazardous waste constituents or treating them in place or providing other effective measures. The permit will specify the specific measures that will be taken.

(c) The owner or operator shall begin corrective action within a reasonable time period after the environmental protection standard is exceeded. The Department will specify that time period in the facility permit. If a facility permit includes a corrective action program under this section in addition to a compliance monitoring program under section 66264.707, the permit will specify when the corrective action will begin, and such a requirement will operate in lieu of section 66264.707(c)(2).

(d) In conjunction with a corrective action program established under this section, the owner or operator shall establish and implement an environmental monitoring program to demonstrate the effectiveness of the corrective action program. Such a monitoring program may be based on the requirements for a compliance monitoring program under section 66264.707 and shall be as effective as that program in determining compliance with the environmental protection standard under section 66264.702 and in determining the success of a corrective action program under subsection (e) of this section.

(e) In addition to the other requirements of this section, the owner or operator shall conduct a corrective action program to remove or treat in place any hazardous constituents under section 66264.703 of this article that have caused, or could cause, the environmental protection standard to be exceeded, or take other action specified by the Department to reduce the concentration of hazardous constituents under section 66264.703 to levels below their respective concentration limits specified pursuant to this chapter, and to prevent subsequent exceedance of those levels by hazardous waste remaining at the regulated unit. The permit will specify the measures to be taken.

(1) Corrective action measures under this subsection shall be initiated and completed within a reasonable period of time considering the extent of contamination.

(2) Corrective action measures under this subsection may be terminated once the concentration of hazardous constituents under section 66264.703 is reduced to levels below their respective concentration limits under section 66264.704, and it is not likely that hazardous waste remaining at the regulated unit will cause a concentration limit under section 66264.704 to be exceeded.

(f) The owner or operator shall continue corrective action measures as necessary to ensure that the environmental protection standard is not exceeded. If the owner or operator is conducting corrective action under this section at the end of the post–closure care period or at the end of any compliance period established under section 66264.96 of article 6, the owner or operator shall continue that corrective action for as long as necessary to achieve compliance with the environmental protection standard under section 66264.702. The owner or operator may terminate corrective action measures under this section taken beyond the end of the post–closure care period or any compliance period established under section 66264.96 of article 6 if the owner or operator demonstrates, to the satisfaction of the Department, based on data from the environmental monitoring program under subsection (d) of this section, that the environmental protection standard of section 66264.702 has not been exceeded during the last three consecutive years.

(g) The owner or operator shall report in writing to the Department on the effectiveness of the corrective action program established under this section. The owner or operator shall submit these reports semiannually.

(h) If the owner or operator determines that the corrective action program does not satisfy the requirements of this section, the owner or operator shall, within 90 days of making such determination, submit an application for a permit modification to make any appropriate changes to the program.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150(a), 25159, 25159.5 and 25245, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

Article 19. Corrective Action for Solid Waste Management Units

§ 66264.800. Applicability.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Repealer of article 19 and section filed 12–23–93 as an emergency; operative 12–23–93 (Register 93, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–9–94 or emergency language will be repealed by operation of law on the following day.
3. Repealer of article 19 and section refiled 4–25–94 as an emergency; operative 4–25–94 (Register 94, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–23–94 or emergency language will be repealed by operation of law on the following day.
4. Repealer of article 19 and section refiled 8–22–94 as an emergency; operative 8–22–94 (Register 94, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–20–94 or emergency language will be repealed by operation of law on the following day.
5. Repealer of article 19 and section refiled 12–22–94 as an emergency; operative 12–22–94 (Register 94, No. 51). A Certificate of Compliance must be transmitted to OAL 4–21–95 or emergency language will be repealed by operation of law on the following day.
6. Repealer of article 19 and section refiled 6–29–95 as an emergency; operative 6–29–95 (Register 95, No. 26). A Certificate of Compliance must be transmitted to OAL by 10–27–95 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction inserting inadvertently deleted article 19 heading (Register 95, No. 43).
8. Repealer of article 19 and section refiled 10–26–95 as an emergency; operative 10–26–95 (Register 95, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–23–96 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 10–26–95 order transmitted to OAL 11–30–95 and filed 1–16–96 (Register 96, No. 3).

§ 66264.801. Corrective Action.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22)
2. Repealer filed 12–23–93 as an emergency; operative 12–23–93 (Register 93, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–9–94 or emergency language will be repealed by operation of law on the following day.
3. Repealer refiled 4–25–94 as an emergency; operative 4–25–94 (Register 94, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–23–94 or emergency language will be repealed by operation of law on the following day.
4. Repealer refiled 8–22–94 as an emergency; operative 8–22–94 (Register 94, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–20–94 or emergency language will be repealed by operation of law on the following day.
5. Repealer of section refiled 12–22–94 as an emergency; operative 12–22–94 (Register 94, No. 51). A Certificate of Compliance must be transmitted to OAL 4–21–95 or emergency language will be repealed by operation of law on the following day.
6. Repealer refiled 6–29–95 as an emergency; operative 6–29–95 (Register 95, No. 26). A Certificate of Compliance must be transmitted to OAL by 10–27–95 or emergency language will be repealed by operation of law on the following day.
7. Repealer refiled 10–26–95 as an emergency; operative 10–26–95 (Register 95, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–23–96 or emergency language will be repealed by operation of law on the following day.

[The next page is 758.19.]

8. Certificate of Compliance as to 10–26–95 order transmitted to OAL 11–30–95 and filed 1–16–96 (Register 96, No. 3).

Appendix I

Recordkeeping Instructions

The recordkeeping provisions of section 66264.73 specify that an owner or operator shall keep a written operating record at the facility. This appendix provides additional instructions for keeping portions of the operating record. See section 66264.73(b) for additional recordkeeping requirements.

The following information shall be recorded, as it becomes available, and maintained in the operating record until closure of the facility in the following manner: records of each hazardous waste received, transferred, treated, stored, or disposed of at the facility which include the following:

(1) a description by its common name and any applicable EPA Hazardous Waste Number or California Hazardous Waste Number from chapter 11 of this division which apply to the waste. The waste description also shall include the waste's physical form, i.e., liquid, sludge, solid, or contained gas. If the waste is not listed in chapter 11, article 4 or Appendix XII of this division, the description also shall include the process that produced it (for example, solid filter cake from production of ——, EPA Hazardous Waste Number W051).

Each hazardous waste listed in chapter 11, article 4, of this division, and each hazardous waste characteristic defined in chapter 11, article 3, of this division, has a four–digit EPA Hazardous Waste Number and/or a three–digit California Hazardous Waste Number assigned to it. This number shall be used for recordkeeping and reporting purposes. Where a hazardous waste contains more than one listed hazardous waste, or where more than one hazardous waste characteristic applies to the waste, the waste description shall include all applicable EPA and California Hazardous Waste Numbers;

(2) the estimated or manifest–reported weight, or volume and density, where applicable, in one of the units of measure specified in Table 1:

Table 1

Unit of Measurement	*Code*[1]
Gallons	G
Gallons per Hour	E
Gallons per Day	U
Liters	L
Liters per Hour	H
Liters per Day	V
Short Tons per Hour	D
Metric Tons per Hour	W
Short Tons per Day	N
Metric Tons per Day	S
Pounds per Hour	J
Kilograms per Hour	R
Cubic Yards	Y
Cubic Meters	C
Acres	B
Acre–feet	A
Hectares	Q
Hectare–meter	F
Btu's per Hour	I

[1]Single digit symbols are used here for data processing purposes.

(3) the method(s) (by handling code(s) as specified in Table 2) and date(s) of treatment, storage, or disposal.

Table 2

Handling Codes for Treatment, Storage, and Disposal Methods

Enter the handling code(s) listed below that most closely represents the technique(s) used at the facility to treat, store, or dispose of each quantity of hazardous waste received.

(a) Storage.
S01 Container (barrel, drum, etc.)
S02 Tank
S03 Waste pile
S04 Surface impoundment
S05 Drip Pad
S06 Containment Building (Storage)
S99 Other Storage (specify)

(b) Treatment.
(1) Thermal Treatment.
T06 Liquid injection incinerator
T07 Rotary kiln incinerator
T08 Fluidized bed incinerator
T09 Multiple hearth incinerator
T10 Infrared furnace incinerator
T11 Molten salt destructor
T12 Pyrolysis
T13 Wet Air oxidation
T14 Calcination
T15 Microwave discharge
T18 Other (specify)

(2) Chemical Treatment.
T19 Absorption mound
T20 Absorption field
T21 Chemical fixation
T22 Chemical oxidation
T23 Chemical precipitation
T24 Chemical reduction
T25 Chlorination
T26 Chlorinolysis
T27 Cyanide destruction
T28 Degradation
T29 Detoxification
T30 Ion exchange
T31 Neutralization
T32 Ozonation
T33 Photolysis
T34 Other (specify)

(3) Physical Treatment.
(A) Separation of components.
T35 Centrifugation
T36 Clarification
T37 Coagulation
T38 Decanting
T39 Encapsulation
T40 Filtration
T41 Flocculation
T42 Flotation
T43 Foaming
T44 Sedimentation
T45 Thickening
T46 Ultrafiltration
T47 Other (specify)

(B) Removal of Specific Components.
T48 Absorption–molecular sieve
T49 Activated carbon
T50 Blending
T51 Catalysis
T52 Crystallization
T53 Dialysis
T54 Distillation
T55 Electrodialysis
T56 Electrolysis
T57 Evaporation
T58 High gradient magnetic separation
T59 Leaching
T60 Liquid ion exchange
T61 Liquid–liquid extraction
T62 Reverse osmosis
T63 Solvent recovery
T64 Stripping
T65 Sand filter
T66 Other (specify)

(4) Biological Treatment
T67 Activated sludge

T68 Aerobic lagoon
T69 Aerobic tank
T70 Anaerobic tank
T71 Composting
T72 Septic tank
T73 Spray irrigation
T74 Thickening filter
T75 Trickling filter
T76 Waste stabilization pond
T77 Other (specify)
T78 [Reserved]
T79 [Reserved]

(5) Boiler and Industrial Furnaces
T80 Boiler
T81 Cement Kiln
T82 Lime Kiln
T83 Aggregate Kiln
T84 Phosphate Kiln
T85 Coke Oven
T86 Blast Furnace
T87 Smelting, Melting, or Refining Furnace
T88 Titanium Dioxide Chloride Process Oxidation Reactor
T89 Methane Reforming Furnace
T90 Pulping Liquor Recovery Furnace
T91 Combustion Device Used in the Recovery of Sulfur Values from Spent Sulfuric Acid
T92 Halogen Acid Furnace
T93 Other Industrial Furnaces Listed in 40 CFR 260.10 (specify)

(6) Other Treatment
T94 Containment Building (Treatment)

(c) Disposal.
D79 Underground injection
D80 Landfill
D81 Land treatment
D82 Ocean disposal
D83 Surface impoundment (to be closed as a landfill)
D99 Other Disposal (specify)

(d) Miscellaneous (Article 16)
X01 Open Burning/Open Detonation
X02 Mechanical Processing
X03 Thermal Unit
X04 Geologic Repository
X99 Other (Article 16) (specify)

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 58004 and 58012, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Part 264, Appendix I.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of tables 1 and 2 and NOTE filed 7–1–96; operative 7–31–96 (Register 96, No. 27).
3. Editorial correction restoring inadvertently omitted text (Register 97, No. 24).
4. Change without regulatory effect amending table 2 filed 6–12–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 24).

Appendix V

Examples of Potentially Incompatible Waste

Many hazardous wastes, when mixed with other waste or materials at a hazardous waste facility, can produce effects which are harmful to human health and the environment, such as (1) heat or pressure, (2) fire or explosion, (3) violent reaction, (4) toxic dusts, mists, fumes, or gases, or (5) flammable fumes or gases.

Below are examples of potentially incompatible wastes, waste components, and materials, along with the harmful consequences which result from mixing materials in one group with materials in another group. The list is intended as a guide to owners or operators of transfer, treatment, storage, and disposal facilities, and to enforcement and permit granting officials, to indicate the need for special precautions when managing these potentially incompatible waste materials or components.

This list is not intended to be exhaustive. An owner or operator shall, as the regulations require, adequately analyze all wastes so as to avoid creating uncontrolled substances or reactions of the type listed below, whether they are listed below or not.

It is possible for potentially incompatible wastes to be mixed in a way that precludes a reaction (e.g., adding acid to water rather than water to acid) or that neutralizes them (e.g., a strong acid mixed with a strong base), or that controls substances produced (e.g., by generating flammable gases in a closed tank equipped so that ignition cannot occur, and burning the gases in an incinerator).

In the lists below, the mixing of a Group A material with a Group B material may have the potential consequence as noted.

Group 1–A	*Group 1–B*
Acetylene sludge	Acid sludge
Alkaline caustic liquids	Acid and water
Alkaline cleaner	Battery acid
Alkaline corrosive liquids	Chemical cleaners
Alkaline corrosive battery fluid	Electrolyte, acid
Caustic wastewater	Etching acid liquid or solvent
Lime sludge and other corrosive alkalies	
Lime wastewater	Pickling liquor and other corrosive acids
Lime and water	Spent acid
Spent caustic	Spent mixed acid
	Spent sulfuric acid

Potential consequences: Heat generation; violent reaction.

Group 2–A	*Group 2–B*
Aluminum	Any waste in Group 1–A or 1–B
Beryllium	
Calcium	
Lithium	
Magnesium	
Potassium	
Sodium	
Zinc powder	
Other reactive metals and metal hydrides	

Potential consequences: Fire or explosion; generation of flammable hydrogen gas.

Group 3–A	*Group 3–B*
Alcohols	Any concentrated waste in Groups 1–A or 1–B
Water	Calcium
	Lithium
	Metal hydrides
	Potassium
	SO_2Cl_2, $SOCl_2$, PCl_3, CH_3SiCl_3
	Other water–reactive waste

Potential consequences: Fire, explosion, or heat generation; generation of flammable or toxic gases.

Group 4–A	*Group 4–B*
Alcohols	Concentrated Group 1–A or 1–B wastes
Aldehydes	Group 2–A wastes
Halogenated hydrocarbons	
Nitrated hydrocarbons	
Unsaturated hydrocarbons	
Other reactive organic compounds and solvents	

Potential consequences: Fire, explosion, or violent reaction.

Group 5–A	*Group 5–B*
Spent cyanide and sulfide solutions	Group 1–B wastes

Potential consequences: Generation of toxic hydrogen cyanide or hydrogen sulfide gas.

Group 6–A	*Group 6–B*
Chlorates	Acetic acid and other organic acids
Chlorine	Concentrated mineral acids
Chlorites	Group 2–A wastes
Chromic acid	Group 4–A wastes
Hypochlorites	Other flammable and combustible wastes
Nitrates	
Nitric acid, fuming	
Perchlorates	
Permanganates	
Peroxides	
Other strong oxidizers	

Potential consequences: Fire, explosion, or violent reaction.

Source: "Law, Regulations, and Guidelines for Handling of Hazardous Waste." California Department of Health, February 1975.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 208, 25159 and 25159.5, Health and Safety Code; 40 CFR Part 264, Appendix V.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

Appendix IX—Ground Water Monitoring List[1]

Common name[2]	CAS RN[3]	Chemical abstracts service index name[4]	Suggested methods[5]	PQL (ug/L)[6]
Acenaphthene.....	83-32-9	Acenaphthylene, 1,2-dihydro-.....	8100	200
			8270	10
Acenaphthylene....	208-96-8	Acenaphthylene.....	8100	200
			8270	10
Acetone.....	67-64-1	2-Propanone.....	8240	100
Acetophenone.....	98-86-2	Ethanone, 1-phenyl-..	8270	10
Acetonitrile; Methyl cyanide	75-05-8	Acetonitrile.....	8015	100
2-Acetylamino-fluorene; 2-AAF	53-96-3	Acetamide, N-9H-fluoren-2-yl-.....	8270	10
Acrolein.....	107-02-8	2-Propenal.....	8030	5
			8240	5
Acrylonitrile.....	107-13-1	2-Propenenitrile.....	8030	5
			8240	5
Aldrin.....	309-00-2	1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10, 10-hexachloro-1,4, 4a,5,8,8a-hexahydro-(1α,4α,4aß,5, 8α, 8aß).....	8080	0.05
			8270	10
Allyl chloride....	107-05-1	1-Propene, 3-chloro-	8010	5
			8010	100
4-Aminobiphenyl...	92-67-1	[1,1'-Biphenyl]-4-amine.....	8270	10
Aniline.....	62-53-3	Benzenamine.....	8270	10
Anthracene.....	120-12-7	Anthracene.....	8100	200
			8270	10
Antimony.....	(Total)	Antimony.....	6010	300
			7040	2,000
			7041	30

[The next page is 758.21.]

Common name[2]	CAS RN[3]	Chemical abstracts service index name[4]	Suggested methods [5]	PQL (ug/L)[6]
Aramite.....	140-57-8	Sulfurous acid, 2-chloroethyl 2-[4-(1,1-dimethylethyl) phenoxy]-1-methyl-ethyl ester.....	8270	10
Arsenic.....	(Total)	Arsenic.....	6010	550
			7060	10
			7061	20
Barium.....	(Total)	Barium.....	6010	20
			7080	1,000
Benzene.....	71-43-2	Benzene.....	8020	2
			8240	5
Benzo[a] anthracene; Benzanthracene..	56-55-3	Benz[a]anthracene....	8100	200
			8270	10
Benzo[b] fluoranthene....	205-99-2	Benz[e]acephenanthrylene.....	8100	200
			8270	10
Benzo[k]fluoranthene.....	207-08-9	Benzo[k]fluoranthene	8100	200
			8270	10
Benzo[ghi] perylene.....	191-24-2	Benzo[ghi]perylene...	8100	200
			8270	10
Benzo[a]pyrene....	50-32-8	Benzo[a]pyrene.....	8100	200
			8270	10
Benzyl alcohol....	100-51-6	Benzenemethanol.....	8270	20

Common name[2]	CAS RN[3]	Chemical abstracts service index name[4]	Suggested methods [5]	PQL (ug/L)[6]
Beryllium.....	(Total)	Beryllium.....	6010	3
			7090	50
			7091	2
alpha-BHC.....	319-84-6	Cyclohexane, 1,2,3,4, 5,6-hexachloro-, (1α,2α,3ß,4α,5ß,6ß)-.	8080	0.05
			8250	10
beta-BHC.....	319-85-7	Cyclohexane, 1,2,3,4, 5,6,-hexachloro-, (1α,2ß,3α,4ß,5α,6ß)-	8080	0.05
			8250	40
delta-BHC.....	319-86-8	Cyclohexane, 1,2,3,4, 5,6-hexachloro-, (1α, 2α,3α,4ß,5α,6ß)-....	8080	0.1
			8250	30
gamma-BHC; Lindane.....	58-89-9	Cyclohexane, 1,2,3,4, 5,6,-hexachloro-, (1α,2α,3ß,4α,5α, 6ß)-	8080	0.05
			8250	10
Bis(2-chloro-ethoxy)methane....	111-91-1	Ethane, 1,1'-[methyl-enebis(oxy)]bis [2-chloro-.....	8270	10
Bis(2-chloro-ethyl)ether.....	111-44-4	Ethane, 1,1'-oxybis [2-chloro-.....	8270	10

Common name[2]	CAS RN[3]	Chemical abstracts service index name[4]	Suggested methods[5]	PQL (ug/L)[6]
Bis(2-chloro-1-methylethyl) ether; 2,2'-Dichlorodiisopropyl ether.....	108-60-1	Propane, 2,2'-oxybis [1-chloro-.....	8010	100
			8270	10
Bis(2-ethylhexyl) phthalate.....	117-81-7	1,2-Benzenedicarboxylic acid, bis (2-ethylhexyl)ester..	8060	20
			8270	10
Bromodichloromethane.....	75-27-4	Methane, bromodichloro-.....	8010	1
			8240	5
Bromoform; Tribromomethane.....	75-25-2	Methane, tribromo-...	8010	2
			8240	5
4-Bromophenyl phenyl ether....	101-55-3	Benzene, 1-bromo-4-phenoxy-.....	8270	10
Butyl benzyl phthalate; Benzyl butyl phthalate.....	85-68-7	1,2-Benzenedicarboxylic acid, butyl phenylmethyl ester.....	8060	5
			8270	10

Common name[2]	CAS RN[3]	Chemical abstracts service index name[4]	Suggested methods[5]	PQL (ug/L)[6]
Cadmium.....	(Total)	Cadmium.....	6010	40
			7130	50
			7131	1
Carbon disulfide..	75-15-0	Carbon disulfide.....	8240	5
Carbon tetra-chloride.....	56-23-5	Methane, tetrachloro-	8010	1
			8240	5
Chlordane.....	57-74-9	4,7-Methano-1H-indene, 1, 2, 4, 5, 6, 7, 8, 8-octachloro-2,3,3a,4,7, 7a-hexahydro-.....	8080	0.1
			8250	10
p-Chloroaniline...	106-47-8	Benzenamine, 4-chloro-.....	8270	20
Chlorobenzene.....	108-90-7	Benzene, chloro-.....	8010	2
			8020	2
			8040	5
Chlorobenzilate...	510-15-6	Benzeneneacetic acid, 4-chloro-α-(4-chlorophenyl)-α-hydroxy,ethyl ester..	8270	10
p-Chloro-m-cresol.....	59-50-7	Phenol, 4-chloro-3-methyl-.....	8040	5
			8270	20
Chloroethane; Ethyl chloride..	75-00-3	Ethane, chloro-.....	8010	5
			8240	10
Chloroform.....	67-66-3	Methane, trichloro-..	8010	0.05
			8240	5

Common name[2]	CAS RN[3]	Chemical abstracts service index name[4]	Suggested methods [5]	PQL (ug/L)[6]
2-Chloronaphthalene.....	91-58-7	Naphthalene, 2-chloro-.....	8120	10
			8270	10
2-Chlorophenol....	95-57-8	Phenol,2-chloro-.....	8040	5
			8270	10
4-Chlorophenyl phenyl ether....	7005-72-3	Benzene, 1-chloro-4-phenoxy-.....	8270	10
Chloroprene.....	126-99-8	1,3-Butadiene,2-chloro-.....	8010	50
			8240	5
Chromium.....	(Total)	Chromium.....	6010	70
			7190	500
			7191	10
Chrysene.....	218-01-9	Chrysene.....	8100	200
			8270	10
Cobolt.....	(Total)	Cabolt.....	6010	70
			7200	500
			7201	10
Copper.....	(Total)	Copper.....	6010	60
			7210	200
m-Cresol.....	108-39-4	Phenol,3-methyl-.....	8270	10
o-Cresol.....	95-48-7	Phenol,2-methyl-.....	8270	10
p-Cresol.....	106-44-5	Phenol,4-methyl-.....	8270	10
Cyanide.....	57-12-5	Cyanide.....	9010	40
2,4-D;2,4-Dichlorophenoxyacetic acid.....	94-75-7	Acetic acid, (2,4-dichlorophenoxy)-.....	8150	10

Common name[2]	CAS RN[3]	Chemical abstracts service index name[4]	Suggested methods [5]	PQL (ug/L)[6]
4,4'-DDD.....	72-54-8	Benzene 1,1'-(2,2-dichloroethylidene) bis[4-chloro-.....	8080	0.1
			8270	10
4,4'-DDE.....	72-55-9	Benzene 1,1'-(dichloroethylidene) bis[4-chloro-.....	8080	0.05
			8270	10
4,4'-DDT.....	50-29-3	Benzene 1,1'-(2,2,2-trichloroethylidene) bis[4-chloro-.....	8080	0.1
			8270	10
Diallate.....	2303-16-4	Carbamothioic acid, bis (1-methylethyl)- , S- (2,3-dichloro-2-propenyl) ester.	8270	10
Dibenz[a,h] anthracene.....	53-70-3	Dibenz[a,h]anthracene	8100	200
			8270	10
Dibenzofuran.....	132-64-9	Dibenzofuran.....	8270	10
Dibromochloro-methane; Chlorodibromo-methane.....	124-48-1	Methane, dibromo-chloro-.....	8010	1
			8240	5

Common name[2]	CAS RN[3]	Chemical abstracts service index name[4]	Suggested methods [5]	PQL (ug/L)[6]
1,2-Dibromo-3-chloropropane; DBCP.....	96-12-8	Propane, 1,2-dibromo-3-chloro-.....	8010	100
			8240	5
			8270	10
1,2-Dibromoethane; Ethylene dibromide.....	106-93-4	Ethane, 1,2-dibromo-.	8010	10
			8240	5
Di-n-butyl phthalate.....	84-74-2	1,2-Benzenedicarboxylic acid, dibutyl ester.....	8060	5
			8270	10
o-Dichlorobenzene.	95-50-1	Benzene, 1,2-dichloro	8010	2
			8020	5
			8120	10
			8270	10
m-Dichlorobenzene.	541-73-1	Benzene, 1,3-dichloro	8010	5
			8020	5
			8120	10
			8270	10
p-Dichlorobenzene.	106-46-7	Benzene, 1,4-dichloro-.....	8010	2
			8020	5
			8120	15
			8270	10
3,3'-Dichlorobenzidine.....	91-94-1	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dichloro-	8270	20

Common name[2]	CAS RN[3]	Chemical abstracts service index name[4]	Suggested methods[5]	PQL (ug/L)[6]
trans-1,4-Dichloro-2-butene.....	110-57-6	2-Butene, 1,4-dichloro-, (E)-.....	8240	5
Dichlorodifluoromethane.....	75-71-8	Methane, dichlorodifluoro-.....	8010	10
			8240	5
1,1-Dichloroethane.....	75-34-3	Ethane, 1,1-dichloro-	8010	1
			8240	5
1,2-Dichloroethane; Ethylene dichloride.....	107-06-2	Ethane, 1,2-dichloro-	8010	0.05
			8240	5
1,1-Dichloroethylene; Vinylidene chloride.....	75-35-4	Ethene, 1,1-dichloro-	8010	0.5
			8240	5
trans-1,2-Dichloroethylene.....	156-60-5	Ethene, 1,2-dichloro-,(E)-.....	8010	1
			8240	5
2,4-Dichlorophenol.....	120-83-2	Phenol, 2,4-dichloro-	8040	5
			8270	10
2,6-Dichlorophenol	87-65-0	Phenol, 2,6- dichloro-	8270	10

Common name[2]	CAS RN[3]	Chemical abstracts service index name[4]	Suggested methods[5]	PQL (ug/L)[6]
1,2-Dichloro propane.....	78-87-5	Propane, 1,2-dichloro-.....	8010	0.5
			8240	5
cis-1,3-Dichloro-propene.....	10061-01-5	1-Propene, 1,3-dichloro-, (Z)-...	8010	20
			8240	5
trans-1,3-Dichloropropene.	10061-02-6	1-Propene, 1,3-dichloro-, (E)-...	8010	5
			8240	5
Dieldrin.....	60-57-1	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9,-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aα,2ß,2aα,3ß,6ß,6aα,7ß,7aα)-.....	8080	0.05
			8270	10
Diethyl phthalate.	84-66-2	1,2-Benzenedicarboxylic acid, diethyl ester.....	8060	5
			8270	10
O,O-Diethyl O-2-pyrazinyl phosphorothioate; Thionazin.....	297-97-2	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester.....	8270	10

Common name[2]	CAS RN[3]	Chemical abstracts service index name[4]	Suggested methods [5]	PQL (ug/L)[6]
Dimethoate.....	60-51-5	Phosphorodithioic acid, O,O-dimethyl S-[2-(methylamino)-2-oxoethyl] ester....	8270	10
p-(Dimethylamino) azobenzene.....	60-11-7	Benzenamine, N,N-dime-thyl-4-(phenylazo)-.....	8270	10
7,12-Dimethylbenz [a]anthracene...	57-97-6	Benz[a]anthracene, 7, 12-dimethyl-.....	8270	10
3,3'-Dimethylben-zidine.....	119-93-7	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethyl-.....	8270	10
alpha,alpha-Di-methylphenethyl-amine.....	122-09-8	Benzeneethanamine, α,α-dimethyl-.....	8270	10
2,4-Dimethyl-phenol.....	105-67-9	Phenol, 2,4-dimethyl-	8040	5
			8270	10
Dimethyl phthalate.....	131-11-3	1,2-Benzenedicarboxy-lic acid, dimethyl ester.....	8060	5
			8270	10
m-Dinitrobenzene..	99-65-0	Benzene, 1,3-dinitro-	8270	10

Common name[2]	CAS RN[3]	Chemical abstracts service index name[4]	Suggested methods[5]	PQL (ug/L)[6]
4,6-Dinitro-o-cresol.....	534-52-1	Phenol, 2-methyl-4,6-dinitro-.....	8040	150
			8270	50
2,4-Dinitrophenol.	51-28-5	Phenol, 2,4-dinitro-.	8040	150
			8270	50
2,4-Dinitrotoluene.....	121-14-2	Benzene, 1-methyl-2,4-dinitro-.....	8090	0.2
			8270	10
2,6-Dinitrotoluene.....	606-20-2	Benzene, 2-methly-1,3-dinitro-.....	8090	0.1
			8270	10
Dinoseb; DNBP; 2-sec-Butyl-4,6-dinitrophenol...	88-85-7	Phenol, 2-(1-methylpropyl)-4,6-dinitro-.	8150	1
			8270	10
Di-n-octyl phthalate.....	117-84-0	1,2-Benzenedicarboxylic acid, dioctyl ester.....	8060	30
			8270	10
1,4-Dioxane.....	123-91-1	1,4-Dioxane.....	8015	150
Diphenylamine.....	122-39-4	Benzenamine, N-phenyl	8270	10
Disulfoton.....	298-04-4	Phosphorodithioic acid, O,O-diethyl S-[2-(ethylthio)- S-[2-ethyl]ester.....	8140	2
			8270	10

Common name[2]	CAS RN[3]	Chemical abstracts service index name[4]	Suggested methods [5]	PQL (ug/L)[6]
Endosulfan I.....	959-98-8	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a hexahydro-,3-oxide, (3α,5aß,6α,9α, 9aß)-.	8080	0.1
			8250	10
Endosulfan II.....	33213-65-9	6,9-Methano-2,4,3-benzodioxathiepin, 7,8,9,10,10-hexachloro- 1,5,5a,6, 9, 9a-hexahydro-, 3- oxide, (3α,5aα, 6ß,9ß,9aα)-.....	8080	0.05
Endosulfan sulfate	1031-07-8	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexa-chloro- 1,5,5a,6, 9,9a -hexahydro-, 3,3- dioxide.....	8080	0.5
			8270	10
Endrin.....	72-20-8	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6, 6a,7,7a-octahydro-, (1aα,2ß,2aß,3α,6α,6aß ,7ß,7aα)-.....	8080	0.1
			8250	10

Common name[2]	CAS RN[3]	Chemical abstracts service index name[4]	Suggested methods[5]	PQL (ug/L)[6]
Endrin aldehyde...	7421-93-4	1,2,4-Methenocyclopenta[cd]pentalene-5-carboxaldehyde,2,2a,3,3,4,7-hexachlorodecahydro-,(1α,2ß,2aß,4ß,4aß,5ß,6aß,6bß,7R*)-.....	8080	0.2
			8270	10
Ethylbenzene.....	100-41-4	Benzene, ethyl-.....	8020	2
			8240	5
Ethyl methacrylate....	97-63-2	2-Propenoic acid, 2-methyl-, ethyl ester.	8015	10
			8240	5
			8270	10
Ethyl methanesulfonate.....	62-50-0	Methanesulfonic acid, ethyl ester.....	8270	10
Famphur.....	52-85-7	Phosphorothioic acid, O-[4-[(dimethylamino)sulfonyl] phenyl]-O,O-dimethyl ester.....	8270	10
Fluoranthene.....	206-44-0	Fluoranthene.....	8100	200
			8270	10
Fluorene.....	86-73-7	9H- Fluorene.....	8100	200
			8270	10
Heptachlor.....	76-44-8	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-.....	8080	0.05
			8270	10

Common name[2]	CAS RN[3]	Chemical abstracts service index name[4]	Suggested methods [5]	PQL (ug/L)[6]
Heptachlor epoxide	1024-57-3	2,5-Methano-2H-indeno [1,2-b]oxirene, 2,3,4,5,6,7, 7-heptachloro- 1a,1b,5,5a,6, 6a,-hexahydro-, (1aα,1bß,2α,5α,5aß ,6ß, 6aα).....	8080	1
			8270	10
Hexachlorobenzene.	118-74-1	Benzene, hexachloro-.	8120	0.5
			8270	10
Hexachlorobutadiene.....	87-68-3	1,3-Butadiene, 1,1,2, 3,4,4-hexachloro-....	8120	5
			8270	10
Hexachlorocyclopentadiene.....	77-47-4	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-.....	8120	5
			8270	10
Hexachloroethane..	67-72-1	Ethane, hexachloro-..	8120	0.5
			8270	10
Hexachlorophene...	70-30-4	Phenol, 2,2'-methylenebis[3,4,6-trichloro-.....	8270	10
Hexachloropropene.	1888-71-7	1-Propene, 1,1,2, 3,3,3-hexachloro-.	8270	10
2-Hexanone.....	591-78-6	2- Hexanone.....	8240	50

Common name[2]	CAS RN[3]	Chemical abstracts service index name[4]	Suggested methods[5]	PQL (ug/L)[6]
Indeno (1,2,3-cd) pyrene.....	193-39-5	Indeno[1,2,3-cd] pyrene.....	8100	200
			8270	10
Isobutyl alcohol..	78-83-1	1-Propanol, 2-methyl-	8015	50
Isodrin.....	465-73-6	1,4,5,8-Dimethanonaph -thalene, 1,2,3,4, 10,10-hexachloro-1, 4,4a,5,8,8a hexahydro- (1α,4α, 4aß,5ß,8ß,8aß)-.....	8270	10
Isophorone.....	78-59-1	2-Cyclohexen-1-one, 3,5,5,-trimethyl-....	8090	60
			8270	10
Isosafrole.....	120-58-1	1,3-Benzodioxole, 5- (1-propenyl)-.....	8270	10
Kepone.....	143-50-0	1,3,4-Metheno-2H- cyclobuta- [cd]penta- len-2-one,1,1a,3,3a, 4,5,5,5a,5b,6- decachlorooctahydro-.	8270	10
Lead.....	(Total)	Lead.....	6010	40
			7420	1,000
			7421	10
Mercury.....	(Total)	Mercury.....	7470	2
Methacryloni- trile.....	126-98-7	2-Propenenitrile,2- methyl-.....	8015	5
			8240	5
Methapyrilene.....	91-80-5	1,2,Ethanediamine, N,N -dimethyl-N'-2- pyri- dinyl-N'-		

Common name[2]	CAS RN[3]	Chemical abstracts service index name[4]	Suggested methods [5]	PQL (ug/L)[6]
		(2-thienyl methyl)-	8270	10
Methoxychlor.....	72-43-5	Benzene, 1,1'-(2,2,2, trichloroethylidene)		
		bis[4-methoxy-.....	8080	2
			8270	10
Methyl bromide;				
Bromomethane.....	74-83-9	Methane, bromo-.....	8010	2
			8240	10
Methyl chloride;				
Chloromethane...	74-87-3	Methane, chloro-.....	8010	1
			8240	10
3-Methylcholan-				
threne.....	56-49-5	Benz[j]aceanthrylene,		
		1,2-dihydro-3-methyl.	8270	10
Methylene bromide;				
Dibromomethane....				
	7-95-3	Methane, dibromo.....	8010	15
			8240	5
Methylene				
chloride;				
Dichloromethane...	75-09-2	Methane, dichloro-...	8010	5
			8240	5
Methyl ethyl				
ketone; MEK.....	78-93-3	2-Butanone.....	8015	10
			8240	100
Methyl iodide;				
Iodomethane.....	74-88-4	Methane, iodo-.....	8010	40
			8240	5
Methyl				
methacrylate....	80-62-6	2-Propenoic acid, 2-		
		methyl-, methyl ester	8015	2
			8240	5

Common name[2]	CAS RN[3]	Chemical abstracts service index name[4]	Suggested methods[5]	PQL (ug/L)[6]
Methyl methanesulfonate	66-27-3	Methanesulfonic acid, methyl ester	8270	10
2-Methylnaphthalene	91-57-6	Naphthalene, 2-methyl-	8270	10
Methyl parathion; Parathion methyl	298-00-0	Phosphorothioic acid, o,o-dimethyl O-(4-nitrophenyl) ester	8140	0.5
			8270	10
4-Methyl-2-pentanone; Methyl isobutyl ketone	108-10-1	2-Pentanone, 4-methyl-	8015	5
			8240	50
Naphthalene	91-20-3	Naphthalene	8100	200
			8270	10
1,4-Naphthoquinone	130-15-4	1,4-Naphthalenedione	8270	10
1-Naphthylamine	34-32-7	1-Naphthalenamine	8270	10
2-Naphthylamine	91-59-8	2-Naphthalenamine	8270	10
Nickel	(Total)	Nickel	6010	50
			7520	400
o-Nitroaniline	88-74-4	Benzenamine, 2-nitro-	8270	50
m-Nitroaniline	99-09-2	Benzenamine, 3-nitro-	8270	50
p-Nitroaniline	100-01-6	Benzenamine, 4-nitro-	8270	50
Nitrobenzene	98-95-3	Benzene, nitro-	8090	40
			8270	10
o-Nitrophenol	88-75-5	Phenol, 2-nitro-	8040	5
			8270	10

Common name[2]	CAS RN[3]	Chemical abstracts service index name[4]	Suggested methods[5]	PQL (ug/L)[6]
p-Nitrophenol.....	100-02-7	Phenol, 4-nitro.....	8040	10
			8270	50
4-Nitroquinoline 1-oxide....	56-57-5	Quinoline, 4-nitro-, 1-oxide.....	8270	10
N-Nitrosodi-n-butylamine.....	924-16-3	1-Butanamine, N-butyl-N-nitroso-.....	8270	10
N-Nitrosodiethylamine.....	55-18-5	Ethanamine, N-ethyl-N-nitroso-.....	8270	10
N-Nitrosodimethylamine.....	62-75-9	Methanamine, N-methyl-N-nitroso-..	8270	10
N-Nitrosodiphenylamine.....	86-30-6	Benzenamine, N-nitroso-N-phenyl-..	8270	10
N-Nitrosodipropylamine; Di-n-propylnitrosamine.....	621-64-7	1-Propanamine, N-nitroso-N-propyl-.....	8270	10
N-Nitrosomethylethylamine.....	10595-95-6	Ethanamine, N-methyl-N-nitroso-.....	8270	10
N-Nitrosomorpholine.....	59-89-2	Morpholine, 4-nitroso-.....	8270	10
N-Nitrosopiperidine.....	100-75-4	Piperidine, 1-nitroso-.....	8270	10

Common name[2]	CAS RN[3]	Chemical abstracts service index name[4]	Suggested methods[5]	PQL (ug/L)[6]
N-Nitrosopyrrolidine.....	930-55-2	Pyrrolidine, 1-nitroso-.....	8270	10
5-Nitro-o-toluidine.....	99-55-8	Benzenamine, 2-methyl-5-nitro-....	8270	10
Parathion.....	56-38-2	Phosphorothioic acid, o,o-diethyl-O-(4-nitrophenyl) ester...	8270	10
Polychlorinated biphenyls; PCBs.	See Note 7	1,1'-Biphenyl, chloro derivatives.....	8080	50
			8250	100
Polychlorinated dibenzo-p-dioxins; PCDDs..	See Note 8	Dibenzo[b,e][1,4] dioxin, chloro derivatives.....	8280	0.01
Polychlorinated dibenzofurans; PCDFs.....	See Note 9	Dibenzofuran, chloro derivatives	8280	0.01
Pentachlorobenzene.....	608-93-5	Benzene, pentachloro-	8270	10
Pentachloroethane.	76-01-7	Ethane, pentachloro...	8240	5
			8270	10
Pentachloronitrobenzene.....	82-68-8	Benzene, pentachloronitro-.....	8270	10
Pentachlorophenol.	87-86-5	Phenol, pentachloro-.	8040	5
			8270	50

Common name[2]	CAS RN[3]	Chemical abstracts service index name[4]	Suggested methods [5]	PQL (ug/L)[6]
Phenacetin.....	62-44-2	Acetamide, N-(4-ethoxyphenyl).....	8270	10
Phenanthrene.....	85-01-8	Phenanthrene.....	8100	200
			8270	10
Phenol.....	108-95-2	Phenol.....	8040	1
			8270	10
p-Phenylenediamine.....	106-50-3	1,4 Benzenediamine...	8270	10
Phorate.....	298-02-2	Phosphorodithioic acid, O,O-diethyl S-[(ethylthio)methyl] ester.....	8140	2
			8270	10
2-Picoline.....	109-06-8	Pyridine, 2-methyl-..	8240	5
			8270	10
Pronamide.....	23950-58-5	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)	8270	10
Propionitrile; Ethyl cyanide...	107-12-0	Propanenitrile.....	8015	60
			8240	5
Pyrene.....	129-00-0	Pyrene.....	8100	200
			8270	10
Pyridine.....	110-86-1	Pyridine.....	8240	5
			8270	10
Safrole.....	94-59-7	1,3-Benzodioxole, 5-(2-propenyl)-.....	8270	10
Selenium.....	(Total)	Selenium.....	6010	750
			7740	20
			7741	20

Common name[2]	CAS RN[3]	Chemical abstracts service index name[4]	Suggested methods[5]	PQL (ug/L)[6]
Silver.....	(Total)	Silver.....	6010	70
			7760	100
Silvex; 2,4,5-TP..	93-72-1	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-.....	8150	2
Styrene.....	100-42-5	Benzene, ethenyl-....	8020	1
			8240	5
Sulfide.....	18496-25-8	Sulfide.....	9030	10,000
2,4,5-T; 2,4,5-Trichlorophenoxyacetic acid..	93-76-5	Acetic acid, (2,4,5-trichlorophenoxy)-...	8150	2
2,3,7,8-TCDD; 2,3,7,8-Tetrachlorodibenzo-p-dioxin.....	1746-01-6	Dibenzo[b,e][1,4]dioxin, 2,3,7,8-tetrachloro-.....	8280	0.005
1,2,4,5-Tetrachlorobenzene...	95-94-3	Benzene, 1,2,4,5-tetra-chloro-.....	8270	10
1,1,1,2-Tetrachloroethane....	630-20-6	Ethane, 1,1,1,2-tetrachloro-.....	8010	5
			8240	5
1,1,2,2-Tetrachloroethane....	79-34-5	Ethane, 1,1,2,2-tetra-chloro-.....	8010	0.5
			8240	5

Common name[2]	CAS RN[3]	Chemical abstracts service index name[4]	Suggested methods [5]	PQL (ug/L)[6]
Tetrachloroethylene; Perchloroethylene; Tetrachloroethene....	127-18-4	Ethene, tetrachloro-	8010	0.5
			8240	5
2,3,4,6-Tetrachlorophenol....	58-90-2	Phenol, 2,3,4,6-tetrachloro-.....	8270	10
Tetraethyl dithiopyrophosphate; Sulfotepp.....	3689-24-5	Thiodiphosphoric acid ([(HO)^{2}/P(S)]^{2}/O), tetraethyl ester.....	8270	10
Thallium.....	(Total)	Thallium.....	6010	400
			7840	1,000
			7841	10
Tin.....	(Total)	Tin.....	7870	8,000
Toluene.....	108-88-3	Benzene, methyl-.....	8020	2
			8240	5
o-Toluidine.....	95-53-4	Benzenamine, 2-methyl-.....	8270	10
Toxaphene.....	8001-35-2	Toxaphene.....	8080	2
1,2,4-Trichlorobenzene.....	120-82-1	Benzene, 1,2,4-trichloro-.....	8270	10
1,1,1-Trichloroethane; Methylchloroform.....	71-55-6	Ethane, 1,1,1,-trichloro-.....	8240	5

Common name[2]	CAS RN[3]	Chemical abstracts service index name[4]	Suggested methods [5]	PQL (ug/L)[6]
1,1,2-Trichloroethane.....	79-00-5	Ethane, 1,1,2-trichloro-.....	8010	0.2
			8240	5
Trichloroethylene; Trichloroethene.....	79-01-6	Ethene, trichloro-....	8010	1
			8250	5
Trichlorofluoromethane.....	75-69-4	Methane, trichlorofluoro-.....	8010	10
			8240	5
2,4,5-Trichlorophenol.....	95-95-4	Phenol, 2,4,5-trichloro-.....	8270	10
2,4,6-Trichlorophenol.....	88-06-2	Phenol, 2,4,6-trichloro-.....	8040	5
			8270	10
1,2,3-Trichloropropane.....	96-18-4	Propane, 1,2,3-trichloro.....	8010	10
			8240	5
O,O,O-Triethyl phosphorothioate.....	126-68-1	Phosphorothioic acid, O,O,O-triethyl ester.	8270	10
sym-Trinitrobenzene.....	99-35-4	Benzene, 1,3,5-trinitro-.....	8270	10

Common name[2]	CAS RN[3]	Chemical abstracts service index name[4]	Suggested methods [5]	PQL (ug/L)[6]
Vanadium.....	(Total)	Vanadium.....	6010	80
			7910	2,000
			7911	40
Vinyl acetate.....	108-05-4	Acetic acid, ethenyl ester.....	8240	5
Vinyl chloride....	75-01-4	Ethene, chloro-.....	8010	2
			8240	10
Xylene (Total)....	1330-20-7	Benzene, dimethyl-	8020	5
			8240	5
Zinc.....	(Total)	Zinc.....	6010	20
			7950	50

[1]The regulatory requirements pertain only to the list of substances; the right hand columns (Methods and PQL) are given for informational purposes only. See also footnotes 5 and 6.
[2]Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.
[3]Chemical Abstracts Service registry number. Where "Total" is entered, all species in the ground water that contain this element are included.
[4]CAS index names are those used in the 9th Cumulative Index.
[5]Suggested Methods refer to analytical procedure numbers used in EPA Report SW–846 "Test Methods for Evaluating Solid Waste", third edition and updates, as incorporated by reference in section 66260.11. Analytical details can be found in SW–846 and in documentation on file at the agency. The packed column gas chromatography methods 8010, 8020, 8030, 8040, 8060, 8080, 8090, 8110, 8120, 8140, 8150, 8240, and 8250 were promulgated methods through Update IIB of SW–846 and, as of Update III, the Agency has replaced these methods with "capillary column GC methods", as the suggested methods.
[6]Practical Quantitation Limits (PQLs) are the lowest concentrations of analytes in ground waters that can be reliably determined within specified limits of precision and accuracy by the indicated methods under routine laboratory operating conditions. The PQLs listed are generally stated to one significant figure. CAUTION: The PQL values in many cases are based only on a general estimate for the method and not on a determination for individual compounds; PQLs are not a part of the regulation.
[7]Polychlorinated biphenyls (CAS RN 1336–36–3); this category contains congener chemicals, including constituents of Aroclor–1016 (CAS RN 12674–11–2); Aroclor–1221 (CAS RN 11104–28–2), Aroclor–1232 (CAS RN 11141–16–5), Aroclor–1242 (CAS RN 53469–21–9), Aroclor–1248 (CAS RN 12672–29–6), Aroclor–1254 (CAS RN 11097–69–1), and Aroclor–1260 (CAS RN 11096–82–5). The PQL shown is an average value for PCB congeners.
[8]This category contains congener chemicals, including tetrachlorodibenzo–p–dioxins (see also 2,3,7,8–TCDD), pentachlorodibenzo–p–dioxins, and hexachlorodibenzo–p–dioxins. The PQL shown is an average value for PCDD congeners.
[9]This category contains congener chemicals, including tetrachlorodibenzofurans, pentachlorodibenzofurans, and hexachlorodi–benzonfurans. The PQL shown is an average value for PCDF congeners.

NOTE: Authority cited: Sections 25150, 25159 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR Part 264, Appendix IX.

HISTORY
1. Amendment of footnote 5 and NOTE filed 10–13–98; operative 11–12–98 (Register 98, No. 42).

Article 27. Air Emission Standards for Process Vents

§ 66264.1030. Applicability.

(a) The regulations in this article apply to owners and operators of facilities that treat, store, or dispose of RCRA hazardous wastes (except as provided in Section 66264.1).

(b) Except for section 66264.1034, subsections (d) and (e), this article applies to process vents associated with distillation, fractionation, thin–film evaporation, solvent extraction, or air or steam stripping operations that manage RCRA hazardous wastes with organic concentrations of at least 10 ppmw, if these operations are conducted in one of the following:

(1) a unit that is subject to the permitting requirements of chapter 20, or

(2) a unit (including a hazardous waste recycling unit) that is not exempt from permitting under the provisions of section 66262.34(a) (i.e., a hazardous waste recycling unit that is not a 90–day tank or container) and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of chapter 20, or

(3) A unit that is exempt from permitting under the provisions of section 66262.34(a) (i.e., a "90–day" tank or container) and is not a recycling unit under the provisions of section 66261.6.

(c) If the owner and operator of a facility subject to this article received a final permit under RCRA section 3005 prior to December 6, 1996, the requirements of this article shall be incorporated into the permit when the permit is reissued in accordance with the requirements of 40 CFR 124.15 or reviewed in accordance with the requirements of section 66270.50(d). Until such date when the owner and operator receives a final permit incorporating the requirements of this article, the owner and operator is subject to the requirements of article 27.

(d) The requirements of this article do not apply to the process vents at a facility where the facility owner or operator certifies that all of the process vents that would otherwise be subject to this article are equipped with and operating air emission controls in accordance with the process vent requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63. The documentation of compliance under regulations at 40 CFR part 60, part 61, or part 63 shall be kept with, or made readily available with, the facility operating record.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR section 264.1030.

HISTORY

1. New article 27 (sections 66264.1030–66264.1036) filed 12–23–92; operative 1–22–93 (Register 93, No. 2).
2. Change without regulatory effect repealing former subsections (b)–(c) and adding new subsections (b)–(d) and amending NOTE filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).
3. Change without regulatory effect repealing first subsections (b)–(b)(2) filed 7–1–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 27).

§ 66264.1032. Standards: Process Vents.

(a) The owner or operator of a facility with process vents associated with distillation, fractionation, thin–film evaporation, solvent extraction, or air or steam stripping operations managing hazardous wastes organic concentrations of at least 10 ppmw shall either:

(1) reduce total organic emissions from all affected process vents at the facility below 1.4 kg/h (3 lb/h) and 2.8 Mg/yr (3.1 tons/yr); or

(2) reduce, by use of a control device, total organic emissions from all affected process vents at the facility by 95 weight percent.

(b) If the owner or operator installs a closed–vent system and control device to comply with the provisions of subsection (a) of this section the closed–vent system and control device shall meet the requirements of Section 66264.1033.

(c) Determinations of vent emissions and emission reduction or total organic compound concentrations achieved by add–on control devices shall be based on engineering calculations or performance tests. If performance tests are used to determine vent emissions, emission reductions, or total organic compound concentrations achieved by add–on control devices, the performance tests shall conform with the requirements of Section 66264.1034(c).

(d) When an owner or operator and the Department do not agree on determinations of vent emissions and/or emission reductions or total organic compound concentrations achieved by add–on control devices based on engineering calculations, the procedures in Section 66264.1034(c) shall be used to resolve the disagreement.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR section 264.1032.

HISTORY

1. New section filed 12–23–92; operative 1–22–93 (Register 93, No. 2).

§ 66264.1033. Standards: Closed–Vent Systems and Control Devices.

(a)(1) Owners or operators of closed–vent systems and control devices used to comply with provisions of this chapter shall comply with the provisions of this section.

(2)(A) The owner or operator of an existing facility who cannot install a closed–vent system and control device to comply with the provisions of this article on the effective date that the facility becomes subject to the provisions of this article must prepare an implementation schedule that includes dates by which the closed–vent system and control device will be installed and in operation. The controls must be installed as soon as possible, but the implementation schedule may allow up to 30 months after the effective date that the facility becomes subject to this article for installation and startup.

(B) Any unit that begins operation after December 21, 1990, and is subject to the provisions of this article when operation begins, shall comply with the rules immediately (i.e., shall have control devices installed and operating on startup of the affected unit); the 30–month implementation schedule does not apply.

(C) The owner or operator of any facility in existence on the effective date of a statutory or Department regulatory amendment that renders the facility subject to this article shall comply with all requirements of this article as soon as practicable but no later than 30 months after the amendment's effective date. When control equipment required by this article cannot be installed and begin operation by the effective date of the amendment, the facility owner or operator shall prepare an implementation schedule that includes the following information: Specific calendar dates for award of contracts or issuance of purchase orders for the control equipment, initiation of on–site installation of the control equipment, completion of the control equipment installation, and performance of any testing to demonstrate that the installed equipment meets the applicable standards of this article. The owner or operator shall enter the implementation schedule in the operating record or in a permanent, readily available file located at the facility.

(D) Owners and operators of facilities and units that become newly subject to the requirements of this article after December 8, 1997, due to an action other than those described in article (a)(2)(C) of this section must comply with all applicable requirements immediately (i.e., must have control devices installed and operating on the date the facility or unit becomes subject to this article; the 30–month implementation schedule does not apply).

(b) A control device involving vapor recovery (e.g., a condenser or absorber) shall be designed and operated to recover the organic vapors vented to it with an efficiency of 95 weight percent or greater unless the total organic emission limits of Section 66264.1032(a)(1) for all affected process vents can be attained at an efficiency less than 95 weight percent.

(c) An enclosed combustion device (e.g., a vapor incinerator, boiler, or process heater) shall be designed and operated to reduce the organic emissions vented by it by 95 weight percent or greater; to achieve a total organic compound concentration of 20 ppmv, expressed as the sum of the actual compounds, not carbon equivalents, on a dry basis corrected to 3

percent oxygen; or to provide a minimum residence time of 0.50 seconds at a minimum temperature of 760 degrees C. If a boiler or process heater is used as the control device, then the vent stream shall be introduced into the flame zone of the boiler or process heater.

(d)(1) A flare shall be designed for and operated with no visible emissions as determined by the methods specified in subsection (e)(1) of this section, except for periods not to exceed a total of five minutes during any two consecutive hours.

(2) A flare shall be operated with a flame present at all times, as determined by the methods specified in subsection (f)(2)(C) of this section.

(3) A flare shall be used only if the net heating value of the gas being combusted is 11.2 MJ/scm (300 Btu/scf) or greater if the flare is steam–assisted or air–assisted; or if the net heating value of the gas being combusted is 7.45 MJ/scm (200 Btu/scf) or greater if the flare is non–assisted. The net heating value of the gas being combusted shall be determined by the methods specified in subsection (e)(2) of this section.

(4)(A) A steam–assisted or non–assisted flare shall be designed for and operated with an exit velocity, as determined by the methods specified in subsection (e)(3) of this section, less than 18.3 m/s (60 ft/s), except as provided in subsections (B) and (C) of this section.

(B) A steam–assisted or non–assisted flare designed for and operated with an exit velocity, as determined by the method specified in subsection (e)(3) of this section, equal to or greater than 18.3 m/s (60 ft/s) but less than 122 m/s (400 ft/s) is allowed if the net heating value of the gas being combusted is greater than 37.3 MJ/scm (1,000 Btu/scf).

(C) A steam–assisted or non–assisted flare designed for and operated with an exit velocity, as determined by the methods specified in subsection (e)(3) of this section, less than the velocity, V_{max} as determined by the method specified in subsection (e)(4) of this section and less than 122 m/s (400 ft/s) is allowed.

(5) An air–assisted flare shall be designed and operated with an exit velocity less than the velocity, V_{max}, as determined by the method specific in subsection (e)(5) of this section.

(6) A flare used to comply with this section shall be steam–assisted, air–assisted, or non–assisted.

(e)(1) Reference Method 22 in 40 CFR, Part 60, incorporated by reference in Section 66260.11 of this chapter, shall be used to determine the compliance of a flare with the visible emission provisions of this article. The observation period is two hours and shall be used according to Method 22.

(2) The net heating value of the gas being combusted in a flare shall be calculated using the following equation:

$$H_t = K\left[\sum_{i=1}^{n} C_i H_i\right]$$

where:

H_t = Net heating value of the sample, MJ/scm; where the net enthalpy per mole of off gas is based on combustion at 25 degrees C and 760 mm Hg, but the standard temperature for determining the volume corresponding to 1 mol is 20 degress C;

K = Constant, 1.74 x 10 –7 (1/ppm) (g mol/scm) (MJ/kcal) where standard temperature for (g mol/scm) is 20 degrees C;

C_i = Concentration of sample component i in ppm on a wet basis, as measured for organics by Reference Method 18 in 40 CFR, Part 60 and measured for hydrogen and carbon monoxide by ASTM D 1946–82 (incorporated by reference as specified in Section 66260.11); and

H_i = Net heat combustion of sample component i, kcal/g mol at 25 degrees C and 760 mm Hg. The heats of combustion may be determined using ASTM D 2382–83 (incorporated by reference as specified in Section 66260.11) if published values are not available or cannot be calculated.

(3) The actual exit velocity of a flare shall be determined by dividing the volumetric flow rate (in units of standard temperature and pressure), as determined by Reference Methods 2, 2A, 2C, or 2D in 40 CFR, Part 60 as appropriate, by the unobstructed (free) cross–sectional area of the flare tip.

(4) The maximum allowed velocity in m/s, V_{max}, for a flare complying with subsection (d)(4)(C) of this section shall be determined by the following equation:

$$\text{Log}_{10}(V_{max}) = (H_T + 28.8)/31.7$$

where:

28.8 = Constant,

31.7 = Constant,

H_T = The net heating value as determined in subsection (e)(2) of this section.

(5) The maximum allowed velocity in m/s, V MAX, for an air–assisted flare shall be determined by the following equation:

$$V_{max} = 8.706 + 0.7084\ (H_T)$$

where:

8.076 = Constant,

0.7084 = Constant,

H_T = The net heating value as determined in subsection (e)(2) of this section.

(f) The owner or operator shall monitor and inspect each control device required to comply with this section to ensure proper operation and maintenance of the control device by implementing the following requirements:

(1) install, calibrate, maintain, and operate according to the manufacturer's specifications a flow indicator that provides a record of vent stream flow from each affected process vent to the control device at least once every hour. The flow indicator sensor shall be installed in the vent stream at the nearest feasible point to the control device inlet but before the point at which the vent streams are combined; and

(2) install, calibrate, maintain, and operate according to the manufacturer's specifications a device to continuously monitor control device operation as specified below:

(A) for a thermal vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall have an accuracy of +/– 1 percent of the temperature being monitored in degrees C or +/– 0.5 degrees C, whichever is greater. The temperature sensor shall be installed at a location in the combustion chamber downstream of the combustion zone;

(B) for a catalytic vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature at two locations and have an accuracy of +/– 1 percent of the temperature being monitored in degrees C or +/– 0.5 degrees C, whichever is greater. One temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed inlet and a second temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed outlet;

(C) for a flare, a heat sensing monitoring device equipped with a continuous recorder that indicates the continuous ignition of the pilot flame;

(D) for a boiler or process heater having a design heat input capacity less than 44 MW, a temperature monitoring device equipped with a continuous recorder. The device shall have an accuracy of +/– 1 percent of the temperature being monitored in degrees C or +/– 0.5 degrees C, whichever is greater. The temperature sensor shall be installed at a location in the furnace downstream of the combustion zone;

(E) for a boiler or process heater having a design heat input capacity greater than or equal to 44 MW, a monitoring device equipped with a continuous recorder to measure a parameter(s) that indicates good combustion operating practices are being used; and

(F) for a condenser, either:

1. a monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent system from the condenser; or

2. a temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature with an

accuracy of ±1 percent of the temperature being monitored in degrees Celsius (°C) or ±0.5°C, whichever is greater. The temperature sensor shall be installed at a location in the exhaust vent stream from the condenser exit (i.e., product side);

(G) for a carbon adsorption system that regenerates the carbon bed directly in the control device such as a fixed-bed carbon adsorber, either:

1. a monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent system from the carbon bed; or

2. a monitoring device equipped with a continuous recorder to measure a parameter that indicates the carbon bed is regenerated on a regular, predetermined time cycle; and

(3) inspect the readings from each monitoring device required by subsection (f)(1) and (2) of this section at least once each operating day to check control device operation and, if necessary, immediately implement the corrective measures necessary to ensure the control device operates in compliance with the requirements of this section.

(g) An owner or operator using a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly on-site in the control device shall replace the existing carbon in the control device with fresh carbon at a regular, pre-determined time interval that is no longer than the carbon service life established as a requirement of Section 66264.1035(b)(4)(C)6.

(h) An owner or operator using a carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly on-site in the control device shall replace the existing carbon in the control device with fresh carbon on a regular basis by using one of the following procedures:

(1) monitor the concentration level of the organic compounds in the exhaust vent stream from the carbon adsorption system on a regular schedule, and replace the existing carbon with fresh carbon immediately when carbon breakthrough is indicated. The monitoring frequency shall be daily or at an interval no greater than 20 percent of the time required to consume the total carbon working capacity established as a requirement of Section 66264.1035(b)(4)(C)7, whichever is longer; or

(2) replace the existing carbon with fresh carbon at a regular, predetermined time interval that is less than the design carbon replacement interval established as a requirement of Section 66264.1035(b)(4)(C)7.

(i) An alternative operational or process parameter may be monitored if it can be demonstrated that another parameter will ensure that the control device is operated in conformance with these standards and the control device's design specifications.

(j) An owner or operator of an affected facility seeking to comply with the provisions of this chapter by using a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system is required to develop documentation including sufficient information to describe the control device operation and identify the process parameter or parameters that indicate proper operation and maintenance of the control device.

(k) A closed-vent system shall meet either of the following design requirements:

(1) a closed-vent system shall be designed to operate with no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background as determined by the procedure in section 66264.1034(b) and by visual inspections; or

(2) a closed-vent system shall be designed to operate at a pressure below atmospheric pressure. The system shall be equipped with at least one pressure gauge or other pressure measurement device that can be read from a readily accessible location to verify that negative pressure is being maintained in the closed-vent system when the control device is operating.

(*l*) The owner or operator shall monitor and inspect each closed-vent system required to comply with this section to ensure proper operation and maintenance of the closed-vent system by implementing the following requirements:

(1) each closed-vent system that is used to comply with subsection (k)(1) of this section shall be inspected and monitored in accordance with the following requirements:

(A) an initial leak detection monitoring of the closed-vent system shall be conducted by the owner or operator on or before the date that the system becomes subject to this section. The owner or operator shall monitor the closed-vent system components and connections using the procedures specified in section 66264.1034(b) of this article to demonstrate that the closed-vent system operates with no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background.

(B) after the initial leak detection monitoring required in subsection (*l*)(1)(A) of this section, the owner or operator shall inspect and monitor the closed-vent system as follows:

1. closed-vent system joints, seams, or other connections that are permanently or semi-permanently sealed (e.g., a welded joint between two sections of hard piping or a bolted and gasketed ducting flange) shall be visually inspected at least once per year to check for defects that could result in air pollutant emissions. The owner or operator shall monitor a component or connection using the procedures specified in section 66264.1034(b) to demonstrate that it operates with no detectable emissions following any time the component is repaired or replaced (e.g., a section of damaged hard piping is replaced with new hard piping) or the connection is unsealed (e.g., a flange is unbolted).

2. closed-vent system components or connections other than those specified in subsection (*l*)(1)(B)1. of this section shall be monitored annually and at other times as requested by the Department, except as provided for in subsection (o) of this section, using the procedures specified in section 66264.1034(b) to demonstrate that the components or connections operate with no detectable emissions.

(C) in the event that a defect or leak is detected, the owner or operator shall repair the defect or leak in accordance with the requirements of subsection (*l*)(3) of this section.

(D) the owner or operator shall maintain a record of the inspection and monitoring in accordance with the requirements specified in section 66264.1035.

(2) each closed-vent system that is used to comply with subsection (k)(2) of this section shall be inspected and monitored in accordance with the following requirements:

(A) the closed-vent system shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in ductwork or piping or loose connections.

(B) the owner or operator shall perform an initial inspection of the closed-vent system on or before the date that the system becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year.

(C) in the event that a defect or leak is detected, the owner or operator shall repair the defect in accordance with the requirements of subsection (*l*)(3) of this section.

(D) the owner or operator shall maintain a record of the inspection and monitoring in accordance with the requirements specified in section 66264.1035.

(3) the owner or operator shall repair all detected defects as follows:

(A) detectable emissions, as indicated by visual inspection, or by an instrument reading greater than 500 ppmv above background, shall be controlled as soon as practicable, but not later than 15 calendar days after the emission is detected, except as provided for in subsection (*l*)(3)(C) of this section.

(B) a first attempt at repair shall be made no later than 5 calendar days after the emission is detected.

(C) delay of repair of a closed-vent system for which leaks have been detected is allowed if the repair is technically infeasible without a process unit shutdown, or if the owner or operator determines that emissions resulting from immediate repair would be greater than the fugitive emis-

sions likely to result from delay of repair. Repair of such equipment shall be completed by the end of the next process unit shutdown.

(D) the owner or operator shall maintain a record of the defect repair in accordance with the requirements specified in section 66264.1035.

(m) Closed–vent systems and control devices used to comply with provisions of this article shall be operated at all times when emissions may be vented to them.

(n) The owner or operator using a carbon adsorption system to control air pollutant emissions shall document that all carbon that is a hazardous waste and that is removed from the control device is managed in one of the following manners, regardless of the average volatile organic concentration of the carbon:

(1) regenerated or reactivated in a thermal treatment unit that meets one of the following:

(A) the owner or operator of the unit has been issued a final permit under chapter 20 which implements the requirements of article 16; or

(B) the unit is equipped with and operating air emission controls in accordance with the applicable requirements of articles 27 and 28.5 of either this chapter or chapter 15; or

(C) the unit is equipped with and operating air emission controls in accordance with a national emission standard for hazardous air pollutants under 40 CFR part 61 or 40 CFR part 63.

(2) incinerated in a hazardous waste incinerator for which the owner or operator either:

(A) has been issued a final permit under chapter 20 which implements the requirements of chapter 14, article 15; or

(B) has designed and operates the incinerator in accordance with the interim status requirements of chapter 15, article 15.

(3) burned in a boiler or industrial furnace for which the owner or operator either:

(A) has been issued a final permit under chapter 20 which implements the requirements of chapter 16, article 8; or

(B) has designed and operates the boiler or industrial furnace in accordance with the interim status requirements of chapter 16, article 8.

(o) Any components of a closed–vent system that are designated, as described in section 66264.1035(c)(9), as unsafe to monitor are exempt from the requirements of subsection (*l*)(1)(B)2. of this section if:

(1) the owner or operator of the closed–vent system determines that the components of the closed–vent system are unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with subsection (*l*)(1)(B)2. of this section; and

(2) the owner or operator of the closed–vent system adheres to a written plan that requires monitoring the closed–vent system components using the procedure specified in subsection (*l*)(1)(B)2. of this section as frequently as practicable during safe–to–monitor times.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR section 264.1033.

HISTORY

1. New section filed 12–23–92; operative 1–22–93 (Register 93, No. 2).
2. Change without regulatory effect amending subsections (c), (e)(2) and (k)(4) filed 12–28–95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 52).
3. Change without regulatory effect amending section and NOTE filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).

§ 66264.1034. Test Methods and Procedures.

(a) Each owner or operator subject to the provisions of this article shall comply with the test methods, procedures and requirements provided in this section.

(b) When a closed–vent system is tested for compliance with no detectable emissions, as required in Section 66264.1033(*l*), the test shall comply with the following requirements:

(1) monitoring shall comply with Reference Method 21 in 40 CFR, part 60;

(2) the detection instrument shall meet the performance criteria of Reference Method 21 in 40 CFR, part 60;

(3) the instrument shall be calibrated before use on each day of its use by the procedures specified in Reference Method 21 in 40 CFR, part 60; and

(4) calibration gases shall be:

(A) zero air (less than 10 ppm of hydrocarbon in air); and

(B) a mixture of methane or n–hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n–hexane; and

(5) the background level shall be determined as set forth in Reference Method 21 in 40 CFR, part 60;

(6) the instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21 in 40 CFR, part 60; and

(7) the arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.

(c) Performance tests to determine compliance with Section 66264.1032(a) and with the total organic compound concentration limit of Section 66264.1033(c) shall comply with the following:

(1) performance tests to determine total organic compound concentrations and mass flow rates entering and exiting control devices shall be conducted and data reduced in accordance with the following reference methods and calculation procedures:

(A) method 2 in 40 CFR, Part 60 for velocity and volumetric flow rate;

(B) method 18 in 40 CFR, Part 60 for organic content;

(C) each performance test shall consist of three separate runs; each run conducted for at least one hour under the conditions that exist when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur. For the purpose of determining total organic compound concentrations and mass flow rates, the average of results of all runs shall apply. The average shall be computed on a time–weighted basis;

(D) total organic mass flow rates shall be determined by the following equation:

$$E_h = Q_{sd} \{ \sum_{i=1}^{n} C_i MW_i \} [0.0416] [10^{-6}]$$

where:

E_h = Total organic mass flow rate, kg/h;

Q_{sd} = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dry standard m^3 /h;

n = Number of organic compounds in the vent gas;

C_i = Organic concentration in ppm, dry basis, of compound i in the vent gas, as determined by Method 18;

MW_i = Molecular weight of organic compound i in the vent gas, kg/kg–mol;

0.0416= Conversion factor for molar volume, kg–mol/m^3 (at 293 K and 760 mm Hg);

10^{-6} = Conversion from ppm, ppm^{-1} .

(E) the annual total organic emission rate shall be determined by the following equation:

$$E_A = (E_h) (H)$$

where:

E_A = Total organic mass emission rate, kg/y;

E_h = Total organic mass flow rate for the process vent, kg/h;

H = Total annual hours of operations for the affected unit, h.

(F) total organic emissions from all affected process vents at the facility shall be determined by summing the hourly total organic mass emission rates (E_h as determined in subsection (c)(1)(D) of this section) and by summing the annual total organic mass emission rates (E_A, as determined in subsection (c)(1)(E) of this section) for all affected process vents at the facility.

(2) The owner or operator shall record such process information as may be necessary to determine the conditions of the performance tests. Operators during periods of start–up, shutdown, and malfunction shall

not constitute representative conditions for the purpose of a performance test.

(3) The owner or operator of an affected facility shall provide, or cause to be provided, performance testing facilities as follows:

(A) sampling ports adequate for the test methods specified in subsection (c)(1) of this section;

(B) safe sampling plateform(s);

(C) safe access to sampling plateform(s); and

(D) utilities for sampling and testing equipment.

(4) For the purpose of making compliance determinations, the time–weighted average of the results of the three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the owner's or operator's control, compliance may, upon the Department's written approval, be determined using the average of the results of the two other runs.

(d) To show that a process vent associated with a hazardous waste distillation, fractionation, thin–film evaporation, solvent extraction, or air or steam stripping operation is not subject to the requirements of this article, the owner or operator shall make an initial determination that the time–weighted, annual average total organic concentration of the waste managed by the waste management unit is less than 10 ppmw using one of the following two methods:

(1) direct measurement of the organic concentration of the waste using the following procedures:

(A) the owner or operator shall take a minimum of four grab samples of waste for each waste stream managed in the affected unit under process conditions expected to cause the maximum waste organic concentration;

(B) for waste generated on–site, the grab samples shall be collected at a point before the waste is exposed to the atmosphere such as in an enclosed pipe or other closed system that is used to transfer the waste after generation to the first affected distillation, fractionation, thin–film evaporation, solvent extraction, or air or steam stripping operation. For waste generated off–site, the grab samples shall be collected at the inlet to the first waste management unit that receives the waste provided the waste has been transferred to the facility in a closed system such as a truck and the waste is not diluted or mixed with other waste;

(C) each sample shall be analyzed and the total organic concentration of the sample shall be computed using Method 9060 or 8260 of SW–846 third edition and updates, as incorporated by reference under Section 66260.11;

(D) the arithmetic mean of the results of the analyses of the four samples shall apply for each waste stream managed in the unit in determining the time–weighted, annual average total organic concentration of the waste. The time–weighted average shall be calculated using the annual quantity of each waste stream processed and the mean organic concentration of each waste stream managed in the unit;

(2) Using knowledge of the waste to determine that its total organic concentration is less than 10 ppmw. Documentation of the waste determination is required. Examples of documentation that shall be used to support a determination under this provision include production process information documenting that no organic compounds are used, information that the waste is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to generate a waste stream having a total organic content less than 10 ppmw, or prior specification analysis results on the same waste stream where it can also be documented that no process changes have occurred since that analysis that could affect the waste total organic concentration.

(e) The determination that distillation, fractionation, thin–film evaporation, solvent extraction, or air or steam stripping operations manage hazardous wastes with time–weighted, annual average total organic concentrations less than 10 ppmw shall be made as follows:

(1) by the effective date that the facility becomes subject to the provisions of this article or by the date when the waste is first managed in a waste management unit, whichever is later; and

(A) for continuously generated waste, annually, or

(B) whenever there is a change in the waste being managed or a change in the process that generates or treats the waste.

(f) When an owner or operator and the Department do not agree on whether a distillation, fractionation, thin–film evaporation, solvent extraction, or air or steam stripping operation manage a hazardous waste with organic concentrations of at least 10 ppmw based on knowledge of the waste, the procedures in Method 8260 of SW–846 third edition and updates, (as incorporated by reference in Section 66260.11 of this division), shall be used to resolve the dispute.

NOTE: Authority cited: Sections 25150, 25159 and 58012, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 264.1034.

HISTORY

1. New section filed 12–23–92; operative 1–22–93 (Register 93, No. 2).
2. Change without regulatory effect amending subsection (c)(1)(E) filed 4–19–93 pursuant to title 1, section 100, California Code of Regulations (Register 93, No. 17).
3. Change without regulatory effect amending subsection (d)(2) filed 12–28–93 pursuant to title 1, section 100, California Code of Regulations (Register 93, No. 53).
4. Editorial correction of subsection (b) (Register 93, No. 53).
5. Editorial correction of subsections (d)(1)(B) and (d)(2) (Register 95, No. 50).
6. Change without regulatory effect amending subsection (c)(1)(D) filed 12–28–95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 52).
7. Change without regulatory effect amending subsection (b)(4)(B) filed 3–28–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 13).
8. Amendment of subsections (d)(1)(C) and (f) and amendment of NOTE filed 10–13–98; operative 11–12–98 (Register 98, No. 42).
9. Change without regulatory effect amending subsection (b) filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).

§ 66264.1035. Recordkeeping Requirements.

(a)(1) Each owner or operator subject to the provisions of this article shall comply with the recordkeeping requirements of this section.

(2) An owner or operator of more than one hazardous waste management unit subject to the provisions of this article may comply with the recordkeeping requirements for these hazardous waste management units in one recordkeeping system if the system identifies each record by each hazardous waste management unit.

(b) Owners and operators shall record or include the following information in the facility operating record:

(1) for facilities that comply with the provisions of Section 66264.1033(a)(2), an implementation schedule that includes dates by which the closed–vent system and control device will be installed and in operation. The schedule shall also include a rationale of why the installation cannot be completed at an earlier date. The implementation schedule shall be in the facility operating record by the effective date that the facility becomes subject to the provisions of this article;

(2) up–to–date documentation of compliance with the process vent standards in Section 66264.1032, including:

(A) information and data identifying all affected process vents, annual throughout and operating hours of each affected unit, estimated emission rates for each affected vent and for the overall facility (i.e., the total emissions for all affected vents at the facility), and the approximate location within the facility of each affected unit (e.g., identify the hazardous waste management units on a facility plot plan); and

(B) information and data supporting determinations of vent emissions and emission reductions achieved by add–on control devices based on engineering calculations or source tests. For the purpose of determining compliance, determinations of vent emissions and emission reductions shall be made using operating parameter values (e.g., temperatures, flow rates, or vent stream organic compounds and concentrations) that represent the conditions that result in maximum organic emissions, such as when the waste management unit is operating at the highest load or ca-

pacity level reasonably expected to occur. If the owner or operator takes any action (e.g., managing a waste of different composition or increasing operating hours of affected waste management units) that would result in an increase in total organic emissions from affected process vents at the facility, then a new determination is required.

(3) Where an owner or operator chooses to use test data to determine the organic removal efficiency or total organic compound concentration achieved by the control device, a performance test plan. The test plan shall include:

(A) a description of how it is determined that the planned test is going to be conducted when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur. This shall include the estimated or design flow rate and organic content of each vent stream and define the acceptable operating range of key process and control device parameters during the test program;

(B) a detailed engineering description of the closed–vent system and control device including:

1. manufacturer's name and model number of control device;
2. type of control device;
3. dimensions of the control device;
4. capacity; and
5. construction materials; and

(C) a detailed description of sampling and monitoring procedures including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

(4) Documentation of compliance with Section 66264.1033, documentation shall include the following information:

(A) a list of all information references and sources used in preparing the documentation; and

(B) records, including the dates, of each compliance test required by Section 66264.1033(k);

(C) If engineering calculations are used, a design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions" (incorporated by reference as specified in Section 66260.11) or other engineering texts acceptable to the Department that present basic control device design information. Documentation provided by the control device manufacturer or vendor that describes the control device design in accordance with subsection (b)(4)(C)1 through (b)(4)(C)7 of this section shall be required to be submitted to the Department to comply with this requirement. The design analysis shall address the vent system characteristics and control device operation parameters as specified below.

1. For a thermal vapor incinerator, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average temperature in the combustion zone and the combustion zone residence time.

2. For a catalytic vapor incinerator, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average temperatures across the catalyst bed inlet and outlet.

3. For a boiler or process heater, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average flame zone temperatures, combustion zone residence time, and description of method and location where the vent stream is introduced into the combustion zone.

4. For a flare, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also consider the requirements specified in Section 66264.1033(d).

5. For a condenser, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design organic compound concentration level, design average temperature of the condenser exhaust vent system, and design average temperatures of the coolant fluid at the condenser inlet and outlet.

6. For a carbon adsorption system such as a fixed–bed adsorber that regenerates the carbon bed directly on–site in the control device, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design exhaust vent stream organic compound concentration level, number, and capacity of carbon beds, type and working capacity of activated carbon used for carbon beds, design total steam flow over the period of each complete carbon bed regeneration cycle, duration of the carbon bed steaming and cooling/drying cycles, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of carbon.

7. For a carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly on–site in the control device, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design outlet organic concentration level, capacity of carbon bed, type and working capacity of activated carbon used for carbon bed, and design carbon replacement interval based on the total carbon working capacity of the control device and source operating schedule.

(D) A statement signed and dated by the owner or operator certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is or would be operating at the highest load or capacity level reasonably expected to occur.

(E) A statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of 95 percent or greater unless the total organic concentration limit of Section 66264.1032(a) is achieved at an efficiency less than 95 weight percent or the total organic emission limits of Section 66264.1032(a) for affected process vents at the facility can be attained by a control device involving vapor recovery at an efficiency less than 95 weight percent. A statement signed and dated by the control device manufacturer or vendor certifying that the control equipment meets the design specifications may be used to comply with this requirement.

(F) If performance tests are used to demonstrate compliance, all test results.

(c) Design documentation and monitoring, operating, and inspection information for each closed–vent system and control device required to comply with the provisions of this chapter shall be recorded and kept up–to–date in the facility operating record. The information shall include:

(1) description and date of each modification that is made to the closed–vent system or control device design;

(2) identification of operating parameter, description of monitoring device, and diagram of monitoring sensor location or locations used to comply with Section 66264.1033(f)(1) and (f)(2);

(3) monitoring, operating, and inspection information required by subsections (f) through (k) of Section 66264.1033;

(4) date, time, and duration of each period of control device operation, when any monitored parameter exceeds the value established in the control device design analysis as specified below:

(A) for a thermal vapor incinerator designed to operate with a minimum residence time of 0.50 second at a minimum temperature of 760 degrees C, period when the combustion temperature is below 760 degrees C;

(B) for a thermal vapor incinerator designed to operate with an organic emission reduction efficiency of 95 weight percent or greater, period when the combustion zone temperature is more than 28 degrees C below the design average combustion zone temperature established as a requirement of subsection (b)(4)(C)1 of this section;

(C) for a catalytic vapor incinerator, period when:

1. temperature of the vent stream at the catalyst bed inlet is more than 28 degrees C below the average temperature of the inlet vent stream established as a requirement of subsection (b)(4)(C)2 of this section; or

2. temperature difference across the catalyst bed is less than 80 percent of the design average temperature difference established as a requirement of subsection (b)(4)(C)2 of this section; and

(D) for a boiler or process heater, period when:

1. flame zone temperature is more than 28 degrees C below the design average flame zone temperature established as a requirement of subsection (b)(4)(C)3 of this section; or

2. position changes where the vent stream is introduced to the combustion zone from the location established as a requirement of paragraph (b)(4)(C)3 of this section; and

(E) for a flare, period when the pilot flame is not ignited;

(F) for a condenser that complies with Section 66264.1033(f)(2)(F)1, period when the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the condenser are more than 20 percent greater than the design outlet organic compound concentration level established as a requirement of paragraph (b)(4)(C)5 of this section;

(G) for a condenser that complies with Section 66264.1033(f)(2)(F)2, period when:

1. temperature of the exhaust vent system stream from the condenser is more than 6 degrees C above the design average exhaust vent system stream temperature established as a requirement of subsection (b)(4)(C)5 of this section; or

2. temperature of the coolant fluid exiting the condenser is more than 6 degrees C above the design average coolant fluid temperature at the condenser outlet established as a requirement of subsection (b)(4)(C)5 of this section; and

(H) for a carbon adsorption system such as a fixed–bed carbon adsorber that regenerates the carbon bed directly on–site in the control device and complies with Section 66264.1033(f)(2)(G)1, period when the organic compound concentration level or readings of organic compounds in the exhaust vent system from the carbon bed are more than 20 percent greater than the design exhaust vent stream organic compound concentration level established as a requirement of subsection (b)(4)(C)6 of this section;

(I) for a carbon adsorption system such as a fixed–bed carbon adsorber that regenerates the carbon bed directly on–site in the control device and complies with Section 66264.1033(f)(2)(G)(2), period when the vent stream continues to flow through the control device beyond the pre–determined carbon bed regeneration time established as a requirement of subsection (b)(4)(C)6 of this section;

(5) explanation for each period recorded under subsection (c)(4) of this section the cause for control device operating parameter exceeding the design value and the measure implemented to correct the control device operation;

(6) for a carbon adsorption system operated subject to requirements specified in Section 66264.1033(g) or Section 66264.1033(h)(2), date when existing carbon in the control device is replaced with fresh carbon;

(7) for a carbon adsorption system operated subject to requirements specified in Section 66264.1033(h)(1), a log that records:

(A) date and time when control device is monitored for carbon breakthrough and the monitoring device reading;

(B) date when existing carbon in the control device is replaced with fresh carbon; and

(8) date of each control device start–up and shutdown.

(9) an owner or operator designating any components of a closed–vent system as unsafe to monitor pursuant to Section 66264.1033(o) shall record in a log that is kept in the facility operating record the identification of closed–vent system components that are designated as unsafe to monitor in accordance with the requirements of Section 66264.1033(o), an explanation for each closed–vent system component stating why the closed–vent system component is unsafe to monitor, and the plan for monitoring each closed–vent system component.

(10) when each leak is detected as specified in Section 66264.1033(*l*), the following information shall be recorded:

(A) the instrument identification number, the closed–vent system component identification number, and the operator name, initials, or identification number.

(B) the date the leak was detected and the date of first attempt to repair the leak.

(C) the date of successful repair of the leak.

(D) maximum instrument reading measured by Method 21 of 40 CFR part 60, appendix A after it is successfully repaired or determined to be nonrepairable.

(E) "Repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.

1. the owner or operator may develop a written procedure that identifies the conditions that justify a delay of repair. In such cases, reasons for delay of repair may be documented by citing the relevant sections of the written procedure.

2. if delay of repair was caused by depletion of stocked parts, there must be documentation that the spare parts were sufficiently stocked on–site before depletion and the reason for depletion.

(d) Records of the monitoring, operating, and inspection information required by subsections (c)(3) through (c)(10) of this section shall be maintained by the owner or operator for at least 3 years following the date of each occurrence, measurement, maintenance, corrective action, or record.

(e) For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, the Department will specify the appropriate record-keeping requirements.

(f) Up–to–date information and data used to determine whether or not a process vent is subject to the requirements in Section 66264.1032, including supporting documentation as required by Section 66264.1034(d)(2), when application of the knowledge of the nature of the hazardous waste stream or the process by which it was produced is used, shall be recorded in a log that is kept in the facility operating record.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR section 264.1035.25150,

HISTORY

1. New section filed 12–23–92; operative 1–22–93 (Register 93, No. 2).
2. Change without regulatory effect amending subsection (b)(4)(B) filed 12–28–93 pursuant to title 1, section 100, California Code of Regulations (Register 93, No. 53).
3. Change without regulatory effect adding subsections (c)–(9)–(c)(10)(E)2. and amending subsection (d) and NOTE filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).
4. Change without regulatory effect repealing second subsection (d) filed 7–1–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 27).

§ 66264.1036. Reporting Requirements.

(a) A semiannual report shall be submitted to the Department by owners and operators subject to the requirements of this article. The report shall be submitted by first week of February and August of each year. The report shall include the following information:

(1) the identification number, name, and address of the facility; and

(2) for each month during the semiannual reporting period:

(A) dates when any control device exceeded or operated outside of the design specifications, as defined in Section 66264.1035(c)(4) and as indicated by the control device monitoring required by Section 66264.1033(f) for more than 24 hours;

(B) dates when any flares operated with visible emissions as defined in Section 66264.1033(d) and as determined by Method 22 monitoring;

(C) the duration and cause of each exceedance or visible emissions; and

(D) any corrective measures taken.

(b) If, during the semiannual reporting period, the control device does not exceed or operate outside of the design specifications as defined in Section 66264.1035(c)(4) for more than 24 hours or a flare does not oper-

ate with visible emissions as defined in Section 66264.1033(d), a report to the Department is not required.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR section 264.1036.

HISTORY

1. New section filed 12–23–92; operative 1–22–93 (Register 93, No. 2).

Article 28. Air Emission Standards for Equipment Leaks

§ 66264.1050. Applicability.

(a) The regulations in this article apply to owners and operators of facilities that treat, store, or dispose of RCRA hazardous wastes (except as provided in Section 66264.1).

(b) Except as provided in section 264.1064(k), this article applies to equipment that contains or contacts hazardous wastes with organic concentrations of at least 10 percent by weight that are managed in one of the following:

(1) A unit that is subject to the permitting requirements of chapter 20, or

(2) A unit (including a hazardous waste recycling unit) that is not exempt from permitting under the provisions of section 66262.34(a) (i.e., a hazardous waste recycling unit that is not a "90–day" tank or container) and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of chapter 20, or

(3) A unit that is exempt from permitting under the provisions of 66262.34(a) (i.e., a "90–day" tank or container) and is not a recycling unit under the provisions of section 66261.6.

(c) For the owner or operator of a facility subject to this article and who received a final permit under RCRA section 3005 prior to December 6, 1996, the requirements of this article shall be incorporated into the permit when the permit is reissued in accordance with the requirements of 40 CFR 124.15 or reviewed in accordance with the requirements of section 66270.50(d). Until such date when the owner or operator receives a final permit incorporating the requirements of this article, the owner or operator is subject to the requirements of chapter 15 article 28.

(d) Each piece of equipment to which this article applies shall be marked in such a manner that it can be distinguished readily from other pieces of equipment.

(e) Equipment that is in vacuum service is exempt from the requirements of Section 66264.1052 through Section 66264.1060 if it is identified as required in Section 66264.1064(g)(5).

(f) Equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year is excluded from the requirements of Sections 66264.1052 through 66264.1060 if it is identified, as required in Section 66264.1064(g)(6).

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR section 264.1050.

HISTORY

1. New article 28 (sections 66264.1050–66264.1065) filed 12–23–92; operative 1–22–93 (Register 93, No. 2).
2. Editorial correction of subsection (b)(2) (Register 95, No. 50).
3. Change without regulatory effect amending section and NOTE filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).

§ 66264.1052. Standards: Pumps in Light Liquid Service.

(a)(1) Each pump in light liquid service shall be monitored monthly to detect leaks by the methods specified in Section 66264.1063(b), except as provided in subsections (d), (e), and (f) of this section.

(2) Each pump in light liquid service shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal.

(b)(1) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(2) If there are indications of liquids dripping from the pump seal, a leak is detected.

(c)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in Section 66264.1059.

(2) A first attempt at repair (e.g., tightening the packing gland) shall be made no later than one day (24 hours) after each leak is detected.

(d) Each pump equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of subsection (a) of this section, provided the following requirements are met:

(1) each dual mechanical seal system shall be:

(A) operated with the barrier fluid at a pressure that is at all times greater than the pump stuffing box pressure;

(B) equipped with a barrier fluid degassing reservoir that is connected by a closed–vent system to a control device that complies with the requirements of Section 66264.1060; or

(C) equipped with a system that purges the barrier fluid into a hazardous waste stream with no detectable emissions to the atmosphere.

(2) The barrier fluid system shall not be a hazardous waste with organic concentrations 10 percent or greater by weight.

(3) Each barrier fluid system shall be equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.

(4) Each pump shall be checked by visual inspection, each calendar week, for indications of liquids dripping from the pump seals.

(5)(A) Each sensor as described in subsections (d)(3) of this section shall be checked daily or be equipped with an audible alarm that shall be checked monthly to ensure that it is functioning properly.

(B) The owner or operator shall determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

(6)(A) If there are indications of liquids dripping from the pump seal or the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined in subsection (d)(5)(B) of this section, a leak is detected.

(B) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in Section 66264.1059.

(C) A first attempt at repair (e.g., relapping the seal) shall be as soon as possible, to minimize escape of hazardous constituents to the environment, but not later than 24 hours after each leak is detected.

(e) Any pump that is designated, as described in Section 66264.1064(g)(2), for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of subsections (a), (c), and (d) of this section if the pump meets the following requirements:

(1) the pump shall have no externally actuated shaft that shall penetrate the pump housing;

(2) the pump shall operate with no detectable emissions as indicated by an instrument reading of less than 500 ppm above background as measured by the methods specified in Section 66264.1063(c); and

(3) the pump must be tested for compliance with subsection (e)(2) of this section initially upon designation, annually, and at other times as required by the Department.

(f) If any pump is equipped with a closed–vent system capable of capturing and transporting any leakage from the seal or seals to a control de-

vice that complies with the requirements of Section 66264.1060, it is exempt from the requirements of subsections (a) through (e) of this section.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR section 264.1052.

HISTORY

1. New section filed 12–23–92; operative 1–22–93 (Register 93, No. 2).
2. Change without regulatory effect amending subsection (f) filed 12–28–95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 52).

§ 66264.1053. Standards: Compressors.

(a) Each compressor shall be equipped with a seal system that includes a barrier fluid system and that prevents leakage of total organic emissions to the atmosphere, except as provided in subsections (h) and (i) of this section.

(b) Each compressor seal system as required in subsection (a) of this section shall be:

(1) operated with the barrier fluid at a pressure that is at all times greater than the compressor stuffing box pressure; or

(2) equipped with a barrier fluid system that is connected by a closed–vent system to a control device that complies with the requirements of Section 66264.1060; or

(3) equipped with a system that purges the barrier fluid into a hazardous waste stream with no detectable emissions to the atmosphere.

(c) The barrier fluid shall not be a hazardous waste with organic concentrations ten percent or greater by weight.

(d) Each barrier fluid system as described in subsections (a) through (c) of this section shall be equipped with a sensor that will detect failure of the seal system, barrier fluid system or both.

(e)(1) Each sensor as required in subsection (d) of this section shall be checked daily or shall be equipped with an audible alarm that shall be checked monthly to ensure that it is functioning properly unless the compressor is located within the boundary of an unstaffed plant site, in which case the sensor shall be checked daily.

(2) The owner or operator shall determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

(f) If the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined under subsection (e)(2) of this section, a leak is detected.

(g)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in Section 66264.1059.

(2) A first attempt at repair (e.g., tightening the packing gland) shall be made as soon as possible, to minimize escape of hazardous constituents to the environment, but no later than 24 hours after each leak is detected.

(h) A compressor is exempt from the requirements of subsections (a) and (b) of this section if it is equipped with a closed–vent system capable of capturing and transporting any leakage from the seal to a control device that complies with the requirements of Section 66264.1060, except as provided in subsection (i) of this section.

(i) Any compressor that is designated, as described in Section 66264.1064(g)(2), for no detectable emissions as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of subsections (a) through (h) of this section if the compressor:

(1) is determined to be operating with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in Section 66264.1063(c); and

(2) is tested for compliance with subsection (i)(1) of this section initially upon designation, annually, and at any other time required by the Department upon a determination by the Department that testing for compliance is necessary to protect human health or the environment.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR section 264.1053.

HISTORY

1. New section filed 12–23–92; operative 1–22–93 (Register 93, No. 2).
2. Change without regulatory effect amending subsection (i)(2) filed 12–28–93 pursuant to title 1, section 100, California Code of Regulations (Register 93, No. 53).

§ 66264.1054. Standards: Pressure Relief Devices in Gas/Vapor Service.

(a) Except during pressure releases, each pressure relief device in gas/vapor service shall be operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in Section 66264.1063(c).

(b)(1) After each pressure release, the pressure relief device shall be returned to a condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as soon as practicable, but no later than 24 hours after each pressure release, except as provided in Section 66264.1059.

(2) No later than 24 hours after the pressure release, the pressure relief device shall be monitored to confirm the condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in Section 66264.1063(c).

(c) Any pressure relief device that is equipped with a closed–vent system capable of capturing and transporting leakage from the pressure relief device to a control device as described in Section 66264.1060 is exempt from the requirements of subsections (a) and (b) of this section.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR section 264.1054.

HISTORY

1. New section filed 12–23–92; operative 1–22–93 (Register 93, No. 2).

§ 66264.1055. Standards: Sampling Connecting Systems.

(a) Each sampling connection system shall be equipped with a closed–purge, closed–loop, or closed–vent system. This system shall collect the sample purge for return to the process or for routing to the appropriate treatment system. Gases displaced during filling of the sample container are not required to be collected or captured.

(b) Each closed–purge, closed–loop, or closed–vent system as required in subsection (a) of this section shall meet one of the following requirements:

(1) return the purged process fluid directly to the process line;

(2) collect and recycle the purged process fluid; or

(3) be designed and operated to capture and transport all the purged process fluid to a waste management unit that complies with the applicable requirements of sections 66264.1084 through 66264.1086 or a control device that complies with the requirements of section 66264.1060.

(c) *In–situ* sampling systems and sampling systems without purges are exempt from the requirements of subsections (a) and (b) of this section.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR section 264.1055.

HISTORY

1. New section filed 12–23–92; operative 1–22–93 (Register 93, No. 2).
2. Change without regulatory effect repealing section and adding new section and amending NOTE filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).

§ 66264.1056. Standards: Open–Ended Valves or Lines.

(a)(1) Each open–ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve.

(2) The cap, blind flange, plug, or second valve shall seal the open end at all times except during operations requiring hazardous waste stream flow through open–ended valve or line.

(b) Each open–ended valve or line equipped with a second valve shall be operated in a manner such that the valve on the hazardous waste stream end is closed before the second valve is closed.

(c) When a double block and bleed system is being used, the bleed valve or line may remain open during operations that require venting the line between the block valves but shall comply with subsection (a) of this section at all other times.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR section 264.1056.

HISTORY

1. New section filed 12–23–92; operative 1–22–93 (Register 93, No. 2).

§ 66264.1057. Standards: Valves in Gas/Vapor Service or in Light Liquid Service.

(a) Each valve in gas/vapor or light liquid service shall be monitored monthly to detect leaks by the methods specified in Section 66264.1063(b) and shall comply with subsections (c) and shall comply with (d) and (e) of this section, except as provided in subsections (f), (g), and (h) of this section, and Sections 66264.1061 and 66264.1062.

(b) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(c)(1) Any valve for which a leak is not detected for two successive months shall be monitored the first month of every succeeding quarter, beginning with the next quarter, until a leak is detected.

(2) If a leak is detected, the valve shall be monitored monthly until a leak is not detected for two successive months.

(d)(1) When a leak is detected, it shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, except as provided in Section 66264.1059.

(2) A first attempt at repair shall be made as soon as possible to minimize escape of hazardous constituents to the environment but no later than 24 hours after each leak is detected.

(e) First attempts at repair include, but are not limited to, the following best practices where practicable:

(1) tightening of bonnet bolts;

(2) replacement of bonnet bolts;

(3) tightening of packing gland nuts; and

(4) injection of lubricant into lubricated packing.

(f) Any valve that is designated, as described in Section 66264.1064(g)(2), for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of subsection (a) of this section if the valve:

(1) has no external actuating mechanism in contact with the hazardous waste stream;

(2) is operated with emissions less than 500 ppm above background as determined by the method specified in Section 66264.1063(c); and

(3) is tested for compliance with paragraph (f)(2) of this section initially upon designation, annually, and at other times as required by the Department.

(g) Any valve that is designated, as described in Section 66264.1064(h)(1), as an unsafe–to–monitor valve is exempt from the requirements of subsection (a) of this section if:

(1) the owner or operator of the valve determines (written explanation in the operating record) that the valve is unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with paragraph (a) of this section; and

(2) the owner or operator of the valve adheres to a written plan that requires monitoring of the valve as frequently as practicable.

(h) Any valve that is designated, as described in Section 66264.1064(h)(2), as a difficult–to–monitor valve is exempt from the requirements of subsection (a) of this section if:

(1) the owner or operator of the valve determines that the valve cannot be monitored without elevating the monitoring personnel more than two meters above a support surface; and

(2) the hazardous waste management unit within which the valve is located was in operation before June 21, 1990, for units that transfer, treat, store, or dispose of RCRA hazardous wastes, unless the owner/operator of the unit is exempt from regulation under 40 CFR, Section 264.1.

(3) the owner or operator of the valve follows a written plan that requires monitoring of the valve at least once per calendar year.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR, Section 264.1057.

HISTORY

1. New section filed 12–23–92; operative 1–22–93 (Register 93, No. 2).
2. Change without regulatory effect amending section heading filed 12–28–95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 52).

§ 66264.1058. Standards: Pumps and Valves in Heavy Liquid Service, Pressure Relief Devices in Light Liquid or Heavy Liquid Service, and Flanges and Other Connectors.

(a) Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors shall be monitored within five days by the method specified in Section 66264.1063(b) if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method.

(b) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(c)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in Section 66264.1059.

(2) The first attempt at repair shall be made no later than 24 hours after each leak is detected.

(d) First attempts at repair include, but are not limited to, the best practices described under Section 66264.1057(e).

(e) Any connector that is inaccessible or is ceramic or ceramic–lined (e.g., porcelain, glass, or glass–lined) is exempt from the monitoring requirements of subsection (a) of this section and from the recordkeeping requirements of Section 66264.1064.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 264.1058.

HISTORY

1. New section filed 12–23–92; operative 1–22–93 (Register 93, No. 2).
2. Change without regulatory effect adding new subsection (e) and amending NOTE filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).

§ 66264.1059. Standards: Delay of Repair.

(a) Delay of repair of equipment for which leaks have been detected will be allowed if the repair is technically infeasible without a hazardous waste management unit shutdown. In such a case, repair of this equipment shall occur before the end of the next hazardous waste management unit shutdown.

(b) Delay of repair of equipment for which leaks have been detected will be allowed for equipment that is isolated from the hazardous waste management unit and that does not continue to contain or contact hazardous waste with organic concentrations at least ten percent by weight.

(c) Delay of repair for valves will be allowed if:

(1) the owner of operator determines that emissions of purged material resulting from immediate repair are greater than the emissions likely to result from delay of repair; and

(2) when repair procedures are effected, the purged material is collected and destroyed or recovered in a control device complying with Section 66264.1060.

(d) Delay of repair for pumps will be allowed if:

(1) repair requires the use of a dual mechanical seal system that includes a barrier fluid system; and

(2) repair is completed as soon as practicable, but not later than six months after the leak was detected.

(e) Delay of repair beyond a hazardous waste management unit shutdown will be allowed for a valve if valve assembly replacement is necessary during the hazardous waste management unit shutdown, valve assembly supplies have been depleted, and valve assembly supplies had been sufficiently stocked before the supplies were depleted. Delay of repair beyond the next hazardous waste management unit shutdown will not be allowed unless the next hazardous waste management unit shutdown occurs sooner than six months after the first hazardous waste management unit shutdown.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR, Section 264.1059.

HISTORY
1. New section filed 12–23–92; operative 1–22–93 (Register 93, No. 2).

§ 66264.1060. Standards: Closed–Vent Systems and Control Devices.

(a) The owners or operators of closed–vent systems and control devices shall comply with the provisions of Section 66264.1033.

(b)(1) The owner or operator of an existing facility who cannot install a closed–vent system and control device to comply with the provisions of this article on the effective date that the facility becomes subject to the provisions of this article must prepare an implementation schedule that includes dates by which the closed–vent system and control device will be installed and in operation. The controls must be installed as soon as possible, but the implementation schedule may allow up to 30 months after the effective date that the facility becomes subject to this article for installation and startup.

(2) Any unit that begins operation after December 21, 1990, and is subject to the provisions of this article when operation begins, must comply with the rules immediately (i.e., must have control devices installed and operating on startup of the affected unit); the 30–month implementation schedule does not apply.

(3) The owner or operator of any facility in existence on the effective date of a statutory or Department regulatory amendment that renders the facility subject to this article shall comply with all requirements of this article as soon as practicable but no later than 30 months after the amendment's effective date. When control equipment required by this article can not be installed and begin operation by the effective date of the amendment, the facility owner or operator shall prepare an implementation schedule that includes the following information: Specific calendar dates for award or contracts or issuance of purchase orders for the control equipment, initiation of on–site installation of the control equipment, completion of the control equipment installation, and performance of any testing to demonstrate that the installed equipment meets the applicable standards of this article. The owner or operator shall enter the implementation schedule in the operating record or in a permanent, readily available file located at the facility.

(4) Owners and operators of facilities and units that become newly subject to the requirements of this article after December 8, 1997, due to an action other than those described in subsection (b)(3) of this section must comply with all applicable requirements immediately (i.e., must have control devices installed and operating on the date the facility or unit becomes subject to this article; the 30–month implementation schedule does not apply).

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR, Section 264.1060.

HISTORY
1. New section filed 12–23–92; operative 1–22–93 (Register 93, No. 2).
2. Change without regulatory effect designating section as subsection (a), adding subsections (b)–(b)(4) and amending NOTE filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).

§ 66264.1061. Alternative Standards for Valves in Gas/Vapor Service or in Light Liquid Service: Percentage of Valves Allowed to Leak.

(a) An owner or operator subject to the requirements of Section 66264.1057 may elect to have all valves within a hazardous waste management unit comply with an alternative standard that allows no greater than two percent of the valves to leak.

(b) The following requirements shall be met if an owner or operator decides to comply with an alternative standard which allows two percent of the valves to leak:

(1) an owner or operator shall notify the Department that the owner or operator has elected to comply with the requirements of this section;

(2) a performance test as specified in paragraph (c) of this section shall be conducted initially upon designation, annually, and at any other time required by the Department upon a determination by the Department that a performance test is necessary to protect human health or to the environment; and

(3) if a valve leak is detected, it shall be repaired in accordance with Sections 66264.1057(d) and (e).

(c) For the purpose of determining when the alternative standard should be allowed under subsection (a), performance tests shall be conducted in the following manner:

(1) all valves subject to the requirements in Section 66264. 1057 within the hazardous waste management unit shall be monitored within one week period by the methods specified in Section 66264.1063(b);

(2) if an instrument reading of 10,000 ppm or greater is measured, a leak is detected; and

(3) the leak percentage shall be determined by dividing the number of valves subject to the requirements in Section 66264.1057 for which leaks are detected by the total number of valves subject to the requirements in Section 66264.1057 within the hazardous waste management unit.

(d) If an owner or operator decides to no longer comply with this section, the owner or operator shall notify the Department in writing that the work practice standard described in Section 66264.1057(a) through (e) will be followed.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR, Section 264.1061.

HISTORY
1. New section filed 12–23–92; operative 1–22–93 (Register 93, No. 2).
2. Change without regulatory effect amending subsection (c) filed 12–28–93 pursuant to title 1, section 100, California Code of Regulations (Register 93, No. 53).

§ 66264.1062. Alternative Standards for Valves in Gas/Vapor Service or in Light Liquid Service: Skip Period Leak Detection and Repair.

(a)(1) An owner or operator subject to the requirements of Section 66264.1057 shall elect for all valves within a hazardous waste management unit to comply with one of the alternative work practices specified in subsections (b)(2) and (3) of this section.

(2) An owner or operator shall notify the Department before implementing one of the alternative work practices.

(b)(1) An owner or operator shall comply with the requirements for valves, as described in Section 66264.1057, except as described in subsections (b)(2) and (b)(3) of this section.

(2) After two consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than two percent, an owner or operator may begin to skip one of the quarterly leak detection periods (i.e., monitor for leaks once every six months) for the valves subject to the requirements in Section 66264.1057.

(3) After five consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than two percent, an owner or operator may begin to skip three of the quarterly leak detection periods (i.e., monitor for leaks once every year) for the valves subject to the requirements in Section 66264.1057.

(4) If the percentage of valves leaking is greater than two percent, the owner or operator shall monitor monthly in compliance with the requirements in Section 66264.1057, but may again elect to use this section after meeting the requirements of Section 66264.1057(c)(1).

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR, Section 264.1062.

HISTORY
1. New section filed 12–23–92; operative 1–22–93 (Register 93, No. 2).
2. Change without regulatory effect amending subsections (b)(2)–(3) and amending NOTE filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).

§ 66264.1063. Test Methods and Procedures.

(a) Each owner or operator subject to the provisions of this article shall comply with the test methods and procedures requirements provided in this section.

(b) Leak detection monitoring, as required in Sections 66264.1052 through 66264.1062, shall comply with the following requirements:

(1) monitoring shall comply with Reference Method 21 in 40 CFR, part 60;

(2) the detection instrument shall meet the performance criteria of Reference Method 21 in CFR, part 60.

(3) the instrument shall be calibrated before use on each day of its use by the procedures specified in Reference Method 21 in 40 CFR, part 60;

(4) Calibration gases shall be:

(A) zero air (less than 10 ppm of hydrocarbon in air); and

(B) a mixture of methane or n–hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n–hexane;

(5) the instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21 in 40 CFR, part 60.

(c) When equipment is tested for compliance with no detectable emissions, as required in Sections 66264.1052(e), 66264.1053(i), 66264.1054, and 66264.1057(f), the test shall comply with the following requirements:

(1) the requirements of subsections (b)(1) through (4) of this section shall apply;

(2) the background level shall be determined as set forth in Reference Method 21 in CFR, part 60;

(3) the instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21 in 40 CFR, part 60; and

(4) the arithmetic difference between the maximum concentration indicated by the instrument and the background level shall be compared with 500 ppm for determining compliance.

(d) In accordance with the waste analysis plan required by Section 66264.13(b), an owner or operator of a facility shall determine, for each piece of equipment, whether the equipment contains or contacts a hazardous waste with organic concentration that equals or exceeds ten percent by weight using the following:

(1) methods described in ASTM Methods D 2267–88, E 169–87, E 168–88, E 260–85 (incorporated by reference under Section 66260.11);

(2) method 9060 or 8260 of SW–846, third edition and updates, (as incorporated by reference under Section 66260.11); or

(3) application of the knowledge of the nature of the hazardous waste stream or the process by which it was produced. Documentation of a waste determination by knowledge is required. Examples of documentation that shall be used to support a determination under this provision include production process information documenting that no organic compounds are used, information that the waste is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to have a total organic content less than ten percent, or prior speciation analysis results on the same waste stream where it can also be documented that no process changes have occurred since that analysis that could affect the total organic concentration of the waste.

(e) If an owner or operator determines that a piece of equipment contains or contacts a hazardous waste with organic concentrations at least ten percent by weight, the determination can be revised only after following the procedures in subsection (d)(1) or (d)(2) of this section.

(f) When an owner or operator and the Department do not agree on whether a piece of equipment contains or contacts a hazardous waste with organic concentrations at least ten percent by weight, the procedures in paragraph (d)(1) or (d)(2) of this section shall be used to resolve the dispute.

(g) Samples used in determining the percent organic content shall be representative of the highest total organic content hazardous waste that is expected to be contained in or contact the equipment.

(h) To determine if pumps or valves are in light liquid service, the vapor pressures of constituents may be obtained from standard reference texts or may be determined by ASTM D–2879–86 (incorporated by reference under Section 66260.11).

(i) Performance tests to determine if a control device achieves 95 weight percent organic emission reduction shall comply with the procedures of Section 66264.1034(c)(1) through (c)(4).

NOTE: Authority cited: Sections 25141, 25150, 25159 and 58012, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR, Section 264.1063.

HISTORY

1. New section filed 12–23–92; operative 1–22–93 (Register 93, No. 2).
2. Change without regulatory effect amending subsections (d)(1) and (d)(3) filed 12–28–95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 52).
3. Amendment of subsection (d)(2) and NOTE filed 10–13–98; operative 11–12–98 (Register 98, No. 42).

§ 66264.1064. Recordkeeping Requirements.

(a)(1) Each owner or operator subject to the provisions of this article shall comply with the recordkeeping requirements of this section.

(2) An owner or operator of more than one hazardous waste management unit subject to the provisions of this article may comply with the recordkeeping requirements for these hazardous waste management units in one recordkeeping system if the system identifies each record by each hazardous waste management unit.

(b) Owners and operators shall record the following information in the facility operating record:

(1) for each piece of equipment to which this article applies:

(A) equipment identification number and hazardous waste management unit identification;

(B) approximate locations within the facility (e.g., identify the hazardous waste management unit on a facility plot plan);

(C) type of equipment (e.g., a pump or pipeline valve);

(D) percent–by–weight total organics in the hazardous waste stream at the equipment;

(E) hazardous waste state at the equipment (e.g., gas/vapor or liquid);

(F) method of compliance with the standard (e.g., "monthly leak detection and repair" or "equipped with dual mechanical seals");

(2) for facilities that comply with the provisions of Section 66264.1033(a)(2), an implementation schedule as specified in Section 66264.1033(a)(2);

(3) an owner or operator who chooses to use test data to demonstrate the organic removal efficiency or total organic compound concentration achieved by the control device, shall record a performance test plan as specified in Section 66264.1035(b)(3); and

(4) documentation of compliance with Section 66264.1060; including the detailed design documentation or performance test results specified in Section 66264.1034(b)(4).

(c) When each leak is detected as specified in Sections 66264.1052, 66264.1053, 66264.1057, and 66264.1058, the following requirements apply:

(1) a weatherproof and readily visible identification, marked with the equipment identification number, the date evidence of a potential leak was found in accordance with Section 66264.1058(a), and the date the leak was detected, shall be attached to the leaking equipment;

(2) the identification on equipment, except on a valve, may be removed after it has been repaired; and

(3) the identification on a valve may be removed after it has been monitored for two successive months as specified in Sections 66264.1057(c) and no leak has been detected during those two months.

(d) When each leak is detected as specified in Sections 66264.1052, 66264.1053, 66264.1057, and 66264.1058, the following information shall be recorded in an inspection log and shall be kept in the facility operating record:

(1) the instrument and operator identification numbers and the equipment identification number;

(2) the date evidence of a potential leak was found in accordance with Section 66264.1058(a);

(3) the date the leak was detected and the dates of each attempt to repair the leak;

(4) repair methods applied in each attempt to repair the leak;

(5) "above 10,000" if the maximum instrument reading measured by the methods specified in Section 6626.1063(b) after each repair attempt is equal to or greater than 10,000 ppm;

(6) "repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak;

(7) source of documentation supporting the delay of repair of a valve in compliance with Section 66264.1059(c);

(8) name and the signature of the owner or operator (or designate) whose decision it was that repair could not be effected without a hazardous waste management unit shutdown;

(9) the expected date of successful repair of the leak if a leak is not repaired within 15 calendar days; and

(10) the date of successful repair of the leak.

(e) Design documentation and monitoring, operating, and inspection information for each closed–vent system and control device required to comply with the provisions of Section 66264.1060 shall be recorded and kept up–to–date in the facility operating record as specified in Section 66264.1035(c). Design documentation is specified in Section 66264.1035(c)(1) and (c)(2), and monitoring, operating, and inspection information is specified in 66264.1035(c)(3) through (c)(8).

(f) For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, the Department will specify the appropriate recordkeeping requirements.

(g) The following information pertaining to all equipment subject to the requirements in Sections 66264.1052 through 66264.1060 shall be recorded in a log that is kept in the facility operating record:

(1) a list of identification numbers for equipment (except welded fittings) subject to the requirements of this article;

(2)(A) a list of identification numbers for equipment that the owner or operator elects to designate for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, under the provisions of Sections 66264.1052(e), 66264.1053(i), and 66264.1057(f);

(B) the designation of this equipment as subject to the requirements of Sections 66264.1052(e), 66264.1053(i), or 66264.1057(f), and 66264.1057(f) shall be signed by the owner or operator;

(3) a list of equipment identification numbers for pressure relief devices required to comply with Section 66264.1054(a).

(4)(A) the dates of each compliance test required in Sections 66264.1052(e), 66264.1053(i), 66264.1054, and 66264.1057(f);

(B) the background level measured during each compliance test;

(C) the maximum instrument reading measured at the equipment during each compliance test; and

(5) a list of identification numbers for equipment in vacuum service.

(6) Identification, either by list or location (area or group) of equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year.

(h) The following information pertaining to all valves subject to the requirements of Section 66264.1057(g) and (h) shall be recorded in a log that is kept in the facility operating record:

(1) a list of identification numbers for valves that are designated as unsafe to monitor, an explanation for each valve stating why the valve is unsafe to monitor, and the plan for monitoring each valve;

(2) a list of identification numbers for valves that are designated as difficult to monitor, an explanation for each valve stating why the valve is difficult to monitor, and the planned schedule for monitoring each valve.

(i) The following information shall be recorded in the facility operating record for valves complying with Section 66264.1062:

(1) a schedule of monitoring; and

(2) the percent of valves found leaking during each monitoring period.

(j) The following information shall be recorded in a log that is kept in the facility operating record:

(1) criteria required in Section 66264.1052(d)(5)(B) and Section 66264.1053(e)(2) and an explanation of the design criteria; and

(2) any changes to these criteria and the reasons for the changes;

(k) The following information shall be recorded in a log that is kept in the facility operating record for use in determining exemptions as provided in the applicability section of this article and other specific articles:

(1) an analysis determining the design capacity of the hazardous waste management unit;

(2) a statement listing the hazardous waste influent to and effluent from each hazardous waste management unit subject to the requirements in Sections 66264.1052 through 66264.1060 and an analysis determining whether these hazardous wastes are heavy liquids; and

(3) an up–to–date analysis and the supporting information and data used to determine whether or not equipment is subject to the requirements in Sections 66264.1052 through 66264.1060. The record shall include supporting documentation as required by Section 66264.1063(d)(3) when application of the knowledge of the nature of the hazardous waste stream or the process by which it was produced is used. If the owner or operator takes any action (e.g., changing the process that produced the waste) that could result in an increase in the total organic content of the waste contained in or contacted by equipment determined not to be subject to the requirements in Sections 66264.1052 through 66264.1060, then a new determination is required.

(l) Records of the equipment leak information required by paragraph (d) of this section and the operating information required by paragraph (e) of this section shall be kept only three years.

(m) The owner or operator of a facility with equipment that is subject to this article and to regulations at 40 CFR part 60, part 61, or part 63 may elect to determine compliance with this article either by documentation pursuant to section 66264.1064, or by documentation of compliance with the regulations at 40 CFR part 60, part 61, or part 63 pursuant to the relevant provisions of the regulations at 40 part 60, part 61, or part 63. The documentation of compliance under regulations at 40 CFR part 60, part 61, or part 63 shall be kept with or made readily available with the facility operating record.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR, Section 264.1064.

HISTORY

1. New section filed 12–23–92; operative 1–22–93 (Register 93, No. 2).
2. Change without regulatory effect amending subsection (j)(1) filed 12–28–95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 52).
3. Change without regulatory effect adding subsection (g)(6) and amending subsection (m) and NOTE filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).

§ 66264.1065. Reporting Requirements.

(a) A semiannual report shall be submitted by owners and operators subject to the requirements of this article to the Department by first week of February and August of each year. The report shall include the following information:

(1) the identification number, name, and address of the facility;

(2) for each month during the semiannual reporting period:

(A) the equipment identification number of each valve for which leak was not repaired as required in Section 66264.1057(d);

(B) the equipment identification number of each pump for which a leak was not repaired as required in Section 66264.1052(c) and (d)(6); and

(C) the equipment identification number of each compressor for which a leak was not repaired as required in Section 66264.1053(g);

(3) dates of hazardous waste management unit shutdowns that occurred within the semiannual reporting period; and

(4) for each month during the semiannual reporting period:

(A) dates when the control device, installed as required by Section 66264.1052, 66264.1053, 66264.1054, or 66264.1055, exceeded or operated outside of the design specifications as defined in Section 66264.1064(e) and as indicated by the control device monitoring required by Section 66264.1060 for more than 24 hours;

(B) the duration and cause of each excess emissions; and

(C) any corrective measures taken.

(b) If, during the semiannual reporting period, leaks from valves, pumps, and compressors are repaired as required in Sections 66264.1057(d), 66264.1052(c) and (d)(6), and 66264.1053(g), respectively, and the control device does not exceed or operate outside of the

design specifications as defined in Section 66264.1064(e) for more than 24 hours, a report to the Department is not required.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR, Section 264.1065.

HISTORY

1. New section filed 12–23–92; operative 1–22–93 (Register 93, No. 2).

Article 28.5. Air Emission Standards for Tanks, Surface Impoundments, and Containers

§ 66264.1080. Applicability.

(a) The requirements of this article apply to owners and operators of all facilities that treat, store, or dispose of RCRA hazardous waste in tanks, surface impoundments, or containers subject to either articles 9, 10, or 11 except as section 66264.1 and subsection (b) of this section provide otherwise.

(b) The requirements of this article do not apply to the following waste management units at the facility:

(1) A waste management unit that holds hazardous waste placed in the unit before December 6, 1996, and in which no hazardous waste is added to the unit on or after December 6, 1996.

(2) A container that has a design capacity less than or equal to 0.1 m^3.

(3) A tank in which an owner or operator has stopped adding hazardous waste and the owner or operator has begun implementing or completed closure pursuant to an approved closure plan.

(4) A surface impoundment in which an owner or operator has stopped adding hazardous waste (except to implement an approved closure plan) and the owner or operator has begun implementing or completed closure pursuant to an approved closure plan.

(5) A waste management unit that is used solely for on–site treatment or storage of hazardous waste that is placed in the unit as a result of implementing remedial activities required under the corrective action authorities of RCRA sections 3004(u), 3004(v), or 3008(h); CERCLA authorities, or similar Federal or State authorities.

(6) A waste management unit that is used solely for the management of radioactive mixed waste in accordance with all applicable regulations under the authority of the Atomic Energy Act and the Nuclear Waste Policy Act.

(7) A hazardous waste management unit that the owner or operator certifies is equipped with and operating air emission controls in accordance with the requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63. For the purpose of complying with this subsection, a tank for which the air emission control includes an enclosure, as opposed to a cover, must be in compliance with the enclosure and control device requirements of section 66264.1084(i), except as provided in section 66264.1082(c)(5).

(8) A tank that has a process vent as defined in section 66260.10.

(c) For the owner and operator of a facility subject to this article who received a final permit under RCRA section 3005 prior to December 6, 1996, the requirements of this article shall be incorporated into the permit when the permit is reissued in accordance with the requirements of 40 CFR 124.15 or reviewed in accordance with the requirements of section 66270.50(d) of this division. Until such date when the permit is reissued in accordance with the requirements of 40 CFR 124.15 or reviewed in accordance with the requirements of section 66270.50(d), the owner and operator is subject to the requirements of chapter 15, article 28.5.

(d) The requirements of this article, except for the recordkeeping requirements specified in section 66264.1089(i) are administratively stayed for a tank or a container used for the management of hazardous waste generated by organic peroxide manufacturing and its associated laboratory operations when the owner or operator of the unit meets all of the following conditions:

(1) The owner or operator identifies that the tank or container receives hazardous waste generated by an organic peroxide manufacturing process producing more than one functional family of organic peroxides or multiple organic peroxides within one functional family, that one or more of these organic peroxides could potentially undergo self–accelerating thermal decomposition at or below ambient temperatures, and that organic peroxides are the predominant products manufactured by the process. For the purpose of meeting the conditions of this subsection, "organic peroxide" means an organic compound that contains the bivalent –O–O–structure and which may be considered to be a structural derivative of hydrogen peroxide where one or both of the hydrogen atoms has been replaced by an organic radical.

(2) The owner or operator prepares documentation, in accordance with the requirements of section 66264.1089(i) of this article, explaining why an undue safety hazard would be created if air emission controls specified in sections 66264.1084 through 66264.1087 are installed and operated on the tanks and containers used at the facility to manage the hazardous waste generated by the organic peroxide manufacturing process or processes meeting the conditions of subsection (d)(1) of this section.

(3) The owner or operator notifies the Department in writing that hazardous waste generated by an organic peroxide manufacturing process or processes meeting the conditions of subsection (d)(1) of this section are managed at the facility in tanks or containers meeting the conditions of subsection (d)(2) of this section. The notification shall state the name and address of the facility, and be signed and dated by an authorized representative of the facility owner or operator.

NOTE: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 264.1080.

HISTORY

1. Change without regulatory effect adding new article 28.5 (sections 66264.1080–66264.1090) and section filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).
2. Change without regulatory effect amending subsection (b)(5) filed 8–3–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 31).
3. Change without regulatory effect amending subsection (a) filed 12–21–2004 pursuant to Health and Safety Code section 25159.1 (Register 2004, No. 52).

§ 66264.1082. Standards: General.

(a) This section applies to the management of hazardous waste in tanks, surface impoundments, and containers subject to this article.

(b) The owner or operator shall control air pollutant emissions from each waste management unit in accordance with standards specified in sections 66264.1084 through 66264.1087, as applicable to the hazardous waste management unit, except as provided for in subsection (c) of this section.

(c) A tank, surface impoundment, or container is exempt from standards specified in sections 66264.1084 through 66264.1087 as applicable, provided that the waste management unit is one of the following:

(1) A tank, surface impoundment, or container for which all hazardous waste entering the unit has an average VO concentration at the point of waste origination of less than 500 parts per million by weight (ppmw). The average VO concentration shall be determined using the procedures specified in section 66264.1083(a). The owner or operator shall review and update, as necessary, this determination at least once every 12 months following the date of the initial determination for the hazardous waste streams entering the unit.

(2) A tank, surface impoundment, or container for which the organic content of all the hazardous waste entering the waste management unit has been reduced by an organic destruction or removal process that achieves any one of the following conditions:

(A) A process that removes or destroys the organics contained in the hazardous waste to a level such that the average VO concentration of the hazardous waste at the point of waste treatment is less than the exit concentration limit (Ct) established for the process. The average VO concentration of the hazardous waste at the point of waste treatment and the exit concentration limit for the process shall be determined using the procedures specified in section 66264.1083(b).

(B) A process that removes or destroys the organics contained in the hazardous waste to a level such that the organic reduction efficiency (R) for the process is equal to or greater than 95 percent, and the average VO concentration of the hazardous waste at the point of waste treatment is less than 100 ppmw. The organic reduction efficiency for the process and the average VO concentration of the hazardous waste at the point of waste treatment shall be determined using the procedures specified in section 66264.1083(b).

(C) A process that removes or destroys the organics contained in the hazardous waste to a level such that the actual organic mass removal rate (MR) for the process is equal to or greater than the required organic mass removal rate (RMR) established for the process. The required organic mass removal rate and the actual organic mass removal rate for the process shall be determined using the procedures specified in section 66264.1083(b).

(D) A biological process that destroys or degrades the organics contained in the hazardous waste, such that either of the following conditions is met:

1. The organic reduction efficiency (R) for the process is equal to or greater than 95 percent, and the organic biodegradation efficiency (R_{bio}) for the process is equal to or greater than 95 percent. The organic reduction efficiency and the organic biodegradation efficiency for the process shall be determined using the procedures specified in section 66264.1083(b).

2. The total actual organic mass biodegradation rate (MR_{bio}) for all hazardous waste treated by the process is equal to or greater than the required organic mass removal rate (RMR). The required organic mass removal rate and the actual organic mass biodegradation rate for the process shall be determined using the procedures specified in section 66264.1083(b).

(E) A process that removes or destroys the organics contained in the hazardous waste and meets all of the following conditions:

1. From the point of waste origination through the point where the hazardous waste enters the treatment process, the hazardous waste is managed continuously in waste management units which use air emission controls in accordance with the standards specified in sections 66264.1084 through 66264.1087, as applicable to the waste management unit.

2. From the point of waste origination through the point where the hazardous waste enters the treatment process, any transfer of the hazardous waste is accomplished through continuous hard-piping or other closed system transfer that does not allow exposure of the waste to the atmosphere. The EPA considers a drain system that meets the requirements of 40 CFR part 63, subpart RR—National Emission Standards for Individual Drain Systems to be a closed system.

3. The average VO concentration of the hazardous waste at the point of waste treatment is less than the lowest average VO concentration at the point of waste origination determined for each of the individual waste streams entering the process or 500 ppmw, whichever value is lower. The average VO concentration of each individual waste stream at the point of waste origination shall be determined using the procedures specified in section 66264.1083(a). The average VO concentration of the hazardous waste at the point of waste treatment shall be determined using the procedures specified in section 66264.1083(b).

(F) A process that removes or destroys the organics contained in the hazardous waste to a level such that the organic reduction efficiency (R) for the process is equal to or greater than 95 percent and the owner or operator certifies that the average VO concentration at the point of waste origination for each of the individual waste streams entering the process is less than 10,000 ppmw. The organic reduction efficiency for the process and the average VO concentration of the hazardous waste at the point of waste origination shall be determined using the procedures specified in sections 66264.1083(b) and 66264.1083(a), respectively.

(G) A hazardous waste incinerator for which the owner or operator has either:

1. Been issued a final permit under chapter 20 which implements the requirements of article 15 of this chapter; or

2. Has designed and operates the incinerator in accordance with the interim status requirements of chapter 15, article 15 of this division.

(H) A boiler or industrial furnace for which the owner or operator has either:

1. Been issued a final permit under chapter 20 which implements the requirements of chapter 16, article 8, or

2. Has designed and operates the boiler or industrial furnace in accordance with the interim status requirements of chapter 16, article 8 of this division.

(I) For the purpose of determining the performance of an organic destruction or removal process in accordance with the conditions in each of subsections (c)(2)(A) through (c)(2)(F) of this section, the owner or operator shall account for VO concentrations determined to be below the limit of detection of the analytical method by using the following VO concentration:

1. If Method 25D in 40 CFR part 60, appendix A is used for the analysis, one-half the blank value determined in the method at section 4.4 of Method 25D in 40 CFR part 60, appendix A, or a value of 25 ppmw, whichever is less.

2. If any other analytical method is used, one-half the sum of the limits of detection established for each organic constituent in the waste that has a Henry's law constant value at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m^3] at 25 degrees Celsius.

(3) A tank or surface impoundment used for biological treatment of hazardous waste in accordance with the requirements of subsection (c)(2)(D) of this section.

(4) A tank, surface impoundment, or container for which all hazardous waste placed in the unit either:

(A) Meets the numerical concentration limits for organic hazardous constituents, applicable to the hazardous waste, as specified in chapter 18—Land Disposal Restrictions under Table "Treatment Standards for Hazardous Waste" in section 66268.40; or

(B) The organic hazardous constituents in the waste have been treated by the treatment technology established by the Department for the waste in section 66268.42(a), or have been removed or destroyed by an equivalent method of treatment approved by the Department pursuant to section 66268.42(b).

(5) A tank used for bulk feed of hazardous waste to a waste incinerator and all of the following conditions are met:

(A) The tank is located inside an enclosure vented to a control device that is designed and operated in accordance with all applicable requirements specified under 40 CFR part 61, subpart FF—National Emission Standards for Benzene Waste Operations for a facility at which the total annual benzene quantity from the facility waste is equal to or greater than 10 megagrams per year;

(B) The enclosure and control device serving the tank were installed and began operation prior to November 25, 1996 and

(C) The enclosure is designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of material into or out of the enclosure by conveyor, vehicles, or other mechanical or electrical equipment; or to direct air flow into the enclosure. The owner or operator shall perform the verification procedure for the enclosure as specified in Section 5.0 to "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" annually.

(d) The Department may at any time perform or request that the owner or operator perform a waste determination for a hazardous waste managed in a tank, surface impoundment, or container exempted from using air emission controls under the provisions of this section as follows:

(1) The waste determination for average VO concentration of a hazardous waste at the point of waste origination shall be performed using direct measurement in accordance with the applicable requirements of

section 66264.1083(a). The waste determination for a hazardous waste at the point of waste treatment shall be performed in accordance with the applicable requirements of section 66264.1083(b).

(2) In performing a waste determination pursuant to subsection (d)(1) of this section, the sample preparation and analysis shall be conducted as follows:

(A) In accordance with the method used by the owner or operator to perform the waste analysis, except in the case specified in subsection (d)(2)(B) of this section.

(B) If the Department determines that the method used by the owner or operator was not appropriate for the hazardous waste managed in the tank, surface impoundment, or container, then the Department may choose an appropriate method.

(3) In a case when the owner or operator is requested to perform the waste determination, the Department may elect to have an authorized representative observe the collection of the hazardous waste samples used for the analysis.

(4) In a case when the results of the waste determination performed or requested by the Department do not agree with the results of a waste determination performed by the owner or operator using knowledge of the waste, then the results of the waste determination performed in accordance with the requirements of subsection (d)(1) of this section shall be used to establish compliance with the requirements of this article.

(5) In a case when the owner or operator has used an averaging period greater than 1 hour for determining the average VO concentration of a hazardous waste at the point of waste origination, the Department may elect to establish compliance with this article by performing or requesting that the owner or operator perform a waste determination using direct measurement based on waste samples collected within a 1-hour period as follows:

(A) The average VO concentration of the hazardous waste at the point of waste origination shall be determined by direct measurement in accordance with the requirements of section 66264.1083(a).

(B) Results of the waste determination performed or requested by the Department showing that the average VO concentration of the hazardous waste at the point of waste origination is equal to or greater than 500 ppmw shall constitute noncompliance with this article except in a case as provided for in subsection (d)(5)(C) of this section.

(C) For the case when the average VO concentration of the hazardous waste at the point of waste origination previously has been determined by the owner or operator using an averaging period greater than 1 hour to be less than 500 ppmw but because of normal operating process variations the VO concentration of the hazardous waste determined by direct measurement for any given 1-hour period may be equal to or greater than 500 ppmw, information that was used by the owner or operator to determine the average VO concentration of the hazardous waste (e.g., test results, measurements, calculations, and other documentation) and recorded in the facility records in accordance with the requirements of Sections 66264.1083(a) and 66264.1089 shall be considered by the Department together with the results of the waste determination performed or requested by the Department in establishing compliance with this article.

NOTE: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 264.1082.

HISTORY

1. Change without regulatory effect adding new section filed 6-11-99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).

§ 66264.1083. Waste Determination Procedures.

(a) Waste determination procedure to determine average volatile organic (VO) concentration of a hazardous waste at the point of waste origination.

(1) An owner or operator shall determine the average VO concentration at the point of waste origination for each hazardous waste placed in a waste management unit exempted under the provisions of Section 66264.1082(c)(1) from using air emission controls in accordance with standards specified in Sections 66264.1084 through 66264.1087, as applicable to the waste management unit.

(A) An initial determination of the average VO concentration of the waste stream shall be made before the first time any portion of the material in the hazardous waste stream is placed in a waste management unit exempted under the provisions of section 66264.1082(c)(1) from using air emission controls, and thereafter an initial determination of the average VO concentration of the waste stream shall be made for each averaging period that a hazardous waste is managed in the unit; and

(B) Perform a new waste determination whenever changes to the source generating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level that is equal to or greater than the applicable VO concentration limits specified in section 66264.1082.

(2) For a waste determination that is required by subsection (a)(1) of this section, the average VO concentration of a hazardous waste at the point of waste origination shall be determined in accordance with the procedures specified in Section 66265.1084(a)(2) through (a)(4).

(b) Waste determination procedures for treated hazardous waste.

(1) An owner or operator shall perform the applicable waste determinations for each treated hazardous waste placed in waste management units exempted under the provisions of Sections 66264.1082(c)(2)(A) through (c)(2)(F) from using air emission controls in accordance with standards specified in Sections 66264.1084 through 66264.1087, as applicable to the waste management unit.

(A) An initial determination of the average VO concentration of the waste stream shall be made before the first time any portion of the material in the treated waste stream is placed in the exempt waste management unit, and thereafter update the information used for the waste determination at least once every 12 months following the date of the initial waste determination; and

(B) Perform a new waste determination whenever changes to the process generating or treating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level such that the applicable treatment conditions specified in section 66264.1082(c)(2) are not achieved.

(2) The waste determination for a treated hazardous waste shall be performed in accordance with the procedures specified in subsections 66265.1084(b)(2) through (b)(9), as applicable to the treated hazardous waste.

(c) Procedure to determine the maximum organic vapor pressure of a hazardous waste in a tank.

(1) An owner or operator shall determine the maximum organic vapor pressure for each hazardous waste placed in a tank using Tank Level 1 controls in accordance with standards specified in Section 66264.1084(c).

(2) The maximum organic vapor pressure of the hazardous waste may be determined in accordance with the procedures specified in subsections 66265.1084(c)(2) through (c)(4).

(d) The procedure for determining no detectable organic emissions for the purpose of complying with this article shall be conducted in accordance with the procedures specified in Section 66265.1084(d).

NOTE: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 265.1083.

HISTORY

1. Change without regulatory effect adding new section filed 6-11-99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).
2. Change without regulatory effect adding subsections (a)(1)(A)-(B) and (b)(1)(A)-(B) filed 8-3-2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 31).

§ 66264.1084. Standards: Tanks.

(a) The provisions of this section apply to the control of air pollutant emissions from tanks for which section 66264.1082(b) references the use of this section for such air emission control.

(b) The owner or operator shall control air pollutant emissions from each tank subject to this section in accordance with the following requirements as applicable:

(1) For a tank that manages hazardous waste that meets all of the conditions specified in subsections (b)(1)(A) through (b)(1)(C) of this section, the owner or operator shall control air pollutant emissions from the tank in accordance with the Tank Level 1 controls specified in subsection (c) of this section or the Tank Level 2 controls specified in subsection (d) of this section.

(A) The hazardous waste in the tank has a maximum organic vapor pressure which is less than the maximum organic vapor pressure limit for the tank's design capacity category as follows:

1. For a tank design capacity equal to or greater than 151 m^3, the maximum organic vapor pressure limit for the tank is 5.2 kPa.

2. For a tank design capacity equal to or greater than 75 m^3 but less than 151 m^3, the maximum organic vapor pressure limit for the tank is 27.6 kPa.

3. For a tank design capacity less than 75 m^3, the maximum organic vapor pressure limit for the tank is 76.6 kPa.

(B) The hazardous waste in the tank is not heated by the owner or operator to a temperature that is greater than the temperature at which the maximum organic vapor pressure of the hazardous waste is determined for the purpose of complying with subsection (b)(1)(A) of this section.

(C) The hazardous waste in the tank is not treated by the owner or operator using a waste stabilization process, as defined in section 66260.10.

(2) For a tank that manages hazardous waste that does not meet all of the conditions specified in subsections (b)(1)(A) through (b)(1)(C) of this section, the owner or operator shall control air pollutant emissions from the tank by using Tank Level 2 controls in accordance with the requirements of subsection (d) of this section. Examples of tanks required to use Tank Level 2 controls include: A tank used for a waste stabilization process; and a tank for which the hazardous waste in the tank has a maximum organic vapor pressure that is equal to or greater than the maximum organic vapor pressure limit for the tank's design capacity category as specified in subsection (b)(1)(A) of this section.

(c) Owners and operators controlling air pollutant emissions from a tank using Tank Level 1 controls shall meet the requirements specified in subsections (c)(1) through (c)(4) of this section:

(1) The owner or operator shall determine the maximum organic vapor pressure for a hazardous waste to be managed in the tank using Tank Level 1 controls before the first time the hazardous waste is placed in the tank. The maximum organic vapor pressure shall be determined using the procedures specified in section 66264.1083(c) of this article. Thereafter, the owner or operator shall perform a new determination whenever changes to the hazardous waste managed in the tank could potentially cause the maximum organic vapor pressure to increase to a level that is equal to or greater than the maximum organic vapor pressure limit for the tank design capacity category specified in subsection (b)(1)(A) of this section, as applicable to the tank.

(2) The tank shall be equipped with a fixed roof designed to meet the following specifications:

(A) The fixed roof and its closure devices shall be designed to form a continuous barrier over the entire surface area of the hazardous waste in the tank. The fixed roof may be a separate cover installed on the tank (e.g., a removable cover mounted on an open–top tank) or may be an integral part of the tank structural design (e.g., a horizontal cylindrical tank equipped with a hatch).

(B) The fixed roof shall be installed in a manner such that there are no visible cracks, holes, gaps, or other open spaces between roof section joints or between the interface of the roof edge and the tank wall.

(C) Each opening in the fixed roof, and any manifold system associated with the fixed roof, shall be either:

1. Equipped with a closure device designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the opening and the closure device; or

2. Connected by a closed–vent system that is vented to a control device. The control device shall remove or destroy organics in the vent stream, and shall be operating whenever hazardous waste is managed in the tank, except as provided for in subsections (c)(2)(C)2.a. and 2.b. of this section.

a. During periods when it is necessary to provide access to the tank for performing the activities of subsection (c)(2)(C)2 of this section, venting of the vapor headspace underneath the fixed roof to the control device is not required, opening of closure devices is allowed, and removal of the fixed roof is allowed. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, and resume operation of the control device.

b. During periods of routine inspection, maintenance, or other activities needed for normal operations, and for removal of accumulated sludge or other residues from the bottom of the tank.

(D) The fixed roof and its closure devices shall be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the fixed roof and closure devices throughout their intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices shall include: Organic vapor permeability, the effects of any contact with the hazardous waste or its vapors managed in the tank; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the tank on which the fixed roof is installed.

(3) Whenever a hazardous waste is in the tank, the fixed roof shall be installed with each closure device secured in the closed position except as follows:

(A) Opening of closure devices or removal of the fixed roof is allowed at the following times:

1. To provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample the liquid in the tank, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the tank.

2. To remove accumulated sludge or other residues from the bottom of tank.

(B) Opening of a spring–loaded pressure–vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the tank internal pressure in accordance with the tank design specifications. The device shall be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the tank internal pressure is within the internal pressure operating range determined by the owner or operator based on the tank manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the tank internal pressure exceeds the internal pressure operating range for the tank as a result of loading operations or diurnal ambient temperature fluctuations.

(C) Opening of a safety device, as defined in section 66265.1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The owner or operator shall inspect the air emission control equipment in accordance with the following requirements.

(A) The fixed roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the tank wall;

broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(B) The owner or operator shall perform an initial inspection of the fixed roof and its closure devices on or before the date that the tank becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year except under the special conditions provided for in subsection (*l*) of this section.

(C) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of subsection (k) of this section.

(D) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in section 66264.1089(b).

(d) Owners and operators controlling air pollutant emissions from a tank using Tank Level 2 controls shall use one of the following tanks:

(1) A fixed–roof tank equipped with an internal floating roof in accordance with the requirements specified in subsection (e) of this section;

(2) A tank equipped with an external floating roof in accordance with the requirements specified in subsection (f) of this section;

(3) A tank vented through a closed–vent system to a control device in accordance with the requirements specified in subsection (g) of this section;

(4) A pressure tank designed and operated in accordance with the requirements specified in subsection (h) of this section; or

(5) A tank located inside an enclosure that is vented through a closed–vent system to an enclosed combustion control device in accordance with the requirements specified in subsection (i) of this section.

(e) The owner or operator who controls air pollutant emissions from a tank using a fixed roof with an internal floating roof shall meet the requirements specified in subsections (e)(1) through (e)(3) of this section.

(1) The tank shall be equipped with a fixed roof and an internal floating roof in accordance with the following requirements:

(A) The internal floating roof shall be designed to float on the liquid surface except when the floating roof must be supported by the leg supports.

(B) The internal floating roof shall be equipped with a continuous seal between the wall of the tank and the floating roof edge that meets either of the following requirements:

1. A single continuous seal that is either a liquid–mounted seal or a metallic shoe seal, as defined in section 66260.10; or

2. Two continuous seals mounted one above the other. The lower seal may be a vapor–mounted seal.

(C) The internal floating roof shall meet the following specifications:

1. Each opening in a noncontact internal floating roof except for automatic bleeder vents (vacuum breaker vents) and the rim space vents is to provide a projection below the liquid surface.

2. Each opening in the internal floating roof shall be equipped with a gasketed cover or a gasketed lid except for leg sleeves, automatic bleeder vents, rim space vents, column wells, ladder wells, sample wells, and stub drains.

3. Each penetration of the internal floating roof for the purpose of sampling shall have a slit fabric cover that covers at least 90 percent of the opening.

4. Each automatic bleeder vent and rim space vent shall be gasketed.

5. Each penetration of the internal floating roof that allows for passage of a ladder shall have a gasketed sliding cover.

6. Each penetration of the internal floating roof that allows for passage of a column supporting the fixed roof shall have a flexible fabric sleeve seal or a gasketed sliding cover.

(2) The owner or operator shall operate the tank in accordance with the following requirements:

(A) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be completed as soon as practical.

(B) Automatic bleeder vents are to be set closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the leg supports.

(C) Prior to filling the tank, each cover, access hatch, gauge float well or lid on any opening in the internal floating roof shall be bolted or fastened closed (i.e., no visible gaps). Rim space vents are to be set to open only when the internal floating roof is not floating or when the pressure beneath the rim exceeds the manufacturer's recommended setting.

(3) The owner or operator shall inspect the internal floating roof in accordance with the procedures specified as follows:

(A) The floating roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to: The internal floating roof is not floating on the surface of the liquid inside the tank; liquid has accumulated on top of the internal floating roof; any portion of the roof seals have detached from the roof rim; holes, tears, or other openings are visible in the seal fabric; the gaskets no longer close off the hazardous waste surface from the atmosphere; or the slotted membrane has more than 10 percent open area.

(B) The owner or operator shall inspect the internal floating roof components as follows except as provided in subsection (e)(3)(C) of this section:

1. Visually inspect the internal floating roof components through openings on the fixed–roof (e.g., manholes and roof hatches) at least once every 12 months after initial fill, and

2. Visually inspect the internal floating roof, primary seal, secondary seal (if one is in service), gaskets, slotted membranes, and sleeve seals (if any) each time the tank is emptied and degassed and at least every 10 years.

(C) As an alternative to performing the inspections specified in subsection (e)(3)(B) of this section for an internal floating roof equipped with two continuous seals mounted one above the other, the owner or operator may visually inspect the internal floating roof, primary and secondary seals, gaskets, slotted membranes, and sleeve seals (if any) each time the tank is emptied and degassed and at least every 5 years.

(D) Prior to each inspection required by subsection (e)(3)(B) or (e)(3)(C) of this section, the owner or operator shall notify the Department in advance of each inspection to provide the Department with the opportunity to have an observer present during the inspection. The owner or operator shall notify the Department of the date and location of the inspection as follows:

1. Prior to each visual inspection of an internal floating roof in a tank that has been emptied and degassed, written notification shall be prepared and sent by the owner or operator so that it is received by the Department at least 30 calendar days before refilling the tank except when an inspection is not planned as provided for in subsection (e)(3)(D)2. of this section.

2. When a visual inspection is not planned and the owner or operator could not have known about the inspection 30 calendar days before refilling the tank, the owner or operator shall notify the Department as soon as possible, but no later than 7 calendar days before refilling of the tank. This notification may be made by telephone and immediately followed by a written explanation for why the inspection is unplanned. Alternatively, written notification, including the explanation for the unplanned inspection, may be sent so that it is received by the Department at least 7 calendar days before refilling the tank.

(E) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of subsection (k) of this section.

(F) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in section 66264.1089(b).

(4) Safety devices, as defined in section 66260.10, may be installed and operated as necessary on any tank complying with the requirements of subsection (e) of this section.

(f) The owner or operator who controls air pollutant emissions from a tank using an external floating roof shall meet the requirements specified in subsections (f)(1) through (f)(3) of this section.

(1) The owner or operator shall design the external floating roof in accordance with the following requirements:

(A) The external floating roof shall be designed to float on the liquid surface except when the floating roof must be supported by the leg supports.

(B) The floating roof shall be equipped with two continuous seals, one above the other, between the wall of the tank and the roof edge. The lower seal is referred to as the primary seal, and the upper seal is referred to as the secondary seal.

1. The primary seal shall be a liquid–mounted seal or a metallic shoe seal, as defined in section 66260.10. The total area of the gaps between the tank wall and the primary seal shall not exceed 212 square centimeters (cm^2) per meter of tank diameter, and the width of any portion of these gaps shall not exceed 3.8 centimeters (cm). If a metallic shoe seal is used for the primary seal, the metallic shoe seal shall be designed so that one end extends into the liquid in the tank and the other end extends a vertical distance of at least 61 centimeters above the liquid surface.

2. The secondary seal shall be mounted above the primary seal and cover the annular space between the floating roof and the wall of the tank. The total area of the gaps between the tank wall and the secondary seal shall not exceed 21.2 square centimeters (cm^2) per meter of tank diameter, and the width of any portion of these gaps shall not exceed 1.3 centimeters (cm).

(C) The external floating roof shall meet the following specifications:

1. Except for automatic bleeder vents (vacuum breaker vents) and rim space vents, each opening in a noncontact external floating roof shall provide a projection below the liquid surface.

2. Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof shall be equipped with a gasketed cover, seal, or lid.

3. Each access hatch and each gauge float well shall be equipped with a cover designed to be bolted or fastened when the cover is secured in the closed position.

4. Each automatic bleeder vent and each rim space vent shall be equipped with a gasket.

5. Each roof drain that empties into the liquid managed in the tank shall be equipped with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening.

6. Each unslotted and slotted guide pole well shall be equipped with a gasketed sliding cover or a flexible fabric sleeve seal.

7. Each unslotted guide pole shall be equipped with a gasketed cap on the end of the pole.

8. Each slotted guide pole shall be equipped with a gasketed float or other device which closes off the liquid surface from the atmosphere.

9. Each gauge hatch and each sample well shall be equipped with a gasketed cover.

(2) The owner or operator shall operate the tank in accordance with the following requirements:

(A) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be completed as soon as practical.

(B) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof shall be secured and maintained in a closed position at all times except when the closure device must be open for access.

(C) Covers on each access hatch and each gauge float well shall be bolted or fastened when secured in the closed position.

(D) Automatic bleeder vents shall be set closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the leg supports.

(E) Rim space vents shall be set to open only at those times that the roof is being floated off the roof leg supports or when the pressure beneath the rim seal exceeds the manufacturer's recommended setting.

(F) The cap on the end of each unslotted guide pole shall be secured in the closed position at all times except when measuring the level or collecting samples of the liquid in the tank.

(G) The cover on each gauge hatch or sample well shall be secured in the closed position at all times except when the hatch or well must be opened for access.

(H) Both the primary seal and the secondary seal shall completely cover the annular space between the external floating roof and the wall of the tank in a continuous fashion except during inspections.

(3) The owner or operator shall inspect the external floating roof in accordance with the procedures specified as follows:

(A) The owner or operator shall measure the external floating roof seal gaps in accordance with the following requirements:

1. The owner or operator shall perform measurements of gaps between the tank wall and the primary seal within 60 calendar days after initial operation of the tank following installation of the floating roof and, thereafter, at least once every 5 years.

2. The owner or operator shall perform measurements of gaps between the tank wall and the secondary seal within 60 calendar days after initial operation of the tank following installation of the floating roof and, thereafter, at least once every year.

3. If a tank ceases to hold hazardous waste for a period of 1 year or more, subsequent introduction of hazardous waste into the tank shall be considered an initial operation for the purposes of subsections (f)(3)(A)1. and (f)(3)(A)2. of this section.

4. The owner or operator shall determine the total surface area of gaps in the primary seal and in the secondary seal individually using the following procedure:

a. The seal gap measurements shall be performed at one or more floating roof levels when the roof is floating off the roof supports.

b. Seal gaps, if any, shall be measured around the entire perimeter of the floating roof in each place where a 0.32–centimeter (cm) diameter uniform probe passes freely (without forcing or binding against the seal) between the seal and the wall of the tank and measure the circumferential distance of each such location.

c. For a seal gap measured under subsection (f)(3) of this section, the gap surface area shall be determined by using probes of various widths to measure accurately the actual distance from the tank wall to the seal and multiplying each such width by its respective circumferential distance.

d. The total gap area shall be calculated by adding the gap surface areas determined for each identified gap location for the primary seal and the secondary seal individually, and then dividing the sum for each seal type by the nominal diameter of the tank. These total gap areas for the primary seal and secondary seal are then compared to the respective standards for the seal type as specified in subsection (f)(1)(B) of this section.

5. In the event that the seal gap measurements do not conform to the specifications in subsection (f)(1)(B) of this section, the owner or operator shall repair the defect in accordance with the requirements of subsection (k) of this section.

6. The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in section 66264.1089(b).

(B) The owner or operator shall visually inspect the external floating roof in accordance with the following requirements:

1. The floating roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to: Holes, tears, or other openings in the rim seal or seal fabric of the floating roof; a rim seal detached from the floating roof; all or a portion of the floating roof deck being submerged below the surface of the liquid in the tank; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

2. The owner or operator shall perform an initial inspection of the external floating roof and its closure devices on or before the date that the tank becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year except for the special conditions provided for in subsection (*l*) of this section.

3. In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of subsection (k) of this section.

4. The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in section 264.1089(b).

(C) Prior to each inspection required by subsection (f)(3)(A) or (f)(3)(B) of this section, the owner or operator shall notify the Department in advance of each inspection to provide the Department with the opportunity to have an observer present during the inspection. The owner or operator shall notify the Department of the date and location of the inspection as follows:

1. Prior to each inspection to measure external floating roof seal gaps as required under subsection (f)(3)(A) of this section, written notification shall be prepared and sent by the owner or operator so that it is received by the Department at least 30 calendar days before the date the measurements are scheduled to be performed.

2. Prior to each visual inspection of an external floating roof in a tank that has been emptied and degassed, written notification shall be prepared and sent by the owner or operator so that it is received by the Department at least 30 calendar days before refilling the tank except when an inspection is not planned as provided for in subsection (f)(3)(C)3. of this section.

3. When a visual inspection is not planned and the owner or operator could not have known about the inspection 30 calendar days before refilling the tank, the owner or operator shall notify the Department as soon as possible, but no later than 7 calendar days before refilling of the tank. This notification may be made by telephone and immediately followed by a written explanation for why the inspection is unplanned. Alternatively, written notification, including the explanation for the unplanned inspection, may be sent so that it is received by the Department at least 7 calendar days before refilling the tank.

(4) Safety devices, as defined in section 66260.10, may be installed and operated as necessary on any tank complying with the requirements of subsection (f) of this section.

(g) The owner or operator who controls air pollutant emissions from a tank by venting the tank to a control device shall meet the requirements specified in subsections (g)(1) through (g)(3) of this section.

(1) The tank shall be covered by a fixed roof and vented directly through a closed–vent system to a control device in accordance with the following requirements:

(A) The fixed roof and its closure devices shall be designed to form a continuous barrier over the entire surface area of the liquid in the tank.

(B) Each opening in the fixed roof not vented to the control device shall be equipped with a closure device. If the pressure in the vapor headspace underneath the fixed roof is less than atmospheric pressure when the control device is operating, the closure devices shall be designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device. If the pressure in the vapor headspace underneath the fixed roof is equal to or greater than atmospheric pressure when the control device is operating, the closure device shall be designed to operate with no detectable organic emissions.

(C) The fixed roof and its closure devices shall be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the fixed roof and closure devices throughout their intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices shall include: Organic vapor permeability, the effects of any contact with the liquid and its vapor managed in the tank; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the tank on which the fixed roof is installed.

(D) The closed–vent system and control device shall be designed and operated in accordance with the requirements of section 66264.1087.

(2) Whenever a hazardous waste is in the tank, the fixed roof shall be installed with each closure device secured in the closed position and the vapor headspace underneath the fixed roof vented to the control device except as follows:

(A) Venting to the control device is not required, and opening of closure devices or removal of the fixed roof is allowed at the following times:

1. To provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample liquid in the tank, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the tank.

2. To remove accumulated sludge or other residues from the bottom of a tank.

(B) Opening of a safety device, as defined in section 66260.10, is allowed at any time conditions require doing so to avoid an unsafe condition.

(3) The owner or operator shall inspect and monitor the air emission control equipment in accordance with the following procedures:

(A) The fixed roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the tank wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(B) The closed–vent system and control device shall be inspected and monitored by the owner or operator in accordance with the procedures specified in section 66264.1087.

(C) The owner or operator shall perform an initial inspection of the air emission control equipment on or before the date that the tank becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year except for the special conditions provided for in subsection (*l*) of this section.

(D) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of subsection (k) of this section.

(E) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in section 66264.1089(b).

(h) The owner or operator who controls air pollutant emissions by using a pressure tank shall meet the following requirements.

(1) The tank shall be designed not to vent to the atmosphere as a result of compression of the vapor headspace in the tank during filling of the tank to its design capacity.

(2) All tank openings shall be equipped with closure devices designed to operate with no detectable organic emissions as determined using the procedure specified in section 66264.1083(d).

(3) Whenever a hazardous waste is in the tank, the tank shall be operated as a closed system that does not vent to the atmosphere except under either of the following conditions as specified in paragraph (h)(3)(A) or (h)(3)(B) of this section.

(A) At those times when opening of a safety device, as defined in section 66260.10, is required to avoid an unsafe condition.

(B) At those times when purging of inerts from the tank is required and the purge stream is routed to a closed–vent system and control device designed and operated in accordance with the requirements of section 66264.1087.

(i) The owner or operator who controls air pollutant emissions by using an enclosure vented through a closed-vent system to an enclosed combustion control device shall meet the requirements specified in subsections (i)(1) through (i)(4) of this section.

(1) The tank shall be located inside an enclosure. The enclosure shall be designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of material into or out of the enclosure by conveyor, vehicles, or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The owner or operator shall perform the verification procedure for the enclosure as specified in Section 5.0 to "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" initially when the enclosure is first installed and, thereafter, annually.

(2) The enclosure shall be vented through a closed-vent system to an enclosed combustion control device that is designed and operated in accordance with the standards for either a vapor incinerator, boiler, or process heater specified in section 66264.1087.

(3) Safety devices, as defined in section 66260.10, may be installed and operated as necessary on any enclosure, closed-vent system, or control device used to comply with the requirements of subsections (i)(1) and (i)(2) of this section.

(4) The owner or operator shall inspect and monitor the closed-vent system and control device as specified in section 66264.1087.

(j) The owner or operator shall transfer hazardous waste to a tank subject to this section in accordance with the following requirements:

(1) Transfer of hazardous waste, except as provided in subsection (j)(2) of this section, to the tank from another tank subject to this section or from a surface impoundment subject to section 66264.1085 shall be conducted using continuous hard-piping or another closed system that does not allow exposure of the hazardous waste to the atmosphere. For the purpose of complying with this provision, an individual drain system is considered to be a closed system when it meets the requirements of 40 CFR part 63, subpart RR—National Emission Standards for Individual Drain Systems.

(2) The requirements of subsection (j)(1) of this section do not apply when transferring a hazardous waste to the tank under any of the following conditions:

(A) The hazardous waste meets the average VO concentration conditions specified in section 66264.1082(c)(1) at the point of waste origination.

(B) The hazardous waste has been treated by an organic destruction or removal process to meet the requirements in 66264.1082(c)(2).

(C) The hazardous waste meets the requirements of section 66264.1082(c)(4).

(k) The owner or operator shall repair each defect detected during an inspection performed in accordance with the requirements of subsection (c)(4), (e)(3), (f)(3), or (g)(3) of this section as follows:

(1) The owner or operator shall make first efforts at repair of the defect no later than 5 calendar days after detection, and repair shall be completed as soon as possible but no later than 45 calendar days after detection except as provided in subsection (k)(2) of this section.

(2) Repair of a defect may be delayed beyond 45 calendar days if the owner or operator determines that repair of the defect requires emptying or temporary removal from service of the tank and no alternative tank capacity is available at the site to accept the hazardous waste normally managed in the tank. In this case, the owner or operator shall repair the defect the next time the process or unit that is generating the hazardous waste managed in the tank stops operation. Repair of the defect shall be completed before the process or unit resumes operation.

(*l*) Following the initial inspection and monitoring of the cover as required by the applicable provisions of this article, subsequent inspection and monitoring may be performed at intervals longer than 1 year under the following special conditions:

(1) In the case when inspecting or monitoring the cover would expose a worker to dangerous, hazardous, or other unsafe conditions, then the owner or operator may designate a cover as an "unsafe to inspect and monitor cover" and comply with all of the following requirements:

(A) Prepare a written explanation for the cover stating the reasons why the cover is unsafe to visually inspect or to monitor, if required.

(B) Develop and implement a written plan and schedule to inspect and monitor the cover, using the procedures specified in the applicable section of this article, as frequently as practicable during those times when a worker can safely access the cover.

(2) In the case when a tank is buried partially or entirely underground, an owner or operator is required to inspect and monitor, as required by the applicable provisions of this section, only those portions of the tank cover and those connections to the tank (e.g., fill ports, access hatches, gauge wells, etc.) that are located on or above the ground surface.

NOTE: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 264.1084.

HISTORY

1. Change without regulatory effect adding new section filed 6-11-99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).
2. Change without regulatory effect amending subsections (h)(3) and adding subsections (h)(3)(A)-(B) filed 8-3-2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 31).

§ 66264.1085. Standards: Surface Impoundments.

(a) The provisions of this section apply to the control of air pollutant emissions from surface impoundments for which section 66264.1082(b) references the use of this section for such air emission control.

(b) The owner or operator shall control air pollutant emissions from the surface impoundment by installing and operating either of the following:

(1) A floating membrane cover in accordance with the provisions specified in subsection (c) of this section; or

(2) A cover that is vented through a closed-vent system to a control device in accordance with the provisions specified in subsection (d) of this section.

(c) The owner or operator who controls air pollutant emissions from a surface impoundment using a floating membrane cover shall meet the requirements specified in subsections (c)(1) through (c)(3) of this section.

(1) The surface impoundment shall be equipped with a floating membrane cover designed to meet the following specifications:

(A) The floating membrane cover shall be designed to float on the liquid surface during normal operations and form a continuous barrier over the entire surface area of the liquid.

(B) The cover shall be fabricated from a synthetic membrane material that is either:

1. High density polyethylene (HDPE) with a thickness no less than 2.5 millimeters (mm); or

2. A material or a composite of different materials determined to have both organic permeability properties that are equivalent to those of the material listed in subsection (c)(1)(B)1. of this section and chemical and physical properties that maintain the material integrity for the intended service life of the material.

(C) The cover shall be installed in a manner such that there are no visible cracks, holes, gaps, or other open spaces between cover section seams or between the interface of the cover edge and its foundation mountings.

(D) Except as provided for in subsection (c)(1)(E) of this section, each opening in the floating membrane cover shall be equipped with a closure device designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device.

(E) The floating membrane cover may be equipped with one or more emergency cover drains for removal of stormwater. Each emergency cover drain shall be equipped with a slotted membrane fabric cover that

covers at least 90 percent of the area of the opening or a flexible fabric sleeve seal.

(F) The closure devices shall be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the closure devices throughout their intended service life. Factors to be considered when selecting the materials of construction and designing the cover and closure devices shall include: Organic vapor permeability; the effects of any contact with the liquid and its vapor managed in the surface impoundment; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the surface impoundment on which the floating membrane cover is installed.

(2) Whenever a hazardous waste is in the surface impoundment, the floating membrane cover shall float on the liquid and each closure device shall be secured in the closed position except as follows:

(A) Opening of closure devices or removal of the cover is allowed at the following times:

1. To provide access to the surface impoundment for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample the liquid in the surface impoundment, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator shall promptly replace the cover and secure the closure device in the closed position, as applicable.

2. To remove accumulated sludge or other residues from the bottom of surface impoundment.

(B) Opening of a safety device, as defined in section 66260.10, is allowed at any time conditions require doing so to avoid an unsafe condition.

(3) The owner or operator shall inspect the floating membrane cover in accordance with the following procedures:

(A) The floating membrane cover and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the cover section seams or between the interface of the cover edge and its foundation mountings; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(B) The owner or operator shall perform an initial inspection of the floating membrane cover and its closure devices on or before the date that the surface impoundment becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year except for the special conditions provided for in subsection (g) of this section.

(C) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of subsection (f) of this section.

(D) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in section 66264.1089(c).

(d) The owner or operator who controls air pollutant emissions from a surface impoundment using a cover vented to a control device shall meet the requirements specified in subsections (d)(1) through (d)(3) of this section.

(1) The surface impoundment shall be covered by a cover and vented directly through a closed–vent system to a control device in accordance with the following requirements:

(A) The cover and its closure devices shall be designed to form a continuous barrier over the entire surface area of the liquid in the surface impoundment.

(B) Each opening in the cover not vented to the control device shall be equipped with a closure device. If the pressure in the vapor headspace underneath the cover is less than atmospheric pressure when the control device is operating, the closure devices shall be designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device. If the pressure in the vapor headspace underneath the cover is equal to or greater than atmospheric pressure when the control device is operating, the closure device shall be designed to operate with no detectable organic emissions using the procedure specified in section 66264.1083(d).

(C) The cover and its closure devices shall be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the cover and closure devices throughout their intended service life. Factors to be considered when selecting the materials of construction and designing the cover and closure devices shall include: Organic vapor permeability; the effects of any contact with the liquid or its vapors managed in the surface impoundment; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the surface impoundment on which the cover is installed.

(D) The closed–vent system and control device shall be designed and operated in accordance with the requirements of section 66264.1087.

(2) Whenever a hazardous waste is in the surface impoundment, the cover shall be installed with each closure device secured in the closed position and the vapor headspace underneath the cover vented to the control device except as follows:

(A) Venting to the control device is not required, and opening of closure devices or removal of the cover is allowed at the following times:

1. To provide access to the surface impoundment for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample liquid in the surface impoundment, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the surface impoundment.

2. To remove accumulated sludge or other residues from the bottom of the surface impoundment.

(B) Opening of a safety device, as defined in section 66260.10, is allowed at any time conditions require doing so to avoid an unsafe condition.

(3) The owner or operator shall inspect and monitor the air emission control equipment in accordance with the following procedures:

(A) The surface impoundment cover and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the cover section seams or between the interface of the cover edge and its foundation mountings; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(B) The closed–vent system and control device shall be inspected and monitored by the owner or operator in accordance with the procedures specified in section 66264.1087.

(C) The owner or operator shall perform an initial inspection of the air emission control equipment on or before the date that the surface impoundment becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year except for the special conditions provided for in subsection (g) of this section.

(D) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of subsection (f) of this section.

(E) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in section 66264.1089(c).

(e) The owner or operator shall transfer hazardous waste to a surface impoundment subject to this section in accordance with the following requirements:

(1) Transfer of hazardous waste, except as provided in subsection (e)(2) of this section, to the surface impoundment from another surface impoundment subject to this section or from a tank subject to section 66264.1084 shall be conducted using continuous hard–piping or another closed system that does not allow exposure of the waste to the atmo-

sphere. For the purpose of complying with this provision, an individual drain system is considered to be a closed system when it meets the requirements of 40 CFR part 63, subpart RR—National Emission Standards for Individual Drain Systems.

(2) The requirements of subsection (e)(1) of this section do not apply when transferring a hazardous waste to the surface impoundment under either of the following conditions:

(A) The hazardous waste meets the average VO concentration conditions specified in section 66264.1082(c)(1) at the point of waste origination.

(B) The hazardous waste has been treated by an organic destruction or removal process to meet the requirements in section 66264.1082(c)(2).

(C) The hazardous waste meets the requirements of Section 66264.1082(c)(4).

(f) The owner or operator shall repair each defect detected during an inspection performed in accordance with the requirements of subsection (c)(3) or (d)(3) of this section as follows:

(1) The owner or operator shall make first efforts at repair of the defect no later than 5 calendar days after detection and repair shall be completed as soon as possible but no later than 45 calendar days after detection except as provided in subsection (f)(2) of this section.

(2) Repair of a defect may be delayed beyond 45 calendar days if the owner or operator determines that repair of the defect requires emptying or temporary removal from service of the surface impoundment and no alternative capacity is available at the site to accept the hazardous waste normally managed in the surface impoundment. In this case, the owner or operator shall repair the defect the next time the process or unit that is generating the hazardous waste managed in the surface impoundment stops operation. Repair of the defect shall be completed before the process or unit resumes operation.

(g) Following the initial inspection and monitoring of the cover as required by the applicable provisions of this article, subsequent inspection and monitoring may be performed at intervals longer than 1 year in the case when inspecting or monitoring the cover would expose a worker to dangerous, hazardous, or other unsafe conditions. In this case, the owner or operator may designate the cover as an "unsafe to inspect and monitor cover" and comply with all of the following requirements:

(1) Prepare a written explanation for the cover stating the reasons why the cover is unsafe to visually inspect or to monitor, if required.

(2) Develop and implement a written plan and schedule to inspect and monitor the cover using the procedures specified in the applicable section of this article as frequently as practicable during those times when a worker can safely access the cover.

NOTE: Sections 25150, 25159, 25159.5 and 25245, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 264.1085.

HISTORY

1. Change without regulatory effect adding new section filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).

§ 66264.1086. Standards: Containers.

(a) The provisions of this section apply to the control of air pollutant emissions from containers for which section 66264.1082(b) references the use of this section for such air emission control.

(b) General requirements.

(1) The owner or operator shall control air pollutant emissions from each container subject to this section in accordance with the following requirements, as applicable to the container, except when the special provisions for waste stabilization processes specified in subsection (b)(2) of this section apply to the container.

(A) For a container having a design capacity greater than 0.1 m^3 and less than or equal to 0.46 m^3, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 1 standards specified in subsection (c) of this section.

(B) For a container having a design capacity greater than 0.46 m^3 that is not in light material service, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 1 standards specified in subsection (c) of this section.

(C) For a container having a design capacity greater than 0.46 m^3 that is in light material service, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 2 standards specified in subsection (d) of this section.

(2) When a container having a design capacity greater than 0.1 m^3 is used for treatment of a hazardous waste by a waste stabilization process, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 3 standards specified in subsection (e) of this section at those times during the waste stabilization process when the hazardous waste in the container is exposed to the atmosphere.

(c) Container Level 1 standards.

(1) A container using Container Level 1 controls is one of the following:

(A) A container that meets the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as specified in subsection (f) of this section.

(B) A container equipped with a cover and closure devices that form a continuous barrier over the container openings such that when the cover and closure devices are secured in the closed position there are no visible holes, gaps, or other open spaces into the interior of the container. The cover may be a separate cover installed on the container (e.g., a lid on a drum or a suitably secured tarp on a roll–off box) or may be an integral part of the container structural design (e.g., a "portable tank" or bulk cargo container equipped with a screw–type cap).

(C) An open–top container in which an organic–vapor suppressing barrier is placed on or over the hazardous waste in the container such that no hazardous waste is exposed to the atmosphere. One example of such a barrier is application of a suitable organic–vapor suppressing foam.

(2) A container used to meet the requirements of subsection (c)(1)(B) or (c)(1)(C) shall be equipped with covers and closure devices, as applicable to the container, that are composed of suitable materials to minimize exposure of the hazardous waste to the atmosphere and to maintain the equipment integrity, for as long as the container is in service. Factors to be considered in selecting the materials of construction and designing the cover and closure devices shall include: Organic vapor permeability; the effects of contact with the hazardous waste or its vapor managed in the container; the effects of outdoor exposure of the closure device or cover material to wind, moisture, and sunlight; and the operating practices for which the container is intended to be used.

(3) Whenever a hazardous waste is in a container using Container Level 1 controls, the owner or operator shall install all covers and closure devices for the container, as applicable to the container, and secure and maintain each closure device in the closed position except as follows:

(A) Opening of a closure device or cover is allowed for the purpose of adding hazardous waste or other material to the container as follows:

1. In the case when the container is filled to the intended final level in one continuous operation, the owner or operator shall promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.

2. In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within 15 minutes; the person performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the material being added to the container, whichever condition occurs first.

(B) Opening of a closure device or cover is allowed for the purpose of removing hazardous waste from the container as follows:

1. For the purpose of meeting the requirements of this section, an empty container as defined in section 66261.7(b) may be open to the atmosphere at any time (i.e., covers and closure devices are not required to be secured in the closed position on an empty container).

2. In the case when discrete quantities or batches of material are removed from the container but the container does not meet the conditions to be an empty container as defined in section 66261.7(b), the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within 15 minutes or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.

(C) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of hazardous waste. Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.

(D) Opening of a spring–loaded pressure–vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the internal pressure of the container in accordance with the container design specifications. The device shall be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the internal pressure of the container is within the internal pressure operating range determined by the owner or operator based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

(E) Opening of a safety device, as defined in section 66260.10, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The owner or operator of containers using Container Level 1 controls shall inspect the containers and their covers and closure devices as follows:

(A) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility (i.e., does not meet the conditions for an empty container as specified in 66261.7(b)), the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility (i.e., the date the container becomes subject to the chapter 30 container standards). For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest in the appendix to chapter 12 (EPA Forms 8700–22 and 8700–22A), as required under section 66264.71. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of subsection (c)(4)(C) of this section.

(B) In the case when a container used for managing hazardous waste remains at the facility for a period of 1 year or more, the owner or operator shall visually inspect the container and its cover and closure devices initially and thereafter, at least once every 12 months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of subsection (c)(4)(C) of this section.

(C) When a defect is detected for the container, cover, or closure devices, the owner or operator shall make first efforts at repair of the defect no later than 24 hours after detection and repair shall be completed as soon as possible but no later than 5 calendar days after detection. If repair of a defect cannot be completed within 5 calendar days, then the hazardous waste shall be removed from the container and the container shall not be used to manage hazardous waste until the defect is repaired.

(5) The owner or operator shall maintain at the facility a copy of the procedure used to determine that containers with capacity of 0.46 m^3 or greater, which do not meet applicable DOT regulations as specified in subsection (f) of this section, are not managing hazardous waste in light material service.

(d) Container Level 2 standards.

(1) A container using Container Level 2 controls is one of the following:

(A) A container that meets the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as specified in subsection (f) of this section.

(B) A container that operates with no detectable organic emissions as defined in section 66260.10 and determined in accordance with the procedure specified in subsection (g) of this section.

(C) A container that has been demonstrated within the preceding 12 months to be vapor–tight by using 40 CFR part 60, appendix A, Method 27 in accordance with the procedure specified in subsection (h) of this section.

(2) Transfer of hazardous waste in or out of a container using Container Level 2 controls shall be conducted in such a manner as to minimize exposure of the hazardous waste to the atmosphere, to the extent practical, considering the physical properties of the hazardous waste and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials. Examples of container loading procedures that the Department considers to meet the requirements of this subsection include using any one of the following: A submerged–fill pipe or other submerged–fill method to load liquids into the container; a vapor–balancing system or a vapor–recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous waste is filled and subsequently purging the transfer line before removing it from the container opening.

(3) Whenever a hazardous waste is in a container using Container Level 2 controls, the owner or operator shall install all covers and closure devices for the container, and secure and maintain each closure device in the closed position except as follows:

(A) Opening of a closure device or cover is allowed for the purpose of adding hazardous waste or other material to the container as follows:

1. In the case when the container is filled to the intended final level in one continuous operation, the owner or operator shall promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.

2. In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within 15 minutes; the person performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the material being added to the container, whichever condition occurs first.

(B) Opening of a closure device or cover is allowed for the purpose of removing hazardous waste from the container as follows:

1. For the purpose of meeting the requirements of this section, an empty container as defined in section 66261.7(b) may be open to the atmosphere at any time (i.e., covers and closure devices are not required to be secured in the closed position on an empty container).

2. In the case when discrete quantities or batches of material are removed from the container but the container does not meet the conditions to be an empty container as defined in section 66261.7(b), the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within 15 minutes or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.

(C) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of hazardous waste. Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.

(D) Opening of a spring–loaded, pressure–vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the internal pressure of the container in accordance with the container design specifications. The device shall be designed to operate with no detectable organic emission when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the internal pressure of the container is within the internal pressure operating range determined by the owner or operator based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

(E) Opening of a safety device, as defined in section 66260.10, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The owner or operator of containers using Container Level 2 controls shall inspect the containers and their covers and closure devices as follows:

(A) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility (i.e., does not meet the conditions for an empty container as specified in section 66261.7(b)), the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility (i.e., the date the container becomes subject to the chapter 30 container standards). For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest in the appendix to chapter 12 (EPA Forms 8700–22 and 8700–22A), as required under section 66264.71. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of subsection (d)(4)(C) of this section.

(B) In the case when a container used for managing hazardous waste remains at the facility for a period of 1 year or more, the owner or operator shall visually inspect the container and its cover and closure devices initially and thereafter, at least once every 12 months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of subsection (d)(4)(C) of this section.

(C) When a defect is detected for the container, cover, or closure devices, the owner or operator shall make first efforts at repair of the defect no later than 24 hours after detection, and repair shall be completed as soon as possible but no later than 5 calendar days after detection. If repair of a defect cannot be completed within 5 calendar days, then the hazardous waste shall be removed from the container and the container shall not be used to manage hazardous waste until the defect is repaired.

(e) Container Level 3 standards.

(1) A container using Container Level 3 controls is one of the following:

(A) A container that is vented directly through a closed–vent system to a control device in accordance with the requirements of subsection (e)(2)(B) of this section.

(B) A container that is vented inside an enclosure which is exhausted through a closed–vent system to a control device in accordance with the requirements of subsections (e)(2)(A) and (e)(2)(B) of this section.

(2) The owner or operator shall meet the following requirements, as applicable to the type of air emission control equipment selected by the owner or operator:

(A) The container enclosure shall be designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of containers through the enclosure by conveyor or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The owner or operator shall perform the verification procedure for the enclosure as specified in Section 5.0 to "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" initially when the enclosure is first installed and, thereafter, annually.

(B) The closed–vent system and control device shall be designed and operated in accordance with the requirements of section 66264.1087.

(3) Safety devices, as defined in section 66260.10, may be installed and operated as necessary on any container, enclosure, closed–vent system, or control device used to comply with the requirements of subsection (e)(1) of this section.

(4) Owners and operators using Container Level 3 controls in accordance with the provisions of this article shall inspect and monitor the closed–vent systems and control devices as specified in section 66264.1087.

(5) Owners and operators that use Container Level 3 controls in accordance with the provisions of this article shall prepare and maintain the records specified in section 66264.1089(d).

(6) Transfer of hazardous waste in or out of a container using Container Level 3 controls shall be conducted in such a manner as to minimize exposure of the hazardous waste to the atmosphere, to the extent practical, considering the physical properties of the hazardous waste and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials. Examples of container loading procedures that the EPA considers to meet the requirements of this paragraph include using any one of the following: A submerged–fill pipe or other submerged–fill method to load liquids into the container; a vapor–balancing system or a vapor–recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous waste is filled and subsequently purging the transfer line before removing it from the container opening.

(f) For the purpose of compliance with subsection (c)(1)(A) or (d)(1)(A) of this section, containers shall be used that meet the applicable

U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as follows:

(1) The container meets the applicable requirements specified in 49 CFR part 178—Specifications for Packaging or 49 CFR part 179—Specifications for Tank Cars.

(2) Hazardous waste is managed in the container in accordance with the applicable requirements specified in 49 CFR part 107, subpart B—Exemptions; 49 CFR part 172—Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements; 49 CFR part 173—Shippers—General Requirements for Shipments and Packages; and 49 CFR part 180—Continuing Qualification and Maintenance of Packagings.

(3) For the purpose of complying with this article, no exceptions to the 49 CFR part 178 or part 179 regulations are allowed except as provided for in subsection (f)(4) of this section.

(4) For a lab pack that is managed in accordance with the requirements of 49 CFR part 178 for the purpose of complying with this article, an owner or operator may comply with the exceptions for combination packagings specified in 49 CFR 173.12(b).

(g) To determine compliance with the no detectable organic emissions requirement of subsection (d)(1)(B) of this section, the procedure specified in section 66264.1083(d) of this article shall be used.

(1) Each potential leak interface (i.e., a location where organic vapor leakage could occur) on the container, its cover, and associated closure devices, as applicable to the container, shall be checked. Potential leak interfaces that are associated with containers include, but are not limited to: The interface of the cover rim and the container wall; the periphery of any opening on the container or container cover and its associated closure device; and the sealing seat interface on a spring–loaded pressure–relief valve.

(2) The test shall be performed when the container is filled with a material having a volatile organic concentration representative of the range of volatile organic concentrations for the hazardous wastes expected to be managed in this type of container. During the test, the container cover and closure devices shall be secured in the closed position.

(h) Procedure for determining a container to be vapor–tight using Method 27 of 40 CFR part 60, appendix A for the purpose of complying with subsection (d)(1)(C) of this section.

(1) The test shall be performed in accordance with Method 27 of 40 CFR part 60, appendix A of this chapter.

(2) A pressure measurement device shall be used that has a precision of ±2.5 mm water and that is capable of measuring above the pressure at which the container is to be tested for vapor tightness.

(3) If the test results determined by Method 27 indicate that the container sustains a pressure change less than or equal to 750 Pascals within 5 minutes after it is pressurized to a minimum of 4,500 Pascals, then the container is determined to be vapor–tight.

NOTE: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 264.1085.

HISTORY

1. Change without regulatory effect adding new section filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).
2. Change without regulatory effect adding subsection (e)(6) filed 8–3–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 31).

§ 66264.1087. Standards: Closed–vent Systems and Control Devices.

(a) This section applies to each closed–vent system and control device installed and operated by the owner or operator to control air emissions in accordance with standards of this article.

(b) The closed–vent system shall meet the following requirements:

(1) The closed–vent system shall route the gases, vapors, and fumes emitted from the hazardous waste in the waste management unit to a control device that meets the requirements specified in subsection (c) of this section.

(2) The closed–vent system shall be designed and operated in accordance with the requirements specified in section 66264.1033(k).

(3) In the case when the closed–vent system includes bypass devices that could be used to divert the gas or vapor stream to the atmosphere before entering the control device, each bypass device shall be equipped with either a flow indicator as specified in subsection (b)(3)(A) of this section or a seal or locking device as specified in subsection (b)(3)(B) of this section. For the purpose of complying with this subsection, low leg drains, high point bleeds, analyzer vents, open–ended valves or lines, spring loaded pressure relief valves, and other fittings used for safety purposes are not considered to be bypass devices.

(A) If a flow indicator is used to comply with subsection (b)(3) of this section, the indicator shall be installed at the inlet to the bypass line used to divert gases and vapors from the closed–vent system to the atmosphere at a point upstream of the control device inlet. For this subsection, a flow indicator means a device which indicates the presence of either gas or vapor flow in the bypass line.

(B) If a seal or locking device is used to comply with subsection (b)(3) of this section, the device shall be placed on the mechanism by which the bypass device position is controlled (e.g., valve handle, damper lever) when the bypass device is in the closed position such that the bypass device cannot be opened without breaking the seal or removing the lock. Examples of such devices include, but are not limited to, a car–seal or a lock–and–key configuration valve. The owner or operator shall visually inspect the seal or closure mechanism at least once every month to verify that the bypass mechanism is maintained in the closed position.

(4) The closed–vent system shall be inspected and monitored by the owner or operator in accordance with the procedure specified in section 66264.1033(l).

(c) The control device shall meet the following requirements:

(1) The control device shall be one of the following devices:

(A) A control device designed and operated to reduce the total organic content of the inlet vapor stream vented to the control device by at least 95 percent by weight;

(B) An enclosed combustion device designed and operated in accordance with the requirements of section 66264.1033(c); or

(C) A flare designed and operated in accordance with the requirements of section 66264.1033(d).

(2) The owner or operator who elects to use a closed–vent system and control device to comply with the requirements of this section shall comply with the requirements specified in subsections (c)(2)(A) through (c)(2)(F) of this section.

(A) Periods of planned routine maintenance of the control device, during which the control device does not meet the specifications of subsections (c)(1)(A), (c)(1)(B), or (c)(1)(C) of this section, as applicable, shall not exceed 240 hours per year.

(B) The specifications and requirements in subsections (c)(1)(A), (c)(1)(B), and (c)(1)(C) of this section for control devices do not apply during periods of planned routine maintenance.

(C) The specifications and requirements in subsections (c)(1)(A), (c)(1)(B), and (c)(1)(C) of this section for control devices do not apply during a control device system malfunction.

(D) The owner or operator shall demonstrate compliance with the requirements of subsection (c)(2)(A) of this section (i.e., planned routine maintenance of a control device, during which the control device does not meet the specifications of subsections (c)(1)(A), (c)(1)(B), or (c)(1)(C) of this section, as applicable, shall not exceed 240 hours per year) by recording the information specified in section 66264.1089(e)(1)(E).

(E) The owner or operator shall correct control device system malfunctions as soon as practicable after their occurrence in order to minimize excess emissions of air pollutants.

(F) The owner or operator shall operate the closed–vent system such that gases, vapors, or fumes are not actively vented to the control device during periods of planned maintenance or control device system malfunction (i.e., periods when the control device is not operating or not op-

erating normally) except in cases when it is necessary to vent the gases, vapors, and/or fumes to avoid an unsafe condition or to implement malfunction corrective actions or planned maintenance actions.

(3) The owner or operator using a carbon adsorption system to comply with subsection (c)(1) of this section shall operate and maintain the control device in accordance with the following requirements:

(A) Following the initial startup of the control device, all activated carbon in the control device shall be replaced with fresh carbon on a regular basis in accordance with the requirements of section 66264.1033(g) or section 66264.1033(h).

(B) All carbon that is a hazardous waste and that is removed from the control device shall be managed in accordance with the requirements of section 66264.1033(n), regardless of the average volatile organic concentration of the carbon.

(4) An owner or operator using a control device other than a thermal vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system to comply with subsection (c)(1) of this section shall operate and maintain the control device in accordance with the requirements of section 66264.1033(j) of this chapter.

(5) The owner or operator shall demonstrate that a control device achieves the performance requirements of subsection (c)(1) of this section as follows:

(A) An owner or operator shall demonstrate using either a performance test as specified in subsection (c)(5)(C) of this section or a design analysis as specified in subsection (c)(5)(D) of this section the performance of each control device except for the following:

1. A flare;

2. A boiler or process heater with a design heat input capacity of 44 megawatts or greater;

3. A boiler or process heater into which the vent stream is introduced with the primary fuel;

4. A boiler or industrial furnace burning hazardous waste for which the owner or operator has been issued a final permit under chapter 20 and has designed and operates the unit in accordance with the requirements of chapter 16, article 8 of this division; or

5. A boiler or industrial furnace burning hazardous waste for which the owner or operator has designed and operates in accordance with the interim status requirements of chapter 16, article 8 of this division.

(B) An owner or operator shall demonstrate the performance of each flare in accordance with the requirements specified in section 66264.1033(e).

(C) For a performance test conducted to meet the requirements of subsection (c)(5)(A) of this section, the owner or operator shall use the test

[The next page is 758.54(q).]

methods and procedures specified in section 66264.1034(c)(1) through (c)(4).

(D) For a design analysis conducted to meet the requirements of subsection (c)(5)(A) of this section, the design analysis shall meet the requirements specified in section 66264.1035(b)(4)(C).

(E) The owner or operator shall demonstrate that a carbon adsorption system achieves the performance requirements of subsection (c)(1) of this section based on the total quantity of organics vented to the atmosphere from all carbon adsorption system equipment that is used for organic adsorption, organic desorption or carbon regeneration, organic recovery, and carbon disposal.

(6) If the owner or operator and the Department do not agree on a demonstration of control device performance using a design analysis then the disagreement shall be resolved using the results of a performance test performed by the owner or operator in accordance with the requirements of subsection (c)(5)(C) of this section. The Department may choose to have an authorized representative observe the performance test.

(7) The closed–vent system and control device shall be inspected and monitored by the owner or operator in accordance with the procedures specified in sections 66264.1033(f)(2) and 66264.1033(*l*). The readings from each monitoring device required by section 66264.1033(f)(2) shall be inspected at least once each operating day to check control device operation. Any necessary corrective measures shall be immediately implemented to ensure the control device is operated in compliance with the requirements of this section.

NOTE: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 264.1087.

HISTORY

1. Change without regulatory effect adding new section filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).

§ 66264.1088. Inspection and Monitoring Requirements.

(a) The owner or operator shall inspect and monitor air emission control equipment used to comply with this article in accordance with the applicable requirements specified in sections 66264.1084 through 66264.1087.

(b) The owner or operator shall develop and implement a written plan and schedule to perform the inspections and monitoring required by subsection (a) of this section. The owner or operator shall incorporate this plan and schedule into the facility inspection plan required under section 66264.15.

NOTE: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 264.1088.

HISTORY

1. Change without regulatory effect adding new section filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).

§ 66264.1089. Recordkeeping Requirements.

(a) Each owner or operator of a facility subject to requirements of this article shall record and maintain the information specified in subsections (b) through (j) of this section, as applicable to the facility. Except for air emission control equipment design documentation and information required by subsections (i) and (j) of this section, records required by this section shall be maintained in the operating record for a minimum of 3 years. Air emission control equipment design documentation shall be maintained in the operating record until the air emission control equipment is replaced or otherwise no longer in service. Information required by subsections (i) and (j) of this section shall be maintained in the operating record for as long as the waste management unit is not using air emission controls specified in sections 66264.1084 through 66264.1087 in accordance with the conditions specified in section 66264.1080(d) or section 66264.1080(b)(7) of this article, respectively.

(b) The owner or operator of a tank using air emission controls in accordance with the requirements of section 66264.1084 shall prepare and maintain records for the tank that include the following information:

(1) For each tank using air emission controls in accordance with the requirements of section 66264.1084, the owner or operator shall record:

(A) A tank identification number (or other unique identification description as selected by the owner or operator).

(B) A record for each inspection required by section 66264.1084 that includes the following information:

1. Date inspection was conducted.

2. For each defect detected during the inspection: The location of the defect, a description of the defect, the date of detection, and corrective action taken to repair the defect. In the event that repair of the defect is delayed in accordance with the requirements of section 66264.1084, the owner or operator shall also record the reason for the delay and the date that completion of repair of the defect is expected.

(2) In addition to the information required by subsection (b)(1) of this section, the owner or operator shall record the following information, as applicable to the tank:

(A) The owner or operator using a fixed roof to comply with the Tank Level 1 control requirements specified in section 66264.1084(c) shall prepare and maintain records for each determination for the maximum organic vapor pressure of the hazardous waste in the tank performed in accordance with the requirements of section 66264.1084(c). The records shall include the date and time the samples were collected, the analysis method used, and the analysis results.

(B) The owner or operator using an internal floating roof to comply with the Tank Level 2 control requirements specified in section 66264.1084(e) shall prepare and maintain documentation describing the floating roof design.

(C) Owners and operators using an external floating roof to comply with the Tank Level 2 control requirements specified in section 66264.1084(f) shall prepare and maintain the following records:

1. Documentation describing the floating roof design and the dimensions of the tank.

2. Records for each seal gap inspection required by section 66264.1084(f)(3) describing the results of the seal gap measurements. The records shall include the date that the measurements were performed, the raw data obtained for the measurements, and the calculations of the total gap surface area. In the event that the seal gap measurements do not conform to the specifications in section 66264.1084(f)(1), the records shall include a description of the repairs that were made, the date the repairs were made, and the date the tank was emptied, if necessary.

(D) Each owner or operator using an enclosure to comply with the Tank Level 2 control requirements specified in section 66264.1084(i) shall prepare and maintain the following records:

1. Records for the most recent set of calculations and measurements performed by the owner or operator to verify that the enclosure meets the criteria of a permanent total enclosure as specified in "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B.

2. Records required for the closed–vent system and control device in accordance with the requirements of subsection (e) of this section.

(c) The owner or operator of a surface impoundment using air emission controls in accordance with the requirements of section 66264.1085 shall prepare and maintain records for the surface impoundment that include the following information:

(1) A surface impoundment identification number (or other unique identification description as selected by the owner or operator).

(2) Documentation describing the floating membrane cover or cover design, as applicable to the surface impoundment, that includes information prepared by the owner or operator or provided by the cover manufacturer or vendor describing the cover design, and certification by the owner or operator that the cover meets the specifications listed in section 66264.1085(c).

(3) A record for each inspection required by section 66264.1085 that includes the following information:

(A) Date inspection was conducted.

(B) For each defect detected during the inspection the following information: The location of the defect, a description of the defect, the date of detection, and corrective action taken to repair the defect. In the event

that repair of the defect is delayed in accordance with the provisions of section 66264.1085(f), the owner or operator shall also record the reason for the delay and the date that completion of repair of the defect is expected.

(4) For a surface impoundment equipped with a cover and vented through a closed–vent system to a control device, the owner or operator shall prepare and maintain the records specified in subsection (e) of this section.

(d) The owner or operator of containers using Container Level 3 air emission controls in accordance with the requirements of section 66264.1086 of this subsection shall prepare and maintain records that include the following information:

(1) Records for the most recent set of calculations and measurements performed by the owner or operator to verify that the enclosure meets the criteria of a permanent total enclosure as specified in "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B.

(2) Records required for the closed–vent system and control device in accordance with the requirements of subsection (e) of this section.

(e) The owner or operator using a closed–vent system and control device in accordance with the requirements of section 66264.1087 shall prepare and maintain records that include the following information:

(1) Documentation for the closed–vent system and control device that includes:

(A) Certification that is signed and dated by the owner or operator stating that the control device is designed to operate at the performance level documented by a design analysis as specified in subsection (e)(1)(B) of this section or by performance tests as specified in subsection (e)(1)(C) of this section when the tank, surface impoundment, or container is or would be operating at capacity or the highest level reasonably expected to occur.

(B) If a design analysis is used, then design documentation as specified in section 66264.1035(b)(4). The documentation shall include information prepared by the owner or operator or provided by the control device manufacturer or vendor that describes the control device design in accordance with section 66264.1035(b)(4)(C) and certification by the owner or operator that the control equipment meets the applicable specifications.

(C) If performance tests are used, then a performance test plan as specified in section 66264.1035(b)(3) and all test results.

(D) Information as required by sections 66264.1035(c)(1) and 66264.1035(c)(2), as applicable.

(E) An owner or operator shall record, on a semiannual basis, the information specified in subsections (e)(1)(E)1. and (e)(1)(E)2. of this section for those planned routine maintenance operations that would require the control device not to meet the requirements of section 66264.1087(c)(1)(A), (c)(1)(B), or (c)(1)(C), as applicable.

1. A description of the planned routine maintenance that is anticipated to be performed for the control device during the next 6–month period. This description shall include the type of maintenance necessary, planned frequency of maintenance, and lengths of maintenance periods.

2. A description of the planned routine maintenance that was performed for the control device during the previous 6–month period. This description shall include the type of maintenance performed and the total number of hours during those 6 months that the control device did not meet the requirements of section 66264.1087 (c)(1)(A), (c)(1)(B), or (c)(1)(C), as applicable, due to planned routine maintenance.

(F) An owner or operator shall record the information specified in subsections (e)(1)(F)1. through (e)(1)(F)3. of this section for those unexpected control device system malfunctions that would require the control device not to meet the requirements of section 66264.1087 (c)(1)(A), (c)(1)(B), or (c)(1)(C), as applicable.

1. The occurrence and duration of each malfunction of the control device system.

2. The duration of each period during a malfunction when gases, vapors, or fumes are vented from the waste management unit through the closed–vent system to the control device while the control device is not properly functioning.

3. Actions taken during periods of malfunction to restore a malfunctioning control device to its normal or usual manner of operation.

(G) Records of the management of carbon removed from a carbon adsorption system conducted in accordance with section 66264.1087(c)(3)(B).

(f) The owner or operator of a tank, surface impoundment, or container exempted from standards in accordance with the provisions of section 66264.1082(c) shall prepare and maintain the following records, as applicable:

(1) For tanks, surface impoundments, and containers exempted under the hazardous waste organic concentration conditions specified in section 66264.1082(c)(1) or sections 66264.1082(c)(2)(A) through (c)(2)(F), the owner or operator shall record the information used for each waste determination (e.g., test results, measurements, calculations, and other documentation) in the facility operating log. If analysis results for waste samples are used for the waste determination, then the owner or operator shall record the date, time, and location that each waste sample is collected in accordance with applicable requirements of section 66264.1083.

(2) For tanks, surface impoundments, or containers exempted under the provisions of section 264.1082(c)(2)(G) or section 66264.1082(c)(2)(H), the owner or operator shall record the identification number for the incinerator, boiler, or industrial furnace in which the hazardous waste is treated.

(g) An owner or operator designating a cover as "unsafe to inspect and monitor" pursuant to section 66264.1084(*l*) or section 66264.1085(g) shall record in a log that is kept in the facility operating record the following information: The identification numbers for waste management units with covers that are designated as "unsafe to inspect and monitor," the explanation for each cover stating why the cover is unsafe to inspect and monitor, and the plan and schedule for inspecting and monitoring each cover.

(h) The owner or operator of a facility that is subject to this article and to the control device standards in 40 CFR part 60, subpart VV, or 40 CFR part 61, subpart V, may elect to demonstrate compliance with the applicable sections of this article by documentation either pursuant to this article, or pursuant to the provisions of 40 CFR part 60, subpart VV or 40 CFR part 61, subpart V, to the extent that the documentation required by 40 CFR parts 60 or 61 duplicates the documentation required by this section.

(i) For each tank or container not using air emission controls specified in sections 66264.1084 through 66264.1087 in accordance with the conditions specified in section 66264.1080(d), the owner or operator shall record and maintain the following information:

(1) A list of the individual organic peroxide compounds manufactured at the facility that meet the conditions specified in section 66264.1080(d)(1).

(2) A description of how the hazardous waste containing the organic peroxide compounds identified in subsection (i)(1) of this section are managed at the facility in tanks and containers. This description shall include:

(A) For the tanks used at the facility to manage this hazardous waste, sufficient information shall be provided to describe for each tank: A facility identification number for the tank; the purpose and placement of this tank in the management train of this hazardous waste; and the procedures used to ultimately dispose of the hazardous waste managed in the tanks.

(B) For containers used at the facility to manage these hazardous wastes, sufficient information shall be provided to describe: A facility identification number for the container or group of containers; the purpose and placement of this container, or group of containers, in the management train of this hazardous waste; and the procedures used to ultimately dispose of the hazardous waste handled in the containers.

(3) An explanation of why managing the hazardous waste containing the organic peroxide compounds identified in subsection (i)(1) of this

section in the tanks and containers as described in subsection (i)(2) of this section would create an undue safety hazard if the air emission controls, as required under sections 66264.1084 through 66264.1087, are installed and operated on these waste management units. This explanation shall include the following information:

(A) For tanks used at the facility to manage these hazardous wastes, sufficient information shall be provided to explain: How use of the required air emission controls on the tanks would affect the tank design features and facility operating procedures currently used to prevent an undue safety hazard during the management of this hazardous waste in the tanks; and why installation of safety devices on the required air emission controls, as allowed under this article, will not address those situations in which evacuation of tanks equipped with these air emission controls is necessary and consistent with good engineering and safety practices for handling organic peroxides.

(B) For containers used at the facility to manage these hazardous wastes, sufficient information shall be provided to explain: How use of the required air emission controls on the containers would affect the container design features and handling procedures currently used to prevent an undue safety hazard during the management of this hazardous waste in the containers; and why installation of safety devices on the required air emission controls, as allowed under this article, will not address those situations in which evacuation of containers equipped with these air emission controls is necessary and consistent with good engineering and safety practices for handling organic peroxides.

(j) For each hazardous waste management unit not using air emission controls specified in sections 66264.1084 through 66264.1087 in accordance with the requirements of section 66264.1080(b)(7), the owner and operator shall record and maintain the following information:

(1) Certification that the waste management unit is equipped with and operating air emission controls in accordance with the requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63.

(2) Identification of the specific requirements codified under 40 CFR part 60, part 61, or part 63 with which the waste management unit is in compliance.

NOTE: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 264.1089.

HISTORY

1. Change without regulatory effect adding new section filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).

§ 66264.1090. Reporting Requirements.

(a) Each owner or operator managing hazardous waste in a tank, surface impoundment, or container exempted from using air emission controls under the provisions of section 66264.1082(c) shall report to the Department each occurrence when hazardous waste is placed in the waste management unit in noncompliance with the conditions specified in section 66264.1082 (c)(1) or (c)(2), as applicable. Examples of such occurrences include placing in the waste management unit a hazardous waste having an average VO concentration equal to or greater than 500 ppmw at the point of waste origination; or placing in the waste management unit a treated hazardous waste of which the organic content has been reduced by an organic destruction or removal process that fails to achieve the applicable conditions specified in section 66264.1082(c)(2)(A) through (c)(2)(F). The owner or operator shall submit a written report within 15 calendar days of the time that the owner or operator becomes aware of the occurrence. The written report shall contain the EPA identification number, facility name and address, a description of the noncompliance event and the cause, the dates of the noncompliance, and the actions taken to correct the noncompliance and prevent recurrence of the noncompliance. The report shall be signed and dated by an authorized representative of the owner or operator.

(b) Each owner or operator using air emission controls on a tank in accordance with the requirements section 66264.1084(c) shall report to the Department each occurrence when hazardous waste is managed in the tank in noncompliance with the conditions specified in section 66264.1084(b). The owner or operator shall submit a written report within 15 calendar days of the time that the owner or operator becomes aware of the occurrence. The written report shall contain the EPA identification number, facility name and address, a description of the noncompliance event and the cause, the dates of the noncompliance, and the actions taken to correct the noncompliance and prevent recurrence of the noncompliance. The report shall be signed and dated by an authorized representative of the owner or operator.

(c) Each owner or operator using a control device in accordance with the requirements of section 66264.1087 shall submit a semiannual written report to the Department excepted as provided for in subsection (d) of this section. The report shall describe each occurrence during the previous 6–month period when either:

(1) A control device is operated continuously for 24 hours or longer in noncompliance with the applicable operating values defined in section 66264.1035(c)(4); or

(2) A flare is operated with visible emissions for 5 minutes or longer in a two–hour period, as defined in section 66264.1033(d). The report shall describe each occurrence during the previous 6–month period when a control device is operated continuously for 24 hours or longer in noncompliance with the applicable operating values defined in section 66264.1035(c)(4) or when a flare is operated with visible emissions as defined in section 66264.1033(d). The written report shall include the EPA identification number, facility name and address, and an explanation why the control device could not be returned to compliance within 24 hours, and actions taken to correct the noncompliance. The report shall be signed and dated by an authorized representative of the owner or operator.

(d) A report to the Department in accordance with the requirements of subsection (c) of this section is not required for a 6–month period during which all control devices subject to this article are operated by the owner or operator such that:

(1) During no period of 24 hours or longer did a control device operate continuously in noncompliance with the applicable operating values defined in section 66264.1035(c)(4); and

(2) No flare was operated with visible emissions for 5 minutes or longer in a two–hour period, as defined in section 66264.1033(d).

NOTE: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 264.1090.

HISTORY

1. Change without regulatory effect adding new section filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).

Article 29. Containment Buildings

§ 66264.1100. Applicability.

The requirements of this article apply to owners or operators who store or treat hazardous waste in units designed and operated under section 66264.1101. These provisions will become effective on February 18, 1993, although an owner or operator may notify the Department of the owner's or operator's intent to be bound by this article at an earlier time. The owner or operator is not subject to the definition of land disposal in section 66260.10 provided that the unit:

(a) Is a completely enclosed, self–supporting structure that is designed and constructed of manmade materials of sufficient strength and thickness to support themselves, the waste contents, and any personnel and heavy equipment that operate within the unit, and to prevent failure due to pressure gradients, settlement, compression, or uplift, physical contact with the hazardous wastes to which they are exposed; climatic conditions; and the stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls;

(b) Has a primary barrier that is designed to be sufficiently durable to withstand the movement of personnel, wastes, and handling equipment within the unit;

(c) If the unit is used to manage liquids, has:

(1) A primary barrier designed and constructed of materials to prevent migration of hazardous constituents into the barrier;

(2) A liquid collection system designed and constructed of materials to minimize the accumulation of liquid on the primary barrier; and

(3) A secondary containment system designed and constructed of materials to prevent migration of hazardous constituents into the barrier, with a leak detection and liquid collection system capable of detecting, collecting, and removing leaks of hazardous constituents at the earliest practicable time, unless the unit has been granted a variance from the secondary containment system requirements under section 66264.1101(b)(4);

(d) Has controls sufficient to prevent fugitive dust emissions to meet the no visible emission standard in section 66264.1101(c)(1)(D); and

(e) Is designed and operated to ensure containment and prevent the tracking of materials from the unit by personnel or equipment.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5 and 58012, Health and Safety Code; 40 CFR Section 264.1100.

HISTORY

1. New article 29 and section filed 10–24–94 as an emergency; operative 10–24–94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–20–95 or emergency language will be repealed by operation of law on the following day.
2. New article 29 and section refiled 2–21–95 as an emergency; operative 2–21–95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–21–95 or emergency language will be repealed by operation of law on the following day.
3. New article 29 and section refiled 6–19–95 as an emergency; operative 6–19–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–95 or emergency language will be repealed by operation of law on the following day.
4. New article 29 and section refiled 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 10–24–94 order including amendment of first paragraph and subsections (c)(3) and (d) transmitted to OAL 12–15–95 and filed 1–31–96 (Register 96, No. 5).
6. Change without regulatory effect amending subsections (a) and (d) filed 8–15–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 33).

§ 66264.1101. Design and Operating Standards.

(a) All containment buildings shall comply with the following design standards:

(1) The containment buildings shall be completely enclosed with a floor, walls, and a roof to prevent exposure to the elements, (e.g., precipitation, wind, runon), and to assure containment of managed wastes.

(2) The floor and containment walls of the unit, including the secondary containment system, if required under subsection (b) of this section, shall be designed and constructed of materials of sufficient strength and thickness to support themselves, the waste contents, and any personnel and heavy equipment that operate within the unit, and to prevent failure due to pressure gradients, settlement, compression, or uplift, physical contact with the hazardous wastes to which they are exposed; climatic conditions; and the stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls. The unit shall be designed so that it has sufficient structural strength to prevent collapse or other failure. All surfaces to be in contact with hazardous wastes shall be chemically compatible with those wastes. The Department will consider standards established by professional organizations generally recognized by the industry, such as the American Concrete Institute (ACI) and the American Society of Testing Materials (ASTM), in judging the structural integrity requirements of this subsection. If appropriate to the nature of the waste management operation to take place in the unit, an exception to the structural strength requirement may be made for light–weight doors and windows that meet *the following criteria*:

(A) They provide an effective barrier against fugitive dust emissions under subsection (c)(1)(D); and

(B) The unit is designed and operated in a fashion that assures that wastes will not actually come in contact with these openings.

(3) Incompatible hazardous wastes or treatment reagents shall not be placed in the unit or its secondary containment system if they could cause the unit or secondary containment system to leak, corrode, or otherwise fail.

(4) A containment building shall have a primary barrier designed to withstand the movement of personnel, waste, and handling equipment in the unit during the operating life of the unit and appropriate for the physical and chemical characteristics of the waste to be managed.

(b) For a containment building used to manage hazardous wastes containing free liquids or treated with free liquids (the presence of which is determined by the paint filter test, a visual examination, or other appropriate means), the owner or operator shall include:

(1) A primary barrier designed and constructed of materials to prevent the migration of hazardous constituents into the barrier (e.g. a geomembrane covered by a concrete wear surface).

(2) A liquid collection and removal system to minimize the accumulation of liquid on the primary barrier of the containment building;

(A) The primary barrier shall be sloped to drain liquids to the associated collection system;

(B) Liquids and waste shall be collected and removed to minimize hydraulic head on the containment system at the earliest practicable time.

(3) A secondary containment system including a secondary barrier designed and constructed to prevent migration of hazardous constituents into the barrier, and a leak detection system that is capable of detecting failure of the primary barrier and collecting accumulated hazardous wastes and liquids at the earliest practicable time.

(A) The requirements of the leak detection component of the secondary containment system are satisfied by installation of a system that is, at a minimum:

1. Constructed with a bottom slope of 1 percent or more; and

2. Constructed of a granular drainage material with a hydraulic conductivity of $1X10^{-2}$ cm/sec or more and a thickness of 12 inches (30.5 cm) or more, or constructed of synthetic or geonet drainage materials with a transmissivity of $3X10^{-5}$ m^2/sec or more.

(B) If treatment is to be conducted in the building, an area in which such treatment will be conducted shall be designed to prevent the release of liquids, wet materials, or liquid aerosols to other portions of the building.

(C) The secondary containment system shall be constructed of materials that are chemically resistant to the waste and liquids managed in the containment building and of sufficient strength and thickness to prevent collapse under the pressure exerted by overlaying materials and by any equipment used in the containment building. (Containment buildings can serve as secondary containment systems for tanks placed within the building under certain conditions. A containment building can serve as an external liner system for a tank, provided it meets the requirements of section 66264.193(d)(1). In addition, the containment building shall meet the requirements of section 66264.193(b) and sections 66264.193(c)(1) and (2) to be considered an acceptable secondary containment system for a tank.)

(c) Owners or operators of all containment buildings shall:

(1) Use controls and practices to ensure containment of the hazardous waste within the unit; and, at a minimum:

(A) Maintain the primary barrier to be free of significant cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the primary barrier;

(B) Maintain the level of the stored/treated hazardous waste within the containment walls of the unit so that the height of any containment wall is not exceeded;

(C) Take measures to prevent the tracking of hazardous waste out of the unit by personnel or by equipment used in handling the waste. An area shall be designated to decontaminate equipment and any rinsate shall be collected and properly managed; and

(D) Take measures to control fugitive dust emissions such that any openings (doors, windows, vents, cracks, etc.) exhibit no visible emissions (see 40 CFR part 60, appendix A, Method 22—Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares). In addition, all associated particulate collection devices (e.g., fabric filter, electrostatic precipitator) shall be operated and maintained with sound air pollution control practices (see 40 CFR part 60 sub-

part 292 for guidance). This state of no visible emissions shall be maintained effectively at all times during routine operating and maintenance conditions, including when vehicles and personnel are entering and exiting the unit;

(2) Obtain certification by a qualified registered professional engineer that the containment building design meets the requirements of paragraphs (a) through (c) of this section. For units placed into operation prior to February 18, 1993, this certification shall be placed in the facility's operating record (on–site files for generators who are not formally required to have operating records) no later than 60 days after the date of initial operation of the unit. After February 18, 1993, PE certification will be required prior to operation of the unit.

(3) Throughout the active life of the containment building, if the owner or operator detects a condition that could lead to or has caused a release of hazardous waste, the owner or operator shall repair the condition promptly, in accordance with the following procedures.

(A) Upon detection of a condition that has lead to a release of hazardous waste (e.g., upon detection of leakage from the primary barrier) the owner or operator shall:

1. Enter a record of the discovery in the facility operating record;
2. Immediately remove the portion of the containment building affected by the condition from service;
3. Determine what steps shall be taken to repair the containment building, remove any leakage from the secondary collection system, and establish a schedule for accomplishing the cleanup and repairs; and
4. Within 7 days after the discovery of the condition, notify the Department of the condition, and within 14 working days, provide a written notice to the Department with a description of the steps taken to repair the containment building, and the schedule for accomplishing the work.

(B) The Department will review the information submitted, make a determination regarding whether the containment building shall be removed from service completely or partially until repairs and cleanup are complete, and notify the owner or operator of the determination and the underlying rationale in writing;

(C) Upon completing all repairs and cleanup the owner or operator shall notify the Department in writing and provide a verification signed by a qualified, registered professional engineer, that the repairs and cleanup have been completed according to the written plan submitted in accordance with subsection (c)(3)(A)4;

(4) Inspect and record in the facility's operating record, at least once every seven days, data gathered from monitoring equipment and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste.

(d) For containment buildings that contain areas both with and without secondary containment, the owner or operator shall:

(1) Design and operate each area in accordance with the requirements enumerated in paragraphs (a) through (c) of this subsection;

(2) Take measures to prevent the release of liquids or wet materials into areas without secondary containment; and

(3) Maintain in the facility's operating log a written description of the operating procedures used to maintain the integrity of areas without secondary containment.

(e) Notwithstanding any other provision of this article, the Department may waive requirements for secondary containment for a permitted containment building where the owner/operator demonstrates that the only free liquids in the unit are limited amounts of dust suppression liquids required to meet occupational health and safety requirements, and where containment of managed wastes and liquids can be assured without a secondary containment system.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5 and 58012, Health and Safety Code; 40 CFR Section 264.1101.

HISTORY

1. New section filed 10–24–94 as an emergency; operative 10–24–94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–20–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 2–21–95 as an emergency; operative 2–21–95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–21–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 6–19–95 as an emergency; operative 6–19–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 10–24–94 order including amendment of section transmitted to OAL 12–15–95 and filed 1–31–96 (Register 96, No. 5).
6. Editorial correction of section heading (Register 96, No. 25).
7. Change without regulatory effect amending subsection (c)(1)(C) filed 8–15–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 33).

§ 66264.1102. Closure and Post–Closure Care.

(a) At closure of a containment building, the owner or operator shall remove or decontaminate all waste residues, contaminated containment system components (liners, etc.,) contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless section 66261.3(d) applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for containment buildings shall meet all of the requirements specified in articles 7 and 8 of this chapter.

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in paragraph (a) of this subsection, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, the owner or operator shall close the facility and perform post–closure care in accordance with the closure and post–closure requirements that apply to landfills (section 66264.310). In addition, for the purposes of closure, post–closure, and financial responsibility, such a containment building is then considered to be a landfill, and the owner or operator shall meet all of the requirements for landfills specified in articles 7 and 8 of this chapter.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5 and 58012, Health and Safety Code; 40 CFR Section 264.1102.

HISTORY

1. New section filed 10–24–94 as an emergency; operative 10–24–94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–20–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 2–21–95 as an emergency; operative 2–21–95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–21–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 6–19–95 as an emergency; operative 6–19–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 10–24–94 order including amendments to subsections (a) and (b) transmitted to OAL 12–15–95 and filed 1–31–96 (Register 96, No. 5).
6. Editorial correction of section heading (Register 96, No. 25).

§ 66264.1103 – 66264.1110. [Reserved]

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5 and 58012, Health and Safety Code: 40 CFR Sections 264.1102 and 264.1103–1110.

Chapter 15. Interim Status Standards for Owners and Operators of Hazardous Waste Transfer, Treatment, Storage, and Disposal Facilities

Article 1. General

§ 66265.1. Purpose, Scope, and Applicability.

(a) The purpose of this chapter is to establish minimum standards that define the acceptable management of hazardous waste during the period of interim status and until certification of final closure or, if the facility

is subject to post-closure requirements, until post-closure responsibilities are fulfilled.

(b) Except as provided in section 66265.1080(b), the standards of this chapter, and of article 15.5 of chapter 14 of this division, apply to owners and operators of facilities that transfer, treat, store or dispose of hazardous waste who have fully complied with the requirements for interim status under Health and Safety Code section 25200.5 and section 66270.10 of this division until either a permit is issued under Health and Safety Code section 25200 or until applicable closure and post-closure responsibilities specified in this chapter are fulfilled, and those owners and operators of facilities in existence on November 19, 1980 who have failed to provide timely notification as required by 42 U.S.C. section 6930(a) and/or failed to file Part A of the permit application as required by section 66270.10(e) and (g). These standards apply to all transfer, treatment, storage and disposal of hazardous waste at these facilities, except as specifically provided otherwise in this chapter or chapters 11, 12 or 13 of this division.

(c) Notwithstanding subsection (b), no facility shall operate under interim status if the owner or operator has failed to file Part A of the permit application as required by section 66270.10(e) and (g). A facility operating under interim status shall not:

(1) manage hazardous wastes which are not specified in Part A of the permit application;

(2) employ processes not described in Part A of the permit application; or

(3) exceed the design capacities specified in Part A of the permit application.

(d) The requirements of this chapter do not apply to:

(1) a person disposing of hazardous waste by means of ocean disposal subject to a permit issued under the Federal Marine Protection, Research, and Sanctuaries Act (33 U.S.C. section 1401, et. seq). Such person shall comply with the requirements of this chapter when transferring, treating or storing hazardous waste before it is loaded onto an ocean vessel for incineration or disposal at sea, as provided in subsection (b) of this section;

(2) [reserved];

(3) the owner or operator of a POTW which transfers, treats, stores, or disposes of hazardous waste;

(4) [reserved];

(5) [reserved];

(6) the owner or operator of a facility managing recyclable materials described in section 66261.6(a)(2)(B) of this division (except to the extent they are referred to in article 8 of chapter 16 of this division);

(7) a generator accumulating waste on-site in compliance with section 66262.34 of this division, except to the extent the requirements are included in section 66262.34 of this division;

(8) a farmer disposing of waste pesticides from the farmer's own use in compliance with section 66262.70 of this division;

(9) [reserved];

(10) [reserved];

(11)(A) except as provided in subsection (d)(11)(B) of this section, a person engaged in treatment or containment activities during immediate response to any of the following situations:

1. a discharge of a hazardous waste;

2. an imminent and substantial threat of a discharge of a hazardous waste;

3. a discharge of a material which, when discharged, becomes a hazardous waste;

(B) an owner or operator of a facility otherwise regulated by this chapter shall comply with all applicable requirements of articles 3 and 4 of this chapter;

(C) any person who is covered by subsection (d)(11)(A) of this section and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this chapter and chapter 21 of this division for those activities.

(D) In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit shall retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition. For the purposes of this subsection, the term "military munitions" is as defined in 40 Code of Federal Regulations section 260.10. The requirements of this subsection apply only to military munitions that are regulated under the federal act, as defined in Health and Safety Code section 25115.1;

(12) a transporter storing manifested shipments of hazardous waste in containers at a transfer facility, or a transfer facility storing manifested shipments of hazardous waste in containers, for six days or less, or 10 days or less for transfer facilities in areas zoned industrial by the local planning authority, and meeting the requirements of sections 66262.30 and 66263.18;

(13) the addition of absorbent material to waste in a container (as defined in section 66260.10 of this division) or the addition of waste to the absorbent material in a container provided that these actions occur at the time waste is first placed in the containers; and sections 66265.17(b), 66265.171, and 66265.172 are complied with;

(14) persons managing hazardous waste in a hazardous waste management unit not subject to 40 Code of Federal Regulations Part 265 (incorporated by reference in section 66260.11 of this division) pursuant to an exemption in 40 Code of Federal Regulations section 265.1(c), if the waste managed in that unit is identified as a hazardous waste solely because it exhibits the characteristic of toxicity set forth in section 66261.24(a)(1) of this division.

(15) Persons who manage universal waste. These persons are subject to regulation under chapter 23 when managing universal wastes listed in section 66261.9 of this division.

(e) The owner or operator of a facility under subsections (d)(1) through (3) of this section shall be subject to the requirements of chapter 14 of this division to the extent they are included in a permit granted to such a person under 40 Code of Federal Regulations Part 122 or under Subchapter H (commencing with Part 220) of chapter I of 40 Code of Federal Regulations.

(f) The following hazardous wastes shall not be managed at facilities subject to regulation under this chapter:

(1) EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, or F027 unless:

(A) the wastewater treatment sludge is generated in a surface impoundment as part of the plant's wastewater treatment system;

(B) the waste is stored in tanks or containers;

(C) the waste is stored or treated in waste piles that meet the requirements of section 66264.250(c) as well as all other applicable requirements of article 12 of this chapter;

(D) the waste is burned in incinerators that are certified pursuant to the standards and procedures in section 66265.352; or

(E) the waste is burned in facilities that thermally treat the waste in a device other than an incinerator and that are certified pursuant to the standards and procedures in section 66265.383.

(g) The requirements of this chapter apply to owners or operators of all facilities which transfer, treat, store or dispose of hazardous waste referred to in chapter 18 of this division, and the chapter 18 standards are considered material conditions or requirements of the chapter 15 interim status standards.

NOTE: Authority cited: Sections 25141, 25150, 25150.6, 25159, 25219.1 and 58012, Health and Safety Code. Reference: Sections 25115.1, 25118, 25141, 25150, 25159, 25159.5, 25200.5, 25219, 25219.1 and 25219.2, Health and Safety Code; and 40 Code of Federal Regulations Sections 260.10 and 265.1.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).
2. Amendment of subsection (b) and NOTE filed 12-23-93 as an emergency; operative 12-23-93 (Register 93, No. 52). A Certificate of Compliance must be transmitted to OAL by 5-9-94 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsection (b) and NOTE refiled 4-25-94 as an emergency; operative 4-25-94 (Register 94, No. 17). A Certificate of Compliance must be transmitted to OAL by 8-23-94 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsection (b) and NOTE refiled 8-22-94 as an emergency; operative 8-22-94 (Register 94, No. 34). A Certificate of Compliance must be transmitted to OAL by 12-20-94 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsection (b) refiled 12-22-94 as an emergency; operative 12-22-94 (Register 94, No. 51). A Certificate of Compliance must be transmitted to OAL 4-21-95 or emergency language will be repealed by operation of law on the following day.

6. Amendment of subsection (b) refiled 6–29–95 as an emergency; operative 6–29–95 (Register 95, No. 26). A Certificate of Compliance must be transmitted to OAL by 10–27–95 or emergency language will be repealed by operation of law on the following day.
7. Amendment of subsection (b) and NOTE refiled 10–26–95 as an emergency; operative 10–26–95 (Register 95, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–23–96 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 10–26–95 order transmitted to OAL 11–30–95 and filed 1–16–96 (Register 96, No. 3).
9. Amendment of subsection (g) and NOTE filed 1–31–96; operative 1–31–96 (Register 96, No. 5).
10. Change without regulatory effect amending subsections (b) and (d)(12 filed 4–3–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
11. Change without regulatory effect adding new subsection (d)(6) filed 6–12–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 24).
12. Amendment of subsection (b) and amendment of NOTE filed 11–19–98 as an emergency; operative 11–19–98 (Register 98, No. 47). A Certificate of Compliance must be transmitted to OAL by 3–19–99 or emergency language will be repealed by operation of law on the following day.
13. Reinstatement of subsection (b) and NOTE as they existed prior to 11–19–98 emergency amendment by operation of Government Code section 11346.1(f) (Register 99, No. 12).
14. Change without regulatory effect amending subsection (b) and NOTE filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).
15. New subsections (d)(15)–(d)(15)(C) and amendment of NOTE filed 3–6–2000 as an emergency; operative 3–6–2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2000 or emergency language will be repealed by operation of law on the following day.
16. New subsections (d)(15)–(d)(15)(C) and amendment of NOTE refiled 6–29–2000 as an emergency; operative 7–6–2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–3–2000 or emergency language will be repealed by operation of law on the following day.
17. New subsections (d)(15)–(d)(15)(C) and amendment of NOTE refiled 11–1–2000 as an emergency; operative 11–4–2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–5–2001 or emergency language will be repealed by operation of law on the following day.
18. New subsections (d)(15)–(d)(15)(C) and amendment of NOTE refiled 3–6–2001 as an emergency; operative 3–6–2001 (Register 2001, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2001 or emergency language will be repealed by operation of law on the following day.
19. New subsections (d)(15)–(d)(15)(C) and amendment of NOTE refiled 6–26–2001 as an emergency; operative 7–5–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–2–2001 or emergency language will be repealed by operation of law on the following day.
20. New subsections (d)(15)–(d)(15)(C) and amendment of NOTE refiled 11–2–2001 as an emergency; operative 11–3–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–4–2002 or emergency language will be repealed by operation of law on the following day.
21. Certificate of Compliance as to 11–2–2001 order, including further amendment of NOTE, transmitted to OAL 12–27–2001 and filed 2–8–2002 (Register 2002, No. 6).
22. Amendment of subsection (d)(15) and repealer of subsections (d)(15)(A)–(C) filed 2–3–2003; operative 2–3–2003 (Register 2003, No. 6).
23. Amendment of NOTE filed 2–13–2003; operative 3–15–2003 (Register 2003, No. 7).
24. Change without regulatory effect adding subsection (d)(11)(D), amending subsections (d)(14) and (e) and amending NOTE filed 4–13–2007 pursuant to Health and Safety Code section 25159.1 (Register 2007, No. 15).

§ 66265.2. Compliance Schedule for Changes During Interim Status.

The owner or operator of a hazardous waste facility who has operated pursuant to a grant of interim status on or before the effective date of this division and is required to comply with the provisions of this chapter, shall submit a request for change(s) in the facility pursuant to chapter 20, article 7 of this division to the Department within 180 days of the effective date of this division. The request shall describe the exact change(s) to be made to the facility to comply with the provisions of this chapter. The owner or operator of such a facility shall implement the approved change(s) according to a schedule of compliance established by the Department.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25200.5, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.4. Enforcement Actions.

In addition to bringing an enforcement action pursuant to chapter 6.5 of division 20 commencing with section 25100 of the Health and Safety Code, the Department may take or secure actions pursuant to Health and Safety Code section 25358.3.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159, 25159.5, 25180.5 through 25196.6 and 25358.3, Health and Safety Code; 40 CFR Section 265.4.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

Article 2. General Facility Standards

§ 66265.10. Applicability.

The regulations in this article apply to owners and operators of all hazardous waste facilities, except as section 66265.1 provides otherwise.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.10.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.11. Identification Number.

Every facility owner or operator shall apply to the Department for an Identification Number in accordance with the Department's notification procedures.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.11.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.12. Required Notices.

(a)(1) The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source shall notify the Department in writing at least four weeks in advance of the date the waste is expected to arrive at the facility. The notification shall be sent to the Import/Export Coordinator, Department of Toxic Substances Control, Hazardous Waste Management Program, Statewide Compliance Division, Glendale Branch, 1011 North Grandview Avenue, Glendale, California 91201–2205. Notice of subsequent shipments of the same waste from the same foreign source is not required.

(2) The owner or operator of a recovery facility that has arranged to receive hazardous waste subject to the requirements of 40 CFR Part 262, Subpart H or this article shall provide a copy of the tracking document bearing all required signatures to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460 and to the competent authorities of all other concerned countries within three working days of receipt of the shipment. The original of the signed tracking document shall be maintained at the facility for at least three years.

(b) The owner or operator of a facility that receives hazardous waste from an off–site source (except where the owner or operator is also the generator) shall inform the generator in writing that the owner or operator has the appropriate interim status for, and will accept, the waste the generator is shipping. The owner or operator shall keep a copy of this written notice as part of the operating record.

(c)(1) Before transferring ownership or operation of a facility during its operating life, or of a disposal facility during the post–closure care period, the owner or operator shall notify the new owner or operator in writing of the requirements of this chapter and chapter 20 of this division. (Also see section 66270.72 of this division.)

(2) An owner's or operator's failure to notify the new owner or operator of the requirements of this chapter shall not relieve the new owner or operator of the obligation to comply with all applicable requirements.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 Code of Federal Regulations Section 265.12.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect redesignating subsection (a) as new subsection (a)(1) and adding new subsection (a)(2) filed 8–20–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).
3. Change without regulatory effect amending subsection (a)(2) and repealing subsection (d) filed 7–1–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 27).

4. Change without regulatory effect amending subsection (a)(1) and NOTE filed 8–24–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 34).

§ 66265.13. General Waste Analysis.

(a)(1) Before an owner or operator transfers, treats, stores, or disposes of any hazardous waste, or non–hazardous waste if applicable under section 66265.113(d), the owner or operator shall obtain a detailed chemical and physical analysis of a representative sample of the waste. At a minimum, this analysis shall contain all the information which must be known to transfer, treat, store, or dispose of the waste in accordance with the requirements of this chapter and chapter 18 of this division.

(2) The analysis may include data developed under chapter 11 of this division, and existing published or documented data on the hazardous waste or on hazardous waste generated from similar processes.

(A) The facility's record of analyses performed on the waste before the effective date of these regulations, or studies conducted on hazardous waste generated from processes similar to that which generated the waste to be managed at the facility, may be included in the data base required to comply with subsection (a)(1) of this section.

(B) The owner or operator of an off–site facility may arrange for the generator of the hazardous waste to supply part or all of the information required by subsection (a)(1) of this section, except as otherwise specified in section 66268.7(b) and (c).

(3) If the generator does not supply the information as specified in subsection (a)(2)(B) of this section, and the owner or operator chooses to accept a hazardous waste, the owner or operator shall obtain the information required to comply with this section.

(4) The analysis shall be repeated as necessary to ensure that it is accurate and up to date. At a minimum, the analysis shall be repeated:

(A) when the owner or operator is notified, or has reason to believe, that the process or operation generating the hazardous waste, or non–hazardous waste, if applicable under section 66265.113(d), has changed; and

(B) for off–site facilities, when the results of the inspection required in subsection (a)(5) of this section indicate that the hazardous waste received at the facility does not match the waste designated on the accompanying manifest or shipping paper.

(5) The owner or operator of an off–site facility shall inspect and, if necessary, analyze each hazardous waste movement received at the facility to determine whether it matches the identity of the waste specified on the accompanying manifest or shipping paper.

(b) The owner or operator shall develop and follow a written waste analysis plan which describes the procedures which the owner or operator will carry out to comply with subsection (a) of this section. The owner or operator shall keep this plan at the facility. At a minimum, the plan shall specify:

(1) the parameters for which each hazardous waste, or non–hazardous waste if applicable under section 66265.113(d), will be analyzed and the rationale for the selection of these parameters (i.e., how analysis for these parameters will provide sufficient information on the waste's properties to comply with subsection (a) of this section);

(2) the test methods which will be used to test for these parameters;

(3) the sampling and sampling management methods which will be used to obtain a representative sample of the waste to be analyzed. The sampling, planning methodology, equipment, sample processing, documentation and custody procedures shall be in accordance with either:

(A) one of the sampling methods described in Appendix I of chapter 11 of this division; or

(B) an equivalent sampling method.

(4) The frequency with which the initial analysis of the waste will be reviewed or repeated to ensure that the analysis is accurate and up to date;

(5) For off–site facilities, the waste analyses that hazardous waste generators have agreed to supply; and

(6) where applicable, the methods which will be used to meet the additional waste analysis requirements for specific waste management methods as specified in sections 66265.193, 66265.200, 66265.225, 66265.252, 66265.273, 66265.314, 66265.341, 66265.375, 66265.402, 66265.1034(d), 66265.1063(d), 66265.1084 and 66268.7 of this division.

(7) For owners and operators seeking an exemption to the air emission standards of article 30 in accordance with section 66265.1083:

(A) If direct measurement is used for the waste determination, the procedures and schedules for waste sampling and analysis, and the results of the analysis of test data to verify the exemption.

(B) If knowledge of the waste is used for the waste determination, any information prepared by the facility owner or operator or by the generator of the hazardous waste, if the waste is received from off–site, that is used as the basis for knowledge of the waste.

(c) For off–site facilities, the waste analysis plan required in subsection (b) of this section shall also specify the procedures which will be used to inspect and, if necessary, analyze each movement of hazardous waste received at the facility to ensure that it matches the identity of the waste designated on the accompanying manifest or shipping paper. At a minimum, the plan shall describe:

(1) the procedures which will be used to determine the identity of each movement of waste managed at the facility; and

(2) the sampling method which will be used to obtain a representative sample of the waste to be identified, if the identification method includes sampling.

(3) The procedures that the owner or operator of an off–site landfill receiving containerized hazardous waste will use to determine whether a hazardous waste generator or treater has added a biodegradable sorbent to the waste in the container.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245, 58004 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 265.13.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of subsection (b)(6) and NOTE filed 12–23–92; operative 1–22–93 (Register 93, No. 1).
3. New subsection (c)(3) and amendment of NOTE filed 8–8–95; operative 8–8–95 (Register 95, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–6–95 or emergency language will be repealed by operation of law on the following day.
4. Editorial correction inserting inadvertently omitted HISTORY 3 (Register 95, No. 37).
5. Reinstatement of section as it existed prior to emergency amendment filed 9–15–95 by operation of Government Code section 11346.1(f) (Register 95, No. 37).
6. Amendment of subsection (a)(2)(B) filed 1–31–96; operative 1–31–96 (Register 96, No. 5).
7. Amendment of subsections (a)(1), (a)(4)(A) and (b)(1) and NOTE filed 6–20–96; operative 7–20–96 (Register 96, No. 25).
8. Editorial correction restoring inadvertently omitted subsections (b)(3)(B)–(b)(5) (Register 97, No. 10).
9. New subsection (c)(3) filed 10–13–98; operative 11–12–98 (Register 98, No. 42).
10. Change without regulatory effect amending subsection (b)(6), adding subsections (b)(7)–(b)(7)(B) and amending NOTE filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).
11. Change without regulatory effect amending subsection (c) filed 7–1–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 27).

§ 66265.14. Security.

(a) The owner or operator shall prevent the unknowing entry, and minimize the possibility for the unauthorized entry, of persons or livestock onto the active portion of the facility, unless the owner or operator can demonstrate to the Department that:

(1) physical contact with the waste, structures, or equipment within the active portion of the facility will not injure unknowing or unauthorized persons or livestock which may enter the active portion of a facility, and

(2) disturbance of the waste or equipment, by the unknowing or unauthorized entry of persons or livestock onto the active portion of a facility, will not cause a violation of the requirements of this chapter.

(b) Unless the owner or operator has made a successful demonstration under subsection (a)(1) and (2) of this section, a facility shall have:

(1) a 24–hour surveillance system (e.g., television monitoring or surveillance by guards or facility personnel) which continuously monitors and controls entry onto the active portion of the facility; or

(2)(A) an artificial or natural barrier (e.g., a fence in good repair or a fence combined with a cliff), which completely surrounds the active portion of the facility; and

(B) a means to control entry, at all times, through the gates or other entrances to the active portion of the facility (e.g., an attendant, television monitors, locked entrance, or controlled roadway access to the facility).

(3) The requirements of subsection (b)(1) or (2) of this section shall be satisfied if the facility or plant within which the active portion is located itself has a surveillance system, or a barrier and a means to control entry, which complies with the requirements of subsection (b)(1) or (2) of this section.

(c) Unless the owner or operator has made a successful demonstration under subsections (a)(1) and (a)(2) of this section, a sign with the legend, "Danger Hazardous Waste Area—Unauthorized Personnel Keep Out," shall be posted at each entrance to the active portion of a facility, and at other locations, in sufficient numbers to be seen from any approach to this active portion. The legend shall be written in English, Spanish and in any other language predominant in the area surrounding the facility, and shall be legible from a distance of at least 25 feet. Existing signs with a legend other than "Danger Hazardous Waste Area—Unauthorized Personnel Keep Out" may be used if the legend on the sign indicates that only authorized personnel are allowed to enter the active portion, and that entry onto the active portion can be dangerous.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.14.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.15. General Inspection Requirements.

(a) The owner or operator shall inspect the facility for malfunctions and deterioration, operator errors, and discharges which may be causing or may lead to: (1) release of hazardous waste constituents to the environment; or (2) a threat to human health. The owner or operator shall conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment.

(b)(1) The owner or operator shall develop and follow a written schedule for inspecting all monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment (such as dikes and sump pumps) that are important to preventing, detecting, or responding to environmental or human health hazards.

(2) The owner or operator shall keep this schedule at the facility.

(3) The schedule shall identify the types of problems (e.g., malfunctions or deterioration) which are to be looked for during the inspection (e.g., inoperative sump pump, leaking fitting, eroding dike, etc.).

(4) The frequency of inspection may vary for the items on the schedule. However, it should be based on the rate of possible deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, or malfunction, or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, shall be inspected daily when in use. At a minimum, the inspection schedule shall include the items and frequencies called for in sections 66265.174, 66265.193, 66265.195, 66265.226, 66265.260, 66265.278, 66265.304, 66265.347, 66265.377, 66265.403, 66265.1033, 66265.1052, 66265.1053, 66265.1058, 66265.1084 through 66265.1090 of this chapter, where applicable.

(c) The owner or operator shall remedy any deterioration or malfunction of equipment or structures which the inspection reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard. Where a hazard is imminent or has already occurred, remedial action shall be taken immediately.

(d) The owner or operator shall record inspections in an inspection log or summary. The owner or operator shall keep these records for at least three years from the date of inspection. At a minimum, these records shall include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 265.15.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of subsection (b)(4) and NOTE filed 12–23–92; operative 1–22–93 (Register 93, No. 1).
3. Amendment of subsection (b)(4) and NOTE filed 7–19–95; operative 8–18–95 (Register 95, No. 29).
4. Change without regulatory effect amending subsection (b)(4) and NOTE filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).

§ 66265.16. Personnel Training.

(a)(1) Facility personnel shall successfully complete a program of classroom instruction or on–the–job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this chapter. The owner or operator shall ensure that this program includes all the elements described in the document required under subsection (d)(3) of this section.

(2) This program shall be directed by a person trained in hazardous waste management procedures, and shall include instruction which teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed.

(3) At a minimum, the training program shall be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, including where applicable:

(A) procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment;

(B) key parameters for automatic waste feed cut–off systems;

(C) communications or alarm systems;

(D) response to fires or explosions;

(E) response to ground–water contamination incidents; and

(F) shutdown of operations.

(b) Facility personnel shall successfully complete the program required in subsection (a) of this section within six months after the date of their employment or assignment to a facility, or to a new position at a facility. Employees hired after the effective date of these regulations shall not work in unsupervised positions until they have completed the training requirements of subsection (a) of this section.

(c) Facility personnel shall take part in an annual review of the initial training required in subsection (a) of this section.

(d) The owner or operator shall maintain the following documents and records at the facility:

(1) the job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;

(2) a written job description for each position listed under subsection (d)(1) of this section. This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but shall include the requisite skill, education, or other qualifications, and duties of facility personnel assigned to each position;

(3) a written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under subsection (d)(1) of this section;

(4) records that document that the training or job experience required under subsections (a), (b), and (c) of this section has been given to, and completed by, facility personnel.

(e) Training records on current personnel shall be kept until closure of the facility. Training records on former employees shall be kept for at least three years from the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.16.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.17. General Requirements for Ignitable, Reactive, or Incompatible Wastes.

(a) The owner or operator shall take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. This waste shall be sep-

arated and protected from sources of ignition or reaction including but not limited to: Open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (e.g., from heat-producing chemical reactions), and radiant heat. While ignitable or reactive waste is being handled, the owner or operator shall confine smoking and open flame to specially designated locations. "No Smoking" signs shall be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

(b) Where specifically required by other sections of this chapter, the transfer, treatment, storage, or disposal of ignitable or reactive waste, and the mixture or commingling of incompatible wastes, or incompatible wastes and materials, shall be conducted so that it does not:

(1) generate extreme heat or pressure, fire or explosion, or violent reaction;

(2) produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health or the environment;

(3) produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions;

(4) damage the structural integrity of the device or facility containing the waste; or

(5) through other like means threaten human health or the environment.

(c) When required to comply with subsection (a) or (b) of this section, the owner or operator shall document that compliance. This documentation may be based on references to published scientific or engineering literature, data from trial tests (e.g., bench scale or pilot scale tests), waste analyses (as specified in section 66265.13) or the results of the treatment of similar wastes by similar treatment processes and under similar operating conditions.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.17.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).

§ 66265.18. Location Standards.

(a) The placement of any hazardous waste in a salt dome, salt bed formation, underground mine or cave is prohibited.

(b) A facility located in a 100-year floodplain or within the maximum high tide shall be designed, constructed, operated and maintained to prevent washout of any hazardous waste by a 100-year flood or maximum high tide, unless the owner or operator can demonstrate to the Department's satisfaction that procedures are in effect which will cause the waste to be removed safely, before flood waters can reach the facility, to a location where the wastes will not be vulnerable to flood or tide waters.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.18.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).

§ 66265.19. Construction Quality Assurance Program.

(a) CQA program. (1) A construction quality assurance (CQA) program is required for all surface impoundment, waste pile, and landfill units that are required to comply with sections 66265.221(a), 66265.254, and 66265.301(a). The program shall ensure that the constructed unit meets or exceeds all design criteria and specifications in the permit. The program shall be developed and implemented under the direction of a CQA officer who is a California state registered professional Civil engineer.

(2) The CQA program shall address the following physical components, where applicable:

(A) Foundations;

(B) Dikes;

(C) Low-permeability soil liners;

(D) Geomembrane (flexible membrane liners);

(E) Leachate collection and removal systems and leak detection systems; and

(F) Final cover systems.

(b) Written CQA plan. Before construction begins on a unit subject to the CQA program under subsection (a) of this section, the owner or operator shall develop a written CQA plan. The plan shall identify steps that will be used to monitor and document the quality of materials and the condition and manner of their installation. The CQA plan shall include:

(1) Identification of applicable units, and a description of how they will be constructed.

(2) Identification of key personnel in the development and implementation of the CQA plan, and CQA officer qualifications.

(3) A description of inspection and sampling activities for all unit components identified in subsection (a)(2) of this section, including observations and tests that will be used before, during, and after construction to ensure that the construction materials and the installed unit components meet the design specifications. The description shall cover: Sampling size and locations; frequency of testing; data evaluation procedures; acceptance and rejection criteria for construction materials; plans for implementing corrective measures; and data or other information to be recorded and retained in the operating record under section 66265.73.

(c) Contents of program. (1) The CQA program shall include observations, inspections, tests, and measurements sufficient to ensure:

(A) Structural stability and integrity of all components of the unit identified in subsection (a)(2) of this section;

(B) Proper construction of all components of the liners, leachate collection and removal system, leak detection system, and final cover system, according to permit specifications and good engineering practices, and proper installation of all components (e.g., pipes) according to design specifications;

(C) Conformity of all materials used with design and other material specifications under sections 66264.221, 66264.251, and 66264.301 of this chapter.

(2) The CQA program shall include test fills for compacted soil liners, using the same compaction methods as in the full-scale unit, to ensure that the liners are constructed to meet the hydraulic conductivity requirements of sections 66264.221(c)(1), 66264.251(c)(1), and 66264.301(c)(1) of this chapter in the field. Compliance with the hydraulic conductivity requirements shall be verified by using in-situ testing on the constructed test fill. The test fill requirement is waived where data are sufficient to show that a constructed soil liner meets the hydraulic conductivity requirements of sections 66264.221(c)(1), 66264.251(c)(1), and 66264.301(c)(1) of this chapter in the field.

(d) Certification. The owner or operator of units subject to section 66265.19 shall submit to the Department by certified mail or hand delivery, at least 30 days prior to receiving waste, a certification signed by the CQA officer that the CQA plan has been successfully carried out and that the unit meets the requirements of sections 66265.221(a), 66265.254, or 66265.301(a). The owner or operator may receive waste in the unit after 30 days from the Department's receipt of the CQA certification unless the Department determines in writing that the construction is not acceptable, or extends the review period for a maximum of 30 more days, or seeks additional information from the owner or operator during this period. Documentation supporting the CQA officer's certification shall be furnished to the Department upon request.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code; and Governor's Reorganization Plan Number 1 of 1991. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 265.19.

HISTORY

1. New section filed 7-19-95; operative 8-18-95 (Register 95, No. 29).

2. Change without regulatory effect amending subsections (c)(2) and (d) filed 6-30-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 27).

§ 66265.25. Seismic and Precipitation Design Standards.

(a) Except as provided by section 66265.192, facilities subject to this chapter and all cover systems and drainage control systems required by this chapter shall be designed to function without failure when subjected to capacity, hydrostatic and hydrodynamic loads resulting from a 24-hour probable maximum precipitation storm.

(b) The following shall be designed, constructed and maintained to withstand the maximum credible earthquake without the level of public health and environmental protection afforded by the original design being decreased:

(1) all surface impoundments, waste piles, landfills and land treatment facilities subject to this chapter; and

(2) all covers and cover systems required by this chapter and all containment and control features which will remain after closure at permanent hazardous waste disposal areas.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Section 25150, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

Article 3. Preparedness and Prevention

§ 66265.30. Applicability.

The regulations in this article apply to owners and operators of all hazardous waste facilities, except as section 66265.1 provides otherwise.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.30.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.31. Maintenance and Operation of Facility.

Facilities shall be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non–sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.31.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.32. Required Equipment.

All facilities shall be equipped with the following, unless it can be demonstrated to the Department that none of the hazards posed by waste handled at the facility could require a particular kind of equipment specified below:

(a) an internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;

(b) a device, such as a telephone (immediately available at the scene of operations) or a hand–held two–way radio, capable of summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams;

(c) portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment, and decontamination equipment; and

(d) water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.32.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.33. Testing and Maintenance of Equipment.

All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, shall be tested and maintained as necessary to assure its proper operation in time of emergency.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.33.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.34. Access to Communications or Alarm System.

(a) Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation shall have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless the Department has ruled that such a device is not required under section 66265.32.

(b) If there is ever just one employee on the premises while the facility is operating, the employee shall have immediate access to a device, such as a telephone (immediately available at the scene of operation) or a hand–held two–way radio, capable of summoning external emergency assistance, unless the Department has ruled that such a device is not required under section 66265.32.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 256.34.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.35. Required Aisle Space.

The owner or operator shall maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless it can be demonstrated to the Department that aisle space is not needed for any of these purposes.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.35.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.37. Arrangements with Local Authorities.

(a) The owner or operator shall attempt to make the following arrangements, as appropriate, for the type of waste handled at the facility and the potential need for the services of these organizations:

(1) arrangements to familiarize police, fire departments, emergency response teams, and the local Office of Emergency Services with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes;

(2) where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;

(3) agreements with State emergency response teams, emergency response contractors, and equipment suppliers; and

(4) arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

(b) Where State or local authorities decline to enter into such arrangements, the owner or operator shall document the refusal in the operating record.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.37.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

Article 4. Contingency Plan and Emergency Procedures

§ 66265.50. Applicability.

The regulations in this article apply to owners and operators of all hazardous waste facilities, except as section 66265.1 provides otherwise.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.50.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.51. Purpose and Implementation of Contingency Plan.

(a) Each owner or operator shall have a contingency plan for the facility. The contingency plan shall be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non–sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

(b) The provisions of the plan shall be carried out immediately whenever there is a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.51.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.52. Content of Contingency Plan.

(a) The contingency plan shall describe the actions facility personnel shall take to comply with sections 66265.51 and 66265.56 in response to fires, explosions, or any unplanned sudden or non–sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.

(b) If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with 40 CFR Part 112, or 40 CFR Part 1510, or some other emergency or contingency plan, the owner or operator need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this chapter.

(c) The plan shall describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, pursuant to section 66265.37.

(d) The plan shall list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see section 66265.55), and this list shall be kept up to date. Where more than one person is listed, one shall be named as primary emergency coordinator and others shall be listed in the order in which they will assume responsibility as alternates.

(e) The plan shall include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list shall be kept up to date. In addition, the plan shall include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(f) The plan shall include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan shall describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).

(g) The plan shall include the current telephone number of the State Office of Emergency Services.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.52.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.53. Copies of Contingency Plan.

A copy of the contingency plan and all revisions to the plan shall be:

(a) maintained at the facility; and

(b) submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.53.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.54. Amendment of Contingency Plan.

The contingency plan shall be reviewed, and immediately amended, if necessary, whenever:

(a) applicable regulations are revised;

(b) the plan fails in an emergency;

(c) the facility changes in its design, construction, operation, maintenance, or other circumstances in a way that materially increases the potential for fires, explosions, or releases of hazardous waste or hazardous waste constituents, or changes the response necessary in an emergency;

(d) the list of emergency coordinators changes; or

(e) the list of emergency equipment changes.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.54.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.55. Emergency Coordinator.

At all times, there shall be at least one employee either on the facility premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures. This emergency coordinator shall be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person shall have the authority to commit the resources needed to carry out the contingency plan.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.55.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.56. Emergency Procedures.

(a) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or the emergency coordinator's designee when the emergency coordinator is on call) shall immediately:

(1) activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(2) notify appropriate State or local agencies with designated response roles if their help is needed.

(b) Whenever there is a release, fire, or explosion, the emergency coordinator shall immediately identify the character, exact source, amount, and areal extent of any released materials. The emergency coordinator may do this by observation or review of facility records or manifests and, if necessary, by chemical analysis.

(c) Concurrently, the emergency coordinator shall assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment shall consider both direct and indirect effects of the release, fire, or explosion (e.g., the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run–offs from water or chemical agents used to control fire and heat–induced explosions).

(d) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility, the emergency coordinator shall report the findings as follows.

(1) If the emergency coordinator's assessment indicates that evacuation of local areas may be advisable, the emergency coordinator shall immediately notify appropriate local authorities. The emergency coordina-

tor shall be available to help appropriate officials decide whether local areas should be evacuated; and

(2) The emergency coordinator shall, in every situation, immediately notify the State Office of Emergency Services. The report shall include:

(A) name and telephone number of reporter;

(B) name and address of facility;

(C) time and type of incident (e.g., release, fire);

(D) name and quantity of material(s) involved, to the extent known;

(E) the extent of injuries, if any; and

(F) the possible hazards to human health, or the environment, outside the facility.

(e) During an emergency, the emergency coordinator shall take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous waste at the facility. These measures shall include, where applicable, stopping processes and operations, collecting and containing released waste, and removing or isolating containers.

(f) If the facility stops operations in response to a fire, explosion or release, the emergency coordinator shall monitor for leaks, pressure build-up, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(g) Immediately after an emergency, the emergency coordinator shall provide for treating, storing, or disposing of recovered waste, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility. Unless the owner or operator can demonstrate, in accordance with section 66261.3(c) or (d) of this division, that the recovered material is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and shall manage it in accordance with all applicable requirements of chapters 12, 13, and 15 of this division.

(h) The emergency coordinator shall ensure that, in the affected area(s) of the facility:

(1) no waste that may be incompatible with the released material is transferred, treated, stored, or disposed of until cleanup procedures are completed; and

(2) all emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(i) The owner or operator shall notify the Department, and appropriate State and local authorities, that the facility is in compliance with subsection (h) of this section before operations are resumed in the affected area(s) of the facility.

(j) The owner or operator shall note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, the owner or operator shall submit a written report on the incident to the Department. The report shall include:

(1) name, address, and telephone number of the owner or operator;

(2) name, address, and telephone number of the facility;

(3) date, time, and type of incident (e.g., fire, explosion);

(4) name and quantity of material(s) involved;

(5) the extent of injuries, if any;

(6) an assessment of actual or potential hazards to human health or the environment, where this is applicable; and

(7) estimated quantity and disposition of recovered material that resulted from the incident.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.56.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

Article 5. Manifest System, Recordkeeping, and Reporting

§ 66265.70. Applicability.

(a) The regulations in this article apply to owners and operators of both on–site and off–site facilities, except as section 66265.1 provides otherwise. Sections 66265.71, 66265.72, and 66265.76 do not apply to owners and operators of on–site facilities that do not receive any hazardous waste from off–site sources.

(b) Compliance with the revisions to the Manifest form and procedures announced in the regulation published by U.S.EPA on March 4, 2005 and by the department on August 24, 2006, shall not be required until on and after September 5, 2006.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 Code of Federal Regulations Section 265.70.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect designating existing section as subsection (a), adding subsection (b) and amending NOTE filed 8–24–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 34).

§ 66265.71. Use of Manifest System.

(a)(1) If a facility receives hazardous waste accompanied by a manifest, the owner or operator, or the facility's agent, shall sign and date each copy of the manifest as indicated in paragraph (a)(2) of this section to certify that the hazardous waste covered by the manifest was received, that the hazardous waste was received except as noted in the discrepancy space of the manifest, or that the hazardous waste was rejected as noted in the manifest discrepancy space.

(2) If a facility receives a hazardous waste shipment accompanied by a manifest, including a facility located out of state, the owner, operator or the facility's agent shall:

(A) sign and date, by hand, each copy of the manifest;

(B) note any significant discrepancies in the manifest (as defined in section 66265.72, subsection (a)) on each copy of the manifest, and enter the most appropriate Hazardous Waste Report Management Method codes for each waste listed on the manifest from the list published in the most recent *Hazardous Waste Report, Instructions and Forms* (EPA Form 8700–13A/B) and shown in Appendix II of chapter 14.

(C) immediately give the transporter at least one copy of the signed manifest;

(D) within 30 days after the delivery, send a copy of the manifest to the generator;

(E) retain at the facility a copy of each manifest for at least three years from the date of delivery;

(F) within 30 days of each receipt of hazardous waste submit to the Department a legible copy of each manifest used. The facility manifest copy shall be submitted to the department for every shipment on a manifest when California is either the generator state or the destination state. The facility manifest copy shall be mailed to:

DTSC FACILITY MANIFESTS
P.O. BOX 3000
SACRAMENTO, CA 95812–3000

; and

(G) a facility shall determine whether the consignment state for a shipment regulates any additional wastes (beyond those regulated federally) as hazardous wastes under its state hazardous waste program. Facilities shall also determine whether the consignment state or generator state requires the facility to submit any copies of the manifest to these states.

(b) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest (excluding the Identification Numbers, generator's certification, and signatures), the owner or operator, or the facility's agent, shall:

(1) sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste covered by the manifest or shipping paper was received;

(2) note any significant discrepancies as defined in section 66265.72(a) in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper;

(3) immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received);

(4) within 30 days after the delivery, send a copy of the signed and dated manifest or a signed and dated copy of the shipping paper (if the manifest has not been received within 30 days after delivery) to the generator;

(5) within 30 days of each receipt of hazardous waste submit to the Department a legible copy of each manifest or shipping paper (if the manifest has not been received) used; and

(6) retain at the facility a copy of the manifest and shipping paper (if signed in lieu of the manifest at the time of delivery) for at least three years from the date of delivery.

(c) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility shall comply with the requirements of chapter 12 of this division.

(d) In addition to submitting a copy of the manifest to the department, if a facility receives federally regulated hazardous waste imported from a foreign source, the receiving facility shall mail a copy of the manifest to the following address within 30 days of delivery: International Compliance Assurance Division, OFA/OECA (2254A), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

(e) Within three working days of the receipt of a shipment subject to the requirements of 40 Code of Federal Regulations Part 262, Subpart H or this article, the owner or operator of facility shall provide a copy of the tracking document bearing all required signatures to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and to competent authorities of all other concerned countries. The original copy of the tracking document shall be maintained at the facility for at least three years from the date of signature.

(f) Whenever hazardous waste is received by a facility from a transporter in a vehicle or bulk container that will be removed from the facility after emptying, the transporter shall determine by inspection whether the vehicle or bulk container is empty pursuant to section 66261.7 prior to the removal of the vehicle or bulk container from the facility.

(g) If a vehicle or bulk container cannot be rendered empty pursuant to section 66261.7 by equipment and methods available at the facility, the transporter shall follow the procedure in subsection (b) of section 66263.21. If the vehicle or bulk container is not empty, the transporter shall not move the vehicle or bulk container without the designated facility preparing a new manifest for container residues pursuant to section 66265.72 or 40 Code of Federal Regulations section 265.72, if located out of state.

(h) The provisions of section 66262.34 are applicable to the on–site accumulation of hazardous wastes by generators. Therefore, the provisions of section 66262.34 only apply to owners or operators who are shipping hazardous waste which they generated at that facility.

NOTE: Authority cited: Sections 25150, 25159, 25159.5 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 Code of Federal Regulations Section 265.71; *Hazardous Waste Report, Instructions and Forms* (EPA Form 8700–13A/B); and 70 Fed. Reg. 10776 (Mar. 4, 2005), p. 10786–10787.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect adding new subsection (d) filed 8–20–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).
3. New subsections (e)–(g) and amendment of NOTE filed 10–19–2000; operative 11–18–2000 (Register 2000, No. 42).
4. Amendment of subsections (a)(2) and (b)(2) and amendment of NOTE filed 4–4–2002 as an emergency; operative 4–4–2002 (Register 2002, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–2–2002 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsections (a)(2) and (b)(2) and amendment of NOTE refiled 8–1–2002 as an emergency; operative 8–1–2002 (Register 2002, No. 31). A Certificate of Compliance must be transmitted to OAL by 12–2–2002 or emergency language will be repealed by operation of law on the following day.
6. Amendment of subsections (a)(2) and (b)(2) and amendment of NOTE refiled 12–2–2002 as an emergency; operative 12–3–2002 (Register 2002, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–2003 or emergency language will be repealed by operation of law on the following day.
7. Amendment of subsections (a)(2) and (b)(2) and amendment of NOTE refiled 4–1–2003 as an emergency; operative 4–3–2003 (Register 2003, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2003 or emergency language will be repealed by operation of law on the following day.
8. Repealer of 4–1–2003 order and amendment of NOTE filed 7–10–2003 as an emergency; operative 7–10–2003 (Register 2003, No. 28). Pursuant to Health and Safety Code section 25169.8, this is a deemed emergency and stays effective until revised by the agency.
9. Change without regulatory effect amending subsection (b)(6) filed 6–7–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 24).
10. Change without regulatory effect amending section and NOTE filed 8–24–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 34).

§ 66265.72. Manifest Discrepancies.

(a) Manifest discrepancies are:

(1) Significant differences (as defined by paragraph (b) of this section) between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste a facility actually receives.

(2) Rejected wastes, which may be a full or partial shipment of hazardous waste that the TSDF cannot accept; or

(3) Container residues, which are residues that exceed the quantity limits for "empty" containers set forth in 40 Code of Federal Regulations section 261.7(b) or section 66261.7 of this division.

(b) Significant discrepancies in quantity are: For bulk waste, variations greater than 10 percent in weight; for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload. Significant discrepancies in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid or toxic constituents not reported on the manifest or shipping paper.

(c) Upon discovering a significant discrepancy in quantity or type, the owner or operator shall attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator shall immediately submit to the Department a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue. Significant Discrepancy Reports should be mailed to:

DTSC REPORT REPOSITORY
GENERATOR INFORMATION SERVICES SECTION
P.O. BOX 806
SACRAMENTO, CA 95812–0806

(d)(1) Upon rejecting waste or identifying a container residue that exceeds the quantity limits for "empty" containers set forth in 40 Code of Federal Regulations section 261.7(b) or section 66261.7 of this division, the facility shall consult with the generator prior to forwarding the waste to another facility that can manage the waste. If it is impossible to locate an alternative facility that can receive the waste, the facility may return the rejected waste or residue to the generator. The facility shall send the waste to the alternative facility or to the generator within the time frame specified in the permit or 60 days, whichever is shorter, of the rejection or the container residue identification. The waste shall be managed con-

sistent with any applicable permit conditions. The waste shall be handled consistent with the requirements of section 25200.19 of the Health and Safety Code.

(2) While the facility is making arrangements for forwarding rejected wastes or residues to another facility under this section, it shall ensure that either the delivering transporter retains custody of the waste, or, the facility shall provide for secure, temporary custody of the waste, pending delivery of the waste to the first transporter designated on the manifest prepared under paragraph (e) or (f) of this section.

(e) Except as provided in paragraph (e)(7) of this section, for full or partial load rejections and residues that are to be sent off-site to an alternate facility, the facility is required to prepare a new manifest in accordance with section 66262.20, subsection (a) of this division or 40 Code of Federal Regulations section 262.20(a), if located out of state, and the following instructions:

(1) Write the generator's EPA ID number in Item 1 of the new manifest. Write the generator's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the generator's site address, then write the generator's site address in the designated space for Item 5.

(2) Write the name of the alternate designated facility and the facility's EPA ID number in the designated facility block (Item 8) of the new manifest.

(3) Copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

(4) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a).

(5) Write the U.S. Department of Transportation description for the rejected load or the residue in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

(6) Sign the Generator's/Offeror's Certification to certify, as the offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation.

(7) For full load rejections that are made while the transporter remains present at the facility, the facility may forward the rejected shipment to the alternate facility by completing Item 18b of the original manifest and supplying the information on the next destination facility in the Alternate Facility space. The facility shall retain a copy of this manifest for its records, and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility shall use a new manifest and comply with paragraphs (e)(1), (2), (3), (4), (5), and (6) of this section.

(f) Except as provided in paragraph (f)(7) of this section, for rejected wastes and residues that shall be sent back to the generator, the facility is required to prepare a new manifest in accordance with section 66262.20, subsection (a) of this division or 40 Code of Federal Regulations section 262.20(a), if located out of state, and the following instructions:

(1) Write the facility's EPA ID number in Item 1 of the new manifest. Write the generator's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the generator's site address, then write the generator's site address in the designated space for Item 5.

(2) Write the name of the initial generator and the generator's U.S. EPA ID number in the designated facility block (Item 8) of the new manifest.

(3) Copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

(4) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a).

(5) Write the U.S. DOT description for the rejected load or the residue in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

(6) Sign the Generator's/Offeror's Certification to certify, as offeror of the shipment, that the waste has been properly packaged, marked and labeled, and is in proper condition for transportation.

(7) For full load rejections that are made while the transporter remains at the facility, the facility may return the shipment to the generator with the original manifest by completing Item 18a and 18b of the manifest and supplying the generator's information in the Alternate Facility space. The facility shall retain a copy for its records and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility shall use a new manifest and comply with paragraphs (f)(1), (2), (3), (4), (5), and (6) of this section.

(g) If a facility rejects a waste or identifies a container residue that exceeds the quantity limits for "empty" containers set forth in 40 Code of Federal Regulations section 261.7(b) or section 66261.7 of this division, after it has signed, dated, and returned a copy of the manifest to the delivering transporter or to the generator, the facility shall amend its copy of the manifest to indicate the rejected wastes or residues in the discrepancy space of the amended manifest. The facility shall also copy the manifest tracking number from Item 4 of the new manifest to the Discrepancy space of the amended manifest, and shall re-sign and date the manifest to certify to the information as amended. The facility shall retain the amended manifest for at least three years from the date of amendment, and shall within 30 days, send a copy of the amended manifest to the transporter and generator that received copies prior to their being amended. The facility shall submit a copy of the amended manifest within 30 days to the department at the address provided in section 66265.71, subsection (a)(2)(F).

(h) Upon discovering a discrepancy involving a hazardous waste of concern, as defined in section 66261.111(a), and the waste at issue represents a reportable quantity or a reportable difference in type, as specified in section 66261.111(b) and (c), the owner or operator shall attempt to reconcile the reportable quantity or difference with the waste generator or transporter. If the reportable quantity or difference is not reconciled within 24 hours after it was discovered, the owner or operator shall immediately notify the Department by calling 1-800-69-TOXIC (1-800-698-6942) and providing the following information:

(1) Facility name and identification number;

(2) Generator name and identification number;

(3) Transporter(s) name(s), identification number(s), and, if available, transporter(s) registration number(s);

(4) Manifest number;

(5) Waste information (lines 11, 12, 13, and 14 of the manifest), including proper shipping name, hazard class or division, identification number, packing group, number of containers, container type (as listed in Table I of the Appendix to Chapter 12, Article 7), quantity or volume of waste at issue, weight or volume units, and waste codes.

For shipments initiated on and after September 5, 2006, waste information (Items 9b, 10, 11, 12, and 13 of the manifest), including proper shipping name, hazard class or division, identification number, packing group, number of containers, container type (found in the manifest instructions in the Appendix to chapter 12, article 8), quantity or volume of waste at issue, weight or volume units, and waste codes; and

(6) Potential locations or transportation routes where the hazardous waste of concern may have become missing (e.g., on highway or roads, rail line, transfer station, truck stop, etc.).

(i) If the reportable quantity or difference is not reconciled within 24 hours after it was discovered, in addition to complying with subsection (h), within 5 days after discovering the reportable quantity or difference, the owner or operator shall submit to the Department a letter describing the reportable quantity or difference and attempts to reconcile it, and a copy of the manifest at issue.

(1) Owners or operators of facilities located in the counties of Los Angeles, Ventura, Santa Barbara, San Bernardino, Orange, Riverside, San Diego, or Imperial shall submit the letter to the Complaint Coordinator, Department of Toxic Substances Control, Statewide Compliance Division, Glendale Branch, 1011 North Grandview Avenue, Glendale, California 91201–2205.

(2) Owners or operators of facilities located in any other county, or out of state, shall submit the letter to the Complaint Coordinator, Department of Toxic Substances Control, Statewide Compliance Division, Northern California Branch, 8800 Cal Center Drive, Sacramento, California 95826–3200.

NOTE: Authority cited: Sections 25150, 25159, 25169.6, 25169.7 and 25169.8, Health and Safety Code. Reference: Sections 25159, 25159.5, 25160.6, 25169.5, 25169.6, 25169.7 and 25200.19, Health and Safety Code; 40 Code of Federal Regulations Section 265.72; *Hazardous Waste Report. Instructions and Forms* (EPA Form 8700–13A/B); and 70 Fed. Reg. 10776 (Mar. 4, 2005), p. 10786–10787.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of section and NOTE filed 4–4–2002 as an emergency; operative 4–4–2002 (Register 2002, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–2–2002 or emergency language will be repealed by operation of law on the following day.
3. Amendment of section and NOTE refiled 8–1–2002 as an emergency; operative 8–1–2002 (Register 2002, No. 31). A Certificate of Compliance must be transmitted to OAL by 12–2–2002 or emergency language will be repealed by operation of law on the following day.
4. Amendment of section and NOTE refiled 12–2–2002 as an emergency; operative 12–3–2002 (Register 2002, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–2003 or emergency language will be repealed by operation of law on the following day.
5. Amendment of section and NOTE refiled 4–1–2003 as an emergency; operative 4–3–2003 (Register 2003, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2003 or emergency language will be repealed by operation of law on the following day.
6. Repealer of 4–1–2003 order, new subsections (c)–(d)(2) and amendment of NOTE filed 7–10–2003 as an emergency; operative 7–10–2003 (Register 2003, No. 28). Pursuant to Health and Safety Code section 25169.8, this is a deemed emergency and stays effective until revised by the agency.
7. Change without regulatory effect amending section and NOTE filed 8–24–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 34).

§ 66265.73. Operating Record.

(a) The owner or operator shall keep a written operating record at the facility.

(b) The following information shall be recorded, as it becomes available, and maintained in the operating record until closure of the facility:

(1) a description and the quantity of each hazardous waste received, and the method(s) and date(s) of its transfer, treatment, storage, or disposal at the facility as required by Appendix I, of this chapter;

(2) the location of each hazardous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each hazardous waste shall be recorded on a map or diagram of each cell or disposal area. For all facilities, this information shall include cross–references to specific manifest document numbers, if the waste was accompanied by a manifest;

(3) records and results of waste analysis, waste determinations, and trial tests performed as specified in sections 66265.13, 66265.200, 66265.225, 66265.252, 66265.273, 66265.314, 66265.341, 66265.375, 66265.402, 66265.1034, 66265.1063, 66265.1084, 66268.4(a), and 66268.7 of this division;

(4) summary reports and details of all incidents that require implementing the contingency plan as specified in section 66265.56(j);

(5) records and results of inspections as required by section 66265.15 (d) (except these data need be kept only three years);

(6) monitoring, testing, or analytical data, and corrective action when required by article 6 and sections 66265.19, 66265.90, 66265.94, 66265.191, 66265.193, 66265.195, 66265.222, 66265.223, 66265.226, 66265.255, 66265.259, 66265.260, 66265.276, 66265.278, 66265.280(d)(1), 66265.302 through 66265.304, 66265.347, 66265.377, 66265.1034(c) through 66265.1034(f), 66265.1035, 66265.1063(d) through 66265.1063(i), 66265.1064, and 66265.1083 through 66265.1090.

(7) all closure cost estimates under section 66265.142 and, for disposal facilities, all post–closure cost estimates under section 66265.144;

(8) records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to section 66268.5, and the applicable notice required by a generator under section 66268.7(a);

(9) for an off–site treatment facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator under section 66268.7;

(10) for an on–site treatment facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator under section 66268.7;

(11) for an off–site land disposal facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator of a treatment facility under section 66268.7;

(12) for an on–site land disposal facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator of a treatment facility under section 66268.7;

(13) for an off–site storage facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator under section 66268.7;

(14) for an on–site storage facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator of a treatment facility under section 66268.7;

(15) for off–site facilities, notices to generators as specified in section 66265.12(b).

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5 and 25208.4(c), Health and Safety Code; and 40 CFR Section 265.73.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of subsections (b)(3) and (b)(6) and NOTE filed 12–23–92; operative 1–22–93 (Register 93, No. 1).
3. Change without regulatory effect amending subsection (b)(3) filed 12–28–93 pursuant to title 1, section 100, California Code of Regulations (Register 93, No. 53).
4. Amendment of subsection (b)(6) and NOTE filed 7–19–95; operative 8–18–95 (Register 95, No. 29).
5. Amendment of subsections (b)(3) and (b)(8)–(14) and NOTE filed 1–31–96; operative 1–31–96 (Register 96, No. 5).
6. Change without regulatory effect amending subsection (b)(6) filed 6–30–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 27).
7. Change without regulatory effect amending subsections (b)(3) and (b)(6) and amending NOTE filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).
8. Change without regulatory effect amending NOTE filed 6–7–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 24).

§ 66265.74. Availability, Retention, and Disposition of Records.

(a) All records, including plans, required under this chapter shall be furnished upon request, and made available at all reasonable times for inspection, by any officer, employee, or representative of USEPA who is duly designated by the Administrator, the Department, the State Water Resources Control Board, or a regional water quality control board.

(b) The retention period for all records required under this chapter is extended automatically during the course of any unresolved enforcement action regarding the facility or as requested by the Department or USEPA Administrator.

(c) A copy of records of waste disposal locations and quantities under section 66265.73(b)(2) shall be submitted to the Department, the appropriate regional water quality control board, and local land authority upon closure of the facility (see section 66265.119).

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.74.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.75. Annual Report.

For the Annual report on activities for 1995, only facilities that are required under Title 40 of the Code of Federal of Regulations (CFR), section 265.75 to prepare and submit this report are subject to this section for the report. This Report, due on March 1, 1996 is to be submitted on U.S. EPA form 8700–13A/B (5–80) (8–95) provided by the Department. Facilities required to submit this report for activities conducted during 1995 are facilities which treated, stored, or disposed of RCRA hazardous waste on site in units subject to RCRA permitting requirements during 1995.

The owner or operator shall prepare and submit single copies of an annual report to the Department and the appropriate regional water quality control board by March 1 of each year. The annual report shall be submitted on forms provided by the Department EPA Form 8700–13A/B, 5–80, (Revised 11–89). The report shall cover facility activities during the previous calendar year and shall include the following information:

(a) the Identification Number, name, and address of the facility;

(b) the calendar year covered by the report;

(c) for off–site facilities, the Identification Number of each hazardous waste generator from which the facility received a hazardous waste during the year; for imported shipments, the report shall give the name and address of the foreign generator:

(d) a description, including any applicable EPA hazardous waste number from chapter 11, article 3 or 4 of this division, California Hazardous Waste Number from chapter 11, Appendix XII of this division, and DOT Hazardous class, and the quantity of each hazardous waste the facility received during the year. Wastes that are classified as non–RCRA wastes shall be described by indicating a generic name of the waste and the phrase "Non–RCRA Hazardous Waste." When possible, the generic name shall be obtained from chapter 11, Appendix X, subdivision (e) of this division. If the generic name is not listed in chapter 11, Appendix X, subdivision (e), the commonly recognized industrial name of the waste shall be used. For off–site facilities, this information shall be listed by Identification Number of each generator;

(e) the method of transfer, treatment, storage, or disposal for each hazardous waste;

(f) monitoring data under article 6 of this chapter where required;

(g) the most recent closure cost estimate under section 66265.142, and, for disposal facilities, the most recent post–closure cost estimate under section 66265.144; and

(h) for generators who transfer, treat, store, or dispose of hazardous waste on–site, a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated;

(i) for generators who transfer, treat, store, or dispose of hazardous waste on–site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984;

(j) the certification signed by the owner or operator of the facility or the facility's authorized representative;

(k) the environmental monitoring data specified in section 66265.73;

(*l*) the owner or operator shall certify the following in writing for waste shipped offsite after January 1, 1990. The certification shall be attached to the Annual Report, and include the following:

(1) whether the hazardous waste shipped offsite has a heating value of 3,000 British Thermal Units per pound of waste or less, and a volatile organic compound (VOC) content of one percent or less by weight; and

(2) if the waste had a heating value or VOC content greater than that specified in subsection (*l*)(B)(1), that:

(A) the waste was incinerated or treated by any method that has been authorized by the Department as part of a hazardous waste facility permit issued pursuant to Health and Safety Code section 25200; or

(B) the waste is exempted from the requirements of chapter 18, article 12; or

(C) the waste was recycled; or

(D) the waste was shipped out of California for incineration, treatment, disposal or recycling.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25155.5, 25159, 25159.5 and 25244.4, Health and Safety Code; 40 CFR Section 265.75.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. New first paragraph filed 3–5–97; operative 4–4–97 (Register 97, No. 10).
3. Change without regulatory effect amending first paragraph filed 6–7–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 24).

§ 66265.76. Unmanifested Waste Report.

(a) If a facility accepts for transfer, treatment, storage, or disposal any hazardous waste from an off–site source without an accompanying manifest, or without an accompanying shipping paper as described in section 66263.20(e)(2) of this division, and if the waste is not excluded from the manifest requirement of this chapter, then the owner or operator shall prepare and submit a single copy of a report to the Department within fifteen days after receiving the waste. The unmanifested waste report shall be submitted in the form of a letter to the Department at:

DTSC REPORT REPOSITORY
GENERATOR INFORMATION SERVICES SECTION
P.O. BOX 806
SACRAMENTO, CA 95812–0806

Such report shall be designated 'Unmanifested Waste Report' and include the following information:

(1) the Identification Number, name, and address of the facility;

(2) the date the facility received the waste;

(3) the Identification Number, name, and address of the generator and the transporter, if available;

(4) a description and the quantity of each unmanifested hazardous waste the facility received;

(5) the method of transfer, treatment, storage, or disposal for each hazardous waste;

(6) the certification signed by the owner or operator of the facility or the facility's authorized representative; and

(7) a brief explanation of why the waste was unmanifested, if known.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 Code of Federal Regulations Section 265.76.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect amending section and NOTE filed 8–24–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 34).

§ 66265.77. Additional Reports.

In addition to submitting the annual report and unmanifested waste reports described in sections 66265.75 and 66265.76, the owner or operator shall also report to the Department:

(a) releases, fires, and explosions as specified in section 66265.56(j);

(b) ground–water contamination and monitoring data as specified in sections 66265.93 and 66265.94;

(c) facility closure as specified in section 66265.115; and

(d) as otherwise required by chapter 15, articles 6 through 17, and Articles 27, 28 and 28.5 of this division.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5 and 25208.4(c), Health and Safety Code; and 40 CFR Section 265.77.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of subsection (d) and NOTE filed 12–23–92; operative 1–22–93 (Register 93, No. 1).

3. Change without regulatory effect amending subsection (d) and NOTE filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).

§ 66265.78. Reporting Hazardous Wastes of Concern Discovered To Be Missing While in Storage.

(a) The owner or operator of a hazardous waste facility, except a facility operating under a Permit by Rule, Conditional Authorization, or Conditional Exemption, shall comply with reporting requirements set forth in this section, in the event that a hazardous waste of concern, as defined in section 66261.111(a), is discovered to be missing during storage at the facility, and the waste at issue represents a reportable quantity or a reportable difference in type, as specified in section 66261.111(b) and (c).

(b) Upon discovering that a hazardous waste of concern is missing, and the waste at issue represents a reportable quantity or a reportable difference in type, the owner or operator shall immediately attempt to reconcile the reportable quantity or difference (e.g., by reviewing facility records). If the reportable quantity or difference is not reconciled within 24 hours after it was discovered, the owner or operator shall immediately notify the Department by calling 1–800–69–TOXIC (1–800–698–6942) and providing the following information:

(1) Facility name and identification number;

(2) Generator name and identification number, if available;

(3) Transporter name, identification number, and transporter registration number, if available;

(4) Manifest number, if available;

(5) Waste information (lines 11, 12, 13, and 14 of the manifest), including proper shipping name, hazard class or division, identification number, packing group, number of containers, container type (as listed in Table I of the Appendix to Chapter 12, Article 7), quantity or volume of waste at issue, weight or volume units, and waste codes.

For shipments initiated on and after September 5, 2006, waste information (Items 9b, 10, 11, 12, and 13 of the manifest), including proper shipping name, hazard class or division, identification number, packing group, number of containers, container type (found in the manifest instructions in the Appendix to chapter 12, article 8), quantity or volume of waste at issue, weight or volume units, and waste codes; and

(6) Potential locations or transportation routes where the hazardous waste of concern may have become missing (e.g., areas at the facility the waste was handled or stored or during transportation to the facility on highway or roads, by rail line, transfer station, truck stop, etc.).

(c) If the reportable quantity or difference is not reconciled within 24 hours after it was discovered, in addition to complying with subsection (b), within 5 days after discovering the reportable quantity or difference, the owner or operator shall submit to the Department a letter describing the reportable quantity or difference and attempts to reconcile it. The owner or operator shall mail the letter to the appropriate address for the county in which the facility is located, as specified in section 66265.72(i).

NOTE: Authority cited: Sections 25169.6, 25169.7 and 25169.8, Health and Safety Code. Reference: Sections 25169.5, 25169.6 and 25169.7, Health and Safety Code; and 40 Code of Federal Regulations 262 Appendix.

HISTORY

1. New section filed 7–10–2003 as an emergency; operative 7–10–2003 (Register 2003, No. 28). Pursuant to Health and Safety Code section 25169.8, this is a deemed emergency and stays effective until revised by the agency.
2. Change without regulatory effect amending subsection (b)(5) and NOTE filed 8–24–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 34).

Article 6. Water Quality Monitoring and Response Programs for Interim Status Facilities

§ 66265.90. Applicability.

(a) The regulations in this article apply to owners or operators of facilities specified in section 66265.1(b). A surface impoundment, waste pile, land treatment unit or landfill that receives or has received hazardous waste after November 19, 1980 shall comply with the requirements of this article for purposes of detecting, characterizing and responding to releases to groundwater, surface water or the unsaturated zone. The Department shall require an owner or operator of a surface impoundment, waste pile, land treatment unit or landfill that ceased receiving hazardous waste by November 19, 1980 to comply with the requirements of this article if the Department determines that constituents in or derived from waste placed in the surface impoundment, waste pile, land treatment unit or landfill may pose a threat to human health or the environment. A surface impoundment, waste pile, land treatment unit or landfill required to comply with the provisions of this article is hereinafter referred to as a "regulated unit."

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25150.5 and 25159, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.91. Required Programs and the Water Quality Sampling and Analysis Plan.

(a) An owner or operator subject to this article shall conduct a monitoring and response program for each regulated unit at the facility as follows:

(1) the owner or operator shall institute a detection monitoring program under section 66265.98 except as required under subsections (a)(2) and (a)(3) of this section;

(2) the owner or operator shall institute an evaluation monitoring program under section 66265.99 whenever there is statistically significant evidence of a release, pursuant to section 66265.98(g) or (i) from the regulated unit during a detection monitoring program; and

(3) the owner or operator shall institute an evaluation monitoring program under section 66265.99 whenever there is significant physical evidence of a release from the regulated unit. Significant physical evidence of a release includes unexplained volumetric changes in surface impoundments, unexplained stress in biological communities, unexplained changes in soil coloration, visible signs of leachate migration, unexplained water table mounding beneath or adjacent to the regulated unit and any other change to the environment that could reasonably be expected to be the result of a release from the regulated unit.

(b) The owner or operator shall develop and follow a water quality sampling and analysis plan that satisfies the requirements of this article. The owner or operator shall submit this plan to the Department and initiate institute a water quality monitoring program required by subsection (a) of this section within 180 days of July 1, 1991. Until the water quality monitoring program is in full operation, the owner or operator shall continue to monitor in accordance with 40 CFR Part 265, Subpart F. The owner or operator shall submit all modifications to the water quality sampling and analysis plan to the Department and shall maintain a current version of the water quality sampling and analysis plan in the operating record at the facility. The Department shall require the owner or operator to modify the water quality sampling and analysis plan as necessary to protect human health or the environment.

(c) The owner or operator shall specify in the water quality sampling and analysis plan the specific elements of each monitoring and response program. For each regulated unit, the owner or operator shall include in the water quality sampling and analysis plan one or more of the programs identified in subsection (a) of this section as may be necessary to protect human health or the environment and shall specify the circumstances under which each of the programs will be required.

(d) In conjunction with an evaluation monitoring program the owner or operator shall continue to conduct a detection monitoring program under section 66265.98 as necessary to provide the best assurance of the detection of subsequent releases from the regulated unit.

NOTE: Authority cited: Sections 208, 25150 and 25259, Health and Safety Code. Reference: Sections 25150, 25150.5 and 25159, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.92. Water Quality Protection Standard.

(a) For each regulated unit, the owner or operator shall establish a water quality protection standard in the water quality sampling and analysis plan. This water quality protection standard shall consist of the list of constituents of concern under section 66265.93, the concentration limits under section 66265.94 and the point of compliance and all monitoring points under section 66265.95. This water quality protection standard shall apply during the active life of the regulated unit and during any compliance period under section 66265.96.

(b) If an owner or operator is conducting a detection monitoring program in conjunction with an evaluation monitoring program for a regulated unit pursuant to section 66265.91(d), the owner or operator may establish separate water quality protection standards for each program.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25150.5 and 25159, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.93. Constituents of Concern.

For each regulated unit, the owner or operator shall specify in the water quality sampling and analysis plan the constituents of concern to which the water quality protection standard of section 66265.92 applies. Constituents of concern are the waste constituents, reaction products, and hazardous constituents that are reasonably expected to be in or derived from waste contained in the regulated unit.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25150.5 and 25159, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.94. Concentration Limits.

(a) For each constituent of concern specified pursuant to section 66265.93, the owner or operator shall specify in the water quality sampling and analysis plan one of the following for each medium (groundwater, surface water and the unsaturated zone) monitored pursuant to section 66265.97:

(1) a concentration limit not to exceed the background value of that constituent as determined under section 66265.97(e)(11)(A); or

(2) that, at any given time, the concentration limit for that constituent will be equal to the background value of that constituent, as determined pursuant to section 66265.97(e)(11)(B).

[The next page is 758.55.]

(b) The owner or operator shall only specify different concentration limits for different monitoring points in the same medium where necessary:

(1) to describe background conditions in multiple surface water bodies, multiple aquifers or geochemically dissimilar zones in the same aquifer; or

(2) because the statistical method selected for a constituent uses intra–well comparison procedures.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25150.5 and 25159, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.95. Monitoring Points and the Point of Compliance.

(a) For each regulated unit, the owner or operator shall specify in the water quality sampling and analysis plan the point of compliance at which the water quality protection standard of section 66265.92 applies and at which monitoring shall be conducted. The point of compliance is a vertical surface, located at the hydraulically downgradient limit of the waste management area, that extends through the uppermost aquifer underlying the regulated unit. For each regulated unit, the owner or operator shall specify monitoring points at the point of compliance and additional monitoring points at locations determined pursuant to section 66265.97 of this article at which the water quality protection standard under section 66265.92 of this article applies and at which monitoring shall be conducted.

(b) The waste management area is the limit projected in the horizontal plane of the area on which waste will be placed during the active life of the regulated unit.

(1) The waste management area includes horizontal space taken up by any liner, dike or other barrier designed to contain waste in the regulated unit.

(2) If the facility contains contiguous regulated units and monitoring along a shared boundary would impair the integrity of a containment or structural feature of any of the units, the waste management area may be described by an imaginary line along the outer boundary of the contiguous regulated units if the water quality monitoring program for each unit will enable the earliest possible detection of a release from that regulated unit. This provision only applies to contiguous regulated units that were operating before July 1, 1991.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25150.5 and 25159, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.96. Compliance Period.

(a) The owner or operator shall specify in the water quality sampling and analysis plan the compliance period for each regulated unit. The compliance period is the number of years equal to the active life of the regulated unit (including the closure period) and constitutes the minimum period of time during which the owner or operator shall conduct a water quality monitoring program subsequent to a release from the regulated unit.

(b) The compliance period begins each time the owner or operator initiates an evaluation monitoring program meeting the requirements of section 66265.99.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25150.5 and 25159, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.97. General Water Quality Monitoring and System Requirements.

(a) The owner or operator shall comply with the requirements of this section for any water quality monitoring program developed to satisfy sections 66265.98 or 66265.99.

(b) Groundwater Monitoring System.

(1) Except as provided under subsection (e)(3) of this section, the owner or operator shall establish a groundwater monitoring system for each regulated unit. The design of the groundwater monitoring system shall be based upon the information obtained from hydrogeologic investigations of the facility area, including the identification of the uppermost aquifer and aquifers hydraulically interconnected and a determination of groundwater flow rate and direction in each such aquifer. This groundwater monitoring system shall be fully operational within 180 days of July 1, 1991. Until such groundwater monitoring system is fully operational, the owner or operator shall continue to comply with 40 CFR Part 265, Subpart F. This groundwater monitoring system shall include:

(A) a sufficient number of background monitoring points (at least one) installed at appropriate locations and depths to yield groundwater samples from the uppermost aquifer that represent the quality of groundwater that has not been affected by a release from the regulated unit;

(B) for a detection monitoring program under section 66265.98:

1. a sufficient number of monitoring points (at least three) installed at appropriate locations and depths to yield groundwater samples from the uppermost aquifer that represent the quality of groundwater passing the point of compliance and to allow for the detection of a release from the regulated unit;

2. a sufficient number of monitoring points installed at additional locations and depths to yield groundwater samples from the uppermost aquifer as necessary to provide the best assurance of the earliest possible detection of a release from the regulated unit; and

3. a sufficient number of monitoring points and background monitoring points installed at appropriate locations and depths to yield groundwater samples from other aquifers, low–yielding saturated zones and from zones of perched water as necessary to provide the best assurance of the earliest possible detection of a release from the regulated unit; and

(C) for an evaluation monitoring program under section 66265.99:

1. a sufficient number of monitoring points (at least three) installed at appropriate locations and depths to yield groundwater samples from the uppermost aquifer that represent the quality of groundwater passing the point of compliance, and at other locations in the uppermost aquifer as necessary, to provide the data needed to evaluate changes in water quality due to the release from the regulated unit; and

2. a sufficient number of monitoring points and background monitoring points installed at appropriate locations and depths to yield groundwater samples from other aquifers, low–yielding saturated zones and zones of perched water as necessary to provide the data needed to evaluate changes in water quality due to the release from the regulated unit.

(2) The groundwater monitoring system may include background monitoring points that are not hydraulically upgradient of the regulated unit if documentation is maintained in the facility operating record that demonstrates that sampling at other monitoring points will provide samples that are representative of the background quality of groundwater or are more representative than those provided by the upgradient monitoring points.

(3) A copy of drillers' logs shall be filed with the Department on Department of Water Resources form DWR 188–Rev 12–86, available from the Department of Water Resources, 3251 S Street, Sacramento, CA 95816–7017, or by phone at (916) 322–7171.

(4) All monitoring wells shall be cased and constructed in a manner that maintains the integrity of the monitoring well bore hole and prevents the bore hole from acting as a conduit for contaminant transport.

(5) The sampling interval of each monitoring well shall be appropriately screened and fitted with an appropriate filter pack to enable collection of representative groundwater samples.

(6) For each monitoring well the annular space (i.e., the space between the bore hole and well casing) above and below the sampling interval shall be appropriately sealed to prevent entry of contaminants from the surface, entry of contaminants from the unsaturated zone, cross contamination of saturated zones and contamination of samples.

(7) All monitoring wells shall be adequately developed to enable collection of representative groundwater samples.

(c) Surface Water Monitoring System.

(1) The owner or operator shall establish a surface water monitoring system to monitor each surface water body that could be affected by a release from the regulated unit.

(2) Each surface water monitoring system shall include:

(A) a sufficient number of background monitoring points established at appropriate locations and depths to yield samples from each surface water body that represent the quality of the surface water that has not been affected by a release from the regulated units;

(B) for a detection monitoring program under section 66265.98, a sufficient number of monitoring points established at appropriate locations and depths to yield samples from each surface water body that provide the best assurance of the earliest possible detection of a release from the regulated unit; and

(C) for an evaluation monitoring program under section 66265.99, a sufficient number of monitoring points established at appropriate locations and depths to yield samples from each surface water body that provide the data necessary to evaluate changes in water quality due to the release from the regulated unit.

(d) Unsaturated Zone Monitoring System.

(1) Except as otherwise provided in subsection (d)(5) of this section, the owner or operator shall establish an unsaturated zone monitoring system for each regulated unit.

(2) The unsaturated zone monitoring system shall include:

(A) a sufficient number of background monitoring points established at appropriate locations and depths to yield soil–pore liquid samples or soil–pore liquid measurements that represent the quality of soil–pore liquid that has not been affected by a release from the regulated unit;

(B) for a detection monitoring program under section 66265.98, a sufficient number of monitoring points established at appropriate locations and depths to yield soil–pore liquid samples or soil–pore liquid measurements that provide the best assurance of the earliest possible detection of a release from the regulated unit; and

(C) for an evaluation monitoring program under section 66265.99, a sufficient number of monitoring points established at appropriate locations and depths to yield soil–pore liquid samples or soil–pore liquid measurements as necessary to provide the data needed to evaluate changes in water quality due to the release from the regulated unit.

(3) Background monitoring points shall be installed at a background plot having soil characteristics similar to those of the soil underlying the regulated unit.

(4) The owner or operator shall install liquid recovery types of unsaturated zone monitoring (e.g., the use of lysimeters) unless the owner or operator submits to the Department, and maintains in the facility operating record, evidence that such methods of unsaturated zone monitoring cannot provide an indication of a release from the regulated unit. The owner or operator shall install complementary or alternative (nonliquid recovery) types of unsaturated zone monitoring as necessary to provide the best assurance of the earliest possible detection of a release from the regulated unit.

(5) The owner or operator may only omit unsaturated zone monitoring from the monitoring program if the owner or operator submits to the Department, and maintains in the facility operating record, evidence that either there is no unsaturated zone monitoring device or method designed to operate under the subsurface conditions existant at that waste management unit or that installation of unsaturated zone monitoring devices would require unreasonable dismantling or relocating of permanent structures.

(6) The owner or operator of a land treatment unit shall comply with the unsaturated zone monitoring and response requirements for that unit in article 13 of this chapter, in addition to the unsaturated zone monitoring requirements of this article.

(e) General Monitoring Requirements.

(1) All monitoring systems shall be designed and certified by a registered geologist or a registered civil engineer.

(2) All monitoring wells and all other borings drilled to satisfy the requirements of this article shall be logged during drilling under the direct supervision of a registered geologist. These logs shall be submitted to the Department upon completion of drilling.

(A) Soil shall be described in the geologic log according to the Unified Soil Classification System as presented in Geotechnical Branch Training Manuals Nos. 4, 5 and 6, published by the United States Bureau of Reclamation, January 1986, incorporated by reference in section 66260.11 of this division.

(B) Rock shall be described in the geologic log in a manner appropriate for the purpose of the investigation.

(C) Where possible, the depth and thickness of saturated zones shall be recorded in the geologic log.

(3) If a facility contains contiguous regulated units, separate groundwater monitoring systems are not required for each such unit if the water quality monitoring program for each unit will enable the earliest possible detection and measurement of a release from that unit.

(4) The water quality monitoring program shall include consistent sampling and analytical procedures that are designed to ensure that monitoring results provide a reliable indication of water quality at all monitoring points and background monitoring points. At a minimum the program shall include a detailed description of the procedures and techniques for:

(A) sample collection (e.g., purging techniques, sampling equipment and decontamination of sampling equipment);

(B) sample preservation and shipment;

(C) analytical procedures; and

(D) chain of custody control.

(5) The water quality monitoring program shall include appropriate sampling and analytical methods for groundwater, surface water and the unsaturated zone that accurately measure the concentration of each constituent of concern and the concentration or value of each monitoring parameter.

(6) For each regulated unit, the owner or operator shall collect all data necessary for selecting the appropriate statistical methods pursuant to subsections (e)(7), (e)(8) and (e)(9) of this section and for establishing the background values pursuant to subsection (e)(11) of this section. At a minimum, this data shall include analytical data obtained during quarterly sampling of all background monitoring points for a period of one year, including the times of expected highest and lowest annual elevations of the groundwater surface. For a new regulated unit, this data shall be collected before wastes are discharged at the unit and background soil pore liquid data shall be collected from beneath the unit before the unit is constructed.

(7) Based on data collected pursuant to subsection (e)(6) of this section the owner or operator shall select one of the statistical methods specified in subsection (e)(8) of this section for each constituent of concern and for each monitoring parameter. These methods shall be specified in the water quality sampling and analysis plan and shall be used in evaluating water quality monitoring data. The specifications for each statistical method shall include a detailed description of the criteria to be used for determining statistically significant evidence of any release from the regulated unit and for determining compliance with the water quality protection standard. Each statistical test specified for a particular constituent of concern or monitoring parameter shall be conducted separately for that constituent of concern or monitoring parameter at each monitoring point. The owner or operator shall maintain sufficient documentation in the facility operating record to demonstrate that use of the selected statistical methods will be protective of human health and the environment and will comply with the performance standards outlined in subsection (e)(9) of this section.

(8) The owner or operator shall specify one of the following statistical methods in the water quality sampling and analysis plan:

(A) a parametric analysis of variance (ANOVA) followed in all instances by a multiple comparisons procedure to identify statistically significant evidence of a release from the regulated unit. The method shall include estimation and testing of the contrasts between each monitoring point's mean and the background mean value for each constituent of concern or monitoring parameter;

(B) an analysis of variance (ANOVA) based on ranks followed in all instances by a multiple comparisons procedure to identify statistically significant evidence of a release from the regulated unit. The method shall include estimation and testing of the contrasts between each monitoring point's median and the background median values for each constituent of concern or monitoring parameter;

(C) a tolerance or prediction interval procedure in which an interval for each constituent of concern or monitoring parameter is established from the distribution of the background data, and the value for each constituent of concern or monitoring parameter at each monitoring point is compared to the upper tolerance or prediction limit;

(D) a control chart approach that gives control limits for each constituent of concern or monitoring parameter; or

(E) another statistical test method if sufficient documentation to support selection of the method is submitted to the Department and is maintained in the facility operating record. If the statistical test method includes a procedure to verify that there is statistically significant evidence of a release from the regulated unit, this procedure shall consist of either a single composite retest (i.e., a statistical analysis of the original data combined with newly–acquired data from the monitoring point at which evidence of a release has been indicated) or shall consist of at least two discrete retests (i.e., statistical analyses which analyze only newly–acquired data from the monitoring point at which evidence of a release has been indicated). The verification procedure shall comply with the following requirements in addition to the statistical performance standards under subsection (e)(9) of this section.

1. If the verification procedure consists of discrete retests, rejection of the null hypothesis for any one of the retests shall be considered confirmation of significant evidence of a release.

2. The number of additional samples collected and analyzed for use in the verification procedure shall be appropriate for the form of statistical test specified in the water quality sampling and analysis plan for that constituent of concern or monitoring parameter pursuant to subsection (e)(7) of this section. This number shall be greater than or equal to the number of samples specified in the water quality sampling and analysis plan for that constituent of concern or monitoring parameter pursuant to subsection (e)(12)(A) of this section.

3. If resampling at the interval identified for use in the initial statistical test pursuant to subsection (e)(12)(B) of this section would cause the entire resampling effort to take longer than 30 days, the sampling interval for use in the verification procedures shall be reduced to ensure that all samples are collected and submitted for laboratory analysis within 30 calendar days from the time that the owner or operator determines statistically significant evidence of a release pursuant to subsection 66265.98(g) or (i).

4. For a verification procedure consisting of a composite retest, the statistical verification procedure shall be based on all data obtained from the initial sampling event combined with all data obtained during the resampling event. For a verification procedure consisting of discrete retests, each shall analyze data obtained during its respective resampling event and no data shall be shared between retests.

5. For a verification procedure consisting of a composite retest, the statistical test method used in the verification procedure shall be the same as the method used in the initial statistical comparison, except that the statistical test used in the verification procedure shall be conducted at a Type 1 error level of no less than 0.05 for both the experimentwise analysis (if any) and the individual monitoring point comparisons; therefore, if a control chart approach is used to evaluate water quality monitoring data, the upper limit on an X–Bar or R–Chart must be set at no more than 1.645 standard deviations of the statistic plotted for a one–sided statistical comparison or at no more than 1.96 standard deviations of the statistic plotted for a two–sided statistical comparison.

6. For a verification procedure consisting of discrete retests, the statistical method used shall be the same as the method used in the initial statistical comparison. Notwithstanding any provision of subsection (e)(9) of this section, the critical value for the tests shall be chosen so that the Type I error rate for all individual monitoring point comparisons is the same, whether for an initial test or for a retest, and is equal–to–or–greater than either

$$(1-0.95^{1/(mws)})^{0.5} \quad x \quad (1/r)^{0.5}$$

or

$$1-(.99)^{1/6}$$

whichever is larger, where: m = the number of monitoring parameters; w = the number of monitoring points at the waste management units; s = the number of times that suites of monitoring data from the waste management unit are subjected to initial statistical analysis within a period of six months (i.e., $s \geq 1$); and r = the number of discrete retests that are to be conducted at a monitoring point whose initial statistical analysis for a given constituent of concern or monitoring paramenter has indicated the presence of a release (i.e., $r \geq 2$).

7. The owner or operator shall report to the Department by certified mail the results of both the initial statistical test and the results of the verification procedure as well as all concentration data collected for use in these tests within seven days of the last laboratory analysis of the samples collected for the verification procedure.

8. The verification procedure shall only be performed for the constituent(s) which has shown statistically significant evidence of a release, and shall only be performed for that (those) monitoring point at which a release has been indicated.

(9) Each statistical method chosen under subsection (e)(7) of this section shall comply with the following performance standards for each six–month period.

(A) The statistical method used to evaluate water quality monitoring data shall be appropriate for the distribution of the constituent of concern or monitoring parameter to which it is applied and shall be the least likely of the appropriate methods to fail to identify a release from the regulated unit. If the distribution of a constituent of concern or monitoring parameter is inappropriate for a normal theory test, then the data shall be either transformed so that the distribution of the transformed data is appropriate for a normal theory test or a distribution–free theory test shall be used. If the distributions for the constituents of concern or monitoring parameters differ, more than one statistical method may be needed.

(B) If an individual monitoring point comparison procedure is used to compare an individual monitoring point constituent concentration or monitoring parameter value with a background parameter value or with a concentration limit in the water quality protection standard or with a background monitoring parameter value, the test shall be done at a Type I error level no less than 0.01. If a multiple comparisons procedure is used, the Type I experimentwise error rate shall be no less than 0.05; however, the Type I error of no less than 0.01 for each individual monitoring point comparison shall be maintained. This performance standard does not apply to tolerance intervals, prediction intervals or control charts.

(C) If a control chart approach is used to evaluate water quality, monitoring data, the specific type of control chart and its associated statistical parameter values (e.g., the upper control limit), shall be protective of human health and the environment. Any control charting procedure must have a false–positive rate of no less than 1 percent for each monitoring point charted (e.g., upper control limits on X–bar or R–charts used only once every six months must be set at no more than 2.327 standard deviations of the statistic plotted for a one–sided statistical comparison or at no more than 2.576 standard deviations of the statistic plotted for a two–sided statistical comparison).

(D) If a tolerance interval or a prediction interval is used to evaluate water quality monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain shall be protective of human health and the environment. These statistical parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentrations or values for each constituent of concern or monitoring parameter. The coverage of any tolerance interval used must be no more than 95 percent and the confidence coefficient must be no more than 95 percent for a six-month period. Prediction intervals shall be constructed with an experimentwise error rate of no less than 5 percent and an individual monitoring point error rate of no less than 1 percent.

(E) The statistical method shall account for data below the practical quantification quantitation limit with one or more statistical procedures that are protective of human health and the environment. Any practical quantitation limit that is used in the statistical method shall be the lowest concentration (or value) that can be reliably achieved within limits of precision and accuracy specified in the water quality sampling and analysis plan for routine laboratory operating conditions that are available to the facility. The owner or operator shall consider the practical quantification quantitation limits listed in Appendix IX to chapter 14 for guidance purposes when specifying limits of precision and accuracy in the water quality sampling and analysis plan.

(F) If necessary, the statistical methods shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

(G) Any quality control procedure that is approved by the Department for application to water quality data from downgradient monitoring points for a monitored medium shall also be applied to all newly-acquired background data from that medium. Any newly-acquired background monitoring datum that is rejected by an approved quality control procedure shall be maintained in the facility record but shall be excluded from use in statistical comparisons with downgradient water quality data.

(10) Based on the data collected pursuant to subsection (e)(6) of this section and the statistical methods specified pursuant to subsection (e)(7) of this section, the owner or operator shall select and justify the use of a procedure for determining a background value for each constituent of concern and for each monitoring parameter specified in the water quality sampling and analysis plan. One of the following procedures shall be selected for groundwater, surface water and the unsaturated zone:

(A) a procedure for determining the background value for each constituent or parameter that does not display appreciable natural variation; or

(B) a procedure for establishing and updating the background value for a constituent or parameter to reflect changes in the background water quality if the use of contemporaneous or pooled data provides the greatest power to the statistical method for that constituent or parameter.

(11) Using the procedures for determining background values proposed pursuant to subsection (e)(10) of this section, the owner or operator shall specify in the water quality sampling and analysis plan one of the following for each constituent of concern and for each monitoring parameter:

(A) the background value established by the owner or operator using the procedure selected pursuant to subsection (e)(10)(A) of this section; or

(B) a detailed description of the procedure, selected pursuant to subsection (e)(10)(B) of this section, to be used by the owner or operator for establishing and updating the background value.

(12) For each constituent of concern and monitoring parameter listed in the water quality sampling and analysis plan, the owner or operator shall specify in the water quality sampling and analysis plan the sampling methods to be used to establish background values and the sampling methods to be used for monitoring pursuant to this article.

(A) The number and kinds of samples collected shall be appropriate for the form of statistical test employed, following generally accepted statistical principles. The sample size shall be as large as necessary to ensure with reasonable confidence that:

1. for a detection monitoring program, a release from the regulated unit will be detected; and

2. for an evaluation monitoring program, changes in water quality due to a release from the regulated unit will be recognized.

(B) The sampling method (including sampling frequency and the interval of time between successive samples) shall be appropriate for the medium from which samples are taken (e.g., groundwater, surface water and soil-pore liquid). The sampling method shall include either:

1. a sequence of at least four samples from each monitoring point, taken at an interval that assures, to the greatest extent technically feasible, that an independent sample is obtained. For groundwater, this interval shall be based upon the rate of groundwater movement in the aquifer and upon the fate and transport characteristics of the potential contaminants or pollutants. The rate of groundwater movement shall be calculated by reference to the aquifer's effective porosity, hydraulic conductivity and hydraulic gradient; or

2. an alternate sampling method if sufficient documentation is submitted to the Department and is maintained in the facility operating record to support selection of the method.

(13) The groundwater portion of the monitoring program shall include an accurate determination of the groundwater surface elevation and field parameters (temperature, electrical conductivity, turbidity and pH) at each well each time groundwater is sampled.

(14) The owner or operator shall graph all analytical data from each monitoring point and background monitoring point and shall submit these graphs to the Department at least annually. Unless the owner or operator receives written approval from the Department to use an alternate procedure, each graph shall represent data from one monitoring point or background monitoring point for one constituent of concern or monitoring parameter. Graphs shall be at a scale appropriate to show trends or variations in water quality. All graphs for a given constituent shall be plotted at the same scale to facilitate visual comparison of monitoring data.

(15) In addition to the water quality sampling conducted pursuant to the requirements of this article, the owner or operator shall measure the water level in each well and determine groundwater flow rate and direction in the uppermost aquifer and in any zones of perched water and in any additional aquifers monitored pursuant to subsection (b)(1) of this section at least quarterly, including the times of expected highest and lowest elevations of the water levels in the wells. The owner or operator shall use this data to determine, at least annually, whether the requirements of section 66265.97(b)(1) are satisfied. If the evaluation shows that the requirements of section 66265.97(b)(1) are not satisfied the owner or operator shall, as soon as technically feasible, modify the number, location or depth of the groundwater monitoring wells as necessary to bring the groundwater monitoring system into compliance with the requirements of this article.

(16) Except as provided below, for all background monitoring points in groundwater, the owner or operator must, within 12 months of July 1, 1991, establish background concentrations or values for all constituents listed in Table 1 by sampling quarterly for one year. Results of this sampling shall be submitted to the Department within 15 days after completing each quarterly analysis. If an owner or operator has previously established background for these parameters pursuant to 40 C.F.R. Part 265 by quarterly sampling for at least one year, the owner or operator shall maintain a record of that sampling and analysis in the facility operating record and shall not repeat the sampling and analysis.

Table 1
Background Water Quality Parameters

Arsenic	Barium
Cadmium	Chloride
Chromium	Coliform Bacteria
Endrin	Fluoride
Gross Alpha	Gross Beta
Iron	Lead
Lindane	Manganese
Mercury	Methoxychlor
Nitrate (as N)	pH
Phenols	Radium
Selenium	Silver
Sodium	Specific Conductance
Sulfate	Toxaphene
2,4–D	2,4,5.TP Silver
Total Organic Carbon	Total Organic Halogen
Turbidity	

(17) Water quality monitoring data collected in accordance with this article, including actual concentrations or values of all constituents and parameters, all backgroundwater quality data, all statistical evaluations, all water level elevation data and all data used to derive the groundwater flow rate and direction shall be maintained in the facility operating record throughout the active life of the facility and throughout the postclosure care period. The owner or operator shall submit this data to the Department at least annually. This information shall be submitted no later than March 1 following each calendar year. The Department shall require more frequent reporting where necessary to protect human health or the environment.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.98. Detection Monitoring Program.

(a) An owner or operator required, pursuant to section 66265.91 of this article, to establish a detection monitoring program for a regulated unit shall, at a minimum, comply with the requirements of this section for that unit.

(b) The owner or operator shall install water quality monitoring systems that are appropriate for detection monitoring and that comply with the provisions of section 66265.97 of this article.

(c) The owner or operator shall establish a background value pursuant to section 66265.97(e)(11) for each monitoring parameter specified under subsection (e) of this section and for each constituent of concern specified under section 66265.97(e)(11) of this article 66265.93.

(d) The owner or operator shall specify the water quality protection standard under section 66265.92 in the water quality sampling and analysis plan.

(e) The owner or operator shall specify in the water quality sampling plan a list of monitoring parameters for each medium (groundwater, surface water and the unsaturated zone) to be monitored pursuant to section 66265.97. The list for each medium shall include those physical parameters, hazardous constituents, waste constituents and reaction products that provide a reliable indication of a release from the regulated unit to that medium. The owner or operator shall specify each list of monitoring parameters in the water quality sampling and analysis plan after considering the following factors:

(1) the types, quantities and concentrations of constituents in wastes managed at the regulated unit;

(2) the expected or demonstrated correlation between the proposed monitoring parameters and the constituents of concern specified for the unit under section 66265.93;

(3) the mobility, stability and persistence of waste constituents or their reaction products;

(4) the detectability of physical parameters, waste constituents and reaction products;

(5) the background values and the coefficients of variation of proposed monitoring parameters in groundwater, surface water and the unsaturated zone; and

(6) the list of suggested detection monitoring analytes presented in Appendix VI of this chapter.

(f) Except as provided below, the owner or operator shall include in the list of monitoring parameters specified for groundwater pursuant to subsection (e) of this section each parameter listed in Table 1. The owner or operator may substitute a more appropriate parameter for a parameter listed in Table 1 if the owner or operator receives written approval for the substitution from the Department and documents in the facility operating record that the parameter is not appropriate for use as a monitoring parameter and that monitoring for the substitute parameter is more likely to provide early detection of a release from the regulated unit.

Table 1
Groundwater Monitoring Parameters

Chloride	Iron
Manganese	pH
Phenols	Sodium
Specific conductance	Sulfate
Total organic carbon	Total organic halogen

(g) The owner or operator shall conduct sampling and analyses for the monitoring parameters listed in the water quality sampling and analysis plan. The owner or operator shall specify the frequencies for collecting samples and conducting statistical analyses to determine whether there is statistically significant evidence of a release from the regulated unit for any monitoring parameter specified in the water quality sampling and analysis plan pursuant to subsection (e) of this section. For groundwater, samples from each monitoring point and each background monitoring point shall be collected at least quarterly during detection monitoring, including the times of expected highest and lowest annual elevations of the groundwater surface. The owner or operator shall conduct more frequent sampling and statistical analyses where necessary to protect human health or the environment. When specifying the frequencies for collecting samples and conducting statistical analyses for groundwater, the owner or operator shall consider the groundwater flow rate and any variation in groundwater flow rate and direction.

(h) In addition to monitoring for the monitoring parameters specified under subsection (e) of this section, the owner or operator shall periodically monitor for all constituents of concern specified in the water quality sampling and analysis plan and determine whether the regulated unit is in compliance with the water quality protection standard there is statistically significant evidence of a release for any constituent of concern using the statistical procedure specified pursuant to section 66265.97(e)(7) of this article. Whenever the regulated unit is not in compliance with the water quality protection standard, it shall be considered statistically significant evidence of a release from the regulated unit. The owner or operator shall specify in the water quality sampling and analysis plan the frequencies and locations for monitoring pursuant to this subsection after considering the degree of certainty associated with the expected or demonstrated correlation between values for monitoring parameters and values for the constituents of concern. Monitoring pursuant to this subsection shall be conducted at least every five years.

(i) The owner or operator shall conduct water quality monitoring for each monitoring parameter and each constituent of concern in accordance with section 66265.97(e)(12) of this article. The owner or operator shall maintain a record of water quality analytical data as measured and in a form necessary for the determination of statistical significance under subsections (h) and (j) of this section.

(j) For each monitoring point, the owner or operator shall determine whether there is statistically significant evidence of a release from the regulated unit for any monitoring parameter specified in the water quality sampling and analysis plan pursuant to subsection (e) of this section at a frequency specified pursuant subsection (g) of this section.

(l) In determining whether statistically significant evidence of a release from the regulated unit exists, the owner or operator shall use the method(s) specified in the water quality sampling and analysis plan under section 66265.97(e)(7). This method(s) shall be used to compare data

collected at the monitoring point(s) with the background water quality data.

(2) The owner or operator shall determine whether there is statistically significant evidence of a release from the regulated unit at each monitoring point within a reasonable period of time after completion of sampling. The owner or operator shall specify in the water quality sampling and analysis plan what period of time is reasonable, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of samples.

(3) The provisions of this section shall not preclude the Department from making an independent finding that there is statistically significant evidence of a release from the regulated unit. If the Department makes such a finding, the owner or operator shall comply with the provisions of this section that are required in response to statistically significant evidence of a release from the regulated unit.

(k) If the owner or operator determines pursuant to subsection (h) or (j) of this section that there is statistically significant evidence of a release from the regulated unit for any monitoring parameter or constituent of concern at any monitoring point, the owner or operator:

(1) shall notify the Department of the finding by certified mail within seven days of such determination. The notification shall identify for each affected monitoring point the monitoring parameters and constituents of concern that have indicated statistically significant evidence of a release from the regulated unit; and

(2) may immediately initiate a procedure to verify that there is statistically significant evidence of a release from the regulated unit for a parameter or constituent which has indicated a release at a monitoring point if that verification procedure has been specified for that constituent or parameter in the water quality sampling and analysis plan pursuant to section 66265.97(e)(8)(E).

(*l*) If the resampling pursuant to subsection (k)(2) of this section confirms that there is statistically significant evidence of a release from the regulated unit or if the owner or operator does not resample pursuant to subsection (k)(2) of this section, then the owner or operator shall:

(1) for that regulated unit, immediately sample all monitoring points in the affected medium (groundwater, surface water or the unsaturated zone) and determine the concentration of all constituents of concern;

(2) for that regulated unit, immediately sample all monitoring points in the affected medium (groundwater, surface water or the unsaturated zone) and determine whether constituents in the list of Appendix IX to chapter 14 are present, and if so, in what concentration(s);

(3) for any Appendix IX constituents found in the analysis pursuant to subsection (*l*)(2) of this section that are not specified in the list of constituents of concern for that unit, the owner or operator may resample within one month and repeat the analysis for those constituents. Each constituent detected in both analyses shall be added to the list of constituents of concern specified in the water quality protection standard for evaluation monitoring unless the owner or operator demonstrates to the satisfaction of the Department that the constituent is not reasonably expected to be in or derived from waste in the regulated unit. If the owner or operator does not resample for the constituents found pursuant to subsection (*l*)(2) of this section, the constituents found during this initial Appendix IX analysis will be added to the list of constituents of concern specified in the water quality protection standard for evaluation monitoring unless the owner or operator demonstrates to the satisfaction of the Department that the constituent is not reasonably expected to be in or derived from waste in the regulated unit;

(4) for each Appendix IX constituent added to the list of constituents of concern pursuant to subsection (k)(3) of this section, the owner or operator shall:

(A) collect all data necessary for establishing the background concentration for that constituent and for selecting an appropriate statistical procedure pursuant to section 66265.97(e)(6);

(B) select an appropriate statistical procedure pursuant to section 66265.97(e)(7);

(C) select a procedure to establish the background concentration for that constituent pursuant to section 66265.97(e)(10); and

(D) establish the background concentration pursuant to section 66265.97(e)(11);

(5) within 90 days of determining statistically significant evidence of a release, submit to the Department an amended water quality sampling and analysis plan to establish an evaluation monitoring program meeting the provisions of section 66265.99. The amended plan shall include the following information:

(A) an identification of the concentration of each constituent of concern at each monitoring point as determined during the most recent sampling events, and an identification of the concentration of each Appendix IX constituent at each monitoring point for the regulated unit in the affected medium (groundwater, surface water or the unsaturated zone);

(B) any proposed changes to the water quality monitoring systems at the facility necessary to meet the requirements of section 66265.99;

(C) any proposed additions or changes to the monitoring frequency, sampling and analytical procedures or methods or statistical methods used at the facility necessary to meet the requirements of section 66265.99.

(D) a detailed description of the measures to be taken by the owner or operator to assess the nature and extent of the release from the regulated unit; and

(E) a schedule of implementation.

(6) within 180 days of determining statistically significant evidence of a release, submit to the Department an engineering feasibility study for a corrective action program necessary to meet the requirements of section 66264.100 of article 6 of chapter 14. At a minimum, the feasibility study shall contain a detailed description of the corrective action measures that could be taken to achieve background concentrations for all constituents of concern; and

(7) if the owner or operator determines, pursuant to subsection (g) or (i) of this section, that there is statistically significant evidence of a release from the regulated unit at any monitoring point, the owner or operator may demonstrate that a source other than the regulated unit caused the evidence of a release or that the evidence is an artifact caused by an error in sampling, analysis or statistical evaluation, or by natural variation in the groundwater, surface water or the unsaturated zone. The owner or operator may make a demonstration pursuant to this subsection in addition to, or in lieu of, submitting both an amended water quality sampling and analysis plan pursuant to subsection (k)(5) of this section and an engineering feasibility study pursuant to subsection (k)(6) of this section; however, the owner or operator is not relieved of the requirements specified in subsections (k)(5) and (k)(6) of this section unless the demonstration made under this subsection shows to the satisfaction of the Department that a source other than the regulated unit caused the evidence of a release or that the indication evidence resulted from error in sampling, analysis or evaluation or from natural variation in groundwater, surface water or the unsaturated zone. In making a demonstration pursuant to this subsection, the owner or operator shall:

(A) within seven days of determining statistically significant evidence of a release, notify the Department by certified mail that the owner or operator intends to make a demonstration under this subsection;

(B) within 90 days of determining statistically significant evidence of a release, submit a report to the Department that demonstrates that a source other than the regulated unit caused the evidence, or that the evidence resulted from error in sampling, analysis or evaluation, or from natural variation in groundwater. surface water, or the unsaturated zone;

(C) within 90 days of determining statistically significant evidence of a release, submit to the Department an amended water quality sampling and analysis plan to make any appropriate changes to the detection monitoring program; and

(D) continue to monitor in accordance with the detection monitoring program established under this section.

(m) If the owner or operator determines that there is significant physical evidence of a release as described in section 66265.91(a)(3) or that the detection monitoring program does not satisfy the requirements of this section, the owner or operator shall:

(1) notify the Department by certified mail within 7 days of such determination; and

(2) within 90 days of such determination, submit an amended water quality sampling and analysis plan to make any appropriate changes to the program.

(n) Any time the Department determines that the detection monitoring program does not satisfy the requirements of this section, the Department shall send written notification of such determination to the owner or operator by certified mail, return receipt requested. The owner or operator shall, within 90 days after receipt of such notification by the Department, submit an amended water quality sampling and analysis plan to make any appropriate changes to the program.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.99. Evaluation Monitoring Program.

(a) An owner or operator required pursuant to section 66265.91 to establish an evaluation monitoring program for a regulated unit shall, at a minimum, comply with the requirements of this section for that unit. The evaluation monitoring program shall be used to assess the nature and extent of the release from the regulated unit and to design a corrective action program meeting the requirements of section 66264.100 of article 6 of chapter 14.

(b) The owner or operator shall collect and analyze all data necessary to assess the nature and extent of the release from the regulated unit. This assessment shall include a determination of the rate of migration of hazardous constituents and the spatial distribution and concentration of each constituent of concern throughout the zone affected by the release. The owner or operator shall complete this assessment as soon as technically feasible and, with 15 days of completion, shall submit to the Department a written report containing an assessment of environmental quality.

(c) Based on the data collected pursuant to subsections (b) and (e) of this section, the owner or operator shall update the engineering feasibility study required under section 66265.98(*l*)(6). The owner or operator shall submit this engineering feasibility study to the Department as soon as technically feasible.

(d) The owner or operator of any facility required to obtain a permit shall use the data collected pursuant to subsection (b) of this section and the engineering feasibility study submitted pursuant to subsection (c) of this section, to prepare Part B of the permit application under section 66270.14 of chapter 20 or to update Part B of the permit application if Part B has been previously submitted. At a minimum, the application shall include the following information:

(1) a detailed assessment of the nature and extent of the release from the regulated unit;

(2) a proposed water quality protection standard including any proposed concentration limits greater than background under section 66264.94(c), and all data necessary to justify each such limit;

(3) a detailed description of proposed corrective action measures that will be taken to achieve compliance with the water quality protection standard proposed for a corrective action program; and

(4) a plan for a water quality monitoring program that will demonstrate the effectiveness of the proposed corrective action.

(e) In addition to the requirements set forth in subsections (b), (c), and (d) of this section, the owner or operator shall continue to monitor groundwater, surface water and the unsaturated zone to evaluate changes in water quality resulting from the release from the regulated unit. In conducting this monitoring, the owner or operator shall comply with the following requirements.

(1) The owner or operator shall install water quality monitoring systems that are appropriate for evaluation monitoring and that comply with the provisions of section 66265.97. These water quality monitoring systems may include all or part of existing monitoring systems.

(2) The owner or operator shall select a list of monitoring parameters for each medium (groundwater, surface water, and the unsaturated zone) to be monitored pursuant to section 66265.97. The list for each medium shall include all hazardous constituents that have been detected in that medium and shall include those physical parameters, waste constituents and reaction products that provide a reliable indication of changes in water quality resulting from the release from the regulated unit to that medium. The owner or operator shall specify each list of monitoring parameters in the water quality sampling and analysis plan after considering the following factors:

(A) the types, quantities and concentrations of constituents in wastes managed at the regulated unit;

(B) information that demonstrates a sufficient correlation between the proposed monitoring parameters and the constituents of concern specified for the unit;

(C) the mobility, stability and persistence of waste constituents or their reaction products;

(D) the detectability of physical parameters, waste constituents and reaction products; and

(E) the background values and the coefficients of variation of proposed monitoring parameters in groundwater, surface water and the unsaturated zone.

(3) The owner or operator shall conduct sampling and analyses for the monitoring parameters listed in the water quality sampling and analysis plan. The owner or operator shall specify in the water quality sampling and analysis plan the frequencies for collecting samples and for conducting statistical analyses to evaluate changes in water quality due to the release from the regulated unit. For groundwater, samples from each monitoring point and each background monitoring point shall be collected at least quarterly during the compliance period of the regulated unit, including the times of expected highest and lowest annual elevations of the groundwater surface. The owner or operator shall conduct more frequent sampling where necessary to protect human health or the environment. When specifying the frequencies for collecting samples and conducting statistical analyses for groundwater, the owner or operator shall consider the groundwater flow rate and any variation in ground water flow rate and direction.

(4) In addition to monitoring for the monitoring parameters specified pursuant to subsection (e)(2) of this section, the owner or operator shall periodically monitor for all constituents of concern specified in the water quality sampling and analysis plan and evaluate changes in water quality due to the release from the regulated unit. The owner or operator shall specify the frequencies for monitoring pursuant to this subsection after considering the degree of certainty associated with the demonstrated correlation between values for monitoring parameters and values for the constituents of concern. Monitoring pursuant to this subsection shall be conducted at least every five years;

(5) The owner or operator shall conduct water quality monitoring for each monitoring parameter and each constituent of concern in accordance with section 66265.97(e)(12). The owner or operator shall maintain a record of water quality analytical data as measured and in a form necessary for the evaluation of changes in water quality due to the release from the regulated unit.

(6) The owner or operator shall analyze samples from all monitoring points in the affected medium (groundwater, surface water or the unsaturated zone) for all constituents contained in Appendix IX to chapter 14 at least annually to determine whether additional hazardous constituents are present and, if so, at what concentration(s). If the owner or operator finds Appendix IX constituents in the groundwater, surface water or the unsaturated zone that are not already identified in the water quality sampling and analysis plan as constituents of concern, the owner or operator

may resample within one month and repeat the analysis for those constituents. If the second analysis confirms the presence of new constituents, the owner or operator shall report the concentration of these additional constituents to the Department by certified mail within seven days after the completion of the second analysis and the owner or operator shall add them to the list of constituents of concern specified in the water quality sampling and analysis plan unless documentation is maintained in the facility operating record that demonstrates that the constituent is not reasonably expected to be in or derived from waste in the regulated unit. If the owner or operator does not resample, then the owner or operator shall report the concentrations of these additional constituents to the Department by certified mail within seven days after completion of the initial analysis and the owner or operator shall add them to the list of constituents of concern specified in the water quality sampling and analysis plan unless documentation is maintained in the facility operating record that demonstrates that the constituent is not reasonably expected to be in or derived from waste in the regulated unit.

(7) The owner or operator shall evaluate all water quality data obtained pursuant to subsection (e) of this section and all water level data obtained pursuant to section 66264.97(e)(15) on a quarterly basis to determine the rate and extent of migration of hazardous constituents and to describe the nature of changes in the geometry and geochemistry of the volume affected by the release. This information shall be reviewed with respect to the design criteria for the corrective action program. If the evaluation indicates that the plan for corrective action is insufficient, the owner or operator shall:

(A) notify the Department by certified mail within seven days of such determination; and

(B) within 90 days of such determination, submit, for approval by the Department any appropriate changes to the application for a permit; and

(8) the owner or operator shall submit to the Department by March 1, following each calendar year, a report on the results of the evaluation monitoring program including, but not limited to, the calculated rate of migration of hazardous constituents in groundwater.

(f) The owner or operator may demonstrate that a source other than the regulated unit caused the evidence of a release or that the evidence is an artifact caused by an error in sampling, analysis or statistical evaluation or by natural variation in groundwater, surface water or the unsaturated zone. Upon a successful demonstration, the Department shall specify that the owner or operator shall reinstitute a detection monitoring program meeting the requirements of section 66265.98. In making a demonstration under this subsection, the owner or operator shall:

(1) notify the Department by certified mail in writing that the owner or operator intends to make a demonstration pursuant to this subsection;

(2) submit a report to the Department that demonstrates that a source other than the regulated unit caused the evidence of a release or that the apparent noncompliance with the standard evidence resulted from error in sampling, analysis, or evaluation or from natural variation in groundwater, surface water or the unsaturated zone;

(3) submit to the Department an amended water quality sampling and analysis plan to reinstitute a detection monitoring program for the unit. This amended plan shall include all appropriate changes to the monitoring program; and

(4) continue to monitor in accordance with the evaluation monitoring program established pursuant to this section.

(g) The Department shall require interim corrective action measures where necessary to protect human health or the environment.

(h) If the owner or operator determines that the evaluation monitoring program does not satisfy the requirements of this section, the owner or operator shall, within 90 days, submit an amended water quality sampling and analysis plan to make any appropriate changes to the program.

(i) Any time the Department determines that the evaluation monitoring program does not satisfy the requirements of this section, the Department shall send written notification of such determination to the owner or operator by certified mail, return receipt requested. The owner or operator shall, within 90 days of such notification by the Department, submit an amended water quality sampling and analysis plan to make appropriate changes to the program.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.101. Corrective Action for Interim Status Waste Management Units.

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25187, 25200.10, 25200.14, 58009 and 58010, Health and Safety Code.

HISTORY

1. New section filed 11–19–98 as an emergency; operative 11–19–98 (Register 98, No. 47). A Certificate of Compliance must be transmitted to OAL by 3–19–99 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 99, No. 12).

Article 7. Closure and Post–Closure

§ 66265.110. Applicability.

Except as section 66265.1 provides otherwise:

(a) sections 66265.111 through 66265.115 (which concern closure) apply to the owners and operators of all hazardous waste management facilities; and

(b) sections 66265.116 through 66265.120 (which concern post–closure care) apply to the owners and operators of:

(1) all hazardous waste disposal facilities;

(2) waste piles and surface impoundments for which the owner or operator intends to remove the waste at closure to the extent that these sections are made applicable to such facilities in section 66265.228 or section 66265.258;

(3) tank systems that are required under section 66265.197 to meet requirements for landfills; and

(4) containment buildings that are required under section 66265.1102 to meet the requirement for landfills.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6, 25245 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5, 25245, 25246 and 58012, Health and Safety Code; 40 CFR Section 265.110.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of subsections (b)(1)–(3), new subsection (b)(4) and amendment of NOTE filed 10–24–94 as an emergency; operative 10–24–94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–20–95 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsections (b)(1)–(3), new subsection (b)(4) and amendment of NOTE refiled 2–21–95 as an emergency; operative 2–21–95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–21–95 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsections (b)(1)–(3), new subsection (b)(4) and amendment of NOTE refiled 6–19–95 as an emergency; operative 6–19–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–95 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsections (b)(1)–(3), new subsection (b)(4) and amendment of NOTE refiled 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 10–24–94 order transmitted to OAL 12–15–95 and filed 1–31–96 (Register 96, No. 5).

§ 66265.111. Closure Performance Standard.

The owner or operator shall close the facility in a manner that:

(a) minimizes the need for further maintenance, and

(b) controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, post–closure escape of hazardous waste, hazardous constituents, leachate, contaminated rainfall or run–off, or waste decomposition products to the ground or surface waters or to the atmosphere, and

(c) complies with the closure requirements of this chapter including, but not limited to, the requirements of sections 66265.197, 66265.228, 66265.258, 66265.280, 66265.310, 66265.351, 66265.381, 66265.404, and 66265.1102.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6, 25245 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5, 25245 and 58012, Health and Safety Code; 40 CFR Section 265.111.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of subsection (c) and NOTE filed 10–24–94 as an emergency; operative 10–24–94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–20–95 or emergency language will be repealed by operation of law on the following day.

[The next page is 758.63.]

3. Amendment of subsection (c) and NOTE refiled 2–21–95 as an emergency; operative 2–21–95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–21–95 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsection (c) and NOTE refiled 6–19–95 as an emergency; operative 6–19–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–95 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsection (c) and NOTE refiled 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.
6. Editorial correction of HISTORY 5 (Register 96, No. 5).
7. Certificate of Compliance as to 10–24–94 order transmitted to OAL 12–15–95 and filed 1–31–95 (Register 96, No. 5).

§ 66265.112. Closure Plan; Amendment of Plan.

(a) Written plan. By six months after the effective date of the rule that first subjects a facility to provisions of this section, the owner or operator of a hazardous waste management facility shall have a written closure plan. Until final closure is completed and certified in accordance with section 66265.115, a copy of the most current plan shall be kept at the facility and furnished to the Department upon request, including request by mail. In addition, for facilities without approved plans, it shall also be provided during site inspections, on the day of inspection, to any officer, employee or representative of the Department who is duly designated by the Director.

(b) Content of plan. The plan shall identify steps necessary to perform partial or final closure of the facility at any point during its active life and to perform final closure of the facility at the end of its active life. The closure plan shall include, at least:

(1) a description of how and when each hazardous waste management unit at the facility will be closed in accordance with section 66265.111; and

(2) a description of how and when final closure of the facility will be conducted in accordance with section 66265.111. The description shall identify the maximum extent of the operation which will be unclosed during the active life of the facility; and

(3) an estimate of the maximum inventory of hazardous wastes ever on–site over the active life of the facility and a detailed description of the methods to be used during partial and final closure, including, but not limited to methods for removing, transporting, treating, storing or disposing of all hazardous waste, identification of and the type(s) of off–site hazardous waste management unit(s) to be used, if applicable; and

(4) a detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, equipment, structures, and soils during partial and final closure including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination necessary to satisfy the closure performance standard; and

(5) a detailed description of other activities necessary during the partial and final closure period to ensure that all partial closures and final closure satisfy the closure performance standards, including, but not limited to, groundwater monitoring, leachate collection, and run–on and run–off control; and

(6) a schedule for closure of each hazardous waste management unit and for final closure of the facility. The schedule shall include, at a minimum, the total time required to close each hazardous waste management unit and the time required for intervening closure activities which will allow tracking of the progress of partial and final closure. (For example, in the case of a landfill unit, estimates of the time required to treat or dispose of all hazardous waste inventory and of the time required to place a final cover shall be included); and

(7) an estimate of the expected year of final closure.

(8) all information necessary to enable the Department to prepare an Initial Study for the closure plan, which meets the requirements of Title 14, CCR section 15063, unless the Department has determined that the closure plan is exempt from the requirements of the California Environmental Quality Act pursuant to Title 14, CCR section 15061.

(c) Amendment of plan. The owner or operator may amend the closure plan at any time prior to the notification of partial or final closure of the facility. An owner or operator with an approved closure plan shall submit a written request to the Department to authorize a change to the approved closure plan. The written request shall include a copy of the amended closure plan for approval by the Department.

(1) The owner or operator shall amend the closure plan whenever:

(A) changes in operating plans or facility design affect the closure plan, or

(B) there is a change in the expected year of closure, or

(C) in conducting partial or final closure activities, unexpected events require a modification of the closure plan.

(2) The owner or operator shall amend the closure plan at least 60 days prior to the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred which has affected the closure plan. If an unexpected event occurs during the partial or final closure period, the owner or operator shall amend the closure plan no later than 30 days after the unexpected event. These provisions also apply to owners or operators of surface impoundments and waste piles who intended to remove all hazardous wastes at closure, but are required to close as landfills in accordance with section 66265.310.

(3) An owner or operator with an approved closure plan shall submit the modified plan to the Department at least 60 days prior to the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred which has affected the closure plan. If an unexpected event occurs during the partial or final closure period, the owner or operator shall submit the modified plan no later than 30 days after the unexpected event. These provisions also apply to owners or operators of surface impoundments and waste piles who intended to remove all hazardous wastes at closure but are required to close as landfills in accordance with section 66265.310. If the amendment to the plan is a Class 2 or 3 modification according to the criteria in section 66270.42, the modification to the plan will be approved according to the procedures in section 66265.112(d)(4).

(4) The Department may request modifications to the plan under the conditions described in subsection (c)(1) of this section. An owner or operator with an approved closure plan shall submit the modified plan within 60 days of the request from the Department, or within 30 days if the unexpected event occurs during partial or final closure. If the amendment is considered a Class 2 or 3 modification according to the criteria in section 66270.42, the modification to the plan will be approved in accordance with the procedures in section 66265.112(d)(4).

(d) Notification of partial closure and final closure.

(1) The owner or operator shall submit the closure plan to the Department at least 180 days prior to the date on which the owner or operator expects to begin closure of the first surface impoundment, waste pile, land treatment, or landfill unit, or final closure if it involves such a unit, whichever is earlier. The owner or operator shall submit the closure plan to the Department at least 180 days prior to the date on which the owner or operator expects to begin partial or final closure of a boiler or industrial furnace. The owner or operator shall submit the closure plan to the Department at least 180 days prior to the date on which the owner or operator expects to begin final closure of a facility with only tanks or containers used for transfer, treatment or storage, or incinerator units. An owner or operator with an approved closure plan shall notify the Department in writing at least 60 days prior to the date on which the owner or operator expects to begin closure of a surface impoundment, waste pile, landfill, or land treatment unit, or final closure of a facility involving such a unit. Owners or operators with approved closure plans shall notify the Department in writing at least 45 days prior to the date on which the owner or operator expects to begin partial or final closure of a boiler or industrial furnace. An owner or operator with an approved closure plan shall notify the Department in writing at least 45 days prior to the date on which the

owner or operator expects to begin final closure of a facility with only tanks or containers used for transfer, treatment or storage, or incinerator units.

(2) The date when the owner or operator "expects to begin closure" shall be either no later than the date on which any hazardous waste management unit receives the known final volume of hazardous wastes or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous waste. The Department may approve an extension to this one-year limit if the owner or operator of a hazardous waste management unit demonstrates to the satisfaction of the Department that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes, the owner or operator has taken, and will continue to take, all steps necessary to comply with all interim status requirements, and the extension will not pose a threat to human health and the environment.

(3) For units meeting the requirements of section 66265.113(d), the date when the owner or operator "expects to begin closure" shall be no later than the date on which the hazardous waste management unit receives the known final volume of non-hazardous wastes, or if there is a reasonable possibility that the hazardous waste management unit will receive additional non-hazardous wastes, no later than one year after the date on which the unit received the most recent volume of non-hazardous wastes. If the owner or operator can demonstrate to the Department that the hazardous waste management unit has the capacity to receive additional non-hazardous wastes and the owner or operator has taken, and will continue to take, all steps to prevent threats to human health and threats to the environment, including compliance with all applicable interim status requirements, the Department may approve an extension to this one-year limit. A facility operating under the requirements of section 66265.113(d) shall continue to be subject to the facility fee specified in Health and Safety Code, Division 20, section 25205.2(d), until the facility has complied with the requirements of section 66265.113(a). Health and Safety Code, Division 20, section 25205.2(d)(4) shall not apply to a facility operating pursuant to section 66265.113(d).

(4) The owner or operator shall submit the closure plan to the Department no later than 15 days after:

(A) termination of interim status except when a permit is issued simultaneously with termination of interim status; or

(B) issuance of a judicial decree or final order under Health and Safety Code section 25358.3 or article 8 of chapter 6.5 of division 20 of the Health and Safety Code to cease receiving hazardous wastes or close.

(5) The Department will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the plan and request modifications to the plan no later than 30 days from the date of the notice. The Department will also, in response to a request or at the Department's own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning a closure plan. The Department will give public notice of the hearing at least 30 days before it occurs. Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined. The Department will approve, modify, or disapprove the plan within 90 days of its receipt. If the Department does not approve the plan the Department shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator shall modify the plan or submit a new plan for approval within 30 days after receiving such written statement. The Department will approve or modify this plan in writing within 60 days. If the Department modifies the plan, this modified plan becomes the approved closure plan. The Department shall assure that the approved plan is consistent with sections 66265.111 through 66265.115 and the applicable requirements of article 6 of this chapter and sections 66265.197, 66265.228, 66265.258, 66265.280, 66265.310, 66265.351, 66265.381, 66265.404, and 66265.1102. A copy of the modified plan with a detailed statement of reasons for the modifications shall be mailed to the owner or operator.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245, 58004 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5, 25245 and 25246, Health and Safety Code; 40 CFR Section 265.112; Sections 21080(c), 21080.1, 21080.3, 21082.1, 21100 and 21151, Public Resources Code.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).
2. Amendment of subsection (d)(4) and NOTE filed 10-24-94 as an emergency; operative 10-24-94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2-20-95 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsection (d)(4) and NOTE refiled 2-21-95 as an emergency; operative 2-21-95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-21-95 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsection (d)(4) and NOTE refiled 6-19-95 as an emergency; operative 6-19-95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-17-95 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsection (d)(4) and NOTE refiled 10-16-95 as an emergency; operative 10-16-95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2-13-96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 10-24-94 order transmitted to OAL 12-15-95 and filed 1-31-95 (Register 96, No. 5).
7. New subsection (d)(3), subsection renumbering, and amendment of newly designated subsection (d)(5) and NOTE filed 6-20-96; operative 7-20-96 (Register 96, No. 25).
8. Amendment of subsections (a) and (d)(1) and NOTE filed 7-1-96; operative 7-31-96 (Register 96, No. 27).
9. Change without regulatory effect amending subsection (d)(2) filed 10-22-96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 43).
10. Change without regulatory effect amending subsection (d)(3) filed 12-23-96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 52).
11. Change without regulatory effect amending subsection (d)(3) filed 1-7-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 2).
12. Change without regulatory effect amending subsection (d)(5) filed 8-15-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 33).

§ 66265.113. Closure; Time Allowed for Closure.

(a) Within 90 days after receiving the final volume of hazardous wastes, or the final volume of non-hazardous wastes if the owner or operator complies with all applicable requirements in subsections (d) and (e) of this section, at a hazardous waste management unit or facility, or within 90 days after approval of the closure plan, whichever is later, the owner or operator shall treat, remove from the unit or facility, or dispose of on-site, all hazardous wastes in accordance with the approved closure plan. The Department may approve a longer period if the owner or operator demonstrates to the satisfaction of the Department that:

(1)(A) the activities required to comply with this subsection will, of necessity, take longer than 90 days to complete; or

(B) 1. the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes, or has the capacity to receive non-hazardous wastes if the facility owner or operator complies with subsections (d) and (e) of this section; and

2. there is a reasonable likelihood that a person other than the owner or operator will recommence operation of the hazardous waste management unit or the facility within one year; and

3. closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

(2) the owner or operator has taken and will continue to take all steps to comply with all applicable interim status requirements and the longer period will not pose a threat to human health and the environment.

(b) The owner or operator shall complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous wastes, or the final volume of non-hazardous wastes if the owner or operator complies with all applicable requirements in subsections (d) and (e) of this section, at the hazardous waste management unit or facility, or 180 days after approval of the closure plan, if that is later. The Department may approve an extension to the closure period if the owner or operator demonstrates that:

(1)(A) the partial or final closure activities will, of necessity, take longer than 180 days to complete; or

(B) 1. the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes, or has the capacity to receive non–hazardous wastes if the facility owner or operator complies with subsections (d) and (e) of this section; and

2. there is reasonable likelihood that a person other than the owner or operator will recommence operation of the hazardous waste management unit or the facility within one year; and

3. closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

(2) the owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed, but not operating, hazardous waste management unit or facility, including compliance with all applicable interim status requirements.

(c) The demonstrations referred to in subsections (a) and (b) of this section shall be made as follows:

(1) the demonstrations in subsection (a) of this section shall be made at least 30 days prior to the expiration of the 90–day period in subsection (a); and

(2) the demonstrations in subsection (b) shall be made at least 30 days prior to the expiration of the 180–day period in subsection (b), unless the owner or operator is otherwise subject to the deadlines in subsection (d) of this section.

(d) The Department may allow an owner or operator to receive non–hazardous wastes in a landfill, land treatment, or surface impoundment unit after the final receipt of hazardous wastes at that unit, if:

(1) The owner or operator submits an amended Part B application, or a Part B application, if not previously required, and demonstrates to the Department that:

(A) the unit has the existing design capacity as indicated on the Part A application to receive non–hazardous wastes; and

(B) there is a reasonable likelihood that either the owner or operator or another person will receive non–hazardous wastes in the unit within one year after the final receipt of hazardous wastes; and

(C) the non–hazardous wastes will not be incompatible with any remaining hazardous wastes in the unit, or with the facility design and operating requirements of the unit or facility under this chapter; and

(D) closure of the hazardous waste management unit would be incompatible with continued operation of the unit or facility; and

(E) the owner or operator is operating and will continue to operate in compliance with all applicable interim status requirements of this chapter and with all applicable regulations promulgated by other state agencies governing discharges of hazardous or non–hazardous wastes to land and water, including, but not limited to, regulations promulgated by the California Integrated Waste Management Board and the State Water Resources Control Board; and

(2) The Part B application includes an amended waste analysis plan, monitoring and response program for groundwater, air and soil–pore gas required under articles 6 and 18 of this chapter, human exposure assessment required under Title 42, U.S.C. section 6939a, and closure and post–closure plans, and updated cost estimates and demonstrations of financial assurance for closure and post–closure care as necessary and appropriate, to reflect any changes due to the presence of hazardous constituents in the non–hazardous wastes and changes in closure activities, including the expected year of closure, if applicable under section 66265.112(b)(7), as a result of the receipt of non–hazardous wastes following the final receipt of hazardous wastes; and

(3) The Part B application is amended, as necessary and appropriate, to account for the receipt of non–hazardous wastes following receipt of the final volume of hazardous wastes; and

(4) The Part B application and the demonstrations referred to in subsection (d)(1) and (d)(2) of this section are submitted to the Department no later than 180 days prior to the date on which the owner or operator receives the known final volume of hazardous wastes, or no later than 90 days after the effective date of this rule, whichever is later.

(e) In addition to the requirements in subsection (d) of this section, an owner or operator of a hazardous waste surface impoundment that is not in compliance with the liner and leachate collection system requirements pursuant to Title 22, CCR, Division 4.5, Chapter 15, Article 11 shall:

(1) Submit with the Part B application:

(A) a contingent corrective measures plan, and

(B) a plan for removing hazardous wastes in compliance with subsection (e)(2) of this section; and

(2) Remove all hazardous wastes from the unit by removing all hazardous liquids and by removing all hazardous sludges to the extent practicable without impairing the integrity of the liner(s), if any.

(3) Removal of hazardous wastes shall be completed no later than 90 days after the final receipt of hazardous wastes. The Department may approve an extension to this deadline if the owner or operator demonstrates that the removal of hazardous wastes will, of necessity, take longer than the allotted period to complete and that an extension will not pose a threat to human health or the environment.

(4) If a release of hazardous waste that is a statistically significant increase (or decrease in the case of pH) in hazardous constituents over background levels or that exceeds the facility's protection standards for groundwater, air, or soil–pore gas at the points of compliance, if applicable, is detected in accordance with the requirements in articles 6 or 18 of this chapter, the owner or operator of the unit:

(A) shall implement corrective measures in accordance with the approved contingent corrective measures plan required by subsection (e)(1) of this section no later than one year after detection of the release of hazardous waste, or approval of the contingent corrective measures plan, whichever is later;

(B) may continue to receive wastes at the unit following detection of any release only if the approved corrective measures plan includes a demonstration that continued receipt of wastes will not impede corrective action; and

(C) may be required by the Department to implement corrective measures in less than one year, or to cease receipt of wastes until corrective measures have been implemented if necessary to protect human health or the environment.

(5) During the period of corrective action, the owner or operator shall provide semi–annual reports to the Department that describe the progress of the corrective action program, compile all monitoring data for groundwater, air, and soil–pore gas, and evaluate the effect of the continued receipt of non–hazardous wastes on the effectiveness of the corrective action.

(6) The Department may require the owner or operator to commence closure of the unit if the owner or operator fails to implement corrective action measures in accordance with the approved contingent corrective measures plan within one year as required in subsection (e)(4) of this section, or fails to make substantial progress in implementing corrective action and achieving the facility's protection standards for groundwater, air, or soil–pore gas, or background levels if the facility has not yet established a protection standard for groundwater, air, or soil–pore gas.

(7) If the owner or operator fails to implement corrective measures as required in subsection (e)(4) of this section, or if the Department determines that substantial progress has not been made pursuant to subsection (e)(6) of this section, the Department shall do the following:

(A) notify the owner or operator in writing that the owner or operator shall begin closure in accordance with the deadlines in subsections (a) and (b) of this section and provide a detailed statement of reasons for this determination.

(B) provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the decision no later than 20 days after the date of the notice.

(C) If the Department receives no written comments, the decision will become final five days after the close of the comment period. The Department shall notify the owner or operator that the decision is final, and that a revised closure plan, if necessary, shall be submitted within 15 days of the final notice and that closure shall begin in accordance with the deadlines in subsections (a) and (b) of this section.

(D) If the Department receives written comments on the decision, the Department shall make a final decision within 30 days after the end of the comment period, and shall provide the owner or operator in writing and the public through a newspaper notice, a detailed statement of reasons for the final decision. If the Department determines that substantial progress has not been made, closure shall be initiated in accordance with the deadlines in subsections (a) and (b) of this section.

(E) The final determinations made by the Department under subsections (e)(7)(C)–(D) of this section are not subject to administrative appeal.

NOTE: Authority cited: Sections 25150, 25159, 25245, 58004 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5, 25200.10, 25245 and 25246, Health and Safety Code; 40 CFR Section 265.113.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of subsections (a), (a)(1)(B)1., (b), (b)(1)(B)1., (b)(2) and (c)(1)–(2), new subsections (d)–(e)(7)(E) and amendment of NOTE filed 6–20–96; operative 7–20–96 (Register 96, No. 25).
3. Change without regulatory effect amending subsections (a), (b) and (e)(5) filed 10–22–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 43).
4. Change without regulatory effect amending subsection (d)(2) filed 12–23–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 52).
5. Change without regulatory effect amending subsection (e)(3) and NOTE filed 6–7–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 24).

§ 66265.114. Disposal or Decontamination of Equipment, Structures and Soils.

During the partial and final closure periods, all contaminated equipment, structures and soil shall be properly disposed of, or decontaminated by removing all hazardous waste and residues, unless specified otherwise in sections 66265.197, 66265.228, 66265.258, 66265.280, or 66265.310. By removing all hazardous wastes and residues or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and shall handle that hazardous waste in accordance with all applicable requirements of chapter 12 of this division.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25245, Health and Safety Code. Reference: Sections 25159, 25159.5, 25245 and 25246, Health and Safety Code; 40 CFR Section 265.114.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.115. Certification of Closure.

Within 60 days of completion of closure of each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit, and within 60 days of completion of final closure, the owner or operator shall submit to the Department, by registered mail, a certification that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. The certification shall be signed by the owner or operator and by an independent qualified professional engineer, registered in California. Documentation supporting the independent registered professional engineer's certification shall be furnished to the Department upon request until the Department releases the owner or operator from the financial assurance requirements for closure under section 66265.143, subsection (i).

NOTE: Authority cited: Sections 25150, 25159 and 25245, Health and Safety Code. Reference: Sections 25159, 25159.5, 25245 and 25246, Health and Safety Code; 40 CFR Section 265.115.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect amending section and NOTE filed 12–19–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 51).

§ 66265.116. Survey Plat.

No later than the submission of the certification of closure of each hazardous waste disposal unit, an owner or operator shall submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Department, a survey plat indicating the location and dimensions of landfill cells or other hazardous waste disposal units with respect to permanently surveyed vertical and horizontal benchmarks. This plat shall be prepared and certified by a professional land surveyor, licensed in California. The plat filed with the local zoning authority, or the authority with jurisdiction over local land use shall contain a note, prominently displayed, which states the owner's or operator's obligation to restrict disturbance of the hazardous waste disposal unit in accordance with the applicable regulations of this article.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25245, Health and Safety Code. Reference: Sections 25159, 25159.5, 25245 and 25246, Health and Safety Code; 40 CFR Section 265.116.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.117. Post–Closure Care and Use of Property.

(a) This section pertains to facilities at which all hazardous wastes, waste residues, contaminated materials and contaminated soils will not be removed during closure. Additional requirements for such facilities are cited in Title 23 of the California Code of Regulations.

(b)(1) Post–closure care for each hazardous waste management unit subject to the requirements of sections 66265.117 through 66265.120 shall begin after completion of closure of the unit and continue for 30 years after that date. It shall consist of at least the following:

(A) monitoring and reporting in accordance with the requirements of articles 6, 11, 12, 13, and 14 of this chapter; and

(B) maintenance and monitoring of waste containment systems in accordance with the requirements of articles 6, 11, 12, 13, and 14 of this chapter.

(2) Any time preceding closure of a hazardous waste management unit subject to post–closure care requirements or final closure, or any time during the post–closure period for a particular hazardous waste disposal unit, the Department shall:

(A) shorten the post–closure care period applicable to the hazardous waste management unit, or facility, if all disposal units have been closed, if the Department finds that the reduced period is sufficient to protect human health and the environment (e.g., leachate or ground–water monitoring results, characteristics of the hazardous waste, application of advanced technology, or alternative disposal, treatment, or re–use techniques indicate that the hazardous waste management unit or facility is secure); or

(B) extend the post–closure care period applicable to the hazardous waste management unit or facility, if the Department finds that the extended period is necessary to protect human health and the environment (e.g., leachate or groundwater monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).

(c)(1) The Department shall require, at partial and final closure, continuation of any of the security requirements of section 66265.14 during part or all of the post–closure period when:

(A) hazardous wastes may remain exposed after completion of partial or final closure; or

(B) access by the public or domestic livestock may pose a hazard to human health.

(2) To extend any of these requirements during post closure period, the Department will use the procedures of sections 66265.118(d) and (f).

(d) Post–closure use of property on or in which hazardous wastes remain after partial or final closure shall never be allowed to disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the facility's monitoring systems, unless the Department finds that the disturbance:

(1) is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or

(2) is necessary to reduce a threat to human health or the environment.

(e) All post–closure care activities shall be in accordance with the provisions of the approved post–closure plan as specified in section 66265.118.

(f) Upon closure of a hazardous waste facility wherein hazardous wastes remain on–site no construction, filling, grading, excavating or mining shall occur without the issuance of a variance by the Department. No variance may be granted which is inconsistent with subsection (d) of this section.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25245, Health and Safety Code. Reference: Sections 25159, 25159.5, 25245 and 25246, Health and Safety Code; 40 CFR Section 265.117.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.118. Post–Closure Plan; Amendment of Plan.

(a) Written plan. The owner or operator of a hazardous waste disposal unit shall have a written post–closure plan. An owner or operator of a surface impoundment or waste pile that intends to remove all hazardous wastes at closure shall prepare a post–closure plan and submit it to the Department within 90 days of the date that the owner or operator or Department determines that the hazardous waste management unit or facility shall be closed as a landfill, subject to the requirements of sections 66265.117 through 66265.120.

(b) Until final closure of the facility, a copy of the most current post–closure plan shall be kept at the facility and furnished to the Department upon request, including request by mail. In addition, for facilities without approved post–closure plans, it shall also be provided during site inspections, on the day of inspection, to any officer, employee or representative of the Department who is duly designated by the Director. After final closure, the person or office specified in section 66265.118(c)(3) shall keep an updated and approved post–closure plan during the post–closure period,

(c) For each hazardous waste management unit subject to the requirements of this section, the post–closure plan shall identify the activities that will be carried on after closure of each disposal unit and the frequency of these activities, and include at least:

(1) a description of the planned monitoring activities and frequencies at which they will be performed to comply with articles 6, 11, 12, 13, and 14 of this chapter during the post–closure care period; and

(2) a description of the planned maintenance activities, and frequencies at which they will be performed, to ensure:

(A) the integrity of the cap and final cover and other containment systems in accordance with the requirements of articles 11, 12, 13, and 14 of this chapter; and

(B) the function of the monitoring equipment in accordance with the requirements of articles 6, 11, 12, 13, and 14 of this chapter; and

(3) the name, address, and phone number of the person or office to contact about the hazardous waste disposal unit or facility during the post–closure care period.

(4) all information necessary to enable the Department to prepare an Initial Study for the post–closure plan, which meets the requirements of Title 14, California Code of Regulations section 15063, unless the Department has determined that the post–closure plan is exempt from the requirements of the California Environmental Quality Act pursuant to Title 14, CCR section 15061.

(d) Amendment of plan. The owner or operator may amend the post–closure plan any time during the active life of the facility or during the post–closure care period. An owner or operator with an approved post–closure plan shall submit a written request to the Department to authorize a change to the approved plan. The written request shall include a copy of the amended post–closure plan for approval by the Department.

(1) The owner or operator shall amend the post–closure plan whenever:

(A) changes in operating plans or facility design affect the post–closure plan, or

(B) events which occur during the active life of the facility or the post–closure care period, including partial and final closures, affect the post–closure plan.

(2) The owner or operator shall amend the post–closure plan at least 60 days prior to the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred which has affected the post–closure plan.

(3) An owner or operator with an approved post–closure plan shall submit the modified plan to the Department at least 60 days prior to the proposed change in facility design or operation, or no more than 60 days after an unexpected event has occurred which has affected the post–closure plan. If an owner or operator of a surface impoundment or a waste pile, who intended to remove all hazardous wastes at closure in accordance with section 66265.228(a) or 66265.258(a) is required to close as a landfill in accordance with section 66265.310, the owner or operator shall submit a post–closure plan within 90 days of the determination by the owner or operator or the Department that the unit shall be closed as a landfill. If the amendment to the post–closure plan is a Class 2 or 3 modification according to the criteria in section 66270.42, the modification to the plan will be approved according to the procedures in section 66265.118(f).

(4) The Department shall request modifications to the plan under the conditions described in subsection (d)(1) of this section. An owner or operator with an approved post–closure plan shall submit the modified plan no later than 60 days after the request from the Department. If the amendment to the plan is considered a Class 2 or 3 modification according to the criteria in section 66270.42, the modifications to the post–closure plan will be approved in accordance with the procedures in section 66265.118(f). If the Department determines that an owner or operator of a surface impoundment or waste pile who intended to remove all hazardous wastes at closure shall close the facility as a landfill, the owner or operator shall submit a post–closure plan for approval to the Department within 90 days of the determination.

(e) The owner or operator of a facility with hazardous waste management units subject to these requirements shall submit the post–closure plan to the Department at least 180 days before the date the owner or operator expects to begin partial or final closure of the first hazardous waste disposal unit. The date the owner or operator "expects to begin closure" of the first hazardous waste disposal unit shall be either no later than the date on which the hazardous waste management unit receives the known final volume of hazardous waste or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous wastes. The owner or operator shall submit the post–closure plan to the Department no later than 15 days after:

(1) termination of interim status (except when a permit is issued to the facility simultaneously with termination of interim status); or

(2) issuance of a judicial decree or final order under Health and Safety Code section 25358.3 or article 8 of chapter 6.5 of division 20 of the Health and Safety Code to cease receiving wastes or close.

(f) The Department will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the post–closure plan and request modifications to the plan no later than 30 days from the date of the notice. The Department will also, in response to a request or at the Department's own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning a post–closure plan. The Department will give public notice of the hearing at least 30 days before it occurs. Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined. The Department will approve, modify, or disapprove the plan within 90 days of its receipt. If the Department disapproves the plan, the Department

shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator shall modify the plan or submit a new plan for approval within 30 days after receiving such written statement. The Department will approve or modify this plan in writing within 60 days. If the Department modifies the plan, this modified plan becomes the approved post-closure plan. The Department shall ensure that the approved post-closure plan is consistent with sections 66265.117 through 66265.120. A copy of the modified plan with a detailed statement of reasons for the modifications shall be mailed to the owner or operator.

(g) The post-closure plan and length of the post-closure care period may be modified any time prior to the end or at the end of the post-closure care period in either of the following two ways.

(1) The owner or operator or any member of the public may petition the Department to extend or reduce the post-closure care period applicable to a hazardous waste management unit or facility based on cause, or alter the requirements of the post-closure care period based on cause.

(A) The petition shall include evidence demonstrating that:

1. the secure nature of the hazardous waste management unit or facility makes the post-closure care requirement(s) unnecessary or supports reduction of the post-closure care period specified in the current post-closure plan (e.g., leachate or groundwater monitoring results, characteristics of the wastes, application of advanced technology, or alternative disposal, treatment, or re-use techniques indicate that the facility is secure), or

2. the requested extension in the post-closure care period or alteration of post-closure care requirements is necessary to prevent threats to human health and the environment (e.g., leachate or groundwater monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).

(B) These petitions will be considered by the Department only when they present new and relevant information not previously considered by the Department. Whenever the Department is considering a petition, the Department will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments within 30 days of the date of the notice. The Department will also, in response to a request or at the Department's own discretion, hold a public hearing whenever a hearing might clarify one or more issues concerning the post-closure plan. The Department will give the public notice of the hearing at least 30 days before it occurs. Public notice of the hearing may be given at the same time as notice of the opportunity for written public comments, and the two notices may be combined). After considering the comments, the Department will issue a final determination, based upon the criteria set forth in subsection (9)(1)(A) of this section.

(C) If the Department denies the petition, the Department will send the petitioner a brief written response giving a reason for the denial.

(2) The Department may tentatively decide to modify the post-closure plan if the Department deems it necessary to prevent threats to human health and the environment. The Department may propose to extend or reduce the post-closure care period applicable to a hazardous waste management unit or facility based on cause, or alter the requirements of the post-closure care period based on cause.

(A) The Department will provide the owner or operator and the affected public, through a newspaper notice, the opportunity to submit written comments within 30 days of the date of the notice and the opportunity for a public hearing as in subsection (g)(1)(B) of this section. After considering the comments, the Department will issue a final determination.

(B) The Department will base the final determination upon the same criteria as required for petitions under subsection (g)(1)(A) of this section. A modification of the post-closure plan may include, where appropriate, the temporary suspension rather than permanent deletion of one or more post-closure care requirements. At the end of the specified period of suspension, the Department would then determine whether the requirement(s) should be permanently discontinued or reinstated to prevent threats to human health and the environment.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25245, Health and Safety Code. Reference: Sections 25159, 25159.5 and 25246, Health and Safety Code; 40 CFR Section 265.118; Sections 21080(c), 21080.1, 21080.3, 21082.1, 21100 and 21151, Public Resources Code.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).

§ 66265.119. Post-Closure Notices.

(a) No later than 60 days after certification of closure of each hazardous waste disposal unit, the owner or operator shall submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Department, a record of the type, location, and quantity of hazardous wastes disposed of within each cell or area (not limited to only hazardous waste disposal unit) of the facility. For hazardous wastes disposed of before January 12, 1981, the owner or operator shall identify the type, location and quantity of the hazardous wastes to the best of the owner's or operator's knowledge and in accordance with any records the owner or operator has kept. Any changes in the type, location or quantity of hazardous wastes disposed of within each cell or area of the facility that occur after the survey plat and record of wastes have been filed pursuant to section 66265.116 shall be reported to the local zoning authority or the authority with jurisdiction over local land use and to the Department.

(b) Within 60 days of certification of closure of the first hazardous waste disposal unit and within 60 days of certification of closure of the last hazardous waste disposal unit, the owner or operator shall:

(1) record, in accordance with State law, a notation on the deed to the facility property, or on some other instrument which is normally examined during title search, that will in perpetuity notify any potential purchaser of the property that:

(A) the land has been used to manage hazardous wastes; and

(B) its use is restricted under article 7 of this chapter; and

(C) the survey plat and record of the type, location, and quantity of hazardous wastes disposed of within each cell or area (not limited to only hazardous waste disposal unit) of the facility required by sections 66265.116 and 66265.119(a) have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the Department; and

(2) submit, to the Department, a certification signed by the owner or operator that the notation specified in subsection (b)(1) of this section has been recorded and a copy of the document in which the notation has been placed.

(c) If at any time the owner or operator or any subsequent owner of the land upon which a hazardous waste disposal unit was located wishes to remove hazardous wastes and hazardous waste residues, the liner, if any, and all contaminated structures, equipment, and underlying and surrounding soils, the owner or operator shall request a modification to the approved post-closure plan in accordance with the requirements of section 66265.118(g). The owner or operator shall demonstrate that the removal of hazardous wastes will satisfy the criteria of section 66265.117(d). By removing hazardous waste, the owner or operator may become a generator of hazardous waste and shall manage it in accordance with all applicable requirements of this division. If the owner or operator is granted approval to conduct the removal activities, and the removal activities are completed to the satisfaction of the Department, the owner or operator may request that the Department approve either:

(1) the removal of the notation on the deed to the facility property or other instrument normally examined during title search, or

(2) the addition of a notation to the deed or instrument indicating the removal of the hazardous waste.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25245, Health and Safety Code. Reference: Sections 25159, 25159.5, 25245 and 25246, Health and Safety Code; 40 CFR Section 265.119.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).

§ 66265.120. Certification of Completion of Post-Closure Care.

No later than 60 days after the completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator shall submit to the Department, by registered mail, a certification that the post-closure care period for the hazardous waste disposal unit was performed in accordance with the specifications in the approved post-closure plan. The certification shall be signed by the owner or operator and an independent qualified professional engineer, registered in California. Documentation supporting the independent registered, qualified professional engineer's certification shall be furnished to the Department upon request until the Department releases the owner or operator from the financial assurance requirements for post-closure care under section 66265.145, subsection (i).

NOTE: Authority cited: Sections 25150, 25159 and 25245, Health and Safety Code. Reference: Sections 25159, 25159.5, 25245 and 25246, Health and Safety Code; 40 CFR Section 265.120.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).
2. Change without regulatory effect amending section and NOTE filed 12-19-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 51).

Article 8. Financial Requirements

§ 66265.140. Applicability.

(a) The requirements of sections 66265.142, 66265.143, and 66265.147 through 66265.148 apply to owners or operators of all hazardous waste facilities, as defined in section 66260.10, except as provided otherwise in this article.

(b) The requirements of sections 66265.144 and 66265.146 apply only to owners and operators of hazardous waste facilities which are:

(1) disposal facilities;

(2) tank systems that are required under section 66265.197 to meet the requirements for landfills; and

(3) containment buildings that are required under section 66265.1102 to meet the requirements for landfills.

(c) States and the Federal government are exempt from the requirements of this article.

(d) For purposes of this article, state government shall not include municipal, local, city, county, city-county special district government or any subdivisions thereof.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6, 25245 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5, 25245 and 58012, Health and Safety Code; 40 CFR Section 265.140.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).
2. Amendment of subsection (b), designation and amendment of subsections (b)(1)-(2), new subsection (b)(3) and amendment of NOTE filed 10-24-94 as an emergency; operative 10-24-94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2-20-95 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsection (b), designation and amendment of subsections (b)(1)-(2), new subsection (b)(3) and amendment of NOTE refiled 2-21-95 as an emergency; operative 2-21-95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-21-95 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsection (b), designation and amendemnt of subsections (b)(1)-(2), new subsection (b)(3) and amendment of NOTE refiled 6-19-95 as an emergency; operative 6-19-95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-17-95 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsection (b), designation and amendment of subsections (b)(1)-(2), new subsection (b)(3) and amendment of NOTE refiled 10-16-95 as an emergency; operative 10-16-95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2-13-96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 10-24-94 order including amendment of subsection (b)(2) transmitted to OAL 12-15-95 and filed 1-31-95 (Register 96, No. 5).
7. Change without regulatory effect amending subsection (b)(1) filed 8-15-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 33).
8. Change without regulatory effect amending subsection (c) filed 11-6-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 45).

§ 66265.141. Definitions As Used in This Article.

(a) The following terms, as defined in section 66260.10, are used in the specifications for the financial tests for closure, post-closure care, and liability coverage. The definitions are intended to assist in the understanding of these regulations and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices.

"Assets"
"Current assets"
"Current liabilities"
"Current plugging and abandonment cost estimate"
"Independently audited"
"Liabilities"
"Net working capital"
"Net worth"
"Substantial business relationship"
"Tangible net worth"

(b) In the liability coverage requirements the terms "bodily injury" and "property damage" as defined in section 66260.10 shall have the meanings given these terms by applicable State law. However, these terms do not include those liabilities which, consistent with standard industry practice, are excluded from coverage in liability policies for bodily injury and property damage. The Department intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry. The definitions given below and defined in section 66260.10 are intended to assist in the understanding of these regulations and are not intended to limit their meanings in a way that conflicts with general insurance industry usage.

"Accidental occurrence"
"Legal defense costs"
"Nonsudden accidental occurrence"
"Sudden accidental occurrence"

NOTE: Authority cited: Sections 208, 25150, 25159, 25159.5 and 25245, Health and Safety Code. Reference: Section 25245, Health and Safety Code; 40 CFR Section 265.141.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).

§ 66265.142. Cost Estimate for Closure.

(a) The owner or operator shall prepare and submit to the Department a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in sections 66265.111 through 66265.115 and applicable closure requirements in sections 66265.178, 66265.197, 66265.228, 66265.258, 66265.280, 66265.310, 66265.351, 66265.381, 66265.404, and 66265.1102.

(1) The estimate shall be submitted in accordance with sections 66270.10 and 66270.14. The estimate shall equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (see section 66265.112(b)).

(2) The closure cost estimate shall be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of parent corporation in section 66260.10.) The owner or operator may use costs for on-site disposal if it can be demonstrated that on-site disposal capacity will exist at all times over the life of the facility.

(3) The closure cost estimate shall not incorporate any salvage value that may be realized by the sale of hazardous wastes, or non-hazardous wastes if applicable under section 66265.113(d), facility structures or equipment, land or other facility assets associated with the facility at the time of the partial or final closure.

(4) The owner or operator shall not incorporate a zero cost for hazardous wastes, or non-hazardous wastes if applicable under section 66265.113(d), that might have economic value.

(b) During the active life of the facility, the owner or operator shall adjust the closure cost estimate for inflation within 60 days prior to the anni versary date of the establishment of the financial instrument(s) used to comply with section 66265.143. For owners and operators using the financial test or corporate guarantee, the closure cost estimate shall be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Department as specified in section 66265.143(e)(3). The adjustment shall be made by recalculating the closure cost estimate in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business, as specified in subsections (b)(1) and (2) of this section. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

(1) The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

(c) During the active life of the facility, the owner or operator shall revise the closure cost estimate no later than 30 days after a revision has been made to the closure plan which increases the cost of closure. If the owner or operator has an approved closure plan, the closure cost estimate shall be revised no later than 30 days after the Department has approved the request to modify the closure plan, if the change in the closure plan increases the cost of closure. The revised closure cost estimate shall be adjusted for inflation as specified in subsection (b) of this section.

(d) The owner or operator shall keep the following at the facility during the operating life of the facility: The latest closure cost estimate prepared in accordance with subsections (a) and (c) of this section and, when this estimate has been adjusted in accordance with subsection (b) of this section, the latest adjusted closure cost estimate.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6, 25245, 58004 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5 and 25245, Health and Safety Code; 40 CFR Section 265.142.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of subsection (a) and NOTE filed 10–24–94 as an emergency; operative 10–24–94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–20–95 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsection (a) and NOTE refiled 2–21–95 as an emergency; operative 2–21–95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–21–95 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsection (a) and NOTE refiled 6–19–95 as an emergency; operative 6–19–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–95 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsection (a) and NOTE refiled 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 10–24–94 order including amendment of subsection (a) transmitted to OAL 12–15–95 and filed 1–31–95 (Register 96, No. 5).
7. Amendment of subsections (a)(3)–(4) and NOTE filed 6–20–96; operative 7–20–96 (Register 96, No. 25).

§ 66265.143. Financial Assurance for Closure.

An owner or operator of each facility shall establish and demonstrate to the Department financial assurance for closure of the facility. The owner or operator shall choose from the options as specified in subsections (a) through (e) and (h) of this section.

(a) Closure trust fund.

(1) An owner or operator may satisfy the requirements of this section by establishing a closure trust fund which conforms to the requirements of this subsection and submitting an originally signed duplicate of the trust agreement to the Department. The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(2) The wording of the trust agreement shall be identical to the wording specified in section 66264.151, subsection (a)(1), shall contain original signatures and shall be accompanied by a formal certification of acknowledgement (for example, see section 66264.151, subsection (a)(2)). Schedule A of the trust agreement shall be updated within 60 days after a change in the amount of the current closure cost estimate covered by the trust agreement.

(3) Payments into the trust fund shall be made annually by the owner or operator over the ten (10) years beginning with the establishment of the trust fund or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereafter referred to as the "pay–in period." The payments into the closure trust fund shall be made as follows.

(A) The first payment shall be at least equal to the current closure cost estimate, except as provided in subsection (f), of this section divided by the number of years in the pay–in period.

(B) Subsequent payments shall be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by this formula:

$$\text{Next payment} = \frac{CE - CV}{Y}$$

where CE is the current closure cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay–in period.

(4) The owner or operator may accelerate payments into the trust fund or deposit the full amount of the current closure cost estimate at the time the fund is established. However, the value of the fund shall be maintained at no less than the value that the fund would have if annual payments were made as specified in subsection (a)(3) of this section.

(5) If the owner or operator establishes a closure trust fund after having used one or more alternate mechanisms specified in this section, the first payment shall be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made as specified in subsection (a)(3) of this section.

(6) After the pay–in period is completed, whenever the current closure cost estimate changes, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance as specified in this article to cover the difference.

(7) If the value of the trust fund is greater than the total amount of the current closure cost estimate, the owner or operator may submit a written request to the Department for release of the amount in excess of the current closure cost estimate.

(8) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the trust fund, a written request may be submitted to the Department for release of the amount in excess of the current closure cost estimate covered by the trust fund.

(9) Within 60 days after receiving a request from the owner or operator for release of funds as specified in subsections (a)(7) or (8) of this section, the Department will instruct the trustee to release to the owner or operator such funds as the Department specifies in writing.

(10) Before final closure occurs, the value of the trust fund shall equal the amount of the current closure cost estimate. If the value of the fund is less than the amount of the current estimate, the owner or operator shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance, as specified in this section, to cover the difference.

(11) After beginning partial or final closure, an owner or operator or another person authorized to conduct partial or final closure may request reimbursements for partial or final closure expenditures by submitting

itemized bills to the Department. The owner or operator may request reimbursements for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. No later than 60 days after receiving bills for partial or final closure activities, the Department shall instruct the trustee to make reimbursements in those amounts as the Department specifies in writing, if the Department determines that the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified. If the Department has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, the Department may withhold reimbursements of such amounts as deemed prudent until a determination is made, in accordance with subsection (i) of this section, that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Department does not instruct the trustee to make such reimbursements, a detailed written statement of reasons will be provided to the owner or operator.

(12) The Department will agree to termination of the trust when:

(A) an owner or operator substitutes alternate financial assurance as specified in this section; or

(B) the Department releases the owner or operator from the requirements in accordance with subsection (i) of this section.

(b) Surety bond guaranteeing payment into a closure trust fund.

(1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this subsection and submitting the bond to the Department. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

(2) The wording of the surety bond shall be identical to the wording specified in section 66264.151, subsection (b). The surety bond shall contain original signatures and shall be accompanied by the documents specified in this subsection.

(3) The owner or operator who uses a surety bond to satisfy the requirements of this section shall also establish a standby trust fund. Under the terms of the bond, all payments made thereunder shall be deposited by the surety directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund shall meet the requirements specified in subsection (a) of this section, except that:

(A) an originally signed duplicate of the standby trust agreement shall be submitted to the Department with the surety bond; and

(B) until the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

1. payments into the trust fund as specified in subsection (a) of this section;

2. updating of Schedule A of the trust agreement (see section 66264.151, subsection (a)) to show current closure cost estimates;

3. annual valuations as required by the trust agreement; and

4. notices of nonpayment as required by the trust agreement.

(4) The bond shall guarantee that the owner or operator shall:

(A) fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility; or

(B) fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin final closure issued by the Department becomes final, or within 15 days after an order to begin final closure is issued by a U.S. district court or other court of competent jurisdiction; or

(C) provide alternate financial assurance as specified in this section, and obtain the Department's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. *For facilities that require a* RCRA permit, the determination will be made pursuant to Health and Safety Code Section 25187.

(6) The penal sum of the bond shall be in an amount at least equal to the current closure cost estimate, except as provided in subsection (f) of this section.

(7) Whenever the current closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, shall either cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the Department.

(8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation shall not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipt.

(9) The owner or operator may cancel the bond if the Department has given prior written consent based on receipt of evidence of alternate financial assurance as specified in this section.

(c) Closure letter of credit.

(1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this subsection and submitting the letter to the Department. The issuing institution shall be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency.

(2) The wording of the letter of credit shall be identical to the wording specified in section 66264.151, subsection (d). The letter of credit shall contain original signatures and shall be accompanied by the documents specified in this subsection.

(3) An owner or operator who uses a letter of credit to satisfy the requirements of this section shall also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Department shall be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund shall meet the requirements of the trust fund specified in subsection (a) of this section, except that:

(A) an originally signed duplicate of the standby trust agreement shall be submitted to the Department with the letter of credit; and

(B) unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

1. payments into the trust fund as specified in subsection (a) of this section;

2. updating of Schedule A of the trust agreement (see section 66264.151, subsection (a)) to show current closure cost estimates;

3. annual valuations as required by the trust agreement; and

4. notices of nonpayment as required by the trust agreement.

(4) The letter of credit shall be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: the Hazardous Waste Facility Identification Number, name and address of the facility, and the amount of funds assured for closure of the facility by the letter of credit.

(5) The letter of credit shall be irrevocable and issued for a period of at least one (1) year. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least 1 year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Department by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days shall begin on the date when both the owner or operator and the Department have received the notice, as evidenced by the return receipts.

(6) The letter of credit shall be issued in an amount at least equal to the current closure cost estimate, except as provided in subsection (f) of this section.

(7) Whenever the current closure cost estimate increases to an amount greater than the amount of the letter of credit, the owner or operator, within 60 days after the increase, shall either cause the amount of the letter of credit to be increased so that it at least equals the current closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current closure cost estimate decreases, the amount of the letter of credit may be reduced to the amount of the current closure cost estimate following written approval by the Department.

(8) Following a determination by the Department that the owner or operator has failed to perform final closure in accordance with the approved closure plan when required to do so, the Department may draw on the letter of credit. For facilities that require a RCRA permit, that determination shall be made pursuant to Section 25187 of the Health and Safety Code.

(9) If the owner or operator does not establish alternate financial assurance as specified in this section and obtain written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Department shall draw on the letter of credit. The Department shall delay drawing on the letter of credit in accordance with the provisions of this paragraph if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the Department shall draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this section and obtain written approval of such assurance from the Department.

(10) The Department shall return the letter of credit to the issuing institution for termination when:

(A) an owner or operator substitutes alternate financial assurance as specified in this section; or

(B) the Department releases the owner or operator from the requirements in accordance with subsection (i) of this section.

(d) Closure insurance.

(1) An owner or operator may satisfy the requirements of this section by obtaining closure insurance which conforms to the requirements of this section and submitting a certificate of such insurance to the Department. The owner or operator shall submit to the Department a letter from an insurer stating that the insurer is considering issuance of closure insurance conforming to the requirements of this subsection to the owner or operator. The owner or operator shall submit the certificate of insurance to the Department or establish other financial assurance as specified in this section. At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.

(2) The wording of the certificate of insurance shall be identical to the wording specified in section 66264.151, subsection (e). The certificate of insurance shall contain original signatures.

(3) The closure insurance policy shall be issued for a face amount at least equal to the current closure cost estimate, except as provided in subsection (f) of this section. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer shall not change the face amount, although the insurer's future liability shall be lowered by the amount of the payments.

(4) The closure insurance policy shall guarantee that funds shall be available to close the facility whenever final closure occurs. The policy shall also guarantee that once final closure begins, the insurer shall be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon direction from the Department, to such party or parties as the Department specifies.

(5) After beginning partial or final closure, an owner or operator or any other person authorized to conduct closure may request reimbursements for closure expenditures by submitting itemized bills to the Department. The owner or operator may request reimbursements for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for closure activities, the Department shall instruct the insurer to make reimbursements in such amounts as the Department specifies in writing if the Department determines that the partial or final closure expenditures are in accordance with the approved closure plan or otherwise justified. If the Department has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the face amount of the policy, a reimbursement of such amounts may be withheld as deemed prudent until a determination, in accordance with subsection (i) of this section, that the owner or operator is no longer required to maintain financial assurance for final closure of the particular facility is made. If the Department does not instruct the insurer to make such reimbursements, the owner or operator shall be provided a detailed written statement of reasons.

(6) The owner or operator shall maintain the policy in full force and effect until the Department consents to termination of the policy by the owner or operator as specified in subsection (d)(10) of this section. Failure to pay the premium, without substitution of alternate financial assurance as specified in this section, shall constitute a significant violation of these regulations, warranting such remedy as the Department deems necessary. Such violation will be deemed to begin upon receipt by the Department of a notice of future cancellation, termination or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

(7) Each policy shall contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

(8) The policy shall provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate or fail to renew the policy by sending notice by certified mail to the owner or operator and the Department. Cancellation, termination or failure to renew shall not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Department and the owner or operator, as evidenced by the return receipts. Cancellation, termination or failure to renew shall not occur and the policy shall remain in full force and effect in the event that on or before the date of expiration:

(A) the Department deems the facility abandoned; or

(B) interim status is terminated or revoked; or

(C) closure is ordered by the Department or any other State or Federal agency or a U.S. district court or other court of competent jurisdiction; or

(D) the owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or

(E) the premium due is paid.

(9) Whenever the current closure cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within 60 days after the increase, shall either cause the face amount to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current closure cost estimate decreases, the face amount may be reduced to the amount of the current closure cost estimate following written approval by the Department.

(10) The Department shall give written consent to the owner or operator that the insurance policy may be terminated when:

(A) an owner or operator substitutes alternate financial assurance as specified in this section; or

(B) the Department releases the owner or operator from the requirements in accordance with subsection (i) of this section.

(e) Financial test and guarantee for closure.

(1) An owner or operator may satisfy the requirements of this section by demonstrating that he or she passes a financial test as specified in this

subsection. To pass this test the owner or operator shall meet the criteria of either subsection (e)(1)(A) or (B) of this section:

(A) the owner or operator shall have:

1. two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

2. net working capital and tangible net worth each at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates; and

3. tangible net worth of at least $10 million; and

4. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates.

(B) The owner or operator shall have:

1. a current rating for his or her most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

2. tangible net worth at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates; and

3. tangible net worth of at least $10 million; and

4. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates.

(2) The phrase "current closure and postclosure cost estimates" as used in subsection (e)(1) of this section refers to the cost estimates required to be shown in paragraphs 1–4 of the letter from the owner's or operator's chief financial officer. The phrase "current plugging and abandonment cost estimates" as used in subsection (e)(1) of this section refers to the cost estimates required to be shown in paragraphs 1–4 of the letter from the owner's or operator's chief financial officer.

(3) To demonstrate that this test has been met, the owner or operator shall submit the following items to the Department:

(A) a letter signed by the owner's or operator's chief financial officer. The letter shall be on the owner's or operator's official letterhead stationery, shall contain an original signature and shall be worded as specified in section 66264.151, subsection (f); and

(B) a copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(C) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

1. the independent certified public accountant has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year–end financial statements for the latest fiscal year with the amounts in such financial statements; and

2. in connection with that procedure, no matters came to the independent certified public accountant's attention which caused the accountant to believe that the specified data should be adjusted.

(4) After the initial submission of items specified in subsection (e)(3) of this section, the owner or operator shall send updated information to the Department within 90 days after the close of each succeeding fiscal year. This information shall consist of all items specified in subsection (e)(3) of this section.

(5) If the owner or operator no longer meets the requirements of subsection (e)(1) of this section, the owner or operator shall send notice to the Department of intent to establish alternate financial assurance as specified in this section. The notice shall be sent by certified mail within 90 days after any occurrence that prevents the owner or operator from meeting the requirements. The owner or operator shall provide the alternate financial assurance within 120 days after such occurrence.

(6) The Department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subsection (e)(1) of this section, require reports of financial condition at any time from the owner or operator in addition to those specified in subsection (e)(3) of this section. If the Department finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subsection (e)(1) of this section, the owner or operator shall provide alternate financial assurance as specified in this section within 30 days after notification of such a finding.

(7) The Department may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his or her report on examination of the owner's or operator's financial statements (see subsection (e)(3)(B) of this section). An adverse opinion or a disclaimer of opinion shall be cause for disallowance. The Department shall evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in this section within 30 days after notification of the disallowance.

(8) The owner or operator is no longer required to submit the items specified in subsection (e)(3) of this section when:

(A) an owner or operator substitutes alternate financial assurance as specified in this section; or

(B) the Department releases the owner or operator from the requirements of this section in accordance with subsection (i) of this section.

(9) An owner or operator may meet the requirements of this section by obtaining a written guarantee. The guarantor shall be the direct or higher–tier parent corporation of the owner or operator as defined in section 66260.10, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor shall meet and comply with the requirements for owners or operators in subsections (e)(1) through (e)(8) of this section and shall comply with the terms of the guarantee. The wording of the guarantee shall be identical to the wording specified in section 66264.151, subsection (h). The guarantee shall be on the official letterhead stationery of the parent corporation, shall contain an original signature and the signature shall be formally witnessed or notarized. A certified copy of the guarantee shall accompany the items sent to the Department as specified in subsection (e)(3) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee shall provide that:

(A) if the owner or operator fails to perform final closure of a facility covered by the guarantee in accordance with the closure plan and other interim status requirements whenever required to do so, the guarantor shall do so or shall establish a trust fund as specified in subsection (a) of this section in the name of the owner or operator;

(B) the guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation shall not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts;

(C) if the owner or operator fails to provide alternate financial assurance as specified in this section and obtain the written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the guarantee from the guarantor, the guarantor shall provide such alternate financial assurance in the name of the owner or operator.

(f) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this section by establishing more than one fi-

nancial mechanism per facility. The mechanisms shall be as specified in subsections (a) through (d) and (h) of this section, except that it is the combination of mechanisms, rather than the single mechanism, which shall provide financial assurance for an amount at least equal to the current closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, the trust fund may be used as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this subsection, the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify the other as "excess" coverage. The Department may use any or all of the mechanisms to provide for closure of the facility.

(g) Use of a financial mechanism for multiple facilities. An owner or operator may use one or more of the financial assurance mechanisms specified in section 66265.143, subsections (a) through (e) and (h) to meet the requirements of section 66265.143 for more than one facility. Evidence of financial assurance submitted to the Department shall include a list showing, for each facility, the Hazardous Waste Facility Identification Number, name, address and the amount of funds for closure assured by the mechanism. The amount of funds available through the mechanism shall be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for closure of any of the facilities covered by the mechanism, the Department may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

(h) Alternative Financial Mechanism for Closure Costs.

(1) An owner or operator of a facility or facilities where solely non-RCRA hazardous waste is managed may establish financial assurance for closure by means of a financial mechanism other than those specified in subsections (a) through (e) of this section, provided that, prior to its use, the mechanism has been submitted to and approved by the Department. The mechanism shall be at least equivalent to the financial mechanisms specified in subsections (a) through (e) of this section. The Department shall evaluate the equivalency of a mechanism principally in terms of:

(A) Certainty of the availability of funds for the required closure activities; and

(B) The amount of funds that will be made available.

The Department shall also consider other factors deemed to be appropriate, and shall require the owner or operator to submit additional information as is deemed necessary to make the determination.

(2) The owner or operator shall submit to the Department the proposed mechanism together with a letter requesting that the proposed mechanism be considered acceptable for meeting the requirements of section 66265.143. The submission shall include the following information:

(A) Name, address and telephone number of issuing institution; and

(B) Hazardous waste facility identification number, name, address and closure cost estimate for each facility intended to be covered by the proposed mechanism; and

(C) The amount of funds for closure to be assured for each facility by the proposed mechanism; and

(D) The terms of the proposed mechanism (period covered, renewal/extension, cancellation).

(3) The Department shall notify the owner or operator in writing of the determination made regarding the proposed mechanism's acceptability in lieu of the financial mechanisms specified in subsections (a) through (e) of this section.

(4) If a proposed mechanism is found acceptable, the owner or operator shall submit a fully executed document to the Department. The document shall contain original signatures and shall be accompanied by a formal certification or acknowledgment.

(5) If a proposed mechanism is found acceptable except for the amount of funds, the owner or operator shall either increase the amount of the mechanism or obtain other financial assurance as specified in subsections (a) through (e) of this section. The amount of funds available through the combination of mechanisms shall at least equal the current closure cost estimate.

(i) Release of the owner or operator from the requirements of this section.

(1) Within 60 days after receiving certifications from the owner or operator and an independent professional engineer, registered in California that final closure has been completed in accordance with the approved closure plan, the Department shall notify the owner or operator in writing that he or she is no longer required by this section to maintain financial assurance for final closure of the facility, unless the Department has reason to believe that final closure has not been in accordance with the approved closure plan. The Department shall provide the owner or operator a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan.

(2) When transfer of ownership or operational control of a facility occurs, and the new owner or operator has demonstrated to the satisfaction of the Department that he or she is complying with the financial requirements of this section, the Department shall notify the previous owner or operator in writing that they are no longer required to maintain financial assurance for closure of that particular facility.

NOTE: Authority cited: Sections 25150, 25159, 25159.5 and 25245, Health and Safety Code. Reference: Sections 25245 and 25245.4, Health and Safety Code; 40 CFR Section 264.143.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of subsections (f)(1) and (f)(2) filed 10–23–91; operative 1–1–92 (Register 92, No. 12).
3. Editorial correction redesignating subsection (f)(9) to subsection (g) and amending subsection (i)(1) (Register 92, No. 29).
4. Change without regulatory effect amending subsections (a)(2), (b)(2), (b)(3)(A), (c)(2), (c)(3)(A), (d)(2), (e), (e)(3)(A), and (e)(9)–(e)(9)(C) filed 8–17–95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 33).
5. Amendment of subsections (f)(1), (f)(2) and (f)(2)(B)–(C) filed 2–13–96 as an emergency; operative 2–13–96 (Register 96, No. 7). A Certificate of Compliance must be transmitted to OAL by 6–12–96 or emergency language will be repealed by operation of law on the following day.
6. Reinstatement of subsections (f)(1), (f)(2) and (f)(2)(B)–(C) as they existed prior to emergency amendment filed 2–13–96 by operation of Government Code section 11346.1(f) (Register 96, No. 25).
7. Amendment of subsections (f)(1), (f)(2) and (f)(2)(B)–(C) filed 6–17–96 as an emergency; operative 6–17–96 (Register 96, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–15–96 or emergency language will be repealed by operation of law on the following day.
8. Amendment of subsections (f)(1), (f)(2) and (f)(2)(B)–(C) refiled 10–15–96 as an emergency; operative 10–15–96 (Register 96, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–97 or emergency language will be repealed by operation of law on the following day.
9. Reinstatement of section as it existed prior to 10–15–96 emergency amendment by operation of Government Code section 11346.1(f) (Register 97, No. 9).
10. Editorial correction of HISTORY 8 (Register 97, No. 9).
11. Amendment of subsections (f)(1), (f)(2) and (f)(2)(B)–(C) filed 2–24–97 as an emergency; operative 2–24–97 (Register 97, No. 9). A Certificate of Compliance must be transmitted to OAL by 6–24–97 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 2–24–97 order, including amendments to subsection (f)(1)(B) and NOTE, transmitted to OAL 6–24–97 and filed 8–6–97 (Register 97, No. 32).
13. Change without regulatory effect amending subsections (a)(1)–(2), (b)(2), (b)(3)(A), (b)(5), (c)(1)–(2), (c)(3)(A), (c)(8), (d)(2), (d)(8)(C), (e)(3)(A) and (e)(9) filed 11–6–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 45).
14. Change without regulatory effect amending subsection (d)(2) filed 10–22–2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 43).
15. Change without regulatory effect amending section and NOTE filed 12–19–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 51).

§ 66265.144. Cost Estimate for Post-Closure Care.

(a) The owner or operator of a hazardous waste disposal unit shall prepare and submit to the Department a detailed written estimate, in current dollars, of the annual cost of postclosure monitoring and maintenance of the facility in accordance with the applicable postclosure regulations in

sections 66265.117 through 66265.120, 66265.228, 66265.258, 66265.280 and 66265.310.

(1) The postclosure cost estimate must be based on the costs to the owner or operator of hiring a third party to conduct postclosure care activities. A third party is a party who is neither a parent nor subsidiary of the owner or operator. (See definition of parent corporation in section 66260.10).

(2) The postclosure cost estimate is calculated by multiplying the annual postclosure cost estimate by the number of years of postclosure care required under section 66265.117.

(b) During the active life of the facility, the owner or operator shall adjust the postclosure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with section 66265.145. For owners or operators using the financial test or corporate guarantee, the postclosure care cost estimate shall be updated for inflation no later than 30 days after the close of the firm's fiscal year and before submission of updated information to the Department as specified in section 66265.145(d)(5). The adjustment shall be made by recalculating the postclosure cost estimate in current dollars or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business as specified in subsections (b)(1) and (b)(2) of this section. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

(1) The first adjustment is made by multiplying the postclosure cost estimate by the inflation factor. The result is the adjusted postclosure cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted postclosure cost estimate by the latest inflation factor.

(c) During the active life of the facility, the owner or operator shall revise the postclosure cost estimate no later than 30 days after a revision to the postclosure plan which increases the cost of postclosure care. If the owner or operator has an approved postclosure plan, the postclosure cost estimate shall be revised no later than 30 days after the Department has approved the request to modify the plan, if the change in the postclosure plan increases the cost of postclosure care. The revised postclosure cost estimate shall be adjusted for inflation as specified in subsection (b) of this section.

(d) The owner or operator shall keep the following at the facility during the operating life of the facility: the latest postclosure cost estimate prepared in accordance with subsections (a) and (c) of this section and, when this estimate has been adjusted in accordance with subsection (b) of this section, the latest adjusted postclosure cost estimate.

NOTE: Authority cited: Sections 208, 25150, 25159, 25159.5 and 25245, Health and Safety Code. Reference: Section 25245, Health and Safety Code; 40 CFR Section 265.144.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.145. Financial Assurance for Postclosure Care.

An owner or operator of a facility with a hazardous waste disposal unit shall establish and demonstrate to the Department financial assurance for postclosure care of the disposal unit(s). The owner or operator shall choose from the options as specified in subsections (a) through (e) and (h) of this section.

(a) Postclosure trust fund.

(1) An owner or operator may satisfy the requirements of this section by establishing a postclosure trust fund which conforms to the requirements of this subsection and submitting an originally signed duplicate of the trust agreement to the Department. The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(2) The wording of the trust agreement shall be identical to the wording specified in section 66264.151, subsection (a)(1). The trust agreement shall contain original signatures and shall be accompanied by a formal certification of acknowledgment (for example, see section 66264.151, subsection (a)(2)). Schedule A of the trust agreement shall be updated within 60 days after a change in the amount of the current postclosure cost estimate covered by the agreement.

(3) Payments into the trust fund shall be made annually by the owner or operator over the ten (10) years beginning with the establishment of the trust fund or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereafter referred to as the "pay–in period." The payments into the postclosure trust fund shall be made as follows:

(A) The first payment shall be at least equal to the current postclosure cost estimate, except as provided in subsection (f) of this section, divided by the number of years in the pay–in period.

(B) Subsequent payments shall be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment shall be determined by this formula:

$$\text{Next payment} = \frac{CE - CV}{Y}$$

where CE is the current postclosure cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay–in period.

(4) The owner or operator may accelerate payments into the trust fund or deposit the full amount of the current postclosure cost estimate at the time the fund is established. However, the value of the fund shall be maintained at no less than the value that the fund would have if annual payments were made as specified in subsection (a)(3) of this section.

(5) If the owner or operator establishes a postclosure trust fund after having used one or more alternate mechanisms specified in this section, the first payment shall be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made as specified in subsection (a)(3) of this section.

(6) After the pay–in period is completed, whenever the current postclosure cost estimate changes during the operating life of the facility, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current postclosure cost estimate, or obtain other financial assurance as specified in this section to cover the difference.

(7) During the operating life of the facility, if the value of the trust fund is greater than the total amount of the current postclosure cost estimate, the owner or operator may submit a written request to the Department for release of the amount in excess of the current postclosure cost estimate.

(8) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the trust fund, the owner or operator may submit a written request to the Department for release of the amount in excess of the current postclosure cost estimate covered by the trust fund.

(9) Within 60 days after receiving a request from the owner or operator for release of funds as specified in subsection (a)(7) or (8) of this section, the Department will instruct the trustee to release to the owner or operator such funds as the Department specifies in writing.

(10) Before final postclosure occurs, the value of the trust fund shall equal the amount of the current postclosure cost estimate. If the value of the fund is less than the amount of the current estimate, the owner or operator shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current postclosure cost estimate, or obtain other financial assurance, as specified in this section, to cover the difference.

(11) During the period of postclosure care, the Department shall approve a release of funds if the owner or operator demonstrates to the satisfaction of the Department that the value of the trust fund exceeds the remaining cost of postclosure care.

(12) An owner or operator or any other person authorized to conduct postclosure care may request reimbursements for postclosure expendi-

tures by submitting itemized bills to the Department. Within 60 days after receiving bills for postclosure care activities, the Department will instruct the trustee to make reimbursements in those amounts as the Department specifies in writing, if the Department determines that the postclosure expenditures are in accordance with the approved postclosure plan or otherwise justified. If the Department does not instruct the trustee to make such reimbursements, the owner or operator shall be provided a detailed written statement of reasons.

(13) The Department will agree to termination of the trust when:

(A) an owner or operator substitutes alternate financial assurance as specified in this section; or

(B) the Department releases the owner or operator from the requirements in accordance with subsection (i) of this section.

(b) Surety bond guaranteeing payment into a postclosure trust fund.

(1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this subsection and submitting the bond to the Department. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

(2) The wording of the surety bond shall be identical to the wording specified in section 66264.151, subsection (b). The surety bond shall contain original signatures and shall be accompanied by the documents specified in this subsection.

(3) The owner or operator who uses a surety bond to satisfy the requirements of this section shall also establish a standby trust fund. Under the terms of the bond, all payments made thereunder shall be deposited by the surety directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund must meet the requirements specified in subsection (a) of this section, except that:

(A) an originally signed duplicate of the standby trust agreement shall be submitted to the Department with the surety bond; and

(B) until the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

1. payments into the trust fund as specified in subsection (a) of this section;

2. updating of Schedule A of the trust agreement (see section 66264.151, subsection (a)) to show current postclosure cost estimates;

3. annual valuations as required by the trust agreement; and

4. notices of nonpayment as required by the trust agreement.

(4) The bond shall guarantee that the owner or operator shall:

(A) fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility; or

(B) fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin final closure issued by the Department becomes final, or within 15 days after an order to begin final closure is issued by a U.S. district court or other court of competent jurisdiction; or

(C) provide alternate financial assurance as specified in this section, and obtain the Department's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(6) The penal sum of the bond shall be in an amount at least equal to the current postclosure cost estimate, except as provided in subsection (f) of this section.

(7) Whenever the current postclosure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, shall either cause the penal sum to be increased to an amount at least equal to the current postclosure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current postclosure cost estimate decreases, the penal sum may be reduced to the amount of the current postclosure cost estimate following written approval by the Department.

(8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation shall not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipt.

(9) The owner or operator may cancel the bond if the Department has given prior written consent based on receipt of evidence of alternate financial assurance as specified in this section.

(c) Postclosure letter of credit.

(1) An owner or operator may satisfy the requirements of this section by obtaining and submitting to the Department, an irrevocable standby letter of credit which conforms to the requirements of this subsection. The issuing institution shall be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency.

(2) The wording of the letter of credit shall be identical to the wording specified in section 66264.151, subsection (d). The letter of credit shall contain original signatures and shall be accompanied by the documents specified in this subsection.

(3) An owner or operator who uses a letter of credit to satisfy the requirements of this section shall also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Department shall be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund must meet the requirements of the trust fund specified in subsection (a) of this section, except that:

(A) an originally signed duplicate of the standby trust agreement shall be submitted to the Department with the letter of credit; and

(B) unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

1. payments into the trust fund as specified in subsection (a) of this section;

2. updating of Schedule A of the trust agreement (see section 66264.151, subsection (a)) to show current postclosure cost estimates;

3. annual valuations as required by the trust agreement; and

4. notices of nonpayment as required by the trust agreement.

(4) The letter of credit shall be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution and date, and providing the following information: the Hazardous Waste Facility Identification Number, name and address of the facility and the amount of funds assured for postclosure care of the facility by the letter of credit.

(5) The letter of credit shall be irrevocable and issued for a period of at least one (1) year. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one (1) year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Department by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days shall begin on the date when both the owner or operator and the Department have received the notice, as evidenced by the return receipt.

(6) The letter of credit shall be issued in an amount at least equal to the current postclosure cost estimate, except as provided in subsection (f) of this section.

(7) Whenever the current postclosure cost estimate increases to an amount greater than the amount of the letter of credit during the operating life of the facility, the owner or operator, within 60 days after the increase, shall either cause the amount of the letter of credit to be increased so that it at least equals the current postclosure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current postclosure cost estimate decreases during the operating life of

the facility, the amount of the letter of credit may be reduced to the amount of the current postclosure cost estimate following written approval from the Department.

(8) During the period of postclosure care, the Department may approve a decrease in the amount of the letter of credit if the owner or operator demonstrates to the Department that the amount exceeds the remaining cost of postclosure care.

(9) Following a determination by the Department that the owner or operator has failed to perform postclosure care in accordance with the approved postclosure plan and other permit requirements, the Department may draw on the letter of credit.

(10) If the owner or operator does not establish alternate financial assurance as specified in this section and obtain written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Department shall draw on the letter of credit. The Department shall delay drawing on the letter of credit in accordance with the provisions of this paragraph, if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the Department shall draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this section and obtain written approval of such assurance from the Department.

(11) The Department shall return the letter of credit to the issuing institution for termination when:

(A) an owner or operator substitutes alternate financial assurance as specified in this section; or

(B) The Department releases the owner or operator from the requirements in accordance with subsection (i) of this section.

(d) Postclosure insurance.

(1) An owner or operator may satisfy the requirements of this section by obtaining postclosure insurance which conforms to the requirements of this subsection and submitting a certificate of such insurance to the Department. The owner or operator shall submit to the Department a letter from an insurer stating that the insurer is considering issuance of postclosure insurance conforming to the requirements of this section to the owner or operator. The owner or operator shall submit the certificate of insurance to the Department or establish other financial assurance as specified in this section. At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.

(2) The wording of the certificate of insurance shall be identical to the wording specified in section 66264.151, subsection (e). The certificate of insurance shall contain original signatures.

(3) The postclosure insurance policy shall be issued for a face amount at least equal to the current postclosure cost estimate, except as provided in subsection (f) of this section. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer shall not change the face amount, although the insurer's future liability shall be lowered by the amount of the payments.

(4) The postclosure insurance policy shall guarantee that funds shall be available to provide postclosure care of the facility whenever the postclosure period begins. The policy shall also guarantee that once postclosure care begins the insurer shall be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Department, to such party or parties as the Department specifies.

(5) An owner or operator or any other person authorized to perform postclosure care may request reimbursement for postclosure care expenditures by submitting itemized bills to the Department. Within 60 days after receiving bills for postclosure care activities, the Department will instruct the insurer to make reimbursements in those amounts as the Department specifies in writing, if the Department determines that the postclosure expenditures are in accordance with the approved postclosure plan or otherwise justified. If the Department does not instruct the insurer to make such reimbursements, a detailed written statement of reasons will be provided to the owner or operator.

(6) The owner or operator shall maintain the policy in full force and effect until the Department consents to termination of the policy by the owner or operator as specified in subsection (d)(11) of this section. Failure to pay the premium, without substitution of alternate financial assurance as specified in the section, shall constitute a significant violation of these regulations, warranting such remedy as the Department deems necessary. Such violation shall be deemed to begin upon receipt by the Department of a notice of future cancellation, termination or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

(7) Each policy shall contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

(8) The policy shall provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate or fail to renew the policy by sending notice by certified mail to the owner or operator and the Department. Cancellation, termination or failure to renew shall not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Department and the owner or operator, as evidenced by the return receipts. Cancellation, termination or failure to renew shall not occur and the policy shall remain in full force and effect in the event that on or before the date of expiration:

(A) the Department deems the facility abandoned; or

(B) interim status is terminated or revoked; or

(C) closure is ordered by the Department or any other State or Federal agency or a U.S. District Court or other court of competent jurisdiction; or

(D) the owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or

(E) the premium due is paid.

(9) Whenever the current postclosure cost estimate increases to an amount greater than the face amount of the policy during the operating life of the facility, the owner or operator, within 60 days after the increase, shall either cause the face amount to be increased to an amount at least equal to the current postclosure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current postclosure cost estimate decreases during the operating life of the facility, the face amount may be reduced to the amount of the current postclosure cost estimate following written approval by the Department.

(10) Commencing on the date that liability to make payments pursuant to the policy accrues, the insurer shall thereafter annually increase the face amount of the policy. Such increase shall be equivalent to the face amounts of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon–issue yield announced by the U.S. Treasury for 26–week Treasury securities.

(11) The Department will give written consent to the owner or operator that the insurance policy may be terminated when:

(A) an owner or operator substitutes alternate financial assurance as specified in this section; or

(B) the Department releases the owner or operator from the requirements of this section in accordance with subsection (i) of this section.

(e) Financial test and guarantee for postclosure care.

(1) An owner or operator may satisfy the requirements of this section by demonstrating that he or she passes a financial test as specified in this section. To pass this test the owner or operator shall meet the criteria either of subsection (e)(1)(A) or (B) of this section.

(A) the owner or operator shall have:

1. two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

2. net working capital and tangible net worth each at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates; and

3. tangible net worth of at least $10 million; and

4. assets in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates.

(B) the owner or operator shall have:

1. a current rating for his or her most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

2. tangible net worth at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates; and

3. tangible net worth of at least $10 million; and

4. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates.

(2) The phrase "current closure and postclosure cost estimates" as used in subsection (e)(1) of this section refers to the cost estimates required to be shown in paragraphs 1 through 4 of the letter from the owner's or operator's chief financial officer. The phrase "current plugging and abandonment cost estimates" as used in subsection (e)(1) of this section refers to the cost estimates required to be shown in paragraphs 1 through 4 of the letter from the owner's or operator's chief financial officer.

(3) To demonstrate that this test can be met, the owner or operator shall submit the following items to the Department:

(A) a letter signed by the owner's or operator's chief financial officer and worded as specified in section 66264.151, subsection (f). The letter shall be on the owner's or operator's official letterhead stationery, and shall contain an original signature, and

(B) a copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(C) a special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

1. the independent certified public accountant has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year–end financial statements for the latest fiscal year with the amounts in such financial statements; and

2. in connection with that procedure, no matters came to the independent certified public accountant's attention which caused him or her to believe that the specified data should be adjusted.

(4) After the initial submission of items specified in subsection (e)(3) of this section, the owner or operator shall send updated information to the Department within 90 days after the close of each succeeding fiscal year. This information shall consist of all three items specified in subsection (e)(3) of this section.

(5) If the owner or operator no longer meets the requirements of subsection (e)(1) of this section, the owner or operator must send notice to the Department of intent to establish alternate financial assurance as specified in this section. The notice shall be sent by certified mail within 90 days after any occurrence that prevents the owner or operator from meeting the requirements. The owner or operator shall provide the alternate financial assurance within 120 days after any such occurrence.

(6) The Department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subsection (e)(1) of this section, require reports of financial condition at any time from the owner or operator in addition to those specified in subsection (e)(3) of this section. If the Department finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subsection (e)(1) of this section, the owner or operator shall provide alternate financial assurance as specified in this section within 30 days after notification of such a finding.

(7) The Department may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his or her report on examination of the owner's or operator's financial statements (see subsection (e)(3)(B) of this section). An adverse opinion or a disclaimer of opinion shall be cause for disallowance. The Department will evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in this section within 30 days after notification of the disallowance.

(8) During the period of postclosure care, the Department may approve a decrease in the current postclosure cost estimate for which this test demonstrates financial assurance if the owner or operator demonstrates to the Department that the amount of the cost estimate exceeds the remaining cost of postclosure care.

(9) The owner or operator is no longer required to submit the items specified in subsection (e)(3) of this section when:

(A) an owner or operator substitutes alternate financial assurance as specified in this section; or

(B) the Department releases the owner or operator from the requirements in accordance with subsection (i) of this section.

(10) An owner or operator may meet the requirements for this section by obtaining a written guarantee. The guarantor shall be the direct or higher–tier parent corporation as defined in section 66260.10 of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor shall meet the requirements for owners or operators in subsections (e)(1) through (9) of this section and shall comply with the terms of the guarantee. The wording of the guarantee shall be identical to the wording specified in section 66264.151, subsection (h). A certified copy of the guarantee shall accompany the items sent to the Department as specified in subsections (e)(3) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee shall provide that:

(A) if the owner or operator fails to perform postclosure care of a facility covered by the guarantee in accordance with the postclosure plan and other interim status requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in subsection (a) of this section in the name of the owner or operator;

(B) the guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation shall not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department as evidenced by the return receipt;

(C) if the owner or operator fails to provide alternate financial assurance as specified in this section and obtain the written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the guarantee from the guarantor, the guarantor shall provide such alternate financial assurance in the name of the owner or operator.

(f) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this section by establishing more than one financial mechanism per facility. The mechanisms shall be as specified in subsections (a) through (d) and (h) of this section, except that it is the combination of mechanisms, rather than the single mechanism, which shall provide financial assurance for an amount at least equal to the current postclosure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he or she may use

the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this subsection, the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify the other as "excess" coverage. The Department may use any or all of the mechanisms to provide for postclosure care of the facility.

(g) Use of a financial mechanism for multiple facilities for postclosure care. An owner or operator may use one or more of the financial assurance mechanisms specified in subsections (a) through (e) and (h) of this section and section 66265.146 to meet the requirements of this section for more than one facility. Evidence of financial assurance submitted to the Department shall include a list showing, for each facility, the Hazardous Waste Facility Identification Number, name, address and the amount of funds for postclosure care assured by the mechanism. The amount of funds available through the mechanism shall be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for postclosure care of any of the facilities covered by the mechanism, the Department may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

(h) Alternative Financial Mechanism for Postclosure Care.

(1) The owner or operator may establish financial assurance for postclosure care for facilities which manage solely non–RCRA hazardous waste by means of a financial mechanism other than as specified in subsections (a) through (e) of this section, provided that prior to its use the mechanism has been submitted to and approved by the Department. The mechanism shall be at least equivalent to the financial mechanisms specified in subsections (a) through (e) of this section and section 66265.146. The Department shall evaluate the equivalency of a mechanism principally in terms of:

(A) certainty of the availability of funds for the required postclosure care activities; and

(B) the amount of funds that will be made available;

(C) the Department may also consider other factors deemed to be appropriate, and may require the owner or operator to submit additional information as is deemed necessary to make the determination.

(2) The owner or operator shall submit to the Department the proposed mechanism together with a letter requesting that the proposed mechanism be considered acceptable for meeting the requirements of this section. The submission shall include the following information:

(A) name, address and phone number of the issuing institution; and

(B) hazardous waste facility identification number, name, address and postclosure cost estimate for each facility; and

(C) the amount of funds for postclosure care to be assured for each facility by the proposed mechanism; and

(D) the terms of the proposed mechanism (period covered, renewal/extension, cancellation).

(3) The Department shall notify the owner or operator in writing of the determination made regarding the proposed mechanism's acceptability in lieu of the financial assurance mechanisms specified in subsections (a) through (e) of this section.

(4) If a proposed mechanism is found acceptable, the owner or operator shall submit a fully executed document to the Department. The document shall contain original signatures and shall be accompanied by a formal certification of acknowledgment.

(5) If a proposed mechanism is found acceptable except for the amount of funds, the owner or operator shall either increase the amount of the mechanism or obtain other financial assurance as specified in subsections (a) through (e) of this section. The amount of funds available through the combination of mechanisms shall at least equal the current postclosure cost estimate.

(i) Release of the owner or operator from Financial Assurance requirements for postclosure care.

(1) Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that all postclosure care requirements have been completed in accordance with the approved postclosure plan, the Department, at the request of the owner or operator, will notify the owner or operator in writing that he or she is no longer required by this section to maintain financial assurance for postclosure care of that unit, unless the Department has reason to believe that postclosure care has not been in accordance with the approved postclosure plan. The Department shall provide the owner or operator a detailed written statement of any such reason to believe that postclosure care has not been in accordance with the approved postclosure plan.

(2) When transfer of ownership or operational control of a facility occurs, and the new owner or operator has demonstrated to the satisfaction of the Department that the owner or operator is complying with the financial requirements of this section, the Department shall notify the previous owner or operator in writing that they are no longer required to maintain financial assurance for postclosure care of that particular facility.

NOTE: Authority cited: Sections 25150, 25159, 25159.5 and 25245, Health and Safety Code. Reference: Section 25245, Health and Safety Code; 40 CFR Section 265.145.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect amending subsections (a)(2), (b)(2), (b)(3)(A), (c)(2), (c)(3)(A), (d)(2), (e), (e)(3)(A), and (e)(10)–(e)(10)(C) and renumbering subsections filed 8–17–95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 33).
3. Editorial correction of subsection numbering (Register 95, No. 35).
4. Change without regulatory effect amending subsections (a)(1)–(3), (b)(2), (b)(3)(A), (c)(1)–(2), (c)(3)(A), (d)(2), (d)(8)(C), (e)(3)(A), (e)(5) and (e)(10) filed 11–6–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 45).
5. Change without regulatory effect amending subsection (d)(2) filed 10–22–2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 43).
6. Change without regulatory effect amending section and NOTE filed 12–19–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 51).

§ 66265.146. Use of a Mechanism for Financial Assurance of Both Closure and Post–Closure Care.

An owner or operator may satisfy the requirements for financial assurance for both closure and post–closure care for one or more facilities by using a trust fund, surety bond, letter of credit, insurance, financial test, or corporate guarantee or alternative mechanism, that meets the specifications for the mechanism in both sections 66265.143 and 66265.145. The amount of funds available through the mechanism shall be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for financial assurance of closure and of post–closure care.

NOTE: Authority cited: Sections 208, 25150, 25159, 25159.5 and 25245, Health and Safety Code. Reference: Section 25245, Health and Safety Code; 40 CFR Section 265.146.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.147. Liability Requirements.

(a) Coverage for sudden accidental occurrences. An owner or operator of a hazardous waste transfer, treatment, storage or disposal facility or a group of such facilities, shall demonstrate to the Department financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. Except as specified in Section 67450.16, the owner or operator shall have and maintain liability coverage for sudden accidental occurrences in the amount of at least $1 million per occurrence with an annual aggregate of at least $2 million, exclusive of legal defense costs. This liability coverage may be demonstrated, as specified in subsections (a)(1), (2), (3), (4), (5), (6) or (8) of this section, and for an operator which is a public agency proposing to operate a household hazardous waste collection facility, subsection (7).

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this subsection.

(A) At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.

(B) Each insurance policy shall be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. If requested by the Department, the owner or operator shall provide a copy of the insurance policy; the copy of the insurance policy shall contain original signatures.

(C) The wording of the liability endorsement shall be identical to the wording specified in section 66264.151, subsection (i). The liability endorsement shall contain original signatures and shall be submitted to the Department.

(D) The wording of the certificate of insurance shall be identical to the wording specified in section 66264.151, subsection (j). The certificate of insurance shall contain original signatures and shall be submitted to the Department.

(E) An owner or operator of a new facility shall submit the liability endorsement or certificate of insurance to the Department at least 60 days before the date on which hazardous waste is first received for transfer, treatment, storage or disposal. The insurance shall be effective before this initial receipt of hazardous waste.

(2) An owner or operator may meet the requirements of this section by passing a financial test or using the guarantee for liability coverage as specified in subsections (f) and (g) of this section.

(3) An owner or operator may meet the requirements of this section by obtaining a letter of credit for liability coverage as specified in subsection (h) of this section.

(4) An owner or operator may meet the requirements of this section by obtaining a payment bond for liability coverage as specified in subsection (i) of this section.

(5) An owner or operator may meet the requirements of this section by obtaining a trust fund for liability coverage as specified in subsection (j) of this section.

(6) An owner or operator may demonstrate the required liability coverage through use of combinations of insurance, financial test, guarantee, letter of credit, payment bond and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated shall total at least the minimum amounts required by this section. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this subsection, the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify the other assurance as "excess" coverage.

(7) An operator which is a public agency which is proposing to operate a household hazardous waste collection facility may meet the requirements of this section by obtaining self-insurance as specified in subsection (k) of this section.

(8) An owner or operator may meet the requirements of this section by obtaining an alternative financial mechanism, as described in subsection (*l*) of this section.

(9) An owner or operator shall notify the Department in writing within 30 days whenever:

(A) a claim results in a reduction in the amount of financial assurance for liability coverage under this section provided by a financial instrument authorized by subsections (a)(1) through (a)(5), (a)(7) and (a)(8) of this section; or

(B) a Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste transfer, treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under subsections (a)(1) through (a)(5), (a)(7) and (a)(8) of this section; or

(C) a final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under subsection (a)(1) through (a)(5), (a)(7) and (a)(8) of this section

(b) Coverage for non-sudden accidental occurrences. An owner or operator of a surface impoundment as defined in section 66260.10, landfill as defined in section 66260.10, or land treatment facility as defined in section 66260.10 which is used to manage hazardous waste, or a group of such facilities, shall demonstrate to the Department financial responsibility for bodily injury and property damage to third parties caused by non-sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for non-sudden accidental occurrences in the amount of at least $3 million per occurrence, as defined in section 66260.10 with an annual aggregate of at least $6 million, exclusive of legal defense costs. An owner or operator who must meet the requirements of this section may combine the required per-occurrence coverage levels for sudden and non-sudden accidental occurrences into a single per-occurrence level, and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and non-sudden accidental occurrences shall maintain liability coverage in the amount of at least $4 million per occurrence and $8 million annual aggregate. This liability coverage may be demonstrated as specified in subsections (b)(1) through (7) of this section.

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this subsection.

(A) At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.

(B) Each insurance policy shall be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. If requested by the Department, the owner or operator shall provide a copy of the insurance policy; the copy of the insurance policy shall contain original signatures.

(C) The wording of the liability endorsement shall be identical to the wording specified in section 66264.151, subsection (i). The liability endorsement shall contain original signatures and shall be submitted to the Department.

(D) The wording of the certificate of insurance shall be identical to the wording specified in section 66264.151, subsection (j). The certificate of insurance shall contain original signatures and shall be submitted to the Department.

(E) An owner or operator of a new facility shall submit the liability endorsement or certificate of insurance to the Department at least 60 days before the date on which hazardous waste is first received for transfer, treatment, storage or disposal. The insurance shall be effective before this initial receipt of hazardous waste.

(2) An owner or operator may meet the requirements of this section by passing a financial test or using the guarantee for liability coverage as specified in sections (f) and (g) of this section.

(3) An owner or operator may meet the requirements of this section by obtaining a letter of credit for liability coverage as specified in subsection (h) of this section.

(4) An owner or operator may meet the requirements of this section by obtaining a payment bond for liability coverage as specified in subsection (i) of this section.

(5) An owner or operator may meet the requirements of this section by obtaining a trust fund for liability coverage as specified in subsection (j) of this section.

(6) An owner or operator may demonstrate the required liability coverage through use of combinations of insurance, financial test, guarantee, letter of credit, payment bond and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirements with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the

guarantor. The amounts of coverage demonstrated shall total at least the minimum amounts required by this section. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this subsection, the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify the other assurance as "excess" coverage.

(7) An owner or operator may meet the requirements of this section by obtaining an alternative financial mechanism, as described in subsection (*l*) of this section.

(8) An owner or operator shall notify the Department in writing within 30 days whenever:

(A) a claim results in a reduction in the amount of financial assurance for liability coverage under this section provided by a financial instrument authorized by subsections (b)(1) through (b)(7) of this section; or

(B) a Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste transfer, treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under subsections (b)(1) through (b)(7) of this section; or

(C) a final court order establishing a judgement for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under subsections (b)(1) through (b)(7) of this section.

(c) Request for variance. If an owner or operator can demonstrate to the satisfaction of the Department that the levels of financial responsibility required by subsection (a) or (b) of this section or section 67450.5 are not consistent with the degree and duration of risk associated with transfer, treatment, storage, or disposal at the facility or group of facilities, the owner or operator may obtain a variance from the Department. The request for a variance shall be submitted in writing to the Department. If granted, the variance shall take the form of an adjusted level of required liability coverage, such level to be based on the Department's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. The Department may require an owner or operator who requests a variance to provide such technical and engineering information as is deemed necessary by the Department to determine a level of financial responsibility other than that required by subsection (a) or (b) of this section or section 67450.5. The Department will process a variance request as if it were a permit modification request under section 66270.41, subsection (a)(5) of this division and subject to the procedures of section 66271.4 of this division. Notwithstanding any other provision, the Department may hold a public hearing at its discretion or whenever it finds, on the basis of requests for a public hearing, a significant degree of public interest is expressed in a tentative decision to grant a variance.

(d) Adjustments by the Department. If the Department determines that the levels of financial responsibility required by subsections (a) or (b) of this section or section 67450.5 are not consistent with the degree and duration of risk associated with transfer, treatment, storage or disposal at the facility or group of facilities, the Department may adjust the level of financial responsibility required under subsections (a) or (b) of this section or section 67450.5 as may be necessary to protect human health and the environment. This adjusted level shall be based on the Department's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. In addition, if the Department determines that there is a significant risk to human health and the environment from non-sudden accidental occurrences resulting from the operations of a facility that is not a surface impoundment, landfill or land treatment facility, the Department shall require that an owner or operator of the facility comply with subsection (b) of this section. An owner or operator shall furnish to the Department, within a reasonable time, any information which the Department requests to determine whether cause exists for such adjustments of level or type of coverage. The Department shall process an adjustment of the level of required coverage as if it were a permit modification under section 66270.41, subsection (a)(5) of this division and subject to the procedures of 66271.4 of this division. Notwithstanding any other provision, the Department may hold a public hearing at its discretion or whenever, on the basis of requests for a public hearing, a significant degree of public interest is expressed in a tentative decision to adjust the level or type of required coverage.

(e) Period of coverage. Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Department shall notify the owner or operator in writing that he or she is no longer required by this section to maintain liability coverage for that facility, unless the Department has reason to believe that closure has not been in accordance with the approved closure plan.

(f) Financial test for liability coverage.

(1) An owner or operator may satisfy the requirements of this section by demonstrating that he or she passes a financial test as specified in this subsection. To pass this test the owner or operator shall meet the criteria of subsection (f)(1)(A) or (B) of this section.

(A) the owner or operator shall have:

1. net working capital and tangible net worth each at least six times the amount of liability coverage to be demonstrated by this test; and

2. tangible net worth of at least $10 million; and

3. assets in the United States amounting to either:

a. at least 90 percent of total assets; or

b. at least six times the amount of liability coverage to be demonstrated by this test.

(B) the owner or operator shall have:

1. a current rating for his or her most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's, or Aaa, Aa, A or Baa as issued by Moody's; and

2. tangible net worth of at least $10 million; and

3. tangible net worth at least six times the amount of liability coverage to be demonstrated by this test; and

4. assets in the United States amounting to either:

a. at least 90 percent of total assets; or

b. at least six times the amount of liability coverage to be demonstrated by this test.

(2) The phrase "amount of liability coverage" as used in subsection (f)(1) of this section refers to the annual aggregate amounts for which coverage is required under subsections (a) and (b) of this section and sections 67450.14 and 67450.15.

(3) To demonstrate that this test can be met, the owner or operator shall submit the following items to the Department:

(A) a letter signed by the owner's or operator's chief financial officer and worded as specified in section 66264.151, subsection (g). The letter shall be on the official letterhead stationery of the owner or operator, and shall contain an original signature. An owner or operator may use the financial test to demonstrate both assurance for closure or postclosure care, as specified in section 66264.143, subsection (f), section 66264.145, subsection (f), section 66265.143, subsection (e), section 66265.145, subsection (e) and section 67450.13, and liability coverage as specified in section 66264.147, subsection (a), section 66264.147, subsection (b), section 66265.147, subsection (a), section 66265.147, subsection (b), sections 67450.14 and 67450.15. If an owner or operator is using the financial test to cover both forms of financial responsibility, a separate letter is not required.

(B) a copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year.

(C) a special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

1. the independent certified public accountant has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements

for the latest fiscal year with the amounts in such financial statements; and

2. in connection with that procedure, no matters came to the independent certified public accountant's attention which caused him or her to believe that the specified data should be adjusted.

(4) An owner or operator of a new facility shall submit the items specified in subsection (f)(3) of this section to the Department at least 60 days before the date on which hazardous waste is first received for transfer, treatment, storage or disposal.

(5) After the initial submission of items specified in subsection (f)(3) of this section, the owner or operator shall send updated information to the Department within 90 days after the close of each succeeding fiscal year. This information shall consist of all three items specified in subsection (f)(3) of this section.

(6) If the owner or operator no longer meets the requirements of subsection (f)(1) of this section, liability coverage shall be obtained for the entire amount of coverage as described in this section by use of the financial mechanisms described in this section. Notice shall be sent to the Department of the owner's or operator's intent to obtain the required coverage; notice shall be sent by either registered mail or by certified mail within 90 days after any occurrence that prevents the owner or operator from meeting the test requirements. Evidence of liability coverage shall be submitted to the Department within 90 days after any occurrence that prevents the owner or operator from meeting the requirements.

(7) The Department may, based on a reasonable belief that the owner or operator no longer meets the requirements of subsection (f)(1) of this section, require reports of financial condition at any time from the owner or operator in addition to those specified in subsection (f)(3) of this section. If the Department finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subsection (f)(1) of this section, the owner or operator shall provide alternate financial assurance for closure and postclosure care and evidence of the required liability coverage as specified in this section within 30 days after notification of such a finding.

(8) The Department may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his or her report on examination of the owner's or operator's financial statements (see subsection (f)(3)(B) of this section). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Department will evaluate other qualifications on an individual basis. The owner or operator shall provide evidence of liability coverage for the entire amount required as specified in this section within 30 days after notification of disallowance.

(9) The owner or operator is no longer required to submit the items specified in subsection (f)(3) of this section when:

(A) an owner or operator substitutes alternate financial assurance for closure and postclosure care and evidence of liability coverage as specified in this section; or

(B) the Department releases the owner or operator from the requirements of this section in accordance with sections 66265.143, subsection (i), 66265.145, subsection (i) and 66265.147, subsection (e).

(g) Guarantee for liability coverage.

(1) Subject to subsection (g)(2) of this section, an owner or operator may meet the requirements of this section by obtaining a written guarantee, hereinafter referred to as "guarantee." The guarantor shall be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor shall meet the requirements for owners or operators in subsections (f)(1) through (f)(6) of this section. The wording of the guarantee shall be identical to the wording specified in section 66264.151, subsection (h)(2), and shall have original signatures. A certified copy of the guarantee shall accompany the items sent to the Department as specified in subsection (f)(3) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, this letter shall describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter shall describe this "substantial business relationship" and the value received in consideration of the guarantee. The term of the guarantee shall provide as follows:

(A) if the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden or non-sudden accidental occurrences (or both as the case may be), arising from the operation of facilities covered by this guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor shall do so up to the limits of coverage.

(B) the guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Department. This guarantee shall not be terminated unless and until the Department approves alternate liability coverage complying with section 66264.147 and/or section 66265.147.

(2)(A) In the case of corporations incorporated in states other than California, a guarantee may be used to satisfy the requirements of this section only if the Attorney General or Insurance Commissioner of;

1. the State in which the guarantor is incorporated, and

2. each state in which a facility covered by the guarantee is located have submitted a written statement to the Department that a guarantee executed as described in this section is a legally valid and enforceable obligation in that State.

(B) In the case of corporations incorporated outside the United States, a guarantee may be used to satisfy the requirements of this section only if;

1. the non-U.S. corporation has identified a registered agent for service of process in each State in which a facility covered by the guarantee is located and in the State in which it has its principal place of business; and if

2. the Attorney General or Insurance Commissioner of each State in which a facility covered by the guarantee is located and the State in which the guarantor corporation has its principal place of business, has submitted a written statement to the Department that a guarantee executed as described in this section is a legally valid and enforceable obligation in that State.

(h) Letter of credit for liability coverage:

(1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit that conforms to the requirements of this subsection and submitting a copy of the letter of credit to the Department.

(2) The financial institution issuing the letter of credit must be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency.

(3) The wording of the letter of credit shall be identical to the wording specified in section 66264.151, subsection (k) of this division. The letter of credit shall contain original signatures and shall be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, effective date, and providing the following information; the hazardous waste facility identification number, name and address of the facility, and the amount of funds assured for valid third party liability claims of the facility by the letter of credit.

(4) An owner or operator who uses a letter of credit to satisfy the requirement of this section may also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the trustee of the standby trust shall be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the trustee. The trustee of the standby trust fund shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency. This standby trust fund shall meet all of the requirements of the trust fund specified in subsection (j) of this section.

(5) The wording of the standby trust fund shall be identical to the wording specified in section 66264.151, subsection (n).

(6) The letter of credit shall be irrevocable and issued for a period of at least one (1) year. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one (1) year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Department by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days shall begin on the date when both the owner or operator and the Department have received the notice, as evidenced by the return receipts.

(7) The letter of credit shall be issued in an amount at least equal to the required per occurrence and annual aggregate amount for sudden, or nonsudden, or sudden and nonsudden liability coverage, except as provided in subsection (b)(6) of this section.

(i) Payment bond for liability coverage.

(1) An owner or operator may satisfy the requirements of this section by obtaining a payment bond that conforms to the requirements of this subsection and submitting a copy of the bond to the Department.

(2) The surety company issuing the bond shall be among those listed as acceptable sureties on Federal bonds in the most recent Circular 570 of the U.S. Department of the Treasury.

(3) The wording of the payment bond shall be identical to the wording specified in section 66264.151, subsection (*l*). The payment bond shall contain original signatures.

(4) A payment bond may be used to satisfy the requirements of this section only if the Attorney General or Insurance Commissioner of

(A) the State in which the surety is incorporated, and

(B) each State in which a facility/TTU covered by the payment bond is located have submitted a written statement to the Department that a payment bond executed as described in this section and is a legally valid and enforceable obligation in that State.

(j) Trust fund for liability coverage.

(1) An owner or operator may satisfy the requirements of this section by establishing a trust fund that conforms to the requirements of this subsection by submitting an originally signed duplicate of the trust agreement and a formal certification of acknowledgment.

(2) The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or state agency.

(3) The trust fund for liability coverage shall be funded for the full amount of the liability coverage to be provided by the trust fund before it may be relied upon to satisfy the requirements of this section. If at any time after the trust fund is created the amount of funds in the trust fund is reduced below the full amount of the liability coverage to be provided, the owner or operator, by the anniversary date of the establishment of the fund, shall either add sufficient funds to the trust fund to cause its value to equal the full amount of liability coverage to be provided, or obtain other financial assurance as specified in this section to cover the difference. For purposes of this subsection, "the full amount of the liability coverage to be provided" means the amount of coverage for sudden and/or nonsudden occurrences required to be provided by the owner or operator by this section, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(4) The wording of the trust agreement shall be identical to the wording specified in section 66264.151, subsection (m).

(k) Self–Insurance for Public Agencies.

(1) A public agency operating a household hazardous waste collection facility may demonstrate the required liability coverage by self–insuring as specified in this section, and by submitting evidence of such insurance to the Department.

(2) The public agency shall have:

(A) self–insurance;

(B) an active safety and loss prevention program that seeks to minimize the frequency and magnitude of third party damages caused by accidental occurrences and other self–insured losses; and

(C) procedures for and a recent history of timely investigation and resolution of any claims for third party damages caused by accidental occurrences and other self–insured losses.

(3) To demonstrate that self–insurance can be used, the public agency shall submit the following items to the Department at least 45 days before the date on which hazardous waste is first received. The insurance shall be effective before the initial receipt of hazardous waste:

(A) a Certificate of Self–Insurance shall be completed by utilizing only form DTSC 1165 (12/00), (Certificate of Self–Insurance), without making any changes to the form, which shall be provided by the Department; and

(B) a letter from the Chief Administrative Officer of the public agency which contains an original signature, stating that self–insurance is the chosen mechanism for liability coverage.

(4) If the public agency no longer meets the requirements of subsection (k)(2) of this section, notice shall be sent by either registered mail or certified mail within 30 days after any occurrence that prevents the public agency from meeting the self–insurance requirements. Alternative liability coverage shall be obtained for the entire amount of coverage as described in Section 67450.4, subsection (b) by using one of the other financial mechanisms described in this section. Evidence of the alternative liability coverage shall be submitted to the Department within 90 days after any occurrence that prevents the public agency from meeting the self–insurance requirements.

(5) The Department may, based on the reasonable belief that the public agency no longer meets the requirements of subsection (k)(2) of this section, require reports of financial condition and insurance policies at any time from the public agency in addition to those specified in subsection (k)(3) of this section. If the Department finds, on the basis of such reports or other information, that the public agency no longer meets the requirements of subsection (k)(2) of this section, the public agency shall provide alternate financial assurance for liability coverage as specified in this section within 30 days after notification of such a finding.

(*l*) Liability Coverage—Alternative Mechanism.

(1) An owner or operator of a facility or facilities where solely non–RCRA hazardous waste is managed, a Transportable Treatment Unit (TTU) operated pursuant to section 67450.2(a) and/or a Fixed Treatment Unit (FTU) operated pursuant to section 67450.2(b), may demonstrate the required liability coverage by means of a mechanism other than those specified in subsections (a) and (b) of this section, provided that, prior to its use, the proposed mechanism has been submitted to and approved by the Department. The mechanism shall be at least equivalent to the mechanisms specified in subsections (a) and (b) of this section. The Department shall evaluate the equivalency of a mechanism principally in terms of:

(A) certainty of the availability of funds for the required liability coverage; and

(B) the amount of funds that will be made available;

(C) the Department shall also consider other factors deemed to be appropriate, and shall require the owner or operator to submit additional information as is deemed necessary to make the determination.

(2) The owner or operator shall submit to the Department the proposed mechanism together with a letter requesting that the alternate mechanism be considered acceptable for meeting the requirements of subsections (a) and (b) of this section and sections 67450.14 and 67450.15. The submission shall include the following information:

(A) the name, address and phone number of the issuing institution; and

(B) hazardous waste facility identification number, name, address and the amount of liability, TTU or FTU coverage to be provided for each facility; and

(C) the terms of the proposed mechanism (period of coverage, renewal/extension, cancellation).

(3) The Department shall notify the owner or operator in writing of the determination made regarding the proposed mechanism's acceptability in lieu of the other mechanisms specified in subsections (a) and (b) of this section and sections 67450.14 and 67450.15.

(4) If a proposed mechanism is found acceptable, the owner or operator shall submit a fully executed document to the Department. The document shall contain original signatures and shall be accompanied by a formal certification of acknowledgment.

(5) If a proposed mechanism is found acceptable except for the amount of coverage, the owner or operator shall either increase the coverage or obtain other liability coverage as specified in subsections (a) and (b) of this section and sections 67450.14 and 67450.15. The amount of coverage available through the combination of mechanisms shall at least equal the amounts required by subsections (a) and (b) of this section and sections 67450.14 and 67450.15.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245, 58004 and 58012, Health and Safety Code. Reference: Sections 25200.1 and 25245, Health and Safety Code; 40 CFR Section 265.147.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of subsections (g) and (*l*) filed 10–23–91; operative 1–1–92 (Register 92, No. 12).
3. Amendment of section and NOTE filed 4–12–93; operative 4–12–93 (Register 93, No. 16).
4. Change without regulatory effect amending section filed 8–17–95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 33).
5. Amendment of NOTE filed 10–13–98; operative 11–12–98 (Register 98, No. 42).
6. Amendment of subsections (a) and (b) and amendment of NOTE filed 10–19–98; operative 11–18–98 (Register 98, No. 43).
7. Change without regulatory effect amending subsections (b), (b)(8)(B)–(C), (f)(3)–(f)(3)(B) and (g)(3)(A)–(C), new (g)(4), subsection renumbering and amendment of subsections (h)(1)–(h)(2)(B), (i)(3), (i)(4)(A), (i)(5), (j)(3)–(4), (k)(4) and (*l*)(3)(A) filed 11–6–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 45).
8. Change without regulatory effect amending section filed 12–19–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 51).
9. Change without regulatory effect amending subsection (g)(1) filed 3–20–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 12).

§ 66265.148. Incapacity of Owners or Operators, Guarantors, or Financial Institutions.

(a) An owner or operator shall notify the Department by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within 10 days after commencement of the proceeding. A guarantor of a guarantee as specified in section 66265.143(e) and 66265.145(e) shall make such a notification if named as debtor, as required under the terms of the guarantee.

(b) An owner or operator who fulfills the financial assurance or liability coverage requirements by obtaining a trust fund, surety bond, letter of credit, or insurance policy shall be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments. The owner or operator shall establish other financial assurance or liability coverage within 60 days after such an event.

NOTE: Authority cited: Sections 208, 25150, 25159, 25159.5 and 25245, Health and Safety Code. Reference: Section 25245, Health and Safety Code; 40 CFR Section 265.148.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

[The next page is 758.81.]

Article 9. Use and Management of Containers

§ 66265.170. Applicability.

The regulations in this article apply to owners and operators of all hazardous waste facilities that transfer or store containers of hazardous waste, except as section 66265.1 provides otherwise.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.170.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.171. Condition of Containers.

If a container holding hazardous waste is not in good condition (e.g., severe rusting, apparent structural defects), or if it begins to leak, the owner or operator shall transfer the hazardous waste from this container to a container that is in good condition, or manage the waste in some other way that complies with the requirements of this chapter.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.171.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.172. Compatibility of Waste with Containers.

The owner or operator shall use a container made of or lined with materials which will not react with, and are otherwise compatible with, the hazardous waste to be transferred or stored, so that the ability of the container to contain the waste is not impaired.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.172.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.173. Management of Containers.

(a) A container holding hazardous waste shall always be closed during transfer and storage, except when it is necessary to add or remove waste.

(b) A container holding hazardous waste shall not be opened, handled, transferred or stored in a manner which may rupture the container or cause it to leak. Re–use of containers for transportation shall comply with the requirements of the U.S. Department of Transportation regulations, including those set forth in 49 CFR section 173.28.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.173.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.174. Inspections.

The owner or operator shall inspect areas used for container storage or transfer, at least weekly, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.174.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.176. Special Requirements for Ignitable or Reactive Waste.

Containers holding ignitable or reactive waste shall be located at least 15 meters (50 feet) from the facility's property line.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.176.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.177. Special Requirements for Incompatible Wastes.

(a) Incompatible wastes, or incompatible wastes and materials (see Appendix V for examples) shall not be placed in the same container, unless section 66265.17(b) is complied with.

(b) Hazardous waste shall not be placed in an unwashed container that previously held an incompatible waste or material (see Appendix V for examples).

(c) A container holding a hazardous waste that is incompatible with any waste or other materials transferred or stored nearby in other containers, piles, open tanks, or surface impoundments shall be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.177.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.178. Air Emission Standards.

The owner or operator shall manage all hazardous waste placed in a container in accordance with the applicable requirements of articles 27, 28 and 28.5 of this chapter.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159,and 25159.5, Health and Safety Code; and 40 CFR Section 265.178.

HISTORY

1. Change without regulatory effect adding new section filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).
2. Editorial correction of NOTE (Register 2004, No. 27).

Article 10. Tank Systems

§ 66265.190. Applicability.

The regulations of this article apply to owners and operators of facilities that use tank systems for transferring, storing or treating hazardous waste, except as otherwise provided in subsections (a) and (b) of this section or in section 66265.1 of this chapter.

(a) Tank systems that are used to transfer, store or treat hazardous waste containing no free liquids and that are situated inside a building with an impermeable floor are exempted from the requirements of section 66265.193 of this article. To demonstrate the absence or presence of free liquids in the stored/treated waste, the following test must be used: Method 9095 (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods", (EPA Publication No. SW–846, 3d edition and Updates (incorporated by reference in section 66260.11 of this chapter)) shall be used.

(b) Tank systems, including sumps, as defined in section 66260.10, that serve as part of a secondary containment system to collect or contain releases of hazardous wastes are exempted from the requirements in section 66265.193(a).

(c) Tanks, sumps, and other collection devices used in conjunction with drip pads, as defined in section 66260.10 and regulated under Chapter 15, Article 17.5, shall meet the requirements of this article.

NOTE: Authority cited: Sections 25150, 25159, 58004 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 265.190.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. New subsection (c) and amendment of NOTE filed 7–29–94; operative 8–29–94 (Register 94, No. 30).
3. Certificate of Compliance as to 2–11–97 order transmitted to OAL 6–10–97; disapproved by OAL and order of repeal as to 2–11–97 filed on 7–24–97 (Register 97, No. 30).
4. Certificate of Compliance as to 2–11–97 order, including amendment of section and NOTE, resubmitted to OAL and approved on 7–24–97 (Register 97, No. 30).
5. Amendment of subsection (a) and NOTE filed 10–13–98; operative 11–12–98 (Register 98, No. 42).

§ 66265.191. Assessment of Existing Tank System's Integrity.

(a) For each existing tank system that does not have secondary containment meeting the requirements of section 66265.193, the owner or operator shall determine that the tank system is not leaking or is unfit for use. Except as provided in subsections (c) and (e) of this section, the owner or operator shall obtain and keep on file at the facility a written assessment reviewed and certified by an independent, qualified, professional engineer, registered in California, in accordance with section 66270.11(d), that attests to the tank system's integrity.

(b) This assessment shall determine that the tank system is adequately designed and has sufficient structural strength and compatibility with the waste(s) to be transferred, stored or treated to ensure that it will not collapse, rupture, or fail. At a minimum, this assessment shall consider the following:

(1) design standard(s), if available, according to which the tank and ancillary equipment were constructed;

(2) hazardous characteristics of the waste(s) that have been or will be handled;

(3) existing corrosion protection measures;

(4) documented age of the tank system, if available, (otherwise, an estimate of the age); and

(5) results of a leak test, internal inspection, or other tank integrity examination such that:

(A) for non–enterable underground tanks, this assessment shall consist of a leak test that is capable of taking into account the effects of temperature variations, tank end deflection, vapor pockets, and high water table effects,

(B) for other than non–enterable underground tanks and for ancillary equipment, this assessment shall be either a leak test, as described above, or an internal inspection and/or other tank integrity examination certified by an independent, qualified, professional engineer, registered in California, in accordance with section 66270.11(d) that addresses cracks, leaks, corrosion, and erosion.

(c) For tank systems that transfer, store or treat materials that become hazardous wastes this assessment shall be conducted within 12 months after the date that the waste becomes a hazardous waste, except as provided in subsection (g) of this section.

(d) If, as a result of the assessment conducted in accordance with subsection (a) or (e) of this section, a tank system is found to be leaking or unfit for use, the owner or operator shall comply with the requirements of section 66265.196.

(e)(1) Notwithstanding subsections (a) through (c) of this section, for each existing tank system that does not have secondary containment meeting the requirements of section 66265.193 and which meets the criteria specified in subsection (e)(2) of this section, the assessment specified in subsection (g) of this section shall be conducted by January 24, 1998. This assessment shall be reviewed and certified by an independent, qualified, professional engineer, registered in California, in accordance with section 66270.11(d), that attests to the tank system's integrity. The assessment shall be kept on file at the facility until closure of the facility and shall be valid for a period of one year from the date the assessment was certified.

(2) The provisions of subsection (e)(1) of this section apply only to:

(A) onground or aboveground tank systems containing only non–RCRA hazardous wastes generated onsite, and tank systems authorized under Permit–by–Rule pursuant to Chapter 45 of this division, Conditional Authorization pursuant to HSC 25200.3, and Conditional Exemption pursuant to HSC 25201.5, and

(B) onground or aboveground tank systems containing RCRA hazardous wastes generated onsite, if:

1. the owner or operator is a conditionally exempt small quantity generator as defined in 40 CFR section 261.5, or a small quantity generator of more than 100 kg but less than 1000 kg per month as defined in 40 CFR section 265.201, or

2. the owner or operator is not subject to regulation in 40 CFR part 265 pursuant to an exemption in 40 CFR section 265.1, but the owner or operator is subject to the standards of this article.

(f) A generator or owner or operator authorized pursuant to Permit–by–Rule pursuant to Chapter 45 of this division, Conditional Authorization pursuant to HSC 25200.3, or Conditional Exemption pursuant to HSC 25201.5, operating a non–RCRA underground tank system or an underground tank system otherwise exempt from permitting requirements pursuant to the federal act, shall comply with the applicable standards of Title 23 of the California Code of Regulations relating to underground tank systems.

(g) The tank system assessment shall include all of the following information:

(1) tank configuration (i.e., horizontal, vertical), and gross capacity (in gallons);

(2) design standard(s), if available, according to which the tank and ancillary equipment were constructed and all of the following information;

(A) material of construction;

(B) material thickness and the method used to determine the thickness;

(C) description of tank system piping (material, diameter);

(D) description of any internal and external pumps; and

(E) sketch or drawing of tank including dimensions.

(3) documented age of the tank system, if available, otherwise, an estimate of the age based on owner or operator knowledge;

(4) description and evaluation of the adequacy of any leak detection equipment;

(5) description and evaluation of any corrosion protection equipment;

(6) description and evaluation of any spill prevention or overfill equipment;

(7) hazardous characteristics of the waste(s) that have been or will be handled;

(8) description of any structural damage or inadequate construction or installation such as cracks, punctures, or damaged fittings. All discrepancies shall be documented in the assessment and remedied before the tank system is certified for use.

(9) results of a leak test, internal inspection, or other tank system integrity examination including the type of integrity examination performed (i.e., ultrasonic, internal examination, volumetric tank test, pipeline pressure test). Tank system integrity or leak test requirements must be in compliance with all local requirements. Prior to conducting a tank system integrity test or leak test, contact local agency staff for local requirements.

(10) estimated remaining service life of the tank system based on findings of subsections (g)(1) through (g)(9).

NOTE: Authority cited: Sections 25150, 25159 and 58012, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.191.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment filed 6–19–95 as an emergency; operative 6–19–95 (Register 95, No. 25). A Certificate of Complaince must be transmitted to OAL by 10–17–95 or emergency language will be repealed by operation of law on the following day.
3. Amendment refiled 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.
4. Amendment refiled 2–16–96 as an emergency; operative 2–16–96 (Register 96, No. 7). A Certificate of Compliance must be transmitted to OAL by 6–15–96 or emergency language will be repealed by operation of law on the following day.
5. Amendment refiled 6–17–96 as an emergency; operative 6–17–96 (Register 96, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–15–96 or emergency language will be repealed by operation of law on the following day.
6. Amendment refiled 10–15–96 as an emergency; operative 10–15–96 (Register 96, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–12–97 or emergency language will be repealed by operation of law on the following day.
7. Amendment refiled 2–11–97 as an emergency, including amendment of NOTE; operative 2–11–97 (Register 97, No. 7). A Certificate of Compliance must be

transmitted to OAL by 6–11–97 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 2–11–97 order transmitted to OAL 6–10–97; disapproved by OAL and order of repeal as to 2–11–97 filed on 7–24–97 (Register 97, No. 30).
9. Certificate of Compliance as to 2–11–97 order, including amendment of section and NOTE, resubmitted to OAL and approved on 7–24–97 (Register 97, No. 30).
10. Change without regulatory effect amending subsection (g)(3) filed 7–1–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 27).
11. Amendment of subsection (a), repealer of subsections (a)(1)–(a)(2)(B)2., amendment of subsection (c), repealer of subsections (c)(1)–(c)(2)(B)2. and amendment of NOTE filed 9–8–2006; operative 10–8–2006 (Register 2006, No. 36).

§ 66265.192. Design and Installation of New Tank Systems or Components.

(a) Owners or operators of new tank systems or components shall ensure that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be transferred, stored or treated, and corrosion protection so that it will not collapse, rupture, or fail. The owner or operator shall obtain a written assessment reviewed and certified by an independent, qualified, professional engineer, registered in California in accordance with section 66270.11(d) attesting that the system has sufficient structural integrity, is acceptable for the transferring, storing and treating of hazardous waste, and that the tanks and containment system are suitably designed to achieve the requirements of this article. This assessment shall be obtained prior to placing the tank system in service, and shall be kept on file at the facility. This assessment shall also include, at a minimum, the following information:

(1) design standard(s) according to which the tank(s) and ancillary equipment are or will be constructed;

(2) hazardous characteristics of the waste(s) to be handled;

(3) for new tank systems or components in which the external shell of a metal tank or any external metal component of the tank system is or will be in contact with the soil or with water, a determination by a corrosion expert of:

(A) factors affecting the potential for corrosion, including but not limited to:

1. soil moisture content;
2. soil pH;
3. soil sulfides level;
4. soil resistivity;
5. structure to soil potential;
6. influence of nearby underground metal structures (e.g., piping);
7. stray electric current; and,
8. existing corrosion–protection measures (e.g., coating, cathodic protection), and

(B) the type and degree of external corrosion protection that are needed to ensure the integrity of the tank system during the use of the tank system or component, consisting of one or more of the following:

1. corrosion–resistant materials of construction such as special alloys or fiberglass–reinforced plastic;
2. corrosion–resistant coating (such as epoxy or fiberglass) with cathodic protection (e.g., impressed current or sacrificial anodes); and
3. electrical isolation devices such as insulating joints and flanges;

(4) for underground tank system components that are likely to be affected by vehicular traffic, a determination of design or operational measures that will protect the tank system against potential damage; and

(5) design considerations to ensure that:

(A) tank foundations will maintain the load of a full tank;

(B) tank systems will be anchored to prevent flotation or dislodgement where the tank system is placed in a saturated zone, or is located within a seismic fault zone; and

(C) tank systems will withstand the effects of frost heave.

(b) The owner or operator of a new tank system shall ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing, or placing a new tank system or component in use, an independent, qualified installation inspector or an independent, qualified, professional engineer, registered in California, either of whom is trained and experienced in the proper installation of tank systems, shall inspect the system or component for the presence of any of the following items:

(1) weld breaks;

(2) punctures;

(3) scrapes of protective coatings;

(4) cracks;

(5) corrosion;

(6) other structural damage or inadequate construction or installation.

All discrepancies shall be remedied before the tank system is covered, enclosed, or placed in use.

(c) New tank systems or components and piping that are placed underground and that are backfilled shall be provided with a backfill material that is a noncorrosive, porous, homogeneous substance and that is carefully installed so that the backfill is placed completely around the tank and compacted to ensure that the tank and piping are fully and uniformly supported.

(d) All new tanks and ancillary equipment shall be tested for tightness prior to being covered, enclosed or placed in use. If a tank system is found not to be tight, all repairs necessary to remedy the leak(s) in the system shall be performed prior to the tank system being covered, enclosed, or placed in use.

(e) Ancillary equipment shall be supported and protected against physical damage and excessive stress due to settlement, vibration, expansion or contraction.

(f) The owner or operator shall provide the type and degree of corrosion protection necessary, based on the information provided under subsection (a)(3) of this section, to ensure the integrity of the tank system during use of the tank system. The installation of a corrosion protection system that is field fabricated shall be supervised by an independent corrosion expert to ensure proper installation.

(g) The owner or operator shall obtain and keep on file at the facility written statements by those persons required to certify the design of the tank system and supervise the installation of the tank system in accordance with the requirements of subsections (b) through (f) of this section to attest that the tank system was properly designed and installed and that repairs, pursuant to subsection (b) and (d) of this section were performed. These written statements shall also include the certification statement as required in section 66270.11(d) of this division.

(h)(1) Notwithstanding subsections (a) through (g) of this section, design and installation of new tank systems or components used to manage hazardous waste, and which meet the criteria specified in subsection (h)(2) of this section, are not subject to the requirements of subsections (h) through (m) of this section until January 24, 1998. The assessment specified in subsection (k) of this section shall be obtained prior to placing a new tank system in service and shall be kept on file at the facility. This assessment shall be reviewed and certified by an independent, qualified, professional engineer, registered in California, in accordance with section 66270.11(d), attesting that the tank system has sufficient structural integrity and is acceptable for the transferring, storing and treating of hazardous waste. The assessment shall be valid for a maximum period of five (5) years or the remaining service life of the tank system, as stated in the engineer's assessment, whichever is less. New tank systems that have been assessed pursuant to subsections (a) through (g) of this section prior to June 1, 1995 are not required to be reassessed pursuant to subsection (k) for a period of five years from the date of the assessment or June 1, 2000, whichever is the earlier date. If changes have been made to the tank system or new components have been added to the tank system subsequent to an assessment conducted prior to June 1, 1995, the tank system shall be reassessed pursuant to subsection (k).

(2) The provisions of subsection (h)(1) of this section apply only to:

(A) onground or aboveground tank systems containing only non–RCRA hazardous waste generated onsite, and tank systems authorized under Permit–by–Rule pursuant to Chapter 45 of this division, Condi-

tional Authorization pursuant to HSC 25200.3, and Conditional Exemption pursuant to HSC 25201.5, and

(B) onground or aboveground tank systems containing RCRA hazardous waste generated onsite, if:

1. the owner or operator is a conditionally exempt small quantity generator as defined in 40 CFR section 261.5, or a small quantity generator of more than 100 kg but less than 1000 kg per month as defined in 40 CFR section 265.201, or

2. the owner or operator is not subject to regulation in 40 CFR part 265 pursuant to an exemption in 40 CFR section 265.1, but the owner or operator is subject to the standards of this article.

(i) A generator or owner or operator authorized pursuant to Permit–by–Rule pursuant to Chapter 45 of this division, Conditional Authorization pursuant to HSC 25200.3, or Conditional Exemption pursuant to HSC 25201.5, operating a non–RCRA underground tank system or an underground tank system otherwise exempt from permitting requirements pursuant to the federal act, shall comply with the applicable standards of Title 23 of the California Code of Regulations relating to underground tank systems.

(j) New, onground or aboveground non–RCRA tank systems or tank systems otherwise exempt from permitting requirements pursuant to the federal act, with secondary containment, whose design and installation have been approved by a local agency or agencies, may, at the discretion of the CUPA, be exempt from the engineering assessment specified in subsection (k) of this section, provided minimum criteria specified in subsections (j)(1) through (j)(3) of this section are met. If the CUPA determines to exempt a new tank system from the assessment required pursuant to this subsection, the exemption shall be for a period of not more than three (3) years from the date the exemption was granted. The tank system owner or operator shall submit documentation of local agency approval to the applicable CUPA for review and possible acceptance in lieu of the assessment specified in subsection (k) of this section. If there is no CUPA, or the CUPA requests that the Department make a determination, the documentation shall be submitted to the Department.

(1) tank system must have secondary containment capable of containing 100 percent of the contents of the tank and ancillary piping volume; and

(2) if the tank system is exposed to precipitation, the secondary containment system must have sufficient capacity, in addition to that required in subsection (j)(1) of this section, to contain run–on and infiltration from a 25–year, 24–hour rainfall event;

(3) tank system secondary containment shall be provided with a leak detection system that is designed and operated so that it will detect either the failure of the primary and secondary containment structure or any release of hazardous waste or accumulated liquid in the secondary containment system within 24 hours, or at the earliest practicable time if the existing detection technology or site conditions will not allow detection of a release within 24 hours.

(k) The tank system assessment shall include all of the following information:

(1) tank configuration (i.e., horizontal, vertical), material of construction, and gross capacity (in gallons);

(2) design standard(s), if available, according to which the tank and ancillary equipment were or will be constructed and all of the following information:

(A) material of construction;

(B) material thickness and the method used to determine the thickness;

(C) description of tank system piping (material, diameter);

(D) description of any internal and external pumps; and

(E) sketch or drawing of tank including dimensions.

(3) documented age of the tank system (if tank was previously used), if available, (otherwise, an estimate of the age);

(4) description and evaluation of any leak detection equipment;

(5) description and evaluation of any corrosion protection equipment, devices, or material;

(6) description and evaluation of any spill prevention or overfill equipment;

(7) description and evaluation of secondary containment for the tank system (secondary containment must meet minimum standards as specified in subsections (j)(1) through (j)(3) of this section) including applicable secondary containment for ancillary equipment as required in subsection 66265.193(f);

(8) hazardous characteristics of the waste(s) that have been or will be handled;

(9) prior to placing a new tank system or component in use, an independent, qualified installation inspector or an independent, qualified, professional engineer, registered in California, either of whom is trained and experienced in the proper installation of tank systems, shall inspect the system or component for the presence of any of the following items and document in writing the results of the inspection:

(A) weld cracks or breaks;

(B) scrapes of protective coatings;

(C) corrosion;

(D) any structural damage or inadequate construction or installation such as cracks, punctures, damaged fittings. All discrepancies shall be documented in the assessment and remedied before the tank system is placed in use.

(10) all new tanks and ancillary equipment shall be tested for tightness prior to being placed in use. The results of the test(s) shall be documented in this assessment. Tank system integrity or leak test requirements must be in compliance with all local requirements. Prior to conducting a tank system integrity test or leak test, contact local agency staff for local requirements.

(11) estimated remaining service life of the tank system based on findings of subsections (k)(1) through (k)(10).

(*l*) The assessment specified in subsection (k) of this section is not required for the replacement of the following identical or functionally equivalent tank system parts or components:

(1) pumps (same type and capacity);

(2) plumbing or piping components such as unions, elbows, tees and gaskets;

(3) valves and check valves;

(4) piping and valve hangers and supports;

(m) Replacement of identical or functionally equivalent tank system parts or components not listed in subsection (*l*) of this section shall be approved by the CUPA prior to replacement or changeout. If the tank system part or component is determined to be identical or functionally equivalent by the CUPA, the assessment specified in subsection (k) of this section is not required. The owner or operator shall provide the CUPA, or the Department if there is no CUPA or the CUPA requests that the Department make a determination, with the following information in writing so that a determination can be made:

(1) name, address, and EPA identification number of the facility;

(2) date of planned replacement;

(3) description part or component to be replaced;

(4) description of the tank system and type of waste(s) handled;

(5) description of how the part or component is identical or functionally equivalent to the part or component to be replaced.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.192.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. New subsections (h)(1)–(h)(2)(B)2. filed 6–19–95 as an emergency; operative 6–19–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–95 or emergency language will be repealed by operation of law on the following day.
3. New subsections (h)(1)–(h)(2)(B)2. refiled 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.
4. New subsections (h)(1)–(h)(1)(B)2. refiled 2–16–96 as an emergency; operative 2–16–96 (Register 96, No. 7). A Certificate of Compliance must be trans-

mitted to OAL by 6–15–96 or emergency language will be repealed by operation of law on the following day.
5. New subsections (h)(1)–(h)(1)(B)2. refiled 6–17–96 as an emergency; operative 6–17–96 (Register 96, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–15–96 or emergency language will be repealed by operation of law on the following day.
6. New subsections (h)(1)–(h)(2)(B)2. refiled 10–15–96 as an emergency; operative 10–15–96 (Register 96, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–12–97 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction removing duplicative subsection (g) (Register 97, No. 7).
8. New subsections (h)(1)–(h)(2)(B)2. refiled 2–11–97 as an emergency, including amendment of NOTE; operative 2–11–97 (Register 97, No. 7). A Certificate of Compliance must be transmitted to OAL by 6–11–97 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 2–11–97 order transmitted to OAL 6–10–97; disapproved by OAL and order of repeal as to 2–11–97 filed on 7–24–97 (Register 97, No. 30).
10. Certificate of Compliance as to 2–11–97 order, including amendment of section, resubmitted to OAL and approved on 7–24–97 (Register 97, No. 30).
11. Change without regulatory effect amending subsection (k)(10) filed 7–1–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 27).

§ 66265.193. Containment and Detection of Releases.

(a) In order to prevent the release of hazardous waste or hazardous constituents to the environment, secondary containment that meets the requirements of this section shall be provided (except as provided in subsections (f) and (g) of this section):

(1) for all new tank systems or components, prior to the tank system or component being put into service;

(2) for all existing tank systems, unless:

(A) the owner or operator is a conditionally exempt small quantity generator as defined in 40 CFR section 261.5, or a 100 to 1000 kg per month generator as defined in 40 CFR section 265.201, or

(B) the owner or operator is not subject to regulation in 40 CFR part 265 pursuant to an exemption in 40 CFR section 265.1.

(3) for tank systems that transfer, store or treat materials that subsequently become hazardous wastes within two years after the materials become hazardous waste unless the owner or operator complies with section 40 CFR 265.201 and is one of the following:

(A) the owner or operator is a conditionally exempt small quantity generator or a 100 to 1000 kg per month generator, or

(B) the owner or operator is not subject to regulation in 40 CFR part 265 pursuant to an exemption in 40 CFR section 265.1, but the owner or operator is subject to the standards of this article.

(b) Secondary containment systems shall be:

(1) designed, installed, and operated to prevent any migration of wastes or accumulated liquid out of the system to the soil, ground water, or surface water at any time during the use of the tank system; and

(2) capable of detecting and collecting releases and accumulated liquids until the collected material is removed.

(c) To meet the requirements of subsection (b) of this section, secondary containment systems shall be at a minimum:

(1) constructed of or lined with materials that are compatible with the waste(s) to be placed in the tank system and shall have sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrological forces), physical contact with the waste to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation (including stresses from nearby vehicular traffic);

(2) placed on a foundation or base capable of providing support to the secondary containment system and resistance to pressure gradients above and below the system and capable of preventing failure due to settlement, compression, or uplift;

(3) provided with a leak detection system that is designed and operated so that it will detect the failure of either the primary and secondary containment structure or any release of hazardous waste or accumulated liquid in the secondary containment system within 24 hours, or at the earliest practicable time if the existing detection technology or site conditions will not allow detection of a release within 24 hours;

(4) sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. Spilled or leaked waste and accumulated precipitation shall be removed from the secondary containment system within 24 hours, or in as timely a manner as is possible to prevent harm to human health or the environment, if removal of the released waste or accumulated precipitation cannot be accomplished within 24 hours.

(A) If the collected material is a hazardous waste under chapter 11 of this division, it shall be managed as a hazardous waste in accordance with all applicable requirements of chapters 2 through 15 of this division.

(B) If the collected material is discharged through a point source to waters of the United States, the owner or operator shall comply with the requirements of sections 301, 304, and 402 of the Federal Clean Water Act (33 U.S.C. sections 1311, 1314 and 1342, respectively), as amended.

(C) If the collected material is discharged to Publicly Owned Treatment Works (POTWs), the owner or operator shall comply with the requirements of section 307 of the Federal Clean Water Act, as amended (33 U.S.C. section 1317).

(D) If the collected material is released to the environment, the owner or operator shall comply with the applicable reporting requirements of 40 CFR Part 302.

(d) Secondary containment for tanks shall include one or more of the following devices:

(1) a liner (external to the tank);

(2) a vault;

(3) a double–walled tank; or

(4) an equivalent device as approved by the Department.

(e) In addition to the requirements of subsections (b), (c), and (d) of this section, secondary containment systems shall satisfy the following requirements:

(1) external liner systems shall be:

(A) designed or operated to contain 100 percent of the capacity of the largest tank within its boundary;

(B) designed or operated to prevent run–on and infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity, in addition to that required in subsection (e)(1)(A) of this section, to contain run–on and infiltration. Such additional capacity shall be sufficient to contain run–on and infiltration of precipitation from a 25–year, 24–hour rainfall event;

(C) free of cracks or gaps; and

(D) designed and installed to completely surround the tank and to cover all surrounding earth likely to come into contact with the waste if released from the tank(s) (i.e., capable of preventing lateral as well as vertical migration of the waste).

(2) Vault systems shall be:

(A) designed or operated to contain 100 percent of the capacity of the largest tank within its boundary;

(B) designed or operated to prevent run–on and infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity, in addition to that required in subsection (e)(2)(A) of this section, to contain run–on and infiltration. Such additional capacity shall be sufficient to contain run–on and infiltration of precipitation from a 25–year, 24–hour rainfall event;

(C) constructed with chemical–resistant water stops in place at all joints (if any);

(D) provided with an impermeable interior coating or lining that is compatible with the waste being transferred, stored or treated and that will prevent migration of waste into the concrete;

(E) provided with a means to protect against the formation of and ignition of vapors within the vault, if the waste being transferred, stored or treated:

1. meets the definition of ignitable waste under section 66262.21 of this division, or

2. meets the definition of reactive waste under section 66261.23 of this division and may form an ignitable or explosive vapor; and

(F) provided with an exterior moisture barrier or be otherwise designed or operated to prevent migration of moisture into the vault if the vault is subject to hydraulic pressure.

(3) Double–walled tanks shall be:

(A) designed as an integral structure (i.e., an inner tank within an outer shell) so that any release from the inner tank is contained by the outer shell;

(B) protected, if constructed of metal, from both corrosion of the primary tank interior and the external surface of the outer shell; and

(C) provided with a built–in, continuous leak detection system capable of detecting a release within 24 hours or at the earliest practicable time, if the owner or operator can demonstrate to the Department, and the Department concurs, that the existing leak detection technology or site conditions will not allow detection of a release within 24 hours.

(f) Ancillary equipment shall be provided with full secondary containment (e.g., trench, jacketing, double–walled piping) that meets the requirements of subsections (b) and (c) of this section except for:

(1) aboveground piping (exclusive of flanges, joints, valves, and connections) that are visually inspected for leaks on a daily basis;

(2) welded flanges, welded joints, and welded connections that are visually inspected for leaks on a daily basis;

(3) sealless or magnetic coupling pumps and sealless valves, that are visually inspected for leaks on a daily basis; and

(4) pressurized aboveground piping systems with automatic shut–off devices (e.g., excess flow check valves, flow metering shutdown devices, loss of pressure actuated shut–off devices) that are visually inspected for leaks on a daily basis.

(g) The owner or operator may obtain a variance from the requirements of this section for existing above–ground tanks in place, if the Department finds, as a result of a demonstration by the owner or operator, either that alternative design and operating practices, together with location characteristics, will prevent the migration of hazardous waste or hazardous constituents into the ground water or surface water at least as effectively as secondary containment during the active life of the tank system, or that in the event of a release that does migrate to ground water or surface water, no substantial present or potential hazard will be posed to human health or the environment.

(1) In deciding whether to grant a variance based on a demonstration of equivalent protection of ground water and surface water, the Department will consider:

(A) the nature and quantity of the waste;

(B) the proposed alternate design and operation;

(C) the hydrogeologic setting of the facility, including the thickness of soils between the tank system and ground water; and

(D) all other factors that would influence the quality and mobility of the hazardous constituents and the potential for the constituents to migrate to ground water or surface water.

(2) In deciding whether to grant a variance, based on a demonstration of no substantial present or potential hazard, the Department will consider:

(A) the potential adverse effects on ground water, surface water, and land quality taking into account:

1. the physical and chemical characteristics of the waste in the tank system, including its potential for migration,

2. the hydrogeological characteristics of the facility and surrounding land,

3. the potential for health risks caused by human exposure to waste constituents,

4. the potential for damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents, and

5. the persistence and permanence of the potential adverse effects;

(B) the potential adverse effects of a release on ground–water quality, taking into account:

1. the quantity and quality of ground water and the direction of ground–water flow,

2. the proximity and withdrawal rates of water in the area,

3. the current and future uses of ground water in the area, and

4. the existing quality of ground water, including other sources of contamination and their cumulative impact on the ground–water quality;

(C) the potential adverse effects of a release on surface water quality, taking into account:

1. the quantity and quality of ground water and the direction of ground–water flow,

2. the patterns of rainfall in the region,

3. the proximity of the tank system to surface waters,

4. the current and future uses of surface waters in the area and any water quality standards established for those surface waters, and

5. the existing quality of surface water, including other sources of contamination and the cumulative impact on surface–water quality; and

(D) the potential adverse effects of a release on the land surrounding the tank system, taking into account:

1. the patterns of rainfall in the region, and

2. the current and future uses of the surrounding land.

(3) The owner or operator of a tank system, for which a variance from secondary containment has been granted in accordance with the requirements of subsection (g)(1) of this section, at which a release of hazardous waste has occurred from the primary tank system but has not migrated beyond the zone of engineering control (as established in the variance), shall:

(A) comply with the requirements of section 66265.196, except subsection (e); and

(B) decontaminate or remove contaminated soil to the extent necessary to:

1. enable the tank system, for which the variance was granted, to resume operation with the capability for the detection of and response to releases at least equivalent to the capability it had prior to the release, and

2. prevent the migration of hazardous waste or hazardous constituents to ground water or surface water; and

(C) if contaminated soil cannot be removed or decontaminated in accordance with subsection (g)(3)(B) of this section, comply with the requirements of section 66265.197(b);

(4) The owner or operator of a tank system, for which a variance from secondary containment has been granted in accordance with the requirements of subsection (g)(1) of this section, at which a release of hazardous waste has occurred from the primary tank system and has migrated beyond the zone of engineering control (as established in the variance), shall:

(A) comply with the requirements of section 66265.196(a), (b), (c), (d) and (e); and

(B) prevent the migration of hazardous waste or hazardous constituents to ground water or surface water, if possible, and decontaminate or remove contaminated soil. If contaminated soil cannot be decontaminated or removed, or if ground water has been contaminated, the owner or operator shall comply with the requirements of section 66265.197(b);

(C) if repairing, replacing, or reinstalling the tank system, provide secondary containment in accordance with the requirements of subsections (a) through (f) of this section or reapply for a variance from secondary containment and meet the requirements for new tank systems in section 66265.192 if the tank system is replaced. The owner or operator shall comply with these requirements even if contaminated soil can be decontaminated or removed, and ground water or surface water has not been contaminated.

(h) The following procedures shall be followed in order to request a variance from secondary containment:

(1) The Department shall be notified in writing by the owner or operator that the facility intends to conduct and submit a demonstration for a variance from secondary containment as allowed in subsection (g) of this section at least 24 months prior to the date that secondary containment is required to be provided in accordance with subsection (a) of this section.

(2) As part of the notification, the owner or operator shall also submit to the Department a description of the steps necessary to conduct the

demonstration and a timetable for completing each of the steps. The demonstration shall address each of the factors listed in subsection (g)(1) or subsection (g)(2) of this section.

(3) The demonstration for a variance shall be completed and submitted to the Department within 180 days after notifying the Department of intent to conduct the demonstration.

(4) The Department will inform the public, through a newspaper notice, of the availability of the demonstration for a variance. The notice shall be placed in a daily or weekly major local newspaper of general circulation and shall provide at least 30 days from the date of the notice for the public to review and comment on the demonstration for a variance. The Department also will hold a public hearing, in response to a request or at the Department's own discretion, whenever such a hearing might clarify one or more issues concerning the demonstration for a variance. Public notice of the hearing will be given at least 30 days prior to the date of the hearing and may be given at the same time as notice of the opportunity for the public to review and comment on the demonstration. These two notices may be combined.

(5) The Department will approve or disapprove the request for a variance within 90 days of receipt of the demonstration from the owner or operator and will notify in writing the owner or operator and each person who submitted written comments or requested notice of the variance decision. If the demonstration for a variance is incomplete or does not include sufficient information, the 90–day time period will begin when the Department receives a complete demonstration, including all information necessary to make a final determination. If the public comment period in subsection (h)(4) of this section is extended, the 90–day time period will be similarly extended.

(i) All tank systems, until such time as secondary containment meeting the requirements of this section is provided, shall comply with the following:

(1) for non–enterable underground tanks, a leak test that meets the requirements of section 66265.191(b)(5) shall be conducted at least annually;

(2) for other than non–enterable underground tanks and for all ancillary equipment, an annual leak test, as described in paragraph (i)(1) of this section, or an internal inspection or other tank integrity examination by an independent, qualified, professional engineer, registered in California, that addresses cracks, leaks, corrosion, and erosion shall be conducted at least annually. The owner or operator shall remove the stored waste from the tank, if necessary, to allow the condition of all internal tank surfaces to be assessed.

(3) The owner or operator shall maintain on file at the facility a record of the results of the assessments conducted in accordance with subsections (i)(1) and (i)(2) of this section.

(4) If a tank system or component is found to be leaking or unfit for use as a result of the leak test or assessment in subsections (i)(1) and (i)(2) of this section, the owner or operator shall comply with the requirements of section 66265.196.

(j)(1) Notwithstanding subsections (a) through (c) of this section, secondary containment that meets the requirements of subsection (*l*) shall be provided for tank systems used to manage hazardous wastes generated onsite, and which meet the criteria specified in subsection (j)(2) of this section:

(A) prior to the tank system or component being placed in service for new tank systems or components; or

(B) by January 24, 1998 for existing tank systems.

(2) The provisions of subsection (j)(1) of this section apply only to:

(A) onground or aboveground tank systems containing only non–RCRA hazardous wastes generated onsite, and tank systems authorized under Permit–by–Rule pursuant to Chapter 45 of this division, Conditional Authorization pursuant to HSC 25200.3, and Conditional Exemption pursuant to HSC 25201.5, and

(B) onground or aboveground tank systems containing RCRA hazardous wastes generated onsite, if:

1. the owner or operator is a conditionally exempt small quantity generator as defined in 40 CFR section 261.5, or a small quantity generator of more than 100 kg but less than 1000 kg per month as defined in 40 CFR section 265.201, or

2. the owner or operator is not subject to regulation in 40 CFR part 265 pursuant to an exemption in 40 CFR section 265.1, but the owner or operator is subject to the standards of this article.

(k) A generator or owner or operator authorized pursuant to Permit–by–Rule pursuant to Chapter 45 of this division, Conditional Authorization pursuant to HSC 25200.3, or Conditional Exemption pursuant to HSC 25201.5, operating a non–RCRA underground tank system or an underground tank system otherwise exempt from permitting requirements pursuant to the federal act, shall comply with the applicable standards of Title 23 of the California Code of Regulations relating to underground tank systems.

(*l*) Secondary containment for onground or aboveground generator and onsite tier (Permit–by–Rule Conditional Authorization, and Conditional Exemption), non–RCRA tank systems or tank systems otherwise exempt from permitting requirements pursuant to the federal act, shall consist of any of the devices listed in subsection (d) and satisfy the requirements of (e) of this section or consist of any device or combination of devices as approved in writing by the CUPA, or the Department if there is no CUPA or the CUPA requests that the Department make a determination, which would satisfy the following minimum requirements:

(1) designed, installed, and operated to prevent any migration of wastes or accumulated liquid out of the system to the soil, ground water, surface water, or air at any time during the use of the tank system; and

(2) capable of detecting and collecting releases and accumulated liquids until the collected material is removed.

(m) Ancillary equipment shall be provided with secondary containment as specified in subsection (f) of this section or an alternative device or devices as approved in writing by the CUPA, or Department if there is no CUPA or the Department if the CUPA requests that the Department make a determination, which would prevent and/or detect any release of wastes out of the tank system before such wastes could migrate to the soil, ground water, or surface water at any time during the use of the tank system. The following are examples of tank system and ancillary equipment secondary containment alternatives or options that may be proposed for review and approval by the CUPA:

(1) traditional containment of entire system within a bermed containment area with visual and/or electronic leak detection monitoring;

(2) troughs or pipe runs with impermeable liners that incorporate the following:

(A) visual monitoring during hours of operation or;

(B) continuous electronic leak detection monitoring for releases or;

(C) sumps located at low elevations with leak detection monitors.

(3) double–walled piping with continuous interstitial monitoring or monitoring intervals located at low elevation points along pipeline;

(4) Double–walled piping with translucent or transparent sections located at low points or low endpoints so that visual monitoring is possible.

(n) A generator or owner or operator authorized pursuant to Permit–by–Rule pursuant to Chapter 45 of this division, Conditional Authorization pursuant to HSC 25200.3, and Conditional Exemption pursuant to HSC 25201.5, operating an onground or aboveground, non–RCRA tank system or a tank system otherwise exempt from permitting requirements pursuant to the federal act, that has 18 months or less remaining in service prior to planned closure of the tank system, may propose alternatives to retrofitting the tank system with secondary containment. Local agency requirements must be considered when proposing alternatives to secondary containment. The owner or operator shall provide the following information in writing to the CUPA, or the Department if there is no CUPA or the CUPA requests that the Department make a determination, so that a determination can be made whether the proposed alternative would be acceptable:

(1) name, address, and EPA identification number of the facility;

(2) date of planned closure;

(3) description of tank system to be closed and form of current authorization for the tank system;

(4) description of how the proposed alternative would provide adequate environmental protection such that the design, installation, and operation will be capable of detecting a release and preventing any migration of wastes or accumulated liquid out of the system to the soil, ground water, surface water, or air at any time during the remaining life of the tank system.

NOTE: Authority cited: Sections 25150, 25159 and 58012, Health and Safety Code. Reference: Sections 25143, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.193.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of section and NOTE filed 6–19–95 as an emergency; operative 6–19–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–95 or emergency language will be repealed by operation of law on the following day.
3. Amendment of section and NOTE refiled 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.
4. Amendment of section and NOTE refiled 2–16–96 as an emergency; operative 2–16–96 (Register 96, No. 7). A Certificate of Compliance must be transmitted to OAL by 6–15–96 or emergency language will be repealed by operation of law on the following day.
5. Amendment of section and NOTE refiled 6–17–96 as an emergency; operative 6–17–96 (Register 96, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–15–96 or emergency language will be repealed by operation of law on the following day.
6. Amendment of section and NOTE refiled 10–15–96 as an emergency; operative 10–15–96 (Register 96, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–12–97 or emergency language will be repealed by operation of law on the following day.
7. Amendment of section and NOTE refiled 2–11–97 as an emergency, including additional amendment of NOTE; operative 2–11–97 (Register 97, No. 7). A Certificate of Compliance must be transmitted to OAL by 6–11–97 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 2–11–97 order transmitted to OAL 6–10–97; disapproved by OAL and order of repeal as to 2–11–97 filed on 7–24–97 (Register 97, No. 30).
9. Certificate of Compliance as to 2–11–97 order, including amendment of section, resubmitted to OAL and approved on 7–24–97 (Register 97, No. 30).
10. Change without regulatory effect amending subsection (*l*) filed 7–1–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 27).
11. Amendment of subsection (a)(2), repealer of subsections (a)(2)(A), (a)(2)(B)–(a)(5)(B)2.b. and (a)(6)(A)–(a)(6)(B)2., redesignation of subsections (a)(2)(A)1.–2. to (a)(2)(A)–(B), renumbering and amendment of former subsection (a)(6) to subsection (a)(3), redesignation of former subsections (a)(6)(B)2.a.–b. to subsections (a)(3)(A)–(B) and amendment of NOTE filed 9–8–2006; operative 10–8–2006 (Register 2006, No. 36).

§ 66265.194. General Operating Requirements.

(a) Hazardous wastes or treatment reagents shall not be placed in a tank system if they could cause the tank, its ancillary equipment, or the secondary containment system to rupture, leak, corrode, or otherwise fail.

(b) The owner or operator shall use appropriate controls and practices to prevent spills and overflows from tank or secondary containment systems. These include at a minimum:

(1) spill prevention controls (e.g., check valves, dry discount couplings);

(2) overfill prevention controls (e.g., level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standby tank); and

(3) maintenance of sufficient freeboard in uncovered tanks to prevent overtopping by wave or wind action or by precipitation. Uncovered tanks

shall be operated to ensure at least 60 centimeters (2 feet) of freeboard, unless the tank is equipped with a containment structure (e.g., dike or trench), a drainage control system or a diversion structure (e.g., standby tank) with a capacity that equals or exceeds the volume of the top 60 centimeters (2 feet) of the tank.

(c) The owner or operator shall comply with the requirements of section 66265.196 if a leak or spill occurs in the tank system.

(d) Transfer, treatment or storage of hazardous waste in tanks shall comply with section 66265.17(b).

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.194.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.195. Inspections.

(a) The owner or operator shall inspect, where present, at least once each operating day:

(1) overfill/spill control equipment (e.g., waste–feed cutoff systems, bypass systems, and drainage systems) to ensure that it is in good working order;

(2) the aboveground portions of the tank system, if any, to detect corrosion or releases of waste;

(3) data gathered from monitoring equipment and leak–detection equipment, (e.g., pressure and temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design;

(4) the construction materials and the area immediately surrounding the externally accessible portion of the tank system including secondary containment structures (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation); and

(5) for uncovered tanks, the level of waste in the tank, to ensure compliance with section 66265.194(b)(3).

(b) The owner or operator shall inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly:

(1) the proper operation of the cathodic protection system shall be confirmed within six months after initial installation, and annually thereafter; and

(2) all sources of impressed current shall be inspected and/or tested, as appropriate, at least bimonthly (i.e., every other month).

(c) The owner or operator shall document in the operating record of the facility an inspection of those items in subsections (a) and (b) of this section.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.195.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.196. Response to Leaks or Spills and Disposition of Leaking or Unfit–for–Use Tank Systems.

A tank system or secondary containment system from which there has been a leak or spill, or which is unfit for use, shall be removed from service immediately, and the owner or operator shall satisfy the following requirements.

(a) General emergency procedures. The owner or operator shall comply with applicable requirements of section 66265.56.

(b) Cessation of use; prevention of flow or addition of wastes. The owner or operator shall immediately stop the flow of hazardous waste into the tank system or secondary containment system and inspect the system to determine the cause of the release.

(c) Removal of waste from tank system or secondary containment system.

(1) If the release was from the tank system, the owner or operator shall, within 24 hours after detection of the leak or, if the owner or operator demonstrates that that is not possible, at the earliest practicable time remove as much of the waste as is necessary to prevent further release of hazardous waste to the environment and to allow inspection and repair of the tank system to be performed.

(2) If the release was to a secondary containment system, all released materials shall be removed within 24 hours or in as timely a manner as is possible to prevent harm to human health and the environment.

(d) Containment of visible releases to the environment. The owner or operator shall immediately conduct a visual inspection of the release and, based upon that inspection:

(1) prevent further migration of the leak or spill to soils or surface water; and

(2) remove, and properly dispose of, any visible contamination of the soil or surface water.

(e) Notifications, reports.

(1) Any release to the environment, except as provided in subsection (e)(2) of this section, shall be reported to the Department within 24 hours of detection.

(2) A leak or spill of hazardous waste is exempted from the requirements of subsection (e) of this section, but is not exempted from the requirements of section 66265.56, if it is:

(A) less than or equal to a quantity of one (1) pound, and

(B) immediately contained and cleaned–up.

(3) Within 30 days of detection of a release to the environment, a report containing the following information shall be submitted to the Department:

(A) likely route of migration of the release;

(B) characteristics of the surrounding soil (soil composition, geology, hydrogeology, climate);

(C) results of any monitoring or sampling conducted in connection with the release, (if available). If sampling or monitoring data relating to the release are not available within 30 days, these data shall be submitted to the Department as soon as they become available;

(D) proximity to downgradient drinking water, surface water, and population areas; and

(E) description of response actions taken or planned.

(f) Provision of secondary containment, repair, or closure.

(1) Unless the owner or operator satisfies the requirements of subsections (f)(2) through (4) of this section, the tank system shall be closed in accordance with section 66265.197.

(2) If the cause of the release was a spill that has not damaged the integrity of the system, the owner/operator may return the system to service as soon as the released waste is removed and repairs, if necessary, are made.

(3) If the cause of the release was a leak from the primary tank system into the secondary containment system, the system shall be repaired prior to returning the tank system to service.

(4) If the source of the release was a leak to the environment from a component of a tank system without secondary containment, the owner/operator shall provide the component of the system from which the leak occurred with secondary containment that satisfies the requirements of section 66265.193 before it can be returned to service, unless the source of the leak is an aboveground portion of a tank system. If the source is an aboveground component that can be inspected visually, the component shall be repaired and may be returned to service without secondary containment as long as the requirements of subsection (g) of this section are satisfied. If a component is replaced to comply with the requirements of this subsection, that component shall satisfy the requirements for new tank systems or components in sections 66265.192 and 66265.193. Additionally, if a leak has occurred in any portion of a tank system component that is not readily accessible for visual inspection (e.g., the bottom of an inground or onground tank), the entire component shall be provided with secondary containment in accordance with section 66265.193 prior to being returned to use.

(g) Certification of major repairs. If the owner or operator has repaired a tank system in accordance with subsection (f) of this section, and the repair has been extensive (e.g., installation of an internal liner; repair of

a ruptured primary containment or secondary containment vessel), the tank system shall not be returned to service unless the owner/operator has obtained a certification by an independent, qualified, professional engineer, registered in California, in accordance with section 66270.11(d), that the repaired system is capable of handling hazardous wastes without release for the intended life of the system. This certification shall be submitted to the Department within seven days after returning the tank system to use.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.196.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.197. Closure and Post–Closure Care.

(a) At closure of a tank system, the owner or operator shall remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated soils, and structures and equipment contaminated with waste, and manage them as hazardous waste, unless section 66261.3(d) of this division applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for tank systems shall meet all of the requirements specified in articles 7 and 8 of this chapter.

(b) If the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required in subsection (a) of this section, then the owner or operator shall close the tank system and perform post–closure care in accordance with the closure and post–closure care requirements that apply to landfills (section 66265.310). In addition, for the purposes of closure, post–closure, and financial responsibility, such a tank system is then considered to be a landfill, and the owner or operator shall meet all of the requirements for landfills specified in articles 7 and 8 of this chapter.

(c) If an owner or operator has a tank system which does not have secondary containment that meets the requirements of section 66265.193(b) through (f) and which has not been granted a variance from the secondary containment requirements in accordance with section 66265.193(g), then:

(1) the closure plan for the tank system shall include both a plan for complying with subsection (a) of this section and a contingent plan for complying with subsection (b) of this section;

(2) a contingent post–closure plan for complying with subsection (b) of this section shall be prepared and submitted as part of the permit application;

(3) the cost estimates calculated for closure and post–closure care shall reflect the costs of complying with the contingent closure plan and the contingent post–closure plan, if these costs are greater than the costs of complying with the closure plan prepared for the expected closure under subsection (a) of this section;

(4) financial assurance shall be based on the cost estimates in subsection (c)(3) of this section;

(5) for the purposes of the contingent closure and post–closure plans, such a tank system is considered to be a landfill, and the contingent plans shall meet all of the closure, post–closure, and financial responsibility requirements for landfills under articles 7 and 8 of this chapter.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.197.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.198. Special Requirements for Ignitable or Reactive Wastes.

(a) Ignitable or reactive waste shall not be placed in a tank system, unless:

(1) the waste is treated, rendered, or mixed before or immediately after placement in the tank system so that:

(A) the resulting waste, mixture, or dissolved material no longer meets the definition of ignitable or reactive waste under sections 66261.21 or 66261.23; and

(B) section 66265.17(b) is complied with; or

(2) the waste is transferred, stored or treated in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or

(3) the tank system is used solely for emergencies.

(b) The owner or operator of a facility where ignitable or reactive waste is transferred, stored or treated in tanks shall comply with the requirements for the maintenance of protective distances between the waste management area and any public ways, streets, alleys, or an adjoining property line that can be built upon as required in Tables 2–1 through 2–6 of the National Fire Protection Association's "Flammable and Combustible Liquids Code," (1981), (incorporated by reference, see section 66260.11).

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.198.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.199. Special Requirements for Incompatible Wastes.

(a) Incompatible wastes, or incompatible waste and materials, shall not be placed in the same tank system, unless section 66265.17(b) is complied with.

(b) Hazardous waste shall not be placed in a tank system that has not been decontaminated and that previously held an incompatible waste or material, unless section 66265.17(b) is complied with.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.199.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.200. Waste Analysis and Trial Tests.

In addition to performing the waste analysis required by section 66265.13, the owner or operator shall, whenever a tank system is to be used to treat chemically or to store a hazardous waste that is substantially different from waste previously treated or stored in that tank system; or to treat chemically a hazardous waste with a substantially different process than any previously used in that tank system:

(a) conduct waste analyses and trial treatment or storage tests (e.g., bench–scale or pilot–plant scale tests); or

(b) obtain written, documented information on similar waste under similar operating conditions to show that the proposed treatment or storage will meet the requirements of sections 66265.194(a) and (d).

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.200.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.202. Air Emission Standards.

The owner or operator shall manage all hazardous waste placed in a tank in accordance with the applicable requirements of articles 27, 28, and 28.5 of this chapter.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159,and 25159.5, Health and Safety Code; and 40 CFR Section 265.202.

HISTORY

1. Change without regulatory effect adding new section filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).

Article 11. Surface Impoundments

§ 66265.220. Applicability.

The regulations in this article apply to owners and operators of facilities that use surface impoundments to treat, store, or dispose of hazardous waste, except as section 66265.1 provides otherwise.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.220.

HISTORY
1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.221. Design Requirements.

(a) The owner or operator of each new surface impoundment unit on which construction commences after January 29, 1992, each lateral expansion of a surface impoundment unit on which construction commences after July 29, 1992, and each replacement of an existing surface impoundment unit that is to commence reuse after July 29, 1992 shall install two or more liners and a leachate collection and removal system between such liners, and operate the leachate collection and removal system, in accordance with section 66264.221(c), unless exempted under section 66264.221(f) or (g) of this chapter. The requirements of this subsection shall not apply to surface impoundment units receiving only non–RCRA hazardous until February 18, 1996. "Construction commences" is as defined in section 66260.10 of this chapter under "existing facility."

(b) The owner or operator of each unit referred to in subsection (a) of this section shall notify the Department at least sixty (60) days prior to receiving waste. The owner or operator of each facility submitting notice shall file a Part B application within six months of the receipt of such notice.

(c) The owner or operator of any replacement surface impoundment unit is exempt from subsection (a) of this section if:

(1) The existing unit was constructed in compliance with the design standards of 42 USC section 6924(o)(1)(A)(i) and 42 USC section 6924(o)(5); and

(2) There is evidence to believe that the liner is functioning as designed.

(d) The double liner requirement set forth in subsection (a) of this section may be waived by the Department for any monofill, if:

(1) the monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes hazardous for reasons other than exceeding the soluble threshold limit concentration as described in section 66261.24; and

(2)(A) 1. the monofill has at least one liner for which there is no evidence that such liner is leaking. For the purposes of this paragraph the term "liner" means a liner designed, constructed, installed and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, groundwater or surface water at any time during the active life of the facility. In the case of any surface impoundment which has been exempted from the requirements of subsection (a) of this section on the basis of a liner designed, constructed, installed and operated to prevent hazardous waste from passing beyond the liner, at the closure of such impoundment the owner or operator must remove or decontaminate all waste residues, all contaminated liner material, and contaminated soil to the extent practicable. If all contaminated soil is not removed or decontaminated, the owner of operator of such impoundment must comply with appropriate postclosure requirements, including but not limited to ground–water monitoring and corrective action;

2. the monofill is located more than one–quarter mile from an underground source of drinking water as defined in section 66260.10; and

3. the monofill is in compliance with generally applicable groundwater monitoring requirements for facilities with permits; or

(B) the owner or operator demonstrates that the monofill is located, designed and operated so as to assure that there will be no migration of any hazardous constituent into groundwater or surface water at any future time.

(e) In the case of any unit in which the liner and leachate collection system has been installed pursuant to the requirements of subsection (a) of this section and in good faith compliance with subsection (a) of this section no liner or leachate collection system which is different from that which was so installed pursuant to subsection (a) of this section will be required for such unit by the Department when issuing the first permit to such facility, except that the Department will not be precluded from requiring installation of a new liner when the Department has reason to believe that any liner installed pursuant to the requirements of subsection (a) of this section is leaking.

(f) A surface impoundment shall maintain enough freeboard to prevent any overtopping of the dike by overfilling, wave action, or a storm. Except as provided in subsection (b) of this section, there shall be at least 2 feet (60 cm) of freeboard.

(g) A freeboard level of less than 2 feet (60 cm) may be maintained if the owner or operator obtains certification by a qualified engineer, registered in California, that alternative design features or operating plans will, to the best of the engineer's knowledge and opinion, prevent overtopping of the dike. The certification along with a written identification of alternate design features or operating plans preventing overtopping, shall be maintained at the facility.

(h) Surface impoundments that are newly subject to RCRA section 3005(j)(1) (42 U.S.C. section 6925(j)(1)) due to the promulgation of additional listings or characteristics for the identification of hazardous waste shall be in compliance with subsections (a), (c) and (d) of this section not later than 48 months after the promulgation of the additional listing or characteristic. This compliance period shall be consistent with health and safety code, division 20, article 9.5 and shall not be cut short as the result of the promulgation of land disposal prohibitions under Chapter 18 or the granting of an extension to the effective date of a prohibition pursuant to section 66268.5, within this 48–month period.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159, 25159.5 and 25208.5, Health and Safety Code; and 40 CFR Section 265.221.

HISTORY
1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of section heading and subsections (a) and (c), new subsections (c)(1)–(2), (f), and (g), and amendment of NOTE filed 7–19–95; operative 8–18–95 (Register 95, No. 29).
3. Amendment of section heading, repealer of subsections (f) and (g), new subsection (h) and amendment of NOTE filed 1–31–96; operative 1–31–96 (Register 96, No. 5).
4. Change without regulatory effect amending subsections (a) and (c)(1) and adopting new subsections (f) and (g) filed 6–30–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 27).
5. Change without regulatory effect amending subsection (h) filed 8–15–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 33).
6. Change without regulatory effect amending subsection (a) filed 10–21–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 43).

§ 66265.222. Action Leakage Rate.

(a) The owner or operator of surface impoundment units subject to section 66265.221(a) shall submit a proposed action leakage rate to the Department when submitting the notice required under section 66265.221(b). The Department will establish an action leakage rate, either as proposed by the owner or operator or modified using the criteria in this section.

(b) The Department shall approve an action leakage rate for surface impoundment units subject to section 66265.221(a). The action leakage rate is the maximum design flow rate that the leak detection system (LDS) can remove without the fluid pressure head on the bottom liner exceeding 1 foot (30.5 cm) at any given portion of the liner. The action leakage rate shall include an adequate safety margin to allow for uncertainties in the design (e.g., slope, hydraulic conductivity, thickness of drainage material), construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions (e.g., the action leakage rate shall consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.).

(c) To determine if the action leakage rate has been exceeded, the owner or operator shall convert the weekly or monthly flow rate from the monitoring data obtained under section 66265.226(b), to an average daily flow rate (gallons per acre per day) for each sump. Unless the Department approves a different calculation, the average daily flow rate for each sump shall be calculated weekly during the active life and closure period,

and if the unit closes in accordance with section 66265.228(a)(2), monthly during the post–closure care period when monthly monitoring is required under section 66265.226(b).

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code; and Governor's Reorganization Plan Number 1 of 1991. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 265.222.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Repealer and new section filed 7–19–95; operative 8–18–95 (Register 95, No. 29).
3. Change without regulatory effect amending subsection (b) filed 6–30–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 27).
4. Change without regulatory effect amending NOTE filed 6–7–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 24).

§ 66265.223. Containment System.

All earthen dikes shall have a protective cover, such as grass, shale, or rock to minimize wind and water erosion and to preserve their structural integrity.

NOTE: Authority cited: Sections 25150, 25159, 58004 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 265.223.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Renumbering and amendment of former section 66265.223 to new section 66265.224 filed 7–19–95; operative 8–18–95 (Register 95, No. 29).
3. New section and amendment of NOTE filed 10–13–98; operative 11–12–98 (Register 98, No. 42).

§ 66265.224. Response Actions.

(a) The owner or operator of surface impoundment units subject to section 66265.221(a) shall submit a response action plan to the Department when submitting the proposed action leakage rate under section 66265.222. The response action plan shall set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan shall describe the actions specified in subsection (b) of this section.

(b) If the flow rate into the leak detection system exceeds the action leakage rate for any sump, the owner or operator shall:

(1) Notify the Department in writing of the exceedence within 7 days of the determination;

(2) Submit a preliminary written assessment to the Department within 14 days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short–term actions taken and planned;

(3) Determine to the extent practicable the location, size, and cause of any leak;

(4) Determine whether waste receipt should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether or not the unit should be closed;

(5) Determine any other short–term and longer–term actions to be taken to mitigate or stop any leaks; and

(6) Within 30 days after the notification that the action leakage rate has been exceeded, submit to the Department the results of the analyses specified in subsections (b)(3), (4), and (5) of this section, the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator shall submit to the Department a report summarizing the results of any remedial actions taken and actions planned.

(c) To make the leak and/or remediation determinations in subsections (b)(3), (4), and (5) of this section, the owner or operator shall:

(1)(A) Assess the source of liquids and amounts of liquids by source,

(B) Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the leak detection system to identify the source of liquids and possible locations of any leaks, and the hazard and mobility of the liquid; and

(C) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

(2) Document why such assessments are not needed.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code; and Governor's Reorganization Plan Number 1 of 1991. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 265.224.

HISTORY

1. Renumbering of former section 66265.223 to new section 66265.224, repealer and new section filed 7–19–95; operative 8–18–95 (Register 95, No. 29).

§ 66265.225. Waste Analysis and Trial Tests.

(a) In addition to the waste analyses required by section 66265.13, whenever a surface impoundment is to be used to:

(1) chemically treat a hazardous waste which is substantially different from waste previously treated in that impoundment; or

(2) chemically treat hazardous waste with a substantially different process than any previously used in that impoundment; the owner or operator shall, before treating the different waste or using the different process:

(A) conduct waste analyses and trial treatment tests (e.g., bench scale or pilot plant scale tests); or

(B) obtain written, documented information on similar treatment of similar waste under similar operating conditions; to show that this treatment will comply with section 66265.17(b).

(b) As required by section 66265.13, the waste analysis plan shall include analyses needed to comply with sections 66265.229 and 66265.230. As required by section 66265.73, the owner or operator must place the results from each waste analysis and trial test, or the documented information, in the operating record of the facility.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.225.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.226. Monitoring and Inspection.

(a) The owner or operator shall inspect:

(1) the freeboard level at least once each operating day to ensure compliance with section 66265.222, and

(2) the surface impoundment, including dikes and vegetation surrounding the dike, at least once a week to detect any leaks, deterioration, or failures in the impoundment.

(b)(1) An owner or operator required to have a leak detection system under section 66265.221(a) shall record the amount of liquids removed from each leak detection system sump at least once each week during the active life and closure period.

(2) After the final cover is installed, the amount of liquids removed from each leak detection system sump shall be recorded at least monthly. If the liquid level in the sump stays below the pump operating level for two consecutive months, the amount of liquids in the sumps shall be recorded at least quarterly. If the liquid level in the sump stays below the pump operating level for two consecutive quarters, the amount of liquids in the sumps shall be recorded at least semi–annually. If at any time during the post–closure care period the pump operating level is exceeded at units on quarterly or semi–annual recording schedules, the owner or operator shall return to monthly recording of amounts of liquids removed from each sump until the liquid level again stays below the pump operating level for two consecutive months.

(3) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the Department based on pump activation level, sump dimensions, and level that avoids backup into drainage layer and minimizes head in the sump. The timing for submission and approval of the proposed "pump operating level" will be in accordance with section 66265.222(a).

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code; and Governor's Reorganization Plan Number 1 of 1991. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 265.226.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of section heading, new subsections (b)(1)–(3) and amendment of NOTE filed 7–19–95; operative 8–18–95 (Register 95, No. 29).

§ 66265.228. Closure and Postclosure Care.

(a) At closure, the owner or operator shall:

(1) remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless section 66261.3(d) applies; or

(2) close the impoundment and provide postclosure care for a landfill under article 7 and section 66265.310 of this chapter, including the following:

(A) eliminate free liquids by removing liquid wastes or solidifying the remaining wastes and waste residues;

(B) stabilize remaining wastes to a bearing capacity sufficient to support the final cover; and

(C) cover the surface impoundment with a final cover designed and constructed to:

1. minimize the downward entry of water into the closed impoundment throughout a period of at least 100 years;

2. function with minimum maintenance;

3. promote drainage and minimize erosion or abrasion of the cover;

4. accommodate settling and subsidence so that the cover's integrity is maintained;

5. have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present;

6. accommodate lateral and vertical shear forces generated by the maximum credible earthquake so that the integrity of the cover is maintained;

7. preclude ponding of rainfall and surface run-on over the closed area; and

8. conform to the provisions of subsection (e) through (r) of section 66264.228, except that the Department shall grant a variance from any requirement which the owner or operator demonstrates to the satisfaction of the Department is not necessary to protect public health, water quality or other environmental quality.

(b) In addition to the requirements of article 7 and section 66265.310 of this chapter, during the postclosure care period, the owner or operator of a surface impoundment in which wastes, waste residues or contaminated materials remain after closure in accordance with the provisions of subsection (a)(2) of this section shall:

(1) maintain the integrity and effectiveness of the final cover, including making repairs to the cover as necessary to correct the effects of settling, subsidence, erosion or other events;

(2) maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of article 6 of chapter 14;

(3) prevent run-on and run-off from eroding or otherwise damaging the final cover, and

(4) maintain and monitor the leak detection system in accordance with sections 66265.221(c)(2)(D) and (c)(3) of this chapter and 66265.226(b) and comply with all other applicable and leak detection system requirements of this part.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code; and Governor's Reorganization Plan Number 1 of 1991. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 265.228.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).

2. Amendment of subsections (b)(2)-(3), new subsection (b)(4) and amendment of NOTE filed 7-19-95; operative 8-18-95 (Register 95, No. 29).

3. Change without regulatory effect amending subsection (b)(4) filed 6-30-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 27).

§ 66265.229. Special Requirements for Ignitable or Reactive Waste.

Ignitable or reactive waste shall not be placed in a surface impoundment unless the waste and the impoundment satisfy all applicable requirements of chapter 18 of this division, and:

(a) the waste is treated, rendered, or mixed before or immediately after placement in the impoundment so that:

(1) the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under sections 66261.21 or 66261.23 of this chapter; and

(2) section 66265.17(b) is complied with; or

(b)(1) the waste is managed in such a way that it is protected from any material or conditions which may cause it to ignite or react; and

(2) the owner or operator obtains a certification from a qualified chemist or engineer, registered in California that to the best of the chemist's or engineer's knowledge and opinion, the design features or operating plans of the facility will prevent ignition or reaction; and

(3) the certification and the basis for it are maintained at the facility; or

(c) the surface impoundment is used solely for emergencies.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.229.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).

§ 66265.230. Special Requirements for Incompatible Wastes.

Incompatible wastes, or incompatible wastes and materials, (see Appendix V for examples) shall not be placed in the same surface impoundment, unless section 66265.17(b) is complied with.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.230.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).

§ 66265.231. Air Emission Standards.

The owner or operator shall manage all hazardous waste placed in a surface impoundment in accordance with the applicable requirements of articles 28 and 28.5 of this chapter.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 265.231.

HISTORY

1. Change without regulatory effect adding new section filed 6-11-99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).

Article 12. Waste Piles

§ 66265.250. Applicability.

The regulations in this article apply to owners and operators of facilities that treat or store hazardous waste in piles, except as section 66265.1 provides otherwise. Alternatively, a pile of hazardous waste may be managed as a landfill under article 14.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.250.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).

§ 66265.251. Protection from Wind.

The owner or operator of a pile containing hazardous waste which could be subject to dispersal by wind shall cover or otherwise manage the pile so that wind dispersal is controlled.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.251.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).

§ 66265.252. Waste Analysis.

(a) In addition to the waste analyses required by section 66265.13, the owner or operator shall analyze a representative sample of waste from each incoming movement before adding the waste to any existing pile, unless (1) The only wastes the facility receives which are amenable to piling are compatible with each other, or (2) the waste received is compatible with the waste in the pile to which it is to be added. The analysis con-

ducted shall be capable of differentiating between the types of hazardous waste the owner or operator places in piles, so that mixing of incompatible waste does not inadvertently occur. The analysis shall include a visual comparison of color and texture.

(b) As required by section 66265.13 of this chapter, the waste analysis plan shall include analyses needed to comply with sections 66265.256 and 66265.257. As required by section 66265.73, the owner or operator shall place the results of this analysis in the operating record of the facility.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.252.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.253. Containment.

If leachate or run–off from a pile is a hazardous waste, then either:

(a)(1) the pile shall be placed on an impermeable base that is compatible with the waste under the conditions of treatment or storage;

(2) the owner or operator shall design, construct, operate, and maintain a run–on control system capable of preventing flow onto the active portion of the pile during peak discharge from at least a 25–year storm;

(3) the owner or operator shall design, construct, operate, and maintain a run–off management system to collect and control at least the water volume resulting from a 24–hour, 25–year storm; and

(4) collection and holding facilities (e.g., tanks or basins) associated with run–on and run–off control systems shall be emptied or otherwise managed expeditiously to maintain design capacity of the system; or

(b)(1) the pile shall be protected from precipitation and run–on by some other means; and

(2) no liquids or wastes containing free liquids shall be placed in the pile.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.253.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.254. Design and Operating Requirements.

(a) The owner or operator of each new waste pile handling RCRA hazardous waste on which construction commences after January 29, 1992, each lateral expansion of a waste pile unit on which construction commences after July 29, 1992, and each such replacement of an existing waste pile unit that is to commence reuse after July 29, 1992 shall install two or more liners and a leachate collection and removal system above and between such liners, and operate the leachate collection and removal systems, in accordance with section 66264.251(c), unless exempted under section 66264.251(*l*), (m), or (n), of this chapter; and shall comply with the procedures of section 66265.221(b). "Construction commences" is as defined in section 66260.10 of this chapter under "existing facility".

(b) The owner or operator of each new waste pile handling only non–RCRA hazardous waste on which construction commences after February 18, 1996, each lateral expansion of a waste pile unit on which construction commences after February 18, 1996, and each such replacement of an existing waste pile unit that is to commence reuse after February 18, 1996 shall install two or more liners and a leachate collection and removal system above and between such liners, and operate the leachate collection and removal systems, in accordance with section 66264.251(c), unless exempted under section 66264.251(*l*), (m) or (n) of this chapter; and shall comply with the procedures of section 66265.221(b). "Construction commences" is as defined in section 66260.10 of this chapter under "existing facility".

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code; and Governor's Reorganization Plan Number 1 of 1991. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 265.254.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of section heading, designation and amendment of subsection (a), new subsection (b) and amendment of NOTE filed 7–19–95; operative 8–18–95 (Register 95, No. 29).
3. Change without regulatory effect amending section filed 6–30–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 27).

§ 66265.255. Action Leakage Rates.

(a) The owner or operator of waste pile units subject to section 66265.254 shall submit a proposed action leakage rate to the Department when submitting the notice required under section 66265.254. The Department will establish an action leakage rate, either as proposed by the owner or operator or modified using the criteria in this section.

(b) The Department shall approve an action leakage rate for waste pile units subject to section 66265.254. The action leakage rate is the maximum design flow rate that the leak detection system (LDS) can remove without the fluid pressure head on the bottom liner exceeding 1 foot (30.5 cm) at any govern portion of the liner. The action leakage rate shall include an adequate safety margin to allow for uncertainties in the design (e.g., slope, construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions (e.g., the action leakage rate shall consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.).

(c) To determine if the action leakage rate has been exceeded, the owner or operator shall convert the weekly flow rate from the monitoring data obtained under section 66265.260, to an average daily flow rate (gallons per acre per day) for each sump. Unless the Department approves a different calculation, the average daily flow rate for each sump shall be calculated weekly during the active life and closure period.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code; and Governor's Reorganization Plan Number 1 of 1991. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 265.255.

HISTORY

1. New section filed 7–19–95; operative 8–18–95 (Register 95, No. 29).
2. Change without regulatory effect amending subsection (b) filed 6–30–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 27).

§ 66265.256. Special Requirements for Ignitable or Reactive Waste.

(a) Ignitable or reactive wastes shall not be placed in a pile, unless the waste and pile satisfy all applicable requirements of chapter 18 of this division, and:

(1) addition of the waste to an existing pile (A) results in the waste or mixture no longer meeting the definition of ignitable or reactive waste under sections 66261.21 or 66261.23 of this chapter, and (B) complies with section 66265.17(b); or

(2) the waste is managed in such a way that it is protected from any material or conditions which may cause it to ignite or react.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.256.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.257. Special Requirements for Incompatible Wastes.

(a) Incompatible wastes, or incompatible wastes and materials, (see Appendix V for examples) shall not be placed in the same pile, unless section 66265.17(b) is complied with.

(b) A pile of hazardous waste that is incompatible with any waste or other material stored nearby in other containers, piles, open tanks, or surface impoundments shall be separated from the other materials, or protected from them by means of a dike, berm, wall, or other device.

(c) Hazardous waste shall not be piled on the same area where incompatible wastes or materials were previously piled, unless that area has been decontaminated sufficiently to ensure compliance with section 66265.17(b).

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.257.

HISTORY
1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.258. Closure and Post–Closure Care.

(a) At closure, the owner or operator shall remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless 66261.3(d) of this chapter applies; or

(b) if, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in subsection (a) of this section, the owner or operator finds that not all contami–

[The next page is 758.95.]

nated subsoils can be practicably removed or decontaminated, the owner or operator shall close the facility and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills (section 66265.310).

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.258.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).

§ 66265.259. Response Actions.

(a) The owner or operator of waste pile units subject to section 66265.254 shall submit a response action plan to the Department when submitting the proposed action leakage rate under section 66265.255. The response action plan shall set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan shall describe the actions specified in subsection (b) of this section.

(b) If the flow rate into the leak determination system exceeds the action leakage rate for any sump, the owner or operator shall:

(1) Notify the Department in writing of the exceedence within 7 days of the determination;

(2) Submit a preliminary written assessment to the Department within 14 days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions taken and planned;

(3) Determine to the extent practicable the location, size, and cause of any leak;

(4) Determine whether waste receipts should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether or not the unit should be closed;

(5) Determine any other short-term and longer-term actions to be taken to mitigate or stop any leaks; and

(6) Within 30 days after the notification that the action leakage rate has been exceeded, submit to the Department the results of the analyses specified in subsections (b)(3), (4) and (5) of this section, the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator shall submit to the Department a report summarizing the results of any remedial actions taken and actions planned.

(c) To make the leak and/or remediation determinations in subsections (b)(3), (4) and (5) of this section, the owner or operator shall:

(1)(A) Assess the source of liquids and amounts of liquids by source,

(B) Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the leak detection system to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and

(C) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

(2) Document why such assessments are not needed.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code; and Governor's Reorganization Plan Number 1 of 1991. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 265.259.

HISTORY

1. New section filed 7-19-95; operative 8-18-95 (Register 95, No. 29).

§ 66265.260. Monitoring and Inspection.

An owner or operator required to have a leak detection system under section 66265.254 shall record the amount of liquids removed from each leak detection system sump at least once each week during the active life and closure period.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code; and Governor's Reorganization Plan Number 1 of 1991. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 265.260.

HISTORY

1. New section filed 7-19-95; operative 8-18-95 (Register 95, No. 29).

Article 13. Land Treatment

§ 66265.270. Applicability.

The regulations in this article apply to owners and operators of hazardous waste land treatment facilities, except as section 66265.1 provides otherwise.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.270.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).

§ 66265.272. General Operating Requirements.

(a) Hazardous waste shall not be placed in or on a land treatment facility unless the waste can be made less hazardous or nonhazardous by degradation, transformation, or immobilization processes occurring in or on the soil.

(b) The owner or operator shall design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portions of the facility during peak discharge from at least a 25-year storm.

(c) The owner or operator shall design, construct, operate, and maintain a run-off management system capable of collecting, controlling and managing a water volume at least equivalent to a 24-hour, 25-year storm.

(d) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems shall be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

(e) If the treatment zone contains particulate matter which may be subject to wind dispersal, the owner or operator shall manage the unit to control wind dispersal.

(f)(1) Unless granted a variance pursuant to subsection (f)(2) of this section, or exempted pursuant to subsection (h) of this section, every new land treatment unit at a new or existing facility, every land treatment unit which replaces an existing land treatment unit, and every laterally expanded portion of an existing land treatment unit is required to be equipped with two or more liners and a leachate collection system meeting the requirements established in section 66264.301(c) for new landfills.

(2) The Department shall grant a variance from the requirements of subsection (f)(1) or subsection (9) of this section if the owner or operator demonstrates to the Department and the Department finds all of the following:

(A) the land treatment unit was an existing land treatment unit as of January 1, 1988, and no hazardous constituents identified in Appendix VIII to chapter 11 of this division have migrated from the treatment zone of the land treatment unit into the vadose zone or into the waters of the State, and no other hazardous constituents have migrated from the land treatment unit into the vadose zone or into the waters of the State in concentrations which pollute or threaten to pollute the vadose zone or the waters of the State. In making this demonstration the owner or operator shall take a sufficient number of core samples in, beneath and surrounding the treatment zone of the land treatment unit to characterize the chemical constituents in the treatment zone, in the immediate area of the vadose zone surrounding the treatment zone, and in the area of the vadose zone beneath the treatment zone and shall submit ground water monitoring data sufficient in scope to demonstrate that there has been no migration of hazardous constituents in the vadose zone or into the waters of the State. The owner or operator, as an alternative to taking these core samples, may use the data obtained from any land treatment demonstration required by the department pursuant to section 66264.272 if the data were obtained not more than two years prior to the application for the variance and were sufficient in scope to demonstrate that there has been no migration of hazardous constituents into the vadose zone or into the waters of the state;

(B) notwithstanding the date that the land treatment unit commenced operations, the design and operating practices will prevent the migration

of hazardous constituents identified in Appendix VIII to chapter 11 of this division from the treatment zone of the land treatment unit into the vadose zone or into the waters of the state and no other hazardous constituents have migrated from the land treatment unit into the vadose zone or into the waters of the state in concentrations which pollute or threaten to pollute the vadose zone or the waters of the state;

(C) notwithstanding the date that the land treatment unit commenced operations, the design and operating practices provide for rapid detection and removal or remediation of any hazardous constituents that migrate from the treatment zone of the land treatment unit into the vadose zone or the waters of the state in concentrations that pollute or threaten to pollute the vadose zone or the waters of the state.

(3)(A) The Department shall renew a variance only in those cases where an owner or operator demonstrates to the Department and the Department finds, both of the following:

1. no hazardous constituents have migrated from the treatment zone of the land treatment unit into the vadose zone or into the waters of the state in concentrations which pollute or threaten to pollute the vadose zone or the waters of the state;

2. continuing the operation of the land treatment unit does not pose a significant threat of hazardous constituents migrating from the land treatment unit into the vadose zone or into the waters of the state in concentrations which pollute or threaten to pollute the vadose zone or the waters of the state.

(B) In making the demonstration for the renewal of a variance pursuant to this subsection, the owner or operator may use field tests, laboratory analysis, or operating data.

(4) A variance or a renewal of a variance may be issued for a period not to exceed three years.

(5) Neither the requirements of this section nor the variance provisions of subsection (f)(2) shall relieve the owner or operator from responsibility to comply with all other existing laws and regulations pertinent to land treatment units.

(g) Unless granted a variance pursuant to subsection (f)(2) or exempted under subsection (h) of this section, after January 1, 1990, no person shall discharge hazardous waste into a land treatment unit which has not been equipped with liners and a leachate collection and removal system which satisfy the requirements of subsection (f)(1) of this section.

(h) Land treatment of soil contaminated only with non–RCRA hazardous waste which has been excavated as part of a removal or remedial action at any hazardous substance release site is exempt from the requirements of subsection (f) of this section if all of the following apply:

(1) the Department determines that the land treatment does not pose a threat to public health or safety or the environment;

(2) the land treatment is conducted pursuant to a plan approved by the Department or a cleanup and abatement order issued by a regional water quality control board;

(3) the land treatment is not conducted at an offsite commercial facility;

(4) the land treatment is used only for purposes of removal or remedial action and, upon completion of the land treatment portion of the removal or remedial action, the land treatment unit is closed.

(i) For purposes of this section, the terms "removal," "remedial action," "hazardous substance" and "release" shall be defined in accordance with article 2 (commencing with section 25310) of chapter 6.8 division 20 of the Health and Safety Code.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5, 25209.2, 25209.3 and 25209.5, Health and Safety Code; 40 CFR Section 265.272.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.273. Waste Analysis.

(a) In addition to the waste analyses required by section 66265.13, before placing a hazardous waste in or on a land treatment facility, the owner or operator shall:

(1) determine the concentrations in the waste of any substances which equal or exceed the maximum concentrations contained in section 66261.24, that cause a waste to exhibit the toxicity characteristic; and

(2) for any waste listed in article 4 of chapter 11 of this division, determine the concentrations of any substances which caused the waste to be listed as a hazardous waste.

(B) Chapter 11 of this division specifies the substances for which a waste is listed as a hazardous waste. As required by section 66265.13, the waste analysis plan shall include analyses needed to comply with sections 66265.281 and 66265.282. As required by section 66265.73, the owner or operator shall place the results from each waste analysis, or the documented information, in the operating record of the facility.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.273.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.276. Food Chain Crops.

(a) An owner or operator of a hazardous waste land treatment facility on which food chain crops are being grown, or have been grown and will be grown in the future, shall notify the Department within 60 days after July 1, 1991.

(b)(1) Food chain crops shall not be grown on the treated area of a hazardous waste land treatment facility unless the owner or operator can demonstrate, based on field testing, that any arsenic, lead, mercury or other constituents identified under section 66265.273(b):

(A) will not be transferred to the food portion of the crop by plant uptake or direct contact, and will not otherwise be ingested by food chain animals (e.g., by grazing); or

(B) will not occur in greater concentrations in the crops grown on the land treatment facility than in the same crops grown on untreated soils under similar conditions in the same region.

(2) The information necessary to make the demonstration required by subsection (b)(1) of this section must be kept at the facility and must, at a minimum:

(A) be based on tests for the specific waste and application rates being used at the facility; and

(B) include descriptions of crop and soil characteristics, sample selection criteria, sample size determination, analytical methods and statistical procedures.

(c) Food chain crops shall not be grown on a land treatment facility receiving waste that contains cadmium unless all requirements of subsections (c)(1)(A) through (C) of this section or all requirements of subsections (c)(2)(A) through (D) of this section are met.

(1)(A) The pH of the waste and soil mixture is 6.5 or greater at the time of each waste application, except for waste containing cadmium at concentrations of 2 mg/kg (dry weight) or less.

(B) The annual application of cadmium from waste does not exceed 0.5 kilograms per hectare (kg/ha) on land used for production of tobacco, leafy vegetables or root crops grown for human consumption. For other food chain crops, the annual cadmium application rate does not exceed:

Time Period	*Annual Cd Application Rate (kg/ha)*
Present to June 30, 1984	2.0
July 1, 1984 to December 31, 1986	1.25
Beginning January 1, 1987	0.5

(C) The cumulative application of cadmium from waste does not exceed the levels in either paragraph (c)(1)(C) 1. or 2. of this section.

1.

Soil Caption Exchange Capacity (meq/100g)	*Maximum Cumulative Application (kg/ha)*	
	Back-ground Soil pH Less Than 6.5	*Back-ground Soil pH Greater Than 6.5*
Less than 5	5	5
5 to 15	5	10
Greater than 15	5	20

2. For soils with a background pH of less than 6.5, the cumulative cadmium application rate does not exceed the levels below; provided, that the pH of the waste and soil mixture is adjusted to and maintained at 6.5 or greater whenever food chain crops are grown.

Soil Caption Exchange Capacity (meq/100g)	*Maximum Cumulative Application (kg/ha)*
Less than 5	5
5 to 15	10
Greater than 15	20

(2)(A) The only food chain crop produced is animal feed.

(B) The pH of the waste and soil mixture is 6.5 or greater at the time of waste application or at the time the crop is planted, whichever occurs later and this pH level is maintained whenever food chain crops are grown.

(C) There is a facility operating plan which demonstrates how the animal feed will be distributed to preclude ingestion by humans. The facility operating plan describes the measures to be taken to safeguard against possible health hazards from cadmium entering the food chain, which may result from alternative land uses.

(D) Future property owners are notified by a stipulation in the land record or property deed which states that the property has received waste at high cadmium application rates and that food chain crops must not be grown except in compliance with paragraph (c)(2) of this section.

(d) As required by section 66265.73, if an owner or operator grows food chain crops on his land treatment facility, he shall place the information developed in this section in the operating record of the facility.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.276.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.278. Vadose Zone (Zone of Aeration) Monitoring.

(a) The owner or operator shall have in writing, and shall implement, a vadose zone monitoring plan which is designed to:

(1) detect the vertical migration of hazardous waste and hazardous waste constituents under the active portion of the land treatment facility, and

(2) provide information on the background concentrations of the hazardous waste and hazardous waste constituents in similar but untreated soils nearby; this background monitoring shall be conducted before or in conjunction with the monitoring required under subsection (a)(1) of this section.

(b) The vadose zone monitoring plan shall include, at a minimum:

(1) soil monitoring using soil cores, and

(2) soil–pore water monitoring using devices such as lysimeters.

(c) To comply with subsection (a)(1) of this section, the owner or operator shall demonstrate in the vadose zone monitoring plan that:

(1) the depth at which soil and soil–pore water samples are to be taken is below the depth to which the waste is incorporated into the soil:

(2) the number of soil and soil–pore water samples to be taken is based on the variability of:

(A) the hazardous waste constituents (as identified in sections 66265.273(a) and (b) in the waste and in the soil; and

(B) *the soil type(s); and*

(3) the frequency and timing of soil and soil–pore water sampling is based on the frequency, time, and rate of waste application, proximity to ground water, and soil permeability.

(d) The owner or operator shall keep at the facility his vadose zone monitoring plan, and the rationale used in developing this plan.

(e) The owner or operator shall analyze the soil and soil–pore water samples for the hazardous waste constituents that were found in the waste during the waste analysis under sections 66265.273(a) and (b).

(f) As required by section 66265.73, all data and information developed by the owner or operator under this section shall be placed in the operating record of the facility.

(g) Except as provided in section 66265.272(h) no person shall place or dispose of hazardous waste in a land treatment unit if any of the following conditions exist:

(1) hazardous constituents have migrated from the land treatment unit into the vadose zone beneath or surrounding the treatment zone or into the waters beneath or surrounding the treatment zone;

(2) there is evidence that a hazardous constituent in the waste discharged to the land treatment unit has not been or will not be completely degraded, transformed or immobilized in the treatment zone;

(3) there is a significant potential for hazardous constituents to migrate from the land treatment unit into a potential source of drinking water.

(h) The owner or operator shall periodically, at the request of the Department, and at least annually, submit information required by the Department to assure that the conditions set forth in subsections (g)(1) and (g)(2) of this section are not present. The information to be submitted to the Department to demonstrate compliance with subsection (g) of this section shall include, but is not limited to, a sufficient number of soil core samples in, beneath, and surrounding the treatment zone of the land treatment unit to detect any constituents of concern.

(i) If the owner or operator determines pursuant to subsection (a) of this section, that there has been a statistically significant increase in the concentration of a hazardous constituent below the treatment zone, or that either of the conditions set forth in subsections (g)(1) or (g)(2) of this section are detected and confirmed, or that conditions exist that render the owner or operator unable to continue to satisfy the variance requirements of section 66265.272(f)(2), the owner or operator shall, within 72 hours, report to the Department describing the full extent of the owner's or operator's findings, including the identification of all constituents which have shown a statistically significant increase.

(j) Upon receiving notice pursuant to subsection (i) of this section, or upon independent confirmation by the Department, the Department shall order the owner or operator to cease operating the land treatment unit. The owner or operator shall not resume operating the land treatment unit and shall close the land treatment unit unless one of the following actions is taken:

(1) the owner or operator completes appropriate removal or remedial actions to the satisfaction of the Department, and the owner or operator submits to the Department, and the Department approves, an application for a permit or a variance modification to modify the operating practices at the facility to maximize the success of degradation, immobilization, or transformation processes in the treatment zone; or

(2) the owner or operator completes appropriate removal or remedial actions, submits to the Department, and the Department approves, an application for a permit or a variance modification to modify the operating practices at the facility to maximize the success of degradation, immobilization, or transformation processes in the treatment zone, and equips the land treatment unit with liners, and a leachate collection and removal system that satisfy the requirements of section 66265.272(f)(1).

(k) All actions taken by an owner or operator pursuant to subsections (j)(1) or (j)(2) of this section shall be completed within a time period specified by the Department, which shall not exceed 18 months after the Department receives notice pursuant to subsection (i) of this section. If the actions are not completed within this time period, the land treatment unit

shall be closed, unless granted an extension by the Department due to exceptional circumstances beyond the control of the owner and operator.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5 and 25209.4, Health and Safety Code; 40 CFR Section 265.278.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.279. Recordkeeping.

The owner or operator shall include hazardous waste application dates and rates in the operating record required under section 66265.73.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.279.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.280. Closure and Post–Closure.

(a) In the closure plan under section 66265.112 and the post–closure plan under section 66265.118, the owner or operator shall address the following objectives and indicate how they will be achieved:

(1) prevention of the migration of hazardous waste and hazardous waste constituents from the treated area into the ground water;

(2) prevention of the release of contaminated run–off from the facility into surface water;

(3) prevention of the release of airborne particulate contaminants caused by wind erosion; and

(4) compliance with section 66265.276 concerning the growth of food–chain crops.

(b) The owner or operator shall consider at least the following factors in addressing the closure and post–closure care objectives of subsection (a) of this section:

(1) type and amount of hazardous waste and hazardous waste constituents applied to the land treatment facility;

(2) the mobility and the expected rate of migration of the hazardous waste and hazardous waste constituents;

(3) site location, topography, and surrounding land use, with respect to the potential effects of pollutant migration (e.g., proximity to ground water, surface water and drinking water sources);

(4) climate, including amount, frequency, and pH of precipitation;

(5) geological and soil profiles and surface and subsurface hydrology of the site, and soil characteristics, including cation exchange capacity, total organic carbon, and pH;

(6) vadose zone monitoring information obtained under section 66265.278; and

(7) type, concentration, and depth of migration of hazardous waste constituents in the soil as compared to their background concentrations.

(c) The owner or operator shall consider at least the following methods in addressing the closure and post–closure care objectives of subsection (a) of this section:

(1) removal of contaminated soils;

(2) placement of a final cover, considering:

(A) functions of the cover (e.g., infiltration control, erosion and run–off control, and wind erosion control); and

(B) characteristics of the cover, including material, final surface contours, thickness, porosity and permeability, slope, length of run of slope, and type of vegetation on the cover; and

(3) monitoring of ground water.

(d) In addition to the requirements of article 7 of this chapter, during the closure period the owner or operator of a land treatment facility shall:

(1) continue vadose zone monitoring in a manner and frequency specified in the closure plan, except that soil pore liquid monitoring may be terminated 90 days after the last application of waste to the treatment zone;

(2) maintain the run–on control system required under section 66265.272(b);

(3) maintain the run–off management system required under section 66265.272(c); and

(4) control wind dispersal of particulate matter which may be subject to wind dispersal.

(e) For the purpose of complying with section 66265.115, when closure is completed the owner or operator may submit to the Department certification both by the owner or operator and by an independent qualified soil scientist, or an independent California Certified Engineering Geologist, in lieu of an independent California registered professional engineer, that the facility has been closed in accordance with the specifications in the approved closure plan.

(f) In addition to the requirements of section 66265.117, during the post–closure care period the owner or operator of a land treatment unit shall:

(1) continue soil–core monitoring by collecting and analyzing samples in a manner and frequency specified in the post–closure plan;

(2) restrict access to the unit as appropriate for its post–closure use;

(3) control wind dispersal of hazardous waste.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.280.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.281. Special Requirements for Ignitable or Reactive Waste.

The owner or operator shall not apply ignitable or reactive waste to the treatment zone unless the waste and treatment zone meet all applicable requirements of chapter 18 of this division, and:

(a) the waste is immediately incorporated into the soil so that:

(1) the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under sections 66261.21 or 66261.23 of this chapter; and

(2) section 66264.17(b) is complied with; or

(b) the waste is managed in such a way that it is protected from any material or conditions which may cause it to ignite or react.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.281.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.282. Special Requirements for Incompatible Wastes.

Incompatible wastes, or incompatible wastes and materials (see Appendix V for examples), shall not be placed in the same land treatment area, unless section 66265.17(b) is complied with.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.282.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

Article 14. Landfills

§ 66265.300. Applicability.

The regulations in this article apply to owners and operators of facilities that dispose of hazardous waste in landfills, except as section 66265.1 provides otherwise. A waste pile used as a disposal facility is a landfill and is governed by this article.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.300.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.301. Design and Operating Requirements.

(a) The owner or operator of each new landfill unit on which construction commences after January 29, 1992, each lateral expansion of a landfill unit on which construction commences after July 29, 1992, and each

replacement of an existing landfill unit that is to commence reuse after July 29, 1992 shall install two or more liners and a leachate collection and removal system above and between such liners, and operate the leachate collection and removal systems, in accordance with section 66264.301(d) or (e), of this chapter. The requirements of this subsection shall not apply to landfill units receiving only non–RCRA hazardous waste until February 18, 1996. "Construction commences" is as defined in section 66260.10 of this chapter under "existing facility".

(b) The owner or operator of each unit referred to in subsection (a) of this section shall notify the Department at least sixty days prior to receiving waste. The owner or operator of each facility submitting notice shall file a Part B application within six months of the receipt of such notice.

(c) The owner or operator of any replacement landfill unit is exempt from subsection (a) of this section if:

(1) The existing unit was constructed in compliance with the design standards of 42 USC section 6924(o)(1)(A)(i) and 42 USC section 6924(o)(5); and

(2) There is evidence to believe that the liner is functioning as designed.

(d) The double liner requirement set forth in subsection (a) of this section may be waived by the Department for any monofill, if:

(1) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes hazardous for reasons other than exceeding the soluble threshold limit concentration as described in section 66261.24(a)(2) for non–RCRA hazardous wastes or the characteristic of toxicity as set forth in section 66261.24(a)(1) for wastes with hazardous wastes numbers D004 through D017 for RCRA hazardous wastes; and

(2)(A) 1. . . . the monofill has at least one liner for which there is no evidence that such liner is leaking;

2. the monofill is located more than one–quarter mile from an underground source of drinking water as defined in section 66260.10; and

3. the monofill is in compliance with generally applicable groundwater monitoring requirements for facilities with hazardous waste facility permits; or

(B) the owner or operator demonstrates to the satisfaction of the Department that the monofill is located, designed and operated so as to assure that there will be no migration of any hazardous constituent into ground water or surface water at any future time.

(e) In the case of any unit in which the liner and leachate collection system has been installed pursuant to the requirements of subsection (a) of this section, and in good faith compliance with subsection (a) of this section no liner or leachate collection system which is different from that which was so installed pursuant to subsection (a) of this section will be required for such unit by the Department when issuing the first permit to such facility, except that the Department will not be precluded from requiring installation of a new liner when the Department has reason to believe that any liner installed pursuant to the requirements of subsection (a) of this section is leaking.

(f) The owner or operator shall design, construct, operate, and maintain a run–on control system capable of preventing flow onto the active portion of the landfill during peak discharge from at least a 25–year storm.

(g) The owner or operator shall design, construct, operate and maintain a run–off management system to collect and control at least the water volume resulting from a 24–hour, 25–year storm.

(h) Collection and holding facilities (e.g., tanks or basins) associated with run–on and run–off control systems shall be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

(i) The owner or operator of a landfill containing hazardous waste which is subject to dispersal by wind shall cover or otherwise manage the landfill so that wind dispersal of the hazardous waste is controlled.

(j) As required by section 66265.13, the waste analysis plan must include analyses to comply with sections 66265.312, 66265.313 and 6265.314. As required by section 66265.73, the owner or operator shall place the results of these analyses in the operating record of the facility.

NOTE: Authority cited: Sections 25150, 25159 and 58012, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 265.301.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of section heading, subsections (a) and (c), new subsections (c)(1)–(2) and (f)–(j) and amendment of NOTE filed 7–19–95; operative 8–18–95 (Register 95, No. 29).
3. Change without regulatory effect amending subsections (a) and (c)(1) filed 6–30–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 27).
4. Change without regulatory effect amending subsection (a) filed 10–21–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 43).
5. Amendment of subsections (d) and (d)(1) and amendment of NOTE filed 10–13–98; operative 11–12–98 (Register 98, No. 42).

§ 66265.302. Action Leakage Rate.

(a) The owner or operator of landfill units subject to section 66265.301(a) shall submit a proposed action leakage rate to the Department when submitting the notice required under section 66265.301(b). The Department will establish an action leakage rate, either as proposed by the owner or operator or modified using the criteria in this section.

(b) The Department shall approve an action leakage rate for landfill units subject to section 66265.301(a). The action leakage rate is the maximum design flow rate that the leak detection system (LDS) can remove without the fluid pressure head on the bottom liner exceeding 1 foot (30.5 cm) at any given portion of the liner. The action leakage rate shall include an adequate safety margin to allow for uncertainties in the design (e.g., slope, hydraulic conductivity, thickness of drainage material), construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions (e.g., the action leakage rate shall consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.).

(c) To determine if the action leakage rate has been exceeded, the owner or operator shall convert the weekly or monthly flow rate from the monitoring data obtained under section 66265.304 to an average daily flow rate (gallons per acre per day) for each sump. Unless the Department approves a different calculation, the average daily flow rate for each sump shall be calculated weekly during the active life and closure period, and monthly during the post–closure care period when monthly monitoring is required under section 66265.304(b).

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code; and Governor' s Reorganization Plan Number 1 of 1991. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 265.302.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of section heading and subsections (a)–(c), repealer of subsections (d)–(e) and amendment of NOTE filed 7–19–95; operative 8–18–95 (Register 95, No. 29).
3. Change without regulatory effect amending subsection (b) filed 6–30–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 27).

§ 66265.303. Response Actions.

(a) The owner or operator of landfill units subject to section 66265.301(a) shall submit a response action plan to the Department when submitting the proposed action leakage rate under section 66265.302. The response action plan shall set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan shall describe the actions specified in subsection (b) of this section.

(b) If the flow rate into the leak detection system exceeds the action leakage rate for any sump, the owner or operator shall:

(1) Notify the Department in writing of the exceedence within 7 days of the determination;

(2) Submit a preliminary written assessment to the Department within 14 days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short–term actions taken and planned;

(3) Determine to the extent practicable the location, size, and cause of any leak;

(4) Determine whether waste receipt should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether or not the unit should be closed;

(5) Determine any other short–term and longer–term actions to be taken to mitigate or stop any leaks; and

(6) Within 30 days after the notification that the action leakage rate has been exceeded, submit to the Department the results of the analyses specified in subsections (b)(3), (4) and (5) of this section, the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator shall submit to the Department a report summarizing the results of any remedial actions taken and actions planned.

(c) To make the leak and/or remediation determinations in subsections (b)(3), (4) and (5) of this section, the owner or operator shall:

(1)(A) Assess the source of liquids and amounts of liquids by source,

(B) Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the leak detection system to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and

(C) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

(2) Document why such assessments are not needed.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code; and Governor' s Reorganization Plan Number 1 of 1991. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 265.303.

HISTORY

1. New section filed 7–19–95; operative 8–18–95 (Register 95, No. 29).

§ 66265.304. Monitoring and Inspection.

(a) An owner or operator required to have a leak detection system under section 66265.301(a) shall record the amount of liquids removed from each leak detection system sump at least once each week during the active life and closure period.

(b) After the final cover is installed, the amount of liquids removed from each leak detection system sump shall be recorded at least monthly. If the liquid level in the sump stays below the pump operating level for two consecutive months, the amount of liquids in the sumps shall be recorded at least quarterly. If the liquid level in the sump stays below the pump operating level for two consecutive quarters, the amount of liquids in the sumps shall be recorded at least semi–annually. If at any time during the post–closure care period the pump operating level is exceeded at units on quarterly or semi–annual recording schedules, the owner or operator shall return to monthly recording of amounts of liquids removed from each sump until the liquid level again stays below the pump operating level for two consecutive months.

(c) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the Department based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump. The timing for submission and approval of the proposed "pump operating level" will be in accordance with Section 66265.302(a).

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code; and Governor' s Reorganization Plan Number 1 of 1991. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 265.304.

HISTORY

1. New section filed 7–19–95; operative 8–18–95 (Register 95, No. 29).

§ 66265.309. Surveying and Recordkeeping.

The owner or operator of a landfill shall maintain the following items in the operating record required in section 66265.73:

(a) on a map, the exact location and dimensions, including depth, of each cell with respect to permanently surveyed benchmarks with horizontal and vertical controls; and

(b) the contents of each cell and the approximate location of each hazardous waste type within each cell.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.309.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.310. Closure and Postclosure Care.

(a) At final closure of the landfill or upon closure of any cell, the owner or operator shall cover the landfill or cell with a final cover designed and constructed to:

(1) prevent the downward entry of water into the closed landfill throughout a period of at least 100 years;

(2) function with minimum maintenance;

(3) promote drainage and minimize erosion or abrasion of the cover;

(4) accommodate settling and subsidence so that the cover's integrity is maintained;

(5) have a permeability less than the permeability of any bottom liner system or natural subsoils present;

(6) accommodate lateral and vertical shear forces generated by the maximum credible earthquake so that the integrity of the cover is maintained;

(7) preclude ponding of rainfall, surface run–off or run–on over the closed area;

(8) conform to the provisions of subsections (e) through (r) of section 66264.228, except that the Department shall grant a variance from any requirement of subsections (e) through (r) which the owner or operator demonstrates to the satisfaction of the Department is not necessary to protect public health, water quality or other environmental quality.

(b) After final closure, the owner or operator shall comply with all postclosure requirements contained in sections 66265.117 through 66265.120 including maintenance and monitoring throughout the postclosure care period. The owner or operator shall:

(1) close the facility in a manner that will minimize any chance of postclosure release of hazardous waste or discarded hazardous material; facilitate postclosure maintenance, monitoring and emergency response; and require minimum maintenance of containment structures, leachate collection systems and surface drainage collection or diversion systems;

(2) maintain the integrity and effectiveness of the final cover, including making repairs to the cover as necessary to correct the effects of settling, subsidence, erosion or other events;

(3) maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of article 6 of chapter 14;

(4) prevent run–on and run–off from eroding or otherwise damaging the final cover;

(5) protect and maintain surveyed benchmarks used in complying with section 66265.309; and

(6) maintain and monitor the leak detection system in accordance with Sections 66264.301(c)(3)(D) and (c)(4) of this chapter and 66265.304(b), and comply with all other applicable leak detection system requirements of this part;

(c) If liquid has been disposed of at the site in containers, in bulk or in a moist semisolid that will drain when the weight of overburden is applied, the owner or operator shall do one of the following before closing the facility:

(1) demonstrate to the satisfaction of the department that incompatible wastes do not commingle and that nongaseous constituents of waste cannot migrate from the site; or

(2) provide measures to prevent incompatible waste from mixing after closure and to prevent migration of nongaseous waste constituents from the site after closure.

(d) The owner or operator shall consider at least the following factors in addressing the closure and postclosure care objectives of subsection (a) of this section:

(1) type and amount of hazardous waste and hazardous waste constituents in the landfill;

(2) the mobility and the expected rate of migration of the hazardous waste and hazardous waste constituents;

(3) site location, topography and surrounding land use, with respect to the potential effects of pollutant migration (e.g., proximity to groundwater, surface water and drinking water sources);

(4) climate, including amount, frequency and pH of precipitation;

(5) characteristics of the cover, including material, final surface contours, thickness, porosity and permeability, slope, length of run of slope and type of vegetation on the cover; and

(6) geological and soil profiles and surface and subsurface hydrology of the site.

(e) In addition to the requirements of section 66265.117, during the postclosure care period, the owner or operator of a hazardous waste landfill shall:

(1) maintain the function and integrity of the final cover as specified in the approved closure plan;

(2) maintain and monitor the leachate collection, removal and treatment system (if there is one present in the landfill) to prevent excess accumulation of leachate in the system;

(3) maintain and monitor the gas collection and control system (if there is one present in the landfill) to control the vertical and horizontal escape of gases;

(4) protect and maintain surveyed benchmarks; and

(5) restrict access to the landfill as appropriate for its postclosure use.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code; and Governor's Reorganization Plan Number 1 of 1991. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 265.310.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of subsections (b)(4)–(5), new subsection (b)(6) and amendment of NOTE filed 7–19–95; operative 8–18–95 (Register 95, No. 29).

§ 66265.312. Special Requirements for Ignitable or Reactive Waste.

(a) Except as provided in subsection (b) of this section, and in section 66265.316, ignitable or reactive waste shall not be placed in a landfill, unless the waste and landfill meets all applicable requirements of chapter 18 of this division, and the waste is treated, rendered, or mixed before or immediately after placement in a landfill so that:

(1) the resulting waste, mixture, or dissolution or material no longer meets the definition of ignitable or reactive waste under sections 66261.21 or 66261.23; and

(2) section 66265.17(b) is complied with.

(b) Except for prohibited wastes which remain subject to treatment standards in article 4 of chapter 18 of this division, ignitable wastes in containers may be landfilled without meeting the requirements of subsection (a) of this section provided that the wastes are disposed in such a way that they are protected from any material or conditions which may cause them to ignite. At a minimum, ignitable wastes shall be disposed in non–leaking containers which are carefully handled and placed so as to avoid heat, sparks, rupture, or any other condition that might cause ignition of the wastes; shall be covered daily with soil or other non–combustible material to minimize the potential for ignition of the wastes; and shall not be disposed in cells that contain or will contain other wastes which may generate heat sufficient to cause ignition of the waste.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.312.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect amending subsection (b) filed 8–15–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 33).

§ 66265.313. Special Requirements for Incompatible Wastes.

Incompatible wastes, or incompatible wastes and materials, (see Appendix V for examples) shall not be placed in the same landfill cell, unless section 66265.17(b) is complied with.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.313.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.314. Special Requirements for Bulk and Containerized Liquids.

(a) Effective February 2, 1985, the placement of bulk or non–containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

(b) Containers holding free liquids shall not be placed in a landfill unless:

(1) all freestanding liquid:

(A) has been removed by decanting, or other methods;

(B) has been mixed with sorbent or solidified so that freestanding liquid is no longer observed; or

(C) has been otherwise eliminated; or

(2) the container is very small, such as an ampule; or

(3) the container is designed to hold free liquids for use other than storage, such as a battery or capacitor; or

(4) the container is a lab pack as defined in section 66265.316 and is disposed of in accordance with section 66265.316.

(c) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the facility shall use Method 9095 (as described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" – EPA Publication SW–846 Third Edition and updates, as incorporated by reference in section 66260.11).

(d) Sorbents used to treat free liquids to be disposed of in landfills shall be nonbiodegradable. Nonbiodegradable sorbents are: materials listed or described in subsection (d)(1) of this section; materials that pass one of the tests in subsection (d)(2) of this section; or materials that are determined by USEPA to be nonbiodegradable through the 40 CFR Part 260 petition process.

(1) Nonbiodegradable sorbents.

(A) Inorganic minerals, other inorganic materials, and elemental carbon (e.g., aluminosilicates, clays, smectites, Fuller's earth, bentonite, calcium bentonite, montmorillonite, calcined montmorillonite, kaolinite, micas (illite), vermiculites, zeolites; calcium carbonate (organic free limestone); oxides/hydroxides, alumina, lime, silica (sand), diatomaceous earth; perlite (volcanic glass); expanded volcanic rock; volcanic ash; cement kiln dust; fly ash; rice hull ash; activated charcoal/activated carbon); or

(B) High molecular weight synthetic polymers (e.g., polyethylene, high density polyethylene (HDPE), polypropylene, polystyrene, polyurethane, polyacrylate, polynorborene, polyisobutylene, ground synthetic rubber, cross–linked allylstyrene and tertiary butyl copolymers). This does not include polymers derived from biological material or polymers specifically designed to be degradable; or

(C) Mixtures of these nonbiodegradable materials.

(2) Tests for nonbiodegradable sorbents.

(A) The sorbent material is determined to be nonbiodegradable under ASTM Method G21–90–Standard Practice for Determining Resistance of Synthetic Polymer Materials to Fungi; or

(B) The sorbent material is determined to be nonbiodegradable under ASTM Method G22–76 (1984b)–Standard Practice for Determining Resistance of Plastics to Bacteria; or

(C) The sorbent material is determined to be non–biodegradable under OECD test 301B; (CO_2 Evolution (Modified Strum Test)).

(e) Effective November 8, 1985, the placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the Department, or the Department determines, that:

(1) the only reasonably available alternative to the placement in such landfill is placement in a landfill or unlined surface impoundment, whether or not permitted or operating under interim status, which contains, or may reasonably be anticipated to contain, hazardous waste; and

(2) placement in such owner or operator's landfill will not present a risk of contamination of any underground source of drinking water (as that term is defined in section 66260.10).

NOTE: Authority cited: Sections 25150, 25159 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5 and 25179.5, Health and Safety Code; 40 CFR Section 265.314.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of subsections (a) and (b)(1), repealer of subsection (b)(2), subsection renumbering, new subsections (d)–(d)(2)(B), subsection relettering and amendment of NOTE filed 8–8–95 as an emergency; operative 8–8–95 (Register 95, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–6–95 or emergency language will be repealed by operation of law on the following day.
3. Reinstatement of section as it existed prior to emergency amendment filed 9–15–95 by operation of Government Code section 11346.1(f) (Register 95, No. 37).
4. Amendment of subsections (a) and (b)(1)(B), repealer of subsections (b)(2)–(b)(2)(C), subsection renumbering, amendment of subsection (c), new subsections (d)–(d)(2)(C), subsection relettering, and amendment of NOTE filed 10–13–98; operative 11–12–98 (Register 98, No. 42).
5. New subsection (d)(2)(A) and amendment of NOTE filed 3–17–99; operative 4–16–99 (Register 99, No. 12).

§ 66265.315. Special Requirements for Containers.

Unless they are very small, such as an ampule, containers shall be either:

(a) at least 90 percent full when placed in the landfill; or

(b) crushed, shredded, or similarly reduced in volume to the maximum practical extent before burial in the landfill.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.315.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.316. Disposal of Small Containers of Hazardous Waste in Overpacked Drums (Lab Packs).

Small containers of hazardous waste in overpacked drums (lab packs) may be placed in a landfill if the following requirements are met.

(a) Hazardous waste shall be packaged in non–leaking inside containers. The inside containers shall be of a design and constructed of a material that will not react dangerously with, be decomposed by, or be ignited by the waste held therein. Inside containers shall be tightly and securely sealed. The inside containers shall be of the size and type specified in the Department of Transportation (DOT) hazardous materials regulations (49 CFR Parts 173, 178 and 179), if those regulations specify a particular inside container for the waste.

(b) The inside containers shall be overpacked in an open head DOT–specification metal shipping container (49 CFR Parts 178 and 179) of no more than 416–liter (110 gallon) capacity and surrounded by, at a minimum, a sufficient quantity of sorbent material, determined to be nonbiodegradable in accordance with 66265.314(d), to completely sorb all of the liquid contents of the inside containers. The metal outer container shall be full after it has been packed with inside containers and sorbent material.

(c) The sorbent material used shall not be capable of reacting dangerously with, being decomposed by, or being ignited by the contents of the inside containers, in accordance with section 66265.17(b).

(d) Incompatible wastes, as defined in section 66260.10, shall not be placed in the same outside container.

(e) Reactive waste, other than cyanide– or sulfide–bearing waste as defined in section 66261.23 (a)(5), shall be treated or rendered non–reactive prior to packaging in accordance with subsections (a) through (d) of this section. Cyanide– and sulfide–bearing reactive waste may be packaged in accordance with subsections (a) through (d) of this section without first being treated or rendered non–reactive provided that the cyanide concentration is less than 1000 mg/l.

(f) Such disposal is in compliance with the requirements of chapter 18 of this division. Persons who incinerate lab packs according to the requirements of section 66268.42(c)(1) may use fiber drums in place of metal outer containers. Such fiber drums shall meet the DOT specifications in 49 CFR 173.12 and be overpacked according to the requirements in Subsection (b) of this section.

NOTE: Authority cited: Sections 25150, 25159 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.316.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Reinstatement of section as it existed prior to emergency amendment filed 9–15–95 by operation of Government Code section 11346.1(f) (Register 95, No. 37).
3. Amendment of section heading and subsection (f) filed 1–31–96; operative 1–31–96 (Register 96, No. 5).
4. Amendment of subsections (b) and (c) and amendment of NOTE filed 10–13–98; operative 11–12–98 (Register 98, No. 42).

§ 66265.317. Special Requirements for Nonliquid Waste.

(a)(1) Effective January 1, 1995 or the effective date of the applicable treatment standard found in chapter 18 of division 4.5 of Titles 22 and 26 of California Code of Regulations, whichever is later, all nonliquid hazardous waste, bulk or containerized, shall contain less than 50 percent moisture by weight prior to disposal in a hazardous waste landfill.

(2) The requirements in (a)(1) cannot be met by adding material that acts solely as a sorbent, unless determined to be nonbiodegradable in accordance with section 66265.314(d) and waste is disposed in a container, or diluting agent. The moisture content shall be determined by pulverizing the entire sample coarsely on a clean surface by hand, using rubber gloves. Twenty–five to 50 grams shall be placed in a prepared evaporating dish and weighed. The sample shall then be placed in an oven at 103 to 105 degrees centigrade for 1 hour. The dish shall be cooled in a desiccator to 20 degrees centigrade for 1 hour and then reweighed. The cycle of drying, cooling, and weighing shall be repeated until a constant weight is obtained or until the weight loss is less than 4 percent of the previous weight.

(b) The calculation in subsection (a) shall be in accordance with the following formula:

Percent Moisture = [(A–B)/(A–C)] x 100

Where:

A = Weight of evaporating dish and original sample, grams

B = Weight of evaporating dish and oven dried sample, grams

C = Weight of evaporating dish, grams.

(c)(1) Lab Packs as defined in section 66265.316 are exempt from section 66265.317(a).

(2) Asbestos–containing waste is exempt from section 66265.317(a) if the waste is disposed according to the requirements of the regional water quality control board in (1) a class I landfill, or (2) segregated areas within a nonclass I landfill.

NOTE: Authority cited: Sections 25150, 25179.5 and 58012, Health and Safety Code. Reference: Sections 25143.7, 25159, 25159.5, 25179.5(b) and 25179.9, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of subsections (a) and (c) filed 10–10–91 as an emergency; operative 10–10–91 (Register 91, No. 52). A Certificate of Compliance must be transmitted to OAL 2–7–92 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsections (a) and (c) refiled 2–7–92 as an emergency; operative 2–7–92 (Register 92, No. 12). A Certificate of Compliance must by transmitted to OAL 6–8–92 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsections (a) and (c) refiled 5–12–92 as an emergency; operative 6–5–92 (Register 92, No. 20). A Certificate of Compliance must be transmitted to OAL 9–9–92 or emergency language will be repealed by operation of law on the following day.

5. Amendment of subsections (a) and (c) refiled 9–14–92 as an emergency; operative 10–2–92 (Register 92, No. 38). A Certificate of Compliance must be transmitted to OAL 2–1–92 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 9–14–92 order including amendment of subsection (c)(2) and NOTE transmitted to OAL 12–23–92 and filed 2–8–93; (Register 93, No. 7).
7. Amendment of subsection (a)(1) filed 5–5–94 as an emergency; operative 5–5–94 (Register 94, No. 18). A Certificate of Compliance must be transmitted to OAL by 9–2–94 or emergency language will be repealed by operation of law on the following day.
8. Amendment of subsection (a)(1) refiled 8–22–94 as an emergency; operative 8–22–94 (Register 94, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–20–94 or emergency language will be repealed by operation of law on the following day.
9. Amendment of subsection (a)(1) refiled 12–22–94 as an emergency, including amendment of subsection (c)(1); operative 12–20–94 (Register 94, No. 51). A Certificate of Compliance must be transmitted to OAL 4–19–95 or emergency language will be repealed by operation of law on the following day.
10. Amendment of subsections (a)(1) and (c)(1) refiled 4–17–95 as an emergency; operative 4–17–95 (Register 95, No. 16). A Certificate of Compliance must be transmitted to OAL 8–15–95 or emergency language will be repealed by operation of law on the following day.
11. Amendment of subsections (a)(1)–(2), (c)(1) and NOTE refiled 8–8–95 as an emergency; operative 8–8–95 (Register 95, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–6–95 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 8–8–95 order transmitted to OAL 8–3–95 and filed 9–15–95 (Register 95, No. 37).
13. Reinstatement of subsection (a)(2) as it existed prior to emergency amendment filed 9–15–95 by operation of Government Code section 11346.1(f) (Register 95, No. 37).
14. Amendment of subsection (a)(2) and NOTE filed 10–13–98; operative 11–12–98 (Register 98, No. 42).

Article 15. Incinerators

§ 66265.340. Applicability.

(a) The regulations in this article apply to owners or operators of facilities that incinerate hazardous waste, except as section 66264.1 provides otherwise. The following facility owners or operators are considered to incinerate hazardous waste:

(1) owners or operators of hazardous waste incinerators (as defined in section 66260.10).

(b) Owners and operators of incinerators burning hazardous waste are exempt from all of the requirements of this article except section 66265.351 (Closure), provided that the owner or operator has documented, in writing, that the waste would not reasonably be expected to contain any of the hazardous constituents listed in, Appendix VIII to chapter 11 of this division, and such documentation is retained at the facility, if the waste to be burned is:

(1) listed as a hazardous waste in article 4 of chapter 11 of this division solely because it is ignitable (Hazard Code I), corrosive (Hazard Code C), or both; or

(2) listed as a hazardous waste in article 4 of chapter 11 of this division solely because it is reactive (Hazard Code R) for characteristics other than those listed in section 66261.23(a)(4) and (a)(5), and will not be burned when other hazardous wastes are present in the combustion zone; or

(3) a hazardous waste solely because it possesses the characteristic of ignitability, corrosivity, or both, as determined by the tests for characteristics of hazardous wastes; or

(4) a hazardous waste solely because it possesses the reactivity characteristics described by section 66261.23(a)(1), (a)(2), (a)(3), (a)(6), (a)(7), (a)(8), and will not be burned when other hazardous wastes are present in the combustion zone.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245, 58004 and 58012, Health and Safety Code. Reference: Sections 25159.5 and 25200, Health and Safety Code; 40 CFR Section 265.340.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of subsection (a)(1), repealer of subsection (a)(2), and amendment of NOTE filed 7–1–96; operative 7–31–96 (Register 96, No. 27).

§ 66265.341. Waste Analysis.

(a) In addition to the waste analyses required by section 66265.13, the owner or operator shall sufficiently analyze any waste which that owner or operator has not previously burned in that owner or operator's incinerator to enable him that owner or operator to establish steady state (normal) operating conditions (including waste and auxiliary fuel feed and air flow) and to determine the type of pollutants which might be emitted. At a minimum, the analysis shall determine:

(1) heating value of the waste;

(2) halogen content and sulfur content in the waste; and

(3) concentrations in the waste of lead and mercury, unless the owner or operator has written, documented data that show that the element is not present.

(b) As required by section 66265.73, the owner or operator must place the results from each waste analysis, or the documented information, in the operating record of the facility.

NOTE: Authority cited: Sections 208 and 25159, Health and Safety Code. Reference cited:Sections 25159.5 and 25200, Health and Safety Code; 40 CFR Section 265.341.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.347. Monitoring and Inspections.

(a) The owner or operator shall conduct, as a minimum, the following monitoring and inspections when incinerating hazardous waste.

(1) Existing instruments which relate to combustion and emission control shall be monitored at least every 15 minutes. Appropriate corrections to maintain steady state combustion conditions shall be made immediately either automatically or by the operator. Instruments which relate to combustion and emission control would normally include those measuring waste feed, auxiliary fuel feed, air flow, incinerator temperature, scrubber flow, scrubber pH, and relevant level controls.

(2) The complete incinerator and associated equipment (pumps, valves, conveyors, pipes, etc.) shall be inspected at least daily for leaks, spills, and fugitive emissions, and all emergency shutdown controls and system alarms must be checked to assure proper operation.

NOTE: Authority cited: Sections 208 and 25159, Health and Safety Code. Reference: Sections 25159.5 and 25200, Health and Safety Code; 40 CFR Section 265.347.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.351. Closure.

(a) At closure, the owner or operator shall remove all hazardous waste and hazardous waste residues (including but not limited to ash, scrubber waters, and scrubber sludges) from the incinerator site.

(b) At closure, as throughout the operating period, unless the owner or operator can demonstrate, in accordance with section 66261.3(d) of this division, that the residue removed from that owner or operator's incinerator is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and shall manage it in accordance with all applicable requirements of this division.

NOTE: Authority cited: Sections 208 and 25159, Health and Safety Code. Reference cited: Sections 25159.5 and 25200, Health and Safety Code; 40 CFR Section 264.351.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.352. Interim Status Incinerators Burning Particular Hazardous Wastes.

(a) Owners or operators of incinerators subject to this article may burn EPA Hazardous Wastes F020, F021, F022, F023, F026, or F027 if they receive a certification from the USEPA Assistant Administrator for Solid Waste and Emergency Response that they can meet the performance standards of article 15 of chapter 14 of this division when they burn these wastes.

(b) The following standards and procedures will be used in determining whether to certify an incinerator.

(1) The owner or operator will submit an application to the USEPA Assistant Administrator for Solid Waste and Emergency Response contain-

ing applicable information in sections 66270.19 and 66270.62 demonstrating that the incinerator can meet the performance standards in article 15 of chapter 14 of this division when they burn these wastes.

(2) The USEPA Assistant Administrator for Solid Waste and Emergency Response will issue a tentative decision as to whether the incinerator can meet the performance standards in article 15 of chapter 14 of this division. Notification of this tentative decision will be provided by newspaper advertisement and radio broadcast in the jurisdiction where the incinerator is located. The USEPA Assistant Administrator for Solid Waste and Emergency Response will accept comment on the tentative decision for 60 days. The USEPA Assistant Administrator for Solid Waste and Emergency Response also may hold a public hearing upon request or at the Assistant Administrator's discretion.

(3) After the close of the public comment period, the USEPA Assistant Administrator for Solid Waste and Emergency Response will issue a decision whether or not to certify the incinerator.

NOTE: Authority cited: Sections 208 and 25159, Health and Safety Code. Reference: Sections 25159.5 and 25200, Health and Safety Code; 40 CFR Section 265.352.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

Article 16. Thermal Treatment

§ 66265.370. Other Thermal Treatment.

The regulations in this article apply to owners or operators of facilities that thermally treat hazardous waste in devices other than enclosed devices using controlled flame combustion, except as section 66265.1 provides otherwise. Thermal treatment in enclosed devices using controlled flame combustion is subject to the requirements of article 15 of this chapter if the unit is an incinerator, and article 8 of chapter 16, if the unit is a boiler or an industrial furnace as defined in section 66260.10.

NOTE: Authority cited: Sections 25159, 25159.5, 58004 and 58012, Health and Safety Code. Reference cited: Sections 25159.5 and 25200, Health and Safety Code; 40 CFR Section 265.370.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of section and NOTE filed 7–1–96; operative 7–31–96 (Register 96, No. 27).

§ 66265.373. General Operating Requirements.

Before adding hazardous waste, the owner or operator shall bring his thermal treatment process to steady state (normal) conditions of operation–including steady state operating temperature using auxiliary fuel or other means, unless the process is a noncontinuous (batch) thermal treatment process which requires a complete thermal cycle to treat a discrete quantity of hazardous waste.

NOTE: Authority cited: Sections 208 and 25159, Health and Safety Code. Reference: Sections 25159, 25159.5 and 25200, Health and Safety Code; 40 CFR Section 265.373.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.375. Waste Analysis.

(a) In addition to the waste analyses required by section 66265.13, the owner or operator must sufficiently analyze any waste which he has not previously treated in that owner's or operator's thermal process to enable that owner or operator to establish steady state (normal) or other appropriate (for a non–continuous process) operating conditions (including waste and auxiliary fuel feed) and to determine the type of pollutants which might be emitted. At a minimum, the analysis must determine:

(1) heating value of the waste;

(2) halogen content and sulfur content in the waste; and

(3) concentrations in the waste of lead and mercury, unless the owner or operator has written, documented data that show that the element is not present.

(b) As required by section 66265.73, the owner or operator must place the results from each waste analysis, or the documented information, in the operating record of the facility.

NOTE: Authority cited: Sections 208 and 25159, Health and Safety Code. Reference: Sections 25159.5 and 25200, Health and Safety Code; 40 CFR Section 265.375.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.377. Monitoring and Inspections.

(a) The owner or operator shall conduct, as a minimum, the following monitoring and inspections when thermally treating hazardous waste.

(1) Existing instruments which relate to temperature and emission control (if an emission control device is present) shall be monitored at least every 15 minutes. Appropriate corrections to maintain steady state or other appropriate thermal treatment conditions shall be made immediately either automatically or by the operator. Instruments which relate to temperature and emission control would normally include those measuring waste feed, auxiliary fuel feed, treatment process temperature, and relevant process flow and level controls.

(2) The stack plume (emissions), where present, shall be observed visually at least hourly for normal appearance (color and opacity). The operator shall immediately make any indicated operating corrections necessary to return any visible emissions to their normal appearance.

(3) The complete thermal treatment process and associated equipment (pumps, valves, conveyors, pipes, etc.) shall be inspected at least daily for leaks, spills, and fugitive emissions, and all emergency shutdown controls and system alarms must be checked to assure proper operation.

NOTE: Authority cited: Sections 208 and 25159, Health and Safety Code. Reference: Sections 25159.5 and 25200, Health and Safety Code; 40 CFR Section 265.377.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.381. Closure.

At closure, the owner or operator shall remove all hazardous waste and hazardous waste residues (including, but not limited to, ash) from the thermal treatment process or equipment. At closure, as throughout the operating period, unless the owner or operator can demonstrate, in accordance with section 66261.3(c) or (d), that any waste removed from that owner or operator's thermal treatment process or equipment is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and shall manage it in accordance with all applicable requirements of this division.

NOTE: Authority cited: Sections 208 and 25159, Health and Safety Code. Reference cited: Sections 25159.5 and 25200, Health and Safety Code; 40 CFR Section 265.381.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.382. Open Burning; Waste Explosives.

Open burning of hazardous waste is prohibited except for the open burning and detonation of waste explosives. Waste explosives include waste which has the potential to detonate and bulk military propellants which cannot safely be disposed of through other modes of treatment. Detonation is an explosion in which chemical transformation passes through the material faster than the speed of sound (0.33 kilometers/second at sea level). Owners or operators choosing to open burn or detonate waste explosives shall do so in accordance with the following table and in a manner that does not threaten human health or the environment.

Pounds of Waste Explosives or Propellants	*Minimum Distance from Open Burning or Detonation to the Property of Others*
0 to 100	204 meters (670 feet)
101 to 1,000	380 meters (1,250 feet)
1,001 to 10,000	530 meters (1,730 feet)
10,001 to 30,000	690 meters (2,260 feet)

NOTE: Authority cited: Sections 208 and 25159, Health and Safety Code. Reference: Sections 25159.5 and 25200, Health and Safety Code; 40 CFR Section 265.382.

HISTORY
1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.383. Interim Status Thermal Treatment Devices Burning Particular Hazardous Waste.

(a) Owners or operators of thermal treatment devices subject to this subpart may burn EPA Hazardous Wastes F020, F021, F022, F023, F026, or F027 if they receive a certification from the USEPA Assistant Administrator for Solid Waste and Emergency Response that they can meet the performance standards of article 15 of chapter 14 of this division when they burn these wastes.

(b) The following standards and procedures will be used in determining whether to certify a thermal treatment unit.

(1) The owner or operator will submit an application to the USEPA Assistant Administrator for Solid Waste and Emergency Response containing the applicable information in sections 66270.19 and 66270.62 demonstrating that the thermal treatment unit can meet the performance standard in article 15 of chapter 14 of this division when they burn these wastes.

(2) The USEPA Assistant Administrator for Solid Waste and Emergency Response will issue a tentative decision as to whether the thermal treatment unit can meet the performance standards in article 15 of chapter 14 of this division. Notification of this tentative decision will be provided by newspaper advertisement and radio broadcast in the jurisdiction where the thermal treatment device is located. The USEPA Assistant Administrator for Solid Waste and Emergency Response will accept comment on the tentative decision for 60 days. The USEPA Assistant Administrator for Solid Waste and Emergency Response also may hold a public hearing upon request or at the Assistant Administrator's discretion.

(3) After the close of the public comment period, the USEPA Assistant Administrator for Solid Waste and Emergency Response will issue a decision whether or not to certify the thermal treatment unit.

NOTE: Authority cited: Sections 208 and 25159, Health and Safety Code. Reference: Sections 25159.5 and 25200, Health and Safety Code; 40 CFR Section 265.383.

HISTORY
1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

Article 17. Chemical, Physical, and Biological Treatment

§ 66265.400. Applicability.

The regulations in this article apply to owners and operators of facilities which treat hazardous wastes by chemical, physical, or biological methods in other than tanks, surface impoundments, and land treatment facilities, except as section 66265.1 provides otherwise. Chemical, physical, and biological treatment of hazardous waste in tanks, surface impoundments, and land treatment facilities shall be conducted in accordance with articles 10, 11, and 13, respectively.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.400.

HISTORY
1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.401. General Operating Requirements.

(a) Chemical, physical, or biological treatment of hazardous waste shall comply with section 66265.17(b).

(b) Hazardous wastes or treatment reagents shall not be placed in the treatment process or equipment if they could cause the treatment process or equipment to rupture, leak, corrode, or otherwise fail before the end of its intended life.

(c) Where hazardous waste is continuously fed into a treatment process or equipment, the process or equipment shall be equipped with a means to stop this inflow (e.g., a waste feed cut–off system or by–pass system to a standby containment device).

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.401.

HISTORY
1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.402. Waste Analysis and Trial Tests.

(a) In addition to the waste analysis required by section 66265.13, the owner or operator shall comply with subsection (b) of this section, whenever:

(1) a hazardous waste which is substantially different from waste previously treated in a treatment process or equipment at the facility is to be treated in that process or equipment, or

(2) a substantially different process than any previously used at the facility is to be used to chemically treat hazardous waste.

(b) The owner or operator shall, before treating the different waste or using the different process or equipment:

(1) conduct waste analyses and trial treatment tests (e.g., bench scale or pilot plant scale tests); or

(2) obtain written, documented information on similar treatment of similar waste under similar operating conditions to show that this proposed treatment will meet all applicable requirements of sections 66265.401(a) and (b).

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. References: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.402.

HISTORY
1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.403. Inspections.

(a) The owner or operator of a treatment facility shall inspect, where present:

(1) discharge control and safety equipment (e.g., waste feed cut–off systems, by–pass systems, drainage systems, and pressure relief systems) at least once each operating day, to ensure that it is in good working order;

(2) data gathered from monitoring equipment (e.g., pressure and temperature gauges), at least once each operating day, to ensure that the treatment process or equipment is being operated according to its design;

(3) the construction materials of the treatment process or equipment, at least weekly, to detect corrosion or leaking of fixtures or seams; and

(4) the construction materials of, and the area immediately surrounding, discharge confinement structures (e.g., dikes), at least weekly, to detect erosion or obvious signs of leakage (e.g., wet spots or dead vegetation).

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.403.

HISTORY
1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.404. Closure.

At closure, all hazardous waste and hazardous waste residues shall be removed from treatment processes or equipment, discharge control equipment, and discharge confinement structures. In addition, owners and operators of incinerators shall comply with the requirements of section 66265.351. At closure, as throughout the operating period, unless the owner or operator can demonstrate, in accordance with section 66261.3(d) or (e) of this division, that any waste removed from the treatment process or equipment is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and shall manage it in accordance with all applicable requirements of chapters 12, 13, and 15 of this division.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.404.

HISTORY
1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.405. Special Requirements for Ignitable or Reactive Waste.

Ignitable or reactive waste shall not be placed in a treatment process or equipment unless:

(a) the waste is treated, rendered, or mixed before or immediately after placement in the treatment process or equipment so that (1) the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under section 66261.21 or 66261.23 of this division, and (2) section 66265.17(b) is complied with; or

(b) the waste is treated in such a way that it is protected from any material or conditions which may cause the waste to ignite or react.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.405.

HISTORY
1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.406. Special Requirements for Incompatible Wastes.

(a) Incompatible wastes, or incompatible wastes and materials, (see Appendix V for examples) shall not be placed in the same treatment process or equipment, unless section 66265.17(b) is complied with.

(b) Hazardous waste shall not be placed in unwashed treatment equipment which previously held an incompatible waste or material, unless section 66265.17(b) is complied with.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.406.

HISTORY
1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

Article 17.5. Drip Pads

§ 66265.440. Applicability.

(a) The requirements of this article apply to owners and operators of facilities that use new or existing drip pads to convey treated wood drippage, precipitation, and/or surface water run–off to an associated collection system. Existing drip pads are those constructed before December 6, 1990, and those for which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to December 6, 1990. All other drip pads are new drip pads. The requirement at section 66265.443(b)(3) to install a leak collection system applies only to those drip pads that are constructed after December 24, 1992 except for those constructed after December 24, 1992 for which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to December 24, 1992.

(b) The owner or operator of any drip pad that is inside or under a structure that provides protection from precipitation so that neither run–off nor run–on is generated is not subject to regulation under sections 66265.443(e) or 66265.443(f), as appropriate.

(c) The requirements of this article are not applicable to the management of infrequent and incidental drippage in storage yards provided that:

(1) the owner or operator maintains and complies with a written contingency plan that describes how the owner or operator will respond immediately to the discharge of such infrequent and incidental drippage. At a minimum, contingency plan shall describe how the facility will do the following:

(A) cleanup the drippage;

(B) document the cleanup of the drippage;

(C) retain documents regarding cleanup for three years; and

(D) manage the contaminated media in a manner consistent with Department regulations.

NOTE: Authority cited: Sections 25150, 25159, 25159.5 and 25245, Health and Safety Code; and Section 58012, Governor's Reorganization Plan Number 1 of 1991. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 265.440.

HISTORY
1. New section filed 7–29–94; operative 8–29–94 (Register 94, No. 30).
2. Change without regulatory effect adding new article heading filed 9–13–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 37).

§ 66265.441. Assessment of Existing Drip Pad Integrity.

(a) For each existing drip pad as defined in section 66265.440 of this article, the owner or operator shall evaluate the drip pad and determine that it meets all of the requirement of this article, except the requirements for liners and leak detection systems of section 66265.443(b). No later than the effective date of this rule, the owner or operator shall obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by an independent, qualified professional engineer registered in California that attests to the results of the evaluation. The assessment shall be reviewed, updated, and re–certified annually until all upgrades, repairs, or modifications necessary to achieve compliance with all of the standards of section 66265.443 are complete. The evaluation shall document the extent to which the drip pad meets each of the design and operating standards of section 66265.443, except the standards for liners and leak detection systems, specific in section 66265.443(b).

(b) The owner or operator shall develop a written plan for upgrading, repairing, and modifying the drip pad to meet the requirements of section 66265.443(b), and submit the plan to the Department no later than two years before the date that all repairs, upgrades, and modifications are complete. This written plan shall describe all changes to be made to the drip pad in sufficient detail to document compliance with all the requirements of section 66265.443. The plan shall be reviewed and certified by an independent, qualified professional engineer registered in California.

(c) Upon completion of all, repairs, and modifications, the owner or operator shall submit to the Department, the as–built drawings for the drip pad together with a certification by an independent, qualified professional engineer registered in California attesting that the drip pad conforms to the drawings.

(d) If the drip pad is found to be leaking or unfit for use, the owner or operator shall comply with the provisions of section 66265.443(m) or close the drip pad in accordance with section 66265.445.

NOTE: Authority cited: Sections 25150, 25159, 25159.5 and 25245, Health and Safety Code; and Section 58012, Governor's Reorganization Plan Number 1 of 1991. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 265.441.

HISTORY
1. New section filed 7–29–94; operative 8–29–94 (Register 94, No. 30).

§ 66265.442. Design and Installation of New Drip Pads.

Owners and operators of new drip pads shall ensure that the pads are designed, installed, and operated in accordance with one of the following:

(a) All of the applicable requirements of sections 66265.443 (except section 66265.443(b)), 66265.444 and 66265.445, or

(b) All of the applicable requirements of sections 66265.443 (except section 66265.443(a)(4)(A) and (B)), 66265.444 and 66265.445.

NOTE: Authority cited: Sections 25150, 25159, 25159.5 and 25245, Health and Safety Code; and Section 58012, Governor's Reorganization Plan Number 1 of 1991. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 265.442.

HISTORY
1. New section filed 7–29–94; operative 8–29–94 (Register 94, No. 30).

§ 66265.443. Design and Operating Requirements.

(a) Drip pads shall:

(1) be constructed of non–earthen materials, excluding wood and non–structurally supported asphalt;

(2) be sloped to free–drain treated wood drippage, rain, and other waters, or solutions of drippage and water or other wastes to the associated collection system;

(3) have a curb or berm around the perimeter;

(4)(A) have a hydraulic conductivity of less than or equal to $1x10^{-7}$ centimeters per second, e.g., existing concrete drip pads shall be sealed, coated, or covered with a surface material with a hydraulic conductivity of less than or equal to $1x10^{-7}$ centimeters per second such that the entire

surface where drippage occurs or may run across is capable of containing such drippage and mixtures of drippage and precipitation, materials, or other wastes while being routed to an associated collection system. This surface material shall be maintained free of cracks and gaps that could adversely affect its hydraulic conductivity, and the materials shall be chemically compatible with the preservatives that contact the drip pad. The requirements of this provision apply only to existing drip pads and those drip pads for which the owner or operator elects to comply with section 66265.442(a) instead of section 66265.442(b).

(B) the owner or operator shall obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by an independent, qualified registered professional engineer registered in California that attests to the results of the evaluation. The assessment shall be reviewed, updated and recertified annually. The evaluation shall document the extent to which the drip pad meets the design and operating standards of this section, except for subsection (b).

(5) be of sufficient structural strength and thickness to prevent failure due to physical contact, climatic conditions, the stress of installation, and the stress of daily operations, e.g., variable and moving loads such as vehicle traffic, movement of wood, etc.

(b) If an owner or operator elects to comply with section 66264.442(b) instead of section 66265.442(a), the drip pad shall have:

(1) a synthetic liner installed below the drip pad that is designed, constructed, and installed to prevent leakage from the drip pad into the adjacent subsurface soil or groundwater or surface water at any time during the active life (including the closure period) of the drip pad. The liner shall be constructed of materials that will prevent waste from being absorbed into the liner and prevent releases into the adjacent subsurface soil or ground water or surface water during the active life of the facility. The liner shall be:

(A) constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or drip pad leakage to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation (including stresses from vehicular traffic on the drip pad);

(B) placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression or uplift; and

(C) installed to cover all surrounding earth that could come in contact with the waste or leakage; and

(2) a leakage detection system, immediately above the liner that is designed, constructed, maintained, and operated to detect leakage from the drip pad. The leakage detection system shall be:

(A) constructed of materials that are:

1. chemically resistant to the waste managed in the drip pad and the leakage that might be generated; and

2. of sufficient strength and thickness to prevent collapse under the pressures exerted by overlaying materials and by any equipment used at the drip pad; and

(B) designed and operated to function without clogging through the scheduled closure of the drip pad;

(C) designed so that it will detect the failure of the drip pad or the presence of a release of hazardous waste or accumulated liquid at the earliest practicable time.

(3) a leakage collection system immediately above the liner that is designed, constructed, maintained and operated to collect leakage from the drip pad such that it can be removed from below the drip pad. The date, time, and quantity of any leakage collected in this system and removed shall be documented in the operating log.

(c) Drip pads shall be maintained such that they remain free of cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the drip pad.

(d) The drip pad and associated collection system shall be designed and operated to convey, drain, and collect liquid resulting from drippage or precipitation in order to prevent run-off.

(e) Unless protected by a structure, as described in section 66265.440(b), the owner or operator shall design, construct, operate, and maintain a run-on control system capable of preventing flow onto the drip pad during peak discharge from at least a 24-hour, 25-year storm unless the system has sufficient excess capacity to contain any run-on that might enter the system, or the drip pad is protected by a structure or cover, as described in section 66265.440(b).

(f) Unless protected by a structure or cover, as described in section 66265.440(b), the owner or operator shall design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(g) The drip pad shall be evaluated to determine that it meets the requirements of subsections (a) through (f) of this section and the owner or operator shall obtain a statement from an independent, qualified, professional engineer registered in California, certifying that the drip pad design meets the requirements of this section.

(h) Drippage and accumulated precipitation shall be removed from the associated collection system as necessary to prevent overflow onto the drip pad.

(i) The drip pad surface shall be cleaned thoroughly in a manner and frequency such that accumulated residues of hazardous waste or other materials are removed, with residues being properly managed as hazardous waste, so as to allow weekly inspections of the entire drip pad surface without interference or hindrance form accumulated residues of hazardous waste or other materials on the drip pad. The owner or operator shall document the date and time of each cleaning and the cleaning procedure used in the facility's operating log.

(j) Drip pads shall be operated and maintained in a manner to minimize tracking of hazardous waste or hazardous waste constituents off the drip pad as a result of activities by personnel or equipment.

(k) After being removed from the treatment vessel, treated wood from pressure and non-pressure processes shall be held on the drip pad until drippage has ceased. The owner or operator shall maintain records sufficient to document that all treated wood is held on the pad following treatment in accordance with this requirement.

(*l*) Collection and holding units associated with run-on and run-off control systems shall be emptied or otherwise managed as soon as possible after storms to maintain design capacity of the system.

(m) Throughout the active life of the drip pad, if the owner or operator detects a condition that may have caused or has caused a release of hazardous waste, the condition shall be repaired within a reasonably prompt period of time following discovery, in accordance with the following procedures:

(1) upon detection of a condition that may have caused or has caused a release of hazardous waste (e.g., upon detection of leakage by the leak detection system), the owner or operator shall:

(A) enter a record of the discovery in the facility operating log;

(B) immediately remove the portion of the drip pad affected by the condition from service;

(C) determine what steps shall be taken to repair the drip pad, remove any leakage from below the drip pad, and establish a schedule for accomplishing the clean up and repairs;

(D) within 24 hours after discovery of the condition, notify the Department of the condition and, within ten working days, provide a written notice to the Department with a description of the steps that will be taken to repair the drip pad, and clean up any leakage, and the schedule for accomplishing this work;

(2) the Department will review the information submitted, make a determination regarding whether the pad shall be removed from service completely or partially until repairs and cleanup are complete, and notify

the owner or operator of the determination and the underlying rationale in writing; and

(3) upon competing all repairs and clean up, the owner or operator shall notify the Department in writing and provide a certification, signed by an independent, qualified professional engineer registered in California, that the repairs and clean up have been completed according to the written plan submitted in accordance with subsection (m)(1)(D) of this section.

(n) The owner or operator shall maintain, as part of the facility operating log, documentation of past operating and waste handling practices. This shall include identification of preservative formulations used in the past, a description of drippage management practices, and a description of treated wood storage and handling practices.

NOTE: Authority cited: Sections 25150, 25159, 25159.5 and 25245, Health and Safety Code; and Section 58012, Governor's Reorganization Plan Number 1 of 1991. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 265.443.

HISTORY

1. New section filed 7–29–94; operative 8–29–94 (Register 94, No. 30).
2. Change without regulatory effect amending subsections (b)(2)(C), (k) and (m)(2) filed 12–28–95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 52).

§ 66265.444. Inspection.

(a) During preconstruction, construction, and operating phases, liners and cover systems (e.g., membranes, sheets, or coatings) shall be inspected for uniformity, damage, and imperfection (e.g., holes cracks, thin spots, or foreign materials). Immediately after construction or installation, liners shall be inspected and certified as meeting the requirements of section 66265.443 by an independent, qualified professional engineer registered in California. The certification shall be maintained at the facility as part of the facility operating record. After installation liners and covers shall be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.

(b) While a drip pad is in operation, it shall be inspected weekly and after storms to detect evidence of any of the following:

(1) deterioration, malfunctions, or improper operation of run–on and run–off control systems;

(2) the presence of leakage in and proper functioning of leakage detection system; or

(3) deterioration or cracking if the drip pad surface.

NOTE: Authority cited: Sections 25150, 25159, 25159.5 and 25245, Health and Safety Code; and Section 58012, Governor's Reorganization Plan Number 1 of 1991. Reference: Sections 25150 and 25245, Health and Safety Code; and 40 CFR Section 265.444.

HISTORY

1. New section filed 7–29–94; operative 8–29–94 (Register 94, No. 30).

§ 66265.445. Closure.

(a) At closure, the owner or operator shall remove or decontaminate all waste residues, contaminated containment system components (pad, liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leakage, and manage them as hazardous waste.

(b) If, after removing or decontaminating all residues and making reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment a required in subsection (a) of this section, the owner or operator finds that not all contaminated subsoils can be practically removed or decontaminated, the owner or operator shall close the facility and perform post–closure care in accordance with closure and post–closure care requirements that apply to landfills (section 66265.310). For permitted units, the requirement to have a permit continues throughout the post–closure period.

(c)(1) The owner or operator of an existing drip pad, as defined in section 66265.440, that does not comply with the liner requirements of section 66265.443(b)(1) shall:

(A) include in the closure plan for the drip pad under section 66265.112 both a plan for complying with subsection (a) of this section and a contingent plan for complying with subsection (b) of this section in case not all contaminated subsoils can be practicably removed at closure; and

(B) prepare a contingent post–closure plan under section 66265.118 for complying with subsection (b) of this section in case not all contaminated subsoils can be practicably removed at closure;

(2) the cost estimates calculated under sections 66265.112 and 66265.144 for closure and post–closure care of a drip pad subject to this subsection shall include the cost of complying with the contingent closure plan and the contingent post–closure plan, but are not required to include the cost of expected closure under subsection (a) of this section.

NOTE: Authority cited: Sections 25150, 25159, 25159.5 and 25245, Health and Safety Code; and Section 58012, Governor's Reorganization Plan Number 1 of 1991. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 265.445.

HISTORY

1. New section filed 7–29–94; operative 8–29–94 (Register 94, No. 30).
2. Change without regulatory effect amending subsections (b), (c)(1)(A) and (c)(2) filed 12–28–95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 52).

Article 18. Environmental Monitoring of Air and Soil–Pore Gas for Interim Status Facilities

§ 66265.710. Applicability to Interim Status Facilities.

(a) Sections 66265.710 through 66265.714 of this chapter apply to owners or operators of interim status facilities that treat, store, recycle or dispose of hazardous waste in a surface impoundment, waste pile, land treatment unit or landfill (hereinafter referred to as a regulated unit), except as section 66265.1 and subsection (b) of this section provide otherwise. The owner or operator of a regulated unit that receives hazardous waste after February 2, 1985 shall install, operate and maintain an environmental monitoring system which meets the requirements of section 66265.711 and shall comply with sections 66265.712 through 66265.714. This environmental monitoring program shall be carried out during the active life of the regulated unit, and for units where hazardous waste will remain after closure, during the post–closure care period as well.

(b) All or part of the environmental monitoring requirements of this article shall be waived if the owner or operator demonstrates to the satisfaction of the Department that hazardous waste will not migrate from the regulated unit during the active life of the unit (including the closure period) and the post–closure care period and that any waste remaining in the unit does not pose a threat to human health and the environment. These demonstrations shall be in writing, and shall be kept at the facility. The demonstration that gas, vapor or airborne solids will not migrate shall be certified by an independent, qualified chemical engineer. The demonstration that liquid will not migrate shall be certified by an independent, certified engineering geologist or professional civil engineer registered in California and shall establish the following:

(1) the potential for migration of hazardous waste or hazardous waste constituents from the regulated unit via transport through soil, water or air;

(2) the potential for migration of hazardous waste or hazardous waste constituents from the regulated unit to ground water, by an evaluation of:

(A) a water balance of precipitation, evapotranspiration, runoff and infiltration;

(B) unsaturated zone characteristics (i.e., geologic materials, physical properties and depth to ground water).

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Sections 25150(a), 25159, 25159.5 and 25245, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.711. Environmental Monitoring System for Interim Status Facilities.

The owner or operator of a regulated unit that contains hazardous waste, or discarded hazardous material, that contains a volatile toxic substance, or a hazardous material that can become airborne, or that can decompose or react to form a volatile toxic substance or toxic gas, shall pro-

vide for representative sampling and analysis of air upwind and at the disposal area and of air in the vapor space at vapor and gas monitoring wells, established by the owner or operator to the satisfaction of the Department. Such monitoring shall be conducted throughout the active life and the post–closure care period of the facility. Vapor and gas monitoring wells shall be covered with collection chambers. The owner or operator shall provide inside the collection chambers probes or equivalent methodologies that actively sense the concentration of substances specified pursuant to section 66265.712(b). If necessary to protect human health or the environment, the owner or operator shall provide instrumentation that provides continuous recording of concentrations of substances in open air and in atmosphere at vapor wells.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Sections 25150(a), 25159, 25159.5 and 25245, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.712. Sampling and Analysis for Interim Status Facilities.

(a) The owner or operator shall develop and follow an environmental sampling and analysis plan that satisfies the requirements of this articlenalysis plan that satisfies the requirements of this article. The owner or operator shall submit this plan to the Department within 90 days of July 1, 1991. The owner or operator shall submit all modifications to the environmental sampling and analysis plan to the Department and shall maintain an updated version of the environmental sampling and analysis plan in the operating record at the facility. The Department shall require the owner or operator to modify the environmental sampling and analysis plan as necessary to protect human health or the environment.

(b) Samples will be analyzed for those substances specified in the environmental sampling and analysis plan. Unless the Department approves an alternate list of monitoring parameters, the owner or operator shall analyze the samples to determine the concentration of all constituents that cause waste at the regulated unit to be hazardous waste. The owner or operator shall specify for the regulated unit the location and frequency of monitoring and the type of statistical test that will be used. The owner or operator shall submit a report to the Department that indicates the results of the analysis and the concentrations of constituents in the air and soil–pore gas sampled. The report shall be submitted to the Department within 30 days of the date and time analyses are completed.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Sections 25150(a), 25159, 25159.5 and 25245, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.713. Preparation, Evaluation and Response for Interim Status Facilities.

(a) Within one year after July 1, 1991, the owner or operator shall prepare a comprehensive environmental monitoring program capable of determining:

(1) whether hazardous waste or hazardous waste constituents have migrated from the facility in air or in soil–pore gas;

(2) the rate and extent of migration of hazardous waste or hazardous waste constituents in air and in soil–pore gas;

(3) the concentrations of hazardous waste or hazardous waste constituents in air and in soil–pore gas.

(b) If the owner or operator determines through the environmental monitoring pursuant to section 66265.712, or the comprehensive environmental monitoring pursuant to subsection (a) of this section, that hazardous waste or hazardous waste constituents have migrated from the regulated unit through air or soil–pore gas, the owner or operator shall, within 15 days of such determination, develop and submit to the Department a specific plan, certified by a qualified certified engineering geologist or qualified geologist or geotechnical engineer or civil engineer registered in California, for an environmental quality assessment program at the facility.

(c) The plan to be submitted under subsection (b) of this section shall specify:

(1) the number, location and depth of sampling stations;

(2) sampling and analytical methods for those hazardous wastes or hazardous waste constituents in the regulated unit;

(3) evaluation procedures, including any use of previously gathered information on the chemical characteristics of soil, soil–pore gas, and air;

(4) a schedule of implementation.

(d) The owner or operator shall implement the environmental quality assessment plan which satisfies the requirements of subsection (c) of this section and, at a minimum, determine:

(1) the rate and extent of migration of the hazardous waste or hazardous waste constituents in air or in soil–pore gas;

(2) the concentrations of the hazardous waste or hazardous waste constituents in air and in soil–pore gas.

(e) The owner or operator shall make the first determination under subsection (d) of this section as soon as technically feasible and, within 15 days after that determination, submit to the Department a written report containing an assessment of the environmental quality.

(f) If the owner or operator determines to the satisfaction of the Department, based on the results of the first determination under subsection (d) of this section, that no hazardous waste or hazardous waste constituents have migrated from the regulated unit, then the owner or operator may reinstate the indicator evaluation program described in section 66265.712. If the owner or operator reinstates the indicator evaluation program, the owner or operator shall so notify the Department in the report submitted under subsection (e) of this section.

(g) If the owner or operator determines, based on the first determination under subsection (d) of this section, that hazardous waste or hazardous waste constituents have migrated from the facility, then the owner or operator:

(1) shall continue to make the determinations required under subsection (d) of this section on a quarterly basis until final closure of the facility, if the environmental quality assessment plan was implemented prior to final closure of the facility; or

(2) may cease to make the determinations required under subsection (d) of this section, if the environmental quality assessment plan was implemented during the post–closure care period.

(h) Notwithstanding any other provision of this article, any environmental quality assessment to satisfy the requirements of section 66265.713(d) which is initiated prior to final closure of the facility shall be completed and reported in accordance with section 66265.713(e).

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Sections 25150(a), 25159, 25159.5 and 25245, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66265.714. Recordkeeping and Reporting at Interim Status Facilities.

(a) Unless the owner or operator provides monitoring that satisfies the requirements of section 66265.713(d), the owner or operator shall report monitoring information to the Department at least annually, including the concentrations or values of the parameters in accordance with section 66265.712 for each sampling station.

(b) If the owner or operator provides monitoring that satisfies the requirements of section 66265.713(d), the owner or operator shall:

(1) keep records of the analyses and evaluations specified in the plan, which satisfies the requirements of section 66265.713(c), throughout the active life of the facility and, for disposal facilities, throughout the post–closure care period as well;

(2) annually, until final closure of the facility, submit to the Department a report containing the results of the environmental quality assessment program which includes, but is not limited to, the calculated (or measured) rate of migration of hazardous waste or hazardous waste constituents in soil, soil–pore gas, and in air during the reporting period. This report shall be submitted as part of the annual report required under section 66265.75.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Sections 25150(a), 25159, 25159.5 and 25245, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

Appendix I

Recordkeeping Instructions

The recordkeeping provisions of section 66265.73 specify that an owner or operator shall keep a written operating record at the facility. This appendix provides additional instructions for keeping portions of the operating record. See section 66265.73(b) for additional recordkeeping requirements.

The following information shall be recorded, as it becomes available, and maintained in the operating record until closure of the facility in the following manner:

(a) records of each hazardous waste received, transferred, treated, stored, or disposed of at the facility which include the following:

(1) a description by its common name and any applicable EPA Hazardous Waste Number or California Hazardous Waste Number from chapter 11 of this division which apply to the waste. The waste description also shall include the waste's physical form, i.e., liquid, sludge, solid, or contained gas. If the waste is not listed in chapter 11, article 4 or Appendix XII of this division, the description also shall include the process that produced it (for example, solid filter cake from production of ——, EPA Hazardous Waste Number W051).

Each hazardous waste listed in chapter 11, article 4, of this division, and each hazardous waste characteristic defined in chapter 11, article 3, of this division, has a four–digit EPA Hazardous Waste Number and/or a three–digit California Hazardous Waste Number assigned to it. This number shall be used for recordkeeping and reporting purposes. Where a hazardous waste contains more than one listed hazardous waste, or where more than one hazardous waste characteristic applies to the waste, the waste description shall include all applicable EPA and California Hazardous Waste Numbers;

(2) the estimated or manifest–reported weight, or volume and density, where applicable, in one of the units of measure specified in Table 1; and

Table 1

Unit of Measurement	*Code*[1]
Gallons	G
Gallons per Hour	E
Gallons per Day	U
Liters	L
Liters per Hour	H
Liters per Day	V
Short Tons per Hour	D
Metric Tons per Hour	W
Short Tons per Day	N
Metric Tons per Day	S
Pounds per Hour	J
Kilograms per Hour	R
Cubic Yards	Y
Cubic Meters	C
Acres	B
Acre–feet	A
Hectares	Q
Hectare–meter	F
Btu's per Hour	I

[1]Single digit symbols are used here for data processing purposes.

(3) the method(s) (by handling code(s) as specified in Table 2) and date(s) of treatment, storage, or disposal:

Table 2
Handling Codes for Treatment, Storage, and Disposal Methods

Enter the handling code(s) listed below that most closely represents the technique(s) used at the facility to treat, store, or dispose of each quantity of hazardous waste received.

1. STORAGE

S01 Container (barrel, drum, etc.)
S02 Tank
S03 Waste pile
S04 Surface impoundment
S05 Drip Pad
S06 Containment Building (Storage)
S99 Other Storage (specify)

2. TREATMENT

(a) Thermal Treatment
T06 Liquid injection incinerator
T07 Rotary kiln incinerator
T08 Fluidized bed incinerator
T09 Multiple hearth incinerator
T10 Infrared furnace incinerator
T11 Molten salt destructor
T12 Pyrolysis
T13 Wet air oxidation
T14 Calcination
T15 Microwave discharge
T18 Other (specify)

(b) Chemical Treatment
T19 Absorption mound
T20 Absorption field
T21 Chemical fixation
T22 Chemical oxidation
T23 Chemical precipitation
T24 Chemical reduction
T25 Chlorination
T26 Chlorinolysis
T27 Cyanide destruction
T28 Degradation
T29 Detoxification
T30 Ion exchange
T31 Neutralization
T32 Ozonation
T33 Photolysis
T34 Other (specify)

(c) Physical Treatment:
(1) Separation of components
T35 Centrifugation
T36 Clarification
T37 Coagulation
T38 Decanting
T39 Encapsulation
T40 Filtration
T41 Flocculation
T42 Flotation
T43 Foaming

T44 Sedimentation
T45 Thickening
T46 Ultrafiltration
T47 Other (specify)

(2) Removal of Specific Components
T48 Absorption–molecular sieve
T49 Activated carbon
T50 Blending
T51 Catalysis
T52 Crystallization
T53 Dialysis
T54 Distillation
T55 Electrodialysis
T56 Electrolysis
T57 Evaporation
T58 High gradient magnetic separation
T59 Leaching
T60 Liquid ion exchange
T61 Liquid–liquid extraction
T62 Reverse osmosis
T63 Solvent recovery
T64 Stripping
T65 Sand filter
T66 Other (specify)

(d) Biological Treatment
T67 Activated sludge
T68 Aerobic lagoon
T69 Aerobic tank
T70 Anaerobic tank
T71 Composting
T72 Septic tank
T73 Spray irrigation
T74 Thickening filter
T75 Trickling filter
T76 Waste stabilization pond
T77 Other (specify)
T78 [Reserved]
T79 [Reserved]

(e) Boiler and Industrial Furnaces
T80 Boiler
T81 Cement Kiln
T82 Lime Kiln
T83 Aggregate Kiln
T84 Phosphate Kiln
T85 Coke Oven
T86 Blast Furnace
T87 Smelting, Melting, or Refining Furnace
T88 Titanium Dioxide Chloride Process Oxidation Reactor
T89 Methane Reforming Furnace
T90 Pulping Liquor Recovery Furnace
T91 Combustion Device Used in the Recovery of Sulfur Values from Spent Sulfuric Acid
T92 Halogen Acid Furnace
T93 Other Industrial Furnaces Listed in 40 CFR 260.10 (specify)

(f) Other Treatment
T94 Containment Building (Treatment)

3. DISPOSAL

D79 Underground injection
D80 Landfill
D81 Land treatment
D82 Ocean disposal
D83 Surface impoundment (to be closed as a landfill)
D99 Other Disposal (specify)

4. MISCELLANEOUS

X01 Open Burning/Open Detonation
X02 Mechanical Processing
X03 Thermal Unit
X04 Geologic Repository
X99 Other (specify)

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 58004 and 58012, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Part 265, Appendix I.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of tables 1 and 2 and NOTE filed 7–1–96; operative 7–31–96 (Register 96, No. 27).
3. Change without regulatory effect amending table 2 filed 6–12–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 24).

Appendix V

Examples of Potentially Incompatible Waste

Many hazardous wastes, when mixed with other waste or materials at a hazardous waste facility, can produce effects which are harmful to human health and the environment, such as (1) heat or pressure, (2) fire or explosion, (3) violent reaction, (4) toxic dusts, mists, fumes, or gases, or (5) flammable fumes or gases.

Below are examples of potentially incompatible wastes, waste components, and materials, along with the harmful consequences which result from mixing materials in one group with materials in another group. The list is intended as a guide to owners or operators of transfer, treatment, storage, and disposal facilities, and to enforcement and permit granting officials, to indicate the need for special precautions when managing these potentially incompatible waste materials or components.

This list is not intended to be exhaustive. An owner or operator shall, as the regulations require, adequately analyze his wastes so that he can avoid creating uncontrolled substances or reactions of the type listed below, whether they are listed below or not.

It is possible for potentially incompatible wastes to be mixed in a way that precludes a reaction (e.g., adding acid to water rather than water to acid) or that neutralizes them (e.g., a strong acid mixed with a strong base), or that controls substances produced (e.g., by generating flammable gases in a closed tank equipped so that ignition cannot occur, and burning the gases in an incinerator).

In the lists below, the mixing of a Group A material with a Group B material may have the potential consequence as noted.

Group 1–A	*Group 1–B*
Acetylene sludge	Acid sludge
Akaline caustic liquids	Acid and water
Alkaline cleaner	Battery acid
Alkaline corrosive liquids	Chemical cleaners
Alkaline corrosive battery fluid	Electrolyte, acid
Caustic wastewater	Etching acid liquid
or solvent	Pickling liquor and
Lime sludge and other	other corrosive acids
corrosive alkalies	Spent acid
Lime wastewater	Spent mixed acid
Lime and water	Spent sulfuric acid
Spent caustic	

Potential consequences: Heat generation; violent reaction.

Group 2–A	*Group 2–B*
Aluminum	Any waste in Group 1–A or 1–B
Beryllium	
Calcium	
Lithium	
Magnesium	
Potassium	
Sodium	
Zinc powder	
Other reactive metals and metal hydrides	

Potential consequences: Fire or explosion; generation of flammable hydrogen gas.

Group 3–A	*Group 3–B*
Alcohols	Any concentrated waste in Groups 1–A or 1–B
Water	Calcium
	Lithium
	Potassium
	PCl_3, CH_3SiCl_3
	Metal hydrides
	SO_2Cl_2, $SOCl_2$,
	Other water–reactive waste

Potential consequences: Fire, explosion, or heat generation; generation of flammable or toxic gases.

Group 4–A	*Group 4–B*
Alcohols	Concentrated Group 1–A or 1–B wastes
Aldehydes	Group 2–A wastes
Halogenated hydrocarbons	
Nitrated hydrocarbons	
Unsaturated hydrocarbons	
Other reactive organic compounds and solvents	

Potential consequences: Fire, explosion, or violent reaction.

Group 5–A	*Group 5–B*
Spent cyanide and sulfide solutions	Group 1–B wastes

Potential consequences: Generation of toxic hydrogen cyanide or hydrogen sulfide gas.

Group 6–A	*Group 6–B*
Chlorates	Acetic acid and other organic acids
Chlorine	Concentrated mineral acides
Chlorites	Group 2–A wastes
Chromic acid	Group 4–A wastes
Hyphochlorites	Other flammable and combustible wastes
Nitrates	
Nitric acid, fuming	
Perchlorates	
Permanganates	
Peroxides	
Other strong oxidizers	

Potential consequences: Fire, explosion, or violent reaction.

Source: "Law, Regulations, and Guidelines for Handling of Hazardous Waste." California Department of Health, February 1975.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 208, 25159 and 25159.5, Health and Safety Code; 40 CFR Part 265, Appendix V.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

Appendix VI

Suggested Detection Monitoring Analytes

This list is intended as a guide to owners or operators of treatment, storage and disposal facilities, and to enforcement and permit granting officials, to assist in the selection of appropriate monitoring parameters for specification in the water quality sampling and analysis plan. The Department is not requiring that all facilities use this list, but the Department believes that these are the best leak indicators for the majority of units, especially if the unit contains a variety of wastes. This list is called Leak Detection Analytes and is made up of volatile organics, hazardous metals and pH (hydrogen ion).

Investigations by USEPA's Environmental Monitoring Systems Laboratory in Las Vegas, Nevada, and others, have shown that most (as high as 70 percent) of the compounds leaking from RCRA sites are volatile organics. This preponderance of volatiles is not surprising since these compounds would be more likely to move quickly and easily through the environment given their volatility. Therefore, it is logical to conclude that volatile organics would be among the best indicators for early detection of a release.

The rest of the Leak Detection Analytes list is made up of those metals that are amenable to the basic inductively coupled plasma (icp) scan and pH. The metals were chosen because they make up the second most common group of substances that leak from hazardous waste land disposal units, and therefore, are also expected to be excellent leak indicators. pH was chosen because of its all around utility in environmental monitoring and data interpretation. pH was also chosen because of its ability to indicate leaks that otherwise might not be indicated because no single substance has exceeded a detectable level.

Leak Detection Analytes

Volatile Organics	*Metals*
Acetone	Antimony
Acrolein	Barium
Acrylonitrile	Beryllium
Allyl chloride	Cadmium
Benzene	Chromium
Bromodichloromethane	Cobalt
Bromoform	Copper
Carbon disulfide	Lead
Carbon tetracholoride	Nickel
Chlorobenzene	Selenium
Chloroethane	Thallium
Chloroform	Vanadium
Chloroprene	Zinc
Dibromochloromethane	
1,2–Dibromo–3–chloropropane	
pH	
1,2–Dibromoethane	
trans–1,4–Dichloro–2–butene	
Dichlorodifluoromethane	
1,1–Dichloroethane	
1,2–Dichloroethane	
trans–1,2–Dichloroethylene	
1,2–Dichloropropane	
trans–1,3–Dichloropropene	
cis–1,3–Dichloropropene	
Ethyl methacrylate	
2–Hexanone	
Methacrylonitrile	
Methyl bromide	
Methyl chloride	
Methylene bromide	
Methylene chloride	
Methyl ethyl ketone	
Methyl iodide	
Methyl methacrylate	
4–Methyl–2–pentanone	
Pentachloroethane	
2–Picoline	
Propionitrile	
Pyridine	
Styrene	
1,1,1,2–Tetrachloroethane	
1,1,2,2–Tetrachloroethane	
Tetrachloroethylene	
Toluene	
1,1,1–Trichloroethane	
1,1,2–Trichloroethane	
Trichloroethylene	
Trichlorofluoromethane	
1,2,3–Trichloropropane	
Vinyl acetate	
Vinyl chloride	
Xylene	

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Part 264, Appendix IX.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

Article 27. Air Emission Standards for Process Vents

§ 66265.1030. Applicability.

(a) The requirements of this article apply to owners and operators of facilities that treat, store, or dispose of RCRA hazardous wastes (except as provided in Section 66265.1).

(b) Except for Section 66265.1034(d) and (e), this article applies to process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations that manage RCRA hazardous wastes with organic concentrations of at least 10 ppmw, if these operations are conducted in:

(1) units that are subject to the permitting requirements of chapter 20; or

(2) hazardous waste recycling units that are located on hazardous waste management facilities otherwise subject to the federal RCRA TSDF permitting requirements of chapter 20; or

(3) a unit that is exempt from permitting under the provisions of 66262.34(a) (i.e., a "90-day" tank or container) and is not a recycling unit under the requirements of 66261.6. *[NOTE: The requirements of sections 66265.1032 through 66265.1036 apply to process vents on hazardous waste recycling units previously exempt under section 66261.6(c)(1). Other exemptions under sections 66261.4 and 66265.1(c) are not affected by these requirements.]*

(c) The requirements of this article do not apply to the process vents at a facility where the facility owner or operator certifies that all of the process vents that would otherwise be subject to this article are equipped with and operating air emission controls in accordance with the process vent requirements of an applicable Clean Air Act regulation codified under regulations at 40 CFR parts 60, 61, or 63 shall be kept with, or made readily available with, the facility operating record.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR, Section 265.1030.

HISTORY

1. New article 27 (sections 66265.1030–66265.1035) filed 12–23–92; operative 1–22–93 (Register 93, No. 2).
2. Change without regulatory effect amending subsection (b)(2) and adding subsections (b)(3) and (c) and amending NOTE filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).

§ 66265.1032. Standards: Process Vents.

(a) The owner or operator of a facility with process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction or air or steam stripping operations managing hazardous wastes with organic concentrations at least 10 ppmw shall either:

(1) reduce total organic emissions from all affected process vents at the facility below 1.4 kg/h (3 lb/h) and 2.8 Mg/yr (3.1 tons/yr); or

(2) reduce, by use of a control device, total organic emissions from all affected process vents at the facility by 95 weight percent.

(b) If the owner or operator installs a closed-vent system and control device to comply with the provisions of Subsection (a) of this section, the closed-vent system and control device shall meet the requirements of Section 66265.1033.

(c) Determinations of vent emissions and emission reductions or total organic compound concentrations achieved by add-on control devices may be based on engineering calculations or performance tests. If performance tests are used to determine vent emissions, emission reductions, or total organic compound concentrations achieved by add-on control devices, the performance tests shall conform with the requirements of Section 66265.1034(c).

(d) When an owner or operator and the Department do not agree on determinations of vent emissions and/or emission reductions or total organic compound concentrations achieved by add-on control devices based on engineering calculations, the test methods in Section 66265.1034(c) shall be used to resolve the disagreement.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR, Section 66265.1032.

HISTORY

1. New section filed 12–23–92; operative 1–22–93 (Register 93, No. 2).

§ 66265.1033. Standards: Closed-Vent Systems and Control Devices.

(a)(1) Owners or operators of closed-vent systems and control devices used to comply with provisions of this chapter shall comply with the provisions of this section.

(2)(A) The owner or operator of an existing facility who cannot install a closed-vent system and control device to comply with the provisions of this article on the effective date that the facility becomes subject to the requirements of this article must prepare an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The controls must be installed as soon as possible, but the implementation schedule may allow up to 30 months after the effective date that the facility becomes subject to this article for installation and startup.

(B) Any unit that begins operation after December 21, 1990, and is subject to the requirements of this article when operation begins, shall comply with the rules immediately (i.e., must have control devices installed and operating on startup of the affected unit); the 30-month implementation schedule does not apply.

(C) The owner or operator of any facility in existence on the effective date of a statutory or Department regulatory amendment that renders the facility subject to this article shall comply with all requirements of this article as soon as practicable but no later than 30 months after the amendment's effective date. When control equipment required by this article cannot be installed and begin operation by the effective date of the amendment, the facility owner or operator shall prepare an implementation schedule that includes the following information: Specific calendar dates for award of contracts or issuance of purchase orders for the control equipment, initiation of on-site installation of the control equipment, completion of the control equipment installation, and performance of any testing to demonstrate that the installed equipment meets the applicable standards of this article. The owner or operator shall enter the implementation schedule in the operating record or in a permanent, readily available file located at the facility.

(D) Owners and operators of facilities and units that become newly subject to the requirements of this article after December 8, 1997, due to an action other than those described in subsection (a)(2)(C) of this section must comply with all applicable requirements immediately (i.e., must have control devices installed and operating on the date the facility or unit becomes subject to this article; the 30-month implementation schedule does not apply).

(b) A control device involving vapor recovery (e.g., a condenser or adsorber) shall be designed and operated to recover the organic vapors vented to it with an efficiency of 95 weight percent or greater unless the total organic emission limits of Section 66265.1032(a)(1) for all affected process vents can be attained at an efficiency less than 95 weight percent.

(c) An enclosed combustion device (e.g., a vapor incinerator, boiler, or process heater) shall be designed and operated to reduce the organic emissions vented to it by 95 weight percent or greater; to achieve a total organic compound concentration of 20 ppmv, expressed as the sum of the actual compounds, not carbon equivalents, on a dry basis corrected to three percent oxygen; or to provide a minimum residence time of 0.50 seconds at a minimum temperature of 760 degrees C. If a boiler or process heater is used as the control device, then the vent stream shall be introduced into the flame combustion zone of the boiler or process heater.

(d)(1) A flare shall be designed for and operated with no visible emissions as determined by the methods specified in subsection (3)(1) of this section, except for periods not to exceed a total of five minutes during any two consecutive hours.

(2) A flare shall be operated with a flame present at all times, as determined by the methods specified in subsection (f)(2)(C) of this section.

(3) a flare shall be used only if the net heating value of the gas being combusted is 11.2 MJ/scm (300 Btu/scf) or greater, if the flare is steam–assisted or air–assisted; or if the net heating value of the gas being combusted is 7.45 MJ/scm (200 Btu/scf) or greater if the flare is non–assisted. The net heating value of the gas being combusted shall be determined by the methods specified in subsection (e)(2) of this section.

(4)(A) A steam–assisted or non–assisted flare shall be designed for and operated with an exit velocity, as determined by the methods specified in subsection (e)(3) of this section, of less than 18.3 m/s (60 ft/s), except as provided in subsections (d)(4)(B) and (C) of this section.

(B) A steam–assisted or non–assisted flare designed for and operated with an exit velocity, as determined by the methods specified in subsection (e)(3) of this section, equal to or greater than 18.3 m/s (60 ft/s) but less than 122 m/s (400 ft/s) is allowed if the net heating value of the gas being combusted is greater than 37.3 MJ/scm (1,000 Btu/scf).

(C) a steam–assisted or non–assisted flare designed for and operated with an exit velocity, as determined by the methods specified in subsection (e)(3) of this section, less than the velocity, V MAX, as determined by the method specified in subsection (e)(4) of this section, and less than 122 m/s (400 ft/s) is allowed.

(5) An air–assisted flare shall be designed and operated with an exit velocity less than the velocity, V MAX, as determined by the method specified in subsection (e)(5) of this section.

(6) A flare used to comply with this section shall be steam– assisted, air–assisted, or non–assisted.

(e)(1) Reference Method 22 in 40 CFR, Part 60 shall be used to determine the compliance of a flare with the visible emission provisions of this article. The observation period is two hours and shall be used according to Method 22.

(2) The net heating value of the gas being combusted in a flare shall be calculated using the following equation:

$$H_t = K \left[\sum_{i=1}^{n} C_i H_i \right]$$

where:

H_t = Net heating value of the sample, MJ/scm; where the net enthalpy per mole of off–gas is based on combustion at 25 degrees C and 760 mm Hg, but the standard temperature for determining the volume corresponding to 1 mol is 20 degrees C;

K = Constant, 1.74 X 10 –7 (1/ppm) (g mol/scm) (MJ/kcal) where standard temperature for (g mol/scm) is 20 degrees C;

C_i = Concentration of sample component i in ppm on a wet basis, as measured for organics by Reference Method 18 in 40 CFR, Part 60 and measured for hydrogen and carbon monoxide by ASTM D 1946–82 (incorporated by reference as specified in Section 66260.11); and

Hi = Net heat of combustion of sample component i, kcal/g mol at 25 degrees C and 760 mm Hg. The heats of combustion may be determined using ASTM D 2382–83 (incorporated by reference as specified in Section 66260.11) if published values are not available or cannot be calculated.

(3) The actual exit velocity of a flare shall be determined by dividing the volumetric flow rate (in units of standard temperature and pressure), as determined by Reference Methods 2, 2A, 2C, or 2D in 40 CFR, Part 60 as appropriate, by the unobstructed (free) cross–sectional area of the flare tip.

(4) The maximum allowed velocity in m/s, V_{max}, for a flare complying with subsection (d)(4)(C) of this section shall be determined by the following equation:

$$\text{Log}_{10}(V_{max}) = (H_t + 28.8)/31.7$$

where:

H_t = The net heating value as determined in subsection (e)(2) of this section.

28.8 = Constant.

31.7 = Constant.

(5) The maximum allowed velocity in m/s, Vmax , for an air– assisted flare shall be determined by the following equation:

$$V_{max} = 8.706 + 0.7084 (H_t)$$

where:

8.706 = Constant.

0.7084 = Constant.

H_t = The net heating value as determined in subsection (e)(2) of this section.

(f) The owner or operator shall monitor and inspect each control device required to comply with this section to ensure proper operation and maintenance of the control device by implementing the following requirements:

(1) install, calibrate, maintain, and operate according to the manufacturer's specifications a flow indicator that provides a record of vent stream flow from each affected process vent to the control device at least once every hour. The flow indicator sensor shall be installed in the vent stream at the nearest feasible point to the control device inlet, but before being combined with other vent streams;

(2) install, calibrate, maintain, and operate according to the manufacturer's specifications a device to continuously monitor control device operation as specified below:

(A) for a thermal vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall have an accuracy of +/– 1 percent of the temperature being monitored in degrees C or +/– 0.5 degrees C, whichever is greater. The temperature sensor shall be installed at a location in the combustion chamber downstream of the combustion zone;

(B) for a catalytic vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature at two locations and have an accuracy of +/– 1 percent of the temperature being monitored in degrees C or +/– 0.5 degrees C, whichever is greater. One temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed inlet and a second temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed outlet;

(C) for a flare, a heat sensing monitoring device equipped with a continuous recorder that indicates the continuous ignition of the pilot flame;

(D) for a boiler or process heater having a design heat input capacity less than 44 MW, a temperature monitoring device equipped with a continuous recorder. The device shall have an accuracy of +/– 1 percent of the temperature being monitored in degrees C or +/– 0.5 degrees C, whichever is greater. The temperature sensor shall be installed at a location in the furnace downstream of the combustion zone;

(E) for a boiler or process heater having a design heat input capacity greater than or equal to 44 MW, a monitoring device equipped with a continuous recorder to measure a parameter(s) that indicates good combustion operating practices are being used;

(F) for a condenser, either:

1. a monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the condenser; or

2. a temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature with an accuracy of ±1 percent of the temperature being monitored in degrees Celsius (°C) or ± 0.5 °C, whichever is greater. The temperature sensor shall be installed at a location in the exhaust vent stream from the condenser exit (i.e., product side).

(G) for a carbon adsorption system such as a fixed–bed carbon adsorber that regenerates the carbon bed directly in the control device, either:

1. a monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the carbon bed; or

2. a monitoring device equipped with a continuous recorder to measure a parameter that indicates the carbon bed is regenerated on a regular, predetermined time cycle;

(3) inspect the readings from each monitoring device required by subsections (f)(1) and (2) of this section at least once each operating day to check control device operation and, if necessary, immediately implement the corrective measures necessary to ensure the control device operates in compliance with the requirements of this section.

(g) An owner or operator using a carbon adsorption system such as a fixed–bed carbon adsorber that regenerates the carbon bed directly on–site in the control device, shall replace the existing carbon in the control device with fresh carbon at a regular, pre–determined time interval that is no longer than the carbon service life established as a requirement of Section 66265.1035(b)(4)(C)6.

(h) An owner or operator using a carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly on–site in the control device shall replace the existing carbon in the carbon device with fresh carbon on a regular basis by using one of the following procedures:

(1) monitor the concentration level of the organic compounds in the exhaust vent system from the carbon adsorption system on a regular schedule and replace the existing carbon with fresh carbon immediately when carbon breakthrough is indicated. The monitoring frequency shall be daily or at an interval no greater than twenty (20) percent of the time required to consume the total carbon working capacity established as a requirement of Section 66265.1035(b)(4)(C)7, whichever is longer; and

(2) replace the existing carbon with fresh carbon at a regular, pre–determined time interval that is less than the design carbon replacement interval established as a requirement of Section 66265.1035(b)(4)(C)7.

(i) An owner or operator of an affected facility seeking to comply with the provisions of this part by using a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system shall develop documentation including sufficient information to describe the control device operation and identify the process parameter or parameters that indicate proper operation and maintenance of the control device.

(j) A closed–vent system shall meet either of the following design requirements:

(1) A closed–vent system shall be designed to operate with no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background as determined by the procedure in section 66265.1034(b), and by visual inspections; or

(2) A closed–vent system shall be designed to operate at a pressure below atmospheric pressure. The system shall be equipped with at least one pressure gauge or other pressure measurement device that can be read from a readily accessible location to verify that negative pressure is being maintained in the closed–vent system when the control device is operating.

(k) The owner or operator shall monitor and inspect each closed–vent system required to comply with this section to ensure proper operation and maintenance of the closed–vent system by implementing the following requirements:

(1) Each closed–vent system that is used to comply with subsection (j)(1) of this section shall be inspected and monitored in accordance with the following requirements:

(A) An initial leak detection monitoring of the closed–vent system shall be conducted by the owner or operator on or before the date that the system becomes subject to this section. The owner or operator shall monitor the closed–vent system components and connections using the procedures specified in section 66265.1034(b) to demonstrate that the closed–vent system operates with no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background.

(B) After initial leak detection monitoring required in subsection (k)(1)(A) of this section, the owner or operator shall inspect and monitor the closed–vent system as follows:

1. Closed–vent system joints, seams, or other connections that are permanently or semi–permanently sealed (e.g., a welded joint between two sections of hard piping or a bolted and gasketed ducting flange) shall be visually inspected at least once per year to check for defects that could result in air pollutant emissions. The owner or operator shall monitor a component or connection using the procedures specified in section 66265.1034(b) to demonstrate that it operates with no detectable emissions following any time the component is repaired or replaced (e.g., a section of damaged hard piping is replaced with new hard piping) or the connection is unsealed (e.g., a flange is unbolted).

2. Closed–vent system components or connections other than those specified in subsection (k)(1)(B)1. of this section shall be monitored annually and at other times as requested by the Department, except as provided for in subsection (n) of this section, using the procedures specified in section 265.1034(b) of this article to demonstrate that the components or connections operate with no detectable emissions.

(C) In the event that a defect or leak is detected, the owner or operator shall repair the defect or leak in accordance with the requirements of subsection (k)(3) of this section.

(D) The owner or operator shall maintain a record of the inspection and monitoring in accordance with the requirements specified in section 66265.1035.

(2) Each closed–vent system that is used to comply with subsection (j)(2) of this section shall be inspected and monitored in accordance with the following requirements:

(A) The closed–vent system shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in ductwork or piping or loose connections.

(B) The owner or operator shall perform an initial inspection of the closed–vent system on or before the date that the system becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year.

(C) In the event that a defect or leak is detected, the owner or operator shall repair the defect in accordance with the requirements of subsection (k)(3) of this section.

(D) The owner or operator shall maintain a record of the inspection and monitoring in accordance with the requirements specified in section 66265.1035.

(3) The owner or operator shall repair all detected defects as follows:

(A) Detectable emissions, as indicated by visual inspection, or by an instrument reading greater than 500 ppmv above background, shall be controlled as soon as practicable, but not later than 15 calendar days after the emission is detected, except as provided for in subsection (k)(3)(C) of this section.

(B) A first attempt at repair shall be made no later than 5 calendar days after the emission is detected.

(C) Delay of repair of a closed–vent system for which leaks have been detected is allowed if the repair is technically infeasible without a process unit shutdown, or if the owner or operator determines that emissions resulting from immediate repair would be greater than the fugitive emissions likely to result from delay of repair. Repair of such equipment shall be completed by the end of the next process unit shutdown.

(D) The owner or operator shall maintain a record of the defect repair in accordance with the requirements specified in section 66265.1035.

(*l*) Closed–vent systems and control devices used to comply with provisions of this article shall be operated at all times when emissions may be vented to them.

(m) The owner or operator using a carbon adsorption system to control air pollutant emissions shall document that all carbon that is a hazardous waste and that is removed from the control device is managed in one of the following manners, regardless of the average volatile organic concentration of the carbon:

(1) Regenerated or reactivated in a thermal treatment unit that meets one of the following:

(A) The owner or operator of the unit has been issued a final permit under chapter 20 which implements the requirements of chapter 14, article 16; or

(B) The unit is equipped with and operating air emission controls in accordance with the applicable requirements of articles 27 and 30 of either this article or of chapter 14; or

(C) The unit is equipped with and operating air emission controls in accordance with a national emission standard for hazardous air pollutants under 40 CFR part 61 or 40 CFR part 63.

(2) Incinerated in a hazardous waste incinerator for which the owner or operator either:

(A) Has been issued a final permit under chapter 20 which implements the requirements of chapter 14, article 15; or

(B) Has designed and operates the incinerator in accordance with the interim status requirements of article 15 of this chapter.

(3) Burned in a boiler or industrial furnace for which the owner or operator either:

(A) Has been issued a final permit under chapter 20 which implements the requirements of chapter 16, article 8; or

(B) Has designed and operates the boiler or industrial furnace in accordance with the interim status requirements of chapter 16, article 8.

(n) Any components of a closed–vent system that are designated, as described in section 66265.1035(c)(9), as unsafe to monitor are exempt from the requirements of subsection (k)(1)(B)2. of this section if:

(1) The owner or operator of the closed–vent system determines that the components of the closed–vent system are unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with subsection (k)(1)(B)2. of this section; and

(2) The owner or operator of the closed–vent system adheres to a written plan that requires monitoring the closed–vent system components using the procedure specified in subsection (k)(1)(B)2. of this section as frequently as practicable during safe–to–monitor times.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 265.1033.

HISTORY

1. New section filed 12–23–92; operative 1–22–93 (Register 93, No. 2).
2. Editorial correction of subsections (f)(2)(A)–(B) (Register 95, No. 50).
3. Change without regulatory effect amending subsection (f)(2)(F)2. filed 12–28–95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 52).
4. Change without regulatory effect amending section and NOTE filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).

§ 66265.1034. Test Methods and Procedures.

(a) Each owner or operator subject to the provisions of this article shall comply with the test methods and procedures requirements provided in this section.

(b) When a closed–vent system is tested for compliance with the "no detectable emissions", requirements in Section 66265.1033(k), the test shall comply with the following requirements:

(1) monitoring shall comply with Reference Method 21 in 40 CFR, part 60;

(2) the detection instrument shall meet the performance criteria of Reference Method 21;

(3) the instrument shall be calibrated before use on each day of its use by the procedures specified in Reference Method 21;

(4) calibration gases shall be:

(A) zero air (less than 10 ppm of hydrocarbon in air);

(B) a mixture of methane or n–hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n–hexane;

(5) the background level shall be determined as set forth in Reference Method 21;

(6) the instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21; and

(7) the arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.

(c) Performance tests to determine compliance with Section 66265.1032(a) and with the total organic compound concentration limit of Section 66265.1033(c) shall comply with the following:

(1) performance tests to determine total organic compound concentrations and mass flow rates entering and exiting control devices shall be conducted and data reduced in accordance with the following reference methods and calculation procedures:

(A) method 2 in 40 CFR, Part 60, incorporated by reference in Section 66260.11 of this chapter, for velocity and volumetric flow rate;

(B) method 18 in 40 CFR, Part 60, incorporated by reference in Section 66260.11 of this division, for organic content;

(C) each performance test shall consist of three separate runs; each run conducted for at least one hour under the conditions that exist when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur. For the purpose of determining total organic compound concentrations and mass flow rates, the average of results of all runs shall apply. The average shall be computed on a time–weighted basis;

(D) total organic mass flow rates shall be determined by the following equation:

$$E_h = Q_{sd} \left[\sum_{i=1}^{n} C_i MW_i \right] [0.0416] [10^{-6}]$$

where:

E_h = Total organic mass flow rate, kg/h;

Q_{sd} = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dry standard m^3 /hour;

n= Number of organic compounds in the vent gas;

C_i = Organic concentration in ppm, dry basis, of compound i in the vent gas, as determined by Method 18;

MW_i = Molecular weight of organic compound in the vent gas, kg/kg–mol;

0.0416= Conversion factor for molar volume, kg–mol/m^3 (at 293 K and 760 mm Hg);

10^{-6} = Conversion from ppm, ppm^{-1}.

(E) the annual total organic emission rate shall be determined by the following equation:

E_A = (E_h) (H)

where:

E_A= Total organic mass emission rate, kg/y;

E_h = As determined in paragraph (c)(1)(D) of this section;

H= Total annual hours of operations for the affected unit, h.

(F) total organic emissions from all affected process vents at the facility shall be determined by summing the hourly total organic mass flow rates (E_h, as determined in subsection (c)(1)(D) of this section) and by summing the annual total organic mass emission rates (E_A, as determined in paragraph (c)(1)(E) of this section for all affected process vents at the facility; and

(2) the owner or operator shall record such process information as may be necessary to determine the conditions of the performance tests. Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test;

(3) the owner or operator of an affected facility shall provide, or cause to be provided, performance testing facilities as follows:

(A) sampling ports adequate for the test methods specified in subsection (c)(1) of this section.

(B) safe sampling platform(s);

(C) safe access to sampling platform(s); and

(D) utilities for sampling and testing equipment; and

(4) for the purpose of making compliance determinations, the time–weighted average of the results of the three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the same train, extreme meteorological conditions, or other circumstances beyond the owner's or operator's control, compliance may, upon the Department's written approval, be determined using the average of the results of the two other runs.

(d) To show that a process vent associated with a hazardous waste distillation, fractionation, thin–film evaporation, solvent extraction, or air or steam stripping operation is not subject to the requirements of this article, the owner or operator shall make an initial determination that the

time–weighted, annual average total organic concentration of the waste managed by the waste management unit is less than 10 ppmw using one of the following two methods:

(1) direct measurement of the organic concentration of the waste using the following procedures:

(A) the owner or operator shall take a minimum of four grab samples of waste for each waste stream managed in the affected unit under process conditions expected to cause the maximum waste organic concentration;

(B) for waste generated on–site, the grab samples shall be collected at a point before the waste is exposed to the atmosphere such as in an enclosed pipe or other closed system that is used to transfer the waste after generation to the first affected distillation, fractionation, thin–film evaporation, solvent extraction, or air or steam stripping operation. For waste generated offsite, the grab samples shall be collected at the inlet to the first waste management unit that receives the waste, provided the waste has been transferred to the facility in a closed system such as a tank truck and the waste is not diluted or mixed with other waste;

(C) each sample shall be analyzed and the total organic concentration of the sample shall be computed using Method 9060 or 8260 of SW–846 (incorporated by reference under Section 66260.11); and

(D) the arithmetic mean of the results of the analyses of the four samples shall apply for each waste stream managed in the unit in determining the time–weighted, annual average total organic concentration of the waste. The time–weighted average shall be calculated using the annual quantity of each waste stream processed and the mean organic concentration of each waste stream managed in the unit;

(2) use of knowledge of the waste to determine that its total organic concentration is less than 10 ppmw. Documentation of the waste determination is required. Examples of documentation that shall be used to support a determination under this provision include production process information documenting that no organic compounds are used, information that the waste is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to generate a waste stream having a total organic content less than 10 ppmw, or prior speciation analysis results on the same waste stream where it can also be documented that no process changes have occurred since that analysis that could affect the waste total organic concentration.

(e) The determination that distillation, fractionation, thin–film evaporation, solvent extraction, or air or steam stripping operations manage hazardous wastes with time–weighted annual average total organic concentrations less than 10 ppmw shall be made as follows:

(1) by the effective date that the facility becomes subject to the provisions of this article or by the date when the waste is first managed in a waste management unit, whichever is later; and

(A) for continuously generated waste, annually; or

(B) whenever there is a change in the waste being managed or a change in the process that generates or treats the waste.

(f) When an owner or operator and the Department do not agree on whether a distillation, fractionation, thin–film evaporation, solvent extraction, or air or steam stripping operation manages a hazardous waste with organic concentrations of at least 10 ppmw based on knowledge of the waste, the procedures in Method 8260 of SW–846 (incorporated by reference under section 66260.11) shall be used to resolve the dispute.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR, Section 265.1034.

HISTORY

1. New section filed 12–23–92; operative 1–22–93 (Register 93, No. 2).
2. Change without regulatory effect amending subsection (c)(1)(F) filed 12–28–93 pursuant to title 1, section 100, California Code of Regulations (Register 93, No. 53).
3. Change without regulatory effect amending subsection (c)(1)(F) filed 12–28–95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 52).
4. Change without regulatory effect amending subsection (b)(4)(B) filed 3–28–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 13).
5. Amendment of subsections (d)(1)(C) and (f) and amendment of NOTE filed 10–13–98; operative 11–12–98 (Register 98, No. 42).
6. Change without regulatory effect amending subsections (a), (b) and (d)(1)(C) and amending NOTE filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).

§ 66265.1035. Recordkeeping Requirements.

(a)(1) Each owner or operator subject to the provisions of this article shall comply with the recordkeeping requirements of this section.

(2) An owner or operator of more than one hazardous waste management unit subject to the provisions of this article may comply with the recordkeeping requirements for these hazardous waste management units in one recordkeeping system if the system identifies each record by each hazardous waste management unit.

(b) Owners and operators shall record or include the following information in the facility operating record:

(1) for facilities that comply with the provisions of Section 66265.1033(a)(2), an implementation schedule that includes dates by which the closed–vent system and control device will be installed and in operation. The schedule shall also include a rationale of why the installation cannot be completed at an earlier date. The implementation schedule shall be in the facility operating record by the effective date that the facility becomes subject to the provisions of this article;

(2) up–to–date documentation of compliance with the process vent standards in Section 66265.1032. including:

(A) information and data identifying all affected process vents, annual throughput and operating hours of each affected unit, estimated emission rates for each affected vent and for the overall facility (i.e., the total emissions for all affected vents at the facility), and the approximate location within the facility of each affected unit (e.g., identify the hazardous waste management units on a facility plot plan); and

(B) information and data supporting determinations of vent emissions and emission reductions achieved by add–on control devices based on engineering calculations or source tests. For the purpose of determining compliance, determinations of vent emissions and emission reductions shall be made using operating parameter values (e.g., temperatures, flow rates or vent stream organic compounds and concentrations) that represent the conditions that result in maximum organic emissions, such as when the waste management unit is operating at the highest load or capacity level reasonably expected to occur. If the owner or operator takes any action (e.g., managing a waste of different composition or increasing operating hours of affected waste management units) that would result in an increase in total organic emissions from affected process vents at the facility, then a new determination is required.

(3) Where an owner or operator chooses to use test data to determine the organic removal efficiency or total organic compound concentration achieved by the control device, a performance test plan. The test plan shall include:

(A) a description of how it is determined that the planned test is going to be conducted when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur. This shall include the estimated or design acceptable operating ranges of key process and control device parameters during the test program;

(B) a detailed engineering description of the closed–vent system and control device including:

1. manufacturer's name and model number of control device;
2. type of control device;
3. dimensions of the control device;
4. capacity;
5. construction materials; and

(C) a detailed description of sampling and monitoring procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

(4) Documentation of compliance with Section 66265.1033. Documentation shall include the following information:

(A) a list of all information references and sources used in preparing the documentation;

(B) records, including the dates of each compliance test required by Section 66265.1033(j);

(C) if engineering calculations are used, a design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions" (incorporated by reference as specified in Section 66260.11) or other engineering texts acceptable to the Department that present basic control device design information. Documentation provided by the control device manufacturer or vendor that describes the control device design in accordance with subsections (b)(4)(C)1 through (b)(4)(C)7 of this section shall be required to be submitted to the Department to comply with this requirement. The design analysis shall address the vent stream characteristics and control device operation parameters as specified below:

1. for a thermal vapor incinerator, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average temperature in the combustion zone and the combustion zone residence time;

2. for a catalytic vapor incinerator, the design analysis shall consider the vent stream composition, constituent concentrations and flow rate. The design analysis shall also establish the design minimum and average temperatures across the catalyst bed inlet and outlet;

3. for a boiler or process heater, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average flame zone temperatures, combustion zone residence time, and description of method and location where the vent stream is introduced into the combustion zone;

4. for a flare, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also consider the requirements specified in Section 66265.1033(d).

5. for a condenser, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design outlet organic compound concentration level, design average temperature of the condenser exhaust vent stream, and design average temperatures of the coolant fluid at the condenser inlet and outlet;

6. for a carbon adsorption system such as a fixed–bed adsorber that regenerates the carbon bed directly on–site in the control device, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design exhaust vent stream organic compound concentration level, number and capacity of carbon beds, type and working capacity of activated carbon used for carbon beds, design total steam flow over the period of each complete carbon bed regeneration cycle, duration of the carbon bed steaming and cooling/drying cycles, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of carbon; and

7. for a carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly on–site in the control device, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design outlet organic concentration level, capacity of carbon bed, type and working capacity of activated carbon used for carbon bed, and design carbon replacement interval based on the total carbon working capacity of the control device and source operating schedule; and

(D) a statement signed and dated by the owner or operator certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is or would be operating at the highest load or capacity level reasonably expected to occur;

(E) a statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of 95 percent or greater unless the total organic concentration limit of Section 66265.1032(a) is achieved at an efficiency less than 95 weight percent or the total organic emission limits of Section 66265.1032(a) for affected process vents at the facility can be attained by a control device involving vapor recovery at an efficiency less than 95 weight percent. A statement signed and dated by the control device manufacturer or vendor certifying that the control equipment meets the design specifications may be used to comply with this requirement; and

(F) if performance tests are used to demonstrate compliance, all test results.

(c) Design documentation and monitoring, operating, and inspection information for each closed–vent system and control device required to comply with the provisions of this chapter shall be recorded and kept up–to–date in the facility operating record. The information shall include:

(1) description and date of each modification that is made to the closed–vent system or control device design;

(2) identification of operating parameter, description of monitoring device, and diagram of monitoring sensor location or locations used to comply with Section 66265.1033(f)(1) and (f)(2);

(3) monitoring, operating and inspection information required by subsections (f) through (k) of Section 66265.1033;

(4) date, time, and duration of each period of control device operation when any monitored parameter exceeds the value established in the control device design analysis as specified below:

(A) for a thermal vapor incinerator designed to operate with a minimum residence time of 0.50 seconds at a minimum temperature of 760 degrees C, period when the combustion temperature is below 760 degrees C;

(B) for a thermal vapor incinerator designed to operate with an organic emission reduction efficiency of 95 percent or greater, period when the combustion zone temperature is more than 28 degrees C below the design average combustion zone temperature established as a requirement of subsection (b)(4)(C)1 of this section;

(C) for a catalytic vapor incinerator, period when:

1. temperature of the vent stream at the catalyst bed inlet is more than 28 degrees C below the average temperature of the inlet vent stream established as a requirement of subsection (b)(4)(C)2 of this section; or

2. temperature difference across the catalyst bed is less than eighty (80) percent of the design average temperature difference established as a requirement of subsection (b)(4)(C)2 of this section; and

(D) for a boiler or process heater, period when:

1. flame zone temperature is more than 28 degrees C below the design average flame zone temperature established as a requirement of subsection (b)(4)(C)3 of this section; or

2. position changes where the vent stream is introduced to the combustion zone from the location established as a requirement of subsection (b)(4)(C)3 of this section;

(E) for a flare, period when the pilot flame is not ignited;

(F) for a condenser that complies with Section 66265.1033(f)(2)(F)1, period when the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the condenser are more than twenty (20) percent greater than the design outlet organic compound concentration level established as a requirement of subsection (b)(4)(C)5 of this section;

(G) for a condenser that complies with Section 66265.1033(f)(2)(F)2, period when:

1. temperature of the exhaust vent stream from the condenser is more than 6 degrees C above the design average exhaust vent stream temperature established as a requirement of subsection (b)(4)(C)5 of this section; or

2. temperature of the coolant fluid exiting the condenser is more than 6 degrees C above the design average coolant fluid temperature at the

condenser outlet established as a requirement of subsection (b)(4)(C)5 of this section;

(H) for a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly on-site in the control device and complies with Section 66265.1033(f)(2)(G)1, period when the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the carbon exhaust vent stream organic compound concentration level established as a requirement of subsection (b)(4)(C)6 of this section;

(I) for a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly on-site in the control device and complies with Section 66265.1033(f)(2)(G)2, period when the vent stream continues to flow through the control device beyond the predetermined carbon bed regeneration time established as a requirement of subsection (b)(4)(C)6 of this section;

(5) explanation for each period recorded under subsection (c)(4) of this section of the cause for control device operating parameter exceeding the design value and the measures implemented to correct the control device operation;

(6) for carbon adsorption systems operated subject to requirements specified in Section 66265.1033(g) or Section 66265.1033(h)(2), date when existing carbon in the control device is replaced with fresh carbon;

(7) for carbon adsorption systems operated subject to requirements specified in Section 66265.1033(h)(1), a log that records:

(A) date and time when control device is monitored for carbon breakthrough and the monitoring device reading;

(B) date when existing carbon in the control device is replaced with fresh carbon;

(8) date of each control device startup and shutdown;

(9) An owner or operator designating any components of a closed-vent system as unsafe to monitor pursuant to section 66265.1033(n) shall record in a log that is kept in the facility operating record the identification of closed-vent system components that are designated as unsafe to monitor in accordance with the requirements of section 66265.1033(n), an explanation for each closed-vent system component stating why the closed-vent system component is unsafe to monitor, and the plan for monitoring each closed-vent system component.

(10) when each leak is detected as specified in section 66265.1033(k), the following information shall be recorded:

(A) the instrument identification number, the closed-vent system component identification number, and the operator name, initials, or identification number;

(B) the date the leak was detected and the date of first attempt to repair the leak;

(C) the date of successful repair of the leak.

(D) maximum instrument reading measured by Method 21 of 40 CFR part 60, appendix A after it is successfully repaired or determined to be nonrepairable.

(E) "Repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.

1. the owner or operator may develop a written procedure that identifies the conditions that justify a delay of repair. In such cases, reasons for delay of repair may be documented by citing the relevant sections of the written procedure.

2. if delay of repair was caused by depletion of stocked parts, there must be documentation that the spare parts were sufficiently stocked on-site before depletion and the reason for depletion.

(d) Records of the monitoring, operating, and inspection information required by subsections (c)(3) through (c)(10) of this section shall be maintained by the owner or operator for at least 3 years following the date of each occurrence, measurement, maintenance, corrective action, or record.

(e) For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, monitoring and inspection information indicating proper operation and maintenance of the control device must be recorded in the facility operating record.

(f) Up-to-date information and data used to determine whether or not a process vent is subject to the requirements in Section 66265.1032, including supporting documentation as required by Section 66265.1034(d)(2) when application of the knowledge of the nature of the hazardous waste stream or the process by which it was produced is used, shall be recorded in a log that is kept in the facility operating record.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR, Section 265.1035.

HISTORY

1. New section filed 12-23-92; operative 1-22-93 (Register 93, No. 2).
2. Change without regulatory effect amending subsection (c)(5) filed 12-28-93 pursuant to title 1, section 100, California Code of Regulations (Register 93, No. 53).
3. Change without regulatory effect amending subsection (b)(2) filed 12-28-95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 52).
4. Change without regulatory effect amending subsections (c)(3) and (c)(7)(B)–(c)(8), adding subsections (c)(9)–(c)(10)(E)2., amending subsection (d) and amending NOTE filed 6-11-99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).

Article 28. Air Emissions Standards for Equipment Leaks

§ 66265.1050. Applicability.

(a) The regulations in this article apply to owners and operators of facilities that treat, store, or dispose of RCRA hazardous wastes (except as provided in Section 66265.1).

(b) Except as provided in Section 66265.1064(k), this article applies to equipment that contains or contacts RCRA hazardous wastes with organic concentrations of at least ten percent by weight that are managed in:

(1) a unit that is subject to the permitting requirements of chapter 20, or

(2) a unit (including a hazardous waste recycling unit) that is not exempt from permitting under the provisions of section 66262.34(a) (i.e., a hazardous waste recycling unit that is not a "90-day" tank or container) and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of chapter 20, or

(3) a unit that is exempt from permitting under the provisions of 66262.34(a) (i.e., a "90-day" tank or container) and is not a recycling unit under the provisions of section 66261.6.

(c) Each piece of equipment to which this article applies shall be marked in such a manner that it can be distinguished readily from other pieces of equipment.

(d) Equipment that is in vacuum service is excluded from the requirements of Section 66265.1052 through Section 66265.1060 if it is identified as required in Section 66265.1064(g)(5).

(e) Equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year is excluded from the requirements of sections 66265.1052 through 66265.1060 if it is identified, as required in section 66265.1064(g)(6).

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR, Section 265.1050.

HISTORY

1. New article 28 (sections 66265.1050–66265.1064) filed 12-23-92; operative 1-22-93 (Register 93, No. 2).
2. Change without regulatory effect repealing subsections (b)(1)–(2), adding new subsections (b)(1)–(3) and (e) and amending NOTE filed 6-11-99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).
3. Change without regulatory effect amending subsection (b) filed 7-1-2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 27).

§ 66265.1052. Standards: Pumps in Light Liquid Service.

(a)(1) Each pump in light liquid service shall be monitored monthly to detect leaks by the methods specified in Section 66265.1063(b), except as provided in subsections (d), (e), and (f) of this section.

(2) Each pump in light liquid service shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal.

(b)(1) If an instrument reading of 10,000 or greater is measured, a leak is detected.

(2) If there are indications of liquids dripping from the pump seal, a leak is detected.

(c)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than fifteen (15) calendar days after it is detected, except as provided in Section 66265.1059.

(2) A first attempt at repair (e.g., tightening the packing gland) shall be made no later than 24 hours after each leak is detected.

(d) Each pump equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of subsection (a), provided the following requirements are met:

(1) each dual mechanical seal system shall be:

(A) operated with the barrier fluid at a pressure that is at all times greater than the pump stuffing box pressure; or

(B) equipped with a barrier fluid degassing reservoir that is connected by a closed–vent system to a control device that complies with the requirements of Section 66265.1060; or

(C) equipped with a system that purges the barrier fluid into a hazardous waste stream with no detectable emissions to the atmosphere.

(2) The barrier fluid system shall not be a hazardous waste with organic concentrations ten percent or greater by weight.

(3) Each barrier fluid system shall be equipped with a sensor that will detect failure of the seal system, the barrier fluid system or both.

(4) Each pump shall be checked by visual inspection, each calendar week, for indications of liquids dripping from the pump seals.

(5)(A) Each sensor as described in subsection (d)(3) of this section shall be checked daily or be equipped with an audible alarm that shall be checked monthly to ensure that it is functioning properly.

(B) The owner or operator shall determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

(6)(A) If there are indications of liquids dripping from the pump seal or the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined in subsection (d)(5)(B) of this section, a leak is detected.

(B) When a leak is detected, it shall be repaired as soon as practicable, but not later than fifteen (15) calendar days after it is detected, except as provided in Section 66265.1059.

(C) A first attempt at repair (e.g., relapping the seal) shall be made no later than 24 hours after each leak is detected.

(e) Any pump that is designated, as described in Section 66265.1064(g)(2), for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of subsections (a), (c), and (d) of this section if the pump meets the following requirements:

(1) the pump shall have no externally actuated shaft penetrating the pump housing;

(2) the pump shall operate with no detectable emissions as indicated by an instrument reading of less than 500 ppm above background as measured by the methods specified in Section 66265.1063(c);

(3) the pump shall be tested for compliance with subsection (e)(2) of this section initially upon designation, annually, and at other times as required by the Department.

(f) if any pump is equipped with a closed–vent system capable of capturing and transporting any leakage from the seal or seals to a control device that complies with the requirements of Section 66265.1060, it is exempt from the requirements of subsections (a) through (e) of this section.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR, Section 66265.1052.

HISTORY

1. New section filed 12–23–92; operative 1–22–93 (Register 93, No. 2).

§ 66265.1053. Standards: Compressors.

(a) Each compressor shall be equipped with a seal system that includes a barrier fluid system and that prevents leakage of total organic emissions to the atmosphere, except as provided in subsections (h) and (i) of this section.

(b) Each compressor seal system as required in subsection (a) of this section shall be:

(1) operated with the barrier fluid at a pressure that is at all times greater than the compressor stuffing box pressure; or

(2) equipped with a barrier fluid system that is connected by a closed–vent system to a control device that complies with the requirements of Section 66265.1060; or

(3) equipped with a system that purges the barrier fluid into a hazardous waste stream with no detectable emissions to the atmosphere.

(c) The barrier fluid shall not be a hazardous waste with organic concentrations ten percent or greater by weight.

(d) Each barrier fluid system as described in subsections (a) through (c) of this section shall be equipped with a sensor that will detect failure of the seal system, barrier fluid system, or both.

(e)(1) Each sensor as required in subsection (d) of this section shall be checked daily or shall be equipped with an audible alarm that shall be checked monthly to ensure that it is functioning properly unless the compressor is located within the boundary of an unstaffed plant site, in which case the sensor shall be checked daily.

(2) The owner or operator shall determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system or both.

(f) If the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined under subsection (e)(2) of this section, a leak is detected.

(g)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than fifteen (15) calendar days after it is detected, except as provided in Section 66265.1059.

(2) A first attempt at repair (e.g., tightening the packing gland) shall be made as soon as possible, to minimize escape of hazardous constituents to the environment, but no later than 24 hours after each leak is detected.

(h) A compressor is exempt from the requirements of subsections (a) and (b) of this section if it is equipped with a closed–vent system capable of capturing and transporting any leakage from the seal to a control device that complies with the requirements of Section 66265.1060, except as provided in subsection (i) of this section.

(i) Any compressor that is designated, as described in Section 66265.1064(g)(2), for no detectable emission as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of subsections (a) through (h) of this section if the compressor:

(1) is determined to be operating with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in Section 66265.1063(c); and

(2) is tested for compliance with subsection (i)(1) of this section initially upon designation, annually, and at any other time as requested by the Department upon a determination by the Department that testing for compliance is necessary to protect human health or the environment.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR, Section 66265.1053.

HISTORY

1. New section filed 12–23–92; operative 1–22–93 (Register 93, No. 2).

§ 66265.1054. Standards: Pressure Relief Devices in Gas/Vapor Service.

(a) Except during pressure releases, each pressure relief device in gas/vapor service shall be operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in Section 66265.1063(c).

(b)(1) After each pressure release, the pressure relief device shall be returned to a condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as soon as practicable, but no later than 24 hours after each pressure release, except as provided in Section 66265.1059.

(2) No later than 24 hours after the pressure release, the pressure relief device shall be monitored to confirm the condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in Section 66265.1063(c).

(c) Any pressure relief device that is equipped with a closed–vent system capable of capturing and transporting leakage from the pressure relief device to a control device as described in Section 66265.1060 is exempt from the requirements of subsections (a) and (b) of this section.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR, Section 66265.1054.

HISTORY

1. New section filed 12–23–92; operative 1–22–93 (Register 93, No. 2).

§ 66265.1055. Standards: Sampling Connecting Systems.

(a) Each sampling connection system shall be equipped with a closed–purge, closed–loop, or closed–vent system. This system shall collect the sample purge for return to the process or for routing to the appropriate treatment system. Gases displaced during filling of the sample container are not required to be collected or captured.

(b) Each closed–purge, closed–loop, or closed–vent system as required in subsection (a) of this section shall:

(1) Return the purged process fluid directly to the process line; or

(2) Collect and recycle the purged process fluid; or

(3) Be designed and operated to capture and transport all the purged process fluid to a waste management unit that complies with the applicable requirements of sections 66265.1085 through 66265.1087 or a control device that complies with the requirements of section 66265.1060.

(c) In–situ sampling systems and sampling systems without purges are exempt from the requirements of subsections (a) and (b) of this section.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 265.1055.

HISTORY

1. New section filed 12–23–92; operative 1–22–93 (Register 93, No. 2).
2. Change without regulatory effect repealing section, adding new section and amending NOTE filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).

§ 66265.1056. Standards: Open–Ended Valves or Lines.

(a)(1) Each open–ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve.

(2) The cap, blind flange, plug, or second valve shall seal the open end at all times except during operations requiring hazardous waste stream flow through the open–ended valve or line.

(b) Each open–ended valve or line equipped with a second valve shall be operated in a manner such that the valve on the hazardous waste stream end is closed before the second valve is closed.

(c) When a double block and bleed system is being used, the bleed valve or line may remain open during operations that require venting the line between the block valves but shall comply with subsection (a) of this section at all other times.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR, Section 66265.1056.

HISTORY

1. New section filed 12–23–92; operative 1–22–93 (Register 93, No. 2).

§ 66265.1057. Standards: Valves in Gas/Vapor Service or in Light Liquid Service.

(a) Each valve in gas/vapor or light liquid service shall be monitored monthly to detect leaks by the methods specified in Section 66265.1063(b) except when in compliance with subsections (c) and shall comply with (d) and (e) of this section, except as provided in subsections (f), (g), and (h) of this section and Sections 66265.1061 and 66265.1062.

(b) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(c)(1) Any valve for which a leak is not detected for two successive months shall be monitored the first month of every succeeding quarter, beginning with the next quarter, until a leak is detected.

(2) If a leak is detected, the valve shall be monitored monthly until a leak is not detected for two successive months.

(d)(1) When a leak is detected, the valve shall be repaired as soon as practicable, but no later than fifteen (15) calendar days after the leak is detected, except as provided in Section 66265.1059.

(2) A first attempt at repair shall be made as soon as possible, to minimize escape of hazardous constituents to the environment, but no later than 24 hours after each leak is detected.

(e) First attempts at repair include, but are not limited to, the following best practices where practicable:

(1) tightening of bonnet bolts;

(2) replacements of bonnet bolts;

(3) tightening of packing gland nuts; and

(4) inspection of lubricant into lubricated packing.

(f) Any valve that is designated, as described in Section 66265.1064(g)(2), for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of subsection (a) of this section if the valve:

(1) has no external actuating mechanism in contact with the hazardous waste stream;

(2) is operated with emissions less than 500 ppm above background as determined by the method specified in Section 66265.1063(c); and

(3) is tested for compliance with subsection (f)(2) of this section initially upon designation, annually, and at other times as requested by the Department.

(g) Any valve that is designated, as described in Section 66265.1064(h)(1), as an unsafe–to–monitor valve is exempt from the requirements of subsection (a) of this section if:

(1) the owner or operator of the valve determines (written explanation in the operating record) that the valve is unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with subsection (a) of this section; and

(2) the owner or operator of the valve adheres to a written plan that requires monitoring of the valve as frequently as practicable.

(h) Any valve that is designated, as described in Section 66265.1064(h)(2), as a difficult–to–monitor valve is exempt from the requirements of subsection (a) of this section if:

(1) the owner or operator of the valve determines that the valve cannot be monitored without elevating the monitoring personnel more than two meters above a support surface; and

(2) the hazardous waste management unit within which the valve is located was in operation before effective date of this regulation; and

(3) the owner or operator of the valve follows a written plan that requires monitoring of the valve at least once per calendar year.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR, Section 66265.1057.

HISTORY

1. New section filed 12–23–92; operative 1–22–93 (Register 93, No. 2).

§ 66265.1058. Standards: Pumps and Valves in Heavy Liquid Service, Pressure Relief Devices in Light Liquid or Heavy Liquid Service, and Flanges and Other Connectors.

(a) Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors shall be monitored within five days by the method specified in Section 66265.1063(b) if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method.

(b) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(c)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than fifteen (15) calendar days after it is detected, except as provided in Section 66265.1059.

(2) The first attempt at repair shall be made as soon as possible, to minimize escape of hazardous constituents to the environment, but no later than 24 hours after each leak is detected.

(d) First attempts at repair include, but are not limited to, the best practices described under Section 66265.1057(e).

(e) Any connector that is inaccessible or is ceramic or ceramic–lined (e.g., porcelain, glass, or glass–lined) is exempt from the monitoring requirements of subsection (a) of this section and from the recordkeeping requirements of section 66265.1064.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 265.1058.

HISTORY

1. New section filed 12–23–92; operative 1–22–93 (Register 93, No. 2).
2. Change without regulatory effect adding new subsection (e) and amending NOTE filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).

§ 66265.1059. Standards: Delay of Repair.

(a) Delay of repair of equipment for which leaks have been detected will be allowed if the repair is technically infeasible without a hazardous waste management unit shutdown. In such a case, repair of this equipment shall occur before the end of the next hazardous waste management unit shutdown.

(b) Delay of repair of equipment for which leaks have been detected will be allowed for equipment that is isolated from the hazardous waste management unit and that does not continue to contain or contact hazardous waste with organic concentrations at least ten percent by weight.

(c) Delay of repair for valves will be allowed if:

(1) The owner or operator determines that emissions of purged material resulting from immediate repair are greater than the emissions likely to result from delay of repair; and

(2) When repair procedures are effected, the purged material is collected and destroyed or recovered in a control device complying with Section 66265.1060.

(d) Delay or repair for pumps will be allowed if:

(1) Repair requires the use of a dual mechanical seal system that includes a barrier fluid system; and

(2) Repair is completed as soon as practicable, but not later than six months after the leak was detected.

(e) Delay of repair beyond a hazardous waste management unit shutdown will be allowed for a valve if valve assembly replacement is necessary during the hazardous waste management unit shutdown, valve assembly supplies have been depleted, and valve assembly supplies had been sufficiently stocked before the supplies were depleted. Delay of repair beyond the next hazardous waste management unit shutdown will not be allowed unless the next hazardous waste management unit shutdown occurs sooner than six months after the first hazardous waste management unit shutdown.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR, Section 66265.1059.

HISTORY

1. New section filed 12–23–92; operative 1–22–93 (Register 93, No. 2).

§ 66265.1060. Standards: Closed–Vent Systems and Control Devices.

(a) Owners and operators of closed–vent systems and control devices subject to this article shall comply with the provisions of section 66265.1033.

(b)(1) The owner or operator of an existing facility who cannot install a closed–vent system and control device to comply with the provisions of this article on the effective date that the facility becomes subject to the provisions of this article must prepare an implementation schedule that includes dates by which the closed–vent system and control device will be installed and in operation. The controls must be installed as soon as possible, but the implementation schedule may allow up to 30 months after the effective date that the facility becomes subject to this article for installation and startup.

(2) Any units that begin operation after December 21, 1990, and are subject to the provisions of this article when operation begins, must comply with the rules immediately (i.e., must have control devices installed and operating on startup of the affected unit); the 30–month implementation schedule does not apply.

(3) The owner or operator of any facility in existence on the effective date of a statutory or Department regulatory amendment that renders the facility subject to this article shall comply with all requirements of this article as soon as practicable but no later than 30 months after the amendment's effective date. When control equipment required by this article cannot be installed and begin operation by the effective date of the amendment, the facility owner or operator shall prepare an implementation schedule that includes the following information: Specific calendar dates for award of contracts or issuance of purchase orders for the control equipment, initiation of on–site installation of the control equipment, completion of the control equipment installation, and performance of any testing to demonstrate that the installed equipment meets the applicable standards of this article. The owner or operator shall enter the implementation schedule in the operating record or in a permanent, readily available file located at the facility.

(4) Owners and operators of facilities and units that become newly subject to the requirements of this article after December 8, 1997 due to an action other than those described in subsection (b)(3) of this section must comply with all applicable requirements immediately (i.e., must have control devices installed and operating on the date the facility or unit becomes subject to this article; the 30–month implementation schedule does not apply).

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR, Section 265.1060.

HISTORY

1. New section filed 12–23–92; operative 1–22–93 (Register 93, No. 2).
2. Change without regulatory effect repealing section, adding new section and amending NOTE filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).

§ 66265.1061. Alternative Standards for Valves in Gas/Vapor Service or in Light Liquid Service: Percentage of Valves Allowed to Leak.

(a) An owner or operator subject to the requirements of Section 66265.1057 may elect to have all valves within a hazardous waste management unit comply with an alternative standard which allows no greater than two percent of the valves to leak.

(b) The following requirements shall be met if an owner or operator decides to comply with an alternative standard which allows two percent of the valves to leak:

(1) the owner or operator shall notify the Department that the owner or operator has elected to comply with the requirements of this section;

(2) a performance test as specified in subsection (c) of this section shall be conducted initially upon designation, annually, and at any other time required by the Department upon a determination by the Department that a performance test is necessary to protect human health or the environment; and

(3) if a valve leak is detected, it shall be repaired in accordance with Sections 66265.1057(d) and (e).

(c) Performance tests shall be conducted in the following manner:

(1) all valves subject to the requirements in Section 66265.1057 within the hazardous waste management unit shall be monitored within a one week period by the methods specified in Section 66265.1063(b);

(2) if an instrument reading of 10,000 ppm or greater is measured, a leak is detected; and

(3) the leak percentage shall be determined by dividing the number of valves subject to the requirements in Section 66265.1057 for which leaks

are detected by the total number of valves subject to the requirements in Section 66265.1057 within the hazardous waste management unit.

(d) If an owner or operator decides no longer to comply with this section, the owner or operator shall notify the Department in writing that the work practice standard described in Section 66265.1057(a) through (e) will be followed.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR, Section 66265.1061.

HISTORY

1. New section filed 12–23–92; operative 1–22–93 (Register 93, No. 2).

§ 66265.1062. Alternative Standards for Valves in Gas/Vapor Service or in Light Liquid Service: Skip Period Leak Detection and Repair.

(a)(1) An owner or operator subject to the requirements of Section 66265.1057 shall elect for all valves within a hazardous waste management unit to comply with one of the alternative work practices specified in subsection (b)(2) and (3) of this section.

(2) An owner or operator shall notify the Department before implementing one of the alternative work practices.

(b)(1) An owner or operator shall comply with the requirements for valves, as described in Section 66265.1057, except as described in subsections (b)(2) and (b)(3) of this section.

(2) After two consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than 2 percent, an owner or operator may begin to skip one of the quarterly leak detection periods (i.e., monitor for leaks once every six months) for the valves subject to the requirements in Section 66265.1057.

(3) After five consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than 2 percent, an owner or operator may begin to skip three of the quarterly leak detection periods (i.e., monitor for leaks once every every year) for the valves subject to the requirements in Section 66265.1057.

(4) If the percentage of valves leaking is greater than 2 percent, the owner or operator shall monitor all valves monthly in compliance with the requirements in Section 66265.1057, but may again elect to use this section after meeting the requirements of Section 66265.1057(c)(1).

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR, Section 265.1062.

HISTORY

1. New section filed 12–23–92; operative 1–22–93 (Register 93, No. 2).
2. Change without regulatory effect amending subsections (b)(2)–(3) and amending NOTE filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).

§ 66265.1063. Test Methods and Procedures.

(a) Each owner or operator subject to the provisions of this article shall comply with the test methods and procedures requirements provided in this section.

(b) Leak detection monitoring, as required in Sections 66265.1052 through 66265.1062, shall comply with the following requirements:

(1) monitoring shall comply with Reference Method 21 in 40 CFR, part 60, incorporated by reference in Section 66260.11 of this chapter.

(2) the detection instrument shall meet the performance criteria of Reference Method 21.

(3) the instrument shall be calibrated before use on each day of its use by the procedures specified in Reference Method 21;

(4) Calibration gases shall be:

(A) zero air (less than 10 ppm of hydrocarbon in air);

(B) a mixture of methane or n–hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n–hexane.

(5) the instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(c) When equipment is tested for compliance with no detectable emissions, as required in Sections 66265.1052(e), 66265.1053(i), 66265.1054, and 66265.1057(f), the test shall comply with the following requirements:

(1) the requirements of subsections (b)(1) through (4) of this section shall apply;

(2) the background level shall be determined, as set forth in Reference Method 21;

(3) the instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21; and

(4) the arithmetic difference between the maximum concentration indicated by the instrument and the background level shall be compared with 500 ppm for determining compliance.

(d) In accordance with the waste analysis plan required by Section 66265.13(b), an owner or operator of a facility shall determine, for each piece of equipment, whether the equipment contains or contacts a hazardous waste with organic concentration that equals or exceeds 10 percent by weight using the following:

(1) methods described in ASTM Methods D 2267–88, E 169–87, E 168–88, E 260–85 (incorporated by reference under Section 260.11);

(2) method 9060 or 8260 of SW–846 (incorporated by reference under Section 66260.11); or

(3) application of the knowledge of the nature of the hazardous waste stream or the process by which it was produced. Documentation of a waste determination by knowledge is required. Examples of documentation that shall be used to support a determination under this provision include production process information documenting that no organic compounds are used, information that the waste is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to have a total organic content less than 10 percent, or prior speciation analysis results on the same waste stream where it can also be documented that no process changes have occurred since that analysis that could affect the total organic concentration of the waste.

(e) If an owner or operator determines that a piece of equipment contains or contacts a hazardous waste with organic concentration at least 10 percent by weight, the determination can be revised only after following the procedures in subsection (d)(1) or (d)(2) of this section.

(f) When an owner or operator and the Department do not agree on whether a piece of equipment contains or contacts a hazardous waste with organic concentrations at least 10 percent by weight, the procedures in subsection (d)(1) or (d)(2) of this section shall be used to resolve the dispute.

(g) Samples used in determining the percent organic content shall be representative of the highest total organic content hazardous waste that is expected to be contained in or contact the equipment.

(h) To determine if pumps or valves are in light liquid service, the vapor pressures of constituents may be obtained from standard reference texts or may be determined by ASTM D–2879–86 (incorporated by reference under Section 260.11).

(i) Performance tests to determine if a control device achieves 95 weight percent organic emission reduction shall comply with the procedures of Section 66265.1034(c)(1) through (c)(4).

NOTE: Authority cited: Sections 25150, 25159 and 58012, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR, Section 66265.1063.

HISTORY

1. New section filed 12–23–92; operative 1–22–93 (Register 93, No. 2).
2. Amendment of subsection (d)(2) and NOTE filed 10–13–98; operative 11–12–98 (Register 98, No. 42).

§ 66265.1064. Recordkeeping Requirements.

(a)(1) Each owner or operator subject to the provisions of this article shall comply with the recordkeeping requirements of this section.

(2) An owner or operator of more than one hazardous waste management unit subject to the provisions of this article may comply with the recordkeeping requirements for these hazardous waste management units in one recordkeeping system if the system identifies each record by each hazardous waste management unit.

(b) Owners and operators shall record the following information in the facility operating record:

(1) for each piece of equipment to which this article applies:

(A) equipment identification number and hazardous waste management unit identification;

(B) approximate locations within the facility (e.g., identify the hazardous waste management unit on a facility plot plan);

(C) type of equipment (e.g., a pump or pipeline valve);

(D) percent–by–weight total organics in the hazardous waste stream at the equipment;

(E) hazardous waste state at the equipment (e.g., gas/vapor or liquid);

(F) method of compliance with the standard (e.g., "monthly leak detection and repair" or "equipped with dual mechanical seals");

(2) for facilities that comply with the provisions of Section 66265.1033(a)(2), an implementation schedule as specified in Section 66265.1033(a)(2);

(3) an owner or operator who chooses to use test data to demonstrate the organic removal efficiency or total organic compound concentration achieved by the control device, shall record a performance test plan as specified in Section 66265.1035(b)(3); and

(4) Documentation of compliance with Section 66265.1060, including the detailed design documentation or performance test results specified in Section 66265.1035(b)(4).

(c) When each leak is detected as specified in Sections 66265.1052, 66265.1053, 66265.1057, and 66265.1058, the following requirements apply:

(1) a weatherproof and readily visible identification, marked with the equipment identification number, the date evidence of a potential leak was found in accordance with Section 66265.1058(a), and the date the leak was detected, shall be attached to the leaking equipment;

(2) the identification on equipment, except on a valve, may be removed after it has been repaired; and

(3) the identification on a valve may be removed after it has been monitored for 2 successive months as specified in Section 66265.1057(c) and no leak has been detected during those 2 months.

(d) When each leak is detected as specified in Sections 66265.1052, 66265.1053, 66265.1057, and 66265.1058, the following information shall be recorded in an inspection log and shall be kept in the facility operating record:

(1) the instrument and operator identification number and the equipment identification number;

(2) the date evidence of a potential leak was found in accordance with Section 66265.1058(a);

(3) the date the leak was detected and the date of each attempt to repair the leak;

(4) repair methods applied in each attempt to repair the leak;

(5) "above 10,000" if the maximum instrument reading measured by the methods specified in Section 66265.1063(b) after each repair attempt is equal to or greater than 10,000 ppm;

(6) "repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak;

(7) source of documentation supporting the delay of repair of a valve in compliance with Section 66265.1059(c);

(8) name and the signature of the owner or operator (or designee) whose decision it was that repair could not be effected without a hazardous waste management unit shutdown;

(9) the expected date of successful repair of the leak if a leak is not repaired within 15 calendar days; and

(10) the date of successful repair of the leak.

(e) Design documentation and monitoring, operating, and inspection information for each closed–vent system and control device required to comply with the provisions of Section 66265.1060 shall be recorded and kept up–to–date in the facility operating record as specified in Section 66265.1035(c). Design documentation is specified in Section 66265.1035(c)(1) and (c)(2) and monitoring, operating, and inspection information is specified in Section 66265.1035(c)(3)–(c)(8).

(f) For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, monitoring and inspection information indicating proper operation and maintenance of the control device must be recorded in the facility operating record.

(g) The following information pertaining to all equipment subject to the requirements in Sections 66265.1052 through 66265.1060 shall be recorded in a log that is kept in the facility operating record:

(1) a list of identification numbers for equipment (except welded fittings) subject to the requirements of this article;

(2)(A) a list of identification numbers for equipment that the owner or operator elects to designate for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, under the provisions of Sections 66265.1052(e), 66265.1053(i), and 66265.1057(f);

(B) the designation of this equipment as subject to the requirements of Sections 66265.1052(e), 66265.1053(i), or 66265.1057(f) shall be signed by the owner or operator;

(3) a list of equipment identification numbers for pressure relief devices required to comply with Section 66265.1054(a);

(4)(A) the dates of each compliance test required in Sections 66265.1052(e), 66265.1053(i), 66265.1054, and 66265.1057(f);

(B) the background level measured during each compliance test;

(C) the maximum instrument reading measured at the equipment during each compliance test;

(5) a list of identification numbers for equipment in vacuum service; and

(6) identification, either by list or location (area or group) of equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year.

(h) The following information pertaining to all valves subject to the requirements of Section 66265.1057(g) and (h) shall be recorded in a log that is kept in the facility operating record:

(1) a list of identification numbers for valves that are designated as unsafe to monitor, an explanation for each valve stating why the valve is unsafe to monitor, and the plan for monitoring each valve; and

(2) a list of identification numbers for valves that are designated as difficult to monitor, an explanation for each valve stating why the valve is difficult to monitor, and the planned schedule for monitoring each valve.

(i) The following information shall be recorded in the facility operating record for valves complying with Section 66265.1062:

(1) a schedule of monitoring; and

(2) the percent of valves found leaking during each monitoring period.

(j) The following information shall be recorded in a log that is kept in the facility operating record:

(1) criteria required in Sections 66265.1052(d)(5)(A) and 66265.1053(e)(2) and an explanation of the criteria; and

(2) any changes to these criteria and the reasons for the changes.

(k) The following information shall be recorded in a log that is kept in the facility operating record for use in determining exemptions as provided in the applicability section of this article and other specific articles:

(1) an analysis determining the design capacity of the hazardous waste management unit;

(2) a statement listing the hazardous waste influent to and effluent from each hazardous waste management unit subject to the requirements in Sections 66265.1052 through 66265.1060 and an analysis determining whether these hazardous wastes are heavy liquids; and

(3) an up–to–date analysis and the supporting information and data used to determine whether or not equipment is subject to the requirements in Sections 66265.1052 through 66265.1060. The record shall include supporting documentation as required by Section 66265.1063(d)(3) when application of the knowledge of the nature of the hazardous waste stream or the process by which it was produced is used. If the owner or operator takes any action (e.g., changing the process that produced the waste) that could result in an increase in the total organic

content of the waste contained in or contacted by equipment determined not to be subject to the requirements in Sections 66265.1052 through 66265.1060, then a new determination is required.

(*l*) Records of the equipment leak information required by subsection (d) of this section and the operating information required by subsection (e) of this section shall be kept 3 years.

(m) The owner or operator of any facility with equipment that is subject to this article and to leak detection, monitoring, and repair requirements under regulations at 40 CFR part 60, part 61, or part 63 may elect to determine compliance with this article either by documentation pursuant to section 66265.1064, or by documentation of compliance with the regulations at 40 CFR part 60, part 61, or part 63 pursuant to the relevant provisions of the regulations at 40 part 60, part 61, or part 63. The documentation of compliance under regulation at 40 CFR part 60, part 61, or part 63 shall be kept with or made readily available with the facility operating record.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR, Section 265.1064.

HISTORY

1. New section filed 12–23–92; operative 1–22–93 (Register 93, No. 2).
2. Change without regulatory effect amending subsections (g)(4)(C)–(g)(5), adding subsection (g)(6) and amending subsection (m) and NOTE filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).

Article 28.5. Air Emission Standards for Tanks, Surface Impoundments, and Containers

§ 66265.1080. Applicability.

(a) The requirements of this article apply to owners and operators of all facilities that treat, store, or dispose of RCRA hazardous waste in tanks, surface impoundments, or containers subject to either articles 9, 10, or 11 except as section 66265.1 and subsection (b) of this section provide otherwise.

(b) The requirements of this article do not apply to the following waste management units at the facility:

(1) A waste management unit that holds hazardous waste placed in the unit before December 6, 1996, and in which no hazardous waste is added to the unit on or after December 6, 1996.

(2) A container that has a design capacity less than or equal to 0.1 m^3.

(3) A tank in which an owner or operator has stopped adding hazardous waste and the owner or operator has begun implementing or completed closure pursuant to an approved closure plan.

(4) A surface impoundment in which an owner or operator has stopped adding hazardous waste (except to implement an approved closure plan) and the owner or operator has begun implementing or completed closure pursuant to an approved closure plan.

(5) A waste management unit that is used solely for on–site treatment or storage of hazardous waste that is placed in the unit as a result of implementing remedial activities required under the corrective action authorities of RCRA sections 3004(u), 3004(v), or 3008(h); CERCLA authorities; or similar Federal or State authorities.

(6) A waste management unit that is used solely for the management of radioactive mixed waste in accordance with all applicable regulations under the authority of the Atomic Energy Act and the Nuclear Waste Policy Act.

(7) A hazardous waste management unit that the owner or operator certifies is equipped with and operating air emission controls in accordance with the requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63. For the purpose of complying with this subsection, a tank for which the air emission control includes an enclosure, as opposed to a cover, must be in compliance with the enclosure and control device requirements of section 66265.1085(i), except as provided in section 66265.1083(c)(5).

(8) A tank that has a process vent as defined in section 66260.10.

(c) For the owner and operator of a facility subject to this article who has received a final permit under RCRA section 3005 prior to December 6, 1996, the following requirements apply:

(1) The requirements of chapter 14, article 30 shall be incorporated into the permit when the permit is reissued in accordance with the requirements of 40 CFR 124.15 or reviewed in accordance with the requirements of section 66270.50(d).

(2) Until the date when the permit is reissued in accordance with the requirements of 40 CFR 124.15 or reviewed in accordance with the requirements of section 66270.50(d), the owner and operator is subject to the requirements of this article.

(d) The requirements of this article, except for the recordkeeping requirements specified in section 265.1090(i) of this article, are administratively stayed for a tank or a container used for the management of hazardous waste generated by organic peroxide manufacturing and its associated laboratory operations when the owner or operator of the unit meets all of the following conditions:

(1) The owner or operator identifies that the tank or container receives hazardous waste generated by an organic peroxide manufacturing process producing more than one functional family of organic peroxides or multiple organic peroxides within one functional family, that one or more of these organic peroxides could potentially undergo self–accelerating thermal decomposition at or below ambient temperatures, and that organic peroxides are the predominant products manufactured by the process. For the purpose of meeting the conditions of this subsection, "organic peroxide" means an organic compound that contains the bivalent –O–O– structure and which may be considered to be a structural derivative of hydrogen peroxide where one or both of the hydrogen atoms has been replaced by an organic radical.

(2) The owner or operator prepares documentation, in accordance with the requirements of section 66265.1090(i) explaining why an undue safety hazard would be created if air emission controls specified in sections 66265.1085 through 66265.1088 are installed and operated on the tanks and containers used at the facility to manage the hazardous waste generated by the organic peroxide manufacturing process or processes meeting the conditions of subsection (d)(1) of this section.

(3) The owner or operator notifies the Department in writing that hazardous waste generated by an organic peroxide manufacturing process or processes meeting the conditions of subsection (d)(1) of this section are managed at the facility in tanks or containers meeting the conditions of subsection (d)(2) of this section. The notification shall state the name and address of the facility, and be signed and dated by an authorized representative of the facility owner or operator.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 265.1080.

HISTORY

1. Change without regulatory effect adding new article 28.5 (sections 66265.1080–66265.1090) and section filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).
2. Change without regulatory effect amending subsection (b)(5) filed 8–3–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 31).
3. Change without regulatory effect amending subsection (a) filed 12–21–2004 pursuant to Health and Safety Code section 25159.1 (Register 2004, No. 52).

§ 66265.1082. Schedule for Implementation of Air Emission Standards.

(a) Owners or operators of facilities existing on December 6, 1996 and subject to articles 9, 10, and 11 shall meet the following requirements:

(1) Install and begin operation of all control equipment or waste management units required to comply with this article and complete modifications of production or treatment processes to satisfy exemption criteria in accordance with section 66265.1083(c) by December 6, 1996, except as provided for in subsection (a)(2) of this section.

(2) When control equipment or waste management units required to comply with this article cannot be installed and in operation or modifica-

tions of production or treatment processes to satisfy exemption criteria in accordance with section 66265.1083(c) cannot be completed by December 6, 1996, the owner or operator shall:

(A) Install and begin operation of the control equipment and waste management units, and complete modifications of production or treatment processes as soon as possible but no later than December 8, 1997.

(B) Prepare an implementation schedule that includes the following information: specific calendar dates for award of contracts or issuance of purchase orders for control equipment, waste management units, and production or treatment process modifications; initiation of on–site installation of control equipment or waste management units, and modifications of production or treatment processes; completion of control equipment or waste management unit installation, and production or treatment process modifications; and performance of testing to demonstrate that the installed equipment or waste management units, and modified production or treatment processes meet the applicable standards of this article.

(C) For facilities subject to the recordkeeping requirements of section 66265.73, the owner or operator shall enter the implementation schedule specified in subsection (a)(2)(B) of this section in the operating record no later than December 6, 1996.

(D) For facilities not subject to section 66265.73, the owner or operator shall enter the implementation schedule specified in subsection (a)(2)(B) of this section in a permanent, readily available file located at the facility no later than December 6, 1996.

(b) Owners or operators of facilities and units in existence on the effective date of a statutory or regulatory amendment that renders the facility subject to articles 9, 10, or 11 shall meet the following requirements:

(1) Install and begin operation of control equipment or waste management units required to comply with this article, and complete modifications of production or treatment processes to satisfy exemption criteria of section 66265.1083(c) by the effective date of the amendment, except as provided for in subsection (b)(2) of this section.

(2) When control equipment or waste management units required to comply with this article cannot be installed and begin operation, or when modifications of production or treatment processes to satisfy exemption criteria of section 66265.1083(c) cannot be completed by the effective date of the amendment, the owner or operator shall:

(A) Install and begin operation of the control equipment or waste management unit, and complete modification of production or treatment processes as soon as possible but no later than 30 months after the effective date of the amendment.

(B) For facilities subject to the recordkeeping requirements of section 66265.73, enter and maintain the implementation schedule specified in subsection (a)(2)(B) of this section in the operating record no later than the effective date of the amendment, or

(C) For facilities not subject to section 66265.73, the owner or operator shall enter and maintain the implementation schedule specified in subsection (a)(2)(B) of this section in a permanent, readily available file located at the facility site no later than the effective date of the amendment.

(c) Owners and operators of facilities and units that become newly subject to the requirements of this article after December 8, 1997 due to an action other than those described in subsection (b) of this section must comply with all applicable requirements immediately (i.e., must have control devices installed and operating on the date the facility or unit becomes subject to this article; the 30–month implementation schedule does not apply).

(d) The Department may elect to extend the implementation date for control equipment at a facility, on a case by case basis, to a date later than December 8, 1997, when special circumstances that are beyond the facility owner's or operator's control delay installation or operation of control equipment, and the owner or operator has made all reasonable and prudent attempts to comply with the requirements of this article.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 265.1082.

HISTORY

1. Change without regulatory effect adding new section filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).
2. Change without regulatory effect amending subsection (b)(2)(B) filed 6–7–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 24).

§ 66265.1083. Standards: General.

(a) This section applies to the management of hazardous waste in tanks, surface impoundments, and containers subject to this article.

(b) The owner or operator shall control air pollutant emissions from each hazardous waste management unit in accordance with standards specified in sections 66265.1085 through 66265.1088 as applicable to the hazardous waste management unit, except as provided for in subsection (c) of this section.

(c) A tank, surface impoundment, or container is exempt from standards specified in sections 66265.1085 through 66265.1088 as applicable, provided that the waste management unit is one of the following:

(1) A tank, surface impoundment, or container for which all hazardous waste entering the unit has an average VO concentration at the point of waste origination of less than 500 parts per million by weight (ppmw). The average VO concentration shall be determined using the procedures specified in section 66265.1084(a) of this article. The owner or operator shall review and update, as necessary, this determination at least once every 12 months following the date of the initial determination for the hazardous waste streams entering the unit.

(2) A tank, surface impoundment, or container for which the organic content of all the hazardous waste entering the waste management unit has been reduced by an organic destruction or removal process that achieves any one of the following conditions:

(A) A process that removes or destroys the organics contained in the hazardous waste to a level such that the average VO concentration of the hazardous waste at the point of waste treatment is less than the exit concentration limit (C_t) established for the process. The average VO concentration of the hazardous waste at the point of waste treatment and the exit concentration limit for the process shall be determined using the procedures specified in section 66265.1084(b).

(B) A process that removes or destroys the organics contained in the hazardous waste to a level such that the organic reduction efficiency (R) for the process is equal to or greater than 95 percent, and the average VO concentration of the hazardous waste at the point of waste treatment is less than 100 ppmw. The organic reduction efficiency for the process and the average VO concentration of the hazardous waste at the point of waste treatment shall be determined using the procedures specified in section 66265.1084(b).

(C) A process that removes or destroys the organics contained in the hazardous waste to a level such that the actual organic mass removal rate (MR) for the process is equal to or greater than the required organic mass removal rate (RMR) established for the process. The required organic mass removal rate and the actual organic mass removal rate for the process shall be determined using the procedures specified in section 66265.1084(b).

(D) A biological process that destroys or degrades the organics contained in the hazardous waste, such that either of the following conditions is met:

1. The organic reduction efficiency (R) for the process is equal to or greater than 95 percent, and the organic biodegradation efficiency (R_{bio}) for the process is equal to or greater than 95 percent. The organic reduction efficiency and the organic biodegradation efficiency for the process shall be determined using the procedures specified in section 66265.1084(b).

2. The total actual organic mass biodegradation rate (MR_{bio}) for all hazardous waste treated by the process is equal to or greater than the required organic mass removal rate (RMR). The required organic mass removal rate and the actual organic mass biodegradation rate for the pro-

cess shall be determined using the procedures specified in section 66265.1084(b).

(E) A process that removes or destroys the organics contained in the hazardous waste and meets all of the following conditions:

1. From the point of waste origination through the point where the hazardous waste enters the treatment process, the hazardous waste is managed continuously in waste management units which use air emission

[The next page is 758.112(l)(3).]

controls in accordance with the standards specified in sections 66265.1085 through 66265.1088 as applicable to the waste management unit.

2. From the point of waste origination through the point where the hazardous waste enters the treatment process, any transfer of the hazardous waste is accomplished through continuous hard–piping or other closed system transfer that does not allow exposure of the waste to the atmosphere. The EPA considers a drain system that meets the requirements of 40 CFR part 63, subpart RR—National Emission Standards for Individual Drain Systems to be a closed system.

3. The average VO concentration of the hazardous waste at the point of waste treatment is less than the lowest average VO concentration at the point of waste origination determined for each of the individual waste streams entering the process or 500 ppmw, whichever value is lower. The average VO concentration of each individual waste stream at the point of waste origination shall be determined using the procedures specified in section 66265.1084(a). The average VO concentration of the hazardous waste at the point of waste treatment shall be determined using the procedures specified in section 66265.1084(b).

(F) A process that removes or destroys the organics contained in the hazardous waste to a level such that the organic reduction efficiency (R) for the process is equal to or greater than 95 percent and the owner or operator certifies that the average VO concentration at the point of waste origination for each of the individual waste streams entering the process is less than 10,000 ppmw. The organic reduction efficiency for the process and the average VO concentration of the hazardous waste at the point of waste origination shall be determined using the procedures specified in sections 66265.1084(b) and 66265.1084(a), respectively.

(G) A hazardous waste incinerator for which the owner or operator has either:

1. Been issued a final permit under chapter 20 which implements the requirements of chapter 14, article 15; or

2. Has designed and operates the incinerator in accordance with the interim status requirements of chapter 15, article 15 of this division.

(H) A boiler or industrial furnace for which the owner or operator has either:

1. Been issued a final permit under chapter 20 which implements the requirements of chapter 16, article 8, or

2. Has designed and operates the boiler or industrial furnace in accordance with the interim status requirements of chapter 16, article 8 of this division.

(I) For the purpose of determining the performance of an organic destruction or removal process in accordance with the conditions in each of subsections (c)(2)(A) through (c)(2)(F) of this section, the owner or operator shall account for VO concentrations determined to be below the limit of detection of the analytical method by using the following VO concentration:

1. If Method 25D in 40 CFR part 60, appendix A is used for the analysis, one–half the blank value determined in the method at section 4.4 of Method 25D in 40 CFR part 60, appendix A, or a value of 25 ppmw, whichever is less.

2. If any other analytical method is used, one–half the sum of the limits of detection established for each organic constituent in the waste that has a Henry's law constant value at least 0.1 mole–fraction–in–the–gas–phase/mole–fraction–in–the–liquid–phase (0.1 Y/X) [which can also be expressed as 1.8×10^{-6} atmospheres/gram–mole/m^3] at 25 degrees Celsius.

(3) A tank or surface impoundment used for biological treatment of hazardous waste in accordance with the requirements of subsection (c)(2)(D) of this section.

(4) A tank, surface impoundment, or container for which all hazardous waste placed in the unit either:

(A) Meets the numerical concentration limits for organic hazardous constituents, applicable to the hazardous waste, as specified in chapter 18—Land Disposal Restrictions under Table "Treatment Standards for Hazardous Waste" in section 66268.40; or

(B) The organic hazardous constituents in the waste have been treated by the treatment technology established by the Department for the waste in section 66268.42(a), or have been removed or destroyed by an equivalent method of treatment approved by the Department pursuant to section 66268.42(b).

(5) A tank used for bulk feed of hazardous waste to a waste incinerator and all of the following conditions are met:

(A) The tank is located inside an enclosure vented to a control device that is designed and operated in accordance with all applicable requirements specified under 40 CFR part 61, subpart FF—National Emission Standards for Benzene Waste Operations for a facility at which the total annual benzene quantity from the facility waste is equal to or greater than 10 megagrams per year;

(B) The enclosure and control device serving the tank were installed and began operation prior to November 25, 1996; and

(C) The enclosure is designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, Appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of material into or out of the enclosure by conveyor, vehicles, or other mechanical or electrical equipment; or to direct air flow into the enclosure. The owner or operator shall perform the verification procedure for the enclosure as specified in Section 5.0 to "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" annually.

(d) The Department may at any time perform or request that the owner or operator perform a waste determination for a hazardous waste managed in a tank, surface impoundment, or container exempted from using air emission controls under the provisions of this section as follows:

(1) The waste determination for average VO concentration of a hazardous waste at the point of waste origination shall be performed using direct measurement in accordance with the applicable requirements of section 66265.1084(a). The waste determination for a hazardous waste at the point of waste treatment shall be performed in accordance with the applicable requirements of section 66265.1084(b).

(2) In performing a waste determination pursuant to subsection (d)(1) of this section, the sample preparation and analysis shall be conducted as follows:

(A) In accordance with the method used by the owner or operator to perform the waste analysis, except in the case specified in subsection (d)(2)(B) of this section.

(B) If the Department determines that the method used by the owner or operator was not appropriate for the hazardous waste managed in the tank, surface impoundment, or container, then the Department may choose an appropriate method.

(3) In a case when the owner or operator is requested to perform the waste determination, the Department may elect to have an authorized representative observe the collection of the hazardous waste samples used for the analysis.

(4) In a case when the results of the waste determination performed or requested by the Department do not agree with the results of a waste determination performed by the owner or operator using knowledge of the waste, then the results of the waste determination performed in accordance with the requirements of subsection (d)(1) of this section shall be used to establish compliance with the requirements of this article.

(5) In a case when the owner or operator has used an averaging period greater than 1 hour for determining the average VO concentration of a hazardous waste at the point of waste origination, the Department may elect to establish compliance with this article by performing or requesting that the owner or operator perform a waste determination using direct measurement based on waste samples collected within a 1–hour period as follows:

(A) The average VO concentration of the hazardous waste at the point of waste origination shall be determined by direct measurement in accordance with the requirements of section 66265.1084(a).

(B) Results of the waste determination performed or requested by the Department showing that the average VO concentration of the hazardous waste at the point of waste origination is equal to or greater than 500 ppmw shall constitute noncompliance with this article except in a case as provided for in subsection (d)(5)(C) of this section.

(C) For the case when the average VO concentration of the hazardous waste at the point of waste origination previously has been determined by the owner or operator using an averaging period greater than 1 hour to be less than 500 ppmw but because of normal operating process variations the VO concentration of the hazardous waste determined by direct measurement for any given 1–hour period may be equal to or greater than 500 ppmw, information that was used by the owner or operator to determine the average VO concentration of the hazardous waste (e.g., test results, measurements, calculations, and other documentation) and recorded in the facility records in accordance with the requirements of section 66265.1084(a) and section 66265.1090 shall be considered by the Department together with the results of the waste determination performed or requested by the Department in establishing compliance with this article.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 265.1083.

HISTORY

1. Change without regulatory effect adding new section filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).

§ 66265.1084. Waste Determination Procedures.

(a) Waste determination procedure to determine average volatile organic (VO) concentration of a hazardous waste at the point of waste origination.

(1) An owner or operator shall determine the average VO concentration at the point of waste origination for each hazardous waste placed in a waste management unit exempted under the provisions of section 66265.1083(c)(1) from using air emission controls in accordance with standards specified in sections 66265.1085 through 66265.1088, as applicable to the waste management unit.

(A) An initial determination of the average VO concentration of the waste stream shall be made before the first time any portion of the material in the hazardous waste stream is placed in a waste management unit exempted under the provisions of section 66265.1083(c)(1) from using air emission controls, and thereafter an initial determination of the average VO concentration of the waste stream shall be made for each averaging period that a hazardous waste is managed in the unit; and

(B) Perform a new waste determination whenever changes to the source generating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level that is equal to or greater than the VO concentration limit specified in section 66265.1083(c)(1).

(2) For a waste determination that is required by subsection (a)(1) of this section, the average VO concentration of a hazardous waste at the point of waste origination shall be determined using either direct measurement as specified in subsection (a)(3) of this section or by knowledge as specified in subsection (a)(4) of this section.

(3) Direct measurement to determine average VO concentration of a hazardous waste at the point of waste origination.

(A) Identification. The owner or operator shall identify and record the point of waste origination for the hazardous waste.

(B) Sampling. Samples of the hazardous waste stream shall be collected at the point of waste origination in a manner such that volatilization of organics contained in the waste and in the subsequent sample is minimized and an adequately representative sample is collected and maintained for analysis by the selected method.

1. The averaging period to be used for determining the average VO concentration for the hazardous waste stream on a mass–weighted average basis shall be designated and recorded. The averaging period can represent any time interval that the owner or operator determines is appropriate for the hazardous waste stream but shall not exceed 1 year.

2. A sufficient number of samples, but no less than four samples, shall be collected and analyzed for a hazardous waste determination. All of the samples for a given waste determination shall be collected within a one–hour period. The average of the four or more sample results constitutes a waste etermination for the waste stream. One or more waste determinations may be required to represent the complete range of waste compositions and quantities that occur during the entire averaging period due to normal variations in the operating conditions for the source or process generating the hazardous waste stream. Examples of such normal variations are seasonal variations in waste quantity or fluctuations in ambient temperature.

3. All samples shall be collected and handled in accordance with written procedures prepared by the owner or operator and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the hazardous waste stream are collected such that a minimum loss of organics occurs throughout the sample collection and handling process, and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained on–site in the facility operating records. An example of an acceptable sampling plan includes a plan incorporating sample collection and handling procedures in accordance with the requirements specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, (incorporated by reference—refer to section 66260.11(a) of this division), or in Method 25D in 40 CFR part 60, appendix A.

4. Sufficient information, as specified in the "site sampling plan" required under paragraph (a)(3)(B)3. of this section, shall be prepared and recorded to document the waste quantity represented by the samples and, as applicable, the operating conditions for the source or process generating the hazardous waste represented by the samples.

(C) Analysis. Each collected sample shall be prepared and analyzed in accordance with one or more of the methods listed in subsections (a)(3)(C)1. through (a)(3)(C)9. of this section, including appropriate quality assurance and quality control (QA/QC) checks and use of target compounds for calibration. If Method 25D in 40 CFR part 60, appendix A is not used, then one or more methods should be chosen that are appropriate to ensure that the waste determination accounts for and reflects all organic compounds in the waste with Henry's law constant values at least 0.1 mole–fraction–in–the–gas–phase/mole–fraction–in–the–liquid–phase (0.1 Y/X) [which can also be expressed as 1.8×10^{-6} atmospheres/gram–mole/m^3] at 25 degrees Celsius. Each of the analytical methods listed in subsections (a)(3)(C)2. through (a)(3)(C)7. of this section has an associated list of approved chemical compounds, for which EPA considers the method appropriate for measurement. If an owner or operator uses EPA Method 624, 625, 1624, or 1625 in 40 CFR part 136, appendix A to analyze one or more compounds that are not on that method's published list, the Alternative Test Procedure contained in 40 CFR 136.4 and 136.5 must be followed. If an owner or operator uses EPA Method 8260 or 8270 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, (incorporated by reference—refer to section 66260.11(a) of this chapter) to analyze one or more compounds that are not on that method's published list, the procedures in subsection (a)(3)(C)8. of this section must be followed. At the owner or operator's discretion, the owner or operator may adjust test data measured by a method other than Method 25D to the corresponding average VO concentration value which would have been obtained had the waste samples been analyzed using Method 25D in 40 CFR part 60, appendix A. To adjust these data, the measured concentration of each individual chemical constituent contained in the waste is multiplied by the appropriate constituent–specific adjustment factor (f_{m25D}). If the owner or operator elects to adjust test data, the adjustment must be made to all individual chemical constituents with a Henry's law constant value greater than or equal to 0.1 Y/X at 25 degrees Celsius contained the waste. Constituent–specific adjustment factors (f_{m25D}) can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711.

1. Method 25D in 40 CFR part 60, appendix A.

2. Method 624 in 40 CFR part 136, appendix A.

3. Method 625 in 40 CFR part 136, appendix A. Perform corrections to the compounds for which the analysis is being conducted based on the "accuracy as recovery" using the factors in Table 7 of the method.

4. Method 1624 in 40 CFR part 136, appendix A.

5. Method 1625 in 40 CFR part 136, appendix A.

6. Method 8260 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846 (incorporated by reference—refer to section 66260.11(a) of this division). Maintain a formal quality assurance program consistent with the requirements of Method 8260. The quality assurance program shall include the following elements:

a. Documentation of site–specific procedures to minimize the loss of compounds due to volatilization, biodegradation, reaction, or sorption during the sample collection, storage, preparation, introduction, and analysis steps.

b. Measurement of the overall accuracy and precision of the specific procedures.

7. Method 8270 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846 (incorporated by reference—refer to section 66260.11(a) of this division). Maintain a formal quality assurance program consistent with the requirements of Method 8270. The quality assurance program shall include the following elements:

a. Documentation of site–specific procedures to minimize the loss of compounds due to volatilization, biodegradation, reaction, or sorption during the sample collection, storage, preparation, introduction, and analysis steps.

b. Measurement of the overall accuracy and precision of the specific procedures.

8. Any other EPA standard method that has been validated in accordance with "Alternative Validation Procedure for EPA Waste and Wastewater Methods", 40 CFR part 63, appendix D. As an alternative, other EPA standard methods may be validated by the procedure specified in subsection (a)(3)(C)9. of this section.

9. Any other analysis method that has been validated in accordance with the procedures specified in Section 5.1 or Section 5.3, and the corresponding calculations in Section 6.1 or Section 6.3, of Method 301 in 40 CFR part 63, appendix A. The data are acceptable if they meet the criteria specified in Section 6.1.5 or Section 6.3.3 of Method 301. If correction is required under section 6.3.3 of Method 301, the data are acceptable if the correction factor is within the range 0.7 to 1.30. Other sections of Method 301 are not required.

(D) Calculations.

1. The average VO concentration ($\bar{c}$) on a mass–weighted basis shall be calculated by using the results for all waste determinations conducted in accordance with subsections (a)(3)(B) and (C) of this section and the following equation:

$$\bar{C} = \frac{1}{Q_T} \times \sum_{i=1}^{n} (Q_i \times C_i)$$

where:

$\bar{c}$ = Average VO concentration of the hazardous waste at the point of waste origination on a mass–weighted basis, ppmw.

i = Individual waste determination "i" of the hazardous waste.

n = Total number of waste determinations of the hazardous waste conducted for the averaging period (not to exceed 1 year).

Q_i = Mass quantity of hazardous waste stream represented by C_i, kg/hr.

Q_T = Total mass quantity of hazardous waste during the averaging period, kg/hr.

C_i = Measured VO concentration of waste determination "i" as determined in accordance with the requirements of subsection (a)(3)(C) of this section (i.e., the average of the four or more samples specified in subsection (a)(3)(B)2. of this section), ppmw.

2. For the purpose of determining C_i, for individual waste samples analyzed in accordance with subsection (a)(3)(C) of this section, the owner or operator shall account for VO concentrations determined to be below the limit of detection of the analytical method by using the following VO concentration:

a. If Method 25D in 40 CFR part 60, Appendix A is used for the analysis, one–half the blank value determined in the method at section 4.4 of Method 25D in 40 CFR part 60, appendix A.

b. If any other analytical method is used, one–half the sum of the limits of detection established for each organic constituent in the waste that has a Henry's law constant values at least 0.1 mole–fraction–in–the–gas–phase/mole–fraction–in–the–liquid–phase (0.1 Y/X) [which can also be expressed as 1.8×10^{-6} atmospheres/gram–mole/m^3] at 25 degrees Celsius.

(E) Provided that the test method is appropriate for the waste as required under subsection (a)(3)(C) of this section, the EPA will determine compliance based on the test method used by the owner or operator as recorded pursuant to section 66265.1090(f)(1).

(4) Use of owner or operator knowledge to determine average VO concentration of a hazardous waste at the point of waste origination.

(A) Documentation shall be prepared that presents the information used as the basis for the owner's or operator's knowledge of the hazardous waste stream's average VO concentration. Examples of information that may be used as the basis for knowledge include: Material balances for the source or process generating the hazardous waste stream; constituent–specific chemical test data for the hazardous waste stream from previous testing that are still applicable to the current waste stream; previous test data for other locations managing the same type of waste stream; or other knowledge based on information included in manifests, shipping papers, or waste certification notices.

(B) If test data are used as the basis for knowledge, then the owner or operator shall document the test method, sampling protocol, and the means by which sampling variability and analytical variability are accounted for in the determination of the average VO concentration. For example, an owner or operator may use organic concentration test data for the hazardous waste stream that are validated in accordance with Method 301 in 40 CFR part 63, appendix A as the basis for knowledge of the waste.

(C) An owner or operator using chemical constituent–specific concentration test data as the basis for knowledge of the hazardous waste may adjust the test data to the corresponding average VO concentration value which would have been obtained had the waste samples been analyzed using Method 25D in 40 CFR part 60, appendix A. To adjust these data, the measured concentration for each individual chemical constituent contained in the waste is multiplied by the appropriate constituent–specific adjustment factor (f_{m25D}).

(D) In the event that the Department and the owner or operator disagree on a determination of the average VO concentration for a hazardous waste stream using knowledge, then the results from a determination of average VO concentration using direct measurement as specified in subsection (a)(3) of this section shall be used to establish compliance with the applicable requirements of this article. The Department may perform or request that the owner or operator perform this determination using direct measurement. The owner or operator may choose one or more appropriate methods to analyze each collected sample in accordance with the requirements of subsection (a)(3)(C) of this section.

(b) Waste determination procedures for treated hazardous waste.

(1) An owner or operator shall perform the applicable waste determination for each treated hazardous waste placed in a waste management unit exempted under the provisions of sections 66265.1083(c)(2)(A) through (c)(2)(F) from using air emission controls in accordance with standards specified in sections 66265.1085 through 66265.1088, as applicable to the waste management unit.

(A) An initial determination of the average VO concentration of the waste stream shall be made before the first time any portion of the material in the treated waste stream is placed in a waste management unit exempted under the provisions of sections 66265.1083(c)(2), 66265.1083(c)(3), or 66265.1083(c)(4) from using air emission controls, and thereafter update the information used for the waste determination at least once every 12 months following the date of the initial waste determination; and

(B) Perform a new waste determination whenever changes to the process generating or treating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level such that the applicable treatment conditions specified in sections 66265.1083(c)(2), 66265.1083(c)(3), or 66265.1083(c)(4) are not achieved.

(2) The owner or operator shall designate and record the specific provision in section 66265.1083(c)(2) under which the waste determination is being performed. The waste determination for the treated hazardous waste shall be performed using the applicable procedures specified in subsections (b)(3) through (b)(9) of this section.

(3) Procedure to determine the average VO concentration of a hazardous waste at the point of waste treatment.

(A) Identification. The owner or operator shall identify and record the point of waste treatment for the hazardous waste.

(B) Sampling. Samples of the hazardous waste stream shall be collected at the point of waste treatment in a manner such that volatilization of organics contained in the waste and in the subsequent sample is minimized and an adequately representative sample is collected and maintained for analysis by the selected method.

1. The averaging period to be used for determining the average VO concentration for the hazardous waste stream on a mass-weighted average basis shall be designated and recorded. The averaging period can represent any time interval that the owner or operator determines is appropriate for the hazardous waste stream but shall not exceed 1 year.

2. A sufficient number of samples, but no less than four samples, shall be collected and analyzed for a hazardous waste determination. All of the samples for a given waste determination shall be collected within a one-hour period. The average of the four or more sample results constitutes a waste determination for the waste stream. One or more waste determinations may be required to represent the complete range of waste compositions and quantities that occur during the entire averaging period due to normal variations in the operating conditions for the process generating or treating the hazardous waste stream. Examples of such normal variations are seasonal variations in waste quantity or fluctuations in ambient temperature.

3. All samples shall be collected and handled in accordance with written procedures prepared by the owner or operator and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the hazardous waste stream are collected such that a minimum loss of organics occurs throughout the sample collection and handling process, and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained on-site in the facility operating records. An example of an acceptable sampling plan includes a plan incorporating sample collection and handling procedures in accordance with the requirements specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW-846 (incorporated by reference—refer to section 66260.11(a)), or in Method 25D in 40 CFR part 60, appendix A.

4. Sufficient information, as specified in the "site sampling plan" required under paragraph (C) of (b)(3)(B) of this section, section 66265.1084(b)(3)(B), shall be prepared and recorded to document the waste quantity represented by the samples and, as applicable, the operating conditions for the process treating the hazardous waste represented by the samples.

(C) Analysis. Each collected sample shall be prepared and analyzed in accordance with one or more of the methods listed in subsections (b)(3)(C)1. through (b)(3)(C)9. of this section, including appropriate quality assurance and quality control (QA/QC) checks and use of target compounds for calibration. When the owner or operator is making a waste determination for a treated hazardous waste that is to be compared to an average VO concentration at the point of waste origination or the point of waste entry to the treatment system, to determine if the conditions of section 66264.1082(c)(2)(A) through (c)(2)(F) or section 66265.1083(c)(2)(A) through (c)(2)(F) are met, then the waste samples shall be prepared and analyzed using the same method or methods as were used in making the initial waste determinations at the point of waste origination or at the point of entry to the treatment system. If Method 25D in 40 CFR part 60, appendix A is not used, then one or more methods should be chosen that are appropriate to ensure that the waste determination accounts for and reflects all organic compounds in the waste with Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m^3] at 25 degrees Celsius. Each of the analytical methods listed in subsections (b)(3)(C)2. through (b)(3)(C)7. of this section has an associated list of approved chemical compounds, for which EPA considers the method appropriate for measurement. If an owner or operator uses EPA Method 624, 625, 1624, or 1625 in 40 CFR part 136, appendix A to analyze one or more compounds that are not on that method's published list, the Alternative Test Procedure contained in 40 CFR 136.4 and 136.5 must be followed. If an owner or operator uses EPA Method 8260 or 8270 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, (incorporated by reference—refer to section 66260.11(a) of this chapter) to analyze one or more compounds that are not on that method's published list, the procedures in subsection (b)(3)(C)8. of this section must be followed. At the owner or operator's discretion, the owner or operator may adjust test data measured by a method other than Method 25D to the corresponding average VO concentration value which would have been obtained had the waste samples been analyzed using Method 25D in 40 CFR part 60, appendix A. To adjust these data, the measured concentration of each individual chemical constituent contained in the waste is multiplied by the appropriate constituent-specific adjustment factor (f_{m25D}). If the owner or operator elects to adjust test data, the adjustment must be made to all individual chemical constituents with a Henry's law constant equal to or greater than 0.1 Y/X at 25 degrees Celsius contained the waste. Constituent-specific adjustment factors (f_{m25D}) can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711.

1. Method 25D in 40 CFR part 60, appendix A.

2. Method 624 in 40 CFR part 136, appendix A.

3. Method 625 in 40 CFR part 136, appendix A. Perform corrections to the compounds for which the analysis is being conducted based on the "accuracy as recovery" using the factors in Table 7 of the method.

4. Method 1624 in 40 CFR part 136, appendix A.

5. Method 1625 in 40 CFR part 136, appendix A.

6. Method 8260 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846 (incorporated by reference—refer to section 66260.11(a) of this division). Maintain a formal quality assurance program consistent with the requirements of Method 8260. The quality assurance program shall include the following elements:

a. Documentation of site-specific procedures to minimize the loss of compounds due to volatilization, biodegradation, reaction, or sorption during the sample collection, storage, preparation, introduction, and analysis steps.

b. Measurement of the overall accuracy and precision of the specific procedures.

7. Method 8270 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846 (incorporated by reference—refer to section 66260.11(a) of this division). Maintain a formal quality assurance program consistent with the requirements of Method

8270. The quality assurance program shall include the following elements:

a. Documentation of site-specific procedures to minimize the loss of compounds due to volatilization, biodegradation, reaction, or sorption during the sample collection, storage, preparation, introduction, and analysis steps.

b. Measurement of the overall accuracy and precision of the specific procedures.

8. Any other EPA standard method that has been validated in accordance with "Alternative Validation Procedure for EPA Waste and Wastewater Methods", 40 CFR part 63, appendix D. As an alternative, other EPA standard methods may be validated by the procedure specified in subsection (b)(3)(C)9. of this section.

9. Any other analysis method that has been validated in accordance with the procedures specified in Section 5.1 or Section 5.3, and the corresponding calculations in Section 6.1 or Section 6.3, of Method 301 in 40 CFR part 63, appendix A. The data are acceptable if they meet the criteria specified in Section 6.1.5 or Section 6.3.3 of Method 301. If correction is required under section 6.3.3 of Method 301, the data are acceptable if the correction factor is within the range 0.7 to 1.30. Other sections of Method 301 are not required.

(D) Calculations. The average VO concentration ($\bar{c}$) on a mass-weighted basis shall be calculated by using the results for all waste determinations conducted in accordance with subsection (b)(3)(B) and (C) of this section and the following equation:

$$\bar{C} = \frac{1}{Q_T} \times \sum_{i=1}^{n} (Q_i \times C_i)$$

Where:

$\bar{c}$ = Average VO concentration of the hazardous waste at the point of waste treatment on a mass-weighted basis, ppmw.

i = Individual waste determination "i" of the hazardous waste.

n = Total number of waste determinations of the hazardous waste conducted for the averaging period (not to exceed 1 year)

Q_i = Mass quantity of hazardous waste stream represented by C_i, kg/hr.

Q_T = Total mass quantity of hazardous waste during the averaging period, kg/hr.

C_i = Measured VO concentration of waste determination "i" as determined in accordance with the requirements of subsection (b)(3)(C) of this section (i.e., the average of the four or more samples specified in subsection (b)(3)(B)2. of this section), ppmw.

(E) Provided that the test method is appropriate for the waste as required under subsection (b)(3)(C) of this section, the Department will determine compliance based on the test method used by the owner or operator as recorded pursuant to section 66265.1090(f)(1).

(4) Procedure to determine the exit concentration limit (C_t) for a treated hazardous waste.

(A) The point of waste origination for each hazardous waste treated by the process at the same time shall be identified.

(B) If a single hazardous waste stream is identified in subsection (b)(4)(A) of this section, then the exit concentration limit (C_t) shall be 500 ppmw.

(C) If more than one hazardous waste stream is identified in subsection (b)(4)(A) of this section, then the average VO concentration of each hazardous waste stream at the point of waste origination shall be determined in accordance with the requirements of subsection (a) of this section. The exit concentration limit (C_t) shall be calculated by using the results determined for each individual hazardous waste stream and the following equation:

$$C_t = \frac{\sum_{x=1}^{m} (Q_x \times \bar{C}_x) + \sum_{y=1}^{n} (Q_y \times 500 ppmw)}{\sum_{x=1}^{m} Q_x + \sum_{y=1}^{n} Q_y}$$

Where:

C_t = Exit concentration limit for treated hazardous waste, ppmw.

x = Individual hazardous waste stream "x" that has an average VO concentration less than 500 ppmw at the point of waste origination as determined in accordance with the requirements of section 66265.1084(a).

y = Individual hazardous waste stream "y" that has an average VO concentration equal to or greater than 500 ppmw at the point of waste origination as determined in accordance with the requirements of section 66265.1084(a).

m = Total number of "x" hazardous waste streams treated by process.

n = Total number of "y" hazardous waste streams treated by process.

Q_x = Annual mass quantity of hazardous waste stream "x," kg/yr.

Q_y= Annual mass quantity of hazardous waste stream "y," kg/yr.

$\bar{c}_x$ = Average VO concentration of hazardous waste stream "x" at the point of waste origination as determined in accordance with the requirements of section 66265.1084(a), ppmw.

(5) Procedure to determine the organic reduction efficiency (R) for a treated hazardous waste.

(A) The organic reduction efficiency (R) for a treatment process shall be determined based on results for a minimum of three consecutive runs.

(B) All hazardous waste streams entering the treatment process and all hazardous waste streams exiting the treatment process shall be identified. The owner or operator shall prepare a sampling plan for measuring these streams that accurately reflects the retention time of the hazardous waste in the process.

(C) For each run, information shall be determined for each hazardous waste stream identified in subsection (b)(5)(B) of this section using the following procedures:

1. The mass quantity of each hazardous waste stream entering the process (Q_b) and the mass quantity of each hazardous waste stream exiting the process (Q_a) shall be determined.

2. The average VO concentration at the point of waste origination of each hazardous waste stream entering the process ($\bar{c}_b$) during the run shall be determined in accordance with the requirements of subsection (a)(3) of this section. The average VO concentration at the point of waste treatment of each waste stream exiting the process ($\bar{c}_a$) during the run shall be determined in accordance with the requirements of subsection (b)(3) of this section.

(D) The waste volatile organic mass flow entering the process (E_b) and the waste volatile organic mass flow exiting the process (E_a) shall be calculated by using the results determined in accordance with subsection (b)(5)(C) of this section and the following equations:

$$E_b = \frac{1}{10^6} \sum_{j=1}^{m} (Q_{bj} \times \bar{C}_{bj})$$

$$E_a = \frac{1}{10^6} \sum_{j=1}^{m} (Q_{aj} \times \bar{C}_{aj})$$

Where:

E_a = Waste volatile organic mass flow exiting process, kg/hr.

E_b = Waste volatile organic mass flow entering process, kg/hr.

m = Total number of runs (at least 3)

j = Individual run "j"

Q_b = Mass quantity of hazardous waste entering process during run "j," kg/hr.

Q_a = Average mass quantity of hazardous waste exiting process during run "j," kg/hr.

$\bar{c}_a$ = Average VO concentration of hazardous waste exiting process during run "j" as determined in accordance with the requirements of section 66265.1084(b)(3), ppmw.

$\bar{c}_b$ = Average VO concentration of hazardous waste entering process during run "j" as determined in accordance with the requirements of section 66265.1084(a)(3), ppmw.

(E) The organic reduction efficiency of the process shall be calculated by using the results determined in accordance with subsection (b)(5)(D) of this section and the following equation:

$$R = \frac{E_b - E_a}{E_b} \times 100\%$$

Where:

R = Organic reduction efficiency, percent.

E_b = Waste volatile organic mass flow entering process as determined in accordance with the requirements of subsection (b)(5)(D) of this section, kg/hr.

E_a = Waste volatile organic mass flow exiting process as determined in accordance with the requirements of subsection (b)(5)(D) of this section, kg/hr.

(6) Procedure to determine the organic biodegradation efficiency (R_{bio}) for a treated hazardous waste.

(A) The fraction of organics biodegraded (F_{bio}) shall be determined using the procedure specified in 40 CFR part 63, appendix C.

(B) The R_{bio} shall be calculated by using the following equation:

$$R_{bio} = F_{bio} \times 100\%$$

Where:

R_{bio} = Organic biodegradation efficiency, percent.

F_{bio} = Fraction of organic biodegraded as determined in accordance with the requirements of subsection (b)(6)(A) of this section.

(7) Procedure to determine the required organic mass removal rate (RMR) for a treated hazardous waste.

(A) All of the hazardous waste streams entering the treatment process shall be identified.

(B) The average VO concentration of each hazardous waste stream at the point of waste origination shall be determined in accordance with the requirements of subsection (a) of this section.

(C) For each individual hazardous waste stream that has an average VO concentration equal to or greater than 500 ppmw at the point of waste origination, the average volumetric flow rate and the density of the hazardous waste stream at the point of waste origination shall be determined.

(D) The RMR shall be calculated by using the average VO concentration, average volumetric flow rate, and density determined for each individual hazardous waste stream, and the following equation:

$$RMR = \sum_{y=1}^{n} \left[V_y \times k_y \times \frac{(\bar{c}_y - 500 \text{ ppmw})}{10^6} \right]$$

Where:

RMR = Required organic mass removal rate, kg/hr.

y = Individual hazardous waste stream "y" that has an average VO concentration equal to or greater than 500 ppmw at the point of waste origination as determined in accordance with the requirements of section 66265.1084(a).

n = Total number of "y" hazardous waste streams treated by process.

V_y = Average volumetric flow rate of hazardous waste stream "y" at the point of waste origination, m^3/hr.

k_y = Density of hazardous waste stream "y," kg/m^3

$\bar{c}_y$ = Average VO concentration of hazardous waste stream "y" at the point of waste origination as determined in accordance with the requirements of section 66265.1084(a), ppmw.

(8) Procedure to determine the actual organic mass removal rate (MR) for a treated hazardous waste.

(A) The MR shall be determined based on results for a minimum of three consecutive runs. The sampling time for each run shall be 1 hour.

(B) The waste volatile organic mass flow entering the process (E_b) and the waste volatile organic mass flow exiting the process (E_a) shall be determined in accordance with the requirements of subsection (b)(5)(D) of this section.

(C) The MR shall be calculated by using the mass flow rate determined in accordance with the requirements of subsection (b)(8)(B) of this section and the following equation:

Where:

$MR = E_b - E_a$

MR = Actual organic mass removal rate, kg/hr.

E_b = Waste volatile organic mass flow entering process as determined in accordance with the requirements of subsection (b)(5)(D) of this section, kg/hr.

E_a = Waste volatile organic mass flow exiting process as determined in accordance with the requirements of subsection (b)(5)(D) of this section, kg/hr.

(9) Procedure to determine the actual organic mass biodegradation rate (MR_{bio}) for a treated hazardous waste.

(A) The MR_{bio} shall be determined based on results for a minimum of three consecutive runs. The sampling time for each run shall be 1 hour.

(B) The waste organic mass flow entering the process (E_b) shall be determined in accordance with the requirements of subsection (b)(5)(D) of this section.

(C) The fraction of organic biodegraded (F_{bio}) shall be determined using the procedure specified in 40 CFR part 63, appendix C.

(D) The MR_{bio} shall be calculated by using the mass flow rates and fraction of organic biodegraded determined in accordance with the requirements of subsections (b)(9)(B) and (b)(9)(C), respectively, of this section and the following equation:

Where:

$MR_{bio} = E_b \times F_{bio}$

MR_{bio} = Actual organic mass biodegradation rate, kg/hr.

E_b = Waste organic mass flow entering process as determined in accordance with the requirements of subsection (b)(5)(D) of this section, kg/hr.

F_{bio} = Fraction of organic biodegraded as determined in accordance with the requirements of subsection (b)(9)(C) of this section.

(c) Procedure to determine the maximum organic vapor pressure of a hazardous waste in a tank.

(1) An owner or operator shall determine the maximum organic vapor pressure for each hazardous waste placed in a tank using Tank Level 1 controls in accordance with the standards specified in section 66265.1085(c).

(2) An owner or operator shall use either direct measurement as specified in subsection (c)(3) of this section or knowledge of the waste as specified by subsection (c)(4) of this section to determine the maximum organic vapor pressure which is representative of the hazardous waste composition stored or treated in the tank.

(3) Direct measurement to determine the maximum organic vapor pressure of a hazardous waste.

(A) Sampling. A sufficient number of samples shall be collected to be representative of the waste contained in the tank. All samples shall be collected and handled in accordance with written procedures prepared by the owner or operator and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the hazardous waste are collected such that a minimum loss of organics occurs throughout the sample collection and handling process and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained on–site in the facility operating records. An example of an

acceptable sampling plan includes a plan incorporating sample collection and handling procedures in accordance with the requirements specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW–846, (incorporated by reference—refer to section 66260.11(a)) or in Method 25D in 40 CFR part 60, appendix A.

(B) Analysis. Any appropriate one of the following methods may be used to analyze the samples and compute the maximum organic vapor pressure of the hazardous waste:

1. Method 25E in 40 CFR part 60 appendix A;

2. Methods described in American Petroleum Institute Publication 2517, Third Edition, February 1989, "Evaporative Loss from External Floating-Roof Tanks," (incorporated by reference—refer to section 66260.11);

3. Methods obtained from standard reference texts;

4. ASTM Method 2879–92 (incorporated by reference—refer to section 66260.11); and

5. Any other method approved by the Department.

(4) Use of knowledge to determine the maximum organic vapor pressure of the hazardous waste. Documentation shall be prepared and recorded that presents the information used as the basis for the owner's or operator's knowledge that the maximum organic vapor pressure of the hazardous waste is less than the maximum vapor pressure limit listed in section 66265.1085(b)(1)(A) for the applicable tank design capacity category. An example of information that may be used is documentation that the hazardous waste is generated by a process for which at other locations it previously has been determined by direct measurement that the waste maximum organic vapor pressure is less than the maximum vapor pressure limit for the appropriate tank design capacity category.

(d) Procedure for determining no detectable organic emissions for the purpose of complying with this article:

(1) The test shall be conducted in accordance with the procedures specified in Method 21 of 40 CFR part 60, appendix A. Each potential leak interface (i.e., a location where organic vapor leakage could occur) on the cover and associated closure devices shall be checked. Potential leak interfaces that are associated with covers and closure devices include, but are not limited to: The interface of the cover and its foundation mounting; the periphery of any opening on the cover and its associated closure device; and the sealing seat interface on a spring–loaded pressure relief valve.

(2) The test shall be performed when the unit contains a hazardous waste having an organic concentration representative of the range of concentrations for the hazardous waste expected to be managed in the unit. During the test, the cover and closure devices shall be secured in the closed position.

(3) The detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the organic constituents in the hazardous waste placed in the waste management unit, not for each individual organic constituent.

(4) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 CFR part 60, appendix A.

(5) Calibration gases shall be as follows:

(A) Zero air (less than 10 ppmv hydrocarbon in air), and

(B) A mixture of methane or n–hexane and air at a concentration of approximately, but less than, 10,000 ppmv methane or n–hexane.

(6) The background level shall be determined according to the procedures in Method 21 of 40 CFR part 60, appendix A.

(7) Each potential leak interface shall be checked by traversing the instrument probe around the potential leak interface as close to the interface as possible, as described in Method 21 of 40 CFR part 60, appendix A. In the case when the configuration of the cover or closure device prevents a complete traverse of the interface, all accessible portions of the interface shall be sampled. In the case when the configuration of the closure device prevents any sampling at the interface and the device is equipped with an enclosed extension or horn (e.g., some pressure relief devices), the instrument probe inlet shall be placed at approximately the center of the exhaust area to the atmosphere.

(8) The arithmetic difference between the maximum organic concentration indicated by the instrument and the background level shall be compared with the value of 500 ppmv except when monitoring a seal around a rotating shaft that passes through a cover opening, in which case the comparison shall be as specified in subsection (d)(9) of this section. If the difference is less than 500 ppmv, then the potential leak interface is determined to operate with no detectable organic emissions.

(9) For the seals around a rotating shaft that passes through a cover opening, the arithmetic difference between the maximum organic concentration indicated by the instrument and the background level shall be compared with the value of 10,000 ppmw. If the difference is less than 10,000 ppmw, then the potential leak interface is determined to operate with no detectable organic emissions.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR section 265.1084.

HISTORY

1. Change without regulatory effect adding new section filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).
2. Change without regulatory effect amending section filed 8–3–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 31).

§ 66265.1085. Standards: Tanks.

(a) The provisions of this section apply to the control of air pollutant emissions from tanks for which section 66265.1083(b) references the use of this section for such air emission control.

(b) The owner or operator shall control air pollutant emissions from each tank subject to this section in accordance with the following requirements, as applicable:

(1) For a tank that manages hazardous waste that meets all of the conditions specified in subsections (b)(1)(A) through (b)(1)(C) of this section, the owner or operator shall control air pollutant emissions from the tank in accordance with the Tank Level 1 controls specified in subsection (c) of this section or the Tank Level 2 controls specified in subsection (d) of this section.

(A) The hazardous waste in the tank has a maximum organic vapor pressure which is less than the maximum organic vapor pressure limit for the tank's design capacity category as follows:

1. For a tank design capacity equal to or greater than 151 m^3, the maximum organic vapor pressure limit for the tank is 5.2 kPa.

2. For a tank design capacity equal to or greater than 75 m^3 but less than 151 m^3, the maximum organic vapor pressure limit for the tank is 27.6 kPa.

3. For a tank design capacity less than 75 m^3, the maximum organic vapor pressure limit for the tank is 76.6 kPa.

(B) The hazardous waste in the tank is not heated by the owner or operator to a temperature that is greater than the temperature at which the maximum organic vapor pressure of the hazardous waste is determined for the purpose of complying with subsection (b)(1)(A) of this section.

(C) The hazardous waste in the tank is not treated by the owner or operator using a waste stabilization process, as defined in section 66265.1081.

(2) For a tank that manages hazardous waste that does not meet all of the conditions specified in subsections (b)(1)(A) through (b)(1)(C) of this section, the owner or operator shall control air pollutant emissions from the tank by using Tank Level 2 controls in accordance with the requirements of subsection (d) of this section. Examples of tanks required to use Tank Level 2 controls include: A tank used for a waste stabilization process; and a tank for which the hazardous waste in the tank has a maximum organic vapor pressure that is equal to or greater than the maximum organic vapor pressure limit for the tank's design capacity category as specified in subsection (b)(1)(A) of this section.

(c) Owners and operators controlling air pollutant emissions from a tank using Tank Level 1 controls shall meet the requirements specified in subsections (c)(1) through (c)(4) of this section:

(1) The owner or operator shall determine the maximum organic vapor pressure for a hazardous waste to be managed in the tank using Tank Level 1 controls before the first time the hazardous waste is placed in the tank. The maximum organic vapor pressure shall be determined using the procedures specified in section 66265.1084(c). Thereafter, the owner or operator shall perform a new determination whenever changes to the hazardous waste managed in the tank could potentially cause the maximum organic vapor pressure to increase to a level that is equal to or greater than the maximum organic vapor pressure limit for the tank design capacity category specified in subsection (b)(1)(A) of this section, as applicable to the tank.

(2) The tank shall be equipped with a fixed roof designed to meet the following specifications:

(A) The fixed roof and its closure devices shall be designed to form a continuous barrier over the entire surface area of the hazardous waste in the tank. The fixed roof may be a separate cover installed on the tank (e.g., a removable cover mounted on an open–top tank) or may be an integral part of the tank structural design (e.g., a horizontal cylindrical tank equipped with a hatch).

(B) The fixed roof shall be installed in a manner such that there are no visible cracks, holes, gaps, or other open spaces between roof section joints or between the interface of the roof edge and the tank wall.

(C) Each opening in the fixed roof, and any manifold system associated with the fixed roof, shall be either:

1. Equipped with a closure device designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the opening and the closure device; or

2. Connected by a closed–vent system that is vented to a control device. The control device shall remove or destroy organics in the vent stream, and shall be operating whenever hazardous waste is managed in the tank, except as provided for in subsections (c)(2)(C)2.a and (c)(2)(C)2.b of this section.

a. During periods it is necessary to provide access to the tank for performing the activities of subsection (c)(2)(C)2.b of this section, venting of the vapor headspace underneath the fixed roof to the control device is not required, opening of closure devices is allowed, and removal of the fixed roof is allowed. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, and resume operation of the control device.

b. During periods of routine inspection, maintenance, or other activities needed for normal operations, and for the removal of accumulated sludge or other residues from the bottom of the tank.

(D) The fixed roof and its closure devices shall be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the fixed roof and closure devices throughout their intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices shall include: Organic vapor permeability, the effects of any contact with the hazardous waste or its vapors managed in the tank; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the tank on which the fixed roof is installed.

(3) Whenever a hazardous waste is in the tank, the fixed roof shall be installed with each closure device secured in the closed position except as follows:

(A) Opening of closure devices or removal of the fixed roof is allowed at the following times:

1. To provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample the liquid in the tank, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the tank.

2. To remove accumulated sludge or other residues from the bottom of tank.

(B) Opening of a spring–loaded pressure–vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the tank internal pressure in accordance with the tank design specifications. The device shall be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the tank internal pressure is within the internal pressure operating range determined by the owner or operator based on the tank manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the tank internal pressure exceeds the internal pressure operating range for the tank as a result of loading operations or diurnal ambient temperature fluctuations.

(C) Opening of a safety device, as defined in section 66265.1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The owner or operator shall inspect the air emission control equipment in accordance with the following requirements.

(A) The fixed roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the tank wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(B) The owner or operator shall perform an initial inspection of the fixed roof and its closure devices on or before the date that the tank becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year except under the special conditions provided for in subsection (*l*) of this section.

(C) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of subsection (k) of this section.

(D) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in section 66265.1090(b).

(d) Owners and operators controlling air pollutant emissions from a tank using Tank Level 2 controls shall use one of the following tanks:

(1) A fixed–roof tank equipped with an internal floating roof in accordance with the requirements specified in subsection (e) of this section;

(2) A tank equipped with an external floating roof in accordance with the requirements specified in subsection (f) of this section;

(3) A tank vented through a closed–vent system to a control device in accordance with the requirements specified in subsection (g) of this section;

(4) A pressure tank designed and operated in accordance with the requirements specified in subsection (h) of this section; or

(5) A tank located inside an enclosure that is vented through a closed–vent system to an enclosed combustion control device in accordance with the requirements specified in subsection (i) of this section.

(e) The owner or operator who controls air pollutant emissions from a tank using a fixed–roof with an internal floating roof shall meet the requirements specified in subsections (e)(1) through (e)(3) of this section.

(1) The tank shall be equipped with a fixed roof and an internal floating roof in accordance with the following requirements:

(A) The internal floating roof shall be designed to float on the liquid surface except when the floating roof must be supported by the leg supports.

(B) The internal floating roof shall be equipped with a continuous seal between the wall of the tank and the floating roof edge that meets either of the following requirements:

1. A single continuous seal that is either a liquid–mounted seal or a metallic shoe seal, as defined in section 66265.1081; or

2. Two continuous seals mounted one above the other. The lower seal may be a vapor–mounted seal.

(C) The internal floating roof shall meet the following specifications:

1. Each opening in a noncontact internal floating roof except for automatic bleeder vents (vacuum breaker vents) and the rim space vents is to provide a projection below the liquid surface.

2. Each opening in the internal floating roof shall be equipped with a gasketed cover or a gasketed lid except for leg sleeves, automatic bleeder vents, rim space vents, column wells, ladder wells, sample wells, and stub drains.

3. Each penetration of the internal floating roof for the purpose of sampling shall have a slit fabric cover that covers at least 90 percent of the opening.

4. Each automatic bleeder vent and rim space vent shall be gasketed.

5. Each penetration of the internal floating roof that allows for passage of a ladder shall have a gasketed sliding cover.

6. Each penetration of the internal floating roof that allows for passage of a column supporting the fixed roof shall have a flexible fabric sleeve seal or a gasketed sliding cover.

(2) The owner or operator shall operate the tank in accordance with the following requirements:

(A) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be completed as soon as practical.

(B) Automatic bleeder vents are to be set closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the leg supports.

(C) Prior to filling the tank, each cover, access hatch, gauge float well or lid on any opening in the internal floating roof shall be bolted or fastened closed (i.e., no visible gaps). Rim space vents are to be set to open only when the internal floating roof is not floating or when the pressure beneath the rim exceeds the manufacturer's recommended setting.

(3) The owner or operator shall inspect the internal floating roof in accordance with the procedures specified as follows:

(A) The floating roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to: The internal floating roof is not floating on the surface of the liquid inside the tank; liquid has accumulated on top of the internal floating roof; any portion of the roof seals have detached from the roof rim; holes, tears, or other openings are visible in the seal fabric; the gaskets no longer close off the hazardous waste surface from the atmosphere; or the slotted membrane has more than 10 percent open area.

(B) The owner or operator shall inspect the internal floating roof components as follows except as provided in subsection (e)(3)(C) of this section:

1. Visually inspect the internal floating roof components through openings on the fixed–roof (e.g., manholes and roof hatches) at least once every 12 months after initial fill, and

2. Visually inspect the internal floating roof, primary seal, secondary seal (if one is in service), gaskets, slotted membranes, and sleeve seals (if any) each time the tank is emptied and degassed and at least every 10 years.

(C) As an alternative to performing the inspections specified in subsection (e)(3)(B) of this section for an internal floating roof equipped with two continuous seals mounted one above the other, the owner or operator may visually inspect the internal floating roof, primary and secondary seals, gaskets, slotted membranes, and sleeve seals (if any) each time the tank is emptied and degassed and at least every 5 years.

(D) Prior to each inspection required by subsection (e)(3)(B) or (e)(3)(C) of this section, the owner or operator shall notify the Department in advance of each inspection to provide the Department with the opportunity to have an observer present during the inspection. The owner or operator shall notify the Department of the date and location of the inspection as follows:

1. Prior to each visual inspection of an internal floating roof in a tank that has been emptied and degassed, written notification shall be prepared and sent by the owner or operator so that it is received by the Department at least 30 calendar days before refilling the tank except when an inspection is not planned as provided for in subsection (e)(3)(D)2. of this section.

2. When a visual inspection is not planned and the owner or operator could not have known about the inspection 30 calendar days before refilling the tank, the owner or operator shall notify the Department as soon as possible, but no later than 7 calendar days before refilling of the tank. This notification may be made by telephone and immediately followed by a written explanation for why the inspection is unplanned. Alternatively, written notification, including the explanation for the unplanned inspection, may be sent so that it is received by the Department at least 7 calendar days before refilling the tank.

(E) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of subsection (k) of this section.

(F) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in section 66265.1090(b).

(4) Safety devices, as defined in section 66265.1081 may be installed and operated as necessary on any tank complying with the requirements of subsection (e) of this section.

(f) The owner or operator who controls air pollutant emissions from a tank using an external floating roof shall meet the requirements specified in subsections (f)(1) through (f)(3) of this section.

(1) The owner or operator shall design the external floating roof in accordance with the following requirements:

(A) The external floating roof shall be designed to float on the liquid surface except when the floating roof must be supported by the leg supports.

(B) The floating roof shall be equipped with two continuous seals, one above the other, between the wall of the tank and the roof edge. The lower seal is referred to as the primary seal, and the upper seal is referred to as the secondary seal.

1. The primary seal shall be a liquid–mounted seal or a metallic shoe seal, as defined in section 66265.1081. The total area of the gaps between the tank wall and the primary seal shall not exceed 212 square centimeters (cm^2) per meter of tank diameter, and the width of any portion of these gaps shall not exceed 3.8 centimeters (cm). If a metallic shoe seal is used for the primary seal, the metallic shoe seal shall be designed so that one end extends into the liquid in the tank and the other end extends a vertical distance of at least 61 centimeters above the liquid surface.

2. The secondary seal shall be mounted above the primary seal and cover the annular space between the floating roof and the wall of the tank. The total area of the gaps between the tank wall and the secondary seal shall not exceed 21.2 square centimeters (cm^2) per meter of tank diameter, and the width of any portion of these gaps shall not exceed 1.3 centimeters (cm).

(C) The external floating roof shall meet the following specifications:

1. Except for automatic bleeder vents (vacuum breaker vents) and rim space vents, each opening in a noncontact external floating roof shall provide a projection below the liquid surface.

2. Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof shall be equipped with a gasketed cover, seal, or lid.

3. Each access hatch and each gauge float well shall be equipped with a cover designed to be bolted or fastened when the cover is secured in the closed position.

4. Each automatic bleeder vent and each rim space vent shall be equipped with a gasket.

5. Each roof drain that empties into the liquid managed in the tank shall be equipped with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening.

6. Each unslotted and slotted guide pole well shall be equipped with a gasketed sliding cover or a flexible fabric sleeve seal.

7. Each unslotted guide pole shall be equipped with a gasketed cap on the end of the pole.

8. Each slotted guide pole shall be equipped with a gasketed float or other device which closes off the liquid surface from the atmosphere.

9. Each gauge hatch and each sample well shall be equipped with a gasketed cover.

(2) The owner or operator shall operate the tank in accordance with the following requirements:

(A) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be completed as soon as practical.

(B) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof shall be secured and maintained in a closed position at all times except when the closure device must be open for access.

(C) Covers on each access hatch and each gauge float well shall be bolted or fastened when secured in the closed position.

(D) Automatic bleeder vents shall be set closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the leg supports.

(E) Rim space vents shall be set to open only at those times that the roof is being floated off the roof leg supports or when the pressure beneath the rim seal exceeds the manufacturer's recommended setting.

(F) The cap on the end of each unslotted guide pole shall be secured in the closed position at all times except when measuring the level or collecting samples of the liquid in the tank.

(G) The cover on each gauge hatch or sample well shall be secured in the closed position at all times except when the hatch or well must be opened for access.

(H) Both the primary seal and the secondary seal shall completely cover the annular space between the external floating roof and the wall of the tank in a continuous fashion except during inspections.

(3) The owner or operator shall inspect the external floating roof in accordance with the procedures specified as follows:

(A) The owner or operator shall measure the external floating roof seal gaps in accordance with the following requirements:

1. The owner or operator shall perform measurements of gaps between the tank wall and the primary seal within 60 calendar days after initial operation of the tank following installation of the floating roof and, thereafter, at least once every 5 years.

2. The owner or operator shall perform measurements of gaps between the tank wall and the secondary seal within 60 calendar days after initial operation of the tank following installation of the floating roof and, thereafter, at least once every year.

3. If a tank ceases to hold hazardous waste for a period of 1 year or more, subsequent introduction of hazardous waste into the tank shall be considered an initial operation for the purposes of subsections (f)(3)(A)1. and (f)(3)(A)2. of this section.

4. The owner or operator shall determine the total surface area of gaps in the primary seal and in the secondary seal individually using the following procedure:

a. The seal gap measurements shall be performed at one or more floating roof levels when the roof is floating off the roof supports.

b. Seal gaps, if any, shall be measured around the entire perimeter of the floating roof in each place where a 0.32-centimeter (cm) diameter uniform probe passes freely (without forcing or binding against the seal) between the seal and the wall of the tank and measure the circumferential distance of each such location.

c. For a seal gap measured under subsection (f)(3) of this section, the gap surface area shall be determined by using probes of various widths to measure accurately the actual distance from the tank wall to the seal and multiplying each such width by its respective circumferential distance.

d. The total gap area shall be calculated by adding the gap surface areas determined for each identified gap location for the primary seal and the secondary seal individually, and then dividing the sum for each seal type by the nominal diameter of the tank. These total gap areas for the primary seal and secondary seal are then compared to the respective standards for the seal type as specified in subsection (f)(1)(B) of this section.

5. In the event that the seal gap measurements do not conform to the specifications in subsection (f)(1)(B) of this section, the owner or operator shall repair the defect in accordance with the requirements of subsection (k) of this section.

6. The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in section 66265.1090(b).

(B) The owner or operator shall visually inspect the external floating roof in accordance with the following requirements:

1. The floating roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to: Holes, tears, or other openings in the rim seal or seal fabric of the floating roof; a rim seal detached from the floating roof; all or a portion of the floating roof deck being submerged below the surface of the liquid in the tank; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

2. The owner or operator shall perform an initial inspection of the external floating roof and its closure devices on or before the date that the tank becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year except for the special conditions provided for in subsection (*l*) of this section.

3. In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of subsection (k) of this section.

4. The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in section 66265.1090(b).

(C) Prior to each inspection required by subsection (f)(3)(A) or (f)(3)(B) of this section, the owner or operator shall notify the Department in advance of each inspection to provide the Department with the opportunity to have an observer present during the inspection. The owner or operator shall notify the Department of the date and location of the inspection as follows:

1. Prior to each inspection to measure external floating roof seal gaps as required under subsection (f)(3)(A) of this section, written notification shall be prepared and sent by the owner or operator so that it is received by the Department at least 30 calendar days before the date the measurements are scheduled to be performed.

2. Prior to each visual inspection of an external floating roof in a tank that has been emptied and degassed, written notification shall be prepared and sent by the owner or operator so that it is received by the Department at least 30 calendar days before refilling the tank except when an inspection is not planned as provided for in subsection (f)(3)(C)3. of this section.

3. When a visual inspection is not planned and the owner or operator could not have known about the inspection 30 calendar days before refilling the tank, the owner or operator shall notify the Department as soon as possible, but no later than 7 calendar days before refilling of the tank. This notification may be made by telephone and immediately followed by a written explanation for why the inspection is unplanned. Alternatively, written notification, including the explanation for the unplanned inspection, may be sent so that it is received by the Department at least 7 calendar days before refilling the tank.

(4) Safety devices, as defined in section 66260.10, may be installed and operated as necessary on any tank complying with the requirements of subsection (f) of this section.

(g) The owner or operator who controls air pollutant emissions from a tank by venting the tank to a control device shall meet the requirements specified in subsections (g)(1) through (g)(3) of this section.

(1) The tank shall be covered by a fixed roof and vented directly through a closed–vent system to a control device in accordance with the following requirements:

(A) The fixed roof and its closure devices shall be designed to form a continuous barrier over the entire surface area of the liquid in the tank.

(B) Each opening in the fixed roof not vented to the control device shall be equipped with a closure device. If the pressure in the vapor headspace underneath the fixed roof is less than atmospheric pressure when the control device is operating, the closure devices shall be designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device. If the pressure in the vapor headspace underneath the fixed roof is equal to or greater than atmospheric pressure when the control device is operating, the closure device shall be designed to operate with no detectable organic emissions.

(C) The fixed roof and its closure devices shall be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the fixed roof and closure devices throughout their intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices shall include: Organic vapor permeability, the effects of any contact with the liquid and its vapor managed in the tank; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the tank on which the fixed roof is installed.

(D) The closed–vent system and control device shall be designed and operated in accordance with the requirements of section 66265.1088.

(2) Whenever a hazardous waste is in the tank, the fixed roof shall be installed with each closure device secured in the closed position and the vapor headspace underneath the fixed roof vented to the control device except as follows:

(A) Venting to the control device is not required, and opening of closure devices or removal of the fixed roof is allowed at the following times:

1. To provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample liquid in the tank, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the tank.

2. To remove accumulated sludge or other residues from the bottom of a tank.

(B) Opening of a safety device, as defined in section 66260.10, is allowed at any time conditions require doing so to avoid an unsafe condition.

(3) The owner or operator shall inspect and monitor the air emission control equipment in accordance with the following procedures:

(A) The fixed roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the tank wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(B) The closed–vent system and control device shall be inspected and monitored by the owner or operator in accordance with the procedures specified in section 66265.1088.

(C) The owner or operator shall perform an initial inspection of the air emission control equipment on or before the date that the tank becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year except for the special conditions provided for in subsection (*l*) of this section.

(D) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of subsection (k) of this section.

(E) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in section 66265.1090(b).

(h) The owner or operator who controls air pollutant emissions by using a pressure tank shall meet the following requirements.

(1) The tank shall be designed not to vent to the atmosphere as a result of compression of the vapor headspace in the tank during filling of the tank to its design capacity.

(2) All tank openings shall be equipped with closure devices designed to operate with no detectable organic emissions as determined using the procedure specified in section 66265.1084(d).

(3) Whenever a hazardous waste is in the tank, the tank shall be operated as a closed system that does not vent to the atmosphere except under either of the following conditions as specified in paragraph (h)(3)(A) or (h)(3)(B) of this section.

(A) At those times when opening of a safety device, as defined in section 66260.10, is required to avoid an unsafe condition.

(B) At those times when purging of inerts from the tank is required and the purge stream is routed to a closed–vent system and control device designed and operated in accordance with the requirements of section 66265.1088.

(i) The owner or operator who controls air pollutant emissions by using an enclosure vented through a closed–vent system to an enclosed combustion control device shall meet the requirements specified in subsections (i)(1) through (i)(4) of this section.

(1) The tank shall be located inside an enclosure. The enclosure shall be designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, Appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of material into or out of the enclosure by conveyor, vehicles, or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The owner or operator shall perform the verification procedure for the enclosure as specified in Section 5.0 to "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" initially when the enclosure is first installed and, thereafter, annually.

(2) The enclosure shall be vented through a closed–vent system to an enclosed combustion control device that is designed and operated in accordance with the standards for either a vapor incinerator, boiler, or process heater specified in section 66265.1088.

(3) Safety devices, as defined in section 66260.10 may be installed and operated as necessary on any enclosure, closed–vent system, or control device used to comply with the requirements of subsections (i)(1) and (i)(2) of this section.

(4) The owner or operator shall inspect and monitor the closed–vent system and control device as specified in section 66265.1088.

(j) The owner or operator shall transfer hazardous waste to a tank subject to this section in accordance with the following requirements:

(1) Transfer of hazardous waste, except as provided in subsection (j)(2) of this section, to the tank from another tank subject to this section or from a surface impoundment subject to section 66265.1086 shall be conducted using continuous hard–piping or another closed system that does not allow exposure of the hazardous waste to the atmosphere. For the purpose of complying with this provision, an individual drain system is considered to be a closed system when it meets the requirements of 40 CFR part 63, subpart RR—National Emission Standards for Individual Drain Systems.

(2) The requirements of subsection (j)(1) of this section do not apply when transferring a hazardous waste to the tank under any of the following conditions:

(A) The hazardous waste meets the average VO concentration conditions specified in section 66265.1083(c)(1) at the point of waste origination.

(B) The hazardous waste has been treated by an organic destruction or removal process to meet the requirements in section 66265.1083(c)(2).

(C) The hazardous waste meets the requirements of section 66265.1083(c)(4).

(k) The owner or operator shall repair each defect detected during an inspection performed in accordance with the requirements of subsections (c)(4), (e)(3), (f)(3), or (g)(3) of this section as follows:

(1) The owner or operator shall make first efforts at repair of the defect no later than 5 calendar days after detection, and repair shall be completed as soon as possible but no later than 45 calendar days after detection except as provided in subsection (k)(2) of this section.

(2) Repair of a defect may be delayed beyond 45 calendar days if the owner or operator determines that repair of the defect requires emptying or temporary removal from service of the tank and no alternative tank capacity is available at the site to accept the hazardous waste normally managed in the tank. In this case, the owner or operator shall repair the defect the next time the process or unit that is generating the hazardous waste managed in the tank stops operation. Repair of the defect shall be completed before the process or unit resumes operation.

(*l*) Following the initial inspection and monitoring of the cover as required by the applicable provisions of this article, subsequent inspection and monitoring may be performed at intervals longer than 1 year under the following special conditions:

(1) In the case when inspecting or monitoring the cover would expose a worker to dangerous, hazardous, or other unsafe conditions, then the owner or operator may designate a cover as an "unsafe to inspect and monitor cover" and comply with all of the following requirements:

(A) Prepare a written explanation for the cover stating the reasons why the cover is unsafe to visually inspect or to monitor, if required.

(B) Develop and implement a written plan and schedule to inspect and monitor the cover, using the procedures specified in the applicable section of this article, as frequently as practicable during those times when a worker can safely access the cover.

(2) In the case when a tank is buried partially or entirely underground, an owner or operator is required to inspect and monitor, as required by the applicable provisions of this section, only those portions of the tank cover and those connections to the tank (e.g., fill ports, access hatches, gauge wells, etc.) that are located on or above the ground surface.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR section 265.1085.

HISTORY

1. Change without regulatory effect adding new section filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).
2. Change without regulatory effect amending subsection (h)(3) and adding subsections (h)(3)(A)–(B) filed 8–3–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 31).

§ 66265.1086. Standards: Surface Impoundments.

(a) The provisions of this section apply to the control of air pollutant emissions from surface impoundments for which section 66265.1083(b) references the use of this section for such air emission control.

(b) The owner or operator shall control air pollutant emissions from the surface impoundment by installing and operating either of the following:

(1) A floating membrane cover in accordance with the provisions specified in subsection (c) of this section; or

(2) A cover that is vented through a closed–vent system to a control device in accordance with the requirements specified in subsection (d) of this section.

(c) The owner or operator who controls air pollutant emissions from a surface impoundment using a floating membrane cover shall meet the requirements specified in subsections (c)(1) through (c)(3) of this section.

(1) The surface impoundment shall be equipped with a floating membrane cover designed to meet the following specifications:

(A) The floating membrane cover shall be designed to float on the liquid surface during normal operations and form a continuous barrier over the entire surface area of the liquid.

(B) The cover shall be fabricated from a synthetic membrane material that is either:

1. High density polyethylene (HDPE) with a thickness no less than 2.5 millimeters (mm); or

2. A material or a composite of different materials determined to have both organic permeability properties that are equivalent to those of the material listed in subsection (c)(1)(B)1. of this section and chemical and physical properties that maintain the material integrity for the intended service life of the material.

(C) The cover shall be installed in a manner such that there are no visible cracks, holes, gaps, or other open spaces between cover section seams or between the interface of the cover edge and its foundation mountings.

(D) Except as provided for in subsection (c)(1)(E) of this section, each opening in the floating membrane cover shall be equipped with a closure device designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device.

(E) The floating membrane cover may be equipped with one or more emergency cover drains for removal of stormwater. Each emergency cover drain shall be equipped with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening or a flexible fabric sleeve seal.

(F) The closure devices shall be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the closure devices throughout their intended service life. Factors to be considered when selecting the materials of construction and designing the cover and closure devices shall include: Organic vapor permeability; the effects of any contact with the liquid and its vapor managed in the surface impoundment; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the surface impoundment on which the floating membrane cover is installed.

(2) Whenever a hazardous waste is in the surface impoundment, the floating membrane cover shall float on the liquid and each closure device shall be secured in the closed position except as follows:

(A) Opening of closure devices or removal of the cover is allowed at the following times:

1. To provide access to the surface impoundment for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample the liquid in the surface impoundment, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator shall promptly replace the cover and secure the closure device in the closed position, as applicable.

2. To remove accumulated sludge or other residues from the bottom of surface impoundment.

(B) Opening of a safety device, as defined in section 66260.10 is allowed at any time conditions require doing so to avoid an unsafe condition.

(3) The owner or operator shall inspect the floating membrane cover in accordance with the following procedures:

(A) The floating membrane cover and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the cover section seams or between the interface of the cover edge and its foundation mountings; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(B) The owner or operator shall perform an initial inspection of the floating membrane cover and its closure devices on or before the date that the surface impoundment becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year

except for the special conditions provided for in subsection (g) of this section.

(C) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of subsection (f) of this section.

(D) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in section 66265.1090(c).

(d) The owner or operator who controls air pollutant emissions from a surface impoundment using a cover vented to a control device shall meet the requirements specified in subsections (d)(1) through (d)(3) of this section.

(1) The surface impoundment shall be covered by a cover and vented directly through a closed–vent system to a control device in accordance with the following requirements:

(A) The cover and its closure devices shall be designed to form a continuous barrier over the entire surface area of the liquid in the surface impoundment.

(B) Each opening in the cover not vented to the control device shall be equipped with a closure device. If the pressure in the vapor headspace underneath the cover is less than atmospheric pressure when the control device is operating, the closure devices shall be designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device. If the pressure in the vapor headspace underneath the cover is equal to or greater than atmospheric pressure when the control device is operating, the closure device shall be designed to operate with no detectable organic emissions using the procedure specified in section 66265.1084(d).

(C) The cover and its closure devices shall be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the cover and closure devices throughout their intended service life. Factors to be considered when selecting the materials of construction and designing the cover and closure devices shall include: Organic vapor permeability; the effects of any contact with the liquid or its vapors managed in the surface impoundment; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the surface impoundment on which the cover is installed.

(D) The closed–vent system and control device shall be designed and operated in accordance with the requirements of section 66265.1088.

(2) Whenever a hazardous waste is in the surface impoundment, the cover shall be installed with each closure device secured in the closed position and the vapor headspace underneath the cover vented to the control device except as follows:

(A) Venting to the control device is not required, and opening of closure devices or removal of the cover is allowed at the following times:

1. To provide access to the surface impoundment for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample liquid in the surface impoundment, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the surface impoundment.

2. To remove accumulated sludge or other residues from the bottom of the surface impoundment.

(B) Opening of a safety device, as defined in section 66260.10, is allowed at any time conditions require doing so to avoid an unsafe condition.

(3) The owner or operator shall inspect and monitor the air emission control equipment in accordance with the following procedures:

(A) The surface impoundment cover and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the cover section seams or between the interface of the cover edge and its foundation mountings; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(B) The closed–vent system and control device shall be inspected and monitored by the owner or operator in accordance with the procedures specified in section 66265.1088.

(C) The owner or operator shall perform an initial inspection of the air emission control equipment on or before the date that the surface impoundment becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year except for the special conditions provided for in subsection (g) of this section.

(D) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of subsection (f) of this section.

(E) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in section 66265.1090(c).

(e) The owner or operator shall transfer hazardous waste to a surface impoundment subject to this section in accordance with the following requirements:

(1) Transfer of hazardous waste, except as provided in subsection (e)(2) of this section, to the surface impoundment from another surface impoundment subject to this section or from a tank subject to section 66265.1085 shall be conducted using continuous hard–piping or another closed system that does not allow exposure of the waste to the atmosphere. For the purpose of complying with this provision, an individual drain system is considered to be a closed system when it meets the requirements of 40 CFR part 63, subpart RR—National Emission Standards for Individual Drain Systems.

(2) The requirements of subsection (e)(1) of this section do not apply when transferring a hazardous waste to the surface impoundment under either of the following conditions:

(A) The hazardous waste meets the average VO concentration conditions specified in section 66265.1083(c)(1) at the point of waste origination.

(B) The hazardous waste has been treated by an organic destruction or removal process to meet the requirements in section 66265.1083(c)(2).

(C) The hazardous waste meets the requirements of section 66265.1083(c)(4).

(f) The owner or operator shall repair each defect detected during an inspection performed in accordance with the requirements of subsection (c)(3) or (d)(3) of this section as follows:

(1) The owner or operator shall make first efforts at repair of the defect no later than 5 calendar days after detection, and repair shall be completed as soon as possible but no later than 45 calendar days after detection except as provided in subsection (f)(2) of this section.

(2) Repair of a defect may be delayed beyond 45 calendar days if the owner or operator determines that repair of the defect requires emptying or temporary removal from service of the surface impoundment and no alternative capacity is available at the site to accept the hazardous waste normally managed in the surface impoundment. In this case, the owner or operator shall repair the defect the next time the process or unit that is generating the hazardous waste managed in the tank stops operation. Repair of the defect shall be completed before the process or unit resumes operation.

(g) Following the initial inspection and monitoring of the cover as required by the applicable provisions of this article, subsequent inspection and monitoring may be performed at intervals longer than 1 year in the case when inspecting or monitoring the cover would expose a worker to dangerous, hazardous, or other unsafe conditions. In this case, the owner or operator may designate the cover as an "unsafe to inspect and monitor cover" and comply with all of the following requirements:

(1) Prepare a written explanation for the cover stating the reasons why the cover is unsafe to visually inspect or to monitor, if required.

(2) Develop and implement a written plan and schedule to inspect and monitor the cover using the procedures specified in the applicable section of this article as frequently as practicable during those times when a worker can safely access the cover.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR section 265.1086.

HISTORY

1. Change without regulatory effect adding new section filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).

§ 66265.1087. Standards: Containers.

(a) The provisions of this section apply to the control of air pollutant emissions from containers for which section 66265.1083(b) references the use of this section for such air emission control.

(b) General requirements.

(1) The owner or operator shall control air pollutant emissions from each container subject to this section in accordance with the following requirements, as applicable to the container, except when the special provisions for waste stabilization processes specified in subsection (b)(2) of this section apply to the container.

(A) For a container having a design capacity greater than 0.1 m^3 and less than or equal to 0.46 m^3, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 1 standards specified in subsection (c) of this section.

(B) For a container having a design capacity greater than 0.46 m^3 that is not in light material service, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 1 standards specified in subsection (c) of this section.

(C) For a container having a design capacity greater than 0.46 m^3 that is in light material service, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 2 standards specified in subsection (d) of this section.

(2) When a container having a design capacity greater than 0.1 m^3 is used for treatment of a hazardous waste by a waste stabilization process, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 3 standards specified in subsection (e) of this section at those times during the waste stabilization process when the hazardous waste in the container is exposed to the atmosphere.

(c) Container Level 1 standards.

(1) A container using Container Level 1 controls is one of the following:

(A) A container that meets the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as specified in subsection (f) of this section.

(B) A container equipped with a cover and closure devices that form a continuous barrier over the container openings such that when the cover and closure devices are secured in the closed position there are no visible holes, gaps, or other open spaces into the interior of the container. The cover may be a separate cover installed on the container (e.g., a lid on a drum or a suitably secured tarp on a roll–off box) or may be an integral part of the container structural design (e.g., a "portable tank" or bulk cargo container equipped with a screw–type cap).

(C) An open–top container in which an organic–vapor suppressing barrier is placed on or over the hazardous waste in the container such that no hazardous waste is exposed to the atmosphere. One example of such a barrier is application of a suitable organic–vapor suppressing foam.

(2) A container used to meet the requirements of subsection (c)(1)(B) or (c)(1)(C) of this section shall be equipped with covers and closure devices, as applicable to the container, that are composed of suitable materials to minimize exposure of the hazardous waste to the atmosphere and to maintain the equipment integrity for as long as it is in service. Factors to be considered in selecting the materials of construction and designing the cover and closure devices shall include: Organic vapor permeability, the effects of contact with the hazardous waste or its vapor managed in the container; the effects of outdoor exposure of the closure device or cover material to wind, moisture, and sunlight; and the operating practices for which the container is intended to be used.

(3) Whenever a hazardous waste is in a container using Container Level 1 controls, the owner or operator shall install all covers and closure devices for the container, as applicable to the container, and secure and maintain each closure device in the closed position except as follows:

(A) Opening of a closure device or cover is allowed for the purpose of adding hazardous waste or other material to the container as follows:

1. In the case when the container is filled to the intended final level in one continuous operation, the owner or operator shall promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.

2. In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within 15 minutes; the person performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the material being added to the container, whichever condition occurs first.

(B) Opening of a closure device or cover is allowed for the purpose of removing hazardous waste from the container as follows:

1. For the purpose of meeting the requirements of this section, an empty container as defined in section 66261.7(b) may be open to the atmosphere at any time (i.e., covers and closure devices are not required to be secured in the closed position on an empty container).

2. In the case when discrete quantities or batches of material are removed from the container but the container does not meet the conditions to be an empty container as defined in section 66261.7(b), the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within 15 minutes or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.

(C) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of hazardous waste. Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.

(D) Opening of a spring–loaded, pressure–vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the container internal pressure in accordance with the design specifications of the container. The device shall be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the internal pressure of the container is within the internal pressure operating range determined by the owner or operator based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

(E) Opening of a safety device, as defined in section 66260.10 is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The owner or operator of containers using Container Level 1 controls shall inspect the containers and their covers and closure devices as follows:

(A) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility (i.e., does not meet the conditions for an empty container as specified in section 66261.7(b)), the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility (i.e., the date the container becomes subject to the chapter 30 container standards). For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest in the appendix to chapter 12 (EPA Forms 8700–22 and 8700–22A), as required under section 66265.71. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of subsection (c)(4)(C) of this section.

(B) In the case when a container used for managing hazardous waste remains at the facility for a period of 1 year or more, the owner or operator shall visually inspect the container and its cover and closure devices initially and thereafter, at least once every 12 months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of subsection (c)(4)(C) of this section.

(C) When a defect is detected for the container, cover, or closure devices, the owner or operator shall make first efforts at repair of the defect no later than 24 hours after detection, and repair shall be completed as soon as possible but no later than 5 calendar days after detection. If repair of a defect cannot be completed within 5 calendar days, then the hazardous waste shall be removed from the container and the container shall not be used to manage hazardous waste until the defect is repaired.

(5) The owner or operator shall maintain at the facility a copy of the procedure used to determine that containers with capacity of 0.46 m^3 or greater, which do not meet applicable DOT regulations as specified in subsection (f) of this section, are not managing hazardous waste in light material service.

(d) Container Level 2 standards.

(1) A container using Container Level 2 controls is one of the following:

(A) A container that meets the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as specified in subsection (f) of this section.

(B) A container that operates with no detectable organic emissions as defined in section 66260.10 and determined in accordance with the procedure specified in subsection (g) of this section.

(C) A container that has been demonstrated within the preceding 12 months to be vapor–tight by using 40 CFR part 60, appendix A, Method 27 in accordance with the procedure specified in subsection (h) of this section.

(2) Transfer of hazardous waste in or out of a container using Container Level 2 controls shall be conducted in such a manner as to minimize exposure of the hazardous waste to the atmosphere, to the extent practical, considering the physical properties of the hazardous waste and good engineering and safety practices for handling flammable, ignitable, explosive, reactive or other hazardous materials. Examples of container loading procedures that the EPA considers to meet the requirements of this subsection include using any one of the following: A submerged–fill pipe or other submerged–fill method to load liquids into the container; a vapor–balancing system or a vapor–recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous waste is filled and subsequently purging the transfer line before removing it from the container opening.

(3) Whenever a hazardous waste is in a container using Container Level 2 controls, the owner or operator shall install all covers and closure devices for the container, and secure and maintain each closure device in the closed position except as follows:

(A) Opening of a closure device or cover is allowed for the purpose of adding hazardous waste or other material to the container as follows:

1. In the case when the container is filled to the intended final level in one continuous operation, the owner or operator shall promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.

2. In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within 15 minutes; the person performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the material being added to the container, whichever condition occurs first.

(B) Opening of a closure device or cover is allowed for the purpose of removing hazardous waste from the container as follows:

1. For the purpose of meeting the requirements of this section, an empty container as defined in section 66261.7(b) may be open to the atmosphere at any time (i.e., covers and closure devices are not required to be secured in the closed position on an empty container).

2. In the case when discrete quantities or batches of material are removed from the container but the container does not meet the conditions to be an empty container as defined in section 66261.7(b), the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within 15 minutes or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.

(C) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of hazardous waste. Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.

(D) Opening of a spring–loaded, pressure–vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the internal pressure of the container in accordance with the container design specifications. The device shall be designed to operate with no detectable organic emission when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the internal pressure of the container is within the internal pressure operating range determined by the owner or operator based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

(E) Opening of a safety device, as defined in section 66260.10 is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The owner or operator of containers using Container Level 2 controls shall inspect the containers and their covers and closure devices as follows:

(A) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility (i.e., does not meet the conditions for an empty container as specified in section 66261.7(b)), the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility (i.e., the date the container becomes subject to the chapter 30 container standards). For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest in the appendix to chapter 12 (EPA Forms 8700-22 and 8700-22A), as required under section 66265.71. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of subsection (d)(4)(C) of this section.

(B) In the case when a container used for managing hazardous waste remains at the facility for a period of 1 year or more, the owner or operator shall visually inspect the container and its cover and closure devices initially and thereafter, at least once every 12 months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of subsection (d)(4)(C) of this section.

(C) When a defect is detected for the container, cover, or closure devices, the owner or operator shall make first efforts at repair of the defect no later than 24 hours after detection, and repair shall be completed as soon as possible but no later than 5 calendar days after detection. If repair of a defect cannot be completed within 5 calendar days, then the hazardous waste shall be removed from the container and the container shall not be used to manage hazardous waste until the defect is repaired.

(e) Container Level 3 standards.

(1) A container using Container Level 3 controls is one of the following:

(A) A container that is vented directly through a closed-vent system to a control device in accordance with the requirements of subsection (e)(2)(B) of this section.

(B) A container that is vented inside an enclosure which is exhausted through a closed-vent system to a control device in accordance with the requirements of subsections (e)(2)(A) and (e)(2)(B) of this section.

(2) The owner or operator shall meet the following requirements, as applicable to the type of air emission control equipment selected by the owner or operator:

(A) The container enclosure shall be designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of containers through the enclosure by conveyor or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The owner or operator shall perform the verification procedure for the enclosure as specified in Section 5.0 to "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" initially when the enclosure is first installed and, thereafter, annually.

(B) The closed-vent system and control device shall be designed and operated in accordance with the requirements of section 66265.1088.

(3) Safety devices, as defined in section 66260.10 may be installed and operated as necessary on any container, enclosure, closed-vent system, or control device used to comply with the requirements of subsection (e)(1) of this section.

(4) Owners and operators using Container Level 3 controls in accordance with the provisions of this article shall inspect and monitor the closed-vent systems and control devices as specified in section 66265.1088.

(5) Owners and operators that use Container Level 3 controls in accordance with the provisions of this article shall prepare and maintain the records specified in section 66265.1090(d).

(6) Transfer of hazardous waste in or out of a container using Container Level 3 controls shall be conducted in such a manner as to minimize exposure of the hazardous waste to the atmosphere, to the extent practical, considering the physical properties of the hazardous waste and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials. Examples of container loading procedures that the EPA considers to meet the requirements of this paragraph include using any one of the following: A submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced for the container during filling operations; or a fitted opening in the top of a container through which the hazardous waste is filled and subsequently purging the transfer line before removing it from the container opening.

(f) For the purpose of compliance with subsection (c)(1)(A) or (d)(1)(A) of this section, containers shall be used that meet the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as follows:

(1) The container meets the applicable requirements specified in 49 CFR part 178—Specifications for Packaging or 49 CFR part 179—Specifications for Tank Cars.

(2) Hazardous waste is managed in the container in accordance with the applicable requirements specified in 49 CFR part 107, subpart B—Exemptions; 49 CFR part 172—Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements; 49 CFR part 173—Shippers—General Requirements for Shipments and Packages; and 49 CFR part 180—Continuing Qualification and Maintenance of Packagings.

(3) For the purpose of complying with this article, no exceptions to the 49 CFR part 178 or part 179 regulations are allowed except as provided for in subsection (f)(4) of this section.

(4) For a lab pack that is managed in accordance with the requirements of 49 CFR part 178 for the purpose of complying with this article, an owner or operator may comply with the exceptions for combination packagings specified in 49 CFR 173.12(b).

(g) To determine compliance with the no detectable organic emissions requirements of subsection (d)(1)(B) of this section, the procedure specified in section 66265.1084(d) shall be used.

(1) Each potential leak interface (i.e., a location where organic vapor leakage could occur) on the container, its cover, and associated closure devices, as applicable to the container, shall be checked. Potential leak interfaces that are associated with containers include, but are not limited to: The interface of the cover rim and the container wall; the periphery of any opening on the container or container cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure-relief valve.

(2) The test shall be performed when the container is filled with a material having a volatile organic concentration representative of the range of volatile organic concentrations for the hazardous wastes expected to be managed in this type of container. During the test, the container cover and closure devices shall be secured in the closed position.

(h) Procedure for determining a container to be vapor-tight using Method 27 of 40 CFR part 60, appendix A for the purpose of complying with subsection (d)(1)(C) of this section.

(1) The test shall be performed in accordance with Method 27 of 40 CFR part 60, appendix A of this chapter.

(2) A pressure measurement device shall be used that has a precision of +2.5 mm water and that is capable of measuring above the pressure at which the container is to be tested for vapor tightness.

(3) If the test results determined by Method 27 indicate that the container sustains a pressure change less than or equal to 750 Pascals within 5 minutes after it is pressurized to a minimum of 4,500 Pascals, then the container is determined to be vapor–tight.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR section 265.1087.

HISTORY

1. Change without regulatory effect adding new section filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).
2. Change without regulatory effect adding subsection (e)(6) filed 8–3–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 31).

§ 66265.1088. Standards: Closed–Vent Systems and Control Devices.

(a) This section applies to each closed–vent system and control device installed and operated by the owner or operator to control air emissions in accordance with standards of this article.

(b) The closed–vent system shall meet the following requirements:

(1) The closed–vent system shall route the gases, vapors, and fumes emitted from the hazardous waste in the waste management unit to a control device that meets the requirements specified in subsection (c) of this section.

(2) The closed–vent system shall be designed and operated in accordance with the requirements specified in section 66265.1033(j).

(3) In the case when the closed–vent system includes bypass devices that could be used to divert the gas or vapor stream to the atmosphere before entering the control device, each bypass device shall be equipped with either a flow indicator as specified in subsection (b)(3)(A) of this section or a seal or locking device as specified in subsection (b)(3)(B) of this section. For the purpose of complying with this subsection, low leg drains, high point bleeds, analyzer vents, open–ended valves or lines, spring–loaded pressure relief valves, and other fittings used for safety purposes are not considered to be bypass devices.

(A) If a flow indicator is used to comply with subsection (b)(3) of this section, the indicator shall be installed at the inlet to the bypass line used to divert gases and vapors from the closed–vent system to the atmosphere at a point upstream of the control device inlet. For this subsection, a flow indicator means a device which indicates the presence of either gas or vapor flow in the bypass line.

(B) If a seal or locking device is used to comply with subsection (b)(3) of this section, the device shall be placed on the mechanism by which the bypass device position is controlled (e.g., valve handle, damper lever) when the bypass device is in the closed position such that the bypass device cannot be opened without breaking the seal or removing the lock. Examples of such devices include, but are not limited to, a car–seal or a lock–and–key configuration valve. The owner or operator shall visually inspect the seal or closure mechanism at least once every month to verify that the bypass mechanism is maintained in the closed position.

(4) The closed–vent system shall be inspected and monitored by the owner or operator in accordance with the procedure specified in section 66265.1033(k).

(c) The control device shall meet the following requirements:

(1) The control device shall be one of the following devices:

(A) A control device designed and operated to reduce the total organic content of the inlet vapor stream vented to the control device by at least 95 percent by weight;

(B) An enclosed combustion device designed and operated in accordance with the requirements of section 66265.1033(c); or

(C) A flare designed and operated in accordance with the requirements of section 66265.1033(d).

(2) The owner or operator who elects to use a closed–vent system and control device to comply with the requirements of this section shall comply with the requirements specified in subsections (c)(2)(A) through (c)(2)(F) of this section.

(A) Periods of planned routine maintenance of the control device, during which the control device does not meet the specifications of subsections (c)(1)(A), (c)(1)(B), or (c)(1)(C) of this section, as applicable, shall not exceed 240 hours per year.

(B) The specifications and requirements in subsections (c)(1)(A), (c)(1)(B), and (c)(1)(C) of this section for control devices do not apply during periods of planned routine maintenance.

(C) The specifications and requirements in subsections (c)(1)(A), (c)(1)(B), and (c)(1)(C) of this section for control devices do not apply during a control device system malfunction.

(D) The owner or operator shall demonstrate compliance with the requirements of subsection (c)(2)(A) of this section (i.e., planned routine maintenance of a control device, during which the control device does not meet the specifications of subsections (c)(1)(A), (c)(1)(B), or (c)(1)(C) of this section, as applicable, shall not exceed 240 hours per year) by recording the information specified in section 66265.1090(e)(1)(E).

(E) The owner or operator shall correct control device system malfunctions as soon as practicable after their occurrence in order to minimize excess emissions of air pollutants.

(F) The owner or operator shall operate the closed–vent system such that gases, vapors, and/or fumes are not actively vented to the control device during periods of planned maintenance or control device system malfunction (i.e., periods when the control device is not operating or not operating normally) except in cases when it is necessary to vent the gases, vapors, or fumes to avoid an unsafe condition or to implement malfunction corrective actions or planned maintenance actions.

(3) The owner or operator using a carbon adsorption system to comply with subsection (c)(1) of this section shall operate and maintain the control device in accordance with the following requirements:

(A) Following the initial startup of the control device, all activated carbon in the control device shall be replaced with fresh carbon on a regular basis in accordance with the requirements of section 66265.1033(g) or section 66265.1033(h).

(B) All carbon that is a hazardous waste and that is removed from the control device shall be managed in accordance with the requirements of section 66265.1033(m), regardless of the average volatile organic concentration of the carbon.

(4) An owner or operator using a control device other than a thermal vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system to comply with subsection (c)(1) of this section shall operate and maintain the control device in accordance with the requirements of section 66265.1033(i).

(5) The owner or operator shall demonstrate that a control device achieves the performance requirements of subsection (c)(1) of this section as follows:

(A) An owner or operator shall demonstrate using either a performance test as specified in subsection (c)(5)(C) of this section or a design analysis as specified in subsection (c)(5)(D) of this section the performance of each control device except for the following:

1. A flare;
2. A boiler or process heater with a design heat input capacity of 44 megawatts or greater;
3. A boiler or process heater into which the vent stream is introduced with the primary fuel;
4. A boiler or industrial furnace burning hazardous waste for which the owner or operator has been issued a final permit under chapter 20 and has designed and operates the unit in accordance with the requirements of chapter 16, article 8; or
5. A boiler or industrial furnace burning hazardous waste for which the owner or operator has designed and operates in accordance with the interim status requirements of chapter 16, article 8.

(B) An owner or operator shall demonstrate the performance of each flare in accordance with the requirements specified in section 66265.1033(e).

(C) For a performance test conducted to meet the requirements of subsection (c)(5)(A) of this section, the owner or operator shall use the test methods and procedures specified in section 66265.1034(c)(1) through (c)(4).

(D) For a design analysis conducted to meet the requirements of subsection (c)(5)(A) of this section, the design analysis shall meet the requirements specified in section 66265.1035(b)(4)(C).

(E) The owner or operator shall demonstrate that a carbon adsorption system achieves the performance requirements of subsection (c)(1) of this section based on the total quantity of organics vented to the atmosphere from all carbon adsorption system equipment that is used for organic adsorption, organic desorption or carbon regeneration, organic recovery, and carbon disposal.

(6) If the owner or operator and the Department do not agree on a demonstration of control device performance using a design analysis then the disagreement shall be resolved using the results of a performance test performed by the owner or operator in accordance with the requirements of subsection (c)(5)(C) of this section. The Department may choose to have an authorized representative observe the performance test.

(7) The closed–vent system and control device shall be inspected and monitored by the owner or operator in accordance with the procedures specified in sections 66265.1033(f)(2) and 66265.1033(k). The readings from each monitoring device required by section 66265.1033(f)(2) shall be inspected at least once each operating day to check control device operation. Any necessary corrective measures shall be immediately implemented to ensure the control device is operated in compliance with the requirements of this section.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR section 265.1088.

HISTORY

1. Change without regulatory effect adding new section filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).

§ 66265.1089. Inspection and Monitoring Requirements.

(a) The owner or operator shall inspect and monitor air emission control equipment used to comply with this article in accordance with the applicable requirements specified in sections 66265.1085 through 66265.1088.

(b) The owner or operator shall develop and implement a written plan and schedule to perform the inspections and monitoring required by subsection (a) of this section. The owner or operator shall incorporate this plan and schedule into the facility inspection plan required under section 66265.15.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR section 265.1089.

HISTORY

1. Change without regulatory effect adding new section filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).

§ 66265.1090. Recordkeeping Requirements.

(a) Each owner or operator of a facility subject to requirements in this article shall record and maintain the information specified in subsections (b) through (j) of this section, as applicable to the facility. Except for air emission control equipment design documentation and information required by subsections (i) and (j) of this section, records required by this section shall be maintained in the operating record for a minimum of 3 years. Air emission control equipment design documentation shall be maintained in the operating record until the air emission control equipment is replaced or otherwise no longer in service. Information required by subsections (i) and (j) of this section shall be maintained in the operating record for as long as the waste management unit is not using air emission controls specified in sections 66265.1085 through 66265.1088 in accordance with the conditions specified in section 66265.1080(d) or section 66265.1080(b)(7) of this article, respectively.

(b) The owner or operator of a tank using air emission controls in accordance with the requirements of section 66265.1085 shall prepare and maintain records for the tank that include the following information:

(1) For each tank using air emission controls in accordance with the requirements of section 66265.1085, the owner or operator shall record:

(A) A tank identification number (or other unique identification description as selected by the owner or operator).

(B) A record for each inspection required by section 66265.1085 that includes the following information:

1. Date inspection was conducted.

2. For each defect detected during the inspection: The location of the defect, a description of the defect, the date of detection, and corrective action taken to repair the defect. In the event that repair of the defect is delayed in accordance with the provisions of section 66265.1085 the owner or operator shall also record the reason for the delay and the date that completion of repair of the defect is expected.

(2) In addition to the information required by subsection (b)(1) of this section, the owner or operator shall record the following information, as applicable to the tank:

(A) The owner or operator using a fixed roof to comply with the Tank Level 1 control requirements specified in section 66265.1085(c) shall prepare and maintain records for each determination for the maximum organic vapor pressure of the hazardous waste in the tank performed in accordance with the requirements of section 66265.1085(c). The records shall include the date and time the samples were collected, the analysis method used, and the analysis results.

(B) The owner or operator using an internal floating roof to comply with the Tank Level 2 control requirements specified in section 66265.1085(e) shall prepare and maintain documentation describing the floating roof design.

(C) Owners and operators using an external floating roof to comply with the Tank Level 2 control requirements specified in section 66265.1085(f) shall prepare and maintain the following records:

1. Documentation describing the floating roof design and the dimensions of the tank.

2. Records for each seal gap inspection required by section 66265.1085(f)(3) describing the results of the seal gap measurements. The records shall include the date that the measurements were performed, the raw data obtained for the measurements, and the calculations of the total gap surface area. In the event that the seal gap measurements do not conform to the specifications in section 66265.1085(f)(1), the records shall include a description of the repairs that were made, the date the repairs were made, and the date the tank was emptied, if necessary.

(D) Each owner or operator using an enclosure to comply with the Tank Level 2 control requirements specified in section 66265.1085(i) shall prepare and maintain the following records:

1. Records for the most recent set of calculations and measurements performed by the owner or operator to verify that the enclosure meets the criteria of a permanent total enclosure as specified in "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B.

2. Records required for the closed–vent system and control device in accordance with the requirements of subsection (e) of this section.

(c) The owner or operator of a surface impoundment using air emission controls in accordance with the requirements of section 66265.1086 shall prepare and maintain records for the surface impoundment that include the following information:

(1) A surface impoundment identification number (or other unique identification description as selected by the owner or operator).

(2) Documentation describing the floating membrane cover or cover design, as applicable to the surface impoundment, that includes information prepared by the owner or operator or provided by the cover manufacturer or vendor describing the cover design, and certification by the owner or operator that the cover meets the specifications listed in section 66265.1086(c).

(3) A record for each inspection required by section 66265.1086 that includes the following information:

(A) Date inspection was conducted.

(B) For each defect detected during the inspection the following information: The location of the defect, a description of the defect, the date of detection, and corrective action taken to repair the defect. In the event that repair of the defect is delayed in accordance with the provisions of section 66265.1086(f), the owner or operator shall also record the reason for the delay and the date that completion of repair of the defect is expected.

(4) For a surface impoundment equipped with a cover and vented through a closed–vent system to a control device, the owner or operator shall prepare and maintain the records specified in subsection (e) of this section.

(d) The owner or operator of containers using Container Level 3 air emission controls in accordance with the requirements of section 66265.1087 shall prepare and maintain records that include the following information:

(1) Records for the most recent set of calculations and measurements performed by the owner or operator to verify that the enclosure meets the criteria of a permanent total enclosure as specified in "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B.

(2) Records required for the closed–vent system and control device in accordance with the requirements of subsection (e) of this section.

(e) The owner or operator using a closed–vent system and control device in accordance with the requirements of section 66265.1088 shall prepare and maintain records that include the following information:

(1) Documentation for the closed–vent system and control device that includes:

(A) Certification that is signed and dated by the owner or operator stating that the control device is designed to operate at the performance level documented by a design analysis as specified in subsection (e)(1)(B) of this section or by performance tests as specified in subsection (e)(1)(C) of this section when the tank, surface impoundment, or container is or would be operating at capacity or the highest level reasonably expected to occur.

(B) If a design analysis is used, then design documentation as specified in section 66265.1035(b)(4). The documentation shall include information prepared by the owner or operator or provided by the control device manufacturer or vendor that describes the control device design in accordance with section 66265.1035(b)(4)(C) and certification by the owner or operator that the control equipment meets the applicable specifications.

(C) If performance tests are used, then a performance test plan as specified in section 66265.1035(b)(3) and all test results.

(D) Information as required by sections 66265.1035(c)(1) and 66265.1035(c)(2), as applicable.

(E) An owner or operator shall record, on a semiannual basis, the information specified in subsections (e)(1)(E)1. and (e)(1)(E)2. of this section for those planned routine maintenance operations that would require the control device not to meet the requirements of section 66265.1088 (c)(1)(A), (c)(1)(B), or (c)(1)(C), as applicable.

1. A description of the planned routine maintenance that is anticipated to be performed for the control device during the next 6–month period. This description shall include the type of maintenance necessary, planned frequency of maintenance, and lengths of maintenance periods.

2. A description of the planned routine maintenance that was performed for the control device during the previous 6–month period. This description shall include the type of maintenance performed and the total number of hours during those 6 months that the control device did not meet the requirements of section 66265.1088 (c)(1)(A), (c)(1)(B), or (c)(1)(C), as applicable, due to planned routine maintenance.

(F) An owner or operator shall record the information specified in subsections (e)(1)(F)1. through (e)(1)(F)3. of this section for those unexpected control device system malfunctions that would require the control device not to meet the requirements of section 66265.1088 (c)(1)(A), (c)(1)(B), or (c)(1)(C), as applicable.

1. The occurrence and duration of each malfunction of the control device system.

2. The duration of each period during a malfunction when gases, vapors, or fumes are vented from the waste management unit through the closed–vent system to the control device while the control device is not properly functioning.

3. Actions taken during periods of malfunction to restore a malfunctioning control device to its normal or usual manner of operation.

(G) Records of the management of carbon removed from a carbon adsorption system conducted in accordance with section 66265.1088(c)(3)(B).

(f) The owner or operator of a tank, surface impoundment, or container exempted from standards in accordance with the provisions of section 66265.1083(c) shall prepare and maintain the following records, as applicable:

(1) For tanks, surface impoundments, or containers exempted under the hazardous waste organic concentration conditions specified in section 66265.1083(c)(1) or sections 66265.1084(c)(2)(A) through (c)(2)(F) the owner or operator shall record the information used for each waste determination (e.g., test results, measurements, calculations, and other documentation) in the facility operating log. If analysis results for waste samples are used for the waste determination, then the owner or operator shall record the date, time, and location that each waste sample is collected in accordance with applicable requirements of section 66265.1084.

(2) For tanks, surface impoundments, or containers exempted under the provisions of sections 66265.1083(c)(2)(G) or 66265.1083(c)(2)(H), the owner or operator shall record the identification number for the incinerator, boiler, or industrial furnace in which the hazardous waste is treated.

(g) An owner or operator designating a cover as "unsafe to inspect and monitor" pursuant to sections 66265.1085(*l*) or 66265.1086(g) shall record in a log that is kept in the facility operating record the following information: The identification numbers for waste management units with covers that are designated as "unsafe to inspect and monitor," the explanation for each cover stating why the cover is unsafe to inspect and monitor, and the plan and schedule for inspecting and monitoring each cover.

(h) The owner or operator of a facility that is subject to this article and to the control device standards in 40 CFR part 60, subpart VV, or 40 CFR part 61, subpart V, may elect to demonstrate compliance with the applicable sections of this article by documentation either pursuant to this article, or pursuant to the provisions of 40 CFR part 60, subpart VV or 40 CFR part 61, subpart V, to the extent that the documentation required by 40 CFR parts 60 or 61 duplicates the documentation required by this section.

(i) For each tank or container not using air emission controls specified in sections 66265.1085 through 66265.1088 in accordance with the conditions specified in section 66265.1080(d), the owner or operator shall record and maintain the following information:

(1) A list of the individual organic peroxide compounds manufactured at the facility that meet the conditions specified in section 66265.1080(d)(1).

(2) A description of how the hazardous waste containing the organic peroxide compounds identified in subsection (i)(1) of this section are managed at the facility in tanks and containers. This description shall include the following information:

(A) For the tanks used at the facility to manage this hazardous waste, sufficient information shall be provided to describe for each tank: A facility identification number for the tank; the purpose and placement of this tank in the management train of this hazardous waste; and the procedures used to ultimately dispose of the hazardous waste managed in the tanks.

(B) For containers used at the facility to manage these hazardous wastes, sufficient information shall be provided to describe: A facility

identification number for the container or group of containers; the purpose and placement of this container, or group of containers, in the management train of this hazardous waste; and the procedures used to ultimately dispose of the hazardous waste handled in the containers.

(3) An explanation of why managing the hazardous waste containing the organic peroxide compounds identified in subsection (i)(1) of this section in the tanks and containers as described in subsection (i)(2) of this section would create an undue safety hazard if the air emission controls, as required under sections 66265.1085 through 66265.1088, are installed and operated on these waste management units. This explanation shall include the following information:

(A) For tanks used at the facility to manage these hazardous wastes, sufficient information shall be provided to explain: How use of the required air emission controls on the tanks would affect the tank design features and facility operating procedures currently used to prevent an undue safety hazard during the management of this hazardous waste in the tanks; and why installation of safety devices on the required air emission controls, as allowed under this article, will not address those situations in which evacuation of tanks equipped with these air emission controls is necessary and consistent with good engineering and safety practices for handling organic peroxides.

(B) For containers used at the facility to manage these hazardous wastes, sufficient information shall be provided to explain: How use of the required air emission controls on the containers would affect the container design features and handling procedures currently used to prevent an undue safety hazard during the management of this hazardous waste in the containers; and why installation of safety devices on the required air emission controls, as allowed under this article, will not address those situations in which evacuation of containers equipped with these air emission controls is necessary and consistent with good engineering and safety practices for handling organic peroxides.

(j) For each hazardous waste management unit not using air emission controls specified in sections 66265.1085 through 66265.1088 in accordance with the provisions of sections 66265.1080(b)(7) the owner and operator shall record and maintain the following information:

(1) Certification that the waste management unit is equipped with and operating air emission controls in accordance with the requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63.

(2) Identification of the specific requirements codified under 40 CFR part 60, part 61, or part 63 with which the waste management unit is in compliance.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 265.1090.

HISTORY

1. Change without regulatory effect adding new section filed 6-11-99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).

Appendix I to Chapter 15, Article 28.5—Compounds with Henry's Law Constant Less Than 0.1 Y/X

Compound name, *CAS No.*	
Acetaldol	107-89-1
Acetamide	60-35-5
2-Acetylaminofluorene	53-96-3
3-Acetyl-5-hydroxypiperidine	
3-Acetylpiperidine	618-42-8
1-Acetyl-2-thiourea	591-08-2
Acrylamide	79-06-1
Acrylic acid	79-10-7
Adenine	73-24-5
Adipic acid	124-04-9
Adiponitrile	111-69-3
Alachlor	15972-60-8
Aldicarb	116-06-3
Ametryn	834-12-8
4-Aminobiphenyl	92-67-1
4-Aminopyridine	504-24-5
Aniline	62-53-3
o-Anisidine	90-04-0
Anthraquinone	84-65-1
Atrazine	1912-24-9
Benzenearsonic acid	98-05-5
Benzenesulfonic acid	98-11-3
Benzidine	92-87-5
Benzo(a)anthracene	56-55-3
Benzo(k)fluoranthene	207-08-9
Benzoic acid	65-85-0
Benzo(g,h,i)perylene	191-24-2
Benzo(a)pyrene	50-32-8
Benzyl alcohol	100-51-6
gamma-BHC	58-89-9
Bis(2-ethylhexyl)phthalate	117-81-7
Bromochloromethyl acetate	
Bromoxynil	1689-84-5
Butyric acid	107-92-6
Caprolactam (hexahydro-2H-azepin-2-one)	105-60-2
Catechol (o-dihydroxybenzene)	120-80-9
Cellulose	9004-34-6
Cell wall	
Chlorhydrin (3-Chloro-1,2-propanediol)	96-24-2
Chloroacetic acid	79-11-8
2-Chloroacetophenone	93-76-5
p-Chloroaniline	106-47-8
p-Chlorobenzophenone	134-85-0
Chlorobenzilate	510-15-6
p-Chloro-m-cresol (6-chloro-m-cresol)	59-50-7
3-Chloro-2,5-diketopyrrolidine	
Chloro-1,2-ethane diol	
4-Chlorophenol	106-48-9
Chlorophenol polymers (2-chlorophenol & 4-chlorophenol)	95-57-8 & 106-48-9
1-(o-Chlorophenyl)thiourea	5344-82-1
Chrysene	218-01-9
Citric acid	77-92-9
Creosote	8001-58-9
m-Cresol	108-39-4
o-Cresol	95-48-7
p-Cresol	106-44-5
Cresol (mixed isomers)	1319-77-3
4-Cumylphenol	27576-86
Cyanide	57-12-5
4-Cyanomethyl benzoate	
Diazinon	333-41-5
Dibenzo(a,h)anthracene	53-70-3
Dibutylphthalate	84-74-2
2,5-Dichloroaniline (N,N'-dichloroaniline)	95-82-9
2,6-Dichlorobenzonitrile11	1194-65-6
2,6-Dichloro-4-nitroaniline	99-30-9
2,5-Dichlorophenol	333-41-5
3,4-Dichlorotetrahydrofuran	3511-19
Dichlorvos (DDVP)	62737
Diethanolamine	111-42-2
N,N-Diethylaniline	91-66-7
Diethylene glycol	111-46-6
Diethylene glycol dimethyl ether (dimethyl Carbitol)	111-96-6
Diethylene glycol monobutyl ether (butyl Carbitol)	112-34-5
Diethylene glycol monoethyl ether acetate (Carbitol acetate)	112-15-2
Diethylene glycol monoethyl ether (Carbitol Cellosolve)	111-90-0
Diethylene glycol monomethyl ether (methyl Carbitol)	111-77-3
N,N'-Diethylhydrazine	1615-80-1
Diethyl (4-methylumbelliferyl) thionophosphate	299-45-6
Diethyl phosphorothioate	126-75-0
N,N'-Diethylpropionamide	15299-99-7
Dimethoate	60-51-5
2,3-Dimethoxystrychnidin-10-one	357-57-3
4-Dimethylaminoazobenzene	60-11-7
7,12-Dimethylbenz(a)anthracene	57-97-6
3,3-Dimethylbenzidine	119-93-7
Dimethylcarbamoyl chloride	79-44-7

Compound name, CAS No.	
Dimethyldisulfide	624-92-0
Dimethylformamide	68-12-2
1,1-Dimethylhydrazine	57-14-7
Dimethylphthalate	131-11-3
Dimethylsulfone	67-71-0
Dimethylsulfoxide	67-68-5
4,6-Dinitro-o-cresol	534-52-1
1,2-Diphenylhydrazine	122-66-7
Dipropylene glycol (1,1'-oxydi-2-propanol)	110-98-5
Endrin	72-20-8
Epinephrine	51-43-4
mono-Ethanolamine	141-43-5
Ethyl carbamate (urethane)	5-17-96
Ethylene glycol	107-21-1
Ethylene glycol monobutyl ether (butyl Cellosolve)	111-76-2
Ethylene glycol monoethyl ether (Cellosolve)	110-80-5
Ethylene glycol monoethyl ether acetate (Cellosolve acetate)	111-15-9
Ethylene glycol monomethyl ether (methyl Cellosolve)	109-86-4
Ethylene glycol monophenyl ether (phenyl Cellosolve)	122-99-6
Ethylene glycol monopropyl ether (propyl Cellosolve)	2807-30-9
Ethylene thiourea (2-imidazolidinethione)	9-64-57
4-Ethylmorpholine	100-74-3
3-Ethylphenol	620-17-7
Fluoroacetic acid, sodium salt	62-74-8
Formaldehyde	50-00-0
Formamide	75-12-7
Formic acid	64-18-6
Fumaric acid	110-17-8
Glutaric acid	110-94-1
Glycerin (Glycerol)	56-81-5
Glycidol	556-52-5
Glycinamide	598-41-4
Glyphosate	1071-83-6
Guthion	86-50-0
Hexamethylene-1,6-diisocyanate (1,6-diisocyanatohexane)	822-06-0
Hexamethyl phosphoramide	680-31-9
Hexanoic acid	142-62-1
Hydrazine	302-01-2
Hydrocyanic acid	74-90-8
Hydroquinone	123-31-9
Hydroxy-2-propionitrile (hydracrylonitrile)	109-78-4
Indeno (1,2,3-cd) pyrene	193-39-5
Lead acetate	301-04-2
Lead subacetate (lead acetate, monobasic)	1335-32-6
Leucine	61-90-5
Malathion	121-75-5
Maleic acid	110-16-7
Maleic anhydride	108-31-6
Mesityl oxide	141-79-7
Methane sulfonic acid	75-75-2
Methomyl	16752-77-5
p-Methoxyphenol	150-76-5
Methyl acrylate	96-33-3
4,4'-Methylene-bis-(2-chloroaniline)	101-14-4
4,4'-Methylenediphenyl diisocyanate (diphenyl methane diisocyanate)	101-68-8
4,4'-Methylenedianiline	101-77-9
Methylene diphenylamine (MDA)	
5-Methylfurfural	620-02-0
Methylhydrazine	60-34-4
Methyliminoacetic acid	
Methyl methane sulfonate	66-27-3
1-Methyl-2-methoxyaziridine	
Methylparathion	298-00-0
Methyl sulfuric acid (sulfuric acid, dimethyl ester)	77-78-1
4-Methylthiophenol	106-45-6
Monomethylformamide (N-methylformamide)	123-39-7
Nabam	142-59-6
alpha-Naphthol	90-15-3
beta-Naphthol	135-19-3
alpha-Naphthylamine	134-32-7
beta-Naphthylamine	91-59-8
Neopentyl glycol (dimethylolpropane)	126-30-7
Niacinamide	98-92-0
o-Nitroaniline	88-74-4
Nitroglycerin	55-63-0
2-Nitrophenol	88-75-5
4-Nitrophenol	100-02-7
N-Nitrosodimethylamine	62-75-9
Nitrosoguanidine	674-81-7
N-Nitroso-n-methylurea	684-93-5
N-Nitrosomorpholine (4-nitrosomorpholine)	59-89-2
Oxalic acid	144-62-7
Parathion	56-38-2
Pentaerythritol	115-77-5
Phenacetin	62-44-2
Phenol	108-95-2
Phenylacetic acid	103-82-2
m-Phenylene diamine	108-45-2
o-Phenylene diamine	95-54-5
p-Phenylene diamine	106-50-3
Phenyl mercuric acetate	62-38-4
Phorate	298-02-2
Phthalic anhydride	85-44-9
alpha-Picoline (2-methyl pyridine)	109-06-8
1,3-Propane sulfone	1120-71-4
beta-Propiolactone	57-57-8
Proporur (Baygon)	
Propylene glycol	57-55-6
Pyrene	129-00-0
Pyridinium bromide	39416-48-3
Quinoline	91-22-5
Quinone (p-benzoquinone)	106-51-4
Resorcinol	108-46-3
Simazine	122-34-9
Sodium acetate	127-09-3
Sodium formate	141-53-7
Strychnine	57-24-9
Succinic acid	110-15-6
Succinimide	123-56-8
Sulfanilic acid	121-47-1
Terephthalic acid	100-21-0
Tetraethyldithiopyrophosphate	3689-24-5
Tetraethylenepentamine	112-57-2
Thiofanox	39196-18-4
Thiosemicarbazide	79-19-6
2,4-Toluenediamine	95-80-7
2,6-Toluenediamine	823-40-5
3,4-Toluenediamine	496-72-0
2,4-Toluene diisocyanate	584-84-9
p-Toluic acid	99-94-5
m-Toluidine	108-44-1
1,1,2-Trichloro-1,2,2-trifluoroethane	76-13-1
Triethanolamine	102-71-6
Triethylene glycol dimethyl ether	
Tripropylene glycol	24800-44-0
Warfarin	81-81-2
3,4-Xylenol(3,4-dimethylphenol)	95-65-8

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR Appendix VI, Part 265.

HISTORY

1. Change without regulatory effect adding new Appendix I filed 6-11-99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).
2. Change without regulatory effect amending Appendix heading filed 6-11-99 pursuant to Health and Safety Code section 25159.1 and section 100, title 1, California Code of Regulations (Register 99, No. 24).

Article 29. Containment Buildings

§ 66265.1100. Applicability.

The requirements of this article apply to owners or operators who store or treat hazardous waste in units designed and operated under section 66265.1101. These provisions will become effective on February 18, 1993, although the owner or operator may notify the Department of the owner or operator's intent to be bound by this article at an earlier time. The owner or operator is not subject to the definition of land disposal in section 66260.10 provided that the unit:

(a) Is a completely enclosed, self-supporting structure that is designed and constructed of manmade materials of sufficient strength and thickness to support themselves, the waste contents, and any personnel and heavy equipment that operate within the unit, and to prevent failure due to pressure gradients, settlement, compression, or uplift, physical contact

with the hazardous wastes to which they are exposed; climatic conditions; and the stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls;

(b) Has a primary barrier that is designed to be sufficiently durable to withstand the movement of personnel, wastes, and handling equipment within the unit;

(c) If the unit is used to manage liquids, has:

(1) A primary barrier designed and constructed of materials to prevent migration of hazardous constituents into the barrier;

(2) A liquid collection system designed and constructed of materials to minimize the accumulation of liquid on the primary barrier; and

(3) A secondary containment system designed and constructed of materials to prevent migration of hazardous constituents into the barrier, with a leak detection and liquid collection system capable of detecting, collecting, and removing leaks of hazardous constituents at the earliest possible time, unless the unit has been granted a variance from the secondary containment system requirements of section 66265.1101(b)(4);

(d) Has controls sufficient to prevent fugitive dust emissions to meet the no visible emission standard in section 66265.1101(c)(1)(D); and

(e) Is designed and operated to ensure containment and prevent the tracking of materials from the unit by personnel or equipment.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5 and 58012, Health and Safety Code; 40 CFR Section 265.1100.

HISTORY

1. New article 29 and section filed 10–24–94 as an emergency; operative 10–24–94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–20–95 or emergency language will be repealed by operation of law on the following day.
2. New article 29 and section refiled 2–21–95 as an emergency; operative 2–21–95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–21–95 or emergency language will be repealed by operation of law on the following day.
3. New article 29 and section refiled 6–19–95 as an emergency; operative 6–19–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–95 or emergency language will be repealed by operation of law on the following day.
4. New article 29 and section refiled 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 10–24–94 order including amendment of first paragraph and subsection (c)(3) transmitted to OAL 12–15–95 and filed 1–31–96 (Register 96, No. 5).
6. Change without regulatory effect amending subsection (d) filed 8–15–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 33).

§ 66265.1101. Design and Operating Standards.

(a) All containment buildings shall comply with the following design standards:

(1) The containment buildings shall be completely enclosed with a floor, walls, and a roof to prevent exposure to the elements, (e.g., precipitation, wind, runon), and to assure containment of managed wastes.

(2) The floor and containment walls of the unit, including the secondary containment system, if required under subsection (b) of this section, shall be designed and constructed of materials of sufficient strength and thickness to support themselves, the waste contents, and any personnel and heavy equipment that operate within the unit, and to prevent failure due to pressure gradients, settlement, compression, or uplift, physical contact with the hazardous wastes to which they are exposed; climatic conditions; and the stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls. The unit shall be designed so that it has sufficient structural strength to prevent collapse or other failure. All surfaces to be in contact with hazardous wastes shall be chemically compatible with those wastes. The Department will consider standards established by professional organizations generally recognized by the industry such as the American Concrete Institute (ACI) and the American Society of Testing Materials (ASTM) in judging the structural integrity requirements of this subsection. If appropriate to the nature of the waste management operation to take place in the unit, an exception to the structural strength requirement may be made for light–weight doors and windows that meet these criteria:

(A) They provide an effective barrier against fugitive dust emissions under subsection (c)(1)(D); and

(B) The unit is designed and operated in a fashion that assures that wastes will not actually come in contact with these openings.

(3) Incompatible hazardous wastes or treatment reagents shall not be placed in the unit or its secondary containment system if they could cause the unit or secondary containment system to leak, corrode, or otherwise fail.

(4) A containment building shall have a primary barrier designed to withstand the movement of personnel, waste, and handling equipment in the unit during the operating life of the unit and appropriate for the physical and chemical characteristics of the waste to be managed.

(b) For a containment building used to manage hazardous wastes containing free liquids or treated with free liquids (the presence of which is determined by the paint filter test, a visual examination, or other appropriate means), the owner or operator shall include:

(1) A primary barrier designed and constructed of materials to prevent the migration of hazardous constituents into the barrier (e.g. a geomembrane covered by a concrete wear surface);

(2) A liquid collection and removal system to prevent the accumulation of liquid on the primary barrier of the containment building:

(A) The primary barrier shall be sloped to drain liquids to the associated collection system; and

(B) Liquids and waste shall be collected and removed to minimize hydraulic head on the containment system at the earliest practicable time that protects human health and the environment;

(3) A secondary containment system including a secondary barrier designed and constructed to prevent migration of hazardous constituents into the barrier, and a leak detection system that is capable of detecting failure of the primary barrier and collecting accumulated hazardous wastes and liquids at the earliest practicable time.

(A) The requirements of the leak detection component of the secondary containment system are satisfied by installation of a system that is, at a minimum:

1. Constructed with a bottom slope of 1 percent or more; and

2. Constructed of a granular drainage material with a hydraulic conductivity of $1X10^{-2}$ cm/sec or more and a thickness of 12 inches (30.5 cm) or more, or constructed of synthetic or geonet drainage materials with a transmissivity of $3X10^{-5}$ m^2/sec or more.

(B) If treatment is to be conducted in the building, an area in which such treatment will be conducted shall be designed to prevent the release of liquids, wet materials, or liquid aerosols to other portions of the building.

(C) The secondary containment system shall be constructed of materials that are chemically resistant to the waste and liquids managed in the containment building and of sufficient strength and thickness to prevent collapse under the pressure exerted by overlaying materials and by any equipment used in the containment building. (Containment buildings can serve as secondary containment systems for tanks placed within the building under certain conditions. A containment building can serve as an external liner system for a tank, provided it meets the requirements of section 66265.193(d)(1). In addition, the containment building shall meet the requirements of section 66265.193(b) and (c) to be considered an acceptable secondary containment system for a tank.)

(c) Owners or operators of all containment buildings shall:

(1) Use controls and practices to ensure containment of the hazardous waste within the unit; and, at a minimum,

(A) Maintain the primary barrier to be free of significant cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the primary barrier;

[The next page is 758.112(m).]

(B) Maintain the level of the stored/treated hazardous waste within the containment walls of the unit so that the height of any containment wall is not exceeded;

(C) Take measures to prevent the tracking of hazardous waste out of the unit by personnel or by equipment used in handling the waste. An area shall be designated to decontaminate equipment and any rinsate shall be collected and properly managed; and

(D) Take measures to control fugitive dust emissions such that any openings (doors, windows, vents, cracks, etc.) exhibit no visible emissions In addition, all associated particulate collection devices (e.g., fabric filter, electrostatic precipitator) shall be operated and maintained with sound air pollution control practices (see 40 CFR part 60 subpart 292 for guidance). This state of no visible emissions shall be maintained effectively at all times during normal operating conditions, including when vehicles and personnel are entering and exiting the unit;

(2) Obtain certification by a qualified registered professional engineer that the containment building design meets the requirements of paragraphs (a) through (c) of this section. For units placed into operation prior to February 18, 1993, this certification shall be placed in the facility's operating record (on–site files for generators who are not formally required to have operating records) no later than 60 days after the date of initial operation of the unit. After February 18, 1993, PE certification will be required prior to operation of the unit;

(3) Throughout the active life of the containment building, if the owner or operator detects a condition that could lead to or has caused a release of hazardous waste, shall repair the condition promptly, in accordance with the following procedures.

(A) Upon detection of a condition that has lead to a release of hazardous waste (e.g., upon detection of leakage from the primary barrier) the owner or operator shall:

1. Enter a record of the discovery in the facility operating record;

2. Immediately remove the portion of the containment building affected by the condition from service;

3. Determine what steps shall be taken to repair the containment building, remove any leakage from the secondary collection system, and establish a schedule for accomplishing the cleanup and repairs; and

4. Within 7 days after the discovery of the condition, notify the Department of the condition, and within 14 working days, provide a written notice to the Department with a description of the steps taken to repair the containment building, and the schedule for accomplishing the work,

(B) The Department will review the information submitted, make a determination regarding whether the containment building shall be removed from service completely or partially until repairs and cleanup are complete, and notify the owner or operator of the determination and the underlying rationale in writing.

(C) Upon completing all repairs and cleanup the owner or operator shall notify the Department in writing and provide a verification signed by a qualified, registered professional engineer, that the repairs and cleanup have been completed according to the written plan submitted in accordance with subsection (c)(3)(A)4; and

(4) Inspect and record in the facility's operating record, at least once every seven days, data gathered from monitoring equipment and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste.

(d) For containment buildings that contain areas both with and without secondary containment, the owner or operator shall:

(1) Design and operate each area in accordance with the requirements enumerated in paragraphs (a) through (c) of this section;

(2) Take measures to prevent the release of liquids or wet materials into areas without secondary containment; and

(3) Maintain in the facility's operating log a written description of the operating procedures used to maintain the integrity of areas without secondary containment.

(e) Notwithstanding any other provision of this article, the Department may waive requirements for secondary containment for a permitted containment building where the owner or operator demonstrates that the only free liquids in the unit are limited amounts of dust suppression liquids required to meet occupational health and safety requirements, and where containment of managed wastes and liquids can be assured without a secondary containment system.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5 and 58012, Health and Safety Code; 40 CFR Section 265.1101.

HISTORY

1. New section filed 10–24–94 as an emergency; operative 10–24–94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–20–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 2–21–95 as an emergency; operative 2–21–95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–21–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 6–19–95 as an emergency; operative 6–19–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 10–24–94 order including amendment of section transmitted to OAL 12–15–95 and filed 1–31–96 (Register 96, No. 5).
6. Change without regulatory effect amending subsections (b)(3)(C) and (e) filed 8–15–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 33).
7. Change without regulatory effect amending subsections (a)(3) and (c)(1) filed 7–1–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 27).

§ 66265.1102. Closure and Post–Closure Care.

(a) At closure of a containment building, the owner or operator shall remove or decontaminate all waste residues, contaminated containment system components (liners, etc.,) contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless section 66261.3(d) applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for containment buildings shall meet all of the requirements specified in articles 7 and 8 of this chapter.

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in subsection (a) of this section, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, the owner or operator shall close the facility and perform post–closure care in accordance with the closure and post–closure requirements that apply to landfills (section 66265.310). In addition, for the purposes of closure, post–closure, and financial responsibility, such a containment building is then considered to be a landfill, and the owner or operator shall meet all of the requirements for landfills specified in articles 7 and 8 of this chapter.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5 and 58012, Health and Safety Code; 40 CFR Section 265.1102.

HISTORY

1. New section filed 10–24–94 as an emergency; operative 10–24–94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–20–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 2–21–95 as an emergency; operative 2–21–95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–21–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 6–19–95 as an emergency; operative 6–19–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by

2–13–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 10–24–94 order including amendments transmitted to OAL 12–15–95 and filed 1–31–96 (Register 96, No. 5)

§ 66265.1103 – 66265.1110. [Reserved].

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5 and 58012, Health and Safety Code and 40 CFR Sections 265.1102 and 265.1103–265.1110.

Chapter 16. Recyclable Materials (Recyclable Hazardous Wastes)

Article 1. General

§ 66266.1. Justification Statement for Disposal of a Recyclable Hazardous Waste.

(a) Within 365 days of the disposal of a recyclable hazardous waste listed in section 66266.2, the Department may request the generator of such hazardous waste to provide the Department with a written statement justifying having not recycled the recyclable hazardous waste. A generator requested to provide such a statement shall comply within 30 days of the Department's written request.

(b) The Department's request for a statement from the generator pursuant to subdivision (a) above shall cite a special property or component of the hazardous waste and a possible use or method of recycling the hazardous waste that the Department considers economically and technologically feasible.

(c) The statement from the generator pursuant to subdivision (a) above that justifies having not recycled a recyclable hazardous waste shall include, at a minimum, the following information:

(1) the general description, source, chemical composition, physical state, and amount of the recyclable hazardous waste;

(2) the amount of similar hazardous waste discarded or recycled during the 365–day period preceding the disposal in question;

(3) an estimate of the amount of similar hazardous waste to be generated by the generator in the 365–day period succeeding the disposal in question;

(4) a summary of efforts made to find a use for the recyclable hazardous waste such as the following:

(A) use without processing;

(B) use after processing to remove or modify undesired impurities;

(C) use as a source of energy by the generator or by another person;

(5) the technologic, economic and other reasons for not recycling the recyclable hazardous waste, taking into account relevant factors, which may include any of the following:

(A) the available amount and the storability of the recyclable hazardous waste;

(B) chemical, physical, toxicological or other properties of the recyclable hazardous waste which might affect its recyclability;

(C) the concentration or recoverability of the chemical component, chemical reactivity, fuel value or other attribute cited by the Department pursuant to subdivision (b) above which may determine the feasibility of recycling the hazardous waste;

(D) the processing required in recycling the recyclable hazardous waste and the availability and cost of suitable processing technology and facilities;

(E) the marketability of the recyclable hazardous waste or its reclaimed components in terms of the distance from the recyclable hazardous waste source to the point of use or reclamation, the costs of handling and transport, and the current market prices for the individual waste components as pure or technical grade materials;

(F) copies of the diligent investigation or environmental audit of the facility or facilities that could have potentially recycled the recyclable hazardous waste; and/or

(G) any other information pertaining to the facility or facilities that could have potentially recycled the recyclable hazardous waste that influenced or formed the basis of the generator's decision to dispose of the recyclable hazardous waste.

(d) The justification statement shall identify all information contained therein that the generator believes is a trade secret as defined in Health and Safety Code sections 25173 and 25358.2. It is the obligation of the generator claiming the trade secret to substantiate the claim. The Department shall notify the generator when the Department has made its determination regarding the generator's claim that certain information contained in the statement submitted to the Department pursuant to this section is a trade secret.

(e) The Department shall notify the generator, in writing within ninety (90) days, of its findings after it has reviewed the generator's justification statement.

(f) A generator who disposes of a recyclable hazardous waste (at least 30 days after the generator receives a notice of the Department's finding that the hazardous waste is economically and technologically feasible to recycle) is subject to five times the disposal fee that would otherwise apply to the disposal of that hazardous waste.

NOTE: Authority cited: Sections 25150 and 25175, Health and Safety Code. Reference: Sections 25159.5 and 25175, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of section heading, section and NOTE filed 6–12–2003; operative 7–12–2003 (Register 2003, No. 24).

§ 66266.2. List of Recyclable Hazardous Wastes.

(a) Wastes on the list of Recyclable Hazardous Wastes in subdivision (b) are wastes which the Department finds to be both economically and technologically feasible to recycle.

(b) List of Recyclable Hazardous Wastes

acetone
benzene
butanol
carbon tetrachloride
chloroform
ethanol
ethyl acetate
ethylene glycol (used antifreeze)
Freons
hexanes
lead–acid batteries
methanol
methylene dichloride
methyl ethyl ketone
mixed hydrocarbon solvents
paint thinner
perchloroethylene
trichloroethane
toluene
xylenes
used oil

NOTE: Authority cited: Sections 25150 and 25175, Health and Safety Code. Reference: Sections 25159.5 and 25175, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of section heading, section and NOTE filed 6–12–2003; operative 7–12–2003 (Register 2003, No. 24).

Article 2. Generator, Transporter and Facility Operator Requirements

§ 66266.3. Requirements for Generator of Recyclable Material.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Sections 25143.2, 25153, 25154, 25159.5 and 25170, Health and Safety Code.

HISTORY
1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Repealer filed 9–20–96; operative 10–20–96 (Register 96, No. 38).

§ 66266.4. Requirements for Transporter of Recyclable Material.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Sections 25143.2, 25154, 25159.5 and 25170, Health and Safety Code.

HISTORY
1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Repealer filed 9–20–96; operative 10–20–96 (Register 96, No. 38).

§ 66266.5. Requirements for Operator of a Resource Recovery Facility.

NOTE: Authority cited: Sections 25150, 25159, 58004 and 58012, Health and Safety Code. Reference: Sections 25143.2, 25154, 25170, 25200 and 25201, Health and Safety Code.

HISTORY
1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Editorial correction of printing error in subsection (a) (Register 92, No. 49).
3. Amendment of subsection (a)(5) and NOTE filed 7–1–96; operative 7–31–96 (Register 96, No. 27).
4. Repealer filed 9–20–96; operative 10–20–96 (Register 96, No. 38).

§ 66266.6. Exclusions.

(a) The following materials are not regulated under this division:

(1) a product for use in agriculture that was processed from a non–RCRA hazardous waste at a facility which is authorized by the Department pursuant to this division and which is licensed by the California Department of Food and Agriculture pursuant to Food and Agricultural Code sections 14551 or 15051, and that meets the requirements of that Department for such use;

(2) surplus material as defined in section 66260.10.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Sections 14551 and 15051, Food and Agricultural Code; and Section 25170, Health and Safety Code.

HISTORY
1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66266.7. Series A Resource Recovery Facility Permit.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Sections 25159.5, 25170, 25200 and 25201, Health and Safety Code.

HISTORY
1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Repealer filed 9–20–96; operative 10–20–96 (Register 96, No. 38).

§ 66266.8. Series B Resource Recovery Facility Permit.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Sections 25159.5, 25170, 25200 and 25201, Health and Safety Code.

HISTORY
1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Repealer filed 9–20–96; operative 10–20–96 (Register 96, No. 38).

§ 66266.9. Series C Resource Recovery Facility Permit.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Sections 25159.5, 25170, 25200 and 25201, Health and Safety Code.

HISTORY
1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Repealer filed 9–20–96; operative 10–20–96 (Register 96, No. 38).

§ 66266.10. Criteria for Compliance.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Sections 25159.5, 25170, 25200 and 25201, Health and Safety Code.

HISTORY
1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Repealer filed 9–20–96; operative 10–20–96 (Register 96, No. 38).

§ 66266.11. General Provisions for Resource Recovery Facilities.

(a) No person shall create, manufacture, or produce from a hazardous waste, a product which poses a hazard to health, safety or the environment under the circumstances of its intended use.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Sections 25159.5, 25170, 25200 and 25201, Health and Safety Code.

HISTORY
1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Repealer of subsection (a) and subsection relettering filed 9–20–96; operative 10–20–96 (Register 96, No. 38).

§ 66266.12. Requirements for Persons Who Store and/or Recycle Recyclable Materials.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 261.6.

HISTORY
1. New section filed 12–23–92; operative 1–22–93 (Register 93, No. 2).
2. Repealer filed 9–20–96; operative 10–20–96 (Register 96, No. 38).

Article 3. Requirements for Recyclable Materials That Are Placed on the Land (Used in a Manner That Constitutes Disposal)

§ 66266.20. Applicability.

This article applies to recyclable materials that, in the course of being recycled, are placed on the land, either without mixing with other materials or after mixing with other materials. These recyclable materials are considered to be: "used in a manner constituting disposal" pursuant to subdivisions (e)(1) and (e)(2) of section 25143.2 of the Health and Safety Code.

NOTE: Authority cited: Sections 25143.2(e)(2) and 25150(e), Health and Safety Code. Reference: Sections 25143.2(f), 25150(e), 25170(i) and 25244.1, Health and Safety Code.

HISTORY
1. Amendment of article heading, new article 3 (sections 66266.20–66266.21) and section filed 6–9–97; operative 1–1–98 (Register 97, No. 24).

§ 66266.21. Requirements.

(a) Recyclable materials that are placed on the land are regulated as hazardous wastes according to this division and Chapter 6.5, Division 20 of the Health and Safety Code, unless the requirements of subdivision (b) of this section are met.

(b) Recyclable materials that are placed on the land and which meet all applicable requirements for exclusion from classification as a waste or for an exemption set forth in section 25143.2 of the Health and Safety Code (HSC), except for the requirement set forth in HSC section 25143.2(e)(2), shall not be regulated pursuant to HSC section 25143.2(e)(2) if the following requirements are met.

(1) The recyclable material shall be a non–RCRA hazardous waste.

(2) The recyclable material shall not be used as an ingredient in an industrial furnace, as defined in section 66260.10, to produce a product that is placed on the land, unless either of the following criteria are met:

(A) the industrial furnace is operating pursuant to the requirements of Article 8 of Chapter 16, "Hazardous Wastes Burned in Boilers or Industrial Furnaces," with regard to the hazardous constituents in the recyclable material (the owner or operator of the industrial furnace must also comply with all requirements of the local air quality management district or air pollution control district); or

(B) the owner or operator of the industrial furnace has a permit from the local air quality management district or air pollution control district addressing the hazardous constituents in the recyclable material (in this case, the local air quality management district or air pollution control district would have sole jurisdiction over air emissions from hazardous constituents in the recyclable material).

(3) The recyclable material, either in its existing state or in processed products, shall not be used in agriculture as a fertilizer, soil amendment, agricultural mineral, auxiliary soil and plant substance, or animal feed.

(4) The recyclable material shall not meet the criteria for a hazardous waste set forth in this division because of:

(A) the characteristics of acute toxicity set forth in paragraphs (a)(3) through (a)(5) of section 66261.24; or

(B) constituents listed in paragraph (a)(7) of section 66261.24; or

(C) any criterion of an extremely hazardous waste as set forth in sections 66261.110 and 66261.113; or

(D) asbestos content exceeding one (1) percent by weight, as specified in section 66261.24(a)(2)(A) of this chapter.

(5) Where the recyclable material is used as an ingredient in the manufacture of a product that is placed on the land, hazardous constituents in the recyclable material whose concentrations are greater than or equal to the Soluble Threshold Limit Concentrations (STLCs) set forth in section 66261.24(a)(2)(A) shall have chemically reacted or become physically bound so as not to leach from the product containing the recyclable material. Specifically, the hazardous constituents shall not leach out of the product in concentrations that would exceed the applicable STLC, once the effect of dilution by other ingredients (as explained below) has been taken into account.

In order to demonstrate that the hazardous constituents in the recyclable material are bound in the product so that they would not exceed the applicable STLC, even when eliminating the effect of dilution by other ingredients, the following procedures must be used.

(A) Sampling of the recyclable material and the product shall be conducted according to the sampling methods described in *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*, SW–846, 3rd edition, U.S. Environmental Protection Agency, 1986, or one of the sampling methods listed in Appendix I, Chapter 11 of this division.

(B) Analysis of the recyclable material and the product shall be conducted according to the Waste Extraction Test (WET), Appendix II, Chapter 11 of this division or an alternative test method approved pursuant to 22 CCR section 66260.21.

(C) The concentration of the hazardous constituents in the final product must be multiplied by the dilution factor inherent in combining the recyclable material with other materials. The dilution factor is calculated by dividing the weight of the final product made with the recyclable material by the weight of the recyclable material used in the product, or

$$\frac{\text{weight of final product}}{\text{weight of recyclable material}} = \text{dilution factor}$$

The final calculation of the hazardous constituents present in the product, as determined by taking into account the effects of dilution, must be less than the applicable STLC.

[The following is an example of how these calculations can be done.

A ton of spent sandblast grit, which is hazardous due to a mean soluble lead concentration of 12 mg/L, is combined with nineteen tons of other aggregate and asphalt to produce twenty tons of asphaltic concrete. The dilution factor is calculated by dividing the twenty tons of final product, including the recyclable material, by the original one ton of recyclable material. This gives us a dilution factor of 20. The asphaltic concrete is then subjected to the WET and yields mean results for lead of 0.23 mg/L. This number is then multiplied by the dilution factor, 20, for a result of 4.60 mg/L. This final result, 4.60 mg/L, does not exceed the STLC for lead of 5 mg/L and therefore meets the criterion.

Note: This is only an example of how to implement this requirement and does not provide guidelines for hazardous waste sampling and analysis. Furthermore this example is not binding on the regulated community.]

(6) Where the recyclable material is used as a substitute for a commercial product or as an ingredient in the manufacture of a product, the final product shall not contain constituents at concentrations that cause the product to exhibit hazardous characteristics pursuant to Chapter 11 of this division, other than those constituents that are also found in the same or greater concentrations in a comparable commercial product. The only exception to this requirement is if, prior to using the recyclable material, the person claiming an exclusion obtains the department's written concurrence that:

(A) the concentrations of hazardous constituents greater than those present in a comparable commercial product improve the quality of the product made from the recyclable material and do not increase the hazards to public health or the environment of that product; or

(B) if no comparable commercial product exists, the hazardous constituents in the recyclable material that cause the product to exhibit a characteristic of a hazardous waste are beneficial to the product and do not cause the product to pose a threat to public health or the environment.

(7) Prior to use of the recyclable material, any person wishing to manage the recyclable material under the claim to an exclusion or exemption pursuant to this article must obtain a written certification from a qualified independent engineer or engineering geologist, registered in the state of California, that the recyclable material and the product containing that material meet the applicable standards or specifications for the intended use of the recyclable material and product of the American Society for Testing and Materials (ASTM), the American Association of State Highway and Transportation Officials (AASHTO), the American National Standards Institute (ANSI), the Uniform Building Code (UBC), or the standards of a government agency having jurisdiction over the applications of that recyclable material or product. Where the certification is not appropriate for an engineer or engineering geologist, but can be provided by another qualified professional, or where standards other than those listed are appropriate, or where there are no applicable standards for a particular use of a recyclable material, the person wishing to claim an exclusion or exemption may meet this requirement by obtaining prior written approval from the department. The person requesting the department's determination shall submit documentation to the department supporting the alternative certification or standards, or absence of standards.

NOTE: Authority cited: Sections 25143.2(e)(2) and 25150(e), Health and Safety Code. Reference: Sections 25143.2(f), 25150(e), 25170(i) and 25244.1, Health and Safety Code.

HISTORY

1. New section filed 6–9–97; operative 1–1–98 (Register 97, No. 24).
2. Change without regulatory effect amending subsection (b)(5)(A) filed 7–1–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 27).

Article 4. Hazardous Wastes and Certain Used Oils Regulated as Hazardous Waste Fuels

§ 66266.30. Applicability.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25124, 25143.2, 25159.5, 25250, 25250.1, 25250.4, 25250.5 and 25250.7, Health and Safety Code; 40 CFR Sections 266.30 and 266.40.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Repealer filed 6–22–95 as an emergency; operative 6–22–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–20–95 or emergency language will be repealed by operation of law on the following day.
3. Repealer refiled 10–20–95 as an emergency; operative 10–20–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–17–96 or emergency language will be repealed by operation of law on the following day.
4. Reinstatement of section as it existed prior to emergency repealer filed 10–20–95 by operation of Government Code section 11346.1(f) (Register 96, No. 38).
5. Repealer refiled 3–14–96 as an emergency; operative 3–14–96 (Register 96, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–12–96 or emergency language will be repealed by operation of law on the following day.
6. Repealer refiled 7–9–96 as an emergency; operative 7–9–96 (Register 96, No. 28). A Certificate of Compliance must be transmitted to OAL by 11–6–96 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction adding new HISTORY 4 and renumbering HISTORIES (Register 96, No. 38).
8. Repealer refiled 11–1–96 as an emergency; operative 11–1–96 (Register 96, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–3–97

or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 11-1-96 order transmitted to OAL 12-23-96 and disapproved 2-6-97 (Register 97, No. 6).
10. Repealer filed 2-7-97 as an emergency; operative 2-7-97 (Register 97, No. 6). A Certificate of Compliance must be transmitted to OAL by 6-9-97 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 2-7-97 order transmitted to OAL 6-6-97 and disapproved 7-22-97 (Register 97, No. 30).
12. Repealer of article 4 (sections 66266.30-66266.35) and section filed 7-22-97 as an emergency; operative 7-22-97 (Register 97, No. 30). A Certificate of Compliance must be transmitted to OAL by 11-19-97 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 7-22-97 order transmitted to OAL 11-19-97 and filed 1-5-98 (Register 98, No. 2).

§ 66266.31. Prohibitions.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Section 25159, Health and Safety Code; 40 CFR Section 266.31.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).
2. Repealer filed 6-22-95 as an emergency; operative 6-22-95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-20-95 or emergency language will be repealed by operation of law on the following day.
3. Repealer refiled 10-20-95 as an emergency; operative 10-20-95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2-17-96 or emergency language will be repealed by operation of law on the following day.
4. Reinstatement of section as it existed prior to emergency repealer filed 10-20-95 by operation of Government Code section 11346.1(f) (Register 96, No. 38).
5. Repealer refiled 3-14-96 as an emergency; operative 3-14-96 (Register 96, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-12-96 or emergency language will be repealed by operation of law on the following day.
6. Repealer refiled 7-9-96 as an emergency; operative 7-9-96 (Register 96, No. 28). A Certificate of Compliance must be transmitted to OAL by 11-6-96 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction adding new HISTORY 4 and renumbering HISTORIES (Register 96, No. 38).
8. Repealer refiled 11-1-96 as an emergency; operative 11-1-96 (Register 96, No. 44). A Certificate of Compliance must be transmitted to OAL by 3-3-97 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 11-1-96 order transmitted to OAL 12-23-96 and disapproved 2-6-97 (Register 97, No. 6).
10. Repealer filed 2-7-97 as an emergency; operative 2-7-97 (Register 97, No. 6). A Certificate of Compliance must be transmitted to OAL by 6-9-97 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 2-7-97 order transmitted to OAL 6-6-97 and disapproved 7-22-97 (Register 97, No. 30).
12. Repealer filed 7-22-97 as an emergency; operative 7-22-97 (Register 97, No. 30). A Certificate of Compliance must be transmitted to OAL by 11-19-97 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 7-22-97 order transmitted to OAL 11-19-97 and filed 1-5-98 (Register 98, No. 2).

§ 66266.32. Standards Applicable to Generators of Hazardous Waste Fuel.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Section 25159, Health and Safety Code; 40 CFR Section 266.32.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).
2. Repealer filed 6-22-95 as an emergency; operative 6-22-95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-20-95 or emergency language will be repealed by operation of law on the following day.
3. Repealer refiled 10-20-95 as an emergency; operative 10-20-95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2-17-96 or emergency language will be repealed by operation of law on the following day.
4. Reinstatement of section as it existed prior to emergency repealer filed 10-20-95 by operation of Government Code section 11346.1(f) (Register 96, No. 38).
5. Repealer refiled 3-14-96 as an emergency; operative 3-14-96 (Register 96, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-12-96 or emergency language will be repealed by operation of law on the following day.
6. Repealer refiled 7-9-96 as an emergency; operative 7-9-96 (Register 96, No. 28). A Certificate of Compliance must be transmitted to OAL by 11-6-96 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction adding new HISTORY 4 and renumbering HISTORIES (Register 96, No. 38).
8. Repealer refiled 11-1-96 as an emergency; operative 11-1-96 (Register 96, No. 44). A Certificate of Compliance must be transmitted to OAL by 3-3-97 or emergency language will be repealed by operation of law on the following day.

[The next page is 758.112(q).]

9. Certificate of Compliance as to 11–1–96 order transmitted to OAL 12–23–96 and disapproved 2–6–97 (Register 97, No. 6).
10. Repealer filed 2–7–97 as an emergency; operative 2–7–97 (Register 97, No. 6). A Certificate of Compliance must be transmitted to OAL by 6–9–97 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 2–7–97 order transmitted to OAL 6–6–97 and disapproved 7–22–97 (Register 97, No. 30).
12. Repealer filed 7–22–97 as an emergency; operative 7–22–97 (Register 97, No. 30). A Certificate of Compliance must be transmitted to OAL by 11–19–97 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 7–22–97 order transmitted to OAL 11–19–97 and filed 1–5–98 (Register 98, No. 2).

§ 66266.33. Standards Applicable to Transporters of Hazardous Waste Fuel.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Section 25159, Health and Safety Code; 40 CFR Section 266.33.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Repealer filed 6–22–95 as an emergency; operative 6–22–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–20–95 or emergency language will be repealed by operation of law on the following day.
3. Repealer refiled 10–20–95 as an emergency; operative 10–20–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–17–96 or emergency language will be repealed by operation of law on the following day.
4. Reinstatement of section as it existed prior to emergency repealer filed 10–20–95 by operation of Government Code section 11346.1(f) (Register 96, No. 38).
5. Repealer refiled 3–14–96 as an emergency; operative 3–14–96 (Register 96, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–12–96 or emergency language will be repealed by operation of law on the following day.
6. Repealer refiled 7–9–96 as an emergency; operative 7–9–96 (Register 96, No. 28). A Certificate of Compliance must be transmitted to OAL by 11–6–96 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction adding new HISTORY 4 and renumbering HISTORIES (Register 96, No. 38).
8. Repealer refiled 11–1–96 as an emergency; operative 11–1–96 (Register 96, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–3–97 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 11–1–96 order transmitted to OAL 12–23–96 and disapproved 2–6–97 (Register 97, No. 6).
10. Repealer filed 2–7–97 as an emergency; operative 2–7–97 (Register 97, No. 6). A Certificate of Compliance must be transmitted to OAL by 6–9–97 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 2–7–97 order transmitted to OAL 6–6–97 and disapproved 7–22–97 (Register 97, No. 30).
12. Repealer filed 7–22–97 as an emergency; operative 7–22–97 (Register 97, No. 30). A Certificate of Compliance must be transmitted to OAL by 11–19–97 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 7–22–97 order transmitted to OAL 11–19–97 and filed 1–5–98 (Register 98, No. 2).

§ 66266.34. Standards Applicable to Marketers of Hazardous Waste Fuel.

NOTE: Authority cited: Sections 208 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 266.34.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Repealer filed 6–22–95 as an emergency; operative 6–22–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–20–95 or emergency language will be repealed by operation of law on the following day.
3. Repealer refiled 10–20–95 as an emergency; operative 10–20–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–17–96 or emergency language will be repealed by operation of law on the following day.
4. Reinstatement of section as it existed prior to emergency repealer filed 10–20–95 by operation of Government Code section 11346.1(f) (Register 96, No. 38).
5. Repealer refiled 3–14–96 as an emergency; operative 3–14–96 (Register 96, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–12–96 or emergency language will be repealed by operation of law on the following day.
6. Repealer refiled 7–9–96 as an emergency; operative 7–9–96 (Register 96, No. 28). A Certificate of Compliance must be transmitted to OAL by 11–6–96 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction adding new HISTORY 4 and renumbering HISTORIES (Register 96, No. 38).
8. Repealer refiled 11–1–96 as an emergency; operative 11–1–96 (Register 96, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–3–97 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 11–1–96 order transmitted to OAL 12–23–96 and disapproved 2–6–97 (Register 97, No. 6).
10. Repealer filed 2–7–97 as an emergency; operative 2–7–97 (Register 97, No. 6). A Certificate of Compliance must be transmitted to OAL by 6–9–97 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 2–7–97 order transmitted to OAL 6–6–97 and disapproved 7–22–97 (Register 97, No. 30).
12. Repealer filed 7–22–97 as an emergency; operative 7–22–97 (Register 97, No. 30). A Certificate of Compliance must be transmitted to OAL by 11–19–97 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 7–22–97 order transmitted to OAL 11–19–97 and filed 1–5–98 (Register 98, No. 2).

§ 66266.35. Standards Applicable to Burners of Hazardous Waste Fuel.

NOTE: Authority cited: Sections 208 and 25159, Health and Safety Code. Reference: Section 25159, Health and Safety Code; 40 CFR Section 266.35.41.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Repealer filed 7–22–97 as an emergency; operative 7–22–97 (Register 97, No. 30). A Certificate of Compliance must be transmitted to OAL by 11–19–97 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7–22–97 order transmitted to OAL 11–19–97 and filed 1–5–98 (Register 98, No. 2).

Article 5. [Reserved]

Article 6. Requirements for Management of Used Oil

§ 66266.50. Requirements for Used Oil and Fuel Derived from Used Oil, That Are Burned for Energy Recovery.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25250.22, Health and Safety Code. Reference: Sections 25159, 25159.5, 25250.1, 25250.7 and 25250.8, Health and Safety Code; 40 CFR Section 266.40.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Repealer filed 6–22–95 as an emergency; operative 6–22–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–20–95 or emergency language will be repealed by operation of law on the following day.
3. Repealer refiled 10–20–95 as an emergency; operative 10–20–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–17–96 or emergency language will be repealed by operation of law on the following day.
4. Reinstatement of section as it existed prior to emergency repealer filed 10–20–95 by operation of Government Code section 11346.1(f) (Register 96, No. 38).
5. Repealer refiled 3–14–96 as an emergency; operative 3–14–96 (Register 96, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–12–96 or emergency language will be repealed by operation of law on the following day.
6. Repealer refiled 7–9–96 as an emergency; operative 7–9–96 (Register 96, No. 28). A Certificate of Compliance must be transmitted to OAL by 11–6–96 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction adding new HISTORY 4 and renumbering HISTORIES (Register 96, No. 38).
8. Repealer refiled 11–1–96 as an emergency; operative 11–1–96 (Register 96, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–3–97 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 11–1–96 order transmitted to OAL 12–23–96 and disapproved 2–6–97 (Register 97, No. 6).
10. Repealer filed 2–7–97 as an emergency; operative 2–7–97 (Register 97, No. 6). A Certificate of Compliance must be transmitted to OAL by 6–9–97 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 2–7–97 order transmitted to OAL 6–6–97 and disapproved 7–22–97 (Register 97, No. 30).
12. Repealer of article 6 (section 66266.50) and section filed 7–22–97 as an emergency; operative 7–22–97 (Register 97, No. 30). A Certificate of Compliance must be transmitted to OAL by 11–19–97 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 7–22–97 order transmitted to OAL 11–19–97 and filed 1–5–98 (Register 98, No. 2).

Article 7. Requirements for Management of Spent Lead–Acid Storage Batteries

§ 66266.80. Applicability.

(a) A person who manages spent lead–acid storage batteries or their components shall comply with all of the requirements of this division pertaining to the management of a hazardous waste, unless the person is specifically exempted in the provisions of this article.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Sections 25150, 25159.5 and 25170, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66266.81. Requirements.

(a) Except as provided in subsection (a)(1) of this section, a person who manages spent lead–acid storage batteries which are equivalent in type and equivalent to, or smaller in size than, spent lead–acid storage batteries removed from motor vehicles as defined in Vehicle Code sections 415 and 670 shall comply with the applicable requirements of subsections (a)(2) through (d) of this section.

(1) A person (e.g., automobile owner, service station operator, retail store operator) who generates in one year, stores at one time, or transports at one time in one vehicle ten or fewer spent lead–acid storage batteries which either have been removed from motor vehicles as defined in Vehicle Code sections 415 and 670, or are equivalent in type and equivalent to, or smaller in size than, such batteries, shall be exempt from the requirements of this division pertaining to the generation, storage, and transportation of a hazardous waste with respect to the management of such batteries, provided that the person intends to or does transfer the batteries to a person who stores the batteries or who recycles, uses, reuses or reclaims the batteries.

(2) A person who transfers spent lead–acid storage batteries to a person described in subsection (a)(3) of this section shall be exempt from the requirements of this division pertaining to the generation, storage, and transportation of a hazardous waste with respect to the management of such batteries.

(3) Except as provided in subsection (a)(4) of this section, a person who accepts spent lead–acid storage batteries in exchange or partial exchange for operable lead–acid storage batteries shall be exempt from the requirements of this division pertaining to the generation and storage of a hazardous waste with respect to the management of such batteries, unless:

(A) The person stores more than one ton of such batteries at any one location for more than 180 days; or

(B) The person stores one ton or less of such batteries at any one location for more than one year; or

(C) The person removes the electrolyte.

(4) Except as provided otherwise in subsections (a)(2) and (a)(3) of this section, a person who generates spent lead–acid storage batteries shall be exempt from the requirements of this division pertaining to the generation and storage of a hazardous waste with respect to the management of such batteries, except as follows:

(A) The generator shall use either the manifest or a bill of lading which fulfills the requirements of Title 13 CCR section 1161, to record the shipment of spent lead–acid storage batteries to a person who stores the batteries or who uses, reuses, recycles or reclaims the batteries or their components.

(B) The generator shall retain, at the generator's place of business for at least three years, a legible copy of each manifest or bill of lading which identifies spent lead–acid storage batteries shipped to a person who stores the batteries or who uses, reuses, recycles or reclaims the batteries or their components.

(C) If the generator ships spent lead–acid storage batteries to a facility where the batteries will be disposed, the generator shall comply with all of the requirements of this division pertaining to the management of a hazardous waste.

(5) A person who transports spent lead–acid storage batteries shall be exempt from the requirements of this division pertaining to the transportation of a hazardous waste with respect to the management of such batteries except as follows:

(A) The transporter shall use either the manifest or a bill of lading which fulfills the requirements of Title 13 CCR section 1161, to record the transportation of spent lead–acid storage batteries to a person who stores the batteries or who uses, reuses, recycles or reclaims the batteries or their components.

(B) The transporter shall retain at the transporter's place of business for at least three years a legible copy of each manifest or bill of lading which identifies spent lead–acid storage batteries hauled to a person who stores the batteries or who uses, reuses, recycles or reclaims the batteries or their components.

(C) The transporter shall submit to the Department by March 1 of each calendar year beginning March 1, 1986, an annual report summarizing for the preceding calendar year information including, but not limited to, the identities of the generator and the recipient of the batteries, on a form approved by the Department.

(D) If the transporter hauls spent lead–acid storage batteries to a facility where the batteries will be disposed, the transporter shall comply with all of the requirements of this division pertaining to the management of a hazardous waste.

(6) A person who owns or operates a facility which stores either more than one ton of spent lead–acid storage batteries at any one location for 180 days or less or one ton or less of such batteries at any one location for one year or less and who transfers the batteries off–site for use, reuse, recycling or reclamation, shall be exempt from the requirements of this division as they pertain to the owner

or operator of a hazardous waste storage facility with respect to the management of such batteries, except as follows:

(A) The owner or operator shall accept either the manifest or a bill of lading which fulfills the requirements of Title 13 CCR section 1161, in lieu of the manifest to record the acceptance of spent lead–acid storage batteries for storage.

(B) The owner or operator shall retain at the owner's or operator's place of business for at least three years, a legible copy of each manifest or bill of lading which identifies spent lead–acid storage batteries accepted for storage.

(C) The owner or operator shall submit to the Department by March 1 of each calendar year beginning March 1, 1986, an annual report summarizing for the previous calendar year information including, but not limited to, the identities of the generator and the transporter of the batteries, on a form approved by the Department.

(D) The owner or operator shall store spent lead–acid storage batteries in accordance with the packaging requirements of Title 49 CFR section 173.260 and shall label the packaged batteries with the date they were received. The labeling shall be written in ink, paint, or other weather–resistant material such that the date is legible and conspicuous.

(7) A person who owns or operates a facility which stores either more than one ton of spent lead–acid storage batteries at any one location for more than 180 days, or one ton or less of such batteries at any one location for more than one year, or which removes electrolyte from such batteries for purposes of recycling either the batteries or their components (e.g., the lead, the cases or other components) shall comply with all of the requirements of this division pertaining to the owner or operator of a hazardous waste facility, except as follows:

(A) The owner or operator shall accept either the manifest or a bill of lading which fulfills the requirements of Title 13 CCR section 1161, to record the receipt of spent lead–acid storage batteries for storage or for recycling.

(B) The owner or operator shall retain at the owner's or operator's place of business for at least three years, a legible copy of each manifest or bill of lading which identifies spent lead–acid storage batteries accepted for storage or for recycling.

(C) The owner or operator shall submit to the Department by March 1 of each calendar year beginning March 1, 1986 an annual report summarizing for the previous calendar year information including, but not limited to, the identities of the generator and the transporter of the batteries, on a form approved by the Department.

(D) The owner or operator shall store spent lead–acid storage batteries in accordance with the packaging requirements of Title 49 CFR section 173.260 and shall label the packaged batteries with the date they were received. The labeling shall be written in ink, paint, or other weather resistant material such that the date is legible and conspicuous.

(8) A person who treats spent or damaged lead–acid storage batteries is subject to all requirements of this division.

(b) A damaged battery shall be managed so as to minimize the release of acid and lead and to protect the handlers and the environment, including at a minimum:

(1) A damaged battery shall be stored and transported in a nonreactive, structurally secure, closed container capable of preventing the release of acid and lead.

(2) A container holding one or more damaged batteries shall be labeled with the date that the first battery in the container was placed there, i.e., the initial date of accumulation.

(3) All container labels shall be written in ink, paint or other weather–resistant material so that the date is legible and conspicuous.

(4) A container holding one or more damaged batteries shall be packed for transportation in a manner that prevents the container from tipping, spilling or breaking during the transporting.

(c) A damaged battery packaged and labeled as specified in subsection (b) of this section shall be transported as provided in subsections (a)(4) and (a)(5) of this section and may be transported with intact batteries, subject in all instances to U.S. Department of Transportation regulations.

(d) "Damaged battery" means, for purposes of this article, any cracked or otherwise damaged lead–acid storage battery that may leak acid, including but not limited to:

(1) A battery damaged at any time before the lead plates are removed, and

(2) A battery that is missing one or more caps.

NOTE: Authority cited: Sections 208, 25150 and 25159.5, Health and Safety Code. Reference: Sections 25159.5, 25160, 25163, 25170 and 25201, Health and Safety Code; 49 CFR Section 173.260.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Editorial correction amending subsection designator from (a)(4)(8) to (a)(4)(B), and amending HISTORY 2 (Register 98, No. 42).

Article 8. Hazardous Waste Burned in Boilers and Industrial Furnaces

§ 66266.100. Applicability.

(a) The regulations of this article apply to hazardous waste burned or processed in a boiler or industrial furnace (as defined in section 66260.10 of chapter 10) irrespective of the purpose of burning or processing except as provided by subsections (b), (c), (d), and (f) of this section. In this article, the term "burn" means burning for energy recovery or destruction, or processing for materials recovery or as an ingredient. The emissions standards of sections 66266.104, 66266.105, 66266.106, and 66266.107 apply to facilities operating under interim status or under a permit as specified in sections 66266.102 and 66266.103. This article applies to used oil except as provided in (b)(1).

(b) The following hazardous wastes and facilities are not subject to regulation under this article:

(1) Used oil that meets the requirements of Health and Safety Code section 25250.1(b);

(2) Gas recovered from hazardous or solid waste landfills when such gas is burned for energy recovery;

(3) Hazardous wastes that are exempt from regulation ion under section 66261.4.

(c) Owners and operators of smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, sintering machines, roasters, and foundry furnaces, but not including cement kilns, aggregate kilns, or halogen acid furnaces burning hazardous waste) that process hazardous waste solely for metal recovery are conditionally exempt from regulation under this article, except for sections 66266.101 and 66266.112. Additionally, industrial furnaces exempted by this subsection are subject to regulation as miscellaneous units.

(1) To be exempt from sections 66266.102 through 66266.111, an owner or operator of a metal recovery furnace or mercury recovery furnace, shall comply with the following requirements, except that an owner or operator of a lead or a nickel–chromium recovery furnace, or a metal recovery furnace that burns baghouse bags used to capture metallic dusts emitted by steel manufacturing, shall comply with the requirements of subsection (c)(3) of this section.

(A) Provide a one–time written notice to the Director indicating the following:

1. The owner or operator claims exemption under this subsection;
2. The hazardous waste is burned sole]y for metal recovery consistent with the provisions of subsection (c)(2) of this section;
3. The hazardous waste contains recoverable levels of metals; and
4. The owner or operator will comply with the sampling and analysis and recordkeeping requirements of this subsection;

(B) Sample and analyze the hazardous waste and other feedstocks as necessary to comply with the requirements of this subsection under procedures specified by Test Methods for Evaluating Solid Waste, Physical/ Chemical Methods, SW–846, incorporated by reference in section 66260.11 of chapter 10 or alternative methods that meet or exceed the SW–846 method performance capabilities. If SW–846 does not prescribe a method for a particular determination, the owner or operator shall use the best available method; and

(C) Maintain at the facility for at least three years records to document compliance with the provisions of this subsection including limits on levels of toxic organic constituents and Btu value of the waste, and levels of recoverable metals in the hazardous waste compared to normal nonhazardous waste feedstocks.

(2) A hazardous waste meeting either of the following criteria is not processed solely for metal recovery:

(A) The hazardous waste has a total concentration of organic compounds listed appendix VIII, of chapter 11 exceeding 500 ppm by weight, as–fired, and so is considered to be burned for destruction. The concentration of organic compounds in a waste as–generated may be reduced to the 500 ppm limit by *bona fide* treatment that removes or destroys organic constituents. Blending for dilution to meet the 500 ppm limit is prohibited and documentation that the waste has not been impermissibly diluted shall be retained in the records required by subsection (c)(1)(C) of this section; or

(B) The hazardous waste has a heating value of 5,000 Btu/lb or more, as–fired and so is considered to be burned as fuel. The heating value of a waste as–generated may be reduced to below the 5,000 Btu/lb limit by *bona fide* treatment that removes or destroys organic constituents. Blending for dilution to meet the 5,000 Btu/lb limit is prohibited and documentation that the waste has not been impermissibly diluted shall be retained in the records required by subsection (c)(1)(C) of this section.

(3) To be exempt from sections 66266.102 through 66266.111, an owner or operator of a lead or nickel–chromium or mercury recovery furnace, or a metal recovery furnace that burns baghouse bags used to capture metallic dusts emitted by steel manufacturing, shall provide a one–time written notice to the Director identifying each hazardous waste burned and specifying whether the owner or operator claims an exemption for each waste under this subsection or subsection (c)(1) of this section. The owner or operator shall comply with the requirements of subsection (c)(1) of this section for those wastes claimed to be exempt under that subsection and shall comply with the requirements below for those wastes claimed to be exempt under this subsection (c)(3).

(A) The hazardous wastes listed in appendices XI, XII, and XIII, Chapter 16 and baghouse bags used to capture metallic dusts emitted by steel manufacturing are exempt from the requirements of subsection (c)(1) of this section, provided that:

1. A waste listed in appendix XI of this chapter shall contain recoverable levels of lead, a waste listed in appendix XII of this chapter shall contain recoverable levels of nickel or chromium, a waste listed in appendix XIII of this chapter must contain recoverable levels of mercury and less than 500 ppm of Chapter 11, Appendix VIII organic constituents, and baghouse bags used to capture metallic dusts emitted by steel manufacturing shall contain recoverable levels of metal; and

2. The waste does not exhibit the Toxicity Characteristic of section 66261.24 of chapter 11 for an organic constituent; and

3. The waste is not a hazardous waste listed in Article 4 of chapter 11 because it is listed for an organic constituent as identified in appendix VII of chapter 11; and

4. The owner or operator certifies in the one-time notice that hazardous waste is burned under the provisions of subsection (c)(3) of this section and that sampling and analysis will be conducted or other information will be obtained as necessary to ensure continued compliance with these requirements. Sampling and analysis shall be conducted according to subsection (c)(1)(B) of this section and records to document compliance with subsection (c)(3) of this section shall be kept for at least three years.

(B) The Director may decide on a case-by-case basis that the toxic organic constituents in a material listed in appendix XI, XII or XIII of this chapter that contains a total concentration of more than 500 ppm toxic organic compounds listed in appendix VIII, of chapter 11, may pose a hazard to human health and the environment when burned in a metal recovery furnace exempt from the requirements of this article. In that situation, after adequate notice and opportunity for comment, the metal recovery furnace will become subject to the requirements of this article when burning that material. In making the hazard determination, the Director will consider the following factors:

1. The concentration and toxicity of organic constituents in the material; and

2. The level of destruction of toxic organic constituents provided by the furnace; and

3. Whether the acceptable ambient levels established in appendices IV or V of this chapter may be exceeded for any toxic organic compound that may be emitted based on dispersion modeling to predict the maximum annual average off-site ground level concentration.

(d) The standards for direct transfer operations under section 66266.111 apply only to facilities subject to the permit standards of section 66266.102 or the interim status standards of section 66266.103.

(e) The management standards for residues under section 66266.112 apply to any boiler or industrial furnace burning hazardous waste.

(f) Owners and operators of smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, sintering machines, roasters, and foundry furnaces) that process hazardous waste for recovery of economically significant amounts of the precious metals gold, silver, platinum, paladium, irridium, osmium, rhodium, or ruthenium, or any combination of these are conditionally exempt from regulation under this article, except for section 66266.112. Additionally, industrial furnaces exempted by this subsection are subject to regulation as miscellaneous units. To be exempt from sections 66266.101 through 66266.111, an owner or operator shall:

(1) Provide a one-time written notice to the Director indicating the following:

(A) The owner or operator claims exemption under this subsection;

(B) The hazardous waste is burned for legitimate recovery of precious metal; and

(C) The owner or operator will comply with the sampling and analysis and recordkeeping requirements of this subsection; and

(2) Sample and analyze the hazardous waste as necessary to document that the waste is burned for recovery of economically significant amounts of precious metal using procedures specified by Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW-846, incorporated by reference in section 66260.11 of chapter 11 or alternative methods that meet or exceed the SW-846 method performance capabilities. If SW-846 does not prescribe a method for a particular determination, the owner or operator shall use the best available method; and

(3) Maintain at the facility for at least three years records to document that all hazardous wastes burned are burned for recovery of economically significant amounts of precious metal.

(g) The requirements for one-time notifications only apply to facilities that had not previously notified US EPA pursuant to 40 CFR 266.100 before January 1, 1996.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245, 58004 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5, 25200 and 25201, Health and Safety Code; and 40 CFR Section 266.100.

HISTORY

1. Renumbering of former article 8 to new article 8.5 and new article 8 (sections 66266.100-66266.112) and section filed 7-1-96; operative 7-31-96 (Register 96, No. 27).
2. Editorial correction of subsections (c)(1)(A)3., (c)(1)(B), (c)(3)(B), (f) and (g) (Register 96, No. 51).
3. Amendment of subsections (c), (c)(3)(A)1. and (f) filed 12-17-96 as an emergency; operative 12-17-96 (Register 96, No. 51). A Certificate of Compliance must be transmitted to OAL by 4-16-97 or emergency language will be repealed by operation of law on the following day.
4. Editorial correction of HISTORY 3 (Register 97, No. 17).
5. Reinstatement of section as it existed prior to 12-17-96 emergency amendment by operation of Government Code section 11346.1(f) (Register 97, No. 17).
6. Amendment of subsections (c), (c)(3)(A)1. and (f) filed 4-23-97 as an emergency; operative 4-23-97 (Register 97, No. 17). A Certificate of Compliance must be transmitted to OAL by 8-21-97 or emergency language will be repealed by operation of law on the following day.
7. Change without regulatory effect amending subsections (a), (c)(3) and (c)(3)(A)1. filed 6-12-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 24).
8. Reinstatement of section as it existed prior to 4-23-97 emergency amendment by operation of Government Code section 11346.1(f) (Register 97, No. 35).
9. Amendment of subsections (c), (c)(3)(A)1. and (f) filed 8-26-97 as an emergency; operative 8-26-97 (Register 97, No. 35). A Certificate of Compliance must be transmitted to OAL by 12-24-97 or emergency language will be repealed by operation of law on the following day.
10. Amendment of subsections (c), (c)(3)(A)1. and (f) refiled 12-30-97 as an emergency, including amendment of NOTE; operative 12-30-97 (Register 98, No. 1). A Certificate of Compliance must be transmitted to OAL by 4-29-98 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 12-30-97 order, including further amendment of subsections (c) and (f), transmitted to OAL 4-3-98 and filed 5-15-98 (Register 98, No. 20).
12. Change without regulatory effect amending subsection (c)(3) filed 6-7-2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 24).

§ 66266.101. Management Prior to Burning.

(a) Generators. Generators of hazardous waste that is burned in a boiler or industrial furnace are subject to the applicable provisions of chapter 12, of this division.

(b) Transporters. Transporters of hazardous waste that is burned in a boiler or industrial furnace are subject to the applicable provisions of chapter 13, of this division.

(c) Storage Facilities. (1) Owners and operators of facilities that store hazardous waste that is burned in a boiler or industrial furnace are subject to the applicable provisions of chapters 14, 15 and 20, of this division, except as provided by subsection (c)(2) of this section. These standards apply to storage by the burner as well as to storage facilities operated by intermediaries (processors, blenders, distributors, etc.) between the generator and the burner.

(2) Owners and operators of facilities that are exempt under the provisions of section 66266.108 and that store mixtures of hazardous waste and a primary fuel in tanks that feed the hazardous waste/fuel mixture directly to the burner, are exempt (with respect to the aforementioned hazardous waste/fuel mixture) from the storage provisions of chapters 14, 15 and 20, of this division. Storage of hazardous waste prior to mixing with a primary fuel is subject to the regulation as prescribed in subsection (c)(1) of this section.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245, 58004 and 58012, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 266.101.

HISTORY

1. New section filed 7–1–96; operative 7–31–96 (Register 96, No. 27).

§ 66266.102. Permit Standards for Burners.

(a) Applicability–(1) General. Owners and operators of boilers and industrial furnaces burning hazardous waste and not operating under interim status shall comply with the requirements of this section and sections 66270.22 and 66270.66 of this division, unless exempt under the small quantity burner exemption of section 66266.108.

(2) Applicability of Chapter 14 standards. Owners and operators of boilers and industrial furnaces that burn hazardous waste are subject to the following provisions of Chapter 14, except as provided otherwise by this article:

(A) In article 1 (General), section 66264.4;

(B) In article 2 (General facility standards), sections 66264.11–66264.18;

(C) In article 3 (Preparedness and prevention), sections 66264.31–66264.37;

(D) In article 4 (Contingency plan and emergency procedures), sections 66264.51–66264.56;

(E) In article 5 (Manifest system, recordkeeping, and reporting), the applicable provisions of sections 66264.71–66264.77.

(F) In article 6 (Corrective Action), sections 66264.90 and 66264.101;

(G) In article 7 (Closure and post–closure), sections 66264.111–66264.115;

(H) In article 8 (Financial requirements), sections 66264.141, 66264.142, 66264.143, and 66264.147–66264.148, except that States and the Federal government are exempt from the requirements of article 8; and

(I) Article 28 (Air emission standards for equipment leaks), except sections 66264.1050(a).

(b) Hazardous waste analysis. (1) The owner or operator shall provide an analysis of the hazardous waste that quantifies the concentration of any constituent identified in appendix VIII of chapter 11 of this division that may reasonably be expected to be in the waste. Such constituents shall be identified and quantified if present, at levels detectable by analytical procedures prescribed by Test Methods for Evaluating Solid Waste, Physical/Chemical Methods (incorporated by reference, see section 66260.11 of this division). Alternate methods that meet or exceed the method performance capabilities of SW–846 methods may be used. If SW–846 does not prescribe a method for a particular determination, the owner or operator shall use the best available method. The appendix VIII, chapter 11, division 4.5 constituents excluded from this analysis shall be identified and the basis for their exclusion explained. This analysis will be used to provide all information required by this article and section 66270.22 and section 66270.66 of this division and to enable the permit writer to prescribe such permit conditions as necessary to protect human health and the environment. Such analysis shall be included as a portion of the part B permit application, or, for facilities operating under the interim status standards of this article, as a portion of the trial burn plan that may be submitted before the part B application under provisions of section 66270.66(g) of chapter 20 as well as any other analysis required by the permit authority in preparing the permit. Owners and operators of boilers and industrial furnaces not operating under the interim status standards shall provide the information required by sections 66270.22 or 66270.66(c) of this division in the part B application to the greatest extent possible.

(2) Throughout normal operation, the owner or operator shall conduct sampling and analysis as necessary to ensure that the hazardous waste, other fuels, and industrial furnace feedstocks fired into the boiler or industrial furnace are within the physical and chemical composition limits specified in the permit.

(c) Emissions standards. Owners and operators shall comply with emissions standards provided by sections 66266.104 through 66266.107.

(d) Permits. (1) The owner or operator may burn only hazardous wastes specified in the facility permit and only under the operating conditions specified under subsection (e) of this section, except in approved trial burns under the conditions specified in section 66270.66 of this division.

(2) Hazardous wastes not specified in the permit may not be burned until operating conditions have been specified under a new permit or permit modification, as applicable. Operating requirements for new wastes may be based on either trial burn results or alternative data included with part B of a permit application under section 66270.22 of this division.

(3) Boilers and industrial furnaces operating under the interim status standards of section 66266.103 are permitted under procedures provided by section 66270.66(g) of this division.

(4) A permit for a new boiler or industrial furnace (those boilers and industrial furnaces not operating under the interim status standards) shall establish appropriate conditions for each of the applicable requirements of this section, including but not limited to allowable hazardous waste firing rates and operating conditions necessary to meet the requirements of subsection (e) of this section, in order to comply with the following standards:

(A) For the period beginning with initial introduction of hazardous waste and ending with initiation of the trial burn, and only for the minimum time required to bring the device to a point of operational readiness to conduct a trial burn, not to exceed a duration of 720 hours operating time when burning hazardous waste, the operating requirements shall be those most likely to ensure compliance with the emission standards of sections 66266.104 through 66266.107, based on the Director's engineering judgment. If the applicant is seeking a waiver from a trial burn to demonstrate conformance with a particular emission standard, the operating requirements during this initial period of operation shall include those specified by the applicable provisions of section 66266.104, section 66266.105, section 66266.106, or section 66266.107. The Director may extend the duration of this period for up to 720 additional hours when good cause for the extension is demonstrated by the applicant.

(B) For the duration of the trial burn, the operating requirements shall be sufficient to demonstrate compliance with the emissions standards of sections 66266.104 through 66266.107 and shall be in accordance with the approved trial burn plan;

(C) For the period immediately following completion of the trial burn, and only for the minimum period sufficient to allow sample analysis, data computation, submission of the trial burn results by the applicant, review of the trial burn results and modification of the facility permit by the Director to reflect the trial burn results, the operating requirements shall be those most likely to ensure compliance with the emission standards sections 66266.104 through 66266.107 based on the Director's engineering judgment.

(D) For the remaining duration of the permit, the operating requirements shall be those demonstrated in a trial burn or by alternative data specified in section 66270.22 of chapter 20, as sufficient to ensure compliance with the emissions standards of sections 66266.104 through 66266.107.

(e) Operating requirements–(1) General. A boiler or industrial furnace burning hazardous waste shall be operated in accordance with the operating requirements specified in the permit at all times where there is hazardous waste in the unit.

(2) Requirements to ensure compliance with the organic emissions standards– (A) DRE standard. Operating conditions will be specified either on a case–by–case basis for each hazardous waste burned as those demonstrated (in a trial burn or by alternative data as specified in section 66270.22) to be sufficient to comply with the destruction and removal efficiency (DRE) performance standard of section 66266.104(a) or as those special operating requirements provided by section 66266.104(a)(4) for the waiver of the DRE trial burn. When the DRE trial burn is not waived under section 66266.104(a)(4), each set of operating requirements shall specify the composition of the hazardous waste (including acceptable variations in the physical and chemical properties of the hazardous waste

which will not affect compliance with the DRE performance standard) to which the operating requirements apply. For each such hazardous waste, the permit shall specify acceptable operating limits including, but not limited to, the following conditions as appropriate:

1. Feed rate of hazardous waste and other fuels measured and specified as prescribed in subsection (e)(6) of this section;

2. Minimum and maximum device production rate when producing normal product expressed in appropriate units, measured and specified as prescribed in subsection (e)(6) of this section;

3. Appropriate controls of the hazardous waste firing system;

4. Allowable variation in boiler and industrial furnace system design or operating procedures;

5. Minimum combustion gas temperature measured at a location indicative of combustion chamber temperature, measured and specified as prescribed in subsection (e)(6) of this section;

6. An appropriate indicator of combustion gas velocity, measured and specified as prescribed in subsection (e)(6) of this section, unless documentation is provided under section 66270.66 of chapter 20 demonstrating adequate combustion gas residence time; and

7. Such other operating requirements as are necessary to ensure that the DRE performance standard of section 66266.104(a) is met.

(B) Carbon monoxide and hydrocarbon standards. The permit shall incorporate a carbon monoxide (CO) limit and, as appropriate, a hydrocarbon (HC) limit as provided by subsections (b), (c), (d), (e) and (f) of section 66266.104. The permit limits will be specified as follows:

1. When complying with the CO standard of section 66266.104(b)(1), the permit limit is 100 ppmv;

2. When complying with the alternative CO standard under section 66266.104(c), the permit limit for CO is based on the trial burn and is established as the average over all valid runs of the highest hourly rolling average CO level of each run, and the permit limit for HC is 20 ppmv (as defined in section 66266.104(c)(1)), except as provided in section 66266.104(f).

3. When complying with the alternative HC limit for industrial furnaces under section 66266.104(f), the permit limit for HC and CO is the baseline level when hazardous waste is not burned as specified by that subsection.

(C) Start-up and shut-down. During start-up and shut-down of the boiler or industrial furnace, hazardous waste (except waste fed solely as an ingredient under the Tier I (or adjusted Tier I) feed rate screening limits for metals and chloride/chlorine, and except low risk waste exempt from the trial burn requirements under sections 66266.104(a)(5), 66266.105, 66266.106, and 66266.107) shall not be fed into the device unless the device is operating within the conditions of operation specified in the permit.

(3) Requirements to ensure conformance with the particulate standard. (A) Except as provided in subsections (e)(3)(B) and (C) of this section, the permit shall specify the following operating requirements to ensure conformance with the particulate standard specified in section 66266.105:

1. Total ash feed rate to the device from hazardous waste, other fuels, and industrial furnace feedstocks, measured and specified as prescribed in subsection (e)(6) of this section;

2. Maximum device production rate when producing normal product expressed in appropriate units, and measured and specified as prescribed in subsection (e)(6) of this section;

3. Appropriate controls on operation and maintenance of the hazardous waste firing system and any air pollution control system;

4. Allowable variation in boiler and industrial furnace system design including any air pollution control system or operating procedures; and

5. Such other operating requirements as are necessary to ensure that the particulate standard in section 66266.105(b) is met.

(B) Permit conditions to ensure conformance with the particulate matter standard shall not be provided for facilities exempt from the particulate matter standard under section 66266.105(b);

(C) For cement kilns and light-weight aggregate kilns, permit conditions to ensure compliance with the particulate standard shall not limit the ash content of hazardous waste or other feed materials.

(4) Requirements to ensure conformance with the metals emissions standard. (A) For conformance with the Tier I (or adjusted Tier I) metals feed rate screening limits of subsections (b) or (e) of section 66266.106, the permit shall specify the following operating requirements:

1. Total feed rate of each metal in hazardous waste, other fuels, and industrial furnace feedstocks measured and specified under provisions of subsection (e)(6) of this section;

2. Total feed rate of hazardous waste measured and specified as prescribed in subsection (e)(6) of this section;

3. A sampling and metals analysis program for the hazardous waste, other fuels, and industrial furnace feedstocks;

(B) For conformance with the Tier II metals emission rate screening limits under section 66266.106(c) and the Tier III metals controls under section 66266.106(d), the permit shall specify the following operating requirements:

1. Maximum emission rate for each metal specified as the average emission rate during the trial burn;

2. Feed rate of total hazardous waste and pumpable hazardous waste, each measured and specified as prescribed in subsection (e)(6)(A) of this section;

3. Feed rate of each metal in the following feedstreams, measured and specified as prescribed in subsection (e)(6) of this section:

a. Total feed streams;

b. Total hazardous waste feed; and

c. Total pumpable hazardous waste feed;

4. Total feed rate of chlorine and chloride in total feed streams measured and specified as prescribed in subsection (e)(6) of this section;

5. Maximum combustion gas temperature measured at a location indicative of combustion chamber temperature, and measured and specified as prescribed in subsection (e)(6) of this section;

6. Maximum flue gas temperature at the inlet to the particulate matter air pollution control system measured and specified as prescribed in subsection (e)(6) of this section;

7. Maximum device production rate when producing normal product expressed in appropriate units and measured and specified as prescribed in subsection (e)(6) of this section;

8. Appropriate controls on operation and maintenance of the hazardous waste firing system and any air pollution control system;

9. Allowable variation in boiler and industrial furnace system design including any air pollution control system or operating procedures; and

10. Such other operating requirements as are necessary to ensure that the metals standards under sections 66266.106(c) or 66266.106(d) are met.

(C) For conformance with an alternative implementation approach approved by the Director under section 66266.106(f), the permit will specify the following operating requirements:

1. Maximum emission rate for each metal specified as the average emission rate during the trial burn;

2. Feed rate of total hazardous waste and pumpable hazardous waste, each measured and specified as prescribed in subsection (e)(6)(A) of this section;

3. Feed rate of each metal in the following feedstreams, measured and specified as prescribed in subsection (e)(6) of this section:

a. Total hazardous waste feed; and

b. Total pumpable hazardous waste feed;

4. Total feed rate of chlorine and chloride in total feed streams measured and specified as prescribed in subsection (e)(6) of this section;

5. Maximum combustion gas temperature measured at a location indicative of combustion chamber temperature, and measured and specified as prescribed in subsection (e)(6) of this section;

6. Maximum flue gas temperature at the inlet to the particulate matter air pollution control system measured and specified as prescribed in subsection (e)(6) of this section;

7. Maximum device production rate when producing normal product expressed in appropriate units and measured and specified as prescribed in subsection (e)(6) of this section;

8. Appropriate controls on operation and maintenance of the hazardous waste firing system and any air pollution control system;

9. Allowable variation in boiler and industrial furnace system design including any air pollution control system or operating procedures; and

10. Such other operating requirements as are necessary to ensure that the metals standards under sections 66266.106(c) or 66266.106(d) are met.

(5) Requirements to ensure conformance with the hydrogen chloride and chlorine gas standards. (A) For conformance with the Tier I total chloride and chlorine feed rate screening limits of section 66266.107(b)(1), the permit will specify the following operating requirements:

1. Feed rate of total chloride and chlorine in hazardous waste, other fuels, and industrial furnace feedstocks measured and specified as prescribed in subsection (e)(6) of this section;

2. Feed rate of total hazardous waste measured and specified as prescribed in subsection (e)(6) of this section;

3. A sampling and analysis program for total chloride and chlorine for the hazardous waste, other fuels, and industrial furnace feedstocks;

(B) For conformance with the Tier II HCl and Cl_2 emission rate screening limits under section 66266.107(b)(2) and the Tier III HCl and Cl_2 controls under section 66266.107(c), the permit shall specify the following operating requirements:

1. Maximum emission rate for HCl and for Cl_2 specified as the average emission rate during the trial burn;

2. Feed rate of total hazardous waste measured and specified as prescribed in subsection (e)(6) of this section;

3. Total feed rate of chlorine and chloride in total feed streams, measured and specified as prescribed in subsection (e)(6) of this section;

4. Maximum device production rate when producing normal product expressed in appropriate units, measured and specified as prescribed in subsection (e)(6) of this section;

5. Appropriate controls on operation and maintenance of the hazardous waste firing system and any air pollution control system;

6. Allowable variation in boiler and industrial furnace system design including any air pollution system or operating procedures; and

7. Such other operating requirements as are necessary to ensure that the HCl and Cl_2 standards under section 66266.107(b)(2) or (c) are met.

(6) Measuring parameters and establishing limits based on trial burn data–(A) General requirements. As specified in subsections (e)(2) through (e)(5) of this section, each operating parameter shall be measured, and permit limits on the parameter shall be established, according to either of the following procedures:

1. Instantaneous limits. A parameter may be measured and recorded on an instantaneous basis (i.e., the value that occurs at any time) and the permit limit specified as the time–weighted average during all valid runs of the trial burn; or

2. Hourly rolling average. *a.* The limit for a parameter may be established and continuously monitored on an hourly rolling average basis defined as follows:

(A) A continuous monitor is one which continuously samples the regulated parameter without interruption, and evaluates the detector response at least once each 15 seconds, and computes and records the average value at least every 60 seconds.

(B) An hourly rolling average is the arithmetic mean of the 60 most recent 1–minute average values recorded by the continuous monitoring system.

b. The permit limit for the parameter shall be established on trial burn data as the average over all valid test runs of the highest hourly rolling average value for each run.

(B) Rolling average limits for carcinogenic metals and lead. Feed rate limits for the carcinogenic metals (i.e., arsenic, beryllium, cadmium and chromium) and lead may be established either on an hourly rolling average basis as prescribed by subsection (e)(6)(A) of this section or on (up to) a 24 hour rolling average basis. If the owner or operator elects to use an average period from 2 to 24 hours:

1. The feed rate of each metal shall be limited at any time to ten times the feed rate that would be allowed on an hourly rolling average basis;

2. The continuous monitor shall meet the following specifications:

a. A continuous monitor is one which continuously samples the regulated parameter without interruption, and evaluates the detector response at least once each 15 seconds, and computes and records the average value at least every 60 seconds.

b. The rolling average for the selected averaging period is defined as the arithmetic mean of one hour block averages for the averaging period. A one hour block average is the arithmetic mean of the one minute averages recorded during the 60–minute period beginning at one minute after the beginning of preceding clock hour; and

3. The permit limit for the feed rate of each metal shall be established based on trial burn data as the average over all valid test runs of the highest hourly rolling average feed rate for each run.

(C) Feed rate limits for metals, total chloride and chlorine, and ash. Feed rate limits for metals, total chlorine and chloride, and ash are established and monitored by knowing the concentration of the substance (i.e., metals, chloride/chlorine, and ash) in each feedstream and the flow rate of the feedstream. To monitor the feed rate of these substances, the flow rate of each feedstream shall be monitored under the continuous monitoring requirements of subsections (e)(6)(A) and (B) of this section.

(D) Conduct of trial burn testing. 1. If compliance with all applicable emissions standards of sections 66266.104 through 66266.107 is not demonstrated simultaneously during a set of test runs, the operating conditions of additional test runs required to demonstrate compliance with remaining emissions standards shall be as close as possible to the original operating conditions.

2. Prior to obtaining test data for purposes of demonstrating compliance with the emissions standards of sections 66266.104 through 66266.107 or establishing limits on operating parameters under this section, the facility shall operate under trial burn conditions for a sufficient period to reach steady–state operations. The Director may determine however, that industrial furnaces that recycle collected particulate matter back into the furnace and that comply with an alternative implementation approach for metals under section 66266.106(f) need not reach steady state conditions with respect to the flow of metals in the system prior to beginning compliance testing for metals emissions.

3. Trial burn data on the level of an operating parameter for which a limit shall be established in the permit shall be obtained during emissions sampling for the pollutant(s) (i.e., metals, PM, HCl/Cl_2, organic compounds) for which the parameter shall be established as specified by subsection (e) of this section.

(7) General requirements–(A) Fugitive emissions. Fugitive emissions shall be controlled by:

1. Keeping the combustion zone totally sealed against fugitive emissions; or

2. Maintaining the combustion zone pressure lower than atmospheric pressure; or

3. An alternate means of control demonstrated (with part B of the permit application) to provide fugitive emissions control equivalent to maintenance of combustion zone pressure lower than atmospheric pressure.

(B) Automatic waste feed cutoff. A boiler or industrial furnace shall be operated with a functioning system that automatically cuts off the hazardous waste feed when operating conditions deviate from those established under this section. The Director may limit the number of cutoffs per an operating period on a case–by–case basis. In addition:

1. The permit limit for (the indicator of) minimum combustion chamber temperature shall be maintained while hazardous waste or hazardous waste residues remain in the combustion chamber.

2. Exhaust gases shall be ducted to the air pollution control system operated in accordance with the permit requirements while hazardous waste or hazardous waste residues remain in the combustion chamber; and

3. Operating parameters for which permit limits are established shall continue to be monitored during the cutoff, and the hazardous waste feed shall not be restarted until the levels of those parameters comply with the permit limits. For parameters that may be monitored on an instantaneous basis, the Director will establish a minimum period of time after a waste feed cutoff during which the parameter shall not exceed the permit limit before the hazardous waste feed may be restarted.

(C) Changes. A boiler or industrial furnace shall cease burning hazardous waste when changes in combustion properties, or feed rates of the hazardous waste, other fuels, or industrial furnace feedstocks, or changes in the boiler or industrial furnace design or operating conditions deviate from the limits as specified in the permit.

(8) Monitoring and Inspections. (A) The owner or operator shall monitor and record the following, at a minimum, while burning hazardous waste:

1. If specified by the permit, feed rates and composition of hazardous waste, other fuels, and industrial furnace feedstocks, and feed rates of ash, metals, and total chloride and chlorine;

2. If specified by the permit, carbon monoxide (CO), hydrocarbons (HC), and oxygen on a continuous basis at a common point in the boiler or industrial furnace downstream of the combustion zone and prior to release of stack gases to the atmosphere in accordance with operating requirements specified in subsection (e)(2)(B) of this section. CO, HC, and oxygen monitors shall be installed, operated, and maintained in accordance with methods specified in appendix IX of this chapter.

3. Upon the request of the Director, sampling and analysis of the hazardous waste (and other fuels and industrial furnace feedstocks as appropriate), residues, and exhaust emissions shall be conducted to verify that the operating requirements established in the permit achieve the applicable standards of sections 66266.104, 66266.105, 66266.106, and 66266.107.

(B) All monitors shall record data in units corresponding to the permit limit unless otherwise specified in the permit.

(C) The boiler or industrial furnace and associated equipment (pumps, valves, pipes, fuel storage tanks, etc.) shall be subjected to thorough visual inspection when it contains hazardous waste, at least daily for leaks, spills, fugitive emissions, and signs of tampering.

(D) The automatic hazardous waste feed cutoff system and associated alarms shall be tested at least once every 7 days when hazardous waste is burned to verify operability, unless the applicant demonstrates to the Director that weekly inspections will unduly restrict or upset operations and that less frequent inspections will be adequate. At a minimum, operational testing shall be conducted at least once every 30 days.

(E) These monitoring and inspection data shall be recorded and the records shall be placed in the operating record required by section 66264.73 of chapter 14.

(9) Direct transfer to the burner. If hazardous waste is directly transferred from a transport vehicle to a boiler or industrial furnace without the use of a storage unit, the owner and operator shall comply with section 66266.111.

(10) Recordkeeping. The owner or operator shall keep in the operating record of the facility all information and data required by this section until closure of the facility.

(11) Closure. At closure, the owner or operator shall remove all hazardous waste and hazardous waste residues (including, but not limited to, ash, scrubber waters, and scrubber sludges) from the boiler or industrial furnace.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245, 58004 and 58012, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 266.102.

HISTORY

1. New section filed 7–1–96; operative 7–31–96 (Register 96, No. 27).
2. Change without regulatory effect amending subsections (e)(3)(A)5. and (e)(4)(C)4. filed 6–12–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 24).
3. Change without regulatory effect amending subsections (b), (e)(4) and (e)(8)(C) filed 6–7–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 24).

§ 66266.103. Interim Status Standards for Burners.

(a) Purpose, scope, applicability. (1) General. (A) The purpose of this section is to establish minimum state standards for owners and operators of "existing" boilers and industrial furnaces that burn hazardous waste where such standards define the acceptable management of hazardous waste during the period of interim status. The standards of this section apply to owners and operators of existing facilities until either a permit is issued under section 66266.102(d) or until closure responsibilities identified in this section are fulfilled.

(B) "Existing" or "in existence" means a boiler or industrial furnace that on or before August 21, 1991 is either in operation burning or processing hazardous waste or for which construction (including the ancillary facilities to burn or to process the hazardous waste) has commenced. A facility has commenced construction if the owner or operator has obtained the Federal, State, and local approvals or permits necessary to begin physical construction; and either

1. A continuous on–site, physical construction program has begun; or

2. The owner or operator has entered into contractual obligations—which cannot be canceled or modified without substantial loss—for physical construction of the facility to be completed within a reasonable time.

(C) If a boiler or industrial furnace is located at a facility that already has a permit or interim status, then the facility shall comply with the applicable regulations dealing with permit modifications in section 66270.42 or changes in interim status in section 66270.72 of this division.

(2) Exemptions. The requirements of this section do not apply to hazardous waste and facilities exempt under sections 66266.100(b), or 66266.108.

(3) Prohibition on burning dioxin–listed wastes. The following hazardous waste listed for dioxin and hazardous waste derived from any of these wastes may not be burned in a boiler or industrial furnace operating under interim status: F020, F021, F022, F023, F026, and F027.

(4) Applicability of Chapter 15, division 4.5 standards. Owners and operators of boilers and industrial furnaces that burn hazardous waste and are operating under interim status are subject to the following provisions of chapter 15 of this division except as provided otherwise by this section:

(A) In article 1 (General), section 66265.4;

(B) In article 2 (General facility standards), sections 66265.11–66265.17;

(C) In article 3 (Preparedness and prevention), sections 66265.31–66265.37;

(D) In article 4 (Contingency plan and emergency procedures), sections 66265.51–66265.56;

(E) In article 5 (Manifest system, recordkeeping, and reporting), sections 66265.71–66265.77, except that sections 66265.71, 66265.72, and 66265.76 do not apply to owners and operators of on–site facilities that do not receive any hazardous waste from off–site sources;

(F) In article 7 (Closure and post–closure), sections 66265.111–66265.115;

(G) In article 8 (Financial requirements), sections 66265.141, 66265.142, 66265.143 and 66265.147–66265.148, except that States and the Federal government are exempt from the requirements of article 8; and

(H) Article 28 (Air emission standards for equipment leaks), except section 66265.1050(a).

(5) Special requirements for furnaces. The following controls apply during interim status to industrial furnaces (e.g., kilns, cupolas) that feed

hazardous waste for a purpose other than solely as an ingredient (see subsection (a)(5)(B) of this section) at any location other than the hot end where the products are normally discharged or where fuels are normally fired:

(A) Controls. 1. The hazardous waste shall be fed at a location where combustion gas temperatures are at least 1800° F;

2. The owner or operator shall determine that adequate oxygen is present in combustion gases to combust organic constituents in the waste and retain documentation of such determination in the facility record;

3. For cement kiln systems, the hazardous waste shall be fed into the kiln; and

4. The hydrocarbon controls of section 66266.104(c) or subsection (c)(5) of this section apply upon certification of compliance under subsection (c) of this section irrespective of the CO level achieved during the compliance test.

(B) Burning hazardous waste solely as an ingredient. A hazardous waste is burned for a purpose other than solely as an ingredient if it meets either of these criteria:

1. The hazardous waste has a total concentration of nonmetal compounds listed in appendix VIII of chapter 11 of this division exceeding 500 ppm by weight, as–fired, and so is considered to be burned for destruction. The concentration of nonmetal compounds in a waste as–generated may be reduced to the 500 ppm limit by *bona fide* treatment that removes or destroys nonmetal constituents. Blending for dilution to meet the 500 ppm limit is prohibited and documentation that the waste has not been impermissibly diluted shall be retained in the facility record; or

2. The hazardous waste has a heating value of 5,000 Btu/lb or more, as–fired, and so is considered to be burned as fuel. The heating value of a waste as–generated may be reduced to below the 5,000 Btu/lb limit by *bona fide* treatment that removes or destroys organic constituents. Blending to augment the heating value to meet the 5,000 Btu/lb limit is prohibited and documentation that the waste has not been impermissibly blended shall be retained in the facility record.

(6) Restrictions on burning hazardous waste that is not a fuel. Prior to certification of compliance under subsection (c) of this section, owners and operators shall not feed hazardous waste that has a heating value less than 5,000 Btu/lb, as–generated, (except that the heating value of a waste as–generated may be increased to above the 5,000 Btu/lb limit by *bona fide* treatment; however, blending to augment the heating value to meet the 5,000 Btu/lb limit is prohibited and records shall be kept to document that impermissible blending has not occurred) in a boiler or industrial furnace, except that:

(A) Hazardous waste may be burned solely as an ingredient; or

(B) Hazardous waste may be burned for purposes of compliance testing (or testing prior to compliance testing) for a total period of time not to exceed 720 hours; or

(C) Such waste may be burned if the Director has documentation to show that, prior to August 21, 1991:

1. The boiler or industrial furnace is operating under the interim status standards for incinerators provided by article 15 of chapter 15 of this division, or the interim status standards for thermal treatment units provided by article 16 of chapter 15 of this division; and

2. The boiler or industrial furnace met the interim status eligibility requirements under section 66270.70 of chapter 20 for article 15 or article 16 of chapter 15 of this division; and

3. Hazardous waste with a heating value less than 5,000 Btu/lb was burned prior to that date; or

(D) Such waste may be burned in a halogen acid furnace if the waste was burned as an excluded ingredient under section 66261.2(e) of chapter 11 of this division prior to February 21, 1991 and documentation is kept on file supporting this claim.

(7) Direct transfer to the burner. If hazardous waste is directly transferred from a transport vehicle to a boiler or industrial furnace without the use of a storage unit, the owner and operator shall comply with section 66266.111.

(b) Certification of precompliance–(1) General. The owner or operator shall provide complete and accurate information specified in subsection (b)(2) of this section to the Director on or before August 21, 1991, and shall establish limits for the operating parameters specified in subsection (b)(3) of this section. Such information is termed a "certification of precompliance" and constitutes a certification that the owner or operator has determined that, when the facility is operated within the limits specified in subsection (b)(3) of this section, the owner or operator believes that, using best engineering judgement, emissions of particulate matter, metals, and HCl and Cl_2 are not likely to exceed the limits provided by sections 66266.105, 66266.106, and 66266.107. The facility may burn hazardous waste only under the operating conditions that the owner or operator establishes under subsection (b)(3) of this section until the owner or operator submits a revised certification of precompliance under subsection (b)(8) of this section or a certification of compliance under subsection (c) of this section, or until a permit is issued.

(2) Information required. The following information shall be submitted with the certification of precompliance to support the determination that the limits established for the operating parameters identified in subsection (b)(3) of this section are not likely to result in an exceedance of the allowable emission rates for particulate matter, metals, and HCl and Cl_2:

(A) General facility information:

1. US EPA facility ID number;

2. Facility name, contact person, telephone number, and address;

3. Description of boilers and industrial furnaces burning hazardous waste, including type and capacity of device;

4. A scaled plot plan showing the entire facility and location of the boilers and industrial furnaces burning hazardous waste; and

5. A description of the air pollution control system on each device burning hazardous waste, including the temperature of the flue gas at the inlet to the particulate matter control system.

(B) Except for facilities complying with the Tier I or Adjusted Tier I feed rate screening limits for metals or total chlorine and chloride provided by sections 66266.106 (b) or (e) and 66266.107 (b)(1) or (e), respectively, the estimated uncontrolled (at the inlet to the air pollution control system) emissions of particulate matter, each metal controlled by section 66266.106, and hydrogen chloride and chlorine, and the following information to support such determinations:

1. The feed rate (lb/hr) of ash, chlorine, antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, silver, and thallium in each feedstream (hazardous waste, other fuels, industrial furnace feedstocks);

2. The estimated partitioning factor to the combustion gas for the materials identified in subsection (b)(2)(B)1. of this section and the basis for the estimate and an estimate of the partitioning to HCl and Cl_2 of total chloride and chlorine in feed materials. To estimate the partitioning factor, the owner or operator shall use either best engineering judgement or the procedures specified in appendix IX of this chapter.

3. For industrial furnaces that recycle collected particulate matter (PM) back into the furnace and that will certify compliance with the metals emissions standards under subsection (c)(3)(B)1., the estimated enrichment factor for each metal. To estimate the enrichment factor, the owner or operator shall use either best engineering judgement or the procedures specified in "Alternative Methodology for Implementing Metals Controls" in appendix IX of this chapter.

4. If best engineering judgement is used to estimate partitioning factors or enrichment factors under subsections (b)(2)(B)2. or (b)(2)(B)3. respectively, the basis for the judgement. When best engineering judgement is used to develop or evaluate data or information and make determinations under this section, the determinations shall be made by a qualified, registered professional engineer and a certification of his/her determinations in accordance with section 66270.11(d) of chapter 20 of this division shall be provided in certification of precompliance.

(C) For facilities complying with the Tier I or Adjusted Tier I feed rate screening limits for metals or total chlorine and chloride provided by sec-

tions 66266.106 (b) or (e) and 66266.107 (b)(1) or (e), the feed rate (lb/hr) of total chloride and chlorine, antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, silver, and thallium in each feedstream (hazardous waste, other fuels, industrial furnace feedstocks).

(D) For facilities complying with the Tier II or Tier III emission limits for metals or HCl and Cl_2 (under sections 66266.106 (c) or (d) or 66266.107(b)(2) or (c)), the estimated controlled (outlet of the air pollution control system) emissions rates of particulate matter, each metal controlled by section 66266.106, and HCl and Cl_2 and the following information to support such determinations:

1. The estimated air pollution control system (APCS) removal efficiency for particulate matter, HCl, Cl_2, antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, silver, and thallium.

2. To estimate APCS removal efficiency, the owner or operator shall use either best engineering judgement or the procedures prescribed in appendix IX of this chapter.

3. If best engineering judgement is used to estimate APCS removal efficiency, the basis for the judgement. Use of best engineering judgement shall be in comformance with provisions of subsection (b)(2)(B)4. of this section.

(E) Determination of allowable emissions rates for HCl, Cl_2, antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, silver, and thallium, and the following information to support such determinations:

1. For all facilities;

a. Physical stack height;

b. Good engineering practice stack height as defined by 40 CFR 51.100(ii);

c. Maximum flue gas flow rate;

d. Maximum flue gas temperature;

e. Attach a US Geological Service topographic map (or equivalent) showing the facility location and surrounding land within 5 km of the facility;

f. Identify terrain type: complex or noncomplex; and

g. Identify land use: urban or rural.

2. For owners and operators using Tier III site specific dispersion modeling to determine allowable levels under section 66266.106(d) or section 66266.107(c), or adjusted Tier I feed rate screening limits under sections 66266.106(e) or 66266.107(e):

a. Dispersion model and version used;

b. Source of meteorological data;

c. The dilution factor in micrograms per cubic meter per gram per second of emissions for the maximum annual average off–site (unless on–site is required) ground level concentration (MEI location); and

d. Indicate the MEI location on the map required under subsection (b)(2)(E)1.e.;

(F) For facilities complying with Tier II or III emissions rate controls for metals or HCl and Cl_2, a comparison of the estimated controlled emissions rates determined under subsection (b)(2)(D) with the allowable emission rates determined under subsection (b)(2)(E);

(G) For facilities complying with the Tier I (or adjusted Tier I) feed rate screening limits for metals or total chloride and chlorine, a comparison of actual feed rates of each metal and total chlorine and chloride determined under subsection (b)(2)(C) of this section to the Tier I allowable feed rates; and

(H) For industrial furnaces that feed hazardous waste for any purpose other than solely as an ingredient (as defined by subsection (a)(5)(B) of this section) at any location other than the product discharge end of the device, documentation of compliance with the requirements of subsections (a)(5)(A) 1., 2., and 3. of this section.

(I) For industrial furnaces that recycle collected particulate matter (PM) back into the furnace and that will certify compliance with the metals emissions standards under subsection (c)(3)(B)1. of this section:

1. The applicable particulate matter standard in lb/hr; and

2. The precompliance limit on the concentration of each metal in collected PM.

(3) Limits on operating conditions. The owner and operator shall establish limits on the following parameters consistent with the determinations made under subsection (b)(2) of this section and certify (under provisions of subsection (b)(9) of this section) to the Director that the facility will operate within the limits during interim status when there is a hazardous waste in the unit until revised certification of precompliance under subsection (b)(8) of this section or certification of compliance under subsection (c) of this section:

(A) Feed rate of total hazardous waste and (unless complying with the Tier I or adjusted Tier I metals feed rate screening limits under section 66266.106(b) or (e)) pumpable hazardous waste;

(B) Feed rate of each metal in the following feed streams:

1. Total feed streams, except that industrial furnaces that comply with the alternative metals implementation approach under subsection (b)(4) of this section shall specify limits on the concentration of each metal in collected particulate matter in lieu of feed rate limits for total feedstreams;

2. Total hazardous waste feed, unless complying with the Tier I or Adjusted Tier I metals feed rate screening limits under section 66266.106 (b) or (e); and

3. Total pumpable hazardous waste feed, unless complying with the Tier I or adjusted Tier I metals feed rate screening limits under section 66266.106 (b) or (e);

(C) Total feed rate of chlorine and chloride in total feed streams;

(D) Total feed rate of ash in total feed streams, except that the ash feed rate for cement kilns and light–weight aggregate kilns is not limited; and

(E) Maximum production rate of the device in appropriate units when producing normal product, unless complying with the Tier I or Adjusted Tier I feed rate screening limits for chlorine under section 66266.107 (b)(1) or (e) and for all metals under section 66266.106 (b) or (e), and the uncontrolled particulate emissions do not exceed the standard under section 66266.105.

(4) Operating requirements for furnaces that recycle PM. Owners and operators of furnaces that recycle collected particulate matter (PM) back into the furnace and that will certify compliance with the metals emissions controls under subsection (c)(3)(B)1. of this section shall comply with the special operating requirements provided in "Alternative Methodology for Implementing Metal Controls" in appendix IX of this chapter.

(5) Measurement of feed rates and production rate. (A) General requirements. Limits on each of the parameters specified in subsection (b)(3) of this section (except for limits on metal concentrations in collected particulate matter (PM) for industrial furnaces that recycle collected PM) shall be established and continuously monitored under either of the following methods:

1. Instantaneous limits. A limit for a parameter may be established and continuously monitored and recorded on an instantaneous basis (i.e., the value that occurs at any time) not to be exceeded at any time; or

2. Hourly rolling average limits. A limit for a parameter may be established and continuously monitored on an hourly rolling average basis defined as follows:

a. A continuous monitor is one which continuously samples the regulated parameter without interruption, and evaluates the detector response at least once each 15 seconds, and computes and records the average value at least every 60 seconds.

b. An hourly rolling average is the arithmetic mean of the 60 most recent 1–minute average values recorded by the continuous monitoring system.

(B) Rolling average limits for carcinogenic metals and lead. Feed rate limits for the carcinogenic metals (arsenic, beryllium, cadmium, and chromium) and lead may be established either on an hourly rolling average basis as prescribed by subsection (b)(5)(A)2. or on (up to) a 24 hour rolling average basis. If the owner or operator elects to use an averaging period from 2 to 24 hours:

1. The feed rate of each metal shall be limited at any time to ten times the feed rate that would be allowed on an hourly rolling average basis;

2. The continuous monitor shall meet the following specifications:

a. A continuous monitor is one which continuously samples the regulated parameter without interruption, and evaluates the detector response at least once each 15 seconds, and computes and records the average value at least every 60 seconds.

b. The rolling average for the selected averaging period is defined as the arithmetic mean of one block averages for the averaging period. A one hour block average is the arithmetic mean of the one minute averages recorded during the 60–minute period beginning at one minute after the beginning of preceding clock hour.

(C) Feed rate limits for metals, total chloride and chlorine, and ash. Feed rate limits for metals, total chlorine and chloride, and ash are established and monitored by knowing the concentration of the substance (i.e., metals, chloride/chlorine, and ash) in each feedstream and the flow rate of the feedstream. To monitor the feed rate of these substances, the flow rate of each feedstream shall be monitored under the continuous monitoring requirements of subsections (b)(5) (A) and (B) of this section.

(6) Public notice requirements at precompliance. On or before August 21, 1991 the owner or operator shall submit a notice with the following information for publication in a major local newspaper of general circulation and send a copy of the notice to the appropriate units of State and local government. The owner and operator shall provide to the Director with the certification of precompliance evidence of submitting the notice for publication. The notice, which shall be entitled "Notice of Certification of Precompliance with Hazardous Waste Burning Requirements of Title 22, CCR, 66266.103(b)", shall include:

(A) Name and address of the owner and operator of the facility as well as the location of the device burning hazardous waste;

(B) Date that the certification of precompliance is submitted to the Director;

(C) Brief description of the regulatory process required to comply with the interim status requirements of this section including required emissions testing to demonstrate conformance with emissions standards for organic compounds, particulate matter, metals, and HCl and Cl_2;

(D) Type and quantities of hazardous waste burned including, but not limited to, source, whether solids or liquids, as well as an appropriate description of the waste;

(E) Type of device(s) in which the hazardous waste is burned including a physical description and maximum production rate of each device;

(F) Types and quantities of other fuels and industrial furnace feedstocks fed to each unit;

(G) Brief description of the basis for this certification of precompliance as specified in subsection (b)(2) of this section;

(H) Locations where the record for the facility can be viewed and copied by interested parties. These records and locations shall at a minimum include:

1. The administrative record kept by the Department office where the supporting documentation was submitted or another location designated by the Director; and

2. The BIF correspondence file kept at the facility site where the device is located. The correspondence file shall include all correspondence between the facility and the Department, other state and local regulatory officials, including copies of all certifications and notifications, such as precompliance certification, precompliance public notice, notice of compliance testing, compliance test report, compliance certification, time extension requests and approvals or denials, enforcement notifications of violations, and copies of US EPA and State site visit reports submitted to the owner or operator.

(I) Notification of the establishment of a facility mailing list whereby interested parties shall notify the Department that they wish to be placed on the mailing list to receive future information and notices about this facility; and

(J) Location (mailing address) of the applicable Department's Office, where further information can be obtained on state regulation of hazardous waste burning.

(7) Monitoring other operating parameters. When the monitoring systems for the operating parameters listed in subsections (c)(1)(E through M) of this section are installed and operating in conformance with vendor specifications or (for CO, HC, and oxygen) specifications provided by appendix IX of this chapter, as appropriate, the parameters shall be continuously monitored and records shall be maintained in the operating record.

(8) Revised certification of precompliance. The owner or operator may revise at any time the information and operating conditions documented under subsections (b)(2) and (b)(3) of this section in the certification of precompliance by submitting a revised certification of precompliance under procedures provided by those subsections.

(A) The public notice requirements of subsection (b)(6) of this section do not apply to recertifications.

(B) The owner and operator shall operate the facility within the limits established for the operating parameters under subsection (b)(3) of this section until a revised certification is submitted under this subsection or a certification of compliance is submitted under subsection (c) of this section.

(9) Certification of precompliance statement. The owner or operator shall include the following signed statement with the certification of precompliance submitted to the Director:

"I certify under penalty of law that this information was prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gathered and evaluated the information and supporting documentation. Copies of all emissions tests, dispersion modeling results and other information used to determine conformance with the requirements of section 66266.103(b) are available at the facility and can be obtained from the facility contact person listed above. Based on my inquiry of the person or persons who manages the facility, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

I also acknowledge that the operating limits established in this certification pursuant to section 66266.103(b) (3) and (4) are enforceable limits at which the facility can legally operate during interim status until: (1) A revised certification of precompliance is submitted, (2) a certification of compliance is submitted, or (3) a hazardous waste facility permit is issued."

(c) Certification of compliance. The owner or operator shall conduct emissions testing to document compliance with the emissions standards of sections 66266.104 (b) through (e), 66266.105, 66266.106, 66266.107, and subsection (a)(5)(A)4. of this section, under the procedures prescribed by this subsection, except under extensions of time provided by subsection (c)(7). Based on the compliance test, the owner or operator shall submit to the Director on or before August 21, 1992 a complete and accurate "certification of compliance" (under subsection (c)(4) of this section) with those emission standards establishing limits on the operating parameters specified in subsection (c)(1).

(1) Limits on operating conditions. The owner or operator shall establish limits on the following parameters based on operations during the compliance test (under procedures prescribed in subsection (c)(4)(D) of this section) or as otherwise specified and include these limits with the certification of compliance. The boiler or industrial furnace shall be operated in accordance with these operating limits and the applicable emissions standards of sections 66266.104(b) through (e), 66266.105, 66266.106, 66266.107, and 66266.103(a)(5)(A)4. at all times when there is hazardous waste in the unit.

(A) Feed rate of total hazardous waste and (unless complying with the Tier I or adjusted Tier I metals feed rate screening limits under section 66266.106(b) or (e)) and the total chlorine and chloride feed rate screening limits under 66266.107(b) or (e), pumpable hazardous waste;

(B) Feed rate of each metal in the following feedstreams:

1. Total feedstreams, except that:

a. Facilities that comply with Tier I or Adjusted Tier I metals feed rate screening limits may set their operating limits at the metals feed rate screening limits determined under section 66266.106(b) or (e); and

b. Industrial furnaces that shall comply with the alternative metals implementation approach under subsection (c)(3)(B) of this section shall specify limits on the concentration of each metal in the collected particulate matter in lieu of feed rate limits for total feedstreams;

2. Total hazardous waste feed (unless complying with the Tier I or Adjusted Tier I metals feed rate screening limits under section 66266.106(b) or (e)); and

3. Total pumpable hazardous waste feed (unless complying with the Tier I or Adjusted Tier I metals feed rate screening limits under section 66266.106(b) or (e));

(C) Total feed rate of chlorine and chloride in total feed streams, except that facilities that comply with Tier I or Adjusted Tier I feed rate screening limits may set their operating limits at the total chlorine and chloride feed rate screening limits determined under section 66266.107(b)(1) or (e);

(D) Total feed rate of ash in total feed streams, except that the ash feed rate for cement kilns and light–weight aggregate kilns is not limited;

(E) Carbon monoxide concentration, and where required, hydrocarbon concentration in stack gas. When complying with the CO controls of section 66266.104(b), the CO limit is 100 ppmv, and when complying with the HC controls of section 66266.104(c), the HC limit is 20 ppmv. When complying with the CO controls of section 66266.104(c), the CO limit is established based on the compliance test;

(F) Maximum production rate of the device in appropriate units when producing normal product, unless complying with the Tier I or Adjusted Tier I feed rate screening limits for chlorine under section 66266.107(b)(1) or (e) and for all metals under section 66266.106(b) or (e), and the uncontrolled particulate emissions do not exceed the standard under section 66266.105;

(G) Maximum combustion chamber temperature where the temperature measurement is as close to the combustion zone as possible and is upstream of any quench water injection (unless complying with the Tier I or Adjusted Tier I metals feed rate screening limits under section 66266.106(b) or (e));

(H) Maximum flue gas temperature entering a particulate matter control device (unless complying with Tier I or Adjusted Tier I metals feed rate screening limits under section 66266.106(b) or (e) and the total chlorine and chloride feed rate screening limits under section 66266.107(b) or (e));

(I) For systems using wet scrubbers, including wet ionizing scrubbers (unless complying with Tier I or Adjusted Tier I metals feed rate screening limits under section 66266.106(b)(1) or (e)):

1. Minimum liquid to flue gas ration;

2. Minimum scrubber blowdown from the system or maximum suspended solids content of scrubber water; and

3. Minimum pH level of the scrubber water;

(J) For systems using venturi scrubbers, the minimum differential gas pressure across the venturi (unless complying with the Tier I or Adjusted Tier I metals feed rate screening limits under section 66266.106(b) or (e) and the total chlorine and chloride feed rate screening limits under section 66266.107(b)(1) or (e));

(K) For systems using dry scrubbers (unless complying with the Tier I or Adjusted Tier I metals feed rate screening limits under section 66266.106(b) or (e) and the total chlorine and chloride feed rate screening limits under section 66266.107(b)(1) or (e)):

1. Minimum caustic feed rate; and

2. Maximum flue gas flow rate;

(L) For systems using wet ionizing scrubbers or electrostatic precipitators (unless complying with the Tier I or Adjusted Tier I metals feed rate screening limits under section 66266.106(b) or (e) and the total chlorine and chloride feed rate screening limits under section 66266.107(b)(1) or (e)):

1. Minimum electrical power in kilovolt amperes (kVA) to the precipitator plates; and

2. Maximum flue gas flow rate;

(M) For systems using fabric filters (baghouses), the minimum pressure drop (unless complying with the Tier I or Adjusted Tier I metal feed rate screening limits under section 66266.106(b) or (e) and the total chlorine and chloride feed rate screening limits under section 66266.107(b)(1) or (e)).

(2) Prior notice of compliance testing. At least 30 days prior to the compliance testing required by subsection (c)(3) of this section, the owner or operator shall notify the Director and submit the following information:

(A) General facility information including:

1. US EPA facility ID number;

2. Facility name, contact person, telephone number, and address;

3. Person responsible for conducting compliance test, including company name, address, and telephone number, and a statement of qualifications;

4. Planned date of the compliance test;

(B) Specific information on each device to be tested including:

1. Description of boiler or industrial furnace;

2. A scaled plot plan showing the entire facility and location of the boiler or industrial furnace;

3. A description of the air pollution control system;

4. Identification of the continuous emission monitors that are installed, including:

a. Carbon monoxide monitor;

b. Oxygen monitor;

c. Hydrocarbon monitor, specifying the minimum temperature of the system and, if the temperature is less than 150 °C, an explanation of why a heated system is not used (see subsection (c)(5) of this section) and a brief description of the sample gas conditioning system;

5. Indication of whether the stack is shared with another device that will be in operation during the compliance test;

6. Other information useful to an understanding of the system design or operation.

(C) Information on the testing planned, including a complete copy of the test protocol and Quality Assurance/Quality Control (QA/QC) plan, and a summary description for each test providing the following information at a minimum:

1. Purpose of the test (e.g., demonstrate compliance with emissions of particulate matter); and

2. Planned operating conditions, including levels for each pertinent parameter specified in subsection (c)(1) of this section.

(3) Compliance testing. (A) General. Compliance testing shall be conducted under conditions for which the owner or operator has submitted a certification of precompliance under subsection (b) of this section and under conditions established in the notification of compliance testing required by subsection (c)(2) of this section. The owner or operator may seek approval on a case–by–case basis to use compliance test data from one unit in lieu of testing a similar on–site unit. To support the request, the owner or operator shall provide a comparison of the hazardous waste burned and other feedstreams, and the design, operation, and maintenance of both the tested unit and the similar unit. The Director shall provide a written approval to use compliance test data in lieu of testing a similar unit if he finds that the hazardous wastes, the devices, and the operating conditions are sufficiently similar, and the data from the other compliance test is adequate to meet the requirements of section 66266.103(c).

(B) Special requirements for industrial furnaces that recycle collected PM. Owners and operators of industrial furnaces that recycle back into the furnace particulate matter (PM) from the air pollution control system shall comply with one of the following procedures for testing to determine compliance with the metals standards of section 66266.106(c) or (d):

1. The special testing requirements prescribed in "Alternative Method for Implementing Metals Controls" in appendix IX of this chapter; or

2. Stack emissions testing for a minimum of 6 hours each day while hazardous waste is burned during interim status. The testing shall be conducted when burning normal hazardous waste for that day at normal feed rates for that day and when the air pollution control system is operated under normal conditions. During interim status, hazardous waste analysis for metals content shall be sufficient for the owner or operator to determine if changes in metals content may affect the ability of the facility to meet the metals emissions standards established under section 66266.106(c) or (d). Under this option, operating limits (under subsection (c)(1) of this section) shall be established during compliance testing under subsection (c)(3) of this section only on the following parameters;

a. Feed rate of total hazardous waste;

b. Total feed rate of chlorine and chloride in total feed streams;

c. Total feed rate of ash in total feed streams, except that the ash feed rate for cement kilns and light-weight aggregate kilns is not limited;

d. Carbon monoxide concentration, and where required, hydrocarbon concentration in stack gas;

e. Maximum production rate of the device in appropriate units when producing normal product; or

3. Conduct compliance testing to determine compliance with the metals standards to establish limits on the operating parameters of subsection (c)(1) of this section only after the kiln system has been conditioned to enable it to reach equilibrium with respect to metals fed into the system and metals emissions. During conditioning, hazardous waste and raw materials having the same metals content as will be fed during the compliance test shall be fed at the feed rates that will be fed during the compliance test.

(C) Conduct of compliance testing. 1. If compliance with all applicable emissions standards of sections 66266.104 through 66266.107 is not demonstrated simultaneously during a set of test runs, the operating conditions of additional test runs required to demonstrate compliance with remaining emissions standards shall be as close as possible to the original operating conditions.

2. Prior to obtaining test data for purposes of demonstrating compliance with the applicable emissions standards of sections 66266.104 through 66266.107 or establishing limits on operating parameters under this section, the facility shall operate under compliance test conditions for a sufficient period to reach steady-state operations. Industrial furnaces that recycle collected particulate matter back into the furnace and that comply with subsections (c)(3)(B)1. or 2. of this section, however, need not reach steady state conditions with respect to the flow of metals in the system prior to beginning compliance testing for metals.

3. Compliance test data on the level of an operating parameter for which a limit shall be established in the certification of compliance shall be obtained during emissions sampling for the pollutant(s) (i.e., metals, PM, HCl/Cl_2, organic compounds) for which the parameter shall be established as specified by subsection (c)(1) of this section.

(4) Certification of compliance. Within 90 days of completing compliance testing, the owner or operator shall certify to the Director compliance with the emissions standards of sections 66266.104(b), (c), and (e), 66266.105, 66266.106, 66266.107, and subsection (a)(5)(A)4. of this section. The certification of compliance shall include the following information:

(A) General facility and testing information including:

1. US EPA facility ID number;

2. Facility name, contact person, telephone number, and address;

3. Person responsible for conducting compliance testing, including company name, address, and telephone number, and a statement of qualifications;

4. Date(s) of each compliance test;

5. Description of boiler or industrial furnace tested;

6. Person responsible for quality assurance/quality control (QA/QC), title, and telephone number, and statement that procedures prescribed in the QA/QC plan submitted under section 66266.103(c)(2)(C) have been followed, or a description of any changes and an explanation of why changes were necessary.

7. Description of any changes in the unit configuration prior to or during testing that would alter any of the information submitted in the prior notice of compliance testing under subsection (c)(2) of this section, and an explanation of why the changes were necessary;

8. Description of any changes in the planned test conditions prior to or during the testing that alter any of the information submitted in the prior notice of compliance testing under subsection (c)(2) of this section, and an explanation of why the changes were necessary; and

9. The complete report on results of emissions testing.

(B) Specific information on each test including:

1. Purpose(s) of test (e.g., demonstrate conformance with the emissions limits for particulate matter, metals, HCl, Cl_2, and CO)

2. Summary of test results for each run and for each test including the following information:

a. Date of run;

b. Duration of run;

c. Time-weighted average and highest hourly rolling average CO level for each run and for the test;

d. Highest hourly rolling average HC level, if HC monitoring is required for each run and for the test;

e. If dioxin and furan testing is required under section 66266.104(e), time-weighted average emissions for each run and for the test of chlorinated dioxin and furan emissions, and the predicted maximum annual average ground level concentration of the toxicity equivalency factor;

f. Time-weighted average particulate matter emissions for each run and for the test;

g. Time-weighted average HCl and Cl_2 emissions for each run and for the test;

h. Time-weighted average emissions for the metals subject to regulation under section 66266.106 for each run and for the test; and

i. QA/QC results.

(C) Comparison of the actual emissions during each test with the emissions limits prescribed by sections 66266.104 (b), (c), and (e), 66266.105, 66266.106, and 66266.107 and established for the facility in the certification of precompliance under subsection (b) of this section.

(D) Determination of operating limits based on all valid runs of the compliance test for each applicable parameter listed in subsection (c)(1) of this section using either of the following procedures:

1. Instantaneous limits. A parameter may be measured and recorded on an instantaneous basis (i.e., the value that occurs at any time) and the operating limit specified as the time-weighted average during all runs of the compliance test; or

2. Hourly rolling average basis. a. The limit for a parameter may be established and continuously monitored on an hourly rolling average basis defined as follows:

(A) A continuous monitor is one which continuously samples the regulated parameter without interruption, and evaluates the detector response at least once each 15 seconds, and computes and records the average value at least every 60 seconds.

(B) An hourly rolling average is the arithmetic mean of the 60 most recent 1-minute average values recorded by the continuous monitoring system.

b. The operating limit for the parameter shall be established based on compliance test data as the average over all test runs of the highest hourly rolling average value for each run.

3. Rolling average limits for carcinogenic metals and lead. Feed rate limits for the carcinogenic metals (i.e., arsenic, beryllium, cadmium and chromium) and lead may be established either on an hourly rolling average basis as prescribed by subsection (c)(4)(D)2. of this section or on (up to) a 24 hour rolling average basis. If the owner or operator elects to use an averaging period from 2 to 24 hours:

a. The feed rate of each metal shall be limited at any time to ten times the feed rate that would be allowed on a hourly rolling average basis;

b. The continuous monitor shall meet the following specifications:

(A) A continuous monitor is one which continuously samples the regulated parameter without interruption, and evaluates the detector response at least once each 15 seconds, and computes and records the average value at least every 60 seconds.

(B) The rolling average for the selected averaging period is defined as arithmetic mean of one hour block averages for the averaging period. A one hour block average is the arithmetic mean of the one minute averages recorded during the 60–minute period beginning at one minute after the beginning of preceding clock hour; and

c. The operating limit for the feed rate of each metal shall be established based on compliance test data as the average over all test runs of the highest hourly rolling average feed rate for each run.

4. Feed rate limits for metals, total chloride and chlorine, and ash. Feed rate limits for metals, total chlorine and chloride, and ash are established and monitored by knowing the concentration of the substance (i.e., metals, chloride/chlorine, and ash) in each feedstream and the flow rate of the feedstream. To monitor the feed rate of these substances, the flow rate of each feedstream shall be monitored under the continuous requirements of subsections (c)(4)(D) 1. through 3. of this section.

(E) Certification of compliance statement. The following statement shall accompany the certification of compliance:

"I certify under penalty of law that this information was prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gathered and evaluated the information and supporting documentation. Copies of all emissions tests, dispersion modeling results and other information used to determine conformance with the requirements of section 66266.103(c) are available at the facility and can be obtained from the facility contact person listed above. Based on my inquiry of the person or persons who manages the facility, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

I also acknowledge that the operating conditions established in this certification pursuant to section 66266.103(c)(4)(D) are enforceable limits at which the facility can legally operate during interim status until a revised certification of compliance is submitted."

(5) Special requirements for HC monitoring systems. When an owner or operator is required to comply with the hydrocarbon (HC) controls provided by section 66266.104(c) or subsection (a)(5)(A) 4. of this section, a conditioned gas monitoring system may be used in conformance with specifications provided in appendix IX of this chapter provided that the owner or operator submits a certification of compliance without using extensions of time provided by subsection (c)(7) of this section.

(6) Special operating requirements for industrial furnaces that recycle collected PM. Owners and operators of industrial furnaces that recycle back into the furnace particulate matter (PM) from the air pollution control system shall:

(A) When complying, with the requirements of subsection (c)(3)(B) 1. of this section, comply with the operating requirements prescribed in "Alternative Method to Implement the Metals Controls" in appendix IX of this chapter; and

(B) When complying with the requirements of subsection (c)(3)(B) 2. of this section, comply with the operating requirements prescribed by that subsection.

(7) Extensions of time. (A) If the owner or operator does not submit a complete certification of compliance for all of the applicable emissions standards of sections 66266.104, 66266.105, 66266.106, and 66266.107 by August 21, 1992, the owner or operator shall either:

1. Stop burning hazardous waste and begin closure activities under subsection (l) of this section for the hazardous waste portion of the facility; or

2. Limit hazardous waste burning only for purposes of compliance testing (and pretesting to prepare for compliance testing) a total period of 720 hours for the period of time beginning August 21, 1992, submit a notification to the Director by August 21, 1992 stating that the facility is operating under restricted interim status and intends to resume burning hazardous waste, and submit a complete certification of compliance by August 23, 1993; or

3. Obtain a case–by–case extension of time under subsection (c)(7)(B) of this section.

(B) The owner or operator may request a case–by–case extension of time to extend any time limit provided by subsection (c) of this section if compliance with the time limit is not practicable for reasons beyond the control of the owner or operator.

1. In granting an extension, the Director may apply conditions as the facts warrant to ensure timely compliance with the requirements of this section and that the facility operates in a manner that does not pose a hazard to human health and the environment;

2. When an owner or operator requests an extension of time to enable the facility to comply with the alternative hydrocarbon provisions of section 66266.104(f) and obtain a hazardous waste facility permit because the facility cannot meet the HC limit of section 66266.104(c) of this chapter:

a. The Director shall, in considering whether to grant the extension:

(A) Determine whether the owner and operator have submitted in a timely manner a complete part B permit application that includes information required under section 66270.22(b) of this chapter 20; and

(B) Consider whether the owner and operator have made a good faith effort to certify compliance with all other emission controls, including the controls on dioxins and furans of section 66266.104(e) and the controls on PM, metals, and HCl/Cl_2.

b. If an extension is granted, the Director shall, as a condition of the extension, require the facility to operate under flue gas concentration limits on CO and HC that, based on available information, including information in the part B permit application, are baseline CO and HC levels as defined by section 66266.104(f)(1).

(8) Revised certification of compliance. The owner or operator may submit at any time a revised certification of compliance (recertification of compliance) under the following procedures:

(A) Prior to submittal of a revised certification of compliance, hazardous waste may not be burned for more than a total of 720 hours under operating conditions that exceed those established under a current certification of compliance, and such burning may be conducted only for purposes of determining whether the facility can operate under revised conditions and continue to meet the applicable emissions standards of sections 66266.104, 66266.105, 66266.106, and 66266.107;

(B) At least 30 days prior to first burning hazardous waste under operating conditions that exceed those established under a current certifica tion of compliance, the owner or operator shall notify the Director and submit the following information:

1. US EPA facility ID number and facility name, contact person, telephone number, and address;

2. Operating conditions that the owner or operator is seeking to revise and description of the changes in facility design or operation that prompted the need to seek to revise the operating conditions;

3. A determination that when operating under the revised operating conditions, the applicable emissions standards of sections 66266.104, 66266.105, 66266.106, and 66266.107 are not likely to be exceeded. To document this determination, the owner or operator shall submit the applicable information required under subsection (b)(2) of this section; and

4. Complete emissions testing protocol for any pretesting and for a new compliance test to determine compliance with the applicable emissions standards of sections 66266.104, 66266.105, 66266.106, and 66266.107 when operating under revised operating conditions. The protocol shall include a schedule of pre–testing and compliance testing. If the owner or operator revises the scheduled date for the compliance test, he/she shall notify the Director in writing at least 30 days prior to the revised date of the compliance test;

(C) Conduct a compliance test under the revised operating conditions and the protocol submitted to the Director to determine compliance with the applicable emissions standards of sections 66266.104, 66266.105, 66266.106, and 66266.107; and

(D) Submit a revised certification of compliance under subsection (c)(4) of this section.

(d) Periodic Recertifications. The owner or operator shall conduct compliance testing and submit to the Director a recertification of compliance under provisions of subsection (c) of this section within three years from submitting the previous certification or recertification. If the owner or operator seeks to recertify compliance under new operating conditions, the owner or operator shall comply with the requirements of subsection (c)(8) of this section.

(e) Noncompliance with certification schedule. If the owner or operator does not comply with the interim status compliance schedule provided by subsections (b), (c), and (d) of this section, hazardous waste burning shall terminate on the date that the deadline is missed, closure activities shall begin under subsection (*l*) of this section, and hazardous waste burning may not resume except under an operating permit issued under section 66270.66 of chapter 20. For purposes of compliance with the closure provisions of subsection (*l*) of this section and sections 66265.112(d)(2) and 66265.113 of chapter 15 the boiler or industrial furnace has received "the known final volume of hazardous waste" on the date that the deadline is missed.

(f) Start–up and shut–down. Hazardous waste (except waste fed solely as an ingredient under the Tier I (or adjusted Tier I) feed rate screening limits for metals and chloride/chlorine) shall not be fed into the device during start–up and shut–down of the boiler or industrial furnace, unless the device is operating within the conditions of operation specified in the certification of compliance.

(g) Automatic waste feed cutoff. During the compliance test required by subsection (c)(3) of this section, and upon certification of compliance under subsection (c) of this section, a boiler or industrial furnace shall be operated with a functioning system that automatically cuts off the hazardous waste feed when the applicable operating conditions specified in subsections (c)(1)(A) and ((E)–(M)) of this section deviate from those established in the certification of compliance. In addition:

(1) To minimize emissions of organic compounds, the minimum combustion chamber temperature (or the indicator of combustion chamber temperature) that occurred during the compliance test shall be maintained while hazardous waste or hazardous waste residues remain in the combustion chamber, with the minimum temperature during the compliance test defined as either:

(A) If compliance with the combustion chamber temperature limit is based on a hourly rolling average, the minimum temperature during the compliance test is considered to be the average over all runs of the lowest hourly rolling average for each run; or

(B) If compliance with the combustion chamber temperature limit is based on an instantaneous temperature measurement, the minimum temperature during the compliance test is considered to be the time–weighted average temperature during all runs of the test; and

(2) Operating parameters limited by the certification of compliance shall continue to be monitored during the cutoff, and the hazardous waste feed shall not be restarted until the levels of those parameters comply with the limits established in the certification of compliance.

(h) Fugitive emissions. Fugitive emissions shall be controlled by:

(1) Keeping the combustion zone totally sealed against fugitive emissions; or

(2) Maintaining the combustion zone pressure lower than atmospheric pressure; or

(3) An alternate means of control that the owner or operator can demonstrate provide fugitive emissions control equivalent to maintenance of combustion zone pressure lower than atmospheric pressure. Support for such demonstration shall be included in the operating record.

(i) Changes. A boiler or industrial furnace shall cease burning hazardous waste when changes in combustion properties, or feed rates of the hazardous waste, other fuels, or industrial furnace feedstocks, or changes in the boiler or industrial furnace design or operating conditions deviate from the limits specified in the certification of compliance.

(j) Monitoring and Inspections. (1) The owner or operator shall monitor and record the following, at a minimum, while burning hazardous waste:

(A) Feed rates and composition of hazardous waste, other fuels, and industrial furnace feed stocks, and feed rates of ash, metals, and total chloride and chlorine as necessary to ensure conformance with the certification of precompliance or certification of compliance;

(B) Carbon monoxide (CO), oxygen, and if applicable, hydrocarbons (HC), on a continuous basis at a common point in the boiler or industrial furnace downstream of the combustion zone and prior to release of stack gases to the atmosphere in accordance with the operating limits specified in the certification of compliance. CO, HC, and oxygen monitors shall be installed, operated, and maintained in accordance with methods specified in appendix IX of this chapter.

(C) Upon the request of the Director, sampling and analysis of the hazardous waste (and other fuels and industrial furnace feed stocks as appropriate) and the stack gas emissions shall be conducted to verify that the operating conditions established in the certification of precompliance or certification of compliance achieve the applicable standards of sections 66266.104, 66266.105, 66266.106, and 66266.107.

(2) The boiler or industrial furnace and associated equipment (pumps, valves, pipes, fuel storage tanks, etc.) shall be subjected to thorough visual inspection when they contain hazardous waste, at least daily for leaks, spills, fugitive emissions, and signs of tampering.

(3) The automatic hazardous waste feed cutoff system and associated alarms shall be tested at least once every 7 days when hazardous waste is burned to verify operability, unless the owner or operator can demonstrate that weekly inspections will unduly restrict or upset operations and that less frequent inspections will be adequate. Support for such demonstration shall be included in the operating record. At a minimum, operational testing shall be conducted at least once every 30 days.

(4) These monitoring and inspection data shall be recorded and the records shall be placed in the operating log.

(k) Recordkeeping. The owner or operator shall keep in the operating record of the facility all information and data required by this section until closure of the boiler or industrial furnace unit.

(*l*) Closure. At closure, the owner or operator shall remove all hazardous waste residues (including, but not limited to, ash, scrubber waters, and scrubber sludges) from the boiler or industrial furnace and shall comply with sections 66265.111–66265.115 of chapter 15 of this division.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245, 58004 and 58012, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 266.103.

HISTORY

1. New section filed 7–1–96; operative 7–31–96 (Register 96, No. 27).
2. Change without regulatory effect amending subsection (g) filed 6–12–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 24).
3. Change without regulatory effect amending subsections (a)(6), (b)(6)(I), (c)(1)(M) and (c)(4) filed 7–1–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 27).
4. Change without regulatory effect amending subsections (b)(2)(B)2., (b)(3), (b)(3)(A), (b)(3)(C) and (b)(6) filed 1–13–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 2).

§ 66266.104. Standards to Control Organic Emissions.

(a) DRE standard–(1) General. Except as provided in subsection (a)(3) of this section, a boiler or industrial furnace burning hazardous waste shall achieve a destruction and removal efficiency (DRE) of 99.99% for all organic hazardous constituents in the waste feed. To demonstrate conformance with this requirement, 99.99% DRE shall be demonstrated during a trial burn for each principal organic hazardous constituent (POHC)

designated (under subsection (a)(2) of this section) in its permit for each waste feed. DRE is determined for each POHC from the following equation:

$$DRE = \left[1 - \frac{W_{out}}{W_{in}}\right] X\ 100$$

where:

W_{in} = Mass feed rate of one principal organic hazardous constituent (POHC) in the hazardous waste fired to the boiler or industrial furnace; and

W_{out} = Mass emission rate of the same POHC present in stack gas prior to release to the atmosphere.

(2) Designation of POHCs. Principal organic hazardous constituents (POHCs) are those compounds for which compliance with the DRE requirements of this section shall be demonstrated in a trial burn in conformance with procedures prescribed in section 66270.66 of chapter 20 of this division. One or more POHCs shall be designated by the Director for each waste feed to be burned. POHCs shall be designated based on the degree of difficulty of destruction of the organic constituents in the waste and on their concentrations or mass in the waste feed considering the results of waste analyses submitted with part B of the permit application. POHCs are most likely to be selected from among those compounds listed in appendix VIII of chapter 11 of this division that are also present in the normal waste feed. However, if the applicant demonstrates to the Department's satisfaction that a compound not listed in appendix VIII or not present in the normal waste feed is a suitable indicator of compliance with the DRE requirements of this section, that compound may be designated as a POHC. Such POHCs need not be toxic or organic compounds

(3) Dioxin–listed waste. A boiler or industrial furnace burning hazardous waste containing (or derived from) US EPA Hazardous Wastes Nos. F020, F021, F022, F023, F026, or F027 shall achieve a destruction and removal efficiency (DRE) of 99.9999% for each POHC designated (under subsection (a)(2) of this section) in its permit. This performance shall be demonstrated on POHCs that are more difficult to burn than tetra–, penta–, and hexachlorodibenzo–p–dioxins and dibenzofurans. DRE is determined for each POHC from the equation in subsection (a)(1) of this section. In addition, the owner or operator of the boiler or industrial furnace shall notify the Director of intent to burn US EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, or F027.

(4) Automatic waiver of DRE trial burn. Owners and operators of boilers operated under the special operating requirements provided by section 66266.110 are considered to be in compliance with the DRE standard of subsection (a)(1) of this section and are exempt from the DRE trial burn.

(5) Low risk waste. Owners and operators of boilers or industrial furnaces that burn hazardous waste in compliance with the requirements of section 66266.109(a) are considered to be in compliance with the DRE standard of subsection (a)(1) of this section and are exempt from the DRE trial burn.

(b) Carbon monoxide standard. (1) Except as provided in subsection (c) of this section, the stack gas concentration of carbon monoxide (CO) from a boiler or industrial furnace burning hazardous waste cannot exceed 100 ppmv on an hourly rolling average basis (i.e., over any 60 minute period), continuously corrected to 7 percent oxygen, dry gas basis.

(2) CO and oxygen shall be continuously monitored in conformance with "Performance Specifications for Continuous Emission Monitoring of Carbon Monoxide and Oxygen for Incinerators, Boilers, and Industrial Furnaces Burning Hazardous Waste" in appendix IX of this chapter.

(3) Compliance with the 100 ppmv CO limit shall be demonstrated during the trial burn (for new facilities or an interim status facility applying for a permit) or the compliance test (for interim status facilities). To demonstrate compliance, the highest hourly rolling average CO level during any valid run of the trial burn or compliance test shall not exceed 100 ppmv.

(c) Alternative carbon monoxide standard. (1) The stack gas concentration of carbon monoxide (CO) from a boiler or industrial furnace burning hazardous waste may exceed the 100 ppmv limit provided that stack gas concentrations of hydrocarbons (HC) do not exceed 20 ppmv, except as provided by subsection (f) of this section for certain industrial furnaces.

(2) HC limits shall be established under this section on an hourly rolling average basis (i.e., over any 60 minute period), reported as propane, and continuously corrected to 7 percent oxygen, dry gas basis.

(3) HC shall be continuously monitored in conformance with "Performance Specifications for Continuous Emission Monitoring of Hydrocarbons for Incinerators, Boilers, and Industrial Furnaces Burning Hazardous Waste" in appendix IX of this chapter. CO and oxygen shall be continuously monitored in conformance with subsection (b)(2) of this section.

(4) The alternative CO standard is established based on CO data during the trial burn (for a new facility) and the compliance test (for an interim status facility). The alternative CO standard is the average over all valid runs of the highest hourly average CO level for each run. The CO limit is implemented on an hourly rolling average basis, and continuously corrected to 7 percent oxygen, dry gas basis.

(d) Special requirements for furnaces. Owners and operators of industrial furnaces (e.g., kilns, cupolas) that feed hazardous waste for a purpose other than solely as an ingredient (see section 66266.103(a)(5)(B)) at any location other than the end where products are normally discharged and where fuels are normally fired shall comply with the hydrocarbon limits provided by subsections (c) or (f) of this section irrespective of whether stack gas CO concentrations meet the 100 ppmv limit of subsection (b) of this section.

(e) Controls for dioxins and furans. Owners and operators of boilers and industrial furnaces that are equipped with a dry particulate matter control device that operates within the temperature range of 450–750 °F, and industrial furnaces operating under an alternative hydrocarbon limit established under subsection (f) of this section shall conduct a site–specific risk assessment as follows to demonstrate that emissions of chlorinated dibenzo–p–dioxins and dibenzofurans do not result in an increased lifetime cancer risk to the hypothetical maximum exposed individual (MEI) exceeding 1 in 100,000:

(1) During the trial burn (for new facilities or an interim status facility applying for a permit) or compliance test (for interim status facilities), determine emission rates of the tetra–octa congeners of chlorinated dibenzo–p–dioxins and dibenzofurans (CDDs/CDFs) using Method 0023A, Sampling Method for Polychlorinated Dibenzo–p–Dioxins and Polychlorinated Dibenzofurans Emissions from Stationary Sources, found in U.S. EPA Publication SW–846, as incorporated by reference in Section 66260.11 of this Division.

(2) Estimate the 2,3,7,8–TCDD toxicity equivalence of the tetra–octa CDDs/CDFs congeners using "Procedures for Estimating the Toxicity Equivalence of Chlorinated Dibenzo–p–Dioxin and Dibenzofuran Congeners" in appendix IX of this chapter. Multiply the emission rates of CDD/CDF congeners with a toxicity equivalence greater than zero (see the procedure) by the calculated toxicity equivalence factor to estimate the equivalent emission rate of 2,3,7,8–TCDD;

(3) Conduct dispersion modeling using methods recommended in appendix W of part 51 of 40 CFR ("Guideline on Air Quality Models (Revised)" (1986) and its supplements), the "Hazardous Waste Combustion Air Quality Screening Procedure", provided in appendix IX of this chapter, or in Screening Procedures for Estimating the Air Quality Impact of Stationary Sources, Revised (incorporated by reference in section 66260.11) to predict the maximum annual average off–site ground level concentration of 2,3,7,8–TCDD equivalents determined under subsection (e)(2) of this section. The maximum annual average concentration shall be used when a person resides on–site; and

(4) The ratio of the predicted maximum annual average ground level concentration of 2,3,7,8–TCDD equivalents to the risk–specific dose for 2,3,7,8–TCDD provided in appendix V of this chapter ($2.2 X 10^{-7}$) shall not exceed 1.0.

(f) Monitoring CO and HC in the by–pass duct of a cement kiln. Cement kilns may comply with the carbon monoxide and hydrocarbon lim-

its provided by subsections (b), (c), and (d) of this section by monitoring in the by–pass duct provided that:

(1) Hazardous waste is fired only into the kiln and not at any location downstream from the kiln exit relative to the direction of gas flow; and

(2) The by–pass duct diverts a minimum of 10% of kiln off–gas into the duct.

(g) Use of emissions test data to demonstrate compliance and establish operating limits. Compliance with the requirements of this section shall be demonstrated simultaneously by emissions testing or during separate runs under identical operating conditions. Further, data to demonstrate compliance with the CO and HC limits of this section or to establish alternative CO or HC limits under this section shall be obtained during the time that DRE testing, and where applicable, CDD/CDF testing under subsection (e) of this section and comprehensive organic emissions testing under subsection (f) is conducted.

(h) Enforcement. For the purposes of permit enforcement, compliance with the operating requirements specified in the permit (under section 66266.102) will be regarded as compliance with this section. However, evidence that compliance with those permit conditions is insufficient to ensure compliance with the requirements of this section may be "information" justifying modification or revocation and re–issuance of a permit under section 66270.41 of chapter 20 of this division.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245, 58004 and 58012, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 266.104.

HISTORY

1. New section filed 7–1–96; operative 7–31–96 (Register 96, No. 27).
2. Amendment of subsection (e)(1) filed 10–13–98; operative 11–12–98 (Register 98, No. 42).
3. Change without regulatory effect amending subsection (e)(2) filed 7–1–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 27).

§ 66266.105. Standards to Control Particulate Matter.

(a) A boiler or industrial furnace burning hazardous waste may not emit particulate matter in excess of 180 milligrams per dry standard cubic meter (0.08 grains per dry standard cubic foot) after correction to a stack gas concentration of 7% oxygen, using procedures prescribed in 40 CFR part 60, appendix A, methods 1 through 5, and appendix IX of this chapter.

(b) An owner or operator meeting the requirements of section 66266.109(b) for the low risk waste is exempt from the particulate matter standard.

(c) For the purposes of permit enforcement, compliance with the operating requirements specified in the permit (under section 66266.102) will be regarded as compliance with this section. However, evidence that compliance with those permit conditions is insufficient to ensure compliance with the requirements of this section may be "information" justifying modification or revocation and re–issuance of a permit under section 66270.41 of chapter 20 of this division.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245, 58004 and 58012, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 266.105.

HISTORY

1. New section filed 7–1–96; operative 7–31–96 (Register 96, No. 27).

§ 66266.106. Standards to Control Metals Emissions.

(a) General. The owner or operator shall comply with the metals standards provided by subsections (b), (c), (d), (e), or (f) of this section for each metal listed in subsection (b) of this section that is present in the hazardous waste at detectable levels using analytical procedures specified in Test Methods for Evaluating Solid Waste, Physical/Chemical Methods (SW–846), incorporated by reference in section 66260.11 of chapter 10 of this division.

(b) Tier I feed rate screening limits. Feed rate screening limits for metals are specified in appendix I of this chapter as a function of terrain–adjusted effective stack height and terrain and land use in the vicinity of the facility. Criteria for facilities that are not eligible to comply with the screening limits are provided in subsection (b)(7) of this section.

(1) Noncarcinogenic metals. The feed rates of antimony, barium, lead, mercury, thallium, and silver in all feed streams, including hazardous waste, fuels, and industrial furnace feed stocks shall not exceed the screening limits specified in appendix I of this chapter.

(A) The feed rate screening limits for antimony, barium, mercury, thallium, and silver are based on either:

1. An hourly rolling average as defined in section 66266.102(e)(6)(A)2.; or

2. An instantaneous limit not to be exceeded at any time.

(B) The feed rate screening limit for lead is based on one of the following:

1. An hourly rolling average as defined in section 66266.102(e)(6)(A)2.;

2. An averaging period of 2 to 24 hours as defined in section 66266.102(e)(6)(B) with an instantaneous feed rate limit not to exceed 10 times the feed rate that would be allowed on an hourly rolling average basis; or

3. An instantaneous limit not to be exceeded at any time.

(2) Carcinogenic metals. (A) The feed rates of arsenic, cadmium, beryllium, and chromium in all feed streams, including hazardous waste, fuels, and industrial furnace feed stocks shall not exceed values derived from the screening limits specified in appendix I of this chapter. The feed rate of each of these metals is limited to a level such that the sum of the ratios of the actual feed rate to the feed rate screening limit specified in appendix I shall not exceed 1.0, as provided by the following equation:

$$\sum_{i=1}^{n} \frac{AFR_{(i)}}{FRSL_{(i)}} \leq 1.0$$

where:

n=number of carcinogenic metals

AFR=actual feed rate to the device for metal "i"

FRSL=feed rate screening limit provided by appendix I of this chapter for metal "i".

(B) The feed rate screening limits for the carcinogenic metals are based on either:

1. An hourly rolling average; or

2. An averaging period of 2 to 24 hours as defined in section 66266.102(e)(6)(B) with an instantaneous feed rate limit not to exceed 10 times the feed rate that would be allowed on an hourly rolling average basis.

(3) TESH.

(A) The terrain–adjusted effective stack height is determined according to the following equation:

TESH=Ha+H1–Tr

where:

Ha=Actual physical stack height.

H1=Plume rise as determined from appendix VI of this chapter as a function of stack flow rate and stack gas exhaust temperature.

Tr=Terrain rise within five kilometers of the stack.

(B) The stack height (Ha) may not exceed good engineering practice as specified in 40 CFR 51.100(ii).

(C) If the TESH for a particular facility is not listed in the table in the appendices, the nearest lower TESH listed in the table shall be used. If the TESH is four meters or less, a value of four meters shall be used.

(4) Terrain type. The screening limits are a function of whether the facility is located in noncomplex or complex terrain. A device located where any part of the surrounding terrain within 5 kilometers of the stack equals or exceeds the elevation of the physical stack height (Ha) is considered to be in complex terrain and the screening limits for complex terrain apply. Terrain measurements are to be made from U.S. Geological Survey 7.5–minute topographic maps of the area surrounding the facility.

(5) Land use. The screening limits are a function of whether the facility is located in an area where the land use is urban or rural. To determine whether land use in the vicinity of the facility is urban or rural, procedures provided in appendices IX or X of this chapter shall be used.

(6) Multiple stacks. Owners and operators of facilities with more than one on–site stack from a boiler, industrial furnace, incinerator, or other thermal treatment unit subject to controls of metals emissions under a hazardous waste facility permit or interim status controls shall comply with the screening limits for all such units assuming all hazardous waste is fed into the device with the worst–case stack based on dispersion characteristics. The worst–case stack is determined from the following equation as applied to each stack:

K=HVT

Where:

K = a parameter accounting for relative influence of stack height and plume rise;

H = physical stack height (meters);

V = stack gas flow rate (m^3/second); and

T = exhaust temperature (°K).

The stack with the lowest value of K is the worst–case stack.

(7) Criteria for facilities not eligible for screening limits. If any criteria below are met, the Tier I and Tier II screening limits do not apply. Owners and operators of such facilities shall comply with either the Tier III standards provided by subsection (d) of this section or with the adjusted Tier I feed rate screening limits provided by subsection (e) of this section.

(A) The device is located in a narrow valley less than one kilometer wide;

(B) The device has a stack taller than 20 meters and is located such that the terrain rises to the physical height within one kilometer of the facility;

(C) The device has a stack taller than 20 meters and is located within five kilometers of shoreline of a large body of water such as an ocean or a large lake;

(D) The physical stack height of any stack is less than 2.5 times the height of any building within five building heights or five projected building widths of the stack and the distance from the stack to the closest boundary is within five building heights or five projected building widths of the associated building; or

(E) The Director determines that standards based on site–specific dispersion modeling are required.

(8) Implementation. The feed rate of metals in each feedstream shall be monitored to ensure that the feed rate screening limits are not exceeded.

(c) Tier II emission rate screening limits. Emission rate screening limits are specified in appendix I as a function of terrain–adjusted effective stack height and terrain and land use in the vicinity of the facility. Criteria for facilities that are not eligible to comply with the screening limits are provided in subsection (b)(7) of this section.

(1) Noncarcinogenic metals. The emission rates of antimony, barium, lead, mercury, thallium, and silver shall not exceed the screening limits specified in appendix I of this chapter.

(2) Carcinogenic metals. The emission rates of arsenic, cadmium, beryllium, and chromium shall not exceed values derived from the screening limits specified in appendix I of this chapter. The emission rate of each of these metals is limited to a level such that the sum of the ratios of the actual emission rate to the emission rate screening limit specified in appendix I shall not exceed 1.0, as provided by the following equation:

$$\sum_{i=1}^{n} \frac{AFR_{(i)}}{FRSL_{(i)}} \leq 1.0$$

where:

n=number of carcinogenic metals

AER=actual emission rate for metal "i"

ERSL=emission rate screening limit provided by appendix I of this chapter for metal "i".

(3) Implementation. The emission rate limits shall be implemented by limiting feed rates of the individual metals to levels during the trial burn (for new facilities or an interim status facility applying for a permit) or the compliance test (for interim status facilities). The feed rate averaging periods are the same as provided by subsections (b)(1)(A) and (B) and (b)(2)(B) of this section. The feed rate of metals in each feedstream shall be monitored to ensure that the feed rate limits for the feedstreams specified under sections 66266.102 or 66266.103 are not exceeded.

(4) Definitions and limitations. The definitions and limitations provided by subsection (b) of this section for the following terms also apply to the Tier II emission rate screening limits provided by subsection (c) of this section: terrain–adjusted effective stack height, good engineering practice stack height, terrain type, land use, and criteria for facilities not eligible to use the screening limits.

(5) Multiple stacks.

(A) Owners and operators of facilities with more than one onsite stack from a boiler, industrial furnace, incinerator, or other thermal treatment unit subject to controls on metals emissions under a hazardous waste facility permit or interim status controls shall comply with the emissions screening limits for any such stacks assuming all hazardous waste is fed into the device with the worst–case stack based on dispersion characteristics.

(B) The worst–case stack is determined by procedures provided in subsection (b)(6) of this section.

(C) For each metal, the total emissions of the metal from those stacks shall not exceed the screening limit for the worst–case stack.

(d) Tier III and Adjusted Tier I site–specific risk assessment. The requirements of this subsection apply to facilities complying with either the Tier III or Adjusted Tier I controls except where specified otherwise.

(1) General. Conformance with the Tier III metals controls shall be demonstrated by emissions testing to determine the emission rate for each metal. In addition, conformance with either the Tier III or Adjusted Tier I metals controls shall be demonstrated by air dispersion modeling to predict the maximum annual average off–site ground level concentration for each dispersion modeling to predict the maximum annual average off–site ground level concentration for each metal, and a demonstration that acceptable ambient levels are not exceeded.

(2) Acceptable ambient levels. Appendices IV and V of this chapter list the acceptable ambient levels for purposes of this rule. Reference air concentrations (RACs) are listed for the noncarcinogenic metals and 10^{-5} risk–specific doses (RSDs) are listed for the carcinogenic metals. The RSD for a metal is the acceptable ambient level for that metal provided that only one of the four carcinogenic metals is emitted. If more than one carcinogenic metal is emitted, the acceptable ambient level for the carcinogenic metals is a fraction of the RSD as described in subsection (d)(3) of this section.

(3) Carcinogenic metals. For the carcinogenic metals, arsenic, cadmium, beryllium, and chromium, the sum of the ratios of the predicted maximum annual average off–site ground level concentrations (except that on–site concentrations shall be considered if a person resides on site) to the risk–specific dose (RSD) for all carcinogenic metals emitted shall not exceed 1.0 as determined by the following equation:

$$\sum_{i=1}^{n} \frac{\text{Predicted Ambient Concentration}_{(i)}}{\text{Risk–Specific Dose}_{(i)}} \leq 1.0$$

where: n=number of carcinogenic metals

(4) Noncarcinogenic metals. For the noncarcinogenic metals, the predicted maximum annual average off–site ground level concentration for each metal shall not exceed the reference air concentration (RAC).

(5) Multiple stacks. Owners and operators of facilities with more than one on–site stack from a boiler, industrial furnace, incinerator, or other thermal treatment unit subject to controls on metals emissions under a hazardous waste facility permit or interim status controls shall conduct emissions testing (except that facilities complying with Adjusted Tier I controls need not conduct emissions testing) and dispersion modeling to demonstrate that the aggregate emissions from all such on–site stacks do not result in an exceedance of the acceptable ambient levels.

(6) Implementation. Under Tier III, the metals controls shall be implemented by limiting feed rates of the individual metals to levels during the trial burn (for new facilities or an interim status facility applying for a permit) or the compliance test (for interim status facilities). The feed rate averaging periods are the same as provided by subsections (b)(1) (A)

and (B) and (b)(2)(B) of this section. The feed rate of metals in each feedstream shall be monitored to ensure that the feed rate limits for the feedstreams specified under sections 66266.102 or 66266.103 are not exceeded.

(e) Adjusted Tier I feed rate screening limits. The owner or operator may adjust the feed rate screening limits provided by appendix I of this chapter to account for site–specific dispersion modeling. Under this approach, the adjusted feed rate screening limit for a metal is determined by back–calculating from the acceptable ambient levels provided by appendices IV and V of this chapter using dispersion modeling to determine the maximum allowable emission rate. This emission rate becomes the adjusted Tier I feed rate screening limit. The feed rate screening limits for carcinogenic metals are implemented as prescribed in subsection (b)(2) of this section.

(f) Alternative implementation approaches. (1) The Director may approve on a case–by–case basis approaches to implement the Tier II or Tier III metals emission limits provided by subsections (c) or (d) of this section alternative to monitoring the feed rate of metals in each feedstream.

(2) The emission limits provided by subsection (d) of this section shall be determined as follows:

(A) For each noncarcinogenic metal, by back–calculating from the RAC provided in appendix IV of this chapter to determine the allowable emission rate for each metal using the dilution factor for the maximum annual average ground level concentration predicted by dispersion modeling in conformance with subsection (h) of this section; and

(B) For each carcinogenic metal by:

1. Back–calculating from the RSD provided in appendix V of this chapter to determine the allowable emission rate for each metal if that metal were the only carcinogenic metal emitted using the dilution factor for the maximum annual average ground level concentration predicted by dispersion modeling in conformance with subsection (h) of this section; and

2. If more than one carcinogenic metal is emitted, selecting an emission limit for each carcinogenic metal not to exceed the emission rate determined by subsection (f)(2)(B)1. of this section such that the sum for all carcinogenic metals of the ratios of the selected emission limit to the emission rate determined by that subsection does not exceed 1.0.

(g) Emission testing–(1) General. Emission testing for metals shall be conducted using Method 0060, Determinations of Metals in Stack Emissions, U.S. EPA Publication SW–846, third edition and Updates, as incorporated by reference in Section 66260.11 of this Division.

(2) Hexavalent chromium. Emissions of chromium are assumed to be hexavalent chromium unless the owner or operator conducts emissions testing to determine hexavalent chromium emissions using procedures prescribed in Method 0061, Determination of Hexavalent Chromium Emissions from Stationary Sources, U.S. EPA Publication SW–846, Third Edition and Updates, as incorporated by reference in Section 66260.11 of this Division.

(h) Dispersion modeling. Dispersion modeling required under this section shall be conducted according to methods recommended in appendix W of part 51 of 40 CFR ("Guideline on Air Quality Models (revised)" (1986) and its supplements), the "Hazardous Waste Combustion Air Quality Screening Procedure", provided in appendix IX of this chapter, or in Screening Procedures for Estimating Air Quality Impact of Stationary Sources, Revised (incorporated by reference in section 66260.11) to predict the maximum annual average off–site ground level concentration. However, on–site concentrations shall be considered when a person resides on–site.

(i) Enforcement. For the purposes of permit enforcement, compliance with the operating requirements specified in the permit (under section 66266.102) will be regarded as compliance with this section. However, evidence that compliance with those permit conditions is insufficient to ensure compliance with the requirements of this section may be "information" justifying modification or revocation and re–issuance of a permit under section 66270.41 of this division.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245, 58004 and 58012, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 266.106.

HISTORY

1. New section filed 7–1–96; operative 7–31–96 (Register 96, No. 27).
2. Amendment of subsections (g) and (g)(2) filed 10–13–98; operative 11–12–98 (Register 98, No. 42).
3. Change without regulatory effect amending subsections (b)(1)(A) and (b)(2) filed 7–1–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 27).

§ 66266.107. Standards to Control Hydrogen Chloride (HCl) and Chlorine Gas (Cl_2) Emissions.

(a) General. The owner or operator shall comply with the hydrogen chloride (HCl) and chlorine (Cl_2) controls provided by subsection (b), (c), or (e) of this section.

(b) Screening limits–(1) Tier I feed rate screening limits. Feed rate screening limits are specified for total chlorine in appendix II of this chapter as a function of terrain–adjusted effective stack height and terrain and land use in the vicinity of the facility. The feed rate of total chlorine and chloride, both organic and inorganic, in all feed streams, including hazardous waste, fuels, and industrial furnace feed stocks shall not exceed the levels specified.

(2) Tier II emission rate screening limits. Emission rate screening limits for HCl and Cl_2 are specified in appendix III of this chapter as a function of terrain–adjusted effective stack height and terrain and land use in the vicinity of the facility. The stack emission rates of HCl and Cl_2 shall not exceed the levels specified.

(3) Definitions and limitations. The definitions and limitations provided by section 66266.106(b) for the following terms also apply to the screening limits provided by this subsection: terrain–adjusted effective stack height, good engineering practice stack height, terrain type, land use, and criteria for facilities not eligible to use the screening limits.

(4) Multiple stacks. Owners and operators of facilities with more than one on–site stack from a boiler, industrial furnace, incinerator, or other thermal treatment unit subject to controls on HCl or Cl_2 emissions under a hazardous waste facility permit or interim status controls shall comply with the Tier I and Tier II screening limits for those stacks assuming all hazardous waste is fed into the device with the worst–case stack based on dispersion characteristics.

(A) The worst–case stack is determined by procedures provided in section 66266.106(b)(6).

(B) Under Tier I, the total feed rate of chlorine and chloride to all subject devices shall not exceed the screening limit for the worst–case stack.

(C) Under Tier II, the total emissions of HCl and Cl_2 from all subject stacks shall not exceed the screening limit for the worst–case stack.

(c) Tier III site–specific risk assessments–(1) General. Conformance with the Tier III controls shall be demonstrated by emissions testing to determine the emission rate for HCl and Cl_2 air dispersion modeling to predict the maximum annual average off–site ground level concentration for each compound, and a demonstration that acceptable ambient levels are not exceeded.

(2) Acceptable ambient levels. Appendix IV of this chapter lists the reference air concentrations (RACs) for HCl (7 micrograms per cubic meter) and Cl_2 (0.4 micrograms per cubic meter).

(3) Multiple stacks. Owners and operators of facilities with more than one on–site stack from a boiler, industrial furnace, incinerator, or other thermal treatment unit subject to controls on HCl or Cl_2 emissions under a hazardous waste facility permit or interim status controls shall conduct emissions testing and dispersion modeling to demonstrate that the aggregate emissions from all such on–site stacks do not result in an exceedance of the acceptable ambient levels for HCl and Cl_2.

(d) Averaging periods. The HCl and Cl_2 controls are implemented by limiting the feed rate of total chlorine and chloride in all feedstreams, including hazardous waste, fuels, and industrial furnace feed stocks. Under Tier I, the feed rate of total chloride and chlorine is limited to the Tier I Screening Limits. Under Tier II and Tier III, the feed rate of total chloride and chlorine is limited to the feed rates during the trial burn (for new faci-

lities or an interim status facility applying for a permit) or the compliance test (for interim status facilities). The feed rate limits are based on either:

(1) An hourly rolling average as defined in section 66266.102(e)(6); or

(2) An instantaneous basis not to be exceeded at any time.

(e) Adjusted Tier I feed rate screening limits. The owner or operator may adjust the feed rate screening limit provided by appendix II of this chapter to account for site-specific dispersion modeling. Under this approach, the adjusted feed rate screening limit is determined by back-calculating from the acceptable ambient level for Cl_2 provided by appendix IV of this chapter using dispersion modeling to determine the maximum allowable emission rate. This emission rate becomes the adjusted Tier I feed rate screening limit.

(f) Emissions testing. Emissions testing for HCl and Cl_2 shall be conducted using the procedures described in Methods 0050 or 0051, U.S. EPA Publication SW-846, Third Edition and Updates, as incorporated by reference in Section 66260.11 of this Division.

(g) Dispersion modeling. Dispersion modeling shall be conducted according to the provisions of section 66266.106(h).

(h) Enforcement. For the purposes of permit enforcement, compliance with the operating requirements specified in the permit (under section 66266.102) will be regarded as compliance with this section. However, evidence that compliance with those permit conditions is insufficient to ensure compliance with the requirements of this section may be "information" justifying modification or revocation and re-issuance of a permit under section 66270.41 of this division.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245, 58004 and 58012, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 266.107.

HISTORY

1. New section filed 7-1-96; operative 7-31-96 (Register 96, No. 27).
2. Amendment of subsection (f) filed 10-13-98; operative 11-12-98 (Register 98, No. 42).

§ 66266.108. Small Quantity On-Site Burner Exemption.

(a) Exempt quantities. Owners and operators of facilities that burn hazardous waste in an on-site boiler or industrial furnace are exempt from the requirements of this article provided that:

(1) The quantity of hazardous waste burned in a device for a calendar month does not exceed the limits provided in the following table based on the terrain-adjusted effective stack height as defined in section 66266.106(b)(3):

Exempt Quantities for Small Quantity Burner Exemption

Terrain-adjusted effective stack height of device (meters)	*Allowable hazardous waste burning rate (gallons/month)*	*Terrain-adjusted effective stack height of devices (meters)*	*Allowable hazardous waste burning rate (gallons/month)*
0 to 3.9	0	40.0 to 44.9	210
4.0 to 5.9	13	45.0 to 49.9	260
6.0 to 7.9	18	50.0 to 54.9	330
8.0 to 9.9	27	55.0 to 59.9	400
10.0 to 11.9	40	60.0 to 64.9	490
12.0 to 13.9	48	65.0 to 69.9	610
14.0 to 15.9	59	70.0 to 74.9	680
16.0 to 17.9	69	75.0 to 79.9	760
18.0 to 19.9	76	80.0 to 84.9	850
20.0 to 21.9	84	85.0 to 89.9	960
22.0 to 23.9	93	90.0 to 94.9	1,100
24.0 to 25.9	100	95.0 to 99.9	1,200
26.0 to 27.9	110	100.0 to 104.9	1,300
28.0 to 29.9	130	105.0 to 109.9	1,500
30.0 to 34.9	140	110.0 to 114.9	1,700
35.0 to 39.9	170	115.0 or greater	1,900

(2) The maximum hazardous waste firing rate does not exceed at any time 1 percent of the total fuel requirements for the device (hazardous waste plus other fuel) on a total heat input or mass input basis, whichever results in the lower mass feed rate of hazardous waste.

(3) The hazardous waste has a minimum heating value of 5,000 Btu/lb, as generated; and

(4) The hazardous waste fuel does not contain (and is not derived from) US EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, or F027.

(b) Mixing with nonhazardous fuels. If hazardous waste fuel is mixed with a nonhazardous fuel, the quantity of hazardous waste before such mixing is used to comply with subsection (a).

(c) Multiple Stacks. If an owner or operator burns hazardous waste in more than one on-site boiler or industrial furnace exempt under this section, the quantity limits provided by subsection (a)(1) of this section are implemented according to the following equation:

$$\sum_{i=1}^{n} \frac{\text{Actual Quantity Burned}_{(i)}}{\text{Allowable Quantity Burned}_{(i)}} \leq 1.0$$

where:

n means the number of stacks;

Actual Quantity Burned means the waste quantity burned per month in device "i";

Allowable Quantity Burned means the maximum allowable exempt quantity for stack "i" from the table in (a)(1) above.

(d) Notification requirements. The owner or operator of facilities qualifying for the small quantity burner exemption under this section shall provide a one-time signed, written notice to the Department indicating the following:

(1) The combustion unit is operating as a small quantity burner of hazardous waste;

(2) The owner and operator are in compliance with the requirements of this section; and

(3) The maximum quantity of hazardous waste that the facility may burn per month as provided by section 66266.108(a)(1).

(e) Recordkeeping requirements. The owner or operator shall maintain at the facility for at least three years sufficient records documenting compliance with the hazardous waste quantity, firing rate, and heating value limits of this section. At a minimum, these records shall indicate the quantity of hazardous waste and other fuel burned in each unit per calendar month, and the heating value of the hazardous waste.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245, 58004 and 58012, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 266.108.

HISTORY

1. New section filed 7–1–96; operative 7–31–96 (Register 96, No. 27).

§ 66266.109. Low Risk Waste Exemption.

(a) Waiver of DRE standard. The DRE standard of section 66266.104(a) does not apply if the boiler or industrial furnace is operated in conformance with (a)(1) of this section and the owner or operator demonstrates by procedures prescribed in (a)(2) of this section that the burning will not result in unacceptable adverse health effects.

(1) The device shall be operated as follows:

(A) A minimum of 50 percent of fuel fired to the device shall be fossil fuel, fuels derived from fossil fuel, tall oil, or, if approved by the Director on a case–by–case basis, other nonhazardous fuel with combustion characteristics comparable to fossil fuel. Such fuels are termed "primary fuel" for purposes of this section. (Tall oil is a fuel derived from vegetable and rosin fatty acids.) The 50 percent primary fuel firing rate shall be determined on a total heat or mass input basis, whichever results in the greater mass feed rate of primary fuel fired;

(B) Primary fuels and hazardous waste fuels shall have a minimum as–fired heating value of 8,000 Btu/lb;

(C) The hazardous waste is fired directly into the primary fuel flame zone of the combustion chamber; and

(D) The device operates in conformance with the carbon monoxide controls provided by section 66266.104(b)(1). Devices subject to the exemption provided by this section are not eligible for the alternative carbon monoxide controls provided by section 66266.104(c).

(2) Procedures to demonstrate that the hazardous waste burning will not pose unacceptable adverse public health effects are as follows:

(A) Identify and quantify those nonmetal compounds listed in appendix VIII of chapter 11 of this division that could reasonably be expected to be present in the hazardous waste. The constituents excluded from analysis shall be identified and the basis for their exclusion explained;

(B) Calculate reasonable, worst–case emission rates for each constituent identified in subsection (a)(2)(A) of this section by assuming the device achieves 99.9 percent destruction and removal efficiency. That is, assume that 0.1 percent of the mass weight of each constituent fed to the device is emitted.

(C) For each constituent identified in subsection (a)(2)(A) of this section, use emissions dispersion modeling to predict the maximum annual average ground level concentration of the constituent.

1. Dispersion modeling shall be conducted using methods specified in section 66266.106(h).

2. Owners and operators of facilities with more than one on–site stack from a boiler or industrial furnace that is exempt under this section shall conduct dispersion modeling of emissions from all stacks exempt under this section to predict ambient levels prescribed by this subsection.

(D) Ground level concentrations of constituents predicted under subsection (a)(2)(C) of this section shall not exceed the following levels:

1. For the noncarcinogenic compounds listed in appendix IV of this chapter, the levels established in appendix IV;

2. For the carcinogenic compounds listed in appendix V of this chapter, the sum for all constituents of the ratios of the actual ground level concentration to the level established in appendix V cannot exceed 1.0; and

3. For constituents not listed in appendix IV or V, 0.1 micrograms per cubic meter.

(b) Waiver of particulate matter standard. The particulate matter standard of section 66266.105 does not apply if:

(1) The DRE standard is waived under subsection (a) of this section; and

(2) The owner or operator complies with the Tier I or adjusted Tier I metals feed rate screening limits provided by section 66266.106 (b) or (e).

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245, 58004 and 58012, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 266.109.

HISTORY

1. New section filed 7–1–96; operative 7–31–96 (Register 96, No. 27).
2. Change without regulatory effect amending subsection (a)(2)(C) filed 6–12–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 24).

§ 66266.110. Waiver of DRE Trial Burn for Boilers.

Boilers that operate under the special requirements of this section, and that do not burn hazardous waste containing, (or derived from) US EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, or F027, are considered to be in conformance with the DRE standard of section 66266.104(a), and a trial burn to demonstrate DRE is waived. When burning hazardous waste:

(a) A minimum of 50 percent of fuel fired to the device shall be fossil fuel, fuels derived from fossil fuel, tall oil, or, if approved by the Director on a case–by–case basis, other nonhazardous fuel with combustion characteristics comparable to fossil fuel. Such fuels are termed "primary fuel" for purposes of this section. (Tall oil is a fuel derived from vegetable and rosin fatty acids.) The 50 percent primary fuel firing rate shall be determined on a total heat or mass input basis, whichever results in the greater mass feed rate of primary fuel fired:

(b) Boiler load shall not be less than 40 percent. Boiler load is the ratio at any time of the total heat input to the maximum design heat input;

(c) Primary fuels and hazardous waste fuels shall have a minimum as–fired heating value of 8,000 Btu/lb, and each material fired in a burner where hazardous waste is fired shall have a heating value of at least 8,000 Btu/lb, as–fired;

(d) The device shall operate in conformance with the carbon monoxide standard provided by section 66266.104(b)(1). Boilers subject to the waiver of the DRE trial burn provided by this section are not eligible for the alternative carbon monoxide standard provided by section 66266.104(c);

(e) The boiler shall be a watertube type boiler that does not feed fuel using a stoker or stoker type mechanism; and

(f) The hazardous waste shall be fired directly into the primary fuel flame zone of the combustion chamber with an air or steam atomization firing system, mechanical atomization system, or a rotary cup atomization system under the following conditions:

(1) Viscosity. The viscosity of the hazardous waste fuel as–fired shall not exceed 300 SSU;

(2) Particle size. When a high pressure air or steam atomizer, low pressure atomizer, or mechanical atomizer is used, 70% of the hazardous waste fuel shall pass through a 200 mesh (74 micron) screen, and when a rotary cup atomizer is used, 70% of the hazardous waste shall pass through a 100 mesh (150 micron) screen;

(3) Mechanical atomization systems. Fuel pressure within a mechanical atomization system and fuel flow rate shall be maintained within the design range taking into account the viscosity and volatility of the fuel;

(4) Rotary cup atomization systems. Fuel flow rate through a rotary cup atomization system shall be maintained within the design range taking into account the viscosity and volatility of the fuel.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245, 58004 and 58012, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 266.110.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Renumbering of former article 8 to new article 8.5, renumbering of former section 66266.110 to new section 66266.115 and new section filed 7–1–96; operative 7–31–96 (Register 96, No. 27).

§ 66266.111. Standards for Direct Transfer.

(a) Applicability. The regulations in this section apply to owners and operators of boilers and industrial furnaces subject to sections 66266.102 or 66266.103 if hazardous waste is directly transferred from a transport vehicle to a boiler or industrial furnace without the use of a storage unit.

(b) Definitions. (1) When used in this section, the following terms have the meanings given below:

Direct transfer equipment means any device (including but not limited to, such devices as piping, fittings, flanges, valves, and pumps) that is used to distribute, meter, or control the flow of hazardous waste between a container (i.e., transport vehicle) and a boiler or industrial furnace.

Container means any portable device in which hazardous waste is transported, stored, treated, or otherwise handled, and includes transport vehicles that are containers themselves (e.g., tank trucks, tanker–trailers, and rail tank cars), and containers placed on or in a transport vehicle.

(2) This section references several requirements provided in articles 9 and 10 of chapters 14 and 15. For purposes of this section, the term "tank systems" in those referenced requirements means direct transfer equipment as defined in subsection (b)(1) of this section.

(c) General operating requirements. (1) No direct transfer of a pumpable hazardous waste shall be conducted from an open–top container to a boiler or industrial furnace.

(2) Direct transfer equipment used for pumpable hazardous waste shall always be closed, except when necessary to add or remove the waste, and shall not be opened, handled, or stored in a manner that may cause any rupture or leak.

(3) The direct transfer of hazardous waste to a boiler or industrial furnace shall be conducted so that it does not:

(A) Generate extreme heat or pressure, fire, explosion, or violent reaction;

(B) Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health;

(C) Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions;

(D) Damage the structural integrity of the container or direct transfer equipment containing the waste;

(E) Adversely affect the capability of the boiler or industrial furnace to meet the standards provided by sections 66266.104 through 66266.107; or

(F) Threaten human health or the environment.

(4) Hazardous waste shall not be placed in direct transfer equipment, if it could cause the equipment or its secondary containment system to rupture, leak, corrode, or otherwise fail.

(5) The owner or operator of the facility shall appropriate controls and practices to prevent spills and overflows from the direct transfer equipment or its secondary containment systems. These include at a minimum:

(A) Spill prevention controls (e.g., check valve, dry discount couplings); and

(B) Automatic waste feed cutoff to use if a leak or spill occurs from the direct transfer equipment.

(d) Areas where direct transfer vehicles (containers) are located. Applying the definition of container under this section, owners and operators shall comply with the following requirements:

(1) The containment requirements of section 66264.175 of this division;

(2) The use and management requirements of article 9, chapter 15, except for sections 66265.170 and 66265.174, and except that in lieu of the special requirements of section 66265.176 for ignitable or reactive waste, the owner or operator may comply with the requirements for the maintenance of protective distances between the waste management area and any public ways, streets, alleys, or an adjacent property line that can be built upon as required in Tables 2–1 through 2–6 of the National Fire Protection Association's (NFPA) "Flammable and Combustible Liquids Code," (1977 or 1981), (incorporated by reference, see section 66260.11). The owner or operator shall obtain and keep on file at the facility a written certification by the local Fire Marshal that the installation meets the subject NFPA codes; and

(3) The closure requirements of section 66264.178 of this division.

(e) Direct transfer equipment. Direct transfer equipment shall meet the following requirements:

(1) Secondary containment. Owners and operators shall comply with the secondary containment requirements of section 66265.193 of this division, except for subsections 66265.193 (a), (d), (e), and (i) as follows:

(A) For all new direct transfer equipment, prior to their being put into service; and

(B) For existing direct transfer equipment within 2 years after August 21, 1991.

(2) Requirements prior to meeting secondary containment requirements. (A) For existing direct transfer equipment that does not have secondary containment, the owner or operator shall determine whether the equipment is leaking or is unfit for use. The owner or operator shall obtain and keep on file at the facility a written assessment reviewed and certified by a qualified, registered professional engineer in accordance with section 66270.11(d) of this division that attests to the equipment's integrity by August 21, 1992.

(B) This assessment shall determine whether the direct transfer equipment is adequately designed and has sufficient structural strength and compatibility with the waste(s) to be transferred to ensure that it will not collapse, rupture, or fail. At a minimum, this assessment shall consider the following:

1. Design standard(s), if available, according to which the direct transfer equipment was constructed;

2. Hazardous characteristics of the waste(s) that have been or will be handled;

3. Existing corrosion protection measures;

4. Documented age of the equipment, if available, (otherwise, an estimate of the age); and

5. Results of a leak test or other integrity examination such that the effects of temperature variations, vapor pockets, cracks, leaks, corrosion, and erosion are accounted for.

(C) If, as a result of the assessment specified above, the direct transfer equipment is found to be leaking or unfit for use, the owner or operator shall comply with the requirements of sections 66265.196 (a) and (b) of this division.

(3) Inspections and recordkeeping. (A) The owner or operator shall inspect at least once each operating hour when hazardous waste is being transferred from the transport vehicle (container) to the boiler or industrial furnace:

1. Overfill/spill control equipment (e.g., waste–feed cutoff systems, bypass systems, and drainage systems) to ensure that it is in good working order;

2. The above ground portions of the direct transfer equipment to detect corrosion, erosion, or releases of waste (e.g., wet spots, dead vegetation); and

3. Data gathered from monitoring equipment and leak–detection equipment, (e.g., pressure and temperature gauges) to ensure that the direct transfer equipment is being operated according to its design.

(B) The owner or operator shall inspect cathodic protection systems, if used, to ensure that they are functioning properly according to the schedule provided by section 66265.195(b) of this division.

(C) Records of inspections made under this subsection shall be maintained in the operating record at the facility, and available for inspection for at least 3 years from the date of the inspection.

(4) Design and installation of new ancillary equipment. Owners and operators shall comply with the requirements of section 66265.192 of this division.

(5) Response to leaks or spills. Owners and operators shall comply with the requirements of section 66265.196 of this division.

(6) Closure. Owners and operators shall comply with the requirements of section 66265.197 of this division, except for section 66265.197(c)(2) through (c)(4).

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245, 58004 and 58012, Health and Safety Code. Reference: Sections 2515912 and 25159.5, Health and Safety Code; and 40 CFR Section 266.111.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Renumbering of former section 66266.111 to new section 66266.116 and new section filed 7–1–96; operative 7–31–96 (Register 96, No. 27).

§ 66266.112. Regulation of Residues.

A residue derived from the burning or processing of hazardous waste in a boiler or industrial furnace is not excluded from the definition of hazardous waste under Health and Safety Code Section 25143.1(b) unless the device and the owner or operator meet the following requirements:

(a) The device meets the following criteria:

(1) Boilers. Boilers shall burn at least 50% coal on a total heat input or mass input basis, whichever results in the greater mass feed rate of coal;

(2) Ore or mineral furnaces. Industrial furnaces burning wastes which are exempt from regulation pursuant to Health and Safety Code, section 25143.1 shall process at least 50% by weight normal, nonhazardous raw materials;

(3) Cement kilns. Cement kilns shall process at least 50% by weight normal cement–production raw materials;

(b) The owner or operator demonstrates that the hazardous waste does not significantly affect the residue by demonstrating conformance with either of the following criteria:

(1) Comparison of waste–derived residue with normal residue. The waste–derived residue shall not contain appendix VIII, chapter 11 constituents (toxic constituents) that could reasonably be attributable to the hazardous waste at concentrations significantly higher than in residue generated without burning or processing of hazardous waste, using the following procedure. Toxic compounds that could reasonably be attributable to burning or processing the hazardous waste (constituents of concern) include toxic constituents in the hazardous waste, and the organic compounds listed in appendix VIII of this chapter that may be generated as products of incomplete combustion. Sampling and analyses shall be in conformance with procedures prescribed in Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, incorporated by reference in section 66260.11(a) of this division.

(A) Normal residue. Concentrations of toxic constituents of concern in normal residue shall be determined based on analyses of a minimum of 10 samples representing a minimum of 10 days of operation. Composite samples may be used to develop a sample for analysis provided that the compositing period does not exceed 24 hours. The upper tolerance limit (at 95% confidence with a 95% proportion of the sample distribution) of the concentration in the normal residue shall be considered the statistically–derived concentration in the normal residue. If changes in raw materials or fuels reduce the statistically–derived concentrations of the toxic constituents of concern in the normal residue, the statistically–derived concentrations shall be revised or statistically–derived concentrations of toxic constituents in normal residue shall be established for a new mode of operation with the new raw material or fuel. To determine the upper tolerance limit in the normal residue, the owner or operator shall use statistical procedures prescribed in "Statistical Methodology for Bevill Residue Determinations" in appendix IX of this chapter.

(B) Waste–derived residue. Waste–derived residue shall be sampled and analyzed as often as necessary to determine whether the residue generated during each 24–hour period has concentrations of toxic constituents that are higher than the concentrations established for the normal residue under subsection (b)(1)(A) of this section. If so, hazardous waste burning has significantly affected the residue and the residue shall not be excluded from the definition of a hazardous waste. Concentrations of toxic constituents of concern in the waste–derived residue shall be determined based on analysis of one or more samples obtained over a 24–hour period. Multiple samples may be analyzed, and multiple samples may be taken to form a composite sample for analysis provided that the sampling period does not exceed 24 hours. If in more than one sample is analyzed to characterize waste–derived residues generated over a 24–hour period, the concentration of each toxic constituent shall be the arithmetic mean of the concentrations in the samples. No results may be disregarded; or

(2) Comparison of waste–derived residue concentrations with health–based limits–(A) Nonmetal constituents. The concentration of each nonmetal toxic constituent of concern (specified in subsection (b)(1) of this section) in the waste–derived residue shall not exceed the health–based level specified in appendix VII of this chapter, or the level of detection (using analytical procedures prescribed in SW–846), whichever is higher. If a health–based limit for a constituent of concern is not listed in appendix VII of this chapter, then a limit of 0.002 micrograms per kilogram or the level of detection (using analytical procedures prescribed in SW–846), whichever is higher, shall be used. The levels specified in appendix VII of this chapter (and the default level of 0.002 micrograms per kilogram or the level of detection for constituents as identified in Note 1 of appendix VII of this chapter) are administratively stayed under the condition, for those constituents specified in subsection (b)(1) of this section, that the owner or operator complies with alternative levels defined as the land disposal restriction limits specified in section 66268.43 of this division for F039 nonwastewaters. In complying with those alternative levels, if an owner or operator is unable to detect a constituent despite documenting use of best good–faith efforts as defined by applicable Department guidance or standards, the owner or operator is deemed to be in compliance for that constituent. Until new guidance or standards are developed, the owner or operator may demonstrate such good–faith efforts by achieving a detection limit for the constituent that does not exceed an order of magnitude above the level provided by section 66268.43 for F039 nonwastewaters; and

(B) Metal constituents. The concentration of metals in an extract obtained using the Toxicity Characteristic Leaching Procedure of section 66261.24 of chapter 11 of this division shall not exceed the levels specified in appendix VII of this chapter; and

(C) Sampling and analysis. Waste–derived residue shall be sampled and analyzed as often as necessary to determine whether the residue generated during each 24–hour period has concentrations of toxic constituents that are higher than the health–based levels. Concentrations of toxic constituents of concern in the waste–derived residue shall be determined based on analysis of one or more samples obtained over a 24–hour period. Multiple samples may be analyzed and multiple samples may be taken to form a composite sample for analysis provided that the sampling period does not exceed 24 hours. If more than one sample is analyzed to characterize waste–derived residues generated over a 24–hour period, the concentration of each toxic constituent shall be the arithmetic mean of the concentrations in the samples. No results may be disregarded; and

(c) Records sufficient to document compliance with the provisions of this section shall be retained until closure of the boiler or industrial furnace unit. At a minimum, the following shall be recorded.

(1) Levels of constituents in appendix VIII, chapter 11, that are present in waste–derived residues;

(2) If the waste–derived residue is compared with normal residue under subsection (b)(1) of this section:

(A) The levels of constituents in appendix VIII, chapter 11, that are present in normal residues; and

(B) Data and information, including analyses of samples as necessary, obtained to determine if changes in raw materials or fuels would reduce the concentration of toxic constituents of concern in the normal residue.

NOTE: Authority cited: Sections 25150, 25159, 25159.5. 25245, 58004 and 58012, Health and Safety Code. Reference: Sections 25159 and 25159.5. Health and Safety Code; and 40 CFR Section 266.112.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Renumbering of former section 66266.112 to new section 66266.117 and new section filed 7–1–96; operative 7–31–96 (Register 96, No. 27).

Article 8.5. Requirements for Management of Recyclable Materials Used in Agriculture

§ 66266.115. Generator Requirements.

(a) Except as provided otherwise in subsection (c)(4) of this section, a person who generates a recyclable material which is to be used in its existing state in agriculture as defined in subsection (e) of this section, shall comply with the following.

(1) If the recyclable material is to be transferred to another person for such agricultural use, the generator shall comply with all of the requirements of this division applicable to a generator of a hazardous waste with respect to the management of such a material, and shall comply with the following additional requirements.

(A) The generator shall submit to the Department for approval the following information at least 60 days before the generator intends to transfer ownership of a recyclable material:

1. a description of the sources, general composition and physical state of the recyclable material;

2. an assessment, consistent with the sources of the recyclable material, of representative material from each of its sources showing the following:

a. its hazardous characteristics pursuant to the criteria of chapter 11 of this division;

b. the concentrations of all substances listed in sections 66261.24 (a)(2) and (a)(7) and of all other substances which, by the criteria of chapter 11 of this division, are present at hazardous waste concentrations;

c. the total concentration of boron in boron–containing compounds, and the total concentrations of nitrate, phosphate and sulfate.

(B) If the recyclable material is to be applied to soil or other growing medium, the generator shall submit to the Department for approval, at the same time as the generator submits the information required in subsection (a)(1)(A) of this section, a letter from an agronomist certified by the American Society of Agronomy stating for the recyclable material and each source thereof:

1. that application of the recyclable material to soil or other growing medium will enhance the agricultural productivity of the soil or other medium;

2. that major and minor constituents in the recyclable material will not prove to be detrimental to agricultural use of the soil or other medium;

3. that conditions and/or restrictions, if any, should be placed on the use of the recyclable material with respect to rates and frequencies of application, concentrations and compatibilities when mixed with other materials in formulated fertilizers or soil amendments or when applied in conjunction with other such materials, types and chemical compositions of soils on which it is used and kinds of crops for which it should be used or not used.

(C) If the recyclable material is to be used as food for domestic livestock or wildlife, the generator shall submit to the Department for approval at the same time as the generator submits the information required in subsection (a)(1)(A) of this section, a statement under penalty of perjury that the recyclable material meets the requirements for commercial feeds containing drugs, food additives, or harmful substances established by the California Department of Food and Agriculture in articles 2 (commencing with section 2676) and 9 (commencing with section 2733) of group 2 of subchapter 2 of chapter 4 of title 3 of the California Code of Regulations.

(2) If the generator intends to utilize the recyclable material for such agricultural use without transferring ownership of the material to another person, the generator shall submit to the Department for approval the information required in subsections (a)(1)(A) and (a)(1)(B) or (a)(1)(C) of this section at least 60 days before the intended use of the recyclable material.

(3) After receiving approval from the Department pursuant to subsection (c) of this section, the generator described in subsections (a)(1)(B) or (a)(1)(C) of this section shall transfer ownership of the recyclable material to another person only after the generator has received written confirmation that the recipient has received a copy of the information provided to the Department under subsection (a)(1) of this section and a copy of the Department's letter of approval obtained pursuant to subsection (c) of this section.

(b) A person who generates a recyclable material which is to be processed prior to use in agriculture, shall comply with all of the applicable requirements of this division (other than the requirements of subsection (a) of this section, unless the processed product is hazardous under chapter 11 of this division and the processor is not licensed by the California Department of Food and Agriculture) applicable to a generator of a hazardous waste with respect to the management of such a material.

(c) Upon receipt of the information required under subsection (a)(1)(A) and either (a)(1)(B) or (a)(1)(C) of this section, the Department shall determine whether the application of the recyclable material or its processed product (if the product is hazardous under chapter 11 of this division and the processor is not licensed by the California Department of Food and Agriculture) to land or its use as a food for animals would cause a potential hazard to health, safety or the environment. The Department shall act on the information submitted pursuant to subsection (a)(1)(A) and either (a)(1)(B) or (a)(1)(C) of this section as provided in section 66260.210(d).

(1) If the Department determines that the application of the recyclable material to land or its use as a food for animals would pose no such hazard, the Department shall send to the generator or processor a letter of approval to use the material in agriculture.

(2) The Department's approval shall be effective until the earliest of the following dates:

(A) an expiration date specified in the Department's letter of approval;

(B) the date that any of the information submitted to the Department by the generator or the processor pursuant to subsection (a)(1) of this section or section 66266.117(b)(1), respectively, changes significantly;

(C) the date five years after the date of the Department's letter of approval; or

(D) the date that the Department suspends or revokes the letter of approval for cause.

(3) If the Department determines that the application of the recyclable material to land or its use as a food for animals would pose such a hazard, the Department shall send to the generator or processor written denial of approval to use the material in agriculture and the reason for that denial.

(4) The Department shall deny the use of any of the following materials in agriculture without prior processing to eliminate the constituents or characteristics that qualify the material as one of the following:

(A) a material which is an extremely hazardous waste under chapter 11 of this division;

(B) a material which is a restricted hazardous waste under chapter 18 of this division;

(C) a material which is a RCRA hazardous waste.

(d) No person shall use a recyclable material in agriculture or transfer such a material to another person for use in agriculture, without obtaining a letter of approval from the Department pursuant to subsection (c) of this section prior to such use or transfer, unless the material is to be transferred to the operator of a facility where it will be processed for such agricultural use pursuant to a valid license issued by the California Department of Food and Agriculture.

(e) As used in this chapter, "use in agriculture" means that a recyclable material (either in its existing state or in processed products) is applied to the land as a fertilizer, soil amendment, agricultural mineral, or an auxiliary soil and plant substance, or is used to produce a food for domestic livestock or wildlife.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25170, 58004 and 58012, Health and Safety Code. Reference: Sections 25143.2(a), 25154, 25155, 25159.5 and 25170, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Renumbering of former article 8 to new article 8.5, renumbering of former section 66266.110 to new section 66266.115, and amendment of subsection (c)(2)(B) and NOTE filed 7–1–96; operative 7–31–96 (Register 96, No. 27).
3. Amendment of subsections (a)(1) and (b) and NOTE filed 9–20–96; operative 10–20–96 (Register 96, No. 38).

§ 66266.116. Transporter Requirements.

(a) A person who transports a recyclable material to a facility where the material is to be used in its existing state or processed for use, in agriculture, shall comply with all of the requirements of this division applicable to a transporter of a hazardous waste with respect to the management of such a material.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 58004 and 58012, Health and Safety Code. Reference: Sections 25159.5, 25160, 25163 and 25170, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Renumbering of former section 66266.111 to new section 66266.116 and amendment of NOTE filed 7–1–96; operative 7–31–96 (Register 96, No. 27).

§ 66266.117. Operator Requirements.

(a) A person who operates a facility which meets either of the criteria in subsection (a)(1) or (a)(2) of this section shall comply with the requirements in subsection (b) of this section.

(1) At the facility, a recyclable material is to be used in its existing state in agriculture.

(2) At the facility, a product processed from a recyclable material at a facility which is not licensed by the California Department of Food and Agriculture is to be used in agriculture and the processed product is hazardous under chapter 11 of this division.

(b) A person who operates a facility described in subsection (a) of this section shall comply with the following:

(1) all of the requirements of this division applicable to an operator of a hazardous waste facility with respect to the management of such a material;

(2) the additional requirements listed below.

(A) An operator shall use a recyclable material in agriculture only after receipt of the documents required under section 66266.115(a)(3).

(B) An operator shall use a recyclable material in agriculture only in compliance with the information in the documents provided pursuant to section 66266.115(a)(3).

(c) A person who operates a facility where a recyclable material used in agriculture is to be processed for such use, shall comply with all of the requirements of this division applicable to the operator of a hazardous waste facility with respect to the handling and management of such a material and shall comply with the additional requirements listed below.

(1) If the facility is not licensed by the California Department of Food and Agriculture and the product processed from the recyclable material is hazardous under chapter 11 of this division, the operator shall comply with the requirements of this division as if the operator were the generator of a hazardous waste under section 66266.115(a)(1).

(2) If the facility is licensed by the California Department of Food and Agriculture and the product processed from the recyclable material is hazardous under chapter 11 of this division, the operator shall be exempt from the requirements of this division as they pertain to a generator of a hazardous waste under section 66266.115(a)(1).

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 58004 and 58012, Health and Safety Code. Reference: Sections 14551 and 15051, Food and Agricultural Code; Sections 25159.5, 25170 and 25201, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Renumbering of former section 66266.112 to new section 66266.117 and amendment of subsections (b)(3)(A)–(B) and (c)(1)–(2) and NOTE filed 7–1–96; operative 7–31–96 (Register 96, No. 27).
3. Amendment of subsection (b)(1), repealer of subsection (b)(2) and subsection renumbering, and amendment of subsection (c) filed 9–20–96; operative 10–20–96 (Register 96, No. 38).

Article 9. Requirements for Management of Waste Elemental Mercury

§ 66266.120. Requirements.

(a) A person who handles waste elemental mercury which is a non–RCRA hazardous waste shall comply with the following provisions with respect to that mercury.

(1) A person who stores in a container ten pounds or less of waste elemental mercury at the site of generation shall be exempt from the permit requirements of this division.

(2) A person who transports in a container ten pounds or less of waste elemental mercury to a resource recovery facility where mercury will be recovered from that waste shall be exempt from the requirements for registration with the Department as a hazardous waste hauler and for the use of a manifest even if the transporter is not the generator of the waste.

(3) The operator of a facility which receives waste elemental mercury for the purpose of recovering mercury from that waste shall comply with all requirements of this chapter applicable to the operator of a hazardous waste facility except that the operator may accept ten pounds or less of mercury from a hauler who is not registered with the Department as a hazardous waste hauler and that the operator does not have to complete a manifest upon receipt of such quantity of mercury.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Sections 25117.9, 25159.5, 25160, 25163, 25170 and 25201, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

Article 10. Requirements for Management of Certain Oily Wastes

§ 66266.130. Management of Used Oil Filters.

(a) Used oil filters are to be managed as hazardous waste unless the conditions of one of the following paragraphs are met:

(1) The filters are characterized as being nonhazardous using procedures identified in this division and applicable waste characterization procedures found in federal regulations or;

(2) The conditions of subsection (b) of this section are met and the filters are managed in compliance with the requirements of subsection (c) of this section or;

(3) The filters are generated by persons maintaining their own place of residence (i.e., household waste) and such filters are taken to a collection location (such as a service station, parts retailer, household waste collection location, etc.) or picked–up by a curbside collection system and transferred for purposes of recycling. The filters must be contained after their initial acceptance or collection so as to capture used oil that may separate from them. Upon reaching a location where proper drainage is practical, the filters shall be managed in accordance with subsection (c) of this section.

(b) For the purposes of subsection (c) of this section, "used oil filters" are defined as filters which contain a residue of used oil (as defined in Health and Safety Code Section 25250.1(a)) and which are exempt from regulation as a hazardous waste under the scrap metal provision found in federal law (40 CFR Section 261.6(a)(3)(iv)).

(c) In accordance with subsection (a) of this section, used oil filters that meet the conditions of subsection (b) of this section and are managed and recycled in compliance with the following requirements shall not be regulated as hazardous waste.

(1) The filters are drained of free–flowing used oil. For the purposes of this subsection, free-flowing is defined as a continuous stream of oil exiting the filter when the filter is inverted. Oil exiting drop by drop is not considered to be free–flowing. However, if the filter is equipped with a device (such as a rubber flap located just inside the filter opening) which impedes the drainage of used oil from the filter, that device shall be manipulated to allow the oil to exit the filter freely, or the filter punctured, crushed, opened, drained, or otherwise handled in a manner that will allow the used oil to exit the filter.

(2) The drained used oil filters are transported for purposes of metal reclamation to any of the following:

(A) A smelter or other scrap metal processor where they are recycled or;

(B) A storage facility or consolidation facility that subsequently transfers the filters to a facility described in paragraph (A) or (C) of this subsection or;

(C) A municipal solid waste incinerator for energy recovery, if the residual casings are subsequently transferred to a facility described in paragraph (A) of this subsection, or to a storage or consolidation facility that subsequently transfers the residual casings to a facility described in paragraph (A) of this subsection.

(3) The drained used oil filters are accumulated, stored, and transferred in a closed, rainproof container that is capable of containing any used oil that may separate from the filters placed inside. Drums of used oil filters shall be sealed during transfer so that used oil will not spill out when they are laid upon their sides. Drums shall be secured as a load to prevent movement or tipping during transfer. Containers shall be labelled as "drained used oil filters" (not as hazardous waste) and show initial date of accumulation or receipt on each container of filters.

(4) Storage of less than one ton of used oil filters shall be limited to one year. Storage of one ton or more of used oil filters is limited to 180 days.

(5) Persons generating, transporting, or receiving used oil filters shall use a bill of lading to record the transfer of used oil filters. Bills of lading must indicate generator, transporter, and receiving company names, addresses, telephone numbers, the quantity and size of used oil filter containers transferred, and the date of transfer. A copy of each bill of lading must be kept on the premises of the generator, transporter, and receiving facility where the used oil filters were handled. Copies of bills of lading shall be kept for a period of three years.

(6) Used oil which incidentally accumulates in a container used to store and/or transfer used oil filters shall not be subject to the requirements of Article 13, Chapter 6.5, Division 20, Health and Safety Code (HSC) until after the filters have been removed from the container so long as applicable requirements of this section are met. Used oil that is separated from the used oil filters during draining procedures, as required in paragraph (1) of subsection (c) of this section, shall be managed in accordance with Article 13 (HSC).

(d) A person who treats a used oil filter which has been drained of free–flowing oil in accordance with paragraph (1) of subsection (c) of this section is authorized, for the purposes of Health and Safety Code section 25201, to perform such activities if any used oil or other residue generated in the course of conducting those activities is managed in accordance with the requirements of this division.

NOTE: Authority cited: Sections 25150, 25200, 58004 and 58012, Health and Safety Code. Reference: Sections 25150, 25159.5, 25175 and 25201, Health and Safety Code.

HISTORY

1. New section filed 3–27–91 as an emergency; operative 3–29–91 (Register 91, No. 16). A Certificate of Compliance must be transmitted to OAL by 7–29–91 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of operative date and Certificate of Compliance transmittal date in HISTORY 1. (Register 91, No. 24).
3. Amendment and renumbering of former section 66828 to section 66266.130 filed 6–25–91 as an emergency; operative 7–1–91 (Register 91, No. 42). A Certificate of Compliance must be transmitted to OAL by 10–29–91 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 10–25–91 as an emergency; operative 10–25–91 (Register 92, No. 5). A Certificate of Compliance must be transmitted to OAL 2–24–92 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 10–25–91 order including amendment of section transmitted to OAL 2–18–92 and filed 3–31–92 (Register 92, No. 14).
6. Amendment of subsection (c)(2), new subsections (c)(2)(A)–(C), new subsection (d) and amendment of NOTE filed 6–22–95 as an emergency; operative 6–22–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–20–95 or emergency language will be repealed by operation of law on the following day.
7. Amendment of subsection (c)(2), new subsections (c)(2)(A)–(C), new subsection (d) and amendment of NOTE refiled 10–20–95 as an emergency; operative 10–20–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–17–96 or emergency language will be repealed by operation of law on the following day.
8. Reinstatement of section as it existed prior to emergency filed 10–20–95 by operation of Government Code section 11346.1(f) (Register 96, No. 38).
9. Amendment of subsection (c)(2), new subsections (c)(2)(A)–(C) and (d), and amendment of NOTE refiled 3–14–96 as an emergency; operative 3–14–96 (Register 96, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–12–96 or emergency language will be repealed by operation of law on the following day.
10. Amendment of subsection (c)(2), new subsections (c)(2)(A)–(C) and (d) and amendment of NOTE refiled 7–9–96 as an emergency; operative 7–9–96 (Register 96, No. 28). A Certificate of Compliance must be transmitted to OAL by 11–6–96 or emergency language will be repealed by operation of law on the following day.
11. Editorial correction adding new HISTORY 8, and renumbering HISTORIES (Register 96, No. 38).
12. Amendment of subsection (c)(2), new subsections (c)(2)(A)–(C) and (d) and amendment of NOTE refiled 11–1–96 as an emergency; operative 11–1–96 (Register 96, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–3–97 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 11–1–96 order transmitted to OAL 12–23–96 and disapproved 2–6–97 (Register 97, No. 6).
14. Amendment of subsection (c)(2), new subsections (c)(2)(A)–(C) and (d) and amendment of NOTE filed 2–7–97 as an emergency; operative 2–7–97 (Register 97, No. 6). A Certificate of Compliance must be transmitted to OAL by 6–9–97 or emergency language will be repealed by operation of law on the following day.
15. Certificate of Compliance as to 2–7–97 order transmitted to OAL 6–6–97 and disapproved 7–22–97 (Register 97, No. 30).
16. Amendment of subsection (c)(2), new subsections (c)(2)(A)–(C) and (d) and amendment of NOTE filed 7–22–97 as an emergency; operative 7–22–97 (Register 97, No. 30). A Certificate of Compliance must be transmitted to OAL by 11–19–97 or emergency language will be repealed by operation of law on the following day.
17. Certificate of Compliance as to 7–22–97 order transmitted to OAL 11–19–97 and filed 1–5–98 (Register 98, No. 2).
18. Editorial correction deleting superfluous HISTORY 10 and renumbering HISTORIES (Register 99, No. 10).

[The next page is 758.113.]

Appendix I—Tier I and Tier II Feed Rate and Emissions Screening Limits for Metals

Table I–A—Tier I and Tier II Feed Rate and Emissions Screening Limits for Noncarcinogenic Metals for Facilities in Noncomplex Terrain
(Values for urban areas)

Terrain adjusted eff. stack. ht. (m)	*Antimony (g/hr)*	*Barium (g/hr)*	*Lead (g/hr)*	*Mercury (g/hr)*	*Silver (g/hr)*	*Thallium (g/hr)*
4	6.0E+01	1.0E+04	1.8E+01	6.0E+01	6.0E+02	6.0E–01
6	6.8E+01	1.1E+04	2.0E–01	6.8E+01	6.8E+02	6.8E+01
8	7.6E+01	1.3E+04	2.3E+01	7.6E+01	7.6E+02	7.6E+01
10	8.6E+01	1.4E+04	2.6E+01	8.6E+01	8.6E+02	8.6E+01
12	9.6E+01	1.7E+04	3.0E+01	9.6E+01	9.6E+02	9.6E+01
14	1.1E+02	1.8E+04	3.4E+01	1.1E+02	1.1E+03	1.1E+02
16	1.3E+02	2.1E+04	3.6E+01	1.3E+02	1.3E+03	1.3E+02
18	1.4E+02	2.4E+04	4.3E+01	1.4E+02	1.4E+03	1.4E+02
20	1.6E+02	2.7E+04	4.6E+01	1.6E+02	1.6E+03	1.6E+02
22	1.8E+02	3.0E+04	5.4E+01	1.8E+02	1.8E+03	1.8E+02
24	2.0E+02	3.4E+04	6.0E+01	2.0E+02	2.0E+03	2.0E+02
26	2.3E+02	3.9E+04	6.8E+01	2.3E+02	2.3E+03	2.3E+02
28	2.6E+02	4.3E+04	7.8E+01	2.6E+02	2.6E+03	2.6E+02
30	3.0E+02	5.0E+04	9.0E+01	3.0E+02	3.0E+03	3.0E+02
35	4.0E+02	6.6E+04	1.1E+02	4.0E+02	4.0E+03	4.0E+02
40	4.6E+02	7.8E+04	1.4E+02	4.6E+02	4.6E+03	4.6E+02
45	6.0E+02	1.0E+05	1.8E+02	6.0E+02	6.0E+03	6.0E+02
50	7.8E+02	1.3E+05	2.3E+02	7.8E+02	7.8E+03	7.8E+02
55	9.6E+02	1.7E+05	3.0E+02	9.6E+02	9.6E+03	9.6E+02
60	1.2E+03	2.0E+05	3.6E+02	1.2E+03	1.2E+04	1.2E+03
65	1.5E+03	2.5E+05	4.3E+02	1.5E+03	1.5E+04	1.5E+03
70	1.7E+03	2.8E+05	5.0E+02	1.7E+03	1.7E+04	1.7E+03
75	1.9E+03	3.2E+05	5.8E+02	1.9E+03	1.9E+04	1.9E+03
80	2.2E+03	3.6E+05	6.4E+02	2.2E+03	2.2E+04	2.2E+03
85	2.5E+03	4.0E+05	7.6E+02	2.5E+03	2.5E+04	2.5E+03
90	2.8E+03	4.6E+05	8.2E+02	2.8E+03	2.8E+04	2.8E+03
95	3.2E+03	5.4E+05	9.6E+02	3.2E+03	3.2E+04	3.2E+03
100	3.6E+03	6.0E+05	1.1E+03	3.6E+03	3.6E+04	3.6E+03
105	4.0E+03	6.8E+05	1.2E+03	4.0E+03	4.0E+04	4.0E+03
110	4.6E+03	7.8E+05	1.4E+03	4.6E+03	4.6E+04	4.6E+03
115	5.4E+03	8.6E+05	1.6E+03	5.4E+03	5.4E+04	5.4E+03
120	6.0E+03	1.0E+06	1.8E+03	6.0E+03	6.0E+04	6.0E+03

Table I–B—Tier I and Tier II Feed Rate and Emissions Screening Limits for Noncarcinogenic Metals for Facilities in Noncomplex Terrain
(Values for rural areas)

Terrain adjusted eff. stack. ht. (m)	*Antimony (g/hr)*	*Barium (g/hr)*	*Lead (g/hr)*	*Mercury (g/hr)*	*Silver (g/hr)*	*Thallium (g/hr)*
4	3.1E+01	5.2E+03	9.4E+00	3.1E+01	3.1E+02	3.1E–01
6	3.6E+01	6.0E+03	1.1E–01	3.6E+01	3.6E+02	3.6E+01
8	4.0E+01	6.8E+03	1.2E+01	4.0E+01	4.0E+02	4.0E+01
10	4.6E+01	7.8E+03	1.4E+01	4.6E+01	4.6E+02	4.6E+01
12	5.8E+01	9.6E+03	1.7E+01	5.8E+01	5.8E+02	5.8E+01
14	6.8E+01	1.1E+04	2.1E+01	6.8E+01	6.8E+02	6.8E+01
16	8.6E+01	1.4E+04	2.6E+01	8.6E+01	8.6E+02	8.6E+01
18	1.1E+02	1.8E+04	3.2E+01	1.1E+02	1.1E+03	1.1E+02
20	1.3E+02	2.2E+04	4.0E+01	1.3E+02	1.3E+03	1.3E+02
22	1.7E+02	2.8E+04	5.0E+01	1.7E+02	1.7E+03	1.7E+02
24	2.2E+02	3.6E+04	6.4E+01	2.2E+02	2.2E+03	2.2E+02
26	2.8E+02	4.6E+04	8.2E+01	2.8E+02	2.8E+03	2.8E+02
28	3.5E+02	5.8E+04	1.0E+02	3.5E+02	3.5E+03	3.5E+02
30	4.3E+02	7.6E+04	1.3E+02	4.3E+02	4.3E+03	4.3E+02
35	7.2E+02	1.2E+05	2.1E+02	7.2E+02	7.2E+03	7.2E+02
40	1.1E+03	1.8E+05	3.2E+02	1.1E+03	1.1E+04	1.1E+03
45	1.5E+03	2.5E+05	4.6E+02	1.5E+03	1.5E+04	1.5E+03
50	2.0E+03	3.3E+05	6.0E+02	2.0E+03	2.0E+04	2.0E+03
55	2.6E+03	4.4E+05	7.8E+02	2.6E+03	2.6E+04	2.6E+03
60	3.4E+03	5.8E+05	1.0E+02	3.4E+03	3.4E+04	3.4E+03
65	4.6E+03	7.6E+05	1.4E+02	4.6E+03	4.6E+04	4.6E+03
70	5.4E+03	9.0E+05	1.6E+03	5.4E+03	5.4E+04	5.4E+03
75	6.4E+03	1.1E+06	1.9E+03	6.4E+03	6.4E+04	6.4E+03
80	7.6E+03	1.3E+06	2.3E+03	7.6E+03	7.6E+04	7.6E+03
85	9.4E+03	1.5E+06	2.8E+03	9.4E+03	9.4E+04	9.4E+03
90	1.1E+04	1.8E+06	3.3E+03	1.1E+04	1.1E+05	1.1E+04
95	1.3E+04	2.2E+06	3.9E+03	1.3E+04	1.3E+05	1.3E+04
100	1.5E+04	2.6E+06	4.6E+03	1.5E+04	1.5E+05	1.5E+04
105	1.8E+04	3.0E+06	5.4E+03	1.8E+04	1.8E+05	1.8E+04
110	2.2E+04	3.6E+06	6.6E+03	2.2E+04	2.2E+05	2.2E+04
115	2.6E+04	4.4E+06	7.8E+03	2.6E+04	2.6E+05	2.6E+04
120	3.1E+04	5.0E+06	9.2E+03	3.1E+04	3.1E+05	3.1E+04

Table I–C—Tier I and Tier II Feed Rate and Emissions Screening Limits for Noncarcinogenic Metals for Facilities in Noncomplex Terrain

Values for urban and rural areas

Terrain adjusted eff. stack. ht. (m)	*Antimony (g/hr)*	*Barium (g/hr)*	*Lead (g/hr)*	*Mercury (g/hr)*	*Silver (g/hr)*	*Thallium (g/hr)*
4	1.4E+01	2.4E+03	4.3E+00	1.4E+01	1.4E+02	1.4E–01
6	2.1E+01	3.5E+03	6.2E+00	2.1E+01	2.1E+02	2.1E+01
8	3.0E+01	5.0E+03	9.2E+00	3.0E+01	3.0E+02	3.0E+01
10	4.3E+01	7.6E+03	1.3E+01	4.3E+01	4.3E+02	4.3E+01
12	5.4E+01	9.0E+03	1.7E+01	5.4E+01	5.4E+02	5.4E+01
14	6.8E+01	1.1E+04	2.0E+01	6.8E+01	6.8E+02	6.8E+01
16	7.8E+01	1.3E+04	2.4E+01	7.8E+01	7.8E+02	7.8E+01
18	8.6E+01	1.4E+04	2.6E+01	8.6E+01	8.6E+02	8.6E+01
20	9.6E+01	1.6E+04	2.9E+01	9.6E+01	9.6E+02	9.6E+01
22	1.0E+02	1.8E+04	3.2E+01	1.0E+02	1.0E+03	1.0E+02
24	1.2E+02	1.9E+04	3.5E+01	1.2E+02	1.2E+03	1.2E+02
26	1.3E+02	2.2E+04	3.6E+01	1.3E+02	1.3E+03	1.3E+02
28	1.4E+02	2.4E+04	4.3E+01	1.4E+02	1.4E+03	1.4E+02
30	1.6E+02	2.7E+04	4.6E+01	1.6E+02	1.6E+03	1.6E+02
35	2.0E+02	3.3E+04	5.8E+01	2.0E+02	2.0E+03	2.0E+02
40	2.4E+02	4.0E+04	7.2E+01	2.4E+02	2.4E+03	2.4E+02
45	3.0E+02	5.0E+04	9.0E+01	3.0E+02	3.0E+03	3.0E+02
50	3.6E+02	6.0E+04	1.1E+02	3.6E+02	3.6E+03	3.6E+02
55	4.6E+02	7.6E+05	1.4E+02	4.6E+02	4.6E+03	4.6E+02
60	5.8E+02	9.4E+04	1.7E+02	5.8E+02	5.8E+03	5.8E+02
65	6.8E+02	1.1E+05	2.1E+02	6.8E+02	6.8E+03	6.8E+02
70	7.8E+02	1.3E+05	2.4E+02	7.8E+02	7.8E+03	7.8E+02
75	8.6E+02	1.4E+05	2.6E+02	8.6E+02	8.6E+03	8.6E+02
80	9.6E+02	1.6E+05	2.9E+02	9.6E+02	9.6E+03	9.6E+02
85	1.1E+03	1.8E+05	3.3E+02	1.1E+03	1.1E+04	1.1E+03
90	1.2E+03	2.0E+05	3.6E+02	1.2E+03	1.2E+04	1.2E+03
95	1.4E+03	2.3E+05	4.0E+02	1.4E+03	1.4E+04	1.4E+03
100	1.5E+03	2.6E+05	4.6E+02	1.5E+03	1.5E+04	1.5E+03
105	1.7E+03	2.8E+05	5.0E+02	1.7E+03	1.7E+04	1.7E+03
110	1.9E+03	3.2E+05	5.8E+02	1.9E+03	1.9E+04	1.9E+03
115	2.1E+03	3.6E+05	6.4E+02	2.1E+03	2.1E+04	2.1E+03
120	2.4E+03	4.0E+05	7.2E+02	2.4E+03	2.4E+04	2.4E+03

Table I–D—Tier I and Tier II Feed Rate and Emissions Screening Limits for Noncarcinogenic Metals for Facilities in Noncomplex Terrain

Values for use in urban areas					Values for use in rural areas			
Terrain adjusted eff. stack. ht. (m)	*Arsenic (g/hr)*	*Cadmium (g/hr)*	*Chromium (g/hr)*	*Beryllium (g/hr)*	*Arsenic (g/hr)*	*Cadmium (g/hr)*	*Chromium (g/hr)*	*Beryllium (g/hr)*
4	4.6E–01	1.1E+00	1.7E–01	8.2E–01	2.4E–01	5.8E–01	8.6E–02	4.3E–01
6	5.4E–01	1.3E+00	1.9E–01	9.4E–01	2.8E–01	6.6E–01	1.0E–01	5.0E–01
8	6.0E–01	1.4E+00	2.2E–01	1.1E+00	3.2E–01	7.6E–01	1.1E–01	5.6E–01
10	6.8E–01	1.6E+00	2.4E–01	1.2E+00	3.6E–01	8.6E–01	1.3E–01	6.4E–01
12	7.6E–01	1.8E+00	2.7E–01	1.4E+00	4.3E–01	1.1E+00	1.6E–01	7.8E–01
14	8.6E–01	2.1E+00	3.1E–01	1.5E+00	5.4E–01	1.3E+00	2.0E–01	9.6E–01
16	9.6E–01	2.3E+00	3.5E–01	1.7E+00	6.8E–01	1.6E+00	2.4E–01	1.2E+00
18	1.1E+00	2.6E+00	4.0E–01	2.0E+00	8.2E–01	2.0E+00	3.0E–01	1.5E+00
20	1.2E+00	3.0E+00	4.4E–01	2.2E+00	1.0E+00	2.5E+00	3.7E–01	1.9E+00
22	1.4E+00	3.4E+00	5.0E–01	2.5E+00	1.3E+00	3.2E+00	4.8E–01	2.4E+00
24	1.6E+00	3.9E+00	5.8E–01	2.8E+00	1.7E+00	4.0E+00	6.0E–01	3.0E+00
26	1.8E+00	4.3E+00	6.4E–01	3.2E+00	2.1E+00	5.0E+00	7.6E–01	3.9E+00
28	2.0E+00	4.8E+00	7.2E–01	3.6E+00	2.7E+00	6.4E+00	9.8E–01	5.0E+00
30	2.3E+00	5.4E+00	8.2E–01	4.0E+00	3.5E+00	8.2E+00	1.2E+00	6.2E+00
35	3.0E+00	6.8E+00	1.0E+00	5.4E+00	5.4E+00	1.3E+01	1.9E+00	9.6E+00
40	3.6E+00	9.0E+00	1.3E+00	6.8E+00	8.2E+00	2.0E+01	3.0E+00	1.5E+01
45	4.6E+00	1.1E+01	1.7E+00	8.6E+00	1.1E+01	2.8E+01	4.2E+00	2.1E+01
50	6.0E+00	1.4E+01	2.2E+00	1.1E+01	1.5E+01	3.7E+01	5.4E+00	2.8E+01
55	7.6E+00	1.8E+01	2.7E+00	1.4E+01	2.0E+01	5.0E+01	7.2E+00	3.6E+01
60	9.4E+00	2.2E+01	3.4E+00	1.7E+01	2.7E+01	6.4E+01	9.6E+00	4.8E+01
65	1.1E+01	2.8E+01	4.2E+00	2.1E+01	3.6E+01	8.6E+01	1.3E+01	6.4E+01
70	1.3E+01	3.1E+01	4.6E+00	2.4E+01	4.3E+01	1.0E+02	1.5E+01	7.6E+01
75	1.5E+01	3.6E+01	5.4E+00	2.7E+01	5.0E+01	1.2E+02	1.8E+01	9.0E+01
80	1.7E+01	4.0E+01	6.0E+00	3.0E+01	6.0E+01	1.4E+02	2.2E+01	1.1E+02
85	1.9E+01	4.6E+01	6.8E+00	3.4E+01	7.2E+01	1.7E+02	2.6E+01	1.3E+02
90	2.2E+01	5.0E+01	7.8E+00	3.9E+01	8.6E+01	2.0E+02	3.0E+01	1.5E+02
95	2.5E+01	5.8E+01	9.0E+00	4.4E+01	1.0E+02	2.4E+02	3.6E+01	1.8E+02
100	2.8E+01	6.8E+01	1.0E+01	5.0E+01	1.2E+02	2.9E+02	4.3E+01	2.2E+02
105	3.2E+01	7.6E+01	1.1E+01	5.6E+01	1.4E+02	3.4E+02	5.0E+01	2.6E+02
110	3.6E+01	8.6E+01	1.3E+01	6.4E+01	1.7E+02	4.0E+02	6.0E+01	3.0E+02
115	4.0E+01	9.6E+01	1.5E+01	7.2E+01	2.0E+02	4.8E+02	7.2E+01	3.6E+02
120	4.6E+01	1.1E+02	1.7E+01	8.2E+01	2.4E+02	5.8E+02	8.6E+01	4.3E+02

Table I–E—Tier I and Tier II Feed Rate and Emissions Screening Limits for Carcinogenic Metals for Facilities in Complex Terrain

Values for use in urban and rural areas

Terrain adjusted eff. stack. ht. (m)	*Arsenic (g/hr)*	*Cadmium (g/hr)*	*Chromium (g/hr)*	*Beryllium (g/hr)*
4	1.1E–01	2.6E–01	4.0E–02	2.0E–01
6	1.6E–01	3.9E–01	5.8E–02	2.9E–01
8	2.4E–01	5.8E–01	8.6E–02	4.3E–01
10	3.5E–01	8.2E–01	1.3E–01	6.2E–01
12	4.3E–01	1.0E+00	1.5E–01	7.6E–01
14	5.0E–01	1.3E+00	1.9E–01	9.4E–01
16	6.0E–01	1.4E+00	2.2E–01	1.1E+00
18	6.8E–01	1.6E+00	2.4E–01	1.2E+00
20	7.6E–01	1.8E+00	2.7E–01	1.3E+00
22	8.2E–01	1.9E+00	3.0E–01	1.5E+00
24	9.0E–01	2.1E+00	3.3E–01	1.6E+00
26	1.0E+00	2.4E+00	3.6E–01	1.8E+00
28	1.1E+00	2.7E+00	4.0E–01	2.0E+00
30	1.2E+00	3.0E+00	4.4E–01	2.2E+00
35	1.5E+00	3.7E+00	5.4E–01	2.7E+00
40	1.9E+00	4.6E+00	6.8E–01	3.4E+00
45	2.4E+00	5.4E+00	8.4E–01	4.2E+00
50	2.9E+00	6.8E+00	1.0E+00	5.0E+00
55	3.5E+00	8.4E+00	1.3E+00	6.4E+00
60	4.3E+00	1.0E+01	1.5E+00	7.8E+00
65	5.4E+00	1.3E+01	1.9E+00	9.6E+00
70	6.0E+00	1.4E+01	2.2E+00	1.1E+01
75	6.8E+00	1.6E+01	2.4E+00	1.2E+01
80	7.6E+00	1.8E+01	2.7E+00	1.3E+01
85	8.2E+00	2.0E+01	3.0E+00	1.5E+01
90	9.4E+00	2.3E+01	3.4E+00	1.7E+01
95	1.0E+01	2.5E+01	4.0E+00	1.9E+01
100	1.2E+01	2.8E+01	4.3E+00	2.1E+01
105	1.3E+01	3.2E+01	4.8E+00	2.4E+01
110	1.5E+01	3.5E+01	5.4E+00	2.7E+01
115	1.7E+01	4.0E+01	6.0E+00	3.0E+01
120	1.9E+01	4.4E+01	6.4E+00	3.3E+01

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245, 58004 and 58012, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR part 266, Appendix I.

HISTORY

1. New appendix filed 7–1–96; operative 7–31–96 (Register 96, No. 27).

Appendix II—Tier I Feed Rate Screening Limits for Total Chlorine

	Noncomplex Terrain		*Complex Terrain*
Terrain adjusted eff. stack. ht. (m)	*Urban (g/hr)*	*Rural (g/hr)*	*(g/hr)*
4	8.2E + 01	4.2E + 01	1.9E + 01
6	9.1E + 01	4.8E + 01	2.8E + 01
8	1.0E + 02	5.3E + 01	4.1E + 01
10	1.2E + 02	6.2E + 01	5.8E + 01
12	1.3E + 02	7.7E + 01	7.2E + 01
14	1.5E + 02	9.1E + 01	9.1E + 01
16	1.7E + 02	1.2E + 02	1.1E + 02
18	1.9E + 02	1.4E + 02	1.2E + 02
20	2.1E + 02	1.8E + 02	1.3E + 02
22	2.4E + 02	2.3E + 02	1.4E + 02
24	2.7E + 02	2.9E + 02	1.6E + 02
26	3.1E + 02	3.7E + 02	1.7E + 02
28	3.5E + 02	4.7E + 02	1.9E + 02
30	3.9E + 02	5.8E + 02	2.1E + 02
35	5.3E + 02	9.6E + 02	2.6E + 02
40	6.2E + 02	1.4E + 03	3.3E + 02
45	8.2E + 02	2.0E + 03	4.0E + 02
50	1.1E + 03	2.6E + 03	4.8E + 02
55	1.3E + 03	3.5E + 03	6.2E + 02
60	1.6E + 03	4.6E + 03	7.7E + 02
65	2.0E + 03	6.2E + 03	9.1E + 02
70	2.3E + 03	7.2E + 03	1.1E + 03
75	2.5E + 03	8.6E + 03	1.2E + 03
80	2.9E + 03	1.0E + 04	1.3E + 03
85	3.3E + 03	1.2E + 04	1.4E + 03
90	3.7E + 03	1.4E + 04	1.6E + 03
95	4.2E + 03	1.7E + 04	1.8E + 03
100	4.8E + 03	2.1E + 04	2.0E + 03
105	5.3E + 03	2.4E + 04	2.3E + 03
110	6.2E + 03	2.9E + 04	2.5E + 03
115	7.2E + 03	3.5E + 04	2.8E + 03
120	8.2E + 03	4.1E + 04	3.2E + 03

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245, 58004 and 58012, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR part 266, Appendix II.

HISTORY

1. New appendix filed 7–1–96; operative 7–31–96 (Register 96, No. 27).

Appendix III—Tier II Emission Rate Screening Limits for Free Chlorine and Hydrogen Chloride

Terrain-adjusted effective stack height (m)	Noncomplex terrain				Complex terrain	
	Values for urban areas		Values for rural areas		Values for use in urban and rural areas	
	Cl_2 (g/hr)	HCl (g/hr)	Cl_2 (g/hr)	HCl (g/hr)	Cl_2 (g/hr)	HCl (g/hr)
4	8.2E+01	1.4E+03	4.2E+01	7.3E+02	1.9E+01	3.3E+02
6	9.1E+01	1.6E+03	4.8E+01	8.3E+02	2.8E+01	4.9E+02
8	1.0E+02	1.8E+03	5.3E+01	9.2E+02	4.1E+01	7.1E+02
10	1.2E+02	2.0E+03	6.2E+01	1.1E+03	5.8E+01	1.0E+03
12	1.3E+02	2.3E+03	7.7E+01	1.3E+03	7.2E+01	1.3E+03
14	1.5E+02	2.6E+03	9.1E+01	1.6E+03	9.1E+01	1.6E+03
16	1.7E+02	2.9E+03	1.2E+02	2.0E+03	1.1E+02	1.8E+03
18	1.9E+02	3.3E+03	1.4E+02	2.5E+03	1.2E+02	2.0E+03
20	2.1E+02	3.7E+03	1.8E+02	3.1E+03	1.3E+02	2.3E+03
22	2.4E+02	4.2E+03	2.3E+02	3.9E+03	1.4E+02	2.4E+03
24	2.7E+02	4.8E+03	2.9E+02	5.0E+03	1.6E+02	2.8E+03
26	3.1E+02	5.4E+03	3.7E+02	6.5E+03	1.7E+02	3.0E+03
28	3.5E+02	6.0E+03	4.7E+02	8.1E+03	1.9E+02	3.4E+03
30	3.9E+02	6.9E+03	5.8E+02	1.0E+04	2.1E+02	3.7E+03
35	5.3E+02	9.2E+03	9.6E+02	1.7E+04	2.6E+02	4.6E+03
40	6.2E+02	1.1E+04	1.4E+03	2.5E+04	3.3E+02	5.7E+03
45	8.2E+02	1.4E+04	2.0E+03	3.5E+04	4.0E+02	7.0E+03
50	1.1E+03	1.8E+04	2.6E+03	4.6E+04	4.8E+02	8.4E+03
55	1.3E+03	2.3E+04	3.5E+03	6.1E+04	6.2E+02	1.1E+04
60	1.6E+03	2.9E+04	4.6E+03	8.1E+04	7.7E+02	1.3E+04
65	2.0E+03	3.4E+04	6.2E+03	1.1E+05	9.1E+02	1.6E+04
70	2.3E+03	3.9E+04	7.2E+03	1.3E+05	1.1E+03	1.8E+04
75	2.5E+03	4.5E+04	8.6E+03	1.5E+05	1.2E+03	2.0E+04
80	2.9E+03	5.0E+04	1.0E+04	1.8E+05	1.3E+03	2.3E+04
85	3.3E+03	5.8E+04	1.2E+04	2.2E+05	1.4E+03	2.5E+04
90	3.7E+03	6.6E+04	1.4E+04	2.5E+05	1.6E+03	2.9E+04
95	4.2E+03	7.4E+04	1.7E+04	3.0E+05	1.8E+03	3.2E+04
100	4.8E+03	8.4E+04	2.1E+04	3.6E+05	2.0E+03	3.5E+04
105	5.3E+03	9.2E+04	2.4E+04	4.3E+05	2.3E+03	3.9E+04
110	6.2E+03	1.1E+05	2.9E+04	5.1E+05	2.5E+03	4.5E+04
115	7.2E+03	1.3E+05	3.5E+04	6.1E+05	2.8E+03	5.0E+04
120	8.2E+03	1.4E+05	4.1E+04	7.2E+05	3.2E+03	5.6E+04

[56 FR 32691, July 17, 1991]

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245, 58004 and 58012, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR part 266, Appendix III.

HISTORY

1. New appendix filed 7–1–96; operative 7–31–96 (Register 96, No. 27).

Appendix IV—Reference Air Concentrations*

Constituent	*CAS No.*	*RAC (ug/m³)*
Acetaldehyde	75–07–0	10
Acetonitrile	75–05–8	10
Acetophenone	98–86–2	100
Acrolein	107–02–8	20
Aldicarb	116–06–3	1
Aluminum Phosphide	20859–73–8	0.3
Allyl Alcohol	107–18–6	5
Antimony	7440–36–0	0.3
Barium	7440–39–3	50
Barium Cyanide	542–62–1	50
Bromomethane	74–83–9	0.8
Calcium Cyanide	592–01–8	30
Carbon Disulfide	75–15–0	200
Chloral	75–87–6	2
Chlorine (free)		0.4
2–Chloro–1,3–butadiene	126–99–8	3
Chromium III	16065–83–1	1000
Copper Cyanide	544–92–3	5
Cresols	1319–77–3	50
Cumene	98–82–8	1
Cyanide (free)	57–12–15	20
Cyanogen	460–19–5	30
Cyanogen Bromide	506–68–3	80
Di–n–butyl Phthalate	84–74–2	100
o–Dichlorobenzene	95–50–1	10
p–Dichlorobenzene	106–46–7	10
Dichlorodifluoromethane	75–71–8	200
2,4–Dichlorophenol	120–83–2	3
Diethyl Phthalate	84–66–2	800
Dimethoate	60–51–5	0.8
2,4–Dinitrophenol	51–28–5	2
Dinoseb	88–85–7	0.9
Diphenylamine	122–39–4	20
Endosulfan	115–29–1	0.05
Endrin	72–20–8	0.3
Fluorine	7782–41–4	50
Formic Acid	64–18–6	2000
Glycidyaldehyde	765–34–4	0.3
Hexachlorocyclopentadiene	77–47–4	5
Hexachlorophene	70–30–4	0.3
Hydrocyanic Acid	74–90–3	20
Hydrogen Chloride	7647–01–1	7
Hydrogen Sulfide	7783–06–4	3
Isobutyl Alcohol	78–83–1	300
Lead	7439–92–1	0.09
Maleic Anyhdride	108–31–6	100
Mercury	7439–97–6	0.3
Methacrylonitrile	126–98–7	0.1
Methomyl	16752–77–5	20
Methoxychlor	72–43–5	50
Methyl Chlorocarbonate	79–22–1	1000
Methyl Ethyl Ketone	78–93–3	80
Methyl Parathion	298–00–0	0.3
Nickel Cyanide	557–19–7	20
Nitric Oxide	10102–43–9	100
Nitrobenzene	98–95–3	0.8
Pentachlorobenzene	608–93–5	0.8
Pentachlorophenol	87–86–5	30
Phenol	108–95–2	30
M–Phenylenediamine	108–45–2	5
Phenylmercuric Acetate	62–38–4	0.075
Phosphine	7803–51–2	0.3
Phthalic Anhydride	85–44–9	2000
Potassium Cyanide	151–50–8	50
Potassium Silver Cyanide	506–61–6	200
Pyridine	110–86–1	1
Selenious Acid	7783–60–8	3
Selenourea	630–10–4	5
Silver	7440–22–4	3
Silver Cyanide	506–64–9	100
Sodium Cyanide	143–33–9	30
Strychnine	57–24–9	0.3
1,2.4,5–Tetrachlorobenzene	95–94–3	0.3
2,3,4,6–Tetrachlorophenol	58–90–2	30
Tetraethyl Lead	78–00–2	0.0001
Tetrahydrofuran	109–99–9	10
Thallic Oxide	1314–32–5	0.3
Thallium	7440–28–0	0.5
Thallium (I) Acetate	563–68–8	0.5
Thallium (I) Carbonate	6533–73–9	0.3
Thallium (I) Chloride	7791–12–0	0.3
Thallium (I) Nitrate	10102–45–1	0.5
Thallium Selenite	12039–52–0	0.5
Thallium (I) Sulfate	7446–18–6	0.075
Thiram	137–26–8	5
Toluene	108–88–3	300
1,2,4–Trichlorobenzene	120–82–1	20
Trichloromonofluoromethane	75–69–4	300
2,4,5–Trichlorophenol	95–95–4	100
Vanadium Pentoxide	1314–62–1	20
Warfarin	81–81–2	0.3
Xylenes	1330–20–7	80
Zinc Cyanide	557–21–1	50
Zinc Phosphide	1314–84–7	0.3

FOOTNOTE: *The RAC for other appendix VIII chapter 11 constituents not listed herein or in appendix V of this chapter is 0.1 ug/m³.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245, 58004 and 58012, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR part 266, Appendix IV.

HISTORY

1. New appendix filed 7–1–96; operative 7–31–96 (Register 96, No. 27).

Appendix V—Risk Specific Doses (10^{-5})

Constituent	*CAS No.*	*Unit risk (m^3/ug)*	*RsD (ug/m^3)*
Acrylamide	79–06–1	1.3E–03	7.7E–03
Acrylonitrile	107–13–1	6.8E–05	1.5E–01
Aldrin	309–00–2	4.9E–03	2.0E–03
Aniline	62–53–3	7.4E–06	1.4E+00
Arsenic	7440–38–2	4.3E–03	2.3E–03
Benz(a)anthracene	56–55–3	8.9E–04	1.1E–02
Benxene	71–43–2	8.3E–06	1.2E+00
Benzidine	92–87–5	6.7E–02	1.5E–04
Benz(a)pyrene	50–32–8	3.3E–03	3.0E–03
Beryllium	7440–41–7	2.4E–03	4.2E–03
Bis(2–chloroethyl)ether	111–44–4	3.3E–04	3.0E–02
Bis(chloromethyl)ether	542–88–1	6.2E–02	1.6E–04
Bis(2–ethylhexyl)–phthalate	117–81–7	2.4E–07	4.2E+01
1,3–Butadiene	106–99–0	2.8E–04	3.6E–02
Cadmium	7440–43–9	1.8E–03	5.6E–03
Carbon Tetrachloride	56–23–5	1.5E–05	6.7E–01
Chlordane	57–74–9	3.7E–04	2.7E–02
Chloroform	67–66–3	2.3E–05	4.3E–01
Chloromethane	74–87–3	3.6E–06	2.8E+00
Chromium VI	7440–47–3	1.2E–02	8.3E–04
DDT	50–29–3	9.7E–05	1.0E–01
Dibenz(a,h)anthracene	53–70–3	1.4E–02	7.1E–04
1,2–Dibromo–3–chloropropane	96–12–8	6.3E–03	1.6E–03
1,2–Dibromoethane	106–93–4	2.2E–04	4.5E–02
1,1–Dichloroethane	75–34–3	2.6E–05	3.8E–01
1,2–Dichloroethane	107–06–2	2.6E–05	3.8E–01
1,1–Dichloroethylene	75–35–4	5.0E–05	2.0E–01
1,3–Dichloropropene	542–75–6	3.5E–01	2.9E–05
Dieldrin	60–57–1	4.6E–03	2.2E–03
Diethylstilbestrol	56–33–1	1.4E–01	7.1E–05
Dimethylnitrosamine	62–75–9	1.4E–02	7.1E–04
2,4–Dinitrotoluene	121–14–2	8.8E–05	1.1E–01
1,2–Diphenylhydrazine	122–66–7	2.2E–04	4.5E–02
1,4–Dioxane	123–91–1	1.4E–06	7.1E+00
Epichlorohydrin	106–89–8	1.2E–06	8.3E+00
Ethylene Oxide	75–21–8	1.0E–04	1.0E–01
Ethylene Dibromide	106–93–4	2.2E–04	4.5E–02
Formaldehyde	50–00–0	1.3E–05	7.7E–01
Heptachlor	76–44–8	1.3E–03	7.7E–03
Heptachlor Epoxide	1024–57–3	2.6E–03	3.8E–03
Hexachlorobenzene	118–74–1	4.9E–04	2.0E–02
Hexachlorobutadiene	87–68–3	2.0E–05	5.0E–01
Alpha–hexachloro–cyclohexane	319–84–6	1.8E–03	5.6E–03
Beta–hexachloro–cyclohexane	319–85–7	5.3E–04	1.9E–02
Gamma–hexachloro–cyclohexane	58–89–9	3.8E–04	2.6E–02
Hexachlorocyclohexane, Technical		5.1E–04	2.0E–02
Hexachlorodibenxo–p–dioxin(1,2 Mixture)		1.3E+0	7.7E–06
Hexachloroethane	67–72–1	4.0E–06	2.5E+00
Hydrazine	302–01–2	2.9E–03	3.4E–03
Hydrazine Sulfate	302–01–2	2.9E–03	3.4E–03
3–Methycholanthrene	56–49–5	2.7E–03	3.7E–03
Methyl Hydrazine	60–34–4	3.1E–04	3.2E–02
Methylene Chloride	75–09–2	4.1E–06	2.4E+00
4,4′–Methylene–bis–2–chloroaniline	101–14–4	4.7E–05	2.1E–01
Nickel	7440–02–0	2.4E–04	4.2E–02
Nickel Refinery Dust	7440–02–0	2.4E–04	4.2E–02
Nickel Subsulfide	12035–72–2	4.8E–04	2.1E–02
2–Nitropropane	79–46–9	2.7E–02	3.7E–04
N–Nitroso–n–butylamine	924–16–3	1.6E–03	6.3E–03
N–Nitroso–n–methylurea	684–93–5	8.6E–02	1.2E–04
N–Nitrosodiethylamine	55–18–5	4.3E–02	2.3E–04
N–Nitrosopyrrolidine	930–55–2	6.1E–04	1.6E–02
Pentachloronitrobenzene	82–68–8	7.3E–05	1.4E–01
PCBs	1336–36–3	1.2E–03	8.3E–03
Pronamide	23950–58–5	4.6E–06	2.2E+00
Reserpine	50–55–5	3.0E–03	3.3E–03
2,3,7,8–Tetrachloro–dibenzo–p–dioxin	1746–01–6	4.5E+01	2.2E–07
1,1,2,2–Tetrachloroethane	79–34–5	5.8E–05	1.7E–01
Tetrachloroethylene	127–18–4	4.8E–07	2.1E–+01
Thiourea	62–56–6	5.5E–04	1.8E–02
1,1,2–Trichloroethane	79–00–5	1.6E–05	6.3E–01
Trichloroethylene	79–01–6	1.3E–06	7.7E–+00
2,4,6–Trichlorophenol	88–06–2	5.7E–06	1.8E+00
Toxaphene	8001–35–2	3.2E–04	3.1E–02
Vinyl Chloride	75–01–4	7.1E–06	1.4E+00

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245, 58004 and 58012, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR part 266, Appendix V.

HISTORY

1. New appendix filed 7–1–96; operative 7–31–96 (Register 96, No. 27).

Appendix VI—Stack Plume Rise

[Estimated Plume Rise (in Meters) Based on Stack Exit Flow and Gas Temperature]

	Exhaust Temperature (K^o)										
Flow rate (m^3/s)	*<3 25*	*325–349*	*350–399*	*400–449*	*450–499*	*500–599*	*600–699*	*700–799*	*800–999*	*1000–1499*	*>1499*
<0.5	0	0	0	0	0	0	0	0	0	0	0
0.5–0.9	0	0	0	0	0	0	0	0	1	1	1
1.0–1.9	0	0	0	0	1	1	2	3	3	3	4
2.0–2.9	0	0	1	3	4	4	6	6	7	8	9
3.0–3.9	0	1	2	5	6	7	9	10	11	12	13
4.0–4.9	1	2	4	6	8	10	12	13	14	15	17
5.0–7.4	2	3	5	8	10	12	14	16	17	19	21
7.5–9.9	3	5	8	12	15	17	20	22	22	23	24
10.0–12.4	4	6	10	15	19	21	23	24	25	26	27
12.5–14.9	4	7	12	18	22	23	25	26	27	28	29
15.0–19.9	5	8	13	20	23	24	26	27	28	29	31
20.0–24.9	6	10	17	23	25	27	29	30	31	32	34
25.0–29.9	7	12	20	25	27	29	31	32	33	35	36
30.0–34.9	8	14	22	26	29	31	33	35	36	37	39
35.0–39.9	9	16	23	28	30	32	35	36	37	39	41
40.0–49.9	10	17	24	29	32	34	36	38	39	41	42
50.0–59.9	12	21	26	31	34	36	39	41	42	44	46
60.0–69.9	14	22	27	33	36	39	42	43	45	47	49
70.0–79.9	16	23	29	35	38	41	44	46	47	49	51
80.0–89.9	17	25	30	36	40	42	46	48	49	51	54
90.0–99.9	19	26	31	38	42	44	48	50	51	53	56
100.0–119.9	21	26	32	39	43	46	49	52	53	55	58
120.0–139.9	22	28	35	42	46	49	52	55	56	59	61
140.0–159.9	23	30	36	44	48	51	55	58	59	62	65
160.0–179.9	25	31	38	46	50	54	58	60	62	65	67
180.0–199.9	26	32	40	48	52	56	60	63	65	67	70
>199.9	26	33	41	49	54	58	62	65	67	69	73

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245, 58004 and 58012, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR part 266, Appendix VI.

HISTORY

1. New appendix filed 7–1–96; operative 7–31–96 (Register 96, No. 27).

Appendix VII—Health-Based Limits for Exclusion of Waste-Derived Residues*

Metals-TCLP Extract Concentration Limits

Constituent	*CAS No.*	*Concentration Limits (mg/L)*
Antimony	7440-36-0	1xE+00
Arsenic	7440-38-2	5xE+00
Barium	7440-39-3	1xE+02
Beryllium	7440-41-7	7xE-03
Cadmium	7440-43-9	1xE+00
Chromium	7440-47-3	5xE+00
Lead	7439-92-1	5xE+00
Mercury	7439-97-6	2xE-01
Nickel	7440-02-0	7xE+01
Selenium	7782-49-2	1xE+00
Silver	7440-22-4	5xE+00
Thallium	7440-28-0	7xE+00

Nonmetals-Residue Concentration Limits

Constituent	*CAS No.*	*Concentration Limits for residues (mg/kg)*
Acetonitrile	75-05-8	2xE-01
Acetophenone	98-86-2	4xE+00
Acrolein	107-02-8	5xE-01
Acrylamide	79-06-1	2xE-04
Acrylonitrile	107-13-1	7xE-04
Aldrin	309-00-2	2xE-05
Allyl alcohol	107-18-6	2xE-01
Aluminum phosphide	20859-73-8	1xE-02
Aniline	62-53-3	6xE-02
Barium cyanide	542-62-1	1xE+00
Benz(a)anthracene	56-55-3	1xE-04
Benzene	71-43-2	5xE-03
Benzidine	92-87-5	1xE-06
Bis(2-chloroethyl) ether	111-44-4	3xE-04
Bis(chloromethyl) ether	542-88-1	2xE-06
Bis(2-ethylhexyl) phthalate	117-81-7	3xE+01
Bromoform	75-25-2	7xE-01
Calcium cyanide	592-01-8	1xE-06
Carbon disulfide	75-15-0	4xE+00
Carbon tetrachloride	56-23-5	5xE-03
Chlordane	57-74-9	3xE-04
Chlorobenzene	108-90-7	1xE+00
Chloroform	67-66-3	6xE-02
Copper cyanide	544-92-3	2xE-01
Cresols (Cresylic acid)	1319-77-3	2xE+00
Cyanogen	460-19-5	1xE+00
DDT	50-29-3	1xE-03
Dibenz(a,h)-anthracene	53-70-3	7xE-06
1,2-Dibromo-3-chloropropane	96-12-8	2xE-05
p-Dichlorobenzene	106-46-7	7.5xE-02
Dichlorodifluoromethane	75-71-8	7xE+00
1,1-Dichloroethylene	75-35-4	5xE-03
2,4-Dichlorophenol	120-83-2	1xE-01
1,3-Dichloropropene	542-75-6	1xE-03
Dieldrin	60-57-1	2xE-05
Diethyl phthalate	84-66-2	3xE+01
Diethylstilbesterol	56-53-1	7xE-07
Dimethoate	60-51-5	3xE-02
2,4-Dinitrotoluene	121-14-2	5xE-04
Diphenylamine	122-39-4	9xE-01
1,2-Diphenylhydrazine	122-66-7	5xE-04
Endosulfan	115-29-7	2xE-03
Endrin	72-20-8	2xE-04
Epichlorohydrin	106-89-8	4xE-02
Ethylene dibromide	106-93-4	4xE-07
Ethylene oxide	75-21-8	3xE-04
Fluorine	7782-41-4	4xE+00
Formic acid	64-18-6	7xE+01
Heptachlor	76-44-8	8xE-05
Heptachlor epoxide	1024-57-3	4xE-05
Hexachlorobenzene	118-74-1	2xE-04
Hexachlorobutadiene	87-68-3	5xE-03
Hexachlorocyclopentadiene	77-47-4	2xE-01
Hexachlorodibenzo-p-dioxins	19408-74-3	6xE-08
Hexachloroethane	67-72-1	3xE-02
Hydrazine	302-01-1	1xE-04
Hydrogen cyanide	74-90-8	7xE-05
Hydrogen sulfide	7783-06-4	1xE-06
Isobutyl alcohol	78-83-1	1xE+01
Methomyl	16752-77-5	1xE+00
Methoxychlor	72-43-5	1xE-01
3-Methylcholanthrene	56-49-5	4xE-05
4,4'-Methylenebis (2-chloroaniline)	101-14-4	2xE-03
Methylene chloride	75-09-2	5xE-02
Methyl ethyl ketone (MEK)	78-93-3	2xE+00
Methyl hydrazine	60-34-4	3xE-04
Methyl parathion	298-00-0	2xE-02
Naphthalene	91-20-3	1xE+01
Nickel cyanide	557-19-7	7xE-01
Nitric oxide	10102-43-9	4xE+00
Nitrobenzene	98-95-3	2xE-02
N-Nitrosodi-n-butylamine	924-16-3	6xE-05
N-Nitrosodiethylamine	55-18-5	2xE-06
N-Nitroso-N-methylurea	684-93-5	1xE-07
N-Nitrosopyrrolidine	930-55-2	2xE-04
Pentachlorobenzene	608-93-5	3xE-02
Pentachloronitrobenzene (PCNB)	82-68-8	1xE-01
Pentachlorophenol	87-86-5	1xE+00
Phenol	108-95-2	1xE+00
Phenylmercury acetate	62-38-4	3xE-03
Phosphine	7803-51-2	1xE-02
Polychlorinated biphenyls, N.O.S.	1336-36-3	5xE-05
Potassium cyanide	151-50-8	2xE+00
Potassium silver cyanide	506-61-6	7xE+00
Pronamide	23950-58-5	3xE+00
Pyridine	110-86-1	4xE-02
Reserpine	50-55-5	3xE-05
Selenourea	630-10-4	2xE-01
Silver cyanide	506-64-9	4xE+00
Sodium cyanide	143-33-9	1xE+00
Strychnine	57-24-9	1xE-02
1,2,4,5-Tetrachlorobenzene	95-94-3	1xE-02
1,1,2,2-tetrachloroethane	79-34-5	2xE-03
Tetrachloroethylene	127-18-4	7xE-01
2,3,4,6-Tetrachlorophenol	58-90-2	1xE-02
Tetraethyl lead	78-00-2	4xE-06
Thiourea	62-56-6	2xE-04
Toluene	108-88-3	1xE+01
Toxaphene	8001-35-2	5xE-03
1,1,2-Trichloroethane	79-00-5	6xE-03
Trichloroethylene	79-01-6	5xE-03
Trichloromonofluoromethane	75-69-4	1xE+01
2,4,5-Trichlorophenol	95-95-4	4xE+00
2,4,6-Trichlorophenol	88-06-2	4xE+00
Vanadium pentoxide	1314-62-1	7xE-01
Vinyl chloride	75-01-4	2xE-03

Note 1: The health-based concentration limits for Appendix VIII chapter 11 constituents for which a health-based concentration is not provided below is 2xE-06 mg/kg.

Note 2: The levels specified in this appendix and the default level of 0.002 micrograms per kilogram or the level of detection for constituents as identified in Note 1 of this appendix are administratively stayed under the condition, for those constituents specified in section 66266.112(b)(1), that the owner or operator complies with alternative levels defined as the disposal restriction limits specified in section 66268.43 of chapter 18 of the California Code of Regulations for F039 nonwastewaters. See section 66266.112(b)(2)(A).

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245, 58004 and 58012, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR part 266, Appendix VII.

HISTORY

1. New appendix filed 7-1-96; operative 7-31-96 (Register 96, No. 27).

Appendix VIII—Potential PICs for Determination of Exclusion of Waste–Derived Residues

PICs Found in Stack Effluents

Volatiles	*Semivolatiles*
Benzene	Bis(2–ethylhexyl)phthalate
Toluene	Napthalene
Carbon tetrachloride	Phenol
Chloroform	Diethyl phthalate
Methylene chloride	Butyl benzyl phthalate
Trichloroethylene	2,4–Dimethylphenol
Tetrachloroethylene	o–Dichlorobenzene
1,1,1–Trichloroethane	m–Dichlorobenzene
Chlorobenzene	p–Dichlorobenzene
cis–1,4–Dichloro–2–butene	Hexachlorobenzene
Bromochloromethane	2,4,6–Trichlorophenol
Bromodichloromethane	Fluoranthene
Bromoform	o–Nitrophenol
Bromomethane	1,2,4–Trichlorobenzene
Methylene bromide	o–Chlorophenol
Methyl ethyl ketone	Pentachlorophenol
	Pyrene
	Dimethyl phthalate
	Mononitrobenzene
	2,6–Toluene diisocyanate

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245, 58004 and 58012, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR part 266, Appendix VIII.

HISTORY

1. New appendix filed 7–1–96; operative 7–31–96 (Register 96, No. 27).

Appendix IX—Methods Manual for Compliance With the BIF Regulations Burning Hazardous Waste in Boilers and Industrial Furnaces

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SECTION 1.0 INTRODUCTION

This document presents required methods for demonstrating compliance with the State of California, Department of Toxic Substances Control regulations governing boilers and industrial furnaces (BIFs) burning hazardous waste (see Title 22, Chapter 16, article 8). Included in this document are:

1. Performance Specifications for Continuous Emission Monitoring (CEM) of Carbon Monoxide, Oxygen, and Hydrocarbons in Stack Gases.

2. Sampling and Analytical (S&A) Methods for Multiple Metals, Hexavalent Chromium, HCl and Chlorine, Polychlorinated Dibenzo–p–dioxins and Dibenzofurans, and Aldehydes and Ketones.

3. Procedures for Estimating the Toxicity Equivalency of Chlorinated Dibenzo–p–dioxin and Dibenzofuran Congeners.

4. Hazardous Waste Combustion Air Quality Screening Procedures (HWCAQSP).

5. Simplified Land Use Classification Procedure for Compliance with Tier I and Tier II Limits.

6. Statistical Methodology for Bevill Residue Determinations.

7. Procedures for Determining Default Values for Air Pollution Control System Removal Efficiencies.

8. Procedures for Determining Default Values for Partitioning of Metals, Ash, and Total Chloride/Chlorine.

9. Alternate Methodology for Implementing Metals Controls.

Additional methods referenced in article 8 of chapter 16 but not included in this document can be found in 40 CFR parts 60 and 61, and "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (SW–846).

The CEM performance specifications of section 2.0, the S&A methods of section 3.0 and the toxicity equivalency procedure for dioxins and furans of section 4.0 are required procedures for determining compliance with BIF regulations. The CEM performance specifications and the S&A methods are interim. The finalized CEM performance specifications and methods will be published in SW–846 or 40 CFR parts 60 and 61.

SECTION 2.0 PERFORMANCE SPECIFICATIONS FOR CONTINUOUS EMISSION MONITORING SYSTEMS

2.1 Performance Specifications for Continuous Emission Monitoring of Carbon Monoxide and Oxygen for Incinerators, Boilers, and Industrial Furnaces Burning Hazardous Waste

2.1.1 Applicability and Principle

2.1.1.1 Applicability. These performance specifications apply to carbon monoxide (CO) and oxygen (O_2) continuous emission monitoring systems (CEMSs) installed on incinerators, boilers, and industrial furnaces burning hazardous waste.. The specifications include procedures which are intended to be used to evaluate the acceptability of the CEMS at the time of its installation or whenever specified in regulations or permits. The procedures are not designed to evaluate CEMS performance over an extended period of time. The source owner or operator is responsible for the proper calibration, maintenance, and operation of the CEMS at all times.

2.1.1.2 Principle. Installation and measurement location specifications, performance and equipment specifications, test and data reduction procedures, and brief quality assurance guidelines are included in the specifications. Calibration drift, relative accuracy, calibration error, and response time tests are conducted to determine conformance of the CEMS with the specifications.

2.1.2 Definitions

2.1.2.1 Continuous Emission Monitoring System (CEMS). A continuous monitor is one in which the sample to be analyzed passes the measurement section of the analyzer without interruption, and which evaluates the detector response to the sample at least once each 15 seconds and computes and records the results at least every 60 seconds. A CEMS consists of all the equipment used to acquire data and includes the sample extraction and transport hardware, the analyzer(s), and the data recording/processing hardware and software.

2.1.2.2 Monitoring System Types. The specification require CEMSs capable of accepting calibration gases. Alternative system designs may be used if approved by the Director. There are two basic types of monitoring systems: extractive and in–situ.

2.1.2.2.1 Extractive. Systems that use a pump or other mechanical, pneumatic, or hydraulic means to draw a sample of the stack or flue gas and convey it to a remotely located analyzer.

2.1.2.2.2 In–situ. Systems that perform an analysis without removing a sample from the stack. Point in–situ analyzers place the sensing or detecting element directly in the flue gas stream. Cross–stack in–situ analyzers measure the parameter of interest by placing a source beam on one side of the stack and the detector (in single–pass instruments) or a retroreflector (in double–pass instruments) on the other side, and measuring the parameter of interest (e.g., CO) by the attenuation of the beam by the gas in its path.

2.1.2.3 Instrument Measurement Range. The difference between the minimum and the maximum concentration that can be measured by a specific instrument. The minimum is often stated or assumed to be zero and the range expressed only as the maximum.

2.1.2.4 Span or Span Value. Full scale instrument measurement range.

2.1.2.5 Calibration Drift (CD). The difference in the CEMS output readings from the established reference value after a stated period of operation during which no unscheduled maintenance, repair, or adjustment

takes place. A CD test is performed to demonstrate the stability of the CEMS calibration over time.

2.1.2.6 Response Time. The time interval between the start of a step change in the system input (e.g., change of calibration gas) and the time when the data recorder displays 95 percent of the final value.

2.1.2.7 Accuracy. A measure of agreement between a measured value and an accepted or true value, expressed as the percentage difference between the true and measured values relative to the true value. For these performance specifications, accuracy is checked by conducting a calibration error (CE) test and a relative accuracy (RA) test. Certain facilities, such as those using solid waste or batch–fed processes, may observe long periods of almost no CO emissions with brief, high–level CO emission spikes. These facilities, as well as facilities whose CO emissions never exceed 5–10 ppm, may need to be exempted from the RA requirement because the RA test procedure cannot ensure acquisition of meaningful test results under these conditions. An alternative procedure for accuracy determination is described in section 2.1.9.

2.1.2.8 Calibration Error (CE). The difference between the concentration indicated by the CEMS and the known concentration of the cylinder gas. A CE test procedure is performed to document the accuracy and linearity of the monitoring equipment over the entire measurement range.

2.1.2.9 Relative Accuracy (RA). A comparison of the CEMS response to a value measured by a performance test method (PTM). The PA test is used to validate the calibration technique and verify the ability of the CEMS to provide representative and accurate measurements.

2.1.2.10 Performance Test Method (PTM). The sampling and analysis procedure used to obtain reference measurements for comparison to CEMS measurements. The applicable test methods are Method 10, 10A, or 10B (for the determination of CO) and Method 3 or 3A (for the determination of O_2). These methods are found in 40 CFR part 60, appendix A.

2.1.2.11 Performance Specification Test (PST) Period. The period during which CD, CE, response time, and RA tests are conducted.

2.1.2.12 Centroidal Area. A concentric area that is geometrically similar to the stack or duct cross section and is no greater than 1 percent of the stack or duct cross–sectional area.

2.1.3 Installation and Measurement Location Specifications

2.1.3.1 CEMS Installation and Measurement Locations. The CEMS shall be installed in a location in which measurements representative of the source's emissions can be obtained. The optimum location of the sample interface for the CEMS is determined by a number of factors, including ease of access for calibration and maintenance, the degree to which sample conditioning will be required, the degree to which it represents total emissions, and the degree to which it represents the combustion situation in the firebox. The location should be as free from in–leakage influences as possible and reasonably free from severe flow disturbances. The sample location should be at least two equivalent duct diameters downstream from the nearest control device, point of pollutant generation, or other point at which a change in the pollutant concentration or emission rate occurs and at least 0.5 diameter upstream from the exhaust or control device. The equivalent duct diameter is calculated as per 40 CFR part 60, appendix A, method 1, section 2.1. If these criteria are not achievable or if the location is otherwise less than optimum, the possibility of stratification should be checked as described in Section 2.1.3.3 to determine whether the location would cause failure of the relative accuracy test.

2.1.3.1.1 For extractive or point in–situ CEMSs, the measurement point should be within or centrally located over the centroidal area of the stack or duct cross section.

2.1.3.1.2 For cross–stack CEMSs, the effective measurement path should (1) have at least 70 percent of the path within the inner 50 percent of the stack or duct cross–sectional area or (2) be centrally located over any part of the centroidal area.

2.1.3.1.3 Both the CO and O_2 monitors should be installed at the same general location. If this is not possible, they may be installed at different locations if the effluent gases at both sample locations are not stratified and there is no in–leakage of air between sampling locations.

2.1.3.2 Performance Test Method (PTM) Measurement Location and Traverse Points.

2.1.3.2.1 Select an accessible PTM measurement point at least two equivalent diameters downstream from the nearest control device, the point of CO generation, or other point at which a change in the CO concentration may occur, and at least a half equivalent diameter upstream from the effluent exhaust or control device. When pollutant concentration changes are due solely to diluent leakage (e.g., air heater leakages) and CO and O_2 are simultaneously measured at the same location, one half diameter may be used in place of two equivalent diameters. The CEMS and PTM locations need not be the same.

2.1.3.2.2 Select traverse points that ensure acquisition of representative samples over the stack or duct cross section. At a minimum, establish a measurement line that passes through the centroidal area in the direction of any expected stratification. If this line interferes with the CEMS measurements, displace the line up to 30 cm (or 5 percent of the equivalent diameter of the cross section, whichever is less) from the centroidal area. Locate three traverse points at 17, 50, and 83 percent of the measurement line. If the measurement line is no longer than 2.4 meters and pollutant stratification is not expected, the tester may choose to locate the three traverse points on the line at 0.4, 1.2, and 2.0 meters from the stack or duct wall. This option must not be used at a site located within eight equivalent diameters downstream of a flow disturbance. The tester may select other traverse points, provided that they can be shown to the satisfaction of the Director to provide a representative sample over the stack or duct cross–section. Conduct all necessary PTM tests within 3 cm of the selected traverse points. Sampling must not be performed within 3 cm of the duct or stack inner wall.

2.1.3.3 Stratification Test Procedure. Stratification is defined as a difference in excess of 10 percent between the average concentration in the duct or stack and the concentration at any point more than 1.0 meter from the duct or stack wall. To determine whether effluent stratification exists, a dual probe system should be used to determine the average effluent concentration while measurements at each traverse point are being made. One probe, located at the stack or duct centroid, is used as a stationary reference point to indicate the change in effluent concentration over time. The second probe is used for sampling the traverse points specified in method 1, appendix A, 40 CFR part 60. The monitoring system samples sequentially at the reference and traverse points throughout the testing period for five minutes at each point.

2.1.4 CEMS Performance and Equipment Specifications

Table 2.1–1 summarizes the performance specifications for the CEMSs. Two sets of standards for CO are given; one for low–range and another for high–range measurements. The high–range specifications relate to measurement and quantification of short duration high concentration peaks, while the low–range specifications relate to the overall average operating condition of the burning device. The dual–range specifications can be met by using (1) one analyzer for each range, (2) a dual range unit, or (3) a single measurement range instrument capable of meeting both specifications with a single unit. Adjustments cannot be made to the analyzer between determinations of low– and high–level accuracy within the single measurement range. In the second case, when the concentration exceeds the span of the lower range, the data acquisition system recorder shall switch to the high range automatically.

2.1.4.1 CEMS Span Value. In order to measure high and low concentrations with the same or similar degree of accuracy, the maximum ranges (span values) are specified for low and high range analyzers. The span values are listed in Table 2.1–2. Tier I and Tier II format definitions are established in Title 22, Chapter 16, Article 8.

[The next page is 758.115.]

Table 2.1–1—Performance Specifications of CO and O_2 Monitors

Parameter	*CO monitors Low range*	*High range*	*O_2 monitors*
Calibration drift 24 hours.	<6 ppm[1]	<90 ppm	<0.5% O_2
Calibration error.	<10 ppm[1]	<150 ppm	<0.5% O_2
Response time.	<2 min	<2 min	<2 min
Relative accuracy[2].	([3])	([3])	(incorporated in CO RA calculation)

FOOTNOTE: [1]For Tier II, CD and CE are <3% and <5% of twice the permit limit, respectively.

FOOTNOTE: [2]Expressed as the sum of the mean absolute value plus the 95% confidence interval of a series of measurements.

FOOTNOTE: [3]The greater of 10% of PTM or 10 ppm.

Table 2.1–2—CEMS Span Values for CO and O_2 Monitors

	CO monitors Low range (ppm)	*High range (ppm)*	*O_2 monitors (percent)*
Tier I rolling average format.	200	3,000	25
Tier II rolling average format.	2 X permit limit.	3,000	25

2.1.4.2 Daily Calibration Gas Values. The owner or operator must choose calibration gas concentrations (or calibration filters for in–situ systems) that include zero and high–level calibration values for the daily calibration checks. For a single measurement range monitor, three CO calibration gas concentrations (or calibration filters for in–situ systems) shall be used, i.e., the zero and high–level concentrations of the low–range CO analyzer and the high–level concentration of the high–range CO analyzer.

2.1.4.2.1 The zero level for the CO or O_2 analyzer may be between zero and 20 percent of the span value, e.g., 0–40 ppm for low–range CO analyzer, 0–600 ppm for the high–range CO analyzer, and 0–5 percent for the O_2 analyzer (for Tier I).

2.1.4.2.2 The high–level concentration for the CO or O_2 analyzer shall be between 50 and 90 percent of the span value, i.e., 100–180 ppm for the low–range CO analyzer, 1500–2700 ppm for the high–range CO analyzer, and 12.5–22.5 percent O_2 for the O_2 analyzer.

2.1.4.3 Data Recorder Scale. The strip chart recorder, computer, or digital recorder must be capable of recording all readings within the CEMS's measurement range and shall have a resolution of 0.5 percent of span value, i.e., 1 ppm CO for low–range CO analyzer, 15 ppm CO for high–range CO analyzer, and 0.1 percent O_2 for the O_2 analyzer.

2.1.4.4 Response Time. The response time for the CO or O_2 monitor shall not exceed 2 minutes to achieve 95 percent of the final stable value.

2.1.4.5 Calibration Drift. The CEMS must allow the determination of CD at the zero and high–level values. The CD must be determined separately for CO and O_2 monitors in terms of concentration. The CO CEMS calibration response must not drift or deviate from the reference value of the calibration gas (or calibration filters for in–situ systems) by more than 3 percent of the span value after each 24–hour period of the 7–day test, i.e., 6 ppm CO for the low–range analyzer (Tier I) and 90 ppm for the high–range analyzer, at both zero and high levels. The O_2 monitor calibration response must not drift or deviate from the reference value by more than 0.5 percent O_2 at both zero and high levels.

2.1.4.6 Relative Accuracy. The result of the PA test of the CO CEMS (which incorporates the O_2 monitor) must be no greater than 10 percent of the mean value of the PTM results or must be within 10 ppm CO of the PTM results, whichever is less restrictive. The ppm CO concentration shall be corrected to 7 percent O_2 before calculating the RA.

2.1.4.7 Calibration Error. The mean difference between the CEMS and reference values at all three test points (see Table 2.1–3) must be no greater than 5 percent of span value for CO monitors (i.e., 10 ppm CO for low–range Tier I CO analyzers and 150 ppm CO for high–range CO analyzers) and 0.5 percent for O_2 analyzers.

2.1.4.8 Measurement and Recording Frequency. The sample to be analyzed shall pass through the measurement section of the analyzer without interruption. The detector shall measure the sample concentration at least once every 15 seconds. An average emission rate shall be computed and recorded at least once every 60 seconds.

2.1.4.9 Hourly Rolling Average Calculation. The CEMS shall calculate every minute an hourly rolling average, which is the arithmetic mean of the 60 most recent 1–minute average values.

2.1.4.10 Retest. If the CEMS produces results within the specified criteria, the test is successful. If the CEMS does not meet one or more of the criteria, the necessary corrections must be made and the performance tests repeated.

2.1.5 Test Periods

2.1.5.1 Pretest Preparation Period. Install the CEMS, prepare the PTM test site according to the specifications in section 2.1.3, and prepare the CEMS for operation and calibration according to the manufacturer's written instructions. A pretest conditioning period similar to that of the 7–day CD test is recommended to verify the operational status of the CEMS.

2.1.5.2 Calibration Drift Test Period. While the facility is operating under normal conditions, determine the CD at 24–hour intervals for seven consecutive days according to the procedure given in section 2.1.6.1. All CD determinations must be made following a 24–hour period during which no unscheduled maintenance, repair, or adjustment takes place. If the combustion unit is taken out of service during the test period, record the onset and the duration of the downtime and continue the calibration drift test when the unit resumes operation.

2.1.5.3 Relative Accuracy Test Period. Conduct the RA test according to the procedure in section 2.1.6.4 while the facility is operating under normal conditions. RA testing for CO and O_2 shall be conducted simultaneously so that the results can be calculated for CO corrected to 7 percent O_2. The RA test shall be conducted during the CD test period. It is emphasized that during the CD test period, no adjustments or repairs may be made to the CEMS other than routine calibration adjustments performed immediately following the daily CD determination.

2.1.5.4 Calibration Error Test and Response Time Test Periods. Conduct the CE and response time tests during the CD test period.

2.1.6 Performance Specification Test Procedures

2.1.6.1 Calibration Drift Test.

2.1.6.1.1 Sampling Strategy. Conduct the CD test for all monitors at 24–hour intervals for seven consecutive days using calibration gases at the two (or three, if applicable) concentration levels specified in section 2.1.4.2. Introduce the calibration gases into the sampling system as close to the sampling probe outlet as practical. The gas shall pass through all filters, scrubbers, conditioners, and other CEMS components used during normal sampling. If periodic automatic or manual adjustments are made to the CEMS zero and calibration settings, conduct the CD test immediately before these adjustments, or conduct it in such a way that the CD can be determined. Record the CEMS response and subtract this value from the reference (calibration gas) value. To meet the specification, none of the differences shall exceed the limits specified in Table 2.1–1.

2.1.6.1.2 Calculations. Summarize the results on a data sheet. An example is shown in Figure 2.1–1. Calculate the differences between the CEMS responses and the reference values.

2.1.6.2 Response Time. Check the entire CEMS including sample extraction and transport, sample conditioning, gas analyses, and the data recording.

2.1.6.2.1 Introduce zero gas into the system. For extractive systems, introduce the calibration gases at the probe as near to the sample location as possible. For in–situ system, introduce the zero gas at a point such that all components active in the analysis are tested. When the system output has stabilized (no change greater than 1 percent of full scale for 30 seconds), switch to monitor stack effluent and wait for a stable value. Re-

cord the time (upscale response time) required to reach 95 percent of the final stable value.

2.1.6.2.2 Next, introduce a high–level calibration gas and repeat the above procedure. Repeat the entire procedure three times and determine the mean upscale and downscale response times. The longer of the two means is the system response time.

2.1.6.3 Calibration Error Test Procedure.

2.1.6.3.1 Sampling Strategy. Challenge each monitor (both low– and high–range CO and O_2) with zero gas and US EPA Protocol 1 cylinder gases at three measurement points within the ranges specified in Table 2.1–3.

Table 2.1–3—Calibration Error Concentration Ranges for Tier I

	GAS Concentration Ranges		
	CO. ppm		
Measurement point	*Low range*[1]	*High range*	*O_2 percent*
1	0–40	0–600	0–2
2	60–80	900–1200	8–10
3	140–160	2100–2400	14–16

FOOTNOTE: [1]For Tier II, the CE specifications for the low–range CO CEMS are 0–20%, 30–40%, and 70–80% of twice the permit limit.

SOURCE:	DATE:
MONITOR:	LOCATION:
SERIAL NUMBER:	SPAN:

LOW RANGE	
HIGH RANGE	

	DAY	DATE	TIME	CALIBRATION VALUE	MONITOR RESPONSE	DIFFERENCE	PERCENT OF SPAN*
ZERO/ LOW LEVEL	1						
	2						
	3						
	4						
	5						
	6						
	7						
HIGH LEVEL	1						
	2						
	3						
	4						
	5						
	6						
	7						

***Acceptance Criteria: ≤ 5% of span each day for seven days**

Figure 2.1–1 Calibration Drift determination

2.1.6.3.1.1 If a single measurement range is used, the calibration gases used in the daily CD checks (if they are Protocol 1 cylinder gases and meet the criteria in section 2.1.6.3.1) may be used for determining CE.

2.1.6.3.1.2 Operate each monitor in its normal sampling mode as nearly as possible. The calibration gas shall be injected into the sample system as close to the sampling probe outlet as practical and should pass through all CEMS components used during normal sampling. Challenge the CEMS three non–consecutive times at each measurement point and record the responses. The duration of each gas injection should be sufficient to ensure that the CEMS surfaces are conditioned.

2.1.6.3.2 Calculations. Summarize the results on a data sheet. An example data sheet is shown in Figure 2.1–2. Average the differences between the instrument response and the certified cylinder gas value for each gas. Calculate three CE results (five CE results for a single–range

CO CEMS) according to Equation 5 (section 2.1.7.5). No confidence coefficient is used in CE calculations.

2.1.6.4 Relative Accuracy Test Procedure.

2.1.6.4.1 Sampling Strategy for PTM tests. Conduct the PTM tests in such a way that they will yield measurements representative of the emissions from the source and can be correlated to the CEMS data. Although it is preferable to conduct the CO, diluent, and moisture (if needed) simultaneously, moisture measurements that are taken within a 60–minute period which includes the simultaneous CO and O_2 measurements may be used to calculate the dry CO concentration.

NOTE: At times, CEMS RA tests may be conducted during incinerator performance tests. In these cases, PTM results obtained during CEMS RA tests may be used to determine compliance with incinerator emissions limits as long as the source and test conditions are consistent with the applicable regulations.

SOURCE:	DATE:
MONITOR:	LOCATION:
SERIAL NUMBER:	SPAN:

LOW RANGE	
HIGH RANGE	

RUN NUMBER	CALIBRATION VALUE	MONITOR RESPONSE	DIFFERENCE		
			Zero/Low	Mid	High
1 – Zero					
2 – Mid					
3 – High					
4 – Mid					
5 – Zero					
6 –High					
7 –Zero					
8 – Mid					
9 – High					
		MEAN DIFFERENCE =			
		CALIBRATION ERROR =	%	%	%

Figure 2.1–1 Calibration Error Determination

2.1.6.4.2 Performance Test Methods.

2.1.6.4.2.1 Unless otherwise specified in the regulations, method 3 or 3A and method 10, 10A, or 10B (40 CFR part 60, appendix A) are the test methods for O_2 and CO, respectively. Make a sample traverse of at least 21 minutes, sampling for 7 minutes at each of three traverse points (see section 3.2).

2.1.6.4.2.2 When the installed CEMS uses a nondispersive infrared (NDIR) analyzer, method 10 shall use the alternative interference trap specified in section 10.1 of the method. An option, which may be approved by the Director in certain cases, would allow the test to be conducted using method 10 without the interference trap. Under this option, a laboratory interference test is performed for the analyzer prior to the field test. The laboratory interference test includes the analysis of SO_2, NO, and CO_2 calibration gases over the range of expected effluent concentrations. Acceptable performance is indicated if the CO analyzer response to each of the gases is less than 1 percent of the applicable measurement range of the analyzer.

2.1.6.4.3 Number of PTM Tests. Conduct a minimum of nine sets of all necessary PTM tests. If more than nine sets are conducted, a maximum of three sets may be rejected at the tester's discretion. The total number of sets used to determine the RA must be greater than or equal to nine. All data, including the rejected data, must be reported.

2.1.6.4.4 Correlation of PTM and CEMS Data. The time and duration of each PTM test run and the CEMS response time should be considered in correlating the data. Use the CEMS final output (the one used for reporting) to determine an integrated average CO concentration for each PTM test run. Confirm that the pair of results are on a consistent moisture and O_2 concentration basis. Each integrated CEMS value should then be compared against the corresponding average PTM value. If the CO concentration measured by the CEMS is normalized to a specified diluent concentration, the PTM results shall be normalized to the same value.

2.1.6.4.5 Calculations. Summarize the results on a data sheet. Calculate the mean of the PTM values and calculate the arithmetic differences between the PTM and the CEMS data sets. The mean of the differences, standard deviation, confidence coefficient, and CEMS RA should be calculated using Equations 1 through 4.

2.1.7 Equations

2.1.7.1 Arithmetic Mean (d). Calculate d of the difference of a data set using Equation 1.

$$\bar{d} = \frac{1}{n}\sum_{i=1}^{n} d_i \quad \text{(Eq. 1)}$$

where: n=Number of data points.

$\sum_{i=1}^{n} d_i$ =Algebraic sum of the individual difference d_i.

When the mean of the differences of pairs of data is calculated, correct the data for moisture, if applicable.

2.1.7.2 Standard Deviation (S_d). Calculate S_d using Equation 2.

$$S_d = \sqrt{\frac{\sum_{i=1}^{n} d_i^2 - \frac{\sum_{i=1}^{n} d_i^2}{n}}{n-1}} \quad \text{(Eq. 2)}$$

2.1.7.3 Confidence Coefficient (CC). Calculate the 2.5 percent error CC (one–tailed) using Equation 3.

$$CC = t_{0.975}\frac{S_d}{\sqrt{n}} \quad \text{(Eq. 3)}$$

where:

$t_{0.975}$=t–value (see Table 2.1–4)

Table 2.1–4—t Values

n[a]	$t_{0.975}$	n[a]	$t_{0.975}$	n[a]	$t_{0.975}$
2	12.706	7	2.447	12	2.201
3	4.303	8	2.365	13	2.179
4	3.182	9	2.306	14	2.160
5	2.776	10	2.662	15	2.145
6	2.571	11	2.228	16	2.131

FOOTNOTE: [a]The values in this table are already corrected for n–1 degrees of freedom.

Use n equal to the number of individual values.

2.1.7.4 Relative Accuracy. Calculate the RA of a set of data using Equation 4.

$$RA = \frac{|\bar{d}| + |CC|}{\bar{P}\,\bar{T}\,\bar{M}} \times 100 \quad \text{(Eq. 4)}$$

where:

$|\bar{d}|$ = Absolute value of the mean of the differences (Equation 1).

CC = Absolute value of the confidence coefficient (Equation 3).

$\bar{P}\,\bar{T}\,\bar{M}$ = Average reference value.

$$CE = \left|\frac{\bar{d}}{FS}\right| x100 \quad \text{(Eq. 5).}$$

where:

$\bar{d}$ = Mean difference between CEMS response and the known reference concentration.

2.1.8 Reporting

At a minimum, summarize in tabular form the results of the CD, RA, response time, and CE test, as appropriate. Include all data sheets, calculations, CEMS data records, and cylinder gas or reference material certifications.

2.1.9 Alternative Procedure

2.1.9.1 Alternative RA Procedure Rationale. Under some operating conditions, it may not be possible to obtain meaningful results using the RA test procedure. This includes conditions where consistent, very low CO emissions or low CO emissions interrupted periodically by short duration, high level spikes are observed. It may be appropriate in these circumstances to waive the PTM RA test and substitute the following procedure.

2.1.9.2 Alternative RA Procedure. Conduct a complete CEMS status check following the manufacturer's written instructions. The check should include operation of the light source, signal receiver, timing mechanism functions, data acquisition and data reduction functions, data recorders, mechanically operated functions (mirror movements, calibration gas valve operations, etc.), sample filters, sample line heaters, moisture traps, and other related functions of the CEMS, as applicable. All parts of the CEMS must be functioning properly before the RA requirement can be waived. The instruments must also have successfully passed the CE and CD requirements of the performance specifications. Substitution of the alternative procedure requires approval of the Director.

2.1.10 Quality Assurance (QA)

Proper calibration, maintenance, and operation of the CEMS is the responsibility of the owner or operator. The owner or operator must establish a QA program to evaluate and monitor CEMS performance. As a minimum, the QA program must include:

2.1.10.1 A daily calibration check for each monitor. The calibration must be adjusted if the check indicates the instrument's CD exceeds the specification established in section 2.1.4.5. The gases shall be injected as close to the probe as possible to provide a check of the entire sampling system. If an alternative calibration procedure is desired (e.g., direct injections or gas cells), subject to Director's approval, the adequacy of this alternative procedure may be demonstrated during the initial 7–day CD test. Periodic comparisons of the two procedures are suggested.

2.1.10.2 A daily system audit. The audit must include a review of the calibration check data, an inspection of the recording system, an inspection of the control panel warning lights, and an inspection of the sample transport and interface system (e.g., flowmeters, filters), as appropriate.

2.1.10.3 A quarterly calibration error (CE) test. Quarterly RA tests may be substituted for the CE test when approved by the Director on a case–by–case basis.

2.1.10.4 An annual performance specification test.

2.1.11 References

1. Jahnke, James A. and G.J. Aldina, "Handbook: Continuous Air Pollution Source Monitoring Systems," U.S. Environmental Protection Agency Technology Transfer, Cincinnati, Ohio 45268, EPA–625/6–79–005, June 1979.

2. "Gaseous Continuous Emissions Monitoring Systems—Performance Specification Guidelines for SO_2, NO_x, CO_2, O_2, and TRS." U.S. Environmental Protection Agency OAQPS, ESED, Research Triangle Park, North Carolina 27711, EPA–450/3–82–026, October 1982.

3. "Quality Assurance Handbook for Air Pollution Measurement Systems: Volume I. Principles." U.S. Environmental Protection Agency ORD/EMSL, Research Triangle Park, North Carolina, 27711, EPA–600/9–76–006, December 1984.

4. Michie, Raymond, M. Jr., et al., "Performance Test Results and Comparative Data for Designated Reference Methods for Carbon Monoxide," U.S. Environmental Protection Agency ORD/EMSL, Research Triangle Park, North Carolina, 27711, EPA–600/S4–83–013, September 1982.

5. Ferguson, B.B., R.E. Lester, and W.J. Mitchell, "Field Evaluation of Carbon Monoxide and Hydrogen Sulfide Continuous Emission Monitors at an Oil Refinery," U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, EPA–600/4–82–054, August 1982.

2.2 Performance Specifications for Continuous Emission Monitoring of Hydrocarbons for Incinerators, Boilers, and Industrial Furnaces Burning Hazardous Waste

2.2.1 Applicability and Principle

2.2.1.1 Applicability. These performance specifications apply to hydrocarbon (HC) continuous emission monitoring systems (CEMSs) installed on incinerators, boilers, and industrial furnaces burning hazardous waste. The specifications include procedures which are intended to be used to evaluate the acceptability of the CEMS at the time of its installation or whenever specified in regulations or permits. The procedures are not designed to evaluate CEMS performance over an extended period of time. The source owner or operator is responsible for the proper calibration, maintenance, and operation of the CEMS at all times.

2.2.1.2 Principle. A gas sample is extracted from the source through a heated sample line and heated filter (except as provided by section 2.2.10) to a flame ionization detector (FID). Results are reported as volume concentration equivalents of propane. Installation and measurement location specifications, performance and equipment specifications, test and data reduction procedures, and brief quality assurance guidelines are included in the specifications. Calibration drift, calibration error, and response time tests are conducted to determine conformance of the CEMS with the specifications.

2.2.2 Definitions

2.2.2.1 Continuous Emission Monitoring System (CEMS). The total equipment used to acquire data, which includes sample extraction and transport hardware, analyzer, data recording and processing hardware, and software. The system consists of the following major subsystems:

2.2.2.1.1 Sample Interface. That portion of the system that is used for one or more of the following: Sample acquisition, sample transportation, sample conditioning, or protection of the analyzer from the effects of the stack effluent.

2.2.2.1.2 Organic Analyzer. That portion of the system that senses organic concentration and generates an output proportional to the gas concentration.

2.2.2.1.3 Data Recorder. That portion of the system that records a permanent record of the measurement values. The data recorder may include automatic data reduction capabilities.

2.2.2.2 Instrument Measurement Range. The difference between the minimum and the maximum concentration that can be measured by a specific instrument. The minimum is often stated or assumed to be zero and the range expressed only as the maximum.

2.2.2.3 Span or Span Value. Full scale instrument measurement range.

2.2.2.4 Calibration Gas. A known concentration of a gas in an appropriate diluent gas.

2.2.2.5 Calibration Drift (CD). The difference in the CEMS output readings from the established reference value after a stated period of operation during which no unscheduled maintenance, repair, or adjustment takes place. A CD test is performed to demonstrate the stability of the CEMS calibration over time.

2.2.2.6 Response Time. The time interval between the start of a step change in the system input (e.g., change of calibration gas) and the time when the data recorder displays 95 percent of the final value.

2.2.2.7 Accuracy. A measurement of agreement between a measured value and an accepted or true value, expressed as the percentage difference between the true and measured values relative to the true value. For these performance specifications, accuracy is checked by conducting a calibration error (CE) test.

2.2.2.8 Calibration Error (CE). The difference between the concentration indicated by the CEMS and the known concentration of the cylinder gas. A CE test procedure is performed to document the accuracy and linearity of the monitoring equipment over the entire measurement range.

2.2.2.9 Performance Specification Test (PST) Period. The period during which the CD, CE, and response time tests are conducted.

2.2.2.10 Centroidal Area. A concentric area that is geometrically similar to the stack or duct cross section and is no greater than 1 percent of the stack or duct cross-sectional area.

2.2.3 Installation and Measurement Location Specifications

2.2.3.1 CEMS Installation and Measurement Locations. The CEMS shall be installed in a location in which measurements representative of the source's emissions can be obtained. The optimum location of the sample interface for the CEMS is determined by a number of factors, including ease of access for calibration and maintenance, the degree to which sample conditioning will be required, the degree to which it represents total emissions, and the degree to which it represents the combustion situation in the firebox. The location should be as free from in-leakage influences as possible and reasonably free from severe flow disturbances. The sample location should be at least two equivalent duct diameters downstream from the nearest control device, point of pollutant generation, or other point at which a change in the pollutant concentration or emission rate occurs and at least 0.5 diameter upstream from the exhaust or control device. The equivalent duct diameter is calculated as per 40 CFR part 60, appendix A, method 1, section 2.1. If these criteria are not achievable or if the location is otherwise less than optimum, the possibility of stratification should be investigated as described in section 2.2.3.2. The measurement point shall be within the centroidal area of the stack or duct cross section.

2.2.3.2 Stratification Test Procedure. Stratification is defined as a difference in excess of 10 percent between the average concentration in the duct or stack and the concentration at any point more than 1.0 meter from the duct or stack wall. To determine whether effluent stratification exists, a dual probe system should be used to determine the average effluent concentration while measurements at each traverse point are being made. One probe, located at the stack or duct centroid, is used as a stationary reference point to indicate the change in effluent concentration over time. The second probe is used for sampling at the traverse points specified in 40 CFR part 60 appendix A, method 1. The monitoring system samples sequentially at the reference and traverse points throughout the testing period for five minutes at each point.

2.2.4 CEMS Performance and Equipment Specifications

If this method is applied in highly explosive areas, caution and care shall be exercised in choice of equipment and installation.

2.2.4.1 Flame Ionization Detector (FID) Analyzer. A heated FID analyzer capable of meeting or exceeding the requirements of these specifications. Heated systems shall maintain the temperature of the sample gas between 150 °C (300 °F) and 175 °C (350 °F) throughout the system. This requires all system components such as the probe, calibration valve, filter, sample lines, pump, and the FID to be kept heated at all times such that no moisture is condensed out of the system.

NOTE: As specified in the regulations, unheated HC CEMs may be considered an acceptable interim alternative monitoring technique. For additional notes, see section 2.2.10. The essential components of the measurement system are described below:

2.2.4.1.1 Sample Probe. Stainless steel, or equivalent, to collect a gas sample from the centroidal area of the stack cross-section.

2.2.4.1.2 Sample Line. Stainless steel or Teflon tubing to transport the sample to the analyzer.

NOTE: Mention of trade names or specific products does not constitute endorsement by the Department.

2.2.4.1.3 Calibration Valve Assembly. A heated three-way valve assembly to direct the zero and calibration gases to the analyzer is recommended. Other methods, such as quick-connect lines, to route calibration gas to the analyzers are applicable.

2.2.4.1.4 Particulate Filter. An in-stack or out-of-stack sintered stainless steel filter is recommended if exhaust gas particulate loading is significant. An out-of-stack filter must be heated.

2.2.4.1.5 Fuel. The fuel specified by the manufacturer (e.g., 40 percent hydrogen/60 percent helium, 40 percent hydrogen/60 percent nitrogen gas mixtures, or pure hydrogen) should be used.

2.2.4.1.6 Zero Gas. High purity air with less than 0.1 parts per million by volume (ppm) HC as methane or carbon equivalent or less than 0.1 percent of the span value, whichever is greater.

2.2.4.1.7 Calibration Gases. Appropriate concentrations of propane gas (in air or nitrogen). Preparation of the calibration gases should be done according to the procedures in US EPA Protocol 1. In addition, the manufacturer of the cylinder gas should provide a recommended shelf life for each calibration gas cylinder over which the concentration does not change by more than ± 2 percent from the certified value.

2.2.4.2 CEMS Span Value. 100 ppm propane.

2.2.4.3 Daily Calibration Gas Values. The owner or operator must choose calibration gas concentrations that include zero and high-level calibration values.

2.2.4.3.1 The zero level may be between 0 and 20 ppm (zero and 20 percent of the span value).

2.2.4.3.2 The high-level concentration shall be between 50 and 90 ppm (50 and 90 percent of the span value).

2.2.4.4 Data Recorder Scale. The strip chart recorder, computer, or digital recorder must be capable of recording all readings within the CEMS's measurement range and shall have a resolution of 0.5 ppm (0.5 percent of span value).

2.2.4.5 Response Time. The response time for the CEMS must not exceed 2 minutes to achieve 95 percent of the final stable value.

2.2.4.6 Calibration Drift. The CEMS must allow the determination of CD at the zero and high-level values. The CEMS calibration response must not differ by more than ± 3 ppm (± 3 percent of the span value) after each 24-hour period of the 7-day test at both zero and high levels.

2.2.4.7 Calibration Error. The mean difference between the CEMS and reference values at all three test points listed below shall be no greater than 5 ppm (± 5 percent of the span value).

2.2.4.7.1 Zero Level. Zero to 20 ppm (0 to 20 percent of span value).

2.2.4.7.2 Mid-Level. 30 to 40 ppm (30 to 40 percent of span value).

2.2.4.7.3 High-Level. 70 to 80 ppm (70 to 80 percent of span value).

2.2.4.8 Measurement and Recording Frequency. The sample to be analyzed shall pass through the measurement section of the analyzer without interruption. The detector shall measure the sample concentration at least once every 15 seconds. An average emission rate shall be computed and recorded at least once every 60 seconds.

2.2.4.9 Hourly Rolling Average Calculation. The CEMS shall calculate every minute an hourly rolling average, which is the arithmetic mean of the 60 most recent 1-minute average values.

2.2.4.10 Retest. If the CEMS produces results within the specified criteria, the test is successful. If the CEMS does not meet one or more of the criteria, necessary corrections must be made and the performance tests repeated.

2.2.5 Performance Specification Test (PST) Periods

2.2.5.1 Pretest Preparation Period. Install the CEMS, prepare the PTM test site according to the specifications in section 2.2.3, and prepare the CEMS for operation and calibration according to the manufacturer's written instructions. A pretest conditioning period similar to that of the 7-day CD test is recommended to verify the operational status of the CEMS.

2.2.5.2 Calibration Drift Test Period. While the facility is operating under normal conditions, determine the magnitude of the CD at 24-hour intervals for seven consecutive days according to the procedure given in section 2.2.6.1. All CD determinations must be made following a 24-hour period during which no unscheduled maintenance, repair, or adjustment takes place. If the combustion unit is taken out of service during the test period, record the onset and duration of the downtime and continue the CD test when the unit resumes operation.

2.2.5.3 Calibration Error Test and Response Time Test Periods. Conduct the CE and response time tests during the CD test period.

2.2.6 Performance Specification Test Procedures

2.2.6.1 Calibration Drift Test.

2.2.6.1.1 Sampling Strategy. Conduct the CD test at 24-hour intervals for seven consecutive days using calibration gases at the two daily concentration levels specified in section 2.2.4.3. Introduce the two calibration gases into the sampling system as close to the sampling probe outlet as practical. The gas shall pass through all CEM components used during normal sampling. If periodic automatic or manual adjustments are made to the CEMS zero and calibration settings, conduct the CD test immediately before these adjustments, or conduct it in such a way that the CD can be determined. Record the CEMS response and subtract this value from the reference (calibration gas) value. To meet the specification, none of the differences shall exceed 3 ppm.

2.2.6.1.2 Calculations. Summarize the results on a data sheet. An example is shown in Figure 2.2-1. Calculate the differences between the CEMS responses and the reference values.

2.2.6.2 Response Time. The entire system including sample extraction and transport, sample conditioning, gas analyses, and the data recording is checked with this procedure.

2.2.6.2.1 Introduce the calibration gases at the probe as near to the sample location as possible. Introduce the zero gas into the system. When the system output has stabilized (no change greater than 1 percent of full scale for 30 sec), switch to monitor stack effluent and wait for a stable value. Record the time (upscale response time) required to reach 95 percent of the final stable value.

2.2.6.2.2 Next, introduce a high-level calibration gas and repeat the above procedure. Repeat the entire procedure three times and determine the mean upscale and downscale response times. The longer of the two means is the system response time.

2.2.6.3 Calibration Error Test Procedure.

2.2.6.3.1 Sampling Strategy. Challenge the CEMS with zero gas and US EPA Protocol 1 cylinder gases at measurement points within the ranges specified in section 2.2.4.7.

2.2.6.3.1.1. The daily calibration gases, if Protocol 1, may be used for this test.

2.2.6.3.1.2 Operate the CEMS as nearly as possible in its normal sampling mode. The calibration gas should be injected into the sampling system as close to the sampling probe outlet as practical and shall pass through all filters, scrubbers, conditioners, and other monitor components used during normal sampling. Challenge the CEMS three non-consecutive times at each measurement point and record the responses. The duration of each gas injection should be for a sufficient period of time to ensure that the CEMS surfaces are conditioned.

2.2.6.3.2 Calculations. Summarize the results on a data sheet. An example data sheet is shown in Figure 2.2-2. Average the differences between the instrument response and the certified cylinder gas value for each gas. Calculate three CE results according to Equation 1. No confidence coefficient is used in CE calculations.

2.2.7 Equations

2.2.7.1 Calibration Error. Calculate CE using Equation 1.

$$C = \left| \frac{\bar{d}}{FS} \right| \times 100$$

(Eq. 1)

Where:

$\bar{d}$

= Mean difference between CEMS response and the known reference concentration.

2.2.8 Reporting

At a minimum, summarize in tabular form the results of the CD, response time, and CE test, as appropriate. Include all data sheets, calculations, CEMS data records, and cylinder gas or reference material certifications.

SOURCE:	DATE:
MONITOR:	LOCATION:
SERIAL NUMBER:	SPAN:

	DAY	*DATE*	*TIME*	*CALIBRATION VALUE*	*MONITOR RESPONSE*	*DIFFERENCE*	*PERCENT OF SPAN**
ZERO/ LOW LEVEL	1						
	2						
	3						
	4						
	5						
	6						
	7						
HIGH LEVEL	1						
	2						
	3						
	4						
	5						
	6						
	7						

*Acceptance Criteria: ≤ 3% of span each day for seven days.

Figure 2.2–1 Calibration Drift Determination

SOURCE:	DATE:
MONITOR:	LOCATION:
SERIAL NUMBER:	SPAN:

RUN NUMBER	*CALIBRATION VALUE*	*MONITOR RESPONSE*	*DIFFERENCE*		
			Zero/Low	Mid	High
1 – Zero					
2 – Mid					
3 – High					
4 – Mid					
5 – Zero					
6 –High					
7 –Zero					
8 – Mid					
9 – High					
		MEAN DIFFERENCE=			
		CALIBRATION ERROR=	%	%	%

Figure 2.2–2 Calibration Error Determination

2.2.9 Quality Assurance (QA)

Proper calibration, maintenance, and operation of the CEMS is the responsibility of the owner or operator. The owner or operator must establish a QA program to evaluate and monitor CEMS performance. As a minimum, the QA program must include:

2.2.9.1 A daily calibration check for each monitor. The calibration must be adjusted if the check indicates the instrument's CD exceeds 3 ppm. The gases shall be injected as close to the probe as possible to provide a check of the entire sampling system. If an alternative calibration procedure is desired (e.g., direct injections or gas cells), subject to Director's approval, the adequacy of this alternative procedure may be demonstrated during the initial 7–day CD test. Periodic comparisons of the two procedures are suggested.

2.2.9.2 A daily system audit. The audit must include a review of the calibration check data, an inspection of the recording system, an inspection of the control panel warning lights, and an inspection of the sample transport and interface system (e.g., flowmeters, filters), as appropriate.

2.2.9.3 A quarterly CE test. Quarterly RA tests may be substituted for the CE test when approved by the Director on a case–by–case basis.

2.2.9.4 An annual performance specification test.

2.2.10 Alternative Measurement Technique

The regulations allow gas conditioning systems to be used in conjunction with unheated HC CEMs during an interim period. This gas conditioning may include cooling to not less than 40 °F and the use of condensate traps to reduce the moisture content of sample gas entering the FID to less than 2 percent. The gas conditioning system, however, must not allow the sample gas to bubble through the condensate as this would remove water soluble organic compounds. All components upstream of the conditioning system should be heated as described in section 2.2.4 to minimize operating and maintenance problems.

2.2.11 References

1. Measurement of Volatile Organic Compounds–Guideline Series. U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, EPA–450/2–78–041, June 1978.

2. Traceability Protocol for Establishing True Concentrations of Gases Used for Calibration and Audits of Continuous Source Emission Monitors (Protocol No. 1). U.S. Environmental Protection Agency ORD/EMSL, Research Triangle Park, North Carolina, 27711, June 1978.

3. Gasoline Vapor Emission Laboratory Evaluation–Part 2. U.S. Environmental Protection Agency, OAQPS, Research Triangle Park, North Carolina, 27711, EMB Report No. 76–GAS–6, August 1975.

SECTION 3.0 SAMPLING AND ANALYTICAL METHODS

NOTE: The sampling and analytical methods to the BIF manual are published in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," U.S. EPA Publication SW–846, third edition and updates, as incorporated by reference in Section 66260.11 of this Division.

SECTION 4.0 PROCEDURE FOR ESTIMATING THE TOXICITY EQUIVALENCY OF CHLORINATED DIBENZO–P–DIOXIN AND DIBENZOFURAN CONGENERS

PCDDs and PCDFs must be determined using the method given in section 3.4 of this document. In this method, individual congeners or homologues[1] are measured and then summed to yield a total PCDD/PCDF value. No toxicity factors are specified in the method to compute risks from such emissions.

FOOTNOTE: [1]The term "congener" refers to any one particular member of the same chemical family; e.g., there are 75 congeners of chlorinated dibenzo–p–dioxins. The term "homologue" refers to a group of structurally related chemicals that have the same degree of chlorination. For example, there are eight homologues of CDs, monochlorinated through octachlorinated. Dibenzo–p–dioxins

and dibenzofurans that are chlorinated at the 2,3,7 and 8 positions are denoted as "2378" congeners, except when 2, 3, 7, 8–TCDD is uniquely referred to: e.g., 1, 2, 3, 7, 8–PeCDF and 2, 3, 4, 7, 8– PeCDF are both referred to as "2378–PeCDFs."

For the purpose of estimating risks posed by emissions from boilers and industrial furnaces, however, specific congeners and homologues must be measured using the specified method and then multiplied by the assigned toxicity equivalence factors (TEFs), using procedures described in "Interim Procedures for Estimating Risks Associated with Exposures to Mixtures of Chlorinated Dibenzo–p–Dioxins and Dibenzofurans (CDDs and CDFs) and 1989 Update," EPA/625/3–89/016, March 1989. The resulting 2, 3, 7, 8–TCDD equivalents value is used in the subsequent risk calculations and modeling efforts as discussed in the BIF final rule.

The procedure for calculating the 2, 3, 7, 8–TCDD equivalent is as follows:

1. Using method 23, determine the concentrations of 2, 7, 3,8–congeners of various PCDDs and PCDFs in the sample.

2. Multiply the congener concentrations in the sample by the TEF listed in Table 4.0–1 to express the congener concentrations in terms of 2, 3, 7, 8–TCDD equivalent. Note that congeners not chlorinated at 2, 3, 7, and 8 positions have a zero toxicity factor in this table.

3. Add the products obtained in step 2, to obtain the total 2, 3, 7, 8–TCDD equivalent in the sample.

Sampling calculations are provided in US EPA document No. EPA/625/3–89/016, March 1989, which can be obtained from the US EPA, ORD Publications Office, Cincinnati, Ohio (Phone no. 513–569–7562).

Table 4.0–1.—2,3,7,8–TCDD Toxicity Equivalence Factors (TEFs)[1]

Compound	*1 – TEFs, 89*
Mono–, Di–, and TriCDDs	0
2,3,7,8–TCDD	1
Other TCDDs	0
2,3,7,8–PeCDD	0.5
Other PeCDDs	0
2,3,7,8–HxCDD	0.1
Other HxCDDs	0
2,3,7,8–HpCDD	0.01
Other HpCDDs	0
OCDD	0.001
Mono–, Di–, and TriCDFs	0
2,3,7,8–TCDF	0.1
Other TCDFs	0
1,2,3,7,8–PeCDF	0.05
2,3,4,7,8–PeCDF	0.5
Other PeCDFs	0
2378–HxCDFs	0.1
Other HxCDFs	0
2378–HpCDFs	0.01
Other HpCDFs	0
OCDF	0.001

Reference: Adapted from NATO/CCMS, 1988a.

FOOTNOTE: [1]Interim Procedures for Estimating Risks Associated with Exposures to Mixtures of Chlorinated Dibenzo–p–Dioxins and Dibenzofurans (CDDs and CDFs) 1989 Update EPA/625/3–89/016, March 1989.

SECTION 5.0 HAZARDOUS WASTE COMBUSTION AIR QUALITY SCREENING PROCEDURE

The HWCAQSP is a combined calculation/reference table approach for conservatively estimating short–term and annual average facility impacts for stack emissions. The procedure is based on extensive short–term modeling of 11 generic source types and on a set of adjustment factors for estimating annual average concentrations from short–term concentrations. Facility impacts may be determined based on the selected worst–case stack or on multiple stacks, in which the impacts from each stack are estimated separately and then added to produce the total facility impact.

This procedure is most useful for facilities with multiple stacks, large source–to–property boundary distances, and complex terrain between 1 and 5 km from the facility. To ensure a sufficient degree of conservatism, the HWCAQSP may not be used if any of the five screening procedure limitations listed below are true:

- The facility is located in a narrow valley less than 1 km wide;
- The facility has a stack taller than 20 m and is located such that the terrain rises to the stack height within 1 km of the facility;
- The facility has a stack taller than 20 m and is located within 5 km of the shoreline of a large body of water;
- The facility property line is within 200 m of the stack and the physical stack height is less than 10 m; or
- On–site receptors are of concern, and stack height is less than 10 m.

If any of these criteria are met or the Director determines that this procedure is not appropriate, then detailed site–specific modeling or modeling using the "Screening Procedures for Estimating the Air Quality Impact of Stationary Sources," EPA–450/4–88–010, Office of Air Quality Planning and Standards, August 1988, is required. Detailed site–specific dispersion modeling must conform to the US EPA "Guidance on Air Quality Models (Revised)", EPA 450/2–78–027R, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, July 1986. This document provides guidance on both the proper selection and regulatory application of air quality models.

Introduction

The Hazardous Waste Combustion Air Quality Screening Procedure (HWCAQSP) (also referred to hereafter as "the screening procedure" or "the procedure") provides a quick, easy method for estimating maximum (hourly) and annual average ambient air impacts associated with the combustion of hazardous waste. The methodology is conservative in nature and estimates dispersion coefficients[1] based on facility–specific information.

FOOTNOTE: [1]The term dispersion coefficient refers to the change in ambient air concentration ($\mu g/m^3$) resulting from a source with an emission rate of 1 g/sec.

The screening procedure can be used to determine emissions limits at sites where the nearest meteorological (STAR) station is not representative of the meteorology at the site. If the screen shows that emissions from the site are adequately protective, then the need to collect site–specific meteorologic data can be eliminated.

The screening procedure is generally most helpful for facilities meeting one or more of the following conditions:

- Multiple stacks with substantially different release specifications (e.g., stack heights differ by >50 percent, exit temperatures differ by >50 °K, or the exit flow rates differ by more than a factor of 2),
- Terrain located between 1 km and 5 km from the site increases in elevation by more than the physical height of the shortest stack (i.e., the facility is located in complex terrain), or
- Significant distance between the facility's stacks and the site boundary [guidance on determining whether a distance is "significant" is provided in Step 6(B) of the procedure].

Step 1 through 9 of the screening procedure present a simplified method for determining emissions based on the use of the "worst–case" stack. If the simplified method shows that desired feed rates result in emissions that exceed allowable limits for one or more pollutants, a refined analysis to examine the emissions from each stack can be conducted. This multiple–stack method is presented in Step 10.

The steps involved in screening methodology are as follows:

Step 1. Define Source Characteristics
Step 2. Determine the Applicability of the Screening Procedure
Step 3. Select the Worst–Case Stack
Step 4. Verify Good Engineering Practice (GEP) Criteria
Step 5. Determine the Effective Stack Height and Terrain–Adjusted Effective Stack Height
Step 6. Classify the Site as Urban or Rural
Step 7. Determine Maximum Dispersion Coefficients
Step 8. Estimate Maximum Ambient Air Concentrations
Step 9. Determine Compliance With Regulatory Limits

Step 10. Multiple Stack Method

Step 1. Define Source Characteristics

Provide the following source data:[2]

FOOTNOTE: [2]Worksheet space is provided for three stacks. If the facility has additional stacks, copy the form and revise stack identification numbers for 4, 5, etc.

Stack Data:	*Stack No. 1*	*Stack No. 2*	*Stack No. 3*
Physical stack height (m)	___	___	___
Exhaust temperature (°K)	___	___	___
Flow rate (m^3/sec)	___	___	___

Nearby Building Dimensions

Consider all buildings within five building heights or five maximum projected widths of the stack(s). For the building with the greatest height, fill in the spaces below.

Building Height (m)

Maximum projected building width (m)

Nearby Terrain Data

Determine maximum terrain rise for the following three distance ranges from the facility (not required if the highest stack is less than 10 m in height):

_____(m) _____(m) _____(m)
0–0.5 km 0–2.5 km 0–5 km

Distance from facility to nearest shoreline (km)

Valley width (km)

Step 2. Determine the Applicability of the Screening Procedure

Fill in the following data:

Is the Facility in a valley < kmin width? Yes__ No__

Is the terrain rise within 1 km of the facility greater than the physical stack height? (Only applies to stacks <20 meters in height) ___ ___

Is the distance to the nearest shoreline < 5 km? (Only applies to facilities with stacks < 20 meters in height) ___ ___

For the building listed in Step 1, is the closest property boundary < 5 times the building height or < 5 times the maximum projected building width? (Only applies to facilities with a stack height < 2.5 times the building height) ___ ___

If the answer is "no" to all the preceding questions, then the HWCAQSP is acceptable. If the answer to any question is "yes", the procedure is not acceptable.

Step 3: Select the Worst–Case Stack

If the facility has several stacks, a worst–case stack must be chosen to conservatively represent release conditions at the facility. Follow the steps below to identify the worst–case stack.

Apply the following equation to each stack:

K = HVT

where:

K = an arbitrary parameter accounting for the relative influence of the stack height and plume rise.

H = Physical stack height (m)

V = Flow rate (m^3/sec)

T = Exhaust temperature (°K)

Complete the following table to compute the "K" value for each stack:

Stack No.	*Stack height (m)*	*X*	*Flow rate (m^3/sec)*	*X*	*Exit temp (°K)*	=	*K*
1		X		X		=	
2		X		X		=	
3		X		X		=	

Select the stack with the lowest "K" value. This is the worst–case stack that will be used for Steps 4 through 9.

Worst–Case Stack is identified as Stack No. ___

Step 4. Verify Good Engineering Practice (GEP) Criteria

Confirm that the selected worst–case stack meets Good Engineering Practice (GEP) criteria. The stack height to be used in the subsequent steps of this procedure must not be greater than the maximum GEP. Maximum and minimum GEP stack heights are defined as follows:

CEP (minimum) = H + (1.5 X L)

GEP (maximum) = greater of 65 m or
H + (1.5 X L)

where:

H = height of the building selected in Step 1 measured from ground level elevation at the base of the stack

L = the lesser dimension of the height or projected width of the building selected in Step 1

Record the following data for the worse–case stack:

Stack height (m) =

H(m) =

L(m) =

Then compute the following:

GEP (minimum) (m) =

GEP (maximum) (m) =

- If the physical height of the worst–case stack exceeds the maximum GEP, then use the maximum GEP stack height for the subsequent steps of this analysis;
- If the physical height of the worst–case stack is less than the minimum GEP, then use generic source number 11 as the selected source for further analysis and proceed directly to Step 6;
- If the physical height of the worst–case stack is between the minimum and maximum GEP, then use the actual physical stack height for the subsequent steps of this analysis.

Step 5. Determine the Effective Stack Height and Terrain–Adjusted Effective Stack Height (TAESH)

The effective stack height is an important factor in dispersion modeling. The effective stack height is the physical height of the stack plus plume rise. As specified in Step 4, the stack height used to estimate the effective stack height must not exceed GEP requirements. Plume rise is a function of the stack exit gas temperature and flow rate.

In this analysis, the effective stack height is used to select the generic source that represents the dispersion characteristics of the facility. For facilities located in flat terrain and for all facilities with worst–case stacks less than or equal to 10 meters in height, generic source numbers are selected strictly on the basis of effective stack height. In all other cases, the effective stack height is further adjusted to take into account the terrain rise near the facility. This "terrain–adjusted effective stack height" (TAESH) is then used to select the generic source number that represents the dispersion characteristics of the facility. Follow the steps below to identify the effective stack height, the TAESH (where applicable), and the corresponding generic source number.

(A) Go to Table 5.0–1 and find the plume rise value corresponding to the stack temperature and exit flow rate for the worst–case stack determined in Step 3.

Plume rise = _____ (m)

(B) Add the plume rise to the GEP stack height of the worst–case stack determined in Steps 3 and 4.

GEP stack height (m)	+	Plume rise (m)	=	Effective stack height (m)
_____	+	_____	=	_____

(C) Go the first column of Table 5.0–2 and identify the range of effective stack heights that includes the effective stack height estimated in Step 5(B). Record the generic source number that corresponds to this range.

Generic source number =

(D) If the source is located in flat terrain[3], or if the generic source number identified in Step 5(C) above is 1 or 11 (regardless of terrain classifi–

cation), use the generic source number determined in Step 5(C) and proceed directly to Step 6. Otherwise, continue to Step 5(E).

FOOTNOTE: [3]The terrain is considered flat and terrain adjustment factors are not used if the maximum terrain rise within 5 km of the facility (see Step 1) is less than 10 percent of the physical stack height of the worst-case stack.

(E) For those situations where the conditions in Step 5(D) do not apply, the effective stack height must be adjusted for terrain. The TAESH for each distance range is computed by subtracting the terrain rise within the distance range from the effective stack height[4].

FOOTNOTE: [4]Refer to Step 1 for terrain adjustment data. Note that the distance from the source to the outer radii of each range is used. For example, for the range >0.5–2.5 km, the maximum terrain rise in the range 0.0–2.5 km is used.

Table 5.0–1.—Estimated Plume Rise (in Meters) Based on Stack Exit Flow Rate and Gas Temperature

Exhaust Temperature (°K)

Flow rate (m^3/s)	*<325*	*325–349*	*350–399*	*400–449*	*450–499*	*500–599*	*600–699*	*700–799*	*800–999*	*1000–1499*	*>1499*
<0.5	0	0	0	0	0	0	0	0	0	0	0
0.5–0.9	0	0	0	0	0	0	0	0	1	1	1
1.0–1.9	0	0	0	0	1	1	2	3	3	3	4
2.0–2.9	0	0	1	3	4	4	6	6	7	8	9
3.0–3.9	0	1	2	5	6	7	9	10	11	12	13
4.0–4.9	1	2	4	6	8	10	12	13	14	15	17
5.0–7.4	2	3	5	8	10	12	14	16	17	19	21
7.5–9.9	3	5	8	12	15	17	20	22	22	23	24
10.0–12.4	4	6	10	15	19	21	23	24	25	26	27
12.5–14.9	4	7	12	18	22	23	25	26	27	28	29
15.0–19.9	5	8	13	20	23	24	26	27	28	29	31
20.0–24.9	6	10	17	23	25	27	29	30	31	32	34
25.0–29.9	7	12	20	25	27	29	31	32	33	35	36
30.0–34.9	8	14	22	26	29	31	33	35	36	37	39
35.0–39.9	9	16	23	28	30	32	35	36	37	39	41
40.0–49.9	10	17	24	29	32	34	36	38	39	41	42
50.0–59.9	12	21	26	31	34	36	39	41	42	44	46
60.0–69.9	14	22	27	33	36	39	42	43	45	47	49
70.0–79.9	16	23	29	35	38	41	44	46	47	49	51
80.0–89.9	17	25	30	36	40	42	46	48	49	51	54
90.0–99.9	19	26	31	38	42	44	48	50	51	53	56
100.0–119.9	21	26	32	39	43	46	49	52	53	55	58
120.0–139.9	22	28	35	42	46	49	52	55	56	59	61
140.0–159.9	23	30	36	44	48	51	55	58	59	62	65
160.0–179.9	25	31	38	46	50	54	58	60	62	65	67
180.0–199.9	26	32	40	48	52	56	60	63	65	67	70
>199.9	26	33	41	49	54	58	62	65	67	69	73

Table 5.0–2—Selection of Generic Source Number

Effective stack height (m)	*Generic source No.*
<10.0	1
10.0–14.9	2
15.0–19.9	3
20.0–24.9	4
25.0–30.9	5
31.0–41.9	6
42.0–52.9	7
53.0–64.9	8
65.0–122.9	9
113.0+	10
Downwash	11

Table 5.0–3—Classification of Land Use Types

Type[1]	*Description*	*Urban or rural designation*[2]
I1	Heavy Industrial	Urban
I2	Light/Moderate Industrial	Urban
C1	Commercial	Urban
R1	Common Residential (Normal Easements)	Rural
R2	Compact Residential (Single Family)	Urban
R3	Compact Residential (Multi-Family)	Rural
R4	Estate Residential (Multi-Acre Plots)	Rural
A1	Metropolitan Natural	Rural
A2	Agricultural	Rural
A3	Undeveloped (Grasses/Weeds)	Rural
A4	Undeveloped (Heavily Wooded)	Rural
A5	Water Surfaces	Rural

FOOTNOTE: [1]US EPA, Guideline on Air Quality Models (Revised), EPA-450/2-78-027R, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, July, 1986.

FOOTNOTE: [2]Auer, August H. Jr., "Correlation of Land Use and Cover with Meteorological Anomalies," Journal of Applied Meteorology, pp. 636–643, 1978.

Distance range (km)	*Effective stack-height (m) [see step 5(B)]*	–	*Maximum terrain-rise (m) (see step 1)*	= *TAESH (m)*
0.0–05	_____	–	_____	= _____
>0.5–2.5	_____	–	_____	= _____
>2.5–5.0	_____	–	_____	= _____

If the terrain rise for any of the distance ranges is greater than the effective stack height, set the TAESH equal to zero and use generic source number 1 for that distance range.

Record the generic source numbers from Table 5.0–2 based on each of the TAESH values.

	Distance range (km)	*Generic source No. (after terrain adjustment)*
0.0 – 0.5		
>0.5 – 2.5		
>2.5 – 5.0		

Step 6. Classify the Site as Urban or Rural

(A) Classify the land use near the facility as either urban or rural by determining the percentage of urban land use types (as defined in Table 3; for further guidance see the footnoted references) that fall within 3 km of the facility[5].

FOOTNOTE: [5]The delineation of urban and rural areas, can be difficult for the residential–type areas listed in Table 5.0–3. The degree of resolution in Table 5.0–3 for residential areas often cannot be identified without conducting site area inspections. This process can require extensive analysis, which, for many applications, can be greatly streamlined without sacrificing confidence in selecting the appropriate urban or rural classification. The fundamental simplifying assumption is based on the premise that many applications will have clear–cut urban/rural designations, i.e., most will be in rural settings that can be definitively characterized through a review of aerial photographs, zoning maps, or U.S. Geological Survey topographical maps.

Method Used to Estimate Percent Urban Land Use:	Visual	Planimeter
	_____	_____
Estimated Percentages	Urban _____	Rural _____

If the urban land use percentage is less than or equal to 30 percent based on a visual estimate, or 50 percent based on a planimeter, the local land use is considered rural. Otherwise, the local land use is considered urban.

Classification (check applicable space.)	Urban	Rural
	_____	_____

(B) Based on the TAESH and the urban/rural classification of surrounding land use, use the following table to determine the threshold distance between any stack and the nearest facility boundary.

Terrain adjusted effective stack height range (m)	*Distance (m)*	
	Urban	*Rural*
1–9.9	200	200
10–14.9	200	250
15–19.9	200	250
20–24.9	200	350
25–30.9	200	450
31–41.9	200	550
42–52.9	250	800
53–64.9	300	1000
65–112.9	400	1200
113+	700	2500

Record the following information:

Threshold distance from the table (m):

Minimum distance from any stack to property boundary (m):

If the minimum distance between any stack and the nearest facility boundary is greater than the threshold distance, the surrounding buffer distance is considered significant and the facility is likely to benefit from use of the HWCAQSP relative to the Tier I and II limits (see discussion of benefits from using HWCAQSP in Introduction section).

Step 7. Determine Maximum Dispersion Coefficients

(A) Determine maximum average hourly dispersion coefficients. Based on the results of Step 6(A), select either Table 5.0–4 (urban) or Table 5.0–5 (rural) to determine the maximum average hourly dispersion coefficient[6]. For flat terrain [defined in Step 5(D)] and for all sites with generic source numbers 1 or 11, use Step 7(A)(1). For rolling or complex terrain (excluding generic sources numbers 1 and 11), use Step 7(A)(2).

FOOTNOTE: [6]For the distance range 6 to 20 kilometers, generic source number 1 is used to conservatively represent the maximum dispersion coefficient.

(1) Search down the appropriate generic source number column [based on Step 5(C)], beginning at the minimum fenceline distance listed in Step 6(B)[7]. Record the maximum average hourly dispersion coefficient encountered.

FOOTNOTE: [7]Exclude all distances that are closer to the facility than the property boundary. For example, if the actual distance to the nearest property boundary is 265 meters, begin at the 300 meter distance in Tables 5.0–4 and 5.0–5.

Maximum Average Hourly Dispersion

Coefficient = ($\mu/m^3/g/sec$)

(2) For each of the three distance–based generic source numbers listed in Step 5(E), search down the appropriate generic source number columns, beginning at the minimum fenceline distance listed in Step 6(B). Note that different columns may be used for each of the three distance ranges if there is a need for terrain adjustment. Record the maximum dispersion coefficient for each generic source number.

Distance range (km)	*Generic source No. (from Step 5(E))*	*Maximum dispersion coefficient ($\mu g/m^3/m/sec$)*
0.0–0.5		
>0.5–2.5		
>2.5–5.0		
>5.0–20.0		

Table 5.0–4—ISCST Predicted Maximum Concentrations ($\mu g/m^3$)[a] for Hazardous Waste Combustors Using Urban Conditions

Distance (KM)	*Generic Source #1 (<10M)*	*Generic Source #2 (10M)*	*Generic Source #3 (15M)*	*Generic Source #4 (20M)*	*Generic Source #5 (25M)*	*Generic Source #6 (31M)*	*Generic Source #7 (42M)*	*Generic Source #8 (53M)*	*Generic Source #9 (65M)*	*Generic Source #10 (113M)*	*Generic Source #11 (Down-wash)*
0.20	680.1	517.5	368.7	268.7	168.5	129.8	63.4	30.1	18.4	1.6	662.3
0.25	521.9	418.2	303.6	232.6	163.0	124.2	67.6	38.5	19.8	3.2	500.0
0.30	407.7	351.7	256.2	199.0	147.0	118.3	63.5	41.5	25.0	4.2	389.3
0.35	326.2	304.2	221.6	172.7	130.2	107.9	60.0	40.5	27.3	5.4	311.9
0.40	268.5	268.5	195.6	152.5	115.7	97.1	59.6	37.8	27.4	5.8	268.5
0.45	240.8	240.7	175.4	136.7	103.9	87.6	56.6	37.2	26.3	5.8	240.8
0.50	218.5	218.5	159.2	124.1	94.4	79.7	52.9	36.7	24.7	5.8	218.5
0.55	200.3	200.3	145.9	113.8	86.5	73.1	49.2	35.4	24.5	6.6	200.3
0.60	185.1	185.1	134.9	105.1	80.0	67.6	45.8	33.8	24.3	7.1	185.1
0.65	172.2	172.2	125.5	97.8	74.4	62.9	42.7	32.0	23.7	7.4	172.2
0.70	161.2	161.2	117.4	91.6	69.6	58.9	40.1	30.2	22.9	7.5	161.2
0.75	151.6	151.6	110.5	86.1	65.5	55.4	37.7	28.6	22.0	7.5	151.6
0.80	143.2	143.2	104.4	81.4	61.9	52.3	35.6	27.1	21.1	7.4	143.2
0.85	135.8	135.8	99.0	77.2	58.7	49.6	33.8	25.7	20.2	7.2	135.8
0.90	129.2	129.2	94.2	73.4	55.8	47.2	32.1	24.5	19.3	7.0	129.2
0.95	123.3	123.3	89.9	70.1	53.3	45.0	30.7	23.4	18.5	6.8	123.3
1.00	118.0	118.0	86.0	67.0	51.0	43.1	29.4	22.4	17.7	6.5	118.0
1.10	108.8	108.0	79.3	61.8	47.0	39.7	27.1	20.6	16.4	6.5	108.8
1.20	101.1	101.1	73.7	57.4	43.7	36.9	25.2	19.2	15.2	6.4	101.1
1.30	94.6	94.6	68.9	53.7	40.9	34.5	23.5	18.0	14.2	6.3	94.6
1.40	89.0	89.0	64.8	50.6	38.5	32.5	22.1	16.9	13.4	6.1	89.0
1.50	84.1	84.1	61.3	47.8	36.3	30.7	20.9	16.0	12.7	5.9	84.1
1.60	79.8	79.8	58.2	45.4	34.5	29.2	19.9	15.2	12.0	5.6	79.8
1.70	76.0	76.0	55.4	43.2	32.9	27.8	18.9	14.4	11.4	5.4	76.0
1.80	72.7	72.7	53.0	41.3	31.4	26.5	18.1	13.8	10.9	5.2	72.7
1.90	69.6	69.6	50.7	39.6	30.1	25.4	17.3	13.2	10.5	5.0	69.6
2.00	66.9	66.9	48.8	38.0	28.9	24.4	16.7	12.7	10.1	4.8	66.9
2.25	61.1	61.1	44.5	34.7	26.4	22.3	15.2	11.6	9.2	4.4	61.1
2.50	56.4	56.4	41.1	32.1	24.4	20.6	14.0	10.7	8.5	4.1	56.4
2.75	52.6	52.6	38.3	29.9	22.7	19.2	10.0	10.0	7.9	3.8	52.6
3.00	49.3	49.3	35.9	28.0	21.3	18.0	9.4	9.4	7.4	3.6	49.3
4.00	40.2	40.2	29.3	22.8	17.4	14.7	7.6	7.6	6.1	2.9	40.2
5.00	34.5	34.5	25.2	19.6	14.9	12.6	6.6	6.6	5.2	2.5	34.5
6.00	30.7	30.7	30.7	30.7	30.7	30.7	30.7	30.7	30.7	30.7	30.7
7.00	27.8	27.8	27.8	37.8	27.8	27.8	27.8	27.8	27.8	27.8	27.8
8.00	25.5	25.5	25.5	25.5	25.5	25.5	25.5	25.5	25.5	25.5	25.5
9.00	23.8	23.8	23.8	23.8	23.8	23.8	23.8	23.8	23.8	23.8	23.8
10.00	22.3	22.3	22.3	22.3	22.3	22.3	22.3	22.3	22.3	22.3	22.3
15.00	17.6	17.6	17.6	17.6	17.6	17.6	17.6	17.6	17.6	17.6	17.6
20.00	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.01	15.0

FOOTNOTE: [3]Based on a 1 Gram/Second Emission Rate

Table 5.0–5.—ISCST Predicted Maximum Concentrations ($\mu g/m^3$)[a] for Hazardous Waste Combustors Using Rural Conditions

Distance (KM)	*Generic Source #1 (<10M)*	*Generic Source #2 (10M)*	*Generic Source #3 (15M)*	*Generic Source #4 (20M)*	*Generic Source #5 (25M)*	*Generic Source #6 (31M)*	*Generic Source #7 (42M)*	*Generic Source #8 (53M)*	*Generic Source #9 (65M)*	*Generic Source #10 (113M)*	*Generic Source #11 (Down-wash)*
0.20	1771.1	670.3	308.6	176.8	102.8	76.5	28.0	10.1	3.5	0.0	1350.8
0.25	1310.6	678.4	316.9	183.6	104.6	71.8	38.0	17.6	7.9	0.2	1227.3
0.30	1022.3	629.2	303.4	199.1	100.4	75.0	39.7	24.0	12.6	0.8	1119.3
0.35	798.4	569.6	282.3	200.7	117.0	71.1	36.3	25.9	16.8	1.9	1023.8
0.40	656.9	516.5	278.7	194.4	125.2	82.7	25.3	24.6	18.1	3.1	938.9
0.45	621.5	471.1	277.6	184.3	127.5	89.7	35.6	21.7	17.6	4.3	851.8
0.50	633.5	432.4	272.0	172.7	125.7	92.9	34.4	21.6	15.9	5.5	787.8
0.55	630.1	399.2	263.8	168.0	121.6	93.3	38.6	22.1	13.6	6.5	730.6
0.60	616.6	370.4	254.0	169.1	116.2	91.8	42.6	21.7	14.3	6.7	676.4
0.65	596.7	345.4	243.6	168.1	110.3	89.2	45.3	20.9	14.7	6.4	633.4
0.70	573.2	323.4	232.9	165.6	104.5	85.8	47.0	23.3	14.6	5.9	592.0
0.75	546.9	304.0	222.3	162.0	98.8	82.2	47.7	25.5	14.3	5.5	554.6
0.80	520.9	286.8	212.1	157.7	98.8	78.5	47.8	27.1	13.8	5.1	522.1
0.85	495.7	271.5	202.4	153.0	99.0	74.9	47.4	28.3	15.0	4.7	491.8
0.90	471.5	257.8	193.3	148.1	98.6	71.4	46.6	29.1	16.3	4.5	464.2
0.95	448.5	245.4	184.7	143.1	97.6	72.3	45.6	29.6	17.3	4.2	438.9
1.00	426.8	234.2	176.8	138.1	96.3	72.6	44.4	29.8	18.2	4.0	415.8
1.10	387.5	214.7	162.5	128.2	91.9	71.1	41.8	29.5	19.3	3.9	375.0
1.20	353.5	198.4	150.3	119.3	87.4	69.1	39.1	28.6	19.8	4.1	340.3
1.30	323.0	189.6	139.9	111.5	82.9	66.7	36.6	27.5	19.8	4.2	310.4
1.40	296.6	182.2	130.8	104.5	78.7	64.2	34.3	26.2	19.5	4.2	284.6
1.50	273.3	174.6	122.9	98.3	74.7	61.6	32.3	24.9	19.0	4.2	262.0
1.60	252.7	167.0	115.9	92.8	71.0	59.1	31.8	23.6	18.4	4.2	242.2
1.70	234.5	159.6	109.7	87.9	67.6	56.7	31.6	22.5	17.7	4.3	224.7
1.80	218.3	152.4	104.1	83.5	64.4	54.3	31.3	21.4	17.0	4.5	211.9
1.90	203.7	145.6	99.1	79.5	61.5	52.1	30.9	20.4	16.3	4.8	198.4
2.00	190.7	139.1	94.6	75.9	58.8	50.0	30.4	19.5	15.7	5.1	186.3
2.25	164.4	124.5	85.1	68.3	53.0	45.4	28.9	18.1	14.2	5.4	160.8
2.50	143.7	112.1	77.3	62.1	48.2	41.4	27.2	17.9	12.9	5.5	140.7
2.75	127.0	101.5	70.9	56.9	38.1	38.1	25.6	17.5	11.8	5.4	124.5
3.00	113.4	92.4	65.6	52.6	35.2	35.2	24.0	17.0	11.2	5.2	112.5
4.00	78.8	67.3	50.6	40.6	27.2	27.2	29.0	14.3	10.4	4.3	78.3
5.00	59.1	54.6	41.4	33.2	22.2	22.2	15.6	12.0	9.3	3.5	58.8
6.00	56.7	46.7	46.7	46.7	46.7	46.7	46.7	46.7	46.7	46.7	46.7
7.00	40.4	40.4	40.4	40.4	40.4	40.4	40.4	40.4	40.4	40.4	40.4
8.00	35.8	35.8	35.8	35.8	35.8	35.8	35.8	35.8	35.8	35.8	35.8
9.00	32.2	32.2	32.2	32.2	32.2	32.2	32.2	32.2	32.2	32.2	32.2
10.00	9.4	29.4	29.4	29.4	29.4	29.4	29.4	29.4	29.4	29.4	29.4
15.00	20.5	20.5	20.5	20.5	20.5	20.5	20.5	20.5	20.5	20.5	20.5
20.00	15.9	15.9	15.9	15.9	15.9	15.9	15.9	15.9	15.9	15.9	15.9

FOOTNOTE: [a]Based on a 1 Gram/Second Emission Rate

(B) Determine annual/hourly ratio for rural analysis. The maximum average annual dispersion coefficient is approximated by multiplying the maximum hourly dispersion coefficient (identified in Step 7(A) by the appropriate ratio selection from Table 5.0–6. The generic source number(s) [from Steps 5(C) or 5(E)], urban/rural designation (from Step 6), and the terrain type are used to select the appropriate scaling factor. Use the noncomplex terrain designation for all sources located in flat terrain, for all sources where the physical stack height of the worst–case stack is less than or equal to 10 m, for all sources where the worst–case stack is less than the minimum GEP, and for those sources where all of the TAESH values in Step 5(E) are greater than zero. Use the complex terrain designation in all other situations.

(C) Determine maximum average annual dispersion coefficient. The maximum average annual dispersion coefficient is determined by multiplying the maximum hourly dispersion coefficient (Step 7(A)) by its corresponding annual/hourly ratio (Step 7(B)).

Terrain	*Distance from stack (m)*	*Generic source No.*	*Maximum hourly dispersion co–efficient ($\mu g/m^3/g/sec$)*	*Annual hourly ratio*	*Maximum annual dispersion coefficient ($\mu g/m^3/g/sec$)*[1]
Flat	0–20.0				
	0–0.5				
	>0.5–2.5				
Rolling or	>2.5–5.0				
Complex	>5.0–20.0				

FOOTNOTE: [1]Maximum hourly dispersion coefficient times annual/hourly ratio.

Step 8: Estimate Maximum Ambient Air Concentrations—see procedures prescribed in article 8 of chapter 16.

Step 9: Determine Compliance with Regulatory Limits—see procedures prescribed in article 8 of chapter 16.

Step 10: Multiple Stack Method (Optional)

This option is a special case procedure that may be helpful when (1) the facility exceeded the regulatory limits for one or more pollutants, as detailed in Step 9, and (2) the facility has multiple stacks with substantially different emission rates and effective release heights. Only those pol-

lutants that fail the Step 9 screening limits need to be addressed in this exercise.

This procedure assesses the environmental impacts from each stack and then sums the results to estimate total impacts. This option is conceptually the same as the basic approach (Steps 1 through 9) and does not involve complex calculations. However, it is more time–consuming and is recommended only if the basic approach fails to meet the risk criteria. The procedure is outlined below.

(A) Compute effective stack heights for each stack.[8]

FOOTNOTE: [8]Follow the procedure outlined in Step 4 of the basic screening procedure to determine the GEP for each stack. If a stack's physical height exceeds the maximum GEP, use the maximum GEP values. If a stack's physical height is less than the minimum GEP, use generic source number 11 in the subsequent steps of this analysis. Follow the procedure in Steps 5(A) and 5(B) to determine the effective height of each stack.

Stack No.	*GEP stack height (m)*	*Flow rate (m^3/sec)*	*Exit temp (^oK)*	*Plume rise (m)*	*Effective stack height (m)*
1					
2					
3					

Add an additional page if more than three stacks are involved. Circle the maximum and minimum effective stack heights.

(B) Determine if this multiple–stack screening procedure will likely produce less conservative results than the procedure in Steps 1 through 9. To do this, compute the ratio of maximum–to–minimum effective stack height:

$$\frac{\textit{Maximum Effective Stack Height}}{\textit{Minimum Effective Stack Height}} = \_\_\_\_\_$$

If the above ratio is greater than 1.25, proceed with the remaining steps. Otherwise, this option is less likely to significantly reduce the degree of conservatism in the screening method.

(C) Determine if terrain adjustment is needed and select generic source numbers. Select the shortest stack height and maximum terrain rise out to 5 km from Step 1 and determine if the facility is in flat terrain.

Shortest stack height (m) =

Maximum terrain rise in meters out to 5 km =

$$\frac{\textit{Terrain Rise (m)}}{\textit{Shortest Stack Height (m)}} \times 100 = \_\_\_\_\_\ \%$$

If the value above is greater than 10 percent, the terrain is considered nonflat; proceed to Step 10(D). If the ratio is less than or equal to 10 percent, the terrain is considered flat. Identify the generic source numbers based on effective stack heights computed in Step 10(A). Refer to Table 5.0–2 provided earlier to identify generic source numbers. Record the generic source numbers identified and proceed to Step 10(F).

	Stack No.		
	1	2	3
Generic Source Number			

(D) Compute the TAESH and select generic source numbers (four sources located in nonflat terrain).

1. Compute the TAESH for all remaining stacks using the following equation:

HE – TR = TAESH

where:

HE = effective stack height (m)

TR = maximum terrain rise for each distance range (m)

TAESH = terrain–adjusted effective stack height (m)

Use the Table Below To Calculate the TAESH for Each Stack[9].

Distance Range (km)	*Stack No.*											
	0–0.5				*>0.5–2.5*				*>2.5–5.0*			
	HE	– *TR*	=	*TAESH*	*HE*	– *TR*	=	*TAESH*	*HE*	– *TR*	=	*TAESH*
1		–	=			–	=			–	=	
2		–	=			–	=			–	=	
3		–	=			–	=			–	=	

FOOTNOTE: [9]Refer to Step 1 for terrain adjustment data. Note that the distance from the source to the outer radii of each range is used. For example, for the range >0.5–2.5 km, the maximum terrain rise in the range 0.0–2.5 km is used.

For those stacks where the terrain rise within a distance range is greater than the effective stack height (i.e., HE–TR is less than zero), the TAESH for that distance range is set equal to zero, and generic source number 1 should be used for that distance range for all subsequent distance ranges. Additionally, for all stacks with a physical stack height of less than or equal to 10 meters, use generic source number 1 for all distance ranges[10]. For the remaining stacks, proceed to Step 10(D)(2).

FOOTNOTE: [10]This applies to all stacks less than or equal to 10 meters regardless of the terrain classification.

2. For the remaining stacks, refer to Table 5.0–2 and, for each distance range, identify the generic source number that includes the TAESH. Use the values obtained from Steps 10(D)(1) and 10(D)(2) to complete the following summary worksheet;

Generic Source Number After Terrain Adjusted (if Necessary)

Stack No.	*0–0.5 km*	*>0.5–2.5 km*	*>2.5–5.0 km*
1			
2			
3			

(E) Identify maximum average hourly dispersion coefficients. Based on the land use classification of the site (e.g., urban or rural), use either Table 5.0–4 or Table 5.0–5 to determine the appropriate dispersion coef-

ficient for each distance range for each stack. Begin at the minimum fenceline distance indicated in Step 7(B) and record on Worksheet 5.0–1 the dispersion coefficient for each stack/distance range. For stacks located in facilities in flat terrain, the generic source numbers were computed in Step 10(C). For stacks located in facilities in rolling and complex terrain, the generic source numbers were computed in Step 10(D). For flat terrain applications and for stacks with a physical height of less than or equal to 10 meters, only one generic source number is used per stack for all distance ranges. For other situations up to three generic source numbers may be needed per stack (i.e., a unique generic source number per distance range). In Tables 5.0–4 and 5.0– 5, the dispersion coefficients for distances of 6 km to 20 km are the same for all generic source numbers in order to conservatively represent terrain beyond 5 km (past the limits of the terrain analysis).

Worksheet 5.0–1 Dispersion Coeffificent by Downwind Distance[1]

Distance	*Stack 1*	*Stack 2*	*Stack 3*
0.20			
0.25			
0.30			
0.35			
0.40			
0.45			
0.50			
0.55			
0.60			
0.65			
0.70			
0.75			
0.80			
0.85			
0.90			
0.95			
1.00			
1.10			
1.20			
1.30			
1.40			
1.50			
1.60			
1.70			
1.80			
1.90			
2.00			
2.25			
2.50			
2.75			
3.00			
4.00			
5.00			
6.00			
7.00			
8.00			
9.00			
10.00			
15.00			
20.00			

[1]NOTE: This procedure places all stacks at the same point, but allows for consideration of different effective stack heights. The distance to the closest boundary (extracted from Step 1) should be the closest distance to any stack.

(F) Estimate maximum hourly ambient air concentrations. In this step, pollutant–specific emission rates are multiplied by appropriate dispersion coefficients to estimate ambient air concentrations. For each stack, emissions are multiplied by the dispersion coefficient selected in Step 10(E) and summed across all stacks to estimate ambient air concentrations at various distances from the facility. From these summed concentrations, the maximum hourly ambient air concentration is selected. First, select the maximum emission rate of the pollutant[11]. Record these data in the spaces provided below[12].

FOOTNOTE: [11]Recall that it is recommended that this analysis be performed for only one or two pollutants. The pollutants chosen for this analysis should be those that show the most significant exceedances of the risk threshold.

FOOTNOTE: [12]Refer to Step 8 of the basic screening procedure. At this point in the screening procedure, annual emissions are used to represent hourly average emission rates. These values will be adjusted by the annual/hourly ratio to estimate annual average concentrations.

Maximum Annual Emission Rates (G/Sec)

Pollutant	*Stack 1*	*Stack 2*	*Stack 3*

Complete a separate copy of Worksheet 5.0–2 for each pollutant and select the highest hourly concentration from the summation column at the far right of the worksheet. Record the maximum hourly air concentration for each pollutant analyzed (add additional lines if needed):

Pollutant	*Maximum hourly air concentration*

Worksheet 5.0-2 Maximum Hourly Ambient Air Concentration

Pollutant _____

Total Distance (km)	Stack 1 ER x DC = C	Stack 2 ER x DC = C	Stack 3 ER x DC = C	Summed Concentration from all Stacks
1.60	____ x ____ = ____	____ x ____ = ____	____ x ____ = ____	____
1.70	____ x ____ = ____	____ x ____ = ____	____ x ____ = ____	____
1.80	____ x ____ = ____	____ x ____ = ____	____ x ____ = ____	____
1.90	____ x ____ = ____	____ x ____ = ____	____ x ____ = ____	____
2.00	____ x ____ = ____	____ x ____ = ____	____ x ____ = ____	____
2.25	____ x ____ = ____	____ x ____ = ____	____ x ____ = ____	____
2.50	____ x ____ = ____	____ x ____ = ____	____ x ____ = ____	____
2.75	____ x ____ = ____	____ x ____ = ____	____ x ____ = ____	____
3.00	____ x ____ = ____	____ x ____ = ____	____ x ____ = ____	____
4.00	____ x ____ = ____	____ x ____ = ____	____ x ____ = ____	____
5.00	____ x ____ = ____	____ x ____ = ____	____ x ____ = ____	____
6.00	____ x ____ = ____	____ x ____ = ____	____ x ____ = ____	____
7.00	____ x ____ = ____	____ x ____ = ____	____ x ____ = ____	____
8.00	____ x ____ = ____	____ x ____ = ____	____ x ____ = ____	____
9.00	____ x ____ = ____	____ x ____ = ____	____ x ____ = ____	____
10.00	____ x ____ = ____	____ x ____ = ____	____ x ____ = ____	____
15.00	____ x ____ = ____	____ x ____ = ____	____ x ____ = ____	____
20.00	____ x ____ = ____	____ x ____ = ____	____ x ____ = ____	____

ER=Annual Average Emission Rate
DC= Hourly Dispersion Coefficient (from Worksheet 5.0-1)
C= Estimated Maximum Hourly Ambient Air Concentration

(G) Determine the complex/noncomplex designation for each stack. For each stack, subtract the maximum terrain rise within 5 km of the site from the physical stack height and designate the stack as either complex or noncomplex. If the stack height minus the maximum terrain rise (within 5 km) is greater than zero or if the stack is less than 10 meters in physical height, then assign the stack a noncomplex designation. If the stack height minus the maximum terrain rise (within 5 km) is less than or equal to zero, then assign the stack a complex designation.

Perform the following computation for each stack and record the information in the spaces provided. Check in the spaces provided whether the stack designation is complex or noncomplex.

Stack No.	*Stack height (m)*		*Maximum terrain rise (m)*		*Complex*	*Noncomplex*
1		–		= (m)		
2		–		= (m)		
3		–		= (m)		

(H) Identify annual/hourly ratios. Extract the annual/hourly ratios for each stack by referring to Table 5.0–6. Generic source numbers (from Steps 10(C) or 10(D), urban/rural designation (from Step 6)), and complex or noncomplex terrain designations (from Step 10(G)) are used to select the appropriate scaling factor needed to convert hourly maximum concentrations to estimates of annual average concentrations.

Complete the following table[13].

FOOTNOTE: [13]If any stack (excluding generic stack number 1 and 11) in Step 10(D) shows a negative terrain adjusted stack height, use the complex terrain annual/hourly ratios.

Stack No.	*Generic source No. steps 10 (C or D) Distance ranges (km)*			*Annual hourly ratio (from table 5.0–6) Distance ranges (km)*		
	0–0.5	*>0.5–2.4*	*>2.5–5.0*	*0–0.5*	*>0.5–2.5*	*>2.5–5.0*
1						
2						
3						

(I) Select the highest annual/hourly ratio among all of the stacks[14], and then estimate the maximum annual average ambient air concentrations for each pollutant by completing the following table, where:

FOOTNOTE: [14]As an option, the user can identify the stack with the highest ratio for each distance range (rather than the absolute highest). In this case, extra sheets would be needed to show estimated annual average concentrations from each stack by multiplying emission rate times maximum hourly dispersion coefficient times maximum annual/hourly ratio for applicable distance range. Then sum across all stacks for each downwind distance.

C = Maximum total hourly ambient air concentration ($\mu g/m^3$) for pollutant "N" from Step 10(F).

C_a = Maximum annual average air concentration for pollutant "N" ($\mu g/m^3$),

R = Annual/hourly ratio.

Table 5.0–6.—95th Percentile of Annual/Hourly Ratios

Noncomplex Terrain			*Complex Terrain*		
Source	*Urban*	*Rural*	*Source*	*Urban*	*Rural*
1	0.019	0.014	1	0.020	0.053
2	0.033	0.019	2	0.020	0.053
3	0.031	0.018	3	0.030	0.057
4	0.029	0.017	4	0.051	0.047
5	0.028	0.017	5	0.067	0.039
6	0.028	0.017	6	0.059	0.034
7	0.031	0.015	7	0.036	0.031
8	0.030	0.013	8	0.026	0.024
9	0.029	0.011	9	0.026	0.024
10	0.029	0.008	10	0.017	0.013
11	0.018	0.015	11	0.020	0.053

Pollutant	C($\mu g/m^3$)	X	R	=	C_a ($\mu g/m^3$)
		X		=	
		X		=	

(J) Use the maximum annual average concentrations from Step 10(I) to determine compliance with regulatory requirements.

SECTION 6.0–SIMPLIFIED LAND USE CLASSIFICATION PROCEDURE FOR COMPLIANCE WITH TIER I AND AND TIER II LIMITS

6.1 Introduction

This section provides a simplified procedure to classify areas in the vicinity of boilers and industrial furnace sites as urban or rural in order to set risk–based emission limits under article 8 of chapter 16. Urban/rural classification is needed because dispersion rates differ between urban and rural areas and thus, the risk per unit emission rate differs accordingly. The combination of greater surface roughness (more buildings/structures to generate turbulent mixing) and the greater amount of heat released from the surface in an urban area (generates buoyancy–induced mixing) produces greater rates of dispersion. The emission limit tables in the regulation, therefore, distinguish between urban and rural areas.

US EPA guidance (EPA 1986)[1] provides two alternative procedures to determine whether the character of an area is predominantly urban or rural. One procedure is based on land use typing and the other is based on population density. Both procedures require consideration of characteristics within a 3–km radius from a source, in this case the facility stack(s). The land use typing method is preferred because it more directly relates to the surface characteristics that affect dispersion rates. The remainder of this discussion is, therefore, focused on the land use method.

While the land use method is more direct, it can also be labor–intensive to apply. For this discussion, the land use method has been simplified so that it is consistent with US EPA guidance (EPA 1986; Auer 1978), while streamlining the process for the majority of applications so that a clear–cut decision can be made without the need for detailed analysis. Table 6.0–1 summarizes the simplified approach for classifying areas as urban or rural. As shown, the applicant always has the option of applying standard (i.e, more detailed) analyses to more accurately distinguish between urban and rural areas. However, the procedure presented here allows for simplified determinations, where appropriate, to expedite the permitting process.

Table 6.0–1.—Classification of Land Use Types

Type[1]	*Description*	*Urban or rural designation*[2]
I1	Heavy industrial	Urban.
I2	Light/Moderate Industrial	Urban.
C1	Commercial	Urban.
R1	Common Residential (Normal Easements)	Rural.
R2	Compact Residential (Single Family)	Urban.
R3	Compact Residential (Multi–Family)	Urban.
R4	Estate Residential (Multi–Acre Plots)	Rural.
A1	Metropolitan Natural	Rural.
A2	Agricultural	Rural.
A3	Undeveloped (Grasses/Weeds)	Rural.
A4	Undeveloped (Heavily Wooded)	Rural.
A5	Water Surfaces	Rural.

FOOTNOTE: [1]US EPA, Guideline on Air Quality Models (Revised), EPA–450/2–78–027R, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, July, 1986.

FOOTNOTE: [2]Auer, August H. Jr., "Correlation of Land Use and Cover with Meteorological Anomalies," Journal of Applied Meteorology, pp. 636–643, 1978.

6.2 Simplified Land Use Process

The land use approach considers four primary land use types: industrial (I), commercial (C), residential (R), and agricultural (A). Within These primary classes, subclasses are identified, as shown in table 6.0–1. The goal is to estimate the percentage of the area within a 3–km radius that is urban type and the percentage that is rural type. Industrial and commercial areas are classified as urban; agricultural areas are classified as rural.

The delineation of urban and rural areas, however, can be more difficult for the residential type areas shown in table 6.0–1. The degree of resolution shown in table 6.0–1 for residential areas often cannot be identified without conducting site area inspections and/or referring to zoning maps. This process can require extensive analysis, which, for many applications, can be greatly streamlined without sacrificing confidence in selecting the appropriate urban or rural classification.

The fundamental simplifying assumption is based on the premise that many applications will have clear–cut urban/rural designations, i.e., most will be in rural settings that can be definitively characterized through a brief review of topographical maps. The color coding on USGS topographical maps provides the most effective means of simplifying the typing scheme. The suggested typing designations for the color codes found on topographic maps are as follows:

Green Wooded areas (rural).

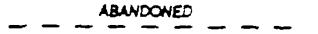
White White areas generally will be treated as rural. This code applies to areas that are unwooded and do not have densely packed structures which would require the pink code (house omission tint). Parks, industrial areas, and unforested rural land will appear as white on the topographical maps. Of these categories, only the industrial areas could potentially be classified as urban based on EPA 1986 or Auer 1978. Industrial areas can be easily identified in most cases by the characteristics shown in Figure 6.0–1. For this simplified procedure, white areas that have an industrial classification will be treated as urban areas.

Figure 6.0-1

Supplementary Publication Symbols

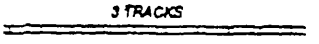
117 Single track
Line weight .005". Tie weight .003", length .04", spaced .20" center to center.

118 Single track abandoned
Same as existing track with space .02", dash .18". Label.

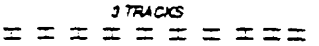


119 Single track under construction
Same as existing track with space .02", dash .38". Label UNDER CONSTRUCTION.

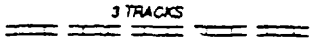
120 Multiple main line track
Overall width .017". Line weight .003". Tie length .052", spaced .20" center to center. If more than two tracks label, with double cross tie at point of change. Double cross tie .017" overall width.



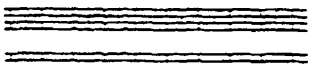
121 Multiple track abandoned
Same as existing track with space .02", dash .18". Label ABANDONED.



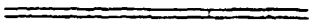
122 Multiple track under construction
Same as existing track with space .02", dash .38". Label UNDER CONSTRUCTION.



123 Juxtaposition
Alternate ties, spaced .20" center to center. Minimum space between tracks .011". Line weight for single tracks .005", multiple tracks .003".

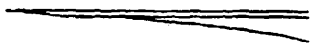


124 Railroad in street
Ties spaced .20" center to center. Label if narrow gage. Tie weight .003".



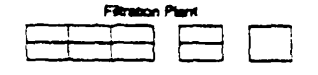
125 Yards
Line weight .003". Space between tracks .011". Ties spaced .20" center to center, maximum length to touch 6 tracks.

126 Sidings
Line weight .003". Scribe to scale with minimum space between tracks .011". Ties spaced .20" center to center, length .04" for single track.



176 Large buildings
Outline weight .003". When width exceeds .06", hatch at 45° angle to building in NE direction. lines .002" spaced .02" center to center.

178 Sewage disposal or filtration plant
Line weight .003". See symbol 700 for blue hatching. Label.



196 Tanks: oil, gas, water, etc.
Circle .03" minimum, 10" maximum. Label as to content.

197 Tanks: oil, gas, water, etc.
Exceeding 10" diameter. Outline weight .003". Hatch SW-NE with .002" lines spaced .02" center to center. Label as to content.

SECTION 7.0 STATISTICAL METHODOLOGY FOR BEVILL RESIDUE DETERMINATIONS

This section describes the statistical comparison of waste–derived residue to normal residue for use in determining eligibility for the Bevill exemption under section 662666.112.

7.1 Comparison of Waste–derived Residue with Normal Residue

To be eligible for the Bevill exclusion from the definition of hazardous waste under section 66266.112(b)(1), waste–derived residue must not contain Appendix VIII, Chapter 11, constituents that could reasonably be attributable to the hazardous waste (toxic constituents) at concentrations significantly higher than in residue generated without burning or processing hazardous waste (normal residue). Concentrations of toxic constituents in normal residue are determined based on analysis of a minimum of 10 samples representing a minimum of 10 days of operation. The statistically– derived concentrations in normal residue are determined as the upper tolerance limit (95% confidence with a 95% proportion of the sample distribution) of the normal residue concentrations. The upper tolerance limit is to be determined as described in Section 7.2 below. If changes in raw materials or fuels could lower the statistically–derived concentrations of toxic constituents of concern, the statistically–derived baseline must be re–established for any such mode of operation with the new raw material or fuel.

Concentrations of toxic constituents in waste–derived residue are determined based on the analysis of one or more samples collected over a compositing period of not more than 24 hours. Multiple samples of the waste–derived residue may be analyzed or subsamples may be composited for analysis, provided that the sampling period does not exceed 24 hours. If more than one sample is analyzed to characterize the waste–derived residue generated over a 24–hour period, the arithmetic mean of the concentrations must be used as the waste–derived concentration for each constituent.

The concentration of a toxic constituent in the waste–derived residue is not considered to be significantly higher than in the normal residue (i.e., the residue passes the Bevill test for that constituent) if the concentration in the waste–derived residue does not exceed the statistically–derived concentration.

7.2 Calculation of the Upper Tolerance Limit

The 95% confidence with 95% proportion of the sample distribution (upper tolerance limit) is calculated for a set of values assuming that the values are normally distributed. The upper tolerance limit is a one–sided calculation and is an appropriate statistical test for cases in which a single value (the waste–derived residue concentration) is compared to the distribution of range of values (the minimum of 10 measurements of normal residue concentrations). The upper tolerance limit value is determined as follows:

$UTL = X + (K)(S)$

where

X = mean of the normal residue concentration, $X = X_i/n$,

K = coefficient for sample size n, 95% confidence and 95% proportion,

S = standard deviation of the normal residue concentrations,

$S = \Sigma(X_i–X)^2/(n–1))^{0.5}$, and

n = sample size.

The values of K at the 95% confidence and 95% proportion, and sample size n are given in Table 7.0–1.

For example, a normal residue test results in 10 samples with the following analytical results for toxic constituent A:

Sample No.	*Concentration of compound A (ppm)*
1	10
2	10
3	15
4	10
5	7
6	12
7	10
8	16
9	15
10	10

The mean and standard deviation of these measurements, calculated using equations above, are 11.5 and 2.9 respectively. Assuming that the values are normally distributed, the upper tolerance limit (UTL) is given by:

$UTL = 11.5 + (2.911)(2.9) = 19.9$ ppm

Table 7.0–1,.—K Values for 95% Confidence and 95% Proportion

Sample size (n)	*K*
10	2.911
11	2.815
12	2.736
13	2.670
14	2.614
15	2.566
16	2.523
17	2.486
18	2.458
19	2.423
20	2.396
21	2.371
22	2.350
23	2.329
24	2.303
25	2.292

Thus, if the concentration of constituent A in the waste–derived residue is below 19.9 ppm, then the waste–derived residue is eligible for the Bevill exclusion for constituent A.

7.3 Normal Distribution Assumption

As noted in section 7.2 above, this statistical approach (use of the upper tolerance limit) for calculation of the concentration in normal residue is based on the assumption that the concentration data are distributed normally. The Department is aware that concentration data of this type may not be distributed normally, particularly when concentrations are near the detection limits. There are a number of procedures that can be used to test the distribution of a data set. For example, the Shapiro–Wilk test, examination of a histogram or plot of the data on normal probability paper, and examination of the coefficient of skewness are methods that may be applicable, depending on the nature of the data (Reference 1 and 2).

If the concentration data are not adequately represented by a normal distribution, the data may be transformed to attain a near normal distribution. The Department has found that concentration data, especially when near detection levels, often exhibit a lognormal distribution. The assumption of a lognormal distribution has been used in various programs at US EPA, such as in the Office of Solid Waste Land Disposal Restrictions program for determination of BDAT treatment standards. The transformed data may be tested for normality using the procedures identified above. If the transformed data are better represented by a normal distribu–

tion than the untransformed data, the transformed data should be used in determining the upper tolerance limit using the procedures in section 7.2 above.

In all cases where the applicant for the Bevill exemption wishes to use other than an assumption of normally distributed data, or believes that use of an alternate statistical approach is appropriate to the specific data set, the applicant must provide supporting rationale and demonstrate to the Director or permitting authority that the data treatment is based upon sound statistical practice.

7.4 Nondetect Values

The US EPA is developing guidance regarding the treatment of nondetect values (data where the concentration of the constituent being measured is below the lowest concentration for which the analytical method is valid) in carrying out the statistical determinations described above. Until the guidance information is available, facilities may present their own approach to the handling of nondetect data points, but must provide supporting rationale in the operating record for consideration by the Director or permitting authority.

7.5 References

1. Shapiro, S.S. and Wilk, M.B. (1965), "An Analysis of Variance Test for Normality (complete samples)," Biometrika, 591–611.

2. Bhattacharyya, G.K. and R.A. Johnson (1977), Statistical Concepts and Methods, John Wiley and Sons, New York.

SECTION 8.0 PROCEDURES FOR DETERMINING DEFAULT VALUES FOR AIR POLLUTION CONTROL SYSTEM REMOVAL EFFICIENCIES

During interim status, owners or operators of boilers and industrial furnaces burning hazardous waste must submit documentation to Department that certifies that emissions of HCl, Cl_2, metals, and particulate matter (PM) are not likely to exceed allowable emission rates. See certification of precompliance under section 66266.103(b).103(b). This documentation also establishes interim status feed rate and operating limits for the facility. For the initial certification, estimates of emissions and system removal efficiencies (SREs) can be made to establish the operating limits. Subsequently, owners or operators must use emissions testing to demonstrate that emissions do not exceed allowable levels, and to establish operating limits. See section 66266.103(c). However, initial estimates of emissions for certification of precompliance can be based on estimated or established SREs.

The SRE combines the effect of partitioning of the chlorine, metals, or PM and the air pollution control system removal efficiency (APCS RE) for these pollutants. The SRE is defined as:

SRE = (species input–species emitted) / species input

The SRE can be calculated from the partitioning factor (PF) and APCS RE by the following formula:

SRE = 1–[(PF/100) X (1–APCS RE/100)]

where:

PF = percentage of the pollutant partitioned to the combustion gas

Estimates of the PF and/or the APCS RE can be based on either US EPA's default values or engineering judgement. US EPA's 'default values for the APCS RE for metals, HCl, Cl_2, and PM are described in this section. US EPA's default values for partitioning of these pollutants are described in section 9.0.

Guidelines for the use of engineering judgement to estimate APCS REs or PFs are described in section 9.4.

8.1 APCS RE Default Values for Metals

US EPA's default assumptions for APCS RE for metals are shown in Table 8.1–1. The default values in the table are conservative estimates of the removal efficiencies for metals in BIFs, depending on the volatility of the metal and the type of APCS.

The volatility of a metal depends on the temperature, the thermal input, the chlorine content of the waste, and the identity and concentration of the metal. Metals that do not vaporize at combustion zone temperatures are classified as "nonvolatile". Such metals typically enter the APCS in the form of large particles that are removed relatively easily. Metals that vaporize in the combustion zone and condense before entering the APCS are classified as "volatile". Such metals typically enter the APCS in the form of very fine, submicron particles that are rather inefficiently removed in many APCSs. Metals that vaporize in the combustion zone and do not condense before entering the APCS are classified as "very volatile". Such metals enter the APCS in the form of a vapor that is very inefficiently removed in many APCSs.

Typically, BIFs have combustion zone temperatures high enough to vaporize any hazardous metal at concentrations sufficient to exceed risk–based emission limits. For this reason, the default assumption is that there are no nonvolatile metals. Tables 8.1–2 and 8.1–3 are used to determine whether metals are classified as "volatile" or "very volatile" depending on the temperature entering the APCS, the thermal input, and whether the waste is chlorinated or nonchlorinated.

Table 8.1–1.—Air Pollution Control Systems (APCS) and Their Conservatively Estimated Efficiencies for Controlling Toxic Metals (%)

APCS	*Metal Volatility*		
	Nonvolatile	*Volatile*	*Very Volatile*
WS	40	30	20
VS–20	80	75	20
VS–60	87	75	40
ESP–1	90	75	0
ESP–2	92	80	0
ESP–4	95	80	0
WESP	90	85	40
FF	90	80	0
SD/FF	97	90	0
DS/FF	95	90	0
WS	90	87	75

WS = Wet Scrubber including: Sieve Tray Tower, Packed Tower, Bubble Cap Tower

VS–20 = Venturi Scrubber, ca. 20–30 in W.G. Δp

VS.60 = Venturi Scrubber, ca. > 60 in W.G. Δp

ESP–1 = Electrostatic Precipitator; 1 stage

ESP–2 = Electrostatic Precipitator; 2 stage

ESP–4 = Electrostatic Precipitator; 4 stage

IWS = Ionizing Wet Scrubber

DS – Dry Scrubber

FF = Fabric Filter (Baghouse)

SD = Spray Dryer (Wet/Dry Scrubber)

WESP = Wet Electrostatic Precipitator

Table 8.1–2.—Temperature (F) Entering APCS Above Which Metals are Classified as Very Volatile in Combustion of Nonchlorinated Wastes

Metal		Thermal Input (MMBtu/hr)[1]				
Name	Symbol	1	10	100	1000	10000
Arsenic	As	320	280	240	200	160
Cadmium	Cd	1040	940	860	780	720
Chromium	Cr	2000	1760	1580	1420	1380
Beryllium	Be	1680	1440	1240	1080	980
Antimony	Sb	680	600	540	480	420
Barium	Ba	2240	1820	1540	1360	1240
Lead	Pb	1280	1180	1080	1000	920
Mercury	Hg	340	300	260	220	180
Silver	Ag	1820	1640	1480	1340	1220
Thallium	Tl	900	800	700	620	540

FOOTNOTE: [1]Interpolation of thermal input is not allowed. If a BIF fires between two ranges, the APCS temperature under the higher thermal input must be used.

Example: For a BIF firing 10–100 MMBtu/hr, Mercury is considered very volatile at APCS temperatures above 260 F and volatile at APCS temperatures of 260 F and below.

Table 8.1–3.—Temperature (F) Entering APCS Above Which Metals are Classified as Very Volatile in Combustion of Chlorinated Wastes

Metal		Thermal Input (MMBtu/hr)[1]				
Name	Symbol	1	10	100	1000	10000
Arsenic	As	320	280	240	200	160
Cadmium	Cd	1040	940	860	780	720
Chromium	Cr	>140	>140	>140	>140	>140
Beryllium	Be	1680	1440	1240	1080	980
Antimony	Sb	680	600	540	480	420
Barium	Ba	2060	1840	1680	1540	1420
Lead	Pb	>140	>140	>140	>140	>140
Mercury	Hg	340	300	260	220	180
Silver	Ag	1080	940	840	740	660
Thallium	Tl	900	800	700	620	540

FOOTNOTE: [1]Interpolation of thermal input is not allowed. If a BIF fires between two ranges, the APCS temperature under the higher thermal input must be used.

EXAMPLE: For a BIF firing 10–100 MMBtu/hr, Mercury is considered very volatile at APCS temperatures above 260 F and volatile at APCS temperatures of 260 F and below.

A waste is considered chlorinated if chlorine is present in concentrations greater than 0.1 percent by weight. In the US EPA guidance document "Guidance for Metals and Hydrogen Chloride Controls for Hazardous Waste Incinerators, Volume IV of the Hazardous Waste Incineration Guidance Series,"(1) one percent is used for the chlorinated/nonchlorinated cutoff. However, best engineering judgement, based on examination of pilot–scale data reported by Carroll et al. (2) on the effects of waste chlorine content on metals emissions, suggests that the 1 percent cutoff may not be sufficiently conservative.

Tables 8.1–2 and 8.1–3 were compiled based on equilibrium calculations. Metals are classified as very volatile at all temperatures above the temperature at which the vapor pressure of the metal is greater than 10 percent of the vapor pressure that results in emissions exceeding the most conservative risk–based emission limits.

8.2 APCS RE Default Values for HCl and Cl_2.

Default assumptions for APCS RE for HCl in BIFs are shown in Table 8.2–1. This table is identical to the column for other BIFs except that cement kilns have a minimum HCl removal efficiency of 83 percent. Because of the alkaline nature of the raw materials in cement kilns, most of the chlorine is converted to chloride salts. Thus, the minimum APCS RE for HCl for cement kilns is independent of the APCS train.

Removal efficiency of Cl_2 for most types of APCS is generally minimal. Therefore, the default assumption for APCS RE for Cl_2 for all APCSs is 0 percent. This is applicable to all BIFs, including cement kilns.

8.3 APCS RE Default Values for Ash

Default assumptions for APCS RE for PM are also shown in Table 8.1–4. These figures are conservative estimates of PM removal efficiencies for different types of APCSs. They are identical to the figures in the Nonvolatile APCS RE column for hazardous metals presented in Table 8.1–1 because the same collection mechanisms and collection efficiencies that apply to nonvolatile metals also apply to PM.

Table 8.2–1—Pollution Control Systems (APCS) and Their Conservatively Estimated Efficiencies for Removing Hydrogen Chloride (HCL) and Particulate Matter (PM) (%)

APCD	HCl		PM
	Cement kilns	Other BIFs	
WS	97	97	40
VS–20	97	97	80
VS–60	98	98	87
ESP–1	83	0	90
ESP–2	83	0	92
ESP–4	83	0	95
WESP	83	70	90
FF	83	0	90
SD/FF	98	98	97
DS/FF	98	98	95
WS/IWS	99	99	95
IWS	99	99	90

WS = Wet Scrubber including: Sieve Tray Tower, Packed Tower, Bubble Cap Tower

PS = Proprietary Wet Scrubber Design (A number of proprietary wet scrubbers have come on the market in recent years that are highly efficient on both particulates and corrosive gases. Two such units are offered by Calvert Environmental Equipment Co. and by Hydro–Sonic Systems, Inc.).

VS–20 = Venturi Scrubber, ca. 20–30 in W.G. Δp

VS–60 = Venturi Scrubber, ca. > 60 in W.G. Δp

ESP–1 = Electrostatic Precipitator; 1 stage

ESP–2 = Electrostatic Precipitator; 2 stage

ESP–4 = Electrostatic Precipitator; 4 stage

IWS = Ionizing Wet Scrubber

DS – Dry Scrubber

FF = Fabric Filter (Baghouse)

SD = Spray Dryer (Wet/Dry Scrubber)

8.4 References

1. U.S. Environmental Protection Agency. "Guidance on Metals and Hydrogen Chloride Controls for Hazardous Waste Incinerators," Office of Solid Waste, Washington, D.C., August 1989.

2. Carroll, G.J., R.C. Thurnau, R.E. Maurnighan, L.R. Waterland, J.W. Lee, and D.J. Fournier. The Partitioning of Metals in Rotary Kiln Incineration. Proceedings of the Third International Conference on New Frontiers for Hazardous Waste Management. NTIS Document No. EPA/600/9–89/072, p. 555 (1989).

SECTION 9.0—PROCEDURES FOR DETERMINING DEFAULT VALUES FOR PARTITIONING OF METALS, ASH, AND TOTAL CHLORIDE/CHLORINE

Pollutant partitioning factor estimates can come from two sources: default assumptions or engineering judgement. The default assumptions are discussed below for metals, HCl, Cl_2, and PM. The default assumptions are used to conservatively predict the partitioning factor for several types of BIFs. Engineering judgement–based partitioning factor estimates are discussed in section 9.4.

9.1 Partitioning Default Value for Metals

To be conservative, owners/operators may assume that 100 percent of each metal in each feed stream is partitioned to the combustion gas. Owners/operators may use this default value or a supportable, site–specific value developed following the general guidelines provided in section 9.4.

9.2 Special Procedures for Chlorine, HCl, and Cl_2

The Department has established the special procedures presented below for chlorine because the emission limits are based on the pollutants HCl and Cl_2 formed from chlorine fed to the combustor. Therefore, the owner/operator must estimate the controlled emission rate of both HCl and Cl_2 and show that they do not exceed allowable levels.

1. The default partitioning value for the fraction of chlorine in the total feed streams that is partitioned to combustion gas is 100 percent. Owners/operators may use this default value or a supportable, site–specific value developed following the general guidelines provided in section 9.4.

2. To determine the partitioning of chlorine in the combustion gas to HCl versus Cl_2, either use the default values below or use supportable site–specific values developed following the general guidelines provided in section 9.4.

- For BIFs excluding halogen acid furnaces (HAFs), with a total feed stream chlorine/hydrogen ration ≤ 0.95, the default partitioning factor is 20 percent Cl_2, 80 percent HCl.
- For HAFs and for BIFs with a total feed stream chlorine/hydrogen ratio > 0.95, the default partitioning factor is 100 percent Cl_2.

3. To determine the uncontrolled (i.e., prior to acid gas APCS) emission rate of HCl and Cl_2, multiply the feed rate of chlorine times the partitioning factor for each pollutant. Then, for HCl, convert the chlorine emission rate to HCl by multiplying it by the ratio of the molecular weight of HCl to the molecular weight of Cl (i.e., 36.5/35.5). No conversion is needed for Cl_2.

9.3 Special Procedures for Ash

This section: (1) Explains why ash feed rate limits are not applicable to cement and light–weight aggregate kilns; (2) presents the default partitioning values for ash; and (3) explains how to convert the 0.08 gr/dscf, corrected to 7% O_2, PM emission limit to a PM emission rate.

Waiver for Cement and Light–Weight Aggregate Kilns. For cement kilns and light–weight aggregate kilns, raw material feed streams contain the vast majority of the ash input, and a significant amount of the ash in the feed stream is entrained into the kiln exhaust gas. For these devices, the ash content of the hazardous waste stream is expected to have a negligible effect on total ash emissions. For this reason, there is no ash feed rate compliance limit for cement kilns or light–weight aggregate kilns. Nonetheless, cement kilns and light–weight aggregate kilns are required to initially certify that PM emissions are not likely to exceed the PM limit, and subsequently, certify through compliance testing that the PM limit is not exceeded.

Default Partitioning Value for Ash. The default assumption for partitioning of ash depends on the feed stream firing system. There are two methods by which materials may be fired into BIFs: Suspension–firing and bed–firing.

The suspension category includes atomized and lanced pumpable liquids and suspension–fired pulverized solids. The default partitioning assumption for materials fired by these systems is that 100 percent of the ash partitions to the combustion gas.

The bed–fired category consists principally of stoker boilers and raw materials (and in some cases containerized hazardous waste) fed into cement and light–weight aggregate kilns. The default partitioning assumption for materials fired on a bed is that 5 percent of the ash partitions to the combustion gas.

Converting the PM Concentration–Based Standard to a PM Mass Emission Rate. The emission limit for BIFs is 0.08 gr/dscf, corrected to

7% O_2, unless a more stringent standard applies [e.g., a New Source Performance Standard (NSPS) or a State standard implemented under the State Implementation Plan (SIP)]. To convert the 0.08 gr/dscf standard to a PM mass emission rate:

1. Determine the flue gas O_2 concentration (percent by volume, dry) and flue gas flow rate (dry standard cubic feet per minute); and

2. Calculate the allowable PM mass emission rate by multiplying the concentration-based PM emission standard times the flue gas flow rate times a dilution correction factor equal to [(21–O_2 concentration from step 1)/(21–7)].

9.4 Use of Engineering Judgement To Estimate Partitioning and APCS RE Values

Engineering judgement may be used in place of US EPA's conservative default assumptions to estimate partitioning and APCS RE values provided that the engineering judgement is defensible and properly documented. To properly document engineering judgement, the owner/operator must keep a written record of all assumptions and calculations necessary to justify the APCS RE used. The owner/operator must provide this record to the Director upon request and must be prepared to defend the assumptions and calculations used.

If the engineering judgement is based on emissions testing, the testing will often document the emission rate of a pollutant relative to the feed rate of that pollutant rather than the partitioning factor or APCS RE.

Examples of situations where the use of engineering judgement may be supportable to estimate a partitioning factor, APCS RE, or SRE include:

- Using emissions testing data from the facility to support an SRE, even though the testing may not meet full QA/QC procedures (e.g., triplicate test runs). The closer the test results conform with full QA/QC procedures and the closer the operating conditions during the test conform with the established operating conditions for the facility, the more supportable the engineering judgement will be.
- Applying emissions testing data documenting an SRE for one metal, including nonhazardous surrogate metals to another less volatile metal.
- Applying emissions testing data documenting an SRE from one facility to a similar facility.
- Using APCS vendor guarantees of removal efficiency.

9.5 Restrictions on Use of Test Data

The measurement of an SRE or an APCS RE may be limited by the detection limits of the measurement technique. If the emission of a pollutant is undetectable, then the calculation of SRE or APCS RE should be based on the lower limit of detectability. An SRE or APCS RE of 100 percent is not acceptable.

Further, mass balance data of facility inputs, emissions, and products/residues may not be used to support a partitioning factor, given the inherent uncertainties of such procedures. Partitioning factors other than the default values may be supported based on engineering judgement, considering, for example, process chemistry. Emissions test data may be used to support an engineering judgement–based SRE, which includes both partitioning and APCS RE.

9.5 References

1. Barton, R.G., W.D. Clark, and W.R. Seeker. (1990) "Fate of Metals in Waste Combustion Systems". Combustion Science and Technology. 74, 1–6, p. 327.

SECTION 10.0 ALTERNATIVE METHODOLOGY FOR IMPLEMENTING METALS CONTROLS

10.1 Applicability

This method for controlling metals emissions applies to cement kilns and other industrial furnaces operating under interim status that recycle emission control residue back into the furnace.

10.2 Introduction

Under this method, cement kilns and other industrial furnaces that recycle emission control residue back into the furnace must comply with a kiln dust concentration limit (i.e., a collected particulate matter (PM) limit) for each metal, as well as limits on the maximum feedrates of each of the metals in: (1) pumpable hazardous waste; and (2) all hazardous waste.

The following subsections describe how this method for controlling metals emissions is to be implemented:

- Subsection 10.3 discusses the basis of the method and the assumptions upon which it is founded;
- Subsection 10.4 provides an overview of the implementation of the method;
- Subsection 10.5 is a step–by–step procedure for implementation of the method;
- Subsection 10.6 describes the compliance procedures for this method; and
- Appendix A describes the statistical calculations and tests to be used in the method.

10.3 Basis

The viability of this method depends on three fundamental assumptions:

(1) Variations in the ratio of the metal concentration in the emitted particulate to the metal concentration in the collected kiln dust (referred to as the enrichment factor or EF) for any given metal at any given facility will fall within a normal distribution that can be experimentally determined.

(2) The metal concentrations in the collected kiln dust can be accurately and representatively measured (using procedures specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW–846), incorporated by reference in section 66260.11 of chapter 11.

(3) The facility will remain in compliance with the applicable particulate matter (PM) emission standard.

Given these assumptions, metal emissions can be related to the measured concentrations in the collected kiln dust by the following equation:

$$ME\left(\frac{lb\ Emitted\ Metal}{hr}\right) = PME\left(\frac{lb\ PM}{hr}\right) DMC\left(\frac{lb\ Dust Metal}{lb\ Dust}\right) EF\left(\frac{lb\ Emitted Metal/lb\ PM}{lb\ Dust\ Metal/lb\ Dust}\right) \quad (1)$$

Where:

ME is the metal emitted; PME is the particulate matter emitted; DMC is the metal concentration in the collected kiln dust; and EF is the enrichment factor, which is the ratio of the metal concentration in the emitted particulate matter to the metal concentration in the collected kiln dust.

This equation can be rearranged to calculate a maximum allowable dust metal concentration limit (DMCL) by assuming worst–case conditions that: metal emissions are at the Tier III (or Tier II) limit (see section 66266.106), and that particulate emissions are at the particulate matter limit (PML):

$$DMCL\left(\frac{lb\ Dust\ Metal}{lb\ Dust}\right) = \frac{Tier\ III\ Limit\left(\frac{lb\ Emitted\ Metal}{hr}\right)}{PML\left(\frac{lb\ PM}{hr}\right) EF\left(\frac{lb\ Emitted\ Metal/lb\ PM}{lb\ Dust\ Metal/lb\ Dust}\right)}$$

The enrichment factor used in the above equation must be determined experimentally from a minimum of 10 tests in which metal concentrations are measured in kiln dust and stack samples taken simultaneously. This approach provides a range of enrichment factors that can be inserted into a statistical distribution (t– distribution) to determine $EF_{95\%}$ and $EF_{99\%}$. $EF_{95\%}$ is the value at which there is a 95% confidence level that the enrichment factor is below this value at any given time. Similarly,

$EF_{99\%}$ is the value at which there is a 99% confidence level that the enrichment factor is below this value at any given time. $EF_{95\%}$ is used to calculate the "violation" dust metal concentration limit ($DMCL_v$):

$$DMCL_v\left(\frac{lb\ Dust\ Metal}{lb\ Dust}\right) = \frac{Tier\ III\ Limit\left(\frac{lb\ Emitted\ Metal}{hr}\right)}{PML\left(\frac{lb\ PM}{hr}\right) EF_{95\%}\left(\frac{lb\ Emitted\ Metal/lb\ PM}{lb\ Dust\ Metal/lb\ Dust}\right)}$$

If the kiln dust metal concentration is just above this "violation" limit, and the PM emissions are at the PM emissions limit, there is a 5% chance that the metal emissions are above the Tier III limit. In such a case, the facility would be in violation of the metals standard.

To provide a margin of safety, a second, more conservative kiln dust metal concentration limit is also used. This "conservative" dust metal concentration limit ($DMCL_c$) is calculated using a "safe" enrichment factor (SEF). If $EF_{99\%}$ is greater than two times the value of $EF_{95\%}$, the "safe" enrichment factor can be calculated using Equation 4a:

$SEF > 2\ EF_{95\%}$ (4a) QO2

If $EF_{99\%}$ is not greater than two times the value of $EF_{95\%}$, the "safe" enrichment factor can be calculated using Equation 4b:

$SEF > EF_{99\%}$ (4b)

In cases where the enrichment factor cannot be determined because the kiln dust metal concentration is nondetectable, the "safe" enrichment factor is as follows:

SEF = 100 (4c)

For all cases, the "conservative" dust metal concentration limit is calculated using the following equation:

$$DMCL_c\left(\frac{lb\ Dust\ Metal}{lb\ Dust}\right) = \frac{Tier\ III\ Limit\left(\frac{lb\ Emitted\ Metal}{hr}\right)}{PML\left(\frac{lb\ PM}{hr}\right) SEF\left(\frac{lb\ Emitted\ Metal/lb\ PM}{lb\ Dust\ Metal/lb\ Dust}\right)} \quad (5)$$

If the kiln dust metal concentration at a facility is just above the "conservative" limit based on that "safe" enrichment factor provided in Equation 4a, and the PM emissions are at the PM emissions limit, there is a 5% chance that the metal emissions are above one–half the Tier III limit. If the kiln dust metal concentration at the facility is just above the "conservative" limit based on the "safe" enrichment factor provided in Equation 4b, and the PM emissions are at the PM emissions limit, there is a 1% chance that the metal emissions are above the Tier III limit. In either case, the facility would be unacceptably close to a violation. If this situation occurs more than 5% of the time, the facility would be required to rerun the series of 10 tests to determine the enrichment factor. To avoid this expense, the facility would be advised to reduce its metals feedrates or to take other appropriate measures to maintain its kiln dust metal concentrations in compliance with the "conservative" dust metal concentration limits.

In cases where the enrichment factor cannot be determined because the kiln dust metal concentration is nondetectable, and thus no $EF_{95\%}$ exists, the "violation" dust metal concentration limit is set at ten times the "conservative" limit:

$DMCL_v = 10\ X\ DMCL_c$ (6)

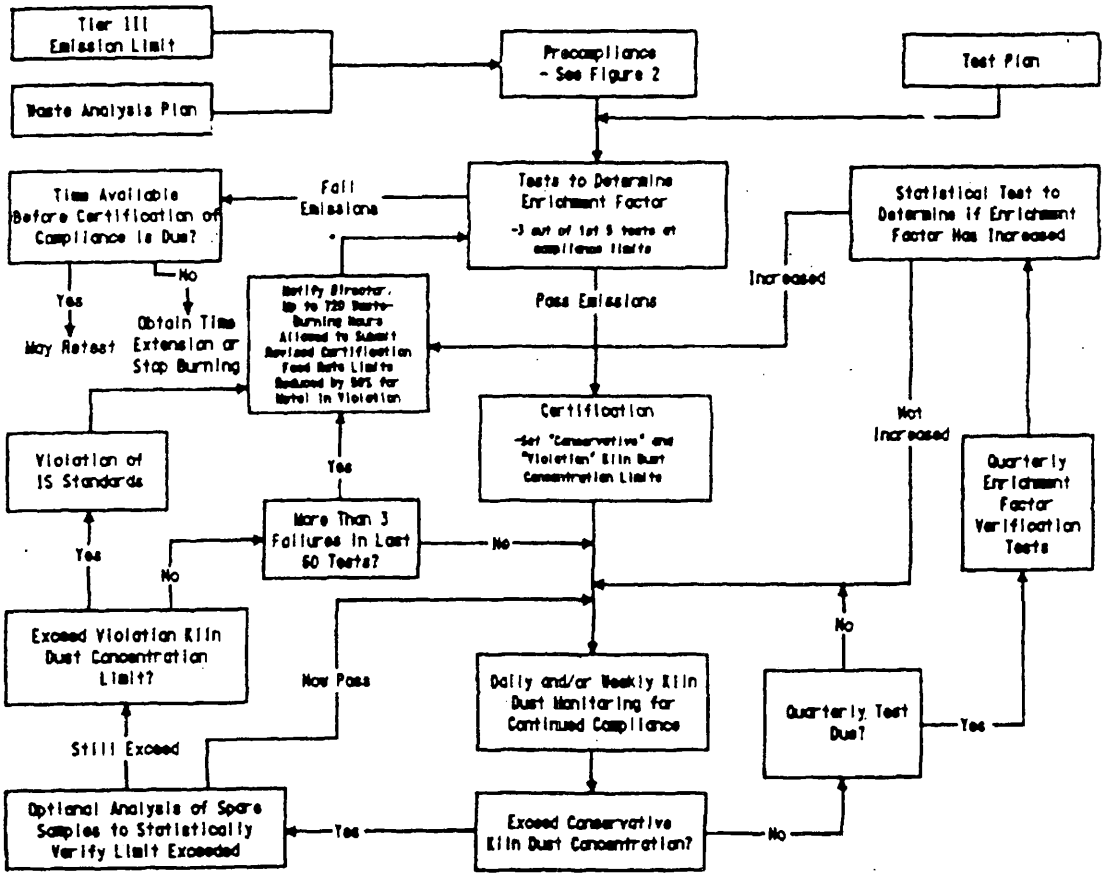
10.4 Overview

The flowchart for implementing the method is shown in Figure 10.4–1. The general procedure is as follows:

- Follow the certification of precompliance procedures described in subsection 10.6 (to comply with section 66266.103(b)).
- For each metal of concern, perform a series of tests to establish the relationship (enrichment factor) between the concentration of emitted metal and the metal concentration in the collected kiln dust.
- Use the demonstrated enrichment factor, in combination with the Tier III (or Tier II) metal emission limit and the most stringent applicable particulate emission limit, to calculate the "violation" and "conservative" dust metal concentration limits. Include this information with the certification of compliance under section 66266.103(c).

Figure 10.4-1

Compliance Implementation Flow Chart



• Perform daily and/or weekly monitoring of the cement kiln dust metal concentration to ensure (with appropriate QA/QC) that the metal concentration does not exceed either limit.

– If the cement kiln dust metal concentration exceeds the "conservative" limit more than 5% of the time (i.e., more than three failures in last 60 tests), the series of tests to determine the enrichment factor must be repeated.

– If the cement kiln dust metal concentration exceeds the "violation" limit, a violation has occurred.

• Perform quarterly tests to verify that the enrichment factor has not increased significantly. If the enrichment factor has increased, the series of tests to determine the enrichment factor must be repeated.

10.5 Implementation Procedures

A step–by–step description for implementing the method is provided below:

(1) Prepare initial limits and test plans.

• Determine the Tier III metal emission limit. The Tier II metal emission limit may also be used (see section 66266.106).

• Determine the applicable PM emission standard. This standard is the most stringent particulate emission standard that applies to the facility. A facility may elect to restrict itself to an even more stringent self–imposed PM emission standard, particularly if the facility finds that it is easier to control particulate emissions than to reduce the kiln dust concentration of a certain metal (i.e., lead).

• Determine which metals need to be monitored (i.e., all hazardous metals for which Tier III emission limits are lower than PM emission limits–assuming PM is pure metal).

• Follow the compliance procedures described in Subsection 10.6.

• Follow the guidelines described in SW–846 for preparing test plans and waste analysis plans for the following tests:

– Compliance tests to determine limits on metal feedrates in pumpable hazardous wastes and in all hazardous wastes (as well as to determine other compliance parameters);

– Initial tests to determine enrichment factors;

– Quarterly tests to verify enrichment factors;

– Analysis of hazardous waste feedstreams; and

– Daily and/or weekly monitoring of kiln dust for continuing compliance.

(2) Conduct tests to determine the enrichment factor.

• These tests must be conducted within a 14–day period. No more than two tests may be conducted in any single day. If the tests are not completed within a 14–day period, they must be repeated.

• Simultaneous stack samples and kiln dust samples must be taken.

– Stack sampling must be conducted with the multiple metals train according to procedures provided in section 10.3 of this Methods Manual.

– Kiln dust sampling must be conducted as follows:

– Follow the sampling and analytical procedures described in SW–846 and the waste analysis plan as they pertain to the condition and accessibility of the dust.

– Samples should be representative of the last ESP or Fabric Filter in the APCS series.

• The feedrates of hazardous metals in all pumpable hazardous waste streams and in all waste streams must be monitored during these tests. It is recommended (but not required) that the feedrates of hazardous metals in all feedstreams also be monitored.

• At least ten single (noncomposited) runs are required during the tests.

– The facility must follow a normal schedule of kiln dust recharging for all of the tests.

– Three of the first five tests must be compliance tests in conformance with section 66266.103(c); i.e., they must be used to determine maximum allowable feedrates of metals in pumpable hazardous wastes, and in all hazardous wastes, as well as to determine other compliance limits (see section 66266.103(c)(1)).

– The remainder of the tests need not be conducted under full compliance test conditions; however, the facility must operate at its compliance test production rate, and it must burn hazardous waste during these tests such that the feedrate of each metal for pumpable and total hazardous wastes is at least 25% of the feedrate during compliance testing. If these criteria, and those discussed below, are not met for any parameter during a test, then either the test is not valid for determining enrichment factors under this method, or the compliance limits for that parameter must be established based on these test conditions rather than on the compliance test conditions.

• Verify that compliance emission limits are not exceeded.

– Metal emissions must not exceed Tier III (or Tier II) limits.

– PM emissions must not exceed the most stringent of applicable PM standards (or an optional self–imposed particulate standard).

• The facility must generate normal, marketable product using normal raw materials and fuels under normal operating conditions (for parameters other than those specified under this method) when these tests are conducted.

• Chromium must be treated as a special case:

– The enrichment factor for total chromium is calculated in the same way as the enrichment factor for other metals (i.e., the enrichment factor is the ratio of the concentration of total chromium in the emitted particulate matter to the concentration of total chromium in the collected kiln dust).

– The enrichment factor for hexavalent chromium (if measured) is defined as the ratio of the concentration of hexavalent chromium in the emitted particulate matter to the concentration of total chromium in the collected kiln dust.

(3) Use the enrichment factors measured in Step 2 to determine $EF_{95\%}$, $EF_{99\%}$, and SEF.

• Calculate $EF_{95\%}$ and $EF_{99\%}$ according to the t–distribution as described in Appendix A

• Calculate SEF by

– Equation 4a if $EF_{95\%}$ is determinable and if $EF_{99\%}$ is greater than two times $EF_{95\%}$.

– Equation 4b if $EF_{95\%}$ is determinable and if $EF_{99\%}$ is not greater than two times $EF_{95\%}$.

– Equation 4c if $EF_{95\%}$ is not determinable.

The facility may choose to set an even more conservative SEF to give itself a larger margin of safety between the point where corrective action is necessary and the point where a violation occurs.

(4) Prepare certification of compliance.

• Calculate the "conservative" dust metal concentration limit ($DMCL_c$) using Equation 5.

– Chromium is treated as a special case. The "conservative" kiln dust chromium concentration limit is set for total chromium, not for hexavalent chromium. The limit for total chromium must be calculated using the Tier III (or Tier II) metal limit for hexavalent chromium.

– If the stack samples described in Step 2 were analyzed for hexavalent chromium, the SEF based on the hexavalent chromium enrichment factors (as defined in Step 2) must be used in this calculation.

– If the stack samples were not analyzed for hexavalent chromium, then the SEF based on the total chromium enrichment factor must be used in this calculation.

• Calculate the "violation" dust metal concentration limit ($DMCL_v$) using Equation 3 if $EF_{95\%}$ is determinable, or using Equation 6 if $EF_{95\%}$ is not determinable.

– Chromium is treated as a special case. The "violation" kiln dust chromium concentration limit is set for total chromium, not for hexavalent chromium. The limit for total chromium must be calculated using the Tier III (or Tier II) metal limit for hexavalent chromium.

– If the stack samples taken in Step 2 were analyzed for hexavalent chromium, the $EF_{95\%}$ based on the hexavalent chromium enrichment factor (as defined in Step 2) should be used in this calculation.

– If the stack samples were not analyzed for hexavalent chromium, the $EF_{95\%}$ based on the total chromium enrichment factor must be used in this calculation.

• Submit certification of compliance.

• Steps 2–4 must be repeated for recertification, which is required once every 3 years (see section 66266.103(d)).

(5) Monitor metal concentrations in kiln dust for continuing compliance, and maintain compliance with all compliance limits for the duration of interim status.

• Metals to be monitored during compliance testing are classified as either "critical" or "noncritical" metals.

– All metals must initially be classified as "critical" metals and be monitored on a daily basis.

– A "critical" metal may be reclassified as a "noncritical" metal if its concentration in the kiln dust remains below 10% of its "conservative" kiln dust metal concentration limit for 30 consecutive daily samples. "Noncritical" metals must be monitored on a weekly basis.

– A "noncritical" metal must be reclassified as a "critical" metal if its concentration in the kiln dust is above 10% of its "conservative" kiln dust metal concentration limit for any single daily or weekly sample.

• Noncompliance with the sampling and analysis schedule prescribed by this method is a violation of the metals controls under section 66266.103.

• Follow the sampling, compositing, and analytical procedures described in this method and in SW–846 as they pertain to the condition and accessibility of the kiln dust.

• Follow the same procedures and sample at the same locations as were used for kiln dust samples collected to determine the enrichment factors (as discussed in Step 2).

• Samples must be collected at least once every 8 hours, and a daily composite must be prepared according to SW–846 procedures.

– At least one composite sample is required. This sample is referred to as the "required" sample.

– For QA/QC purposes, a facility may elect to collect two or more additional samples. These samples are referred to as the "spare" samples. These additional samples must be collected over the same time period and according to the same procedures as those used for the "required" sample.

– Samples for "critical" metals must be daily composites.

– Samples for "noncritical" metals must be weekly composites. These samples can be composites of the original 8–hour samples, or they can be composites of daily composite samples.

• Analyze the "required" sample to determine the concentration of each metal.

– This analysis must be completed within 48 hours of the close of the sampling period. Failure to meet this schedule is a violation of the metals standards of section 66266.103.

• If the "conservative" kiln dust metal concentration limit is exceeded for any metal, refer to Step 8.

• If the "conservative" kiln dust metal concentration limit is not exceeded, continue with the daily or weekly monitoring (Step 5) for the duration of interim status.

• Conduct quarterly enrichment factor verification tests, as described in Step 6.

(6) Conduct quarterly enrichment factor verification tests.

• After certification of compliance with the metals standards, a facility must conduct quarterly enrichment factor verification tests every three months for the duration of interim status. The first quarterly test must be completed within three months of certification (or recertification). Each subsequent quarterly test must be completed within three months of the preceding quarterly test. Failure to meet this schedule is a violation.

• Simultaneous stack samples and kiln dust samples must be collected.

• Follow the same procedures and sample at the same locations as were used for kiln dust samples and stack samples collected to determine the enrichment factors (as discussed in Step 2).

• At least three single (noncomposite) runs are required. These tests need not be conducted under the operating conditions of the initial compliance test; however, the facility must operate under the following conditions:

– It must operate at compliance test production rate.

– It must burn hazardous waste during the test, and for the 2–day period immediately preceding the test, such that the feedrate of each metal for pumpable and total hazardous wastes consist of at least 25% of the operating limits established during the compliance test.

– It must remain in compliance with all compliance parameters (see section 66266.103(c)(1).

– It must follow a normal schedule of kiln dust recharging.

– It must generate normal marketable product from normal raw materials during the tests.

(7) Conduct a statistical test to determine if the enrichment factors measured in the quarterly verification tests have increased significantly from the enrichment factors determined in the tests conducted in Step 2. The enrichment factors have increased significantly if all three of the following criteria are met:

• By applying the t–test described in appendix A, it is determined that the enrichment factors measured in the quarterly tests are not taken from the same population as the enrichment factors measured in the Step 2 tests;

• The $EF_{95\%}$ calculated for the combined data sets (i.e., the quarterly test data and the original Step 2 test data) according to the t–distribution (described in appendix A) is more than 10% higher than the $EF_{95\%}$ based on the enrichment factors previously measured in Step 2; and

• The highest measured kiln dust metal concentration recorded in the previous quarter is more than 10% of the "violation" kiln dust concentration limit that would be calculated from the combined $EF_{95\%}$.

If the enrichment factors have increased significantly, the tests to determine the enrichment factors must be repeated (refer to Step 11). If the enrichment factors have not increased significantly, continue to use the kiln dust metal concentration limits based on the enrichment factors previously measured in Step 2, and continue with the daily and/or weekly monitoring described in Step 5.

(8) If the "conservative" kiln dust metal concentration limit was exceeded for any metal in any single analysis of the "required" kiln dust sample, the "spare" samples corresponding to the same period may be analyzed to determine if the exceedance was due to a sampling or analysis error.

• If no "spare" samples were taken, refer to Step 9.

• If the average of all the samples for a given day (or week, as applicable) (including the "required" sample and the "spare" samples) does not exceed the "conservative" kiln dust metal concentration limit, no corrective measures are necessary; continue with the daily and/or weekly monitoring as described in Step 5.

• If the average of all samples for a given day (or week, as applicable) exceeds the "conservative" kiln dust metal concentration limit, but the average of the "spare" samples is below the "conservative" kiln dust metal concentration limit, apply the Q–test, described in appendix A, to determine whether the "required" sample concentration can be judged as an outlier.

– If the "required" sample concentration is judged an outlier, no corrective measures are necessary; continue with the daily and/or weekly monitoring described in Step 5.

– If the "required" sample concentration is not judged an outlier, refer to Step 9.

(9) Determine if the "violation" kiln dust metal concentration has been exceeded based on either the average of all the samples collected during the 24–hour period in question, or if discarding an outlier can be statistically justified by the Q–test described in appendix A, on the average of the remaining samples.

• If the "violation" kiln dust metal concentration limit has been exceeded, a violation of the metals controls under section 66266.103(c) has occurred. Notify the Director that a violation has occurred. Hazardous waste may be burned for testing purposes for up to 720 operating hours to support a revised certification of compliance. Note that the Director may grant an extension of the hours of hazardous waste burning under section 66266.103(c)(7) if additional burning time is needed to support a revised certification for reasons beyond the control of the owner or operator. Until a revised certification of compliance is submitted to the Director, the feedrate of the metals in violation in total and pumpable hazardous waste feeds is limited to 50% of the previous compliance test limits.

• If the "violation" kiln dust metal concentration has not been exceeded:

– If the exceedance occurred in a daily composite sample, refer to Step 10.

– If the exceedance occurred in a weekly composite sample, refer to Step 11.

(10) Determine if the "conservative" kiln dust metal concentration limit has been exceeded more than three times in the last 60 days.

• If not, log this exceedance and continue with the daily and/or weekly monitoring (Step 5).

• If so, the tests to determine the enrichment factors must be repeated (refer to Step 11).

• This determination is made separately for each metal; For example,

– Three exceedances for each of the ten hazardous metals are allowed within any 60–day period.

– Four exceedances of any single metal in any 60–day period is not allowed.

• This determination should be made daily, beginning on the first day of daily monitoring. For example, if four exceedances of any single metal occur in the first four days of daily monitoring, do not wait until the end of the 60–day period; refer immediately to Step 11.

(11) The tests to determine the enrichment factor must be repeated if: (1) More than three exceedances of the "conservative" kiln dust metal concentration limit occur within any 60 consecutive daily samples; (2) an excursion of the "conservative" kiln dust metal concentration limit oc–

curs in any weekly sample; or (3) a quarterly test indicates that the enrichment factors have increased significantly.

- The facility must notify the Director if these tests must be repeated.
- The facility has up to 720 hazardous–waste burning hours to redetermine the enrichment factors for the metal or metals in question and to recertify (beginning with a return to Step 2). During this period, the facility must reduce the feed rate of the metal in violation by 50%. If the facility has not completed the recertification process within this period, it must stop burning or obtain an extension. Hazardous waste burning may resume only when the recertification process (ending with Step 4) has been completed.
- Meanwhile, the facility must continue with daily kiln dust metals monitoring (Step 5) and must remain in compliance with the "violation" kiln dust metal concentration limits (Step 9).

10.6 Precompliance Procedures

Cement kilns and other industrial furnaces that recycle emission control residue back into the furnace must comply with the same certification schedules and procedures (with the few exceptions described below) that apply to other boilers and industrial furnaces. These schedules and procedures, as set forth in section 66266.103, require no later than the effective date of the rule, each facility submit a certification which establishes precompliance limits for a number of compliance parameters (see section 66266.103(b)(3)), and that each facility immediately begin to operate under these limits.

These precompliance limits must ensure that interim status emissions limits for hazardous metals, particulate matter, HCl, and Cl_2 are not likely to be exceeded. Determination of the values of precompliance limits must be made based on either (1) conservative default assumptions in this Methods Manual, or (2) engineering judgement.

The flowchart for implementing the precompliance procedures is shown in Figure 10.6–1. The step–by–step precompliance implementation procedure is described below. The precompliance implementation procedures and numbering scheme are similar to those used for the compliance procedures described in Subsection 10.5.

(1) Prepare initial limits and test plans.

- Determine the Tier III metal emission limit. The Tier II metal emission limit may also be used (see section 66266.106).
- Determine the applicable PM emission standard. This standard is the most stringent particulate emission standard that applies to the facility. A facility may elect to restrict itself to an even more stringent self–imposed PM emission standard, particularly if the facility finds that it is easier to control particulate emissions than to reduce the kiln dust concentration of a certain metal (i.e., lead).
- Determine which metals need to be monitored (i.e., all hazardous metals for which Tier III emission limits are lower than PM emission limits, assuming PM is pure metal).
- Follow the procedures described in SW–846 for preparing waste analysis plans for the following tasks:

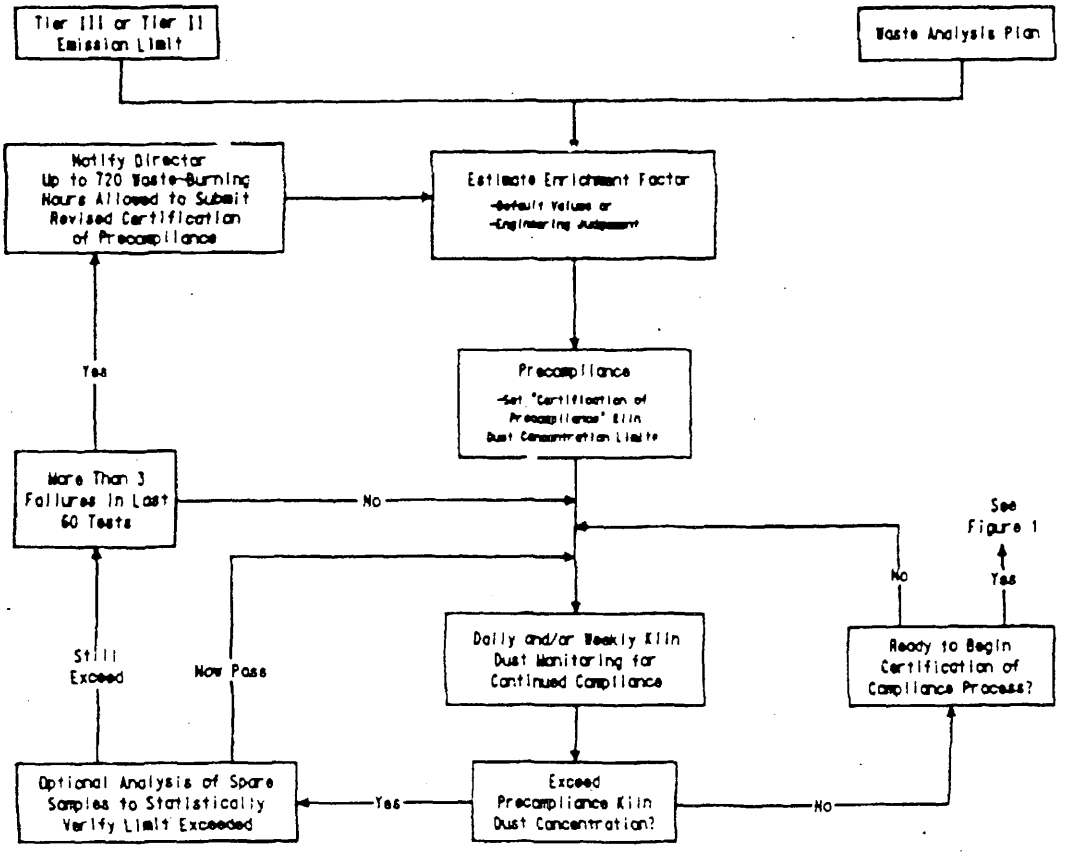
– Analysis of hazardous waste feedstreams.

– Daily and/or weekly monitoring of kiln dust concentrations for continuing compliance.

(2) Determine the "safe" enrichment factor for precompliance. In this context, the "safe" enrichment factor is a conservatively high estimate of the enrichment factor (the ratio of the emitted metal concentration to the metal concentration in the collected kiln dust). The "safe" enrichment factor must be calculated from either conservative default values, or engineering judgement.

Figure 10.6-1

Precompliance Implementation Flow Chart


Tier III or Tier II Emission Limit
Waste Analysis Plan
Notify Director Up to 720 Waste-Burning Hours Allowed to Submit Revised Certification of Precompliance
Estimate Enrichment Factor
Precompliance
More Than 3 Failures In Last 60 Tests
No
Yes
See Figure 1
Yes
No
Still Exceed
Now Pass
Daily and/or Weekly Kiln Dust Monitoring for Continued Compliance
Ready to Begin Certification of Compliance Process?
Optional Analysis of Spare Samples to Statistically Verify Limit Exceeded
Yes
Exceed Precompliance Kiln Dust Concentration?
No

• Conservative default values for the "safe" enrichment factor are as follows:

– SEF = 10 for all hazardous metals except mercury. SEF = 10 for antimony, arsenic, barium, beryllium, cadmium, chromium, lead, silver, and thallium.

– SEF = 100 for mercury.

• Engineering judgement may be used in place of conservative default assumptions provided that the engineering judgement is defensible and properly documented. The facility must keep a written record of all assumptions and calculations necessary to justify the SEF. The facility must provide this record to Department upon request and must be prepared to defend these assumptions and calculations.

Examples of situations where the use of engineering judgement is appropriate include:

– Use of data from precompliance tests;

– Use of data from previous compliance tests; and

– Use of data from similar facilities.

(3) This step does not apply to precompliance procedures.

(4) Prepare certification of precompliance.

• Calculate the "conservative" dust metal concentration limit ($DMCL_c$) using Equation 5.

• Submit certification of precompliance. This certification must include precompliance limits for all compliance parameters that apply to other boilers and industrial furnaces (i.e., those that do not recycle emission control residue back into the furnace) as listed in section 66266.103(b)(3), except that it is not necessary to set precompliance limits on maximum feedrate of each hazardous metal in all combined feedstreams.

• Furnaces that recycle collected PM back into the furnace (and that elect to comply with this method (see section 66266.103(c)(3)(ii)) are subject to a special precompliance parameter, however. They must establish precompliance limits on the maximum concentration of each hazardous metal in collected kiln dust. (which must be set according to the procedures described above).

(5) Monitor metal concentration in kiln dust for continuing compliance, and maintain compliance with all precompliance limits until certification of compliance has been submitted.

• Metals to be monitored during precompliance testing are classified as either "critical" or "noncritical" metals.

– All metals must initially be classified as "critical" metals and be monitored on a daily basis.

– A "critical" metal may be reclassified as a "noncritical" metal if its concentration in the kiln dust remains below 10% of its "conservative" kiln dust metal concentration limit for 30 consecutive daily samples. "Noncritical" metals must be monitored on a weekly basis, at a minimum.

– A "noncritical" metal must be reclassified as a "critical" metal if its concentration in the kiln dust is above 10% of its "conservative" kiln dust metal concentration limit for any single daily or weekly sample.

• It is a violation if the facility fails to analyze the kiln dust for any "critical" metal on any single day or for any "noncritical" metal during any single week, when hazardous waste is burned.

• Follow the sampling, compositing, and analytical procedures described in this method and in SW–846 as they pertain to the condition and accessibility of the kiln dust.

• Samples must be collected at least once very 8 hours, and a daily composite prepared according to SW–846 procedures.

– At least one composite sample is required. This sample is referred to as the "required" sample.

– For QA/QC purposes, a facility may elect to collect two or more additional samples. These samples are referred to as the "spare" samples. These additional samples must be collected over the same time period and according to the same procedures as those used for the "required" sample.

– Samples for "critical" metals must be daily composites.

– Samples for "noncritical" metals must be weekly composites, at a minimum. These samples can be composites of the original 8–hour samples, or they can be composites of daily composite samples.

• Analyze the "required" sample to determine the concentration of each metal.

– This analysis must be completed within 48 hours of the close of the sampling period. Failure to meet this schedule is a violation.

• If the "conservative" kiln dust metal concentration limit is exceeded for any metal, refer to Step 8.

• If the "conservative" kiln dust metal concentration limit is not exceeded, continue with the daily and/or weekly monitoring (Step 5) for the duration of interim status.

(6) This step does not apply to precompliance procedures.

(7) This step does not apply to precompliance procedures.

(8) If the "conservative" kiln dust metal concentration limit was exceeded for any metal in any single analysis of the "required" kiln dust sample, the "spare" samples corresponding to the same period may be analyzed to determine if the exceedance is due to a sampling or analysis error.

• If no "spare" samples were taken, refer to Step 9.

• If the average of all the samples for a given day (or week, as applicable) (including the "required" sample and the "spare" samples) does not exceed the "conservative" kiln dust metal concentration limit, no corrective measures are necessary; continue with the daily and/or weekly monitoring as described in Step 5.

• If the average of all the samples for a given day (or week, as applicable) exceeds the "conservative" kiln dust metal concentration limit. but the average of the "spare" samples is below the "conservative" kiln dust metal concentration limit, apply the Q–test, described in appendix A, to determine whether the "required" sample concentration can be judged as an outlier.

– If the "required" sample concentration is judged an outlier, no corrective measures are necessary; continue with the daily and/or weekly monitoring described in Step 5.

– If the "required" sample concentration is not judged an outlier, refer to Step 10.

(9) This step does not apply to precompliance procedures.

(10) Determine if the "conservative" kiln dust metal concentration limit has been exceeded more than three times in the last 60 days.

• If not, log this exceedance and continue with the daily and/or weekly monitoring (Step 5).

• If so, the tests to determine the enrichment factors must be repeated (refer to Step 11).

• This determination is made separately for each metal; for example

– Three exceedances for each of the ten hazardous metals are allowed within any 60–day period.

– Four exceedances of any single metal is any 60–day period is not allowed.

• This determination should not be made daily, beginning on the first day of daily monitoring. For example, if four exceedances of any single metal occur in the first four days of daily monitoring, do not wait until the end of the 60–day period; refer immediately to Step 11.

(11) A revised certification of compliance must be submitted to the Director (or certification of compliance must be submitted) if: (1) More than three exceedances of the "conservative" kiln dust metal concentration limit occur within any 60 consecutive daily samples; or (2) an exceedance of the "conservative" kiln dust metal concentration limit occurs in any weekly sample.

• The facility must notify the Director if a revised certification of precompliance must be submitted.

• The facility has up to 720 waste–burning hours to submit a certification of compliance or a revised certification of precompliance. During this period, the feed rate of the metal in violation must be reduced by 50%. In the case of a revised certification of precompliance, engineering judgement must be used to ensure that the "conservative" kiln dust metal concentration will not be exceeded. Examples of how this goal might be accomplished include:

– Changing equipment or operating procedures to reduce the kiln dust metal concentration;

– Changing equipment or operating procedures, or using more detailed engineering judgement, to decrease the estimated SEF and thus increase the "conservative" kiln dust metal concentration limit;

– Increasing the "conservative" kiln dust metal concentration limit by imposing a stricter PM emissions standard; or

– Increasing the "conservative" kiln dust metal concentration limit by performing a more detailed risk assessment to increase the metal emission limits.

• Meanwhile, the facility must continue with daily kiln dust metals monitoring (Step 5).

Appendix A to Appendix IX—Statistics

A.1 Determination of Enrichment Factor

After at least 10 initial emissions tests are performed, an enrichment factor for each metal must be determined. At the 95% confidence level, the enrichment factor, $EF_{95\%}$s, is based on the test results and is statistically determined so there is only a 5% chance that the enrichment factor at any given time will be larger than $EF_{95\%}$. Similarly, at the 99% confidence level, the enrichment factor, $EF_{99\%}$, is statistically determined so there is only a 1% chance that the enrichment factor at any given time will be larger than $EF_{99\%}$.

For a large number of samples ($n > 30$), $EF_{95\%}$ is based on a normal distribution, and is equal to:

$EF_{95\%} = EF + z_c\sigma$ (1)

where:

$$\overline{EF} = \frac{\sum_{i=1}^{n} EF_i}{n} \quad (2),$$

$$\sigma = \left[\sum_{i=1}^{n} \frac{\left(EF_i - \overline{EF}\right)^2}{n}\right]^{1/2} \quad (3)$$

For a 95% confidence level, z_c is equal to 1.645.

For a small number of samples ($n < 30$), $EF_{95\%}$ is based on the t – distribution and is equal to:

$EF_{95\%} = EF + t_c S$ (4)

where the standard deviation, S, is defined as:

$$S = \left[\frac{\sum_{i=1}^{n} (EF_i - \overline{EF})^2}{n-1} \right]^{1/2} \quad (5)$$

t_c is a function of the number of samples and the confidence level that is desired. It increases in value as the sample size decreases and the confidence level increases. The 95% confidence level is used in this method to calculate the "violation" kiln dust metal concentration limit; and the 99% confidence level is sometimes used to calculate the "conservative" kiln dust metal concentration limit. Values of t_c are shown in table A–1 for various degrees of freedom (degrees of freedom = sample size–1) at the 95% and 99% confidence levels. As the sample size approaches infinity, the normal distribution is approached.

A.2 Comparison of Enrichment Factor Groups

To determine if the enrichment factors measured in the quarterly tests are significantly different from the enrichment factors determined in the initial Step 2 tests, the t–test is used. In this test, the value t_{meas}:

$$t_{meas} = \frac{\overline{EF}_1 - \overline{EF}_2}{\sigma_i \left(\frac{1}{n_1} + \frac{1}{n_2}\right)^{\frac{1}{2}}} \quad (6)$$

Table A–1.—T–Distribution

$n-1$ or $n_1 + n_2 - 2$	t_{95}	t_{99}
1	6.31	31.82
2	2.92	6.96
3	2.35	4.54
4	2.13	3.75
5	2.02	3.36
6	1.94	3.14
7	1.90	3.00
8	1.86	2.90
9	1.83	2.82
10	1.81	2.76
11	1.80	2.72
12	1.78	2.68
13	1.77	2.65
14	1.76	2.62
15	1.75	2.60
16	1.75	2.58
17	1.74	2.57
18	1.73	2.55
19	1.73	2.54
20	1.72	2.53
25	1.71	2.48
30	1.70	2.46
40	1.68	2.42
60	1.67	2.39
120	1.66	2.36
∞	1.645	2.33

$$\sigma_i = \left(\frac{(n_1 - 1)S_1^2 + (n_2 - 1)S_2^2}{n_1 + n_2 - 2} \right)^{\frac{1}{2}} \quad (7)$$

is compared to t_{crit} at the desired confidence level. The 95% confidence level is used in this method. Values of t_{crit} are shown in table A–1 for various degrees of freedom (degrees of freedom $n_1 + n_2 - 2$) at the 95% and 99% confidence levels. If t_{meas} is greater then t_{crit}, it can be concluded with 95% confidence that the two groups are not from the same population.

A.3 Rejection of Data

If the concentration of any hazardous metal in the "required" kiln dust sample exceeds the kiln dust metal concentration limit, the "spare" samples are analyzed. If the average of the combined "required" and "spare" values is still above the limit, a statistical test is used to decide if the upper value can be rejected.

The "Q–test" is used to determine if a data point can be rejected. The difference between the questionable result and its neighbor is divided by the spread of the entire data set. The resulting ratio, Q_{meas}, is then compared with rejection values that are critical for a particular degree of confidence, where Q_{meas} is:

$$Q_{meas} = \frac{DMC_{highest} - DMC_{next\ highest}}{DMC_{highest} - DMC_{lowest}} \quad (8)$$

The 90% confidence level for data rejection is used in this method. Table A–2 provides the values of Q_{crit} at the 90% confidence level. If Q_{meas} is larger than Q_{crit}, the data point can be discarded. Only one data point from a sample group can be rejected using this method.

Table A–2.—Critical Values for Use in the Q–Test

n	Q_{crit}
3	0.94
4	0.76
5	0.64
6	0.56
7	0.51
8	0.47
9	0.44
10	0.41

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245, 58004 and 58012, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR part 266, Appendix IX.

HISTORY

1. New appendix filed 7–1–96; operative 7–31–96 (Register 96, No. 27).
2. Change without regulatory effect amending appendix IX filed 6–12–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 24).
3. Repealer and new section 3.0 and repealer of sections 3.1–3.6.9.4 filed 10–13–98; operative 11–12–98 (Register 98, No. 42).
4. Change without regulatory effect amending appendix filed 7–1–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 27).
5. Change without regulatory effect amending appendix filed 1–13–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 2).

Appendix X—[Reserved]

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245, 58004 and 58012, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR part 266, Appendix X.

HISTORY

1. Change without regulatory effect amending NOTE filed 6–7–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 24).

Appendix XI—Lead–Bearing Materials That May Be Processed in Exempt Lead Smelters

A. Exempt Lead–Bearing Materials When Generated or Originally Produced By Lead–Associated Industries[1]

Acid dump/fill solids
Sump mud
Materials from laboratory analyses
Acid filters
Baghouse bags
Clothing (e.g., coveralls, aprons, shoes, hats, gloves)
Sweepings
Air filter bags and cartridges
Respiratory cartridge filters
Shop abrasives
Stacking boards
Waste shipping containers (e.g., cartons, bags, drums, cardboard)
Paper hand towels
Wiping rags and sponges

Contaminated pallets
Water treatment sludges, filter cakes, residues, and solids
Emission control dusts, sludges, filter cakes, residues, and solids from lead–associated industries (e.g., K069 and D008 wastes)
Spent grids, posts, and separators
Spent batteries
Lead oxide and lead oxide residues
Lead plates and groups
Spent battery cases, covers, and vents
Pasting belts
Water filter media
Cheesecloth from pasting rollers
Pasting additive bags
Asphalt paving materials
B. Exempt Lead–Bearing Materials When Generated or Originally Produced By Any Industry
Charging jumpers and clips
Platen abrasive
Fluff from lead wire and cable casings
Lead–based pigments and compounding pigment dust
FOOTNOTE: [1]Lead–associated industries are lead smelters, lead–acid battery manufacturing, and lead chemical manufacturing (e.g., manufacturing of lead oxide or other lead compounds).

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245, 58004 and 58012, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR part 266, Appendix XI.

HISTORY

1. New appendix filed 7–1–96; operative 7–31–96 (Register 96, No. 27).

Appendix XII—Nickel or Chromium–Bearing Materials That May Be Processed in Exempt Nickel–Chromium Recovery Furnaces

A. Exempt Nickel or Chromium–Bearing Materials when Generated by Manufacturers or Users of Nickel, Chromium, or Iron
Baghouse bags
Raney nickel catalyst
Floor sweepings
Air filters
Electroplating bath filters
Wastewater filter media
Wood pallets
Disposable clothing (coveralls, aprons, hats, and gloves)
Laboratory samples and spent chemicals
Shipping containers and plastic liners from containers or vehicles used to transport nickel or chromium–containing wastes
Respirator cartridge filters
Paper hand towels
B. Exempt Nickel or Chromium–Bearing Materials when Generated by Any Industry
Electroplating wastewater treatment sludges (F006)
Nickel and/or chromium–containing solutions
Nickel, chromium, and iron catalysts
Nickel–cadmium and nickel–iron batteries
Filter cake from wet scrubber system water treatment plants in the specialty steel industry[1]
Filter cake from nickel–chromium alloy pickling operations[1]
FOOTNOTE: [1]If a hazardous waste under an authorized State program.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245, 58004 and 58012, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR part 266, Appendix XII.

HISTORY

1. New appendix filed 7–1–96; operative 7–31–96 (Register 96, No. 27).
2. Change without regulatory effect amending appendix filed 7–1–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 27).

Appendix XIII—Mercury Bearing Wastes That May Be Processed in Exempt Mercury Recovery Units

These are exempt mercury–bearing materials with less than 500 ppm of Chapter 11, appendix VIII organic constituents when generated by manufacturers or users of mercury or mercury products.

Activated carbon
Decomposer graphite
Wood
Paper
Protective clothing
Sweepings
Respiratory cartridge filters
Cleanup articles
Plastic bags and other contaminated containers
Laboratory and process control samples
K106 and other wastewater treatment plant sludge and filter cake
Mercury cell sump and tank sludge
Mercury cell process solids
Recoverable levels or mercury contained in soil

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245, 58004 and 58012, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR part 266, Appendix XIII.

HISTORY

1. New appendix filed 7–1–96; operative 7–31–96 (Register 96, No. 27).
2. Change without regulatory effect amending appendix filed 7–1–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 27).

Chapter 17. Military Munitions

§ 66267.10. Definition of Waste.

For purposes of sections 25200.10 and 25187 of the Health and Safety Code, a used or fired military munition is a waste, and, therefore, is potentially subject to corrective action authorities under sections 25200.10 and 25187 of the Health and Safety Code if the munition lands off–range and is not promptly rendered safe and/or retrieved. Any imminent and substantial threats associated with any remaining material shall be addressed. If a remedial action is infeasible, the operator of the range shall maintain a record of the event for as long as any threat remains. The record shall include the type of munition and its location (to the extent the location is known). For the purposes of this section, the term "military munitions" is as defined in 40 Code of Federal Regulations section 260.10. The requirements of this section apply only to military munitions that are regulated under the federal act, as defined in Health and Safety Code section 25115.1.

NOTE: Authority cited: Sections 25150, 25159.5, 25179.6 and 58012, Health and Safety Code. Reference: Section 25115.1, Health and Safety Code; and 40 Code of Federal Regulations Sections 260.10 and 266.02.

HISTORY

1. Change without regulatory effect adding Chapter 17 (section 66267.10) and section filed 4–13–2007 pursuant to Health and Safety Code section 25159.1 (Register 2007, No. 15).

Chapter 18. Land Disposal Restrictions

Article 1. General

§ 66268.1. Purpose, Scope and Applicability.

(a) This chapter identifies hazardous wastes that are restricted from land disposal and defines those limited circumstances under which an otherwise prohibited waste may continue to be land disposed.

(b) Except as specifically provided otherwise in this chapter or chapter 11 of this division, the requirements of this chapter apply to persons who generate or transport hazardous waste and owners and operators of hazardous waste treatment, storage, and disposal facilities.

(c) Restricted wastes may continue to be land disposed as follows:

(1) where persons have been granted an extension to the effective date of a prohibition under article 3 of this chapter or pursuant to section 66268.5, with respect to those wastes covered by the extension;

(2) Where persons have been granted an exemption from a prohibition pursuant to a petition under section 66268.6, with respect to those wastes and units covered by the petition;

(3) RCRA hazardous wastes that are hazardous only because they exhibit a hazardous characteristic, and which are otherwise prohibited under this chapter, are not prohibited if the wastes:

(A) Are disposed into a nonhazardous or hazardous injection well; and

(B) Do not exhibit any prohibited characteristic of hazardous waste identified in sections 66261.21, 66261.22(a)(1), 66261.22(a)(2), 66261.23, and 66261.24(a)(1) at the point of injection.

(4) RCRA hazardous wastes that are hazardous only because they exhibit a hazardous characteristic, and which are otherwise prohibited under this chapter, are not prohibited if the wastes meet any of the following criteria, unless the wastes are subject to a specified method of treatment other than DEACT in section 66268.40, or are D003 reactive cyanide:

(A) The wastes are managed in a treatment system which subsequently discharges to waters of the U.S. pursuant to a permit issued under section 402 of the Clean Water Act; or

(B) The wastes are treated for purposes of the pretreatment requirements of section 307 of the Clean Water Act; or

(C) The wastes are managed in a zero discharge system engaged in Clean Water Act–equivalent treatment as defined in section 66268.37; and

(D) The wastes no longer exhibit a prohibited characteristic in sections 66261.21, 66261.22(a)(1), 66261.22(a)(2), 66261.23, and 66261.24(a)(1) at the point of land disposal (i.e., placement in a surface impoundment).

(5) where persons who own or operate a land treatment facility have been granted by the Department an exemption allowing the disposal of restricted hazardous waste in the land treatment facility pursuant to Health and Safety Code section 25179.12;

(6) where persons who own or operate a surface impoundment have been granted by the Department an exemption allowing the treatment of restricted waste in the surface impoundment in accordance with Health and Safety Code section 25179.11;

(7) where restricted hazardous waste in lab packs has not been restricted or prohibited by the USEPA pursuant to RCRA section 3004 (42 U.S.C. section 6924), as amended.

(d) The requirements of this chapter shall not affect the availability of a waiver under section 121(d)(4) of CERCLA (42 U.S.C. section 9621).

(e) The following hazardous wastes are not subject to any provision of chapter 18:

(1) RCRA hazardous waste generated by small quantity generators of less than 100 kilograms of non–acute hazardous waste or less than 1 kilogram of acute hazardous waste per month, as defined in 40 CFR section 261.5;

(2) waste pesticides that a farmer disposes of pursuant to section 66262.70;

(3) solid hazardous wastes generated in the clean up or decontamination of any site contaminated only by hazardous wastes which have not been restricted or prohibited by the USEPA pursuant to section 3004 of the RCRA (42 U.S.C. section 6924), as amended, and which have complied with California Health and Safety Code section 25179.5(a)(4).

(4) Wastes identified or listed as RCRA hazardous waste after November 8, 1984 for which the Department has not promulgated land disposal prohibitions or treatment standards;

(5) *De minimis* losses to wastewater treatment systems of commercial chemical product or chemical intermediates that are ignitable (D001), corrosive (D002), or are organic constituents that exhibit the characteristic of toxicity (D012–D043), and that contain underlying hazardous constituents as defined in section 66260.10, are not considered to be prohibited wastes. *De minimis* is defined as losses from normal material handling operations (e.g. spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials); minor leaks of process equipment; storage tanks or containers; leaks from well–maintained pump packings and seals; sample purgings; and relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing; or

(f) Effective May 8, 1990, all hazardous wastes are prohibited from land disposal unless the wastes have been exempted, granted a variance or granted an extension under this chapter or pursuant to California Health and Safety Code sections 25179.8, 25179.9, 25179.10, 25179.11 and 25179.12, unless the wastes meet the applicable treatment standards specified under article 4 and article 11 of this chapter, or 40 CFR part 268 or unless the wastes have a treatment standard that has been repealed pursuant to Health and Safety Code section 25179.6.

(g) Persons who manage universal waste are exempt from sections 66268.7 and 66268.50. These persons are subject to regulation under chapter 23 when managing universal wastes listed in section 66261.9 of this division.

NOTE: Authority cited: Sections 25141, 25150, 25150.6, 25159, 25179.6, 25219.1 and 58012, Health and Safety Code. Reference: Sections 25118, 25141, 25150, 25159, 25159.5, 25179.3, 25179.6, 25179.7, 25179.8, 25179.9, 25179.10, 25179.11, 25179.12, 25219, 25219.1 and 25219.2, Health and Safety Code; 40 CFR Section 268.1.

HISTORY

1. New section with renumbering and amendment of former section 66826 to subsections (g), (h) and (i) filed 5–24–91; operative 7–1–91 (Register 91, No. 22). A Certificate of Compliance for 5–6–91 order must be transmitted to OAL by 9–3–91 or the emergency language will be repealed by operation of law on the following day.
2. Emergency order of 5–6–91 adopting subsections (g)–(i) refiled 9–3–91 as an emergency; operative 9–3–91 (Register 92, No. 17). A Certificate of Compliance must be transmitted to OAL 1–2–92 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsections (g)–(i) refiled, including further amendments and new subsection (j) filed 12–26–91 as an emergency; operative 12–26–91 (Register 92, No. 17). A Certificate of Compliance must be transmitted to OAL 4–24–92 or emergency language will be repealed by operation of law on the following day.
4. New subsections (g), (h), (i) and (j) refiled 4–20–92 as an emergency; operative 4–20–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 8–18–92 or emergency language will be repealed by operation of law on the following day.
5. Repealer of emergency amendments and reinstatement of prior text filed 11–2–92 by operation of Government Code section 11346.1(f) (Register 92, No. 45).
6. Amendment of section and NOTE filed 3–1–93; operative 3–1–93 (Register 93, No. 10).
7. Amendment of subsection (c)(1) and new subsections (e)(3) and (e)(4) filed 1–31–96; operative 1–31–96 (Register 96, No. 5).
8. Amendment of subsections (e)(2) and (g)–(i) filed 7–23–97; operative 8–22–97 (Register 97, No. 30).
9. Change without regulatory effect repealing subsection (h) filed 8–15–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 33).
10. Change without regulatory effect amending section filed 6–4–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 23).
11. New subsections (g)–(g)(3) and amendment of NOTE filed 3–6–2000 as an emergency; operative 3–6–2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2000 or emergency language will be repealed by operation of law on the following day.
12. New subsections (g)–(g)(3) and amendment of NOTE refiled 6–29–2000 as an emergency; operative 7–6–2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–3–2000 or emergency language will be repealed by operation of law on the following day.
13. New subsections (g)–(g)(3) and amendment of NOTE refiled 11–1–2000 as an emergency; operative 11–4–2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–5–2001 or emergency language will be repealed by operation of law on the following day.
14. New subsections (g)–(g)(3) and amendment of NOTE refiled 3–6–2001 as an emergency; operative 3–6–2001 (Register 2001, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2001 or emergency language will be repealed by operation of law on the following day.
15. New subsections (g)–(g)(3) and amendment of NOTE refiled 6–26–2001 as an emergency; operative 7–5–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–2–2001 or emergency language will be repealed by operation of law on the following day.

16. New subsections (g)–(g)(3) and amendment of NOTE refiled 11–2–2001 as an emergency; operative 11–3–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–4–2002 or emergency language will be repealed by operation of law on the following day.

17. Certificate of Compliance as to 11–2–2001 order transmitted to OAL 12–27–2001 and filed 2–8–2002 (Register 2002, No. 6).

18. Amendment of subsection (g), repealer of subsections (g)(1)–(3) and amendment of NOTE filed 2–3–2003; operative 2–3–2003 (Register 2003, No. 6).

19. Amendment of subsection (g) and NOTE filed 2–13–2003; operative 3–15–2003 (Register 2003, No. 7).

20. Change without regulatory effect amending subsection (f) filed 6–7–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 24).

§ 66268.2. Definitions Applicable in This Chapter.

Definitions of terms applicable in this chapter are provided under section 66260.10.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25179.6, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 268.2.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66268.3. Dilution Prohibited As a Substitute for Treatment.

(a) No generator, transporter, handler, or owner or operator of a treatment, storage, or disposal facility shall in any way dilute a restricted waste or the residual from treatment of a restricted waste as a substitute for adequate treatment to achieve compliance with article 4 or article 11 of this chapter, to circumvent the effective date of a prohibition in article 3 or article 10 of this chapter, to otherwise avoid a prohibition in article 3 or article 10 of this chapter, or to circumvent a land disposal prohibition imposed by RCRA section 3004 (42 U.S.C. section 6924).

(b) Combustion of the hazardous waste codes listed in Appendix XI of this chapter is prohibited, unless the waste, at the point of generation, or after any bona fide treatment such as cyanide destruction prior to combustion, can be demonstrated to comply with one or more of the following criteria (unless otherwise specifically prohibited from combustion):

(1) The waste contains hazardous organic constituents or cyanide at levels exceeding the constituent–specific treatment standard found in section 66268.48;

(2) The waste consists of organic, debris–like materials (e.g., wood paper, plastic, or cloth) contaminated with an inorganic metal–bearing hazardous waste;

(3) The waste, at point of generation, has reasonable heating value such as greater than or equal to 5000 BTU per pound;

(4) The waste is co–generated with wastes for which combustion is a required method of treatment;

(5) The waste is subject to Federal and/or State requirements necessitating reduction of organics (including biological agents); or

(6) The waste contains greater than 1% Total Organic Carbon (TOC).

(c) It is a form of impermissible dilution, and therefore prohibited, to add iron filings or other metallic forms of iron to lead–containing hazardous wastes in order to achieve any land disposal restriction treatment standard for lead. Lead–containing wastes include D008 wastes (wastes exhibiting a characteristic due to the presence of lead), all characteristic wastes containing lead as an underlying hazardous constituent, listed wastes containing lead as a regulated constituent, and hazardous media containing any of the aforementioned lead–containing wastes.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25179.6, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 268.3.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

2. Change without regulatory effect redesignating and amending first paragraph as subsection (a) and adding new subsections (b)–(c) filed 6–4–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 23).

§ 66268.5. Procedures for Case–by–Case Extensions to an Effective Date.

(a) Any person who generates, treats, stores, or disposes of a hazardous waste may submit an application to the Department, for non–RCRA hazardous wastes, or the U.S. EPA Administrator, for RCRA hazardous wastes, for an extension to the effective date of any applicable restriction established under article 3 of this chapter.

(b) For hazardous waste subject to RCRA land disposal restrictions set forth in article 4 of this chapter, the applicant shall petition the U.S. EPA Administrator for a case–by–case extension pursuant to 40 CFR section 268.5. Within 30 days after the applicant has received from the U.S. EPA Administrator an approved petition for a case–by–case extension, the applicant shall submit to the Department a copy of the approved case–by–case extension.

(c) For hazardous waste listed in section 66268.29 of this chapter subject to non–RCRA land disposal restrictions set forth in article 11 of this chapter, the applicant shall petition the Department for a case–by–case extension pursuant to this section. Each applicant for an extension shall demonstrate that all of the following conditions apply to the waste.

(1) The hazardous waste cannot be recycled, reused, or treated to meet the standards adopted by the Department pursuant to section 25179.6, California Health and Safety Code, at a commercial off–site hazardous waste facility in the state.

(2) Recycling or treatment alternatives cannot be provided at the site of generation.

(3) Measures have been, or will be, taken to reduce the generation of the hazardous waste.

(4) Land disposal of the hazardous waste is in compliance with all existing statutes and regulations.

(5) Circumstances beyond the control of the applicant, such as delays in the issuance of a permit, have prevented the development of the needed capacity by the date established under this chapter.

(d) An extension will apply only to the waste generated at the individual facility covered by the application and will not apply to restricted waste from any other facility.

(e) On the basis of the information referred to in subsections (a), (b), and (c) of this section, the Department may grant an extension of up to 1 year from the effective date. The Department may renew this extension for up to 1 additional year upon the request of the applicant if the demonstration required in subsections (a), (b), and (c) of this section can still be made. In no event will an extension extend beyond 24 months from the applicable effective date specified in article 3 of chapter 18. The length of any extension authorized will be determined by the Department based on the time required to construct or obtain the type of capacity needed by the applicant.

(f) Any person granted an extension under this section shall immediately notify the Department as soon as the person has knowledge of any change in the conditions certified to in the application.

(g) Any person granted an extension under this section shall submit written progress reports to the Department at intervals designated by the Department. Such reports shall describe the overall progress made toward constructing or otherwise providing alternative treatment, recovery or disposal capacity, shall identify any event which may cause or has caused a delay in the development of the capacity, and shall summarize the steps taken to mitigate the delay. The Department can revoke the extension at any time if the applicant does not demonstrate a good–faith effort to meet the schedule for completion, if the Department denies or revokes any required permit, if conditions certified in the application change, or for any violation of this division.

(h) Whenever the Department establishes an extension to an effective date under this section, during the period for which such extension is in effect:

(1) the storage restrictions under section 66268.50(a) do not apply; and

(2) such hazardous waste may be disposed in a landfill or surface impoundment only if such unit is in compliance with the technical require-

ments of the following provisions regardless of whether such unit is existing, new or a replacement or lateral expansion:

(A) the landfill, if in interim status, is in compliance with the requirements of article 6 of chapter 15 and section 66265.301(a), (c), and (d) of this division; or,

(B) the landfill, if permitted, is in compliance with the requirements of article 6 of chapter 14 and section 66264.301(c), (d) and (e) of this division;

(C) the surface impoundment, if in interim status, is in compliance with the requirements of article 6 of chapter 15, section 66265.221(a), (c), and (d) of this division, and RCRA section 3005(j)(1); or

(D) the surface impoundment, if permitted, is in compliance with the requirements of article 6 of chapter 14 and section 66264.221(c), (d) and (e) of this division and California Health and Safety Code, division 20, chapter 6.5 article 9.5;

(E) as consistent with state law, the surface impoundment, if newly subject to RCRA section 3005(j)(1) (42 U.S.C. section 6925(j)(1)) due to the promulgation of additional listings or characteristics for the identification of hazardous waste, is in compliance with the requirements of article 6 of chapter 15 within 12 months after the promulgation of additional listings or characteristics of hazardous waste, and the requirements of section 66265.221(a), (c) and (d) of this division within 48 months after the promulgation of additional listings or characteristics of hazardous waste. If a national capacity variance is granted, during the period the variance is in effect, the surface impoundment, if newly subject to RCRA section 3005(j)(1) (42 U.S.C. section 6925(j)(1)) due to the promulgation of additional listings or characteristics of hazardous waste, is in compliance with the requirements of article 6 of chapter 15 within 12 months after the promulgation of additional listings or characteristics of hazardous waste, and with the requirements of section 66265.221 (a), (c) and (d) of this division within 48 months after the promulgation of additional listings or characteristics of hazardous waste; or

(F) the landfill, if disposing of containerized liquid hazardous wastes containing PCBs at concentrations greater than or equal to 50 ppm but less than 500 ppm, is also in compliance with the requirements of 40 CFR section 761.75 and chapters 14 and 15 of this division.

(i) Pending a decision on the application, the applicant is required to comply with all restrictions on land disposal under this chapter once the effective date for the waste has been reached.

(j) After receiving an application for an extension, the Department may request any additional information which it deems necessary to evaluate the application. Within 45 days of the receipt of the application, the Department shall inform the applicant, in writing, that the application is complete and accepted for filing, or that the application is deficient and what specific information is required.

(k) The Department shall make a decision on an application for an extension within 120 days of the filing of a completed application.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25179.6, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5 and 25179.8, Health and Safety Code; 40 CFR Section 268.5; Section 15376, Government Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Editorial correction amending subsection designator from (f)(9) to (g) (Register 92, No. 49).
3. New subsection (h)(2)(E) and subsection lettering filed 1–31–96; operative 1–31–96 (Register 96, No. 5).
4. Amendment of subsections (a)–(c) and (e)–(g) filed 7–23–97; operative 8–22–97 (Register 97, No. 30).

§ 66268.6. Petitions to Allow Land Disposal of a Waste Prohibited Under Article 3 of Chapter 18.

For hazardous waste subject to RCRA land disposal restrictions set forth in article 3 of this chapter, the applicant shall petition the U.S. EPA Administration for an exemption from a prohibition pursuant to 40 CFR section 268.6. Within 30 days after the applicant has received from the U.S. EPA Administrator an approved petition, the applicant shall submit to the Department a copy of the approved petition.

HISTORY

1. Change without regulatory effect adding new section filed 8–15–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 33).

§ 66268.7. Testing, Tracking, and Recordkeeping Requirements for Generators, Treaters, and Disposal Facilities.

(a) Requirements for generators:

(1) A generator of hazardous waste shall determine if the waste has to be treated before it can be land disposed. This is done by determining if the hazardous waste meets the treatment standards in article 4 or article 11. This determination can be made in either of two ways: testing the waste or using knowledge of the waste. If the generator tests the waste, testing would normally determine the total concentration of hazardous constituents, or the concentration of hazardous constituents in an extract of the waste obtained using test method 1311 in "Test Methods of Evaluating Solid Waste, Physical/Chemical Methods," "USEPA Publication SW–846, as referenced in section 66260.11 of this division, depending on whether the treatment standard for the waste is expressed as a total concentration or concentration of hazardous constituent in the waste's extract. In addition, some hazardous wastes shall be treated by particular treatment methods before they can be land disposed and some soils are contaminated by such hazardous wastes. These treatment standards are also found in section 66268.40, and are described in detail in section 66268.42, Table 1. These wastes, and soils contaminated with such wastes, do not need to be tested (however, if they are in a waste mixture, other wastes with concentration level treatment standards would have to be tested). If a generator determines they are managing a waste or soil contaminated with a waste, that displays a hazardous characteristic of ignitability, corrosivity, reactivity, or toxicity, they shall comply with the special requirements of section 66268.9 of this chapter in addition to any applicable requirements in this section.

(2) Except as provided in subsection (B), if the waste or contaminated soil does not meet the treatment standard: With the initial shipment of waste to each treatment or storage facility, the generator shall send a one–time written notice to each treatment or storage facility receiving the waste, and place a copy in the file. The notice shall include the information in column "66268.7(a)(2)" of the Generator Paperwork Requirements Table in section 66268.7(a)(4). No further notification is necessary until such time that the waste or facility change, in which case a new notification shall be sent and a copy placed in the generator's file.

(A) For contaminated soil, the following certification statement should be included, signed by an authorized representative:

I certify under penalty of law that I personally have examined this contaminated soil and it [does/does not] contain listed hazardous waste and [does/does not] exhibit a characteristic of hazardous waste and requires treatment to meet the soil treatment standards as provided by section 66268.49(c).

(B) If a generator determines that the generator is managing a restricted waste under section 66268.29 or prohibited waste under section 66268.32 and the waste does not meet the applicable treatment standards set forth in article 11 of this chapter, with each shipment of waste the generator shall notify the receiving facility in writing only if the receiving facility is a land disposal facility operating within California. The notice shall include the following information:

1. Non–RCRA hazardous waste Category listed in section 66268.29, if applicable;

2. the manifest number associated with the shipment of waste; and

3. waste analysis data, where available.

(3) If the waste or contaminated soil meets the treatment standard at the original point of generation:

(A) With the initial shipment of waste to each treatment, storage, or disposal facility, the generator shall send a one–time written notice to each treatment, storage, or disposal facility receiving the waste, and place a copy in the file. The notice shall include the information indicated in column "66268.7(a)(3)" of the Generator Paperwork Requirements

Table in section 66268.7(a)(4) and the following certification statement, signed by an authorized representative:

I certify under penalty of law that I personally have examined and am familiar with the waste through analysis and testing or through knowledge of the waste to support this certification that the waste complies with the treatment standards specified in CCR, Title 22, division 4.5, chapter 18, article 4. I believe that the information I submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting a false certification, including the possibility of a fine and imprisonment.

(B) For contaminated soil, with the initial shipment of wastes to each treatment, storage, or disposal facility, the generator shall send a one–time written notice to each facility receiving the waste and place a copy in the file. The notice shall include the information in "66268.7(a)(3)" of the Generator Paperwork Requirements Table in section 66268.7(a)(4).

(C) If the waste changes, the generator shall send a new notice and certification to the receiving facility, and place a copy in their files. Generators of hazardous debris excluded from the definition of hazardous waste under section 66261.3(e) are not subject to these requirements.

(D) If a generator determines that the generator is managing a restricted waste under section 66268.29 and subject to applicable treatment standards set forth in article 11 of this chapter or prohibited under section 66268.32 and determines that the waste can be land disposed without further treatment, with each shipment of waste the generator shall submit to the receiving facility a notice and a certification stating that the waste meets the applicable treatment standards set forth in article 11 of this chapter or the applicable prohibitions set forth in section 66268.32, only if the receiving facility is a land disposal facility operating within California. The notice shall include the following information:

1. Non–RCRA hazardous waste Category listed in section 66268.29, if applicable;

2. the manifest number associated with the shipment of waste; and

3. waste analysis data, where available.

The certification shall state:

I certify under penalty of law that I personally have examined and am familiar with the waste through analysis and testing or through knowledge of the waste to support this certification that the waste complies with the treatment standards specified in CCR, Title 22, division 4.5, chapter 18, article 11 [or all applicable prohibitions in section 66268.32]. I believe that the information I submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting a false certification, including the possibility of a fine and imprisonment.

(4) For reporting, tracking, and recordkeeping when exceptions allow certain wastes or contaminated soil that do not meet the treatment standards to be land disposed: There are certain exemptions from the requirement that hazardous wastes or contaminated soil meet treatment standards before they can be land disposed. These include, but are not limited to case–by–case extensions under section 66268.5, disposal in a no–migration unit under section 66268.6, or a national capacity variance or case–by–case capacity variance under article 3 of this chapter. If a generator's waste is so exempt, then with the initial shipment of waste, the generator shall send a one–time written notice to each land disposal facility receiving the waste. The notice shall include the information indicated in column "66268.7(a)(4)" of the Generator Paperwork Requirements Table in this subsection. If the waste changes, the generator shall send a new notice to the receiving facility, and place a copy in their files.

Generator Paperwork Requirements Table

Required Information	*§ 66268.7(a)(2)*	*§ 66268.7(a)(3)*	*§ 66268.7(a)(4)*	*§ 66268.7(a)(9)*
1. EPA Hazardous Waste Numbers and Manifest Number of first shipment	√	√	√	√
2. Statement: this waste is not prohibited from land disposal			√	
3. The waste is subject to the LDRs. The constituents of concern for F001–F005, and F039, and underlying hazardous constituents in RCRA characteristic wastes, unless the waste will be treated and monitored for all constituents. If all constituents will be treated and monitored, there is no need to put them all on the LDR notice.	√	√		
4. The notice shall include the applicable wastewater/nonwastewater category (see section 66260.10) and subdivisions made within a waste code based on waste–specific criteria (such as D003 *reactive cyanide*)	√	√		
5. Waste analysis data (when available)	√	√	√	
6. Date the waste is subject to the prohibition			√	
7. For hazardous debris, when treating with the alternative treatment technologies provided by section 66268.45: the contaminants subject to treatment, as described in section 66268.45(b); and an indication that these contaminants are being treated to comply with section 66268.45	√		√	
8. For contaminated soil subject to LDRs as provided in section 66268.49(a), the constituents subject to treatment as described in section 66268.49(d), and the following statement: This contaminated soil [does/does not] contain listed hazardous waste and [does/does not] exhibit a characteristic of hazardous waste and [is subject to/complies with] the soil treatment standards as provided by section 66268.49(c) or the universal treatment standards.	√	√		
9. A certification is needed (see applicable section for exact wording)		√		√

(5) If a generator is managing and treating prohibited waste or contaminated soil in tanks, containers, or containment buildings regulated under 40 CFR 262.34 to meet applicable LDR treatment standards found at section 66268.40, the generator shall develop and follow a written waste analysis plan which describes the procedures they will carry out to comply with the treatment standards. (Generators treating hazardous debris under the alternative treatment standards of Table 1, section 66268.45, however, are not subject to these waste analysis requirements.) The plan shall be kept on site in the generator's records, and the following requirements shall be met:

(A) The waste analysis plan shall be based on a detailed chemical and physical analysis of a representative sample of the prohibited waste(s) being treated, and contain all information necessary to treat the waste(s) in accordance with the requirements of this chapter, including the selected testing frequency.

(B) Such plan shall be kept in the facility's on–site files and made available to inspectors.

(C) Wastes shipped off–site pursuant to this subsection shall comply with the notification requirements of section 66268.7(a)(3).

(6) If a generator determines that the waste or contaminated soil is restricted based solely on the generator's knowledge of the waste, all supporting data used to make this determination shall be retained on–site in the generator's files. If a generator determines that the waste is restricted based on testing this waste or an extract developed using the test method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," USEPA Publication SW–846, as referenced in section 66260.11 of this division, and all waste analysis data shall be retained on–site in the generator's files.

(7) If a generator determines that the generator is managing a prohibited waste that is excluded from the definition of hazardous waste or waste or is exempted from hazardous waste regulation under CCR, Title 22, Chapter 11, section 66261.2 through 66261.6 or under the Health and Safety Code subsequent to the point of generation (including deactivated characteristic hazardous wastes managed in wastewater treatment systems subject to the federal Clean Water Act (CWA) as specified at CCR, Title 22, section 66261.4(a)(1) or that are federal CWA–equivalent, or are managed in an underground injection well regulated by the federal SDWA), the generator shall place a one–time notice describing such generation, subsequent exclusion from the definition of hazardous waste or waste or exemption from hazardous waste regulation, and the disposition of the waste, in the facility's on–site files.

(8) Generators shall retain on–site a copy of all notices, certifications, waste analysis data, and other documentation produced pursuant to this section for at least three years from the date that the waste that is the subject of such documentation was last sent to on–site or off–site treatment, storage, or disposal. The three year record retention period is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Department. The requirements of this subsection apply to wastes even when the hazardous characteristic is removed prior to disposal, or when the waste is excluded from the definition of hazardous waste or waste under CCR, Title 22, sections 66261.2 through 66261.6 or under Health and Safety Code, or exempted from hazardous waste regulation, subsequent to the point of generation.

(9) If a generator is managing a lab pack containing hazardous wastes and wishes to use the alternative treatment standard for lab packs found at section 66268.42(c):

(A) With the initial shipment of waste to a treatment facility, the generator shall submit a notice that provides the information in column "66268.7(a)(9)" in the Generator Paperwork Requirements Table of subsection (a)(4) of this section, and the following certification. The certification, which shall be signed by an authorized representative and shall be placed in the generator's files, shall say the following:

I certify under penalty of law that I personally have examined and am familiar with the waste and that the lab pack contains only wastes that have not been excluded under appendix IV to CCR, Title 22, division 4.5, chapter 18 and that this lab pack will be sent to a combustion facility in compliance with the alternative treatment standards for lab packs under CCR, Title 22, division 4.5, chapter 18, section 66268.42(c). I am aware that there are significant penalties for submitting a false certification, including the possibility of fine or imprisonment.

(B) No further notification is necessary until such time that the wastes in the lab pack change, or the receiving facility changes, in which case a new notice and certification shall be sent and a copy placed in the generator's file.

(C) If the lab pack contains characteristic hazardous wastes (D001–D043), underlying hazardous constituents (as defined in section 66260.10) need not be determined.

(D) The generator shall also comply with the requirements in subsections (a)(6) and (a)(7) of this section.

(10) Small quantity generators of RCRA hazardous wastes with reclamation agreements established pursuant to the requirements of title 40 of the Code of Federal Regulations, section 262.20(e) and 263.20(h), as of those sections read on July 1, 2001, shall comply with the applicable notification and certification requirements of subsection (a) of this section for the initial shipment of the waste subject to the agreement. Such generators must retain on–site a copy of the notification and certification, together with the reclamation agreement, for at least three years after termination or expiration of the agreement. The three–year retention period is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Department.

(11) If a generator determines that restricted asbestos–containing waste is being managed and that the waste can be land disposed without further treatment, with each shipment of waste, the generator shall submit to the receiving facility, a notice and a certification stating that the waste meets the applicable treatment standards set forth in section 66268.114, only if the receiving facility is a land disposal facility operating within California. Such generators shall retain a copy of the notification and certification at their principal place of business in California for at least three years. The three year period is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Department. Generators who have been assigned by the Department the EPA identification number for residentials for asbestos–containing waste or a 90–day one time provisional EPA identification number for asbestos–containing waste are exempted from subsections (A) and (B) below.

(A) The notice shall include the following information:

1. The California Waste Code for asbestos–containing waste;
2. The corresponding treatment standard;
3. The manifest number associated with the shipment of waste;

(B) The certification shall be signed by an authorized representative and shall state the following:

"I warrant that I am an authorized representative of the generator. I certify under penalty of law that the waste complies with the treatment standards specified in CCR, Title 22, Division 4.5, Chapter 18, section 66268.114. I believe that the information I submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting a false certification, including the possibility of a fine and imprisonment."

And including the following information:

1. Generator's Name;
2. Generator's Address;
3. Authorized Representative Printed Name;
4. Authorized Representative Signature and;
5. Date.

(b) Treatment facilities shall test their wastes according to the frequency specified in their waste analysis plans as required by section 66264.13 (for permitted TSDs) or section 66265.13 (for interim status facilities). Such testing shall be performed as provided in subsections (b)(1), (b)(2) and (b)(3) of this section.

(1) For wastes or contaminated soil with treatment standards expressed in the waste extract (TCLP), the owner or operator of the treatment facility shall test an extract of the treatment residues, using test method 1311 (the Toxicity Characteristic Leaching Procedure, described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," USEPA Publication SW–846 as incorporated by reference in section 66260.11 of this division) or the test method specified in section 66268.106 to assure that the treatment residues extract meet the applicable treatment standards.

(2) For wastes or contaminated soil with treatment standards expressed as concentrations in the waste, the owner or operator of the treatment facility shall test the treatment residues (not an extract of such residues) to assure that they meet the applicable treatment standards.

(3) A one–time notice shall be sent with the initial shipment of waste or contaminated soil to the land disposal facility. A copy of the notice shall be placed in the treatment facility's file.

(A) No further notification is necessary until such time that the waste or receiving facility change, in which case a new notice shall be sent and a copy placed in the treatment facility's file.

(B) The one–time notice shall include these requirements:

Treatment Facility Paperwork Requirements Table

Required Information	*§ 66268.7(b)*
1. EPA Hazardous Waste Numbers and Manifest Number of first shipment.	√
2. The waste is subject to the LDRs. The constituents of concern for F001–F005, and F039, and underlying hazardous constituents in RCRA characteristic wastes, unless the waste will be treated and monitored for all constituents. If all constituents will be treated and monitored, there is no need to put them all on the LDR notice.	√
3. The notice shall include the applicable wastewater/ nonwastewater category (see section 66268.10) and subdivisions made within a waste code based on waste–specific criteria (such as D003 *reactive cyanide*)	√
4. Waste analysis data (when available)	√
5. For contaminated soil subject to LDRs as provided in section 66268.49(a), the constituents subject to treatment as described in section 66268.49(d), and the following statement, "this contaminated soil [does/does not] contain listed hazardous waste and [does/does not] exhibit characteristic of hazardous waste and [is subject to/complies with] the soil treatment standards as provided by section 66268.49(c).	√
6. A certification is needed (see applicable section for exact wording)	√

(4) The treatment facility shall submit a one–time certification signed by an authorized representative with the initial shipment of waste or treatment residue of a restricted waste to the land disposal facility. The certification shall state:

I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification. Based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the treatment process has been operated and maintained properly so as to comply with treatment standards specified in CCR, Title 22, division 4.5, section 66268.40 without impermissible dilution of the prohibited waste. I am aware there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

A certification is also necessary for contaminated soil and it shall state:

I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification and believe that it has been maintained and operated properly so as to comply with treatment standards specified in CCR, Title 22, division 4.5, section 66268.49 without impermissible dilution of the prohibited wastes. I am aware there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

(A) A copy of the certification shall be placed in the treatment facility's on–site files. If the waste or treatment residue changes, or the receiving facility changes, a new certification shall be sent to the receiving facility, and a copy placed in the file.

(B) Debris excluded from the definition of hazardous waste under section 66261.3(e) of this division (i.e., debris treated by an extraction or destruction technology provided by Table 1, section 66268.45, and debris that the Department has determined does not contain hazardous waste), however, is subject to the notification and certification requirements of subsection (d) of this section rather than the certification requirements of this subsection.

(C) For wastes with organic constituents having treatment standards expressed as concentration levels, if compliance with the treatment standards is based in whole or in part on the analytical detection limit alternative specified in section 66268.40(d), the certification, signed by an authorized representative, shall state the following:

I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification. Based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the nonwastewater organic constituents have been treated by combustion units as specified in section 66268.42, Table 1. I have been unable to detect the nonwastewater organic constituents, despite having used best good–faith efforts to analyze for such constituents. I am aware there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

(D) For RCRA characteristic wastes that are subject to the treatment standards in section 66268.40 (other than those expressed as a method of treatment), or section 66268.49 and, that contain underlying hazardous constituents as defined in section 66260.10; if these wastes are treated on–site to remove the hazardous characteristic; and are then sent off–site for treatment of underlying hazardous constituents, the certification shall state the following:

I certify under penalty of law that the waste has been treated in accordance with the requirements of CCR, Title 22, division 4.5, section 66268.40 or 66268.49 to remove the hazardous characteristic. This decharacterized waste contains underlying hazardous constituents that require further treatment to meet treatment standards. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

(E) For RCRA characteristic wastes that contain underlying hazardous constituents as defined in section 66260.10 that are treated on–site to remove the hazardous characteristic to treat underlying hazardous constituents to levels in section 66268.48 Universal Treatment Standards, the certification shall state the following:

I certify under penalty of law that the waste has been treated in accordance with the requirements of CCR, Title 22, division 4.5, section 66268.40 to remove the hazardous characteristic and that underlying hazardous constituents, as defined in section 66260.10 have been treated on–site to meet the section 66268.48 Universal Treatment Standards. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

(5) If the waste or treatment residue will be further managed at a different treatment, storage, or disposal facility, the treatment, storage, or disposal facility sending the waste or treatment residue off–site shall comply with the notice and certification requirements applicable to generators under this section.

(6) For wastes that are prohibited under section 66268.32 of this chapter but not subject to any treatment standards under article 4 or article 11 of this chapter, the owner or operator of the treatment facility shall test the treatment residues according to the generator testing requirements specified in section 66268.32 to assure that the treatment residues comply with the applicable prohibitions.

(7) For restricted waste under section 66268.29 subject to applicable treatment standards set forth in article 11 of this chapter or wastes that are prohibited under section 66268.32 in which the treatment facility determines that the waste can be land disposed without further treatment, with each shipment of waste the treatment facility shall submit to the receiving facility a notice and certification, only if the receiving facility is a land disposal facility operating within California. The notice shall include the following information:

(A) Non–RCRA hazardous waste category listed in section 66268.29, if applicable;

(B) the manifest number associated with the shipment of waste;

(C) waste analysis data, where available.

The certification shall be signed by an authorized representative and shall state the following:

I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification. Based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the treatment process has been operated and maintained properly so as to comply with treatment standards specified in CCR, Title 22, division 4.5, chapter 18, article 11 [or all applicable prohibitions in section 66268.32] without impermissible dilution of the prohibited waste.

I am aware there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

(c) The owner or operator of any land disposal facility disposing any waste subject to restrictions under this chapter shall:

(1) have copies of the notice and certifications specified in subsection (a) or (b) of this section;

(2) Test the waste, or an extract of the waste or treatment residue developed using test method 1311 (the Toxicity Characteristic Leaching Procedure), described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," USEPA Publication SW–846 as incorporated by reference in section 66260.11 of this division) or section 66268.106 of this chapter or using any methods required under section 66268.32 of this chapter, to assure that the wastes or treatment residues are in compliance with the applicable treatment standards set forth in article 4 and article 11 of this chapter or the prohibition levels in section 66268.32. Such testing shall be performed according to the frequency specified in the facility's waste analysis plan as required by section 66264.13 or section 66265.13 of this division.

(d) Generators or treaters who first claim that hazardous debris is excluded from the definition of hazardous waste under section 66261.3(e) (i.e. debris treated by an extraction or destruction technology provided by Table 1, Section 66268.45, and debris that the Department has determined does not contain hazardous waste are subject to the following notification and certification requirements:

(1) A one–time notification, including the following information, shall be submitted to the Department:

(A) The name and address of the RCRA Subtitle D facility receiving the treated debris;

(B) A description of the hazardous debris as initially generated, including the applicable EPA Hazardous Waste Number(s); and

(C) For debris excluded under 66261.3(e)(1), the technology from Table 1, Section 66268.45, used to treat the debris.

(2) The notification shall be updated if the debris is shipped to a different facility, and, for debris excluded under section 66261.3(e)(1), if a different type of debris is treated or a different type of technology is used to treat the debris.

(3) For debris excluded under section 66261.3(e)(1), the owner or operator of the treatment facility shall document and certify compliance with the treatment standards of Table 1, section 66268.45, as follows:

(A) Records shall be kept of all inspections, evaluations, and analyses of treated debris that are made to determine compliance with the treatment standards;

(B) Records shall be kept of any data or information the treater obtains during treatment of the debris that identifies key operating parameters of the treatment unit; and

(C) For each shipment of treated debris, a certification of compliance with the treatment standards shall be signed by an authorized representative and placed in the facility's files. The certification shall state the following: "I certify under penalty of law that the debris has been treated in accordance with the requirements of CCR Title 22, division 4.5, chapter 18, section 66268.45. I am aware that there are significant penalties for making a false certification, including the possibility of fine and imprisonment."

(e) Generators and treaters who first receive from the Department a determination that a given contaminated soil subject to LDRs as provided in section 66268.49(a) no longer contains a listed hazardous waste and generators and treaters who first determine that a contaminated soil subject to LDRs as provided in section 66268.49(a) no longer exhibits a characteristic of hazardous waste shall:

(1) Prepare a one–time only documentation of these determinations including all supporting information; and

(2) Maintain that information in the facility files and other records for a minimum of three years.

(f) Notwithstanding other provisions in this Division, in the event USEPA changes the notification or certification requirements specified in 40 CFR section 268.7 applicable to a particular waste, the new federal notification and certification component(s) may be used to fulfill the notification and certification required by this section for the same waste until the Department adopts the new requirement(s).

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5, 25160.2 and 25179.7, Health and Safety Code; and 40 CFR Sections 262.20(e), 263.20(h) and 268.7.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Editorial correction of HISTORY 1. and emergency order of 5–6–91 refiled 9–3–91 as an emergency; operative 9–3–91 (Register 92, No. 17). A Certificate of Compliance must be transmitted to OAL 1–2–92 or emergency language will be repealed by operation of law on the following day.
3. Amendment refiled, including further amendments, 12–26–91 as an emergency; operative 12–26–92 (Register 92, No. 17). A Certificate of Compliance must be transmitted to OAL 4–24–92 or emergency language will be repealed by operation of law on the following day.
4. Amendment refiled 4–20–92 as an emergency; operative 4–20–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 8–18–92 or emergency language will be repealed by operation of law on the following day.
5. Repealer of emergency amendments and reinstatement of prior text filed 11–2–92 by operation of Government Code section 11346.1(f) (Register 92, No. 45).
6. Amendment of section and NOTE filed 3–1–93; operative 3–1–93 (Register 93, No. 10).
7. Amendment of section and NOTE filed 10–24–94 as an emergency; operative 10–24–94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–20–95 or emergency language will be repealed by operation of law on the following day.
8. Amendment of section and NOTE refiled 2–21–95 as an emergency; operative 2–21–95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–21–95 or emergency language will be repealed by operation of law on the following day.
9. Amendment of section and NOTE refiled 6–19–95 as an emergency; operative 6–19–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–95 or emergency language will be repealed by operation of law on the following day.
10. Amendment of section and NOTE refiled 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 10–24–94 order, including amendment of section, transmitted to OAL 12–15–95 and filed 1–31–96 (Register 96, No. 5).
12. Amendment filed 7–23–97; operative 8–22–97 (Register 97, No. 30).
13. Change without regulatory effect amending section filed 8–15–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 33).
14. Change without regulatory effect repealing subsections (a)(4)–(a)(4)(B)5. and adding new subsections (a)(4)–(a)(4)(iii) and (a)(12)–(a)(12)(B)5. filed 10–28–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 44).
15. Change without regulatory effect amending section heading and section filed 6–4–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 23).
16. Change without regulatory effect amending subsections (a)(4), (b)(3)(B) and (b)(4)(D) filed 9–11–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 37).
17. Change without regulatory effect amending subsection (a)(10) and amending NOTE filed 12–31–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 1).
18. Change without regulatory effect adopting new subsection (a)(1)(C) and relettering subsections filed 7–3–2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 27).
19. Change without regulatory effect amending subsection (b)(4)(E) and NOTE filed 2–26–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 9).
20. Change without regulatory effect amending subsection (b)(6) filed 6–7–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 24).
21. Change without regulatory effect amending subsection (a)(3)(D)3. filed 1–13–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 2).

§ 66268.9. Special Rules Regarding Wastes That Exhibit a RCRA Characteristic.

(a) The initial generator of a waste shall determine each EPA Hazardous Waste Number (waste code) applicable to the waste in order to determine the applicable treatment standards under article 4 of this chapter. For purposes of chapter 18, the RCRA hazardous waste will carry the waste code for any applicable listed waste (chapter 11, article 4). In addition, where the RCRA hazardous waste exhibits a characteristic, the

RCRA hazardous waste will carry one or more of the characteristic waste codes (chapter 11, article 3), except when the treatment standard for the listed waste operates in lieu of the treatment standard for the characteristic waste, as specified in subsection (b) of this section. If the generator determines that their RCRA hazardous waste displays a hazardous characteristic (and is not D001 nonwastewaters treated by CMBST, RORGS, OR POLYM of section 66268.42, Table 1), the generator shall determine the underlying hazardous constituents (as defined in section 66260.10) in the RCRA hazardous characteristic waste.

(b) Where a prohibited waste is both listed under article 4, chapter 11 and exhibits a RCRA characteristic under article 3 of chapter 11, the treatment standard for the waste code listed in article 4 of chapter 11 will operate in lieu of the standard for the waste code under article 3 of chapter 11, provided that the treatment standard for the listed waste includes a treatment standard for the constituent that causes the waste to exhibit the characteristic. Otherwise, the RCRA waste shall meet the treatment standards for all applicable listed and RCRA characteristic waste codes.

(c) In addition to any applicable standards determined from the initial point of generation, no prohibited waste which exhibits a RCRA characteristic under article 3 of chapter 11 may be land disposed unless the waste complies with the treatment standards under article 4 of chapter 18.

(d) The RCRA characteristic wastes as defined in section 66260.10 of this division, are also subject to section 66268.7 requirements, except that once the waste no longer exhibits the RCRA characteristic(s), a one–time notification and certification shall be placed in the generator's or treater's files and sent to the Department. The notification and certification that is placed in the generator's or treater's files shall be updated if the process or operation generating the waste changes and/or if the facility receiving the waste changes. However, the generator or treater need only notify the Department on an annual basis if such changes occur. Such notification and certification shall be sent to the Department by the end of the calendar year, but no later than December 31.

(1) The notification shall include the following information:

(A) name and address of the facility receiving the waste shipment; and

(B) a description of the waste as initially generated, including the applicable EPA hazardous waste code(s), treatability group(s), and underlying hazardous constituents (as defined in section 66260.10), unless the waste will be treated and monitored for all underlying hazardous constituents. If all underlying hazardous constituents will be treated and monitored, there is no requirement to list any of the underlying hazardous constituents on the notice.

(2) The certification shall be signed by an authorized representative and shall state the language found in section 66268.7(b)(4).

(A) If treatment removes the RCRA characteristic but does not meet standards applicable to underlying hazardous constituents, then the certification found in section 66268.7(b)(4)(D) applies.

(B) [reserved]

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5, 25179.6, and 58012, Health and Safety Code; 40 CFR Section 268.9.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of subsections (a), (d), (d)(1)(A)–(B), repealer of subsection (d)(1)(C), new subsections (d)(2)(A)–(B) and amendment of NOTE filed 10–24–94 as an emergency; operative 10–24–94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–20–95 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsections (a), (d), (d)(1)(A)–(B), repealer of subsection (d)(1)(C), new subsections (d)(2)(A)–(B) and amendment of NOTE refiled 2–21–95 as an emergency; operative 2–21–95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–21–95 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsections (a), (d), and (d)(1)(A)–(B), repealer of subsection (d)(1)(C), new subsections (d)(2)(A)–(B) and amendment of NOTE refiled 6–19–95 as an emergency; operative 6–19–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–95 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsections (a), (d), and (d)(1)(A)–(B), repealer of subsection (d)(1)(C), new subsections (d)(2)(A)–(B) and amendment of NOTE refiled 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 10–24–94 order including amendment of subsections (a), (d)(1) and (d)(1)(B) transmitted to OAL 12–15–95 and filed 1–31–96 (Register 96, No. 5).

[The next page is 758.123.]

7. Amendment of subsection (b) filed 7–23–97; operative 8–22–97 (Register 97, No. 30).
8. Change without regulatory effect amending section filed 8–15–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 33).
9. Change without regulatory effect amending section filed 6–4–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 23).
10. Change without regulatory effect amending subsections (d) and (d)(2)–(d)(2)(A) filed 9–11–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 37).
11. Change without regulatory effect amending section heading and subsections (b)–(d), (d)(1)(A) and (d)(2)(A) filed 2–26–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 9).

Article 2. Schedule for Land Disposal Prohibition and Establishment of Treatment Standards

§ 66268.10. Identification of Wastes to Be Evaluated by August 8, 1988.

(a) USEPA will take action under section 3004(g)(5) and 3004(m) of the Resource Conservation and Recovery Act (42 U.S.C. section 6924(g)(5) and 6924(m)), by August 8, 1988 for the wastes listed in this subsection (for ease of understanding, the wastes have been listed by the subsection of section 66261 under which they were listed). If USEPA fails to take action for any of these wastes by August 8, 1988, the provisions of section 3004(g)(6)(A) of the Resource Conservation and Recovery Act (42 U.S.C. section 6924(g)(6)(A)) will apply to those wastes for which USEPA has failed to take action. If USEPA fails to take action for any of these wastes by May 8, 1990, the provisions of section 3004(g)(6)(C) of the Resource Conservation and Recovery Act (42 U.S.C. section 6924(g)(6)(C)) will apply to those wastes for which USEPA has failed to take action.

(b) The following wastes are subject to the requirements of subsection (a) of this section:

(1) section 66261.31 wastes:

F006—wastewater treatment sludges from electroplating operations except from the following processes: (A) sulfuric acid anodizing of aluminum; (B) tin plating on carbon steel; (C) zinc plating (segregated basis) on carbon steel; (D) aluminum or zinc–aluminum plating on carbon steel; (E) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (F) chemical etching and milling of aluminum;

F007—spent cyanide plating bath solutions from electroplating operations;

F008—plating bath sludges from the bottom of plating baths from electroplating operations where cyanides are used in the process;

F009—spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process;

F019—wastewater treatment sludges from the chemical conversion coating of aluminum;

(2) section 66261.32 Wastes:

K001—bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol;

K004—wastewater treatment sludge from the production of zinc yellow pigments;

K008—over residue from the production of chrome oxide green pigments;

K011—bottom stream from the wastewater stripper in the production of acrylonitrile;

K013—bottom stream from the acetonitrile column in the production of acrylonitrile;

K014—bottoms from the acetonitrile purification column in the production of acrylonitrile;

K015—still bottoms from the distillation of benzyl chloride;

K016—heavy ends or distillation residues from the production of carbon tetrachloride;

K017—heavy ends (still bottoms) from the purification column in the production of epichlorohydrin;

K018—heavy ends from the fractionation column in ethyl chloride production;

K020—heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production;

K021—aqueous spent antimony catalyst waste from fluoromethanes production;

K022—distillation bottom tars from the production of phenol/acetone from cumane;

K024—distillation bottoms from the production of phthalic anhydride from naphthalene;

K030—column bottom or heavy ends from the combined production of trichloroethylene and perchloroethylene;

K031—by–products salts generated in the production of MSMA and cacodylic acid;

K035—wastewater treatment sludges generated in the production of creosote;

K036—still bottoms from toluene reclamation distillation in the production of disulfoton;

K037—wastewater treatment sludge from the production of disulfoton;

K044—wastewater treatment sludges from the manufacturing and processing of explosives;

K045—spent carbon from the treatment of wastewater containing explosives;

K046—wastewater treatment sludges from the manufacturing, formulation and loading of lead–based initiating compounds;

K047—pink/red water from TNT operations;

K060—ammonia still lime sludge from coking operations;

K061—emission control dust/sludge from the primary production of steel in electric furnaces;

K062—spent pickle liquor from steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332);

K069—emission control dust/sludge from secondary lead smelting;

K071—brine purification muds from the mercury cells process in chlorine production, where separately prepurified brine is not used;

K073—chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes;

K083—distillation bottoms from aniline production;

K084—wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo–arsenic compounds;

K085—distillation of fractionation column bottoms from the production of chlorobenzenes;

K086—solvent washes and sludges; caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead;

K087—decanter tank tar sludge from coking operations;

K099—untreated wastewater from the production of 2,4–D;

K101—distillation tar residues from the distillation of aniline–based compounds in the production of veterinary pharmaceuticals from arsenic or organo–arsenic compounds;

K102—residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo–arsenic compounds;

K103—process residues from aniline extraction from the production of aniline;

K104—combined wastewater streams generated from nitrobenzene/aniline production;

K106—wastewater treatment sludge from the mercury cell process in chlorine production;

(3) section 66261.33(e) wastes:

P001—warfarin, when present at concentration greater than 0.3

P004—Aldrin

P005—Allyl alcohol

P010—Arsenic acid

P011—Arsenic (V) oxide
P012—Arsenic (III) oxide
P015—Beryllium dust
P016—Bis-(chloromethyl) ether
P018—Brucine
P020—Dinoseb
P030—Soluble cyanide salts not elsewhere specified
P036—Dichlorophenylarsine
P037—Dieldrin
P039—Disulfoton
P041—Diethyl-p-nitrophenyl phosphate
P048—2,4-Dinitrophenol
P050—Endosulfan
P058—Fluoracetic acid, sodium salt
P059—Heptachlor
P063—Hydrogen cyanide
P068—Methyl hydrazine
P069—2-Methyllactonitrile
P070—Aldicarb
P071—Methyl parathion
P081—Nitroglycerine
P082—N-Nitrosodimethylamine
P084—N-Nitrosomethylvinylamine
P087—Osmium tetraoxide
P089—Parathion
P092—Phenylmercuric acetate
P094—Phorate
P097—Famphur
P102—Propargyl alcohol
P105—Sodium azide
P108—Strychnine and salts
P110—Tetraethyl lead
P115—Thallium (I) sulfate
P120—Vanadium pentoxide
P122—Zinc phosphide, when present at concentrations greater than 10
P123—Toxaphene
(4) section 66261.33(f) wastes:
U007—Acrylamide
U009—Acrylonitrile
U010—Mitomycin C
U012—Aniline
U016—Benz(c)acridine
U018—Benz(a)anthracene
U019—Benzene
U022—Benzo(a)pyrene
U029—Methyl bromide
U031—n-Butanol
U036—Chlordane, technical
U037—Chlorobenzene
U041—n-Chloro-2,3-epoxypropane
U043—Vinyl chloride
U044—Chloroform
U046—Chloromethyl methyl ether
U050—Chrysene
U051—Creosote
U053—Crotonaldehyde
U061—DDTU063—Dibenzo(a, h)anthracene
U064—1,2:7,8 Dibenzopyrene
U066—Dibromo-3-chloropropane 1,2-
U067—Ethylene dibromide
U074—1,4-Dichloro-2-butene
U077—Ethane, 1,2-dichloro-
U078—Dichloroethylene, 1,1-
U086—N,N Diethylhydrazine
U089—Diethylstilbestrol
U103—Dimethyl sulfate
U105—2,4-Dinitrotoluene
U108—Dioxane, 1,4-
U115—Ethylene oxide
U122—Formaldehyde
U124—Furan
U129—Lindane
U130—Hexachlorocyclopentadiene
U133—Hydrazine
U134—Hydrofluoric acid
U137—Indeno(1,2,3-cd)pyrene
U151—Mercury
U154—Methanol
U155—Methapyrilene
U157—3-Methylcholanthrene
U158—4,4-Methylene-bis-(2-chloroaniline)
U159—Methyl ethyl ketone
U171—Nitropropane, 2-
U177—N-Nitroso-N-methylurea
U180—N-Nitrosopyrrolidine
U185—Pentachloronitrobenzene
U188—Phenol
U192—Pronamide
U200—Reserpine
U209—Tetrachloroethane, 1,1,2,2-
U210—Tetrachloroethylene
U211—Carbon tetrachloride
U219—Thiourea
U220—Toluene
U221—Toluenediamine
U223—Toluene diisocyanate
U226—Methylchloroform
U227—Trichloroethane, 1,1,2-
U228—Trichloroethylene
U237—Uracil mustard
U238—Ethyl carbamate
U248—Warfarin, when present at concentrations of 0.3% or less
U249—Zinc phosphide, when present at concentrations of 10% or less

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5, 25179.6 and 58012, Health and Safety Code; 40 CFR Section 268.10.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).
2. Repealer of subsection (b)(2) K048-K052 and amendment of NOTE filed 10-24-94 as an emergency; operative 10-24-94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2-20-95 or emergency language will be repealed by operation of law on the following day.
3. Repealer of subsection (b)(2) K048-K052 and amendment of NOTE refiled 2-21-95 as an emergency; operative 2-21-95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-21-95 or emergency language will be repealed by operation of law on the following day.
4. Repealer of subsection (b)(2)K048-K052 and amendment of NOTE refiled 6-19-95 as an emergency; operative 6-19-95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-17-95 or emergency language will be repealed by operation of law on the following day.
5. Repealer of subsection (b)(2)K048-K052 and amendment of NOTE refiled 10-16-95 as an emergency; operative 10-16-95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2-13-96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 10-24-94 order transmitted to OAL 12-15-95 and filed 1-31-96 (Register 96, No. 5).

§ 66268.11. Identification of Wastes to Be Evaluated by June 8, 1989.

(a) USEPA will take action under section 3004(g)(5) and 3004(m) of the Resource Conservation and Recovery Act (42 U.S.C. section 6924(g)(5) and 6924(m)), by June 8, 1989 for the wastes listed in this subsection (for ease of understanding, the wastes have been listed by the subsection of section 66261 under which they were listed). If USEPA fails to take action for any of these wastes by June 8, 1989, the provisions of section 3004(g)(6)(B) of the Resource Conservation and Recovery Act

(42 U.S.C. section 6924(g)(6)(B)) will apply to those wastes for which USEPA has failed to take action. If USEPA fails to take action for any of these wastes by May 8, 1990, the provisions of section 3004(g)(6)(C) of the Resource Conservation and Recovery Act (42 U.S.C. section 6924(g)(6)(C)) will apply to those wastes for which USEPA has failed to take action.

(b) The following wastes are subject to the requirements of subsection (a) of this section.

(1) section 66261.31 wastes:

F010—Quenching bath sludge from oil baths from metal heat treating operations where cyanides are used in the process;

F011—Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations;

F012—Quenching wastewater treatment sludges from metal heat operations where cyanides are used in the process;

F024—Wastes including but not limited to, distillation residues, heavy ends, tars and reactor clean-out wastes from the production of chlorinated aliphatic hydrocarbons, having carbon content from one to five, utilizing free radical catalyzed processes; [This listing does not include light ends, spent filters and filter aids, spent desiccants, wastewater, wastewater treatment sludges, spent catalysts, and wastes listed in section 66261.32];

(2) section 66261.32 wastes:

K009—Distillation bottoms from the production of acetaldehyde from ethylene;

K010—Distillation side cuts from the productions of acetaldehyde from ethylene;

K019—Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production;

K025—Distillation bottoms from the production of nitrobenzene by the nitration of benzene;

K027—Centrifuge and distillation residues from toluene diisocyanate production;

K028—Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane;

K029—Waste from the product steam stripper in the production of 1,1,1-trichloroethane;

K038—Wastewater from the washing and stripping of phorate production;

K039—Filter cake from the filtration of diethylphosphorodithioic acid in the production of phorate;

K040—Wastewater treatment sludge from the production of phorate;

K041—Wastewater treatment sludge from the production of toxaphene;

K042—Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T;

K043—2,6-Dichlorophenol waste from the production of 2,4-D;

K095—Distillation bottoms from the production of 1,1,1-trichloroethane;

K096—Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane;

K097—Vacuum stripper discharge from the chlordane chlorinator in the production of chlordane;

K098—Untreated process wastewater from the production of toxaphene;

K105—Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes;

(3) section 66261.33(e) wastes:

P002—1-Acetyl-2-thiourea
P003—Acrolein
P007—5-(Aminoethyl)-3-isoxazolol
P008—4-Aminopyridine
P014—Thiophenol
P026—1-(o-Chlorophenyl)thiourea
P027—Propanenitrile, 3-chloro
P029—Copper cyanides
P040—0,0-Diethyl o-pyrazinyl phosphorothioate
P043—Diisopropyl fluorophosphate
P044—Dimethoate
P049—2,4-Dithiobiuret
P054—Aziridine
P057—Fluoracetamide
P060—Isodrin
P062—Hexaethyltetraphosphate
P066—Methomyl
P067—2-Methylaziridine
P072—Alpha-naphthylthiourea (ANTU)
P074—Nickel cyanide
P085—Octamethylpyrophosphoramide
P098—Potassium cyanide
P104—Silver cyanide
P106—Sodium cyanide
P107—Strontium sulfide
P111—Tetraethylpyrophosphate
P112—Tetranitromethane
P113—Thallic oxide
P114—Thallium (I) selenite

(4) section 66261.33(f) wastes:

U002—Acetone
U003—Acetonitrile
U005—o-Acetylaminofluorene
U008—Acrylic acid
U011—Amitrole
U014—Auramine
U015—Azaserine
U020—Benzenesulfonyl chloride
U021—Benzidine
U023—Benzotrichloride
U025—Dichloroethyl ether
U026—Chlornaphazine
U028—Bis-(2-ethylhexyl)phthalate
U032—Calcium chromate
U035—Chlorambucil
U047—Beta-chloronaphthalene
U049—4-Chloro-o-toluidine, hydrochloride
U057—Cyclohexanone
U058—Cyclophosphamide
U059—Daunomycin
U060—DDD
U062—Diallate
U070—o-Dichlorobenzene
U073—Dichlorobenzidene, 3,3'-
U080—Methylene chloride
U083—Dichloropropane, 1,2-
U092—Dimethylamine
U093—Dimethylaminoazobenzene
U094—Dimethylbenz(a)anthracene,7,12-
U095—Dimethylbenzidine,3,3'-
U097—Dimethylcarbamoyl chloride
U098—Dimethylhydrazine, 1,1-
U099—Dimethylhydrazine, 1,2-
U101—Dimethylphenol, 2,4-
U106—Dinitrotoluene, 2,6-
U107—Di-n-octyl phthalate
U109—1,2,-Diphenylhydrazine
U110—Dipropylamine
U111—Di-N-Propylnitrosamine
U114—Ethylenebis-(dithiocarbamic acid)
U116—Ethylene thiourea
U119—Ethyl methanesulfonate
U127—Hexachlorobenzene
U128—Hexachlorobutadiene

U131—Hexachloroethane
U135—Hydrogen sulfide
U138—Methyl iodide
U140—Isobutyl alcohol
U142—Kepone
U143—Lasiocarpine
U144—Lead acetate
U146—Lead subacetate
U147—Maleic anhydride
U149—Malononitrile
U150—Melphalan
U161—Methyl isobutyl ketone
U162—Methyl methacrylate
U163—N-Methyl-N-nitro-N-nitrosoguanidine
U164—Methylthiouracil
U165—Naphthalene
U168—Napthylamine, 2-
U169—Nitrobenzene
U170—p-Nitrophenol
U172—N-Nitroso-di-n-butylamine
U173—N-Nitroso-diethanolamine
U174—N-Nitroso-diethylamine
U176—N-Nitroso-N-ethylurea
U178—N-Nitroso-N-methylurethane
U179—N-Nitrosopiperidine
U189—Phosphorus sulfide
U193—1,3-Propane sultone
U196—Pyridine
U203—Safrole
U205—Selenium disulfide
U206—Streptozotocin
U208—Terachloroethane, 1,1,1,2-
U213—Tetrahydrofuran
U214—Thallium (I) acetate
U215—Thallium (I) carbonate
U216—Thallium (I) chloride
U217—Thallium (I) nitrate
U218—Thioacetamide
U235—Tris (2,3-Dibromopropyl) phosphate
U239—Xylene
U244—Thiram

NOTE: Authority cited: Sections 208, 25150, 25159 and 25179.6, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5 and 25179.6, Health and Safety Code; 40 CFR Section 268.11.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).

§ 66268.12. Identification of Wastes to Be Evaluated by May 8, 1990.

U.S. EPA will take action under section 3004(g)(5) and 3004(m) of the Resource Conservation and Recovery Act (42 U.S.C. section 6924(g)(5) and 6924(m)), by May 8, 1990 for the wastes listed in this subsection (for ease of understanding, the wastes have been listed by the subsection of section 66261 under which they were listed). If USEPA fails to take action for any of these wastes by May 8, 1990, the provisions of section 3004(g)(6)(C) of the Resource Conservation and Recovery Act (42 U.S.C. section 6924(g)(6)(C)) will apply to those wastes for which USEPA has failed to take action.

(a) Wastes listed below by the section of chapter 11 of this division under which they were listed.

(1) section 66261.32 wastes:

K002—Wastewater treatment sludge from the production of chrome yellow and orange pigments;

K003—Wastewater treatment sludge from the production of molybdate orange pigments;

K005—Wastewater treatment sludge from the production of chrome green pigments;

K006—Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated);

K007—Wastewater treatment sludge from the production of iron blue pigments;

K023—Distillation light ends from the production of phthalic anhydride from naphthalene;

K026—Stripping still tails from the production of methyl ethyl pyridines;

K032—Wastewater treatment sludge from the production of chlordane;

K033—Wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane;

K034—Filter solids from the hexachlorocyclopentadiene in the production of chlordane;

K048—dissolved air flotation (DAF) float from the petroleum refining industry;

K049—slop oil emulsion solids from the petroleum refining industry;

K050—heat exchange bundle cleaning sludge from the petroleum refining industry;

K051—API separator sludge from the petroleum refining industry;

K052—tank bottoms (leaded) from the petroleum refining industry;

K093—Distillation light ends from the production of phthalic anhydride from ortho-xylene;

K094—Distillation bottoms from the production of phthalic anhydride from ortho-xylene;

K100—Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting;

(2) section 66261.33(e) wastes:

P006—Aluminum phosphide
P009—Ammonium picrate
P013—Barium cyanide
P017—Bromoacetone
P021—Calcium cyanide
P022—Carbon disulfide
P023—Chloroacetaldehyde
P024—p-Chloroaniline
P028—Benzyl chloride
P031—Cyanogen
P033—Cyanogen chloride
P034—4,6-Dinitro-o-cyclohexylphenol
P038—Diethylarsine
P042—Epinephrine
P045—Thiofanox
P046—Alpha, alpha-Dimethylphenethylamine
P047—4,6-Dinitro-o-cresol and salts
P051—Endrin
P056—Fluorine
P064—Methyl isocyanate
P065—Mercury fulminate
P073—Nickel carbonyl
P075—Nicotine and salts
P076—Nitric oxide
P077—p-Nitroaniline
P078—Nitrogen dioxide
P088—Endothall
P093—N-Phenylthiourea
P095—Phosgene
P096—Phosphine
P099—Potassium silver cyanide
P101—Propanenitrile
P103—Selenourea
P109—Tetraethyldithiopyrophosphate
P116—Thiosemicarbazide
P118—Trichloromethanethiol
P119—Ammonium vanadate
P121—Zinc cyanide

(3) section 66261.33(f) wastes:
U001—Acetaldehyde
U004—Acetophenone
U006—Acetyl chloride
U017—Benzal chloride
U024—Bis(2-chloroethoxy)methane
U027—Bis(2-chloroisopropyl)ether
U030—Benzene, 1-bromo-4-phenoxy
U033—Carbonyl fluoride
U034—Chloral
U038—Ethyl-4-4′ dichlorobenzilate
U039—4-Chloro-m-cresol
U042—Vinyl ether, 2-chloroethyl
U045—Methyl chloride
U048—o-Chlorophenol
U052—Cresols
U055—Cumene
U056—Cyclohexane
U068—Methane, dibromo
U069—Dibutyl phthalate
U071—m-Dichlorobenzene
U072—p-Dichlorobenzene
U075—Dichlorodifluoromethane
U076—Ethane, 1,1-dichloro-
U079—1,2-Dichlorethylene
U081—2,4-Dichlorophenol
U082—2,6-Dichlorophenol
U084—1,3-Dichloropropene
U085—2,2′ Bioxirane
U087—0,0,-Diethyl-S-methyl-dithiophosphate
U088—Diethyl phthalate
U090—Dihydrosafrole
U091—3,3′ Dimethoxybenzidine
U096—alpha,alpha-Dimethylbenzylhydroxyperoxide
U102—Dimethyl phthalate
U112—Ethyl acetate
U113—Ethyl acrylate
U117—Ethyl ether
U118—Ethylmethacrylate
U120—Fluoranthene
U121—Trichloromonofluoromethane
U123—Formic acid
U125—Furfural
U126—Glycidylaldehyde
U132—Hexachlorophene
U136—Cacodylic acid
U139—Iron dextran
U141—Isosafrole
U145—Lead phosphate
U148—Maleic hydrazide
U152—Methacrylonitrile
U153—Methanethiol
U156—Methyl chlorocarbonate
U160—Methyl ethyl ketone peroxide
U166—1,4-Naphthaquinone
U167—1-Naphthylamine
U181—5-Nitro-o-toluidine
U182—Paraldehyde
U183—Pentachlorobenzene
U184—Pentachloroethane
U186—1,3-Pentadiene
U187—Phenacetin
U190—Phthalic anhydride
U191—2-Picoline
U194—1-Propanamine
U197—p-Benzoquinone
U201—Resorcinol
U202—Saccharin and salts
U204—Selenious acid
U207—1,2,4,5-tetrachlorobenzene
U222—o-Toluidine hydrochloride
U225—Bromoform
U234—Sym-Trinitrobenzene
U236—Trypan blue
U240—2,4-D, salts and esters
U243—Hexachloropropene
U246—Cyanogen bromide
U247—Methoxychlor

(4) Wastes identified as hazardous based on a characteristic alone (i.e., corrosivity, reactivity, ignitability and EP toxicity).

(b) Wastewater residues (less than 1 percent total organic carbon and less than 1 percent suspended solids) resulting from the following well-designed and well-operated treatment methods for wastes listed in section 66268.10 and section 66268.11 for which USEPA has not promulgated wastewater treatment standards: metals recovery, metals precipitation, cyanide destruction, carbon adsorption, chemical oxidation, steam stripping, biodegradation, and incineration or other direct thermal destruction.

(c) Hazardous wastes listed in sections 66268.10 and 66268.11 which are mixed hazardous/radioactive wastes.

(d) Multi-source leachate that is derived from disposal of any listed waste, except from Hazardous Wastes F020, F021, F022, F023, F026, F027, or F028.

(e) Nonwastewater forms of wastes listed in section 66268.10 that were originally disposed before August 17, 1988 and for which U.S. EPA has promulgated "no land disposal" as the treatment standard (section 66268.43, Table CCW, No Land Disposal Subtable). This provision does not apply to waste codes K044, K045, K047, and K061 (high zinc subcategory).

(f) Nonwastewater forms of wastes listed in section 66268.10 for which U.S. EPA has promulgated "no land disposal" as the treatment standard (section 66268.43, Table CCW, No Land Disposal Subtable) that are generated in the course of treating wastewater forms of the wastes. This provision does not apply to waste codes K044, K045, K047 and K061 (high zinc subcategory).

(g) Nonwastewater forms of waste codes K015 and K083.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5, 25179.6 and 58012, Health and Safety Code; 40 CFR Section 268.12.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).
2. New subsections (a)(1) K048-K052 and amendment of NOTE filed 10-24-94 as an emergency; operative 10-24-94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2-20-95 or emergency language will be repealed by operation of law on the following day.
3. New subsections (a)(1) K048-K052 and amendment of NOTE refiled 2-21-95 as an emergency; operative 2-21-95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-21-95 or emergency language will be repealed by operation of law on the following day.
4. New subsections (a)(1)K048-K052 and amendment of NOTE refiled 6-19-95 as an emergency; operative 6-19-95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-17-95 or emergency language will be repealed by operation of law on the following day.
5. New subsections (a)(1)K048-K052 and amendment of NOTE refiled 10-16-95 as an emergency; operative 10-16-95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2-13-96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 10-24-94 order transmitted to OAL 12-15-95 and filed 1-31-96 (Register 96, No. 5).
7. Editorial correction of section heading (Register 97, No. 23).

§ 66268.13. Schedule for Wastes Identified or Listed After November 8, 1984.

In the case of any hazardous waste identified or listed under section 3001 of the Resource Conservation and Recovery Act (42 U.S.C. section 6921) after November 8, 1984, the U.S. EPA Administrator shall make a land disposal prohibition determination within 6 months after the date of identification or listing.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25179.6, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5 and 25179.6, Health and Safety Code; 40 CFR Section 268.13.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66268.29. List of Restricted Non–RCRA Hazardous Wastes.

The following non–RCRA hazardous wastes are subject to land disposal restrictions specified in this article.

(a) metal–containing aqueous waste that contains any metals or metal compounds identified in section 66261.24(a)(2)(A). For the purpose of this article, an aqueous waste is defined as a waste containing water, and less than or equal to one weight percent of suspended solids;

(b) auto shredder waste. For the purpose of this article, auto shredder waste is defined as the hazardous waste generated from the shredding of metallic materials including, but not limited to automobiles and appliances;

(c) hazardous waste foundry sand. For the purpose of this article, hazardous waste foundry sand is defined as waste sand or waste sand residue, generated by foundries using a sand molding process, that is considered hazardous according to the provisions of Chapter 11;

(d) fly ash, bottom ash, retort ash or baghouse waste from sources other than foundries that contains any of the metals or metal compounds identified in section 66261.24(a)(2). For the purposes of this article: "fly ash" means ash that is entrained in exhaust gases leaving the combustion equipment and which is captured in air pollution control equipment; "bottom ash" means ash remaining in the combustion equipment after incineration and includes boiler slag and oversized aggregated material; "retort ash" means ash from retorting such as from oil shale, zinc ore or coal carbonization; "baghouse waste from sources other than foundries" means dust that is collected in the baghouse or other dry air pollution control devices of facilities that are not foundries;

(e) baghouse waste from foundries that contains any of the metals or metal compounds identified in section 66261.24(a)(2). For the purposes of this article: "Baghouse waste from foundries" means dust that is collected in the baghouse or other dry air pollution control devices at ferrous and nonferrous foundries;

(f) Asbestos–Containing Waste. For the purpose of this article, asbestos–containing waste is defined as hazardous waste which exhibits the hazardous characteristics for asbestos as established in chapter 11.

NOTE: Authority cited: Sections 25150, 25159, 25179.6 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5, 25179.3 and 25179.6, Health and Safety Code.

HISTORY

1. Amendment and renumbering of former section 67702 to section 66268.29 filed 5–24–91; operative 7–1–91 (Register 91, No. 22). A Certificate of Compliance for 5–6–91 order must be transmitted to OAL by 9–3–91 or emergency language will be repealed by operation of law on the following day.
2. Emergency order of 5–6–91 adopting subsections (g), (j) and (k) refiled 9–3–91 as an emergency; operative 9–3–91 (Register 92, No. 17). A Certificate of Compliance must be transmitted to OAL 1–2–92 or emergency language will be repealed by operation of law on the following day.
3. Adoption of subsections (g), (j) and (k) refiled, including further amendments, and amendments to subsections (c), (d), (e), (f), (h) and (i) filed 12–26–91 as an emergency; operative 12–26–91 (Register 92, No. 17). A Certificate of Compliance must be transmitted to OAL 4–24–92 or emergency language will be repealed by operation of law on the following day.
4. New subsections (g), (j) and (k) and amendments refiled 4–20–92 as an emergency; operative 4–20–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 8–18–92 or emergency language will be repealed by operation of law on the following day.
5. Certificates of Compliance as to 4–20–92 order including amendment of subsections (g), (j) and (k) and NOTE transmitted to OAL 8–11–92 and filed 9–23–92 (Register 92, No. 39).
6. Editorial correction adding new subsections (c)–(f), (h) and (i) filed 2–23–93 (Register 93, No. 7).
7. Amendment of section and NOTE filed 3–1–93; operative 3–1–93 (Register 93, No. 10).
8. Repealer of subsections (b), (d), (f), (g), (j) and (k), and subsection relettering filed 7–23–97; operative 8–22–97 (Register 97, No. 30).

Article 3. Prohibitions on Land Disposal

§ 66268.30. Waste Specific Prohibitions—Wood Preserving Wastes.

(a) Effective August 11, 1997, the following wastes are prohibited from land disposal: the wastes specified in CCR, Title 22, chapter 11 as EPA Hazardous Waste numbers F032, F034, and F035.

(b) Effective May 12, 1999, the following wastes are prohibited from land disposal: soil and debris contaminated with F032, F034, F035; and radioactive wastes mixed with EPA Hazardous waste numbers F032, F034, and F035.

(c) Between May 12, 1997 and May 12, 1999, soil and debris contaminated with F032, F034, F035; and radioactive waste mixed with F032, F034, and F035 may be disposed in a landfill or surface impoundment only if such unit is in compliance with the requirements specified in section 66268.5(h)(2) of this chapter.

(d) The requirements of subsections (a) and (b) of this section do not apply if:

(1) The wastes meet the applicable treatment standards specified in article 4 of this chapter;

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under section 66268.6, with respect to those wastes and units covered by the petition;

(3) The wastes meet the applicable alternate treatment standards established pursuant to a petition granted under section 66268.44; or

(4) Persons have been granted an extension to the effective date of a prohibition pursuant to section 66268.5, with respect to those wastes covered by the extension.

(e) To determine whether a hazardous waste identified in this section exceeds the applicable treatment standards specified in section 66268.40, the initial generator shall test a sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains constituents in excess of the applicable Universal Treatment Standard levels of section 66268.48 of this chapter, the waste is prohibited from land disposal, and all requirements of chapter 18 are applicable, except as otherwise specified.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25179.6, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5 and 25179.6, Health and Safety Code; 40 CFR Section 268.30.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect adding new subsection (d)(2) and subsection renumbering filed 8–15–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 33).
3. Change without regulatory effect amending section heading and repealing and adopting new section filed 6–4–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 23).

§ 66268.31. Waste Specific Prohibitions—Dioxin Containing Wastes.

(a) Effective November 8, 1988, the dioxin–containing wastes specified in section 66261.31 of chapter 11 as EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, F027 and F028, are prohibited from land disposal unless the following condition applies: the F020–F023 and F026–F028 dioxin–containing waste is contaminated soil and debris resulting from a response action taken under section 104 or 106 of CERCLA or a corrective action taken under Subtitle C of RCRA.

(b) Effective November 8, 1990, the F020–F023 and F026–F028 dioxin–containing wastes listed in subsection (a) of this section are prohibited from land disposal.

(c) Between November 8, 1988 and November 8, 1990, wastes included in subsection (a) of this section may be disposed in a landfill or surface impoundment only if such unit is in compliance with the requirements specified in section 66268.5(h)(2) and all other applicable requirements of chapters 14 and 15 of this division.

(d) The requirements of subsections (a) and (b) of this section do not apply if:

(1) the wastes meet the standards of article 4 of this chapter; or

(2) persons have been granted an exemption from a prohibition pursuant to a petition under section 66268.6, with respect to those wastes and units covered by the petition; or

(3) persons have been granted an extension to the effective date of a prohibition pursuant to section 66268.5, with respect to those wastes covered by the extension.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25179.6, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5 and 25179.6, Health and Safety Code; 40 CFR Section 268.31.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect adding new subsection (d)(2) and subsection renumbering filed 8–15–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 33).

§ 66268.31.5. Waste Specific Prohibitions — Soils Exhibiting the Toxicity Characteristic for Metals and Containing PCBs.

(a) Effective December 26, 2000, the following wastes are prohibited from land disposal: any volumes of soil exhibiting the toxicity characteristic solely because of the presence of metals (D004–D011) and containing PCBs.

(b) The requirements of paragraph (a) of this section do not apply if:

(1)(A) The wastes contain halogenated organic compounds in total concentration less than 1,000 mg/kg; and

(B) The wastes meet the treatment standards specified in article 4 of this chapter for EPA hazardous waste numbers D004–D011, as applicable; or

(2)(A) The wastes contain halogenated organic compounds in total concentration less than 1,000 mg/kg; and

(B) The wastes meet the alternative treatment standards specified in section 66268.49 for contaminated soil; or

(3) Persons have been granted an exemption from a prohibition pursuant to a petition under section 66268.6, with respect to those wastes and units covered by the petition; or

(4) The wastes meet applicable alternative treatment standards established pursuant to a petition granted under section 66268.44.

NOTE: Authority cited: Sections 25150, 25159, 25179.6 and 58102, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5 and 25179.6, Health and Safety Code; and 40 CFR Section 268.32.

HISTORY

1. Change without regulatory effect adopting new section filed 7–3–2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 27).

§ 66268.32. Waste Specific Prohibitions—California List Wastes.

(a) The following hazardous wastes are prohibited from land disposal effective on the specified date:

(1) effective January 1, 1984, liquid hazardous wastes containing polychlorinated biphenyls (PCBs) at concentrations greater than or equal to 50 ppm;

(2) effective June 1, 1983, liquid hazardous wastes, including free liquids associated with any solid or sludge, containing free cyanides at concentrations greater than or equal to 1000 mg/l.

(b)–(d) [Reserved]

(e) The following hazardous wastes are prohibited from land disposal effective on the specified date:

(1) effective January 1, 1985, liquid hazardous wastes that contain HOCs listed in Appendix III and Appendix III–A of this chapter, in total concentration greater than or equal to 1,000 mg/l; and

(2) [Reserved]

(f) The requirements of paragraphs (a), (d) and (e) of this section do not apply if:

(1) persons have been granted an exemption from a prohibition pursuant to a petition under section 66268.6, with respect to those wastes and units covered by the petition; or

(2) persons have been granted an extension to the effective date of a prohibition pursuant to section 66268.5 with respect to those wastes covered by the extension; or

(3) the wastes meet the applicable standards specified in article 4 of this chapter, or, where treatment standards are not specified, the wastes are in compliance with the applicable prohibitions set forth in this section.

(g) The prohibitions and effective dates specified in subsections (a)(3), (d) and (e) of this section do not apply where the waste is subject to a chapter 18, article 3 prohibition and effective date for a specified HOC (such as a hazardous waste chlorinated solvent).

(h) To determine whether or not a waste is a liquid under paragraphs (a) and (e) of this section, the following test shall be used: Method 9095 (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," USEPA Publication No. SW–846, Third Edition. (Incorporated by reference, in section 66260.11(a) of this division.)

(i) Except as otherwise provided in this subsection, the waste analysis and recordkeeping requirements of section 66268.7 are applicable to wastes prohibited under this chapter.

(1) The initial generator of either a liquid hazardous waste containing polychlorinated biphenyls (PCBs) or a liquid or nonliquid hazardous waste containing halogenated organic compounds (HOCs), shall test the waste (not an extract or filtrate), or use knowledge of the waste, to determine whether the concentration levels in the waste equal or exceed the prohibition levels specified in this section. If the concentration of PCBs or HOCs in the waste is greater than or equal to the prohibition levels specified in this section, the waste is restricted from land disposal and all requirements of chapter 18 are applicable, except as otherwise specified in this section.

(2) The initial generator of liquid hazardous wastes containing free cyanides shall test the extract or filtrate to determine whether the concentration levels in the waste equal or exceed the prohibition levels specified in this section. If the concentration of free cyanides is greater than or equal to the prohibition levels specified in this section, the waste is restricted from land disposal and all requirements of chapter 18 are applicable, except as otherwise specified in this section.

(j) Effective July 8, 1992, nonliquid non–RCRA hazardous wastes containing halogenated organic compounds (HOCs) listed in Appendix III and Appendix III–A of this chapter in total concentration greater or equal to 1,000 mg/kg HOC are prohibited from land disposal. Non–RCRA hazardous waste is defined in section 66261.101 of chapter 11.

(1) The prohibitions and effective dates specified in subsections (k) & (*l*) of this section do not apply when a waste is restricted pursuant to section 66268.29 of Chapter 18.

(*l*) Lab packs containing restricted hazardous wastes identified under article 3 of this chapter, other than that hazardous waste identified in subsection (l) of this section, may be placed in a landfill, and:

(1) the restricted hazardous wastes in the lab pack are not subject to land disposal restrictions imposed by the USEPA Administrator pursuant to 40 CFR Part 268; or

(2) the restricted hazardous wastes in the lab pack are removed before disposal; or

(3) the restricted hazardous wastes in the lab pack have been treated in accordance with the applicable treatment standards specified in article 4 of this chapter.

(m) The following wastes, if they are non–RCRA hazardous wastes, are exempt from land disposal restrictions contained in this section:

(1) drilling fluids, produced waters and other fluids or materials which are brought to the surface in conjunction with the exploration, development or production of crude oil or natural gas, and which are reinjected;

(2) mining overburden as defined by the Surface Mining and Reclamation Act, Public Resources Code, section 2732 deposited within the mining permit area pursuant to a Surface Mining and Reclamation Act permit;

(3) contaminated soil from cleanup of any hazardous waste site pursuant to approval by the Department, unless the Department determines that a recycling or treatment process is technically and economically feasible to render the contaminated soil no longer a listed restricted hazardous waste.

(n) Hazardous wastes or land disposal methods that are exempt from the land disposal restrictions of this section remain subject to all of the other provisions of this chapter.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25179.6, Health and Safety Code and Governor's Reorganization Plan Number 1 of 1991, Section 58012. Reference: Sections 25105, 25159, 25159.5 and 25179.6, Health and Safety Code; and 40 CFR Section 268.32.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. New subsection (k)(1) and amendment of NOTE filed 7–9–92 as an emergency; operative 7–8–92 (Register 92, No. 28). A Certificate of Compliance must be transmitted to OAL 11–5–92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7–9–92 order transmitted to OAL 10–26–92 and filed 12–2–92 (Register 92, No. 49).
4. Change without regulatory effect adding new subsection (g)(1) and subsection renumbering filed 8–15–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 33).
5. Change without regulatory effect amending section filed 6–4–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 23).

§ 66268.33. Waste–Specific Prohibitions—Chlorinated Aliphatic Wastes.

(a) Effective May 8, 2001, the wastes specified in section 66261.32 as EPA Hazardous Wastes Numbers K174 and K175, soils and debris contaminated with these wastes, radioactive wastes mixed with these wastes, and soils and debris contaminated with radioactive wastes mixed with these wastes are prohibited from land disposal.

(b) The requirements of subsection (a) of this section do not apply if:

(1) The wastes meet the applicable treatment standards specified in article 4 of this chapter;

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under section 66268.6, with respect to those wastes and units covered by the petition;

(3) The wastes meet the applicable treatment standards established pursuant to a petition granted under section 66268.44;

(4) Hazardous debris that has met treatment standards in section 66268.40 or the alternative treatment standards in section 66268.45; or

(5) Persons have been granted an extension to the effective date of a prohibition pursuant to section 66268.5, with respect to these wastes covered by the extension.

(c) To determine whether a hazardous waste identified in this section exceeds the applicable treatment standards specified in section 66268.40, the initial generator must test a sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains regulated constituents in excess of the applicable treatment standards specified in article 4 of this chapter, the waste is prohibited from land disposal, and all requirements of this chapter are applicable, except as otherwise specified.

(d) Disposal of K175 wastes that have complied with all applicable treatment standards specified in section 66268.40 must also be macroencapsulated in accordance with section 66268.45, Table 1, unless the waste is placed in:

(1) A RCRA Subtitle C monofill containing only K175 wastes that meet all applicable section 66268.40 treatment standards; or

(2) A dedicated RCRA Subtitle C landfill cell in which all other wastes being co–disposed are at pH≤6.0.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5, 25179.6 and 58012, Health and Safety Code; 40 CFR Section 268.33.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of subsection (b) and NOTE filed 10–24–94 as an emergency; operative 10–24–94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–20–95 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsection (b) and NOTE refiled 2–21–95 as an emergency; operative 2–21–95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–21–95 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsection (b) and NOTE refiled 6–19–95 as an emergency; operative 6–19–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–95 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsection (b) and NOTE refiled 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 10–24–94 order transmitted to OAL 12–15–95 and filed 1–31–96 (Register 96, No. 5).
7. Change without regulatory effect adding new subsection (e)(2) and subsection renumbering filed 8–15–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 33).
8. Change without regulatory effect amending section heading and repealing and adopting new section filed 6–4–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 23).
9. Change without regulatory effect amending section heading and repealing and adopting new section filed 7–3–2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 27).

§ 66268.34. Waste Specific Prohibitions—Toxicity Characteristic Metal Wastes.

(a) Effective August 24, 1998, the following wastes are prohibited from land disposal: the wastes specified in CCR, Title 22, division 4.5, chapter 11 as EPA Hazardous Waste numbers D004–D011 that are newly identified (i.e., wastes, soil, or debris identified as hazardous by the Toxic Characteristic Leaching Procedure but not the Extraction Procedure), and waste, soil, or debris from mineral processing operations that is identified as hazardous by the specification at CCR, Title 22, division 4.5, chapter 11.

(b) Effective November 26, 1998, the following waste is prohibited from land disposal: slag from secondary lead smelting which exhibits the Toxicity Characteristic due to the presence of one or more metals pursuant to section 66261.24(a)(1) of this division.

(c) Effective May 26, 2000, the following wastes are prohibited from land disposal: newly identified characteristic wastes from elemental phosphorus processing; radioactive wastes mixed with EPA Hazardous wastes D004–D011 that are newly identified (i.e., wastes, soil, or debris identified as hazardous by the Toxic Characteristic Leaching Procedure but not the Extraction Procedure); or mixed with newly identified characteristic mineral processing wastes, soil, or debris.

(d) Between May 26, 1998 and May 26, 2000, newly identified characteristic wastes from elemental phosphorus processing, radioactive waste mixed with D004–D011 wastes that are newly identified (i.e., wastes, soil, or debris identified as hazardous by the Toxic Characteristic Leaching Procedure but not the Extraction Procedure), or mixed with newly identified characteristic mineral processing wastes, soil, or debris may be disposed in a landfill or surface impoundment only if such unit is in compliance with the requirements specified in section 66268.5(h)(2) of this chapter.

(e) The requirements of subsections (a) and (b) of this section do not apply if:

(1) The wastes meet the applicable treatment standards specified in article 4 of this chapter;

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under section 66268.6, with respect to those wastes and units covered by the petition;

(3) The wastes meet the applicable alternate treatment standards established pursuant to a petition granted under section 66268.44; or

(4) Persons have been granted an extension to the effective date of a prohibition pursuant to section 66268.5, with respect to these wastes covered by the extension.

(f) To determine whether a hazardous waste identified in this section exceeds the applicable treatment standards specified in section 66268.40, the initial generator shall test a sample of the waste extract or

the entire waste, depending on whether the treatment standards are expressed as concentration in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains constituents (including underlying hazardous constituents in characteristic wastes) in excess of the applicable Universal Treatment Standard levels of section 66268.48 of this chapter, the waste is prohibited from land disposal, and all requirements of chapter 18 are applicable, except as otherwise specified.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5, 25179.6 and 58012, Health and Safety Code; 40 CFR Section 268.34.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect amending subsection (f)(1) and adding new subsection (f)(2) filed 8–15–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 33).
3. Change without regulatory effect amending section heading and repealing and adopting new section filed 6–4–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 23).
4. Change without regulatory effect adding subsection (b), relettering subsections and amending NOTE filed 9–11–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 37).
5. Change without regulatory effect amending subsection (b) filed 1–13–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 2).

§ 66268.35. [Reserved].

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5, 25179.6 and 58012, Health and Safety Code; 40 CFR Section 268.35.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of subsections (a), (c), (d), amendment and redesignation of subsection (e) to subsections (e)–(e)(5)(B)8, new subsection (k) and amendment of NOTE filed 10–24–94 as an emergency; operative 10–24–94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–20–95 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsections (a), (c), (d), amendment and redesignation of subsection (e) to subsections (e)–(e)(5)(B)8., new subsection (k) and amendment of NOTE refiled 2–21–95 as an emergency; operative 2–21–95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–21–95 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsections (a), (c), (d), amendment and redesignation of subsection (e) to subsections (e)–(e)(5)(B)8., new subsection (k) and amendment of NOTE refiled 6–19–95 as an emergency; operative 6–19–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–95 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsections (a), (c), (d), amendment and redesignation of subsection (e) to subsections (e)–(e)(5)(B)8., new subsection (k) and amendment of NOTE refiled 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 10–24–94 order including amendment of subsections (a), (c), (d) and (e)(5)(B)8, repealer of subsection (i)(2) and subsection renumbering transmitted to OAL 12–15–95 and filed 1–31–96 (Register 96, No. 5).
7. Change without regulatory effect amending subsection (e)(3) and (i)(1), adding new subsection (i)(2), renumbering subsections, and amending newly designated subsection (i)(3) filed 8–15–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 33).
8. Editorial correction of HISTORY 7 (Register 98, No. 42).
9. Change without regulatory effect repealing section filed 6–4–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 23).

§ 66268.36. [Reserved].

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5 and 58012, Health and Safety Code; 40 CFR Section 268.36.

HISTORY

1. New section filed 10–24–94 as an emergency; operative 10–24–94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–20–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 2–21–95 as an emergency; operative 2–21–95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–21–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 6–19–95 as an emergency; operative 6–19–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 10–24–94 order including relettering and amendment of subsection (h)(3)(A) to (i) transmitted to OAL 12–15–95 and filed 1–31–96 (Register 96, No. 5).
6. Change without regulatory effect amending subsection (h)(1), adding new subsection (h)(2), renumbering subsections, and amending newly designated subsections (h)(3) and (h)(4) filed 8–15–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 33).
7. Change without regulatory effect repealing section filed 6–4–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 23).

§ 66268.37. Waste Specific Prohibitions–Ignitable and Corrosive Characteristic Wastes Whose Treatment Standards Were Vacated.

Effective August 9, 1993, the wastes specified in section 66261.21 as D001 (and is not in the High TOC Ignitable Liquids Subcategory), and specified in section 66261.22 as D002, that are managed in systems other than those whose discharge is regulated under the Clean Water Act (CWA) or that are zero dischargers that engage in CWA–equivalent treatment before ultimate land disposal, are prohibited from land disposal. CWA–equivalent treatment means biological treatment for organics, alkaline chlorination or ferrous sulfate precipitation for cyanide, precipitation/sedimentation for metals, reduction of hexavalent chromium, or other treatment technology that can be demonstrated to perform equally or greater than these technologies.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5 and 58012, Health and Safety Code; 40 CFR Section 268.37.

HISTORY

1. New section filed 10–24–94 as an emergency; operative 10–24–94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–20–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 2–21–95 as an emergency; operative 2–21–95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–21–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 6–19–95 as an emergency; operative 6–19–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 10–24–94 order including amendment of subsection (a) transmitted to OAL 12–15–95 and filed 1–31–96 (Register 96, No. 5).
6. Change without regulatory effect repealing subsection (a) designator filed 8–15–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 33).

§ 66268.38. Waste Specific Prohibitions–Newly Identified Organic Toxicity Characteristic Wastes and Newly Listed Coke By–Product and Chlorotoluene Production Wastes.

(a) Effective December 19, 1994, the wastes specified in section 66261.32 as EPA Hazardous Waste numbers K141, K142, K143, K144, K145, K147, K148, K149, K150, and K151 are prohibited from land disposal. In addition, debris contaminated with EPA Hazardous Waste numbers F037, F038, K107 – K112, K117, K118, K123– K126, K131, K132, K136, U328, U353, U359, and soil and debris contaminated with D012–D043, K141–K145, and K147–K151 are prohibited from land disposal. The following wastes that are specified in section 66261.24, Table 1 as EPA Hazardous Waste numbers: D012, D013, D014, D015, D016, D017, D018, D019, D020, D021, D022, D023, D024, D025, D026, D027, D028, D029, D030, D031, D032, D033, D034, D035, D036, D037, D038, D039, D040, D041, D042, D043 that are not radioactive, or that are managed in systems other than those whose discharge is

regulated under the Clean Water Act (CWA), or that are zero dischargers that do not engage in CWA–equivalent treatment before ultimate land disposal, are prohibited from land disposal. CWA–equivalent treatment means biological treatment for organics, alkaline chlorination or ferrous sulfate precipitation for cyanide, precipitation/sedimentation for metals, reduction of hexavalent chromium, or other treatment technology that can be demonstrated to perform equally or better than these technologies.

(b) On September 19, 1996, radioactive wastes that are mixed with D018–D043 that are managed in systems other than those whose discharge is regulated under the Clean Water Act (CWA), or that are zero dischargers that engage in CWA–equivalent treatment before ultimate land disposal are prohibited from land disposal. CWA–equivalent treatment means biological treatment for organics, alkaline chlorination or ferrous sulfate precipitation for cyanide, precipitation/sedimentation for metals, reduction of hexavalent chromium, or other treatment technology that can be demonstrated to perform equally or greater than these technologies. Radioactive wastes mixed with K141–K145, and K147–K151 are also prohibited from land disposal. In addition, soil and debris contaminated with these radioactive mixed wastes are prohibited from land disposal.

(c) Between December 19, 1994, and September 19, 1996, the wastes included in subsection (b) of this section may be disposed in a landfill or surface impoundment, only if such unit is in compliance with the requirements specified in section 66268.5(h)(2) of this chapter.

(d) The requirements of subsections (a), (b), and (c) of this section do not apply if:

(1) the wastes meet the applicable treatment standards specified in article 4 of this chapter;

(2) persons have been granted an exemption from a prohibition pursuant to a petition under section 66268.6, with respect to those wastes and units covered by the petition; or

(3) the wastes meet the applicable alternate treatment standards established pursuant to a petition granted under section 66268.44 of this chapter; or

(4) persons have been granted an extension to the effective date of a prohibition pursuant to section 66268.5, with respect to these wastes covered by the extension.

(e) To determine whether a hazardous waste identified in this section exceeds the applicable treatment standards specified in section 66268.40, the initial generator shall test a sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains constituents in excess of the applicable article 4 levels, the waste is prohibited from land disposal, and all requirements of chapter 18 of this division are applicable, except as otherwise specified.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5 and 58012, Health and Safety Code; 40 CFR Section 268.38.

HISTORY

1. New section filed 10–24–94 as an emergency; operative 10–24–94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–20–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 2–21–95 as an emergency; operative 2–21–95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–21–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 6–19–95 as an emergency; operative 6–19–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 10–24–94 order including amendment of subsections (a), (b), and (e) transmitted to OAL 12–15–95 and filed 1–31–96 (Register 96, No. 5).
6. Change without regulatory effect amending subsection (d)(1), adding new subsection (d)(2), renumbering subsections, and amending newly designated subsections (d)(3) and (d)(4) filed 8–15–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 33).

§ 66268.39. Waste Specific Prohibitions—Spent Aluminum Potliners; Reactive; and Carbamate Wastes

(a) On July 8, 1996, the wastes specified in section 66261.32 as EPA Hazardous Waste numbers K156–K159 and K161; and in section 66261.33 as EPA Hazardous Waste numbers P127, P128, P185, P188–P192, P194, P196–P199, P201–P205, U271, U278–U280, U364, U367, U372, U373, U387, U389, U394, U395, U404, and U409–U411 are prohibited from land disposal. In addition, soil and debris contaminated with these wastes are prohibited from land disposal.

(b) On July 8, 1996, the waste identified in Section 66261.23 as D003 that are managed in systems other than those whose discharge is regulated under the federal Clean Water Act (CWA), or that inject in Class I deep wells regulated under the federal Safe Drinking Water Act (SDWA) or that are zero dischargers that engage in federal CWA–equivalent treatment before ultimate land disposal, are prohibited from land disposal. This prohibition does not apply to unexploded ordnance and other explosive devices which have been the subject of an emergency response. (Such D003 wastes are prohibited unless they meet the treatment standard of DEACT before land disposal (see section 66268.40)).

(c) On September 21, 1998, the wastes specified in section 66261.32 as EPA Hazardous Waste number K088 are prohibited from land disposal. In addition, soil and debris contaminated with these wastes are prohibited from land disposal.

(d) On April 8, 1998, radioactive wastes mixed with K088, K156–K159, K161, P127, P128, P185, P188–P192, P194, P196–P199, P201–P205, U271, U278–U280, U364, U367, U372, U373, U387, U389, U394, U395, U404, and U409–U411 are prohibited from land disposal. In addition, soil and debris contaminated with these radioactive mixed wastes are prohibited from land disposal.

(e) Between July 8, 1996, and April 8, 1998, the wastes included in subsections (a), (c), and (d) of this section may be disposed in a landfill or surface impoundment, only if such unit is in compliance with the requirements specified in section 66268.5(h)(2).

(f) The requirements of subsections (a), (b), (c), and (d) of this section do not apply if:

(1) The wastes meet the applicable treatment standards specified in article 4 of this chapter;

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under section 66268.6, with respect to those wastes and units covered by the petition;

(3) The wastes meet the applicable alternate treatment standards established pursuant to a petition granted under section 66268.44;

(4) Persons have been granted an extension to the effective date of a prohibition pursuant to section 66268.5, with respect to these wastes covered by the extension.

(g) To determine whether a hazardous waste identified in this section exceeds the applicable treatment standards specified in section 66268.40, the initial generator shall test a sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains constituents in excess of the applicable article 4 levels, the waste is prohibited from land disposal, and all requirements of this chapter are applicable, except as otherwise specified.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5 and 58012, Health and Safety Code; and 40 CFR Section 268.39.

HISTORY

1. Change without regulatory effect adding new section filed 6–4–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 23).
2. Change without regulatory effect amending subsection (c) filed 9–11–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 37).

§ 66268.39.5. Waste Specific Prohibitions—Newly Listed and Identified Wastes.

(a) Effective August 24, 1998, all newly identified D004–D011 wastes and characteristic mineral processing wastes, except those identified in subsection (b) of this section, are prohibited from underground injection.

(b) Effective May 26, 2000, RCRA characteristic wastes from titanium dioxide mineral processing, and radioactive wastes mixed with newly identified D004–D011 or mixed with newly identified characteristic mineral processing wastes, are prohibited from underground injection.

(c) Effective August 11, 1997, the wastes specified in section 66261.32 as EPA Hazardous Waste Numbers F032, F034, and F035 are prohibited from underground injection.

(d) Effective May 12, 1999, the wastes specified in section 66261.32 as EPA Hazardous Waste Numbers F032, F034, and F035 that are mixed with radioactive wastes are prohibited from underground injection.

(e) On July 8, 1996, the wastes specified in section 66261.32 as EPA Hazardous Waste Numbers K156–K161, P127, P128, P185, P188–P192, P194, P196–P199, P201–P205, U271, U277–U280, U364–U367, U372, U373, U375–U379, U381–U387, U389–U396, U400–U404, U407, and U409–U411 are prohibited from underground injection.

(f) On January 8, 1997, the wastes specified in section 66261.32 as EPA Hazardous Waste Number K088 is prohibited from underground injection.

(g) On April 8, 1998, the waste specified in section 66261.32 as EPA Hazardous Waste Numbers D018–D043, and Mixed TC/Radioactive wastes, are prohibited from underground injection.

(h) [Reserved]

(i) Effective February 8, 1999, the wastes specified in section 66261.32 as EPA Hazardous Waste Numbers K169, K170, K171, and K172 are prohibited from underground injection.

(j) Effective May 8, 2001, the wastes specified in section 66261.32 as EPA Hazardous Waste Numbers K174 and K175 are prohibited from underground injection.

(k) The requirements of subsections (a) through (j) of this section do not apply if:

(1) The wastes meet the applicable treatment standards specified in article 4 of this chapter;

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under section 66268.6, with respect to those wastes and units covered by the petition; or

(3) Persons have been granted an extension to the effective date of a prohibition pursuant to section 66268.5, with respect to those wastes covered by the extension.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5 and 58012, Health and Safety Code; and 40 CFR Section 148.18.

HISTORY

1. Change without regulatory effect adding new section filed 6–4–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 23).
2. Change without regulatory effect amending section heading and repealing and adopting new section filed 7–3–2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 27).

Article 4. Treatment Standards

§ 66268.40. Applicability of Treatment Standards.

NOTE: The treatment standards that heretofore appeared in tables in sections 66268.41, 66268.42, and 66268.43 of this chapter have been consolidated into the table "Treatment Standards for Hazardous Wastes" in this section.

(a) A prohibited waste identified in the table "Treatment Standards for Hazardous Wastes" may be land disposed only if it meets the requirements found in the table. For each waste, the table identifies one of three types of treatment standard requirements:

(1) All hazardous constituents in the waste or in the treatment residue shall be at or below the values found in the table for that waste ("total waste standards"); or,

(2) The hazardous constituents in the extract of the waste or in the extract of the treatment residue shall be at or below the values found in the table ("waste extract standards"); or,

(3) The waste shall be treated using the technology specified in the table ("technology standard"), which are described in detail in section 66268.42 Table 1 – Technology Codes and Description of Technology–Based Standards.

(b) For wastewaters, compliance with concentration level standards is based on maximums for any one day, except for D004 through D011 wastes for which the previously promulgated treatment standards based on grab samples remain in effect. For all nonwastewaters, compliance with concentration level standards is based on grab sampling. For wastes covered by the waste extract standards, the test Method 1311, the Toxicity Characteristic Leaching Procedure found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods." EPA Publication SW–846, as incorporated by reference in section 66260.11 (a)(19), shall be used to measure compliance. An exception is made for D004 and D008, for which either of two test methods may be used: Method 1311, or Method 1310, the Extraction Procedure Toxicity Test. For wastes covered by a technology standard, the wastes may be land disposed after being treated using that specified technology or an equivalent treatment technology approved by the Department under the procedures set forth in section 66268.42(b).

(c) When wastes with differing treatment standards for a constituent of concern are combined for purposes of treatment, the treatment residue shall meet the lowest treatment standard for the constituent of concern.

(d) Notwithstanding the prohibitions specified in subsection (a) of this section, treatment and disposal facilities may demonstrate (and certify pursuant to section 66268.7(b)(5)) compliance with the treatment standards for organic constituents specified by a footnote in the table "Treatment Standards for Hazardous Wastes" in this section, provided the following conditions are satisfied:

(1) The treatment standards for the organic constituents were established based on incineration in units operated in accordance with the technical requirements of article 15 of chapter 14 or based on combustion in fuel substitution units operating in accordance with applicable technical requirements;

(2) The treatment or disposal facility has used the methods referenced in subsection (d)(1) of this section to treat the organic constituents; and

(3) The treatment or disposal facility may demonstrate compliance with organic constituents if good–faith analytical efforts achieve detection limits for the regulated organic constituents that do not exceed the treatment standards specified in this section by an order of magnitude.

(e) For characteristic wastes (D001–D043) that are subject to treatment standards in the following table "Treatment Standards for Hazardous Wastes," and are not managed in a wastewater treatment system that is regulated under the federal Clean Water Act (CWA), that is federal CWA–equivalent, or that is injected into a Class I nonhazardous deep injection well, all underlying hazardous constituents (as defined in section 66260.10) shall meet Universal Treatment Standards, found in section 66268.48, Table Universal Treatment Standards, prior to land disposal as defined in section 66260.10 of this division.

(f) The treatment standards for F001—F005 nonwastewater constituents carbon disulfide, cyclohexanone, and/or methanol apply to wastes which contain only one, two, or three of these constituents. Compliance is measured for these constituents in the waste extract from test Method 1311, the Toxicity Characteristic Leaching Procedure found in "Test Method for Evaluating Solid Waste, Physical/Chemical Methods." EPA Publication SW–846, as incorporated by reference in section 66260.11 (a)(19). If the waste contains any of these three constituents along with any of the other 25 constituents found in F001—F005, then compliance with treatment standards for carbon disulfide, cyclohexanone, and/or methanol are not required.

(g) Between August 26, 1996 and March 4, 1999 the treatment standards for the wastes specified in section 66261.32 as EPA Hazardous Waste numbers K156–K159, and K161; and in section 66261.33 as EPA Hazardous Waste numbers P127, P128, P185, P188–P192, P194, P196–P199, P201–P205, U271, U278–U280, U364, U367, U372, U373, U387, U389, U394, U395, U404, and U409–U411; and soil contaminated with these wastes; may be satisfied by either meeting the constituent concentrations presented in the table "Treatment Standards for Hazardous Wastes" in this section, or by treating the waste by the following technologies: combustion, as defined by the technology code CMBST in section 66268.42 Table 1, for nonwastewaters; and, biodegradation as defined by the technology code BIODG, carbon adsorption as defined by the technology code CARBN, chemical oxidation as defined by the technology code CHOXD, or combustion as defined as technology code CMBST at section 66268.42 Table 1, for wastewaters.

(h) Prohibited D004–D011 mixed radioactive wastes and mixed radioactive listed wastes containing metal constituents, that were previously treated by stabilization to the treatment standards in effect at that time and then put into storage, do not have to be re–treated to meet treatment standards in this section prior to land disposal.

(i) Zinc micronutrient fertilizers that are produced for the general public's use and that are produced from or contain recycled characteristic hazardous wastes (D004–D011) are subject to the applicable treatment standards in section 268.41 contained in the 40 CFR, parts 260 to 299, edition revised as of July 1, 1990.

(j) Effective September 4, 1998, the treatment standards for the wastes specified in section 66261.33 as EPA Hazardous Waste numbers P185, P191, P192, P197, U364, U394, and U395 may be satisfied by either meeting the constituent concentrations presented in the table "Treatment Standards for Hazardous Wastes" in this section, or by treating the waste by the following technologies: combustion, as defined by the technology code CMBST at section 66268.42 Table 1 of this chapter, for nonwastewaters; and, biodegradation as defined by the technology code BIODG, carbon adsorption as defined by the technology code CARBN, chemical oxidation as defined by the technology code CHOXD, or combustion as defined as technology code CMBST at section 66268.42 Table 1 of this chapter, for wastewaters.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5, 25179.6 and 58012, Health and Safety Code; 40 CFR Section 268.40.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Repealer and new text, amendment of NOTE, and new Table filed 10–24–94 as an emergency; operative 10–24–94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–20–95 or emergency language will be repealed by operation of law on the following day.
3. Repealer and new text, amendment of NOTE, and new Table refiled 2–21–95 as an emergency; operative 2–21–95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–21–95 or emergency language will be repealed by operation of law on the following day.
4. Repealer and new text, amendment of NOTE, and new Table refiled 6–19–95 as an emergency; operative 6–19–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–95 or emergency language will be repealed by operation of law on the following day.
5. Repealer and new text, amendment of NOTE, and new Table refiled 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 10–24–94 order including amendment of subsections (a)(1)–(c), (e) and (f) and table transmitted to OAL 12–15–95 and filed 1–31–96 (Register 96, No. 5).
7. Change without regulatory effect amending subsections (d) and (e) filed 8–15–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 33).
8. Amendment of listing P015 in Table filed 10–13–98; operative 11–12–98 (Register 98, No. 42).
9. Change without regulatory effect amending subsection (a), repealing and adopting new subsection (e), adding new subsections (g)–(h), and repealing and adopting new table filed 6–4–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 23).
10. Change without regulatory effect amending subsection (g), adding subsections (i)–(j) and amending Table "Treatment Standards for Hazardous Wastes" filed 9–11–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 37).
11. Change without regulatory effect amending subsection (j) and amending Table, "Treatment Standards for Hazardous Wastes" filed 7–3–2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 27).

Treatment Standards for Hazardous Wastes

Note: NA means not applicable

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
D001[9]	Ignitable Characteristic Wastes, except for the § 66261.21(a)(1) High TOC Subcategory.	NA	NA	DEACT and meet §66268.48 standards[8]; or RORGS; or CMBST	DEACT and meet §66268.48 standards[8]; or RORGS; or CMBST
	High TOC Ignitable Characteristic Liquids Subcategory based on §66261.21(a)(1) – Greater than or equal to 10% total organic carbon. (Note: This subcategory consists of nonwastewaters only.)	NA	NA	NA	RORGS; CMBST; or POLYM
D002[9]	Corrosive Characteristic Wastes.	NA	NA	DEACT and meet §66268.48 standards[8]	DEACT and meet §66268.48 standards[8]
D002, D004, D005, D006, D007, D008, D009, D010, D011	Radioactive high level wastes generated during the reprocessing of fuel rods. (Note: This subcategory consists of nonwastewaters only.)	Corrosivity (pH)	NA	NA	HLVIT
		Arsenic	7440–38–2	NA	HLVIT
		Barium	7440–39–3	NA	HLVIT
		Cadmium	7440–43–9	NA	HLVIT
		Chromium (Total)	7440–47–3	NA	HLVIT
		Lead	7439–92–1	NA	HLVIT
		Mercury	7439–97–6	NA	HLVIT
		Selenium	7782–49–2	NA	HLVIT
		Silver	7440–22–4	NA	HLVIT
D003[9]	Reactive Sulfides Subcategory based on §66261.23(a)(5).	NA	NA	DEACT	DEACT
	Explosives Subcategory based on §66261.23(a)(6), (7), and (8).	NA	NA	DEACT and meet §66268.48 standards[8]	DEACT and meet §66268.48 standards[8]
	Unexploded ordnance and other explosive devices which have been the subject of an emergency response.	NA	NA	DEACT	DEACT
	Other Reactives Subcategory based on §66261.23(a)(1).	NA	NA	DEACT and meet §66268.48 standards[8]	DEACT and meet §66268.48 standards[8]
	Water Reactive Subcategory based on § 261.23(a)(2), (3), and (4). (Note: This subcategory consists of nonwastewaters only.)	NA	NA	NA	DEACT and meet §66268.48 standards[8]
	Reactive Cyanides Subcategory based on §66261.23(a)(5).	Cyanides (Total)[7]	57–12–5	Reserved	590
		Cyanides (Amenable)[7]	57–12–5	0.86	30
D004[9]	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for arsenic based on the toxicity characteristic leaching procedure (TCLP) in SW846.	Arsenic	7440–38–2	1.4 and meet §66268.48 standards[8]	5.0 mg/l TCLP and meet §66268.48 standards[8]
D005[9]	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for barium based on the toxicity characteristic leaching procedure (TCLP) in SW846.	Barium	7440–39–3	1.2 and meet §66268.48 standards[8]	21 mg/l TCLP and meet §66268.48 standards[8]
D006[9]	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for cadmium based on the toxicity characteristic leaching procedure (TCLP) in SW846.	Cadmium	7440–43–9	0.69 and meet §66268.48 standards[8]	0.11 mg/l TCLP and meet §66268.48 standards[8]
	Cadmium Containing Batteries Subcategory. (Note: This subcategory consists of nonwastewaters only.)	Cadmium	7440–43–9	NA	RTHRM
D007[9]	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for chromium based on the toxicity characteristic leaching procedure (TCLP) in SW846.	Chromium (Total)	7440–47–3	2.77 and meet §66268.48 standards[8]	0.60 mg/l TCLP and meet §66268.48 standards[8]

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
D008[9]	Wastes that exhibit, or are expected exhibit, the characteristic of toxicity for lead based on the toxicity characteristic leaching procedure (TCLP) in SW846.	Lead	7439–92–1	0.69 and meet §66268.48 standards[8]	0.75 mg/l TCLP and meet §66268.48 standards[8]
	Lead Acid Batteries Subcategory (Note: This standard only applies to lead acid batteries that are identified as RCRA hazardous wastes and that are not excluded elsewhere from regulation under the land disposal restrictions of CCR Title 22, Chapter 18 or exempted under other regulations (see CCR Title 22, section 66266.80). This subcategory consists of nonwastewaters only.)	Lead	7439–92–1	NA	RLEAD
	Radioactive Lead Solids Subcategory (Note: these lead solids include, but are not limited to, all forms of lead shielding and other elemental forms of lead. These lead solids do not include treatment residuals such as hydroxide sludges, other wastewater treatment residuals, or incinerator ashes that can undergo conventional pozzolanic stabilization, nor do they include organo–lead materials that can be incinerated and stabilized as ash. This subcategory consists of nonwastewaters only.)	Lead	7439–92–1	NA	MACRO
D009[9]	Nonwastewaters that exhibit, or are expected to exhibit, the characteristic of toxicity for mercury based on the toxicity characteristic leaching procedure (TCLP) in SW846; and contain greater than or equal to 260 mg/kg total mercury that also contain organics and are not incinerator residues. (High Mercury–Organic Subcategory)	Mercury	7439–97–6	NA	IMERC; OR RMERC
	Nonwastewaters that exhibit, or are expected to exhibit, the characteristic of toxicity for mercury based on the toxicity characteristic leaching procedure (TCLP) in SW846; and contain greater than or equal to 260 mg/kg total mercury that that are inorganic, including incinerator residues and residues from RMERC. (High Mercury–Inorganic Subcategory)	Mercury	7439–97–6	NA	RMERC
	Nonwastewaters that exhibit, or are expected to exhibit, the characteristic of toxicity for mercury based on the toxicity characteristic leaching procedure (TCLP) in SW846; and contain less than 260 mg/kg total mercury, and that are residues from RMERC only. (Low Mercury Subcategory)	Mercury	7439–97–6	NA	0.20 mg/l TCLP and meet §66268.48 standards[8]
	All other nonwastewaters that exhibit, or are expected to exhibit, the characteristic of toxicity for mercury based on the toxicity characteristic leaching procedure (TCLP) in SW846; and contain less than 260 mg/kg total mercury and that are not residues from RMERC. (Low Mercury Subcategory)	Mercury	7439–97–6	NA	0.025 mg/l TCLP and meet §66268.48 standards[8]
	All D009 wastewaters.	Mercury	7439–97–6	0.15 and meet §66268.48 standards[8]	NA
	Elemental mercury contaminated with radioactive materials. (Note: This subcategory consists of nonwastewaters only.)	Mercury	7439–97–6	NA	AMLGM

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
	Hydraulic oil contaminated with Mercury Radioactive Materials Subcategory. (Note: This subcategory consists of nonwastewaters only.)	Mercury	7439–97–6	NA	IMERC
D010[9]	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for selenium based on the toxicity characteristic leaching procedure (TCLP) in SW846.	Selenium	7782–49–2	0.82 and meet §66268.48 standards[8]	5.7 mg/l TCLP and meet §66268.48 standards[8]
D011[9]	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for silver based on the toxicity characteristic leaching procedure (TCLP) in SW846.	Silver	7440–22–4	0.43 and meet §66268.48 standards[8]	0.14 mg/l TCLP and meet §66268.48 standards[8]
D012[9]	Wastes that are TC for Endrin based on the TCLP in SW846 Method 1311.	Endrin	72–20–8	BIODG; or CMBST	0.13 and meet §66268.48 standards[8]
		Endrin aldehyde	7421–93–4	BIODG; or CMBST	0.13 and meet §66268.48 standards[8]
D013[9]	Wastes that are TC for Lindane based on the TCLP in SW846 Method 1311.	alpha–BHC	319–84–6	CARBN; or CMBST	0.066 and meet §66268.48 standards
		beta–BHC	319–85–7	CARBN; or CMBST	0.066 and meet §66268.48 standards[8]
		delta–BHC	319–86–8	CARBN; or CMBST	0.066 and meet §66268.48 standards[8]
		gamma–BHC (Lindane)	58–89–9	CARBN; or CMBST	0.066 and meet §66268.48 standards[8]
D014[9]	Wastes that are TC for Methoxychlor based on the TCLP in SW846 Method 1311.	Methoxychlor	72–43–5	WETOX or CMBST	0.18 and meet §66268.48 standards[8]
D015[9]	Wastes that are TC for Toxaphene based on the TCLP in SW846 Method 1311.	Toxaphene	8001–35–2	BIODG or CMBST	2.6 and meet §66268.48 standards[8]
D016[9]	Wastes that are TC for 2,4–D (2,4–Dichlorophenoxyacetic acid) based on the TCLP in SW846 Method 1311.	2,4–D (2,4–Dichlorophenoxyacetic acid)	94–75–7	CHOXD, BIODG, or CMBST	10 and meet §66268.48 standards[8]
D017[9]	Wastes that are TC for 2,4,5–TP (Silvex) based on the TCLP in SW846 Method 1311.	2,4,5–TP (Silvex)	93–72–1	CHOXD or CMBST	7.9 and meet §66268.48 standards[8]
D018[9]	Wastes that are TC for Benzene based on the TCLP in SW846 Method 1311.	Benzene	71–43–2	0.14 and meet §66268.48 standards[8]	10 and meet §66268.48 standards[8]
D019[9]	Wastes that are TC for Carbon tetrachloride based on the TCLP in SW846 Method 1311.	Carbon tetrachloride	56–23–5	0.057 and meet §66268.48 standards[8]	6.0 and meet §66268.48 standards[8]
D020[9]	Wastes that are TC for Chlordane based on the TCLP in SW846 Method 1311.	Chlordane (alpha and gamma isomers)	57–74–9	0.0033 and meet §66268.48 standards[8]	0.26 and meet §66268.48 standards[8]
D021[9]	Wastes that are TC for Chlorobenzene based on the TCLP in SW846 Method 1311.	Chlorobenzene	108–90–7	0.057 and meet §66268.48 standards[8]	6.0 and meet §66268.48 standards[8]
D022[9]	Wastes that are TC for Chloroform based on the TCLP in SW846 Method 1311.	Chloroform	67–66–3	0.046 and meet §66268.48 standards[8]	6.0 and meet §66268.48 standards[8]
D023[9]	Wastes that are TC for o–Cresol based on the TCLP in SW846 Method 1311.	o–Cresol	95–48–7	0.11 and meet §66268.48 standards[8]	5.6 and meet §66268.48 standards[8]
D024[9]	Wastes that are TC for m–Cresol based on the TCLP in SW846 Method 1311.	m–Cresol (difficult to distinguish from p–cresol)	108–39–4	0.77 and meet §66268.48 standards[8]	5.6 and meet §66268.48 standards[8]
D025[9]	Wastes that are TC for p–Cresol based on the TCLP in SW846 Method 1311.	p–Cresol (difficult to distinguish from m–cresol)	106–44–5	0.77 and meet §66268.48 standards[8]	5.6 and meet §66268.48 standards[8]

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
D026[9]	Wastes that are TC for Cresols (Total) based on the TCLP in SW846 Method 1311.	Cresol-mixed isomers (Cresylic acid) (sum of o-, m-, and p-cresol concentrations)	1319-77-3	0.88 and meet §66268.48 standards[8]	11.2 and meet §66268.48 standards[8]
D027[9]	Wastes that are TC for p-Dichlorobenzene based on the TCLP in SW846 Method 1311.	p-Dichlorobenzene (1,4-Dichlorobenzene)	106-46-7	0.090 and meet §66268.48 standards[8]	6.0 and meet §66268.48 standards[8]
D028[9]	Wastes that are TC for 1,2-Dichloroethane based on the TCLP in SW846 Method 1311.	1,2-Dichloroethane	107-06-2	0.21 and meet §66268.48 standards[8]	6.0 and meet §66268.48 standards[8]
D029[9]	Wastes that are TC for 1,1-Dichloroethylene based on the TCLP in SW846 Method 1311.	1,1-Dichloroethylene	75-35-4	0.025 and meet §66268.48 standards[8]	6.0 and meet §66268.48 standards[8]
D030[9]	Wastes that are TC for 2,4-Dinitrotoluene based on the TCLP in SW846 Method 1311.	2,4-Dinitrotoluene	121-14-2	0.32 and meet §66268.48 standards[8]	140 and meet §66268.48 standards[8]
D031[9]	Wastes that are TC for Heptachlor based on the TCLP in SW846 Method 1311.	Heptachlor	76-44-8	0.0012 and meet §66268.48 standards[8]	0.066 and meet §66268.48 standards[8]
		Heptachlor epoxide	1024-57-3	0.016 and meet §66268.48 standards[8]	0.066 and meet §66268.48 standards[8]
D032[9]	Wastes that are TC for Hexachlorobenzene based on the TCLP in SW846 Method 1311.	Hexachlorobenzene	118-74-1	0.055 and meet §66268.48 standards[8]	10 and meet §66268.48 standards[8]
D033[9]	Wastes that are TC for Hexachlorobutadiene based on the TCLP in SW846 Method 1311.	Hexachlorobutadiene	87-68-3	0.055 and meet §66268.48 standards[8]	5.6 and meet §66268.48 standards[8]
D034[9]	Wastes that are TC for Hexachloroethane based on the TCLP in SW846 Method 1311.	Hexachloroethane	67-72-1	0.055 and meet §66268.48 standards[8]	30 and meet §66268.48 standards[8]
D035[9]	Wastes that are TC for Methyl ethyl ketone based on the TCLP in SW846 Method 1311.	Methyl ethyl ketone	78-93-3	0.28 and meet §66268.48 standards[8]	36 and meet §66268.48 standards[8]
D036[9]	Wastes that are TC for Nitrobenzene based on the TCLP in SW846 Method 1311.	Nitrobenzene	98-95-3	0.068 and meet §66268.48 standards[8]	14 and meet §66268.48 standards[8]
D037[9]	Wastes that are TC for Pentachlorophenol based on the TCLP in SW846 Method 1311.	Pentachlorophenol	87-86-5	0.089 and meet §66268.48 standards[8]	7.4 and meet §66268.48 standards[8]
D038[9]	Wastes that are TC for Pyridine based on the TCLP in SW846 Method 1311.	Pyridine	110-86-1	0.014 and meet §66268.48 standards[8]	16 and meet §66268.48 standards[8]
D039[9]	Wastes that are TC for Tetrachloroethylene based on the TCLP in SW846 Method 1311.	Tetrachloroethylene	127-18-4	0.056 and meet §66268.48 standards[8]	6.0 and meet §66268.48 standards[8]
D040[9]	Wastes that are TC for Trichloroethylene based on the TCLP in SW846 Method 1311.	Trichloroethylene	79-01-6	0.054 and meet §66268.48 standards[8]	6.0 and meet §66268.48 standards[8]
D041[9]	Wastes that are TC for 2,4,5-Trichlorophenol based on the TCLP in SW846 Method 1311.	2,4,5-Trichlorophenol	95-95-4	0.18 and meet §66268.48 standards[8]	7.4 and meet §66268.48 standards[8]
D042[9]	Wastes that are TC for 2,4,6-Trichlorophenol based on the TCLP in SW846 Method 1311.	2,4,6-Trichlorophenol	88-06-2	0.035 and meet §66268.48 standards[8]	7.4 and meet §66268.48 standards[8]

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
D043[9]	Wastes that are TC for Vinyl chloride based on the TCLP in SW846 Method 1311.	Vinyl chloride	75–01–4	0.27 and meet §66268.48 standards[8]	6.0 and meet §66268.48 standards[8]
F001, F002, F003, F004, & F005	F001, F002, F003, F004 and/or F005 solvent wastes that contain any combination of one or more of the following spent solvents: acetone, benzene, n–butyl alcohol, carbon disulfide, carbon tetrachloride, chlorinated fluorocarbons, chlorobenzene, o–cresol, m–cresol, p–cresol, cyclohexanone, o–dichlorobenzene, 2–ethoxyethanol, ethyl acetate, ethyl benzene, ethyl ether, isobutyl alcohol, methanol, methylene chloride, methyl ethyl ketone, methyl isobutyl ketone, nitrobenzene, 2–nitropropane, pyridine, tetrachloroethylene, toluene, 1,1,1–trichloroethane, 1,1,2–trichloroethane, 1,1,2–trichloro–1,2,2–trifluoroethane, trichloroethylene, trichloromonofluoromethane, and/or xylenes [except as specifically noted in other subcategories]. See further details of these listings in §66261.31.	Acetone	67–64–1	0.28	160
		Benzene	71–43–2	0.14	10
		n–Butyl alcohol	71–36–3	5.6	2.6
		Carbon disulfide	75–15–0	3.8	NA
		Carbon tetrachloride	56–23–5	0.057	6.0
		Chlorobenzene	108–90–7	0.057	6.0
		o–Cresol	95–48–7	0.11	5.6
		m–Cresol (difficult to distinguish from p–cresol)	108–39–4	0.77	5.6
		p–Cresol (difficult to distinguish from m–cresol)	106–44–5	0.77	5.6
		Cresol–mixed isomers (Cresylic acid) (sum of o–, m–, and p–cresol concentrations)	1319–77–3	0.88	11.2
		Cyclohexanone	108–94–1	0.36	NA
		o–Dichlorobenzene	95–50–1	0.088	6.0
		Ethyl acetate	141–78–6	0.34	33
		Ethyl benzene	100–41–4	0.057	10
		Ethyl ether	60–29–7	0.12	160
		Isobutyl alcohol	78–83–1	5.6	170
		Methanol	67–56–1	5.6	NA
		Methylene chloride	75–9–2	0.089	30
		Methyl ethyl ketone	78–93–3	0.28	36
		Methyl isobutyl ketone	108–10–1	0.14	33
		Nitrobenzene	98–95–3	0.068	14
		Pyridine	110–86–1	0.014	16
		Tetrachloroethylene	127–18–4	0.056	6.0
		Toluene	108–88–3	0.080	10
		1,1,1–Trichloroethane	71–55–6	0.054	6.0
		1,1,2–Trichloroethane	79–00–5	0.054	6.0
		1,1,2–Trichloro–1,2,2–trifluoroethane	76–13–1	0.057	30
		Trichloroethylene	79–01–6	0.054	6.0
		Trichloromonofluoro–methane	75–69–4	0.020	30
		Xylenes–mixed isomers (sum of o–, m–, and p–xylene concentrations)	1330–20–7	0.32	30
	F003 and/or F005 solvent wastes that contain any combination of one or more of the following three solvents as the only listed F001–5 solvents: carbon disulfide, cyclohexanone, and/or methanol. (formerly §66268.41(c))	Carbon disulfide	75–15–0	3.8	4.8 mg/l TCLP
		Cyclohexanone	108–94–1	0.36	0.75 mg/l TCLP
		Methanol	67–56–1	5.6	0.75 mg/l TCLP
	F005 solvent waste containing 2–Nitropropane as the only listed F001–5 solvent.	2–Nitropropane	79–46–9	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
	F005 solvent waste containing 2–Ethoxyethanol as the only listed F001–5 solvent.	2–Ethoxyethanol	110–80–5	BIODG: or CMBST	CMBST
F006	Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc–aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.	Cadmium	7440–43–9	0.69	0.11 mg/l TCLP
		Chromium (Total)	7440–47–3	2.77	0.60 mg/l TCLP
		Cyanides (Total)[7]	57–12–5	1.2	590
		Cyanides (Amenable)[7]	57–12–5	0.86	30
		Lead	7439–92–1	0.69	0.75 mg/l TCLP
		Nickel	7440–02–0	3.98	11 mg/l TCLP
		Silver	7440–22–4	NA	0.14 mg/l TCLP

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
F007	Spent cyanide plating bath solutions from electroplating operations.	Cadmium	7440-43-9	NA	0.11 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
		Nickel	7440-02-0	3.98	11 mg/l TCLP
		Silver	7440-22-4	NA	0.14 mg/l TCLP
F008	Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process.	Cadmium	7440-43-9	NA	0.11 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
		Nickel	7440-02-0	3.98	11 mg/l TCLP
		Silver	7440-22-4	NA	0.14 mg/l TCLP
F009	Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.	Cadmium	7440-43-9	NA	0.11 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
		Nickel	7440-02-0	3.98	11 mg/l TCLP
		Silver	7440-22-4	NA	0.14 mg/l TCLP
F010	Quenching bath residues from oil baths from metal heat treating operations where cyanides are used in the process.	Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	NA
F011	Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations.	Cadmium	7440-43-9	NA	0.11 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
		Nickel	7440-02-0	3.98	11 mg/l TCLP
		Silver	7440-22-4	NA	0.14 mg/l TCLP
F012	Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process.	Cadmium	7440-43-9	NA	0.11 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
		Nickel	7440-02-0	3.98	11 mg/l TCLP
		Silver	7440-22-4	NA	0.14 mg/l TCLP
F019	Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process.	Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
F020, F021, F022, F023, F026	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of: (1) tri– or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives, excluding wastes from the production of Hexachlorophene from highly purified 2,4,5–trichlorophenol (F020); (2) pentachlorophenol, or of intermediates used to produce its derivatives (i.e., F021); (3) tetra–, penta–, or hexachlorobenzenes under alkaline conditions (i.e., F022); and from the production of materials on equipment previously used for the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of: (1) tri– or tetrachlorophenols, excluding wastes from equipment used only for the production of Hexachlorophene from highly purified 2,4,5–trichlorophenol (F023); (2) tetra–, penta–, or hexachlorobenzenes under alkaline conditions (i.e., F026).	HxCDDs (All Hexachlorodibenzo–p–dioxins)	NA	0.000063	0.001
		HxCDFs (All Hexachlorodibenzofurans)	NA	0.000063	0.001
		PeCDDs (All Pentachloro–dibenzo–p–dioxins)	NA	0.000063	0.001
		PeCDFs (All Pentachloro–dibenzofurans)	NA	0.000035	0.001
		Pentachlorophenol	87–86–5	0.089	7.4
		TCDDs (All Tetrachlorodibenzo–p–dioxins)	NA	0.000063	0.001
		TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001
		2,4,5–Trichlorophenol	95–95–4	0.18	7.4
		2,4,6–Trichlorophenol	88–06–2	0.035	7.4
		2,3,4,6–Tetrachlorophenol	58–90–2	0.030	7.4
F024	Process wastes, including but not limited to, distillation residues, heavy ends, tars, and reactor clean–out wastes, from the production of certain chlorinated aliphatichydrocarbons by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. (This listing does not include wastewaters, wastewater treatment sludges, spent catalysts, and wastes listed in §66261.31 or §66261.32.).	All F024 wastes	NA	CMBST[11]	CMBST[11]
		2–Chloro–1,3–butadiene	126–99–8	0.057	0.28
		3–Chloropropylene	107–05–1	0.036	30
		1,1–Dichloroethane	75–34–3	0.059	6.0
		1,2–Dichloroethane	107–06–2	0.21	6.0
		1,2–Dichloropropane	78–87–5	0.85	18
		cis–1,3–Dichloropropylene	10061–01–5	0.036	18
		trans–1,3–Dichloro–propylene	10061–02–6	0.036	18
		bis(2–Ethylhexyl) phthalate	117–81–7	0.28	28
		Hexachloroethane	67–72–1	0.055	30
		Chromium (Total)	7440–47–3	2.77	0.60 mg/l TCLP
		Nickel	7440–02–0	3.98	11 mg/l TCLP

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
F025	Condensed light ends from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. F025 – Light Ends Subcategory	Carbon tetrachloride	56–23–5	0.057	6.0
		Chloroform	67–66–3	0.046	6.0
		1,2–Dichloroethane	107–06–2	0.21	6.0
		1,1–Dichloroethylene	75–35–4	0.025	6.0
		Methylene chloride	75–9–2	0.089	30
		1,1,2–Trichloroethane	79–00–5	0.054	6.0
		Trichloroethylene	79–01–6	0.054	6.0
		Vinyl chloride	75–01–4	0.27	6.0
	Spent filters and filter aids, and spent desiccant wastes from the production of certain chlorinated aliphatic hydrocarbons by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. F025 – Spent Filters/Aids and Desiccants Subcategory	Carbon tetrachloride	56–23–5	0.057	6.0
		Chloroform	67–66–3	0.046	6.0
		Hexachlorobenzene	118–74–1	0.055	10
		Hexachlorobutadiene	87–68–3	0.055	5.6
		Hexachloroethane	67–72–1	0.055	30
		Methylene chloride	75–9–2	0.089	30
		1,1,2–Trichloroethane	79–00–5	0.054	6.0
		Trichloroethylene	79–01–6	0.054	6.0
		Vinyl chloride	75–01–4	0.27	6.0
F027	Discarded unused formulations containing tri–, tetra–, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. (This listing does not include formulations containing hexachlorophene synthesized from prepurified 2,4,5–trichlorophenol as the sole component.).	HxCDDs (All Hexachlorodibenzo–p–dioxins)	NA	0.000063	0.001
		HxCDFs (All Hexachlorodibenzofurans)	NA	0.000063	0.001
		PeCDDs (All Pentachloro–dibenzo–p–dioxins)	NA	0.000063	0.001
		PeCDFs (All Pentachlorodibenzofurans)	NA	0.000035	0.001
		Pentachlorophenol	87–86–5	0.089	7.4
		TCDDs (All Tetrachloro–dibenzo–p–dioxins)	NA	0.000063	0.001
		TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001
		2,4,5–Trichlorophenol	95–95–4	0.18	7.4
		2,4,6–Trichlorophenol	88–06–2	0.035	7.4
		2,3,4,6–Tetrachlorophenol	58–90–2	0.030	7.4
F028	Residues resulting from the incineration or thermal treatment of soil contaminated with EPA Hazardous Wastes Nos. F020, F021, F023, F026, and F027.	HxCDDs (All Hexachlorodibenzo–p–dioxins)	NA	0.000063	0.001
		HxCDFs (All Hexachloro–dibenzofurans)	NA	0.000063	0.001
		PeCDDs (All Pentachlorodibenzo–p–dioxins)	NA	0.000063	0.001
		PeCDFs (All Pentachlorodibenzofurans)	NA	0.000035	0.001
		Pentachlorophenol	87–86–5	0.089	7.4
		TCDDs (All Tetrachlorodibenzo–p–dioxins)	NA	0.000063	0.001
		TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001
		2,4,5–Trichlorophenol	95–95–4	0.18	7.4
		2,4,6–Trichlorophenol	88–06–2	0.035	7.4
		2,3,4,6–Tetrachlorophenol	58–90–2	0.030	7.4

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
F032	Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that currently use or have previously used chlorophenolic formulations (except potentially cross-contaminated wastes that have had the F032 waste code deleted in accordance with §66261.35 of this division or potentially cross-contaminated wastes that are otherwise currently regulated as hazardous wastes (i.e., F034 or F035), and where the generator does not resume or initiate use of chlorophenolic formulations). This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or penta-chlorophenol.	Acenaphthene	83-32-9	0.059	3.4
		Anthracene	120-12-7	0.059	3.4
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Chrysene	218-01-9	0.059	3.4
		Dibenz(a,h)anthracene	53-70-3	0.055	8/2
		2-4-Dimethyl phenol	105-67-9	0.036	14
		Fluorene	86-73-7	0.059	3.4
		Hexachlorodibenzo-p-dioxins	NA	0.000063, or CMBST[11]	0.001, or CMBST[11]
		Hexachlorodibenzofurans	NA	0.000063, or CMBST[11]	0.001, or CMBST[11]
		Indeno (1,2,3-c,d) pyrene	193-39-5	0.0055	3.4
		Naphthalene	91-20-3	0.059	5.6
		Pentachlorodibenzo-p dioxins	NA	0.000063, or CMBST[11]	0.001, or CMBST[11]
		Pentachlorodibenzofurans	NA	0.000035, or CMBST[11]	0.001, or CMBST[11]
		Pentachlorophenol	87-86-5	0.089	7.4
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyrene	129-00-0	0.067	8.2
		Tetrachlorodibenzo-p-dioxins	NA	0.000063, or CMBST[11]	0.001, or CMBST[11]
		Tetrachlorodibenzofurans	NA	0.000063, or CMBST[11]	0.001, or CMBST[11]
		2,3,4,6-Tetrachlorophenol	58-90-2	0.030	7.4
		2,4,6-Trichlorophenol	88-06-2	0.035	7.4
		Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
F034	Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use creosote formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.	Acenaphthene	83-32-9	0.059	3.4
		Anthracene	120-12-7	0.059	3.4
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Chrysene	218-01-9	0.059	3.4
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		Fluorene	86-73-7	0.059	3.4
		Indeno (1,2,3-c,d) pyrene	193-39-5	0.0055	3.4
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Pyrene	129-00-0	0.067	8.2
		Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
F035	Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes processes generated at plants that use inorganic preservatives containing arsenic or chromium. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
F037	Petroleum refinery primary oil/water/solids separation sludge–Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in: oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludge generated in stormwater units that do not receive dry weather flow, sludges generated from non–contact once–through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in §66261.32(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing.	Acenaphthene	83–32–9	0.059	NA
		Anthracene	120–12–7	0.059	3.4
		Benzene	71–43–2	0.14	10
		Benz(a)anthracene	56–55–3	0.059	3.4
		Benzo(a)pyrene	50–32–8	0.061	3.4
		bis(2–Ethylhexyl) phthalate	117–81–7	0.28	28
		Chrysene	218–01–9	0.059	3.4
		Di–n–butyl phthalate	84–74–2	0.057	28
		Ethylbenzene	100–41–4	0.057	10
		Fluorene	86–73–7	0.059	NA
		Naphthalene	91–20–3	0.059	5.6
		Phenanthrene	85–01–8	0.059	5.6
		Phenol	108–95–2	0.039	6.2
		Pyrene	129–00–0	0.067	8.2
		Toluene	108–88–3	0.080	10
		Xylenes–mixed isomers (sum of o–, m–, and p–xylene concentrations)	1330–20–7	0.32	30
		Chromium (Total)	7440–47–3	2.77	0.60 mg/l TCLP
		Cyanides (Total)[7]	57–12–5	1.2	590
		Lead	7439–92–1	0.69	NA
		Nickel	7440–02–0	NA	11 mg/l TCLP
F038	Petroleum refinery secondary (emulsified) oil/water/solids separation sludge and/or float generated from the physical and/or chemical separation of oil/water/solids in process wastewaters and oily cooling wastewaters from petroleum refineries. Such wastes include, but are not limited to, all sludges and floats generated in: induced air floatation (IAF) units, tanks and impoundments, and all sludges generated in DAF units. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated from non–contact once–through cooling waters segregated for treatment from other process or oily cooling waters, sludges and floats generated in aggressive biological treatment units as defined in §66261.31(b)(2) (including sludges and floats generated in one or more additional units after wastewaters have been treated in aggressive biological units) and F037, K048, and K051 are not included in this listing.	Benzene	71–43–2	0.14	10
		Benzo(a)pyrene	50–32–8	0.061	3.4
		bis(2–Ethylhexyl) phthalate	117–81–7	0.28	28
		Chrysene	218–01–9	0.059	3.4
		Di–n–butyl phthalate	84–74–2	0.057	28
		Ethylbenzene	100–41–4	0.057	10
		Fluorene	86–73–7	0.059	NA
		Naphthalene	91–20–3	0.059	5.6
		Phenanthrene	85–01–8	0.059	5.6
		Phenol	108–95–2	0.039	6.2
		Pyrene	129–00–0	0.067	8.2
		Toluene	108–88–3	0.080	10
		Xylenes–mixed isomers (sum of o–, m–, and p–xylene concentrations)	1330–20–7	0.32	30
		Chromium (Total)	7440–47–3	2.77	0.60 mg/l TCLP
		Cyanides (Total)[7]	57–12–5	1.2	590
		Lead	7439–92–1	0.69	NA
		Nickel	7440–02–0	NA	11 mg/l TCLP
F039	Leachate (liquids that have percolated through land disposed wastes) resulting from the disposal of more than one restricted waste classified as hazardous under article 4 of this chapter. (Leachate resulting from the disposal of one or more of the following EPA Hazardous Wastes and no other Hazardous Wastes retains its EPA Hazardous Waste Number(s): F020, F021, F022, F026, F027, and/or F028.).	Acenaphthylene	208–96–8	0.059	3.4
		Acenaphthene	83–32–9	0.059	3.4
		Acetone	67–64–1	0.28	160
		Acetonitrile	75–05–8	5.6	NA
		Acetophenone	96–86–2	0.010	9.7
		2–Acetylaminofluorene	53–96–3	0.059	140
		Acrolein	107–02–8	0.29	NA
		Acrylonitrile	107–13–1	0.24	84
		Aldrin	309–00–2	0.021	0.066
		4–Aminobiphenyl	92–67–1	0.13	NA
		Aniline	62–53–3	0.81	14
		Anthracene	120–12–7	0.059	3.4
		Aramite	140–57–8	0.36	NA
		alpha–BHC	319–84–6	0.00014	0.066
		beta–BHC	319–85–7	0.00014	0.066

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
		delta–BHC	319–86–8	0.023	0.066
		gamma–BHC	58–89–9	0.0017	0.066
		Benzene	71–43–2	0.14	10
		Benz(a)anthracene	56–55–3	0.059	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205–99–2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207–08–9	0.11	6.8
		Benzo(g,h,i)perylene	191–24–2	0.0055	1.8
		Benzo(a)pyrene	50–32–8	0.061	3.4
		Bromodichloromethane	75–27–4	0.35	15
		Methyl bromide (Bromomethane)	74–83–9	0.11	15
		4–Bromophenyl phenyl ether	101–55–3	0.055	15
		n–Butyl alcohol	71–36–3	5.6	2.6
		Butyl benzyl phthalate	85–68–7	0.017	28
		2–sec–Butyl–4,6–dinitrophenol (Dinoseb)	88–85–7	0.066	2.5
		Carbon disulfide	75–15–0	3.8	NA
		Carbon tetrachloride	56–23–5	0.057	6.0
		Chlordane (alpha and gamma isomers)	57–74–9	0.0033	0.26
		p–Chloroaniline	106–47–8	0.46	16
		Chlorobenzene	108–90–7	0.057	6.0
		Chlorobenzilate	510–15–6	0.10	NA
		2–Chloro–1,3–butadiene	126–99–8	0.057	NA
		Chlorodibromomethane	124–48–1	0.057	15
		Chloroethane	75–00–3	0.27	6.0
		bis(2–Chloroethoxy) methane	111–91–1	0.036	7.2
		bis(2–Chloroethyl)ether	111–44–4	0.033	6.0
		Chloroform	67–66–3	0.046	6.0
		bis(2–Chloroisopropyl) ether	39638–32–9	0.055	7.2
		p–Chloro–m–cresol	59–50–7	0.018	14
		Chloromethane (Methyl chloride)	74–87–3	0.19	30
		2–Chloronaphthalene	91–58–7	0.055	5.6
		2–Chlorophenol	95–57–8	0.044	5.7
		3–Chloropropylene	107–05–1	0.036	30
		Chrysene	218–01–9	0.059	3.4
		o–Cresol	95–48–7	0.11	5.6
		m–Cresol (difficult to distinguish from p–cresol)	108–39–4	0.77	5.6
		p–Cresol (difficult to distinguish from m–cresol)	106–44–5	0.77	5.6
		Cyclohexanone	108–94–1	0.36	NA
		1,2–Dibromo–3–chloropropane	96–12–8	0.11	15
		Ethylene dibromide (1,2–Dibromoethane)	106–93–4	0.028	15
		Dibromomethane	74–95–3	0.11	15
		2,4–D (2,4–Dichloro–phenoxyacetic acid)	94–75–7	0.72	10
		o,p'–DDD	53–19–0	0.023	0.087
		p,p'–DDD	72–54–8	0.023	0.087
		o,p'–DDE	3424–82–6	0.031	0.087
		p,p'–DDE	72–55–9	0.031	0.087
		o,p'–DDT	789–02–6	0.0039	0.087
		p,p'–DDT	50–29–3	0.0039	0.087
		Dibenz(a,h)anthracene	53–70–3	0.055	8.2
		Dibenz(a,e)pyrene	192–65–4	0.061	NA

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
		m-Dichlorobenzene	541-73-1	0.036	6.0
		o-Dichlorobenzene	95-50-1	0.088	6.0
		p-Dichlorobenzene	106-46-7	0.090	6.0
		Dichlorodifluoro-methane	75-71-8	0.23	7.2
		1,1-Dichloroethane	75-34-3	0.059	6.0
		1,2-Dichloroethane	107-06-2	0.21	6.0
		1,1-Dichloroethylene	75-35-4	0.025	6.0
		trans-1,2-Dichloro-ethylene	156-60-5	0.054	30
		2,4-Dichlorophenol	120-83-2	0.044	14
		2,6-Dichlorophenol	87-65-0	0.044	14
		1,2-Dichloropropane	78-87-5	0.85	18
		cis-1,3-Dichloro-pr0pylene	10061-01-5	0.036	18
		trans-1,3-Dichloro-propylene	10061-02-6	0.036	18
		Dieldrin	60-57-1	0.017	0.13
		Diethyl phthalate	84-66-2	0.20	28
		2-4-Dimethyl phenol	105-67-9	0.036	14
		Dimethyl phthalate	131-11-3	0.047	28
		Di-n-butyl phthalate	84-74-2	0.057	28
		1,4-Dinitrobenzene	100-25-4	0.32	2.3
		4,6-Dinitro-o-cresol	534-52-1	0.28	160
		2,4-Dinitrophenol	51-28-5	0.12	160
		2,4-Dinitrotoluene	121-14-2	0.32	140
		2,6-Dinitrotoluene	606-20-2	0.55	28
		Di-n-octyl phthalate	117-84-0	0.017	28
		Di-n-propylnitrosamine	621-64-7	0.40	14
		1,4-Dioxane	123-91-1	12.0	170
		Diphenylamine (difficult to distinguish from diphenylnitrosamine)	122-39-4	0.92	N/A
		Diphenylnitrosamine (difficult to distinguish from diphenylamine)	86-30-6	0.92	NA
		1,2-Diphenylhydrazine	122-66-7	0.087	NA
		Disulfoton	298-04-4	0.017	6.2
		Endosulfan I	939-98-8	0.023	0.066
		Endosulfan II	33213-6-5	0.029	0.13
		Endosulfan sulfate	1031-07-8	0.029	0.13
		Endrin	72-20-8	0.0028	0.13
		Endrin aldehyde	7421-93-4	0.025	0.13
		Ethyl acetate	141-78-6	0.34	33
		Ethyl cyanide (Propanenitrile)	107-12-0	0.24	360
		Ethyl benzene	100-41-4	0.057	10
		Ethyl ether	60-29-7	0.12	160
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		Ethyl methacrylate	97-63-2	0.14	160
		Ethylene oxide	75-21-8	0.12	NA
		Famphur	52-85-7	0.017	15
		Fluoranthene	206-44-0	0.068	3.4
		Fluorene	86-73-7	0.059	3.4
		Heptachlor	76-44-8	0.0012	0.066
		Heptachlor epoxide	1024-57-3	0.016	0.066
		1,2,3,4,6,7,8-Heptachlorodibenzo-p-dioxin (1,2,3,4,6,7,8-HpCDD)	35822-46-9	0.000035	0.0025
		1,2,3,4,6,7,8-Heptachlorodibenzofuran (1,2,3,4,6,7,8-HpCDF)	67562-39-4	0.000035	0.0025
		1,2,3,4,7,8,9-Heptachlorodibenzofuran (1,2,3,4,7,8,9-HpCDF)	55673-89-7	0.000035	0.0025
		Hexachlorobenzene	118-74-1	0.055	10
		Hexachlorobutadiene	87-68-3	0.055	5.6
		Hexachlorocyclo-pentadiene	77-47-4	0.057	2.4
		HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.000063	0.001

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
		HxCDFs (All Hexachlorodibenzofurans)	NA	0.000063	0.001
		Hexachloroethane	67-72-1	0.055	30
		Hexachloropropylene	1888-71-7	0.035	30
		Indeno (1,2,3-c,d) pyrene	193-39-5	0.0055	3.4
		Iodomethane	74-88-4	0.19	65
		Isobutyl alcohol	78-83-1	5.6	170
		Isodrin	465-73-6	0.021	0.066
		Isosafrole	120-58-1	0.081	2.6
		Kepone	143-50-8	0.0011	0.13
		Methacrylonitrile	126-98-7	0.24	84
		Methanol	67-56-1	5.6	NA
		Methapyrilene	91-80-5	0.081	1.5
		Methoxychlor	72-43-5	0.25	0.18
		3-Methylcholanthrene	56-49-5	0.0055	15
		4,4-Methylene bis(2-chloroaniline)	101-14-4	0.50	30
		Methylene chloride	75-09-2	0.089	30
		Methyl ethyl ketone	78-93-3	0.28	36
		Methyl isobutyl ketone	108-10-1	0.14	33
		Methyl methacrylate	80-62-6	0.14	160
		Methyl methansulfonate	66-27-3	0.018	NA
		Methyl parathion	298-00-0	0.014	4.6
		Naphthalene	91-20-3	0.059	5.6
		2-Naphthylamine	91-59-8	0.52	NA
		p-Nitroaniline	100-01-6	0.028	28
		Nitrobenzene	98-95-3	0.068	14
		5-Nitro-o-toluidine	99-55-8	0.32	28
		p-Nitrophenol	100-02-7	0.12	29
		N-Nitrosodiethylamine	55-18-5	0.40	28
		N-Nitrosodimethylamine	62-75-9	0.40	NA
		N-Nitroso-di-n-butylamine	924-16-3	0.40	17
		N-Nitrosomethyl-ethylamine	10595-95-6	0.40	2.3
		N-Nitrosomorpholine	59-89-2	0.40	2.3
		N-Nitrosopiperidine	100-75-4	0.013	35
		N-Nitrosopyrrolidine	930-55-2	0.013	35
		1,2,3,4,7,8,9-Octachlorodibenzo-p-dioxin (OCDD)	3268-87-9	0.000063	0.0025
		1,2,3,4,6,7,8,9-Octachlorodibenzofuran (OCDF)	39001-02-0	0.000063	0.005
		Parathion	56-38-2	0.014	4.6
		Total PCBs (sum of all PCB isomers, or all Aroclors)	1336-36-3	0.10	10
		Pentachlorobenzene	608-93-5	0.055	10
		PeCDDs (All Penta-chlorodibenzo-p-dioxins)	NA	0.000063	0.001
		PeCDFs (All Penta-chlorodibenzofurans)	NA	0.000035	0.001
		Pentachloronitro-benzene	82-68-8	0.055	4.8
		Pentachlorophenol	87-86-5	0.089	7.4
		Phenacetin	62-44-2	0.081	16
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Phorate	298-02-2	0.021	4.6
		Phthalic anhydride	85-44-9	0.055	NA
		Pronamide	23950-58-5	0.093	1.5
		Pyrene	129-00-0	0.067	8.2
		Pyridine	110-86-1	0.014	16
		Safrole	94-59-7	0.081	22
		Silvex (2,4,5-TP)	93-72-1	0.72	7.9
		2,4,5-T	93-76-5	0.72	7.9
		1,2,4,5-Tetrachloro-benzene	95-94-3	0.055	14
		TCDDs (All Tetra-chlorodibenzo-p-dioxins)	NA	0.000063	0.001
		TCDFs (All Tetra-chlorodibenzofurans)	NA	0.000063	0.001

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
		1,1,1,2–Tetra–chloroethane	630–20–6	0.057	6.0
		1,1,2,2–Tetra–chloroethane	79–34–6	0.057	6.0
		Tetrachloroethylene	127–18–4	0.056	6.0
		2,3,4,6–Tetra–chlorophenol	58–90–2	0.030	7.4
		Toluene	108–88–3	0.080	10
		Toxaphene	8001–35–2	0.0095	2.6
		Bromoform (Tribromomethane)	75–25–2	0.63	15
		1,2,4–Trichlorobenzene	120–82–1	0.055	19
		1,1,1–Trichloroethane	71–55–6	0.054	6.0
		1,1,2–Trichloroethane	79–00–5	0.054	6.0
		Trichloroethylene	79–01–6	0.054	6.0
		Trichloromono–fluoromethane	75–69–4	0.020	30
		2,4,5–Trichlorophenol	95–95–4	0.18	7.4
		2,4,6–Trichlorophenol	88–06–2	0.035	7.4
		1,2,3–Trichloropropane	96–18–4	0.85	30
		1,1,2–Trichloro–1,2,2–trifluoroethane	76–13–1	0.057	30
		tris(2,3–Dibromo–propyl) phosphate	126–72–7	0.11	NA
		Vinyl chloride	75–01–4	0.27	6.0
		Xylenes–mixed isomers (sum of o–, m–, and p–xylene concentrations)	1330–20–7	0.32	30
		Antimony	7440–36–0	1.9	1.15 mg/l TCLP
		Arsenic	7440–38–2	1.4	5.0 mg/l TCLP
		Barium	7440–39–3	1.2	21 mg/l TCLP
		Beryllium	7440–41–7	0.82	NA
		Cadmium	7440–43–9	0.69	0.11 mg/l TCLP
		Chromium (Total)	7440–47–3	2.77	0.60 mg/l TCLP
		Cyanides (Total)[7]	57–12–5	1.2	590
		Cyanides (Amenable)[7]	57–12–5	0.86	NA
		Fluoride	16964–48–8	35	NA
		Lead	7439–92–1	0.69	0.75 mg/l TCLP
		Mercury	7439–97–6	0.15	0.025 mg/l TCLP
		Nickel	7440–02–0	3.98	11 mg/l TCLP
		Selenium	7782–49–2	0.82	5.7 mg/l TCLP
		Silver	7440–22–4	0.43	0.14 mg/l TCLP
		Sulfide	8496–25–8	14	NA
		Thallium	7440–28–0	1.4	NA
		Vanadium	7440–62–2	4.3	NA
K001	Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol.	Naphthalene	91–20–3	0.059	5.6
		Pentachlorophenol	87–86–5	0.089	7.4
		Phenanthrene	85–01–8	0.059	5.6
		Pyrene	129–00–0	0.067	8.2
		Toluene	108–88–3	0.080	10
		Xylenes–mixed isomers (sum of o–, m–, and p–xylene concentrations)	1330–20–7	0.32	30
		Lead	7439–92–1	0.69	0.75 mg/l TCLP
K002	Wastewater treatment sludge from the production of chrome yellow and orange pigments.	Chromium (Total)	7440–47–3	2.77	0.60 mg/l TCLP
		Lead	7439–92–1	0.69	0.75 mg/l TCLP
K003	Wastewater treatment sludge from the production of molybdate orange pigments.	Chromium (Total)	7440–47–3	2.77	0.60 mg/l TCLP
		Lead	7439–92–1	0.69	0.75 mg/l TCLP
K004	Wastewater treatment sludge from the production of zinc yellow pigments.	Chromium (Total)	7440–47–3	2.77	0.60 mg/l TCLP
		Lead	7439–92–1	0.69	0.75 mg/l TCLP

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		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
K005	Wastewater treatment sludge from the production of chrome green pigments.	Chromium (Total)	7440–47–3	2.77	0.60 mg/l TCLP
		Lead	7439–92–1	0.69	0.75 mg/l TCLP
		Cyanides (Total)[7]	57–12–5	1.2	590
K006	Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous).	Chromium (Total)	7440–47–3	2.77	0.60 mg/l TCLP
		Lead	7439–92–1	0.69	0.75 mg/l TCLP
	Wastewater treatment sludge from the production of chrome oxide green pigments (hydrated).	Chromium (Total)	7440–47–3	2.77	0.60 mg/l TCLP
		Lead	7439–92–1	0.69	NA
K007	Wastewater treatment sludge from the production of iron blue pigments.	Chromium (Total)	7440–47–3	2.77	0.60 mg/l TCLP
		Lead	7439–92–1	0.69	0.75 mg/l TCLP
		Cyanides (Total)[7]	57–12–5	1.2	590
K008	Oven residue from the production of chrome oxide green pigments.	Chromium (Total)	7440–47–3	2.77	0.60 mg/l TCLP
		Lead	7439–92–1	0.69	0.75 mg/l TCLP
K009	Distillation bottoms from the production of acetaldehyde from ethylene.	Chloroform	67–66–3	0.046	6.0
K010	Distillation side cuts from the production of acetaldehyde from ethylene.	Chloroform	67–66–3	0.046	6.0
K011	Bottom stream from the wastewater stripper in the production of acrylonitrile.	Acetonitrile	75–05–8	5.6	38
		Acrylonitrile	107–13–1	0.24	84
		Acrylamide	79–06–1	19	23
		Benzene	71–43–2	0.14	10
		Cyanide (Total)	57–12–5	1.2	590
K013	Bottom stream from the acetonitrile column in the production of acrylonitrile.	Acetonitrile	75–05–8	5.6	38
		Acrylonitrile	107–13–1	0.24	84
		Acrylamide	79–06–1	19	23
		Benzene	71–43–2	0.14	10
		Cyanide (Total)	57–12–5	1.2	590
K014	Bottoms from the acetonitrile purification column in the production of acrylonitrile.	Acetonitrile	75–05–8	5.6	38
		Acrylonitrile	107–13–1	0.24	84
		Acrylamide	79–06–1	19	23
		Benzene	71–43–2	0.14	10
		Cyanide (Total)	57–12–5	1.2	590
K015	Still bottoms from the distillation of benzyl chloride.	Anthracene	120–12–7	0.059	3.4
		Benzal chloride	98–87–3	0.055	6.0
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205–99–2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207–08–9	0.11	6.8
		Phenanthrene	85–01–8	0.059	5.6
		Toluene	108–88–3	0.080	10
		Chromium (Total)	7440–47–3	2.77	0.60 mg/l TCLP
		Nickel	7440–02–0	3.98	11 mg/l TCLP

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K016	Heavy ends or distillation residues from the production of carbon tetrachloride.	Hexachlorobenzene	118–74–1	0.055	10
		Hexachlorobutadiene	87–68–3	0.055	5.6
		Hexachloro–cyclopentadiene	77–47–4	0.057	2.4
		Hexachloroethane	67–72–1	0.055	30
		Tetrachloroethylene	127–18–4	0.056	6.0
K017	Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin.	bis(2–Chloroethyl)ether	111–44–4	0.033	6.0
		1,2–Dichloropropane	78–87–5	0.85	18
		1,2,3–Trichloropropane	96–18–4	0.85	30
K018	Heavy ends from the fractionation column in ethyl chloride production.	Chloroethane	75–00–3	0.27	6.0
		Chloromethane	74–87–3	0.19	NA
		1,1–Dichloroethane	75–34–3	0.059	6.0
		1,2–Dichloroethane	107–06–2	0.21	6.0
		Hexachlorobenzene	118–74–1	0.055	10
		Hexachlorobutadiene	87–68–3	0.055	5.6
		Hexachloroethane	67–72–1	0.055	30
		Pentachloroethane	76–01–7	NA	6.0
		1,1,1–Trichloroethane	71–55–6	0.054	6.0
K019	Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production.	bis(2–Chloroethyl)ether	111–44–4	0.033	6.0
		Chlorobenzene	108–90–7	0.057	6.0
		Chloroform	67–66–3	0.046	6.0
		p–Dichlorobenzene	106–46–7	0.090	NA
		1,2–Dichloroethane	107–06–2	0.21	6.0
		Fluorene	86–73–7	0.059	NA
		Hexachloroethane	67–72–1	0.055	30
		Naphthalene	91–20–3	0.059	5.6
		Phenanthrene	85–01–8	0.059	5.6
		1,2,4,5–Tetrachloro–benzene	95–94–3	0.055	NA
		Tetrachloroethylene	127–18–4	0.056	6.0
		1,2,4–Trichloro–benzene	120–82–1	0.055	19
		1,1,1–Trichloroethane	71–55–6	0.054	6.0
K020	Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production.	1,2–Dichloroethane	107–06–2	0.21	6.0
		1,1,2,2–Tetra–chloroethane	79–34–6	0.057	6.0
		Tetrachloroethylene	127–18–4	0.056	6.0
K021	Aqueous spent antimony catalyst waste from fluoromethanes production.	Carbon tetrachloride	56–23–5	0.057	6.0
		Chloroform	67–66–3	0.046	6.0
		Antimony	7440–36–0	1.9	1.15 mg/l TCLP
K022	Distillation bottom tars from the production of phenol/acetone from cumene.	Toluene	108–88–3	0.080	10
		Acetophenone	96–86–2	0.010	9.7
		Diphenylamine (difficult to distinguish from diphenylnitrosamine)	122–39–4	0.92	13
		Diphenylnitrosamine (difficult to distinguish from diphenylamine)	86–30–6	0.92	13
		Phenol	108–95–2	0.039	6.2
		Chromium (Total)	7440–47–3	2.77	0.60 mg/l TCLP
		Nickel	7440–02–0	3.98	11 mg/l TCLP

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		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
K023	Distillation light ends from the production of phthalic anhydride from naphthalene.	Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	100-21-0	0.055	28
		Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	85-44-9	0.055	28
K024	Distillation bottoms from the production of phthalic anhydride from naphthalene.	Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	100-21-0	0.055	28
		Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	85-44-9	0.055	28
K025	Distillation bottoms from the production of nitrobenzene by the nitration of benzene.	NA	NA	LLEXT fb SSTRP fb CARBN; or CMBST	CMBST
K026	Stripping still tails from the production of methyl ethyl pyridines.	NA	NA	CMBST	CMBST
K027	Centrifuge and distillation residues from toluene diisocyanate production.	NA	NA	CARBN; or CMBST	CMBST
K028	Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane.	1,1-Dichloroethane	75-34-3	0.059	6.0
		trans-1,2-Dichloro-ethylene	156-60-5	0.054	30
		Hexachlorobutadiene	87-68-3	0.055	5.6
		Hexachloroethane	67-72-1	0.055	30
		Pentachloroethane	76-01-7	NA	6.0
		1,1,1,2-Tetra-chloroethane	630-20-6	0.057	6.0
		1,1,2,2-Tetra-chloroethane	79-34-6	0.057	6.0
		Tetrachloroethylene	127-18-4	0.056	6.0
		1,1,1-Trichloro-ethane	71-55-6	0.054	6.0
		1,1,2-Trichloro-ethane	79-00-5	0.054	6.0
		Cadmium	7440-43-9	0.69	NA
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
		Nickel	7440-02-0	3.98	11 mg/l TCLP
K029	Waste from the product steam stripper in the production of 1,1,1-trichloroethane.	Chloroform	67-66-3	0.046	6.0
		1,2-Dichloroethane	107-06-2	0.21	6.0
		1,1-Dichloroethylene	75-35-4	0.025	6.0
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
		Vinyl chloride	75-01-4	0.27	6.0
K030	Column bodies or heavy ends from the combined production of trichloroethylene and perchloroethylene.	o-Dichlorobenzene	95-50-1	0.088	NA
		p-Dichlorobenzene	106-46-7	0.090	NA
		Hexachlorobutadiene	87-68-3	0.055	5.6
		Hexachloroethane	67-72-1	0.055	30
		Hexachloropropylene	1888-71-7	NA	30
		Pentachlorobenzene	608-93-5	NA	10
		Pentachloroethane	76-01-7	NA	6.0
		1,2,4,5-Tetrachloro-benzene	95-94-3	0.055	14
		Tetrachloroethylene	127-18-4	0.056	6.0
		1,2,4-Trichlorobenzene	120-82-1	0.055	19
K031	By-product salts generated in the production of MSMA and cacodylic acid.	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP

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K032	Wastewater treatment sludge from the production of chlordane.	Hexachloro–cyclopentadiene	77–47–4	0.057	2.4
		Chlordane (alpha and gamma isomers)	57–74–9	0.0033	0.26
		Heptachlor	76–44–8	0.0012	0.066
		Heptachlor epoxide	1024–57–3	0.016	0.066
K033	Wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane.	Hexachloro–cyclopentadiene	77–47–4	0.057	2.4
K034	Filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane.	Hexachloro–cyclopentadiene	77–47–4	0.057	2.4
K035	Wastewater treatment sludges generated in the production of creosote.	Acenaphthene	83–32–9	NA	3.4
		Anthracene	120–12–7	NA	3.4
		Benz(a)anthracene	56–55–3	0.059	3.4
		Benzo(a)pyrene	50–32–8	0.061	3.4
		Chrysene	218–01–9	0.059	3.4
		o–Cresol	95–48–7	0.11	5.6
		m–Cresol (difficult to distinguish from p–cresol)	108–39–4	0.77	5.6
		p–Cresol (difficult to distinguish from m–cresol)	106–44–5	0.77	5.6
		Dibenz(a,h)anthracene	53–70–3	NA	8.2
		Fluoranthene	206–44–0	0.068	3.4
		Fluorene	86–73–7	NA	3.4
		Indeno(1,2,3–cd)pyrene	193–39–5	NA	3.4
		Naphthalene	91–20–3	0.059	5.6
		Phenanthrene	85–01–8	0.059	5.6
		Phenol	108–95–2	0.039	6.2
		Pyrene	129–00–0	0.067	8.2
K036	Still bottoms from toluene reclamation distillation in the production of disulfoton.	Disulfoton	298–04–4	0.017	6.2
K037	Wastewater treatment sludges from the production of disulfoton.	Disulfoton	298–04–4	0.017	6.2
		Toluene	108–88–3	0.080	10
K038	Wastewater from the washing and stripping of phorate production.	Phorate	298–02–2	0.021	4.6
K039	Filter cake from the filtration of diethylphosphorodithioc acid in the production of phorate.	NA	NA	CARBN; or CMBST	CMBST
K040	Wastewater treatment sludge from the production of phorate.	Phorate	298–02–2	0.021	4.6
K041	Wastewater treatment sludge from the production of toxaphene.	Toxaphene	8001–35–2	0.0095	2.6
K042	Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5–T.	o–Dichlorobenzene	95–50–1	0.088	6.0
		p–Dichlorobenzene	106–46–7	0.090	6.0
		Pentachlorobenzene	608–93–5	0.055	10
		1,2,4,5–Tetrachloro–benzene	95–94–3	0.05	
		1,2,4–Trichlorobenzene	120–82–1	0.055	19
K043	2,6–Dichlorophenol waste from the production of 2,4–D.	2,4–Dichlorophenol	120–83–2	0.044	14
		2,6–Dichlorophenol	187–65–0	0.044	14
		2,4,5–Trichlorophenol	95–95–4	0.18	7.4
		2,4,6–Trichlorophenol	88–06–2	0.035	7.4
		2,3,4,6–Tetrachloro–phenol	58–90–2	0.030	7.4

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		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
		Pentachlorophenol	87–86–5	0.089	7.4
		Tetrachloroethylene	127–18–4	0.056	6.0
		HxCDDs (All Hexachlorodibenzo–p–dioxins)	NA	0.000063	0.001
		HxCDFs (All Hexachlorodibenzo–furans)	NA	0.000063	0.001
		PeCDDs (All Pentachlorodibenzo–p–dioxins)	NA	0.000063	0.001
		PeCDFs (All Pentachlorodibenzo–furans)	NA	0.000035	0.001
		TCDDs (All Tetrachlorodibenzo–p–dioxins)	NA	0.000063	0.001
		TCDFs (All Tetrachlorodibenzo–furans)	NA	0.000063	0.001
K044	Wastewater treatment sludges from the manufacturing and processing of explosives.	NA	NA	DEACT	DEACT
K045	Spent carbon from the treatment of wastewater containing explosives.	NA	NA	DEACT	DEACT
K046	Wastewater treatment sludges from the manufacturing, formulation and loading of lead–based initiating compounds.	Lead	7439–92–1	0.69	0.75 mg/l TCLP
K047	Pink/red water form TNT operations	NA	NA	DEACT	DEACT
K048	Dissolved air flotation (DAF) float from the petroleum refining industry.	Benzene	71–43–2	0.14	10
		Benzo(a)pyrene	50–32–8	0.061	3.4
		bis(2–Ethylhexyl) phthalate	117–81–7	0.28	28
		Chrysene	218–01–9	0.059	3.4
		Di–n–butyl phthalate	84–74–2	0.057	28
		Ethylbenzene	100–41–4	0.057	10
		Fluorene	86–73–7	0.059	NA
		Naphthalene	91–20–3	0.059	5.6
		Phenanthrene	85–01–8	0.059	5.6
		Phenol	108–95–2	0.039	6.2
		Pyrene	129–00–0	0.067	8.2
		Toluene	108–88–33	0.080	10
		Xylenes–mixed isomers (sum of o–, m–, and p–xylene concentrations)	1330–20–7	0.32	30
		Chromium (Total)	7440–47–3	2.77	0.60 mg/l TCLP
		Cyanides (Total)[7]	57–12–5	1.2	590
		Lead	7439–92–1	0.69	NA
		Nickel	7440–02–0	NA	11 mg/l TCLP
K049	Slop oil emulsion solids from the petroleum refining industry.	Anthracene	120–12–7	0.059	3.4
		Benzene	71–43–2	0.14	10
		Benzo(a)pyrene	50–32–8	0.061	3.4
		bis(2–Ethylhexyl) phthalate	117–81–7	0.28	28
		Carbon disulfide	75–15–0	3.8	NA
		Chrysene	2218–01–9	0.059	3.4
		2,4–Dimethylphenol	105–67–9	0.036	NA
		Ethylbenzene	100–41–4	0.057	10
		Naphthalene	91–20–3	0.059	5.6
		Phenanthrene	85–01–8	0.059	5.6

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
		Phenol	108-95-2	0.039	6.2
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-3	0.080	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Cyanides (Total)[7]	57-12-5	1.2	590
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Lead	7439-92-1	0.69	NA
		Nickel	7440-02-0	NA	11 mg/l TCLP
K050	Heat exchanger bundle cleaning sludge from the petroleum refining industry.	Benzo(a)pyrene	50-32-8	0.061	3.4
		Phenol	108-95-2	0.039	6.2
		Cyanides (Total)[7]	57-12-5	1.2	590
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Lead	7439-92-1	0.69	NA
		Nickel	7440-02-0	NA	11 mg/l TCLP
K051	API separator sludge from the petroleum refining industry.	Acenaphthene	83-32-9	0.059	NA
		Anthracene	120-12-7	0.059	3.4
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzene	71-43-2	0.14	10
		Benzo(a)pyrene	50-32-8	0.061	3.4
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		Chrysene	2218-01-9	0.059	3.4
		Di-n-butyl phthalate	105-67-9	0.057	28
		Ethylbenzene	100-41-4	0.057	10
		Fluorene	86-73-7	0.059	NA
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-3	0.08	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Cyanides (Total)[7]	57-12-5	1.2	590
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Lead	7439-92-1	0.69	NA
		Nickel	7440-02-0	NA	11 mg/l TCLP
K052	Tank bottoms (leaded) from the petroleum refining industry.	Benzene	71-43-2	0.14	10
		Benzo(a)pyrene	50-32-8	0.061	3.4
		o-Cresol	95-48-7	0.11	5.6
		m-Cresol (difficult to distinguish from p-cresol)	108-39-4	0.77	5.6
		p-Cresol (difficult to distinguish from m-cresol)	106-44-5	0.77	5.6
		2,4-Dimethylphenol	105-67-9	0.036	NA
		Ethylbenzene	100-41-4	0.057	10
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Toluene	108-88-3	0.08	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Lead	7439-92-1	0.69	NA
		Nickel	7440-02-0	NA	11 mg/l TCLP

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
K060	Ammonia still lime sludge from coking operations.	Benzene	71-43-2	0.14	10
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Naphthalene	91-20-3	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Cyanides (Total)[7]	57-12-5	1.2	590
K061	Emission control dust/sludge from the primary production of steel in electric furnaces.	Antimony	7440-36-0	NA	1.15 mg/l TCLP
		Arsenic	7440-38-2	NA	5.0 mg/l TCLP
		Barium	7440-39-3	NA	21 mg/l TCLP
		Beryllium	7440-41-7	NA	1.22 mg/l TCLP
		Cadmium	7440-43-9	0.69	0.11 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
		Mercury	7439-97-6	NA	0.025 mg/l TCLP
		Nickel	7440-02-0	3.98	11 mg/l TCLP
		Selenium	7782-49-2	NA	5.7 mg/l TCLP
		Silver	7440-22-4	NA	0.14 mg/l TCLP
		Thallium	7440-28-0	NA	0.20 mg/l TCLP
		Zinc	7440-66-6	NA	4.3 mg/l TCLP
K062	Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332).	Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
K069	Emission control dust/sludge from secondary lead smelting. - Calcium Sulfate (Low Lead) Subcategory	Cadmium	7440-43-9	0.69	0.11 mg/l TCLP
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
	Emission control dust/sludge from secondary lead smelting. - Non-Calcium Sulfate (High Lead) Subcategory	NA	NA	NA	RLEAD
K071	K071 (Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used) nonwastewaters that are residues from RMERC.	Mercury	7439-97-6	NA	0.20 mg/l TCLP
	K071 (Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used.) nonwastewaters that are not residues from RMERC.	Mercury	7439-97-6	NA	0.025 mg/l TCLP
	All K071 wastewaters.	Mercury	7439-97-6	0.15	NA
K073	Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production.	Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Hexachloroethane	67-72-1	0.055	30
		Tetrachloroethylene	127-18-4	0.056	6.0
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
K083	Distillation bottoms from aniline production.	Aniline	62-53-3	0.81	14
		Benzene	71-43-2	0.14	10
		Cyclohexanone	108-94-1	0.36	NA
		Diphenylamine (difficult to distinguish from diphenylnitrosamine)	122-39-4	0.92	13

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
		Diphenylnitrosamine (difficult to distinguish from diphenylamine)	86-30-6	0.92	13
		Nitrobenzene	98-95-3	0.068	14
		Phenol	108-95-2	0.039	6.2
		Nickel	7440-02-0	3.98	11 mg/l TCLP
K084	Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
K085	Distillation or fractionation column bottoms from the production of chlorobenzenes.	Benzene	71-43-2	0.14	10
		Chlorobenzene	108-90-7	0.057	6.0
		m-Dichlorobenzene	541-73-1	0.036	6.0
		o-Dichlorobenzene	95-50-1	0.088	6.0
		p-Dichlorobenzene	106-46-7	0.090	6.0
		Hexachlorobenzene	118-74-1	0.055	10
		Total PCBs (sum of all PCB isomers, or all Aroclors)	1336-36-3	0.10	10
		Pentachlorobenzene	608-93-5	0.055	10
		1,2,4,5-Tetra-chlorobenzene	95-94-3	0.055	14
		1,2,4-Trichloro-benzene	120-82-1	0.055	19
K086	Solvent wastes and sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead.	Acetone	67-64-1	0.28	160
		Acetophenone	96-86-2	0.010	9.7
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		n-Butyl alcohol	71-36-3	5.6	2.6
		Butylbenzyl phthalate	85-68-7	0.017	28
		Cyclohexanone	108-94-1	0.36	NA
		o-Dichlorobenzene	95-50-1	0.088	6.0
		Diethyl phthalate	84-66-2	0.20	28
		Dimethyl phthalate	131-11-3	0.047	28
		Di-n-butyl phthalate	84-74-2	0.057	28
		Di-n-octyl phthalate	117-84-0	0.017	28
		Ethyl acetate	141-78-6	0.34	33
		Ethylbenzene	100-41-4	0.057	10
		Methanol	67-56-1	5.6	NA
		Methyl ethyl ketone	78-93-3	0.28	36
		Methyl isobutyl ketone	108-10-1	0.14	33
		Methylene chloride	75-09-2	0.089	30
		Naphthalene	91-20-3	0.059	5.6
		Nitrobenzene	98-95-3	0.068	14
		Toluene	108-88-3	0.080	10
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
		Trichloroethylene	79-01-6	0.054	6.0
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Lead	7439-92-1	0.69	0.75 mg/l TCLP

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT, Common Name	CAS[2] Number	WASTEWATERS Concentration in mg/l[3]; or Technology Code[4]	NONWASTEWATERS Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
K087	Decanter tank tar sludge from coking operations.	Acenaphthylene	208–96–8	0.059	3.4
		Benzene	71–43–2	0.14	10
		Chrysene	218–01–9	0.059	3.4
		Fluoranthene	206–44–0	0.068	3.4
		Indeno(1,2,3–cd)pyrene	193–39–5	0.0055	3.4
		Naphthalene	91–20–3	0.059	5.6
		Phenanthrene	85–01–8	0.059	5.6
		Toluene	108–88–3	0.080	10
		Xylenes–mixed isomers (sum of o–, m–, and p–xylene concentrations)	1330–20–7	0.32	30
		Lead	7439–92–1	0.69	0.37 mg/l TCLP
K088	Spent potliners from primary aluminum reduction.	Acenaphthalene	83–32–9	0.059	3.4
		Anthracene	120–12–7	0.059	3.4
		Benzo(a)anthracene	56–55–3	0.059	3.4
		Benzo(a)pyrene	50–32–8	0.061	3.4
		Benzo(b)fluoranthene	205–99–2	0.11	6.8
		Benzo(k)fluoranthene	207–08–9	0.11	6.8
		Benzo(g,h,i)perylene	191–24–2	0.0055	1.8
		Chrysene	218–01–9	0.059	3.4
		Dibenz(a,h)anthracene	53–70–3	0.055	8.2
		Fluoranthene	206–44–0	0.068	3.4
		Indeno(1,2,3–c,d)pyrene	193–39–5	0.0055	3.4
		Phenanthrene	85–01–8	0.059	5.6
		Pyrene	129–00–0	0.067	8.2
		Antimony	7440–36–0	1.9	1.15 mg/l TCLP
		Arsenic	7440–38–2	1.4	26.1
		Barium	7440–39–3	1.2	21 mg/l TCLP
		Beryllium	7440–41–7	0.82	1.22 mg/l TCLP
		Cadmium	7440–43–9	0.69	0.11 mg/l TCLP
		Chromium (Total)	7440–47–3	2.77	0.60 mg/l TCLP
		Lead	7439–92–1	0.69	0.75 mg/l TCLP
		Mercury	7439–97–6	0.15	0.025 mg/l TCLP
		Nickel	7440–02–0	3.98	11 mg/l TCLP
		Selenium	7782–49–2	0.82	5.7 mg/l TCLP
		Silver	7440–22–4	0.43	0.14 mg/l TCLP
		Cyanide (Total)[7]	57–12–5	1.2	590
		Cyanide (Amendable)[7]	57–12–5	0.86	30
		Fluoride	16984–48–8	35	NA
K093	Distillation light ends from the production of phthalic anhydride from ortho–xylene.	Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	100–21–0	0.055	28
		Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	85–44–9	0.055	28
K094	Distillation bottoms from the production of phthalic anhydride from ortho–xylene.	Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	100–21–0	0.055	28
		Phthalic anhydride (meansured as Phthalic acid or Terephthalic acid)	85–44–9	0.055	28

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
K095	Distillation bottoms from the production of 1,1,1-trichloroethane.	Hexachloroethane	67-72-1	0.055	30
		Pentachloroethane	76-01-7	0.055	6.0
		1,1,1,2-Tetrachloroethane	630-20-6	0.057	6.0
		1,1,2,2-Tetrachloroethane	79-34-6	0.057	6.0
		Tetrachloroethylene	127-18-4	0.056	6.0
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		Trichloroethylene	79-01-6	0.054	6.0
K096	Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane.	m-Dichlorobenzene	541-73-1	0.036	6.0
		Pentachloroethane	76-01-7	0.055	6.0
		1,1,1,2-Tetrachloroethane	630-20-6	0.057	6.0
		1,1,2,2-Tetrachloroethane	79-34-6	0.057	6.0
		Tetrachloroethylene	127-18-4	0.056	6.0
		1,2,4-Trichlorobenzene	120-82-1	0.055	19
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		Trichloroethylene	79-01-6	0.054	6.0
K097	Vacuum stripper discharge from the chlordane chlorinator in the production of chlordane.	Chlordane (alpha and gamma isomers)	57-74-9	0.0033	0.26
		Heptachlor	76-44-8	0.0012	0.066
		Heptachlor epoxide	1024-57-3	0.016	0.066
		Hexachlorocyclopentadiene	77-47-4	0.057	2.4
K098	Untreated process wastewater from the production of toxaphene.	Toxaphene	8001-35-2	0.0095	2.6
K099	Untreated wastewater from the production of 2,4-D.	2,4-Dichlorophenoxyacetic acid	94-75-7	0.72	10
		HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		HxCDFs (All Hexachlorodibenzofurans)	NA	0.000063	0.001
		PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		PeCDFs (All Pentachlorodibenzofurans)	NA	0.000035	0.001
		TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001
K100	Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting.	Cadmium	7440-43-9	0.69	0.11 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
K101	Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.	o-Nitroaniline	88-74-4	0.27	14
		Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
		Cadmium	7440-43-9	0.69	NA
		Lead	7439-92-1	0.69	NA
		Mercury	7439-97-6	0.15	NA

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
K102	Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.	o-Nitrophenol	88-75-5	0.028	13
		Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
		Cadmium	7440-43-9	0.69	NA
		Lead	7439-92-1	0.69	NA
		Mercury	7439-97-6	0.15	NA
K103	Process residues from aniline extraction from the production of aniline.	Aniline	62-53-3	0.81	14
		Benzene	71-43-2	0.14	10
		2,4-Dinitrophenol	51-28-5	0.12	160
		Nitrobenzene	98-95-3	0.068	14
		Phenol	108-95-2	0.039	6.2
K104	Combined wastewater streams generated from nitrobenzene/ aniline production.	Aniline	62-53-3	0.81	14
		Benzene	71-43-2	0.14	10
		2,4-Dinitrophenol	51-28-5	0.12	160
		Nitrobenzene	98-95-3	0.068	14
		Phenol	108-95-2	0.039	6.2
		Cyanides (Total)[7]	57-12-5	1.2	590
K105	Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes.	Benzene	71-43-2	0.14	10
		Chlorobenzene	108-90-7	0.057	6.0
		2-Chlorophenol	95-57-8	0.044	5.7
		o-Dichlorobenzene	95-50-1	0.088	6.0
		p-Dichlorobenzene	106-46-7	0.090	6.0
		Phenol	108-95-2	0.039	6.2
		2,4,5-Trichlorophenol	95-95-4	0.18	7.4
		2,4,6-Trichlorophenol	88-06-2	0.035	7.4
K106	K106 (wastewater treatment sludge from the mercury cell process in chlorine production) nonwastewaters that contain greater than or equal to 260 mg/kg total mercury.	Mercury	7439-97-6	NA	RMERC
	K106 (wastewater treatment sludge from the mercury cell process in chlorine production) nonwastewaters that contain less than 260 mg/kg total mercury that are residues from RMERC.	Mercury	7439-97-6	NA	0.20 mg/l TCLP
	Other K106 nonwastewaters that contain less than 260 mg/kg total mercury and are not residues from RMERC.	Mercury	7439-97-6	NA	0.025 mg/l TCLP
	All K106 wastewaters.	Mercury	7439-97-6	0.15	NA
K107	Column bottoms from product separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	NA	NA	CMBST; or CHOXD fb CARBN; or BIODG fb CARBN	CMBST
K108	Condensed column overheads from product separation and condensed reactor vent gases from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	NA	NA	CMBST; or CHOXD fb CARBN; or BIODG fb CARBN	CMBST

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
K109	Spent filter cartridges from product purification from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	NA	NA	CMBST; or CHOXD fb CARBN; or BIODG fb CARBN	CMBST
K110	Condensed column overheads from intermediate separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	NA	NA	CMBST; or CHOXD fb CARBN; or BOIDG fb CARBN	CMBST
K111	Product washwaters from the production of dinitrotoluene via nitration of toluene	2,4-Dinitrotoluene	121-1-2	0.32	140
		2,6-Dinitrotoluene	606-20-2	0.55	28
K112	Reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene.	NA	NA	CMBST; or CHOXD fb CARBN; or BIODG fb CARBN	CMBST
K113	Condensed liquid light ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	NA	NA	CARBN; OR CMBST	CMBST
K114	Vicinals from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotolune.	NA	NA	CARBN; or CMBST	CMBST
K115	Heavy ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	Nickel	7440-02-0	3.98	11 mg/l TCLP
		NA	NA	CARBN; or CMBST	CMBST
K116	Organic condensate from the solvent recovery column in the production of toluene diisocyanate via phosgenation of toluenediamine.	NA	NA	CARBN; or CMBST	CMBST
K117	Wastewater from the reactor vent gas scrubber in the production of ethylene dibromide via bromination of ethene.	Methyl bromide (Bromomethane)	74-83-9	0.11	15
		Chloroform	67-66-3	0.046	6.0
		Ethylene dibromide (1,2-Dibromoethane)	106-93-4	0.028	15
K118	Spent absorbent solids from purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.	Methyl bromide (Bromomethane)	74-83-9	0.11	15
		Chloroform	67-66-3	0.046	6.0
		Ethylene dibromide (1,2-Dibromoethane)	106-93-4	0.028	15
K123	Process wastewater (including supernates, filtrates, and washwaters) from the production of ethylenebisdithiocarbamic acid and its salts.	NA	NA	CMBST; or CHOXD fb (BIODG or CARBN)	CMBST
K124	Reactor vent scrubber water from the production of ethylenebisdithiocarbamic acid and its salts.	NA	NA	CMBST; or CHOXD fb (BIODG or CARBN)	CMBST
K125	Filtration, evaporation, and centrifugation solids from the production of ethylenebisdithiocarbamic acid and its salts.	NA	NA	CMBST; or CHOXD fb (BIODG or CARBN)	CMBST

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
K126	Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylenebisdithiocarbamic acid and its salts.	NA	NA	CMBST; or CHOXD fb (BIODG or CARBN)	CMBST
K131	Wastewater from the reactor and spent sulfuric acid from the acid dryer from the production of methyl bromide.	Methyl bromide (Bromomethane)	74–83–9	0.11	15
K132	Spent absorbent and wastewater separator solids from the production of methyl bromide.	Methyl bromide (Bromomethane)	74–83–9	0.11	15
K136	Still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.	Methyl bromide (Bromomethane)	74–83–9	0.11	15
		Chloroform	67–66–3	0.046	6.0
		Ethylene dibromide (1,2–Dibromoethane)	106–93–4	0.028	15
K141	Process residues from the recovery of coal tar, including, but not limited to, collecting sump residues from the production of coke or the recovery of coke by–products produced from coal. This listing does not include K087 (decanter tank tar sludge from coking operations).	Benzene	71–43–2	0.14	10
		Benz(a)anthracene	56–55–3	0.059	3.4
		Benzo(a)pyrene	50–2–8	0.061	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205–99–2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207–08–9	0.11	6.8
		Chrysene	218–01–9	0.059	3.4
		Dibenz(a,h)anthracene	53–70–3	0.055	8.2
		Indeno(1,2,3–cd)pyrene	193–39–5	0.0055	3.4
K142	Tar storage tank residues from the production of coke from coal or from the recovery of coke by–products produced from coal.	Benzene	71–43–2	0.14	10
		Benz(a)anthracene	56–55–3	0.059	3.4
		Benzo(a)pyrene	50–32–8	0.061	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205–99–2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207–08–9	0.11	6.8
		Chrysene	218–01–9	0.059	3.4
		Dibenz(a,h)anthracene	53–70–3	0.055	8.2
		Indeno(1,2,3–cd)pyrene	193–39–5	0.0055	3.4
K143	Process residues from the recovery of light oil, including, but not limited to, those generated in stills, decanters, and wash oil recovery units from the recovery of coke by–products produced from coal.	Benzene	71–43–2	0.14	10
		Benz(a)anthracene	56–55–3	0.059	3.4
		Benzo(a)pyrene	50–32–8	0.061	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205–99–2	0.11	6.8
		Benzo(k)flouranthene (difficult to distinguish from benzo(b)fluoranthene)	207–08–9	0.11	6.8
		Chrysene	218–01–9	0.059	3.4
K144	Wastewater sump residues from light oil refining, including, but not limited to, intercepting or contamination sump sludges from the recovery of coke by–products produced from coal.	Benzene	71–43–2	0.14	10
		Benz(a)anthracene	56–55–3	0.059	3.4
		Benzo(a)pyrene	50–32–8	0.061	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205–99–2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207–08–9	0.11	6.8
		Chrysene	218–01–9	0.059	3.4
		Dibenz(a,h)anthracene	53–70–3	0.055	8.2
K145	Residues from naphthalene collection and recovery operations from the recovery of coke by–products produced from coal.	Benzene	71–43–2	0.14	10
		Benz(a)anthracene	56–55–3	0.059	3.4
		Benzo(a)pyrene	50–32–8	0.061	3.4
		Chrysene	218–01–9	0.059	3.4
		Dibenz(a,h)anthracene	53–70–3	0.055	8.2
		Naphthalene	91–20–3	0.059	5.6

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
K147	Tar storage tank residues from coal tar refining.	Benzene	71-43-2	0.14	10
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Chrysene	218-01-9	0.059	3.4
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		Indeno(1,2,3-cd)pyrene	193-39-5	0.0055	3.4
K148	Residues from coal tar distillation, including, but not limited to, still bottoms.	Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Chrysene	218-01-9	0.059	3.4
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		Indeno(1,2,3-cd)pyrene	193-39-5	0.0055	3.4
K149	Distillation bottoms from the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups. (This waste does not include still bottoms from the distillations of benzyl chloride.)	Chlorobenzene	108-90-7	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Chloromethane	74-87-3	0.19	30
		p-Dichlorobenzene	106-46-7	0.090	6.0
		Hexachlorobenzene	118-74-1	0.055	10
		Pentachlorobenzene	608-93-5	0.055	10
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
		Toluene	108-88-3	0.080	10
K150	Organic residuals, excluding spent carbon adsorbent, from the spent chlorine gas and hydrochloric acid recovery processes associated with the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups.	Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Chloromethane	74-87-3	0.19	30
		p-Dichlorobenzene	106-46-7	0.090	6.0
		Hexachlorobenzene	118-74-1	0.055	10
		Pentachlorobenzene	608-93-5	0.055	10
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
		1,1,2,2-Tetrachloroethane	79-34-5	0.057	6.0
		Tetrachloroethylene	127-18-4	0.056	6.0
		1,2,4-Trichlorobenzene	120-82-1	0.055	19
K151	Wastewater treatment sludges, excluding neutralization and biological sludges, generated during the treatment of wastewaters from the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups.	Benzene	71-43-2	0.14	10
		Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Hexachlorobenzene	118-74-1	0.055	10
		Pentachlorobenzene	608-93-5	0.055	10
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
		Tetrachloroethylene	127-18-4	0.056	6.0
		Toluene	108-88-3	0.080	10
K156	Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes.[10]	Acetonitrile	75-05-8	5.6	1.8
		Acetophenone	96-86-2	0.010	9.7
		Aniline	62-53-3	0.81	14
		Benomyl	17804-35-2	0.056	1.4
		Benzene	71-43-2	0.14	10
		Carbaryl	63-25-2	0.006	0.14
		Carbenzadim	10605-21-7	0.056	1.4
		Carbofuran	1563-66-2	0.006	0.14
		Carbosulfan	55285-14-8	0.028	1.4
		Chlorobenzene	108-90-7	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		o-Dichlorobenzene	95-50-1	0.088	6.0
		Methomyl	16752-77-5	0.028	0.14
		Methylene chloride	75-09-2	0.089	30
		Methyl ethyl ketone	78-93-3	0.28	36
		Naphthalene	91-20-3	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyridine	110-86-1	0.014	16
		Toluene	108-88-3	0.080	10
		Triethylamine	121-44-8	0.081	1.5

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
K157	Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes.	Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Chloromethane	74-87-3	0.19	30
		Methomyl	16752-77-5	0.028	0.14
		Methylene chloride	75-09-2	0.089	30
		Methyl ethyl ketone	78-93-3	0.28	36
		Pyridine	110-86-1	0.014	16
		Triethylamine	121-44-8	0.081	1.5
K158	Bag house dusts and filter/separation solids from the production of carbamates and carbamoyl oximes.	Benomyl	17804-35-2	0.056	1.4
		Benzene	71-43-2	0.14	10
		Carbenzadim	10605-21-7	0.056	1.4
		Carbofuran	1563-66-2	0.006	0.14
		Carbosulfan	55285-14-8	0.028	1.4
		Chloroform	67-66-3	0.046	6.0
		Methylene chloride	75-09-2	0.089	30
		Phenol	108-95-2	0.039	6.2
K159	Organics from the treatment of thiocarbamate wastes.[10]	Benzene	71-43-2	0.14	10
		Butylate	2008-41-5	0.042	1.4
		EPTC (Eptam)	759-94-4	0.042	1.4
		Molinate	2212-67-1	0.042	1.4
		Pebulate	1114-71-2	0.042	1.4
		Vernolate	1929-77-7	0.042	1.4
K161	Purification solids (including filtration, evaporation, and centrifugation solids), baghouse dust and floor sweepings from the production of dithiocarbamate acids and their salts.	Antimony	7440-36-0	1.9	1.15 mg/l TCLP
		Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
		Carbon disulifie	75-15-0	3.8	4.8 mg/l TCLP
		Dithiocarbamates (total)	137-30-4	0.028	28
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
		Nickel	7440-02-0	3.98	11 mg/l TCLP
		Selenium	7782-49-2	0.82	5.7 mg/l TCLP
K174	Wastewater treatment sludges from the production of ethylene dichloride or vinyl chloride monomer.	1,,2,3,4,6,7,8,-Heptachlorodibenzo-p-dioxin (1,2,3,4,6,7,8,-HpCDD)	35822-46-9	0.000035 or CMBST[11]	0.0025 or CMBST[11]
		1,2,3,4,6,7,8-Heptachlorodibenzofuran (1,2,3,4,6,7,8-HpCDF)	67562-39-4	0.000035 or CMBST[11]	0.0025 or CMBST[11]
		1,2,3,4,7,8,9-Heptachlorodibenzofuran (1,2,3,4,7,8,9-HpCDF)	55673-89-7	0.000035 or CMBST[11]	0.0025 or CMBST[11]
		HxCDDs (All Hexachlorodibenzo-p-dioxins)	34465-46-8	0.000063 or CMBST[11]	0.001 or CMBST[11]
		HxCDFs (All Hexachlorodibenzofurans)	55684-94-1	0.000063 or CMBST[11]	0.001 or CMBST[11]
		1,2,3,4,7,8,9-Octachlorodibenzo-p-dioxin (OCDD)	3268-87-9	0.000063 or CMBST[11]	0.005 or CMBST[11]
		1,2,3,4,7,8,9-Octachlorodibenzofuran (OCDF)	39001-02-0	0.000063 or CMBST[11]	0.005 or CMBST[11]
		PeCDDs (All Pentachlorodibenzo-p-dioxins)	36088-22-9	0.000063 or CMBST[11]	0.001 or CMBST[11]
		PeCDFs (All pentachlorodibenzofurans)	30402-15-4	0.000035 or CMBST[11]	0.001 or CMBST[11]
		TCDDs (All tetrachlorodibenzo-p-dioxins)	41903-57-5	0.000063 or CMBST[11]	0.001 or CMBST[11]
		TCDFs (All chlorodibenzofurans)	55722-27-5	0.000063 or CMBST[11]	0.001 or CMBST[11]
		Arsenic	7440-36-0	1.4	5.0 mg/l TCLP
K175	Wastewater treatment sludge from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process.	Mercury[12]	7438-97-6	NA	0.025 mg/l TCLP
		pH[12]		NA	pH≤6.0
	All K175 wastewaters	Mercury	7438-97-6	0.15	NA

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
P001	Warfarin, & salts, when present at concentrations greater than 0.3%	Warfarin	81–81–2	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P002	1–Acetyl–2–thiourea	1–Acetyl–2–thiourea	591–08–2	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P003	Acrolein	Acrolein	107–02–8	0.29	CMBST
P004	Aldrin	Aldrin	309–00–2	0.021	0.066
P005	Allyl alcohol	Allyl alcohol	107–18–6	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P006	Aluminum phosphide	Aluminum phosphide	20859–73–8	CHOXD; CHRED; or CMBST	CHOXD; CHRED; or CMBST
P007	5–Aminomethyl 3–isoxazolol	5–Aminomethyl 3–isoxazolol	2763–96–4	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
P008	4–Aminopyridine	4–Aminopyridine	504–24–5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P009	Ammonium picrate	Ammonium picrate	131–74–8	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
P010	Arsenic acid	Arsenic	7440–38–2	1.4	5.0 mg/l TCLP
P011	Arsenic pentoxide	Arsenic	7440–38–2	1.4	5.0 mg/l TCLP
P012	Arsenic trioxide	Arsenic	7440–38–2	1.4	5.0 mg/l TCLP
P013	Barium cyanide	Barium	7440–39–3	NA	21 mg/l TCLP
		Cyanides (Total)[7]	57–12–5	1.2	590
		Cyanides (Amenable)[7]	57–12–5	0.86	30
P014	Thiophenol (Benzene thiol)	Thiophenol (Benzene thiol)	108–98–5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P015	Beryllium dust	Beryllium	7440–41–7	RMETL; or RTHRM	RMETL; or RTHRM
P016	Dichloromethyl ether (Bis(chloromethyl)ether)	Dichloromethyl ether	542–88–1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P017	Bromoacetone	Bromoacetone	598–31–2	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P018	Brucine	Brucine	357–57–3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P020	2–sec–Butyl–4,6–dinitrophenol (Dinoseb)	2–sec–Butyl–4,6–dinitrophenol (Dinoseb)	88–85–7	0.066	2.5
P021	Calcium cyanide	Cyanides (Total)[7]	57–12–5	1.2	590
		Cyanides (Amenable)[7]	57–12–5	0.86	30
P022	Carbon disulfide	Carbon disulfide	75–15–0	3.8	CMBST
		Carbon disulfide; alternate[6] standard for nonwastewaters only	75–15–0	NA	4.8 mg/l TCLP
P023	Chloroacetaldehyde	Chloroacetaldehyde	107–20–0	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
P024	p–Chloroaniline	p–Chloroaniline	106–47–8	0.46	16
P026	1–(o–Chlorophenyl)thiourea	1–(o–Chlorophenyl)–thiourea	5344–82–1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P027	3–Chloropropionitrile	3–Chloropropionitrile	542–76–7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P028	Benzyl chloride	Benzyl chloride	100–44–7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P029	Copper cyanide	Cyanides (Total)[7]	57–12–5	1.2	590
		Cyanides (Amenable)[7]	57–12–5	0.86	30
P030	Cyanides (soluble salts and complexes)	Cyanides (Total)[7]	57–12–5	1.2	590
		Cyanides (Amenable)[7]	57–12–5	0.86	30
P031	Cyanogen	Cyanogen	460–19–5	CHOXD; WETOX; or CMBST	CHOXD WETOX; or CMBST
P033	Cyanogen chloride	Cyanogen chloride	506–77–4	CHOXD; WETOX; or CMBST	CHOXD; WETOX; or CMBST
P034	2–Cyclohexyl–4,6–dinitrophenol	2–Cyclohexyl–4,6–dinitrophenol	131–89–5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P036	Dichlorophenylarsine	Arsenic	7440–38–2	1.4	5.0 mg/l TCLP
P037	Dieldrin	Dieldrin	60–57–1	0.017	0.13
P038	Diethylarsine	Arsenic	7440–38–2	1.4	5.0 mg/l TCLP
P039	Disulfoton	Disulfoton	298–04–4	0.017	6.2
P040	0,0–Diethyl O–pyrazinyl phosphorothioate	0,0–Diethyl O–pyrazinyl phosphorothioate	297–97–2	CARBN; or CMBST	CMBST
P041	Diethyl–p–nitrophenyl phosphate	Diethyl–p–nitrophenyl phosphate	311–45–5	CARBN; or CMBST	CMBST
P042	Epinephrine	Epinephrine	51–43–4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P043	Diisopropylfluoro–phosphate (DFP)	Diisopropylfluoro–phosphate (DFP)	55–91–4	CARBN; or CMBST	CMBST
P044	Dimethoate	Dimethoate	60–51–5	CARBN; or CMBST	CMBST
P045	Thiofanox	Thiofanox	39196–18–4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P046	alpha, alpha–Dimethylphene–thylamine	alpha, alpha–Dimethyl–phenethylamine	122–09–8	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P047	4,6–Dinitro–o–cresol	4,6–Dinitro–o–cresol	543–52–1	0.28	160
	4,6–Dinitro–o–cresol salts	NA	NA	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P048	2,4–Dinitrophenol	2,4–Dinitrophenol	51–28–5	0.12	160

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		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
P049	Dithiobiuret	Dithiobiuret	541–53–7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P050	Endosulfan	Endosulfan I	939–98–8	0.023	0.066
		Endosulfan II	33213–6–5	0.029	0.13
		Endosulfan sulfate	1031–07–8	0.029	0.13
P051	Endrin	Endrin	72–20–8	0.0028	0.13
		Endrin aldehyde	7421–93–4	0.025	0.13
P054	Aziridine	Aziridine	151–56–4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P056	Fluorine	Fluoride (measured in wastewaters only)	16964–48–8	35	ADGAS fb NEUTR
P057	Fluoroacetamide	Fluoroacetamide	640–19–7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P058	Fluoroacetic acid, sodium salt	Fluoroacetic acid, sodium salt	62–74–8	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P059	Heptachlor	Heptachlor	76–44–8	0.0012	0.066
		Heptachlor epoxide	1024–57–3	0.016	0.066
P060	Isodrin	Isodrin	465–73–6	0.021	0.066
P062	Hexaethyl tetraphosphate	Hexaethyl tetraphosphate	757–58–4	CARBN; or CMBST	CMBST
P063	Hydrogen cyanide	Cyanides (Total)[7]	57–12–5	1.2	590
		Cyanides (Amenable)[7]	57–12–5	0.86	30
P064	Isocyanic acid, ethyl ester	Isocyanic acid, ethyl ester	624–83–9	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P065	Mercury fulminate nonwastewaters, regardless of their total mercury content, that are not incinerator residues or are not residues from RMERC.	Mercury	7439–97–6	NA	IMERC
	Mercury fulminate nonwastewaters that are either incinerator residues or are residues from RMERC; and contain greater than or equal to 260 mg/kg total mercury.	Mercury	7439–97–6	NA	RMERC
	Mercury fulminate nonwastewaters that are residues from RMERC and contain less less than 260 mg/kg total mercury.	Mercury	7439–97–6	NA	0.20 mg/l TCLP
	Mercury fulminate nonwastewaters that are incinerator residues and contain less than 260 mg/kg total mercury.	Mercury	7439–97–6	NA	0.025 mg/l TCLP
	All mercury fulminate wastewaters.	Mercury	7439–97–6	0.15	NA
P066	Methomyl	Methomyl	16752–77–5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P067	2–Methyl–aziridine	2–Methyl–aziridine	75–55–8	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P068	Methyl hydrazine	Methyl hydrazine	60–34–4	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
P069	2–Methyllactonitrile	2–Methyllactonitrile	75–86–5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P070	Aldicarb	Aldicarb	116–06–3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P071	Methyl parathion	Methyl parathion	298–00–0	0.014	4.6
P072	1–Naphthyl–2–thiourea	1–Naphthyl–2–thiourea	86–88–4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P073	Nickel carbonyl	Nickel	7440–02–0	3.98	11 mg/l TCLP

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
P074	Nickel cyanide	Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
		Nickel	7440-02-0	3.98	11 mg/l TCLP
P075	Nicotine and salts	Nicotine and salts	54-11-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P076	Nitric oxide	Nitric oxide	10102-43-9	ADGAS	ADGAS
P077	p-Nitroaniline	p-Nitroaniline	100-01-6	0.028	28
P078	Nitrogen dioxide	Nitrogen dioxide	10102-44-0	ADGAS	ADGAS
P081	Nitroglycerin	Nitroglycerin	55-63-0	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
P082	N-Nitrosodimethylamine	N-Nitrosodmethyl-amine	62-75-9	0.40	2.3
P084	N-Nitrosomethylvinylamine	N-Nitrosomethyl-vinylamine	4549-40-0	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P085	Octamethylpyrophosphoramide	Octamethylpyro-phosphoramide	152-16-9	CARBN; or CMBST	CMBST
P087	Osmium tetroxide	Osmium tetroxide	20816-12-0	RMETL; or RTHRM	RMETL; or RTHRM
P088	Endothall	Endothall	145-73-3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P089	Parathion	Parathion	56-38-2	0.014	4.6
P092	Phenyl mercuric acetate nonwastewaters, regardless of their total mercury content, that are not incinerator residues or are not residues from RMERC.	Mercury	7439-97-6	NA	IMERC; or RMERC
	Phenyl mercuric acetate nonwastewaters that are either incinerator residues or are residues from RMERC; and still contain greater than or equal to 260 mg/kg total mercury.	Mercury	7439-97-6	NA	RMERC
	Phenyl mercuric acetate nonwastewaters that are residues from RMERC and contain less than 260 mg/kg total mercury.	Mercury	7439-97-6	NA	0.20 mg/l TCLP
	Phenyl mercuric acetate nonwastewaters that are incinerator residues and contain less than 260 mg/kg total mercury.	Mercury	7439-97-6	NA	0.025 mg/l TCLP
	All Phenyl mercuric acetate wastewaters.	Mercury	7439-97-6	0.15	NA
P093	Phenylthiouea	Phenylthiouea	103-85-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P094	Phorate	Phorate	298-02-2	0.021	4.6
P095	Phosgene	Phosgene	75-44-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P096	Phosphine	Phosphine	7803-51-2	CHOXD; CHRED; or CMBST	CHOXD; CHRED; or CMBST
P097	Famphur	Famphur	52-85-7	0.017	15
P098	Potassium cyanide.	Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
P099	Potassium silver cyanide	Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
		Silver	7440-22-4	0.43	0.14 mg/l TCLP
P101	Ethyl cyanide (Propanenitrile)	Ethyl cyanide (Propanenitrile)	107-12-0	0.24	360
P102	Propargyl alcohol	Propargyl alcohol	107-19-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P103	Selenourea	Selenium	7782-49-2	0.82	5.7 mg/l TCLP
P104	Silver cyanide	Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
		Silver	7440-22-4	0.43	0.14 mg/l TCLP
P105	Sodium azide	Sodium azide	26628-22-8	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
P106	Sodium cyanide	Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
P108	Strychnine and salts	Strychnine and salts	57-24-9	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P109	Tetraethyldithiopyrophosphate	Tetraethyldithio-pyrophosphate	3689-24-5	CARBN; or CMBST	CMBST
P110	Tetraethyl lead	Lead	7439-92-1	0.69	0.75 mg/l TCLP
P111	Tetraethylpyrophosphate	Tetraethylpyrophosphate	107-49-3	CARBN; or CMBST	CMBST
P112	Tetranitromethane	Tetranitromethane	509-14-8	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
P113	Thallic oxide	Thallium (measured in wastewaters only)	7440-28-0	1.4	RTHRM; or STABL
P114	Thallium selenite	Selenium	7782-49-2	0.82	5.7 mg/l TCLP
P115	Thallium (I) sulfate	Thallium (measured in wastewaters only)	7440-28-0	1.4	RTHRM; or STABL
P116	Thiosemicarbazide	Thiosemicarbazide	79-19-6	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P118	Trichloromethanethiol	Trichloromethanethiol	75-70-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P119	Ammonium vanadate	Vanadium (measured in wastewaters only)	7440-62-2	4.3	STABL
P120	Vanadium pentoxide	Vanadium (measured in wastewaters only)	7440-62-2	4.3	STABL
P121	Zinc cyanide	Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
P122	Zinc phosphide Zn_3P_2, when present at concentrations greater than 10%	Zinc Phosphide	1314-84-7	CHOXD; CHRED; or CMBST	CHOXD; CHRED; or CMBST
P123	Toxaphene	Toxaphene	8001-35-2	0.0095	2.6
P127	Carbofuran	Carbofuran	1563-66-2	0.006	0.14
P128	Mexacarbate	Mexacarbate	315-18-4	0.056	1.4
P185	Tirpate[10]	Tirpate	26419-73-8	0.056	0.28
P188	Physostigmine salicylate	Physostigmine salicylate	57-64-7	0.056	1.4
P189	Carbosulfan	Carbosulfan	55285-14-8	0.028	1.4
P190	Metolcarb	Metolcarb	1129-41-5	0.056	1.4
P191	Dimetilan[10]	Dimetilan	644-64-4	0.056	1.4
P192	Isolan[10]	Isolan	119-38-0	0.056	1.4
P194	Oxamyl	Oxamyl	23135-22-0	0.056	0.28
P196	Manganese dimethyldithiocarbamate	Dithiocarbamates (total)	NA	0.028	28
P197	Formparanate[10]	Formparanate	17702-57-7	0.056	1.4
P198	Formetanate hydrochloride	Formetanate hydrochloride	23422-53-9	0.056	1.4
P199	Methiocarb	Methiocarb	2032-65-7	0.056	1.4
P201	Promecarb	Promecarb	2631-37-0	0.056	1.4
P202	m-Cumenyl methylcarbamate	m-Cumenyl methylcarbamate	64-00-6	0.056	1.4
P203	Aldicarb sulfone	Aldicarb sulfone	1646-88-4	0.056	0.28
P204	Physostigmine	Physostigmine	57-47-6	0.056	1.4
P205	Ziram	Dithiocarbamates (total)	NA	0.028	28
U001	Acetaldehyde	Acetaldehyde	75-07-0	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U002	Acetone	Acetone	67-64-1	0.28	160
U003	Acetonitrile	Acetonitrile	75-05-8	5.6	CMBST
		Acetonitrile; alternate[6] standard for nonwastewaters only	75-05-8	NA	38
U004	Acetophenone	Acetophenone	98-86-2	0.010	9.7
U005	2-Acetylaminofluorene	2-Acetylaminofluorene	53-96-3	0.059	140
U006	Acetyl chloride	Acetyl Chloride	75-36-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U007	Acrylamide	Acrylamide	79-06-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U008	Acrylic acid	Acrylic acid	79-10-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U009	Acrylonitrile	Acrylonitrile	107-13-1	0.24	84
U010	Mitomycin C	Mitomycin C	50-07-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U011	Amitrole	Amitrole	61-82-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U012	Aniline	Aniline	62-53-3	0.81	14
U014	Auramine	Auramine	492-80-8	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U015	Azaserine	Azaserine	115-02-6	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U016	Benz(c)acridine	Benz(c)acridine	225-51-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
U017	Benzal chloride	Benzal chloride	98–87–3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U018	Benz(a)anthracene	Benz(a)anthracene	56–55–3	0.059	3.4
U019	Benzene	Benzene	71–43–2	0.14	10
U020	Benzenesulfonyl chloride	Benzenesulfonyl chloride	98–09–9	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U021	Benzidine	Benzidine	92–87–5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U022	Benzo(a)pyrene	Benzo(a)pyrene	50–32–8	0.061	3.4
U023	Benzotrichloride	Benzotrichloride	98–07–7	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
U024	bis(2–Chloroethoxy)methane	bis(2–Chloroethoxy) methane	111–91–1	0.036	7.2
U025	bis(2–Chloroethyl)ether	bis(2–Chloroethyl) ether	111–44–4	0.033	6.0
U026	Chlornaphazine	Chlornaphazine	494–03–1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U027	bis(2–Chloroisopropyl)ether	bis(2–Chloroisopropyl) ether	39638–32–9	0.055	7.2
U028	bis(2–Ethylhexyl) phthalate	bis(2–Ethylhexyl) phthalate	117–81–7	0.28	28
U029	Methyl bromide (Bromomethane)	Methyl bromide (Bromomethane)	74–83–9	0.11	15
U030	4–Bromophenyl phenyl ether	4–Bromophenyl phenyl ether	101–55–3	0.055	15
U031	n–Butyl alcohol	n–Butyl alcohol	71–36–3	5.6	2.6
U032	Calcium chromate	Chromium (Total)	7440–47–3	2.77	0.60 mg/l TCLP
U033	Carbon oxyfluoride	Carbon oxyfluoride	353–50–4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U034	Trichloroacetaldehyde (Chloral)	Trichloroace–taldehyde (Chloral)	75–87–6	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U035	Chlorambucil	Chlorambucil	305–03–3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U036	Chlordane	Chlordane (alpha and gamma isomers)	57–74–9	0.0033	0.26
U037	Chlorobenzene	Chlorobenzene	108–90–7	0.057	6.0
U038	Chlorobenzilate	Chlorobenzilate	510–15–6	0.10	CMBST
U039	p–Chloro–m–cresol	p–Chloro–m–cresol	59–50–7	0.018	14
U041	Epichlorohydrin (1–Chloro–2,3–epoxypropane)	Epichlorohydrin (1–Chloro–2,3–epoxy–propane)	106–89–8	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U042	2–Chloroethyl vinyl ether	2–Chloroethyl vinyl ether	110–75–8	0.062	CMBST
U043	Vinyl chloride	Vinyl chloride	75–01–4	0.27	6.0
U044	Chloroform	Chloroform	67–66–3	0.046	6.0
U045	Chloromethane (Methyl chloride)	Chloromethane (Methyl chloride)	74–87–3	0.19	30
U046	Chloromethyl methyl ether	Chloromethyl methyl ether	107–30–2	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U047	2–Chloronaphthalene	2–Chloronaphthalene	91–58–7	0.055	5.6
U048	2–Chlorophenol	2–Chlorophenol	95–57–8	0.044	5.7
U049	4–Chloro–o–toluidine hydrochloride	4–Chloro–o–toluidine hydrochloride	3165–93–3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U050	Chrysene	Chrysene	218–01–9	0.059	3.4
U051	Creosote	Naphthalene	91–20–3	0.059	5.6
		Pentachlorophenol	87–86–5	0.089	7.4
		Phenanthrene	85–01–8	0.059	5.6
		Pyrene	129–00–0	0.067	8.2
		Toluene	108–88–3	0.080	10
		Xylenes–mixed isomers (sum of o–, m–, and p–xylene concentrations)	1330–20–7	0.32	30
		Lead	7439–92–1	0.69	0.75 mg/l TCLP
U052	Cresols (Cresylic acid)	o–Cresol	95–48–7	0.11	5.6
		m–Cresol (difficult to distinguish from p–cresol)	108–39–4	0.77	5.6
		p–Cresol (difficult to distinguish from m–cresol)	106–44–5	0.77	5.6
		Cresol–mixed isomers (Cresylic acid) (sum of o–, m–, and p–cresol concentrations)	1319–77–3	0.88	11.2

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
U053	Crotonaldehyde	Crotonaldehyde	4170–30–3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U055	Cumene	Cumene	98–82–8	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U056	Cyclohexane	Cyclohexane	110–82–7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U057	Cyclohexanone	Cyclohexanone	108–94–1	0.36	CMBST
		Cyclohexanone; alternate[6] standard for nonwastewaters only	108–94–1	NA	0.75 mg/l TCLP
U058	Cyclophosphamide	Cyclophosphamide	50–18–0	CARBN; or CMBST	CMBST
U059	Daunomycin	Daunomycin	20830–81–3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U060	DDD	o,p'–DDD	53–19–0	0.023	0.087
		p,p'–DDD	72–54–8	0.023	0.087
U061	DDT	o–p'–DDT	789–02–6	0.0039	0.087
		p,p'–DDT	50–29–3	0.0039	0.087
		o,p'–DDD	53–19–0	0.023	0.087
		p,p'–DDD	72–54–8	0.023	0.087
		o,p'–DDE	3424–82–6	0.031	0.087
		p,p'–DDE	72–55–9	0.031	0.087
U062	Diallate	Diallate	2303–16–4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U063	Dibenz(a,h)anthracene	Dibenz(a,h)–anthracene	53–70–3	0.055	8.2
U064	Dibenz(a,i)pyrene	Dibenz(a,i)pyrene	189–55–9	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U066	1,2–Dibromo–3–chloropropane	1,2–Dibromo–3–chloropropane	96–12–8	0.11	15
U067	Ethylene dibromide (1,2–Dibromoethane)	Ethylene dibromide (1,2–Dibromoethane)	106–93–4	0.028	15
U068	Dibromomethane	Dibromomethane	74–95–3	0.11	15
U069	Di–n–butyl phthalate	Di–n–butyl phthalate	84–74–2	0.057	28
U070	o–Dichlorobenzene	o–Dichlorobenzene	95–50–1	0.088	6.0
U071	m–Dichlorobenzene	m–Dichlorobenzene	541–73–1	0.036	6.0
U072	p–Dichlorobenzene	p–Dichlorobenzene	106–46–7	0.090	6.0
U073	3,3'–Dichlorobenzidine	3,3'–Dichloro–benzidine	91–94–1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U074	1,4–Dichloro–2–butene	cis–1,4–Dichloro–2–butene	1476–11–5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
		trans–1,4–Dichloro–2–butene	764–41–0	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U075	Dichlorodifluoromethane	Dichlorodifluorome–thane	75–71–8	0.23	7.2
U076	1,1–Dichloroethane	1,1–Dichloroethane	75–34–3	0.059	6.0
U077	1,2–Dichloroethane	1,2–Dichloroethane	107–06–2	0.21	6.0
U078	1,1–Dichloroethylene	1,1–Dichloroethylene	75–35–4	0.025	6.0
U079	1,2–Dichloroethylene	trans–1,2–Dichloroe–thylene	156–60–5	0.054	30
U080	Methylene chloride	Methylene chloride	75–09–2	0.089	30
U081	2,4–Dichlorophenol	2,4–Dichlorophenol	120–83–2	0.044	14
U082	2,6–Dichlorophenol	2,6–Dichlorophenol	87–65–0	0.044	14
U083	1,2–Dichloropropane	1,2–Dichloropropane	78–87–5	0.85	18
U084	1,3–Dichloropropylene	cis–1,3–Dichloropro–pylene	10061–01–5	0.036	18
		trans–1,3–Dichloropro–pylene	10061–02–6	0.036	18
U085	1,2:3,4–Diepoxybutane	1,2:3,4–Diepoxybutane	1464–53–5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U086	N,N'–Diethylhydrazine	N,N'–Diethylhydrazine	1615–80–1	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
U087	O,O–Diethyl S–methyldithiophosphate	O,O–Diethyl S–methyldithiophosphate	3288–58–2	CARBN; or CMBST	CMBST
U088	Diethyl phthalate	Diethyl phthalate	84–66–2	0.20	28
U089	Diethyl stilbestrol	Diethyl stilbestrol	56–53–1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U090	Dihydrosafrole	Dihydrosafrole	94–58–6	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U091	3,3′–Dimethoxybenzidine	3,3′–Dimethoxy–benzidine	119–90–4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U092	Dimethylamine	Dimethylamine	124–40–3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U093	p–Dimethylaminoazobenzene	p–Dimethylaminoazo–benzene	60–11–7	0.13	CMBST
U094	7,12–Dimethylbenz(a)–anthracene	7,12–Dimethylbenz(a)–anthracene	57–97–6	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U095	3,3′–Dimethylbenzidine	3,3′–Dimethylben–zidine	119–93–7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U096	alpha, alpha–Dimethyl benzyl hydroperoxide	alpha, alpha–Dimethyl benzyl hydroperoxide	80–15–9	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
U097	Dimethylcarbamoyl chloride	Dimethylcarbamoyl chloride	79–44–7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U098	1,1–Dimethylhydrazine	1,1–Dimethylhydrazine	57–14–7	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
U099	1,2–Dimethylhydrazine	1,2–Dimethylhydrazine	540–73–8	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
U101	2,4–Dimethylphenol	2,4–Dimethylphenol	105–67–9	0.036	14
U102	Dimethyl phthalate	Dimethyl phthalate	131–11–3	0.047	28
U103	Dimethyl sulfate	Dimethyl sulfate	77–78–1	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
U105	2,4–Dinitrotoluene	2,4–Dinitrotoluene	121–14–2	0.32	140
U106	2,6–Dinitrotoluene	2,6–Dinitrotoluene	606–20–2	0.55	28
U107	Di–n–octyl phthalate	Di–n–octyl phthalate	117–84–0	0.017	28
U108	1,4–Dioxane	1,4–Dioxane	123–91–1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
		1,4–Dioxane; alternate[6]	123–91–1	12.0	170
U109	1,2–Diphenylhydrazine	1,2–Diphenylhydrazine	122–66–7	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
		1,2–Diphenylhydrazine; alternate[6] standard for wastewaters only	122–66–7	0.087	NA
U110	Dipropylamine	Dipropylamine	142–84–7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U111	Di–n–propylnitrosamine	Di–n–propylnitro–samine	621–64–7	0.40	14
U112	Ethyl acetate	Ethyl acetate	141–78–6	0.34	33
U113	Ethyl acrylate	Ethyl acrylate	140–88–5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U114	Ethylenebisdithiocarbamic acid salts and esters	Ethylenebisdithio–carbamic acid	111–54–6	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U115	Ethylene oxide	Ethylene oxide	75–21–8	(WETOX or CHOXD) fb CARBN; or CMBST	CHOXD; or CMBST
		Ethylene oxide; alternate[6] standard for wastewaters only	75–21–8	0.12	NA
U116	Ethylene thiourea	Ethylene thiourea	96–45–7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U117	Ethyl ether	Ethyl ether	60–29–7	0.12	160
U118	Ethyl methacrylate	Ethyl methacrylate	97–63–2	0.14	160
U119	Ethyl methane sulfonate	Ethyl methane sulfonate	62–50–0	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
U120	Fluoranthene	Fluoranthene	206-44-0	0.068	3.4
U121	Trichloromonofluoromethane	Trichloromono-fluoromethane	75-69-4	0.020	30
U122	Formaldehyde	Formaldehyde	50-00-0	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U123	Formic acid	Formic acid	64-18-6	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U124	Furan	Furan	110-00-9	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U125	Furfural	Furfural	98-01-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U126	Glycidylaldehyde	Glycidylaldehyde	765-34-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U127	Hexachlorobenzene	Hexachlorobenzene	118-74-1	0.055	10
U128	Hexachlorobutadiene	Hexachlorobutadiene	87-68-3	0.055	5.6
U129	Lindane	alpha-BHC	319-84-6	0.00014	0.066
		beta-BHC	319-85-7	0.00014	0.066
		delta-BHC	319-86-8	0.023	0.066
		gamma-BHC (Lindane)	58-89-9	0.0017	0.066
U130	Hexachlorocyclopentadiene	Hexachlorocyclo-pentadiene	77-47-4	0.057	2.4
U131	Hexachloroethane	Hexachloroethane	67-72-1	0.055	30
U132	Hexachlorophene	Hexachlorophene	70-30-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U133	Hydrazine	Hydrazine	302-01-2	CHOXD; CHRED; CARBN; DIODG; or CMBST	CHOXD; CHRED; or CMBST
U134	Hydrogen fluoride	Fluoride (measured in wastewaters only)	16964-48-8	35	ADGAS fb NEUTR; or NEUTR
U135	Hydrogen Sulfide	Hydrogen Sulfide	7783-06-4	CHOXD; CHRED, or CMBST	CHOXD; CHRED, or CMBST
U136	Cacodylic acid	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
U137	Indeno(1,2,3-c,d)pyrene	Indeno(1,2,3-c,d) pyrene	193-39-5	0.0055	3.4
U138	Iodomethane	Iodomethane	74-88-4	0.19	65
U140	Isobutyl alcohol	Isobutyl alcohol	78-83-1	5.6	170
U141	Isosafrole	Isosafrole	120-58-1	0.081	2.6
U142	Kepone	Kepone	143-50-8	0.0011	0.13
U143	Lasiocarpine	Lasiocarpine	303-34-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U144	Lead acetate	Lead	7439-92-1	0.69	0.75 mg/l TCLP
U145	Lead phosphate	Lead	7439-92-1	0.69	0.75 mg/l TCLP
U146	Lead subacetate	Lead	7439-92-1	0.69	0.75 mg/l TCLP
U147	Maleic anhydride	Maleic anhydride	108-31-6	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U148	Maleic hydrazide	Maleic hydrazide	123-33-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U149	Malononitrile	Malononitrile	109-77-3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U150	Melphalan	Melphalan	148-82-3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U151	U151 (mercury) nonwastewaters that contain greater than or equal to 260 mg/kg total mercury.	Mercury	7439-97-6	NA	RMERC
	U151 (mercury) nonwastewaters that contain less than 260 mg/kg total mercury and that are residues from RMERC only.	Mercury	7439-97-6	NA	0.20 mg/l TCLP
	U151 (mercury) nonwastewaters that contain less than 260 mg/kg total mercury and that are not residues from RMERC.	Mercury	7439-97-6	NA	0.025 mg/l TCLP
	All U151 (mercury) wastewaters.	Mercury	7439-97-6	0.15	NA
	Elemental Mercury Contaminated with Radioactive Materials	Mercury	7439-97-6	NA	AMLGM
U152	Methacrylonitrile	Methacrylonitrile	126-98-7	0.24	84
U153	Methanethiol	Methanethiol	74-93-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U154	Methanol	Methanol	67-56-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
		Methanol; alternate[6] set of standards for both wastewaters and nonwastewaters	67-56-1	5.6	0.75 mg/l TCLP

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
U155	Methapyrilene	Methapyrilene	91–80–5	0.081	1.5
U156	Methyl chlorocarbonate	Methyl chlorocarbonate	79–22–1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U157	3–Methylcholanthrene	3–Methylcholanthrene	56–49–5	0.0055	15
U158	4,4′–Methylene bis(2–chloroaniline)	4,4′–Methylene bis(2–chloroaniline)	101–14–4	0.50	30
U159	Methyl ethyl ketone	Methyl ethyl ketone	78–93–3	0.28	36
U160	Methyl ethyl ketone peroxide	Methyl ethyl ketone peroxide	1338–23–4	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
U161	Methyl isobutyl ketone	Methyl isobutyl ketone	108–10–1	0.14	33
U162	Methyl methacrylate	Methyl methacrylate	80–62–6	0.14	160
U163	N–Methyl N′–nitro N–nitrosoguanidine	N–Methyl N′–nitro N–nitrosoguanidine	70–25–7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U164	Methylthiouracil	Methylthiouracil	56–04–2	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U165	Naphthalene	Naphthalene	91–20–3	0.059	5.6
U166	1,4–Naphthoquinone	1,4–Naphthoquinone	130–15–4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U167	1–Naphthlyamine	1–Naphthlyamine	134–32–7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U168	2–Naphthlyamine	2–Naphthlyamine	91–59–8	0.52	CMBST
U169	Nitrobenzene	Nitrobenzene	98–95–3	0.068	14
U170	p–Nitrophenol	p–Nitrophenol	100–02–7	0.12	29
U171	2–Nitropropane	2–Nitropropane	79–46–9	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U172	N–Nitrosodi–n–butylamine	N–Nitrosodi–n–butylamine	924–16–3	0.40	17
U173	N–Nitrosodiethanolamine	N–Nitrosodiethano–lamine	1116–54–7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U174	N–Nitrosodiethylamine	N–Nitrosodiethylamine	55–18–5	0.40	28
U176	N–Nitroso–N–ethylurea	N–Nitroso–N–ethylurea	759–73–9	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U177	N–Nitroso–N–methylurea	N–Nitroso–N–methylurea	684–93–5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U178	N–Nitroso–N–methylurethane	N–Nitroso–N–methylurethane	615–53–2	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U179	N–Nitrosopiperidine	N–Nitrosopiperidine	100–75–4	0.013	35
U180	N–Nitrosopyrrolidine	N–Nitrosopyrrolidine	930–55–2	0.013	35
U181	5–Nitro–o–toluidine	5–Nitro–o–toluidine	99–55–8	0.32	28
U182	Paraldehyde	Paraldehyde	123–63–7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U183	Pentachlorobenzene	Pentachlorobenzene	608–93–5	0.055	10
U184	Pentachloroethane	Pentachloroethane	76–01–7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
		Pentachloroethane; alternate[6] standards for both wastewaters and nonwastewaters	76–01–7	0.055	6.0
U185	Pentachloronitrobenzene	Pentachloronitro–benzene	82–68–8	0.055	4.8
U186	1,3–Pentadiene	1,3–Pentadiene	504–60–9	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U187	Phenacetin	Phenacetin	62–44–2	0.081	16
U188	Phenol	Phenol	108–95–2	0.039	6.2
U189	Phosphorus sulfide	Phosphorus sulfide	1314–80–3	CHOXD; CHRED; or CMBST	CHOXD; CHRED; or CMBST
U190	Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	100–21–0	0.055	28
		Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	85–44–9	0.055	28

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
U191	2–Picoline	2–Picoline	109–06–8	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U192	Pronamide	Pronamide	23950–58–5	0.093	1.5
U193	1,3–Propane sultone	1,3–Propane sultone	1120–71–4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U194	n–Propylamine	n–Propylamine	107–10–8	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U196	Pyridine	Pyridine	110–86–1	0.014	16
U197	p–Benzoquinone	p–Benzoquinone	106–51–4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U200	Reserpine	Reserpine	50–55–5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U201	Resorcinol	Resorcinol	108–46–3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U202	Saccharin and salts	Saccharin	81–07–2	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U203	Safrole	Safrole	94–59–7	0.081	22
U204	Selenium dioxide	Selenium	7782–49–2	0.82	5.7 mg/l TCLP
U205	Selenium sulfide	Selenium	7782–49–2	0.82	5.7 mg/l TCLP
U206	Streptozotocin	Streptozotocin	18883–66–4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U207	1,2,4,5–Tetrachlorobenzene	1,2,4,5–Tetrachloro–benzene	95–94–3	0.055	14
U208	1,1,1,2–Tetrachloroethane	1,1,1,2–Tetrachloro–ethane	630–20–6	0.057	6.0
U209	1,1,2,2–Tetrachloroethane	1,1,2,2–Tetrachloro–ethane	79–34–5	0.057	6.0
U210	Tetrachloroethylene	Tetrachloroethylene	127–18–4	0.056	6.0
U211	Carbon tetrachloride	Carbon tetrachloride	56–23–5	0.057	6.0
U213	Tetrahydrofuran	Tetrahydrofuran	109–99–9	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U214	Thallium (I) acetate	Thallium (measured in wastewaters only)	7440–28–0	1.4	RTHRM; or STABL
U215	Thallium (I) carbonate	Thallium (measured in wastewaters only)	7440–28–0	1.4	RTHRM; or STABL
U216	Thallium (I) chloride	Thallium (measured in wastewaters only)	7440–28–0	1.4	RTHRM; or STABL
U217	Thallium (I) nitrate	Thallium (measured in wastewaters only)	7440–28–0	1.4	RTHRM; or STABL
U218	Thioacetamide	Thioacetamide	62–55–5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U219	Thiourea	Thiourea	62–56–6	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U220	Toluene	Toluene	108–88–3	0.080	10
U221	Toluenediamine	Toluenediamine	25376–45–8	CARBN; or CMBST	CMBST
U222	o–Toluidine hydrochloride	o–Toluidine hydrochloride	636–21–5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U223	Toluene diisocyanate	Toluene diisocyanate	26471–62–5	CARBN; or CMBST	CMBST
U225	Bromoform (Tribromomethane)	Bromoform (Tribromomethane)	75–25–2	0.63	15
U226	1,1,1–Trichloroethane	1,1,1–Trichloroethane	71–55–6	0.054	6.0
U227	1,1,2–Trichloroethane	1,1,2–Trichloroethane	79–00–5	0.054	6.0
U228	Trichloroethylene	Trichloroethylene	79–01–6	0.054	6.0
U234	1,3,5–Trinitrobenzene	1,3,5–Trinitrobenzene	99–35–4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U235	tris–(2,3–Dibromopropyl)–phosphate	tris–(2,3–Dibromo–propyl)–phosphate	126–72–7	0.11	0.10
U236	Trypan Blue	Trypan Blue	72–57–1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U237	Uracil mustard	Uracil mustard	66–75–1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code[4]
U238	Urethane (Ethyl carbamate)	Urethane (Ethyl carbamate)	51–79–6	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U239	Xylenes	Xylenes–mixed isomers (sum of o–, m–, and p–xylene concentrations)	1330–20–7	0.32	30
U240	2,4–D (2,4–Dichlorophen–oxyacetic acid)	2,4–D (2,4–Dichloro–phenoxyacetic acid)	94–75–7	0.72	10
	2,4–D (2,4–Dichloro–phenoxyacetic acid) salts and esters		NA	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U243	Hexachloropropylene	Hexachloropropylene	1888–71–7	0.035	30
U244	Thiram	Thiram	137–26–8	(WETOX or CHOXD) fb fb CARBN; or CMBST	CMBST
U246	Cyanogen bromide	Cyanogen bromide	506–68–3	CHOXD; WETOX; or CMBST	CHOXD; WETOX; or CMBST
U247	Methoxychlor	Methoxychlor	72–43–5	0.25	0.18
U248	Warfarin, & salts, when present at concentrations of 0.3% or less	Warfarin	81–81–2	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U249	Zinc phosphide, Zn_3P_2, when present at concentrations of 10% or less	Zinc Phosphide	1314–84–7	CHOXD; CHRED; or CMBST	CHOXD; CHRED; or CMBST
U271	Benomyl	Benomyl	17804–35–2	0.056	1.4
U278	Bendiocarb	Bendiocarb	22781–23–3	0.056	1.4
U279	Carbaryl	Carbaryl	63–25–2	0.006	0.14
U280	Barban	Barban	101–27–9	0.056	1.4
U328	o–Toluidine	o–Toluidine	95–53–4	CMBST; or CHOXD fb (BIODG or CARBN); or BIODG fb CARBN.	CMBST
U353	p–Toluidine	p–Toluidine	106–49–0	CMBST; or CHOXD fb (BIODG or CARBN); or BIODG fb CARBN	CMBST
U359	2–Ethoxyethanol	2–Ethoxyethanol	110–80–5	CMBST; or CHOXD fb (BIODG or CARBN); or BIODG fb CARBN	CMBST
U364	Bendiocarb phenol[10]	Bendiocarb phenol	22961–82–6	0.056	1.4
U367	Carbofuran phenol	Carbofuran phenol	1563–38–8	0.056	1.4
U372	Carbendazim	Carbendazim	10605–21–7	0.056	1.4
U373	Propham	Propham	122–42–9	0.056	1.4
U387	Prosulfocarb	Prosulfocarb	52888–80–9	0.042	1.4
U389	Triallate	Triallate	2303–17–5	0.042	1.4
U394	A2213[10]	A2213	30558–43–1	0.042	1.4
U395	Diethylene glycol, dicarbamate[10]	Diethylene glycol, dicarbamate	5952–26–1	0.056	1.4
U404	Triethylamine	Triethylamine	121–44–8	0.081	1.5
U409	Thiophanate–methyl	Thiophanate–methyl	23564–05–8	0.056	1.4
U410	Triodicarb	Triodicarb	59669–26–0	0.019	1.4
U411	Propoxur	Propoxur	114–26–1	0.056	1.4

(1) The waste descriptions provided in this table do not replace waste descriptions in Title 22, CCR, chapter 11. Descriptions of Treatment/Regulatory Subcategories are provided, as needed, to distinguish between applicability of different standards.

(2) CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.

(3) Concentration standards for wastewaters are expressed in mg/l are based on analysis of composite samples.

(4) All treatment standards expressed as a Technology Code or combination of Technology Codes are explained in detail in section 66268.42 Table 1 — Technology Codes and Descriptions of Technology–Based Standards.

(5) Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of Title 22, CCR, chapter 14, article 15 or chapter 15, article 15, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in section 66268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

(6) Where an alternate treatment standard or set of alternate standards has been indicated, a facility may comply with this alternate standard, but only for the Treatment/Regulatory Subcategory or physical form (i.e., wastewater and/or nonwastewater) specified for that alternate standard.

(7) Both Cyanides (Total) and Cyanides (Amenable) for nonwastewaters are to be analyzed using Method 9010 or 9012, found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," USEPA Publication SW–846, as incorporated by reference in section 66260.11, with a sample size of 10 grams and a distillation time of one hour and 15 minutes.

(8) These wastes, when rendered nonhazardous and then subsequently managed in federal CWA, or federal CWA–equivalent systems, are not subject to treatment standards. (See section 66268.1(c)(3) and (4)).

(9) These wastes, when rendered nonhazardous and then subsequently injected in a Class I federal Safe Drinking Water Act (SDWA) well, are not subject to treatment standards.

(10) The treatment standard for this waste may be satisfied by either meeting the constituent concentrations in this table or by treating the waste by the specified technologies: combustion, as defined by the technology code CMBST in section 66268.42 Table 1 of this chapter, for nonwastewaters; and, biodegradation as defined by the technology code BIODG, carbon adsorption as defined by the technology code CARBN, chemical oxidation as defined by the technology code CHOXD, or combustion as defined as technology code CMBST in section 66268.42 Table 1 of this chapter, for wastewaters.

(11) For these wastes, the definition of CMBST is limited to: (1) combustion units operating under CCR, Title 22, chapter 16, (2) combustion units permitted under CCR, Title 22, chapter 14, article 15, or (3) combustion units operating under CCR, Title 22, chapter 15, article 15, which have obtained a determination of equivalent treatment under section 66268.42(b).

(12) Disposal of K175 wastes that have complied with all applicable section 66268.40 treatment standards must also be macroencapsulated in accordance with 66268.45 Table 1 unless the waste is placed in:

(1) A RCRA Subtitle C monofill containing only K175 wastes that meet all applicable section 66268.40 treatment standards; or

(2) A dedicated RCRA Subtitle C landfill cell in which all other wastes being co–disposed are at pH≤6.0.

NOTE: NA means not applicable.

§ 66268.41. Treatment Standards Expressed As Concentrations in Waste Extract.

For the requirements previously found in this section and for treatment standards in Table CCWE—Constituent Concentrations in Waste Extracts, refer to section 66268.40 of this chapter.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5, 25179.6 and 58012, Health and Safety Code; 40 CFR Section 268.41.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Editorial correction of HISTORY 1. and amendment of subsection (a) refiled, including further amendments, new section refiled 9–3–91 as an emergency; operative 9–3–91 (Register 92, No. 17). A Certificate of Compliance must be transmitted to OAL 1–2–92 or emergency language will be repealed by operation of law on the following day.
3. Emergency order of 5–6–91 amending subsection (a) filed 12–26–91 as an emergency; operative 12–26–91 (Register 92, No. 17). A Certificate of Compliance must be transmitted to OAL 4–24–92 or emergency language will be repealed by operation of law on the following day.
4. Amendment refiled 4–20–92 as an emergency; operative 4–20–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 8–18–92 or emergency language will be repealed by operation of law on the following day.
5. Repealer of emergency amendments and reinstatement of prior text filed 11–2–92 by operation of Government Code section 11346.1(f) (Register 92, No. 45).
6. Repealer and new text, amendment of NOTE, and repealer of Table CCWE filed 10–24–94 as an emergency; operative 10–24–94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–20–95 or emergency language will be repealed by operation of law on the following day.
7. Repealer and new text, amendment of NOTE, and repealer of Table CCWE refiled 2–21–95 as an emergency; operative 2–21–95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–21–95 or emergency language will be repealed by operation of law on the following day.
8. Repealer and new text, amendment of NOTE and repealer of Table CCWE refiled 6–19–95 as an emergency; operative 6–19–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–95 or emergency language will be repealed by operation of law on the following day.
9. Repealer and new text, amendment of NOTE and repealer of Table CCWE refiled 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 10–24–94 order transmitted to OAL 12–15–95 and filed 1–31–96 (Register 96, No. 5).
11. Change without regulatory effect repealing subsection (a) designator filed 8–15–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 33).

§ 66268.42. Treatment Standards Expressed As Specified Technologies.

NOTE: For the requirements previously found in this section in Table 2 — TECHNOLOGY–BASED STANDARDS BY RCRA WASTE CODE, and Table 3 — TECHNOLOGY–BASED STANDARDS FOR SPECIFIC RADIOACTIVE HAZARDOUS MIXED WASTE, refer to section 66268.40 of this chapter.

(a) The following wastes in the table in section 66268.40 "Treatment Standards for Hazardous Wastes," for which standards are expressed as a treatment method rather than a concentration level, shall be treated using the technology or technologies specified in the table entitled "Technology Codes and Description of Technology–Based Standards" in this section.

(1) Liquid hazardous wastes containing polychlorinated biphenyls (PCBs) at concentrations greater than or equal to 50 ppm but less than 500 ppm shall be incinerated in accordance with the technical requirements of 40 CFR 761.70 or burned in high efficiency boilers in accordance with the technical requirements of 40 CFR 761.60. Liquid hazardous wastes containing polychlorinated biphenyls (PCBs) at concentrations greater than or equal to 500 ppm shall be incinerated in accordance with the technical requirements of 40 CFR 761.70. Thermal treatment under this section shall also be in compliance with applicable regulations in chapters 14, 15, and 16.

(2) Nonliquid hazardous wastes containing halogenated organic compounds (HOCs) in total concentration greater than or equal to 1,000 mg/kg and liquid HOC–containing wastes that are prohibited under section 66268.32(e)(1) of this chapter shall be incinerated in accordance with the requirements of chapter 14, article 15 or chapter 15, article 15. These treatment standards do not apply where the waste is subject to a chapter 18, article 4 treatment standard for a specific HOC (such as a hazardous waste chlorinated solvent for which a treatment standard is established under section 66268.41(a)).

(b) Any person may submit an application to the Department demonstrating that an alternative treatment method will result in a level of performance substantially equivalent or greater than that achievable using the method or methods specified in paragraphs (a), (c) and (d) of this section for wastes or hazardous debris specified in Table 1 of section 66268.45. The applicant shall demonstrate that the USEPA Administrator has approved the use of the alternative treatment method pursuant to 40 CFR 268.42(b). The approval shall demonstrate to the satisfaction of the Department that the method is in compliance with all federal, state and local requirements and is protective of human health and the environment. On the basis of such information and any other available information, the Department may approve the use of the alternative treatment method if the Department finds that the alternative treatment method will result in a level of performance substantially equivalent or greater than that achievable using the methods specified in subsections (a), (c) and (d) of this section for wastes or hazardous debris specified in Table 1 of section 66268.45. Any approval shall be stated in writing and may contain such provisions and conditions as the Department deems appropriate. The person to whom such approval is issued shall comply with all limitations contained in such a determination.

(c) As an alternative to the otherwise applicable article 4 treatment standards, lab packs are eligible for land disposal provided the following requirements are met:

(1) the lab packs comply with the applicable provisions of section 66264.316 and section 66265.316;

(2) the lab pack does not contain any of the wastes listed in Appendix IV to chapter 18;

(3) the lab packs are incinerated in accordance with the requirements of article 15, chapter 14 or article 15, chapter 15 and;

(4) any incinerator residues from lab packs containing D004, D005, D006, D007, D008, D010, and D011 are treated in compliance with the applicable treatment standards specified for such wastes in article 4, chapter 18.

(d) Radioactive hazardous mixed wastes are subject to the treatment standards in section 66268.40. Where treatment standards are specified for radioactive mixed wastes in the Table of Treatment Standards, those treatment standards will govern. Where there is no specific treatment standard for radioactive mixed waste, the treatment standard for the hazardous waste (as designated by EPA waste code) applies. Hazardous debris containing radioactive waste is subject to the treatment standards specified in section 66268.45.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5, 25179.6 and 58012, Health and Safety Code; 40 CFR Section 268.42.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of section, NOTE and Table 1 and repealer of Tables 2 and 3 filed 10–24–94 as an emergency; operative 10–24–94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–20–95 or emergency language will be repealed by operation of law on the following day.
3. Amendment of section, NOTE and Table 1 and repealer of Tables 2 and 3 refiled 2–21–95 as an emergency; operative 2–21–95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–21–95 or emergency language will be repealed by operation of law on the following day.
4. Amendment of section, NOTE and Table 1 and repealer of Tables 2 and 3 refiled 6–19–95 as an emergency; operative 6–19–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–95 or emergency language will be repealed by operation of law on the following day.
5. Amendment of section, NOTE and Table 1 and repealer of Tables 2 and 3 refiled 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 10–24–94 order including new subsection (a)(3) and amendment of subsection (b) and Table 1 transmitted to OAL 12–15–95 and filed 1–31–96 (Register 96, No. 5).
7. Change without regulatory effect repealing and adopting new subsection (a), repealing subsection (a)(3), and amending table filed 6–4–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 23).
8. Change without regulatory effect amending Table 1 filed 2–26–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 9).

Table 1.—Technology Codes and Description of Technology–Based Standards

Technology code	Description of technology–based standard
ADGAS	Venting of compressed gases into an absorbing or reacting media (i.e., solid or liquid) — venting can be accomplished through physical release utilizing valves/piping; physical penetration of the container; and/or penetration through detonation.
AMLGM	Amalgamation of liquid, elemental mercury contaminated with radioactive materials utilizing inorganic reagents such as copper, zinc, nickel, gold, and sulfur that result in a nonliquid, semi–solid amalgam and thereby reducing potential emissions of elemental mercury vapors to the air.
BIODG	Biodegradation of organics or non–metallic inorganics (i.e., degradable inorganics that contain the elements of phosphorus, nitrogen, and sulfur) in units operated under either aerobic or anaerobic conditions such that a surrogate compound or indicator parameter has been substantially reduced in concentration in the residuals (e.g., Total Organic Carbon can often be used as an indicator parameter for the biodegradation of many organic constituents that cannot be directly analyzed in wastewater residues).
CARBN	Carbon adsorption (granulated or powdered) of non–metallic inorganics, organo–metallics, and/or organic constituents, operated such that a surrogate compound or indicator parameter has not undergone breakthrough (e.g., Total Organic Carbon can often be used as an indicator parameter for the adsorption of many organic constituents that cannot be directly analyzed in wastewater residues). Breakthrough occurs when the carbon has become saturated with the constituent (or indicator parameter) and substantial change in adsorption rate associated with that constituent occurs.
CHOXD	Chemical or electrolytic oxidation utilizing the following oxidation reagents (or waste reagents) or combinations of reagents: (1) Hypochlorite (e.g. bleach); (2) chlorine; (3) chlorine dioxide; (4) Ozone or UV (ultraviolet light) assisted ozone; (5) peroxides; (6) persulfates; (7) perchlorates; (8) permanganates; and/or (9) other oxidizing reagents of equivalent efficiency, performed in units operated such that a surrogate compound or indicator parameter has been substantially reduced in concentration in the residuals (e.g., Total Organic Carbon can often be used as an indicator parameter for the oxidation of many organic constituents that cannot be directly analyzed in wastewater residues). Chemical oxidation specifically includes what is commonly referred to as alkaline chlorination.
CHRED	Chemical reduction utilizing the following reducing reagents (or waste reagents) or combinations of reagents: (1) Sulfur dioxide; (2) sodium, potassium or alkali salts or sulfites, bisulfites, metabisulfites and polyethylene glycols (e.g. NaPEG and KPEG); (3) sodium hydrosulfide; (4) ferrous salts; and/or (5) other reducing reagents of equivalent efficiency, performed in units operated such that a surrogate compound or indicator parameter has been substantially reduced in concentration in the residuals (e.g., Total Organic Halogens can often be used as an indicator parameter for the reduction of many halogenated organic constituents that cannot be directly analyzed in wastewater residues). Chemical reduction is commonly used for the reduction of hexavalent chromium to the trivalent state.
CMBST	High temperature organic destruction technologies, such as combustion in incinerators, boilers, or industrial furnaces operated in accordance with the applicable requirements of CCR, Title 22, division 4.5, chapter 14, article 14 or chapter 15, article 15 or chapter 16, article 8, and in other units operated in accordance with applicable technical operating requirements; and certain non–combustive technologies, such as the Catalytic Extraction Process.
DEACT	Deactivation to remove the hazardous characteristics of a waste due to its ignitability, corrosivity, and/or reactivity.
FSUBS	Fuel substitution in units operated in accordance with applicable technical operating requirements.
HLVIT	Vitrification of high level mixed radioactive wastes in units in compliance with all applicable radioactive protection requirements under control of the Nuclear Regulatory Commission.
IMERC	Incineration of wastes containing organics and mercury in units operated in accordance with the technical operating requirements of 40 CFR part 264, subpart O and 40 CFR part 265, subpart O. All wastewater and nonwastewater residues derived from this process shall then comply with the corrresponding treatment standards per waste code with consideration of any applicable subcategories (e.g., High or Low Mercury Subcategories).
INCIN	Incineration in units operated in accordance with the technical operating requirements of 40 CFR part 264, subpart O and 40 CFR part 265, subpart O.
LLEXT	Liquid–liquid extraction (often referred to as solvent extraction) of organics from liquid wastes into an immiscible solvent for which the hazardous constituents have a greater solvent affinity, resulting in an extract high in organics that shall undergo either incineration, reuse as a fuel, or other recovery/reuse and a raffinate (extracted liquid waste) proportionately low in organics that shall undergo further treatment as specified in the standard.
MACRO	Macroencapsulation with surface coating materials such as polymeric organics (e.g., resins and plastics) or with a jacket of inert inorganic materials to substantially reduce surface exposure to potential leaching media. Macroencapsulation specifically does not include any material that would be classified as a tank or container according to 40 CFR 260.10.
NEUTR	Neutralization with the following reagents (or waste reagents) or combinations of reagents: (1) Acids; (2) bases; or (3) water (including wastewaters) resulting in a pH greater than 2 but less than 12.5 as measured in the aqueous residuals.
NLDBR	No land disposal based on recycling.
POLYM	Formation of complex high–molecular weight solids through polymerization of monomers in high–TOC D001 non–wastewaters which are chemical components in the manufacture of plastics.
PRECP	Chemical precipitation of metals and other inorganics as insoluble precipitates of oxides, hydroxides, carbonates, sulfides, sulfates, chlorides, fluorides, or phosphates. The following reagents (or waste reagents) are typically used alone or in combination: (1) Lime (i.e., containing oxides and/or hydroxides of calcium and/or magnesium; (2) caustic (i.e., sodium and/or potassium hydroxides; (3) soda ash (i.e., sodium carbonate); (4) sodium sulfide; (5) ferric sulfate or ferric chloride; (6) alum; or (7) sodium sulfate. Additional flocculating, coagulation, or similar reagents/processes that enhance sludge dewatering characteristics are not precluded from use.
RBERY	Thermal recovery of Beryllium.
RCGAS	Recovery/reuse of compressed gases including techniques such as reprocessing of the gases for reuse/resale; filtering/adsorption of impurities; remixing for direct reuse or resale; and use of the gas as a fuel source.
RCORR	Recovery of acids or bases utilizing one or more of the following recovery technologies: (1) Distillation (i.e., thermal concentration); (2) ion exchange; (3) resin or solid adsorption; (4) reverse osmosis; and /or (5) incineration for the recovery of acid — Note: this does not preclude the use of other physical phase separation or concentration techniques such as decantation, filtration (including ultrafiltration), and centrifugation, when used in conjunction with the above listed recovery technologies.
RLEAD	Thermal recovery of lead in secondary lead smelters.
RMERC	Retorting or roasting in a thermal processing unit capable of volatilizing mercury and subsequently condensing the volatilized mercury for recovery. The retorting or roasting unit (or facility) must be subject to one or more of the following: (a) a National Emissions Standard for Hazardous Air Pollutants (NESHAP) for mercury; (b) a Best Available Control Technology (BACT) or a Lowest Achievable Emission Rate (LAER) standard for mercury imposed pursuant to a Prevention of Significant Deterioration (PSD) permit; or (c) a state permit that establishes emission limitations (within meaning of section 302 of the Clean Air Act) for mercury. All wastewater and nonwastewater residues derived from this process shall then comply with the corresponding treatment standards per waste code with consideration of any applicable subcategories (e.g., High or Low Mercury Subcategories).

Table 1.—Technology Codes and Description of Technology–Based Standards (cont'd)

Technology code	Description of technology–based standard
RMETL	Recovery of metals or inorganics utilizing one or more of the following direct physical/removal technologies: (1) Ion exchange; (2) resin or solid (i.e., zeolites) adsorption; (3) reverse osmosis; (4) chelation/solvent extraction; (5) freeze crystallization; (6) ultrafiltration; and/or (7) simple precipitation (i.e., crystalization) — Note: this does not preclude the use of other physical phase separation or concentration techniques such as decantation, filtration (including ultrafiltration), and centrifugation, when used in conjunction with the above listed recovery technologies.
RORGS	Recovery of organics utilizing one or more of the following technologies: (1) Distillation; (2) thin film evaporation; (3) steam stripping; (4) carbon adsorption; (5) critical fluid extraction; (6) liquid–liquid extraction; (7) precipitation/crystallization (including freeze crystallization); or (8) chemical phase separation techniques (i.e., addition of acids, bases, demulsifiers, or similar chemicals); Note: This does not preclude the use of other physical phase separation techniques such as decantation, filtration (including ultrafiltration), and centrifugation, when used in conjunction with the above listed recovery technologies.
RTHRM	Thermal recovery of metals or inorganics from nonwastewaters in units defined in 40 CFR 260.10, paragraphs (1), (6), (7), (11), and (12), under the definition of "industrial furnaces".
RZINC	Resmelting in high temperature metal recovery units for the purpose of recovery of zinc.
STABL	Stabilization with the following reagents (or waste reagents) or combinations of reagents: (1) Portland cement; or (2) lime/pozzolans (e.g., fly ash and cement kiln dust) — this does not preclude the addition of reagents (e.g., iron salts, silicates, and clays) designed to enhance the set/cure time and/or compressive strength, or to overall reduce the leachability of the metal or inorganic.
SSTRP	Steam stripping of organics from liquid wastes utilizing direct application of steam to the wastes operated such that liquid and vapor flow rates, as well as, temperature and pressure ranges have been optimized, monitored, and maintained. These operating parameters are dependent upon the design parameters of the unit such as, the number of separation stages and the internal column design. Thus, resulting in a condensed extract high in organics that shall undergo either incineration, reuse as a fuel, or other recovery/reuse and an extracted wastewater that shall undergo further treatment as specified in the standard.
WETOX	Wet air oxidation performed in units operated such that a surrogate compound or indicator parameter has been substantially reduced in concentration in the residuals (e.g., Total Organic Carbon can often be used as an indicator parameter for the oxidation of many organic constituents that cannot be directly analyzed in wastewater residues).
WTRRX	Controlled reaction with water for highly reactive inorganic or organic chemicals with precautionary controls for protection of workers from potential violent reactions as well as precautionary controls for potential emissions of toxic/ignitable levels of gases released during the reaction.

Note 1: When a combination of these technologies (i.e., a treatment train) is specified as a single treatment standard, the order of application is specified in Section 66268.42, Table 2 by indicating the five letter technology code that must be applied first, then the designation "fb." (an abbreviation for "followed by"), then the five letter technology code for the technology that must be applied next, and so on.

Note 2: When more than one technology (or treatment train) are specified as alternative treatment standards, the five letter technology codes (or the treatment trains) are separated by a semicolon (;) with the last technology preceded by the word "OR". This indicates that any one of these BDAT technologies or treatment trains can be used for compliance with the standard.

[The next page is 758.179.]

§ 66268.43. Treatment Standards Expressed As Waste Concentrations.

For the requirements previously found in this section and for treatment standards in Table CCW — Constituent Concentrations in Wastes, refer to section 66268.40.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5, 25179.6 and 58012, Health and Safety Code; 40 CFR Section 268.43.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Repealer and new text, amendment of NOTE and repealer of tables filed 10–24–94 as an emergency; operative 10–24–94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–20–95 or emergency language will be repealed by operation of law on the following day.
3. Repealer and new text, amendment of NOTE and repealer of tables refiled 2–21–95 as an emergency; operative 2–21–95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–21–95 or emergency language will be repealed by operation of law on the following day.
4. Repealer and new text, amendment of NOTE and repealer of tables refiled 6–19–95 as an emergency; operative 6–19–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–95 or emergency language will be repealed by operation of law on the following day.
5. Repealer and new text, amendment of NOTE and repealer of Tables refiled 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 10–24–94 order transmitted to OAL 12–15–95 and filed 1–31–96 (Register 96, No. 5).

§ 66268.44. Variance from a Treatment Standard.

(a) Based on a petition filed by a generator or treater of RCRA hazardous waste, the USEPA Administrator may approve a variance from an applicable treatment standard if:

(1) It is not physically possible to treat the waste to the level specified in the treatment standard, or by the method specified as the treatment standard. To show that this is the case, the petitioner shall demonstrate that because the physical or chemical properties of the waste differ significantly from waste analyzed in developing the treatment standard, the waste cannot be treated to the specified level or by the specified method; or

(2) It is inappropriate to require the waste to be treated to the level specified in the treatment standard or by the method specified as the treatment standard, even though such treatment is technically possible. To show that this is the case, the petitioner shall either demonstrate that:

(A) Treatment to the specified level or by the specified method is technically inappropriate (for example, resulting in combustion of large amounts of mildly contaminated environmental media); or

(B) For remediation waste only, treatment to the specified level or by the specified method is environmentally inappropriate because it would likely discourage aggressive remediation.

(b) For hazardous waste subject to RCRA land disposal restrictions set forth in article 4 of this chapter, the applicant shall petition the U.S. EPA Administrator for a variance from a treatment standard pursuant to 40 CFR section 268.44. Within 30 days after the applicant has received from the U.S. EPA Administrator an approved variance from a treatment standard, the applicant shall submit to the Department a copy of the approved variance.

(c) For hazardous waste listed in section 66268.29 of this chapter subject to non–RCRA land disposal restrictions set forth in article 11 of this chapter, the applicant shall petition the Department for a variance from a treatment standard pursuant to this section and section 25179.8, Health and Safety Code. Each petitioner shall demonstrate that all the following conditions apply to the waste.

(1) The hazardous waste cannot be recycled, reused, or treated to meet the standards adopted by the department pursuant to section 25179.6 California Health and Safety Code at a commercial offsite hazardous waste facility in the state.

(2) Recycling or treatment alternatives cannot be provided at the site of generation.

(3) Measures have been, or will be, taken to reduce the generation of the hazardous waste.

(4) Land disposal of the hazardous waste is in compliance with all existing statutes and regulations.

(d) A generator, treatment facility, or disposal facility that is managing a waste covered by a variance from the treatment standards shall comply with the waste analysis requirements for restricted wastes found under section 66268.7.

(e) During the petition review process, the applicant is required to comply with all restrictions on land disposal under this chapter once the effective date for the waste has been reached.

(f) Based on a petition filed by a generator or treater of RCRA hazardous waste, the Department may approve a site–specific variance from an applicable treatment standard pursuant to this section and Health and Safety Code section 25179.8 if:

(1) It is not physically possible to treat the waste to the level specified in the treatment standard, or by the method specified as the treatment standard. To show that this is the case, the petitioner shall demonstrate that because the physical or chemical properties of the waste differ significantly from waste analyzed in developing the treatment standard, the waste cannot be treated to the specified level or by the specified method; or

(2) It is inappropriate to require the waste to be treated to the level specified in the treatment standard or by the method specified as the treatment standard, even though such treatment is technically possible. To show that this is the case, the petitioner shall either demonstrate that:

(A) Treatment to the specified level or by the specified method is technically inappropriate (for example, resulting in combustion of large amounts of mildly contaminated environmental media where the treatment standard is not based on combustion of such media); or

(B) For remediation waste only, treatment to the specified level or by the specified method is environmentally inappropriate because it would likely discourage aggressive remediation.

(3) For contaminated soil only, treatment to the level or by the method specified in the soil treatment standards would result in concentrations of hazardous constituents that are below (i.e., lower than) the concentrations necessary to minimize short– and long–term threats to human health and the environment. Treatment variances approved under this subsection shall:

(A) At a minimum, impose alternative land disposal restriction treatment standards that, using a reasonable maximum exposure scenario:

1. for carcinogens, achieve constituent concentrations that result in the total excess risk to an individual exposed over a lifetime generally falling within a range from 10^{-4} to 10^{-6}; and

2. for constituents with non–carcinogenic effects, achieve constituent concentrations that an individual could be exposed to on a daily basis without appreciable risk of deleterious effect during a lifetime.

(B) not consider post–land–disposal controls.

(4) For contaminated soil only, treatment to the level or by the method specified in the soil treatment standards would result in concentrations of hazardous constituents that are below (i.e., lower than) natural background concentrations at the site where the contaminated soil will land disposed.

(5) Public notice and a reasonable opportunity for public comment shall be provided before granting or denying a petition.

(g) Each petition shall be submitted to the Department and shall include:

(1) The petitioner's name and address;

(2) A statement of the petitioner's interest in the proposed action;

(3) A description of the proposed action, including (where appropriate) suggested regulatory language; and

(4) A statement of the need and justification for the proposed action, including any supporting tests, studies, or other information.

(h) For hazardous waste listed in section 66268.29 of this chapter subject to non–RCRA land disposal restrictions set forth in article 11 of this chapter, the applicant shall petition the Department for a site–specific variance from a treatment standard pursuant to this section and section 25179.8, Health and Safety Code. Each petitioner for a site–specific vari-

ance shall demonstrate that all the following conditions apply to the waste.

(1) The hazardous waste cannot be recycled, reused, or treated to meet the standards adopted by the department pursuant to section 25179.6 California Health and Safety Code at a commercial offsite hazardous waste facility in the state.

(2) Recycling or treatment alternatives cannot be provided at the site of generation.

(3) Measures have been, or will be, taken to reduce the generation of the hazardous waste.

(4) Land disposal of the hazardous waste is in compliance with all existing statutes and regulations.

(i) A generator, treatment facility, or disposal facility that is managing a waste covered by a site-specific variance from a treatment standard shall comply with the waste analysis requirements for restricted wastes found under section 66268.7.

(j) During the application review process, the applicant for a site-specific variance shall comply with all restrictions on land disposal under this chapter once the effective date for the waste has been reached.

(k) After receiving a petition pursuant to subsections (c), (f), and (h) for variance from a treatment standard, the Department may request any additional information or samples which the Department may require to evaluate the petition. Additional copies of the petition may be requested as needed. Within 45 days of the receipt of the petition, the Department shall inform the petitioner, in writing, that the petition is complete and accepted for filing, or that the petition is deficient and what specific information is required.

(*l*) The Department shall make a decision on a petition pursuant to subsections (c), (f), and (h) for variance from a treatment standard within 120 days of the filing of a completed petition.

(m) For all variances, the petitioner shall also demonstrate that compliance with any given treatment variance is sufficient to minimize threats to human health and the environment posed by land disposal of the waste. In evaluating this demonstration, the Department may take into account whether a treatment variance should be approved if the subject waste is to be used in a manner constituting disposal.

NOTE: Authority cited: Sections 25150, 25159, 25179.5, 25179.6 and 58012, Health and Safety Code and Section 15376, Government Code. Reference: Sections 25150, 25159, 25159.5 and 25179.8, Health and Safety Code; Section 15376, Government Code; 40 CFR Section 268.44.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).
2. Amendment of subsections (a)-(c) and (f)-(h) filed 7-23-97; operative 8-22-97 (Register 97, No. 30).
3. Change without regulatory effect amending section and NOTE filed 6-4-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 23).

§ 66268.45. Treatment Standards for Hazardous Debris.

(a) *Treatment standards.* Hazardous debris shall be treated prior to land disposal as follows unless the Department determines under section 66261.3(e)(2) of this division that the debris is no longer contaminated with hazardous waste or the debris is treated to the waste-specific treatment standard provided in this article for the waste contaminating the debris;

(1) *General.* Hazardous debris shall be treated for each "contaminant subject to treatment" defined by paragraph (b) of this section using the technology or technologies identified in Table 1 of this section.

(2) *Characteristic debris.* Hazardous debris that exhibits the characteristic of ignitability, corrosivity, or reactivity identified under sections 66261.21, 66261.22, and 66261.23, respectively, shall be deactivated by treatment using one of the technologies identified in Table 1 of this section.

(3) *Mixtures of debris types.* The treatment standards of Table 1 in this section shall be achieved for each type of debris contained in a mixture of debris types. If an immobilization technology is used in a treatment train, it shall be the last treatment technology used.

(4) *Mixtures of contaminant types.* Debris that is contaminated with two or more contaminants subject to treatment identified under paragraph (b) of this section shall be treated for each contaminant using one or more treatment technologies identified in Table 1 of this section. If an immobilization technology is used in a treatment train, it shall be the last treatment technology used.

(5) *Waste PCBs.* Hazardous debris that is also a waste PCB under 40 CFR part 761 is subject to the requirements of either 40 CFR part 761 or the requirements of this section, whichever are more stringent.

(b) *Contaminants subject to treatment.* Hazardous debris shall be treated for each "contaminant subject to treatment." The contaminants subject to treatment shall be determined as follows:

(1) *Toxicity characteristic debris.* The contaminants subject to treatment for debris that exhibits the Toxicity Characteristic (TC) by section 66261.24(a)(1) are those EP constituents for which the debris exhibits the TC toxicity characteristic.

(2) *Debris contaminated with listed waste.* The contaminants subject to treatment for debris that is contaminated with a prohibited listed hazardous waste are those constituents or wastes for which treatment standards are established for the waste under section 66268.40.

(3) *Cyanide reactive debris.* Hazardous debris that is reactive because of cyanide shall be treated for cyanide.

(c) *Conditioned exclusion of treated debris.* Hazardous debris that has been treated using one of the specified extraction or destruction technologies in Table 1 of this section and that does not exhibit a characteristic of hazardous waste as identified in article 3 of chapter 11 of this division after treatment is not a hazardous waste and need not be managed in a hazardous waste facility. Hazardous debris contaminated with a listed waste that is treated by an immobilization technology specified in Table 1 is a hazardous waste and shall be managed in a hazardous waste facility.

(d) *Treatment residuals* – (1) *General Requirements.* Except as provided by paragraphs (d)(2) and (d)(4) of this section:

(A) Residue from the treatment of hazardous debris shall be separated from the treated debris using simple physical or mechanical means; and

(B) Residue from the treatment of hazardous debris is subject to the waste-specific treatment standards provided by article 4 of this chapter for the waste contaminating the debris.

(2) *Nontoxic debris.* Residue from the deactivation of ignitable, corrosive, or reactive characteristic hazardous debris (other than cyanide-reactive) that is not contaminated with a contaminant subject to treatment defined by subsection (b) of this section, shall be deactivated prior to land disposal and is not subject to the waste-specific treatment standards of article 4 of this chapter.

(3) *Cyanide-reactive debris.* Residue from the treatment of debris that is reactive because of cyanide shall meet the treatment standards for D003 in "Treatment Standards for Hazardous Wastes" under section 66268.40.

(4) *Ignitable nonwastewater residue.* Ignitable nonwastewater residue containing equal to or greater than 10% total organic carbon is subject to the technology specified in the treatment standard for D001: Ignitable Liquids.

(5) *Residue from spalling.* Layers of debris removed by spalling are hazardous debris that remain subject to the treatment standards of this section.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5 and 58012, Health and Safety Code; 40 CFR Section 268.45.

HISTORY

1. New section and Table 1 filed 10-24-94 as an emergency; operative 10-24-94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2-20-95 or emergency language will be repealed by operation of law on the following day.
2. New section and Table 1 refiled 2-21-95 as an emergency; operative 2-21-95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-21-95 or emergency language will be repealed by operation of law on the following day.
3. New section and Table 1 refiled 6-19-95 as an emergency; operative 6-19-95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL

by 10–17–95 or emergency language will be repealed by operation of law on the following day.

4. New section and Table 1 refiled 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 10–24–94 order including amendment of subsections (a)–(b)(1), (b)(3), (c), (d)(1), (d)(1)(A) and (d)(2)–(3) and amendment of Table 1 transmitted to OAL 12–15–95 and filed 1–31–96 (Register 96, No. 5).
6. Change without regulatory effect amending subsections (a), (c), (d)(1)(B) and (d)(2) and footnote 8 of Table 1 filed 8–15–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 33).
7. Change without regulatory effect amending subsections (a), (b)(1), (d)(3) and (d)(4) filed 6–4–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 23).
8. Change without regulatory effect amending subsection (c)(4) filed 6–7–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 24).

Table 1 — Alternative Treatment Standards for Hazardous Debris[1]

Technology description	*Performance and/or design and operating standard*	*Contaminant restrictions*[2]
A. Extraction Technologies 1. Physical Extraction a. *Abrasive Blasting:* Removal of contaminated debris surface layers using water and/or air pressure to propel a solid media (e.g., steel shot, aluminum oxide grit, plastic beads).	*Glass, Metal Plastic, Rubber:* Treatment to a clean debris surface.[3] *Brick, Cloth, Concrete, Paper, Pavement, Rock, Wood:* Removal of at least 0.6 cm of the surface layer; treatment to a clean debris surface.[3]	*All Debris:* None.
b. *Scarification, Grinding, and Planing:* Process utilizing striking piston heads, saws, or rotating grinding wheels such that contaminated debris surface layers are removed.	Same as above.	Same as above.
c. *Spalling:* Drilling or chipping holes at appropriate locations and depth in the contaminated debris surface and applying a tool which exerts a force on the sides of those holes such that the surface layer is removed. The surface layer removed remains hazardous debris subject to the debris treatment standards.	Same as above.	Same as above.
d. *Vibratory Finishing:* Process utilizing scrubbing media, flushing fluid, and oscillating energy such that hazardous contaminants or contaminated debris surface layers are removed.[4]	Same as above.	Same as above.
e. *High Pressure Steam and Water Sprays:* Application of water or steam sprays of sufficient temperature, pressure, residence time, agitation, surfactants, and detergents to remove hazardous contaminants from debris surfaces or to remove contaminated debris surface layers.	Same as above.	Same as above
2. Chemical Extraction a. *Water Washing and Spraying*: Application of water sprays or water baths of sufficient temperature, pressure, residence time, agitation, surfactants, acids, bases and detergents to remove hazardous contaminants from debris surfaces and surface pores or to remove contaminated debris surface layers.	*All Debris:* Treatment to a clean debris surface;[3] *Brick, Cloth, Concrete, Paper, Pavement, Rock, Wood:* Debris shall be no more than 1.2 cm (1/2 inch) in one dimension (i.e., thickness limit,[5] except that this thickness limit may be waived under an "Equivalent Technology" approval under section 66268.42(b);[8] debris surfaces shall be in contact with water solution for at least 15 minutes.	*Brick, Cloth, Concrete, Paper, Pavement, Rock, Wood:* Contaminant shall be soluble to at least 5% by weight in water solution or 5% by weight in emulsion; if debris is contaminated with a dioxin–listed waste,[6] and "Equivalent Technology" approval under section 66268.42(b) shall be obtained.[8]
b. *Liquid Phase Solvent Extraction:* Removal of hazardous contaminants from debris surfaces and surface pores by applying a nonaqueous liquid or liquid solution which causes the hazardous contaminants to enter the liquid phase and be flushed away from the debris along with the liquid or liquid solution while using appropriate agitation, temperature, and residence time.[4]	Same as above.	*Brick, Cloth, Concrete, Paper, Pavement, Rock, Wood:* Same as above, except that contaminant shall be soluble to at least 5% by weight in the solvent.
c. *Vapor Phase Solvent Extraction:* Application of an organic vapor using sufficient agitation, residence time, and temperature to cause hazardous contaminants on contaminated debris surfaces and surface pores to enter the vapor phase and be flushed away with the organic vapor.[4]	Same as above, except that brick, cloth, concrete, paper, pavement, rock and wood surfaces shall be in contact with the organic vapor for at least 60 minutes.	Same as above.
3. Thermal Extraction a. *High Temperature Metals Recovery:* Application of sufficient heat, residence time, mixing, fluxing agents, and/or carbon in a smelting, melting, or refining furnace to a separate metals from debris.	For refining furnaces, treated debris shall be separated from treatment residuals using simple physical or mechanical means,[9] and, prior to further treatment, such residuals shall meet the waste–specific treatment standards for organic compounds in the waste contaminating the debris.	*Debris contaminated with a dioxin–listed waste:*[5] Obtain an "Equivalent Technology" approval under section 66268.42(b).[8]

Table 1 — Alternative Treatment Standards for Hazardous Debris[1]—continued

Technology description	*Performance and/or design and operating standard*	*Contaminant restrictions*[2]
b. *Thermal Desorption:* Heating in an enclosed chamber under either oxidizing or nonoxidizing atmospheres at sufficient temperature and residence time to vaporize hazardous contaminants from contaminated surfaces and the surface pores and to remove the contaminants from the heating chamber in a gaseous exhaust gas.[7]	*All Debris:* Obtain an "Equivalent Technology" approval under section 66268.42(b);[8] treated debris shall be separated from treatment residuals using simple physical or mechanical means,[9] and, prior to further treatment, such residues shall meet the waste-specific treatment standards for organic compounds in the waste contaminating the debris. *Brick, Cloth, Concrete, Paper, Pavement, Rock, Wood:* Debris shall be no more than 10 cm (4 inches) in one dimension (i.e., thickness limit),[5] except that this thickness limit may be waived under the "Equivalent Technology" approval.	*All Debris:* Metals other than mercury.
B. Destruction Technologies 1. *Biological Destruction (Biodegradation):* Removal of hazardous contaminants from debris surfaces and surface pores in an aqueous solution and biodegration of organic or nonmetallic inorganic compounds (i.e., inorganics that contain phosphorus, nitrogen, or sulfur) in units operated under either aerobic or anaerobic conditions.	*All Debris:* Obtain an "Equivalent Technology" approval under section 66268.42(b);[8] treated debris shall be separated from treatment residuals using simple physical or mechanical means,[9] and, prior to further treatment, such residues shall meet the waste-specific treatment standards for organic compounds in the waste contaminating the debris. *Brick, Cloth, Concrete, Paper, Pavement, Rock, Wood:* Debris shall be no more than 1.2 cm (1/2 inch) in one dimension (i.e., thickness limit),[5] except that this thickness limit may be waived under the "Equivalent Technology" approval.	*All Debris:* Metal contaminants.
2. Chemical Destruction a. *Chemical Oxidation:* Chemical or electrolytic oxidation utilizing the following oxidation reagents (or waste reagents) or combination of reagents— (1) hypochlorite (e.g., bleach); (2) chlorine; (3) Chlorine dioxide; (4) ozone or UV (ultraviolet light) assisted ozone; (5) peroxides; (6) persulfates; (7) perchlorates; (8) permanganates; and/or (9) other oxidizing reagents of equivalent destruction efficiency.[4] Chemical oxidation specifically includes what is referred to as alkaline chlorination.	*All Debris:* Obtain an "Equivalent Technology" approval under section 66268.42(b);[8] treated debris shall be separated from treatment residuals using simple physical or mechanical means,[9] and, prior to further treatment, such residues shall meet the waste-specific treatment standards for organic compounds in the waste contaminating the debris. *Brick, Cloth, Concrete, Paper, Pavement, Rock, Wood:* Debris shall be no more than 1.2 cm (1/2 inch) in one dimension (i.e., thickness limit),[5] except that this thickness limit may be waived under the "Equivalent Technology" approval.	*All Debris:* Metal contaminants.
b. Chemical Reduction: Chemical reaction utilizing the following reducing reagents (or waste reagents) or combination of reagents: (1) sulfur dioxide; (2) sodium, potassium, or alkali slats of sulfites, bisulfites, and metabisulfites, and polyethylene glycols (e.g., NaPEG and KPEG); (3) sodium hydrosulfide; (4) ferrous salts; and/or (5) other reducing reagents of equivalent efficiency.[4]	Same as above.	Same as above.
3. *Thermal Destruction:* Treatment in an incinerator operating in accordance with CCR, Title 22, Chapter 14 , article 15, or Chapter 15, article 15, of this division; a boiler or industrial furnace operating in accordance with 40 CFR Part 266, Subpart H, or other thermal treatment unit operated in accordance with 40 CFR Part 264, Subpart X or 40 CFR Part 265, Subpart P, but excluding for purposes of these debris treatment standards Thermal Desorption units.	Treated debris shall be separated from treatment residuals using simple physical or mechanical means,[9] and, prior to further treatment, such residue shall meet the waste-specific treatment standard for organic compounds in the waste contaminating the debris.	*Brick, Concrete, Glass, Metal, Pavement, Rock, Metal:* Metals other than mercury, except that there are no metal restrictions for vitrification. *Debris contaminated with a dioxin-listed waste:*[6] Obtain an "Equivalent Technology" approval under section 66268.42(b),[8] except that this requirement does not apply to vitrification.
C. Immobilization Technologies 1. *Macroencapsulation:* Application of surface coating materials such as polymeric organics (e.g., resins and plastics) or use of a jacket of inert inorganic materials to substantially reduce surface exposure to potential leaching media.	Encapsulating material shall completely encapsulate debris and be resistant to degradation by the debris and its contaminants and materials into which it may come into contact after placement (leachate, other waste, microbes).	None.

Table 1 — Alternative Treatment Standards for Hazardous Debris[1]—continued

Technology description	*Performance and/or design and operating standard*	*Contaminant restrictions*[2]
2. *Microencapsulation:* Stabilization of the debris with the following reagents (or waste reagents) such that the leachability of the hazardous contaminants is reduced: (1) Portland cement; or (2) lime/pozzolans (e.g., fly ash and cement kiln dust). Reagents (e.g., iron salts, silicates, and clays) may be added to enhance the set/cure time and/or compressive strength, or to reduce the leachability of the hazardous constituents.[5]	Leachability of the hazardous contaminants shall be reduced.	None.
3. *Sealing:* Application of an appropriate material which adheres tightly to the debris surface to avoid exposure of the surface to potential leaching media. When necessary to effectively seal the surface, sealing entails pretreatment of the debris surface to remove foreign matter and to clean and roughen the surface. Sealing materials include epoxy, silicone, and urethane compounds, but paint may not be used as a sealant.	Sealing shall avoid exposure of the debris surface to potential leaching media and sealant shall be resistant to degradation by the debris and its contaminants and materials into which it may come into contact after placement (leachate, other waste, microbes).	None.

[1]Hazardous debris shall be treated by either these standards or the waste-specific treatment standards for the waste contaminating the debris. The treatment standard shall be met for each type of debris contained in a mixture of debris types, unless the debris is converted into treatment residue as a result of the treatment process. Debris treatment residuals are subject to the waste-specific treatment standard for the waste contaminating the debris.

[2]Contaminant restriction means that the technology is not BDAT for that contaminant. If debris containing a restricted contaminant is treated by the technology, the contaminant shall be subsequently treated by a technology for which it is not restricted in order to be land disposed (and excluded from the requirements of this division).

[3]"Clean debris surface" means the surface, when viewed without magnification, shall be free of all visible contaminated soil and hazardous waste except that residual staining from soil and waste consisting of light shadows, slight streaks, or minor discolorations, and soil and waste in cracks, crevices, and pits may be present provided that such staining and waste and soil in cracks, crevices, and pits shall be limited to no more than 5% of each square inch of surface area.

[4]Acids, solvents, and chemical reagents may react with some debris and contaminants to form hazardous compounds. For example, acid washing of cyanide-contaminated debris could result in the formation of hydrogen cyanide. Some acids may also react violently with some debris and contaminants, depending on the concentration of the acid and the type of debris and contaminants. Debris treaters should refer to the safety precautions specified in Material Safety Data Sheets for various acids to avoid applying an incompatible acid to a particular debris/contaminant combination. For example, concentrated sulfuric acid may react violently with certain organic compounds, such as acrylonitrile.

[5]If reducing the particle size of debris to meet the treatment standards results in material that no longer meets the 60 mm minimum particle size limit for debris, such material is subject to the waste-specific treatment standards for the waste contaminating the material, unless the debris has been cleaned and separated from contaminated soil and waste prior to size reduction. At a minimum, simple physical or mechanical means shall be used to provide such cleaning and separation of nondebris materials to ensure that the debris surface is free of caked soil, waste or other nondebris material.

[6]Dioxin-listed wastes are EPA Hazardous Waste numbers F020, F021, F022, F023, F026, and F027.

[7]Thermal desorption is distinguished from Thermal Destruction in that the primary purpose of Thermal Desorption is to volatilize contaminants and to remove them from the treatment chamber for subsequent destruction or other treatment.

[8]The demonstration "Equivalent Technology" under section 66268.42(b) shall document that the technology treats contaminants subject to treatment to a level equivalent to that required by the performance and design and operating standard for other technologies in this table such that residual levels of hazardous contaminants will not pose a hazard to human health and the environment absent management controls.

[9]Any soil, waste, and other nondebris material that remains on the debris surface (or remains mixed with the debris) after treatment is considered a treatment residual that shall be separated from the debris using, at a minimum, simple physical or mechanical means. Examples of simple physical or mechanical means are vibratory or trommel screening or water washing. The debris surface need not be cleaned to a "clean debris surface" as defined in note 3 when separating treated debris from residue; rather, the surface shall be free of caked soil, waste, or other nondebris material. Treatment residuals are subject to the waste-specific treatment standards for the waste contaminating the debris.

§ 66268.46. Alternative Treatment Standards Based on HTMR.

For the treatment standards previously found in this section, refer to section 66268.40.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5 and 58012, Health and Safety Code; 40 CFR Section 268.46.

HISTORY

1. New section filed 10-24-94 as an emergency; operative 10-24-94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2-20-95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 2-21-95 as an emergency; operative 2-21-95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-21-95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 6-19-95 as an emergency; operative 6-19-95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-17-95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 10-16-95 as an emergency; operative 10-16-95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2-13-96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 10-24-94 order transmitted to OAL 12-15-95 and filed 1-31-96 (Register 96, No. 5).

§ 66268.48. Universal Treatment Standards.

(a) Table UTS identifies the hazardous constituents, along with the nonwastewater and wastewater treatment standard levels, that are used to regulate most prohibited hazardous wastes with numerical limits. For determining compliance with treatment standards for underlying hazardous constituents as defined in section 66260.10, these treatment standards may not be exceeded. Compliance with these treatment standards is measured by an analysis of grab samples, unless otherwise noted in the following Table UTS.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5 and 58012, Health and Safety Code; 40 CFR Section 268.48.

HISTORY

1. New section and Table filed 10-24-94 as an emergency; operative 10-24-94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2-20-95 or emergency language will be repealed by operation of law on the following day.
2. New section and Table refiled 2-21-95 as an emergency; operative 2-21-95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-21-95 or emergency language will be repealed by operation of law on the following day.
3. New section and Table refiled 6-19-95 as an emergency; operative 6-19-95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-17-95 or emergency language will be repealed by operation of law on the following day.

4. New section and Table refiled 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 10–24–94 order transmitted to OAL 12–15–95 and filed 1–31–96 (Register 96, No. 5).
6. Change without regulatory effect repealing and adopting new table filed 6–4–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 23).
7. Change without regulatory effect amending Table "Universal Treatment Standards" filed 9–11–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 37).
8. Change without regulatory effect amending Table, "Universal Treatment Standards" filed 7–3–2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 27).

UNIVERSAL TREATMENT STANDARDS NOTE: NA means not applicable

REGULATED CONSTITUENT Common Name	*CAS[1] Number*	*Wastewater Standard Concentration in mg/l[2]*	*Nonwastewater Standard Concentration in mg/kg[3] unless noted as "mg/l TCLP"*
Organic Constituents			
Acenaphthylene	208-96-8	0.059	3.4
Acenaphthene	83-32-9	0.059	3.4
Acetone	67-64-1	0.28	160
Acetonitrile	75-05-8	5.6	38
Acetophenone	96-86-2	0.010	9.7
2-Acetylaminofluorene	53-96-3	0.059	140
Acrolein	107-02-8	0.29	NA
Acrylamide	79-06-1	19	23
Acrylonitrile	107-13-1	0.24	84
Aldicarb sulfone[6]	1646-88-4	0.056	0.28
Aldrin	309-00-2	0.021	0.066
4-Aminobiphenyl	92-67-1	0.13	NA
Aniline	62-53-3	0.81	14
Anthracene	120-12-7	0.059	3.4
Aramite	140-57-8	0.36	NA
alpha-BHC	319-84-6	0.00014	0.066
beta-BHC	319-85-7	0.00014	0.066
delta-BHC	319-86-8	0.023	0.066
gamma-BHC	58-89-9	0.0017	0.066
Barban[6]	101-27-9	0.056	1.4
Bendiocarb[6]	22781-23-3	0.056	1.4
Benomyl[6]	17804-35-2	0.056	1.4
Benzene	71-43-2	0.14	10
Benz(a)anthracene	56-55-3	0.059	3.4
Benzal chloride	98-87-3	0.055	6.0
Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
Benzo(g,h,i)perylene	191-24-2	0.0055	1.8
Benzo(a)pyrene	50-32-8	0.061	3.4
Bromodichloromethane	75-27-4	0.35	15
Bromomethane/Methyl bromide	74-83-9	0.11	15
4-Bromophenyl phenyl ether	101-55-3	0.055	15
n-Butyl alcohol	71-36-3	5.6	2.6
Butylate[6]	2008-41-5	0.042	1.4
Butyl benzyl phthalate	85-68-7	0.017	28
2-sec-Butyl-4,6-dinitrophenol-Dinoseb	88-85-7	0.066	2.5
Carbaryl[6]	63-25-2	0.006	0.14
Carbenzadim[6]	10605-21-7	0.056	1.4
Carbofuran[6]	1563-66-2	0.006	0.14
Carbofuran phenol[6]	1563-38-8	0.056	1.4
Carbon disulfide	75-15-0	3.8	4.8 mg/l TCLP
Carbon tetrachloride	56-23-5	0.057	6.0
Carbosulfan[6]	55285-14-8	0.028	1.4
Chlordane (alpha and gamma isomers)	57-74-9	0.0033	0.26
p-Chloroaniline	106-47-8	0.46	16
Chlorobenzene	108-90-7	0.057	6.0
Chlorobenzilate	510-15-6	0.10	NA
2-Chloro-1,3-butadiene	126-99-8	0.057	0.28
Chlorodibromomethane	124-48-1	0.057	15
Chloroethane	75-00-3	0.27	6.0
bis (2-Chloroethoxy) methane	111-91-1	0.036	7.2
bis (2-Chloroethyl) ether	111-44-4	0.033	6.0
Chloroform	67-66-3	0.046	6.0
bis (2-Chloroisopropyl) ether	39638-32-9	0.055	7.2
p-Chloro-m-cresol	59-50-7	0.018	14
2-Chloroethyl vinyl ether	110-75-8	0.062	NA
Chloromethane/Methyl chloride	74-87-3	0.19	30
2-Chloronaphthalene	91-58-7	0.055	5.6
2-Chlorophenol	95-57-8	0.044	5.7
3-Chloropropylene	107-05-1	0.036	30
Chrysene	218-01-9	0.059	3.4
o-Cresol	95-48-7	0.11	5.6
m-Cresol (difficult to distinguish from p-cresol)	108-39-4	0.77	5.6
p-Cresol (difficult to distinguish from m-cresol)	106-44-5	0.77	5.6
m-Cumenyl methylcarbamate[6]	64-00-6	0.056	1.4
Cyclohexanone	108-94-1	0.36	0.75 mg/l TCLP
o,p'-DDD	53-19-0	0.023	0.087
p,p'-DDD	72-54-8	0.023	0.087
o,p'-DDE	3424-82-6	0.031	0.087
p,p'-DDE	72-55-9	0.031	0.087
o,p'-DDT	789-02-6	0.0039	0.087
p,p'-DDT	50-29-3	0.0039	0.087

REGULATED CONSTITUENT Common Name	CAS[1] Number	Wastewater Standard Concentration in mg/l[2]	Nonwastewater Standard Concentration in mg/kg[3] unless noted as "mg/l TCLP"
Dibenz (a,h) anthracene	53–70–3	0.055	8.2
Dibenz (a,e) pyrene	192–65–4	0.061	NA
1,2–Dibromo–3–chloropropane	96–12–8	0.11	15
1,2–Dibromoethane/Ethylene dibromide	106–93–4	0.028	15
Dibromomethane	74–95–3	0.11	15
m–Dichlorobenzene	541–73–1	0.036	6.0
o–Dichlorobenzene	95–50–1	0.088	6.0
p–Dichlorobenzene	106–46–7	0.090	6.0
Dichlorodifluoromethane	75–71–8	0.23	7.2
1,1–Dichloroethane	75–34–3	0.059	6.0
1,2–Dichloroethane	107–06–2	0.21	6.0
1,1–Dichloroethylene	75–35–4	0.025	6.0
trans–1,2–Dichloroethylene	156–60–5	0.054	30
2,4–Dichlorophenol	120–83–2	0.044	14
2,6–Dichlorophenol	87–65–0	0.044	14
2,4–Dichlorophenoxyacetic acid/2,4–D	94–75–7	0.72	10
1,2–Dichloropropane	78–87–5	0.85	18
cis–1,3–Dichloropropylene	10061–01–5	0.036	18
trans–1,3–Dichloropropylene	10061–02–6	0.036	18
Dieldrin	60–57–1	0.017	0.13
Diethyl phthalate	84–66–2	0.20	28
p–Dimethylaminoazobenzene	60–11–7	0.13	NA
2–4–Dimethyl phenol	105–67–9	0.036	14
Dimethyl phthalate	131–11–3	0.047	28
Di–n–butyl phthalate	84–74–2	0.057	28
1,4–Dinitrobenzene	100–25–4	0.32	2.3
4,6–Dinitro–o–cresol	534–52–1	0.28	160
2,4–Dinitrophenol	51–28–5	0.12	160
2,4–Dinitrotoluene	121–14–2	0.32	140
2,6–Dinitrotoluene	606–20–2	0.55	28
Di–n–octyl phthalate	117–84–0	0.017	28
Di–n–propylnitrosamine	621–64–7	0.40	14
1,4–Dioxane	123–91–1	12.0	170
Diphenylamine (difficult to distinguish from diphenylnitrosamine)	122–39–4	0.92	13
Diphenylnitrosamine (difficult to distinguish from diphenylamine)	86–30–6	0.92	13
1,2–Diphenylhydrazine	122–66–7	0.087	NA
Disulfoton	298–04–4	0.017	6.2
Dithiocarbamates (total)[6]	NA	0.028	28
Endosulfan I	959–98–8	0.023	0.066
Endosulfan II	33213–65–9	0.029	0.13
Endosulfan sulfate	1031–07–8	0.029	0.13
Endrin	72–20–8	0.0028	0.13
Endrin aldehyde	7421–93–4	0.025	0.13
EPTC[6]	759–94–4	0.042	1.4
Ethyl acetate	141–78–6	0.34	33
Ethyl benzene	100–41–4	0.057	10
Ethyl cyanide/Propanenitrile	107–12–0	0.24	360
Ethyl ether	60–29–7	0.12	160
bis (2–Ethylhexyl) phthalate	117–81–7	0.28	28
Ethyl methacrylate	97–63–2	0.14	160
Ethylene oxide	75–21–8	0.12	NA
Famphur	52–85–7	0.017	15
Fluoranthene	206–44–0	0.068	3.4
Fluorene	86–73–7	0.059	3.4
Formetanate hydrochloride[6]	23422–53–9	0.056	1.4
Heptachlor	76–44–8	0.0012	0.066
1,2,3,4,6,7,8–Heptachlorodibenzo–p–dioxin (1,2,3,4,6,7,8–HpCDD)	35822–46–9	0.000035	0.0025
1,2,3,4,6,7,8–Heptachlorodibenzofuran (1,2,3,4,6,7,8–HpCDF)	67562–39–4	0.000035	0.0025
1,2,3,4,7,8,9–Heptachlorodibenzofuran (1,2,3,4,7,8,9–HpCDF)	55673–89–7	0.000035	0.0025
Heptachlor epoxide	1024–57–3	0.016	0.066
Hexachlorobenzene	118–74–1	0.055	10
Hexachlorobutadiene	87–68–3	0.055	5.6
Hexachlorocyclopentadiene	77–47–4	0.057	2.4
HxCDDs (All Hexachlorodibenzo–p–dioxins)	NA	0.000063	0.001
HxCDFs (All Hexachlorodibenzofurans)	NA	0.000063	0.001
Hexachloroethane	67–72–1	0.055	30
Hexachloropropylene	1888–71–7	0.035	30
Indeno (1,2,3–c,d) pyrene	193–39–5	0.0055	3.4
Iodomethane	74–88–4	0.19	65
Isobutyl alcohol	78–83–1	5.6	170
Isodrin	465–73–6	0.021	0.066
Isosafrole	120–58–1	0.081	2.6
Kepone	143–50–0	0.0011	0.13
Methacrylonitrile	126–98–7	0.24	84
Methanol	67–56–1	5.6	0.75 mg/l TCLP
Methapyrilene	91–80–5	0.081	1.5

REGULATED CONSTITUENT Common Name	*CAS[1] Number*	*Wastewater Standard Concentration in mg/l[2]*	*Nonwastewater Standard Concentration in mg/kg[3] unless noted as "mg/l TCLP"*
Methiocarb[6]	2032-65-7	0.056	1.4
Methomyl[6]	16752-77-5	0.028	0.14
Methoxychlor	72-43-5	0.25	0.18
3-Methylcholanthrene	56-49-5	0.0055	15
4,4-Methylene bis(2-chloroaniline)	101-14-4	0.50	30
Methylene chloride	75-09-2	0.089	30
Methyl ethyl ketone	78-93-3	0.28	36
Methyl isobutyl ketone	108-10-1	0.14	33
Methyl methacrylate	80-62-6	0.14	160
Methyl methansulfonate	66-27-3	0.018	NA
Methyl parathion	298-00-0	0.014	4.6
Metolcarb[6]	1129-41-5	0.056	1.4
Mexacarbate[6]	315-18-4	0.056	1.4
Molinate[6]	2212-67-1	0.042	1.4
Naphthalene	91-20-3	0.059	5.6
2-Naphthylamine	91-59-8	0.52	NA
o-Nitroaniline	88-74-4	0.27	14
p-Nitroaniline	100-01-6	0.028	28
Nitrobenzene	98-95-3	0.068	14
5-Nitro-o-toluidine	99-55-8	0.32	28
o-Nitrophenol	88-75-5	0.028	13
p-Nitrophenol	100-02-7	0.12	29
N-Nitrosodiethylamine	55-18-5	0.40	28
N-Nitrosodimethylamine	62-75-9	0.40	2.3
N-Nitroso-di-n-butylamine	924-16-3	0.40	17
N-Nitrosomethylethylamine	10595-95-6	0.40	2.3
N-Nitrosomorpholine	59-89-2	0.40	2.3
N-Nitrosopiperidine	100-75-4	0.013	35
N-Nitrosopyrrolidine	930-55-2	0.013	35
1,2,3,4,6,7,8,9-Octachlorodibenzo-p-dioxin (OCDD)	3268-87-9	0.000063	0.005
1,2,3,4,6,7,8,9-Octachlorodibenzofuran (OCDF)	39001-02-0	0.000063	0.005
Oxamyl[6]	23135-22-0	0.056	0.28
Parathion	56-38-2	0.014	4.6
Total PCBs (sum of all PCB isomers, or all Aroclors)	1336-36-3	0.10	10
Pebulate[6]	1114-71-2	0.042	1.4
Pentachlorobenzene	608-93-5	0.055	10
PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.000063	0.001
PeCDFs (All Pentachlorodibenzofurans)	NA	0.000035	0.001
Pentachloroethane	76-01-7	0.055	6.0
Pentachloronitrobenzene	82-68-8	0.055	4.8
Pentachlorophenol	87-86-5	0.089	7.4
Phenacetin	62-44-2	0.081	16
Phenanthrene	85-01-8	0.059	5.6
Phenol	108-95-2	0.039	6.2
Phorate	298-02-2	0.021	4.6
Phthalic acid	100-21-0	0.055	28
Phthalic anhydride	85-44-9	0.055	28
Physostigmine[6]	57-47-6	0.056	1.4
Physostigmine salicylate[6]	57-64-7	0.056	1.4
Promecarb[6]	2631-37-0	0.056	1.4
Pronamide	23950-58-5	0.093	1.5
Propham[6]	122-42-9	0.056	1.4
Propoxur[6]	114-26-1	0.056	1.4
Prosulfocarb[6]	52888-80-9	0.042	1.4
Pyrene	129-00-0	0.067	8.2
Pyridine	110-86-1	0.014	16
Safrole	94-59-7	0.081	22
Silvex/2,4,5-TP	93-72-1	0.72	7.9
1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.000063	0.001
TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001
1,1,1,2-Tetrachloroethane	630-20-6	0.057	6.0
1,1,2,2-Tetrachloroethane	79-34-5	0.057	6.0
Tetrachloroethylene	127-18-4	0.056	6.0
2,3,4,6-Tetrachlorophenol	58-90-2	0.030	7.4
Thiodicarb[6]	59669-26-0	0.019	1.4
Thiophanate-methyl[6]	23564-05-8	0.056	1.4
Toluene	108-88-3	0.080	10
Toxaphene	8001-35-2	0.0095	2.6
Triallate[6]	2302-17-5	0.042	1.4
Tribromomethane/Bromoform	75-25-2	0.63	15
1,2,4-Trichlorobenzene	120-82-1	0.055	19
1,1,1-Trichloroethane	71-55-6	0.054	6.0
1,1,2-Trichloroethane	79-00-5	0.054	6.0

REGULATED CONSTITUENT Common Name	CAS[1] Number	Wastewater Standard Concentration in mg/l[2]	Nonwastewater Standard Concentration in mg/kg[3] unless noted as "mg/l TCLP"
Trichloroethylene	79-01-6	0.054	6.0
Trichloromonofluoromethane	75-69-4	0.020	30
2,4,5-Trichlorophenol	95-95-4	0.18	7.4
2,4,6-Trichlorophenol	88-06-2	0.035	7.4
2,4,5-Trichlorophenoxyacetic acid/2,4,5-T	93-76-5	0.72	7.9
1,2,3-Trichloropropane	96-18-4	0.85	30
1,1,2-Trichloro-1,2,2-trifluoroethane	76-13-1	0.057	30
Triethylamine[6]	101-44-8	0.081	1.5
tris- (2,3-Dibromopropyl) phosphate	126-72-7	0.11	0.10
Vernolate[6]	1929-77-7	0.042	1.4
Vinyl chloride	75-01-4	0.27	6.0
Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
Inorganic Constituents			
Antimony	7440-36-0	1.9	1.5 mg/l TCLP
Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
Barium	7440-39-3	1.2	21 mg/l TCLP
Beryllium	7440-41-7	0.82	1.22 mg/l TCLP
Cadmium	7440-43-9	0.69	0.11 mg/l TCLP
Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
Cyanides (Total)[4]	57-12-5	1.2	590
Cyanides (Amenable)[4]	57-12-5	0.86	30
Fluoride[5]	16984-48-8	35	NA
Lead	7439-92-1	0.69	0.75 mg/l TCLP
Mercury - Nonwastewater from Retort	7439-97-6	NA	0.20 mg/l TCLP
Mercury - All Others	7439-97-6	0.15	0.025 mg/l TCLP
Nickel	7440-02-0	3.98	11 mg/l TCLP
Selenium[7]	7782-49-2	0.82	5.7 mg/l TCLP
Silver	7440-22-4	0.43	0.14 mg/l TCLP
Sulfide[5]	18496-25-8	14	NA
Thallium	7440-28-0	1.4	0.078 mg/l TCLP
Vanadium[5]	7440-62-2	4.3	1.6 mg/l TCLP
Zinc[5]	7440-66-6	2.61	4.3 mg/l TCLP

(1) CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with it's salts and/or esters, the CAS number is given for the parent compound only.
(2) Concentration standards for wastewaters are expressed in mg/l are based on analysis of composite samples.
(3) Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of Title 22, CCR, chapter 14, article 15 or chapter 15, article 15, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in section 66268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.
(4) Both Cyanides (Total) and Cyanides (Amenable) for nonwastewaters are to be analyzed using Method 9010 or 9012, found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," USEPA Publication SW-846, as incorporated by reference in section 66260.11, with a sample size of 10 grams and a distillation time of one hour and 15 minutes.
(5) These constituents are not "underlying hazardous constituents" in characteristic wastes, according to the definition in section 66260.10.
(6) Between August 26, 1996, and March 4, 1999, these constituents are not "underlying hazardous constituents" as defined in section 66260.10 of this division.
(7) This constituent is not an underlying hazardous constituent as defined in section 66260.10 of this division because its UTS level is greater than its TC level, thus a treated selenium waste would always be characteristically hazardous, unless it is treated to below its characteristic level.
(8) This standard is temporarily deferred for soil exhibiting a hazardous characteristic due to D004-D011 only.
NOTE: NA means not applicable.

§ 66268.49. Alternative LDR Treatment Standards for Contaminated Soil.

(a) Applicability. You shall comply with LDRs prior to placing soil that exhibits a characteristic of hazardous waste, or exhibited a characteristic of hazardous waste at the time it was generated, into a land disposal unit. The following chart describes whether you shall comply with LDRs prior to placing soil contaminated by listed hazardous waste into a land disposal unit:

If LDRs. . .	And If LDRs. . .	And If . . .	Then You . . .
applied to the listed waste when it contaminated the soil*	apply to the listed waste now		shall comply with LDRs
didn't apply to the listed waste when it contaminated the soil*	apply to the listed waste now	the soil is determined to contain the listed waste when the soil is first generated	shall comply with LDRs
didn't apply to the listed waste when it contaminated the soil*	apply to the listed waste now	the soil is determined not to contain the listed waste when the soil is first generated	needn't comply with LDRs
didn't apply to the listed waste when it contaminated the soil*	don't apply to the list waste now		needn't comply with LDRs

*For dates of LDR applicability, see CCR, Title 22, chapter 18, appendix VII. To determine the date any given listed hazardous waste contaminated any given volume of soil, use the last date any given listed hazardous waste was placed into any given land disposal unit or, in the case of an accidental spill, the date of the spill.

(b) Prior to land disposal, contaminated soil identified by subsection (a) of this section as needing to comply with LDRs shall be treated according to the applicable treatment standards specified in subsection (c) of this section or according to the Universal Treatment Standards specified in section 66268.48 applicable to the contaminating listed hazardous waste and/or the applicable characteristic of hazardous waste if the soil is characteristic. The treatment standards specified in subsection (c) of this section and the Universal Treatment Standards may be modified through a treatment variance approved in accordance with section 66268.44.

(c) Treatment standards for contaminated soils. Prior to land disposal, contaminated soil identified by subsection (a) of this section as needing to comply with LDRs shall be treated according to all the standards specified in this subsection or according to the Universal Treatment Standards specified in section 66268.48.

(1) All soils. Prior to land disposal, all constituents subject to treatment shall be treated as follows:

(A) For non–metals except carbon disulfide, cyclohexanone, and methanol, treatment shall achieve 90 percent reduction in total constituent concentrations, except as provided by subsection (c)(1)(C) of this section.

(B) For metals and carbon disulfide, cyclohexanone, and methanol, treatment shall achieve 90 percent reduction in constituent concentrations as measured in leachate from the treated media (tested according to the TCLP) or 90 percent reduction in total constituent concentrations (when a metal removal treatment technology is used), except as provided by subsection (c)(1)(C)of this section.

(C) When treatment of any constituent subject to treatment to a 90 percent reduction standard would result in a concentration less than 10 times the Universal Treatment Standard for that constituent, treatment to achieve constituent concentrations less than 10 times the universal treatment standard is not required. Universal Treatment Standards are identified in section 66268.48 Table UTS.

(2) Soils that exhibit the characteristic of ignitability, corrosivity or reactivity. In addition to the treatment required by subsection (c)(1) of this section, prior to land disposal, soils that exhibit the characteristic of ignitability, corrosivity, or reactivity shall be treated to eliminate these characteristics.

(3) Soils that contain nonanalyzable constituents. In addition to the treatment requirements of subsections (c)(1) and (2) of this section, prior to land disposal, the following treatment is required for soils that contain nonanalyzable constituents:

(A) For soil that contains only analyzable and nonanalyzable organic constituents, treatment of the analyzable organic constituents to the levels specified in subsections (c)(1) and (2) of this section; or,

(B) For soil that contains only nonanalyzable constituents, treatment by the method(s) specified in section 66268.42 for the waste contained in the soil.

(d) Constituents subject to treatment. When applying the soil treatment standards in subsection (c) of this section, constituents subject to treatment are any constituents listed in section 66268.48 Table UTS—Universal Treatment Standards that are reasonably expected to be present in any given volume of contaminated soil, except fluoride, selenium, sulfides, vanadium, zinc, and that are present at concentrations greater than ten times the universal treatment standard. PCBs are not constituents subject to treatment in any given volume of soil which exhibits the toxicity characteristic solely because of the presence of metals.

(e) Management of treatment residuals. Treatment residuals from treating contaminated soil identified by subsection (a) of this section as needing to comply with LDRs shall be managed as follows:

(1) Soil residuals are subject to the treatment standards of this section;

(2) Non–soil residuals are subject to:

(A) For soils contaminated by listed hazardous waste, the hazardous waste standards applicable to the listed hazardous waste; and

(B) For soils that exhibit a characteristic of hazardous waste, if the non–soil residual also exhibits a characteristic of hazardous waste, the treatment standards applicable to the characteristic hazardous waste.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.5 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5 and 58012, Health and Safety Code; and 40 CFR Section 268.49.

HISTORY

1. Change without regulatory effect adding new section filed 6–4–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 23).
2. Change without regulatory effect amending subsections (c)(3)(A)–(B) filed 9–11–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 37).
3. Change without regulatory effect amending subsections (c)(1)(A)–(B) and (d) filed 7–3–2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 27).

Article 5. Prohibitions on Storage

§ 66268.50. Prohibitions on Storage of Restricted Wastes.

(a) Except as provided in this section, the storage of hazardous wastes restricted from land disposal under article 3 of this chapter or RCRA section 3004 (42 U.S.C. section 6924) is prohibited, unless the following conditions are met.

(1) A generator stores such wastes in tanks, containers, or containment buildings on site solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and the generator complies with the requirements in section 66262.34 and Chapters 14 and 15 of this division. (A generator who is in existence on July 1, 1991 and who must store hazardous wastes for longer than the applicable accumulation period specified in subsection (a) or (d) of section 66262.34 of this chapter, due to the regulations under this chapter becomes an owner/operator of a storage facility and shall obtain a Hazardous Waste Facility Permit. Such a facility may qualify for interim status upon compliance with the regulations governing interim status under section 66270.70 of chapter 20).

(2) An owner/operator of a hazardous waste treatment, storage, or disposal facility stores such wastes in tanks, containers, or containment buildings solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and:

(A) each container is clearly marked to identify its contents and the date each period of accumulation begins;

(B) each tank is clearly marked with a description of its contents, the quantity of each hazardous waste received, and the date each period of accumulation begins, or such information for each tank is recorded and maintained in the operating record at that facility. Regardless of whether the tank itself is marked, an owner/operator shall comply with the operating record requirements specified in section 66264.73 or section 66265.73.

(3) A transporter stores manifested shipments of such wastes at a transfer facility for six days or less, or 10 days or less for transfer facilities in areas zoned industrial by the local planning authority.

(b) An owner/operator of a treatment, storage or disposal facility may store such wastes for up to one year unless the Department can demonstrate that such storage was not solely for the purpose of accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment, or disposal.

(c) An owner/operator of a treatment, storage or disposal facility may store such wastes beyond one year; however, the owner/operator bears the burden of proving that such storage was solely for the purpose of accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment, or disposal.

(d) If a generator's waste is exempt from a prohibition on the type of land disposal utilized for the waste (for example, because of an approved case–by–case extension under section 66268.5, or a nationwide capacity variance under article 3), the prohibition in paragraph (a) of this section does not apply during the period of such exemption.

(e) The prohibition in subsection (a) of this section does not apply to hazardous wastes that meet the treatment standards specified under section 66268.40 or the treatment standards specified under the variance in section 66268.44, or, where treatment standards have not been specified, is in compliance with the applicable prohibitions specified in section 66268.32 or RCRA section 3004 (42 U.S.C. section 6924) or where the waste is a non–RCRA hazardous waste.

(f) Liquid hazardous wastes containing polychlorinated biphenyls (PCBs) at concentrations greater than or equal to 50 ppm shall be stored at a facility that meets the requirements of 40 CFR section 761.65(b) and shall be removed from storage and treated or disposed as required by this part within one year of the date when such wastes are first placed into storage. The provisions of subsection (c) of this section do not apply to such PCB wastes prohibited under section 66268.32 of this chapter.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5 and 58012, Health and Safety Code; 40 CFR Section 268.50.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of subsections (a)(1)–(2) and NOTE filed 10–24–94 as an emergency; operative 10–24–94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–20–95 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsections (a)(1)–(2) and NOTE refiled 2–21–95 as an emergency; operative 2–21–95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–21–95 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsections (a)(1)–(2) and NOTE refiled 6–19–95 as an emergency; operative 6–19–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–95 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsections (a)(1)–(2) and NOTE refiled 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 10–24–94 order including amendment of subsection (a)(1) transmitted to OAL 12–15–95 and filed 1–31–96 (Register 96, No. 5).
7. Change without regulatory effect amending subsection (a)(1) filed 4–3–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
8. Change without regulatory effect amending subsection (a)(3) filed 4–3–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
9. Change without regulatory effect amending subsection (e) filed 9–11–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 37).

Article 10. Land Disposal Prohibitions—Non–RCRA Wastes

§ 66268.100. Waste Specific Prohibitions.

(a) The following non–RCRA hazardous wastes are subject to prohibition under this section.

(1) Non–RCRA metal–containing aqueous wastes identified in section 66268.29(a) are prohibited from land disposal.

(2) Auto shredder waste identified in section 66268.29(b) is prohibited from land disposal effective on May 8, 1991.

(3) Hazardous waste foundry sand identified in section 66268.29(c) is prohibited from land disposal after January 1, 1991.

(4) Non–RCRA metal–containing fly ash, bottom ash, retort ash or baghouse waste from sources other than foundries identified in section 66268.29(d) is prohibited from land disposal after January 1, 1991.

(5) Non–RCRA metal–containing baghouse waste from foundries identified in section 66268.29(e) is prohibited from land disposal after January 1, 1991.

(6) Asbestos–containing waste as defined in section 66268.29(f) is prohibited from land disposal effective March 1, 1993 and thereafter.

(b) The requirements of subsection (a) of this section do not apply if:

(1) the waste meets the treatment standards of article 11 of this chapter; or

(2) persons have been granted an extension to the effective date of a prohibition pursuant to section 66268.5, with respect to those wastes covered by the extension.

NOTE: Authority cited: Sections 25150, 25159, 25179.6 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5, 25179.3 and 25179.6, Health and Safety Code.

HISTORY

1. Amendment and renumbering of former section 67715 to section 66268.100 filed 5–24–91; operative 7–1–91 (Register 91, No. 22). A Certificate of Compliance for 5–6–91 order must be transmitted to OAL by 9–3–91 or emergency language will be repealed by operation of law on the following day.
2. Emergency order of 5–6–91 amending subsection (a) refiled 9–3–91 as an emergency; operative 9–3–91 (Register 92, No. 17). A Certificate of Compliance must be transmitted to OAL 1–2–92 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsection (a) refiled, including further amendments, filed 12–26–91 as an emergency; operative 12–26–91 (Register 92, No. 17). A Certificate of Compliance must be transmitted to OAL 4–24–92 or emergency language will be repealed by operation of law on the following day.
4. New subsections (a)(7), (a)(10) and (a)(11) and amendments refiled 4–20–92 as an emergency; operative 4–20–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 8–18–92 or emergency language will be repealed by operation of law on the following day.
5. Certificates of Compliance as to 4–20–92 order including amendment of subsection (a)(7) and NOTE transmitted to OAL 8–11–92 and filed 9–23–92 (Register 92, No. 39).
6. Editorial correction adding new subsections (a)(3)–(6), (a)(8) and (a)(9), and amending subsection (a)(11) filed 2–23–93 (Register 93, No. 7).
7. Amendment of section and NOTE filed 3–1–93; operative 3–1–93 (Register 93, No. 10).
8. Repealer of subsections (a)(2), (a)(4), (a)(6)–(7), (a)(10)–(12), subsection renumbering, and amendment of newly designated subsections (a)(2) and (a)(4)–(6) filed 7–23–97; operative 8–22–97 (Register 97, No. 30).

Article 11. Treatment Standards—Non–RCRA Waste Categories

§ 66268.105. Applicability of Treatment Standards.

(a) A restricted waste identified in section 66268.106 may be land disposed without further treatment only if an extract of the waste or of the treatment residue of the waste developed using the test method in Appendix II chapter 11, CCR, does not exceed the value shown in Table I–

CCWE of section 66268.106 for any hazardous constituent listed in Table I–CCWE for that waste.

(b) A restricted waste identified in section 66268.107 may be land disposed only if the constituent concentrations in the waste or treatment residue of the waste do not exceed the value shown in section 66268.107 for any hazardous constituent listed for that waste.

NOTE: Authority cited: Sections 25150, 25159 and 25179.6, Health and Safety Code; and Section 58012 of the Governor's Re–organization Plan #1 of 1991. Reference: Sections 25150, 25159, 25159.5, 25179.3 and 25179.6, Health and Safety Code.

HISTORY

1. Amendment and renumbering of former section 67750 to section 66268.105 filed 5–24–91; operative 7–1–91 (Register 91, No. 22). A Certificate of Compliance for 5–6–91 order must be transmitted to OAL by 9–3–91 or emergency language will be repealed by operation of law on the following day.
2. Emergency order of 5–6–91 amending subsections (d) and (e) refiled 9–3–91 as an emergency; operative 9–3–91 (Register 92, No. 17). A Certificate of Compliance must be transmitted to OAL 1–2–92 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsections (d) and (e) refiled 12–26–91 as an emergency; operative 12–26–91 (Register 92, No. 17). A Certificate of Compliance must be transmitted to OAL 4–24–92 or emergency language will be repealed by operation of law on the following day.
4. New subsections (d) and (e) refiled 4–20–92 as an emergency; operative 4–20–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 8–18–92 or emergency language will be repealed by operation of law on the following day.
5. Certificates of Compliance as to 4–20–92 order including new subsections (f)–(f)(1) and amendment of NOTE transmitted to OAL 8–11–92 and filed 9–23–92 (Register 92, No. 39).
6. Repealer of subsections (c)–(f)(1) filed 7–23–97; operative 8–22–97 (Register 97, No. 30).

§ 66268.106. Treatment Standards Expressed As Concentrations in Waste Extract.

(a) The CCWE tables (below) identify the restricted wastes and the concentrations of their associated hazardous constituents which may not be exceeded by the extract of a waste or waste treatment residual developed using the test method in Appendix II, chapter 11, CCR, for the allowable land disposal of such waste.

(1) Table I–A CCWE identifies the non–RCRA auto shredder wastes and the concentrations of their associated hazardous constituents which may not be exceeded by the extract of the waste or treatment residual for the allowable land disposal of such waste or residual.

TABLE I–A CCWE

Auto Shredder Wastes	*Concentration (mg/l)*
Cadmium	1.0
Chromium (VI) Compounds	5.0
Chromium (total)	560.0
Copper	25.0
Lead	50.0
Mercury	0.2
Nickel	20.0
Zinc	250.0

(2) Table I–B CCWE identifies the concentrations of hazardous constituents of hazardous waste foundry sand which may not be exceeded by the waste or treatment residual for the allowable land disposal of such waste or residual.

(A) Hazardous waste foundry sand containing hazardous constituents other than those listed in Table I–B CCWE or exhibiting other hazardous characteristics shall be subject to the appropriate generic treatment standard(s) for those hazardous constituents or hazardous characteristics.

TABLE I–B CCWE

Hazardous Waste Foundry Sand	*Concentration (mg/l)*
Cadmium	1.0
Copper	200.0
Lead	30.0
Nickel	20.0
Zinc	250.0

(3) Table I–D CCWE identifies the non–RCRA metal–containing fly ash, bottom ash, retort ash and baghouse waste from sources other than foundries, and the concentrations of their associated hazardous constituents which may not be exceeded by the extract of the waste or treatment residual for the allowable land disposal of such waste or residual. The specified concentrations shall not be exceeded by an average value of WET results for four representative samples, or a single representative sample. Non–RCRA fly ash, bottom ash, retort ash and baghouse waste from sources other than foundries containing hazardous constituents other than those listed in Table I–D CCWE shall be subject to the appropriate generic treatment standard(s) for those hazardous constituents or hazardous characteristics.

Table I–D CCWE

Non–RCRA Waste Category
Fly ash, Bottom Ash, Retort Ash, and Baghouse waste from Sources other than Foundries

Concentration	*(mg/l)*
Arsenic	15.0
Cadmium	1.0
Copper	40.0
Lead	20.0
Nickel	20.0
Selenium	1.0
Vanadium	24.0
Zinc	250.0

(4) Table I–E CCWE identifies the non–RCRA metal–containing baghouse waste from foundries, and the concentrations of their associated hazardous constituents which may not be exceeded by the extract of the waste or treatment residual for the allowable land disposal of such waste or residual. The specified concentrations shall not be exceeded by an average value of WET results for four representative samples, or a representative sample. Non–RCRA baghouse waste from foundries containing hazardous constituents other than those listed in Table I–E CCWE shall be subject to the appropriate generic treatment standard(s) for those hazardous constituents or hazardous characteristics.

TABLE I–E CCWE

Non–RCRA Waste Category Baghouse Waste from Foundries	*Concentration (mg/l)*
Arsenic	15.0
Cadmium	1.0
Copper	350.0
Lead	70.0
Nickel	20.0
Selenium	1.0
Vanadium	24.0
Zinc	250.0

(b) When wastes with differing treatment standards for a constituent of concern are combined for purposes of treatment, the treatment residue shall meet the lowest treatment standard for the constituent of concern.

NOTE: Authority cited: Sections 25150, 25159 and 25179.6, Health and Safety Code; and Section 58012 of the Governor's Re–organization Plan #1 of 1991. Ref-

erence: Sections 25150, 25159, 25159.5, 25170, 25179.3 and 25179.6, Health and Safety Code.

HISTORY

1. Amendment and renumbering of former section 67755 to section 66268.106 filed 5–24–91; operative 7–1–91 (Register 91, No. 22). A Certificate of Compliance for 5–6–91 order must be transmitted to OAL by 9–3–91 or emergency language will be repealed by operation of law on the following day.
2. Emergency order of 5–6–91 amending subsections (a) and (a)(3) refiled 9–3–91 as an emergency; operative 9–3–91 (Register 92, No. 17). A Certificate of Compliance must be transmitted to OAL 1–2–92 or emergency language will be repealed by operation of law on the following day.
3. Amendment to subsections (a)–(a)(3) refiled, including further amendments, filed 12–26–91 as an emergency; operative 12–26–91 (Register 92, No. 17). A Certificate of Compliance must be transmitted to OAL 4–24–92 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsections (a)–(a)(3) refiled 4–20–92 as an emergency; operative 4–20–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 8–18–92 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 4–20–92 order including amendment of subsection (a)(3) and NOTE transmitted to OAL 8–11–92 and filed 9–23–92 (Register 92, No. 39).
6. Editorial correction amending subsection (a), adding new subsections (a)(1) and (a)(2), and amending of subsections (a)(3) and (a)(3)(A) filed 2–23–93 (Register 93, No. 7).
7. Editorial correction inserting mistakenly omitted Table I–E CCWE filed as part of 12–4–90 order (Register 97, No. 30).
8. Repealer of subsection (a)(3), Table I–C CCWE and subsection (a)(3)(A), subsection renumbering, and repealer of former subsection (a)(6) filed 7–23–97; operative 8–22–97 (Register 97, No. 30).

§ 66268.107. Treatment Standards Expressed As Waste Concentrations.

(a) Table II–CCW identifies the non–RCRA metal–containing aqueous wastes and the concentrations of their associated hazardous constituents which may not be exceeded by the waste or treatment residual for the allowable land disposal of such waste or residual.

Table II—Constituent Concentrations in Wastes

Non–RCRA Waste Category Metal–Containing Aqueous Waste	*Concentration In Liquid Residual (mg/l)*
Antimony	15.0
Arsenic	5.0
Barium	100.0
Beryllium	0.75
Cadmium	1.0
Chromium (VI)	5.0
Chromium (III)	560.0
Cobalt	80.0
Copper	25.0
Lead	5.0
Mercury	0.2
Molybdenum	350.0
Nickel	20.0
Selenium	1.0
Silver	5.0
Thallium	7.0
Vanadium	24.0
Zinc	250.0

(A) The concentrations listed in subsection (a) shall be determined using the WET procedure specified in Appendix II, chapter 11, CCR.

(c)(1) When RCRA wastes with differing treatment standards for a constituent of concern are combined for purposes of treatment, the treatment residue must meet the lowest treatment standard for the constituent of concern. When non–RCRA wastes with differing treatment standards for a constituent of concern are combined for purposes of treatment, the treatment residue must meet the lowest treatment standard for the constituent of concern.

(c)(2) When RCRA and Non–RCRA wastes are combined for purposes of treatment, the treatment residue must meet both the lowest treatment standard established for the RCRA wastes and the lowest treatment standard established for the non–RCRA wastes.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25179.6, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5, 25179.3 and 25179.6, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Repealer of subsection (b), Table III, and subsections (b)(1)–(3) filed 7–23–97; operative 8–22–97 (Register 97, No. 30).

§ 66268.108. Treatment Standard Expressed As Specific Technologies.

[Reserved]

§ 66268.110. Treatment Standard for PCB Wastes.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25179.6, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5, 25179.3 and 25179.6, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect repealing section filed 3–29–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 13).

§ 66268.112. Treatment Standards for Aqueous and Liquid Organic Wastes.

NOTE: Authority cited: Sections 25150, 25159 and 25179.6, Health and Safety Code; and Section 58012 of the Governor's Reorganization Plan #1 of 1991. Reference: Sections 25150, 25159, 25159.5, 25179.3 and 25179.6, Health and Safety Code.

HISTORY

1. Amendment and renumbering of former section 67785 to section 66268.112 filed 5–24–91; operative 7–1–91 (Register 91, No. 22). A Certificate of Compliance for 5–6–91 order must be transmitted to OAL by 9–3–91 or emergency language will be repealed by operation of law on the following day.
2. Emergency order of 5–6–91 adopting section refiled 9–3–91 as an emergency; operative 9–3–91 (Register 92, No. 17). A Certificate of Compliance must be transmitted to OAL 1–2–92 or emergency language will be repealed by operation of law on the following day.
3. Adoption of section refiled 12–26–91 as an emergency; operative 12–26–91 (Register 92, No. 17). A Certificate of Compliance must be transmitted to OAL 4–24–92 or emergency language will be repealed by operation of law on the following day.
4. Adoption of section refiled 4–20–92 as an emergency; operative 4–20–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 8–18–92 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 4–20–92 order including amendment of section and NOTE transmitted to OAL 8–11–92 and filed 9–23–92 (Register 92, No. 39).
6. Change without regulatory effect repealing section filed 3–29–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 13).

§ 66268.113. Treatment Standards for Solid Hazardous Waste Containing Organics.

NOTE: Authority cited: Sections 25150, 25159 and 25179.6, Health and Safety Code; and Section 58012 of the Governor's Re–organization Plan #1 of 1991. Reference: Sections 25150, 25159, 25159.5, 25179.3 and 25179.6, Health and Safety Code.

HISTORY

1. Amendment and renumbering of former section 67786 to section 66268.113 filed 5–24–91; operative 7–1–91 (Register 91, No. 22). A Certificate of Compliance for 5–6–91 order must be transmitted to OAL by 9–3–91 or emergency language will be repealed by operation of law on the following day.
2. Emergency order of 5–6–91 adopting section refiled 9–3–91 as an emergency; operative 9–3–91 (Register 92, No. 17). A Certificate of Compliance must be transmitted to OAL 1–2–92 or emergency language will be repealed by operation of law on the following day.
3. Adoption of section refiled, including amendments, refiled 12–26–91 as an emergency; operative 12–26–91 (Register 92, No. 17). A Certificate of Compliance must be transmitted to OAL 4–24–92 or emergency language will be repealed by operation of law on the following day.
4. Adoption of section refiled 4–20–92 as an emergency; operative 4–20–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 8–18–92 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 4–20–92 order including amendment of section and NOTE transmitted to OAL 8–11–92 and filed 9–23–92 (Register 92, No. 39).
6. Change without regulatory effect repealing section filed 3–29–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 13).

§ 66268.114. Treatment Standard for Asbestos–Containing Waste.

(a) Asbestos–containing waste shall be treated using one of the methods of (a)(1) through (a)(3).

(1) Asbestos–containing waste is managed as follows:

(A) Mix control device asbestos–containing waste to form a slurry; adequately wet other asbestos–containing waste; and

(B) Discharge no visible emissions to the outside air from collection, mixing, wetting and handling operations; and

(C) After wetting, seal all asbestos–containing waste in leak tight containers while wet; or, for waste that will not fit into containers without additional breaking, put waste into leak tight wrapping; and discharge no visible emissions during disposal operations.

(2) Process asbestos–containing waste into nonfriable form.

(3) Use an alternative waste treatment method pursuant to Health and Safety Code 25179.6(b)(2).

(b) When used in subsection (a), the following terms have the meanings given below:

(1) "Adequately wet" means sufficiently mixed or penetrated with liquid to prevent the release of finely divided particles of asbestos or waste containing asbestos. If visible emissions are observed coming from asbestos–containing waste, then that waste has not been adequately wetted. However, absence of visible emissions is not sufficient evidence of being adequately wetted.

(2) "Visible emissions" means any emissions which are visually detectable without the aid of instrument, coming from asbestos–containing waste. This does not include condensed, uncombined water.

(3) "Leak tight" means that solids or liquids cannot escape or spill out. It also means dust tight.

NOTE: Authority cited: Sections 25150, 25159, 25179.6 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5 and 25179.6, Health and Safety Code.

HISTORY

1. New section filed 3–1–93; operative 3–1–93 (Register 93, No. 10).

Article 12. Incineration Requirements of Certain Hazardous Waste

§ 66268.120. Hazardous Waste with Heating Values Greater than 3,000 British Thermal Units per Pound of Waste.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Section 25155.5, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect repealing section filed 3–29–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 13).

§ 66268.121. Hazardous Waste Contain More than One Percent of Volatile Organic Compounds.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Sections 25123.6 and 25155.5, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect repealing section filed 3–29–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 13).

§ 66268.122. Treatment Capacity Exemption.

If the Department determines that adequate incineration or other authorized treatment capacity does not exist within the state, a person disposing of hazardous waste subject to sections 66268.120 and 66268.121 of this chapter is exempt from the treatment requirements of these sections, until the Department determines that adequate incinerator or other treatment is available. This section shall not exempt a hazardous waste specified in sections 66268.120 and 66268.121 from any treatment, handling or disposal standard established by any other provision of law or regulation.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Section 25155.5, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66268.124. Emergency Variance from Sections 66268.120 and 66268.121.

(a) A hazardous waste producer may request in writing, an emergency variance from the Department pursuant to Health and Safety Code section 25155.7. A producer of a hazardous waste subject to Land Disposal Restrictions established pursuant to section 6924(m) of Title 42 of the United States Code is not eligible for an emergency variance, unless the waste has been granted a variance, extension, or exemption by the EPA Administrator.

(b) After receiving an application for an emergency variance, the Department may request any additional information which it deems necessary to evaluate the application. Within 45 days of receipt of the application, the Department shall inform the applicant, in writing, that the application is complete and accepted for filing, or that the application is deficient and what specific information is required.

(c) On the basis of the information referred to in subsection (b) of this section, the Department may grant an emergency variance of up to 1 year upon the request of the applicant if the demonstration required pursuant to Health and Safety Code section 25155.7, can still be made. In no event will an emergency variance extend beyond 24 months from the date the Department determines the application is complete and accepted for filing. The length of any emergency variance will be determined by the Department based on the time required for the applicant to secure other treatment pursuant to sections 66268.120 and 66268.121. The Department shall make a decision on an application for an emergency variance within 120 days of the filing of a completed application.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Section 25155.7, Health and Safety Code; Section 15376, Government Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Editorial correction of printing error in Appendix III–A (Register 92, No. 49).
3. Amendment of Appendices II and IV, repealer of Appendix V, amendment of Appendix VII, new Appendices VIII and IX, and amendment of NOTE filed 10–24–94 as an emergency; operative 10–24–94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–20–95 or emergency language will be repealed by operation of law on the following day.
4. Amendment of Appendices II and IV, repealer of Appendix V, amendment of Appendix VII, new Appendices VIII and IX, and amendment of NOTE refiled 2–21–95 as an emergency; operative 2–21–95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–21–95 or emergency language will be repealed by operation of law on the following day.
5. Amendment of Appendices II and IV, repealer of Appendix V, amendment of Appendix VII, new Appendices VIII and IX and amendment of NOTE refiled 6–19–95 as an emergency; operative 6–19–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–95 or emergency language will be repealed by operation of law on the following day.
6. Amendment of Appendices II and IV, repealer of Appendix V, amendment of Appendix VII, new Appendices VIII and IX and amendment of NOTE refiled 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 10–24–94 order including repealer of Appendix I, amendment of Appendix II heading, and amendment of Appendices III, IV, VII, VIII asnd IX transmitted to OAL 12–15–95 and filed 1–31–96 (Register 96, No. 5).
8. Change without regulatory effect repealing appendix II and amending appendices III, IIIA and IX filed 8–15–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 33).
9. Change without regulatory effect replacing first paragraph of Appendix VI, repealing and adopting new Appendix VII (Tables 1 and 2), repealing former Appendix IX, renumbering former Appendix VIII to new Appendix IX and adopting new Appendix VIII, Appendix X (reserved) and Appendix XI filed 6–4–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 23).
10. Change without regulatory effect amending heading for appendix VIII filed 1–13–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 2).

Appendix I, Chapter 18

Toxicity Characteristic Leaching Procedure (TCLP)

Note: The TCLP (Method 1311) is published in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," U.S. EPA Publication SW–846, as incorporated by reference in section 66260.11(a)(19).

NOTE: Authority cited: Sections 208, 25150, 25159 and 25179.6, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5 and 25179.6, Health and Safety Code; and 40 CFR Part 268 Appendix I.

[The next page is 758.193.]

Appendix II, Chapter 18

(reserved)

[The next page is 758.237.]

Appendix III

List of Halogenated Organic Compounds Regulated
Under 66268.32 EPA Listed Compounds:

In determining the concentration of HOCs in a hazardous waste for purposes of the Section 66268.32 land disposal prohibition, the generator or facility owner/operator shall include the following HOCs in the calculation as any compounds having a carbon-halogen bond which are listed in this Appendix (see Section 66268.10). Appendix III to Chapter 18 consists of the following compounds:

Volatiles

Bromodichloromethane

Bromomethane

Carbon Tetrachloride

Chlorobenzene

2-Chloro-1,3-butadiene

Chlorodibromomethane

Chloroethane

2-Chloroethyl vinyl ether

Chloroform

Chloromethane

3-Chloropropene

1,2-Dibromo-3-chloropropane

1,2-Dibromoethane

Dibromomethane

Trans-1,4-Dichloro-2-butene

Dichlorodifluoromethane

1,1-Dichloroethane

1,2-Dichloroethane

1,1-Dichloroethylene

Trans-1,2-Dichloroethene

1,2-Dichloropropane

Trans-1,3-Dichloropropene

cis-1,3-Dichloropropene

Iodomethane

Methylene chloride

1,1,1,2-Tetrachloroethane

1,1,2,2-Tetrachloroethane

Tetrachloroethane

Tribromomethane

1,1,1-Trichloroethane

1,1,2-Trichloroethane

Trichloroethene

Trichloromonofluoromethane

1,2,3-Trichloropropane

Vinyl chloride

Semivolatiles

Bis(2-chloroethoxy)ethane

Bis(2-chloroethyl)ether

Bis(2-chloroisopropyl) ether

p-Chloroaniline

Chlorobenzilate

p-Chloro-m-cresol

2-Chloronaphthalene

2-Chlorophenol

3-Chloropropionitrile

m-Dichlorobenzene

o-Dichlorobenzene

p-Dichlorobenzene

3,3'-Dichlorobenzidine

2,4-Dichlorophenol

2,6-Dichlorophenol

Hexachlorobenzene

Hexachlorobutadiene

Hexachlorocyclopentadiene

Hexachloroethane

Hexachloroprophene

Hexachloropropene

4,4'-Methylenebis(2-chloroaniline)

Pentachlorobenzene

Pentachloroethane

Pentachloronitrobenzene

Pentachlorophenol

Pronamide

1,2,4,5-Tetrachlorobenzene

2,3,4,6-Tetrachlorophenol

1,2,4-Trichlorobenzene

2,4,5-Trichlorophenol

2,4,6-Trichlorophenol

Tris(2,3-dibromopropyl)phosphate

Organochlorine Pesticides

Aldrin

alpha-BHC

beta-BHC

delta-BHC

gamma-BHC

Chlordane

DDD

DDE

DDT

Dieldrin

Endosulfan I

Endosulfan II

Endrin

Endrin aldehyde

Heptachlor

Heptachlor epoxide

Isodrin

Kepone

Methoxyclor

Toxaphene

Phenoxyacetic Acid Herbicides

2,4-Dichlorophenoxyacetic acid

Silvex

2,4,5-T

PCBs

Aroclor 1016

Aroclor 1221

Aroclor 1232

Aroclor 1242

Aroclor 1248

Aroclor 1254

Aroclor 1260

PCBs not otherwise specified

Dioxins and Furans

Hexachlorodibenzo-p-dioxins

Hexachlorodibenzofuran

Pentachlorodibenzo-p-dioxins

Pentachlorodibenzofuran

Tetrachlorodibenzo-p-dioxins

Tetrachlorodibenzofuran

2,3,7,8-Tetrachlorodibenzo-p-dioxin

NOTE: Authority cited: Sections 208, 25150, 25159 and 25179.6, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5 and 25179.6, Health and Safety Code.

Appendix III–A

List of Halogenated Organic Compounds Regulated
Under 66268.32: California Listed Compounds

In determining the concentration of HOCs in a hazardous waste for the purposes of the Section 66268.32 land disposal prohibition, HOCs that shall be included in the calculation as any compounds having a carbon-halogen bond which are listed in this Appendix (See Section 66260.10). Appendix III-A to Chapter 18 consists of the following compounds:

Chlorinated Solvents

1-Chlorobutane (N-Butyl Chloride)

2-Chloro-2-methylpropane (t-Butyl Chloride)

3-Chloro-2-methylpropene (Methallyl Chloride)

Dichlorobutadiene

Dichlorobutenes

1,4-Dichlorobutyne

Tetrachloroethylene (Perchloroethylene)

1,2,3-Trichloropropene

Pesticides

Atrazine

Balan

Barban

Bladex

Bromacil

Bromoxynil Octanoate

Captafol

Captan

Carbon Tetrachloride

Carbophenthion

CDEC

Chipco 26019 (Iprodione)

Chloramben (Imagan)

Chlorbisan

Chlordimeform

Chloromeform Hydrochloride

Chlorflurenol, methyl ester

Chlorobenzilate

2-Chloroethyl Trimethyl Ammonium Chloride

Chloroneb

Chlorophacione

Chlorophenols

1-(4-Chlorophenoxy)-3,3-Dimethyl-1-(1,2,4-Triazol-1-YL)-Butan-2-one

S-((4-Chlorophenyl) methyl) Diethylcarbothioate

Chloropicrin

Chlorothalonil

Chloroxuron

Chloropynifus

Chloro-IPC

Dalapon

4(2,4-DB)

D-D Mixture (Dichloropropane, Dichloropropene

DDVP; Dichlorovo; Vapona

Diallate

Dicamba

Dichlobenil

Dichlone

Para-dichlorobenzene

2,4-Dichloro-6-(0-chloroanilino)-S-Triazine

2,6-Dichloro-4-Nitroaniline Dichlorophene

1-(2-(2,4 Dichlorophenyl)-2-(2-Propenyoxy-Ethyl)-IH-IM-IDAZ

Dichloropropane

Dichloropropene

Dicofol

Dimethyl Tetrachloroterephthalate

Diuron

2,4-DP

Endothal

Ethephon

Ethylene Dibromide (EDB)

Ethylene Dichloride (EDC)

Fenac

Fluometron

Fluchloralin

Folpet

Hexachlorophene

Lindane

Linuron

MCPA

MCPPA

Methfluoramid

Methyl Bromide

Methyl-2,3-Dichloro-9-hydroxy fluorene-9-carboxylate Methyl 2,7-Dichloro-9-hydroxy fluorene-9-carboxylate Methyl 2-(4-(2,4 Dichlorophenoxy) phenoxy propanoate Methylene Chloride

Methyl-9-hydroxyfluorene-9-carboxylate Monuron

Naled

Neburon

N-Serve (Nitrapyrin)

Nitrofen

Norflurazon

PCNB

PCP

Pentac

Permethrin

Perthane

Phosalone

Picloram-R

Pipvon

Permethrin

Profluralin

Propachlor

Propanil

Propazine

Pyrazon

Ronnel

Simazine

Sodium Dichloro-s-triazinetrione

Terbucil

Terrazole

Tetrachloroethylene

Tetrachlorovintos

Tetrudifon

N-Trichlormethyl Thio-4-cyclohexine 1,2-Dicarboximide

Trichlorophon

Trichloro-5-triazinetrione

Trifluralin

Triforine

Vinclozolin

Compounds from Appendix X--Chapter 11

Acetyl Chloride

Allyl Bromide, 3-Bromopropene

Allylchloride, 3-chloropropene

N-Amyl chloride, 1-chloropentane

Benzotrifluoride, trifluoromethyl benzene

Benzl Bromide, Alpha-Bromotoluene

Benzylchloride, Apha-chlorotoluene

bis (chloromethyl) ether, Dichloromethyl ether

Carbophenothion, trithion

Chloral Hydrate, trichloro Acetaldehyde

Chlortenvinphos

Chloroacetaldehyde

Apha-chloroacetophenone, phenylchloromethyl ketone

Chloroacetyl chloride

para-Chlorobenzoyl peroxide

orth-Chlorobenzylidine malonitrite, OCMB

Chloropicrin, Trichloronitromethane

Chloro-ortho-toluidine, 2 Amino-4-chloroteulene

Coroxon

Crimidine

1,2-Dichloroethylene

Dichloroethyl ether, diclorether

1,2 Dichloropropene, propylene dichloride

1,3 Dichloropropylene; 1,3 dichloropropene

Dinitirochlorobenzene

Epichlorohydrin

Ethyl Chloride, chloroethane

Fluoroacetanilide

Fluoroacetic acid

Isoproply chloride

Methyl Chloromethyl ether, CMME

Monochloroacetic acid, Chloroacetic Acid, MCA

Monochloroacetone, Chloroacetone, 1-chloro-2-propanone

Nitrochlorobenzene, Chloronitrobenzene

Perchloroethylene

Perchloromethyl mercaptan, Trichloromethylsulfenyl chloride

Phosphamidon, Dimecron

Picryl Chloride, 2-Chloro-1,3,5 Trinitro Benzene Telodrin

Tetrasal, Animert

Tranid

NOTE: Authority cited: Sections 208, 25150, 25159 and 25179.6, Health and Safety Code.

Reference: Sections 25150, 25159, 25159.5 and 25179.6, Health and Safety Code.

Appendix IV to Chapter 18
Wastes Excluded From Lab Packs Under the Alternative Treatment Standards of Section 66268.42(c)

Hazardous waste with the following EPA Hazardous Waste Codes may not be placed in lab packs under alternative lab pack treatment standards of section 66268.42(c), D009, F019, K003, K004, K005, K006, K062, K071, K100, K106, P010, P011, P012, P076, P078, U134, U151.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5, 25179.6 and 58012, Health and Safety Code; 40 CFR Section 268, Appendix IV.

Appendix V

[reserved]

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5, 25179.6 and 58012, Health and Safety Code; 40 CFR Section 268, Appendix V.

Appendix VI

Recommended Technologies to Achieve Deactivation of Characteristics in Section 66268.42

The treatment standard for many characteristic wastes is stated in the section 66268.40 Table of Treatment Standards as "Deactivation and meet UTS." USEPA as determined that many technologies, when used alone or in combination, can achieve the deactivation portion of the treatment standard. Characteristic wastes that are not managed in a facility regulated by the federal Clean Water Act (CWA) or in a federal CWA-equivalent facility, and that also contain underlying hazardous constituents (see section 66260.10 shall be treated not only by a "deactivating" technology to remove the characteristic, but also to achieve the universal treatment standards (UTS) for underlying hazardous constituents. The following appendix presents a partial list of technologies, utilizing the five letter technology codes established in section 66268.42 Table 1, that may be useful in meeting the treatment standard. Use of these specific technologies is not mandatory and does not preclude direct reuse, recovery, and/or the use of other pretreatment technologies, provided deactivation is achieved and underlying hazardous constituents are treated to achieve the UTS.

Waste Code/Subcategory	Nonwastewaters	Wastewaters
D001 Ignitable Liquids based on 66261.21(a)(1) - Low TOC Nonwastewater Subcategory (containing 1% to <10% TOC)	RORGS INCIN WETOX CHOXD BIODG	n.a.
D001 Ignitable Liquids based on 66261.21(a)(1) - Ignitable Wastewater Subcategory (containing <1% TOC)	n.a.	RORGS INCIN WETOX CHOXD BIODG
D001 Compressed Gases based on 66261.21(a)(3)	RCGAS INCIN FSUBS ADGAS fb. INCIN ADGAS fb. (CHOXD; or CHRED)	n.a.
D001 Ignitable Reactives based on 66261.21 (a)(2)	WTRRX CHOXD CHRED STABL INCIN	n.a.
D001 Ignitable Oxidizers based on 66261.21(a)(4)	CHRED INCIN	CHRED INCIN
D002 Acid Subcategory based on 66261.22(a)(1) with pH less than or equal to 2	RCORR NEUTR INCIN	NEUTR INCIN
D002 Alkaline Subcategory based on 66261.22(a)(1) with pH greater than or equal to 12.5	NEUTR INCIN	NEUTR INCIN

Waste Code/Subcategory	Nonwastewaters	Wastewaters
D002 Other Corrosives based on 66261.22(a)(2)	CHOXD CHRED INCIN STABL	CHOXD CHRED INCIN
D003 Water Reactives based on 66261.23(a)(2), (3), and (4)	INCIN WTRRX CHOXD CHRED	n.a.
D003 Reactive Sulfides based on 66261.23(a)(5)	CHOXD CHRED INCIN STABL	CHOXD CHRED BIODG INCIN
D003 Explosives based on 66261.23(a)(6), (7), and (8)	INCIN CHOXD CHRED	INCIN CHOXD CHRED BIODG CARBN
D003 Other Reactives based on 66261.23(a)(1)	INCIN CHOXD CHRED	INCIN CHOXD CHRED BIODG CARBN
K044 Wastewater treatment sludges from the manufacturing and processing of explosives	CHOXD CHRED INCIN	CHOXD CHRED BIODG CARBN INCIN
K045 Spent carbon from the treatment of wastewaters containing explosives	CHOXD CHRED INCIN	CHOXD CHRED BIODG CARBN INCIN
K047 Pink/red water from TNT operations	CHOXD CHRED INCIN	CHOXD CHRED BIODG CARBN INCIN

NOTE: "n.a." stands for "not applicable"; "fb." stands for "followed by".

NOTE: Authority cited: Sections 208, 25150, 25159 and 25179.6, Health and Safety Code.
Reference: Sections 25150, 25159, 25159.5 and 25179.6, Health and Safety Code; 40 CFR Part 268 Appendix VI.

Appendix VII—Table 1. Effective Dates of Surface Disposed Wastes (Non–Soil and Debris) Regulated in the LDRs [Comprehensive List]

Waste code	*Waste category*	*Effective date*
California List	Liquid hazardous wastes, including free liquids associated with solid or sludge, containing free cyanides at concentrations greater than or equal to 1,000 mg/l or certain metals or compounds of these metals greater than or equal to the prohibition levels	July 8, 1987.
California List	Liquid (aqueous) hazardous wastes having a pH less than or equal to 2	July 8, 1987
California List	Dilute HOC wastewaters, defined as HOC–waste mixtures that are primarily water and that contain greater than or equal to 1,000 mg/l but less than 10,000 mg/l	July 8, 1987.
California List	Liquid hazardous waste containing PCBs greater than or equal to 50 ppm	July 8, 1987.
California List	Other liquid and non–liquid hazardous wastes containing HOCs in total concentration greater than or equal to 1,000 mg	Nov. 8, 1988.
D001[c]	All (except High TOC Ignitable Liquids)	Aug. 9, 1993.
D001	High TOC Ignitable Liquids	Aug. 8, 1990.
D002[c]	All	Aug. 9, 1993.
D003[e]	All others	July 8, 1996.
D003	Newly identified surface–disposed elemental phosphorus processing wastes	May 26, 200
D004	Nonwastewater	May 8, 1992.
D004	Wastewater	Aug. 8, 1992.
D004	Newly identified D004 and mineral processing wastes	Aug. 24, 1998
D004	Mixed radioactive/newly identified D004 or mineral processing wastes	May 26, 2000
D005	All others	Aug. 8, 1990
D005	Newly identified D005 and mineral processing wastes	Aug. 24, 1998
D005	Mixed radioactive/newly identified D005 or mineral processing wastes	May 26, 2000
D006	All others	Aug. 8, 1990.
D006	Newly identified D006 and mineral processing waste	Aug. 24, 1998
D006	Mixed radioactive/newly identified D006 or mineral processing wastes	May 26, 2000.
D007	All others	Aug. 8, 1990.
D007	Newly identified D007 and mineral processing wastes	Aug. 24, 1998
D007	Mixed radioactive/newly identified D007 or mineral processing wastes	May 26, 2000
D008	Lead materials before secondary smelting	May 8, 1992.
D008	Newly identified D008 and mineral processing waste	Aug. 24, 1998
D008	Mixed radioactive/newly identified D008 or mineral processing wastes	May 26, 2000
D008	All others	Aug. 8, 1990.
D009	Nonwastewater	May 8, 1992.
D009	Newly identified D009 and mineral processing waste	Aug. 24, 1998
D009	Mixed radioactive/newly identified D009 or mineral processing wastes	May 26, 2000
D009	All others	Aug. 8, 1990.
D010	All others	Aug. 8, 1990.
D010	Newly identified D010 and mineral processing wastes	Aug. 24, 1998
D010	Mixed radioactive/newly identified D010 or mineral processing wastes	May 26, 2000
D011	All others	Aug. 8, 1990.
D011	Newly identified D011 and mineral processing wastes	Aug. 24, 1998
D011	Mixed radioactive/newly identified D011 or mineral processing wastes	May 26, 2000
D012 (that exhibit the toxicity characteristic based on the TCLP)[d]	All	Dec. 14, 1994.
D013 (that exhibit the toxicity characteristic based on the TCLP)[d]	All	Dec. 14, 1994.
D014 (that exhibit the toxicity characteristic based on the TCLP)[d]	All	Dec. 14, 1994.
D015 (that exhibit the toxicity characteristic based on the TCLP)[d]	All	Dec. 14, 1994.
D016 (that exhibit the toxicity characteristic based on the TCLP)[d]	All	Dec. 14, 1994.
D017 (that exhibit the toxicity characteristic based on the TCLP)[d]	All	Dec. 14, 1994.
D018	Mixed with radioactive wastes	Sept. 19, 1996
D018	All others	Dec. 19, 1994.
D019	Mixed with radioactive wastes	Sept. 19, 1996
D019	All others	Dec. 19, 1994.
D020	Mixed with radioactive wastes	Sept. 19, 1996
D020	All others	Dec. 19, 1994.
D021	Mixed with radioactive wastes	Sept. 19, 1996
D021	All others	Dec. 19, 1994.
D022	Mixed with radioactive wastes	Sept. 19, 1996
D022	All others	Dec. 19, 1994.
D023	Mixed with radioactive wastes	Sept. 19, 1996.
D023	All others	Dec. 19, 1994.
D024	Mixed with radioactive wastes	Sept. 19, 1996
D024	All others	Dec. 19, 1994.
D025	Mixed with radioactive wastes	Sept. 19, 1996
D025	All others	Dec. 19, 1994.
D026	Mixed with radioactive wastes	Sept. 19, 1996
D026	All others	Dec. 19, 1994.
D027	Mixed with radioactive wastes	Sept. 19, 1996
D027	All others	Dec. 19, 1994.
D028	Mixed with radioactive wastes	Sept. 19, 1996
D028	All others	Dec. 19, 1994.
D029	Mixed with radioactive wastes	Sept. 19, 1996
D029	All others	Dec. 19, 1994.
D030	Mixed with radioactive wastes	Sept. 19, 1996
D030	All others	Dec. 19, 1994.
D031	Mixed with radioactive wastes	Sept. 19, 1996
D031	All others	Dec. 19, 1994.
D032	Mixed with radioactive wastes	Sept. 19, 1996
D032	All others	Dec. 19, 1994.
D033	Mixed with radioactive wastes	Sept. 19, 1996
D033	All others	Dec. 19, 1994.
D034	Mixed with radioactive wastes	Sept. 19, 1996
D034	All others	Dec. 19, 1994.
D035	Mixed with radioactive wastes	Sept. 19, 1996
D035	All others	Dec. 19, 1994.
D036	Mixed with radioactive wastes	Sept. 19, 1996
D036	All others	Dec. 19, 1994.
D037	Mixed with radioactive wastes	Sept. 19, 1996
D037	All others	Dec. 19, 1994.
D038	Mixed with radioactive wastes	Sept. 19, 1996
D038	All others	Dec. 19, 1994.
D039	Mixed with radioactive wastes	Sept. 19, 1996
D039	All others	Dec. 19, 1994.
D040	Mixed with radioactive wastes	Sept. 19, 1996
D040	All others	Dec. 19, 1994.
D041	Mixed with radioactive wastes	Sept. 19, 1996
D041	All others	Dec. 19, 1994.
D042	Mixed with radioactive wastes	Sept. 19, 1996
D042	All others	Dec. 19, 1994.
D043	Mixed with radioactive wastes	Sept. 19, 1996
D043	All others	Dec. 19, 1994.
F001	Small quantity generators, CERCLA response/RCRA corrective action, initial generator's solvent–water mixtures, solvent–containing sludges and solids.	Nov. 8, 1988.
F001	All others	Nov. 8, 1986
F002 (1,1,2–trichloroethane)	Wastewater and Nonwastewater	Aug. 8, 1990

Waste code	*Waste category*	*Effective date*
F002	Small quantity generators, CERCLA response/RCRA corrective action, initial generator's solvent–water mixtures, solvent–containing sludges and solids.	Nov. 8, 1988.
F002	All others	Nov. 8, 1986.
F003	Small quantity generators, CERCLA response/RCRA corrective action, initial generator's solvent–water mixtures, solvent–containing sludges and solids.	Nov. 8, 1988.
F003	All others	Nov. 8, 1986.
F004	Small quantity generators, CERCLA response/RCRA corrective action, initial generator's solvent–water mixtures, solvent–containing sludges and solids.	Nov. 8, 1988.
F004	All others	Nov. 8, 1986.
F005 (benzene, 2–ethoxy ethanol, 2–nitropropane)	Wastewater and Nonwastewater	Aug. 8, 1990
F005	Small quantity generators, CERCLA response/RCRA corrective action, initial generator's solvent–water mixtures, solvent–containing sludges and solids.	Nov. 8, 1988.
F005	All others	Nov. 8, 1986.
F006	Wastewater	Aug. 8, 1990.
F006	Nonwastewater	Aug. 8, 1988.
F006 (cyanides)	Nonwastewater	July 8, 1989.
F007	All	July 8, 1989.
F008	All	July 8, 1989.
F009	All	July 8, 1989.
F010	All	June 8, 1989.
F011 (cyanides)	Nonwastewater	Dec. 8, 1989.
F011	All others	July 8, 1989.
F012 (cyanides)	Nonwastewater	Dec. 8, 1989.
F012	All others	July 8, 1989.
F019	All	Aug. 8, 1990.
F020	All	Nov. 8, 1988.
F021	All	Nov. 8, 1988.
F022	All	Nov. 8, 1988.
F023	All	Nov. 8, 1988.
F024 (metals)	Wastewater	June 8, 1989.
F024 (metals)	Nonwastewater	Aug. 8, 1990.
F024[b]	All others	June 8, 1989.
F025	All	Aug. 8, 1990.
F026	All	Nov. 8, 1988.
F027	All	Nov. 8, 1988.
F028	All	Nov. 8, 1988.
F032	Mixed with radioactive wastes	May 12, 1999.
F032	All others	Aug. 12, 1997
F034	Mixed with radioactive wastes	May 12, 1999.
F034	All others	Aug. 12, 1997
F035	Mixed with radioactive wastes	May 12,, 1999.
F035	All others	Aug. 12, 1997
F037	Not generated from surface impoundment cleanouts or closures	June 30, 1993.
F037	Generated from surface impoundment cleanouts or closures	June 30, 1994.
F037	Mixed with radioactive wastes	June 30, 1994.
F038	Not generated from surface impoundment cleanouts or closures	June 30, 1993.
F038	Generated from surface impoundment cleanouts or closures	June 30, 1994.
F038	Mixed with radioactive wastes	June 30, 1994.
F039	Wastewater	Aug. 8, 1990.
F039	Nonwastewater	May 8, 1992.
K001 (organics)[b]	All	Aug. 8, 1988.
K001	All others	Aug. 8, 1988.
K002	All	Aug. 8, 1990.
K003	All	Aug. 8, 1990.
K004	Wastewater	Aug. 8, 1990.
K004	Nonwastewater	Aug. 8, 1988.
K005	Wastewater	Aug. 8, 1990.
K005	Nonwastewater	June 8, 1989.
K006	All	Aug. 8, 1990.
K007	Wastewater	Aug. 8, 1990.
K007	Nonwastewater	June 8, 1989.
K008	Wastewater	Aug. 8, 1990.
K008	Nonwastewater	Aug. 8, 1988.
K009	All	June 8, 1989.
K010	All	June 8, 1989.
K011	Wastewater	Aug. 8, 1990.
K011	Nonwastewater	June 8, 1989.
K013	Wastewater	Aug. 8, 1990.
K013	Nonwastewater	June 8, 1989.
K014	Wastewater	Aug. 8, 1990.
K014	Nonwastewater	June 8, 1989.
K015	Wastewater	Aug. 8, 1988.
K015	Nonwastewater	Aug. 8, 1990.
K016	All	Aug. 8, 1988.
K017	All	Aug. 8, 1990.
K018	All	Aug. 8, 1988.
K019	All	Aug. 8, 1988.
K020	All	Aug. 8, 1988.
K021	Wastewater	Aug. 8, 1990.
K021	Nonwastewater	Aug. 8, 1988.
K022	Wastewater	Aug. 8, 1990.
K022	Nonwastewater	Aug. 8, 1988.
K023	All	June 8, 1989.
K024	All	Aug. 8, 1988.
K025	Wastewater	Aug. 8, 1990.
K025	Nonwastewater	Aug. 8, 1988.
K026	All	Aug. 8, 1990.
K027	All	June 8, 1989.
K028 (metals)	Nonwastewater	Aug. 8, 1990.
K028	All others	June 8, 1989.
K029	Wastewater	Aug. 8, 1990.
K029	Nonwastewater	June 8, 1989.
K030	All	Aug. 8, 1988.
K031	Wastewater	Aug. 8, 1990.
K031	Nonwastewater	May 8, 1992.
K032	All	Aug. 8, 1990.
K033	All	Aug. 8, 1990.
K034	All	Aug. 8, 1990.
K035	All	Aug. 8, 1990.
K036	Wastewater	June 8, 1989.
K036	Nonwastewater	Aug. 8, 1988.
K037[b]	Wastewater	Aug. 8, 1988.
K037	Nonwastewater	Aug. 8, 1988.
K038	All	June 8, 1989.
K039	All	June 8, 1989.
K040	All	June 8, 1989.
K041	All	Aug. 8, 1990.
K042	All	Aug. 8, 1990.
K043	All	June 8, 1989.
K044	All	Aug. 8, 1988.
K045	All	Aug. 8, 1988.
K046 (Nonreactive)	Nonwastewater	Aug. 8, 1988.
K046	All others	Aug. 8, 1990.
K047	All	Aug. 8, 1988.
K048	Wastewater	Aug. 8, 1990.
K048	Nonwastewater	Nov. 8, 1990.
K049	Wastewater	Aug. 8, 1990.
K049	Nonwastewater	Nov. 8, 1990.
K050	Wastewater	Aug. 8, 1990.
K050	Nonwastewater	Nov. 8, 1990.
K051	Wastewater	Aug. 8, 1990.
K051	Nonwastewater	Nov. 8, 1990.
K052	Wastewater	Aug. 8, 1990.
K052	Nonwastewater	Nov. 8, 1990.
K060	Wastewater	Aug. 8, 1990.
K060	Nonwastewater	Aug. 8, 1988.
K061	Wastewater	Aug. 8, 1990.
K061	Nonwastewater	June 30, 1992.
K062	All	Aug. 8, 1988.
K069 (Non–Calcium Sulfate)	Nonwastewater	Aug. 8. 1988
K069	All others	Aug. 8, 1990.
K071	All	Aug. 8, 1990.
K073	All	Aug. 8, 1990.
K083	All	Aug. 8, 1990.
K084	Wastewater	Aug. 8, 1990.
K084	Nonwastewater	May 8, 1992.
K085	All	Aug. 8, 1990.
K086 (organics)[b]	All	Aug. 8, 1988.
K086	All others	Aug. 8, 1988.
K087	All	Aug. 8, 1988.
K088	Mixed with radioactive wastes	April 8, 1998.
K088	All others	Oct. 8, 1997.
K093	All	June 8, 1989.

Waste code	*Waste category*	*Effective date*
K094	All	June 8, 1989.
K095	Wastewater	Aug. 8, 1990.
K095	Nonwastewater	June 8, 1989.
K096	Wastewater	Aug. 8, 1990.
K096	Nonwastewater	June 8, 1989.
K097	All	Aug. 8, 1990.
K098	All	Aug. 8, 1990.
K099	All	Aug. 8, 1988.
K100	Wastewater	Aug. 8, 1990.
K100	Nonwastewater	Aug. 8, 1988.
K101 (organics)	Wastewater	Aug. 8, 1988.
K101 (metals)	Wastewater	Aug. 8, 1990.
K101 (organics)	Nonwastewater	Aug. 8, 1988.
K101 (metals)	Nonwastewater	May 8, 1992.
K102 (organics)	Wastewater	Aug. 8, 1988.
K102 (metals)	Wastewater	Aug. 8, 1990.
K102 (organics)	Nonwastewater	Aug. 8, 1988.
K102 (metals)	Nonwastewater	May 8, 1992.
K103	All	Aug. 8, 1988.
K104	All	Aug. 8, 1988.
K105	All	Aug. 8, 1990.
K106	Wastewater	Aug. 8, 1990.
K106	Nonwastewater	May 8, 1992.
K107	Mixed with radioactive wastes	June 30, 1994.
K107	All others	Nov. 9, 1992.
K108	Mixed with radioactive wastes	June 30, 1994.
K108	All others	Nov. 9, 1992.
K109	Mixed with radioactive wastes	June 30, 1994.
K109	All others	Nov. 9, 1992.
K110	Mixed with radioactive wastes	June 30, 1994.
K110	All others	Nov. 9, 1992.
K111	Mixed with radioactive wastes	June 30, 1994.
K111	All others	Nov. 9, 1992.
K112	Mixed with radioactive wastes	June 30, 1994.
K112	All others	Nov. 9, 1992.
K113	All	June 8, 1989.
K114	All	June 8, 1989.
K115	All	June 8, 1989.
K116	All	June 8, 1989.
K117	Mixed with radioactive wastes	June 30, 1994.
K117	All others	Nov. 9, 1992.
K118	Mixed with radioactive wastes	June 30, 1994.
K118	All others	Nov. 9, 1992.
K123	Mixed with radioactive wastes	June 30, 1994.
K123	All others	Nov. 9, 1992.
K124	Mixed with radioactive wastes	June 30, 1994.
K124	All others	Nov. 9, 1992.
K125	Mixed with radioactive wastes	June 30, 1994.
K125	All others	Nov. 9, 1992.
K126	Mixed with radioactive wastes	June 30, 1994.
K126	All others	Nov. 9, 1992.
K131	Mixed with radioactive wastes	June 30, 1994.
K131	All others	Nov. 9, 1992.
K132	Mixed with radioactive wastes	June 30, 1994.
K132	All others	Nov. 9, 1992.
K136	Mixed with radioactive wastes	June 30, 1994.
K136	All others	Nov. 9, 1992.
K141	Mixed with radioactive wastes	Sept. 19, 1996.
K141	All others	Dec. 19, 1994.
K142	Mixed with radioactive wastes	Sept. 19, 1996.
K142	All others	Dec. 19, 1994.
K143	Mixed with radioactive wastes	Sept. 19, 1996.
K143	All others	Dec. 19, 1994.
K144	Mixed with radioactive wastes	Sept. 19, 1996.
K144	All others	Dec. 19, 1994.
K145	Mixed with radioactive wastes	Sept. 19, 1996.
K145	All others	Dec. 19, 1994.
K147	Mixed with radioactive wastes	Sept. 19, 1996.
K147	All others	Dec. 19, 1994.
K148	Mixed with radioactive wastes	Sept. 19, 1996.
K148	All others	Dec. 19, 1994.
K149	Mixed with radioactive wastes	Sept. 19, 1996.
K149	All others	Dec. 19, 1994.
K150	Mixed with radioactive wastes	Sept. 19, 1996.
K150	All others	Dec. 19, 1994.
K151	Mixed with radioactive wastes	Sept. 19, 1996.
K151	All others	Dec. 19, 1994.
K156	Mixed with radioactive wastes	April 8, 1998.
K156	All others	July 8, 1996.
K157	Mixed with radioactive wastes	April 8, 1998.
K157	All others	July 8, 1996.
K158	Mixed with radioactive wastes	April 8, 1998.
K158	All others	July 8, 1996.
K159	Mixed with radioactive wastes	April 8, 1998.
K159	All others	July 8, 1996.
K160	Mixed with radioactive wastes	April 8, 1998.
K160	All others	July 8, 1996.
K161	Mixed with radioactive wastes	April 8, 1998.
K161	All others	July 8, 1996.
P001	All	Aug. 8, 1990.
P002	All	Aug. 8, 1990.
P003	All	Aug. 8, 1990.
P004	All	Aug. 8, 1990.
P005	All	Aug. 8, 1990.
P006	All	Aug. 8, 1990.
P007	All	Aug. 8, 1990.
P008	All	Aug. 8, 1990.
P009	All	Aug. 8, 1990.
P010	Wastewater	Aug. 8, 1990.
P010	Nonwastewater	May 8, 1992.
P011	Wastewater	Aug. 8, 1990.
P011	Nonwastewater	May 8, 1992.
P012	Wastewater	Aug. 8, 1990.
P012	Nonwastewater	May 8, 1992.
P013 (barium)	Nonwastewater	Aug. 8, 1990.
P013	All others	June 8, 1989.
P014	All	Aug. 8, 1990.
P015	All	Aug. 8, 1990.
P016	All	Aug. 8, 1990.
P017	All	Aug. 8, 1990.
P018	All	Aug. 8, 1990.
P020	All	Aug. 8, 1990.
P021	All	June 8, 1989.
P022	All	Aug. 8, 1990.
P023	All	Aug. 8, 1990.
P024	All	Aug. 8, 1990.
P026	All	Aug. 8, 1990.
P027	All	Aug. 8, 1990.
P028	All	Aug. 8, 1990.
P029	All	June 8, 1989.
P030	All	June 8, 1989.
P031	All	Aug. 8, 1990.
P033	All	Aug. 8, 1990.
P034	All	Aug. 8, 1990.
P036	Wastewater	Aug. 8, 1990.
P036	Nonwastewater	May 8, 1992.
P037	All	Aug. 8, 1990.
P038	Wastewater	Aug. 8, 1990.
P038	Nonwastewater	May 8, 1992.
P039	All	June 8, 1989.
P040	All	June 8, 1989.
P041	All	June 8, 1989.
P042	All	Aug. 8, 1990.
P043	All	June 8, 1989.
P044	All	June 8, 1989.
P045	All	Aug. 8, 1990.
P046	All	Aug. 8, 1990.
P047	All	Aug. 8, 1990.
P048	All	Aug. 8, 1990.
P049	All	Aug. 8, 1990.
P050	All	Aug. 8, 1990.
P051	All	Aug. 8, 1990.
P054	All	Aug. 8, 1990.
P056	All	Aug. 8, 1990.
P057	All	Aug. 8, 1990.
P058	All	Aug. 8, 1990.
P059	All	Aug. 8, 1990.
P060	All	Aug. 8, 1990.
P062	All	June 8, 1989.
P063	All	June 8, 1989.
P064	All	Aug. 8, 1990.
P065	Wastewater	Aug. 8, 1990.
P065	Nonwastewater	May 8, 1992.
P066	All	Aug. 8, 1990.
P067	All	Aug. 8, 1990.
P068	All	Aug. 8, 1990.
P069	All	Aug. 8, 1990.
P070	All	Aug. 8, 1990.
P071	All	June 8, 1989.
P072	All	Aug. 8, 1990.

Waste code	*Waste category*	*Effective date*
P073	All	Aug. 8, 1990.
P074	All	June 8, 1989.
P075	All	Aug. 8, 1990.
P076	All	Aug. 8, 1990.
P077	All	Aug. 8, 1990.
P078	All	Aug. 8, 1990.
P081	All	Aug. 8, 1990.
P082	All	Aug. 8, 1990.
P084	All	Aug. 8, 1990.
P085	All	June 8, 1989.
P087	All	May 8, 1992.
P088	All	Aug. 8, 1990.
P089	All	June 8, 1989.
P092	Wastewater	Aug. 8, 1990.
P092	Nonwastewater	May 8, 1992.
P093	All	Aug. 8, 1990.
P094	All	June 8, 1989.
P095	All	Aug. 8, 1990.
P096	All	Aug. 8, 1990.
P097	All	June 8, 1989.
P098	All	June 8, 1989.
P099 (silver)	Wastewater	Aug. 8, 1990.
P099	All others	June 8, 1989.
P101	All	Aug. 8, 1990.
P102	All	Aug. 8, 1990.
P103	All	Aug. 8, 1990.
P104 (silver)	Wastewater	Aug. 8, 1990.
P104	All others	June 8, 1989.
P105	All	Aug. 8, 1990.
P106	All	June 8, 1989.
P108	All	Aug. 8, 1990.
P109	All	June 8, 1989.
P110	All	Aug. 8, 1990.
P111	All	June 8, 1989.
P112	All	Aug. 8, 1990.
P113	All	Aug. 8, 1990.
P114	All	Aug. 8, 1990.
P115	All	Aug. 8, 1990.
P116	All	Aug. 8, 1990.
P118	All	Aug. 8, 1990.
P119	All	Aug. 8, 1990.
P120	All	Aug. 8, 1990.
P121	All	June 8, 1989.
P122	All	Aug. 8, 1990.
P123	All	Aug. 8, 1990.
P127	Mixed with radioactive wastes	April 8, 1998.
P127	All others	July 8, 1996.
P128	Mixed with radioactive wastes	April 8, 1998.
P128	All others	July 8, 1996.
P185	Mixed with radioactive wastes	April 8, 1998.
P185	All others	July 8, 1996.
P188	Mixed with radioactive wastes	April 8, 1998.
P188	All others	July 8, 1996.
P189	Mixed with radioactive wastes	April 8, 1998.
P189	All others	July 8, 1996.
P190	Mixed with radioactive wastes	April 8, 1998.
P190	All others	July 8, 1996.
P191	Mixed with radioactive wastes	April 8, 1998.
P191	All others	July 8, 1996.
P192	Mixed with radioactive wastes	April 8, 1998.
P192	All others	July 8, 1996.
P194	Mixed with radioactive wastes	April 8, 1998.
P194	All others	July 8, 1996.
P196	Mixed with radioactive wastes	April 8, 1998.
P196	All others	July 8, 1996.
P197	Mixed with radioactive wastes	April 8, 1998.
P197	All others	July 8, 1996.
P198	Mixed with radioactive wastes	April 8, 1998.
P198	All others	July 8, 1996.
P199	Mixed with radioactive wastes	April 8, 1998.
P199	All others	July 8, 1996.
P201	Mixed with radioactive wastes	April 8, 1998.
P201	All others	July 8, 1996.
P202	Mixed with radioactive wastes	April 8, 1998.
P202	All others	July 8, 1996.
P203	Mixed with radioactive wastes	April 8, 1998.
P203	All others	July 8, 1996.
P204	Mixed with radioactive wastes	April 8, 1998.
P204	All others	July 8, 1996.
P205	Mixed with radioactive wastes	April 8, 1998.
P205	All others	July 8, 1996.
U001	All	Aug. 8, 1990.
U002	All	Aug. 8, 1990.
U003	All	Aug. 8, 1990.
U004	All	Aug. 8, 1990.
U005	All	Aug. 8, 1990.
U006	All	Aug. 8, 1990.
U007	All	Aug. 8, 1990.
U008	All	Aug. 8, 1990.
U009	All	Aug. 8, 1990.
U010	All	Aug. 8, 1990.
U011	All	Aug. 8, 1990.
U012	All	Aug. 8, 1990.
U014	All	Aug. 8, 1990.
U015	All	Aug. 8, 1990.
U016	All	Aug. 8, 1990.
U017	All	Aug. 8, 1990.
U018	All	Aug. 8, 1990.
U019	All	Aug. 8, 1990.
U020	All	Aug. 8, 1990.
U021	All	Aug. 8, 1990.
U022	All	Aug. 8, 1990.
U023	All	Aug. 8, 1990.
U024	All	Aug. 8, 1990.
U025	All	Aug. 8, 1990.
U026	All	Aug. 8, 1990.
U027	All	Aug. 8, 1990.
U028	All	June 8, 1989.
U029	All	Aug. 8, 1990.
U030	All	Aug. 8, 1990.
U031	All	Aug. 8, 1990.
U032	All	Aug. 8, 1990.
U033	All	Aug. 8, 1990.
U034	All	Aug. 8, 1990.
U035	All	Aug. 8, 1990.
U036	All	Aug. 8, 1990.
U037	All	Aug. 8, 1990.
U038	All	Aug. 8, 1990.
U039	All	Aug. 8, 1990.
U041	All	Aug. 8, 1990.
U042	All	Aug. 8, 1990.
U043	All	Aug. 8, 1990.
U044	All	Aug. 8, 1990.
U045	All	Aug. 8, 1990.
U046	All	Aug. 8, 1990.
U047	All	Aug. 8, 1990.
U048	All	Aug. 8, 1990.
U049	All	Aug. 8, 1990.
U050	All	Aug. 8, 1990.
U051	All	Aug. 8, 1990.
U052	All	Aug. 8, 1990.
U053	All	Aug. 8, 1990.
U055	All	Aug. 8, 1990.
U056	All	Aug. 8, 1990.
U057	All	Aug. 8, 1990.
U058	All	June 8, 1989.
U059	All	Aug. 8, 1990.
U060	All	Aug. 8, 1990.
U061	All	Aug. 8, 1990.
U062	All	Aug. 8, 1990.
U063	All	Aug. 8, 1990.
U064	All	Aug. 8, 1990.
U066	All	Aug. 8, 1990.
U067	All	Aug. 8, 1990.
U068	All	Aug. 8, 1990.
U069	All	June 30, 1992
U070	All	Aug. 8, 1990.
U071	All	Aug. 8, 1990.
U072	All	Aug. 8, 1990.
U073	All	Aug. 8, 1990.
U074	All	Aug. 8, 1990.
U075	All	Aug. 8, 1990.
U076	All	Aug. 8, 1990.
U077	All	Aug. 8, 1990.
U078	All	Aug. 8, 1990.
U079	All	Aug. 8, 1990.
U080	All	Aug. 8, 1990.
U081	All	Aug. 8, 1990.
U082	All	Aug. 8, 1990.
U083	All	Aug. 8, 1990.
U084	All	Aug. 8, 1990.
U085	All	Aug. 8, 1990.
U086	All	Aug. 8, 1990.
U087	All	June 8, 1989.
U088	All	June 8, 1989.
U089	All	Aug. 8, 1990.

Waste code	*Waste category*	*Effective date*	*Waste code*	*Waste category*	*Effective date*
U090	All	Aug. 8, 1990.	U173	All	Aug. 8, 1990.
U091	All	Aug. 8, 1990.	U174	All	Aug. 8, 1990.
U092	All	Aug. 8, 1990.	U176	All	Aug. 8, 1990.
U093	All	Aug. 8, 1990.	U177	All	Aug. 8, 1990.
U094	All	Aug. 8, 1990.	U178	All	Aug. 8, 1990.
U095	All	Aug. 8, 1990.	U179	All	Aug. 8, 1990.
U096	All	Aug. 8, 1990.	U180	All	Aug. 8, 1990.
U097	All	Aug. 8, 1990.	U181	All	Aug. 8, 1990.
U098	All	Aug. 8, 1990.	U182	All	Aug. 8, 1990.
U099	All	Aug. 8, 1990.	U183	All	Aug. 8, 1990.
U101	All	Aug. 8, 1990.	U184	All	Aug. 8, 1990.
U102	All	June 8, 1989.	U185	All	Aug. 8, 1990.
U103	All	Aug. 8, 1990.	U186	All	Aug. 8, 1990.
U105	All	Aug. 8, 1990.	U187	All	Aug. 8, 1990.
U106	All	Aug. 8, 1990.	U188	All	Aug. 8, 1990.
U107	All	June 8, 1989.	U189	All	Aug. 8, 1990.
U108	All	Aug. 8, 1990.	U190	All	June 8, 1989.
U109	All	Aug. 8, 1990.	U191	All	Aug. 8, 1990.
U110	All	Aug. 8, 1990.	U192	All	Aug. 8, 1990.
U111	All	Aug. 8, 1990.	U193	All	Aug. 8, 1990.
U112	All	Aug. 8, 1990.	U194	All	Aug. 8, 1990.
U113	All	Aug. 8, 1990.	U196	All	Aug. 8, 1990.
U114	All	Aug. 8, 1990.	U197	All	Aug. 8, 1990.
U115	All	Aug. 8, 1990.	U200	All	Aug. 8, 1990.
U116	All	Aug. 8, 1990.	U201	All	Aug. 8, 1990.
U117	All	Aug. 8, 1990.	U202	All	Aug. 8, 1990.
U118	All	Aug. 8, 1990.	U203	All	Aug. 8, 1990.
U119	All	Aug. 8, 1990.	U204	All	Aug. 8, 1990.
U120	All	Aug. 8, 1990.	U205	All	Aug. 8, 1990.
U121	All	Aug. 8, 1990.	U206	All	Aug. 8, 1990.
U122	All	Aug. 8, 1990.	U207	All	Aug. 8, 1990.
U123	All	Aug. 8, 1990.	U208	All	Aug. 8, 1990.
U124	All	Aug. 8, 1990.	U209	All	Aug. 8, 1990.
U125	All	Aug. 8, 1990.	U210	All	Aug. 8, 1990.
U126	All	Aug. 8, 1990.	U211	All	Aug. 8, 1990.
U127	All	Aug. 8, 1990.	U213	All	Aug. 8, 1990.
U128	All	Aug. 8, 1990.	U214	All	Aug. 8, 1990.
U129	All	Aug. 8, 1990.	U215	All	Aug. 8, 1990.
U130	All	Aug. 8, 1990.	U216	All	Aug. 8, 1990.
U131	All	Aug. 8, 1990.	U217	All	Aug. 8, 1990.
U132	All	Aug. 8, 1990.	U218	All	Aug. 8, 1990.
U133	All	Aug. 8, 1990.	U219	All	Aug. 8, 1990.
U134	All	Aug. 8, 1990.	U220	All	Aug. 8, 1990.
U135	All	Aug. 8, 1990.	U221	All	June 8, 1989.
U136	Wastewater	Aug. 8, 1990.	U222	All	Aug. 8, 1990
U136	Nonwastewater	May 8, 1992.	U223	All	June 8, 1989.
U137	All	Aug. 8, 1990.	U225	All	Aug. 8, 1990.
U138	All	Aug. 8, 1990.	U226	All	Aug. 8, 1990.
U140	All	Aug. 8, 1990.	U227	All	Aug. 8, 1990.
U141	All	Aug. 8, 1990.	U228	All	Aug. 8, 1990.
U142	All	Aug. 8, 1990.	U234	All	Aug. 8, 1990.
U143	All	Aug. 8, 1990.	U235	All	June 8, 1989.
U144	All	Aug. 8, 1990.	U236	All	Aug. 8, 1990.
U145	All	Aug. 8, 1990.	U237	All	Aug. 8, 1990.
U146	All	Aug. 8, 1990.	U238	All	Aug. 8, 1990.
U147	All	Aug. 8, 1990.	U239	All	Aug. 8, 1990.
U148	All	Aug. 8, 1990.	U240	All	Aug. 8, 1990.
U149	All	Aug. 8, 1990.	U243	All	Aug. 8, 1990.
U150	All	Aug. 8, 1990.	U244	All	Aug. 8, 1990.
U151	Wastewater	Aug. 8, 1990.	U246	All	Aug. 8, 1990.
U151	Nonwastewater	May 8, 1992.	U247	All	Aug. 8, 1990.
U152	All	Aug. 8, 1990.	U248	All	Aug. 8, 1990.
U153	All	Aug. 8, 1990.	U249	All	Aug. 8, 1990.
U154	All	Aug. 8, 1990.	U271	Mixed with radioactive wastes	April 8, 1998.
U155	All	Aug. 8, 1990.	U271	All others	July 8, 1996.
U156	All	Aug. 8, 1990.	U277	Mixed with radioactive wastes	April 8, 1998.
U157	All	Aug. 8, 1990.	U277	All others	July 8, 1996.
U158	All	Aug. 8, 1990.	U278	Mixed with radioactive wastes	April 8, 1998.
U159	All	Aug. 8, 1990.	U278	All others	July 8, 1996.
U160	All	Aug. 8, 1990.	U279	Mixed with radioactive wastes	April 8, 1998.
U161	All	Aug. 8, 1990.	U279	All others	July 8, 1996.
U162	All	Aug. 8, 1990.	U280	Mixed with radioactive wastes	April 8, 1998.
U163	All	Aug. 8, 1990.	U280	All others	July 8, 1996.
U164	All	Aug. 8, 1990.	U328	Mixed with radioactive wastes	June 30, 1994.
U165	All	Aug. 8, 1990.	U328	All others	Nov. 9, 1992.
U166	All	Aug. 8, 1990.	U353	Mixed with radioactive wastes	June 30, 1994.
U167	All	Aug. 8, 1990.	U353	All others	Nov. 9, 1992.
U168	All	Aug. 8, 1990.	U359	Mixed with radioactive wastes	June 30, 1994.
U169	All	Aug. 8, 1990.	U359	All others	Nov. 9, 1992.
U170	All	Aug. 8, 1990.	U364	Mixed with radioactive wastes	April 8, 1998.
U171	All	Aug. 8, 1990.	U364	All others	July 8, 1996.
U172	All	Aug. 8, 1990.	U365	Mixed with radioactive wastes	April 8, 1998.

Waste code	*Waste category*	*Effective date*
U365	All others	July 8, 1996.
U366	Mixed with radioactive wastes	April 8, 1998.
U366	All others	July 8, 1996.
U367	Mixed with radioactive wastes	April 8, 1998.
U367	All others	July 8, 1996.
U372	Mixed with radioactive wastes	April 8, 1998.
U372	All others	July 8, 1996.
U373	Mixed with radioactive wastes	April 8, 1998.
U373	All others	July 8, 1996.
U375	Mixed with radioactive wastes	April 8, 1998.
U375	All others	July 8, 1996.
U376	Mixed with radioactive wastes	April 8, 1998.
U376	All others	July 8, 1996.
U377	Mixed with radioactive wastes	April 8, 1998.
U377	All others	July 8, 1996.
U378	Mixed with radioactive wastes	April 8, 1998.
U378	All others	July 8, 1996.
U379	Mixed with radioactive wastes	April 8, 1998.
U379	All others	July 8, 1996.
U381	Mixed with radioactive wastes	April 8, 1998.
U381	All others	July 8, 1996.
U382	Mixed with radioactive wastes	April 8, 1998.
U382	All others	July 8, 1996.
U383	Mixed with radioactive wastes	April 8, 1998.
U383	All others	July 8, 1996.
U384	Mixed with radioactive wastes	April 8, 1998.
U384	All others	July 8, 1996.
U385	Mixed with radioactive wastes	April 8, 1998.
U385	All others	July 8, 1996.
U386	Mixed with radioactive wastes	April 8, 1998.
U386	All others	July 8, 1996.
U387	Mixed with radioactive wastes	April 8, 1998.
U387	All others	July 8, 1996.
U389	Mixed with radioactive wastes	April 8, 1998.
U389	All others	July 8, 1996.
U390	Mixed with radioactive wastes	April 8, 1998.
U390	All others	July 8, 1996.
U391	Mixed with radioactive wastes	April 8, 1998.
U391	All others	July 8, 1996.
U392	Mixed with radioactive wastes	April 8, 1998.
U392	All others	July 8, 1996.
U393	Mixed with radioactive wastes	April 8, 1998.
U393	All others	July 8, 1996.
U394	Mixed with radioactive wastes	April 8, 1998.
U394	All others	July 8, 1996.
U395	Mixed with radioactive wastes	April 8, 1998.
U395	All others	July 8, 1996.
U396	Mixed with radioactive wastes	April 8, 1998.
U396	All others	July 8, 1996.
U400	Mixed with radioactive wastes	April 8, 1998.
U400	All others	July 8, 1996.
U401	Mixed with radioactive wastes	April 8, 1998.
U401	All others	July 8, 1996.
U402	Mixed with radioactive wastes	April 8, 1998.
U402	All others	July 8, 1996.
U403	Mixed with radioactive wastes	April 8, 1998.
U403	All others	July 8, 1996.
U404	Mixed with radioactive wastes	April 8, 1998.
U404	All others	July 8, 1996.
U407	Mixed with radioactive wastes	April 8, 1998.
U407	All others	July 8, 1996.
U409	Mixed with radioactive wastes	April 8, 1998.
U409	All others	July 8, 1996.
U410	Mixed with radioactive wastes	April 8, 1998.
U410	All others	July 8, 1996.
U411	Mixed with radioactive wastes	April 8, 1998.
U411	All others	July 8, 1996.

[a] This table does not include mixed radioactive wastes (from the First, Second, and Third Third rules) which received national capacity variance until May 8, 1992. This table also does not include contaminated soil and debris wastes.
[b] The standard was revised in the Third Third Final Rule (55 Federal Register 22520, June 1, 1990).
[c] The standard was revised in the Third Third Emergency Rule (58 Federal Register 29860, May 24, 1993); the original effective date was August 8, 1990.
[d] The standard was revised in the Phase II Final Rule (59 Federal Register 47982, Sept. 19, 1994); the original effective date was August 8, 1990.
NOTE: This table is provided for the convenience of the reader.

Appendix VII—Table 2.
Summary of Effective Dates of Land Disposal Restrictions for Contaminated Soil and Debris (CSD)

Restricted hazardous waste in CSD	*Effective Date*
1. Solvent–(F001–F005) and dioxin–(F020–F023 and F026–F028) containing soil and debris from CERCLA response or RCRA corrective actions.	Nov. 8, 1990.
2. Soil and debris not from CERCLA response or RCRA corrective actions contaminated with less than 1% total solvents (F001–F005) or dioxins (F020–F023 and F026–F028)	Nov. 8, 1988.
3. All soil and debris contaminated with First Third wastes for which treatment standards are based on incineration.	Aug. 8, 1990.
4. All soil and debris contaminated with Second Third wastes for which treatment standards are based on on incineration.	June 8, 1991.
5. All soil debris contaminated with Third Third wastes or, First or Second Third "soft hammer" wastes which had treatment standards promulgated in the Third Third rule, for which treatment standards are based on incineration, vitrification, or mercury retorting, acid leaching followed by chemical precipitation, or thermal recovery of metals; as well as all inorganic solids debris contaminated with D004–D011 wastes, and all soil and debris contaminated with mixed RCRA/radioactive wastes.	May 8, 1992.
6. Soil and debris contaminated with D012–D043, K141–K145, and K147–151 wastes.	Dec. 19, 1994.
7. Debris (only) contaminated with F037, F038, K107–K112, K117, K118, K123–K126, K131, K132, K136, U328, U353, U359	Dec. 19, 1994
8. Soil and debris contaminated K088, K156–K159, K161, P127, P128, P185, P188–P192, P194, P196–P199, P201–P205, U271, U278–U280, U364, U367, U372, U387, U389, U394, U395, U404, and U409–U411 wastes.	July 8, 1996.
9. Soil and debris contaminated with K088 wastes.	Oct. 8, 1997.
10. Soil and debris contaminated with radioactive wastes mixed with K088, K156–K159, K161, P127, P128, P185, P188–P192, P194, P196–P199, P201–P205, U271, U278–U280, U364, U367, U372, U373, U387, U389, U394, U395, U404, and U409–U411 wastes.	April 8, 1998.
11. Soil and debris contaminated with F032, F034, and F035.	May 12, 1999.
12. Soil and debris contaminated with newly identified D004–D011 toxicity characteristic wastes and mineral processing wastes.	Aug. 24, 1998.
13. Soil and debris contaminated with mixed radioactive newly identified D004–D011 characteristic wastes and mineral processing wastes.	May 26, 2000.

NOTE: 1 Appendix VII is provided for the convenience of the reader.

Appendix VIII—LDR Effective Dates of Injected Prohibited Hazardous Wastes

NATIONAL CAPACITY LDR VARIANCES FOR UIC WASTES[a]

Waste code	*Waste category*	*Effective date*
F001–F005	All spent F001–F005 solvent containing less than 1 percent total F001–F005 solvent constituents.	Aug. 8, 1990.
D001 (except High TOC Ignitable Liquids Subcategory)[c]	All	Feb. 10, 1994.
D001 (High TOC Igniable Charactertistic Liquids Subcategory)	Nonwastewater	Sept. 19, 1995.
D002[b]	All	May 8, 1992.

Waste code	Waste category	Effective date
D002[c]	All	Feb. 10, 1994.
D003 (cyanides)	All	May 8, 1992.
D003 (sulfides)	All	May 8, 1992.
D003 (explosives, reactives)	All	May 8, 1992.
D007	All	May 8, 1992.
D009	Nonwastewater	May 8, 1992.
D012	All	Sept. 19, 1995.
D013	All	Sept. 19, 1995.
D014	All	Sept. 19, 1995.
D015	All	Sept. 19, 1995.
D016	All	Sept. 19, 1995.
D017	All	Sept. 19, 1995.
D018	All, including mixed with radioactive wastes	April 8, 1998.
D019	All, including mixed with radioactive wastes	April 8, 1998.
D020	All, including mixed with radioactive wastes	April 8, 1998.
D021	All, including mixed with radioactive wastes	April 8, 1998.
D022	All, including mixed with radioactive wastes	April 8, 1998.
D023	All, including mixed radioactive wastes	April 8, 1998.
D024	All, including mixed radioactive wastes	April 8, 1998.
D025	All, including mixed radioactive wastes	April 8, 1998.
D026	All, including mixed radioactive wastes	April 8, 1998.
D027	All, including mixed radioactive wastes	April 8, 1998.
D028	All, including mixed radioactive wastes	April 8, 1998.
D029	All, including mixed radioactive wastes	April 8, 1998.
D030	All, including mixed radioactive wastes	April 8, 1998.
D031	All, including mixed radioactive wastes	April 8, 1998.
D032	All, including mixed radioactive wastes	April 8, 1998.
D033	All, including mixed radioactive wastes	April 8, 1998.
D034	All, including mixed radioactive wastes	April 8, 1998.
D035	All, including mixed radioactive wastes	April 8, 1998.
D036	All, including mixed radioactive wastes	April 8, 1998.
D037	All, including mixed radioactive wastes	April 8, 1998.
D038	All, including mixed radioactive wastes	April 8, 1998.
D039	All, including mixed radioactive wastes	April 8, 1998.
D040	All, including mixed radioactive wastes	April 8, 1998.
D041	All, including mixed radioactive wastes	April 8, 1998.
D042	All, including mixed radioactive wastes	April 8, 1998.
D043	All, including mixed radioactive wastes	April 8, 1998.
F007	All	June 8, 1991.
F032	All, including mixed radioactive wastes	May 12, 1999.
F034	All, including mixed radioactive wastes	May 12, 1999.
F035	All, including mixed radioactive wastes	May 12, 1999.
F037	All	Nov. 8, 1992.
F038	All	Nov. 8, 1992.
F039	Wastewater	May 8, 1992.
K009	Wastewater	June 8, 1991.
K011	Nonwastewater	June 8, 1991.
K011	Wastewater	May 8, 1992.
K013	Nonwastewater	June 8, 1991.
K013	Wastewater	May 8, 1992.
K014	All	May 8, 1992.
K016 (dilute)	All	June 8, 1991.
K049	All	Aug. 8, 1990.
K050	All	Aug. 8, 1990.
K051	All	Aug. 8, 1990.
K052	All	Aug. 8, 1990.
K062	All	Aug. 8, 1990.
K071	All	Aug. 8, 1990.
K088	All	Jan. 8, 1997.
K104	All	Aug. 8, 1990.
K107	All	Nov. 8, 1992.
K108	All	Nov. 9, 1992.
K109	All	Nov. 9, 1992.
K110	All	Nov. 9, 1992.
K111	All	Nov. 9, 1992.
K112	All	Nov. 9, 1992.
K117	All	June 30, 1995.
K118	All	June 30, 1995.
K123	All	Nov. 9, 1992.
K124	All	Nov. 9, 1992.
K125	All	Nov. 9, 1992.
K126	All	Nov. 9, 1992.
K131	All	June 30, 1995.
K132	All	June 30, 1995.
K136	All	Nov. 9, 1992.
K141	All	Dec. 19, 1994.
K142	All	Dec. 19, 1994.
K143	All	Dec. 19, 1994.
K144	All	Dec. 19, 1994.
K145	All	Dec. 19, 1994.
K147	All	Dec. 19, 1994.
K148	All	Dec. 19, 1994.
K149	All	Dec. 19, 1994.
K150	All	Dec. 19, 1994.
K151	All	Dec. 19, 1994.
K156	All	July 8, 1996.
K157	All	July 8, 1996.
K158	All	July 8, 1996.
K159	All	July 8, 1996.
K160	All	July 8, 1996.
K161	All	July 8, 1996.
NA	Newly identified mineral processingwastes from titanium dioxideproduction and mixed radioactive/newly identified D004–D011 characteristic wastes and mineral processing wastes	May 26, 2000
P127	All	July 8, 1996.
P128	All	July 8, 1996.
P185	All	July 8, 1996.
P188	All	July 8, 1996.
P189	All	July 8, 1996.
P190	All	July 8, 1996.
P191	All	July 8, 1996.
P192	All	July 8, 1996.
P194	All	July 8, 1996.
P196	All	July 8, 1996.
P197	All	July 8, 1996.
P198	All	July 8, 1996.
P199	All	July 8, 1996.
P201	All	July 8, 1996.
P202	All	July 8, 1996.
P203	All	July 8, 1996.
P204	All	July 8, 1996.
P205	All	July 8, 1996.
U271	All	July 8, 1996.
U277	All	July 8, 1996.
U278	All	July 8, 1996.
U279	All	July 8, 1996.
U280	All	July 8, 1996.
U328	All	Nov. 9, 1992.
U353	All	Nov. 9, 1992.
U359	All	Nov. 9, 1992.
U364	All	July 8, 1996.
U365	All	July 8, 1996.
U366	All	July 8, 1996.
U367	All	July 8, 1996.
U372	All	July 8, 1996.
U373	All	July 8, 1996.
U375	All	July 8, 1996.
U376	All	July 8, 1996.
U377	All	July 8, 1996.
U378	All	July 8, 1996.
U379	All	July 8, 1996.
U381	All	July 8, 1996.
U382	All	July 8, 1996.
U383	All	July 8, 1996.
U384	All	July 8, 1996.
U385	All	July 8, 1996.
U386	All	July 8, 1996.

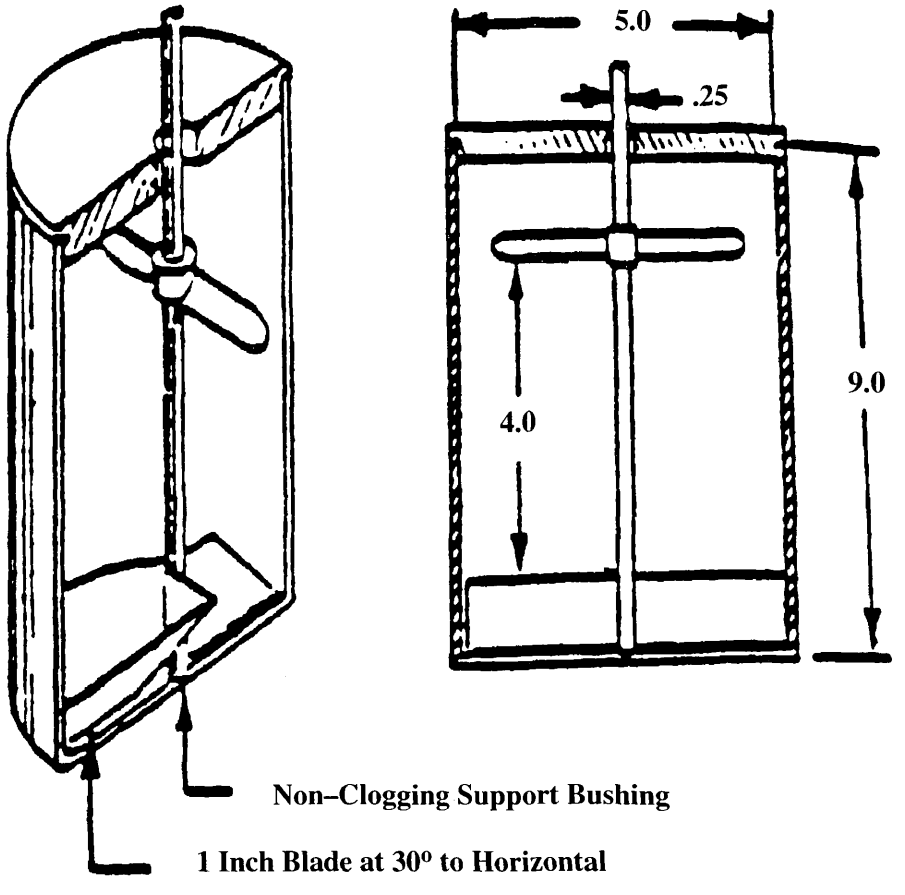
Waste code	*Waste category*	*Effective date*
U387	All	July 8, 1996.
U389	All	July 8, 1996.
U390	All	July 8, 1996.
U391	All	July 8, 1996.
U392	All	July 8, 1996.
U393	All	July 8, 1996.
U394	All	July 8, 1996.
U395	All	July 8, 1996.
U396	All	July 8, 1996.
U400	All	July 8, 1996.
U401	All	July 8, 1996.
U402	All	July 8, 1996.
U403	All	July 8, 1996.
U404	All	July 8, 1996.
U407	All	July 8, 1996.
U409	All	July 8, 1996.
U410	All	July 8, 1996.
U411	All	July 8, 1996.

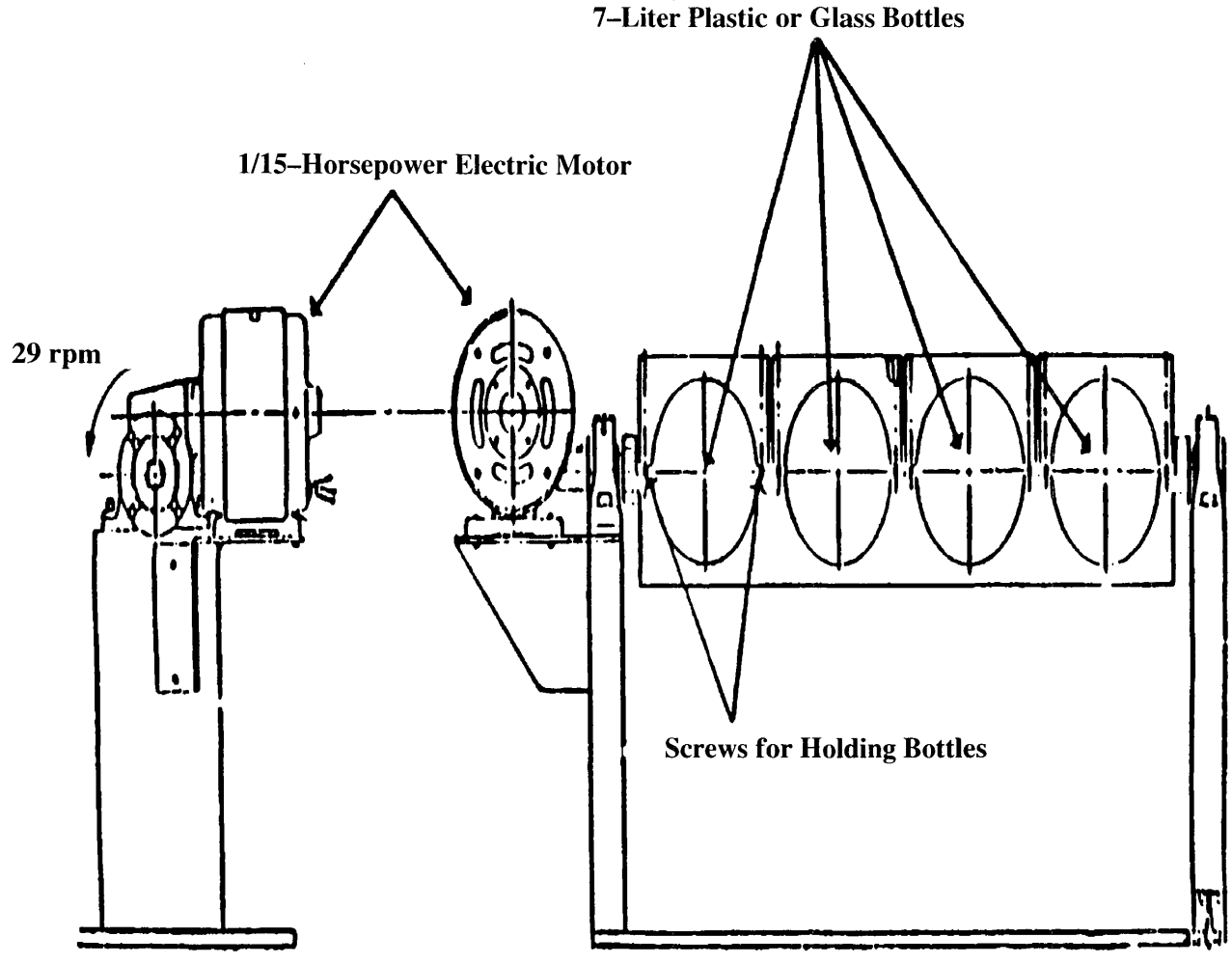
[a] Wastes that are deep well disposed on-site receive a six-month variance, with restrictions effective in November 1990.
[b] Deepwell injected D002 liquids with a pH less than 2 must meet the California List treatment standards on August 8, 1990.
[c] Managed in systems defined in 40 CFR 144.6(e) and 14.6(e) as Class V injection wells, that do not engage in federal CWA-equivalent treatment before injection.
NOTE: This table is provided for the convenience of the reader.

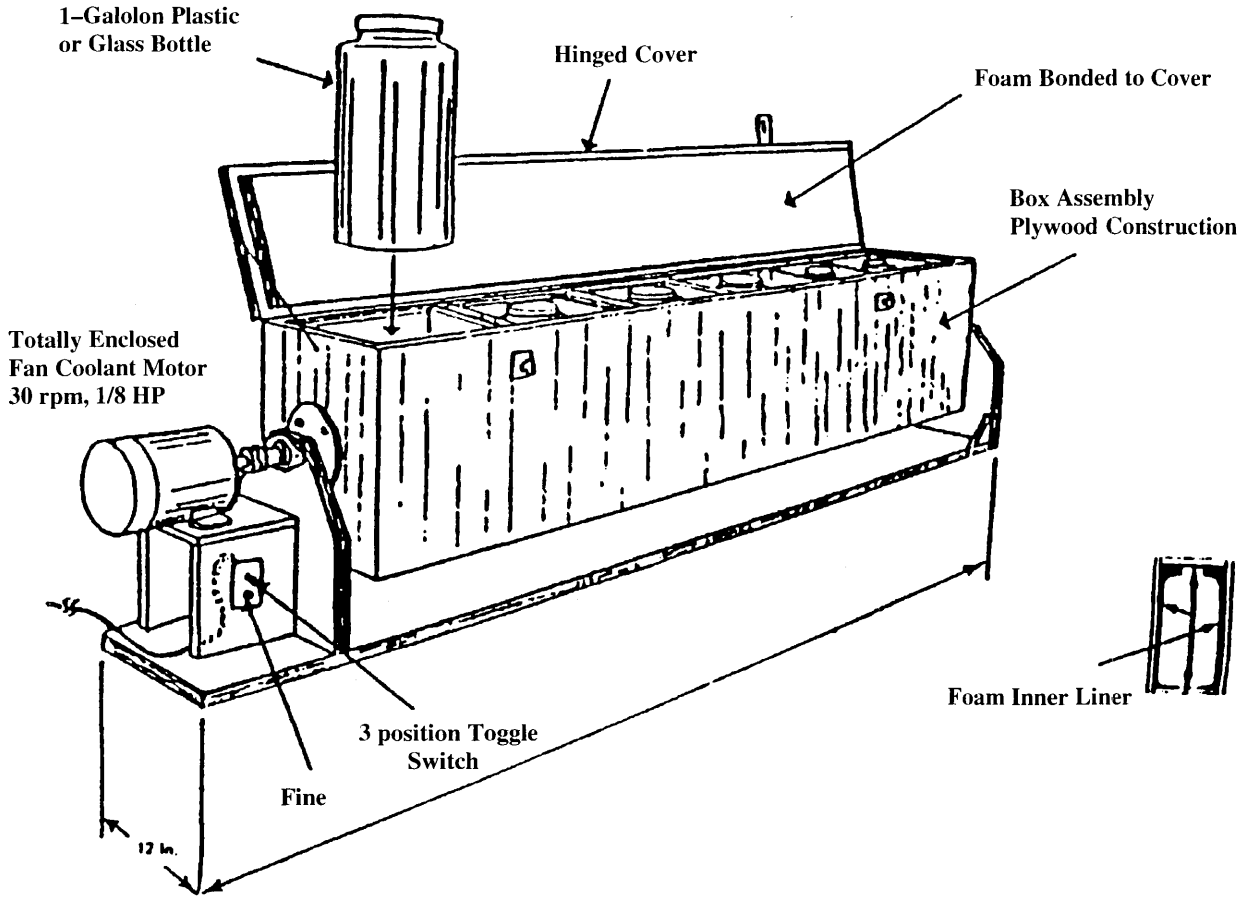
Appendix IX—Extraction Procedure (EP)

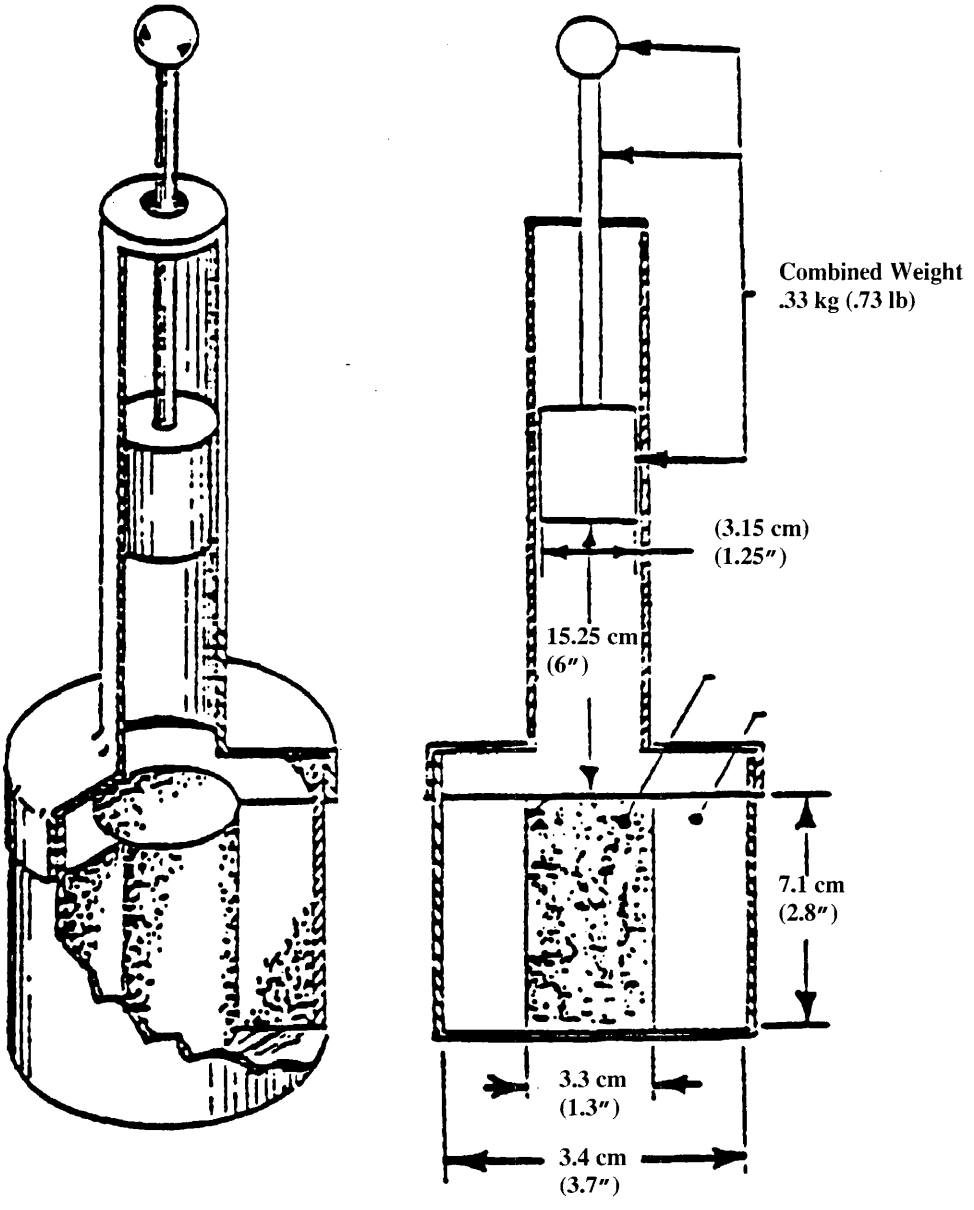
Toxicity Test Method and Structural Integrity Test (SW-846, Method 1310A)

NOTE: The EP (Method 1310) is published in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," USEPA Publication SW-846, as incorporated by reference in section 66260.11.




7–Liter Plastic or Glass Bottles
1/15–Horsepower Electric Motor
29 rpm
Screws for Holding Bottles


1–Galolon Plastic
or Glass Bottle
Hinged Cover
Foam Bonded to Cover
Box Assembly
Plywood Construction
Totally Enclosed
Fan Coolant Motor
30 rpm, 1/8 HP
Foam Inner Liner
3 position Toggle
Switch
Fine
12 in.


Combined Weight
.33 kg (.73 lb)
(3.15 cm)
(1.25″)
15.25 cm
(6″)
7.1 cm
(2.8″)
3.3 cm
(1.3″)
3.4 cm
(3.7″)

Appendix X [Reserved]

Appendix XI—Metal Bearing Wastes Prohibited From Dilution in a Combustion Unit According to section 66268.3(b)[1]

Waste code	*Waste description*
D004	Toxicity Characteristic for Arsenic.
D005	Toxicity Characteristic for Barium.
D006	Toxicity Characteristic for Cadmium.
D007	Toxicity Characteristic for Chromium.
D008	Toxicity Characteristic for Lead.
D009	Toxicity Characteristic for Mercury.
D010	Toxicity Characteristic for Selenium.
D011	Toxicity Characteristic for Silver.
F006	Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum; (2) tin plating carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc–plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.
F007	Spent cyanide plating bath solutions from electroplating operations.
F008	Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process.
F009	Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.
F010	Quenching bath residues from oil baths from metal treating operations where cyanides are used in the process.
F011	Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations.
F012	Quenching waste water treatment sludges from metal heat treating operations where cyanides are used in the process.
F019	Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum car washing when such phosphating is an exclusive conversion coating process.
K002	Wastewater treatment sludge from the production of chrome yellow and orange pigments.
K003	Wastewater treatment sludge from the production of molybdate orange pigments.
K004	Wastewater treatment sludge from the production of zinc yellow pigments.
K005	Wastewater treatment sludge from the production of chrome green pigments.
K006	Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated).
K007	Wastewater treatment sludge from the production of iron blue pigments.
K008	Oven residue from the production of chrome oxide green pigments.
K061	Emission control dust/sludge from the primary production of steel in electric furnaces.
K069	Emission control dust/sludge from secondary lead smelting.
K071	Brine purification muds from the mercury cell processes in chlorine production, where separately prepurified brine is not used.
K100	Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting.
K106	Sludges from the mercury cell processes for making chlorine.
P010	Arsenic acid H_3ASO_4
P011	Arsenic oxide AS_2O_5
P012	Arsenic trioxide
P013	Barium cyanide
P015	Beryllium
P029	Copper cyanide Cu(CN)
P074	Nickel cyanide $Ni(CN)_2$
P087	Osmium tetroxide
P099	Potassium silver cyanide
P104	Silver cyanide
P113	Thallic oxide
P114	Thallium (I) selenite
P115	Thallium (I) sulfate
P119	Ammonium vanadate
P120	Vanadium oxide V_2O_5
P121	Zinc cyanide.
U032	Calcium chromate.
U145	Lead phosphate.
U151	Mercury.
U204	Selenious acid.
U205	Selenium disulfide.
U216	Thallium (I) chloride.
U217	Thallium (I) nitrate.

[1] A combustion unit is defined as any thermal technology subject to CCR, Title 22, division 4.5, chapter 14, article 14 or chapter 15, article 15 and/or chapter 16, article 8.

Chapter 19. Fees

§ 66269.1. Environmental Fee.

The Department finds that every business in California with fifty or more employees uses, generates, stores, or conducts activities in this state related to hazardous materials, as defined in section 25501 of the Health and Safety Code and in this section.

(a) Definitions: When used in Health and Safety Code section 25205.6, or in this chapter, the following terms have the meanings given below.

(1) "Employee" means any person who is an employee within the meaning of chapter 3 (commencing with section 601) of part 1 of division 1 of the Unemployment Insurance Code. A person is the employee of the employing unit that lawfully reports him or her as an employee to the Employment Development Department, except as expressly provided otherwise by this section or in Health and Safety Code section 25205.6. If two or more business enterprises are united by common ownership or management, or if one enterprise is a subsidiary of another, a person shall be deemed to be the employee only of the enterprise for which he or she most directly provides services.

(2) "Environmental fee" means the charge imposed pursuant to Health and Safety Code section 25205.6.

(3) "Hazardous material" means any material, whether a product, a substance, or a waste, that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or poten-

tial hazard to human health and safety or to the environment if released into the workplace or the environment. A material has been shown to pose a significant hazard if the material is included on any list identified in subsection (b). A hazardous material includes, but is not limited to, a product or piece of equipment that contains a component or ingredient that is a hazardous material, or requires the use of a fuel that is a hazardous material.

(4) To "use hazardous materials" and to "conduct activities related to hazardous materials" means any use or handling, in any amount or to any degree, of one or more substances or wastes that are included on any list identified in subsection (b), if that use or handling is related in any way to the operation or maintenance of the organization.

(b) The following references identify materials that pose a significant present or potential hazard to human health or safety, or to the environment, if released into the workplace or the environment:

(1) Appendix B of chapter 1 of title 10 of the Code of Federal Regulations.

(2) Subdivision (b) of section 6382 of the Labor Code.

(3) Chapter 11 (commencing with §66261.1) of title 22 of the California Code of Regulations.

(4) Parts 172 and 173 of title 49 of the Code of Federal Regulations.

(5) Part 261 of title 40 of the Code of Federal Regulations.

(6) Sections 66261.9, 66261.30 through 66261.33, and 66261.100 through 66261.126 of title 22 of the California Code of Regulations.

(7) Sections 1317(a) and 1321(b)(2)(A) of title 33 of the United States Code.

(8) Section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 U.S.C. § 9602).

(9) Section 6921 of title 42 of the United States Code, unless otherwise provided by Act of Congress.

In addition, a material is hazardous if the manufacturer or producer is required to prepare a material safety data sheet (MSDS) for the substance or product pursuant to chapter 2.5 (commencing with § 6360) of part 1 of division 5 of the Labor Code, or pursuant to any applicable federal law or regulation.

(c) The Department shall compile a list of industry types, either by Standard Industrial Classification (SIC) Code or North American Industry Classification System (NAICS) Code, that are subject to the environmental fee. The Department shall include a code in the compilation if it determines that it is probable that the industry, in order to function at a level requiring fifty or more employees, would, in the normal course of doing business, generate, store, use, or conduct activities that involve one or more hazardous materials at one or more times during a year. The Department shall take into account the normal usage of consumer or business products that are in common distribution and contain hazardous materials, and the list shall include, but not be limited to, any industry type that uses or conducts activities involving such consumer or business products. In addition to any other relevant indicators, the Department may also take into account one or more databases maintained by, or based on records maintained by, a government agency, if that database indicates hazardous material usage by industry type. Codes shall normally be listed by two digits, except that the Department may break codes down by additional digits if it determines that, for one or more industry sub–categories, the determination should differ from the two–digit code, or if a sub–category has been exempted from the environmental fee by law.

(d) The Department shall submit the list of industry types to the Board of Equalization by November 1 on an annual basis, and in doing so shall ensure that the list continues to meet the requirements of subsection (c). The codes that are on the most recently submitted list shall be deemed to be correct and shall not be superseded until the Department submits a revised list to the Board of Equalization. Pursuant to the criteria established by subsection (c), all codes pertain to industry types that generate, store, use, or conduct activities related to hazardous materials, with the exception of the code that applies to Private Households. The code for Residential Care is excluded from the list in accordance with subdivision (h) of section 25205.6 of the Health and Safety Code.

NOTE: Authority cited: Sections 25205.6 and 58012, Health and Safety Code. Reference: Sections 25205.6 and 25501, Health and Safety Code.

HISTORY

1. New chapter 19 (section 66269.1) and section filed 11–7–2007; operative 12–7–2007 (Register 2007, No. 45).

[The next page is 758.271.]

Chapter 20. The Hazardous Waste Permit Program

Article 1. General Information

§ 66270.1. Purpose and Scope of These Regulations.

(a) Coverage.

(1) These permit regulations establish provisions for the issuance and administration of hazardous waste permits pursuant to chapter 6.5 of division 20 of the Health and Safety Code (commencing with section 25100).

(2) The regulations in this chapter cover basic permitting requirements, such as application requirements, standard permit conditions, and monitoring and reporting requirements. These regulations are part of a regulatory scheme implementing chapter 6.5 (commencing with section 25100) of division 20 of the Health and Safety Code, set forth in different parts of Title 22, California Code of Regulations.

(3) Technical regulations. The permit program has separate additional regulations that contain technical requirements. These separate regulations are used by the Department to determine what requirements shall be placed in permits if they are issued. These separate regulations are located in chapters 14 and 16 of this division.

(b) Overview of the Permit Program. Not later than 90 days after the promulgation or revision of regulations in chapter 11 of this division, which result in a waste becoming subject to the requirements of this division, generators and transporters of that hazardous waste, and owners or operators of hazardous waste facilities that transfer, treat, store, or dispose of that waste shall file a notification of that activity under Health and Safety Code section 25153.6. After the promulgation of the chapter 11 regulations, transfer, treatment, storage or disposal of the newly regulated hazardous waste by any person who has not filed a notification with the Department and received a permit or grant of interim status is prohibited unless otherwise specifically authorized by the Department or another provision of this division. A permit application consists of two parts, Part A (see section 66270.13) and Part B (see section 66270.14 and applicable sections in sections 66270.15 through 66270.23). For "existing HWM facilities," the requirement to submit an application is satisfied by submitting only Part A of the permit application until the date the Department sets for submitting Part B of the application. (Part A consists of Forms 1 and 3 of the Consolidated Permit Application Forms.) Timely submission of both notification under Health and Safety Code section 25153.6 and Part A qualifies owners and operators of existing HWM facilities (who are required to have a permit) for interim status under section 25200.5 of the Health and Safety Code. Facility owners and operators with interim status are treated as having been issued a permit until the Department makes a final determination on the permit application. Facility owners and operators with interim status shall comply with interim status standards set forth in chapter 15 of this division. For existing HWM facilities, the Department shall set a date, giving at least 60 days notice, for submission of Part B of the application.

There is no form for Part B of the application; rather, Part B shall be submitted in narrative form and contain the information set forth in the applicable sections of sections 66270.14 through 66270.23. Owners or operators of new HWM facilities shall submit Parts A and B of the permit application at least 180 days before physical construction is expected to commence.

(c) Scope of the Permit Requirements. A permit is required for the "transfer," "treatment," "storage," and "disposal" of any waste which is hazardous waste pursuant to section 66261.3. The terms "transfer," "treatment," "storage," "disposal," and "hazardous waste" are defined in section 66260.10. Owners and operators of hazardous waste management units shall have permits during the active life (including the closure period) of the unit. Owners or operators of surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure (according to section 66265.115) after January 26, 1983, shall have post-closure permits, unless they demonstrate closure by removal as provided under subsections (c)(5) and (6) of this section. If a post-closure permit is required, the permit shall address applicable chapter 14 Water Quality Monitoring, Environmental Monitoring, Corrective Action, and Post-closure Care Requirements of this division. The denial of a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a post-closure permit under this section.

(1) Specific inclusions. Owners and operators of certain facilities require hazardous waste facility permits as well as permits under other programs for certain aspects of the facility operation. Permits are required for:

(A) injection wells that dispose of hazardous waste, and associated surface facilities that transfer, treat, store or dispose of hazardous waste;

(B) transfer, treatment, storage, or disposal of hazardous waste at facilities requiring an NPDES permit. However, the owner or operator of a publicly owned treatment works receiving hazardous waste shall be deemed to have a permit for treatment of that waste if the owner or operator complies with the requirements of section 66270.60(d)(1).

(C) barges or vessels that dispose of hazardous waste by ocean disposal. However, the owner or operator shall be deemed to have a permit for ocean disposal from the barge or vessel if the owner or operator complies with the requirements of section 66270.60(d)(2).

(D) treatment of hazardous wastes using a Transportable Treatment Unit (TTU). However, the owner or operator of a transportable treatment unit (TTU) shall be deemed to have a permit to operate the TTU when the owner or operator submits completed TTU notifications as specified in Section 67450.2(a) and 67450.3(a)(3) and receives acknowledgements from the Department authorizing operation of the TTU pursuant to sections 67450.2(a)(3) and 67450.3(b).

(E) treatment of hazardous wastes using a Fixed Treatment Unit (FTU). However, the owner or operator of a fixed treatment unit (FTU) shall be deemed to have a permit to operate the FTU when the owner or operator submits a completed FTU facility-specific notification as specified in Section 67450.2(b) and receives an acknowledgement from CUPA or authorized agency authorizing operation of the FTU pursuant to section 67450.2(b)(5).

(F) operation of a temporary household hazardous waste collection facility (THHWCF). However, the operator of a THHWCF shall be deemed to have a permit to operate the THHWCF when the operator submits a completed THHWCF notification as specified in Section 66270.60(d)(5)(A).

(2) Specific exclusions. The following persons are among those who are not required to obtain a permit:

(A) generators who accumulate hazardous waste on-site without meeting the definition of a storage facility set forth in Health and Safety Code Section 25123.3.

(B) farmers who dispose of hazardous waste pesticides from their own use as provided in section 66262.70;

(C) transporters storing manifested shipments of hazardous waste in containers at a transfer facility, and transfer facilities storing manifested shipments of hazardous waste in containers, for six days or less, or 10 days or less for transfer facilities in areas zoned industrial by the local planning authority, and meeting the requirements of sections 66262.30 and 66263.18;

(D) persons adding absorbent material to waste in a container (as defined in section 66260.10 of this division) and persons adding waste to absorbent material in a container, provided that these actions occur at the time waste is first placed in the container; and sections 66264.17(b), 66264.171, and 66264.172 of this division are complied with.

(E) Persons who manage universal waste. These persons are subject to regulation under chapter 23 when managing universal wastes listed in section 66261.9 of this division.

(3) Further exclusions.

(A) A person is not required to obtain a permit for treatment or containment activities which are necessary to perform an immediate response to any of the following situations:

1. a discharge of a hazardous waste;

2. an imminent and substantial threat of a discharge of hazardous waste;

3. a discharge of a material which, when discharged, becomes a hazardous waste.

(B) Any person who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this chapter for those activities.

(C) In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit shall retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition. For the purposes of this subsection, the term "military munitions" is as defined in 40 Code of Federal Regulations section 260.10. The requirements of this subsection apply only to military munitions that are regulated under the federal act, as defined in Health and Safety Code section 25115.1;

(4) Permits for less than an entire facility. The Department may issue or deny a permit for one or more units at a facility without simultaneously issuing or denying a permit to all of the units at the facility. The interim status of any unit for which a permit has not been issued or denied is not affected by the issuance or denial of a permit to any other unit at the facility.

(5) Closure by removal. Owners/operators of surface impoundments, land treatment units, and waste piles closing by removal or decontamination under the standards of chapter 15 of this division shall obtain a post–closure permit unless they can demonstrate to the Department that the closure met the standards for closure–by–removal or decontamination in sections 66264.228, 66264.280(e), or 66264.258, respectively. The demonstration may be made in the following ways:

(A) if the owner/operator has submitted a Part B application for a post–closure permit, the owner/operator may request a determination, based on information contained in the application, that the closure–by–removal or decontamination standards of chapter 14 of this division were met. If the Department believes that the chapter 14 standards were met, the Department will notify the public of this proposed decision, allow for public comment, and reach a final determination according to the procedures in paragraph (c)(6) of this section.

(B) If the owner/operator has not submitted a Part B application for a post–closure permit, the owner/operator may petition the Department for a determination that a post–closure permit is not required because the closure met the applicable closure–by–removal or decontamination standards of chapter 14 of this division.

1. The petition shall include data demonstrating that the applicable chapter 14 closure–by–removal or decontamination standards were met.

2. The Department shall approve or deny the petition according to the procedures outlined in subsection (c)(6) of this section.

(6) Procedures for closure equivalency determination.

(A) If a facility owner/operator seeks an equivalency demonstration under section 66270.1(c)(5), the Department shall provide the public, through a newspaper notice, the opportunity to submit written comments on the information submitted by the owner/operator within 30 days from the date of the notice. The Department shall also, in response to a request or at the Department's own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the equivalence of the closure under chapter 15 of this division to a closure–by–removal or decontamination under chapter 14 of this division. The Department shall give public notice of the hearing at least 30 days before it occurs. Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.

(B) The Department shall determine whether the closure under chapter 15 of this division met the closure–by–removal or decontamination requirements of chapter 14 of this division within 90 days of receipt of a petition requesting a closure equivalency determination. If the Department finds that the closure did not meet the applicable chapter 14 standards, the Department shall provide the owner/operator with a written statement of the reasons why the closure failed to meet chapter 14 standards. The owner/operator may submit additional information in support of an equivalency demonstration within 30 days after receiving such written statement. The Department shall review any additional information submitted and make a final determination within 60 days.

(C) If the Department determines that the facility did not close in accordance with the closure–by–removal or decontamination standards of chapter 14 of this division, the facility is subject to post–closure permitting requirements.

(d) Where waste discharge requirements are established pursuant to sections 13260 and 13263 of the Water Code, they shall be incorporated as a condition of the Hazardous Waste Facility Permit issued to the applicant pursuant to this chapter to the extent the Department determines the waste discharge requirements are not less stringent than this division or chapter 6.5 of division 20 of the Health and Safety Code. The Department may establish in the permit more stringent requirements which the Department determines are necessary or appropriate to carry out this division of chapter 6.5 of division 20 of the Health and Safety Code.

NOTE: Authority cited: Sections 25141, 25150, 25150.6, 25159, 25219.1 and 58012, Health and Safety Code. Reference: Sections 25115.1, 25118, 25141, 25159, 25159.5, 25219, 25219.1 and 25219.2, Health and Safety Code; and 40 Code of Federal Regulations Sections 260.10 and 270.1.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment filed 10–23–91; operative 1–1–92 (Register 92, No. 12).
3. New subsection (c)(1)(F) and amendment of subsections (c)(1)(B)–(C) and NOTE filed 4–12–93; operative 4–12–93 (Register 93, No. 16).
4. Change without regulatory effect amending subsection (c)(2)(C) filed 4–3–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
5. Amendment of subsections (c)(1)(D)–(F) filed 1–8–99 as an emergency; operative 1–8–99 (Register 99, No. 2). A Certificate of Compliance must be transmitted to OAL by 5–10–99 or emergency language will be repealed by operation of law on the following day.
6. Amendment of subsections (c)(1)(D)–(F) refiled 5–7–99 as an emergency; operative 5–7–99 (Register 99, No. 19). A Certificate of Compliance must be transmitted to OAL by 9–7–99 or emergency language will be repealed by operation of law on the following day.
7. Amendment of subsections (c)(1)(D)–(F) refiled 9–3–99 as an emergency; operative 9–3–99 (Register 99, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–3–2000 or emergency language will be repealed by operation of law on the following day.
8. Amendment of subsections (c)(1)(D)–(F) refiled 12–29–99 as an emergency; operative 1–3–2000 (Register 99, No. 53). A Certificate of Compliance must be transmitted to OAL by 5–2–2000 or emergency language will be repealed by operation of law on the following day.
9. New subsections (c)(2)(E)–(c)(2)(E)3. and amendment of NOTE filed 3–6–2000 as an emergency; operative 3–6–2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2000 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 12–29–99 order transmitted to OAL 2–29–2000 and filed 4–11–2000 (Register 2000, No. 15).
11. New subsections (c)(2)(E)–(c)(2)(E)3. and amendment of NOTE refiled 6–29–2000 as an emergency; operative 7–6–2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–3–2000 or emergency language will be repealed by operation of law on the following day.
12. New subsections (c)(2)(E)–(c)(2)(E)3. and amendment of NOTE refiled 11–1–2000 as an emergency; operative 11–4–2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–5–2001 or emergency language will be repealed by operation of law on the following day.
13. New subsections (c)(2)(E)–(c)(2)(E)3. and amendment of NOTE refiled 3–6–2001 as an emergency; operative 3–6–2001 (Register 2001, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2001 or emergency language will be repealed by operation of law on the following day.
14. New subsections (c)(2)(E)–(c)(2)(E)3. and amendment of NOTE refiled 6–26–2001 as an emergency; operative 7–5–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–2–2001 or emergency language will be repealed by operation of law on the following day.

15. New subsections (c)(2)(E)–(c)(2)(E)3. and amendment of NOTE refiled 11–2–2001 as an emergency; operative 11–3–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–4–2002 or emergency language will be repealed by operation of law on the following day.
16. Certificate of Compliance as to 11–2–2001 order, including further amendment of NOTE, transmitted to OAL 12–27–2001 and filed 2–8–2002 (Register 2002, No. 6).
17. Amendment of subsection (c)(2)(E) and repealer of subsections (c)(2)(E)1.–3. filed 2–3–2003; operative 2–3–2003 (Register 2003, No. 6).
18. Amendment of NOTE filed 2–13–2003; operative 3–15–2003 (Register 2003, No. 7).
19. Change without regulatory effect amending subsections (c)(1)(D)–(E) filed 6–7–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 24).
20. Change without regulatory effect adding subsection (c)(3)(C) and amending NOTE filed 4–13–2007 pursuant to Health and Safety Code section 25159.1 (Register 2007, No. 15).

§ 66270.3. Considerations Under Federal Law.

The following is a list of Federal laws that may apply to the issuance of permits under these rules. When any of these laws is applicable, its procedures shall be followed. When the applicable law requires consideration or adoption of particular permit conditions or requires the denial of a permit, those requirements also shall be followed.

(a) The Wild and Scenic Rivers Act. 16 U.S.C. section 1273 et seq.) section 7 of the Act prohibits the USEPA Regional Administrator and the Department from assisting by permit or otherwise the construction of any water resources project that would have a direct, adverse effect on the values for which a national wild and scenic river was established.

(b) The National Historic Preservation Act of 1966. (16 U.S.C. section 470 et seq.) section 106 of the Act and implementing regulations (36 CFR Part 800) require the USEPA Regional Administrator and the Department, before issuing a permit, to adopt measures when feasible to mitigate potential adverse effects of the licensed activity and properties listed or eligible for listing in the National Register of Historic Places. The Act's requirements are to be implemented in cooperation with the California State Office of Historic Preservation and upon notice to, and when appropriate, in consultation with the Advisory Council on Historic Preservation.

(c) The Endangered Species Act. 16 U.S.C. section 1531 et seq.) section 7 of the Act and implementing regulations (50 CFR Part 402) require the USEPA Regional Administrator and the Department to ensure, in consultation with the Secretary of the Interior or Commerce, that any action authorized by USEPA or the Department is not likely to jeopardize the continued existence of any endangered or threatened species or adversely affect its critical habitat.

(d) The Coastal Zone Management Act. (16 U.S.C. section 1451 et seq.) section 307(c) of the Act and implementing regulations (15 CFR Part 930) prohibit USEPA and the Department from issuing a permit for an activity affecting land or water use in the coastal zone until the applicant certifies that the proposed activity complies with the California State Coastal Zone Management Program, and the California Coastal Commission concurs with the certification (or the U.S. Secretary of Commerce overrides the Commission's nonconcurrence).

(e) The Fish and Wildlife Coordination Act. 16 U.S.C. section 661 et seq. requires that the USEPA Regional Administrator and the Department, before issuing a permit proposing or authorizing the impoundment (with certain exemptions), diversion, or other control or modification of any body of water, consult with the State Department of Fish and Game exercising jurisdiction over wildlife resources to conserve those resources.

(f) Executive orders. [Reserved]

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 270.3.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66270.4. Effect of a Permit.

(a) The Department's issuance of a permit does not prevent the Department from adopting or amending regulations which impose additional or more stringent requirements than those in existence at the time a permit is issued and does not prevent the enforcement of these requirements against the owner or operator of a permitted facility. As part of any formal rulemaking, the Department shall specify the manner in which a proposed regulatory change is intended to apply to facilities which have been issued a hazardous waste facility permit.

(b) Not withstanding subsection (a) above, the owner or operator of a facility which has been issued a hazardous waste facility permit shall comply with conditions of the permit as well as regulations adopted by the Department.

(c) The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

(d) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159, 25159.5 and 25202, Health and Safety Code; 40 CFR Section 270.4.

[The next page is 758.273.]

HISTORY
1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66270.5. Noncompliance and Program Reporting by the Department.

The Department shall prepare quarterly and annual reports on facilities and activities regulated under RCRA as detailed below. the Department shall submit any reports required under this section to the USEPA Regional Administrator. For purposes of this section only, permittees shall include interim status facilities, when appropriate.

(a) Quarterly reports. The Department shall submit quarterly narrative reports for major facilities as follows.

(1) Format. The report shall use the following format:

(A) information on noncompliance for each facility;

(B) alphabetize by permittee name. When two or more permittees have the same name, the lowest permit number shall be entered first;

(C) for each entry on the list, include the following information in the following order:

1. name, location, and permit number of the noncomplying permittee;

2. a brief description and date of each instance of noncompliance for that permittee. Instances of noncompliance may include one or more of the kinds set forth in subsection (a)(2) of this section. When a permittee has noncompliance of more than one kind, combine the information into a single entry for each such permittee;

3. the date(s) and a brief description of the action(s) taken by the Department to ensure compliance;

4. status of the instance(s) of noncompliance with the date of the review of the status or the date of resolution;

5. any details which tend to explain or mitigate the instance(s) of noncompliance.

(2) Instances of noncompliance to be reported. Any instances of noncompliance within the following categories shall be reported in successive reports until the noncompliance is reported as resolved (once noncompliance is reported as resolved it need not appear in subsequent reports):

(A) failure to complete construction elements. When the permittee has failed to complete, by the date specified in the permit, an element of a compliance schedule involving either planning for construction (for example, award of a contract, preliminary plans), or a construction step (for example, begin construction, attain operation level); and the permittee has not returned to compliance by accomplishing the required element of the schedule within 30 days from the date a compliance schedule report is due under the permit;

(B) modifications to schedules of compliance. When a schedule of compliance in the permit has been modified under section 66270.41 or 66270.42 because of the permittee's noncompliance;

(C) failure to complete or provide compliance schedule or monitoring reports. When the permittee has failed to complete or provide a report required in a permit compliance schedule (for example, progress report or notice of noncompliance or compliance) or a monitoring report; and the permittee has not submitted the complete report within 30 days from the date it is due under the permit for compliance schedules, or from the date specified in the permit for monitoring reports;

(D) deficient reports. When the required reports provided by the permittee are so deficient as to cause misunderstanding by the Department and thus impede the review of the status of compliance;

(E) noncompliance with other permit requirements. Noncompliance shall be reported in the following circumstances:

1. whenever the permittee has violated a permit requirement (other than reported under subsection (a)(2)(A) or (B) of this section) and has not returned to compliance within 45 days from the date reporting of noncompliance was due under the permit; or

2. when the Department determines that a pattern of noncompliance exists for a major facility permittee over the most recent four consecutive reporting periods. This pattern includes any violation of the same requirement in two consecutive reporting periods, and any violation of one or more requirements in each of four consecutive reporting periods; or

3. when the Department determines significant permit noncompliance or other significant event has occurred such as a fire or explosion or migration of fluids into a USDW;

4. all other. Statistical information shall be reported quarterly on all other instances of noncompliance by major facilities with permit requirements not otherwise reported under subsection (a) of this section.

(b) Annual reports.

(1) Annual noncompliance report. Statistical reports shall be submitted by the Department on nonmajor RCRA permittees indicating the total number reviewed, the number of noncomplying nonmajor permittees, the number of enforcement actions, and number of permit modifications extending compliance deadlines. The statistical information shall be organized to follow the types of noncompliance listed in subsection (a) of this section.

(2) In addition to the annual noncompliance report, the Department shall prepare a "program report" which contains information (in a manner and form prescribed by the USEPA Regional Administrator) on generators and transporters and the permit status of regulated facilities. The Department shall also include, on a biennial basis, summary information on the quantities and types of hazardous wastes generated, transported, treated, stored and disposed during the preceding odd–numbered year. This summary information shall be reported in a manner and form prescribed by the USEPA Regional Administrator and shall be reported according to USEPA characteristics and lists of hazardous wastes in chapter 11 of this division.

(c) Schedule for all quarterly reports. No later than the last working day of May, August, November, and February, the Department shall submit to the USEPA Regional Administrator information concerning noncompliance with permit requirements by major facilities in the State in accordance with the following schedule.

QUARTERS COVERED BY REPORTS ON NONCOMPLIANCE BY MAJOR DISCHARGERS

[Date for completion of reports]	
January, February, and March	[1]May 31
April, May, and June	[1]August 31
July, August, and September	[1]November 30
October, November, and December	[1]February 28

[1]Reports shall be made available to the public for inspection and copying no later than this date.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 270.5.

HISTORY
1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

Article 2. Permit Application

§ 66270.10. General Application Requirements.

(a) Permit application. Any person who is required to have a permit (including new applicants and permittees with expiring permits) shall complete, sign, and submit a Part A and Part B permit application to the Department as specified in this chapter. Persons currently authorized with interim status shall apply for permits when required by the Department. Persons covered by permits by rule (section 66270.60) need not apply. Procedures for applications, issuance and administration of emergency permits are found exclusively in section 66270.61. Procedures for application, issuance and administration of research, development, and demonstration permits are found exclusively in section 66270.65.

(b) Who applies? When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit, except that the owner shall also sign the permit application.

(c) Completeness. The Department shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit. The Department shall not issue a permit be-

fore receiving a complete application for a permit except for permits by rule, or emergency permits. An application for a permit is complete when the Department receives an application form and any supplemental information which are completed to the Department's satisfaction, and the Department notifies the applicant in writing that the application is complete. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity. The Department may deny a permit for the active life a of a hazardous waste management facility or unit before receiving a complete application for a permit.

(d) Information requirements. All applicants for permits shall provide information set forth in section 66270.13 and applicable subsections in sections 66270.14 through 66270.23 to the Department, using the application form (Application for a Hazardous Waste Permit, EPA Form 8700–23, revised 1/90) provided by the Department.

(e) Existing hazardous waste management facilities and interim status qualifications.

(1) Owners and operators of existing hazardous waste management facilities or of hazardous waste management facilities in existence on the effective date of statutory or regulatory amendments under the act that render the facility subject to the requirement to have a permit shall submit Part A of their permit application no later than:

(A) six months after the date of publication of regulations which first require them to comply with the standards set forth in chapter 15 or 16 of this division, or

(B) thirty days after the date they first become subject to the standards set forth in chapter 15 or 16 of this division, whichever first occurs.

(2) At any time after July 1, 1991, the owner and operator of an existing hazardous waste management facility may be required to submit Part B of their permit application. Any owner or operator shall be allowed 60 days from the date of request to submit a complete Part B of the application. The Department shall allow an owner or operator more time to submit a complete Part B if the owner or operator demonstrates to the satisfaction of the Department that additional time is required to complete Part B of the application. Any owner or operator of an existing hazardous waste management facility may voluntarily submit Part B of the application at any time.

Notwithstanding the above, any owner or operator of an existing hazardous waste management facility shall submit a Part B permit application in accordance with the dates specified in section 66270.73. Any owner or operator of a land disposal facility in existence on the effective date of statutory or regulatory amendments under RCRA or the Health and Safety Code that render the facility subject to the requirement to have a permit shall submit a Part B application in accordance with the dates specified in section 66270.73.

(3) Failure to furnish a requested Part B application on time, or to furnish in full the information required by the Part B application, is grounds for termination of interim status under chapter 21 of this division.

(f) New hazardous waste management facilities.

(1) No person shall begin physical construction of a new hazardous waste management facility or new HWM unit without having submitted Parts A and B of the permit application or a permit modification request and having received a finally effective permit or permit modification.

(2) An application for a permit for a new hazardous waste management facility (including both Parts A and B) may be filed any time after promulgation of those standards in chapter 14, article 9 et seq. of this division applicable to such facility. The application shall be filed with the Department. All applications shall be submitted at least 180 days before physical construction is expected to commence.

(g) Updating permit applications.

(1) If any owner or operator of a hazardous waste management facility has filed Part A of a permit application and has not yet filed Part B, the owner or operator shall file an amended Part A application:

(A) with the Department, no later than the effective date of regulatory provisions listing or designating wastes as hazardous in addition to those listed or designated under the previous regulations, if the facility is transferring, treating, storing, or disposing of any of those newly listed or designated wastes; or

(B) As necessary to comply with provisions of section 66270.72 for changes during interim status.

(2) The owner or operator of a facility who fails to comply with the updating requirements of subsection (g)(1) of this section shall not receive interim status as to the wastes not covered by duly filed and approved Part A applications.

(h) Reapplications. Any hazardous waste management facility with an effective permit shall submit a new application at least 180 days before the expiration date of the effective permit, unless permission for a later date has been granted by the Department. (The Department shall not grant permission for applications to be submitted later than the expiration date of the existing permit.)

(i) Recordkeeping. Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under sections 66270.10(d), 66270.13, and 66270.14 through 66270.23 for a period of at least 3 years from the date the application is signed.

(j) Exposure information.

(1) After August 8, 1985, any Part B permit application submitted by an owner or operator of a facility that transfers, stores, treats, or dispose of hazardous waste in a surface impoundment or a landfill shall be accompanied by information, reasonably ascertainable by the owner or operator, on the potential for the public to be exposed to hazardous wastes or hazardous constituents through releases related to the unit. At a minimum, such information shall address:

(A) reasonably foreseeable potential releases from both normal operations and accidents at the unit, including releases associated with transportation to or from the unit;

(B) the potential pathways of human exposure to hazardous wastes or constituents resulting from the releases described under subsection (j)(l)(A) of this section; and

(C) the potential magnitude and nature of the human exposure resulting from such releases.

(2) By August 8, 1985, owners and operators of a landfill or a" surface impoundment who have already submitted a Part B application shall submit the exposure information required in subsection (j)(l) of this section.

(k) The Department may require a permittee or an applicant to submit information in order to establish permit conditions under sections 66270.32(b)(2) and 66270.50(d).

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 270.10.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66270.11. Signatories to Permit Applications and Reports.

(a) Applications. All permit applications shall be signed as follows:

(1) for a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means a president, secretary, treasurer, or vice–president of the corporation in charge of a principal business function, or any other person who is authorized to perform similar policy or decision making functions, which govern the operation of the regulated facility, for the corporation;

(2) for a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(3) for a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes:

(A) the chief executive officer of the agency, or

(B) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of USEPA).

(b) Reports. All reports required by permits and other information requested by the Department shall be signed by a person described in subsection (a) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) the authorization is made in writing by a person described in subsection (a) of this section;

(2) the authorization specifies either an individual or a position having responsibility for overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and (3) the written authorization is submitted to the Department.

(c) Changes to authorization. If an authorization under subsection (b) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (b) of this section shall be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.

(d) Certification. Any person signing a document under subsection (a) or (b) of this section shall make the following certification: I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to be the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 270.11.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66270.12. Confidentiality of Information.

(a) In accordance with section 66260.2, any information submitted to the Department pursuant to these regulations may be claimed as confidential by the submitter. Any such claim shall be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, the Department may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in section 66260.2.

(b) Claims of confidentiality for the name and address of any permit applicant or permittee will be denied.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 270.12.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66270.13. Contents of Part A of the Permit Application.

All applicants for permits shall provide the following information to the Department using the Part A application (Application for a Hazardous Waste Permit, Form EPA 8700–23, revised 1/90) form provided by the Department:

(a) the activities conducted by the applicant which require it to obtain a permit;

(b) name, mailing address, and location, including latitude and longitude of the facility for which the application is submitted;

(c) up to four SIC Codes which best reflect the principal products or services provided by the facility;

(d) the operator's name, address, telephone number, ownership status, and status as Federal, State, private, public, or other entity;

(e) the name, address, and phone number of the owner of the facility;

(f) whether the facility is located on Indian lands;

(g) an indication of whether the facility is new or existing and whether it is a first or revised application;

(h) for existing facilities, (1) a scale drawing of the facility showing the location of all past, present, and future treatment, storage, and disposal areas; and (2) photographs of the facility clearly delineating all existing structures; existing treatment, storage, and disposal areas; and sites of future treatment, storage, and disposal areas;

(i) a description of the processes to be used for transferring,treating, storing, and disposing of hazardous waste, and the design capacity of these items;

(j) a specification of the hazardous wastes listed or designated under chapter 11 of this division to be transferred, treated, stored, or disposed of at the facility, an estimate of the quantity of such wastes to be transferred, treated, stored, or disposed annually, and a general description of the processes to be used for such wastes;

(k) a listing of all permits or construction approvals received or applied for under any of the following programs:

(1) hazardous Waste Management program under RCRA (42 U.S.C. commencing with section 6921 or the Health and Safety Code commencing with section 25100);

(2) UIC program under the federal SDWA (42 U.S.C. 6924);

(3) NPDES program under the federal CWA (33 U.S.C. 1342);

(4) prevention of Significant Deterioration (PSD) program under the federal Clean Air Act (42 U.S.C. 7401 et seq.);

(5) nonattainment program under the federal Clean Air Act (42 U.S.C. 7501–7502);

(6) national Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the federal Clean Air Act (42 U.S.C. 7412);

(7) ocean dumping permits under the Federal Marine Protection Research and Sanctuaries Act (33 U.S.C. section 1401, et. seq.);

(8) dredge or fill permits under section 404 of the federal CWA (33 U.S.C. 1344);

(9) other relevant environmental permits;

(*l*) a topographic map extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste transfer, treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; each building and its use; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant within 1/4 mile of the facility property boundary;

(m) a brief description of the nature of the business.

(n) For hazardous debris, a description of the debris category(ies) and contaminant category(ies) to be treated, stored, or disposed of at the facility.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5 and 58012, Health and Safety Code; 40 CFR Section 270.13.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. New subsection (n) and amendment of NOTE filed 10–24–94 as an emergency; operative 10–24–94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–20–95 or emergency language will be repealed by operation of law on the following day.
3. New subsection (n) and amendment of NOTE refiled 2–21–95 as an emergency; operative 2–21–95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–21–95 or emergency language will be repealed by operation of law on the following day.
4. New subsection (n) and amendment of NOTE refiled 6–19–95 as an emergency; operative 6–19–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–95 or emergency language will be repealed by operation of law on the following day.
5. New subsection (n) and amendment of NOTE refiled 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.

6. Certificate of Compliance as to 10–24–94 order transmitted to OAL 12–15–95 and filed 1–31–96 (Register 96, No. 5).

§ 66270.14. Contents of Part B: General Requirements.

(a) Part B of the permit application consists if the general information requirements of this section, and the specific information requirements in sections 66270.14 through 66270.23 applicable to the facility. The Part B information requirements presented in sections 66270.14 through 66270.23 reflect the standards promulgated in chapter 14 of this division. These information requirements are necessary in order for the Department to determine compliance with the chapter 14 standards. If owners and operators of hazardous waste management facilities can demonstrate that the information prescribed in Part B cannot be provided to the extent required, the Department may make allowance for submission of such information on a case–by–case basis. Information required in Part B shall be submitted to the Department and signed in accordance with requirements in section 66270.11. Certain technical data, such as design drawings and specifications, and engineering studies shall be certified by an independent, qualified professional engineer registered in California. Geologic plans, specifications, reports or documents shall be prepared by or under the direction of, and shall be certified by, a geologist registered in California. Calculations and technical data supporting the certification need not be submitted with Part B but shall be retained by the owner or operator and be available for review by the Department.

(b) General information requirements. The following information is required for all hazardous waste management facilities, except as section 66264.1 provides otherwise:

(1) a general description of the facility;

(2) chemical and physical analyses of the hazardous waste and hazardous debris to be handled at the facility. At a minimum, these analyses shall contain all the information which must be known to transfer, treat, store or dispose of the wastes properly in accordance with chapter 14 of this division;

(3) a copy of the waste analysis plan required by section 66264.13(b) and, if applicable section 66264.13(c);

(4) a description of the security procedures and equipment required by section 66264.14, or a justification demonstrating the reasons for requesting a waiver of this requirement;

(5) a copy of the general inspection schedule required by section 66264.15(b). Include where applicable, as part of the inspection schedule, specific requirements in sections 66264.174, 66264.193(i), 66264.195, 66264.226, 66264.254, 66264.273, 66264.303, 66264.602, 66264.1033, 66264.1052, 66264.1053, 66264.1058, 66264.1084, 66264.1085, 66264.1086, and 66264.1088;

(6) a justification of any request for a waiver(s) of the preparedness and prevention requirements of chapter 14, article 3 of this division;

(7) a copy of the contingency plan required by chapter 14, article 4 of this division. NOTE: Include, where applicable, as part of the contingency plan, specific requirements in section 6264.227;

(8) a description of procedures, structures or equipment used at the facility to:

(A) prevent hazards in unloading operations (for example, ramps, special forklifts);

(B) prevent runoff from hazardous waste handling areas to other areas of the facility or environment, or to prevent flooding (for example, berms, dikes, trenches);

(C) prevent contamination of water supplies;

(D) mitigate effects of equipment failure and power outages; and

(E) prevent undue exposure of personnel to hazardous waste (for example, protective clothing); and

(F) Prevent releases to the atmosphere.

(9) a description of precautions to prevent accidental ignition or reaction of ignitable, reactive or incompatible wastes as required to demonstrate compliance with section 66264.17 including documentation demonstrating compliance with section 66264.17(c);

(10) traffic pattern, estimated volume (number, types of vehicles) and control (for example, show turns across traffic lanes, and stacking lanes (if appropriate); describe access road surfacing and load bearing capacity; show traffic control signals);

(11) facility location information:

(A) the owner or operator of a new facility or a facility undergoing substantial modification (a Class 3 modification specified in section 66270.42(c) involving physical changes to the facility) shall demonstrate compliance with the seismic standard. This demonstration may be made using either published geologic data or data obtained from field investigations carried out by the applicant. The information provided shall be of such quality to be acceptable to geologists experienced in identifying and evaluating seismic activity. The information submitted shall show that either:

1. no faults which have had displacement in Holocene time are present, or no lineations which suggest the presence of a fault (which have displacement in Holocene time) within 3,000 feet of a facility are present, based on data from:

a. published geologic studies,

b. aerial reconnaissance of the area within a five–mile radius from the facility;

c. an analysis of aerial photographs covering a 3,000 foot radius of the facility, and

d. if needed to clarify the above data, a reconnaissance based on walking portions of the area within 3,000 feet of the facility, or

2. if faults (to include lineations) which have had displacement in Holocene time are present within 3,000 feet of a facility, no faults pass within 200 feet of the portions of the facility where treatment, storage or disposal of hazardous waste will be conducted, based on data from a comprehensive geologic analysis of the site. Unless a site analysis is otherwise conclusive concerning the absence of faults within 200 feet of such portions of the facility data shall be obtained from a subsurface exploration (trenching) of the area within a distance no less than 200 feet from portions of the facility where transfer, treatment, storage or disposal of hazardous waste will be conducted. Such trenching shall be performed in a direction that is perpendicular to known faults (which have had displacement in Holocene time) passing within 3,000 feet of the portions of the facility where transfer, treatment, storage or disposal of hazardous waste will be conducted. Such investigation shall document with supporting maps and other analyses, the location of faults found;

(B) owners and operators of all facilities shall provide an identification of whether the facility is located within a 100 year floodplain. This identification shall indicate the source of data for such determination and include a copy of the relevant Federal Insurance Administration (FIA) flood map, if used, or the calculations and maps used where an FIA map is not available. Information shall also be provided identifying the 100–year flood level and any other special flooding factors (e.g., wave action) which must be considered in designing, constructing, operating or maintaining the facility to withstand washout from a 100–year flood;

(C) where maps for the National Flood Insurance Program produced by the Federal Insurance Administration (FIA) of the Federal Emergency Management Agency are available, they will normally be determinative of whether a facility is located within or outside of the 100–year floodplain. However, where the FIA map excludes an area (usually areas of the floodplain less than 200 feet in width), these areas shall be considered and a determination made as to whether they are in the 100–year floodplain. Where FIA maps are not available for a proposed facility location, the owner or operator shall use equivalent mapping techniques to determine whether the facility is within the 100–year floodplain, and if so located, what the 100–year flood elevation would be;

(D) owners and operators of facilities located in the 100–year floodplain shall provide the following information:

1. engineering analysis to indicate the various hydrodynamic and hydrostatic forces expected to result at the site as consequence of a 100–year flood;

2. structural or other engineering studies showing the design of operational units (e.g., tanks, incinerators) and flood protection devices (e.g., floodwalls, dikes) at the facility and how these will prevent washout;

3. if applicable, and in lieu of subsections (b)(11)(D) 1. and 2. of this section, a detailed description of procedures to be followed to remove hazardous waste to safety before the facility is flooded, including:

a. timing of such movement relative to flood levels, including estimated time to move the waste, to show that such movement can be completed before floodwaters reach the facility;

b. a description of the location(s) to which the waste will be moved and demonstration that those facilities will be eligible to receive hazardous waste in accordance with the regulations under chapters 14, 15, 16, 20 and 21 of this division;

c. the planned procedures, equipment and personnel to be used and the means to ensure that such resources will be available in time for use;

d. the potential for accidental discharges of the waste during movement;

(E) existing facilities NOT in compliance with section 66264.18(b) shall provide a plan showing how the facility will be brought into compliance and a schedule for compliance;

(F) the owners and operators of surface impoundments, waste piles, land treatment facilities and landfills shall provide information regarding the depth to the saturated zone or groundwater table, including seasonal high levels for groundwater, known aquifers beneath the site and any aquifers having hydraulic continuity;

(12) an outline of both the introductory and continuing training programs by owners or operators to prepare persons to operate or maintain the hazardous waste management facility in a safe manner as required to demonstrate compliance with section 66264.16. A brief description of how training will be designed to meet actual job tasks in accordance with requirements in section 66264.16(a)(3);

(13) a copy of the closure plan and, where applicable, the postclosure plan required by sections 66264.112, 66264.118 and 66264.197. Include, where applicable, as part of the plans, specific requirements in sections 66264.178, 66264.197, 66264.228, 66264.258, 66264.280, 66264.310, 66264.351, 66264.601 and 66264.603;

(14) for hazardous waste disposal units that have been closed, documentation that notices required under section 66264.119 have been filed;

(15) the most recent closure cost estimate for the facility prepared in accordance with section 66264.142 and a copy of the documentation required to demonstrate financial assurance under section 66264.143. For a new facility, a copy of the required documentation may be submitted 60 days prior to the initial receipt of hazardous wastes, if that is later than the submission of the Part B;

(16) where applicable, the most recent post closure cost estimate for the facility prepared in accordance with section 66264.144 plus a copy of the documentation required to demonstrate financial assurance under section 66264.145. For a new facility, a copy of the required documentation may be submitted 60 days prior to the initial receipt of hazardous wastes, if that is later than the submission of the Part B;

(17) where applicable, a copy of the insurance policy or other documentation which comprises compliance with the requirements of section 66264.147. For a new facility, documentation showing the amount of insurance meeting the specification of section 66264.147(a) and, if applicable, section 66264.147(b), that the owner or operator plans to have in effect before initial receipt of hazardous waste for transfer, treatment, storage or disposal. A request for a variance in the amount of required coverage, for a new or existing facility, may be submitted as specified in section 66264.147(c);

(18) a topographic map showing a distance of 2000 feet around the facility at a scale of 2.5 centimeters (1 inch) equal to not more than 61.0 meters (200 feet). Contours shall be shown on the map. The contour interval shall be sufficient to clearly show the pattern of surface water flow in the vicinity of and from each operational unit of the facility. For example, contours with an interval of 1.5 meters (5 feet), if relief is greater than 6.1 meters (20 feet), or an interval of 0.6 meters (2 feet), if relief is less than 6.1 meters (20 feet). Owners and operators of hazardous waste management facilities located in mountainous areas should use larger contour intervals to adequately show topographic profiles of facilities. The map shall clearly show the following:

(A) map scale and date;

(B) 100–year floodplain area;

(C) surface waters including intermittent streams;

(D) surrounding land uses (residential, commercial, agricultural, recreational);

(E) a wind rose (i.e., prevailing wind–speed and direction);

(F) orientation of the map (north arrow);

(G) legal boundaries of the hazardous waste management facility site;

(H) access control (fences, gates);

(I) injection and withdrawal wells both onsite and offsite;

(J) buildings; transfer, treatment, storage or disposal operations; or other structure (recreation areas, run–off control systems, access and internal roads, storm, sanitary and process sewerage systems, loading and unloading areas, fire control facilities, etc.);

(K) barriers for drainage or flood control;

(L) location of operational units within the hazardous waste management facility site, where hazardous waste is (or will be) transferred, treated, stored or disposed (include equipment cleanup areas);

(19) any additional information related to the proposed activity or facility which is requested by the Department;

(20) for land disposal facilities, if a case–by–case extension for RCRA wastes has been approved by USEPA under 40 CFR Section 268.5 and by the Department under section 66268.5 or a petition has been approved under section 66268.6, copies of the notices of approval for the extension or petition are required. If a variance for non RCRA wastes has been granted by the Department under Health and Safety Code section 25143 and section 66260.210 of this division, a copy of the letter granting the variance is required;

(21) For facilities applying for RCRA permits, a summary of the pre–application meeting, along with a list of attendees and their addresses, and copies of any written comments or materials submitted at the meeting, as required under section 66271.31(c).

(c) Additional information requirements. The information specified in this subsection shall be submitted for each regulated unit at a hazardous waste management facility. An owner or operator of a regulated unit that did not receive hazardous waste after February 2, 1985 shall submit this additional information only as it pertains to the water quality protection requirements of article 6 of chapter 14 of this division:

(1) a summary of the environmental monitoring data obtained during the interim status period under sections 66265.90 through 66265.99 and sections 66265.710 through 66265.714, where applicable;

(2) identification of the uppermost aquifer and aquifers hydraulically interconnected beneath the facility property, including groundwater flow direction and rate, which at a minimum shall be determined at the times of expected highest and lowest annual elevations of the groundwater surface, and the basis for such identification (i.e., the information obtained from hydrogeologic investigations of the facility area);

(3) on the topographic map required under subsection (b)(18) of this section, a delineation of the waste management area, the property boundary, the proposed "point of compliance" as defined under section 66264.95, the proposed location of monitoring points as required under sections 66264.95 and 66264.705, and, to the extent possible, the information required in subsection (c)(2) of this section;

(4) a description of any plume of contamination or pollution that has migrated from a regulated unit at the time that the application was submitted that:

(A) delineates the extent of the plume on the topographic map required under subsection (b)(18) of this section;

(B) identifies the concentration of each constituent of concern throughout the plume or identified the maximum concentrations of each such constituent in the plume;

(5) detailed plans and an engineering report describing the proposed environmental monitoring programs to be implemented to meet the requirements of articles 6 and 17 of chapter 14 of this division. This submission shall be prepared and certified by a geologist registered in California or a civil engineer registered in California;

(6) if a detection monitoring program is required under section 66264.91 and/or section 66264.701 at the time of permit application, the owner or operator shall submit sufficient information, supporting data, and analyses to establish a detection monitoring program which meets the requirements of section 66264.98 and/or section 66264.706. This submission shall address the following items specified under section 66264.98 and 66264.706:

(A) a proposed list of constituents of concern for groundwater, surface water, air, soil–pore gas and soil–pore liquid, a proposed list of hazardous constituents for air, soil and soil–pore gas and a proposed list of monitoring parameters for each medium that can provide a reliable indication of a release from a regulated unit;

(B) proposed groundwater, soil–pore liquid and surface water monitoring systems required under section 66264.98 and any air or soil–pore gas monitoring systems required under article 17 of chapter 14;

(C) background values for each proposed monitoring parameter, hazardous constituent, and constituent of concern, or procedures to calculate such values; and

(D) a description of proposed sampling, analysis and statistical comparison procedures to be utilized in evaluating monitoring data;

(7) if an evaluation monitoring program is required under section 66264.91 and/or a compliance monitoring program is required under section 66264.701 at the time of the permit application, the owner or operator shall submit sufficient information, supporting data, and analyses to establish an evaluation monitoring program which meets the requirements of sections 66264.99 and/or a compliance monitoring program under section 66264.707. The owner or operator shall also submit an engineering feasibility study for a corrective action program necessary to meet the requirements of sections 66264.100 and/or 66264.708, unless the owner or operator obtains written authorization from the Department prior to submittal of the permit application to submit a proposed permit schedule for submittal of such a study. To demonstrate compliance with sections 66264.99 and/or 66264.707, the owner or operator shall address the following items:

(A) a description of the wastes previously handled at the facility;

(B) a characterization of the contaminated or polluted groundwater, soil, soil–pore liquid, soil–pore gas, surface water or air, including concentrations of monitoring parameters, hazardous constituents.and constituents of concern in each medium;

(C) for each medium, a proposed list of monitoring parameters for which evaluation monitoring will be undertaken in accordance with sections 66264.97 and 66264.99 and/or for compliance monitoring under section 66264.707;

(D) for each medium, background values, and any proposed concentration limits greater than background and/or alternate concentration limits for each constituent of concern and/or hazardous constituent based on the criteria set forth in sections 66264.94 and/or 66264.704, including a justification for establishing any such concentration limits;

(E) detailed plans and an engineering report describing the proposed monitoring system, prepared and certified by a geologist registered in California or a civil engineer registered in California, in accordance with the requirements of sections 66264.97 and 66264.98 and/or section 66264.707; and

(F) a description of proposed sampling, analysis and statistical comparison procedures to be utilized in evaluating monitoring data;

(8) if a corrective action program is required under sections 66264.91 and/or 66264.701 at the time of permit application, the owner or operator shall submit sufficient information, supporting data, and analyses to establish a corrective action program which meets the requirements of sections 66264.100 and/or 66264.7098. To demonstrate compliance with sections 66264.100 and/or 66264.7098, the owner or operator shall address, at a minimum, the following items:

(A) a characterization of the contaminated or polluted groundwater, soil, soil–pore liquid, soil–pore vapor, surface water or air including concentrations of monitoring parameters, hazardous constituents and constituents of concern in each medium;

(B) a proposed list of hazardous constituents and constituents of concern for each medium;

(C) for each medium, the proposed concentration limits for each hazardous constituent and constituent of concern as set forth in sections 66264.94 and/or 66264.704;

(D) detailed plans and an engineering report describing the corrective action to be taken and proposed environmental monitoring programs, prepared and certified by a geologist registered in California or a civil engineer registered in California; and

(E) a description of how the environmental monitoring programs will demonstrate the adequacy of the corrective action;

(F) a proposed permit schedule for submittal of the information operator obtains written authorization from the Department prior to submittal of the permit application.

(d) Information requirements for solid waste management units.

(1) The following information is required for each solid waste management unit at a facility seeking a permit:

(A) the location of the unit on the topographic map required under subsection (b)(18) of this section;

(B) designation of type of unit;

(C) general dimensions and structural description (supply any available drawings);

(D) when the unit was operated;

(E) specification of all wastes that have been managed at the unit, to the extent available;

(F) when applicable, the information required under section 66264.801.

(2) The owner or operator of any facility containing one or more solid waste management units shall submit all available information pertaining to any release of hazardous wastes or hazardous constituents from such unit or units.

(3) The owner/operator shall conduct and provide the results of sampling and analysis of groundwater, landsurface and subsurface strata, surface water, or air, which may include the installation of wells, where the Department ascertains it is necessary to complete a RCRA Facility Assessment that will determine if a more complete investigation is necessary.

(e) California Environmental Quality Act (CEQA) Information Requirements. Unless the Department has determined that the activity to be permitted is exempt from the requirements of CEQA pursuant to Title 14, CCR section 15061, the applicant shall submit with Part B of the permit application all information necessary to enable the Department to prepare an Initial Study meeting the requirements of Title 14, CCR section 15063.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5, 25179.6, 25200 and 58012, Health and Safety Code; and 40 CFR Section 270.14.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of subsections (b)(5) and (b)(8)(E) and NOTE and new subsection (b)(8)(F) filed 12–23–92; operative 1–22–93 (Register 93, No. 2).
3. Amendment of subsection (b)(2) and NOTE filed 10–24–94 as an emergency; operative 10–24–94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–20–95 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsection (b)(2) and NOTE refiled 2–21–95 as an emergency; operative 2–21–95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–21–95 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsection (b)(2) and NOTE refiled 6–19–95 as an emergency; operative 6–19–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–95 or emergency language will be repealed by operation of law on the following day.
6. Amendment of subsection (b)(2) and NOTE refiled 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 10–24–94 order transmitted to OAL 12–15–95 and filed 1–31–96 (Register 96, No. 5).
8. Change without regulatory effect adding new subsection (b)(21) filed 12–19–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 51).

9. Change without regulatory effect amending subsection (b)(20) filed 8–15–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 33).
10. Change without regulatory effect amending subsection (b)(5) and NOTE filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).

§ 66270.15. Specific Part B Information Requirements for Containers.

Except as otherwise provided in section 66264.170, owners or operators of facilities that transfer or store containers of hazardous waste shall provide the following additional information:

(a) a description of the containment system to demonstrate compliance with section 66264.175. Show at least the following:

(1) basic design parameters, dimensions, and materials of construction;

(2) how the design promotes drainage or how containers are kept from contact with standing liquids in the containment system;

(3) capacity of the containment system relative to the number and volume of containers to be transferred or stored;

(4) provisions for preventing or managing run–on;

(5) how accumulated liquids can be analyzed and removed to prevent overflow;

(b) sketches, drawings, or data demonstrating compliance with section 66264.176 (location of buffer zone and containers holding ignitable or reactive wastes) and section 66264.177(c) (location of incompatible wastes), where applicable;

(c) where incompatible wastes are stored or otherwise managed in containers, a description of the procedures used to ensure compliance with sections 66264.177(a) and (b), and 66264.17(b) and (c).

(d) Information on air emission control equipment as required in section 66270.27.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 270.15.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect adding subsection (d) and amending NOTE filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).

§ 66270.16. Specific Part B Information Requirements for Tank Systems.

Except as otherwise provided in section 66264.190, owners and operators of facilities that use tanks to transfer, store or treat hazardous waste shall provide a description of design and operation procedures which demonstrate compliance with the requirements of sections 66264.192, 66264.194, 66264.198, and 66264.199, including the following additional information:

(a) a written assessment that is reviewed and certified by an independent, qualified, professional engineer registered in California as to the structural integrity and suitability for handling hazardous waste of each tank system including the containment system, as required under sections 66264.191(b) and (f) and 66264.192(b);

(b) dimensions, capacity, and shell thickness of each tank;

(c) description of feed systems, safety cutoff, bypass systems, and pressure controls (e.g., vents);

(d) a diagram of piping, instrumentation, and process flow for each tank system;

(e) a description of materials and equipment used to provide external corrosion protection, as required under section 66264.192(b)(3);

(f) for new tank systems, a detailed description of how the tank system(s) will be installed in compliance with sections 66264.192(c), (d), (e) and (f);

(g) detailed plans and description of how the secondary containment system for each tank system is or will be designed, constructed, and operated to meet the requirements of sections 66264.193(a), (b), (c), (d), (e), (f) and (j);

(h) for tank systems for which a variance from the requirements of section 66264.193 is sought (as provided by section 66264.193(g)):

(1) detailed plans and engineering and hydrogeologic reports, as appropriate, describing alternate design and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous waste or hazardous constituents into the ground water or surface water during the life of the facility, or

(2) a detailed assessment of the substantial present or potential hazards posed to human health or the environment should a release enter the environment;

(i) description of controls and practices to prevent spills and overflows, as required under section 66264.194(b); and

(j) for tank systems in which ignitable, reactive, or incompatible wastes are to be transferred, stored or treated, a description of how operating procedures and tank system and facility design will achieve compliance with the requirements of sections 66264.198 and 66264.199;

(k) references to design standards or other available information used (or to be used) in design and construction of the tank;

(*l*) a description of design specifications, including identification of construction materials and lining materials for the tank and secondary containment facilities (include pertinent characteristics such as corrosion or erosion resistance).

(m) Information on air emission control equipment as required in section 66270.27.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 270.16.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect adding subsection (m) and amending NOTE filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).

§ 66270.17. Specific Part B Information Requirements for Surface Impoundments.

Except as otherwise provided in section 66264.1, owners and operators of facilities that store, treat or dispose of hazardous waste in surface impoundments shall provide the following additional information:

(a) a list of the hazardous wastes placed or to be placed in each surface impoundment;

(b) detailed plans and an engineering report describing how the surface impoundment is designed and is or will be constructed, operated and maintained to meet the requirements of sections 66264.19, 66264.221, 66264.222, and 66264.223 of this chapter, addressing the following items:

(1) the liner system (except for an existing portion of a surface impoundment). If an exemption from the requirement for a liner is sought as provided by section 66264.221(b), submit detailed plans and engineering and hydrogeologic reports, as appropriate, describing alternate design and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the ground water or surface water at any future time;

(2) prevention of overtopping;

(3) structural integrity of dikes, including information described in section 66264.228(e)(18), whether or not dikes will remain after closure;

(4) The double liner and leak (leachate) detection, collection, and removal system, if the surface impoundment shall meet the requirements of section 66264.221(c) of this chapter. If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternative design is sought as provided by section 66264.221(f), (g), or (k) of this chapter, submit appropriate information;

(5) If the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;

(6) The construction quality assurance (CQA) plan if required under section 66264.19 of this chapter;

(7) Proposed action leakage rate, with rationale, if required under section 66264.222 of this chapter, and response action plan, if required under section 66264.223 of this chapter;

(c) detailed plans and an engineering report explaining the location of the saturated zone in relation to the surface impoundment, and the design of a double–liner system that incorporates a leak detection system between the liners;

(d) A description of how each surface impoundment, including the double liner system, leak detection system, cover system and appurtenances for control of overtopping, will be inspected in order to meet the requirements of section 66264.226(a), (b) and (d) of this chapter. This information shall be included in the inspection plan submitted under section 66270.14(b)(5);

(e) a certification by an independent, qualified, professional engineer, registered in California which attests to the structural integrity of each dike, as required under section 66264.226(c). For new units, the owner or operator shall submit a statement by an independent, qualified, professional engineer, registered in California, that the engineer will provide such a certification upon completion of construction in accordance with the plans and specifications;

(f) a description of the procedure to be used for removing a surface impoundment from service, as required under sections 66264.227(b) and (c). This information shall be included in the contingency plan submitted under section 66270.14(b)(7);

(g) a description of how hazardous waste residues and contaminated materials will be removed from the unit at closure, as required under section 66264.228(a)(1). For any wastes not to be removed from the unit upon closure, the owner or operator shall submit detailed plans and an engineering report describing how sections 66264.228(a)(2) and (b) will be complied with. This information shall be included in the closure plan and, where applicable, the post–closure plan submitted under section 66270.14(b)(13);

(h) if ignitable or reactive wastes are to be placed in a surface impoundment, an explanation of how section 66264.229 will be complied with;

(i) if incompatible wastes, or incompatible wastes and materials will be placed in a surface impoundment, an explanation of how section 66264.230 will be complied with.

(j) a waste management plan for EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027 describing how the surface impoundment is or will be designed, constructed, operated, and maintained to meet the requirements of section 66264.231. This submission shall address the following items as specified in section 66264.231:

(1) the volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) the attenuative properties of underlying and surrounding soils or other materials;

(3) the mobilizing properties of other materials co–disposed with these wastes; and

(4) the effectiveness of additional treatment, design, or monitoring techniques.

(k) Information on air emission control equipment as required in section 66270.27.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 270.17.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of subsections (b) and (b)(2), new subsections (b)(4)–(7) and amendment of subsection (d) and NOTE filed 7–19–95; operative 8–18–95 (Register 95, No. 29).
3. Change without regulatory effect adding subsection (k) and amending NOTE filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).

§ 66270.18. Specific Part B Information Requirements for Waste Piles.

Except as otherwise provided in section 66264.1, owners and operators of facilities that store or treat hazardous waste in waste piles shall provide the following additional information:

(a) a list of hazardous wastes placed or to be placed in each waste pile;

(b) detailed plans and an engineering report describing how the waste pile is designed and is or will be constructed, operated and maintained to meet the requirements of sections 66264.19, 66264.251, 66264.252, and 66264.253 of this chapter, addressing the following items:

(1)(A) the liner system (except for an existing portion of a waste pile), if the waste pile shall meet the requirements of section 66264.251(a) of this chapter. If an exemption from the requirement for a liner is sought, as provided by section 66264.251(e) of this chapter, submit detailed plans, and engineering and hydrogeological reports, as appropriate, describing alternate designs and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the ground water or surface water at any future time;

(B) The double liner and leak (leachate) detection, collection, and removal system, if the waste pile shall meet the requirements of section 66264.251(c) of this chapter. If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternative design is sought as provided by section 66264.251(*l*), (m), or (n) of this chapter, submit appropriate information;

(C) If the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;

(D) The construction quality assurance (CQA) plan if required under section 66264.19 of this chapter;

(E) Proposed action leakage rate, with rationale, if required under section 66264.252 of this chapter, and response action plan, if required under section 66264.253 of this chapter;

(2) control of run–on;

(3) control of run–off;

(4) management of collection and holding units associated with run–on and run–off control systems; and

(5) control of wind dispersal of particulate matter, where applicable;

(c) if a double liner and leak detection system is required, as noted by section 66264.251(k), detailed plans and an engineering report describing how the requirements of section 66264.251(k) will be complied with;

(d) a description of how each waste pile, including the double liner system, leachate collection and removal system, leak detection system, cover system, and appurtenances for control of run–on and run–off, will be inspected in order to meet the requirements of section 66264.254(a), (b) and (c) of this chapter. This information shall be included in the inspection plan submitted under section 66270.14(b)(5). If a double liner and leak detection system is required, pursuant to section 66264.251(k), describe in the inspection plan how the inspection requirements of section 66264.254(b)(3) will be complied with;

(e) if treatment is carried out on or in the waste pile, details of the process and equipment used, and the nature and quality of the residuals;

(f) if ignitable or reactive wastes are to be placed in a waste pile, an explanation of how the requirements of section 66264.256 will be complied with;

(g) if incompatible wastes, or incompatible wastes and materials will be placed in a waste pile, an explanation of how section 66264.257 will be complied with;

(h) a description of how hazardous waste residues and contaminated materials will be removed from the waste pile at closure, as required under section 66264.258(a). For any waste not to be removed from the waste pile upon closure, the owner or operator shall submit detailed plans and an engineering report describing how sections 66264.310(a) and (b) will be complied with. This information shall be included in the closure plan and, where applicable, the post–closure plan submitted under section 66270.14(b)(13);

(i) a waste management plan for EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027 describing how a waste pile in which any of these wastes has been or will be placed is or will be designed, constructed, operated, and maintained to meet the requirements of section 66264.259. This submission shall address the following items as specified in section 66264.259:

(1) the volume, physical, and chemical characteristics of the wastes to be disposed in the waste pile, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) the attenuative properties of underlying and surrounding soils or other materials;

(3) the mobilizing properties of other materials co-disposed with these wastes; and

(4) the effectiveness of additional treatment, design, or monitoring techniques.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code; and Governor's Reorganization Plan Number 1 of 1991. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 270.18.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).
2. Amendment of subsections (b)-(b)(1), designation of subsection (b)(1)(A), new subsections (b)(1)(B)-(E), and amendment of subsection (d) and NOTE filed 7-19-95; operative 8-18-95 (Register 95, No. 29).
3. Change without regulatory effect amending subsection (b)(1)(B) filed 6-30-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 27).

§ 66270.19. Specific Part B Information Requirements for Incinerators.

Except as section 66264.340 of this division provides otherwise, owners and operators of facilities that incinerate hazardous waste shall fulfill the requirements of subsection (a), (b), or (c) of this section:

(a) when seeking an exemption under section 66264.340(b) or (c) of this division (ignitable, corrosive, or reactive wastes only):

(1) documentation that the waste is listed as a hazardous waste in chapter 11, article 4 of this division, solely because it is ignitable (Hazard Code I) or corrosive (Hazard Code C) or both; or ignitable (Hazard Code I) or corrosive (Hazard Code C) or both; or

(2) documentation that the waste is listed as a hazardous waste in chapter 11, article 4 of this division, solely because it is reactive (Hazard Code R) for characteristics other than those listed in sections 66261.23(a)(4) and (5), and will not be burned when other hazardous wastes are present in the combustion zone; or

(3) documentation that the waste is a hazardous waste solely because it possesses the characteristic of ignitability, corrosivity, or both, as determined by the tests for characteristics of hazardous waste under chapter 11, article 3 of this division; or

(4) documentation that the waste is a hazardous waste solely because it possesses the reactivity characteristics listed in section 66261.23(a)(1), (2), (3), (6), (7), or (8) of this chapter and that it will not be burned when other hazardous wastes are present in the combustion zone; or

(b) submit a trial burn plan or the results of a trial burn, including all required determinations, in accordance with section 66270.62; or

(c) in lieu of a trial burn, the applicant may submit the following information:

(1) an analysis of each waste or mixture of wastes to be burned including:

(A) heat value of the waste in the form and composition in which it will be burned;

(B) viscosity (if applicable), or description of physical form of the waste;

(C) an identification of any hazardous organic constituents listed in chapter 11, Appendix VIII, of this division, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in chapter 11, Appendix VIII, of this division which would reasonably not be expected to be found in the waste. The constituents excluded from analysis shall be identified and the basis for their exclusion stated. The waste analysis shall rely on analytical techniques specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA publication SW-846, Third Edition and Updates (incorporated by reference in section 66260.11), or their equivalent;

(D) an approximate quantification of the hazardous constituents identified in the waste, within the precision produced by the analytical methods specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA publication SW-846, Third Edition and Updates (incorporated by reference in section 66260.11);

(E) a quantification of those hazardous constituents in the waste which may be designated as POHCs based on data submitted from other trial or operational burns which demonstrate compliance with the performance standards in section 66264.343 of this division;

(2) a detailed engineering description of the incinerator,including:

(A) manufacturer's name and model number of incinerator;

(B) type of incinerator;

(C) linear dimension of incinerator unit including cross sectional area of combustion chamber;

(D) description of auxiliary fuel system (type/feed);

(E) capacity of prime mover;

(F) description of automatic waste feed cutoff system(s);

(G) stack gas monitoring and pollution control monitoring system;

(H) nozzle and burner design;

(I) construction materials;

(J) location and description of temperature, pressure, and flow indicating devices and control devices;

(3) a description and analysis of the waste to be burned compared with the waste for which data from operational or trial burns are provided to support the contention that a trial burn is not needed. The data shall include those items listed in subsection (c)(1) of this section. This analysis shall specify the POHCs which the applicant has identified in the waste for which a permit is sought, and any differences from the POHCs in the waste for which burn data are provided;

(4) the design and operating conditions of the incinerator unit to be used, compared with that for which comparative burn data are available;

(5) a description of the results submitted from any previously conducted trial burn(s) including:

(A) sampling and analysis techniques used to calculate performance standards in section 66264.343 of this division;

(B) methods and results of monitoring temperatures, waste feed rates, carbon monoxide, and an appropriate indicator of combustion gas velocity (including a statement concerning the precision and accuracy of this measurement);

(C) the certification and results required by section 66270.62(b)(7);

(6) the expected incinerator operation information to demonstrate compliance with sections 66264.343 and 66264.345 of this division including:

(A) expected carbon monoxide (CO) and oxygen (O_2) concentrations in the stack exhaust gas;

(B) waste feed rate;

(C) combustion zone temperature;

(D) indication of combustion gas velocity;

(E) expected stack gas volume, flow rate, and temperature;

(F) computed residence time for waste in the combustion zone;

(G) expected hydrochloric acid removal efficiency;

(H) expected fugitive emissions and their control procedures;

(I) proposed waste feed cut-off limits based on the identified significant operating parameters;

(7) such supplemental information as the Department finds necessary to achieve the purposes of this section;

(8) waste analysis data, including that submitted in subsection (c)(1) of this section, sufficient to allow the Department to specify as permit Principal Organic Hazardous Constituents (permit POHCs) those constituents for which destruction and removal efficiencies will be required.

(d) The Department shall approve a permit application without a trial burn if it finds that:

(1) the wastes are sufficiently similar; and

(2) the incinerator units are sufficiently similar, and the data from other trial burns are adequate to specify (under section 66264.345) operating conditions that will ensure that the performance standards in section 66264.343 will be met by the incinerator.

NOTE: Authority cited: Sections 25150, 25159, 58004 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 270.19.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of subsections (c)(1)(C)–(D) and amendment of NOTE filed 10–13–98; operative 11–12–98 (Register 98, No. 42).

§ 66270.20. Specific Part B Information Requirements for Land Treatment Facilities.

Except as otherwise provided in section 66264.1, owners and operators of facilities that use land treatment to treat or dispose of hazardous waste shall provide the following additional information:

(a) a description of plans to conduct a treatment demonstration as required under section 66264.272. The description shall include the following information:

(1) the wastes for which the demonstration will be made and the potential hazardous constituents in the waste;

(2) the data sources to be used to make the demonstration (e.g., literature, laboratory data, field data, or operating data);

(3) any specific laboratory or field test that will be conducted, including:

(A) the type of test (e.g., column leaching, degradation);

(B) materials and methods, including analytical procedures;

(C) expected time for completion;

(D) characteristics of the unit that will be simulated in the demonstration, including treatment zone characteristics, climatic conditions, and operating practices;

(b) a description of a land treatment program, as required under section 66264.271. This information shall be submitted with the plans for the treatment demonstration, and updated following the treatment demonstration. The land treatment program shall address the following items:

(1) the wastes to be land treated;

(2) design measures and operating practices necessary to maximize treatment in accordance with section 66264.273(a) including:

(A) waste application method and rate;

(B) measures to control soil pH;

(C) enhancement of microbial or chemical reactions;

(D) control of moisture content;

(3) provisions for unsaturated zone monitoring, including:

(A) sampling equipment, procedures, and frequency;

(B) procedures for selecting sampling locations;

(C) analytical procedures;

(D) chain of custody control;

(E) procedures for establishing background values;

(F) statistical methods for interpreting results;

(G) the justification for any hazardous constituents recommended, for selection as principal hazardous constituents, in accordance with the criteria for such selection in section 66264.278(a);

(4) a list of hazardous constituents reasonably expected to be in, or derived from, the wastes to be land treated based on waste analysis performed pursuant to section 66264.13;

(5) the proposed dimensions of the treatment zone;

(c) a description of how the unit is or will be designed, constructed, operated, and maintained in order to meet the requirements of section 66264.273. This submission shall address the following items:

(1) control of run–on;

(2) collection and control of run–off;

(3) minimization of run–off of hazardous constituents from the treatment zone;

(4) management of collection and holding facilities associated with run–on and run–off control systems;

(5) periodic inspection of the unit. This information shall be included in the inspection plan submitted under section 66270.14(b)(5);

(6) control of wind dispersal of particulate matter, if applicable;

(d) a description of the vegetative cover to be applied to closed portions of the facility, and a plan for maintaining such cover during the post–closure care period, as required under sections 66264.280(a)(8) and 66264.280(c)(2). This information shall be included in the closure plan and, where applicable, the post–closure care plan submitted under section 66270.14(b)(13);

(e) if ignitable or reactive wastes will be placed in or on the treatment zone, an explanation of how the requirements of section 66264.281 will be complied with;

(f) if incompatible wastes, or incompatible wastes and materials, will be placed in or on the same treatment zone, an explanation of how section 66264.282 will be complied with;

(g) a waste management plan for EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027 describing how a land treatment facility is or will be designed, constructed, operated, and maintained to meet the requirements of section 66264.283. This submission shall address the following items as specified in section 66264.283:

(1) the volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) the attentuative properties of underlying and surrounding soils or other materials;

(3) the mobilizing properties of other materials co–disposed with these wastes; and

(4) the effectiveness of additional treatment, design, or monitoring techniques.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 270.20.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66270.21. Specific Part B Information Requirements for Landfills.

Except as otherwise provided in section 66264.1, owners and operators of facilities that dispose of hazardous waste in landfills shall provide the following additional information:

(a) a list of the hazardous wastes placed or to be placed in each landfill or landfill cell;

(b) Detailed plans and an engineering report describing how the landfill is designed, and is or will be constructed, operated and maintained to meet the requirements of sections 66264.19, 66264.301, 66264.302 and 66264.303 of this chapter, addressing the following items:

(1)(A) The liner system (except for an existing portion of a landfill), if the landfill shall meet the requirements of section 66264.301(a) of this chapter. If an exemption from the requirements for a liner is sought as provided by section 66264.301(b) of this chapter, submit detailed plans, and engineering and hydrogeological reports, as appropriate, describing alternate designs and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents, into the ground water or surface water at any future time;

(B) The double liner and leak (leachate) detection, collection, and removal system, if the landfill shall meet the requirements of section 66264.301(c) of this chapter. If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternative design is sought as provided by section 66264.301(d), (e), or (*l*) of this chapter, submit appropriate information;

(C) If the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;

(D) The construction quality assurance (CQA) plan if required under section 66264.19 of this chapter;

(E) Proposed action leakage rate, with rationale, if required under section 66264.302 of this chapter, and response action plan, if required under section 66264.303 of this chapter;

(2) control of run–on;

(3) control of run–off;

(4) management of collection and holding facilities associated with run–on and run–off control systems; and

(5) control of wind dispersal of particulate matter, where applicable;

(c) if a double liner and leak detection system is required, as provided by section 66264.301(a), the owner or operator shall submit detailed plans and an engineering report explaining the location of the saturated zone in relation to the landfill, the design of a double–liner system that incorporates a leak detection system between the liners, and a leachate collection and removal system above the liners;

(d) a description of how each landfill, including the double liner and cover system, leachate collection and removal system, leak detection system, cover system, and appurtenances for control of run–on and run–off, will be inspected in order to meet the requirements of section 66264.303(a), (b) and (c) of this chapter. This information shall be included in the inspection plan submitted under section 66270.14(b)(5);

(e) detailed plans and an engineering report describing the final cover which will be applied to each landfill or landfill cell at closure in accordance with section 66264.310(a), and a description of how each landfill will be maintained and monitored after closure in accordance with section 66264.310(b). This information shall be included in the closure and post–closure plans submitted under section 66270.14(b)(13);

(f) if ignitable or reactive wastes will be landfilled, an explanation of how the standards of section 66264.312 will be complied with;

(g) if incompatible wastes, or incompatible wastes and materials will be landfilled, an explanation of how section 66264.313 will be complied with;

(h) if containers of hazardous waste are to be landfilled, an explanation of how the requirements of section 66264.315 or section 66264.316, as applicable, will be complied with;

(i) a waste management plan for EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027 describing how a landfill is or will be designed, constructed, operated, and maintained to meet the requirements of section 66264.317. This submission shall address the following items as specified in section 66264.317:

(1) the volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) the attenuative properties of underlying and surrounding soils or other materials;

(3) the mobilizing properties of other materials co–disposed with these wastes; and

(4) the effectiveness of additional treatment, design, or monitoring techniques.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code; and Governor's Reorganization Plan Number 1 of 1991. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 270.21.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of subsections (b)–(b)(1), designation of subsection (b)(1)(A), new subsections (b)(1)(B)–(E), and amendment of subsection (d) and NOTE filed 7–19–95; operative 8–18–95 (Register 95, No. 29).
3. Change without regulatory effect amending subsections (b)and (b)(1)(A) filed 6–30–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 27).

§ 66270.22. Specific Part B Information Requirements for Boilers and Industrial Furnaces Burning Hazardous Waste.

(a) Trial burns–(1) General. Except as provided below, owners and operators that are subject to the standards to control organic emissions provided by section 66266.104 of chapter 16, standards to control particulate matter provided by section 66266.105 of chapter 16, standards to control metals emission provided by section 66266.106 of chapter 16, or standards to control hydrogen chloride or chlorine gas emissions provided by section 66266.107 of chapter 16 shall conduct a trial burn to demonstrate conformance with those standards and shall submit a trial burn plan or the results of a trial burn, including all required determinations, in accordance with section 66270.66 of this chapter.

(A) A trial burn to demonstrate conformance with a particular emission standard may be waived under provisions of sections 66266.104 through 66266.107 of chapter 16 and subsections (a)(2) through (a)(5) of this section; and

(B) The owner or operator may submit data in lieu of a trial burn, as prescribed in subsection (a)(6) of this section.

(2) Waiver of trial burn for DRE–(A) Boilers operated under special operating requirements. When seeking to be permitted under sections 66266.104(a)(4) and 66266.110 of chapter 16 that automatically waive the DRE trial burn, the owner or operator of a boiler shall submit documentation that the boiler operates under the special operating requirements provided by section 66266.110 of chapter 16.

(B) Boilers and industrial furnaces burning low risk waste. When seeking to be permitted under the provisions for low risk waste provided by sections 66266.104(a)(5) and 66266.109(a) of chapter 16 that waive the DRE trial burn, the owner or operator shall submit:

1. Documentation that the device is operated in conformance with the requirements of section 66266.109(a)(1) of chapter 16.

2. Results of analyses of each waste to be burned, documenting the concentrations of nonmetal compounds listed in appendix VIII of chapter 11, except for those constituents that would reasonably not be expected to be in the waste. The constituents excluded from analysis shall be identified and the basis for their exclusion explained. The analysis shall rely on analytical techniques specified in Test Methods for Evaluating Solid Waste, Physical/Chemical Methods (incorporated by reference, see section 66260.11).

3. Documentation of hazardous waste firing rates and calculations of reasonable, worst–case emission rates of each constituent identified in subsection (a)(2)(B)2. of this section using procedures provided by section 66266.109(a)(2)(B) of chapter 16.

4. Results of emissions dispersion modeling for emissions identified in subsections (a)(2)(B)3. of this section using modeling procedures prescribed by section 66266.106(h) of chapter 16. The Director will review the emission modeling conducted by the applicant to determine conformance with these procedures. The Director will either approve the modeling or determine that alternate or supplementary modeling is appropriate.

5. Documentation that the maximum annual average ground level concentration of each constituent identified in subsection (a)(2)(B)2. of this section quantified in conformance with subsection (a)(2)(B)4. of this section does not exceed the allowable ambient level established in appendices IV or V of chapter 16. The acceptable ambient concentration for emitted constituents for which a specific Reference Air Concentration has not been established in appendix IV or Risk–Specific Dose has not been established in appendix V is 0.1 micrograms per cubic meter, as noted in the footnote to appendix IV.

(3) Waiver of trial burn for metals. When seeking to be permitted under the Tier I (or adjusted Tier I) metals feed rate screening limits provided by section 66266.106 (b) and (e) of chapter 16 that control metals emissions without requiring a trial burn, the owner or operator shall submit:

(A) Documentation of the feed rate of hazardous waste, other fuels, and industrial furnace feed stocks;

(B) Documentation of the concentration of each metal controlled by section 66266.106 (b) or (e) of chapter 16 in the hazardous waste, other fuels, and industrial furnace feedstocks, and calculations of the total feed rate of each metal;

(C) Documentation of how the applicant will ensure that the Tier I feed rate screening limits provided by section 66266.106 (b) or (e) of chapter 16 will not be exceeded during the averaging period provided by that subsection;

(D) Documentation to support the determination of the terrain– adjusted effective stack height, good engineering practice stack height, terrain type, and land use as provided by section 66266.106(b)(3) through (b)(5) of chapter 16;

(E) Documentation of compliance with the provisions of section 66266.106(b)(6), if applicable, for facilities with multiple stacks;

(F) Documentation that the facility does not fail the criteria provided by section 66266.106(b)(7) for eligibility to comply with the screening limits; and

(G) Proposed sampling and metals analysis plan for the hazardous waste, other fuels, and industrial furnace feed stocks.

(4) Waiver of trial burn for particulate matter. When seeking to be permitted under the low risk waste provisions of section 66266.109(b) which waives the particulate standard (and trial burn to demonstrate conformance with the particulate standard), applicants shall submit documentation supporting conformance with subsections (a)(2)(B) and (a)(3) of this section.

(5) Waiver of trial burn for HCl and Cl_2. When seeking to be permitted under the Tier I (or adjusted Tier I) feed rate screening limits for total chloride and chlorine provided by section 66266.107(b)(1) and (e) of chapter 16 that control emissions of hydrogen chloride (HCl) and chlorine gas (Cl_2) without requiring a trial burn, the owner or operator shall submit:

(A) Documentation of the feed rate of hazardous waste, other fuels, and industrial furnace feed stocks;

(B) Documentation of the levels of total chloride and chlorine in the hazardous waste, other fuels, and industrial furnace feedstocks, and calculations of the total feed rate of total chloride and chlorine;

(C) Documentation of how the applicant will ensure that the Tier I (or adjusted Tier I) feed rate screening limits provided by section 66266.107 (b)(1) or (e) of chapter 16 will not be exceeded during the averaging period provided by that subsection;

(D) Documentation to support the determination of the terrain– adjusted effective stack height, good engineering practice stack height, terrain type, and land use as provided by section 66266.107(b)(3) of chapter 16;

(E) Documentation of compliance with the provisions of section 66266.107(b)(4), if applicable, for facilities with multiple stacks;

(F) Documentation that the facility does not fail the criteria provided by section 66266.107(b)(3) for eligibility to comply with the screening limits; and

(G) Proposed sampling and analysis plan for total chloride and chlorine for the hazardous waste, other fuels, and industrial furnace feedstocks.

(6) Data in lieu of trial burn. The owner or operator may seek an exemption from the trial burn requirements to demonstrate conformance with sections 66266.104 through 66266.107 of chapter 16 and section 66270.66 by providing the information required by section 66270.66 from previous compliance testing of the device in conformance with section 66266.103 of chapter 16, or from compliance testing or trial or operational burns of similar boilers or industrial furnaces burning similar hazardous wastes under similar conditions. If data from a similar device is used to support a trial burn waiver, the design and operating information required by section 66270.66 shall be provided for both the similar device and the device to which the data is to be applied, and a comparison of the design and operating information shall be provided. The Director shall approve a permit application without a trial burn if the Director finds that the hazardous wastes are sufficiently similar, the devices are sufficiently similar, the operating conditions are sufficiently similar, and the data from other compliance tests, trial burns, or operational burns are adequate to specify (under section 66266.102 of chapter 16) operating conditions that will ensure conformance with section 66266.102(c) of chapter 16. In addition, the following information shall be submitted:

(A) For a waiver from any trial burn:

1. A description and analysis of the hazardous waste to be burned compared with the hazardous waste for which data from compliance testing, or operational or trial burns are provided to support the contention that a trial burn is not needed;

2. The design and operating conditions of the boiler or industrial furnace to be used, compared with that for which comparative burn data are available; and

3. Such supplemental information as the Director finds necessary to achieve the purposes of this subsection.

(B) For a waiver of the DRE trial burn, the basis for selection of POHCs used in the other trial or operational burns which demonstrate compliance with the DRE performance standard in section 66266.104(a) of chapter 16. This analysis should specify the constituents in appendix VIII, of chapter 11, that the applicant has identified in the hazardous waste for which a permit is sought, and any differences from the POHCs in the hazardous waste for which burn data are provided.

(b) Alternative HC limit for industrial furnaces with organic matter in raw materials. Owners and operators of industrial furnaces requesting an alternative HC limit under section 66266.104(f) of chapter 16 shall submit the following information at a minimum:

(1) Documentation that the furnace is designed and operated to minimize HC emissions from fuels and raw materials;

(2) Documentation of the proposed baseline flue gas HC (and CO) concentration, including data on HC (and CO) levels during tests when the facility produced normal products under normal operating conditions from normal raw materials while burning normal fuels and when not burning hazardous waste;

(3) Test burn protocol to confirm the baseline HC (and CO) level including information on the type and flow rate of all feedstreams, point of introduction of all feedstreams, total organic carbon content (or other appropriate measure of organic content) of all nonfuel feedstreams, and operating conditions that affect combustion of fuel(s) and destruction of hydrocarbon emissions from nonfuel sources;

(4) Trial burn plan to:

(A) Demonstrate that flue gas HC (and CO) concentrations when burning hazardous waste do not exceed the baseline HC (and CO) level; and

(B) Identify the types and concentrations of organic compounds listed in appendix VIII of chapter 11, that are emitted when burning hazardous waste in conformance with procedures prescribed by the Director;

(5) Implementation plan to monitor over time changes in the operation of the facility that could reduce the baseline HC level and procedures to periodically confirm the baseline HC level; and

(6) Such other information as the Director finds necessary to achieve the purposes of this subsection.

(c) Alternative metals implementation approach. When seeking to be permitted under an alternative metals implementation approach under section 66266.106(f) of chapter 16, the owner or operator shall submit documentation specifying how the approach ensures compliance with the metals emissions standards of section 66266.106(c) or (d) and how the approach can be effectively implemented and monitored. Further, the owner or operator shall provide such other information that the Director finds necessary to achieve the purposes of this subsection.

(d) Automatic waste feed cutoff system. Owners and operators shall submit information describing the automatic waste feed cutoff system, including any pre–alarm systems that may be used.

(e) Direct transfer. Owners and operators that use direct transfer operations to feed hazardous waste from transport vehicles (containers, as defined in section 66266.111 of chapter 16) directly to the boiler or industrial furnace shall submit information supporting conformance with the standards for direct transfer provided by section 66266.111 of chapter 16.

(f) Residues. Owners and operators that claim that their residues are excluded from regulation under the provisions of section 66266.112 of chapter 16 shall submit information adequate to demonstrate conformance with those provisions.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245, 58004 and 58012, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 270.22.

HISTORY

1. New section filed 7–1–96; operative 7–31–96 (Register 96, No. 27).
2. Change without regulatory effect amending subsections (a)(3)(D) and (a)(5) filed 7–1–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 27).

§ 66270.23. Specific Part B Information Requirements for Miscellaneous Units.

Except as otherwise provided in section 66264.600, owners and operators of facilities that transfer, treat, store, or dispose of hazardous waste in miscellaneous units shall provide the following additional information:

(a) a detailed description of the unit being used or proposed for use, including the following:

(1) physical characteristics, materials of construction, and dimensions of the unit;

(2) detailed plans and engineering reports describing how the unit will be located, designed, constructed, operated, maintained, monitored, inspected, and closed to comply with the requirements of sections 66264.601 and 66264.602, and

(3) for disposal units, a detailed description of the plans to comply with the post–closure requirements of section 66264.603;

(b) detailed hydrologic, geologic, and meteorologic assessments and land–use maps for the region surrounding the site that address and ensure compliance of the unit with each factor in the environmental performance standards of section 66264.601. If the applicant can demonstrate that the facility does not violate the environmental performance standards of section 66264.601 and the Department agrees with such demonstration, preliminary hydrologic, geologic, and meteorologic assessments will suffice;

(c) information on the potential pathways of exposure of humans or environmental receptors to waste constituents, hazardous constituents and reaction products, and on the potential magnitude and nature of such exposures;

(d) for any treatment unit, a report on a demonstration of the effectiveness of the treatment based on laboratory or field data;

(e) any additional information determined by the Department to be necessary for evaluation of compliance of the unit with the environmental performance standards of section 66264.601.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 270.23.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66270.24. Specific Part B Information Requirements for Process Vents.

Except as otherwise provided in Section 66264.1, owners and operators of facilities that have process vents to which Article 27 of Chapter 14 applies must provide the following additional information:

(a) For facilities that cannot install a closed–vent system and control device to comply with the provisions of 40 CFR 264 subpart AA on the effective date that the facility becomes subject to the provisions of Chapter 14 or 15 Article 27, an implementation schedule as specified in Section 66264.1033(a)(2).

(b) Documentation of compliance with the process vent standards in Section 66264.1032, including:

(1) information and data identifying all affected process vents, annual throughput and operating hours of each affected unit, estimated emission rates for each affected vent and for the overall facility (i.e., the total emissions for all affected vents at the facility), and the approximate location within the facility of each affected unit (e.g., identify the hazardous waste management units on a facility plot plan);

(2) information and data supporting estimates of vent emissions and emission reduction achieved by add–on control devices based on engineering calculations or source tests. For the purpose of determining compliance, estimates of vent emissions and emission reductions must be made using operating parameter values (e.g., temperatures, flow rates, or concentrations) that represent the conditions that exist when the waste management unit is operating at the highest load or capacity level reasonably expected to occur; and

(3) information and data used to determine whether or not a process vent is subject to the requirements of Section 264.1032.

(c) An owner or operator who applies for permission to use a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system to comply with the requirements of Section 66264.1032, and chooses to use test data to determine the organic removal efficiency or the total organic compound concentration achieved by the control device, shall provide a performance test plan as specified in Section 66264.1035(b)(3).

(d) Documentation of compliance with Section 66264.1033, including:

(1) a list of all information references and sources used in preparing the documentation;

(2) records, including the dates of each compliance test required by Section 66264.1033(k);

(3) a design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions" (incorporated by reference as specified in Section 66260.11) or other engineering texts which the Department determines contain basic control device design information which is at least as protective of human health and the environment as APTI Course 415: Control of Gaseous Emissions. The design analysis shall address the vent stream characteristics and control device operation parameters as specified in Section 66264.1035(b)(4)(C);

(4) a statement signed and dated by the owner or operator certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is or would be operating at the highest load or capacity level reasonably expected to occur; and

(5) a statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of 95 weight percent or greater unless the total organic emission limits of Section 66264.1032(a) for affected process vents at the facility can be attained by a control device involving vapor recovery at an efficiency less than 95 weight percent.

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 270.24.

HISTORY

1. New section filed 12–23–92; operative 1–22–93 (Register 93, No. 2).
2. Change without regulatory effect amending subsections (b)(2), (c), (d)(2) and (d)(3) filed 12–28–93 pursuant to title 1, section 100, California Code of Regulations (Register 93, No. 53).
3. Editorial correction of subsection (d)(4) (Register 95, No. 50).
4. Change without regulatory effect amending subsections (d)(2)–(3) filed 12–28–95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 52).

§ 66270.25. Specific Part B Information Requirements for Equipment.

Except as otherwise provided in Section 66264.1, owners and operators of facilities that have equipment to which Article 28 of Chapter 14 applies must provide the following additional information:

(a) For each piece of equipment to which Article 28 of Chapter 14 applies:

(1) equipment identification number and hazardous waste management unit identification;

(2) Approximate locations within the facility (e.g., identify the hazardous waste management unit on a facility plot plan);

(3) type of equipment (e.g., a pump or pipeline valve);

(4) percent by weight total organics in the hazardous waste stream at the equipment;

(5) hazardous waste state at the equipment (e.g., gas/vapor or liquid); and

(6) methods of compliance with the standards (e.g., "monthly leak detection and repair" or "equipped with dual mechanical seals").

(b) For facilities that cannot install a closed–vent system and control device to comply with the provisions of 40 CFR 264 subpart BB on the effective date that the facility becomes subject to the provisions of Chapter 14 or 15, Article 28, an implementation schedule as specified in Section 66264.1033(a)(2).

(c) Where an owner or operator applies for permission to use a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system and chooses to use test data to determine, the organic removal efficiency or the total organic compound concentration achieved by the control device, a performance test plan as specified in Section 966264.1035(b)(3).

(d) Documentation that demonstrates compliance with the equipment standards in Sections 66264.1052 to 66264.1059. This documentation shall contain the records required under Section 66264.1064. The Department may request further documentation before deciding if compliance has been demonstrated.

(e) Documentation to demonstrate compliance with Section 66264.1060 shall include the following information:

(1) a list of information references and sources used in preparing the documentation;

(2) records, including the dates of each compliance test required by Section 66264.1033(j);

(3) a design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions" (incorporated by reference as specified in Section 66260.11) or other engineering texts which the Department determines contain basic control device design information which is at least as protective of human health and environment as APTI Course 415: Control of Gaseous Emissions. The design analysis shall address the vent stream characteristics and control device operation parameters as specified in Section 66264.1035(b)(4)(C);

(4) a statement signed and dated by the owner or operator certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur;

(5) a statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of 95 weight percent or greater.

(6) method of compliance with the standard (e.g., "monthly leak detection and repair" or "equipped with dual mechanical seals").

NOTE: Authority cited: Sections 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 270.25.

HISTORY

1. New section filed 12–23–92; operative 1–22–93 (Register 93, No. 2).
2. Change without regulatory effect amending subsection (e)(2) filed 12–28–93 pursuant to title 1, section 100, California Code of Regulations (Register 93, No. 53).
3. Editorial correction of first paragraph (Register 95, No. 50).
4. Change without regulatory effect amending subsections (d), (e), (e)(3) and (e)(5) and deleting duplicate subsections (b)–(e)(5) filed 12–28–95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 52).

§ 66270.26. Special Part B Information Requirements for Drip Pads.

Except as otherwise provided by section 66264.1, owner and operators of hazardous waste transfer, treatment, storage, or disposal facilities that transfer, treat, store, or dispose hazardous waste on drip pads shall provide the following additional information:

(a) A list of hazardous waste placed or to be placed on each drip pad.

(b) Detailed plans and an engineering report describing how the drip pad is or will be designed, constructed, operated and maintained to meet the requirements of section 66264.573, including the as–built drawings and specifications. This submission shall address the following items as specified in section 66264.571:

(1) the design characteristics of the drip pad;

(2) the liner system;

(3) the leakage detection system, including the leak detection system and how it is designed to detect the failure of the drip pad or the presence of any releases of hazardous waste or accumulated liquid at the earliest practicable time;

(4) practices designed to maintain drip pads;

(5) the associated collection system;

(6) control of run–on to the drip pad;

(7) control of run–off from the drip pad;

(8) the interval at which drippage and other materials will be removed from the associated collection system and a statement demonstrating that the interval will be sufficient to prevent overflow onto the drip pad;

(9) procedures for cleaning the drip pad at least once every seven days to ensure the removal of any accumulated residues of waste or other materials, including but not limited to rinsing, washing with detergents or other appropriate solvents, or steam cleaning and provisions for documenting the date, time, and cleaning procedure used each time the pad is cleaned;

(10) operating practices and procedures that will be followed to ensure that tracking of hazardous waste or waste constituents off the drip pad due to activities by personnel or equipment is minimized;

(11) procedures for ensuring that, after removal from the treatment vessel, treated wood from pressure and non–pressure processes is held on the drip pad until drippage had ceased, including recordkeeping practices;

(12) provisions for ensuring that collection and holding units associated with run–on and run–off control systems are emptied or otherwise managed as soon as possible after storms to maintain design capacity of the system;

(13) if treatment is carried out on the drip pad, details of the process equipment used, and the nature and quality of the residuals;

(14) a description of how each drip pad, including appurtenances for control of run–on and run–off, will be inspected in order to meet the requirements of section 66264.573. This information should be included in the inspection plan submitted under section 66270.14(b)(5);

(15) a certification signed by an independent, qualified professional engineer registered in California, stating that the drip pad design meets the requirements of 66264.573(a) through (f);

(16) a description of how hazardous waste residues and contaminated materials will be removed from the drip pad at closure, as required under section 66264.575(a). For any waste not to be removed from the drip pad upon closure, the owner or operator shall submit detailed plans and an engineering report describing how section 66264.310(a) an (b) will be complied with. This information should be included in the closure plan and, where applicable, the post–closure plan submitted under section 66270.14(b)(13).

NOTE: Authority cited: Sections 25150, 25159, 25159.5 and 25245, Health and Safety Code; and Section 58012, Governor's Reorganization Plan Number 1 of 1991. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 270.26.

HISTORY

1. New section filed 7–29–94; operative 8–29–94 (Register 94, No. 30).
2. Change without regulatory effect amending subsections (b)(7)–(8) and (b)(10)–(12) filed 12–28–95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 52).

§ 66270.27. Specific Part B Information Requirements for Air Emission Controls for Tanks, Surface Impoundments, and Containers.

(a) Except as otherwise provided in section 66264.1, owners and operators of tanks, surface impoundments, or containers that use air emission controls in accordance with the requirements of section chapter 14, article 30 shall provide the following additional information:

(1) Documentation for each floating roof cover installed on a tank subject to sections 66264.1084(d)(1) or 66264.1084(d)(2) that includes information prepared by the owner or operator or provided by the cover manufacturer or vendor describing the cover design, and certification by the owner or operator that the cover meets the applicable design specifications as listed in sections 66264.1084(e)(1) or 66264.1084(f)(1).

(2) Identification of each container area subject to the requirements of chapter 14, article 30 and certification by the owner or operator that the requirements of this article are met.

(3) Documentation for each enclosure used to control air pollutant emissions from tanks or containers in accordance with the requirements of sections 66264.1084(d)(5) or 66264.1086(e)(1)(B) that includes records for the most recent set of calculations and measurements performed by the owner or operator to verify that the enclosure meets the criteria of a permanent total enclosure as specified in "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B.

(4) Documentation for each floating membrane cover installed on a surface impoundment in accordance with the requirements of section 66264.1085(c) that includes information prepared by the owner or operator or provided by the cover manufacturer or vendor describing the cover design, and certification by the owner or operator that the cover meets the specifications listed in section 66264.1085(c)(1)..

(5) Documentation for each closed–vent system and control device installed in accordance with the requirements of section 66264.1087 that includes design and performance information as specified in section 66270.24 (c) and (d).

(6) An emission monitoring plan for both Method 21 in 40 CFR part 60, appendix A and control device monitoring methods. This plan shall include the following information: monitoring point(s), monitoring methods for control devices, monitoring frequency, procedures for documenting exceedances, and procedures for mitigating noncompliances.

(7) When an owner or operator of a facility subject to chapter 15, article 28.5 cannot comply with chapter 14, article 28.5 by the date of permit issuance, the schedule of implementation required under section 66265.1082.

NOTE: Sections 25150, 25159, 25159.5, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; and 40 CFR section 270.27.

HISTORY

1. Change without regulatory effect adding new section filed 6–11–99 pursuant to Health and Safety Code section 25159.1 (Register 99, No. 24).

§ 66270.29. Permit Denial.

The Department may, pursuant to the procedures in chapter 21, deny the permit application either in its entirety or as to the active life of a hazardous waste management facility or unit only.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code; 40 CFR Section 270.29.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

Article 3. Permit Conditions

§ 66270.30. Conditions Applicable to All Permits.

The following conditions apply to all permits. All conditions applicable to permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to the appropriate regulations shall be given in the permit.

(a) Duty to comply. The permittee shall comply with all conditions of this permit, except that the permittee need not comply with the conditions of this permit to the extent and for the duration such noncompliance is authorized in an emergency permit. (See section 66270.61). Any permit noncompliance, except under the terms of an emergency permit, constitutes a violation of the appropriate statute or regulation and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

(b) Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit.

(c) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(d) In the event of noncompliance with the permit, the permittee shall take all reasonable steps to minimize or correct releases to the environment, and shall carry out all measures as are reasonable to prevent and correct adverse impacts on human health or the environment.

(e) Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back–up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

(f) Permit actions. This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(g) Property rights. The permit does not convey any property rights of any sort, or any exclusive privilege.

(h) Duty to provide information. The permittee shall furnish to the Department, within a reasonable time, not to exceed 30 days unless a time extension is approved by the Department, any relevant information which the Department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Department, upon request, copies of records required to be kept by this permit.

(i) Inspection and entry. The permittee shall allow an authorized representative of the Department, the State Water Resources Control Board or a Regional Water Quality Control Board, upon the presentation of credentials and other documents as may be required by law to:

(1) enter at reasonable times upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

(2) have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(3) inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

(4) sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by law, any substances or parameters at any location.

(j) Monitoring and records.

(1) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(2) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, the certification required by section 66264.73(b)(9) of this division, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report, certification, or application. This period may be extended by request of the Department at any time. The permittee shall maintain records from all groundwater monitoring wells and associated ground water surface elevations, for the active life of the facility, and for disposal facilities for the post–closure care period as well.

(3) Records for monitoring information shall include:

(A) the date, exact place, and time of sampling or measurements;

(B) the name(s) of the individual(s) who performed the sampling or measurements;

(C) the date(s) analyses were performed;

(D) the name(s) of the individual(s) who performed the analyses;

(E) the analytical techniques or methods used; and

(F) the results of such analyses.

(k) Signatory requirements. All applications, reports, or information submitted to the Department shall be signed and certified. (See section 66270.11.)

(*l*) Reporting requirements. (1) Planned changes. The permittee shall give notice to the Department as soon as possible and at least 30 days in advance of any planned physical alterations or additions to the permitted facility.

(2) Anticipated noncompliance. The permittee shall give advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements. For a new facility, the permittee shall not transfer, treat, store, or dispose of hazardous waste; and for a facility being modified, the permittee shall not transfer, treat, store, or dispose of hazardous waste in the modified portion of the facility except as provided in section 66270.42, until:

(A) the permittee has submitted to the Department by certified mail or hand delivery a letter signed by the permittee and a professional engineer, registered in California, stating that the facility has been constructed or modified in compliance with the permit; and

(B) 1. the Department has inspected the modified or newly constructed facility and finds it is in compliance with the conditions of the permit; or

2. if within 15 days of the date of submission of the letter in subsection (l)(2)(A) of this section, the permittee has not received notice from the Department of the Department's intent to inspect, prior inspection is waived and the permittee may commence transfer, treatment, storage, or disposal of hazardous waste.

(3) Transfers. This permit is not transferable to any person except after notice to the Department. The Department may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary. (See section 66270.40.)

(4) Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(5) Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

(6) Twenty-four hour reporting.

(A) The permittee shall report any noncompliance which may endanger health or the environment orally within 24 hours from the time the permittee becomes aware of the circumstances, including:

1. information concerning release of any hazardous waste that may cause an endangerment to public drinking water supplies;

2. any information of a release or discharge of hazardous waste or of a fire or explosion from the hazardous waste facility, which could threaten the environment or human health outside the facility.

(B) The description of the occurrence and its cause shall include:

1. name, address, and telephone number of the owner or operator;

2. name, address, and telephone number of the facility;

3. date, time, and type of incident;

4. name and quantity of material(s) involved;

5. the extent of injuries, if any;

6. an assessment of actual or potential hazards to the environment and human health outside the facility, where this is applicable; and

7. estimated quantity and disposition of recovered material that resulted from the incident.

(C) A written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance including exact dates and times, and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The Department may waive the 5-day written notice requirement in favor of a written report within 15 days.

(7) Manifest discrepancy report. If a significant discrepancy in a manifest is discovered, the permittee shall attempt to reconcile the discrepancy. If not resolved within fifteen days, the permittee shall submit a letter report, including a copy of the manifest, to the Department. (See section 66264.72.)

(8) Unmanifested hazardous waste report. This report shall be submitted to the Department within 15 days of receipt of unmanifested waste. (See section 66264.76.)

(9) Annual report. An annual report shall be submitted to the Department covering facility activities during the previous calendar year. (See section 66264.75.)

(10) Other noncompliance. The permittee shall report all instances of noncompliance not reported under subsections (l)(4), (5), and (6) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in subsection (l)(6) of this section.

(11) Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application of in any report to the Department, it shall promptly submit such facts or information.

(m) Information repository. For facilities applying for a RCRA permit, the Director may require the permittee to establish and maintain an information repository at any time, based on the factors set forth in section 66271.33(b). The information repository will be governed by the provisions in section 66271.33(c) through (f).

NOTE: Authority cited: Sections 25150, 25159 and 58012, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 270.30.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).
2. Change without regulatory effect adding new subsection (m) filed 12-19-96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 51).
3. Amendment of subsection (*l*)(7) and NOTE filed 4-4-2002 as an emergency; operative 4-4-2002 (Register 2002, No. 14). A Certificate of Compliance must be transmitted to OAL by 8-2-2002 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsection (*l*)(7) and amendment of NOTE refiled 8-1-2002 as an emergency; operative 8-1-2002 (Register 2002, No. 31). A Certificate of Compliance must be transmitted to OAL by 12-2-2002 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsection (*l*)(7) and amendment of NOTE refiled 12-2-2002 as an emergency; operative 12-3-2002 (Register 2002, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-2003 or emergency language will be repealed by operation of law on the following day.
6. Amendment of subsection (*l*)(7) and amendment of NOTE refiled 4-1-2003 as an emergency; operative 4-3-2003 (Register 2003, No. 14). A Certificate of Compliance must be transmitted to OAL by 8-1-2003 or emergency language will be repealed by operation of law on the following day.
7. Repealer of 4-1-2003 order and amendment of NOTE filed 7-10-2003 as an emergency; operative 7-10-2003 (Register 2003, No. 28). Pursuant to Health and Safety Code section 25169.8, this is a deemed emergency and stays effective until revised by the agency.

§ 66270.31. Requirements for Recording and Reporting of Monitoring Results.

All permits shall specify:

(a) requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

(b) required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

(c) applicable reporting requirements based upon the impact of the regulated activity and as specified in chapters 14 and 16 of this division. Reporting shall be no less frequent than specified in the above regulations.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 270.31.

HISTORY
1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66270.32. Establishing Permit Conditions.

(a) In addition to conditions required in all permits (section 66270.30), the Department shall establish conditions, as required on a case–by–case basis, in permits under section 66270.50 (duration of permits), section 66270.33(a) (schedules of compliance), section 66270.31 (monitoring), section 66270.33(b) (alternate schedules of compliance), and section 66270.3 (considerations under Federal law).

(b)(1) Each permit shall include permit conditions necessary to achieve compliance with the statutes and regulations, including each of the applicable requirements specified in chapters 14, 16, and 18 of this division. In satisfying this provision, the Department may incorporate applicable requirements of chapters 14, 16 and 18 of this division directly into the permit or establish other permit conditions that are based on these chapters.

(2) In addition to conditions required in all permits, each permit issued shall contain terms and conditions as the Department determines necessary to protect human health and the environment.

(c) An applicable requirement is a statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit or prior to the modification or revocation and reissuance of a permit, to the extent allowed in section 66270.41. Section 66271.13 (reopening of comment period) provides a means for reopening permit proceedings at the discretion of the Department where new requirements become effective during the permitting process and are of sufficient magnitude to make additional proceedings desirable.

(d) New or reissued permits, and to the extent allowed under section 66270.41, modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in this section and in section 66270.31.

(e) Incorporation. All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements shall be given in the permit.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 270.32.

HISTORY
1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66270.33. Schedules of Compliance.

(a) The permit may, when appropriate, specify a schedule of compliance leading to compliance with the statutes and regulations.

(1) Time for compliance. Any schedules of compliance under this section shall require compliance as soon as possible.

(2) Interim dates. Except as provided in subsection (b)(1)(B) of this section, if a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

(A) The time between interim dates shall not exceed one year.

(B) If the time necessary for completion of any interim requirement is more than one year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(3) Reporting. The permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, the permittee shall notify the Department in writing, of its compliance or noncompliance with the interim or final requirements.

(b) Alternative schedules of compliance. A permit applicant or permittee may cease conducting regulated activities (by receiving a terminal volume of hazardous waste and, for transfer, treatment and storage hazardous waste management facilities, closing pursuant to applicable requirements; and, for disposal hazardous waste management facilities, closing and conducting post–closure care pursuant to applicable requirements) rather than continue to operate and meet permit requirements as follows.

(1) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

(A) the permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

(B) the permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

(2) If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination which will ensure timely compliance with applicable requirements.

(3) If the permittee is undecided whether to cease conducting regulated activities, the Department may issue or modify a permit to contain two schedules as follows:

(A) both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

(B) one schedule shall lead to timely compliance with applicable requirements;

(C) the second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements;

(D) each permit containing two schedules shall include a requirement that after the permittee has made a final decision under subsection (b)(3)(A) of this section it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

(4) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the Department, such as resolution of the board of directors of a corporation.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 270.33.

HISTORY
1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

Article 4. Permit Changes and Denials

§ 66270.40. Transfer of Permits.

(a) A permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued (under section 66270.40(b) or 66270.41(b)(2)) to identify the new permittee and incorporate such other requirements as may be necessary under the appropriate statute or regulation.

(b) Changes in the ownership or operational control of a facility may be made as a Class I modification with prior written approval of the Department in accordance with section 66270.42. The new owner or operator shall submit a revised permit application no later than 90 days prior to the scheduled change. A written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees shall also be submitted to the Department. When a transfer of ownership or operational control occurs, the old owner or operator shall comply with the requirements of article 8 of chapter 14 of this division (Financial Requirements) until the new owner or operator has demonstrated to the Department that he or she is complying with the requirements of that article. The new owner or operator shall demonstrate compliance with article 8 requirements within six months of the date of the change of ownership or operational control of the facility. Upon demonstration to the Department by the new owner or operator of compliance with article 8, the Department shall notify the old owner or operator in writing that he or she no longer needs to comply with article 8 as of the date of demonstration.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 270.40.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 270.41.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66270.41. Modification or Revocation and Reissuance of Permits.

When the Department receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit (see section 66270.30), receives a request for revocation and reissuance under section 66271.4, or conducts a review of the permit file) the Department may determine whether or not one or more of the causes listed in subsections (a) and (b) of this section for modification, or revocation and reissuance or both exist. If cause exists, the Department may modify or revoke and reissue the permit accordingly, subject to the limitations of subsection (c) of this section, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. (See section 66271.4(c)(2).) If cause does not exist under this section, the Department shall not modify or revoke and reissue the permit, except on request of the permittee or as provided in subsection (a)(5) of this section. If a permit modification is requested by the permittee, the Department shall approve or deny the request according to the procedures of section 66270.42. Otherwise, a draft permit shall be prepared and other procedures in chapter 21 shall be followed.

(a) Causes for modification. The following are causes for modification, but not revocation and reissuance, of permits; the following may be causes for revocation and reissuance, as well as modification, when the permittee requests or agrees.

(1) Alterations. There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

(2) Information. The Department has received information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance.

(3) New statutory requirements or regulations. The standards or regulations on which the permit was based have been changed by statute, through promulgation of new or amended standards or regulations, or by judicial decision after the permit was issued.

(4) Compliance schedules. The Department determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy.

(5) Notwithstanding any other provision in this section, when a permit is reviewed by the Department, the Department shall modify the permit as necessary to assure that the facility is in compliance with the currently applicable requirements in chapters 10 through 16, 20 and 21 of this division and as necessary to protect human health and the environment.

(b) Causes for modification or revocation and reissuance. The following are causes to modify or, alternatively, revoke and reissue a permit.

(1) Cause exists for termination under section 66270.43, and the Department determines that modification or revocation and reissuance is appropriate.

(2) The Department has received notification (as required in the permit, see section 66270.30(l)(3)) of a proposed transfer of the permit.

(c) Facility siting. Suitability of the facility location will not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environmental exists which was unknown at the time of permit issuance.

§ 66270.42. Permit Modification at the Request of the Permittee.

(a) Class 1 modifications.

(1) Except as provided in subsection (a)(2) of this section, the permittee may put into effect Class 1 modifications listed in Appendix I of this chapter under the following conditions.

(A) The permittee shall notify the Department concerning the modification by certified mail or other means that establish proof of delivery at least 30 calendar days before the change is put into effect. This notice shall specify the changes being made to permit conditions or supporting documents referenced by the permit and shall explain why they are necessary. Along with the notice, the permittee shall provide the applicable information required by sections 66270.10, 66270.13 through 66270.23, 66270.62, and 66270.63. With written authorization from the Department, the change may be put into effect earlier than 30 calendar days after the Department is notified concerning the modification.

(B) The permittee shall send a notice of the modification to all persons on the facility mailing list, maintained by the Department in accordance with section 66271.9(c)(1)(D), and the appropriate units of State and local government, as specified in section 66271.9(c)(1)(E). The notification shall include the information specified in subsections 66271.9(d)(1)(A) through 66271.9(d)(1)(D). The information shall also include a description of the proposed changes at the facility, and the name and telephone number of a Department contact person. This notification shall be made within 90 calendar days after the change is put into effect. For the Class 1 modifications that require prior Department approval, the notification shall be made within 7 days after the permittee notifies the Department and shall also be published in a major local newspaper of general circulation.

(C) Any person may request the Department to review, and the Department may for cause reject, any Class 1 modification. The Department shall inform the permittee by certified mail that a Class 1 modification has been rejected, explaining the reasons for the rejection. If a Class 1 modification has been rejected, the permittee shall comply with the original permit conditions.

(D) Causes for rejection of a Class 1 permit modification by the Department include:

1. the requested modification does not qualify as a Class 1 permit modification;

2. the modification request does not contain sufficient information for the Department to determine the appropriate permit modification classification or to determine the actions necessary to comply with the California Environmental Quality Act (CEQA) with respect to the requested modification, or the modification is otherwise incomplete;

3. the requested modification does not comply with the appropriate requirements of chapter 14 of this division or other applicable requirements; or

4. the conditions of the modification fail to protect human health and the environment.

(2) Class 1 permit modifications identified in Appendix I of this chapter by an asterisk and Class 1 modifications not exempt from the requirements of CEQA under Title 14, CCR section 15061 may be made only with the prior written approval of the Department.

(3) For a Class 1 permit modification, the permittee may elect to follow the procedures in section 66270.42(b) for Class 2 modifications instead of the Class 1 procedures. The permittee shall inform the Department of this decision in the notice required in section 66270.42(b)(1).

(b) Class 2 modifications.

(1) For Class 2 modifications, listed in Appendix I of this chapter, the permittee shall submit a modification request to the Department that:

(A) describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(B) identifies that the modification is a Class 2 modification;

(C) explains why the modification is needed; and

(D) provides the applicable information required by sections 66270.10, 66270.13 through 66270.23, 66270.62, and 66270.63.

(2) The permittee shall send a notice of the modification request to all persons on the facility mailing list maintained by the Department and to the appropriate units of State and local government as specified in section 66271.9(c)(1)(E) and shall publish this notice in a major local newspaper of general circulation. This notice shall be mailed and published within 7 days before or after the date of submission of the modification request, and the permittee shall provide to the Department evidence of the mailing and publication. The notice shall include:

(A) announcement of a 60–day comment period, in accordance with section 66270.42(b)(5), and the name and address of a Department contact to whom comments shall be sent;

[The next page is 758.291.]

(B) announcement of the date, time and place for a public meeting held in accordance with section 66270.42(b)(4);

(C) name and telephone number of the permittee's contact person;

(D) name and telephone number of a Department contact person;

(E) location where copies of the modification request and any supporting documents can be viewed and copied; and

(F) the following statement: "The permittee's compliance history during the life of the permit being modified is available from the Department contact person."

(G) a description of the proposed changes at the facility.

(3) The permittee shall place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.

(4) The permittee shall hold a public meeting no earlier than 15 days after the publication of the notice required in subsection (b)(2) of this section and no later than 15 days before the close of the 60–day comment period. The meeting shall be held to the extent practicable in the vicinity of the permitted facility.

(5) The public shall be provided 60 days to comment on the modification request. The comment period shall begin on the date the permittee publishes the notice in the local newspaper. Comments shall be submitted to the Department contact identified in the public notice.

(6)(A) After the conclusion of the 60–day comment period, the Department shall take one of the following actions:

1. approve the modification request, with or without changes, and modify the permit accordingly, after the applicable requirements of CEQA have been satisfied;

2. deny the request;

3. determine that the modification request shall follow the procedures in section 66270.42(c) for Class 3 modifications for one of the following reasons:

a. there is significant public concern about the proposed modification; or

b. the complex nature of the change requires the more extensive procedures of Class 3; or

4. approve the request, with or without changes, as a temporary authorization having a term of up to 180 days, after the applicable requirements of CEQA have been satisfied.

(B) For the purposes of complying with the requirements of CEQA, the Class 2 permit modification shall not be considered complete until the close of the 60–day comment period and receipt by the Department from the permittee of the information necessary to address the public comments submitted during the 60–day comment period and other information required by this section.

(C) In case of a temporary authorization under subsection (b)(6)(A) 4. of this section, if the Department has not made a final approval or denial of the modification request by the end of the temporary authorization, the permittee shall comply with the original permit conditions.

(D) In making a decision to approve or deny a modification request, including a decision to issue a temporary authorization or to reclassify a modification as a Class 3, the Department shall consider all written comments submitted to the Department during the public comment period and shall respond in writing to all significant comments in its decision.

(7) The Department may deny or change the terms of a Class 2 permit modification request under subsection (b)(6)(A) of this section for the following reasons:

(A) the modification request is incomplete;

(B) the requested modification does not comply with the appropriate requirements of chapter 14 of this division or other applicable requirements; or

(C) the conditions of the modification fail to protect human health and the environment.

(8) Except for construction of new hazardous waste management units, the permittee may perform any construction associated with a Class 2 permit modification request beginning 60 days after the submission of the request unless the Department establishes a later date for commencing construction and informs the permittee in writing before day 60. Construction performed pursuant to this subsection shall not affect the Department's authority to approve or disapprove a permit modification request for the subject hazardous waste management activity.

(c) Class 3 modifications.

(1) For Class 3 modifications listed in Appendix I of this chapter, the permittee shall submit a modification request to the Department that:

(A) describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(B) identifies that the modification is a Class 3 modification;

(C) explains why the modification is needed; and

(D) provides the applicable information required by sections 66270.10, 66270.13 through 66270.23, 66270.62, 66270.63 and 66270.66.

(2) The permittee shall send a notice of the modification request to all persons on the facility mailing list maintained by the Department and to the appropriate units of State and local government as specified in section 66271.9(c)(1)(E) and shall publish this notice in a major local newspaper of general circulation. This notice shall be mailed and published within seven days before or after the date of submission of the modification request, and the permittee shall provide to the Department evidence of the mailing and publication. The notice shall include:

(A) announcement of a 60–day comment period, and a name and address of a Department contact to whom comments shall be sent;

(B) announcement of the date, time, and place for a public meeting on the modification request, in accordance with section 66270.42(c)(4);

(C) name and telephone number of the permittee's contact person;

(D) name and telephone number of a Department contact person;

(E) location where copies of the modification request and any supporting documents can be viewed and copied; and

(F) the following statement: "The permittee's compliance history during the life of the permit being modified is available from the Department contact person."

(3) The permittee shall place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.

(4) The permittee shall hold a public meeting no earlier.than 15 days after the publication of the notice required in subsection (c)(2) of this section and no later than 15 days before the close of the 60–day comment period. The meeting shall be held to the extent practicable in the vicinity of the permitted facility.

(5) The public shall be provided at least 60 days to comment on the modification request. The comment period shall begin on the date the permittee publishes the notice in the local newspaper. Comments shall be submitted to the Department contact identified in the notice.

(6) After the conclusion of the 60–day comment period, the Department shall grant or deny the permit modification request according to the permit modification procedures of chapter 21 of this division. In addition, the Director shall consider and respond to all significant written comments received during the 60–day comment period. For the purposes of complying with the requirements of CEQA, the Class 3 permit modification shall not be considered complete until the close of the 60–day comment period and receipt by the Department from the permittee of the information necessary to address the public comments submitted during the 60–day comment period and other information required by this section.

(d) Other modifications.

(1) In the case of modifications not explicitly listed in Appendix I of this chapter, the permittee may submit a Class 3 modification request to the Department, or the permittee may request a determination by the Department that the modification should be reviewed and approved as a Class 1 or Class 2 modification. If the permittee requests that the modification be classified as a Class 1 or 2 modification, the permittee shall provide the Department with the necessary information to support the requested classification.

(2) The Department shall make the determination described in subsection (d)(1) of this section as promptly as practicable. In determining the appropriate class for a specific modification, the Department shall consider the similarity of the modification to other modifications codified in Appendix 1 of this chapter and the following criteria:

(A) Class 1 modifications apply to minor changes that keep the permit current with routine changes to the facility or its operation. These changes do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment. In the case of Class 1 modifications, the Department may require prior approval.

(B) Class 2 modifications apply to changes that are necessary to enable a permittee to respond, in a timely manner, to:

1. common variations in the types and quantities of the wastes managed under the facility permit,

2. technological advancements, and

3. changes necessary to comply with new regulations, where these changes can be implemented without substantially changing design specifications or management practices in the permit.

(C) Class 3 modifications substantially alter the facility or its operation.

(e) Temporary authorizations.

(1) Upon request of the permittee, the Department may, without prior public notice and comment, grant the permittee a temporary authorization in accordance with this subsection. Temporary authorizations shall have a term of not more than 180 days.

(2)(A) The permittee may request a temporary authorization for:

1. any Class 2 modification meeting the criteria in subsection (e)(3)(C) of this section, and

2. any Class 3 modification that meets the criteria in subsection (3)(C) 1. or 2. of this section; or that meets the criteria in subsections (3)(C) 3. through 5. of this section and provides improved management or treatment of a hazardous waste already listed in the facility permit.

(B) The temporary authorization request shall include:

1. a description of the activities to be conducted under the temporary authorization;

2. an explanation of why the temporary authorization is necessary; and

3. sufficient information to ensure compliance with the standards of chapter 14 of this division.

(C) The permittee shall send a notice about the temporary authorization request to all persons on the facility mailing list maintained by the Department and to appropriate units of State and local governments as specified in section 66271.9(c)(1)(E). The permittee shall also publish this notice in a major local newspaper of general circulation. This notification shall be made within seven days of submission of the authorization request.

(3) The Department shall approve or deny the temporary authorization as quickly as practical. To issue a temporary authorization, the Department shall find:

(A) the authorized activities are in compliance with the standards of chapter 14 of this division;

(B) the temporary authorization is exempt from the requirements of CEQA under Title 14, CCR section 15061, or the applicable requirements of CEQA have been met with respect to the temporary authorization;

(C) the temporary authorization is necessary to achieve one of the following objectives before action is likely to be taken on a modification request:

1. to facilitate timely implementation of closure or corrective action activities;

2. to allow treatment or storage in tanks, containers, or in containment buildings in accordance with chapter 18 of this division;

3. to prevent disruption of ongoing waste management activities;

4. to enable the permittee to respond to sudden changes in the types or quantities of the wastes managed under the facility permit; or

5. to facilitate other changes to protect human health and the environment.

(4) A temporary authorization may be reissued for one additional term of up to 180 days provided that:

(A) the permittee has requested a Class 2 or 3 permit modification for the activity covered in the temporary authorization;

(B) the requirements of CEQA have been met with respect to the reissued temporary authorization; and

(C) 1. the reissued temporary authorization constitutes the Department's decision on a Class 2 permit modification in accordance with subsection (b)(6)(A) or (B) 4. of this section, or

2. the Department determines that the reissued temporary authorization involving a Class 3 permit modification request is warranted to allow the authorized activities to continue while the modification procedures of subsection (c) of this section are conducted.

(f) Public notice and appeals of permit modification and temporary authorization decisions.

(1) The Department shall notify persons on the facility mailing list and appropriate units of State and local government within 10 days of any decision under this section to grant or deny a Class 2 or 3 permit modification request or temporary authorization. This notice shall include reference to the procedures for appealing a decision on a permit modification or temporary authorization.

(2) The Department's decision to grant or deny a Class 2 or 3 permit modification or temporary authorization request under this section may be appealed under the permit appeal procedures of section 66271.18.

(g) Newly regulated wastes and units.

(1) The permittee is authorized to continue to manage wastes listed or identified as hazardous under chapter 11 of this division, or to continue to manage hazardous waste in units newly regulated as hazardous waste management units, if:

(A) The unit was in existence as a hazardous waste facility with respect to the newly listed or characterized waste or newly regulated waste management unit on the effective date of the final rule listing or identifying the waste, or regulating the unit;

(B) The permittee submits a Class 1 modification request on or before the date on which the waste or unit becomes subject to the new requirements and receives Department approval of the Class 1 permit modification request. If the Department does not approve the Class 1 modification request by the date on which the waste or unit becomes subject to the new requirements, the permittee shall discontinue managing the waste or unit until Department approval of the Class 1 modification request is received;

(C) The permittee is in compliance with the applicable standards of chapters 15 and 16 of this division;

(D) The permittee, in the case of Classes 2 and 3 modifications, also submits a complete permit modification request within 180 days after the effective date of the rule listing or identifying the waste, or subjecting the unit to management standards found in the Health and Safety Code, division 20, chapter 6.5, article 9, section 25100 et seq.; and

(E) In the case of land disposal units, the permittee certifies that each such unit is in compliance with all applicable ground–water monitoring and financial responsibility requirements contained in chapter 15 of this division on the date 12 months after the effective date of the rule identifying or listing the waste as hazardous, or regulating the unit as a hazardous waste management unit. If the owner or operator fails to certify compliance with these requirements, the facility shall lose authority to operate under this section.

(2) New wastes or units added to a facility's permit under this subsection do not constitute expansions for the purpose of the 25 percent capacity expansion limit for Class 2 modifications.

(h) Permit modification list.

The Department shall maintain a list of all approved permit modifications and shall publish a newspaper notice statewide once a year that an updated list is available for review.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6, 58004 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5, 25186 and 58012, Health and Safety Code; 40 CFR Section 270.42.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of subsection (e)(3)(C)2 and NOTE filed 10–24–94 as an emergency; operative 10–24–94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–20–95 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsection (e)(3)(C)2. and NOTE refiled 2–21–95 as an emergency; operative 2–21–95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–21–95 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsection (e)(3)(C)2. and NOTE refiled 6–19–95 as an emergency; operative 6–19–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–95 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsection (e)(3)(C)2. and NOTE refiled 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 10–24–94 order transmitted to OAL 12–15–95 and filed 1–31–96 (Register 96, No. 5).
7. Amendment of subsections (c)(1)(D) and (g)–(g)(1)(E) and NOTE filed 7–1–96; operative 7–31–96 (Register 96, No. 27).
8. Change without regulatory effect amending subsection (e)(3)(C)2. filed 8–15–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 33).
9. Amendment of subsection (a)(1)(B) and new subsection (b)(2)(G) filed 4–4–2002; operative 5–4–2002 (Register 2002, No. 14).

§ 66270.42.5. Permit Modifications for Non–RCRA Activities.

(a) This section applies only to permit modifications involving activities that are not subject to permitting requirements under the federal act.

(b) The following types of changes to a facility's authorization are not subject to the permit modification approval or procedural requirements of sections 66270.41 or 66270.42. Except as otherwise specified below, the owner or operator of the facility shall notify the Department in writing of any change within ten (10) calendar days after the change is put into effect:

(1) changes in the expiration date of the permit to allow earlier permit termination, with prior written approval of the Department;

(2) changes to the closure plan to reflect a decrease in the estimated maximum extent of operations or maximum inventory of waste on site at any time during the active life of the facility, with prior written approval from the Department;

(3) correction of non–substantive typographical errors;

(4) a change in the legal name of the facility that does not include changes in ownership or operational control of the facility;

(5) informational changes that do not impact the operation of the facility;

(6) changes in frequency of or procedures for monitoring, reporting, sampling or maintenance activities that provide for more frequent monitoring, reporting, sampling or maintenance;

(7) equipment replacement or upgrading with functionally equivalent components (other than the structural unit itself), as long as the functional capacity of the unit is not increased or the unit is not being moved to another location, with a written notice to the Department at least 30 days prior to the intended change, or such shorter time frame as may be approved by the Department;

(8) changes to waste sampling or analysis methods to conform with the Department's guidance or regulations;

(9) changes to analytical quality assurance/control plan to conform to the Department's guidance or regulations;

(10) changes in procedures for maintaining the operating record;

(11) changes in frequency or content of inspection schedules that provide for more frequent or more thorough inspections;

(12) changes in the training plan that increase the amount or type of training given to employees;

(13) changes in emergency procedures that maintain or improve the effectiveness of the response;

(14) relocation of emergency equipment;

(15) changes to structures or equipment within the boundary of a permitted unit, but which the owner or operator certifies as not actively related to the storage, treatment, disposal or secondary containment of hazardous waste, with a written notice to the Department at least 30 days prior to the intended change, or such shorter time frame as may be approved by the Department;

(16) changes to a permit required by another regulatory agency, if the activities affected by the permit are not directly related to hazardous waste management, and do not have an impact on the permitted hazardous waste management activity, may be made without notifying the Department;

(17) For changes to a permit required by another regulatory agency, if the activities affected by the permit are related directly to hazardous waste management, but are not subject to the Department's permitting authority, they may be made with a written notice to DTSC at least 30 days prior to the intended change.

(c) The following changes to a facility's authorization require compliance with the Class 1* permit modification procedures (Class 1 modification procedures and prior written Departmental approval) specified in subsection (a) of section 66270.42:

(1) changes in ownership or operational control of a facility, provided the procedures of section 66270.40(b) are followed;

(2) changes to waste sampling or analysis methods that are other than those set forth in the Department's guidance or regulations;

(3) changes in interim compliance dates, with prior written approval of the Department;

(4) changes in procedures for decontamination of equipment or structures, with prior written approval of the Department;

(5) changes in the closure schedule for any unit, changes in the final closure schedule for the facility, or extension of the closure period, with prior written approval of the Department;

(6) changes to analytical quality assurance/control plan other than to conform to the Department's guidance or regulations;

(7) removal of equipment from the emergency equipment list;

(8) changes to the closure plan to reflect an increase in the estimated maximum extent of operations or maximum inventory of waste on site at any time during the active life of the facility;

(d) The following changes to a facility's authorization require compliance with the Class 2 permit modification procedures specified in subsection (b) of section 66270.42:

(1) physical and operational changes to a facility except as specified in subsections (b) or (c) of this section;

(2) changes in the approved closure plan resulting from unexpected events occurring during closure, unless otherwise addressed in this section;

(3) changes in frequency of, or procedures for, monitoring, reporting, sampling or maintenance activities that provide for less frequent monitoring, reporting, sampling or maintenance;

(4) changes in frequency or content of inspection schedules that provide for less frequent or less thorough inspections;

(5) changes in the training plan that decrease the type or amount of training given to employees;

(6) changes in emergency procedures that reduce the effectiveness of the response;

(7) changes in the expiration date of the permit to allow later permit termination.

(8) permit modifications that are designated in section 66270.42(d)(2)(C) or Appendix I of this Article as Class 3 modifications, but are determined by the Department, on a case–by–case basis, to have no significant potential for environmental concerns or significant public interest. If the Department determines, based on the nature of the proposed modification, the level of public interest, or other factors, that the modification shall be subject to the Class 3 permit modification procedures specified in section 66270.42(c), the modification shall be subject

to the Class 3 permit modification procedures specified in section 66270.42(c).

(e) Notwithstanding subsections (b), (c) and (d) of this section, if the Department determines, on a case-by-case basis, that a proposed modification meets the criteria specified in section 66270.42(b)(6)(A)3, the modification shall be subject to the Class 3 permit modification procedures specified in section 66270.42(c).

(f) For changes not specifically addressed in this section, a facility owner/operator may propose a classification for the desired modification(s). A written proposal shall be made to the Department, and shall include the rationale behind the proposed classification.

(g) The Department may grant a temporary authorization pursuant to the procedures set forth in section 66270.42(e) for a Class 2 or Class 3 modification that is proposed for the purpose of effecting environmentally-beneficial changes to a facility.

(h) Notwithstanding section 66270.72, the owner or operator of an interim status facility may, for activities that are not subject to permitting or interim status requirements under the federal act, notify or request any modification to the facility pursuant to this Article.

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25150 and 25200.15.

HISTORY

1. New section filed 4-4-2002; operative 5-4-2002 (Register 2002, No. 14).
2. Change without regulatory effect amending subsection (d)(4) filed 7-1-2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 27).

§ 66270.43. Revocation and Denial of Permits.

(a) The Department may deny or revoke a permit for any cause specified in Health and Safety Code section 25186.

(b) The following are additional causes for revoking a permit during its term, or for denying a permit renewal application:

(1) noncompliance by the permittee with any condition of the permit;

(2) the permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; or

(3) a determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit denial, modification, or revocation.

(c) The Department shall follow the applicable procedures in chapter 20 or 21 of this division in revoking or denying any permit under this section.

NOTE: Authority cited: Sections 25150 , 25159 and 58012, Health and Safety Code. Reference: Sections 25159.5, 25186 and 25186.1, Health and Safety Code; 40 CFR Section 270.43.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).
2. Amendment of section heading, subsections (a), (b), (b)(3) and (c) and NOTE filed 7-19-95; operative 8-18-95 (Register 95, No. 29).

Article 5. Expiration and Continuation of Permits

§ 66270.50. Duration of Permits.

(a) Permits shall be effective for a fixed term not to exceed 10 years.

(b) Except as provided in section 66270.51, the term of a permit shall not be extended by modification beyond the maximum duration specified in this section.

(c) When necessary to protect human health and safety or the environment, the Department shall issue a permit for a duration that is less than the full allowable term under this section.

(d) Each permit for a land disposal facility shall be reviewed by the Department five years after the date of permit issuance or reissuance and shall be modified as necessary, as provided in section 66270.41.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 270.50.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).

§ 66270.51. Continuation of Expiring Permits.

(a) The conditions of an expired permit continue in force under chapter 6.5 of division 20 of the Health and Safety Code until the effective date of a new permit (see section 66271.14) if:

(1) the permittee has submitted a timely application under section 66270.14 and the applicable sections in section 66270.15 through section 66270.23 which is a complete (under section 66270.10(c)) application for a new permit; and

(2) the Department through no fault of the permittee, does not issue a new permit with an effective date under section 66271.14 on or before the expiration date of the previous permit (for example, when issuance is impracticable due to time or resource constraints).

(b) Effect. Permits continued under this section remain fully effective and enforceable.

(c) Enforcement. When the permittee is not in compliance with the conditions of the expiring or expired permit, the Department may choose to do any or all of the following:

(1) initiate enforcement action based upon the permit which has been continued;

(2) issue a notice of intent to deny the new permit under section 66271.5. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the. continued permit or be subject to enforcement action for operating without a permit;

(3) issue a new permit under chapter 21 of this division with appropriate conditions; or

(4) take other actions authorized by these regulations.

(d) If a permittee has submitted a timely and complete application under applicable State law and regulations, the terms and conditions of an USEPA-issued RCRA permit continue in force beyond the expiration date of the USEPA-issued RCRA permit, but only until the effective date of the Department's issuance or denial of a State permit.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 270.51.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).

Article 6. Special Forms of Permits

§ 66270.60. Permits by Rule.

(a) Notwithstanding any other provision of this chapter, all variances previously issued to owners or operators of hazardous waste management units or facilities for treatment activities which are eligible for permit by rule are revoked effective May 1, 1992. This revocation date does not apply to temporary household hazardous waste collection facilities or K-12 schools hazardous waste collection, consolidation, and accumulation facilities (SHWCCAF) eligible for operation pursuant to article 5 of chapter 45 (commencing with section 67450.40). The owner or operator of a SHWCCAF operating under a variance issued by the department may continue operation under the conditions of the variance until the variance expires.

(b) No TTU owner or operator authorized to treat hazardous waste pursuant to a permit by rule before January 1, 1992 shall be deemed to have a permit after May 1, 1992 unless the TTU owner or operator submits a notification as specified in section 67450.2(a) and receives an acknowledgement from the Department authorizing operation of the TTU.

(c) An owner or operator who has been issued a formal hazardous waste facility permit pursuant to Health and Safety Code section 25200, or granted interim status pursuant to Health and Safety Code section 25200.5 for a unit or facility which is otherwise eligible for operation pursuant to a permit by rule may convert to operation pursuant to a permit by rule as follows:

(1) An owner or operator who has been issued a formal hazardous waste facility permit shall submit a written request for a permit modification to the Department pursuant to section 66271.4. All requirements es-

tablished in the hazardous waste facility permit shall remain in effect pending completion of the modification proceedings.

(2) An owner or operator who has been granted interim status or another grant of authorization other than those specified in paragraph (3), and who intends to operate under a permit by rule shall advise the Department, in writing, of intent to operate pursuant to a permit by rule, request withdrawal of a submitted Part B application, if applicable, and submit the notification specified in subsection (d)(6)(A) of this section or section 67450.2(b)(2), whichever is applicable to the CUPA or authorized agency.

(d) Except as provided in Section 67450.9, the following shall be deemed to have a permit if the conditions listed are met:

(1) The owner or operator of a publicly owned treatment works (POTW). The owner or operator of a POTW which accepts hazardous waste for treatment, shall be deemed to have a permit if the requirements of subsections (d)(1)(A) through (d)(1)(E) of this section are met:

(A) The owner or operator shall have a National Pollutant Discharge Elimination System (NPDES) permit and waste discharge requirements issued by a Regional Water Quality Control Board;

(B) The owner or operator shall comply with the conditions of the NPDES permit and waste discharge requirements;

(C) The owner or operator shall comply with the following regulations:

1. Section 66264.11, Identification Number;
2. Section 66264.71, Use of Manifest System;
3. Section 66264.72, Manifest Discrepancies;
4. Section 66264.73(a) and (b)(1), Operating Record;
5. Section 66264.75, Annual Report; and
6. Section 66264.76, Unmanifested Waste Report,
7. For NPDES permits issued after November 8, 1984, section 66264.801.

(D) The waste shall meet all Federal, State, and local pretreatment requirements which would be applicable to the waste if it were being discharged into the POTW through a sewer, pipe, or similar conveyance;

(E) Hazardous wastes generated by a POTW shall be managed in compliance with the requirements of this chapter.

(2) The owner or operator of an ocean disposal barge or vessel. The owner or operator of a barge or other vessel which accepts hazardous waste for ocean disposal, shall be deemed to have a permit if the requirements of subsections (d)(2)(A) through (d)(2)(C) of this section are met:

(A) The owner or operator shall have a permit for ocean dumping issued under Title 40, CFR, Part 220 (Ocean Dumping, authorized by the Federal Marine Protection, Research, and Sanctuaries Act, Title 33, U.S.C., Section 1420 et seq.);

(B) The owner or operator shall comply with the conditions of that permit; and

(C) The owner or operator shall comply with the regulations specified in subsection (d)(1)(C) of this section.

(3) The owner or operator of a Transportable Treatment Unit (TTU). The owner or operator of a TTU that treats hazardous waste shall be deemed to have a permit when the requirements of section 67450.2(a) and 67450.3(a)(3) are met and the Department acknowledges authorization of the TTU pursuant to sections 67450.2(a)(3) and 67450.3(b).

(4) The owner or operator of a Fixed Treatment Unit (FTU). The owner or operator of a FTU that treats hazardous waste shall be deemed to have a permit when the requirements of section 67450.2(b) are met.

(5) The operator of a temporary household hazardous waste collection facility (THHWCF). The operator of a THHWCF shall be deemed to have a permit when the operator complies with subsections (d)(5)(A) and (d)(5)(B) of this section. For purposes of this section, the public agency signing the notification required by subsection (d)(5)(A) of this section shall be deemed to have the permit to operate the THHWCF and shall assume all the responsibilities of an operator as specified in the sections applicable to THHWCFs. A public agency operating a THHWCF may enter into a written agreement with a person (contractor) to conduct the operations at the facility. The public agency shall be deemed the operator for the purposes of Chapters 20 and 45, and the other party to the agreement shall be deemed the contractor for the purposes of Chapters 20 and 45.

(A) The operator of a THHWCF shall submit, in person or by certified mail with return receipt requested, a Temporary Household Hazardous Waste Collection Facility Permit by Rule Notification (DTSC Form 8464) (9/94) to CUPA or authorized agency. Each notification may address all THHWCF events to be held at a given location during a single reporting period (January 1 through December 31). If significant changes to the notification information occur during the reporting period, an amended notification must be submitted immediately. The notification shall be submitted a minimum of 45 days in advance of the date the first session of the THHWCF commences operation. Each notification required by this subsection shall be completed, dated and signed according to the requirements of Section 66270.11 as those requirements apply to permit applications and shall be submitted with all of the following:

1. the name, mailing address and telephone number of the operator;
2. the facility name, address or legal description of the facility location and identification number issued by the Department;
3. an indication whether the facility will accept wastes from small quantity commercial sources;
4. a list of the days and hours of operation including alternate dates as appropriate;
5. the name, address and telephone number of the contact person for the THHWCF;
6. a listing of the local authorities that have been notified of the intended operation;
7. a listing of all local permits obtained for the operation of the facility;
8. an indication of an agreement between the property owner and facility operator allowing operation of the THHWCF; and

(B) Each THHWCF operator shall comply with the requirements specified in Section 67450.4 between the time the THHWCF session commences and the time the requirements of Section 67450.4(f) are met.

(6) The operator of a permanent household hazardous waste collection facility (PHHWCF). The operator of a PHHWCF shall be deemed to have a permit when the operator complies with subsections (d)(6)(A) and (d)(6)(C) of this section and receives an acknowledgement from CUPA or authorized agency authorizing operation of the PHHWCF pursuant to subsection (d)(6)(B) of this section. For purposes of Chapter 20 commencing with section 66270.1, and Chapter 45 commencing with section 67450.1, the public agency signing the notification required by subparagraph (A) of this paragraph shall be deemed to have the permit to operate the PHHWCF and the public agency or its contractor who conducts the operation of the PHHWCF shall assume all the responsibilities of an operator as specified in sections 67450.25 and 67450.30. A public agency operating a PHHWCF may enter into a written agreement with a person to conduct the operations at the facility. In such instances, the public agency shall be deemed the operator for the purposes of Chapters 20 and 45, and the other party to the agreement shall be deemed the contractor for the purposes of Chapters 20 and 45.

(A) The operator of a PHHWCF shall submit, in person or by certified mail with return receipt requested, a Permanent Household Hazardous Waste Collection Facility Permit by Rule Notification (DTSC Form 1094B) (09/96) to CUPA or authorized agency. The notification shall be submitted a minimum of 45 days in advance of the planned commencement of operation except as provided in subsections (c)(2) and (c)(3) of this section. Each notification required by this subsection shall be completed, dated and signed according to the requirements of section 66270.11 as those requirements apply to permit applications and shall be submitted with all of the following:

1. the name, mailing address and telephone number of the operator;
2. the facility name, address, legal description of the facility location, and identification number issued by the Department;
3. the contractor's name, address, telephone number and name of the contact person, if applicable;

4. a listing of all local and state permits required for the operation of the facility, and an indication of whether those permits have been obtained;

5. a copy of a written agreement between the property owner and facility operator, if applicable, allowing operation of the PHHWCF;

6. an indication whether the facility will accept wastes from conditionally exempt small quantity generators;

7. an identification of the types of wastes that will be consolidated at the PHHWCF, if applicable;

8. an estimate of the total quantity of waste expected to be brought to the PHHWCF in an average month;

9. the design capacity of the storage units at the PHHWCF;

10. the operating schedule of the PHHWCF;

11. a narrative description of the facility and its operation, including a description of the length of time waste will be held at the facility;

12. a plot plan of the facility showing the general perimeters of the facility, traffic patterns, and all hazardous waste management units, and including the information specified in sections 66270.14(b)(18)(A), (F), (G), (H), (J), and (L). (This requirement may be satisfied by submitting a hand drawn schematic.)

(B) CUPA or authorized agency within thirty (30) calendar days of receipt of a notification submitted pursuant to subsection (d)(6)(A) of this section, shall acknowledge in writing receipt of the notification. CUPA or authorized agency shall, in conjunction with the acknowledgement, authorize operation of the PHHWCF subject to the requirements and conditions of section 67450.25; deny authorization to operate under a permit by rule pursuant to section 67450.9(a); or notify the operator that the notification is incomplete or inaccurate and inform the operator of the additional information or correction(s) needed. CUPA or authorized agency shall deny the notification of any operator who fails to provide the information or correction(s) requested within ten (10) calendar days of receipt of the acknowledgement. Upon good cause shown by the operator, CUPA or authorized agency shall grant the operator additional time to provide the information or correction(s) requested. An operator whose notification is rejected may submit a new or revised notification.

(C) Fortyfive (45) calendar days prior to implementing any change in the operation of the facility as described in the notification required by paragraph (A) of this subsection, the operator shall send a revised notification (DTSC Form 1094B) (09/96) to CUPA or authorized agency. CUPA or authorized agency shall notify the operator if the information is incomplete or inaccurate within thirty (30) calendar days of receipt of the revised notification. Upon good cause shown by the operator, CUPA or authorized agency shall allow the operator to submit the revised notification within a shorter period of time prior to implementing the change.

(D) CUPA or authorized agency, within thirty (30) calendar days of receipt of a revised notification submitted pursuant to subsection (d)(6)(C) of this section, shall acknowledge in writing receipt of the revised notification. CUPA or authorized agency shall, in conjunction with the acknowledgment, authorize continued operation of the PHHWCF subject to the requirements and conditions of section 67450.25; deny authorization to operate under a permit by rule pursuant to section 67450.9(a); or notify the operator that the revised notification is incomplete or inaccurate and inform the operator of the additional information or correction(s) needed. CUPA or authorized agency shall deny the revised notification of any operator who fails to provide the information or correction(s) requested within ten (10) calendar days of receipt of the acknowledgment. Upon good cause shown by the operator, CUPA or authorized agency shall grant the operator additional time to provide the information or correction(s) requested. An operator whose revised notification is rejected may submit a new revised notification.

(E) Each PHHWCF operator and contractor shall comply with the requirements specified in section 67450.25 between the time the PHHWCF commences operation and the time the requirements of section 66265.111 are met.

(7) The owner or operator of a K–12 schools hazardous waste collection, consolidation, and accumulation facility (SHWCCAF). The owner or operator of a SHWCCAF shall be deemed to have a permit when the requirements of section 67450.43 are met and the SHWCCAF receives an acknowledgement from the CUPA or authorized agency authorizing operation of the SHWCCAF pursuant to sections 67450.43(e) or (g).

(A) The owner or operator of a SHWCCAF operating under a variance issued by the department shall submit a notification of intent to operate as a SHWCCAF under permit by rule pursuant to section 67450.43 no later than 45 days prior to the expiration date of the variance. The owner or operator of a SHWCCAF operating under a variance issued by the department shall discontinue operation of the SHWCCAF after the expiration date of the variance unless authorization to operate under permit by rule is received pursuant to section 67450.43(e).

NOTE: Authority cited: Sections 25150, 25150.6, 25200, 25218.3(d) and 58012, Health and Safety Code. Reference: Sections 25150.6, 25159, 25159.5, 25200, 25218.2, 25218.3 and 25218.8, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment filed 10–23–91; operative 1–1–92 (Register 92, No. 12).
3. New subsections (d)(5)–(d)(5)(C) and renumbering with amendment of text and NOTE filed 4–12–93; operative 4–12–93 (Register 93, No. 16).
4. Amendment of section and NOTE filed 8–30–95 as an emergency; operative 8–30–95 (Register 95, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–28–95 or emergency language will be repealed by operation of law on the following day.
5. Amendment of section and NOTE refiled 12–26–95 as an emergency; operative 12–26–95 (Register 95, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–24–96 or emergency language will be repealed by operation of law on the following day.
6. Amendment of section and NOTE refiled 4–25–96 as an emergency; operative 4–25–96 (Register 96, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–23–96 or emergency language will be repealed by operation of law on the following day.
7. Amendment of section and NOTE refiled 8–23–96 as an emergency; operative 8–23–96 (Register 96, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–23–96 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 8–23–96 order, including amendment of section, transmitted to OAL 9–27–96 and filed 11–7–96 (Register 96, No. 45).
9. Amendment filed 1–8–99 as an emergency; operative 1–8–99 (Register 99, No. 2). A Certificate of Compliance must be transmitted to OAL by 5–10–99 or emergency language will be repealed by operation of law on the following day.
10. Amendment refiled 5–7–99 as an emergency; operative 5–7–99 (Register 99, No. 19). A Certificate of Compliance must be transmitted to OAL by 9–7–99 or emergency language will be repealed by operation of law on the following day.
11. Amendment refiled 9–3–99 as an emergency; operative 9–3–99 (Register 99, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–3–2000 or emergency language will be repealed by operation of law on the following day.
12. Amendment refiled 12–29–99 as an emergency; operative 1–3–2000 (Register 99, No. 53). A Certificate of Compliance must be transmitted to OAL by 5–2–2000 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 12–29–99 order transmitted to OAL 2–29–2000 and filed 4–11–2000 (Register 2000, No. 15).
14. Amendment of subsection (a), new subsections (d)(7)–(d)(7)(A) and amendment of NOTE filed 1–30–2002; operative 1–30–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 5).
15. Change without regulatory effect repealing subsection (d)(5)(A)9. filed 1–13–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 2).

§ 66270.61. Emergency Permits.

(a) Notwithstanding any other provision of this chapter or chapter 21 of this division, in the event the Department finds an imminent and substantial endangerment to human health or the environment the Department may issue a temporary emergency permit:

(1) to an otherwise non–permitted facility, including but not limited to, a facility operating pursuant to interim status or a variance, etc., to allow transfer, treatment, storage, or disposal of hazardous waste; or

(2) to a permitted facility to allow transfer, treatment, storage, or disposal of a hazardous waste not covered by an effective permit.

(b) This emergency permit:

(1) may be oral or written. If oral, it shall be followed in five days by a written emergency permit;

(2) shall not exceed 90 days in duration;

(3) shall clearly specify the hazardous wastes to be received, and the manner and location of their transfer, treatment, storage, or disposal;

(4) may be terminated by the Department at any time without process if it is determined that termination is appropriate to protect human health or the environment;

(5) shall be accompanied by a public notice published under section 66271.9 including:

(A) name and address of the office granting the emergency authorization;

(B) name and location of the permitted HWM facility;

(C) a brief description of the wastes involved;

(D) a brief description of the action authorized and reasons for authorizing it; and

(E) duration of the emergency permit; and

(6) shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of this chapter and chapters 14 and 16 of this division.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 270.61.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22)

§ 66270.62. Hazardous Waste Incinerator Permits.

(a) For the purposes of determining operational readiness following completion of physical construction, the Department shall establish permit conditions, including but not limited to allowable waste feeds and operating conditions, in the permit to a new hazardous waste incinerator. These permit conditions will be effective for the minimum time required to bring the incinerator to a point of operational readiness to conduct a trial burn, not to exceed 720 hours operating time for treatment of hazardous waste. The Department may extend the duration of this operational period once, for up to 720 additional hours, at the request of the applicant when good cause is shown. The permit may be modified to reflect the extension according to section 66270.42 of this chapter.

(1) Applicants shall submit a statement, with Part B of the permit application, which suggests the conditions necessary to operate in compliance with the performance standards of section 66264.343 of this division during this period. This statement must include, at a minimum, restrictions on waste constituents, waste feed rates and the operating parameters identified in section 66264.345.

(2) The Department will review this statement and any other relevant information submitted with Part B of the permit application and specify requirements for this period sufficient to meet the performance standards of section 66264.343 of this division based on its engineering judgment.

(b) For the purposes of determining feasibility of compliance with the performance standards of section 66264.343 of this division and of determining adequate operating conditions under section 66264.345 of this division, the Department shall establish conditions in the permit for a new hazardous waste incinerator to be effective during the trial burn.

(1) Applicants shall propose a trial burn plan, prepared under subsection (b)(2) of this section with Part B of the permit application.

(2) The trial burn plan shall include the following information:

(A) an analysis of each waste or mixture of wastes to be burned which includes:

1. heat value of the waste in the form and composition in which it will be burned;

2. viscosity (if applicable), or description of the physical form of the waste;

3. an identification of any hazardous organic constituents listed in chapter 11, Appendix VIII of this division, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in chapter 11, Appendix VIII of this division which would reasonably not be expected to be found in the waste. The constituents excluded from analysis shall be identified, and the basis for the exclusion stated. The waste analysis shall rely on analytical techniques specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA publication SW–846, Third Edition and updates (incorporated by reference in section 66260.11), or other equivalent;

4. an approximate quantification of the hazardous constituents identified in the waste, within the precision produced by the analytical methods specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA publication SW–846, Third edition and updates (incorporated by reference in section 66260.11), or their equivalent;

(B) a detailed engineering description of the incinerator for which the permit is sought including:

1. manufacturer's name and model number of incinerator (if available);

2. type of incinerator;

3. linear dimensions of the incinerator unit including the cross sectional area of combustion chamber;

4. description of the auxiliary fuel system type/feed);

5. capacity of prime mover;

6. description of automatic waste feed cut–off system(s);

7. stack gas monitoring and pollution control equipment;

8. nozzle and burner design;

9. construction materials;

10. location and description of temperature, pressure, and flow indicating and control devices;

(C) a detailed description of sampling and monitoring procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis;

(D) a detailed test schedule for each waste for which the trial burn is planned including date(s), duration, quantity of waste to be burned, and other factors relevant to the Department's decision under subsection (b)(5) of this section;

(E) a detailed test protocol, including, for each waste identified, the ranges of temperature, waste feed rate, combustion gas velocity, use of auxiliary fuel, and any other relevant parameters that will be varied to affect the destruction and removal efficiency of the incinerator;

(F) a description of, and planned operating conditions for, any emission control equipment which will be used;

(G) procedures for rapidly stopping waste feed, shutting down the incinerator, and controlling emissions in the event of an equipment malfunction;

(H) such other information as the Department reasonably finds necessary to determine whether to approve the trial burn plan in light of the purposes of this section and the criteria in subsection (b)(5) of this section.

(3) The Department, in reviewing the trial burn plan, shall evaluate the sufficiency of the information provided and may require the applicant to supplement this information, if necessary, to achieve the purposes of this section.

(4) Based on the waste analysis data in the trial burn plan, the Department will specify as trial Principal Organic Hazardous Constituents (POHCs), those constituents for which destruction and removal efficiencies shall be calculated during the trial burn. These trial POHCs will be specified by the Department based on its estimate of the difficulty of incineration of the constituents identified in the waste analysis, their concentration or mass in the waste feed, and, for wastes listed in chapter 11, article 4, of this division, the hazardous waste organic constituent or constituents identified in Appendix VII of that chapter as the basis for listing.

(5) The Department shall approve a trial burn plan if it finds that:

(A) the trial burn is likely to determine whether the incinerator performance standard required by section 66264.343 of this division can be met;

(B) the trial burn itself will not present an imminent hazard to human health or the environment;

(C) the trial burn will help the Department to determine operating requirements to be specified under section 66264.345; and

(D) the information sought in subsections (b)(5)(A) and (B) of this section cannot reasonably be developed through other means.

(6) For facilities applying for a RCRA permit, the Director must send a notice to all persons on the facility mailing list as set forth in section 66271.9(c)(1)(D) and to the appropriate units of State and local government as set forth in section 66271.9(c)(1)(E) announcing the scheduled commencement and completion dates for the trial burn. The applicant may not commence the trial burn until after the Director has issued such notice.

(A) This notice must be mailed within a reasonable time period before the scheduled trial burn. An additional notice is not required if the trial burn is delayed due to circumstances beyond the control of the facility or the Department.

(B) This notice must contain:

1. The name and telephone number of the applicant's contact person;
2. The name and telephone number of the permitting agency's contact office;
3. The location where the approved trial burn plan and any supporting documents can be reviewed and copied; and
4. An expected time period for commencement and completion of the trial burn.

(7) During each approved trial burn (or as soon after the burn as is practicable), the applicant shall make the following determinations:

(A) a quantitative analysis of the trial POHCs in the waste feed to the incinerator;

(B) a quantitative analysis of the exhaust gas for the concentration and mass emissions of the trial POHCs, oxygen (O_2) and hydrogen chloride (HCl);

(C) a quantitative analysis of the scrubber water (if any), ash residues, and other residues, for the purpose of estimating the fate of the trial POHCs;

(D) a computation of destruction and removal efficiency (DRE), in accordance with the DRE formula specified in section 66264.343(a);

(E) if the HCl emission rate exceeds 1.8 kilograms of HCl per hour (4 pounds per hour), a computation of HCl removal efficiency in accordance with section 66264.343(b);

(F) a computation of particulate emissions, in accordance with section 66264.343(c);

(G) an identification of sources of fugitive emissions and their means of control;

(H) a measurement of average, maximum, and minimum temperatures and combustion gas velocity;

(I) a continuous measurement of carbon monoxide (CO) in the exhaust gas;

(J) such other information as the Department may specify as necessary to ensure that the trial burn will determine compliance with the performance standards in section 66264.343 of this division and to establish the operating conditions required by section 66264.345 of this division as necessary to meet that performance standard.

(8) The applicant shall submit to the Department a certification that the trial burn has been carried out in accordance with the approved trial burn plan, and shall submit the results of all the determinations required in subsection (b)(6) of this section. This submission shall be made within 90 days of completion of the trial burn, or later if approved by the Department.

(9) All data collected during any trial burn shall be submitted to the Department following the completion of the trial burn.

(10) All submissions required by this subsection shall be certified on behalf of the applicant by the signature of a person authorized to sign a permit application or a report under section 66270.11.

(11) Based on the results of the trial burn, the Department shall set the operating requirements in the final permit according to section 66264.345 of this division. The permit modification shall proceed according to section 66270.42.

(c) For the purposes of allowing operation of a new hazardous waste incinerator following completion of the trial burn and prior to final modification of the permit conditions to reflect the trial burn results, the Department may establish permit conditions, including but not limited to allowable waste feeds and operating conditions sufficient to meet the requirements of section 66264.345 of this division, in the permit to a new hazardous waste incinerator. These permit conditions will be effective for the minimum time required to complete sample analysis, data computation and submission of the trial burn results by the applicant, and modification of the facility permit by the Department.

(1) Applicants shall submit a statement, with Part B of the permit application, which identifies the conditions necessary to operate in compliance with the performance standards of section 66264.343 of this division, during this period. This statement must include, at a minimum, restrictions on waste constituents, waste feed rates, and the operating parameters in section 66264.345 of this division.-

(2) The Department will review this statement and any other relevant information submitted with Part B of the permit application and specify those requirements for this period most likely to meet the performance standards of section 66264.343 of this division based on the Department's engineering judgment.

(d) For the purposes of determining feasibility of compliance with the performance standards of section 66264.343 of this division and of determining adequate operating conditions under section 66264.345 of this division, the applicant for a permit for an existing hazardous waste incinerator shall prepare and submit a trial burn plan and perform a trial burn in accordance with section 66270.19(b) and subsections (b)(2) through (b)(5) and (b)(7) through (b)(10) of this section or, instead, submit other information as specified in section 66270.19(c). Applicants submitting information under section 66270.19(a) are exempt from compliance with sections 66264.343 and 66264.345 and, therefore, are exempt from the requirement to conduct a trial burn. Applicants who submit trial burn plans and receive approval before submission of a permit application shall complete the trial burn and submit the results, specified in subsection (b)(7), with Part B of the permit application. If completion of this process conflicts with the date set for submission of the Part B application, the applicant shall contact the Department to establish a later date for submission of the Part B application or the trial burn results. Trial burn results shall be submitted prior to issuance of the permit. When the applicant submits a trial burn plan with Part B of the permit application, the Department shall specify a time period prior to permit issuance in which the trial burn shall be conducted and the results submitted.

(1) For facilities applying for RCRA permits, the Director shall announce his or her intention to approve the trial burn plan in accordance with the timing and distribution requirements of subsection (b)(6) of this section. The contents of the notice shall include: the name and telephone number of a contact person at the facility; the name and telephone number of a contact office at the Department; the location where the trial burn plan and any supporting documents can be reviewed and copied; and a schedule of the activities that are required prior to permit issuance, including the anticipated time schedule for Department approval of the plan and the time period during which the trial burn would be conducted.

NOTE: Authority cited: Sections 25150, 25159, 58004 and 58012, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 270.62.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect adding new subsections (b)(6)–(b)(6)(B)d., subsection renumbering, amendment of subsection (d) and new subsection (d)(1) filed 12–19–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 51).
3. Change without regulatory effect amending subsection (a)(6)(A), redesignating subsections (a)(6)(B)a.–d. to subsections (a)(6)(B)1.–4., and amending subsections (d) and (d)(1) filed 6–18–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 25).
4. Amendment of subsections (b)(2)(A)3. and 4. and amendment of NOTE filed 10–13–98; operative 11–12–98 (Register 98, No. 42).

§ 66270.63. Permits for Land Treatment Demonstrations Using Field Test or Laboratory Analyses.

(a) For the purpose of allowing an owner or operator to meet the treatment demonstration requirements of section 66264.272 of this division, the Department may issue a treatment demonstration permit. The permit shall contain only those requirements necessary to meet the standards in section 66264.272(c). The permit may be issued either as a treatment or

disposal permit covering only the field test or laboratory analyses, or as a two–phase facility permit covering the field tests, or laboratory analyses, and design, construction operation and maintenance of the land treatment unit.

(1) The Department shall issue a two–phase facility permit if it finds that, based on information submitted in Part B of the application, substantial, although incomplete or inconclusive, information already exists upon which to base the issuance of a facility permit.

(2) If the Department finds that not enough information exists upon which it can establish permit conditions to provide for compliance with all of the requirements of article 13 of chapter 14 of this division the Department shall issue a treatment demonstration permit covering only the field test or laboratory analyses.

(b) If the Department finds that a phased permit may be issued, the Department will establish, as requirements in the first phase of the facility permit, conditions for conducting the field tests or laboratory analyses. These permit conditions will include design and operating parameters (including the duration of the tests or analyses and, in the case of field tests, the horizontal and vertical dimensions of the treatment zone), monitoring procedures, post–demonstration clean–up activities, and any other conditions which the Department finds may be necessary under section 66264.272(c). The Department will include conditions in the second phase of the facility permit to attempt to meet all requirements listed in article 13 of chapter 14 of this division pertaining to unit design, construction, operation, and maintenance. The Department will establish these conditions in the second phase of the permit based upon the substantial but incomplete or inconclusive information contained in the Part B application.

(1) The first phase of the permit will be effective as provided in section 66271.14(b) of this division.

(2) The second phase of the permit will be effective as provided in subsection (d) of this section.

(c) When the owner or operator who has been issued a two–phase permit has completed the treatment demonstration, the owner, or operator shall submit to the Department a certification, signed by a person authorized to sign a permit application or report under section 66270.11, that the field tests or laboratory analyses have been carried out in accordance with the conditions specified in phase one of the permit for conducting such tests or analyses. The owner or operator shall also submit all data collected during the field tests or laboratory analyses within 90 days of completion of those tests or analyses unless the Department approves a later date.

(d) If the Department determines that the results of the field tests or laboratory analyses meet the requirements of section 66264.272 of this division, the Department will modify the second phase of the permit to incorporate any requirements necessary for operation of the facility in compliance with chapter 14, article 13, of this division, based upon the results of the field tests or laboratory analyses.

(1) This permit modification may proceed under section 66270.42, or otherwise will proceed as a modification under section 66270.41(a)(2). If such modifications are necessary, the second phase of the permit shall become effective only after those modifications have been made.

(2) If no modifications of the second phase of the permit are necessary, the Department will give notice of its final decision to the permit applicant and to each person who submitted written comments on the phased permit or who requested notice of the final decision on the second phase of the permit. The second phase of the permit then will become effective as specified in section 66271.14(b).

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 270.63.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66270.65. Research, Development, and Demonstration Permits.

(a) The Department may issue a research, development, and demonstration permit for any hazardous waste treatment facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under chapter 14 or 16 of this division. Any such permit shall include such terms and conditions that shall assure protection of human health and safety, livestock, wildlife and the environment. Such permits:

(1) shall provide for the construction of such facilities as necessary, and for operation of the facility for not longer than one year unless renewed as provided in subsection (d) of this section, and

(2) shall provide for the receipt and treatment by the facility of only those types and quantities of hazardous waste which the Department deems necessary for purposes of determining the efficacy and performance capabilities of the technology or process and the effects of such technology or process on human health and safety, livestock, wildlife and the environment, and

(3) shall include such requirements as the Department deems necessary to protect human health and safety, livestock, wildlife and the environment (including, but not limited to, requirements regarding monitoring, operation, financial responsibility, closure, and remedial action), and such requirements as the Department deems necessary regarding testing and providing of information to the Department with respect to the operation of the facility.

(b) If an applicant demonstrates to the satisfaction of the Department that the expedited review and issuance of a permit under this section is necessary for the protection of human health and safety, and the environment, the Department shall modify or waive permit application and permit issuance requirements in chapters 20 and 21 of this division to the extent necessary to protect human health and safety and the environment except that there may be no modification or waiver of regulations regarding financial responsibility (including insurance) or of procedures regarding public participation.

(c) The Department shall order an immediate termination of all operations at the facility at any time the Department determines that termination is necessary to protect human health and safety, livestock, wildlife and the environment.

(d) Any permit issued under this section may be renewed not more than three times. Each such renewal shall be for a period of not more than 1 year.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 270.65.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66270.66. Permits for Boilers and Industrial Furnaces Burning Hazardous Waste.

(a) General. Owners and operators of new boilers and industrial furnaces (those not operating under the interim status standards of section 66266.103 of chapter 16) are subject to subsections (b) through (f) of this section. Boilers and industrial furnaces operating under the interim status standards of section 66266.103 of chapter 16 are subject to subsection (g) of this section.

(b) Permit operating periods for new boilers and industrial furnaces. A permit for a new boiler or industrial furnace shall specify appropriate conditions for the following operating periods:

(1) Pretrial burn period. For the period beginning with initial introduction of hazardous waste and ending with initiation of the trial burn, and only for the minimum time required to bring the boiler or industrial furnace to a point of operational readiness to conduct a trial burn, not to exceed 720 hours operating time when burning hazardous waste, the Direc-

tor shall establish in the Pretrial Burn Period of the permit conditions, including but not limited to, allowable hazardous waste feed rates and operating conditions. The Director may extend the duration of this operational period once, for up to 720 additional hours, at the request of the applicant when good cause is shown. The permit may be modified to reflect the extension according to section 66270.42.

(A) Applicants shall submit a statement, with part B of the permit application, that suggests the conditions necessary to operate in compliance with the standards of sections 66266.104 through 66266.107 of chapter 16 during this period. This statement should include, at a minimum, restrictions on the applicable operating requirements identified in section 66266.102(e) of chapter 16.

(B) The Director will review this statement and any other relevant information submitted with part B of the permit application and specify requirements for this period sufficient to meet the performance standards of sections 66266.104 through 66266.107 of chapter 16 based on the Director's engineering judgment.

(2) Trial burn period. For the duration of the trial burn, the Director shall establish conditions in the permit for the purposes of determining feasibility of compliance with the performance standards of sections 66266.104 through 66266.107 of chapter 16 and determining adequate operating conditions under section 66266.102(e) of chapter 16. Applicants shall propose a trial burn plan, prepared under subsection (c) of this section, to be submitted with part B of the permit application.

(3) Post–trial burn period. (A) For the period immediately following completion of the trial burn, and only for the minimum period sufficient to allow sample analysis, data computation, and submission of the trial burn results by the applicant, and review of the trial burn results and modification of the facility permit by the Director to reflect the trial burn results, the Director will establish the operating requirements most likely to ensure compliance with the performance standards of sections 66266.104 through 66266.107 of chapter 16 based on the Director's engineering judgment.

(B) Applicants shall submit a statement, with part B of the application, that identifies the conditions necessary to operate during this period in compliance with the performance standards of sections 66266.104 through 66266.107 of chapter 16. This statement should include, at a minimum, restrictions on the operating requirements provided by section 66266.102(e) of chapter 16.

(C) The Director will review this statement and any other relevant information submitted with part B of the permit application and specify requirements for this period sufficient to meet the performance standards of sections 66266.104 through 66266.107 of chapter 16 based on the Director's engineering judgment.

(4) Final permit period. For the final period of operation, the Director will develop operating requirements in conformance with section 66266.102(e) of chapter 16 that reflect conditions in the trial burn plan and are likely to ensure compliance with the performance standards of sections 66266.104 through 66266.107 of chapter 16. Based on the trial burn results, the Director shall make any necessary modifications to the operating requirements to ensure compliance with the performance standards. The permit modification shall proceed according to section 66270.42.

(c) Requirements for trial burn plans. The trial burn plan shall include the following information. The Director, in reviewing the trial burn plan, shall evaluate the sufficiency of the information provided and may require the applicant to supplement this information, if necessary, to achieve the purposes of this subsection:

(1) An analysis of each feed stream, including hazardous waste, other fuels, and industrial furnace feed stocks, as fired, that includes:

(A) Heating value, levels of antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, silver, thallium, total chlorine/chloride, and ash;

(B) Viscosity or description of the physical form of the feed stream;

(2) An analysis of each hazardous waste, as fired, including:

(A) An identification of any hazardous organic constituents listed in appendix VIII, chapter 11, that are present in the feed stream, except that the applicant need not analyze for constituents listed in appendix VIII that would reasonably not be expected to be found in the hazardous waste. The constituents excluded from analysis shall be identified and the basis for this exclusion explained. The waste analysis shall be conducted in accordance with analytical techniques specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", US EPA publication SW–846, Third Edition and updates as incorporated by reference in section 66260.11, or their equivalent.

(B) An approximate quantification of the hazardous constituents identified in the hazardous waste, within the precision produced by the analytical methods specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", US EPA publication SW–846, Third Edition incorporated by reference in section 66260.11, or other equivalent.

(C) A description of blending procedures, if applicable, prior to firing the hazardous waste, including a detailed analysis of the hazardous waste prior to blending, an analysis of the material with which the hazardous waste is blended, and blending ratios.

(3) A detailed engineering description of the boiler or industrial furnace, including:

(A) Manufacturer's name and model number of the boiler or industrial furnace;

(B) Type of boiler or industrial furnace;

(C) Maximum design capacity in appropriate units;

(D) Description of the feed system for the hazardous waste, and, as appropriate, other fuels and industrial furnace feedstocks;

(E) Capacity of hazardous waste feed system;

(F) Description of automatic hazardous waste feed cutoff system(s); and

(G) Description of any pollution control system; and

(H) Description of stack gas monitoring and any pollution control monitoring systems.

(4) A detailed description of sampling and monitoring procedures including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

(5) A detailed test schedule for each hazardous waste for which the trial burn is planned, including date(s), duration, quantity of hazardous waste to be burned, and other factors relevant to the Director's decision under subsection (b)(2) of this section.

(6) A detailed test protocol, including, for each hazardous waste identified, the ranges of hazardous waste feed rate, and, as appropriate, the feed rates of other fuels and industrial furnace feedstocks, and any other relevant parameters that may affect the ability of the boiler or industrial furnace to meet the performance standards in sections 66266.104 through 66266.107 of chapter 16.

(7) A description of, and planned operating conditions for, any emission control equipment that will be used.

(8) Procedures for rapidly stopping the hazardous waste feed and controlling emissions in the event of an equipment malfunction.

(9) Such other information as the Director reasonably finds necessary to determine whether to approve the trial burn plan in light of the purposes of this subsection and the criteria in subsection (b)(2) of this section.

(d) Trial burn procedures. (1) A trial burn shall be conducted to demonstrate conformance with the standards of sections 66266.104 through 66266.107 of chapter 16 under an approved trial burn plan.

(2) The Director shall approve a trial burn plan if the Director finds that:

(A) The trial burn is likely to determine whether the boiler or industrial furnace can meet the performance standards of sections 66266.104 through 66266.107 of chapter 16;

(B) The trial burn itself will not present an imminent hazard to human health and the environment;

(C) The trial burn will help the Director to determine operating requirements to be specified under section 66266.102(e) of chapter 16; and

(D) The information sought in the trial burn cannot reasonably be developed through other means.

(3) The applicant shall submit to the Director a certification that the trial burn has been carried out in accordance with the approved trial burn plan, and shall submit the results of all the determinations required in subsection (c) of this section. This submission shall be made within 90 days of completion of the trial burn, or later if approved by the Director.

(4) All data collected during any trial burn shall be submitted to the Director following completion of the trial burn.

(5) All submissions required by this subsection shall be certified on behalf of the applicant by the signature of a person authorized to sign a permit application or a report under section 66270.11.

(6) For facilities applying for RCRA permits, the Director must send a notice to all persons on the facility mailing list as set forth in section 66271.9(c)(1)(D) and to the appropriate units of State and local government as set forth in section 66271.9(c)(1)(E) announcing the scheduled commencement and completion dates for the trial burn. The applicant may not commence the trial burn until after the Director has issued such notice.

(A) This notice must be mailed within a reasonable time period before the trial burn. An additional notice is not required if the trial burn is delayed due to circumstances beyond the control of the facility or the Department.

(B) This notice must contain:

1. The name and telephone number of applicant's contact person;

2. The name and telephone number of the permitting agency contact office;

3. The location where the approved trial burn plan and any supporting documents can be reviewed and copied; and

4. An expected time period for commencement and completion of the trial burn.

(e) Special procedures for DRE trial burns. When a DRE trial burn is required under section 66266.104(a) of chapter 16, the Director will specify (based on the hazardous waste analysis data and other information in the trial burn plan) as trial Principal Organic Hazardous Constituents (POHCs) those compounds for which destruction and removal efficiencies shall be calculated during the trial burn. These trial POHCs will be specified by the Director based on information including the Director's estimate of the difficulty of destroying the constituents identified in the hazardous waste analysis, their concentrations or mass in the hazardous waste feed, and, for hazardous waste containing or derived from wastes listed in chapter 11, article 4, the hazardous waste organic constituent(s) identified in appendix VII of that chapter as the basis for listing.

(f) Determinations based on trial burn. During each approved trial burn (or as soon after the burn as is practicable), the applicant shall make the following determinations:

(1) A quantitative analysis of the levels of antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, thallium, silver, and chlorine/chloride, in the feed streams (hazardous waste, other fuels, and industrial furnace feedstocks);

(2) When a DRE trial burn is required under section 66266.104(a) of chapter 16:

(A) A quantitative analysis of the trial POHCs in the hazardous waste feed;

(B) A quantitative analysis of the stack gas for the concentration and mass emissions of the trial POHCs; and

(C) A computation of destruction and removal efficiency (DRE), in accordance with the DRE formula specified in section 66266.104(a) of chapter 16;

(3) When a trial burn for chlorinated dioxins and furans is required under section 66266.104(e) of chapter 16, a quantitative analysis of the stack gas for the concentration and mass emission rate of the 2,3,7,8–chlorinated tetra–octa congeners of chlorinated dibenzo–p–dioxins and furans, and a computation showing conformance with the emission standard.

(4) When a trial burn for particulate matter, metals, or HCl/Cl_2 is required under sections 66266.105, 66266.106 (c) or (d), or 66266.107 (b)(2) or (c) of chapter 16, a quantitative analysis of the stack gas for the concentrations and mass emissions of particulate matter, metals, or hydrogen chloride (HCl) and chlorine (Cl_2), and computations showing conformance with the applicable emission performance standards;

(5) When a trial burn for DRE, metals, or HCl/Cl_2 is required under sections 66266.104(a), 66266.106 (c) or (d), or 66266.107 (b)(2) or (c) of chapter 16, a quantitative analysis of the scrubber water (if any), ash residues, other residues, and products for the purpose of estimating the fate of the trial POHCs, metals, and chlorine/chloride;

(6) An identification of sources of fugitive emissions and their means of control;

(7) A continuous measurement of carbon monoxide (CO), oxygen, and where required, hydrocarbons (HC), in the stack gas; and

(8) Such other information as the Director may specify as necessary to ensure that the trial burn will determine compliance with the performance standards in sections 66266.104 through 66266.107 of chapter 16 and to establish the operating conditions required by section 66266.102(e) of chapter 16 as necessary to meet those performance standards.

(g) Interim status boilers and industrial furnaces. For the purpose of determining feasibility of compliance with the performance standards of sections 66266.104 through 66266.107 of chapter 16 and of determining adequate operating conditions under section 66266.103 of chapter 16, applicants owning or operating existing boilers or industrial furnaces operated under the interim status standards of section 66266.103 shall either prepare and submit a trial burn plan and perform a trial burn in accordance with the requirements of this section or submit other information as specified in section 66270.22(a)(6). Applicants who submit a trial burn plan and receive approval before submission of the part B permit application shall complete the trial burn and submit the results specified in subsection (f) of this section with the part B permit application. If completion of this process conflicts with the date set for submission of the part B application, the applicant shall contact the Director to establish a later date for submission of the part B application or the trial burn results. If the applicant submits a trial burn plan with part B of the permit application, the trial burn shall be conducted and the results submitted within a time period prior to permit issuance to be specified by the Director.

(1) For facilities applying for RCRA permits, the Director must announce his or her intention to approve the trial burn plan in accordance with the timing and distribution requirements of paragraph (d)(6) of this section. The contents of the notice must include: the name and telephone number of a contact person at the facility; the name and telephone number of a contact office at the permitting agency; the location where the trial burn plan and any supporting documents can be reviewed and copied; and a schedule of the activities that are required prior to permit issuance, including the anticipated time schedule for agency approval of the plan and the time period during which the trial burn would be conducted.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245, 58004 and 58012, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; and 40 CFR Section 270.66.

HISTORY

1. New section filed 9–29–93 as an emergency; operative 9–29–93 (Register 93, No. 40). A Certificate of Compliance must be transmitted to OAL by 1–27–94 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of NOTE (Register 94, No. 3).
3. New section refiled 1–19–94 as an emergency; operative 1–19–94 (Register 94, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–19–94 or emergency language will be repealed by operation of law on the following day.
4. Editorial correction adding HISTORY 3 (Register 94, No. 9).
5. New section refiled 5–23–94 with amendment of subsection (c) as an emergency; operative 5–23–94 (Register 94, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–20–94 or emergency language will be repealed by operation of law on the following day.
6. New section refiled 9–19–94 with amendment of subsection (a)(3) and NOTE as an emergency; operative 9–19–94 (Register 94, No. 38). A Certificate of Compliance must be transmitted to OAL by 1–17–95 or emergency language will be repealed by operation of law on the following day.

7. Repealed by operation of Government Code section 11346.1(g) (Register 95, No. 10).
8. New section filed 3–8–95; operative 3–8–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 10).
9. Renumbering of former section 66270.66 to new section 66270.69 and new section 66270.66 filed 7–1–96; operative 7–31–96 (Register 96, No. 27).
10. Change without regulatory effect adding new subsections (d)(6)–(d)(6)(B)d. and (g)(1) filed 12–19–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 51).
11. Change without regulatory effect amending subsections (b)(1), (d)(2)(C) and (g) filed 6–12–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 24).
12. Change without regulatory effect amending subsection (d)(6)(A) and redesignating subsections (d)(6)(B)a.–d. to subsections (d)(6)(B)1.–4. filed 6–18–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 25).
13. Amendment of subsection (c)(2)(A) filed 10–13–98; operative 11–12–98 (Register 98, No. 42).
14. Change without regulatory effect amending subsections (c)(2)(B) and (g)(1) filed 7–1–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 27).

§ 66270.67. Transportable Treatment Unit Standardized Permit. [Renumbered]

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25150 and 25200.2, Health and Safety Code.

HISTORY

1. New section filed 5–14–2001; operative 6–13–2001 (Register 2001, No. 20).
2. Renumbering of former section 66270.67 to new section 66270.69.5 filed 9–6–2007; operative 10–6–2007 (Register 2007, No. 36).

§ 66270.68. [Reserved]

§ 66270.69. Standardized Permit. [Renumbered]

NOTE: Authority cited: Sections 25150, 25201.6, 58004 and 58012, Health and Safety Code. Reference: Sections 25150, 25201.6 and 25250.1, Health and Safety Code.

HISTORY

1. Renumbering of former section 66270.66 to new section 66270.69 and amendment of NOTE filed 7–1–96; operative 7–31–96 (Register 96, No. 27).
2. Change without regulatory effect repealing subsection (d) filed 4–4–2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 14).
3. Renumbering of former section 66270.69 to new section 66270.69.1 filed 9–6–2007; operative 10–6–2007 (Register 2007, No. 36).

Article 6.5. Standardized Permits

§ 66270.69.1. Standardized Permit.

(a) Notwithstanding any other provisions of this division, offsite or onsite treatment or storage activities, other than those specified in paragraphs (1) through (3) of this section, that do not require a permit under the federal act may be eligible for a standardized permit pursuant to section 25201.6 of the Health and Safety Code. The following are not eligible for a standardized permit:

(1) used oil recycling activities as defined in Health and Safety Code section 25250.1;

(2) recycling or reclamation of federally regulated solvents identified by EPA hazardous waste numbers F001, F002, F003, F004 and F005 pursuant to 40 Code of Federal Regulations section 261.31; and

(3) units that are not authorized to operate pursuant to Title 22, California Code of Regulations, Division 4.5, Chapter 14 or Chapter 15 that engage in incineration, thermal destruction or land disposal activities.

(b) Each hazardous waste treatment or storage facility conducting activities pursuant to a standardized permit shall be designated as a Series A, Series B or Series C standardized permit facility as defined in Health and Safety Code section 25201.6.

(c) A facility that performs activities that meet the criteria for more than one of the standardized permit series shall be classified as the highest of the applicable series.

NOTE: Authority cited: Sections 25150, 25201.6, 58004 and 58012, Health and Safety Code. Reference: Sections 25150, 25201.6 and 25250.1, Health and Safety Code.

HISTORY

1. New article 6.5 (sections 66270.69.1–66270.69.5) and renumbering and amendment of former section 66270.69 to new section 66270.69.1 filed 9–6–2007; operative 10–6–2007 (Register 2007, No. 36).

§ 66270.69.2. Application for a Standardized Permit.

(a) An applicant who conducts or wishes to conduct an activity that qualifies for a standardized permit pursuant to Health and Safety Code section 25201.6 and section 66270.69.1 of this article, shall submit an application package that includes information equivalent to the following portions of chapters 14, 20 and 21 of title 22, division 4.5 of the California Code of Regulations:

(1) Articles 1 through 5, 7, 8, 9 and 10 of chapter 14. The applicant may comply with the financial responsiblity requirements of section 66270.69.4 of this article in lieu of the financial responsibility requirements of article 8 of chapter 14;

(2) Article 1, sections 66270.10 through 66270.16 of article 2, and articles 3 through 5 of chapter 20; and

(3) Article 1 of chapter 21.

NOTE: Authority cited: Sections 25150, 25201.6 and 58012, Health and Safety Code. Reference: Sections 25150 and 25201.6, Health and Safety Code.

HISTORY

1. New section filed 9–6–2007; operative 10–6–2007 (Register 2007, No. 36).

§ 66270.69.3. Requirements for Standardized Permit Facilities.

(a) A facility with an existing permit issued pursuant to Health and Safety Code section 25200 may have its permit converted directly to a standardized permit, using the Class 1 permit modification procedures as specified in section 66270.42 or 66270.42.5. In addition to all other applicable requirements, the owner or operator of a facility eligible for the standardized permit tier pursuant to section 66270.69.1 shall comply with all of the following:

(1) Articles 1 through 5, 7, 9 and 10 of title 22, Chapter 14 of this division;

(2) section 66264.175 regarding secondary containment for containers; and

(3) section 66270.69.4 regarding financial responsibility compliance.

NOTE: Authority cited: Sections 25150, 25201.6, 58004 and 58012, Health and Safety Code. Reference: Sections 25150 and 25201.6, Health and Safety Code.

HISTORY

1. Renumbering of former section 67800.1 to new section 66270.69.3, including amendment of section and NOTE, filed 9–6–2007; operative 10–6–2007 (Register 2007, No. 36).

§ 66270.69.4. Financial Responsibility for Facilities Operating Under a Standardized Permit.

The owner or operator of a facility that operates pursuant to a standardized permit issued pursuant to Health and Safety Code section 25201.6 shall comply with chapter 14, article 8, except as follows:

(a) Series A facilities, as defined by Health and Safety Code section 25201.6(a)(1), shall have and maintain liability coverage for sudden accidental occurrences in the amount of at least $1 million per occurrence with an annual aggregate of at least $2 million, exclusive of legal defense costs.

(b) Series B facilities, as defined by Health and Safety Code section 25201.6(a)(2), Series C facilities, as defined by Health and Safety Code section 25201.6(a)(3), that treat or store reactive, ignitable or extremely hazardous waste and Series C facilities that treat solvents in accordance with Health and Safety Code section 25201.6(g)(2) shall have and maintain liability coverage for sudden accidental occurrences in the amount of at least $500,000 per occurrence with an annual aggregate of at least $1 million, exclusive of legal defense costs.

(c) Series C facilities, as defined by Health and Safety Code section 25201.6(a)(3), shall have and maintain liability coverage for sudden accidental occurrences in the amount of at least $300,000 per occurrence with an annual aggregate of at least $600,000, exclusive of legal defense costs.

(d) Notwithstanding subdivision (c) of this section, Series C facilities that treat no more than 1,500 gallons of liquid hazardous waste or 3,000 pounds of solid hazardous waste in any calendar month, or have a maximum storage capacity of no more than 15,000 gallons of liquid hazardous waste or 30,000 pounds of solid hazardous waste, shall have and maintain liability coverage for sudden accidental occurrences in the amount

of at least $100,000 per occurrence with an annual aggregate of at least $200,000, exclusive of legal defense costs.

(e) An owner or operator of more than one facility that operates pursuant to a standardized permit may meet the liability coverage requirements of this section by having and maintaining liability coverage at the level required for the facility that is regulated at the highest standardized permit series.

(f) An owner or operator of one or more facilities that operate pursuant to a standardized permit, who also owns or operates one or more facilities regulated pursuant to a hazardous waste facility permit, may meet the liability coverage requirements of this section by having and maintaining sudden liability coverage as required by section 66264.147(a).

(g) An owner or operator of one or more facilities that operate pursuant to a standardized permit, who also owns or operates one or more facilities that operates pursuant to interim status granted pursuant to Health and Safety Code section 25200.5 may meet the liability coverage requirements of this section by having and maintaining liability coverage as required by section 66265.147(a).

NOTE: Authority cited: Sections 25143.13, 25150, 25200.1, 25201.6, 25245, 58004 and 58012, Health and Safety Code. Reference: Sections 25143.13, 25150, 25200.1, 25200.5, 25200.9 and 25201.6, Health and Safety Code.

HISTORY

1. Renumbering of former section 67800.5 to new section 66270.69.4 filed 9–6–2007; operative 10–6–2007 (Register 2007, No. 36).

§ 66270.69.5. Transportable Treatment Unit Standardized Permit.

(a) The owner or operator of a TTU that treats reactive wastes or extremely hazardous wastes, the treatment of which does not require a permit under the federal act, is eligible for a TTU Standardized Permit, except when conducting the following activities:

(1) used oil recycling activities as defined in Health and Safety Code section 25250.1;

(2) recycling or reclamation of federally regulated solvents identified by EPA hazardous waste numbers F001, F002, F003, F004 and F005 pursuant to 40 CFR section 261.31.

(3) operating treatment units that are not authorized pursuant to Title 22, California Code of Regulations, Division 4.5, Chapter 14 or Chapter 15 that engage in incineration, thermal destruction or land disposal activities.

(b) To apply for a TTU Standardized Permit, the owner or operator shall submit to Department the following information dated and signed as required by section 66270.11 for TTU operation:

(1) name, mailing address, and telephone number of both the owner and operator of the TTU;

(2) name and address or legal description of the location where the TTU is stored when not in use;

(3) identification number of the location where the TTU is stored, if any, and Board of Equalization account number;

(4) a description of the specific waste type(s) that will be treated;

(5) a description of the treatment process(s) that will be used;

(6) a description of how all treatment effluents and residuals will be managed;

(7) the serial number of the TTU for which a permit is requested;

(8) information as to whether the TTU operation is new or existing;

(9) a detailed sampling and waste analysis plan describing how representative samples will be collected and analyzed during TTU operations as required by section 66264.13;

(10) a description of procedures to prevent the release of hazardous waste and constituents to air, soil and groundwater during TTU operations;

(11) information on how the owner of the property where the TTU is stored will be notified that the TTU is being stored on the property;

(12) a description of preparedness and prevention procedures for the TTU operations, as required pursuant to chapter 14, article 3 of this division for the TTU operations;

(13) training documents as specified in section 66264.16(d)(4);

(14) a copy of the contingency plan for as specified by chapter 14, article 4 of this division;

(15) documentation of compliance with article 8 of chapter 14 of this division for financial responsibility; and

(16) a written closure plan as specified by section 67450.3(a)(13)(B).

(c) The owner or operator of the TTU shall discharge any effluent or treatment residual during TTU operation pursuant to section 67450.3(a)(7).

(d) The Department shall issue, modify, reissue, deny or revoke the permit for TTU operation pursuant to the procedures in Chapter 21 except for section 66271.2(a).

(e) The Department shall not begin the processing of a permit until the applicant has fully complied with subsection (b) of this section for that permit.

(f) California Environmental Quality Act (CEQA) information requirements. Unless the Department has determined that the activity to be permitted is exempt from the requirements of CEQA pursuant to title 14, CCR, section 15061, the applicant shall submit all information necessary to enable the Department to prepare an Initial Study meeting the requirements of title 14, CCR, section 15063.

(g) The owner or operator of the TTU shall submit to the Department, for each site where the TTU will perform treatment, site–specific information, as specified by subsections 67450.3(a)(3)(A) and (C), and a certification, signed by the owner or operator, specifying the local authorities that have been notified of the intended date(s) of operation, pursuant to section 67450.3(a)(3)(B). The site–specific information shall be submitted at least twenty–one (21) days prior to each site visit, unless the Department approves a shorter period of time upon a showing of good cause by the owner or operator. The information shall be completed, dated and signed according to the requirements of section 66270.11.

(h) If the owner or operator of the TTU is the generator of the waste influents treated by the TTU, the owner or operator is subject to the corrective action requirements specified in section 66264.100.

(i) The TTU may only be stationed and operated at a site if the conditions specified in section 67450.3(a)(8) are met.

(j) The owner or operator of a TTU who uses rental equipment shall do all of the following:

(1) prior to use of the TTU, notify the rental equipment owner of how the rental equipment will be used;

(2) properly remove and/or decontaminate equipment, structures, soil and all collected materials and wastes after termination of the TTU operation and assure that all contaminated materials and wastes are removed by a registered hazardous waste transporter or as otherwise authorized by law.

(3) certify in writing to the rental equipment owner that the rental equipment has been properly decontaminated; and

(4) keep copies of all correspondence related to rental equipment for three (3) years.

(k) The owner or operator of the TTU shall prepare and submit an annual report for TTU operation to the Department as specified in section 67450.3(a)(12).

(*l*) The owner or operator of the TTU shall maintain compliance for TTU operation with the following requirements:

(1) H&SC, sections 25200.2, annual and facility fees.

(2) H&SC, section 25205.7, application processing fee requirements.

(3) section 66264.11, Identification Number.

(4) section 66264.14, Security Requirements.

(5) section 66264.15, General Inspection Requirements.

(6) section 66264.17, General Requirements for Ignitable, Reactive, or Incompatible Wastes.

(7) section 66264.114, Disposal or Decontamination of Equipment, Structures and Soils.

(8) sections 66264.117, 66264.118, 66264.119, and 66264.120, post closure requirements.

(9) section 66264.143, Financial Assurance for Closure.

(10) chapter 14 of this division:

(A) article 5. Manifest System, Recordkeeping and Reporting (except for sections 66264.73(b)(2), 66264.73(b)(6), 66264.73(b)(7), 66264.73(b)(15) and 66264.75;

(B) article 9. Use and Management of Containers; and

(C) article 10. Tank Systems.

(11) chapter 15, article 17; Chemical, Physical, and Biological Treatment

(12) section 66270.42, Permit Modification at the Request of the Permittee.

(m) If treatment is conducted in containers and/or tanks, the owner or operator of TTU shall comply with the containment requirements of sections 66264.175 and 66264.193, respectively.

(n) The owner or operator of the TTU shall maintain the TTU Standardized Permit and the documents specified in subsections (g), (j) and (k) of this section at the site or facility where the TTU is operating. The owner or operator shall make these documents available upon demand at the site or facility to any representative of the Department, the U.S. Environmental Protection Agency or a local governmental agency.

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25150 and 25200.2, Health and Safety Code.

HISTORY

1. Renumbering of former section 66270.67 to new section 66270.69.5 filed 9–6–2007; operative 10–6–2007 (Register 2007, No. 36).

Article 7. Interim Status

§ 66270.70. Qualifying for Interim Status.

(a) Any person who owns or operates an "existing HWM facility" or a facility in existence on the effective date of statutory or regulatory amendments under the Act that render the facility subject to the requirement to have a permit shall have interim status and shall be treated as having been issued a permit to the extent the owner or operator has:

(1) complied with the requirements of Health and Safety Code section 25153.6 pertaining to notification of hazardous waste activity. Existing facilities not required to file a notification under Health and Safety Code section 25153.6 shall qualify for interim status by meeting subsection (a)(2) of this section;

(2) complied with the requirements of section 66270.10 governing a submission of Part A applications.

(b) When the Department determines on examination or reexamination of a Part A application that it fails to meet the standards of these regulations, it shall notify the owner or operator in writing that the application is deficient, and specify the grounds for the Department's belief that the application is deficient. The Department may also notify the owner or operator that the owner or operator is therefore not entitled to interim status. The owner or operator will then be subject to enforcement for operating without a permit.

(c) Subsection (a) of this section shall not apply to any facility which has been previously denied a permit or if authority to operate the facility has been previously terminated.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 270.70.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66270.71. Operation During Interim Status.

(a) During the interim status period the facility shall not:

(1) transfer, treat, store, or dispose of hazardous waste not specified in Part A of the permit application;

(2) employ processes not specified in Part A of the permit application; or

(3) exceed the design capacities specified in Part A of the. permit application.

(b) Interim status standards. During interim status, owners or operators shall comply with the interim status standards in chapter 15 of this division.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159, 25159.5 and 25200.5, Health and Safety Code; 40 CFR Section 270.71.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66270.72. Changes During Interim Status.

(a) Except as provided in subsection (b) of this section, the owner or operator of an interim status facility may make the following changes at a facility:

(1) transfer, treatment, storage, or disposal of new hazardous wastes not previously identified in Part A of the permit application (and, in the case of newly listed or identified wastes, addition of the units being used to transfer, treat, store or dispose of the hazardous wastes on the effective date of the listing or identification) if the owner or operator submits and receives Department approval of a revised Part A permit application prior to such transfer, treatment, storage or disposal;

(2) increases in the design capacity of processes used at the facility if the owner or operator submits a revised Part A permit application prior to such a change (along with a justification explaining the need for the change) and the Department approves the change because:

(A) there is a lack of available transfer, treatment, storage, or disposal capacity at other hazardous waste management facilities, or

(B) the change is necessary to comply with a Federal, State, or local requirement;

(3) changes in the processes for the transfer, treatment, storage, or disposal of hazardous waste or addition of processes if the owner or operator submits a revised Part A permit application prior to such a change (along with a justification explaining the need for the change) and the Department approves the change because:

(A) the change is necessary to prevent a threat to human health and the environment because of an emergency situation, or

(B) the change is necessary to comply with a Federal, State, or local requirement;

(4) changes in the ownership or operational control of a facility if the new owner or operator submits a revised Part A permit application no later than 90 days prior to the scheduled change. When a transfer of ownership or operational control of a facility occurs, the old owner or operator shall comply with the requirements of chapter 15, article 8 (Financial Requirements) of this division, until the new owner or operator has demonstrated to the Department compliance with the requirements of that article. The new owner or operator shall demonstrate compliance with article 8 requirements within six months of the date of the change in the ownership or operational control of the facility. Upon demonstration to the Department by the new owner or operator of compliance with article 8, the Department shall notify the old owner or operator in writing that it no longer needs to comply with article 8 as of the date of demonstration. All other interim status duties are transferred effective immediately upon the date of the change in ownership or operational control of the facility;

(5) changes made in accordance with an interim status corrective action order issued by the USEPA under 42 U.S.C. section 6928(h) or other Federal authority, by the Department under article 8, commencing with section 25180, of chapter 6.5 of division 20 of the Health and Safety Code, or by a court in a judicial action brought by the USEPA or by the Department. Changes under this subsection are limited to the transfer, treatment, storage, or disposal of solid waste from releases that originate within the boundary of the facility.

(6) Addition of newly regulated units for the treatment, storage, or disposal of hazardous waste if the owner or operator submits a revised Part A permit application on or before the date on which the unit becomes subject to the new requirements.

[The next page is 758.301.]

(b) Except as specifically allowed under this subsection, changes listed under subsection (a) of this section shall not be made if they amount to reconstruction of the hazardous waste management facility. Reconstruction occurs when the capital investment in the changes to the facility exceeds 50 percent of the capital cost of a comparable entirely new hazardous waste management facility. If all other requirements are met, the following changes may be made even if they amount to a reconstruction:

(1) changes made solely for the purposes of complying with the requirements of section 66265.193 for tanks and ancillary equipment;

(2) if necessary to comply with Federal, State, or local requirements, changes to an existing unit, changes solely involving tanks or containers, or addition of replacement surface impoundments that satisfy the standards of 42 U.S.C. section 6924(o);

(3) changes that are necessary to allow owners or operators to continue handling newly listed or identified hazardous wastes that have been transferred, treated, stored, or disposed of at the facility prior to the effective date of the rule establishing the new listing or identification;

(4) changes during closure of a facility or of a unit within a facility made in accordance with an approved closure plan;

(5) changes necessary to comply with an interim status corrective action order issued by the USEPA under 42 U.S.C. section 6928(h) or other Federal authority, by the Department under article 8, commencing with section 25180, of chapter 6.5 of division 20 of the Health and Safety Code, or by a court in a judicial proceeding brought by the USEPA or the Department, provided that such changes are limited to transfer, treatment, storage, or disposal of solid waste from releases that originate within the boundary of the facility;

(6) changes to transfer, treat or store, in tanks, containers, or containment buildings, hazardous wastes subject to land disposal restrictions imposed by chapter 18 of this division or 42 U.S.C. section 6924, provided that such changes are made solely for the purpose of complying with chapter 18 of this division or 42 U.S.C. section 6924.

(7) Addition of newly regulated units under subsection (a)(6) of this section.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6, 58004 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5 and 58012, Health and Safety Code; 40 CFR Section 270.72.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of subsection (b)(6) and NOTE filed 10–24–94 as an emergency; operative 10–24–94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–20–95 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsection (b)(6) and NOTE refiled 2–21–95 as an emergency; operative 2–21–95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–21–95 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsection (b)(6) and NOTE refiled 6–19–95 as an emergency; operative 6–19–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–95 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsection (b)(6) and NOTE refiled 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 10–24–94 order transmitted to OAL 12–15–95 and filed 1–31–96 (Register 96, No. 5).
7. New subsections (a)(6) and (b)(7) and amendment of NOTE filed 7–1–96; operative 7–31–96 (Register 96, No. 27).

§ 66270.73. Termination of Interim Status.

Interim status terminates when:

(a) final administrative disposition of a permit application is made; or

(b) interim status

is terminated as provided in section 66270.10(e)(3);

(c) for owners or operators of each land disposal facility which has been granted interim status prior to November 8, 1984, on November 8, 1985, unless one of the following applies:

(1) part A of the facility's permit application specifies that only non–RCRA hazardous waste will be disposed of at the facility; or

(2) the owner or operator of the facility does both of the following:

(A) submits a Part B application for a permit for such facility prior to that date; and

(B) certifies that such facility is in compliance with all applicable ground–water monitoring and financial responsibility requirements;

(d) for owners or operators of each land disposal facility which is in existence on the effective date of statutory or regulatory amendments under the Health and Safety Code that render the facility subject to the requirement to have a permit and which is granted interim status, twelve months after the date on which the facility first becomes subject to such permit requirement unless one of the following applies:

(1) part A of the facility's permit application specifies that only non–RCRA hazardous waste will be disposed of at the facility; or

(2) the owner or operator of the facility does both of the following:

(A) submits a Part B application for a permit for such facility before the date 12 months after the date on which the facility first becomes subject to such permit requirement; and

(B) certifies that such facility is in compliance with all applicable ground water monitoring and financial responsibility requirements;

(e) for owners or operators of any land disposal unit that is granted authority to operate under section 66270.72(a)(1), (2) or (3), on the date 12 months after the effective date of such requirement, unless one of the following applies:

(1) Part A of the facility's permit application specifies that only non–RCRA hazardous waste will be disposed of at the facility; or

(2) the owner or operator certifies that such unit is in compliance with all applicable ground water monitoring and financial responsibility requirements;

(f) for owners or operators of each incinerator facility which has achieved interim status prior to November 8, 1984, interim status terminates on November 8, 1989, unless one of the following applies:

(1) Part A of the facility's permit application specifies that only non–RCRA hazardous waste will be incinerated at the facility; or

(2) the owner or operator of the facility submits a Part B application for a permit for an incinerator facility by November 8, 1986;

(g) for owners or operators of any facility (other than a land disposal or an incinerator facility) which has achieved interim status prior to November 8, 1984, interim status terminates on November 8, 1992, unless one of the following applies:

(1) Part A of the facility's permit application specifies that only non–RCRA hazardous wastes will be transferred, treated, or stored at the facility; or

(2) the owner or operator of the facility submits a Part B application for a permit for the facility by November 8, 1988.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 58004 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5, 25200.5 and 25200.7, Health and Safety Code and 40 CFR Section 270.73.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Editorial correction restoring appropriate hierarchical structure (Register 93, No. 20).
3. Amendment of subsections (f) and (g) and NOTE filed 7–1–96; operative 7–31–96 (Register 96, No. 27).

Appendix I

Classification of Permit Modifications

Modifications	*Class*
A. General Permit Provisions	
1. Administrative and informational changes.	1
2. Correction of typographical errors.	1
3. Equipment replacement or upgrading with functionally equivalent components (e.g., pipes, valves, pumps, conveyors, controls).	1
4. Changes in the frequency of or procedures for monitoring, reporting, sampling, or maintenance activities by the permittee:	
a. To provide for more frequent monitoring, reporting, sampling, or maintenance.	1
b. Other changes.	2

Modifications	Class
5. Schedule of compliance:	
a. Changes in interim compliance dates, with prior approval of the Department.	1*
b. Extension of final compliance date.	3
6. Changes in expiration date of permit to allow earlier permit termination, with prior approval of the Department.	1*
7. Changes in ownership or operational control of a facility, provided the procedures of section 66270.40(b) are followed.	1*
B. General Facility Standards	
1. Changes to waste sampling or analysis methods:	
a. To conform with Department guidance or regulations.	1
b. To incorporate changes associated with F039 (multi–source leachate) sampling or analysis methods	1*
c. To incorporate changes associated with underlying hazardous constituents in ignitable or corrosive wastes	1*
d. Other changes.	2
2. Changes to analytical quality assurance/control plan:	
a. To conform with Department guidance or regulations.	1
b. Other changes.	2
3. Changes in procedures for maintaining the operating record.	1
4. Changes in frequency or content of inspection schedules.	2
5. Changes in the training plan:	
a. That affect the type or decrease the amount of training given to employees.	2
b. Other changes.	1
6. Contingency plan:	
a. Changes in emergency procedures (i.e., spill or release response procedures).	2
b. Replacement with functionally equivalent equipment, upgrade, or relocate emergency equipment listed.	1
c. Removal of equipment from emergency equipment list.	2
d. Changes in name, address, or phone number of coordinators or other persons or agencies identified in the plan.	1
7. Construction quality assurance plan:	
a. Changes that the CQA officer certifies in the operating record will provide equivalent or better certainty that the unit components meet the design specifications.	1
b. Other changes	2

NOTE: When a permit modification (such as introduction of a new unit) requires a change in facility plans or other general facility standards, that change shall be reviewed under the same procedures as the permit modification.

C. Water Quality and Environmental Protection	
1. Changes to monitoring points:	
a. Changes in the number, location, depth, or design of monitoring points or background monitoring points of a permitted water quality or environmental monitoring system.	2
b. Replacement of an existing monitoring point that has been damaged or rendered inoperable, without change to location, design, or depth of the monitoring point.	1
2. Changes in a water quality or environmental sampling or analytical procedure or monitoring schedule, with prior approval of the Department.	1*
3. Changes in statistical procedure for determining whether a statistically significant change in water quality or environmental quality between monitoring points and background monitoring points has occurred, with prior approval of the Department.	1
4. Changes in the point of compliance.	2
5. Changes in constituents of concern, monitoring parameters, or concentration limits:	
a. As specified in the water quality or environmental protection standard.	3
b. As specified for a detection monitoring program.	2
6. Detection monitoring program:	
a. Addition of a detection monitoring program as required by sections 66264.99(f)(3) and 66264.100(i)(3).	3
b. Changes to a detection monitoring program as required by section 66264.98(l) or (m) or section 66264.706(f), unless otherwise specified in this Appendix.	2
7. Evaluation or Compliance monitoring program:	
a. Addition of an evaluation monitoring program as required by sections 66264.91(a)(2) or (a)(3).	3
b. Changes to an evaluation monitoring program as required by section 66264.99(h) or (i), unless otherwise specified in this Appendix.	2
c. Addition of a compliance monitoring program as required by section 66264.701(a)(1).	3
d. Changes to a compliance monitoring program as required by section 66264.707(e), unless otherwise specified in this Appendix.	2
8. Corrective action program:	
a. Addition of a corrective action program as required by section 66264.91(a)(4) or 66264.701(a)(2).	3
b. Changes to a corrective action program as required by section 66264.100(k) or (l) or section 66264.708(h), unless otherwise specified in this Appendix.	2
D. Closure	
1. Changes to the closure plan:	
a. Changes in estimate of maximum extent of operations or maximum inventory of waste on–site at any time during the active life of the facility, with prior approval of the Department.	1*
b. Changes in the closure schedule for any unit, changes in the final closure schedule for the facility, or extension of the closure period, with prior approval of the Department.	1*
c. Changes in the expected year of final closure, where other permit conditions are not changed, with prior approval of the Department.	1*
d. Changes in procedures for decontamination of facility equipment or structures, with prior approval of the Department.	1*
e. Changes in approved closure plan resulting from unexpected events occurring during partial or final closure, unless otherwise specified in this Appendix.	2
f. Extension of the closure period to allow a landfill, surface impoundment, or land treatment unit to receive non–hazardous wastes after final receipt of hazardous wastes under sections 66264.113(d) and (e) of chapter 14.	2
2. Creation of a new landfill unit as part of closure.	3
3. Addition of the following new units to be used temporarily for closure activities:	
a. Surface impoundments.	3
b. Incinerators.	3
c. Waste piles that comply with the following requirements: —the waste pile is inside or under a structure that provides protection from precipitation so that neither run–off nor leachate is generated, —liquids or materials containing free liquids are not placed in the waste pile, —the waste pile is protected from surface water run–on by the structure or in some other manner, —the waste pile is designed and operated to control dispersal of the waste by wind, where necessary, by means other than wetting, and —the waste pile shall not generate leachate through decomposition or other reactions.	2
d. Waste piles that do not comply with the requirements of D(3)(c) of this Appendix.	3

Modifications	Class
e. Tanks or containers (other than specified below).	2
f. Tanks used for neutralization, dewatering, phase separation, or component separation, with prior approval of the Department.	1*
E. Post–Closure	
1. Changes in name, address, or phone number of contact in post–closure plan.	1
2. Extension of post–closure care period.	2
3. Reduction in the post–closure care period.	3
4. Changes to the expected year of final closure, where other permit conditions are not changed.	1
5. Changes in post–closure plan necessitated by events occurring during the active life of the facility, including partial and final closure.	2
F. Containers	
1. Modification or addition of container units:	
a. Resulting in greater than 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) below.	3
b. Resulting in up to 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) below.	2
c. Or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in section 66268.8(a)(2)(B), with prior approval of the Department. This modification may also involve addition of new waste codes or narrative descriptions of wastes. It is not applicable to dioxin–containing wastes (F020, 021, 022, 023, 026, 027, and 028).	1*
2. a. Modification of a container unit without increasing the capacity of the unit.	2
b. Addition of a roof to a container unit without alteration of the containment system.	1
3. Storage of different wastes in containers, except as provided in F(4) below:	
a. That require additional or different management practices from those authorized in the permit.	3
b. That do not require additional or different management practices from those authorized in the permit.	2
NOTE: See section 66270.42(g) for modification procedures to be used for the management of newly listed or identified wastes.	
4. Storage or treatment of different wastes in containers:	
a. That require addition of units or change in treatment process or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards, or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in section 66268.8(a)(2)(B). This modification is not applicable to dioxin–containing wastes (F020, 021, 022, 023, 026, 027, and 028).	1
b. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin–containing wastes (F020, 021, 022, 023, 026, 027, and 028).	1
5. Modifications to conform to the Department's changes in empty container management practices.	2
6. Other changes in container management practices (e.g., aisle space; types of containers; segregation).	2
G. Tanks.	1
1.	

Modifications	Class
a. Modification or addition of tank units resulting in greater than 25% increase in the facility's tank capacity, except as provided in G(1)(c), G(1)(d), and G(1)(e) below.	3
b. Modification or addition of tank units resulting in up to 25% increase in the facility's tank capacity, except as provided in G(1)(d) and G(1)(e) below.	2
c. Addition of a new tank that will operate for more than 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation.	2
d. After prior approval of the Department, addition of a new tank that will operate for up to 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation.	1*
e. Modification or addition of tank units or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in section 66268.8(a)(2)(B), with prior approval of the Department. This modification may also involve addition of new waste codes. It is not applicable to dioxin–containing wastes (F020, 021, 022, 023, 026, 027, and 028).	1*
2. Modification of a tank unit or secondary containment system without increasing the capacity of the unit.	2
3. Replacement of a tank with a tank that meets the same design standards and has a capacity within +/– 10% of the replaced tank provided:	1
—The capacity difference is no more than 1500 gallons,	
—The facility's permitted tank capacity is not increased and	
—The replacement tank meets the same conditions in the permit.	
4. Modification of a tank management practice.	2
5. Management of different wastes in tanks:	
a. That require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit, except as provided in G(5)(c) below.	3
b. That do not require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process than those authorized in the permit, except as provided in G(5)(d) below.	2
c. That require addition of units or change in treatment processes or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in section 66268.8(a)(2)(B). This modification is not applicable to dioxin–containing wastes (F020, 021, 022, 023, 026, 027, and 028).	1
d. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin–containing wastes (F020, 021, 022, 023, 026, 027, and 028).	1
NOTE: See section 66270.42(g) for modification procedures to be used for the management of newly listed or identified wastes.	
H. Surface Impoundments	
1. Modification or addition of surface impoundment units that result in increasing the facility's surface impoundment storage or treatment capacity.	3

Modifications	*Class*
2. Replacement of a surface impoundment unit.	3
3. Modification of a surface impoundment unit without increasing the facility's surface impoundment storage or treatment capacity and without modifying the unit's liner, leak detection system, or leachate collection system.	2
4. Modification of a surface impoundment management practice.	2
5. Treatment, storage, or disposal of different wastes in surface impoundments:	
a. That require additional or different management practices or different design of the liner or leak detection system than authorized in the permit.	3
b. That do not require additional or different management practices or different design of the liner or leak detection system than authorized in the permit.	2
c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in section 66268(a)(2)(B), and provided that the unit meets the minimum technological requirements stated in section 66268.5(h)(2). This modification is not applicable to dioxin–containing wastes (F020, 021, 022, 023, 026, 027, and 028).	1
d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a unit that meets the minimum technological requirements stated in section 66268.5(h)(2), and provided further that the surface impoundment has previously received wastes of the same type (for example, incinerator scrubber water). This modification is not applicable to dioxin–containing wastes (F020, 021, 022, 023,026, 027, and 028).	1
6. Modifications of unconstructed units to comply with sections 66264.221(c), 66264.222, 66264.223, and 66264.226(d)	*1
7. Changes in response action plan:	
a. Increase in action leakage rate	3
b. Change in a specific response reducing its frequency or effectiveness.	3
c. Other changes	2

NOTE: See section 66270.42(g) for modification procedures to be used for the management of a newly listed or identified wastes.

I. Enclosed Waste Piles

For all waste piles except those complying with the requirements of D(3)(c) of this Appendix, modifications are treated the same as for a landfill. The following modifications are applicable only to waste piles complying with D(3)(c) of this Appendix.

1. Modification or addition of waste pile units:	
a. Resulting in greater than 25% increase in the facility's waste pile storage or treatment capacity.	3
b. Resulting in up to 25% increase in the facility's waste pile storage or treatment capacity.	2
2. Modification of waste pile unit without increasing the capacity of the unit.	2
3. Replacement of a waste pile unit with another waste pile unit of the same design and capacity and meeting all waste pile conditions in the permit.	1
4. Modification of a waste pile management practice.	2
5. Storage or treatment of different wastes in waste piles:	
a. That require additional or different management practices or different design of the unit.	3
b. That do not require additional or different management practices or different design of the unit.	2
6. Conversion of an enclosed waste pile to a containment building unit.	2

NOTE: See section 66270.42(g) for modification procedures to be used for the management of newly listed or identified wastes.

J. Landfills and Unenclosed Waste Piles

1. Modification or addition of landfill units that result in increasing the facility's disposal capacity.	3
2. Replacement of a landfill.	3
3. Addition or modification of a liner, leachate collection system, leachate detection system, run–off control, or final cover system.	3
4. Modification of a landfill unit without changing a liner, leachate collection system, leachate detection system, run–off control, or final cover system.	2
5. Modification of a landfill management practice.	2
6. Landfill different wastes:	
a. That require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system.	3
b. That do not require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system.	2
c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in section 66268.8(a)(2)(B), and provided that the landfill unit meets the minimum technological requirements stated in section 66268.5(h)(2). This modification is not applicable to dioxin–containing wastes (F020, 021, 022, 023, 026, 027, and 028).	1
d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a landfill unit that meets the minimum technological requirements stated in section 66268.5(h)(2), and provided further that the landfill has previously received wastes of the same type (for example, incinerator ash). This modification is not applicable to dioxin–containing wastes (F020, 021,022, 023, 026, 027, and 028).	1
7. Modifications of unconstructed units to comply with sections 66264.251(c), 66264.252, 66264.253, 66264.254(c), 66264.301(c), 66264.302, 66264.303(c), and 66264.304.	*1
8. Changes in response action plan:	
a. Increase in action leakage rate	3
b. Change in a specific response reducing its frequency or effectiveness	3
c. Other changes	2

NOTE: See section 66270.42(g) for modification procedures to be used for the management of newly listed or identified wastes.

K. Land Treatment

1. Lateral expansion of or other modification of a land treatment unit to increase areal extent.	3
2. Modification of run–on control system.	2
3. Modify run–off control system.	3
4. Other modifications of land treatment unit component specifications or standards required in permit.	2
5. Management of different wastes in land treatment units:	
a. That require a change in permit operating conditions or unit design specifications.	3
b. That do not require a change in permit operating conditions or unit design specifications.	2

NOTE: See section 66270.42(g) for modification procedures to be used for the management of newly listed or identified wastes.

Modifications	Class
6. Modification of a land treatment unit management practice to:	
a. Increase rate or change method of waste application.	3
b. Decrease rate of waste application.	1
7. Modification of a land treatment unit management practice to change measures of pH or moisture content, or to enhance microbial or chemical reactions.	2
8. [Reserved]	
9. Modification of operating practice due to detection of releases from the land treatment unit pursuant to section 66264.278(j)(1).	3
10. Changes in the unsaturated zone monitoring system,resulting in a change to the location, depth, number of sampling points, or replace unsaturated zone monitoring devices or components of devices with devices or components that have specifications different from permit requirements.	3
11. Changes in the unsaturated zone monitoring system that do not result in a change to the location, depth, number of sampling points, or that replace unsaturated zone monitoring devices or components of devices with devices or components having specifications different from permit requirements.	2
12. Changes in background values for hazardous constituents in soil and soil–pore liquid.	2
13. Changes in sampling, analysis, or statistical procedure.	2
14. Changes in land treatment demonstration program prior to or during the demonstration.	2
15. Changes in any condition specified in the permit for a land treatment unit to reflect results of the land treatment demonstration, provided performance standards are met, and the Department's prior approval has been received.	1*
16. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the wastes can be treated completely, provided the conditions for the second demonstration are substantially the same as the conditions for the first demonstration and have received the prior approval of the Department.	1*
17. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the wastes can be treated completely, where the conditions for the second demonstration are not substantially the same as the conditions for the first demonstration.	3
18. Changes in vegetative cover requirements for closure.	2
L. Incinerators, Boilers, and Industrial Furnaces:	
1. Changes to increase by more than 25% any of the following limits authorized in the permit: A thermal feed rate limit, a feedstream feed rate limit, a chlorine/chloride feed rate limit, a metal feed rate limit, or an ash feed rate limit. The Department will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.	3
2. Changes to increase by up to 25% any of the following limits authorized in the permit: A thermal feed rate limit, a feedstream feed rate limit, a chlorine/chloride feed rate limit, a metal feed rate limit, or an ash feed rate limit. The Director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.	2
3. Modification of an incinerator, boiler, or industrial furnace unit by changing the internal size or geometry of the primary or secondary combustion units, by adding a primary or secondary combustion unit, by substantially changing the design of any component used to remove HCl/Cl_2, metals, or particulate from the combustion gases, or by changing other features of the incinerator, boiler, or industrial furnace that could affect its capability to meet the regulatory performance standards. The Director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.	3
4. Modification of an incinerator, boiler, or industrial furnace unit in a manner that would not likely affect the capability of the unit to meet the regulatory performance standards but which would change the operating conditions or monitoring requirements specified in the permit. The Director may require a new trial burn to demonstrate compliance with the regulatory performance standards.	2
5. Operating requirements:	
a. Modification of the limits specified in the permit for minimum or maximum combustion gas temperature, minimum combustion gas residence time, oxygen concentration in the secondary combustion chamber, flue gas carbon monoxide and hydrocarbon concentration, maximum temperature at the inlet to the particulate matter emission control system, or operating parameters for the air pollution control system. The Department will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.	3
b. Modification of any stack gas emission limits specified in the permit, or modification of any conditions in the permit concerning emergency shutdown or automatic waste feed cutoff procedures or controls.	3
c. Modification of any other operating condition or any inspection or recordkeeping requirement specified in the permit.	2
6. Burning different wastes:	
a. If the waste contains a POHC that is more difficult to burn than authorized by the permit or if burning of the waste requires compliance with different regulatory performance standards than specified in the permit. The Department will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.	3
b. If the waste does not contain a POHC that is more difficult to burn than authorized by the permit and if burning of the waste does not require compliance with different regulatory performance standards than specified in the permit.	2
NOTE: See section 66270.42(g) for modification procedures to be used for the management of newly listed or identified wastes.	
7. Shakedown and trial burn:	
a. Modification of the trial burn plan or any of the permit conditions applicable during the shakedown periods for determining operational readiness after construction, the trial burn period, or the period immediately following the trial burn.	2
b. Authorization of up to an additional 720 hours of waste burning during the shakedown period for determining operational readiness after construction, with the prior approval of the Department.	1*

Modifications	*Class*
c. Changes in the operating requirements set in the permit for conducting a trial burn, provided the change is minor and has received the prior approval of the Department.	1*
d. Changes in the ranges of the operating requirements set in the permit to reflect the results of the trial burn, provided the change is minor and has received the prior approval of the Department.	1*
8. Substitution of an alternate type of nonhazardous waste fuel that is not specified in the permit.	1
M. Containment Buildings.	
1. Modification or addition of containment building units:	
a. Resulting in greater than 25% increase in the facility's containment building storage or treatment capacity	3
b. Resulting in up to 25% increase in the facility's containment building storage or treatment capacity	2
2. Modification of a containment building unit or secondary containment system without increasing the capacity of the unit	2
3. Replacement of a containment building with a containment building that meets the same design standards provided:	
a. The unit capacity is not increased	1
b. The replacement containment building meets the same conditions in the permit	1
4. Modification of a containment building management practice	2
5. Storage or treatment of different wastes in containment buildings:	
a. That require additional or different management practices	3
b. That do not require additional or different management practices	2
N. Corrective Action	
1. Approval of a corrective action management unit pursuant to article 15.5 of chapter 14.	3
2. Approval of a temporary unit or time extension for a temporary unit pursuant to article 15.5 of chapter 14.	2

*Class 1 modifications requiring prior Department approval.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6, 58004 and 58012, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 270.42, 40 CFR Part 270, Appendix I.

HISTORY

1. New Appendix I filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. New subpart F.5. and renumbering filed 8–25–92; operative 8–25–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 35).
3. Editorial correction of HISTORY 1 (Register 93, No. 52).
4. New subparts M. (reserved) and N–N.2 and amendment of NOTE filed 12–23–93 as an emergency; operative 12–23–93 (Register 93, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–9–94 or emergency language will be repealed by operation of law on the following day.
5. New subparts M and N–N.2 and amendment of NOTE refiled 4–25–94 as an emergency; operative 4–25–94 (Register 94, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–23–94 or emergency language will be repealed by operation of law on the following day.
6. New subparts M and N–N.2 refiled 8–22–94 as an emergency; operative 8–22–94 (Register 94, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–20–04 or emergency language will be repealed by operation of law on the following day.
7. New subsections B1b–c and subsection redesignation, new subsections I6 and M–M5b and amendment of NOTE filed 10–24–94 as an emergency; operative 10–24–94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–20–95 or emergency language will be repealed by operation of law on the following day.
8. New subparts M and N–N.2 refiled 12–22–94 as an emergency; operative 12–22–94 (Register 94, No. 51). A Certificate of Compliance must be transmitted to OAL 4–21–95 or emergency language will be repealed by operation of law on the following day.
9. New subsections B.1.b.–c. and subsection redesignation, new subsections I.6. and M.–M.5.b. and amendment of NOTE refiled 2–21–95 as an emergency; operative 2–21–95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–21–95 or emergency language will be repealed by operation of law on the following day.
10. New subsections B.1.b.–c. and subsection redesignation, new subsections I.6 and M.–M.5.b. and amendment of NOTE refiled 6–19–95 as an emergency; operative 6–19–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–95 or emergency language will be repealed by operation of law on the following day.
11. New subsections N.–N.2. refiled 6–29–95 as an emergency; operative 6–29–95 (Register 95, No. 26). A Certificate of Compliance must be transmitted to OAL by 10–27–95 or emergency language will be repealed by operation of law on the following day.
12. New subsections B.7.a.–b., H.6.–7.c. and J.7.–8.c. and amendment of NOTE filed 7–19–95; operative 8–18–95 (Register 95, No. 29).
13. New subsections B.1.b.–c. and subsection redesignation, new subsections I.6 and M.–M.5.b and amendment of NOTE refiled 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.
14. New subsections N.-N.2. and amendment of NOTE refiled 10–26–95 as an emergency; operative 10–26–95 (Register 95, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–23–96 or emergency language will be repealed by operation of law on the following day.
15. Certificate of Compliance as to 10–26–95 order transmitted to OAL 11–30–95 and filed 1–16–96 (Register 96, No. 3).
16. Certificate of Compliance as to 10–24–94 order including amendment of subsection M. heading and NOTE transmitted to OAL 12–15–95 and filed 1–31–96 (Register 96, No. 5).
17. New subparagraph D.1.f. and amendment of NOTE filed 6–20–96; operative 7–20–96 (Register 96, No. 25).
18. Amendment of subparagraphs L–L.8 and NOTE filed 7–1–96; operative 7–31–96 (Register 96, No. 27).
19. Change without regulatory effect amending Appendix I, subsections H.6. and J.7. and NOTE filed 6–30–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 27).
20. Change without regulatory effect amending appendix I filed 8–15–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 33).

Chapter 21. Procedures for Hazardous Waste Permit Decisions

Article 1. General Program Requirements

§ 66271.1. Purpose and Scope.

(a) This chapter contains the Department's procedures for issuing, modifying, revoking and reissuing, denying or revoking all hazardous waste facility "permits" other than "emergency permits" (see section 66270.61) and "permits by rule" (section 66270.60). Emergency permits are governed by section 66270.61. Permits by rule are governed by section 67450.9. Interim status is not a "permit" and is covered by specific provisions in chapter 20 of this division. The procedures of this chapter also apply to denial of a permit for the active life of a hazardous waste management facility or unit under section 66270.29.

(b) Chapter 21 contains general procedural requirements applicable to all permit programs covered by these regulations. Chapter 21 describes the steps the Department will follow in receiving permit applications, preparing draft permits, issuing public notices, inviting public comments and holding public hearings on draft permits. Chapter 21 also covers assembling an administrative record, responding to comments, issuing a final permit decision, and allowing for administrative appeal of the final permit decision.

NOTE: Authority cited: Sections 25150, 25159 and 58012, Health and Safety Code. Reference: Sections 25159.5, 25186, 25186.1, 25186.2 and 25200, Health and Safety Code; 40 CFR Section 124.1.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of subsection (a) and NOTE filed 7–19–95; operative 8–18–95 (Register 95, No. 29).
3. Change without regulatory effect adding new article 1 heading filed 12–19–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 51).

§ 66271.2. Application for a Permit.

(a)(1) Any person who requires a permit under Health and Safety Code section 25201 shall complete, sign, and submit to the Department an application for the permit required under section 66270.1. Applications are not required for permits by rule (section 66270.60).

(2) The Department shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit. (See sections 66270.10 and 66270.13.)

(3) Permit applications shall comply with the signature and certification requirements of section 66270.11.

(b) [Reserved]

(c)(1) No later than 30 calendar days after receipt of a permit application, the Department shall review the application for completeness (in accordance with the provisions of chapter 4.5 (commencing with section 65920) of division 1 of Title 2 of the Government Code and Health and Safety Code section 25199.6)), and notify the applicant in writing whether the application is complete.

(2) If the application is incomplete, the Department's written notice to the applicant shall specify those parts of the application which are incomplete and shall indicate the manner in which they can be made complete, including a list and thorough description of the specific information needed to complete the application. The Department shall specify in the notice of deficiency a date for submitting the necessary information. The applicant shall submit to the Department the materials necessary to make the application complete, as specified by the Department in the written notice of incompleteness. No later than 60 calendar days after receiving additional application materials, submitted in response to a notice of incompleteness, the Department shall notify the applicant in writing whether the application with the additional materials is complete.

(3) If the application together with the additional materials is determined to be incomplete, the applicant may appeal the Department's determination to the Director. Such an appeal shall be made in writing within 30 days after the issuance of the incompleteness determination, and shall include a statement of the reasons supporting the appeal. The Director shall grant or deny the appeal in writing no later than 60 calendar days after receipt of the written appeal.

(4) The application shall not be deemed complete if the Department fails to make a written completeness determination within 60 calendar days or if the Director fails to provide a written response to an appeal within 60 calendar days. An application is deemed complete when the Department notifies the applicant in writing that the application is complete.

(5) Nothing in this subsection shall preclude the applicant and the Department from mutually agreeing to an extension of any time limit specified in this subsection.

(6) After the application is completed, the Department may request additional information from an applicant but only when necessary to clarify, modify, or supplement previously submitted material. Requests for such additional information will not render an application incomplete.

(d) The Department may deny a permit for any cause specified in Health and Safety Code section 25186.

(e) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken under Health and Safety Code sections 25186, 25187, 25189.3 or 25200.8. If an applicant does not respond to three or more notices of deficiency regarding the same or different deficiencies or responds with substantially incomplete or substantially unsatisfactory information on three or more occasions, the Department shall initiate proceedings to deny the permit application in accordance with the requirements of this chapter. This section does not preclude the Department from initiating permit denial proceedings prior to sending three notices of deficiency.

(f) If the Department decides that a site visit is necessary for any reason in conjunction with the processing of an application, the Department shall notify the applicant and a date shall be scheduled.

(g) The effective date of an application is the date on which the Department notifies the applicant that the application is complete as provided in subsection (c) of this section.

(h) For each application from a major new HWM facility the Department shall, no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule shall specify target dates by which the Department intends to:

(1) prepare a draft permit;

(2) give public notice;

(3) complete the public comment period, including any public hearing; and

(4) issue a final permit.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 2, Government Code, Sections 25159, 25159.5, 25186, 25187, 25189.3, 25199.6, 25200, and 25200.8, Health and Safety Code; 40 CFR Section 124.3.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect amending subsection (c)(1) filed 3–15–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 11).

§ 66271.4. Request for Modification, Revocation and Reissuance, or Revocation of Permits.

(a) Permits may be modified, revoked and reissued, or revoked either at the request of any interested person (including the permittee) or upon the Department's initiative. However, permits may only be modified, revoked and reissued, or revoked for the reasons specified in section 66270.41 or 66270.43 or Health and Safety Code section 25186. All requests shall be in writing and shall contain facts or reasons supporting the request.

(b) If the Department decides the request is not justified, the Department shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or revocation are not subject to public notice, comment, or hearings.

(c)(1) If the Department tentatively decides to modify or revoke and reissue a permit under section 66270.41 or 66270.42(c), the Department shall prepare a draft permit under section 66271.5 incorporating the proposed changes. The Department may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, the Department shall require the submission of a new application.

(2) In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(3) "Class 1 and 2 modifications" as defined in sections 66270.42(a) and (b) are not subject to the requirements of this section.

(d) All draft permits prepared under this section shall be based on the administrative record as defined in section 66271.8.

(e) If the Department decides to revoke a permit, it shall initiate adjudicatory proceedings under the Administrative Procedure Act (Gov. Code § 11500 et seq.) by serving an Accusation on the holder of the permit.

NOTE: Authority cited: Sections 25150, 25159 and 58012, Health and Safety Code. Reference: Sections 25159.5, 25186, 25286.1 and 25200, Health and Safety Code; 40 CFR Section 124.5.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of section heading, subsections (a)–(c)(1) and (c)(3), repealer of subsection (d), subsection relettering, new subsection (e) and amendment of NOTE filed 7–19–95; operative 8–18–95 (Register 95, No. 29).

§ 66271.5. Draft Permits.

(a) Once an application is complete, the Department shall tentatively decide whether to prepare a draft permit or to deny the application.

(b) If the Department tentatively decides to deny the permit application, the Department shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under this section. See subsection (d) of this section. If the Department's final decision (see sec–

tion 66271.14) is that the tentative decision to deny the permit application was incorrect, the Department shall withdraw the notice of intent to deny and proceed to prepare a draft permit under subsection (c) of this section.

(c) If the Department decides to prepare a draft permit, it shall prepare a draft permit that contains the following information:

(1) all conditions under sections 66270.30 and 66270.32;

(2) all compliance schedules under section 66270.33;

(3) all monitoring requirements under section 66270.31; and

(4) standards for transfer, treatment, storage, and/or disposal and other permit conditions under section 66270.30.

(d) All draft permits prepared under this section shall be accompanied by a statement of basis (section 66271.6) or fact sheet (section 66271.7), and shall be based on the administrative record (section 66271.8), publicly noticed (section 66271.9) and made available for public comment (section 66271.10). The Department shall give notice of opportunity for a public hearing (section 66271.11), issue a final decision (section 66271.14) and respond to comments (section 66271.16). An appeal may be taken under section 66271.18. Draft permits shall be accompanied by a fact sheet if required under section 66271.7.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 124.6.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66271.6. Statement of Basis.

The Department shall prepare a statement of basis for every draft permit for which a fact sheet under section 66271.7 is not prepared. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny, reasons supporting the tentative decision. The statement of basis shall be sent to the applicant and, on request, to any other person.

NOTE: Authority cited: Sections 25150, 25159 and 58012, Health and Safety Code. Reference: Sections 25159.5, 25186, 25186.1 and 25200, Health and Safety Code; 40 CFR Section 124.7.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of section and NOTE filed 7–19–95; operative 8–18–95 (Register 95, No. 29).

§ 66271.7. Fact Sheet.

(a) A fact sheet shall be prepared for every draft permit for a major HWM facility, and for every draft permit which the Department finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Department shall send this fact sheet to the applicant and, on request, to any other person.

(b) The fact sheet shall include, when applicable:

(1) a brief description of the type of facility or activity which is the subject of the draft permit;

(2) the type and quantity of wastes, fluids, or pollutants which are proposed to be or are being transferred, treated, stored, disposed of, injected, emitted, or discharged;

(3) a brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by section 66271.8;

(4) reasons why any requested variances or alternatives to required standards do or do not appear justified;

(5) a description of the procedures for reaching a final decision on the draft permit including:

(A) the beginning and ending dates of the comment period under section 66271.9 and the address where comments will be received;

(B) procedures for requesting a hearing and the nature of that hearing; and

(C) any other procedures by which the public may participate in the final decision;

(6) name and telephone number of a person to contact for additional information.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 124.8.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66271.8. Administrative Record for Draft Permits.

(a) The provisions of a draft permit prepared under section 66271.5 shall be based on the administrative record as defined in this section.

(b) For preparing a draft permit under section 66271.5, the record shall consist of:

(1) the application, if required, and any supporting data furnished by the applicant;

(2) the draft permit or notice of intent to deny the application;

(3) the statement of basis (section 66271.6) or fact sheet (section 66271.7);

(4) all documents cited in the statement of basis or fact sheet; and

(5) other documents contained in the supporting file for the draft permit.

(c) Material readily available at the Department or published material that is generally available, and that is included in the administrative record under subsection (b) of this section, need not be physically included with the rest of the record as long as it is specifically referred to in the statement of basis or the fact sheet.

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25159.5 and 25200, Health and Safety; 40 CFR Section 124.9.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of subsections (a) and (b)(2) and NOTE filed 7–19–95; operative 8–18–95 (Register 95, No. 29).

§ 66271.9. Public Notice of Permit Actions and Public Comment Period.

(a) Scope.

(1) The Department shall give public notice that the following actions have occurred:

(A) a permit application has been tentatively denied under section 66271.5(b);

(B) a draft permit has been prepared under section 66271.5(c);

(C) a hearing has been scheduled under section 66271.11; or

(D) an appeal has been granted under section 66271.18(b).

(2) No public notice is required when a request for permit modification, revocation and reissuance, or revocation is denied under section 66271.4(b). Written notice of that denial shall be given to the requester and to the permittee.

(3) Public notices may describe more than one permit or permit action.

(b) Timing.

(1) Public notice of the preparation of a draft permit (including a notice of intent to deny a permit application) required under subsection (a) of this section shall allow at least 45 days for public comment.

(2) Public notice of a public hearing shall be given at least 30 days before the hearing. Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.

(c) Methods. Public notice of activities described in subsection (a)(1) of this section shall be given by the following methods:

(1) by mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this subsection may waive his or her rights to receive notice for any classes and categories of permits):

(A) the applicant;

(B) any other agency which the Department knows has issued or is required to issue a permit for the same facility or activity (including USEPA);

(C) federal and State agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers,

and other appropriate government authorities, including any affected States;

(D) persons on a mailing list developed by:

1. including those who request in writing to be on the list;

2. soliciting persons for "area lists" from participants in past permit proceedings in that area; and

3. notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as USEPA Region IX and State-funded newsletters, environmental bulletins, or State law journals; (The Department may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Department may delete from the list the name of any person who fails to respond to such a request.)

(E) any unit of local government having jurisdiction over the area where the facility is proposed to be located, and each State agency having any authority under State law with respect to the construction or operation of such facility;

(2)(A) for major permits, publication of a notice in a daily or weekly newspaper within the area affected by the facility or activity;

(B) for all permits, publication of a notice in a daily or weekly major local newspaper of general circulation and broadcast over local radio stations;

(3) any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(d) Contents. (1) All public notices. All public notices issued under this chapter shall contain the following minimum information:

(A) name and address of the office processing the permit action for which notice is being given;

(B) name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;

(C) a brief description of the business conducted at the facility or activity described in the permit application or the draft permit;

(D) name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit , statement of basis or fact sheet, and the application; and

(E) a brief description of the comment procedures required by sections 66271.10 and 66271.11 and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision;

(F) the location of the administrative record required by section 66271.8, the times at which the record will be open for public inspection, and a statement that all data submitted by the applicant is available as part of the administrative record;

(G) any additional information considered necessary or proper.

(2) Public notices for hearings. In addition to the general public notice described in subsection (d)(1) of this section, the public notice of a hearing under section 66271.11, shall contain the following information:

(A) reference to the date of previous public notices relating to the permit;

(B) date, time, and place of the hearing; and

(C) a brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(e) In addition to the general public notice described in subsection (d)(1) of this section, all persons identified in subsections (c)(1)(A), (B), and (C) of this section shall be mailed a copy of the fact sheet or statement of basis, the permit application, and the draft permit.

NOTE: Authority cited: Sections 25150, 25159 and 58012, Health and Safety Code. Reference: Sections 25159.5 and 25200, Health and Safety Code; 40 CFR Section 124.10.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

2. Amendment of subsection (a)(2) and NOTE filed 7–19–95; operative 8–18–95 (Register 95, No. 29).

§ 66271.10. Public Comments and Requests for Public Hearings.

During the public comment period provided under section 66271.9, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in section 66271.16.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 124.11.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66271.11. Public Hearings.

(a)(1) The Department shall hold a public hearing whenever it finds, on the basis of requests, a significant degree of public interest in a draft permit(s).

(2) The Department may also hold a public hearing at the Department's discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision.

(3)(A) The Department shall hold a public hearing whenever the Department receives written notice of opposition to a draft permit and a request for a hearing within 45 days of public notice under section 66271.9(b)(1).

(B) Whenever possible the Department shall schedule a hearing under this section at a location convenient to the nearest population center to the proposed facility.

(4) Public notice of the hearing shall be given as specified in section 66271.9.

(b) Whenever a public hearing will be held, the Department shall designate a Presiding Officer for the hearing who shall be responsible for its scheduling and orderly conduct.

(c) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under section 66271.9 shall automatically be extended to the close of any public hearing under this section. The Department may also extend the comment period by so stating at the hearing.

(d) A tape recording or written transcript of the hearing shall be made available to the public.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 124.12.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66271.12. Obligation to Raise Issues and Provide Information During the Public Comment Period.

All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Department's tentative decision to deny an application or prepare a draft permit is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably available arguments and factual grounds supporting their position, including all supporting material, by the close of the public comment period (including any public hearing) under section 66271.9. All supporting materials shall be included in full and may not be incorporated by reference, unless they are already part of the administrative record in the same proceeding, or consist of State or Federal statutes and regulations, Department or USEPA documents of general applicability, or other generally available reference materials. Commenters shall make supporting material not already included in the administrative record available to the Department as directed by the Department. A comment period longer than 45 days may be necessary to give commenters a reasonable opportunity to comply

with the requirements of this section. Additional time shall be granted under section 66271.9 to the extent that a commenter who requests additional time demonstrates the need for such time.

NOTE: Authority cited: Sections 25150, 25159 and 58012, Health and Safety Code. Reference: Sections 25159.5 and 25200, Health and Safety Code; 40 CFR Section 124.13.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of section and NOTE filed 7–19–95; operative 8–18–95 (Register 95, No. 29).

§ 66271.13. Reopening of the Public Comment Period.

(a)(1) The Department may order the public comment period reopened if the procedures of this subsection could expedite the decisionmaking process. When the public comment period is reopened under this subsection, all persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Department's tentative decision to deny an application or prepare a draft permit is inappropriate, shall submit all reasonably available factual grounds supporting their position, including all supporting material, by a date, not less than sixty days after public notice under subsection (a)(2) of this section, set by the Department. Thereafter, any person may file a written response to the material filed by any other person, by a date, not less than twenty days after the date set for filing of the material, set by the Department.

(2) Public notice of any comment period under this subsection shall identify the issues which the requirements of section 66271.13(a) shall apply.

(3) On the Department's own motion or on the request of any person, the Department may direct that the requirements of subsection (a)(1) of this section shall apply during the initial comment period where it reasonably appears that issuance of the permit will be contested and that applying the requirements of subsection (a)(1) of this section will substantially expedite the decisionmaking process. The notice of the draft permit shall state whenever this has been done.

(4) A comment period of longer than 60 days will often be necessary in complicated proceedings to give commenters a reasonable opportunity to comply with the requirements of this section. Commenters may request longer comment periods and they shall be granted under section 66271.9 to the extent they appear necessary.

(b) If any data, information or arguments submitted during the public comment period, including information or arguments required under section 66271.12, appear to raise substantial new questions concerning a permit, the Department may take one or more of the following actions:

(1) prepare a new draft permit, appropriately modified, under section 66271.5;

(2) prepare a revised statement of basis under section 66271.6, a fact sheet or revised fact sheet under section 66271.7 and reopen the comment period under section 66271.13; or

(3) reopen or extend the comment period under section 66271.9 to give interested persons an opportunity to comment on the information or arguments submitted.

(c) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under section 66271.9 shall define the scope of the reopening.

(d) Public notice of any of the above actions shall be issued under section 66271.9.

NOTE: Authority cited: Sections 25150, 25159 and 58012, Health and Safety Code. Reference: Sections 25159.5 and 25200, Health and Safety Code; 40 CFR Section 124.14.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of section and NOTE filed 7–19–95; operative 8–18–95 (Register 95, No. 29).

§ 66271.14. Issuance and Effective Date of Permit.

(a) After the close of the public comment period under section 66271.9 on a draft permit, the Department shall issue a final permit decision (or a decision to deny a permit for the active life of a hazardous waste management facility or unit under section 66270.29.) Final permit decisions shall be made and noticed in accordance with the provisions of Health and Safety Code section 25199.6 and chapter 4.5 (commencing with section 65920) of division 1 of Title 2 of the Government Code. The Department shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for appealing a decision on a permit. For the purposes of this section, a final permit decision means a final decision to issue, deny, modify, or revoke and reissue a permit.

(b) A final permit decision (or a decision to deny a permit for the active life of a hazardous waste management facility or unit under section 66270.29) shall become effective 30 days after the service of notice of the decision unless:

(1) a later effective date is specified in the decision; or

(2) review is requested under section 66271.18; or

(3) No comments requested a change in the draft permit, in which case the permit shall become effective immediately upon issuance.

NOTE: Authority cited: Sections 25150, 25159 and 58012, Health and Safety Code. Reference: Sections 25159.5, 25186, 25186.1 and 25200, Health and Safety Code; 40 CFR Section 124.15.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of subsections (a) and (b)(2) and NOTE filed 7–19–95; operative 8–18–95 (Register 95, No. 29).

§ 66271.15. Stays of Contested Permit Conditions.

(a) Stays. (1) If a request for review of a permit is granted, the effect of the contested permit conditions shall be stayed and shall not be subject to judicial review pending final Department action. If the permit involves a new facility, the applicant shall be without a permit for the proposed new facility.

(2) Uncontested conditions which are not severable from those contested shall be stayed together with the contested conditions. Stayed provisions of permits for existing facilities shall be identified by the Department. All other provisions of the permit for the existing facility shall remain fully effective and enforceable.

(b) Stays based on cross effects. A stay may be granted based on the grounds that an appeal to the Department under section 66271.18 of one permit may result in changes to another permit only when each of the permits involved has been appealed to the Department and the Department has accepted each appeal.

(c) Any facility or activity holding an existing permit shall:

(1) comply with the conditions of that permit during any modification or revocation and reissuance proceeding under section 66271.4; and

(2) to the extent conditions of any new permit are stayed under this section, comply with the conditions of the existing permit which correspond to the stayed conditions, unless compliance with the existing conditions would be technologically incompatible with compliance with other conditions of the new permit which have not been stayed.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 124.16.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66271.16. Response to Comments.

(a) At the time that any final permit decision is issued under section 66271.14, the Department shall issue a response to comments. This response shall:

(1) specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

(2) briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.

(b) Any documents cited in the response to comments shall be included in the administrative record for the final permit decision as defined in section 66271.17. If new points are raised or new material supplied during the public comment period, the Department may document its response to those matters by adding new materials to the administrative record.

(c) The response to comments shall be available to the public.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 124.17.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66271.17. Administrative Record for Final Permit.

(a) The Department shall base final permit decisions under section 66271.14 on the administrative record defined in this section.

(b) The administrative record for any final permit shall consist of the administrative record for the draft permit and:

(1) all comments received during the public comment period provided under section 66271.9 (including any extension or reopening under section 66271.13);

(2) the tape or transcript of any hearing(s) held under section 66271.11;

(3) any written materials submitted at such a hearing;

(4) the response to comments required by section 66271.16 and any new material placed in the record under that section;

(5) other documents contained in the supporting file for the permit; and

(6) the final permit.

(c) The additional documents required under subsection (b) of this section shall be added to the record as soon as possible after their receipt. The record shall be complete on the date the final permit is issued.

(d) This section applies to all final permits when the draft permit was subject to the administrative record requirements of section 66271.8.

(e) Material readily available at the Department, or published materials which are generally available and which are included in the administrative record under the standards of this section or of section 66271.16 ("Response to comments"), need not be physically included in the same file as the rest of the record as long as it is specifically referred to in the statement of basis or fact sheet or in the response to comments.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 124.18.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66271.18. Appeal of Decisions to Grant, Issue, Modify, or Deny Permits.

(a) Within 30 days after a final permit decision [or a decision under section 66270.29 to deny a permit for the active life of a hazardous waste management facility or unit] has been issued under section 66271.14, any person who filed comments on that draft permit or participated in the public hearing may petition the Department to review any condition of the permit decision. Any person who failed to file comments or failed to participate in the public hearing on the draft permit may petition for administrative review only to the extent of the changes from the draft to the final permit decision. Any person may petition the Department to review any condition of a temporary authorization under section 66270.42(f). The 30–day period within which a person may request review under this section begins with the service of notice of the Department's action unless a later date is specified in that notice. The petition shall include a statement of the reasons supporting that review, including a demonstration that any issues being raised were raised during the public comment period (including any public hearing) to the extent required by these regulations and when appropriate, a showing that the condition in question is based on:

(1) a finding of fact or conclusion of law which is clearly erroneous, or

(2) an exercise of discretion or an important policy consideration which the Department should, in its discretion, review.

(b) The Department may also decide on its initiative to review any condition of any permit issued under this chapter. The Department shall act under this subsection within 30 days of the service date of notice of the Department's action.

(c) Within a reasonable time following the filing of the petition for review, the Department shall issue an order either granting or denying the petition for review. Public notice of any grant of review by the Department under subsection (a) of this section shall be given as provided in section 66271.9. Public notice shall set forth a briefing schedule for the appeal and shall state that any interested person may file a written argument. Notice of denial of review shall be sent only to the person(s) requesting review.

(d) When a review has been initiated pursuant to subsection (a) or (b) of this section, the order denying review or the decision on the merits shall constitute the Department's final permit decision, and shall be effective on the date of mailing of the order denying review or decision on the merits.

(e) A final permit decision on a petition to the Department under subsection (a) of this section is a prerequisite to seeking judicial review of the Department's decision.

(f) If a permit decision is pending on the date this section is amended to eliminate a hearing under the Administrative Procedure Act, this section shall be applied as follows:

(1) If a Statement of Issues or Accusation was issued prior to the effective date of the amendment, the proceeding shall continue under the regulation in effect when the Administrative Procedure Act proceeding was initiated.

(2) If a Statement of Issues or Accusation has not been issued prior to the effective date of the amendment, the proceeding shall be governed by the amended regulation.

NOTE: Authority cited: Sections 25150, 25159 and 58012, Health and Safety Code. Reference: Sections 25159.5, 25186, 25186.1 and 25200, Health and Safety Code; 40 CFR Section 124.19.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of section heading, subsections (a)(2) and (c), repealer of subsections (d)–(h), new subsections (d)–(f)(2) and amendment of NOTE filed 7–19–95; operative 8–18–95 (Register 95, No. 29).
3. Amendment of subsection (d) filed 4–4–2002; operative 5–4–2002 (Register 2002, No. 14).

§ 66271.19. Appeal of Decisions to Suspend and/or Revoke Permits.

(a) A decision to suspend and/or revoke a permit shall be initiated by serving the holder of the permit with a temporary suspension order and/or accusation.

(b) Proceedings shall be conducted as provided by HSC sections 25186.1 and 25186.2 and the Administrative Procedure Act, Government Code section 11500 et seq.

(c) If the permit holder fails to request a hearing by filing a notice of defense within 15 days after being served with an accusation, the Department shall take final action by issuing an order revoking the permit.

NOTE: Authority cited: Sections 25150, 25159 and 58012, Health and Safety Code. Reference: Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2, Government Code; and Sections 25186, 25186.1 and 25186.2, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Renumbering and amendment of former section 66271.19 to new section 66271.20 and new section filed 7–19–95; operative 8–18–95 (Register 95, No. 29).

§ 66271.20. Appeal of Decision on Class of Modification.

(a) The Department's decision on whether a permit modification is Class 1, 2 or 3 pursuant to section 66270.42(d) or 66270.42.5(e) or (f) shall be made in writing and may be appealed only by the person who requested the modification.

(b) Within fifteen (15) days after the date of receipt of the written decision on the classification of a permit modification, the person who requested the modification may petition the Department to review the decision, pursuant to section 66271.18. The petition shall be in writing and shall include a statement of the reasons supporting a different classification.

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25159.5 and 25200.15, Health and Safety Code.

HISTORY

1. Renumbering and amendment of former section 66271.19 to new section 66271.20 filed 7–19–95; operative 8–18–95 (Register 95, No. 29).
2. Renumbering of former section 66271.20 to section 66271.21 and new section 66271.20 filed 4–4–2002; operative 5–4–2002 (Register 2002, No. 14).

§ 66271.21. Computation of Time.

(a) Any time period scheduled to begin on the occurrence of an act or event shall begin on the day after the act or event.

(b) Any time period scheduled to begin before the occurrence of an act or event shall be computed so that the period ends on the day before the act or event.

(c) If the final day of any time period falls on a weekend or legal holiday, the time period shall be extended to the next working day.

(d) Whenever a party or interested person has the right or is required to act within a prescribed period after the service of notice or other paper upon that party or person by mail, three days shall be added to the prescribed time.

NOTE: Authority cited: Sections 25150, 25159 and 58012, Health and Safety Code. Reference: Sections 25159.5, 25186, 25186.1, 25186.2 and 25200, Health and Safety Code; 40 CFR Section 124.20.

HISTORY

1. Renumbering of former section 66271.20 to section 66271.21 filed 4–4–2002; operative 5–4–2002 (Register 2002, No. 14).

Article 2. Specific Procedures Applicable to RCRA Permits

§ 66271.31. Pre–Application Public Meeting and Notice.

(a) Applicability. The requirements of this section shall apply to all RCRA part B applications seeking initial RCRA permits for hazardous waste management units. The requirements of this section shall also apply to RCRA part B applications seeking renewal of permits for such units, where the renewal application is proposing a significant change in facility operations. For the purposes of this section, a "significant change" is any change that would qualify as a class 3 permit modification under 40 CFR, section 270.42. The requirements of this section do not apply to permit modifications under section 66270.42 or to applications when either are submitted for the sole purpose of conducting post–closure activities or post–closure activities and corrective action at a facility.

(b) Prior to the submission of a part B RCRA permit application for a facility, the applicant must hold at least one meeting with the public in order to solicit questions from the community and inform the community of proposed hazardous waste management activities. The applicant shall post a sign–in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses.

(c) The applicant shall submit a summary of the meeting, along with a list of attendees and their addresses developed under subsection (b) of this section, and copies of any written comments or materials submitted at the meeting, to the Department as a part of the part B application, in accordance with section 66270.14(b).

(d) The applicant must provide public notice of the pre–application meeting at least 30 days prior to the meeting. The applicant must maintain, and provide to the Department upon request, documentation of the notice.

(1) The applicant shall provide public notice in all of the following forms:

(A) A newspaper advertisement. The applicant shall publish a notice, fulfilling the requirements in subsection (d)(2) of this section, in a newspaper of general circulation in the county or equivalent jurisdiction that hosts the proposed location of the facility. In addition, the Director shall instruct the applicant to publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdictions, where the Director determines that such publication is necessary to inform the affected public. The notice must be published as a display advertisement.

(B) A visible and accessible sign. The applicant shall post a notice on a clearly marked sign at or near the facility, fulfilling the requirements in subsection (d)(2) of this section. If the applicant places the sign on the facility property, then the sign must be large enough to be readable from the nearest point where the public would pass by the site.

(C) A broadcast media announcement. The applicant shall broadcast a notice, fulfilling the requirements in subsection (d)(2) of this section, at least once on at least one local radio station or television station. The applicant may employ another medium with prior approval of the Director.

(D) A notice to the Department. The applicant shall send a copy of the newspaper notice to the permitting agency and to the appropriate units of State and local government, in accordance with section 66271.9(c)(1)(E).

(2) The notices required under subsection (d)(1) of this section must include:

(A) The date, time, and location of the meeting;

(B) A brief description of the purpose of the meeting;

(C) A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location;

(D) A statement encouraging people to contact the facility at least 72 hours before the meeting if they need special access to participate in the meeting; and

(E) The name, address, and telephone number of a contact person for the applicant.

NOTE: Authority cited: Sections 25150, 25159, 58004 and 58012, Health and Safety Code. Reference: Sections 25159.5, 25186, 25186.1, 25186.2 and 25200, Health and Safety Code; 40 CFR Section 124.31.

HISTORY

1. Change without regulatory effect adding new article 2 (sections 66271.31–66271.33) and new section filed 12–19–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 51).
2. Change without regulatory effect amending subsections (a), (c) and (d)(1)(A)–(d)(2) filed 6–18–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 25).

§ 66271.32. Public Notice Requirements at the Application Stage.

(a) Applicability. The requirements of this section shall apply to all RCRA part B applications seeking initial RCRA permits for hazardous waste management units. The requirements of this section shall also apply to RCRA part B applications seeking renewal of permits for such units under section 66270.51. The requirements of this section do not apply to permit modifications under section 66270.42 or permit applications submitted for the sole purpose of conducting post–closure activities or post–closure activities and corrective action at a facility.

(b) Notification at application submittal.

(1) The Director shall provide public notice as set forth in section 66271.9(c)(1)(D), and notice to appropriate units of State and Local government as set forth in section 66271.9(c)(1)(E), that a part B permit application has been submitted to the Department and is available for review.

(2) The notice shall be published within a reasonable period of time after the application is received by the Director. The notice must include:

(A) The name and telephone number of the applicant's contact person;

(B) The name and telephone number of the Department's office charged with issuance of the permit, and a mailing address to which information, opinions, and inquiries may be directed throughout the permit review process;

(C) An address to which people can write in order to be put on the facility mailing list;

(D) The location where copies of the permit application and any supporting documents can be viewed and copied;

(E) A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location on the front page of the notice; and

(F) The date that the application was submitted.

(c) Concurrent with the notice required under section 66271.32(b) of this article, the Director shall place the permit application and any supporting documents in a location accessible to the public in the vicinity of

the facility or at the Department office charged with the issuance of the permit.

NOTE: Authority cited: Sections 25150, 25159, 58004 and 58012, Health and Safety Code. Reference: Sections 25159.5, 25186, 25186.1, 25186.2 and 25200, Health and Safety Code; 40 CFR Section 124.32.

HISTORY

1. Change without regulatory effect adding new section filed 12–19–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 51).
2. Change without regulatory effect amending subsection (d)(2)(B) filed 6–18–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 25).

§ 66271.33. Information Repository.

(a) Applicability. The requirements of this section apply to all applications seeking RCRA permits for hazardous waste management units.

(b) For facilities applying for or operating under RCRA permits, the Director may assess the need, on a case–by–case basis, for an information repository. When assessing the need for an information repository, the Director shall consider a variety of factors, including: the level of public interest; the type of facility; the presence of an existing repository; and the proximity to the nearest copy of the administrative record. If the Director determines, at any time after submittal of a permit application, that there is a need for a repository, then the Director shall notify the facility that it must establish and maintain an information repository. (See section 66270.30(m) for similar provisions relating to the information repository during the life of a permit).

(c) The information repository shall contain all documents, reports, data, and information deemed necessary by the Director to fulfill the purposes for which the repository is established. The Director shall have the discretion to limit the contents of the repository.

(d) The information repository shall be located and maintained at a site chosen by the facility. If the Director finds the site unsuitable for the purposes and persons for which it was established, due to problems with the location, hours of availability, access, or other relevant considerations, then the Director shall specify a more appropriate site.

(e) The Director shall specify requirements for informing the public about the information repository. At a minimum, the Director shall require the facility to provide a written notice about the information repository to all individuals on the facility mailing list.

(f) The facility owner/operator shall be responsible for maintaining and updating the repository with appropriate information throughout a time period specified by the Director. The Director may close the repository at his or her discretion, based on the factors in subsection (b) of this section.

NOTE: Authority cited: Sections 25150, 25159, 58004 and 58012, Health and Safety Code. Reference: Sections 25159.5, 25186, 25186.1, 25186.2 and 25200, Health and Safety Code; 40 CFR Section 124.33.

HISTORY

1. Change without regulatory effect adding new section filed 12–19–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 51).
2. Change without regulatory effect amending subsection (f) filed 6–18–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 25).
3. Change without regulatory effect amending subsection (f) filed 1–13–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 2).

Chapter 22. Enforcement, Inspections, and Informant Rewards

Article 1. Inspection Authority, Designation of Enforcement Authority, and Awards

§ 66272.1. Inspections.

(a) The Director or any duly authorized representative of the Department may, at any reasonable hour of the day, do any of the following:

(1) enter a factory, plant, construction site, waste disposal site, transfer facility, establishment or any other area, place or environment where wastes are stored, handled, treated, processed, disposed of, or treated to recover resources, inspect the premises and gather evidence on existing conditions and procedures;

(2) carry out any sampling activities necessary to carry out chapter 6.5, commencing with section 25100, of division 20 of the Health and Safety Code, including obtaining samples from any individual or taking samples from the property of any person or from any vehicle which any authorized representative of the department or a local health officer reasonably believes has transported or is transporting hazardous waste. However, upon request, split samples shall be given to the person from whom, or from whose property or vehicle, the samples were obtained;

(3) stop and inspect any vehicle reasonably suspected of transporting hazardous wastes when accompanied by a uniformed police officer in a clearly marked vehicle;

(4) conduct tests, analyses and evaluations to determine whether the waste is hazardous waste or whether the requirements of chapter 6.5 of division 20 of the Health and Safety Code are met;

(5) photograph any waste, waste container, waste container label, vehicle, waste treatment process, waste disposal site, or condition constituting a violation of law found during an inspection;

(6) inspect and copy any records, reports, test results, or other information required to carry out chapter 6.5 of division 20 of the Health and Safety Code.

(b) During the inspection, the inspector shall comply with all reasonable security, safety and sanitation measures. In addition, the inspector shall comply with reasonable precautionary measures specified by the operator.

(c) A report listing any violations found during the inspection shall be prepared by the inspector and shall be kept on file in the Department. A copy of the report shall be provided to the operator.

(d) If corrections are needed, the operator shall provide to the Department, as directed, a written plan of correction which states the actions to be taken and the expected dates of completion.

(e) Upon request of the inspector, the operator of the facility being inspected shall retain evidence as instructed by the inspector for a period not to exceed 30 days.

NOTE: Authority cited: Sections 208, 25150 and 25187.7, Health and Safety Code; Section 58012, Governor's Reorganizational Plan # 1 of 1991. Reference: Sections 25150, 25185 and 25187.7, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment adding heading for article 1 (sections 66272.1–66272.30) and amendment of NOTE filed 6–21–93; operative 6–21–93 pursuant to Government Code section 11346.2(d) (Register 93, No. 26).

§ 66272.10. Designation of Enforcement Authority.

(a) The Department may designate a local public officer to enforce the standards and regulations adopted by the Department pursuant to section 25150 of the Health and Safety Code if it is demonstrated to the satisfaction of the Department that:

[The next page is 758.305.]

(1) the prospective designee has appropriate jurisdiction and competency, facilities and personnel to perform the functions specified by the Department; and

(2) other activities of the governmental entity which the prospective designee represents will not compromise the designee's ability to enforce those regulations equitably and effectively.

(b) The Department may designate a local public officer to enforce all requirements of this division if it is demonstrated to the satisfaction of the Department that:

(1) the prospective designee can meet the requirements cited in (a) above;

(2) the prospective designee has countywide jurisdiction;

(3) the governmental entity which the prospective designee represents does not operate a hazardous waste facility;

(4) the prospective designee's personnel are qualified to the satisfaction of the Department;

(5) the prospective designee's laboratory support is adequate to determine whether wastes contain hazardous materials;

(6) the prospective designee's personnel will be able to provide adequate reviews, inspections, and monitoring of hazardous waste and enforcement of the requirements of this division.

(c) The Department shall not authorize a local public officer to enforce any requirement of this division if such person does not meet the requirements specified in (a) above.

(d) The Department shall not authorize a local public officer to enforce all requirements of this division if such person does not meet the requirements specified in (b) above.

NOTE: Authority cited: Section 25150 and 25187.7, Health and Safety Code. Section 58012, Governor's Reorganizational Plan #1 of 1991. Reference: Sections 25180 and 25187.7, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of section heading, subsections (a) and (a)(1) and NOTE filed 6–21–93; operative 6–21–93 pursuant to Government Code section 11346.2(d) (Register 93, No. 26).

§ 66272.20. Rewards for Informants.

(a) An application for reward under the provisions of section 25191.7 of the Health and Safety Code shall be submitted to the Department or the county not later than 60 days after a final judgment has been entered or 60 days after the period for appeal of a judgment has expired.

(b) An application for a reward to be paid by the Department pursuant to section 25191.7(a) of the Health and Safety Code shall be filed on a form provided by the Department (DHS 8073, revised 6/83) and shall be signed with the applicant's name.

(c) The Department and counties shall not disclose the names of informants or reward applicants unless such names are otherwise publicly disclosed, as part of a judicial proceeding.

NOTE: Authority cited: Section 25191.7, Health and Safety Code. Reference: Section 25191.7, Health and Safety Code and Sections 6254 and 6255, Government Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66272.30. Award and Payment of Reward Claims.

(a) In determining whether the applicant supplied information that materially contributed to the imposition of judgments against persons for violations specified in section 25191.7 of the Health and Safety Code, the Department or the county shall consider, but shall not be limited to considering the following factors:

(1) the validity of the information;

(2) the nature and extent of detail supplied, including, as available, dates, times, places, names, and other details;

(3) the date and time of receipt of the information;

(4) information regarding the reported violation(s) possessed by the Department or the county prior to receipt of the applicant's information;

(5) the nature of the reported violations as compared with other violations alleged in the civil or criminal complaint; and

(6) the findings in the judgment.

(b) The Department or the county shall notify the applicant in writing of its decision to grant or deny a reward.

(c) Decisions by the Department or the county to grant or deny rewards shall be final.

(d) Approved reward claims shall be paid in accordance with subdivisions (a) and (b) of section 25191.7 of the Health and Safety Code. Successful reward applicants shall be paid by check within 30 days of collection and deposit of the penalties described in section 25191.7(a) or (b).

NOTE: Authority cited: Section 25191.7, Health and Safety Code. Reference: Section 25191.7, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

Article 2. Delegation of Enforcement Order Authority

§ 66272.31. Definitions.

NOTE: Authority cited: Sections 25150 and 25187.7, Health and Safety Code; Section 58012, Governor's Reorganizational Plan #1 of 1991. Reference: Section 25187.7, Health and Safety Code.

HISTORY

1. New article 2 (sections 66272.31–66272.50) and section filed 6–21–93; operative 6–21–93 pursuant to Government Code section 11346.2(d) (Register 93, No. 26).
2. Editorial correction of article 2 heading (Register 95, No. 21).
3. Change without regulatory effect repealing article 2 (sections 66272.31–66272.50) and section filed 4–1–96 pursuant to section 100, title 1, California Code of Regulations; operative 1–1–97 (Register 96, No. 14).

§ 66272.32. Application Procedure.

NOTE: Authority cited: Sections 25150 and 25187.7, Health and Safety Code; Section 58012, Governor's Reorganizational Plan #1 of 1991. Reference: Section 25187.7, Health and Safety Code.

HISTORY

1. New section filed 6–21–93; operative 6–21–93 pursuant to Government Code section 11346.2(d) (Register 93, No. 26).
2. Change without regulatory effect repealing section filed 4–1–96 pursuant to section 100, title 1, California Code of Regulations; operative 1–1–97 (Register 96, No. 14).

§ 66272.33. Eligibility Requirements.

NOTE: Authority cited: Sections 25150 and 25187.7, Health and Safety Code; Section 58012, Governor's Reorganizational Plan #1 of 1991. Reference: Section 25187.7, Health and Safety Code.

HISTORY

1. New section filed 6–21–93; operative 6–21–93 pursuant to Government Code section 11346.2(d) (Register 93, No. 26).
2. Change without regulatory effect repealing section filed 4–1–96 pursuant to section 100, title 1, California Code of Regulations; operative 1–1–97 (Register 96, No. 14).

§ 66272.34. Criteria for Selection.

NOTE: Authority cited: Sections 25150 and 25187.7, Health and Safety Code; Section 58012, Governor's Reorganizational Plan #1 of 1991. Reference: Section 25187.7, Health and Safety Code.

HISTORY

1. New section filed 6–21–93; operative 6–21–93 pursuant to Government Code section 11346.2(d) (Register 93, No. 26).
2. Change without regulatory effect repealing section filed 4–1–96 pursuant to section 100, title 1, California Code of Regulations; operative 1–1–97 (Register 96, No. 14).

§ 66272.36. Delegation Agreement.

NOTE: Authority cited: Sections 25150 and 25187.7, Health and Safety Code; Section 58012, Governor's Reorganizational Plan #1 of 1991. Reference: Section 25187.7, Health and Safety Code.

HISTORY

1. New section filed 6–21–93; operative 6–21–93 pursuant to Government Code section 11346.2(d) (Register 93, No. 26).
2. Change without regulatory effect repealing section filed 4–1–96 pursuant to section 100, title 1, California Code of Regulations; operative 1–1–97 (Register 96, No. 14).

§ 66272.38. Revocation of the Delegation Agreement.

NOTE: Authority cited: Sections 25150 and 25187.7, Health and Safety Code; Section 58012, Governor's Reorganizational Plan #1 of 1991. Reference: Section 25187.7, Health and Safety Code.

HISTORY

1. New section filed 6–21–93; operative 6–21–93 pursuant to Government Code section 11346.2(d) (Register 93, No. 26).
2. Change without regulatory effect repealing section filed 4–1–96 pursuant to section 100, title 1, California Code of Regulations; operative 1–1–97 (Register 96, No. 14).

§ 66272.40. Representation in Appeals.

NOTE: Authority cited: Sections 25150 and 25187.7, Health and Safety Code; Section 58012, Governor's Reorganizational Plan #1 of 1991. Reference: Section 25187.7, Health and Safety Code.

HISTORY

1. New section filed 6–21–93; operative 6–21–93 pursuant to Government Code section 11346.2(d) (Register 93, No. 26).
2. Change without regulatory effect repealing section filed 4–1–96 pursuant to section 100, title 1, California Code of Regulations; operative 1–1–97 (Register 96, No. 14).

§ 66272.42. Coordination with Local Prosecutors and the Department.

NOTE: Authority cited: Sections 25150 and 25187.7, Health and Safety Code; Section 58012, Governor's Reorganizational Plan #1 of 1991. Reference: Section 25187.7, Health and Safety Code.

HISTORY

1. New section filed 6–21–93; operative 6–21–93 pursuant to Government Code section 11346.2(d) (Register 93, No. 26).
2. Change without regulatory effect repealing section filed 4–1–96 pursuant to section 100, title 1, California Code of Regulations; operative 1–1–97 (Register 96, No. 14).

§ 66272.44. Training and Experience Required.

NOTE: Authority cited: Sections 25150 and 25187.7, Health and Safety Code; Section 58012, Governor's Reorganizational Plan #1 of 1991. Reference: Section 25187.7, Health and Safety Code.

HISTORY

1. New section filed 6–21–93; operative 6–21–93 pursuant to Government Code section 11346.2(d) (Register 93, No. 26).
2. Change without regulatory effect repealing section filed 4–1–96 pursuant to section 100, title 1, California Code of Regulations; operative 1–1–97 (Register 96, No. 14).

§ 66272.46. Reporting Requirements.

NOTE: Authority cited: Sections 25150 and 25187.7, Health and Safety Code; Section 58012, Governor's Reorganizational Plan #1 of 1991. Reference: Section 25187.7, Health and Safety Code.

HISTORY

1. New section filed 6–21–93; operative 6–21–93 pursuant to Government Code section 11346.2(d) (Register 93, No. 26).
2. Change without regulatory effect repealing section filed 4–1–96 pursuant to section 100, title 1, California Code of Regulations; operative 1–1–97 (Register 96, No. 14).

§ 66272.48. Review Committee.

NOTE: Authority cited: Sections 25150 and 25187.7, Health and Safety Code; Section 58012, Governor's Reorganizational Plan #1 of 1991. Reference: Section 25187.7, Health and Safety Code.

HISTORY

1. New section filed 6–21–93; operative 6–21–93 pursuant to Government Code section 11346.2(d) (Register 93, No. 26).
2. Change without regulatory effect repealing section filed 4–1–96 pursuant to section 100, title 1, California Code of Regulations; operative 1–1–97 (Register 96, No. 14).

§ 66272.50. No Duplication of Orders.

NOTE: Authority cited: Sections 25150 and 25187.7, Health and Safety Code; Section 58012, Governor's Reorganizational Plan #1 of 1991. Reference: Section 25187.7, Health and Safety Code.

HISTORY

1. New section filed 6–21–93; operative 6–21–93 pursuant to Government Code section 11346.2(d) (Register 93, No. 26).
2. Change without regulatory effect repealing section filed 4–1–96 pursuant to section 100, title 1, California Code of Regulations; operative 1–1–97 (Register 96, No. 14).

Article 3. Assessment of Administrative Penalties

§ 66272.60. Applicability.

(a) This article only applies to the assessment of administrative penalties in administrative enforcement orders issued pursuant to Health and Safety Code Section 25187. This article does not apply to minor violations as defined in Health and Safety Code Section 25117.6 unless the minor violation is subject to a penalty in accordance with Health and Safety Code Section 25187.8(g). This article does not apply to penalties assessed pursuant to Health and Safety Code Sections 25244.18(d)(2), 25244.21(a) and 25244.21(b) regarding requirements for source reduction evaluation review, plans, and reports. This article does not apply to the settlement of any enforcement action.

(b) For purposes of this article, "Enforcement Agency" is defined as any department, unified program agency, local health officer, or local public officer having the authority to issue administrative orders pursuant to Health and Safety Code Section 25187.

(c) The Enforcement Agency shall, pursuant to Health and Safety Code Section 25180(d), determine whether the person being assessed a penalty is being treated equally and consistently with regard to the same types of violations previously assessed against other violators.

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25117.6, 25180(d), 25187, 25187.8(g), 25189.2, 25244.18(d)(2), 25244.21(a) and 25244.21(b), Health and Safety Code; and Section 11425.50, Government Code.

HISTORY

1. New article 3 (sections 66272.60–66272.67) and section filed 7–15–97; operative 7–1–97 (Register 97, No. 29). This interim regulation is exempt from most of the procedural requirements of the Administrative Procedure Act and from review by the Office of Administrative Law pursuant to Government Code section 11400.20 and will expire on December 31, 1998 unless earlier terminated or replaced by, or readopted as, permanent regulations.
2. Expired by its own terms on 12–31–98 (Register 99, No. 3).
3. New article 3 (sections 66272.60–66272.68) and section filed 1–14–99 as an emergency; operative 1–14–99 (Register 99, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–14–99 or emergency language will be repealed by operation of law on the following day.
4. New article 3 (sections 66272.60–66272.68) and section refiled 5–10–99 as an emergency; operative 5–10–99 (Register 99, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–7–99 or emergency language will be repealed by operation of law on the following day.
5. New article 3 (sections 66272.60–66272.68) and section refiled 9–7–99 as an emergency; operative 9–7–99 (Register 99, No. 37). A Certificate of Compliance must be transmitted to OAL by 1–5–2000 or emergency language will be repealed by operation of law on the following day.
6. Repealer of article 3 (sections 66272.60–66272.68) and section by operation of Government Code section 11346.1(g) (Register 2000, No. 38).
7. New article 3 (sections 66272.60–66272.69) and section filed 12–13–2000 as an emergency; operative 12–13–2000 (Register 2000, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–12–2001 or emergency language will be repealed by operation of law on the following day.
8. New article 3 (sections 66272.60–66272.69) and section refiled 3–30–2001 as an emergency; operative 4–13–2001 (Register 2001, No. 13). A Certificate of Compliance must be transmitted to OAL by 8–13–2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 3–30–2001 order, including amendment of section and NOTE, transmitted to OAL 7–19–2001 and filed 8–28–2001 (Register 2001, No. 35).

§ 66272.61. Penalty Calculation.

Administrative penalties assessed in administrative enforcement orders issued pursuant to Health and Safety Code Section 25187 shall be assessed following the procedures set forth in this article. The penalty assessed for any violation in accordance with this article shall not exceed the maximum penalty specified in statute.

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25187 and 25189.2, Health and Safety Code; and Section 11425.50, Government Code.

HISTORY

1. New section filed 7–15–97; operative 7–1–97 (Register 97, No. 29). This interim regulation is exempt from most of the procedural requirements of the Administrative Procedure Act and from review by the Office of Administrative Law pursuant to Government Code section 11400.20 and will expire on December

31, 1998 unless earlier terminated or replaced by, or readopted as, permanent regulations.

2. Expired by its own terms on 12–31–98 (Register 99, No. 3).
3. New section filed 1–14–99 as an emergency; operative 1–14–99 (Register 99, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–14–99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 5–10–99 as an emergency; operative 5–10–99 (Register 99, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–7–99 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 9–7–99 as an emergency; operative 9–7–99 (Register 99, No. 37). A Certificate of Compliance must be transmitted to OAL by 1–5–2000 or emergency language will be repealed by operation of law on the following day.
6. Repealed by operation of Government Code section 11346.1(g) (Register 2000, No. 38).
7. New section filed 12–13–2000 as an emergency; operative 12–13–2000 (Register 2000, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–12–2001 or emergency language will be repealed by operation of law on the following day.
8. New section refiled 3–30–2001 as an emergency; operative 4–13–2001 (Register 2001, No. 13). A Certificate of Compliance must be transmitted to OAL by 8–13–2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 3–30–2001 order, including amendment of section, transmitted to OAL 7–19–2001 and filed 8–28–2001 (Register 2001, No. 35).

§ 66272.62. Determining the Initial Penalty for Each Violation.

(a) The Enforcement Agency shall determine an initial penalty for each violation, considering potential harm and the extent of deviation from hazardous waste management requirements. The Enforcement Agency shall use the matrix set forth in Subsection 66272.62(d) to determine the initial penalty for each violation.

(b) Potential Harm of the Violation

(1) The Enforcement Agency shall consider potential harm to public health and safety and the environment when using the matrix.

(2) The categories for degree of potential harm are defined as follows:

(A) Major — The characteristics and/or amount of the substance involved present a major threat to human health or safety or the environment and the circumstances of the violation indicate a high potential for harm or, in the case of a violation of financial requirements, coverage is lacking or substantially below the required amount or it is certain or probable that the coverage would be absent or inadequate;

(B) Moderate — The characteristics and/or amount of the substance involved do not present a major threat to human health or safety or the environment, and the circumstances of the violation do not indicate a high potential for harm or, in the case of a violation of financial requirements, coverage is significantly below the required amount or it is possible that the coverage would be absent or inadequate;

(C) Minimal — The threat presented by the characteristics and the amount of the substance or by the circumstances of the violation are low or, in the case of a violation of financial requirements, coverage is slightly below the required amount or it is unlikely that the coverage would be absent or inadequate.

(3) In determining the degree of potential harm, the Enforcement Agency shall consider the following factors:

(A) The characteristics of the substance involved,

(B) The amount of the substance involved,

(C) The extent to which human life or health is threatened,

(D) The extent to which animal life is threatened,

(E) The extent to which the environment is threatened, and

(F) The extent to which potable water supplies are threatened.

(4) Potential harm for violations or financial requirements shall be determined by considering the amount of closure, postclosure, or corrective action costs for which there is no financial assurance or the amount of required liability coverage that is absent, and the likelihood that injury or damages, if they occur, will not be compensated due to an inadequacy in the coverage.

(5) A violation must involve the actual management of hazardous waste including the absence of adequate financial assurance for closure, postclosure, corrective action or financial liability coverage, as distinguished from being a "record–keeping" violation, for the violation to have a major potential for harm. "Record–keeping," for purposes of this article, means a requirement to record information, to retain records, and to have documents available for inspection. "Record–keeping" does not include a substantive requirement such as the requirement to have a contingency plan, a waste analysis plan, or a closure plan. The following examples illustrate what is considered "record–keeping" and what is considered a violation that could have a major potential for harm.

(A) A failure to record inspections that were in fact completed is a record–keeping violation and would not have a major potential for harm. A failure to conduct inspections according to the schedule is not a record–keeping violation and could have a major potential for harm depending on the circumstances.

(B) A failure to retain a copy of a manifest is a record–keeping violation and would not have a major potential for harm. A failure to use a manifest for a shipment of hazardous waste is not a record–keeping violation and could have a major potential for harm depending on the circumstances.

(C) A failure to have available for inspection a waste analysis plan that does in fact exist is a record–keeping violation and would not have a major potential for harm. A failure to have a waste analysis plan, or a failure to have a waste analysis plan available to staff who are to implement the plan, is not a record–keeping violation and could have a major potential for harm depending on the circumstances.

(6) Financial violations that are strictly paperwork errors or omissions that do not affect actual functioning of adequate financial assurance for closure, postclosure, corrective action, or financial liability coverage are record–keeping violations. Violations involving the absence of adequate financial assurance for closure, postclosure, corrective action, or financial liability coverage are hazardous waste management violations, not record–keeping violations.

(7) Groundwater monitoring record–keeping is a fundamental part of the groundwater monitoring requirements. Groundwater monitoring record–keeping violations may have a major, moderate, or minimal potential for harm. The category selected for potential harm shall be based on the extent to which the violation may lead directly to environmental harm, have a potential for harm, or cause an inability to detect releases to groundwater.

(c) Extent of Deviation of the Violation

(1) The Enforcement Agency shall consider the extent of deviation from hazardous waste management requirements when using the matrix set forth in this section.

(2) The categories for extent of deviation from requirements are defined as follows:

(A) Major — The act deviates from the requirement to such an extent that the requirement is completely ignored and none of its provisions are complied with, or the function of the requirement is rendered ineffective because some of its provisions are not complied with.

(B) Moderate — The act deviates from the requirement, but it functions to some extent although not all of its important provisions are complied with.

(C) Minimal — The act deviates somewhat from the requirement. The requirement functions nearly as intended, but not as well as if all provisions had been met.

(3) For requirements with more than one part, the Enforcement Agency shall consider the extent of violation in terms of the most significant requirement.

(4) For a single requirement, the range of potential deviation from the requirement may vary. For example, if a facility has no contingency plan, the deviation would be major. If a facility has a contingency plan but significant elements are omitted, the deviation would be moderate. If a facility has a contingency plan with only one or two minor elements missing, the deviation would be minimal.

(d) The matrix set forth in this subsection shall be used to determine the initial penalty for a violation. The Enforcement Agency shall select a penalty amount from the range provided in the matrix cell that corresponds to the appropriate extent of deviation and the potential harm categories. The numbers in parenthesis in each cell of the following matrix are the midpoints of the range.

Determination of Initial Penalty Matrix
(in dollars)

Extent of Deviation	*Potential Harm*		
	Major	*Moderate*	*Minimal*
Major	25,000 (22,500) 20,000	20,000 (17,500) 15,000	15,000 (10,500) 6,000
Moderate	20,000 (17,500) 15,000	15,000 (10,500) 6,000	6,000 (4,000) 2,000
Minimal	15,000 (10,500) 6,000	6,000 (4,000) 2,000	2,000 (1,000) 0

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25187 and 25189.2, Health and Safety Code; and Section 11425.50, Government Code.

HISTORY

1. New section filed 7–15–97; operative 7–1–97 (Register 97, No. 29). This interim regulation is exempt from most of the procedural requirements of the Administrative Procedure Act and from review by the Office of Administrative Law pursuant to Government Code section 11400.20 and will expire on December 31, 1998 unless earlier terminated or replaced by, or readopted as, permanent regulations.
2. Expired by its own terms on 12–31–98 (Register 99, No. 3).
3. New section filed 1–14–99 as an emergency; operative 1–14–99 (Register 99, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–14–99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 5–10–99 as an emergency; operative 5–10–99 (Register 99, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–7–99 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 9–7–99 as an emergency; operative 9–7–99 (Register 99, No. 37). A Certificate of Compliance must be transmitted to OAL by 1–5–2000 or emergency language will be repealed by operation of law on the following day.
6. Repealed by operation of Government Code section 11346.1(g) (Register 2000, No. 38).
7. New section filed 12–13–2000 as an emergency; operative 12–13–2000 (Register 2000, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–12–2001 or emergency language will be repealed by operation of law on the following day.
8. New section refiled 3–30–2001 as an emergency; operative 4–13–2001 (Register 2001, No. 13). A Certificate of Compliance must be transmitted to OAL by 8–13–2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 3–30–2001 order, including amendment of section, transmitted to OAL 7–19–2001 and filed 8–28–2001 (Register 2001, No. 35).

§ 66272.63. Initial Penalty Adjustment Factors.

(a) After determining the initial penalty, the Enforcement Agency shall adjust the initial penalty based on the violator's intent in committing the violation using the following guidelines:

Adjustment Factors for Violator's Intent

Adjustment Factor	*Circumstance*
Downward Adjustment of 100 percent	Violation was completely beyond the control of the violator.
Downward Adjustment of 0 to 50 percent	Violation occurred despite good faith efforts to comply with regulation(s).
No Adjustment	Violation indicated neither good faith efforts nor intentional failure to comply.
Upward Adjustment of 50 percent to 100 percent	Violation was a result of intentional failure to comply.

(b) Adjustment of the initial penalty in accordance with subsection (a) may result in an adjusted initial penalty that is higher or lower than the range presented in the originally selected matrix cell.

(c) The initial penalty shall be increased by the amount of any economic benefit gained or cost of compliance avoided by the violator as a result of noncompliance up to the statutory maximum for each violation. Economic benefit includes, but is not limited to, avoided costs, increased profits, having the use of capital from delayed or avoided costs, and avoided interest.

(d) The adjusted initial penalty for a violation shall not exceed the statutory maximum.

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25187 and 25189.2, Health and Safety Code; and Section 11425.50, Government Code.

HISTORY

1. New section filed 7–15–97; operative 7–1–97 (Register 97, No. 29). This interim regulation is exempt from most of the procedural requirements of the Administrative Procedure Act and from review by the Office of Administrative Law pursuant to Government Code section 11400.20 and will expire on December 31, 1998 unless earlier terminated or replaced by, or readopted as, permanent regulations.
2. Expired by its own terms on 12–31–98 (Register 99, No. 3).
3. New section filed 1–14–99 as an emergency; operative 1–14–99 (Register 99, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–14–99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 5–10–99 as an emergency; operative 5–10–99 (Register 99, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–7–99 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 9–7–99 as an emergency; operative 9–7–99 (Register 99, No. 37). A Certificate of Compliance must be transmitted to OAL by 1–5–2000 or emergency language will be repealed by operation of law on the following day.
6. Repealed by operation of Government Code section 11346.1(g) (Register 2000, No. 38).
7. New section filed 12–13–2000 as an emergency; operative 12–13–2000 (Register 2000, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–12–2001 or emergency language will be repealed by operation of law on the following day.
8. New section refiled 3–30–2001 as an emergency; operative 4–13–2001 (Register 2001, No. 13). A Certificate of Compliance must be transmitted to OAL by 8–13–2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 3–30–2001 order, including amendment of section, transmitted to OAL 7–19–2001 and filed 8–28–2001 (Register 2001, No. 35).

§ 66272.64. Multiple Violations.

(a) At the discretion of the Enforcement Agency, a single initial penalty may be assessed for multiple violations. Multiple violations subject to this section are multiple instances of the same violation, where each instance is a violation in itself.

(b) The assessment of a single initial penalty may be appropriate for multiple violations in the following cases:

(1) The facility has violated the same requirement at one or more locations (e.g. units) within the facility;

(2) The violation occurs on separate occasions, unless the facility has been notified of the violation and has had sufficient time to correct the violation, and the violation is not a violation that continues uninterrupted for more than one day;

(3) When violations are not independent or are not substantially distinguishable. For such violations, the Enforcement Agency shall consider the extent of violation in terms of the most significant violation.

(c) Where it is necessary to deprive the violator of the economic benefit of multiple violations, the Enforcement Agency shall cite such violations separately and assess an initial penalty for each violation.

(d) The single initial penalty for multiple violations is to be determined as provided in Sections 66272.62 and 66272.63.

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25187 and 25189.2, Health and Safety Code; and Section 11425.50, Government Code.

HISTORY

1. New section filed 7–15–97; operative 7–1–97 (Register 97, No. 29). This interim regulation is exempt from most of the procedural requirements of the Admin-

istrative Procedure Act and from review by the Office of Administrative Law pursuant to Government Code section 11400.20 and will expire on December 31, 1998 unless earlier terminated or replaced by, or readopted as, permanent regulations.
2. Expired by its own terms on 12–31–98 (Register 99, No. 3).
3. New section filed 1–14–99 as an emergency; operative 1–14–99 (Register 99, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–14–99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 5–10–99 as an emergency; operative 5–10–99 (Register 99, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–7–99 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 9–7–99 as an emergency; operative 9–7–99 (Register 99, No. 37). A Certificate of Compliance must be transmitted to OAL by 1–5–2000 or emergency language will be repealed by operation of law on the following day.
6. Repealed by operation of Government Code section 11346.1(g) (Register 2000, No. 38).
7. New section filed 12–13–2000 as an emergency; operative 12–13–2000 (Register 2000, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–12–2001 or emergency language will be repealed by operation of law on the following day.
8. New section refiled 3–30–2001 as an emergency; operative 4–13–2001 (Register 2001, No. 13). A Certificate of Compliance must be transmitted to OAL by 8–13–2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 3–30–2001 order, including amendment of section and NOTE, transmitted to OAL 7–19–2001 and filed 8–28–2001 (Register 2001, No. 35).

§ 66272.65. Multiday Violations.

(a) Each day a violation continues is a separate and distinct violation. The penalty for a continuing violation shall be determined according to this section.

(1) The initial penalty for the first day of violation shall be determined as provided in Sections 66272.62 and 66272.63;

(2) For days following the first day of violation, the multiday component of the penalty shall be calculated by determining two percent of the adjusted initial penalty and multiplying that value by the number of days the violation occurred after the initial day.

(b) If the Enforcement Agency fails to respond in a timely manner to the violator's written response to an inspection report, the Enforcement Agency may not seek penalties for continuing violations in accordance with Health and Safety Code Section 25185(c)(3).

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25185, 25187 and 25189.2, Health and Safety Code; and Section 11425.50, Government Code.

HISTORY

1. New section filed 7–15–97; operative 7–1–97 (Register 97, No. 29). This interim regulation is exempt from most of the procedural requirements of the Administrative Procedure Act and from review by the Office of Administrative Law pursuant to Government Code section 11400.20 and will expire on December 31, 1998 unless earlier terminated or replaced by, or readopted as, permanent regulations.
2. Expired by its own terms on 12–31–98 (Register 99, No. 3).
3. New section filed 1–14–99 as an emergency; operative 1–14–99 (Register 99, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–14–99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 5–10–99 as an emergency; operative 5–10–99 (Register 99, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–7–99 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 9–7–99 as an emergency; operative 9–7–99 (Register 99, No. 37). A Certificate of Compliance must be transmitted to OAL by 1–5–2000 or emergency language will be repealed by operation of law on the following day.
6. Repealed by operation of Government Code section 11346.1(g) (Register 2000, No. 38).
7. New section filed 12–13–2000 as an emergency; operative 12–13–2000 (Register 2000, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–12–2001 or emergency language will be repealed by operation of law on the following day.
8. New section refiled 3–30–2001 as an emergency; operative 4–13–2001 (Register 2001, No. 13). A Certificate of Compliance must be transmitted to OAL by 8–13–2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 3–30–2001 order, including amendment of section, transmitted to OAL 7–19–2001 and filed 8–28–2001 (Register 2001, No. 35).

§ 66272.66. Minor Violations Subject to a Penalty.

When a "minor violation," as defined by Health and Safety Code Section 25117.6, is subject to a penalty for any of the reasons specified in Health and Safety Code Section 25187.8(g), including that a penalty is warranted or required by federal law, the penalty for that violation shall be determined in accordance with this Article. Written findings that set forth the basis for the Enforcement Agency's determination to assess a penalty for a minor violation shall be made in accordance with Health and Safety Code Section 25187.8(g)(2).

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25117.6, 25187.8 and 25189 Health and Safety Code; and Section 11425.50, Government Code.

HISTORY

1. New section filed 7–15–97; operative 7–1–97 (Register 97, No. 29). This interim regulation is exempt from most of the procedural requirements of the Administrative Procedure Act and from review by the Office of Administrative Law pursuant to Government Code section 11400.20 and will expire on December 31, 1998 unless earlier terminated or replaced by, or readopted as, permanent regulations.
2. Expired by its own terms on 12–31–98 (Register 99, No. 3).
3. New section filed 1–14–99 as an emergency; operative 1–14–99 (Register 99, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–14–99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 5–10–99 as an emergency; operative 5–10–99 (Register 99, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–7–99 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 9–7–99 as an emergency; operative 9–7–99 (Register 99, No. 37). A Certificate of Compliance must be transmitted to OAL by 1–5–2000 or emergency language will be repealed by operation of law on the following day.
6. Repealed by operation of Government Code section 11346.1(g) (Register 2000, No. 38).
7. New section filed 12–13–2000 as an emergency; operative 12–13–2000 (Register 2000, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–12–2001 or emergency language will be repealed by operation of law on the following day.
8. Editorial correction of typographical error in first sentence of emergency text filed 12–27–2000 (Register 2000, No. 52).
9. New section refiled 3–30–2001 as an emergency; operative 4–13–2001 (Register 2001, No. 13). A Certificate of Compliance must be transmitted to OAL by 8–13–2001 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 3–30–2001 order, including amendment of section, transmitted to OAL 7–19–2001 and filed 8–28–2001 (Register 2001, No. 35).

§ 66272.67. Base Penalty.

(a) If a violation is a one day occurrence, the base penalty for that violation is the adjusted initial penalty as determined pursuant to Sections 66272.62 and 66272.63.

(b) The base penalty for multiple violations is the adjusted initial penalty determined pursuant to Section 66272.64.

(c) The base penalty for multiday violations is the adjusted initial penalty for the first day of violation determined pursuant to Sections 66272.62 and 66272.63 plus the penalty for the additional days of violation pursuant to Section 66272.65.

(d) The total base penalty for an enforcement action is the sum of the base penalties for all violations.

(e) The total base penalty shall not exceed the statutory maximum.

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25187 and 25189.2 Health and Safety Code; and Section 11425.50, Government Code.

HISTORY

1. New section filed 7–15–97; operative 7–1–97 (Register 97, No. 29). This interim regulation is exempt from most of the procedural requirements of the Administrative Procedure Act and from review by the Office of Administrative Law pursuant to Government Code section 11400.20 and will expire on December 31, 1998 unless earlier terminated or replaced by, or readopted as, permanent regulations.
2. Expired by its own terms on 12–31–98 (Register 99, No. 3).
3. New section filed 1–14–99 as an emergency; operative 1–14–99 (Register 99, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–14–99

or emergency language will be repealed by operation of law on the following day.

4. New section refiled 5–10–99 as an emergency; operative 5–10–99 (Register 99, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–7–99 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 9–7–99 as an emergency; operative 9–7–99 (Register 99, No. 37). A Certificate of Compliance must be transmitted to OAL by 1–5–2000 or emergency language will be repealed by operation of law on the following day.
6. Repealed by operation of Government Code section 11346.1(g) (Register 2000, No. 38).
7. New section filed 12–13–2000 as an emergency; operative 12–13–2000 (Register 2000, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–12–2001 or emergency language will be repealed by operation of law on the following day.
8. New section refiled 3–30–2001 as an emergency; operative 4–13–2001 (Register 2001, No. 13). A Certificate of Compliance must be transmitted to OAL by 8–13–2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 3–30–2001 order, including amendment of section, transmitted to OAL 7–19–2001 and filed 8–28–2001 (Register 2001, No. 35).

§ 66272.68. Adjustments to the Total Base Penalty.

The Enforcement Agency shall adjust the total base penalty considering each of the following adjustment factors:

(a) Cooperation: The Enforcement Agency shall consider the violator's cooperation and efforts to return to compliance. Cooperation in achieving compliance is the standard and all necessary good faith efforts to comply with requirements must be made. Adjustments shall be based on the violator's efforts to return to compliance after being notified of the violations by the Enforcement Agency. The adjustment shall be made using the following guidelines:

Adjustment Factors for Cooperation

Degree of Cooperation /Effort	*Adjustment Factor*	*Circumstance*
Extraordinary	Downward adjustment of up to 25 percent	Violator exceeded the minimum requirements in returning to compliance or returned to compliance faster than requested.
Good Faith	No adjustment	Violator demonstrated a cooperative effort.
Recalcitrance	Upward adjustment of up to 25 percent	Violator failed to cooperate, delayed compliance, created unnecessary obstacles to achieving compliance, or the compliance submittal failed to meet requirements.
Refusal	Upward adjustment of 50 to 100 percent	Violator intentionally failed to return to compliance or to allow clean–up operations to take place. This does not include refusal to allow inspections.

(b) Prophylactic Effect: The total base penalty may be adjusted upward or downward to ensure that the penalty is sufficient to provide a prophylactic effect on both the violator and the regulated community as a whole.

(c) Compliance History: The total base penalty may be decreased by five percent for each previous consecutive Enforcement Agency inspection report that has had no violations noted, up to a total reduction of ten percent. A separate, additional downward adjustment of 15 percent may be granted if the violator has a current International Organization for Standardization (ISO) 14001 Certificate. The total base penalty may be increased if the violator has demonstrated a history of noncompliance over the past five (5) years. The maximum adjustment factor for compliance history is an upward adjustment of 100 percent. When adjusting the penalty for compliance history, the Enforcement Agency shall consider the following criteria:

(1) Previous violations at the site in question receive more weight than previous violations at another site owned or operated by the same person;

(2) Recent violations receive more weight than older violations;

(3) The same or substantially similar previous violations receive more weight than previous unrelated violations.

(d) Ability to Pay: If the violator has provided the Enforcement Agency with the financial information necessary to assess the violator's ability to pay, the payment of the final penalty may be extended over a period of time if immediate, full payment would cause, in the judgment of the Enforcement Agency, extreme financial hardship. If extending the penalty payment over a period of time would cause, in the judgment of the Enforcement Agency, extreme financial hardship, the penalty may be reduced. No adjustment for ability to pay may be made if the penalty has been adjusted upward because of failure to cooperate, pursuant to subsection (a), or because of compliance history, pursuant to subsection (c).

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25187 and 25189.2 Health and Safety Code; and Section 11425.50, Government Code.

HISTORY

1. New section filed 1–14–99 as an emergency; operative 1–14–99 (Register 99, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–14–99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–10–99 as an emergency; operative 5–10–99 (Register 99, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–7–99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–7–99 as an emergency; operative 9–7–99 (Register 99, No. 37). A Certificate of Compliance must be transmitted to OAL by 1–5–2000 or emergency language will be repealed by operation of law on the following day.
4. Repealed by operation of Government Code section 11346.1(g) (Register 2000, No. 38).
5. New section filed 12–13–2000 as an emergency; operative 12–13–2000 (Register 2000, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–12–2001 or emergency language will be repealed by operation of law on the following day.
6. New section refiled 3–30–2001 as an emergency; operative 4–13–2001 (Register 2001, No. 13). A Certificate of Compliance must be transmitted to OAL by 8–13–2001 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 3–30–2001 order, including amendment of section, transmitted to OAL 7–19–2001 and filed 8–28–2001 (Register 2001, No. 35).

§ 66272.69. Final Penalty.

The final penalty consists of the total base penalty, as defined in Section 66272.67, with any adjustments made pursuant to the adjustment factors set forth in Section 66272.68. The final penalty shall not exceed the statutory maximum.

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25187 and 25189.2 Health and Safety Code; and Section 11425.50, Government Code.

HISTORY

1. New section filed 12–13–2000 as an emergency; operative 12–13–2000 (Register 2000, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–12–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–30–2001 as an emergency; operative 4–13–2001 (Register 2001, No. 13). A Certificate of Compliance must be transmitted to OAL by 8–13–2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 3–30–2001 order, including amendment of section, transmitted to OAL 7–19–2001 and filed 8–28–2001 (Register 2001, No. 35).

Chapter 23. Standards for Universal Waste Management

Article 1. General

§ 66273.1. Scope.

(a) This chapter establishes requirements for managing the following:

(1) Batteries as described in section 66273.2;

(2) Thermostats as described in section 66273.4;

(3) Lamps as described in section 66273.5 (including, but not limited to, M003 Wastes);

(4) Cathode ray tube materials as described in section 66273.6;

(5) Universal waste electronic devices as described in section 66273.3;

(6) Aerosol cans as specified in Health and Safety Code section 25201.16;

(7) Mercury–containing motor vehicle switches [including, but not limited to, mercury–containing motor vehicle light switches as specified in Health and Safety Code section 25214.5 (M001 Wastes), and motor vehicles that contain such switches (M001 Wastes)], as described in section 66273.7.1;

(8) Non–automotive mercury switches and products that contain such switches (including, but not limited to, M002 Wastes), as described in section 66273.7.2;

(9) Dental amalgam wastes, as described in section 66273.7.3;

(10) Pressure or vacuum gauges, as described in section 66273.7.4;

(11) Mercury–added novelties (including, but not limited to, M004 Wastes), as described in section 66273.7.5;

(12) Mercury counterweights and dampers, as described in section 66273.7.6;

(13) Mercury thermometers, as described in section 66273.7.7

(14) Dilators and weighted tubing, as described in section 66273.7.8;

(15) Mercury–containing rubber flooring, as described in section 66273.7.9; and

(16) Mercury gas flow regulators, as described in section 66273.10.

(b) This chapter provides an alternative set of management standards in lieu of regulation as hazardous wastes under chapters 10 through 16, 18, and 20 through 22 of this division.

NOTE: Authority cited: Sections 25141, 25150, 25150.6, 25201, 25214.9, 25214.10.2, 25219.1 and 58012, Health and Safety Code; and Sections 42475.1 and 42475.2, Public Resources Code. Reference: Sections 25141, 25150, 25159.5, 25201, 25212, 25214.6, 25214.9, 25219, 25219.1 and 25219.2, Health and Safety Code; 40 CFR Section 273.1.

HISTORY

1. New chapter 23 (articles 1–7), article 1 (sections 66273.1–66273.9) and section filed 3–6–2000 as an emergency; operative 3–6–2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2000 or emergency language will be repealed by operation of law on the following day.
2. New chapter 23 (articles 1–7), article 1 (sections 66273.1–66273.9) and section refiled 6–29–2000 as an emergency; operative 7–6–2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–3–2000 or emergency language will be repealed by operation of law on the following day.
3. New chapter 23 (articles 1–7), article 1 (sections 66273.1–66273.9) and section refiled 11–1–2000 as an emergency; operative 11–4–2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–5–2001 or emergency language will be repealed by operation of law on the following day.
4. New chapter 23 (articles 1–7), article 1 (sections 66273.1–66273.9) and section refiled 3–6–2001 as an emergency; operative 3–6–2001 (Register 2001, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2001 or emergency language will be repealed by operation of law on the following day.
5. New chapter 23 (articles 1–7), article 1 (sections 66273.1–66273.9) and section refiled 6–26–2001 as an emergency; operative 7–5–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–2–2001 or emergency language will be repealed by operation of law on the following day.
6. Amendment of subsections (a)(2)–(3) and new subsection (a)(4) filed 8–3–2001 as an emergency; operative 8–3–2001 (Register 2001, No. 31). A Certificate of Compliance must be transmitted to OAL by 12–3–2001 or emergency language will be repealed by operation of law on the following day.
7. New chapter 23 (articles 1–7), article 1 (sections 66273.1–66273.9) and section refiled 11–2–2001 as an emergency; operative 11–3–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–4–2002 or emergency language will be repealed by operation of law on the following day.
8. Amendment of subsections (a)(2)–(3) and new subsection (a)(4) refiled 11–30–2001 as an emergency; operative 11–30–2001 (Register 2001, No. 48). A Certificate of Compliance must be transmitted to OAL by 4–2–2002 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 11–2–2001 order transmitted to OAL 12–27–2001 and filed 2–8–2002 (Register 2002, No. 6).
10. Amendment refiled 3–26–2002 as an emergency; operative 4–12–2002 (Register 2002, No. 13). A Certificate of Compliance must be transmitted to OAL by 8–12–2002 or emergency language will be repealed by operation of law on the following day.
11. Amendment refiled 8–6–2002 as an emergency; operative 8–6–2002 (Register 2002, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–4–2002 or emergency language will be repealed by operation of law on the following day.
12. Amendment refiled 11–25–2002 as an emergency; operative 12–5–2002 (Register 2002, No. 48). A Certificate of Compliance must be transmitted to OAL by 4–4–2003 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 11–25–2002 order, including amendment of subsections (a)(3) and (a)(4), new subsections (a)(5)–(a)(7) and amendment of NOTE, transmitted to OAL 12–24–2002 and filed 2–3–2003 (Register 2003, No. 6).
14. Amendment of section and NOTE filed 2–13–2003; operative 3–15–2003 (Register 2003, No. 7).
15. Amendment of subsection (a)(5) and NOTE filed 6–7–2004 as an emergency; operative 6–7–2004 (Register 2004, No. 24). Pursuant to Public Resources Code section 42475.2, a Certificate of Compliance must be transmitted to OAL by 6–7–2006 or emergency language will be repealed by operation of law on the following day.
16. Amendment of subsection (a)(5) and NOTE refiled 6–5–2006 as an emergency, including further amendment of NOTE; operative 6–5–2006 (Register 2006, No. 23). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.
17. Amendment of subsection (a)(5) and NOTE refiled 5–8–2008 as an emergency; operative 5–8–2008 (Register 2008, No. 19). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.

§ 66273.2. Applicability—Batteries.

(a) Batteries covered under chapter 23. The requirements of this chapter apply to persons managing batteries, as described in section 66273.9, except those listed in subsection (b) of this section.

(b) Batteries not covered under this chapter. The requirements of this chapter do not apply to persons managing the following batteries:

(1) Automotive type spent lead–acid batteries. Automotive–type spent lead acid storage batteries are managed under article 7 of chapter 16. Small sealed lead–acid storage batteries are not automotive type lead–acid batteries.

(2) Batteries, as described in section 66273.9, that are not yet wastes under chapter 11, including those that do not meet the criteria for waste generation in subsection (c).

(3) Batteries, as described in Section 66273.9, that do not exhibit a characteristic of a hazardous waste as set forth in article 3 of chapter 11.

(c) Generation of waste batteries.

(1) A used battery becomes a waste on the date it is discarded (e.g., when sent for reclamation).

(2) An unused battery becomes a waste on the date the handler decides to discard it.

NOTE: Authority cited: Sections 25141, 25150, 25219.1 and 58012, Health and Safety Code. Reference: Sections 25141, 25150, 25159.5, 25219, 25219.1 and 25219.2, Health and Safety Code; 40 CFR Section 273.2.

HISTORY

1. New section filed 3–6–2000 as an emergency; operative 3–6–2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2000 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6–29–2000 as an emergency; operative 7–6–2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–3–2000 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11–1–2000 as an emergency; operative 11–4–2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–5–2001 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 3–6–2001 as an emergency; operative 3–6–2001 (Register 2001, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2001 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 6–26–2001 as an emergency; operative 7–5–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–2–2001 or emergency language will be repealed by operation of law on the following day.
6. New section refiled 11–2–2001 as an emergency; operative 11–3–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–4–2002 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 11–2–2001 order transmitted to OAL 12–27–2001 and filed 2–8–2002 (Register 2002, No. 6).

§ 66273.3. Applicability—Electronic Devices.

(a) Universal waste electronic devices covered under chapter 23.

(1) The requirements of this chapter apply to persons managing electronic devices, as described in section 66273.9, except those listed in subsection (b) of this section.

(2) Discarded electronic devices that are hazardous solely because the device exhibits the characteristic of toxicity specified in section 66261.24 may be managed as a universal waste.

(b) Electronic devices not covered under chapter 23.

The requirements of this chapter do not apply to persons managing the following electronic devices:

(1) Electronic devices that are not yet wastes under chapter 11. Subsection (c) of this section describes when electronic devices become wastes.

(2) Electronic devices that do not exhibit a characteristic of a hazardous waste as set forth in article 3 of chapter 11 and that are not otherwise identified as hazardous waste under chapter 11.

(3) Electronic devices that exhibit any characteristic of a hazardous waste other than the characteristic of toxicity.

(4) Electronic devices that are destined for disposal or are disposed to a class I landfill, in which case the universal waste electronic device shall be managed as hazardous waste under chapters 10 through 22.

(5) Electronic devices that are managed as hazardous waste under chapters 10 through 22 of this division;

(6) Electronic devices that are exempted pursuant to subsection 66273.8(c);

(7) Electronic devices that were previously identified as waste under chapter 11, but are no longer identified as a waste (e.g., a discarded universal waste electronic device that is refurbished and is returned to service).

(c) Generation of waste electronic devices.

(1) A used electronic device becomes a waste on the date it is discarded (e.g., when sent for reclamation).

(2) An unused electronic device becomes a waste on the date the owner decides to discard it.

NOTE: Authority cited: Sections 25141, 25150, 25150.6, 25201, 25214.9, 25214.10.2 and 58012, Health and Safety Code; and Sections 42475.1 and 42475.2, Public Resources Code. Reference: Sections 25141, 25150, 25159.5, 25201 and 25214.9, Health and Safety Code.

HISTORY

1. New section filed 2–3–2003; operative 2–3–2003 (Register 2003, No. 6).
2. Amendment of section heading, section and NOTE filed 6–7–2004 as an emergency; operative 6–7–2004 (Register 2004, No. 24). Pursuant to Public Resources Code section 42475.2, a Certificate of Compliance must be transmitted to OAL by 6–7–2006 or emergency language will be repealed by operation of law on the following day.
3. Amendment of section heading, section and NOTE refiled 6–5–2006 as an emergency, including further amendment of NOTE; operative 6–5–2006 (Register 2006, No. 23). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.
4. Amendment of section heading, section and NOTE refiled 5–8–2008 as an emergency; operative 5–8–2008 (Register 2008, No. 19). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.

§ 66273.4. Applicability—Mercury Thermostats.

(a) Thermostats covered under chapter 23. The requirements of this chapter apply to persons managing thermostats, as described in section 66273.9, except those listed in subsection (b) of this section.

(b) Thermostats not covered under chapter 23. The requirements of this chapter do not apply to persons managing the following thermostats:

(1) Thermostats that are not yet wastes under chapter 11. Subsection (c) of this section describes when thermostats become wastes.

(2) Thermostats that do not exhibit a characteristic of a hazardous waste as set forth in article 3 of chapter 11.

(c) Generation of waste thermostats.

(1) A used thermostat becomes a waste on the date it is discarded (e.g., sent for reclamation).

(2) An unused thermostat becomes a waste on the date the handler decides to discard it.

NOTE: Authority cited: Sections 25141, 25150, 25150.6 and 58012, Health and Safety Code. Reference: Sections 25141, 25150 and 25159.5, Health and Safety Code; 40 CFR Section 273.4.

HISTORY

1. New section filed 3–6–2000 as an emergency; operative 3–6–2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2000 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6–29–2000 as an emergency; operative 7–6–2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–3–2000 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11–1–2000 as an emergency; operative 11–4–2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–5–2001 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 3–6–2001 as an emergency; operative 3–6–2001 (Register 2001, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2001 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 6–26–2001 as an emergency; operative 7–5–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–2–2001 or emergency language will be repealed by operation of law on the following day.
6. New section refiled 11–2–2001 as an emergency; operative 11–3–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–4–2002 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 11–2–2001 order transmitted to OAL 12–27–2001 and filed 2–8–2002 (Register 2002, No. 6).
8. Amendment of subsection (a) and amendment of NOTE filed 2–3–2003; operative 2–3–2003 (Register 2003, No. 6).

§ 66273.5. Applicability—Lamps.

(a) Lamps covered under this chapter. The requirements of this chapter apply to persons managing the following:

(1) lamps, as described in section 66273.9, that exhibit a characteristic of a hazardous waste, as set forth in article 3 of chapter 11;

(2) on or after February 9, 2004:

(A) mercury–added lamps, as described in section 66273.9, that meet listing description M003 in section 66261.50; and

(B) products that contain such lamps, except those listed in subsection (b) of this section.

(b) Lamps not covered under this chapter. The requirements of this chapter do not apply to persons managing the following:

(1) Lamps that are not yet wastes under chapter 11 as provided in subsection (c) of this section.

(2) Lamps that do not exhibit a characteristic of a hazardous waste as set forth in article 3 of chapter 11 and do not contain mercury (i.e., lamps that do not meet the listing description for M003 wastes in section 66261.50).

(3) Lamps which are not destined for an authorized recycling facility; these lamps are regulated as hazardous wastes pursuant to chapters 10 through 16, 18, and 20 through 22 of this division.

(4) Vehicles that contain mercury–added lamps, unless such vehicles exhibit a characteristic of a hazardous waste, as set forth in article 3 of chapter 11.

(5) Waste motor vehicles from which all mercury–added lamps have not been removed that are crushed, baled, sheared, or shredded; if they exhibit a characteristic of a hazardous waste in article 3 of chapter 11, these motor vehicles are regulated as hazardous wastes pursuant to chapters 10 through 16, 18, and 20 through 22 of this division.

(c) Generation of waste lamps.

(1) A used lamp becomes a waste on the date it is discarded.

(2) An unused lamp becomes a waste on the date the handler decides to discard it.

NOTE: Authority cited: Sections 25141, 25150 and 58012, Health and Safety Code. Reference: Sections 25141, 25150, 25159.5 and 25179.4, Health and Safety Code; 40 CFR Section 273.5.

HISTORY

1. New section filed 3–6–2000 as an emergency; operative 3–6–2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2000 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 6–29–2000 as an emergency; operative 7–6–2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–3–2000 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11–1–2000 as an emergency; operative 11–4–2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–5–2001 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 3–6–2001 as an emergency; operative 3–6–2001 (Register 2001, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2001 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 6–26–2001 as an emergency; operative 7–5–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–2–2001 or emergency language will be repealed by operation of law on the following day.
6. New section refiled 11–2–2001 as an emergency; operative 11–3–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–4–2002 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 11–2–2001 order, including new subsection (b)(3) and amendment of NOTE, transmitted to OAL 12–27–2001 and filed 2–8–2002 (Register 2002, No. 6).
8. Editorial correction of HISTORY 7 (Register 2002, No. 10).
9. Amendment filed 2–13–2003; operative 3–15–2003 (Register 2003, No. 7).

§ 66273.6. Applicability—CRT Materials.

(a) CRT materials covered under chapter 23.

The requirements of this chapter apply to CRT materials, as described in section 66273.9, except those listed in subsection (b).

(b) CRT materials not covered under chapter 23.

The requirements of this chapter do not apply to the following CRT materials:

(1) CRT materials that are not yet wastes under chapter 11 as provided in subsection (c) of this section;

(2) CRT materials that do not exhibit a characteristic of a hazardous waste as set forth in article 3 of chapter 11;

(3) CRT materials that are destined for disposal or are disposed to a class I landfill, in which case the CRT materials shall be managed as hazardous waste under chapters 10 through 22;

(4) CRT materials that are managed as hazardous waste under chapters 10 through 22 of this division;

(5) CRT materials exempted pursuant to subsection 66273.8(c);

(6) CRT materials that were previously wastes under chapter 11, but are no longer wastes (e.g., a discarded CRT device that is refurbished and is returned to service).

(c) Generation of CRT materials.

(1) A CRT device or CRT becomes a waste on the date when the earlier of the following occur:

(A) The owner discards it; or

(B) The CRT or the CRT in the CRT device is physically cracked, broken, or shattered.

(2) CRT glass released or derived from a CRT or a CRT device becomes a waste on the date that the CRT glass is released or derived from the CRT or the CRT device.

NOTE: Authority cited: Sections 25141, 25150, 25150.6, 25201, 25214.9, 25214.10.2 and 58012, Health and Safety Code; and Sections 42475.1 and 42475.2, Public Resources Code. Reference: Sections 25141, 25150, 25159.5, 25201 and 25214.9, Health and Safety Code.

HISTORY

1. New section filed 8–3–2001 as an emergency; operative 8–3–2001 (Register 2001, No. 31). A Certificate of Compliance must be transmitted to OAL by 12–3–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 11–30–2001 as an emergency; operative 11–30–2001 (Register 2001, No. 48). A Certificate of Compliance must be transmitted to OAL by 4–2–2002 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 3–26–2002 as an emergency; operative 4–12–2002 (Register 2002, No. 13). A Certificate of Compliance must be transmitted to OAL by 8–12–2002 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 8–6–2002 as an emergency; operative 8–6–2002 (Register 2002, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–4–2002 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 11–25–2002 as an emergency; operative 12–5–2002 (Register 2002, No. 48). A Certificate of Compliance must be transmitted to OAL by 4–4–2003 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 11–25–2002 order, including amendment of subsections (a), (b) and (b)(5) and amendment of NOTE, transmitted to OAL 12–24–2002 and filed 2–3–2003 (Register 2003, No. 6).
7. Amendment of NOTE filed 6–7–2004 as an emergency; operative 6–7–2004 (Register 2004, No. 24). Pursuant to Public Resources Code section 42475.2, a Certificate of Compliance must be transmitted to OAL by 6–7–2006 or emergency language will be repealed by operation of law on the following day.
8. Amendment of NOTE refiled 6–5–2006 as an emergency, including further amendment of NOTE; operative 6–5–2006 (Register 2006, No. 23). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.
9. Amendment of NOTE refiled 5–8–2008 as an emergency; operative 5–8–2008 (Register 2008, No. 19). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.

§ 66273.7. [Reserved.]

§ 66273.7.1. Applicability—Motor Vehicles That Contain Mercury Switches and Switches Removed from Motor Vehicles.

(a) Switches and vehicles covered under chapter 23. Except as provided in subsection (b), the requirements of this chapter apply to persons managing the following:

(1) Mercury–containing motor vehicle switches, as described in section 66273.9, that exhibit a characteristic of a hazardous waste as set forth in article 3 of chapter 11.

(2) On or after January 1, 2005:

(A) mercury–containing motor vehicle light switches, as described in section 66273.9, that meet listing description M001 in section 66261.50;

(B) motor vehicles that contain such switches; and

(C) portions of motor vehicles that contain such switches.

(b) Switches and vehicles not covered under chapter 23. The requirements of this chapter do not apply to persons managing the following:

(1) Mercury–containing motor vehicle switches that are not wastes under chapter 11. Subsection (c) of this section describes when motor vehicle switches become wastes.

(2) Motor vehicle switches that do not contain mercury.

(3) Motor vehicles and portions of motor vehicles from which all mercury–containing light switches have been removed.

(4) Waste mercury–containing motor vehicle switches that are not destined for an authorized recycling facility; these switches are regulated as hazardous wastes pursuant to chapters 10 through 16, 18, and 20 through 22 of this division.

(5) Waste motor vehicles and portions of motor vehicles from which all mercury light switches have not been removed (other than switches that cannot be removed due to accidental damage to the vehicle), and that are crushed, baled, sheared, or shredded. (If they exhibit a characteristic of a hazardous waste in article 3 of chapter 11, these motor vehicles or portions of motor vehicles are regulated as hazardous wastes pursuant to chapters 10 through 16, 18, and 20 through 22 of this division.)

(c) Generation of waste mercury–containing motor vehicle switches and waste motor vehicles with mercury light switches.

(1) A used mercury–containing motor vehicle switch becomes a universal waste on the date a handler removes it from a motor vehicle and decides to discard it.

(2) On or after January 1, 2005, a motor vehicle from which any mercury–containing light switches have not been removed becomes a universal waste on the date any person decides to crush, bale, shear, or shred it.

(3) An unused mercury–containing motor vehicle switch becomes a waste on the date the handler decides to discard it.

NOTE: Authority cited: Sections 25141, 25150, 25214.6 and 58012, Health and Safety Code. Reference: Sections 25141, 25150, 25159.5 and 25214.6, Health and Safety Code.

HISTORY

1. New section filed 2–13–2003; operative 3–15–2003 (Register 2003, No. 7).

§ 66273.7.2. Applicability—Products That Contain Mercury Switches and Switches Removed from Products.

(a) Switches and products covered under chapter 23. Except as provided in subsection (b), the requirements of this chapter apply to persons managing the following:

(1) Non–automotive mercury switches, and products that contain such switches, as described in section 66273.9, that exhibit a characteristic of a hazardous waste as set forth in article 3 of chapter 11.

(2) On or after February 9, 2006, non–automotive mercury switches, and products that contain such switches, as described in section 66273.9, that meet listing description M002 in section 66261.50.

(b) Switches and products not covered under chapter 23. The requirements of this chapter do not apply to persons managing the following:

(1) Non–automotive mercury switches, and products that contain such switches that are not wastes under chapter 11. Subsection (c) of this section describes when non–automotive mercury switches, and products that contain such switches, become wastes.

(2) Non–automotive switches, and products that contain such switches that do not contain mercury.

(3) Until February 8, 2006, products that contain non–automotive mercury switches that do not exhibit a characteristic of a hazardous waste as set forth in article 3 of chapter 11.

(4) Products from which all non–automotive mercury switches have been removed.

(5) Waste non–automotive mercury switches that are not destined for an authorized recycling facility; these switches are regulated as hazardous wastes pursuant to chapters 10 through 16, 18, and 20 through 22 of this division.

(6) Waste appliances and portions of appliances from which all non–automotive mercury switches have not been removed and that are crushed, baled, sheared, or shredded. (If they exhibit a characteristic of a hazardous waste in article 3 of chapter 11, these appliances are regulated as hazardous wastes pursuant to chapters 10 through 16, 18, and 20 through 22 of this division.)

(c) Generation of waste non–automotive mercury switches and waste products with mercury switches.

(1) A used non–automotive mercury switch becomes a universal waste on the date a handler discards it or removes it from a product in order to discard it.

(2) A product that contains one or more non–automotive mercury switches becomes a universal waste on the date the owner discards the product.

(3) An unused non–automotive mercury switch becomes a waste on the date the handler decides to discard it.

NOTE: Authority cited: Sections 25141, 25150 and 58012, Health and Safety Code. Reference: Sections 25141, 25150, 25159.5 and 25212, Health and Safety Code.

HISTORY

1. New section filed 2–13–2003; operative 3–15–2003 (Register 2003, No. 7).

§ 66273.7.3. Applicability—Dental Amalgam Wastes.

(a) Dental amalgam wastes covered under chapter 23. The requirements of this chapter apply to persons managing dental amalgam wastes, as described in section 66273.9, except those listed in subsection (b) of this section.

(b) Dental amalgam wastes not covered under chapter 23. The requirements of this chapter do not apply to persons managing the following dental wastes:

(1) Dental amalgam that is not waste under chapter 11. Subsection (c) of this section describes when dental amalgam becomes waste.

(2) Empty used amalgam capsules.

(3) Waste dental restorative materials that do not contain mercury.

(4) Dental amalgam wastes that are not destined for an authorized recycling facility; these wastes are regulated as hazardous wastes pursuant to chapters 10 through 16, 18, and 20 through 22 of this division.

(c) Generation of dental amalgam wastes.

(1) Teeth that contain dental amalgam restorations become universal wastes on the date they are discarded.

(2) Scrap dental amalgam, including excess mix, becomes universal waste on the date it is discarded.

(3) Amalgam particles contained in reusable chair side traps, reusable vacuum pump filters, and amalgam separators become universal wastes on the date they are removed from these traps, filters, and amalgam separators.

(4) Disposable chair side traps and vacuum pump filters that contain amalgam particles become universal wastes on the date they are discarded.

NOTE: Authority cited: Sections 25141, 25150 and 58012, Health and Safety Code. Reference: Sections 25141, 25150 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 2–13–2003; operative 3–15–2003 (Register 2003, No. 7).

§ 66273.7.4. Applicability—Mercury–Containing Pressure or Vacuum Gauges.

(a) Pressure or vacuum gauges covered under chapter 23. The requirements of this chapter apply to persons managing pressure or vacuum gauges, as described in section 66273.9, except those listed in subsection (b) of this section.

(b) Pressure or vacuum gauges not covered under chapter 23. The requirements of this chapter do not apply to persons managing the following pressure or vacuum gauges:

(1) Pressure or vacuum gauges that are not wastes under chapter 11. Subsection (c) of this section describes when mercury–containing devices become waste.

(2) Waste pressure or vacuum gauges that do not contain mercury.

(3) Waste pressure or vacuum gauges that are not destined for an authorized recycling facility; these gauges are regulated as hazardous wastes pursuant to chapters 10 through 16, 18, and 20 through 22 of this division.

(c) Generation of waste pressure or vacuum gauges.

(1) Used pressure or vacuum gauges become wastes on the date they are discarded.

(2) Unused pressure or vacuum gauges become wastes on the date the handler decides to discard them.

NOTE: Authority cited: Sections 25141, 25150 and 58012, Health and Safety Code. Reference: Sections 25141, 25150 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 2–13–2003; operative 3–15–2003 (Register 2003, No. 7).

§ 66273.7.5. Applicability—Mercury–Added Novelties.

(a) Mercury–added novelties covered under chapter 23. Except as provided in subsection (b), the requirements of this chapter apply to persons managing the following:

(1) Mercury–added novelties, as described in section 66273.9 that exhibit a characteristic of a hazardous waste as set forth in article 3 of chapter 11.

(2) On or after January 1, 2004, mercury–added novelties, as described in section 66273.9 that that meet listing description M004 in section 66261.50.

(b) Novelties not covered under chapter 23. The requirements of this chapter do not apply to persons managing the following novelties:

(1) Mercury–added novelties that are not wastes under chapter 11. Subsection (c) of this section describes when mercury–containing devices become waste.

(2) Waste novelties that do not contain mercury.

(3) Waste mercury–added novelties that contain liquid mercury and are not destined for an authorized recycling facility; these novelties are regulated as hazardous wastes pursuant to chapters 10 through 16, 18, and 20 through 22 of this division.

(c) Generation of waste mercury–added novelties.

(1) Used mercury-added novelties become wastes on the date they are discarded.

(2) Unused mercury-added novelties become wastes on the date the handler decides to discard them.

NOTE: Authority cited: Sections 25141, 25150 and 58012, Health and Safety Code. Reference: Sections 25141, 25150 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 2-13-2003; operative 3-15-2003 (Register 2003, No. 7).

§ 66273.7.6. Applicability—Mercury Counterweights and Dampers.

(a) Mercury counterweights and dampers covered under chapter 23. The requirements of this chapter apply to persons managing mercury counterweights and dampers, as described in section 66273.9, and products containing mercury counterweights and dampers, except those listed in subsection (b) of this section.

(b) Counterweights and dampers not covered under chapter 23. The requirements of this chapter do not apply to persons managing the following counterweights and dampers and products containing counterweights and dampers:

(1) Mercury counterweights and dampers, and products containing mercury counterweights and dampers that are not wastes under chapter 11. Subsection (c) of this section describes when mercury counterweights and dampers become wastes.

(2) Waste counterweights and dampers that do not contain mercury and products with counterweights and dampers that do not contain mercury.

(3) Waste products from which mercury counterweights and dampers have been removed.

(4) Waste mercury counterweights and dampers that are not destined for an authorized recycling facility; these counterweights and dampers are regulated as hazardous wastes pursuant to chapters 10 through 16, 18, and 20 through 22 of this division.

(c) Generation of waste mercury counterweights and dampers, and waste products containing mercury counterweights and dampers.

(1) A used mercury counterweight or damper, or a used product containing one or more mercury counterweights or dampers becomes a waste on the date a handler discards it.

(2) An unused mercury counterweight or damper, or an unused product containing one or more mercury counterweights or dampers becomes a waste on the date the handler decides to discard it.

NOTE: Authority cited: Sections 25141, 25150 and 58012, Health and Safety Code. Reference: Sections 25141, 25150 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 2-13-2003; operative 3-15-2003 (Register 2003, No. 7).

§ 66273.7.7. Applicability—Mercury Thermometers.

(a) Thermometers covered under chapter 23. The requirements of this chapter apply to persons managing thermometers, as described in section 66273.9, except those listed in subsection (b) of this section.

(b) Thermometers not covered under chapter 23. The requirements of this chapter do not apply to persons managing the following thermometers:

(1) Mercury thermometers that are not wastes under chapter 11. Subsection (c) of this section describes when mercury thermometers become waste.

(2) Waste thermometers that do not use the expansion and contraction of a column of mercury to measure temperature.

(3) Waste mercury thermometers that are not destined for an authorized recycling facility; these thermometers are regulated as hazardous wastes pursuant to chapters 10 through 16, 18, and 20 through 22 of this division.

(c) Generation of waste thermometers.

(1) Used thermometers become wastes on the date they are discarded.

(2) Unused thermometers become wastes on the date the handler decides to discard them.

NOTE: Authority cited: Sections 25141, 25150 and 58012, Health and Safety Code. Reference: Sections 25141, 25150 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 2-13-2003; operative 3-15-2003 (Register 2003, No. 7).

§ 66273.7.8. Applicability—Mercury Dilators and Weighted Tubing.

(a) Dilators and weighted tubing covered under chapter 23. The requirements of this chapter apply to persons managing dilators and weighted tubing, as described in section 66273.9, except those listed in subsection (b) of this section.

(b) Dilators and weighted tubing not covered under chapter 23. The requirements of this chapter do not apply to persons managing the following dilators and weighted tubing:

(1) Mercury-containing dilators and weighted tubing that are not wastes under chapter 11. Subsection (c) of this section describes when mercury dilators and weighted tubing become waste.

(2) Waste dilators and weighted tubing that do not contain mercury.

(3) Waste mercury-containing dilators and weighted tubing that are not destined for an authorized recycling facility; these dilators and weighted tubing are regulated as hazardous wastes pursuant to chapters 10 through 16, 18, and 20 through 22 of this division.

(c) Generation of waste dilators and weighted tubing.

(1) Used dilators and weighted tubing become wastes on the date they are discarded.

(2) Unused dilators and weighted tubing become wastes on the date the handler decides to discard them.

NOTE: Authority cited: Sections 25141, 25150 and 58012, Health and Safety Code. Reference: Sections 25141, 25150 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 2-13-2003; operative 3-15-2003 (Register 2003, No. 7).

§ 66273.7.9. Applicability—Mercury-Containing Rubber Flooring.

(a) Mercury-containing rubber flooring covered under chapter 23. The requirements of this chapter apply to persons managing mercury-containing rubber flooring, as described in section 66273.9, except that listed in subsection (b) of this section.

(b) Rubber flooring not covered under chapter 23. The requirements of this chapter do not apply to persons managing the following rubber flooring:

(1) Mercury-containing rubber flooring that is not waste under chapter 11. Subsection (c) of this section describes when mercury-containing rubber flooring becomes waste.

(2) Rubber flooring that does not contain mercury.

(c) Generation of waste mercury-containing rubber flooring.

(1) Used mercury-containing rubber flooring becomes a waste on the date it is discarded.

(2) Unused mercury-containing rubber flooring becomes a waste on the date the handler decides to discard it.

NOTE: Authority cited: Sections 25141, 25150 and 58012, Health and Safety Code. Reference: Sections 25141, 25150 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 2-13-2003; operative 3-15-2003 (Register 2003, No. 7).

§ 66273.7.10. Applicability—Mercury-Containing Gas Flow Regulators.

(a) Mercury-containing gas flow regulators covered under chapter 23. The requirements of this chapter apply to persons managing mercury gas flow regulators, as described in section 66273.9, except those listed in subsection (b) of this section.

(b) Gas flow regulators not covered under chapter 23. The requirements of this chapter do not apply to persons managing the following gas flow regulators:

(1) Mercury-containing gas flow regulators that are not wastes under chapter 11. Subsection (c) of this section describes when mercury-containing gas flow regulators become waste.

(2) Waste gas flow regulators that do not contain mercury.

(3) Waste mercury–containing gas flow regulators that are not destined for an authorized recycling facility; these gas flow regulators are regulated as hazardous wastes pursuant to chapters 10 through 16, 18, and 20 through 22 of this division.

(c) Generation of waste mercury–containing gas flow regulators.

(1) A used mercury–containing gas flow regulator becomes a waste on the date it is discarded.

(2) An unused mercury–containing gas flow regulator becomes a waste on the date the handler decides to discard it.

NOTE: Authority cited: Sections 25141, 25150 and 58012, Health and Safety Code. Reference: Sections 25141, 25150 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 2–13–2003; operative 3–15–2003 (Register 2003, No. 7).

§ 66273.8. Exemptions.

(a) Temporary disposal exemption for specific universal wastes.

(1) Through February 8, 2006, universal waste batteries, universal waste lamps, universal waste mercury thermostats, and universal waste electronic devices produced by a household, as defined in section 66273.9, incidental to owning or leasing and maintaining a place of residence, are not classified as hazardous waste and may be managed as non–hazardous solid waste, provided the wastes are disposed in a landfill permitted to accept municipal solid waste or hazardous waste.

(2) Through February 8, 2004, 100 kilograms (220 pounds) or less per month of universal waste batteries, universal waste thermostats, and universal waste lamps generated by conditionally exempt small quantity universal waste generators as defined in section 66273.9 may be managed as non–hazardous waste, provided the wastes are disposed in a landfill permitted to accept municipal solid waste or hazardous waste and the generator remains in compliance with subsections (a)(3)(B), (a)(3)(C), and (a)(3)(D) of this section. The quantity limit applies to the total amounts of universal waste batteries, universal waste thermostats, and universal waste lamps added together.

(3) From February 9, 2004 through February 8, 2006, universal waste batteries, universal waste lamps, and universal mercury thermostats produced by a conditionally exempt small quantity universal waste generator, as defined in section 66273.9, may be managed as non–hazardous solid waste, provided they are managed according to the following criteria:

(A) Universal wastes are disposed as non–hazardous waste in no more than the following quantities:

1. No more than 30 universal waste lamps in any calendar month; and

2. No more than 20 pounds of universal waste batteries in any calendar month; and

3. No universal waste thermostats.

(B) The generator's total generation of RCRA hazardous waste and universal waste does not exceed 100 kilograms (220 pounds) or, if the generator generates acutely hazardous waste, 1 kilogram (2.2 pounds) of acutely hazardous waste, in any calendar month.

(C) The waste is recycled by a destination facility or disposed in a landfill permitted to accept municipal solid waste or hazardous waste; and

(D) The generator remains in compliance with 40 CFR section 261.5.

(4) Through February 8, 2006, universal waste electronic devices generated by conditionally exempt small quantity universal waste generators as defined in section 66273.9 may be managed as non–hazardous solid waste, provided the wastes are disposed in a landfill permitted to accept municipal solid waste or hazardous waste and the generator remains in compliance with subsections (a)(3)(B), (a)(3)(C), and (a)(3)(D) of this section.

(5) Persons who commingle the household and conditionally exempt small quantity universal waste generator wastes described in subsections (a)(1), (a)(2), and (a)(3) of this section together with other universal waste regulated under this chapter shall manage the commingled waste under the requirements of this chapter.

(b) Household exemption.

A person maintaining a household is exempt from the requirements of this chapter for the management of that person's universal waste, provided:

(1) the waste is not disposed, except for those wastes exempted pursuant to subsection (a) of this section;

(2) the person does not disassemble or otherwise treat the waste, except under the provisions of section 66273.13; and

(3) the universal waste generated by the person is transported to another universal waste handler or to a destination facility.

(c) Conditionally Exempt Small Quantity Universal Waste Generator Exemption.

A conditionally exempt small quantity universal waste generator is exempt from the requirements of this chapter for the management of that person's universal waste, provided:

(1) the waste is not disposed, except for the following wastes:

(A) those wastes exempted pursuant to subsection (a) of this section;

(B) mercury–added novelties that do not contain liquid mercury, as described in section 66273.9; and

(C) mercury–containing rubber flooring, as described in section 66273.9.

(2) the person does not disassemble or otherwise treat the waste, except under the provisions of section 66273.13; and

(3) the universal waste generated by the person is transported to another universal waste handler or to a destination facility.

(d) Persons managing universal waste identified as household hazardous waste pursuant to 40 CFR section 261.4 and persons identified as conditionally exempt small quantity generators pursuant to 40 CFR section 261.5 may, at their option, manage their universal wastes under this chapter. If these persons decide to not manage their waste pursuant to this chapter, as provided in this section, these wastes must be managed pursuant to the standards for other hazardous wastes under this division and Chapter 6.5 of the Health and Safety Code.

NOTE: Authority cited: Sections 25141, 25150, 25150.6, 25201, 25214.9, 25214.10.2, 25219.1 and 58012, Health and Safety Code; and Sections 42475.1 and 42475.2, Public Resources Code. Reference: Sections 25141, 25150, 25159.5, 25201, 25214.9, 25219, 25219.1 and 25219.2, Health and Safety Code; 40 CFR Sections 261.4, 261.5 and 273.8.

HISTORY

1. New section filed 3–6–2000 as an emergency; operative 3–6–2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2000 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6–29–2000 as an emergency; operative 7–6–2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–3–2000 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11–1–2000 as an emergency; operative 11–4–2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–5–2001 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 3–6–2001 as an emergency; operative 3–6–2001 (Register 2001, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2001 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 6–26–2001 as an emergency; operative 7–5–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–2–2001 or emergency language will be repealed by operation of law on the following day.
6. Amendment of section heading and section filed 8–3–2001 as an emergency; operative 8–3–2001 (Register 2001, No. 31). A Certificate of Compliance must be transmitted to OAL by 12–3–2001 or emergency language will be repealed by operation of law on the following day.
7. New section refiled 11–2–2001 as an emergency; operative 11–3–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–4–2002 or emergency language will be repealed by operation of law on the following day.
8. Amendment of section heading and section refiled 11–30–2001 as an emergency; operative 11–30–2001 (Register 2001, No. 48). A Certificate of Compliance must be transmitted to OAL by 4–2–2002 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 11–2–2001 order, including amendment of section and NOTE, transmitted to OAL 12–27–2001 and filed 2–8–2002 (Register 2002, No. 6).

10. Amendment of section heading and section refiled 3–26–2002 as an emergency; operative 4–12–2002 (Register 2002, No. 13). A Certificate of Compliance must be transmitted to OAL by 8–12–2002 or emergency language will be repealed by operation of law on the following day.
11. Amendment of section heading and section refiled 8–6–2002 as an emergency; operative 8–6–2002 (Register 2002, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–4–2002 or emergency language will be repealed by operation of law on the following day.
12. Amendment of section heading and section refiled 11–25–2002 as an emergency; operative 12–5–2002 (Register 2002, No. 48). A Certificate of Compliance must be transmitted to OAL by 4–4–2003 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 11–25–2002 order, including further amendment of section heading and section, transmitted to OAL 12–24–2002 and filed 2–3–2003 (Register 2003, No. 6).
14. Amendment of subsection (c)(1) and new subsections (c)(1)(A)–(C) filed 2–13–2003; operative 3–15–2003 (Register 2003, No. 7).
15. Amendment of subsections (a)(1) and (a)(4) and NOTE filed 6–7–2004 as an emergency; operative 6–7–2004 (Register 2004, No. 24). Pursuant to Public Resources Code section 42475.2, a Certificate of Compliance must be transmitted to OAL by 6–7–2006 or emergency language will be repealed by operation of law on the following day.
16. Amendment of subsections (a)(1) and (a)(4) and NOTE refiled 6–5–2006 as an emergency, including further amendment of NOTE; operative 6–5–2006 (Register 2006, No. 23). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.
17. Amendment of subsections (a)(1) and (a)(4) and NOTE refiled 5–8–2008 as an emergency; operative 5–8–2008 (Register 2008, No. 19). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.

§ 66273.9. Definitions.

"Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

"Cathode ray tube" or "CRT" means a vacuum tube or picture tube used to convert an electrical signal into a visual image.

"Conditionally exempt small quantity universal waste generator" means a generator of universal waste who:

(a) generates no more than 100 kilograms (220 pounds) of RCRA hazardous wastes and no more than 1 kilogram (2.2 pounds) of acutely hazardous waste in any calendar month. When making the quantity determination of this section, the generator must, include all universal waste except CRT materials, and all RCRA hazardous waste; and

(b) generates a total of five or less CRT devices in a calendar year; and

(c) remains in compliance with 40 CFR section 261.5.

"CRT device" means any electronic device that contains one or more CRTs including, but not limited to, computer monitors, televisions, cash registers and oscilloscopes.

"CRT glass" means any glass released, derived or otherwise generated from the treatment or breakage of one or more CRTs.

"CRT material" means all or any of the following:

(a) a CRT, as defined in this section, that is or has become a waste pursuant to section 66273.6(c);

(b) a CRT device, as defined in this section, that is or has become a waste pursuant to section 66273.6(c);

(c) CRT glass, as defined in this section, that is or has become a waste pursuant to section 66273.6(c) and that is reclaimed at a CRT glass manufacturer or at a primary or secondary lead smelter.

"CRT material handler" means any person who generates, accumulates, stores, treats, or recycles any universal waste CRT material.

"CRT Material Transporter" means a person engaged in the off-site transportation of universal waste CRT materials by air, rail, highway, or water.

"Dental amalgam" or "universal waste dental amalgam" means dental amalgam chunks, dental amalgam fines, mixtures containing dental amalgam fines, single-use dental amalgam traps that contain dental amalgam, dental amalgam sludge, vacuum pump filters that contain dental amalgam, and extracted teeth with amalgam restorations.

"Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in section 66273.13, section 66273.33(a), (b), and (c) and section 66273.83. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

"Dilators and weighted tubing" or "universal waste dilators and weighted tubing" means mercury containing dilators and weighted tubing used in medical procedures. "Dilators and weighted tubing" include, but are not limited to, bougie tubes, Canter tubes, and Miller–Abbot tubes.

"Electronic Device" means any electronic device including, but not limited to, computers, computer peripherals, telephones, answering machines, radios, stereo equipment, tape players/recorders, phonographs, video cassette players/recorders, compact disc players/recorders, calculators, and some appliances. An electronic device does not include any CRT device as defined in this section, or any major appliance as defined in the Public Resources Code section 42166. The requirements of this chapter only apply to electronic devices as described in section 66273.3(a) (i.e., those wastes that exhibit the characteristic of toxicity).

"Flame sensor" means a device, usually found in a gas–fired appliance, that uses the expansion and contraction of liquid mercury contained in a probe to open and shut a valve.

"Gas flow regulator," "mercury gas flow regulator" or "universal waste gas flow regulator" means a mercury–containing device used to regulate the flow of gas through a gas meter.

"Generator" or "producer" means:

(a) any person, by site, whose act or process produces hazardous waste identified or listed in chapter 11 of this division or whose act first causes a hazardous waste to become subject to regulation.

(b) any person, by site, whose act or process produces universal waste as defined in this section or whose act first causes a universal waste to become subject to regulation.

"Household" means a private residence. For the purposes of this section, household does not mean a hotel, motel, bunkhouse, ranger station, crew quarters, campground, picnic ground, or day–use recreation facility.

"Lamp", also referred to as "universal waste lamp" is defined as the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infra–red regions of the electromagnetic spectrum. Examples of common universal waste electric lamps include, but are not limited to, fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.

"Large Quantity Handler of Universal Waste" means a universal waste handler (as defined in this section) who accumulates 5,000 kilograms or more total of universal waste (e.g., batteries, thermostats, lamps, etc. calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total of universal waste is accumulated.

"Management" means handling, storage, transportation, processing, treatment, recovery, recycling, transfer and disposal.

"Mercury–added novelty" means a mercury–added product intended mainly for personal or household enjoyment or adornment. A "mercury–added novelty" includes, but is not limited to, any item intended for use as a practical joke, figurine, adornment, toy, game, card, ornament, yard statue or figure, candle, jewelry, holiday decoration, and item of apparel, including footwear.

"Mercury gas flow regulator" or "universal waste gas flow regulator" means a mercury–containing device used to regulate the flow of gas through a gas meter.

"Mercury–containing motor vehicle light switch" means any motor vehicle switch found in the hood or trunk of a motor vehicle that contains mercury.

"Mercury–containing motor vehicle switch" means any motor vehicle switch that contains mercury including, but not limited to, a mercury containing motor vehicle light switch.

"Mercury–containing rubber flooring" or "universal waste rubber flooring" means any rubber flooring material formulated with intentionally added mercury.

"Mercury counterweights and dampers" or "universal waste mercury counterweights and dampers" means an enclosed device that uses liquid mercury for weight or dampening. Includes, but is not limited to, mercury bow stabilizers used in archery, mercury recoil suppressors used in shooting, and mercury counterweights used in clocks.

"Mercury switch" or "universal waste mercury switch" means an electrical switch that employs mercury to make an electrical contact. "Mercury switch" includes, but is not limited to the following mercury–containing switches: mercury–containing motor vehicle switches, tilt switches, vibration–sensing switches, off–balance switches, float switches, silent light switches, and relays.

"Non–automotive mercury switch" means any mercury switch other than a mercury–containing motor vehicle switch.

"Offsite" means any site which is not onsite.

"On–site" means the same or geographically contiguous property which may be divided by public or private right–of–way, provided that the entrance and exit between the properties is at a cross–roads intersection, and access is by crossing as opposed to going along the right of way. Non–contiguous properties owned by the same person but connected by a right–of–way which he controls and to which the public does not have access, are also considered on–site property.

"PRC" means California Public Resources Code.

"Pressure or vacuum gauge," "universal waste gauge," or "gauge," means any device in which pressure or vacuum is measured using the height of a column of liquid mercury. "Pressure or vacuum gauge" includes, but is not limited to, barometers, manometers, and sphygmomanometers.

"Small Quantity Handler of Universal Waste" means a universal waste handler (as defined in this section) who does not accumulate 5,000 kilograms or more total of universal waste (e.g., batteries, thermostats, lamps, etc., calculated collectively) at any time.

"Thermometer," "mercury thermometer" or "universal waste thermometer" means any thermometer that uses the expansion and contraction of a column of mercury to measure temperature.

"Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury–containing ampules that have been removed from these temperature control devices in compliance with the requirements of sections 66273.13(c)(2) or 66273.33(c)(2).

"Universal Waste" means any of the wastes that are listed in section 66261.9.

"Universal Waste Handler":

(a) Means:

(1) A generator (as defined in section 66260.10 and this section) of universal waste; or

(2) The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(b) Does not mean:

(1) A person who treats (except under the provisions of section 66273.13, section 66273.33, or section 66273.83, disposes of, or recycles universal waste; or

(2) A person engaged in the off–site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

(3) A CRT material handler, as defined in this section.

"Universal Waste Transfer Facility" means any transportation–related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten days or less.

"Universal Waste Transporter" means a person engaged in the off–site transportation of universal waste by air, rail, highway, or water.

NOTE: Authority cited: Sections 25141, 25150, 25214.6, 25150.6, 25201, 25214.9, 25214.10.2, 25219.1 and 58012, Health and Safety Code; and Sections 42475.1 and 42475.2, Public Resources Code. Reference: Sections 25141, 25150, 25159.5, 25201, 25212, 25214.6, 25214.9, 25219, 25219.1 and 25219.2, Health and Safety Code; 40 CFR Sections 261.4, 261.5, and 273.9.

HISTORY

1. New section filed 3–6–2000 as an emergency; operative 3–6–2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2000 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6–29–2000 as an emergency; operative 7–6–2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–3–2000 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11–1–2000 as an emergency; operative 11–4–2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–5–2001 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 3–6–2001 as an emergency; operative 3–6–2001 (Register 2001, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2001 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 6–26–2001 as an emergency; operative 7–5–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–2–2001 or emergency language will be repealed by operation of law on the following day.
6. Amendment filed 8–3–2001 as an emergency; operative 8–3–2001 (Register 2001, No. 31). A Certificate of Compliance must be transmitted to OAL by 12–3–2001 or emergency language will be repealed by operation of law on the following day.
7. New section refiled 11–2–2001 as an emergency; operative 11–3–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–4–2002 or emergency language will be repealed by operation of law on the following day.
8. Amendment refiled 11–30–2001 as an emergency; operative 11–30–2001 (Register 2001, No. 48). A Certificate of Compliance must be transmitted to OAL by 4–2–2002 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 11–2–2001 order, including amendment of definition of "Conditionally exempt small quantity universal waste generator," transmitted to OAL 12–27–2001 and filed 2–8–2002 (Register 2002, No. 6).
10. Amendment refiled 3–26–2002 as an emergency; operative 4–12–2002 (Register 2002, No. 13). A Certificate of Compliance must be transmitted to OAL by 8–12–2002 or emergency language will be repealed by operation of law on the following day.
11. Amendment refiled 8–6–2002 as an emergency; operative 8–6–2002 (Register 2002, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–4–2002 or emergency language will be repealed by operation of law on the following day.
12. Amendment refiled 11–25–2002 as an emergency; operative 12–5–2002 (Register 2002, No. 48). A Certificate of Compliance must be transmitted to OAL by 4–4–2003 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 11–25–2002 order, including further amendment of section and NOTE, transmitted to OAL 12–24–2002 and filed 2–3–2003 (Register 2003, No. 6).
14. Amendment of section and NOTE filed 2–13–2003; operative 3–15–2003 (Register 2003, No. 7).
15. Amendment of section and NOTE filed 6–7–2004 as an emergency; operative 6–7–2004 (Register 2004, No. 24). Pursuant to Public Resources Code section 42475.2, a Certificate of Compliance must be transmitted to OAL by 6–7–2006 or emergency language will be repealed by operation of law on the following day.
16. Amendment of section and NOTE refiled 6–5–2006 as an emergency, including further amendment of NOTE; operative 6–5–2006 (Register 2006, No. 23). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.
17. Amendment of section and NOTE refiled 5–8–2008 as an emergency; operative 5–8–2008 (Register 2008, No. 19). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.

Article 2. Standards for Small Quantity Handlers of Universal Waste

§ 66273.10. Applicability.

This article applies to small quantity handlers of universal waste (as defined in section 66273.9) except as provided for households and for conditionally exempt small quantity universal waste generators in section 66273.8.

NOTE: Authority cited: Sections 25141, 25150, 25219.1 and 58012, Health and Safety Code. Reference: Sections 25141, 25150, 25159.5, 25219, 25219.1 and 25219.2, Health and Safety Code; 40 CFR Section 273.10.

HISTORY

1. New article 2 (sections 66273.10–66273.20) and section filed 3–6–2000 as an emergency; operative 3–6–2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2000 or emergency language will be repealed by operation of law on the following day.
2. New article 2 (sections 66273.10–66273.20) and section refiled 6–29–2000 as an emergency; operative 7–6–2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–3–2000 or emergency language will be repealed by operation of law on the following day.
3. New article 2 (sections 66273.10–66273.20) and section refiled 11–1–2000 as an emergency; operative 11–4–2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–5–2001 or emergency language will be repealed by operation of law on the following day.
4. New article 2 (sections 66273.10–66273.20) and section refiled 3–6–2001 as an emergency; operative 3–6–2001 (Register 2001, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2001 or emergency language will be repealed by operation of law on the following day.
5. New article 2 (sections 66273.10–66273.20) and section refiled 6–26–2001 as an emergency; operative 7–5–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–2–2001 or emergency language will be repealed by operation of law on the following day.
6. New article 2 (sections 66273.10–66273.20) and section refiled 11–2–2001 as an emergency; operative 11–3–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–4–2002 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 11–2–2001 order transmitted to OAL 12–27–2001 and filed 2–8–2002 (Register 2002, No. 6).

§ 66273.11. Prohibitions.

A small quantity handler of universal waste is:

(a) Prohibited from disposing of universal waste; and

(b) Prohibited from diluting or treating universal waste, except by responding to releases as provided in section 66273.17; or by managing specific wastes as provided in section 66273.13.

NOTE: Authority cited: Sections 25141, 25150, 25219.1 and 58012, Health and Safety Code. Reference: Sections 25141, 25150, 25159.5, 25219, 25219.1 and 25219.2, Health and Safety Code; 40 CFR Section 273.11.

HISTORY

1. New section filed 3–6–2000 as an emergency; operative 3–6–2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2000 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6–29–2000 as an emergency; operative 7–6–2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–3–2000 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11–1–2000 as an emergency; operative 11–4–2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–5–2001 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 3–6–2001 as an emergency; operative 3–6–2001 (Register 2001, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2001 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 6–26–2001 as an emergency; operative 7–5–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–2–2001 or emergency language will be repealed by operation of law on the following day.
6. New section refiled 11–2–2001 as an emergency; operative 11–3–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–4–2002 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 11–2–2001 order transmitted to OAL 12–27–2001 and filed 2–8–2002 (Register 2002, No. 6).

§ 66273.12. Notification.

A small quantity handler of universal waste is not required to notify the Department or the U.S. EPA of universal waste handling activities except as specified in section 66273.13(d) for small quantity universal waste electronic device handlers.

NOTE: Authority cited: Sections 25141, 25150, 25201, 25214.9, 25214.10.2, 25219.1 and 58012, Health and Safety Code; and Sections 42475.1 and 42475.2, Public Resources Code. Reference: Sections 25141, 25150, 25159.5, 25201, 25214.9, 25219, 25219.1 and 25219.2, Health and Safety Code; 40 CFR Section 273.12.

HISTORY

1. New section filed 3–6–2000 as an emergency; operative 3–6–2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2000 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6–29–2000 as an emergency; operative 7–6–2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–3–2000 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11–1–2000 as an emergency; operative 11–4–2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–5–2001 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 3–6–2001 as an emergency; operative 3–6–2001 (Register 2001, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2001 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 6–26–2001 as an emergency; operative 7–5–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–2–2001 or emergency language will be repealed by operation of law on the following day.
6. New section refiled 11–2–2001 as an emergency; operative 11–3–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–4–2002 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 11–2–2001 order transmitted to OAL 12–27–2001 and filed 2–8–2002 (Register 2002, No. 6).
8. Amendment of section and NOTE filed 6–7–2004 as an emergency; operative 6–7–2004 (Register 2004, No. 24). Pursuant to Public Resources Code section 42475.2, a Certificate of Compliance must be transmitted to OAL by 6–7–2006 or emergency language will be repealed by operation of law on the following day.
9. Amendment of section and NOTE refiled 6–5–2006 as an emergency, including further amendment of NOTE; operative 6–5–2006 (Register 2006, No. 23). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.
10. Amendment of section and NOTE refiled 5–8–2008 as an emergency; operative 5–8–2008 (Register 2008, No. 19). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.

§ 66273.13. Waste Management.

(a) Universal Waste Batteries. A small quantity handler of universal waste shall manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A small quantity handler of universal waste shall contain any universal waste battery that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container shall be closed, structurally sound, compatible with the contents of the battery, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A small quantity handler of universal waste may conduct the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed (except that cells may be opened to remove electrolyte but shall be immediately closed after removal):

(A) Sorting batteries by type;

(B) Mixing battery types in one container;

(C) Discharging batteries so as to remove the electric charge;

(D) Regenerating used batteries;

(E) Disassembling batteries or battery packs into individual batteries or cells;

(F) Removing batteries from consumer products; or

(G) Removing electrolyte from batteries.

(3) A small quantity handler of universal waste who removes electrolyte from batteries, or who generates other solid waste (e.g., battery pack materials, discarded consumer products) as a result of the activities listed above, shall determine whether the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste identified in article 3 of chapter 11.

(A) If the electrolyte and/or other solid waste exhibits a characteristic of hazardous waste, it is subject to all applicable requirements of this division. The handler is considered the generator of the hazardous electrolyte and/or other waste and is subject to chapter 12.

(B) If the electrolyte or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(b) Universal Waste Thermostats. A small quantity handler of universal waste shall manage universal waste thermostats in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A small quantity handler of universal waste shall contain any universal waste thermostat that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container shall be closed, structurally sound, compatible with the contents of the thermostat, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A small quantity handler of universal waste may remove mercury-containing ampules from universal waste thermostats provided the handler:

(A) Removes the ampules in a manner designed to prevent breakage of the ampules;

(B) Removes ampules only over or in a containment device (e.g., tray or pan sufficient to collect and contain any mercury released from an ampule in case of breakage);

(C) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules, from the containment device to a container that meets the requirements of section 66262.34;

(D) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of section 66262.34;

(E) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA and CalOSHA exposure levels for mercury;

(F) Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;

(G) Stores removed ampules in closed, non-leaking containers that are in good condition;

(H) Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation; and

(3)(A) A small quantity handler of universal waste who removes mercury-containing ampules from thermostats shall determine whether the following exhibit a characteristic of hazardous waste identified in article 3 of chapter 11:

1. Mercury or clean-up residues resulting from spills or leaks; and/or

2. Other solid waste generated as a result of the removal of mercury-containing ampules (e.g., remaining thermostat units).

(B) If the mercury, residues, and/or other solid waste exhibit a characteristic of hazardous waste, it shall be managed in compliance with all applicable requirements of this division. The handler is considered the generator of the mercury, residues, and/or other waste and is subject to chapter 12.

(C) If the mercury, residues, and/or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(c) Universal Waste Lamps. A small quantity handler of universal waste shall manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A small quantity handler of universal waste shall contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages shall remain closed and shall lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

(2) A small quantity handler of universal waste shall immediately clean up and place in a container any lamp that is broken and shall place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment. Containers shall be closed, structurally sound, compatible with the contents of the lamps and shall lack evidence of leakage, spillage or damage that could cause leakage or releases of mercury or other hazardous constituents to the environment under reasonably foreseeable conditions.

(3) A small quantity handler of universal waste may remove universal waste lamps from a product or structure, provided the handler removes the lamps in a manner designed to prevent breakage.

(d) Universal Waste Electronic Devices. A small quantity handler of universal waste shall manage universal waste electronic devices in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) Containment:

(A) A small quantity handler of universal waste shall handle any universal waste electronic devices in a manner that minimizes breakage. If containers are used, such containers shall prevent leakage, spillage or damage that could reasonably be foreseen. Whole universal waste electronic devices that are managed in a manner (e.g., stored in a room) that prevents breakage of the device and release of hazardous components of the device (e.g, on a pallet) shall be considered to comply with this requirement.

(B) A small quantity handler of universal waste shall immediately clean up and place in a container any universal waste electronic device that is broken and may reasonably be expected to cause a release of hazardous constituents to the environment. Containers shall be structurally sound, compatible with the contents of the universal waste electronic devices and shall prevent releases of hazardous components to the environment under reasonably foreseeable conditions.

(2) Notification and Reporting Requirements:

(A) Notification: Any person who intends to handle any universal waste electronic devices from an offsite source after August 6, 2004 shall submit to the Department, by certified mail, with return receipt requested, a notification containing the information specified below no later than 30 days prior to accepting any universal waste electronic devices. Small quantity handlers currently handling universal waste electronic devices from offsite sources shall submit this notification prior to July 7, 2004.

1. Name of handler;

2. Telephone number of handler;

3. Type of handler for purposes of Public Resources Code, division 30, part 3, chapter 8.5 (i.e., collector, recycler, or dual entity);

4. Mailing address of handler, and physical address, including county, if different from the mailing address;

5. Name of the contact person;

6. Telephone number of the contact person;

7. An e-mail address for the contact person or organization, if available;

8. The types of universal waste electronic devices expected to be handled;

9. The sources of universal waste electronic devices (i.e., residential collections, business asset recovery, other collectors, etc.).

(B) Annual Report. A small quantity handler of universal waste electronic devices that accepts more than 100 kilograms or 220 pounds of universal waste electronic devices from any offsite source shall, by February 1 of each calendar year, commencing February 1, 2005, submit a written or electronic report containing the information specified below to the Department. The information submitted under this subsection shall cover universal waste electronic device handling activities during the previous calendar year.

1. Name of handler;

2. Telephone number of handler;

3. Mailing address of handler, and physical address, including county, if different from the mailing address;

4. Name of the contact person;

5. Telephone number of the contact person;

6. An e-mail address for the contact person or organization, if available;

7. The types of universal waste electronic devices handled;

8. The total quantity of universal waste electronic devices (count or weight) handled during the previous calendar year;

9. A list including the names, addresses, and phone numbers of each location that the small quantity handler shipped universal waste electronic devices to during the previous year and the total quantity of universal waste electronic devices (count or weight) shipped to each location.

(C) Electronic notifications and reports submitted under subsection (A) and (B) shall be submitted to www.dtsc.ca.gov.

(D) Written notifications and reports submitted under subsection (A) and (B) shall be submitted to the Department by certified mail, return receipt requested to: Department of Toxic Substances Control, Hazardous Waste Management Program, Regulatory and Program Development Division, P.O. Box 806, Sacramento, CA 95812-0806, with "Attention: UWED Handling Activities" prominently displayed on the front of the envelope.

(3) Small Quantity Handler Standards: A small quantity handler of universal waste electronic devices may treat or recycle the universal waste electronic devices (i.e., may conduct hazardous waste treatment) provided the handler complies with the applicable standards below:

(A) Notwithstanding subsections (B), (C), and (D) below, a small quantity handler of universal waste electronic devices may remove from the universal waste electronic devices any discrete assemblies which are typically removed during the normal operation of the universal waste electronic device, such as the removal and replacement of batteries or ink cartridges, provided the small quantity universal waste handler conducts the disassembly in the manner prescribed in the operating manual for the universal waste electronic device or that would otherwise be performed during the normal use of the universal waste electronic device.

(B) A small quantity handler of universal waste who recycles universal waste electronic devices by reclaiming components (e.g., circuit boards, integrated circuits, metals, plastic, wiring, batteries, lamps, etc.) from universal waste electronic devices through manual disassembly, dismantling, or otherwise manually segregating components from those devices for the purposes of directly reusing those components onsite without further processing, or sending those components offsite for direct reuse or further reclamation at another location shall comply with subsections (F)(1) through (F)(5) below.

(C) A small quantity handler of universal waste who recycles universal waste electronic devices (and their components) through the utilization of treatment processes other than manual disassembly for the purposes of directly reusing components onsite without further processing, sending components offsite for direct reuse, or sending components or treatment residuals offsite for further reclamation at another location, and whose recycling or treatment activities produces only hazardous residuals (including finely divided materials) that meet the definition of scrap metal in 66260.10, or which are otherwise exempt from full regulation as hazardous waste, shall comply with subsections (F)(1) through (F)(6) below.

(D) A small quantity handler of universal waste who recycles universal waste electronic devices (and their components) through the utilization of treatment processes other than manual disassembly for the purposes of directly reusing components onsite without further processing, sending components offsite for direct reuse, or sending components or treatment residuals offsite for further reclamation at another location, and whose recycling or treatment processes produce any residuals (including baghouse and filter dusts) which exhibit any hazardous waste characteristic defined in chapter 11 and do not meet the definition of scrap metal in section 66260.10 (e.g., because they are fine powders or are contaminated with fine powders), or do not qualify for management as universal waste under this chapter shall comply with subsections (F)(1) through (F)(7) below.

(E) A small quantity handler of universal waste electronic devices who conducts treatment or recycling activities as described in subsections (A) through (D) above shall not be deemed to be operating pursuant to a permit-by-rule, conditional authorization, or conditional exemption.

(F) A small quantity handler of universal waste electronic devices who conducts treatment or recycling activities as described in subsections (B) through (D) shall comply with the following waste management standards, as applicable:

1. Treatment/Recycling Notification and Reporting:

a. Any person who intends to conduct treatment activities as described in subsections (B), (C), or (D) above after August 6, 2004 shall submit to the Department, by certified mail, with return receipt requested, a notification containing the information specified below no later than 30 days prior to treating or recycling any universal waste electronic devices. Small quantity handlers currently treating or recycling universal waste electronic devices shall submit this notification prior to July 7, 2004.

1. The small quantity universal waste electronic device handler's name and mailing address;

2. The name and business telephone number of the person at the small quantity universal waste electronic device handler's site who should be contacted regarding universal waste management activities;

3. The name, mailing address and telephone number of the owner of the facility;

4. A description of the type of universal waste electronic devices that will be treated;

5. A description of the treatment processes to be used;

6. Documentation that the facility operator has notified the facility property owner (if different from the operator of the facility) that the operator is conducting universal waste electronic device treatment or recycling operations at the facility.

b. A small quantity handler of universal waste electronic devices who conducts treatment activities as described in subsections (B), (C), or (D) above shall prepare and submit an annual report to the Department. The annual report shall be delivered by certified mail, return receipt requested, to the Department by February 1 of each calendar year. The report shall be dated and signed according to the requirements of section 66270.11 as those requirements apply to permit applications, and shall include the following information for the previous calendar year:

1. The name, address, physical location and a description of the facility;

2. The mailing address of the business entity that owns and operates the facility;

3. The name, title and telephone number of the person at the facility who should be contacted regarding universal waste management activities at the facility;

4. The facility EPA Identification number, if required;

5. The number of days each facility operated;

6. The total quantity (count or weight) universal waste electronic devices (with their respective types or categories) treated or recycled by the handler during the previous year;

7. The treatment or recycling method used for each universal waste electronic device treated by the facility;

8. The final destination of universal waste electronic devices recycled.

2. Containment of Residuals: A small quantity handler of universal waste electronic devices who conducts treatment activities as described in subsections (B), (C), or (D) above shall manage all materials produced from the treatment of universal waste electronic devices in a manner that prevents a release of any universal waste electronic devices or any components thereof, as follows:

a. A small quantity handler of universal waste electronic devices shall conduct activities over or in a containment device (e.g., a tray, a box, a workbench, a table, or an enclosed machine) sufficient in size and construction to contain any materials that may be released.

b. A small quantity handler of universal waste electronic devices shall contain any residuals produced from universal waste electronic devices in a manner that prevents releases of hazardous residuals to the environment under reasonably foreseeable conditions.

c. A small quantity handler of universal waste shall immediately clean up and place in a container any universal waste electronic device that is broken and may reasonably be expected to cause a release. Such containers shall be structurally sound, compatible with the contents of the universal waste electronic devices and shall prevent releases under reasonably foreseeable conditions.

3. Worker Safety:

a. A small quantity handler of universal waste electronic devices who conducts treatment activities as described in subsections (B), (C), or (D) above shall be thoroughly familiar with the associated hazards and have access to the proper procedures and protective equipment necessary to safely conduct the treatment and to comply with the requirements of this section;

b. A small quantity handler of universal waste electronic devices who conducts treatment activities shall ensure that the facility is operated in compliance with all applicable worker health and safety laws and regulations (i.e., California Code of Regulations, title 8).

4. Zoning: A small quantity handler of universal waste electronic devices who conducts treatment activities as described in subsections (B), (C), or (D) above shall ensure that the activities conducted at the facility are consistent with local zoning and land use requirements for that location.

5. Management of Residuals: A small quantity handler of universal waste electronic devices who conducts treatment activities as described in subsections (B), (C), or (D) above shall ensure that all materials produced as a result of the treatment processes are properly classified and managed in accordance with any applicable requirements of this division.

6. Management Standards Applicable to Small Quantity Handlers Identified in Subsections (C) and (D): A small quantity handler of universal waste electronic devices who conducts treatment activities as described in subsections (C) and (D) above shall:

a. Utilize only treatment methods that employ one or more of the following technologies:

1. Physical processes that change only the physical properties of the waste such as cutting, sawing, breaking, shredding, crushing, grinding, screening, sieving, acceleration, or compacting; and/or

2. Separation based on differences in physical properties such as size, color, density, or ferromagnetism.

3. If processes such as cutting, sawing, shredding, crushing, grinding, crushing, acceleration, or compacting are utilized, the handler shall ensure all mercury containing lamps and other components which contain fluids (i.e., liquids or gasses) that would be identified as hazardous waste are removed prior to processing.

4. A small quantity handler of universal waste electronic devices shall not process any universal waste electronic devices containing PCB ballasts, medical or biohazardous wastes, radioactive materials, reactive materials, or ignitable materials.

b. Ensure the treatment is conducted without the use or application of:

1. Chemicals, including water;

2. External heat.

c. Ensure that all hazardous wastes generated from treatment activities that are sent offsite for disposal are manifested in accordance with the applicable requirements of article 2 of chapter 12.

d. Ensure that all treatment residuals meeting the definition of scrap metal in section 66260.10 are recycled.

e. Not accept for treatment, any universal waste electronic devices that are managed, or are required to be managed, as hazardous waste under chapters 10 through 22 of this division unless authorized to do so under hazardous waste management permit or other grant of authorization.

f. Comply with the requirements of sections 66265.18 and 66265.25 of chapter 15 as those requirements apply to facility location and design standards.

g. Ensure that all treatment is conducted in compliance with all applicable local and state air pollution control laws and regulations.

h. Conduct treatment only for the purposes of recycling one or more types of universal waste electronic devices.

i. Maintain on file the documents specified in subparagraphs (i)(1) and (i)(2) at the facility by no later than 30 days prior to recycling or treating any universal waste electronic devices. The handler shall make these documents available upon demand at the facility to any representative of the Department, the U. S. EPA or a local governmental agency having jurisdiction over the facility. A copy of these documents shall be delivered in person or by certified mail, return receipt requested, to the Department when requested in writing. The written request from the Department shall specify the documents that are required, where and how to submit those documents and the date by which those documents shall be submitted.

1. A copy of the most recent notifications and reports submitted as required by subsection (F)(1).

2. A copy of any local air district permit and other permits required for the facility.

j. No later than 30 days after ceasing treatment or recycling activities at the facility, a small quantity handler of universal waste electronic devices shall submit to the Department, by certified mail, with return receipt requested, a notification containing the following information:

1. The date of the last day on which the handler conducted treatment or recycling activities;

2. The date of the last day on which the handler conducted handling activities at the facility, if applicable; and

3. The date the small quantity handler closed or vacated the facility, if applicable.

7. Treatment Standards Applicable to Small Quantity Handlers Identified in Subsection (D). A small quantity handler of universal waste electronic devices who conducts treatment activities other than manual disassembly or dismantling treatment as described in subsection (D) above shall:

a. No later than 30 days prior to initially recycling or treating any universal waste electronic devices, prepare and submit to the Department, by certified mail, with return receipt requested, an estimate of the cost of facility closure prepared pursuant to section 66265.142. The small quantity handler shall evaluate the estimate annually and adjust it to reflect changes in closing cost as appropriate.

b. No later than 30 days prior to initially recycling or treating any universal waste electronic devices, submit to the Department, by certified mail, with return receipt requested, documentation demonstrating financial assurance for closure pursuant to section 66265.143.

c. No later than 30 days prior to initially recycling or treating any universal waste electronic devices, submit to the Department, by certified mail, with return receipt requested documentation demonstrating financial responsibility for liability pursuant to section 66265.147.

(e) Universal Waste Mercury Switches and Thermometers. A small quantity handler of universal waste shall manage universal waste mercury switches and thermometers in a way that prevents releases of any uni-

versal waste or component of a universal waste to the environment, as follows:

(1) A small quantity handler of universal waste shall contain any universal waste mercury switch or thermometer that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a sealed plastic bag in a container. The container shall be closed, structurally sound, compatible with the contents of the switch or thermometer, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The container shall contain packing materials adequate to prevent breakage of universal waste mercury switches and thermometers during storage, handling, and transportation.

(2) A small quantity handler of universal waste shall accumulate universal waste thermometers in closed, non-leaking containers that are in good condition and shall pack thermometers with packing materials adequate to prevent breakage during storage, handling, and transportation.

(3)(A) A small quantity handler of universal waste may remove mercury-containing motor vehicle switches from motor vehicles, and may remove non-automotive mercury switches from products that contain them, provided the handler:

1. Removes mercury switches in a manner designed to prevent breakage;

2. Ensures that a mercury clean-up system is readily available;

3. Immediately transfers any mercury resulting from spills or leaks from broken mercury switches to an airtight container that meets the requirements of paragraph (1) of this subsection;

4. Ensures that employees removing mercury switches are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of spilled mercury to appropriate containers;

5. Accumulates removed mercury switches in closed, non-leaking containers that are in good condition;

6. Packs removed mercury switches in the container with packing materials adequate to prevent breakage during storage, handling, and transportation; and

7. Keeps records, on paper or electronically, of the removal of mercury switches from vehicles and household appliances for at least three years from the date of removal, which shall include, at a minimum, the following information:

a. The total number of vehicles crushed, baled, sheared, or shredded;

b. The total number of appliances destined for shredding;

c. The total number of vehicles or appliances destined for crushing, baling, shearing, or shredding that were determined to contain one or more mercury switches;

d. The number of mercury switches removed from these vehicles and appliances; and

e. The number of motor vehicles from which mercury switches could not be removed due to accidental damage to the vehicle.

(B) On or after January 1, 2005, a small quantity universal waste handler who intends to crush, bale, shear, or shred a motor vehicle that contains mercury light switches, shall, prior to crushing, baling, shearing, or shredding the vehicle, remove all mercury-containing motor vehicle light switches (except switches that cannot be removed due to accidental damage to the vehicle) or ensure that all mercury-containing motor vehicle light switches have already been removed.

(4)(A) A small quantity handler of universal waste shall determine whether the following exhibit a characteristic of hazardous waste identified in article 3 of chapter 11:

1. Mercury or clean-up residues resulting from spills or leaks from a mercury switch or thermometer; and/or

2. Other wastes generated as a result of the handling of universal waste mercury switches and/or thermometers.

(B) If the mercury, residues, and/or other wastes exhibit a characteristic of hazardous waste, the wastes shall be managed in compliance with all applicable requirements of this division. The handler is considered the generator of the mercury, residues, and/or other wastes and shall manage them pursuant to chapter 12.

(C) If the mercury, residues, and/or other wastes are not hazardous, the handler may manage the wastes in any way that complies with all applicable federal, state or local solid waste regulations.

(f) Universal Waste Dental Amalgam. A small quantity handler of universal waste shall manage universal waste dental amalgam in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A small quantity handler of universal waste shall place amalgam scraps, amalgam fines, single-use amalgam traps and filters, and extracted teeth with amalgam restorations in airtight containers. The containers shall be kept closed, except when universal waste dental amalgam is being added.

(2) A small quantity handler of universal waste shall not rinse amalgam traps or filters into a sink.

(3) A small quantity handler of universal waste shall not place universal waste dental amalgam into medical waste containers.

(g) Universal Waste Gauges. A small quantity handler of universal waste shall manage universal waste gauges in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1)(A) All openings through which mercury could escape shall be securely closed with appropriately sized stoppers or other closures that are compatible with the contents of the device.

(B) Each universal waste gauge shall be sealed in a plastic bag. Plastic bags containing universal waste gauges shall be placed into a container or package that is structurally sound, adequate to prevent breakage, and compatible with the contents of the gauge. The container or package shall remain closed and shall lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions. The container shall contain packing materials adequate to prevent breakage during storage, handling, and transportation.

(C) A mercury clean-up system shall be readily available to immediately transfer any mercury resulting from spills or leaks from universal waste gauges to an airtight container that meets the requirements of paragraph (2) of this subsection;

(D) Universal waste gauges shall be kept upright at all times during handling, accumulation, and transportation.

(2) A small quantity handler of universal waste may drain elemental mercury from pressure or vacuum gauges generated by that handler, at the site where the gauges were generated, provided the handler:

(A) Ensures that the universal waste pressure or vacuum gauges are drained over or in a containment device (e.g., tray or pan sufficient to collect and contain any mercury released from a device in case of breakage or spill);

(B) Ensures that the draining operations are performed safely by developing and implementing a written procedure detailing how to safely drain the universal waste pressure or vacuum gauges. This procedure shall include: the type of equipment to be used to drain the universal waste pressure or vacuum gauges safely, operation and maintenance of the equipment, appropriate personal protective equipment, segregation of incompatible wastes, proper waste management practices, spill response procedures, and waste characterization;

(C) Ensures that a spill clean-up kit is readily available to immediately clean up spills or leaks of the contents of the universal waste pressure or vacuum gauge that may occur during the mercury draining operation;

(D) Immediately transfers the drained elemental mercury to a container. The container shall be closed, structurally sound, compatible with elemental mercury, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions;

(E) Ensures that employees are thoroughly familiar with the procedure for draining universal waste pressure or vacuum gauges, and proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies;

(F) Stores the drained elemental mercury in a closed, non-leaking container that is in good condition and meets the requirements of subparagraph (D);

(G) Ensures that any container into which mercury from a universal waste pressure or vacuum gauge is drained or in which drained mercury is stored is placed into a secondary container that is in good condition, compatible with mercury, and large enough to accommodate the contents of the primary container if it should leak or break;

(H) Maintains documentation of the date of accumulation, a description of the pressure or vacuum gauges drained, and the amount of mercury drained; and

(I) Accumulates no more than 35 kilograms of elemental mercury at any one time.

(3)(A) A small quantity handler of universal waste shall determine whether the following exhibit a characteristic of hazardous waste identified in article 3 of chapter 11:

1. Whole or partial universal waste gauges from which mercury has been drained;

2. Mercury or clean–up residues resulting from spills or leaks;

3. Other wastes generated as a result of the handling of universal waste gauges.

(B) If a whole or partial universal waste gauge from which mercury has been drained exhibits a characteristic of hazardous waste, it shall be managed in compliance with all applicable requirements of this chapter.

(C) If the mercury or clean–up residues resulting from spills or leaks, and/or other wastes exhibit a characteristic of hazardous waste, the wastes shall be managed in compliance with all applicable requirements of this division. The handler is considered the generator of the mercury, residues, and/or other wastes and shall manage them pursuant to chapter 12.

(D) If the mercury, residues, and/or other wastes are not hazardous, the handler may manage the wastes in any way that complies with all applicable federal, state or local solid waste regulations.

(h) Universal Waste Novelties. A small quantity handler of universal waste shall manage universal waste novelties in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) Universal waste novelties whose only mercury is contained in a button cell or other mercury–containing battery shall be managed in accordance with the requirements for universal waste batteries, pursuant to subsection (a) of this section.

(A) If they are removable, a small quantity handler of universal waste may remove mercury–containing batteries from a universal waste novelty.

(B) If, after removal of all mercury–containing batteries, a universal waste novelty contains no other mercury and does not exhibit a characteristic of a hazardous waste as set forth in article 3 of chapter 11; the novelty may be managed as non–hazardous waste.

(C) Batteries removed from universal waste novelties may be managed as universal waste batteries, pursuant to subsection (a) of this section.

(2) Universal waste novelties that are painted with mercury–containing paint shall be accumulated in an airtight container. The container shall be closed, structurally sound, compatible with the novelty, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(3) Universal waste novelties that contain liquid mercury shall be managed as follows:

(A) Universal waste novelties that contain liquid mercury shall be packed in an airtight container, with packing materials adequate to prevent breakage during storage, handling, and transportation. The container shall be closed, structurally sound, compatible with the novelty, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions;

(B) A mercury clean–up system shall be readily available; and

(C) Any universal waste novelty containing liquid mercury that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions shall be placed in an airtight container. The container shall meet the requirements of subparagraph (A) of this paragraph.

(4) Universal waste novelties whose only mercury is contained in a mercury switch or switches shall be managed in accordance with the requirements for universal waste switches and thermometers, pursuant to subsection (d) of this section.

(A) If they are removable, a small quantity handler of universal waste may remove mercury switches from a universal waste novelty.

(B) If, after removal of all mercury switches, a universal waste novelty contains no other mercury and does not exhibit a characteristic of a hazardous waste as set forth in article 3 of chapter 11; the novelty may be managed as non–hazardous waste.

(C) Switches removed from universal waste novelties may be managed as universal waste switches and thermometers, pursuant to subsection (d) of this section.

(5)(A) A small quantity handler of universal waste shall determine whether the following exhibit a characteristic of hazardous waste identified in article 3 of chapter 11:

1. Mercury or clean–up residues resulting from spills or leaks; and/or

2. Other wastes generated as a result of the handling of novelties that contain liquid mercury.

(B) If the mercury, residues, and/or other wastes exhibit a characteristic of hazardous waste, the wastes shall be managed in compliance with all applicable requirements of this division. The handler is considered the generator of the mercury, residues, and/or other wastes and shall manage them pursuant to chapter 12.

(C) If the mercury, residues, and/or other wastes are not hazardous, the handler may manage the wastes in any way that complies with all applicable federal, state or local solid waste regulations.

(i) Universal Waste Counterweights and Dampers. A small quantity handler of universal waste shall manage universal waste counterweights and dampers in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) Prior to shipping universal waste counterweights and dampers to a recycler, a small quantity handler of universal waste shall pack universal waste counterweights and dampers in a container, with packing materials adequate to prevent breakage during storage, handling, and transportation. The container shall be closed, structurally sound, compatible with the contents of the counterweight or damper, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A small quantity handler of universal waste shall place any universal waste counterweight or damper that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions into a sealed plastic bag in an airtight container. The container shall be closed, structurally sound, compatible with the contents of the counterweight or damper, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(3) A small quantity handler of universal waste shall ensure that a mercury clean–up system is readily available;

(4)(A) A small quantity handler of universal waste shall determine whether the following exhibit a characteristic of hazardous waste identified in article 3 of chapter 11:

1. Mercury or clean–up residues resulting from spills or leaks; and/or

2. Other wastes generated as a result of the handling of universal waste counterweights and dampers.

(B) If the mercury, residues, and/or other wastes exhibit a characteristic of hazardous waste, the wastes shall be managed in compliance with all applicable requirements of this division. The handler is considered the generator of the mercury, residues, and/or other waste and shall manage them pursuant to chapter 12.

(C) If the mercury, residues, and/or other wastes are not hazardous, the handler may manage the wastes in any way that complies with all applicable federal, state or local solid waste regulations.

(j) Universal Waste Dilators and Weighted Tubing. A small quantity handler of universal waste shall manage universal waste dilators and weighted tubing in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) Prior to shipping universal waste dilators and weighted tubing, a small quantity handler of universal waste shall pack universal waste dilators and weighted tubing in a container, with packing materials adequate to prevent breakage during storage, handling, and transportation. The container shall be closed, structurally sound, compatible with the contents of the dilators and weighted tubing, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A small quantity handler of universal waste shall place any universal waste dilators and weighted tubing that show evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions into a sealed plastic bag in an airtight container. The container shall be closed, structurally sound, compatible with the contents of the dilators and weighted tubing, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(3) A small quantity handler of universal waste shall ensure that a mercury clean-up system is readily available.

(4)(A) A small quantity handler of universal waste shall determine whether the following exhibit a characteristic of hazardous waste identified in article 3 of chapter 11:

1. Mercury or clean-up residues resulting from spills or leaks; and/or

2. Other wastes generated as a result of the handling of universal waste dilators and weighted tubing.

(B) If the mercury, residues, and/or other wastes exhibit a characteristic of hazardous waste, the wastes shall be managed in compliance with all applicable requirements of this division. The handler is considered the generator of the mercury, residues, and/or other wastes and shall manage them pursuant to chapter 12.

(C) If the mercury, residues, and/or other wastes are not hazardous, the handler may manage the wastes in any way that complies with all applicable federal, state or local solid waste regulations.

(k) Universal Waste Rubber Flooring. A small quantity handler of universal waste shall manage universal waste rubber flooring in a way that prevents releases of any universal waste or component of a universal waste to the environment.

(*l*) Universal Waste Gas Flow Regulators. A small quantity handler of universal waste shall manage universal waste gas flow regulators in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A small quantity handler of universal waste shall ensure that universal waste gas flow regulators are kept upright at all times during accumulation and transportation.

(2) A small quantity handler of universal waste shall place each regulator into an airtight container or package that is structurally sound, adequate to prevent breakage, and compatible with the contents of the regulator. The container or package shall remain closed and shall lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

(3) A small quantity handler of universal waste shall ensure that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from universal waste gas flow regulators to an airtight container that meets the requirements of paragraph (2) of this subsection.

(4)(A) A small quantity handler of universal waste shall determine whether the following exhibit a characteristic of hazardous waste identified in article 3 of chapter 11:

1. Mercury or clean-up residues resulting from spills or leaks; and

2. Other wastes generated as a result of the handling of universal waste gas flow regulators.

(B) If the mercury or clean-up residues resulting from spills or leaks, and/or other wastes exhibit a characteristic of hazardous waste, the wastes shall be managed in compliance with all applicable requirements of this division. The handler is considered the generator of the mercury, residues, and/or other wastes and shall manage them pursuant to chapter 12.

(C) If the mercury, residues, and/or other wastes are not hazardous, the handler may manage the wastes in any way that complies with all applicable federal, state or local solid waste regulations.

NOTE: Authority cited: Sections 25141, 25150, 25201, 25214.6, 25214.9, 25214.10.2, 25219.1, 25219.2 and 58012, Health and Safety Code; and Sections 42475.1 and 42475.2, Public Resources Code. Reference: Sections 25141, 25150, 25159.5, 25201, 25214.6, 25214.9, 25219, 25219.1 and 25219.2, Health and Safety Code; 40 CFR Section 273.13.

HISTORY

1. New section filed 3-6-2000 as an emergency; operative 3-6-2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by 7-5-2000 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6-29-2000 as an emergency; operative 7-6-2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 11-3-2000 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11-1-2000 as an emergency; operative 11-4-2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 3-5-2001 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 3-6-2001 as an emergency; operative 3-6-2001 (Register 2001, No. 10). A Certificate of Compliance must be transmitted to OAL by 7-5-2001 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 6-26-2001 as an emergency; operative 7-5-2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 11-2-2001 or emergency language will be repealed by operation of law on the following day.
6. New section refiled 11-2-2001 as an emergency; operative 11-3-2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3-4-2002 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 11-2-2001 order, including amendment of NOTE, transmitted to OAL 12-27-2001 and filed 2-8-2002 (Register 2002, No. 6).
8. Amendment of subsection (b)(3)(B), new subsections (d)-(d)(3) and amendment of NOTE filed 2-3-2003; operative 2-3-2003 (Register 2003, No. 6).
9. New subsections (c)(3) and (e)-(*l*)(4)(C) and amendment of NOTE filed 2-13-2003; operative 3-15-2003 (Register 2003, No. 7).
10. Amendment of section and NOTE filed 6-7-2004 as an emergency; operative 6-7-2004 (Register 2004, No. 24). Pursuant to Public Resources Code section 42475.2, a Certificate of Compliance must be transmitted to OAL by 6-7-2006 or emergency language will be repealed by operation of law on the following day.
11. Amendment of section and NOTE refiled 6-5-2006 as an emergency, including further amendment of NOTE; operative 6-5-2006 (Register 2006, No. 23). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.
12. Editorial correction of subsection (d)(3)(F) (Register 2006, No. 24).
13. Amendment of section and NOTE refiled 5-8-2008 as an emergency; operative 5-8-2008 (Register 2008, No. 19). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.

§ 66273.14. Labeling/Marking.

A small quantity handler of universal waste shall label or mark the universal waste to identify the type of universal waste as specified below:

(a) Universal waste batteries (i.e., each battery), or a container in which the batteries are contained, shall be labeled or marked clearly with any one of the following phrases: "Universal Waste—Battery(ies), or "Waste Battery(ies)," or "Used Battery(ies);"

(b) Universal waste thermostats (i.e., each thermostat), or a container in which the thermostats are contained, shall be labeled or marked clearly with any one of the following phrases: "Universal Waste—Mercury Thermostat(s)," or "Waste Mercury Thermostat(s)," or "Used Mercury Thermostat(s)".

(c) Each lamp or a container or package in which such lamps are contained shall be labeled or marked clearly with one of the following phrases: "Universal Waste—Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)."

(d) Each universal waste electronic device or container or pallet in or on which universal waste electronic devices are contained, including containers or pallets that also contain devices that are not waste, shall be labeled or marked clearly with one of the following phrases: "Universal Waste—Electronic Device(s)" or "UW—Electronic Device(s)."

(1) In lieu of labeling individual universal waste electronic devices or containers or pallets, a small quantity handler may accumulate universal waste electronic devices within a designated area demarcated by boundaries that are clearly labeled with one of the following phrases: "Universal Waste Electronic Device(s)" or "UW Electronic Device(s)."

(e) Universal waste mercury switches and thermometers or a container in which the switches are contained, shall be labeled or marked clearly with any one of the following phrases: "Universal Waste—Mercury Switch(es)," or "Waste Mercury Switch(es)," or "Used Mercury Switch(es);"

(f) Dental amalgam. A container in which universal waste dental amalgam is contained shall be labeled or marked clearly with any one of the following phrases: "Universal Waste—Dental Amalgam," or "Waste Dental Amalgam" or "Scrap Dental Amalgam;"

(g) Pressure or vacuum gauges.

(1) A container in which universal waste gauges are contained shall be labeled or marked clearly with any one of the following phrases: "Universal Waste—Gauge(s)," or "Waste Mercury Gauge(s)" or "Used Mercury Gauge(s);"

(2) A container in which mercury drained from one or more universal waste pressure or vacuum gauges is contained shall be labeled or marked clearly with any one of the following phrases, as appropriate: "Universal Waste—Drained Mercury," or "Universal Waste—Mercury from Gauges;"

(h) Universal waste novelties or a container in which the novelties are contained shall be labeled or marked clearly with any one of the following phrases: "Universal Waste–Novelty(ies)," or "Waste Mercury Novelty(ies)" or "Used Mercury Novelty(ies);"

(i) Universal waste counterweights and dampers, a product that contains one or more counterweights and/or dampers, or a container in which the counterweights and/or dampers are contained, shall be labeled or marked clearly with any one of the following phrases, as appropriate: "Universal Waste—Counterweight(s)," or "Universal Waste—Damper(s);" "Waste Mercury Counterweight(s)" or "Waste Mercury Damper(s);" "Used Mercury Counterweight(s)," or "Used Mercury Damper(s);"

(j) Universal waste dilators and weighted tubing or a container in which the dilators and weighted tubing are contained shall be labeled or marked clearly with any one of the following phrases, as appropriate: "Universal Waste—Dilator(s)," "Waste Mercury Dilator(s)" "Used Mercury Dilator(s)," "Universal Waste—Mercury–Weighted Tubing," "Waste Mercury–Weighted Tubing," or "Used Mercury–Weighted Tubing."

(k) Universal waste rubber flooring or a container in which the flooring is contained shall be labeled or marked clearly with any one of the following phrases: "Universal Waste—Rubber Flooring," or "Waste Mercury–Containing Flooring" or "Used Mercury–Containing Flooring."

(*l*) Gas flow regulators. A waste gas meter that contains a mercury gas flow regulator or a container in which a universal waste gas flow regulator is contained shall be labeled or marked clearly with any one of the following phrases: "Universal Waste—Gas Flow Regulator," or "Waste Mercury Gas Flow Regulator" or "Used Mercury Gas Flow Regulator."

NOTE: Authority cited: Sections 25141, 25150, 25201, 25214.6, 25214.9, 25214.10.2, 25219.1 and 58012, Health and Safety Code; and Sections 42475.1 and 42475.2, Public Resources Code. Reference: Sections 25141, 25150, 25159.5, 25201, 25212, 25214.6, 25214.9, 25219, 25219.1 and 25219.2, Health and Safety Code; 40 CFR Section 273.14.

HISTORY

1. New section filed 3–6–2000 as an emergency; operative 3–6–2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2000 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6–29–2000 as an emergency; operative 7–6–2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–3–2000 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11–1–2000 as an emergency; operative 11–4–2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–5–2001 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 3–6–2001 as an emergency; operative 3–6–2001 (Register 2001, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2001 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 6–26–2001 as an emergency; operative 7–5–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–2–2001 or emergency language will be repealed by operation of law on the following day.
6. New section refiled 11–2–2001 as an emergency; operative 11–3–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–4–2002 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 11–2–2001 order transmitted to OAL 12–27–2001 and filed 2–8–2002 (Register 2002, No. 6).
8. New subsection (d) and amendment of NOTE filed 2–3–2003; operative 2–3–2003 (Register 2003, No. 6).
9. New subsections (e)–(*l*) and amendment of NOTE filed 2–13–2003; operative 3–15–2003 (Register 2003, No. 7).
10. Amendment of section and NOTE filed 6–7–2004 as an emergency; operative 6–7–2004 (Register 2004, No. 24). Pursuant to Public Resources Code section 42475.2, a Certificate of Compliance must be transmitted to OAL by 6–7–2006 or emergency language will be repealed by operation of law on the following day.
11. Amendment of subsections (d) and (d)(1) and NOTE refiled 6–5–2006 as an emergency, including further amendment of NOTE; operative 6–5–2006 (Register 2006, No. 23). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.
12. Amendment of subsections (d) and (d)(1) and NOTE refiled 5–8–2008 as an emergency; operative 5–8–2008 (Register 2008, No. 19). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.

§ 66273.15. Accumulation Time Limits.

(a) A small quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated, or received from another handler, unless the requirements of subsection (b) of this section are met.

(b) A small quantity handler of universal waste may accumulate universal waste for longer than one year from the date the universal waste is generated, or received from another handler, if such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal. However, the handler bears the burden of proving that such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal.

(c) A small quantity handler of universal waste who accumulates universal waste shall be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. The handler may make this demonstration by:

(1) Placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received;

(2) Marking or labeling each individual item of universal waste (e.g., each battery or thermostat) with the date it became a waste or was received;

(3) Maintaining an inventory system on–site that identifies the date each universal waste became a waste or was received;

(4) Maintaining an inventory system on–site that identifies the earliest date that any universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received;

(5) Placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or

(6) Any other method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

NOTE: Authority cited: Sections 25141, 25150, 25150.6, 25219.1 and 58012, Health and Safety Code. Reference: Sections 25141, 25150, 25159.5, 25219, 25219.1 and 25219.2, Health and Safety Code; 40 CFR Section 273.15.

HISTORY

1. New section filed 3–6–2000 as an emergency; operative 3–6–2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2000 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6–29–2000 as an emergency; operative 7–6–2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–3–2000 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11–1–2000 as an emergency; operative 11–4–2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–5–2001 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 3–6–2001 as an emergency; operative 3–6–2001 (Register 2001, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2001 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 6–26–2001 as an emergency; operative 7–5–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–2–2001 or emergency language will be repealed by operation of law on the following day.
6. New section refiled 11–2–2001 as an emergency; operative 11–3–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–4–2002 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 11–2–2001 order, including amendment of NOTE, transmitted to OAL 12–27–2001 and filed 2–8–2002 (Register 2002, No. 6).

§ 66273.16. Employee Training.

A small quantity handler of universal waste shall inform all employees who handle or have responsibility for managing universal waste. The information shall describe proper handling and emergency procedures appropriate to the type(s) of universal waste handled at the facility.

NOTE: Authority cited: Sections 25141, 25150, 25219.1 and 58012, Health and Safety Code. Reference: Sections 25141, 25150, 25159.5, 25219, 25219.1 and 25219.2, Health and Safety Code; 40 CFR Section 273.16.

HISTORY

1. New section filed 3–6–2000 as an emergency; operative 3–6–2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2000 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6–29–2000 as an emergency; operative 7–6–2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–3–2000 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11–1–2000 as an emergency; operative 11–4–2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–5–2001 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 3–6–2001 as an emergency; operative 3–6–2001 (Register 2001, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2001 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 6–26–2001 as an emergency; operative 7–5–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–2–2001 or emergency language will be repealed by operation of law on the following day.
6. New section refiled 11–2–2001 as an emergency; operative 11–3–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–4–2002 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 11–2–2001 order transmitted to OAL 12–27–2001 and filed 2–8–2002 (Register 2002, No. 6).

§ 66273.17. Response to Releases.

(a) A small quantity handler of universal waste shall immediately contain all releases of universal wastes and other residues from universal wastes.

(b) A small quantity handler of universal waste shall determine whether any material resulting from the release is hazardous waste, and if so, shall manage the hazardous waste in compliance with all applicable requirements of this division. The handler is considered the generator of the material resulting from the release, and shall manage it in compliance with chapter 12.

(c) Waste consisting only of residues of leaking, broken, or otherwise damaged universal waste may be managed as universal waste provided that the leaking, broken, or otherwise damaged universal waste is repackaged according to the standards of section 66273.13.

NOTE: Authority cited: Sections 25141, 25150, 25219.1 and 58012, Health and Safety Code. Reference: Sections 25141, 25150, 25159.5, 25219, 25219.1 and 25219.2, Health and Safety Code; 40 CFR Section 273.17.

HISTORY

1. New section filed 3–6–2000 as an emergency; operative 3–6–2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2000 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6–29–2000 as an emergency; operative 7–6–2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–3–2000 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11–1–2000 as an emergency; operative 11–4–2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–5–2001 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 3–6–2001 as an emergency; operative 3–6–2001 (Register 2001, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2001 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 6–26–2001 as an emergency; operative 7–5–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–2–2001 or emergency language will be repealed by operation of law on the following day.
6. New section refiled 11–2–2001 as an emergency; operative 11–3–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–4–2002 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 11–2–2001 order, including new subsection (c), transmitted to OAL 12–27–2001 and filed 2–8–2002 (Register 2002, No. 6).

§ 66273.18. Off–Site Shipments.

(a) A small quantity handler of universal waste is prohibited from sending or taking universal waste to a place other than another universal waste handler, a destination facility, or a foreign destination.

(b) If a small quantity handler of universal waste self–transports universal waste off–site, the handler becomes a universal waste transporter for those self–transportation activities and shall comply with the transporter requirements of article 4 of this chapter while transporting the universal waste.

(c) If a universal waste being offered for off–site transportation meets the definition of hazardous materials under 49 CFR parts 171 through 180, a small quantity handler of universal waste shall package, label, mark and placard the shipment, and prepare the proper shipping papers in accordance with the applicable Department of Transportation regulations under 49 CFR parts 172 through 180;

(d) Prior to sending a shipment of universal waste to another universal waste handler, the originating handler shall ensure that the receiving handler agrees to receive the shipment.

(e) If a small quantity handler of universal waste sends a shipment of universal waste to another handler or to a destination facility and the shipment is rejected by the receiving handler or destination facility, the originating handler shall either:

(1) Receive the waste back when notified that the shipment has been rejected, or

(2) Agree with the receiving handler on a destination facility to which the shipment will be sent.

(f) A small quantity handler of universal waste may reject a shipment containing universal waste, or a portion of a shipment containing universal waste that he has received from another handler. If a handler rejects a shipment or a portion of a shipment, he shall contact the originating handler to notify him of the rejection and to discuss reshipment of the load. The handler shall:

(1) Send the shipment back to the originating handler, or

(2) If agreed to by both the originating and receiving handler, send the shipment to a destination facility.

(g) If a small quantity handler of universal waste receives a shipment containing hazardous waste that is not a universal waste, the handler shall immediately notify the Department of the illegal shipment, and provide the name, address, and phone number of the originating shipper. The Department will provide instructions for managing the hazardous waste.

(h) If a small quantity handler of universal waste receives a shipment of non-hazardous, non-universal waste, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

NOTE: Authority cited: Sections 25141, 25150, 25150.6, 25219.1 and 58012, Health and Safety Code. Reference: Sections 25141, 25150, 25159.5, 25219, 25219.1 and 25219.2, Health and Safety Code; 40 CFR Section 273.18.

HISTORY

1. New section filed 3-6-2000 as an emergency; operative 3-6-2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by 7-5-2000 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6-29-2000 as an emergency; operative 7-6-2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 11-3-2000 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11-1-2000 as an emergency; operative 11-4-2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 3-5-2001 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 3-6-2001 as an emergency; operative 3-6-2001 (Register 2001, No. 10). A Certificate of Compliance must be transmitted to OAL by 7-5-2001 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 6-26-2001 as an emergency; operative 7-5-2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 11-2-2001 or emergency language will be repealed by operation of law on the following day.
6. New section refiled 11-2-2001 as an emergency; operative 11-3-2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3-4-2002 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 11-2-2001 order, including amendment of NOTE, transmitted to OAL 12-27-2001 and filed 2-8-2002 (Register 2002, No. 6).

§ 66273.19. Tracking Universal Waste Shipments.

(a) Receipt of shipments. A small quantity handler of universal waste shall keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, or other shipping document. The record for each shipment of universal waste received shall include the following information:

(1) The name and address of the originating universal waste handler or foreign shipper from whom the universal waste was sent;

(2) The quantity of each type of universal waste received (e.g., batteries, thermostats, lamps, mercury switches, etc.);

(3) The date of receipt of the shipment of universal waste.

(b) Shipments off-site. A small quantity handler of universal waste shall keep a record of each shipment of universal waste sent from the handler to other facilities. The record may take the form of a log, invoice, manifest, bill of lading or other shipping document. The record for each shipment of universal waste sent shall include the following information:

(1) The name and address of the universal waste handler, destination facility, or foreign destination to whom the universal waste was sent;

(2) The quantity of each type of universal waste sent (e.g., batteries, thermostats, lamps, mercury switches, etc.);

(3) The date the shipment of universal waste left the facility.

(c) Record retention.

(1) A small quantity handler of universal waste shall retain the records described in subsection (a) of this section for at least three years from the date of receipt of a shipment of universal waste;

(2) A small quantity handler of universal waste shall retain the records described in subsection (b) of this section for at least three years from the date a shipment of universal waste left the facility.

NOTE: Authority cited: Sections 25141, 25150, 25150.6, 25219.1, 25219.2 and 58012, Health and Safety Code. Reference: Sections 25141, 25150, 25159.5, 25219, 25219.1 and 25219.2, Health and Safety Code; 40 CFR Section 273.39.

HISTORY

1. New section filed 3-6-2000 as an emergency; operative 3-6-2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by 7-5-2000 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6-29-2000 as an emergency; operative 7-6-2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 11-3-2000 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11-1-2000 as an emergency; operative 11-4-2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 3-5-2001 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 3-6-2001 as an emergency; operative 3-6-2001 (Register 2001, No. 10). A Certificate of Compliance must be transmitted to OAL by 7-5-2001 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 6-26-2001 as an emergency; operative 7-5-2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 11-2-2001 or emergency language will be repealed by operation of law on the following day.
6. New section refiled 11-2-2001 as an emergency; operative 11-3-2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3-4-2002 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 11-2-2001 order, including amendment of NOTE, transmitted to OAL 12-27-2001 and filed 2-8-2002 (Register 2002, No. 6).
8. Repealer and new section and amendment of NOTE filed 2-13-2003; operative 3-15-2003 (Register 2003, No. 7).

§ 66273.20. Exports.

A small quantity handler of universal waste who sends universal waste, not including universal waste electronic devices, to a foreign destination other than to those OECD countries specified in section 66262.58(a)(1) (in which case the handler is subject to the requirements of article 8 of chapter 12) shall:

(a) Comply with the requirements applicable to a primary exporter in section 66262.53, 66262.56(a)(1) through (4), (6), and (b) and 66262.57;

(b) Export such universal waste only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent as defined in article 5 of chapter 12; and

(c) Provide a copy of the EPA Acknowledgment of Consent for the shipment to the transporter transporting the shipment for export.

(d) A small quantity handler of universal waste who sends universal waste electronic devices to any foreign destination shall notify the Department and concurrently send a copy of that notification to the CUPA, or, if there is no CUPA, to the agency authorized pursuant to subdivision (f) of Health and Safety Code section 25404.3, of an intended export before such universal waste electronic device is scheduled to leave the United States. A completed notification shall be submitted four weeks before the initial shipment is intended to be shipped offsite. This notification shall cover export activities extending over a twelve (12) month or lesser period.

(e) The notification submitted pursuant to subsection (d) of this section shall be in writing, signed by the universal waste handler, and include the following information:

(1) name, mailing address, and telephone number of the universal waste handler;

(2) the foreign destination, for each type of universal waste electronic device:

(A) the amount of universal waste electronic devices (by count or by weight);

(B) the estimated frequency or rate at which the universal waste electronic device is to be exported and the period of time over which the universal waste electronic device is to be exported;

(C) all points of entry to and departure from each foreign country through which the universal waste electronic device will pass;

(D) a description of the means by which each shipment of universal waste electronic devices will be recycled at the foreign destination; and

(E) the name and site address of the consignee or any alternate consignee.

(f) Notifications submitted under subsection (d) of this section shall be sent to the following address by certified mail, return receipt requested: Department of Toxic Substances Control, Hazardous Waste Management Program, Regulatory and Program Development Division, P.O. Box 806, Sacramento, CA 95812–0806, with "Attention: Notification to Export Universal Waste Electronic Devices" prominently displayed on the front of the envelope.

(g) A person who exports covered electronic wastes shall also comply with the applicable export requirements of Public Resources Code, division 30, part 3, chapter 8.5.

NOTE: Authority cited: Sections 25141, 25150, 25150.2, 25150.6, 25201, 25214.9, 25214.10.2, 25219.1 and 58012, Health and Safety Code; and Sections 42475.1 and 42475.2, Public Resources Code. Reference: Sections 25141, 25150, 25159.5, 25201, 25214.9, 25219, 25219.1 and 25219.2, Health and Safety Code; Section 42476.5, Public Resources Code; and 40 CFR Section 273.20.

HISTORY

1. New section filed 3–6–2000 as an emergency; operative 3–6–2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2000 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6–29–2000 as an emergency; operative 7–6–2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–3–2000 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11–1–2000 as an emergency; operative 11–4–2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–5–2001 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 3–6–2001 as an emergency; operative 3–6–2001 (Register 2001, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2001 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 6–26–2001 as an emergency; operative 7–5–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–2–2001 or emergency language will be repealed by operation of law on the following day.
6. New section refiled 11–2–2001 as an emergency; operative 11–3–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–4–2002 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 11–2–2001 order transmitted to OAL 12–27–2001 and filed 2–8–2002 (Register 2002, No. 6).
8. Amendment of first paragraph, new subsections (d)–(f) and amendment of NOTE filed 2–3–2003; operative 2–3–2003 (Register 2003, No. 6).
9. Amendment of section and NOTE filed 6–7–2004 as an emergency; operative 6–7–2004 (Register 2004, No. 24). Pursuant to Public Resources Code section 42475.2, a Certificate of Compliance must be transmitted to OAL by 6–7–2006 or emergency language will be repealed by operation of law on the following day.
10. Amendment of section and NOTE refiled 6–5–2006 as an emergency, including further amendment of NOTE; operative 6–5–2006 (Register 2006, No. 23). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.
11. Amendment of section and NOTE refiled 5–8–2008 as an emergency; operative 5–8–2008 (Register 2008, No. 19). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.

§ 66273.21. Accumulation of Mercury–Containing Universal Wastes Received from Other Universal Waste Handlers.

(a) A small quantity handler of universal waste may accumulate the following universal wastes received from other handlers only at a location where accumulation of universal waste is consistent with local land use zoning or land use patterns:

(1) Mercury–containing motor vehicle switches (including, but not limited to M001 Wastes), and motor vehicles that contain such switches (M001 Wastes), as described in section 66273.7.1;

(2) Non–automotive mercury switches and products that contain such switches (including, but not limited to, M002 Wastes), as described in section 66273.7.2;

(3) Dental amalgam wastes, as described in section 66273.7.3;

(4) Pressure or vacuum gauges, as described in section 66273.7.4;

(5) Mercury–added novelties (including, but not limited to, M004 Wastes), as described in section 66273.7.5;

(6) Mercury counterweights and dampers, as described in section 66273.7.6;

(7) Mercury thermometers, as described in section 66273.7.7;

(8) Mercury dilators and weighted tubing, as described in section 66273.7.8;

(9) Mercury containing rubber flooring, as described in section 66273.7.9; and

(10) Mercury gas flow regulators, as described in section 66273.10.

(b) A small quantity handler of universal waste who accumulates any of the universal wastes listed in subsection (a) received from other handlers shall:

(1) Comply with all applicable requirements for handlers of hazardous materials;

(2) Disclose that mercury is being handled in all applicable business and use permitting applications;

(3) Comply with the location standards in section 66265.18;

(4) Comply with the seismic precipitation design standards in section 66265.25;

(5) Accumulate universal wastes listed in subsection (a) only in areas that are zoned for commercial or industrial uses; and

(6) Accumulate universal wastes listed in subsection (a) in a location that does not pose site specific land use hazards or contain sensitive habitat area, based on a review of state and local planning documents and constraints mapping.

NOTE: Authority cited: Sections 25141, 25150, 25214.6, 25219.1, 25219.2 and 58012, Health and Safety Code. Reference: Sections 25141, 25150, 25159.5, 25212, 25214.6, 25219, 25219.1 and 25219.2, Health and Safety Code.

HISTORY

1. New section filed 2–13–2003; operative 3–15–2003 (Register 2003, No. 7).

Article 3. Standards for Large Quantity Handlers of Universal Waste

§ 66273.30. Applicability.

This article applies to large quantity handlers of universal waste (as defined in section 66273.9).

NOTE: Authority cited: Sections 25141, 25150, 25219.1 and 58012, Health and Safety Code. Reference: Sections 25141, 25150, 25159.5, 25219, 25219.1 and 25219.2, Health and Safety Code; 40 CFR Section 273.30.

HISTORY

1. New article 3 (sections 66273.30–66273.40) and section filed 3–6–2000 as an emergency; operative 3–6–2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2000 or emergency language will be repealed by operation of law on the following day.
2. New article 3 (sections 66273.30–66273.40) and section refiled 6–29–2000 as an emergency; operative 7–6–2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–3–2000 or emergency language will be repealed by operation of law on the following day.
3. New article 3 (sections 66273.30–66273.40) and section refiled 11–1–2000 as an emergency; operative 11–4–2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–5–2001 or emergency language will be repealed by operation of law on the following day.
4. New article 3 (sections 66273.30–66273.40) and section refiled 3–6–2001 as an emergency; operative 3–6–2001 (Register 2001, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2001 or emergency language will be repealed by operation of law on the following day.
5. New article 3 (sections 66273.30–66273.40) and section refiled 6–26–2001 as an emergency; operative 7–5–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–2–2001 or emergency language will be repealed by operation of law on the following day.
6. New article 3 (sections 66273.30–66273.40) and section refiled 11–2–2001 as an emergency; operative 11–3–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–4–2002 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 11–2–2001 order transmitted to OAL 12–27–2001 and filed 2–8–2002 (Register 2002, No. 6).

§ 66273.31. Prohibitions.

A large quantity handler of universal waste is:

(a) Prohibited from disposing of universal waste; and

(b) Prohibited from diluting or treating universal waste, except by responding to releases as provided in section 66273.37; or by managing specific wastes as provided in section 66273.33.

NOTE: Authority cited: Sections 25141, 25150, 25219.1 and 58012, Health and Safety Code. Reference: Sections 25141, 25150, 25159.5, 25219, 25219.1 and 25219.2, Health and Safety Code; 40 CFR Section 273.31.

HISTORY

1. New section filed 3–6–2000 as an emergency; operative 3–6–2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2000 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6–29–2000 as an emergency; operative 7–6–2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–3–2000 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11–1–2000 as an emergency; operative 11–4–2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–5–2001 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 3–6–2001 as an emergency; operative 3–6–2001 (Register 2001, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2001 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 6–26–2001 as an emergency; operative 7–5–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–2–2001 or emergency language will be repealed by operation of law on the following day.
6. New section refiled 11–2–2001 as an emergency; operative 11–3–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–4–2002 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 11–2–2001 order transmitted to OAL 12–27–2001 and filed 2–8–2002 (Register 2002, No. 6).

§ 66273.32. Notification.

(a)(1) Except as provided in subsections (a)(2) and (3) of this section, a large quantity handler of universal waste shall have sent written notification of universal waste management to the Regional Administrator, and received an EPA Identification Number, before meeting or exceeding the 5,000 kilogram accumulation limit.

(2) A large quantity handler of universal waste who has already notified the U.S. EPA of his hazardous waste management activities and has received an EPA Identification Number is not required to renotify under this section.

(3) A large quantity handler of universal waste who would otherwise be required by subsection (a)(1) to notify the Regional Administrator and obtain an EPA Identification Number is not required to do so if the following conditions are met:

(A) the total quantity of all universal wastes handled other than universal waste electronic devices does not meet or exceed the 5,000 Kg accumulation limit, and

(B) the large quantity handler has submitted the applicable notifications specified in this Article, and

(C) the large quantity handler ensures that all universal waste electronic devices handled are managed and recycled in accordance with this Article.

(b) This notification shall include:

(1) The universal waste handler's name and mailing address;

(2) The name and business telephone number of the person at the universal waste handler's site who should be contacted regarding universal waste management activities;

(3) The address or physical location of the universal waste management activities;

(4) A list of all of the types of universal waste managed by the handler (e.g, batteries, thermostats, lamps);

(5) A statement indicating that the handler is accumulating more than 5,000 kilograms of universal waste at one time and the types of universal waste (e.g, batteries, thermostats, lamps) the handler is accumulating above this quantity.

NOTE: Authority cited: Sections 25141, 25150, 25201, 25214.9, 25214.10.2, 25219.1 and 58012, Health and Safety Code; and Sections 42475.1 and 42475.2, Public Resources Code. Reference: Sections 25141, 25150, 25159.5, 25201, 25214.9, 25219, 25219.1 and 25219.2, Health and Safety Code; and 40 CFR Section 273.32.

HISTORY

1. New section filed 3–6–2000 as an emergency; operative 3–6–2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2000 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6–29–2000 as an emergency; operative 7–6–2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–3–2000 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11–1–2000 as an emergency; operative 11–4–2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–5–2001 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 3–6–2001 as an emergency; operative 3–6–2001 (Register 2001, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2001 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 6–26–2001 as an emergency; operative 7–5–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–2–2001 or emergency language will be repealed by operation of law on the following day.
6. New section refiled 11–2–2001 as an emergency; operative 11–3–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–4–2002 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 11–2–2001 order transmitted to OAL 12–27–2001 and filed 2–8–2002 (Register 2002, No. 6).
8. Amendment of subsection (a)(1), new subsections (a)(3)–(a)(3)(C) and amendment of NOTE filed 6–7–2004 as an emergency; operative 6–7–2004 (Register 2004, No. 24). Pursuant to Public Resources Code section 42475.2, a Certificate of Compliance must be transmitted to OAL by 6–7–2006 or emergency language will be repealed by operation of law on the following day.
9. Amendment of subsection (a)(1), new subsections (a)(3)–(a)(3)(C) and amendment of NOTE refiled 6–5–2006 as an emergency, including further amendment of NOTE; operative 6–5–2006 (Register 2006, No. 23). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.
10. Amendment of subsection (a)(1), new subsections (a)(3)–(a)(3)(C) and amendment of NOTE refiled 5–8–2008 as an emergency; operative 5–8–2008 (Register 2008, No. 19). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.

§ 66273.33. Waste Management.

(a) Universal Waste Batteries. A large quantity handler of universal waste shall manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A large quantity handler of universal waste shall contain any universal waste battery that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container shall be closed, structurally sound, compatible with the contents of the battery, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A large quantity handler of universal waste may conduct the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed (except that cells may be opened to remove electrolyte but shall be immediately closed after removal):

(A) Sorting batteries by type;

(B) Mixing battery types in one container;

(C) Discharging batteries so as to remove the electric charge;

(D) Regenerating used batteries;

(E) Disassembling batteries or battery packs into individual batteries or cells;

(F) Removing batteries from consumer products; or

(G) Removing electrolyte from batteries.

(3) A large quantity handler of universal waste who removes electrolyte from batteries, or who generates other solid waste (e.g., battery pack materials, discarded consumer products) as a result of the activities listed above, shall determine whether the electrolyte and/or other solid waste

exhibit a characteristic of hazardous waste identified in article 3 of chapter 11.

(A) If the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste, it shall be managed in compliance with all applicable requirements of this division. The handler is considered the generator of the hazardous electrolyte and/or other waste and is subject to chapter 12.

(B) If the electrolyte or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(b) Universal Waste Thermostats. A large quantity handler of universal waste shall manage universal waste thermostats in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A large quantity handler of universal waste shall contain any universal waste thermostat that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container shall be closed, structurally sound, compatible with the contents of the thermostat, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A large quantity handler of universal waste may remove mercury–containing ampules from universal waste thermostats provided the handler:

(A) Removes the ampules in a manner designed to prevent breakage of the ampules;

(B) Removes ampules only over or in a containment device (e.g., tray or pan sufficient to contain any mercury released from an ampule in case of breakage);

(C) Ensures that a mercury clean–up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules, from the containment device to a container that meets the requirements of section 66262.34;

(D) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of section 66262.34;

(E) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA and CalOSHA exposure levels for mercury;

(F) Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;

(G) Stores removed ampules in closed, non–leaking containers that are in good condition;

(H) Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation; and

(3)(A) A large quantity handler of universal waste who removes mercury–containing ampules from thermostats shall determine whether the following exhibit a characteristic of hazardous waste identified in article 3 of chapter 11:

1. Mercury or clean–up residues resulting from spills or leaks; and/or

2. Other solid waste generated as a result of the removal of mercury–containing ampules (e.g., remaining thermostat units).

(B) If the mercury, residues, and/or other solid waste exhibit a characteristic of hazardous waste, it shall be managed in compliance with all applicable requirements of this division. The handler is considered the generator of the mercury, residues, and/or other waste and is subject to chapter 12.

(C) If the mercury, residues, and/or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(c) Universal Waste Lamps. A large quantity handler of universal waste shall manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A large quantity handler of universal waste shall contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages shall remain closed and shall lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

(2) A large quantity handler of universal waste shall immediately clean up and place in a container any lamp that is broken and shall place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment. Containers shall be closed, structurally sound, compatible with the contents of the lamps and shall lack evidence of leakage, spillage or damage that could cause leakage or releases of mercury or other hazardous constituents to the environment under reasonably foreseeable conditions.

(3) A large quantity handler of universal waste may remove universal waste lamps from a product or structure, provided the handler removes the lamps in a manner designed to prevent breakage.

(d) Universal Waste Electronic Devices. A large quantity handler of universal waste shall manage universal waste electronic devices in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) Containment:

(A) A large quantity handler of universal waste shall handle any universal waste electronic devices in a manner that minimizes breakage. If containers are used, such containers shall prevent leakage, spillage or damage that could reasonably be foreseen. Whole universal waste electronic devices that are managed in a manner (e.g., stored in a room) that prevents breakage of the device and release of hazardous components of the device (e.g, on a pallet) shall be considered to comply with this requirement.

(B) A large quantity handler of universal waste shall immediately clean up and place in a container any universal waste electronic device that is broken and may reasonably be expected to cause a release of hazardous constituents to the environment. Containers shall be structurally sound, compatible with the contents of the universal waste electronic devices and shall prevent releases of hazardous components to the environment under reasonably foreseeable conditions.

(2) Notification and Reporting Requirements:

(A) Notification: Any person who intends to handle any universal waste electronic devices from an offsite source after August 6, 2004 shall submit to the Department, by certified mail, with return receipt requested, a notification containing the information specified below no later than 30 days prior to accepting any universal waste electronic devices. Large quantity handlers currently handling universal waste electronic devices from offsite sources shall submit this notification prior to July 7, 2004.

1. Name of handler;

2. Telephone number of handler;

3. Type of handler for purposes of Public Resources Code, division 30, part 3, chapter 8.5 (i.e., collector, recycler, or dual entity);

4. Mailing address of handler, and physical address, including county, if different from the mailing address;

5. Name of the contact person;

6. Telephone number of the contact person;

7. An e–mail address for the contact person or organization, if available;

8. The types of universal waste electronic devices expected to be handled;

9. The sources of universal waste electronic devices (i.e., residential collections, business asset recovery, other collectors, etc.).

(B) Annual Report. A large quantity handler of universal waste electronic devices that accepts more than 100 kilograms or 220 pounds of universal waste electronic devices from any offsite source shall, by February 1 of each calendar year, commencing February 1, 2005, submit a

written or electronic report containing the information specified below to the Department. The information submitted under this subsection shall cover universal waste electronic device handling activities during the previous calendar year.

1. Name of handler;

2. Telephone number of handler;

3. Mailing address of handler, and physical address, including county, if different from the mailing address;

4. Name of the contact person;

5. Telephone number of the contact person;

6. An e-mail address for the contact person or organization, if available;

7. The types of universal waste electronic devices handled;

8. The total quantity of universal waste electronic devices (count or weight) handled during the previous calendar year;

9. A list including the names, addresses, and phone numbers of each location that the large quantity handler shipped universal waste electronic devices to during the previous year and the total quantity of universal waste electronic devices (count or weight) shipped to each location.

(C) Electronic notifications and reports submitted under subsection (A) and (B) shall be submitted to www.dtsc.ca.gov.

(D) Written notifications and reports submitted under subsection (A) and (B) shall be submitted to the Department by certified mail, return receipt requested to: Department of Toxic Substances Control, Hazardous Waste Management Program, Regulatory and Program Development Division, P.O. Box 806, Sacramento, CA 95812-0806, with "Attention: UWED Handling Activities" prominently displayed on the front of the envelope.

(3) Large Quantity Handler Standards: A large quantity handler of universal waste electronic devices may treat or recycle the universal waste electronic devices (i.e., may conduct hazardous waste treatment) provided the handler complies with the applicable standards below:

(A) Notwithstanding subsections (B), (C), and (D) below, a large quantity handler of universal waste electronic devices may remove from the universal waste electronic devices any discrete assemblies which are typically removed during the normal operation of the universal waste electronic device, such as the removal and replacement of batteries or ink cartridges, provided the large quantity universal waste handler conducts the disassembly in the manner prescribed in the operating manual for the universal waste electronic device or that would otherwise be performed during the normal use of the universal waste electronic device.

(B) A large quantity handler of universal waste who recycles universal waste electronic devices by reclaiming components (e.g., circuit boards, integrated circuits, metals, plastic, wiring, batteries, lamps, etc.) from universal waste electronic devices through manual disassembly, dismantling, or otherwise manually segregating components from those devices for the purposes of directly reusing those components onsite without further processing, or sending those components offsite for direct reuse or further reclamation at another location shall comply with subsections (F)(1) through (F)(5) below.

(C) A large quantity handler of universal waste who recycles universal waste electronic devices (and their components) through the utilization of treatment processes other than manual disassembly for the purposes of directly reusing components onsite without further processing, sending components offsite for direct reuse, or sending components or treatment residuals offsite for further reclamation at another location, and whose recycling or treatment activities produces only hazardous residuals (including finely divided materials) that meet the definition of scrap metal in 66260.10, or which are otherwise exempt from full regulation as hazardous waste, shall comply with subsections (F)(1) through (F)(6) below.

(D) A large quantity handler of universal waste who recycles universal waste electronic devices (and their components) through the utilization of treatment processes other than manual disassembly for the purposes of directly reusing components onsite without further processing, sending components offsite for direct reuse, or sending components or treatment residuals offsite for further reclamation at another location, and whose recycling or treatment processes produce any residuals (including baghouse and filter dusts) which exhibit any hazardous waste characteristic defined in chapter 11 and do not meet the definition of scrap metal in section 66260.10 (e.g., because they are fine powders or are contaminated with fine powders), or do not qualify for management as universal waste under this chapter shall comply with subsections (F)(1) through (F)(7) below.

(E) A large quantity handler of universal waste electronic devices who conducts treatment or recycling activities as described in subsections (A) through (D) above shall not be deemed to be operating pursuant to a permit-by-rule, conditional authorization, or conditional exemption.

(F) A large quantity handler of universal waste electronic devices who conducts treatment or recycling activities as described in subsections (B) through (D) shall comply with the following waste management standards, as applicable:

1. Treatment/Recycling Notification and Reporting:

a. Any person who intends to conduct treatment activities as described in subsections (B), (C), or (D) above after August 6, 2004 shall submit to the Department, by certified mail, with return receipt requested, a notification containing the information specified below no later than 30 days prior to treating or recycling any universal waste electronic devices. Large quantity handlers currently treating or recycling universal waste electronic devices shall submit this notification prior to July 7, 2004.

1. The large quantity universal waste electronic device handler's name and mailing address;

2. The name and business telephone number of the person at the large quantity universal waste electronic device handler's site who should be contacted regarding universal waste management activities;

3. The name, mailing address and telephone number of the owner of the facility;

4. A description of the type of universal waste electronic devices that will be treated;

5. A description of the treatment processes to be used;

6. Documentation that the facility operator has notified the facility property owner (if different from the operator of the facility) that the operator is conducting universal waste electronic device treatment or recycling operations at the facility.

b. A large quantity handler of universal waste electronic devices who conducts treatment activities as described in subsections (B), (C), or (D) above shall prepare and submit an annual report to the Department. The annual report shall be delivered by certified mail, return receipt requested, to the Department by February 1 of each calendar year. The report shall be dated and signed according to the requirements of section 66270.11 as those requirements apply to permit applications, and shall include the following information for the previous calendar year:

1. The name, address, physical location and a description of the facility;

2. The mailing address of the business entity that owns and operates the facility;

3. The name, title and telephone number of the person at the facility who should be contacted regarding universal waste management activities at the facility;

4. The facility EPA Identification number, if required;

5. The number of days each facility operated;

6. The total quantity (count or weight) universal waste electronic devices (with their respective types or categories) treated or recycled by the handler during the previous year;

7. The treatment or recycling method used for each universal waste electronic device treated by the facility;

8. The final destination of universal waste electronic devices recycled.

2. Containment of Residuals: A large quantity handler of universal waste electronic devices who conducts treatment activities as described in subsections (B), (C), or (D) above shall manage all materials produced from the treatment of universal waste electronic devices in a manner that

prevents a release of any universal waste electronic devices or any components thereof, as follows:

a. A large quantity handler of universal waste electronic devices shall conduct activities over or in a containment device (e.g., a tray, a box, a workbench, a table, or an enclosed machine) sufficient in size and construction to contain any materials that may be released.

b. A large quantity handler of universal waste electronic devices shall contain any residuals produced from universal waste electronic devices in a manner that prevents releases of hazardous residuals to the environment under reasonably foreseeable conditions.

c. A large quantity handler of universal waste shall immediately clean up and place in a container any universal waste electronic device that is broken and may reasonably be expected to cause a release. Such containers shall be structurally sound, compatible with the contents of the universal waste electronic devices and shall prevent releases under reasonably foreseeable conditions.

3. Worker Safety:

a. A large quantity handler of universal waste electronic devices who conducts treatment activities as described in subsections (B), (C), or (D) above shall be thoroughly familiar with the associated hazards and have access to the proper procedures and protective equipment necessary to safely conduct the treatment and to comply with the requirements of this section;

b. A large quantity handler of universal waste electronic devices who conducts treatment activities shall ensure that the facility is operated in compliance with all applicable worker health and safety laws and regulations (i.e., California Code of Regulations, title 8).

4. Zoning: A large quantity handler of universal waste electronic devices who conducts treatment activities as described in subsections (B), (C), or (D) above shall ensure that the activities conducted at the facility are consistent with local zoning and land use requirements for that location.

5. Management of Residuals: A large quantity handler of universal waste electronic devices who conducts treatment activities as described in subsections (B), (C), or (D) above shall ensure that all materials produced as a result of the treatment processes are properly classified and managed in accordance with any applicable requirements of this division.

6. Management Standards Applicable to Large Quantity Handlers Identified in Subsections (C) and (D): A large quantity handler of universal waste electronic devices who conducts treatment activities as described in subsections (C) and (D) above shall:

a. Utilize only treatment methods that employ one or more of the following technologies:

1. Physical processes that change only the physical properties of the waste such as cutting, sawing, breaking, shredding, crushing, grinding, screening, sieving, acceleration, or compacting; and/or

2. Separation based on differences in physical properties such as size, color, density, or ferromagnetism.

3. If processes such as cutting, sawing, shredding, crushing, grinding, crushing, acceleration, or compacting are utilized, the handler shall ensure all mercury containing lamps and other components which contain fluids (i.e., liquids or gasses) that would be identified as hazardous waste are removed prior to processing.

4. A large quantity handler of universal waste electronic devices shall not process any universal waste electronic devices containing PCB ballasts, medical or biohazardous wastes, radioactive materials, reactive materials, or ignitable materials.

b. Ensure the treatment is conducted without the use or application of:

1. Chemicals, including water;

2. External heat.

c. Ensure that all hazardous wastes generated from treatment activities that are sent offsite for disposal are manifested in accordance with the applicable requirements of article 2 of chapter 12.

d. Ensure that all treatment residuals meeting the definition of scrap metal in section 66260.10 are recycled.

e. Not accept for treatment, any universal waste electronic devices that are managed, or are required to be managed, as hazardous waste under chapters 10 through 22 of this division unless authorized to do so under hazardous waste management permit or other grant of authorization.

f. Comply with the requirements of sections 66265.18 and 66265.25 of chapter 15 as those requirements apply to facility location and design standards.

g. Ensure that all treatment is conducted in compliance with all applicable local and state air pollution control laws and regulations.

h. Conduct treatment only for the purposes of recycling one or more types of universal waste electronic devices.

i. Maintain on file the documents specified in subparagraphs (i)(1) and (i)(2) at the facility by no later than 30 days prior to recycling or treating any universal waste electronic devices material. The handler shall make these documents available upon demand at the facility to any representative of the Department, the U. S. EPA or a local governmental agency having jurisdiction over the facility. A copy of these documents shall be delivered in person or by certified mail, return receipt requested, to the Department when requested in writing. The written request from the Department shall specify the documents that are required, where and how to submit those documents and the date by which those documents shall be submitted.

1. A copy of the most recent notifications and reports submitted as required by subsection (F)(1).

2. A copy of any local air district permit and other permits required for the facility.

j. No later than 30 days after ceasing treatment or recycling activities at the facility, a large quantity handler of universal waste electronic devices shall submit to the Department, by certified mail, with return receipt requested, a notification containing the following information:

1. The date of the last day on which the handler conducted treatment or recycling activities;

2. The date of the last day on which the handler conducted handling activities at the facility, if applicable; and

3. The date the large quantity handler closed or vacated the facility, if applicable.

7. Treatment Standards Applicable to Large Quantity Handlers Identified in Subsection (D). A large quantity handler of universal waste electronic devices who conducts treatment activities other than manual disassembly or dismantling treatment as described in subsection (D) above shall:

a. No later than 30 days prior to initially recycling or treating any universal waste electronic devices, prepare and submit to the Department, by certified mail, with return receipt requested, an estimate of the cost of facility closure prepared pursuant to section 66265.142. The large quantity handler shall evaluate the estimate annually and adjust it to reflect changes in closing cost as appropriate.

b. No later than 30 days prior to initially recycling or treating any universal waste electronic devices, submit to the Department, by certified mail, with return receipt requested, documentation demonstrating financial assurance for closure pursuant to section 66265.143.

c. No later than 30 days prior to initially recycling or treating any universal waste electronic devices, submit to the Department, by certified mail, with return receipt requested documentation demonstrating financial responsibility for liability pursuant to section 66265.147.

(e) Universal Waste Mercury Switches and Thermometers. A large quantity handler of universal waste shall manage universal waste mercury switches and thermometers in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A large quantity handler of universal waste shall contain any universal waste mercury switch or thermometer that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a sealed plastic bag in a container. The container shall be closed, structurally sound, compatible with the contents of the switch or thermometer, and shall lack evidence of leakage, spillage, or

damage that could cause leakage under reasonably foreseeable conditions. The container shall contain packing materials adequate to prevent breakage of universal waste mercury switches and thermometers during storage, handling, and transportation.

(2) A large quantity handler of universal waste shall accumulate universal waste thermometers in closed, non–leaking containers that are in good condition and shall pack thermometers with packing materials adequate to prevent breakage during storage, handling, and transportation.

(3)(A) A large quantity handler of universal waste may remove mercury–containing motor vehicle switches from motor vehicles, and may remove non–automotive mercury switches from products that contain them, provided the handler:

1. Removes mercury switches in a manner designed to prevent breakage;

2. Ensures that a mercury clean–up system is readily available;

3. Immediately transfers any mercury resulting from spills or leaks from broken mercury switches to an airtight container that meets the requirements of paragraph (1) of this subsection;

4. Ensures that employees removing mercury switches are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of spilled mercury to appropriate containers;

5. Accumulates removed mercury switches in closed, non–leaking containers that are in good condition;

6. Packs removed mercury switches in the container with packing materials adequate to prevent breakage during storage, handling, and transportation; and

7. Keeps records, on paper or electronically, of the removal of mercury switches from vehicles and household appliances for at least three years from the date of removal, which shall include, at a minimum, the following information:

a. The total number of vehicles crushed, baled, sheared, or shredded;

b. The total number of appliances destined for shredding;

c. The total number of vehicles or appliances destined for crushing, baling, shearing, or shredding that were determined to contain one or more mercury switches;

d. The number of mercury switches removed from these vehicles and appliances; and

e. The number of motor vehicles from which mercury switches could not be removed due to accidental damage to the vehicle.

(B) On or after January 1, 2005, a large quantity universal waste handler who intends to crush, bale, shear, or shred a motor vehicle that contains mercury light switches, shall, prior to crushing, baling, shearing, or shredding the vehicle, remove all mercury–containing motor vehicle light switches (except switches that cannot be removed due to accidental damage to the vehicle) or ensure that all mercury–containing motor vehicle light switches have already been removed.

(4)(A) A large quantity handler of universal waste shall determine whether the following exhibit a characteristic of hazardous waste identified in article 3 of chapter 11:

1. Mercury or clean–up residues resulting from spills or leaks from a mercury switch or thermometer; and/or

2. Other wastes generated as a result of the handling of universal waste mercury switches and/or thermometers.

(B) If the mercury, residues, and/or other wastes exhibit a characteristic of hazardous waste, the wastes shall be managed in compliance with all applicable requirements of this division. The handler is considered the generator of the mercury, residues, and/or other wastes and shall manage them pursuant to chapter 12.

(C) If the mercury, residues, and/or other wastes are not hazardous, the handler may manage the wastes in any way that complies with all applicable federal, state or local solid waste regulations.

(f) Universal Waste Dental Amalgam. A large quantity handler of universal waste shall manage universal waste dental amalgam in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A large quantity handler of universal waste shall place amalgam scraps, amalgam fines, single–use amalgam traps and filters, and extracted teeth with amalgam restorations in airtight containers. The containers shall be kept closed, except when universal waste dental amalgam is being added.

(2) A large quantity handler of universal waste shall not rinse amalgam traps or filters into a sink.

(3) A large quantity handler of universal waste shall not place universal waste dental amalgam into medical waste containers.

(g) Universal Waste Gauges. A large quantity handler of universal waste shall manage universal waste gauges in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1)(A) All openings through which mercury could escape shall be securely closed with appropriately sized stoppers or other closures that are compatible with the contents of the device.

(B) Each universal waste gauge shall be sealed in a plastic bag. Plastic bags containing universal waste gauges shall be placed into a container or package that is structurally sound, adequate to prevent breakage, and compatible with the contents of the gauge. The container or package shall remain closed and shall lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions. The container shall contain packing materials adequate to prevent breakage during storage, handling, and transportation.

(C) A mercury clean–up system shall be readily available to immediately transfer any mercury resulting from spills or leaks from universal waste gauges to an airtight container that meets the requirements of paragraph (2) of this subsection.

(D) Universal waste gauges shall be kept upright at all times during handling, accumulation, and transportation.

(2) A large quantity handler of universal waste may drain elemental mercury from pressure or vacuum gauges generated by that handler, at the site where the gauges were generated, provided the handler:

(A) Ensures that the universal waste pressure or vacuum gauges are drained over or in a containment device (e.g., tray or pan sufficient to collect and contain any mercury released from a device in case of breakage or spill);

(B) Ensures that the draining operations are performed safely by developing and implementing a written procedure detailing how to safely drain the universal waste pressure or vacuum gauges. This procedure shall include: the type of equipment to be used to drain the universal waste pressure or vacuum gauges safely, operation and maintenance of the equipment, appropriate personal protective equipment, segregation of incompatible wastes, proper waste management practices, spill response procedures, and waste characterization;

(C) Ensures that a spill clean–up kit is readily available to immediately clean up spills or leaks of the contents of the universal waste pressure or vacuum gauge that may occur during the mercury draining operation;

(D) Immediately transfers the drained elemental mercury to a container. The container shall be closed, structurally sound, compatible with elemental mercury, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions;

(E) Ensures that employees are thoroughly familiar with the procedure for draining universal waste pressure or vacuum gauges, and proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies;

(F) Stores the drained elemental mercury in a closed, non–leaking container that is in good condition and meets the requirements of subparagraph (D);

(G) Ensures that any container into which mercury from a universal waste pressure or vacuum gauge is drained or in which drained mercury is stored is placed into a secondary container that is in good condition, compatible with mercury, and large enough to accommodate the contents of the primary container if it should leak or break;

(H) Maintains documentation of the date of accumulation, a description of the pressure or vacuum gauges drained, and the amount of mercury drained; and

(I) Accumulates no more than 35 kilograms of elemental mercury at any one time.

(3)(A) A large quantity handler of universal waste shall determine whether the following exhibit a characteristic of hazardous waste identified in article 3 of chapter 11:

1. Whole or partial universal waste gauges from which mercury has been drained;

2. Mercury or clean–up residues resulting from spills or leaks;

3. Other wastes generated as a result of the handling of universal waste gauges.

(B) If a whole or partial universal waste gauge from which mercury has been drained exhibits a characteristic of hazardous waste, it shall be managed in compliance with all applicable requirements of this chapter.

(C) If the mercury or clean–up residues resulting from spills or leaks, and/or other wastes exhibit a characteristic of hazardous waste, the wastes shall be managed in compliance with all applicable requirements of this division. The handler is considered the generator of the mercury, residues, and/or other wastes and shall manage them pursuant to chapter 12.

(D) If the drained gauge, mercury, residues, and/or other wastes are not hazardous, the handler may manage the wastes in any way that complies with all applicable federal, state or local solid waste regulations.

(h) Universal Waste Novelties. A large quantity handler of universal waste shall manage universal waste novelties in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) Universal waste novelties whose only mercury is contained in a button cell or other mercury–containing battery shall be managed in accordance with the requirements for universal waste batteries, pursuant to subsection (a) of this section.

(A) If they are removable, a large quantity handler of universal waste may remove mercury–containing batteries from a universal waste novelty.

(B) If, after removal of all mercury–containing batteries, a universal waste novelty contains no other mercury and does not exhibit a characteristic of a hazardous waste as set forth in article 3 of chapter 11; the novelty may be managed as non–hazardous waste.

(C) Batteries removed from universal waste novelties may be managed as universal waste batteries, pursuant to subsection (a) of this section.

(2) Universal waste novelties that are painted with mercury–containing paint shall be accumulated in an airtight container. The container shall be closed, structurally sound, compatible with the novelty, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(3) Universal waste novelties that contain liquid mercury shall be managed as follows:

(A) Universal waste novelties that contain liquid mercury shall be packed in an airtight container, with packing materials adequate to prevent breakage during storage, handling, and transportation. The container shall be closed, structurally sound, compatible with the novelty, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions;

(B) A mercury clean–up system shall be readily available; and

(C) Any universal waste novelty containing liquid mercury that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions shall be placed in an airtight container. The container shall meet the requirements of subparagraph (A) of this paragraph.

(4) Universal waste novelties whose only mercury is contained in a mercury switch or switches shall be managed in accordance with the requirements for universal waste switches and thermometers, pursuant to subsection (d) of this section.

(A) If they are removable, a large quantity handler of universal waste may remove mercury switches from a universal waste novelty.

(B) If, after removal of all mercury switches, a universal waste novelty contains no other mercury and does not exhibit a characteristic of a hazardous waste as set forth in article 3 of chapter 11; the novelty may be managed as non–hazardous waste.

(C) Switches removed from universal waste novelties may be managed as universal waste switches and thermometers, pursuant to subsection (d) of this section.

(5)(A) A large quantity handler of universal waste shall determine whether the following exhibit a characteristic of hazardous waste identified in article 3 of chapter 11:

1. Mercury or clean–up residues resulting from spills or leaks; and/or

2. Other wastes generated as a result of the handling of novelties that contain liquid mercury.

(B) If the mercury, residues, and/or other wastes exhibit a characteristic of hazardous waste, the wastes shall be managed in compliance with all applicable requirements of this division. The handler is considered the generator of the mercury, residues, and/or other wastes and shall manage them pursuant to chapter 12.

(C) If the mercury, residues, and/or other wastes are not hazardous, the handler may manage the wastes in any way that complies with all applicable federal, state or local solid waste regulations.

(i) Universal Waste Counterweights and Dampers. A large quantity handler of universal waste shall manage universal waste counterweights and dampers in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) Prior to shipping universal waste counterweights and dampers to a recycler, a large quantity handler of universal waste shall pack universal waste counterweights and dampers in a container, with packing materials adequate to prevent breakage during storage, handling, and transportation. The container shall be closed, structurally sound, compatible with the contents of the counterweight or damper, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A large quantity handler of universal waste shall place any universal waste counterweight or damper that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions into a sealed plastic bag in an airtight container. The container shall be closed, structurally sound, compatible with the contents of the counterweight or damper, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(3) A large quantity handler of universal waste shall ensure that a mercury clean–up system is readily available;

(4)(A) A large quantity handler of universal waste shall determine whether the following exhibit a characteristic of hazardous waste identified in article 3 of chapter 11:

1. Mercury or clean–up residues resulting from spills or leaks; and/or

2. Other wastes generated as a result of the handling of universal waste counterweights and dampers.

(B) If the mercury, residues, and/or other wastes exhibit a characteristic of hazardous waste, the wastes shall be managed in compliance with all applicable requirements of this division. The handler is considered the generator of the mercury, residues, and/or other waste and shall manage them pursuant to chapter 12.

(C) If the mercury, residues, and/or other wastes are not hazardous, the handler may manage the wastes in any way that complies with all applicable federal, state or local solid waste regulations.

(j) Universal Waste Dilators and Weighted Tubing. A large quantity handler of universal waste shall manage universal waste dilators and weighted tubing in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) Prior to shipping universal waste dilators and weighted tubing a large quantity handler of universal waste shall pack universal waste dilators and weighted tubing in a container, with packing materials adequate

to prevent breakage during storage, handling, and transportation. The container shall be closed, structurally sound, compatible with the contents of the dilators and weighted tubing, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A large quantity handler of universal waste shall place any universal waste dilators and weighted tubing that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions into a sealed plastic bag in an airtight container. The container shall be closed, structurally sound, compatible with the contents of the dilators and weighted tubing, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(3) A large quantity handler of universal waste shall ensure that a mercury clean-up system is readily available.

(4)(A) A large quantity handler of universal waste shall determine whether the following exhibit a characteristic of hazardous waste identified in article 3 of chapter 11:

1. Mercury or clean-up residues resulting from spills or leaks; and/or

2. Other wastes generated as a result of the handling of universal waste dilators and weighted tubing.

(B) If the mercury, residues, and/or other wastes exhibit a characteristic of hazardous waste, the wastes shall be managed in compliance with all applicable requirements of this division. The handler is considered the generator of the mercury, residues, and/or other wastes and shall manage them pursuant to chapter 12.

(C) If the mercury, residues, and/or other wastes are not hazardous, the handler may manage the wastes in any way that complies with all applicable federal, state or local solid waste regulations.

(k) Universal Waste Rubber Flooring. A large quantity handler of universal waste shall manage universal waste rubber flooring in a way that prevents releases of any universal waste or component of a universal waste to the environment.

(*l*) Universal Waste Gas Flow Regulators. A large quantity handler of universal waste shall manage universal waste gas flow regulators in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A large quantity handler of universal waste shall ensure that universal waste gas flow regulators are kept upright at all times during accumulation and transportation.

(2) A large quantity handler of universal waste shall place each regulator into an airtight container or package that is structurally sound, adequate to prevent breakage, and compatible with the contents of the regulator. The container or package shall remain closed and shall lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

(3) A large quantity handler of universal waste shall ensure that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from universal waste gas flow regulators to an airtight container that meets the requirements of paragraph (2) of this subsection.

(4)(A) A large quantity handler of universal waste shall determine whether the following exhibit a characteristic of hazardous waste identified in article 3 of chapter 11:

1. Mercury or clean-up residues resulting from spills or leaks; and

2. Other wastes generated as a result of the handling of universal waste gas flow regulators.

(B) If the mercury or clean-up residues resulting from spills or leaks, and/or other wastes exhibit a characteristic of hazardous waste, the wastes shall be managed in compliance with all applicable requirements of this division. The handler is considered the generator of the mercury, residues, and/or other wastes and shall manage them pursuant to chapter 12.

(C) If the mercury, residues, and/or other wastes are not hazardous, the handler may manage the wastes in any way that complies with all applicable federal, state or local solid waste regulations.

NOTE: Authority cited: Sections 25141, 25150, 25201, 25214.6, 25214.9, 25214.10.2, 25219.1 and 58012, Health and Safety Code; and Sections 42475.1 and 42475.2, Public Resources Code. Reference: Sections 25141, 25150, 25159.5, 25201, 25212, 25214.6, 25214.9, 25219, 25219.1 and 25219.2, Health and Safety Code; 40 CFR Section 273.33.

HISTORY

1. New section filed 3–6–2000 as an emergency; operative 3–6–2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2000 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6–29–2000 as an emergency; operative 7–6–2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–3–2000 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11–1–2000 as an emergency; operative 11–4–2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–5–2001 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 3–6–2001 as an emergency; operative 3–6–2001 (Register 2001, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2001 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 6–26–2001 as an emergency; operative 7–5–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–2–2001 or emergency language will be repealed by operation of law on the following day.
6. New section refiled 11–2–2001 as an emergency; operative 11–3–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–4–2002 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 11–2–2001 order transmitted to OAL 12–27–2001 and filed 2–8–2002 (Register 2002, No. 6).
8. New subsections (d)–(d)(3) and amendment of NOTE filed 2–3–2003; operative 2–3–2003 (Register 2003, No. 6).
9. New subsections (c)(3) and (e)–(*l*)(4)(C) and amendment of NOTE filed 2–13–2003; operative 3–15–2003 (Register 2003, No. 7).
10. Amendment of section and NOTE filed 6–7–2004 as an emergency; operative 6–7–2004 (Register 2004, No. 24). Pursuant to Public Resources Code section 42475.2, a Certificate of Compliance must be transmitted to OAL by 6–7–2006 or emergency language will be repealed by operation of law on the following day.
11. Amendment of section and NOTE refiled 6–5–2006 as an emergency, including further amendment of NOTE; operative 6–5–2006 (Register 2006, No. 23). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.
12. Amendment of section and NOTE refiled 5–8–2008 as an emergency; operative 5–8–2008 (Register 2008, No. 19). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.

§ 66273.34. Labeling/Marking.

A large quantity handler of universal waste shall label or mark the universal waste to identify the type of universal waste as specified below:

(a) Universal waste batteries (i.e., each battery), or a container or tank in which the batteries are contained, shall be labeled or marked clearly with the any one of the following phrases: "Universal Waste—Battery(ies)," or "Waste Battery(ies)," or "Used Battery(ies);"

(b) Universal waste thermostats (i.e., each thermostat), or a container or tank in which the thermostats are contained, shall be labeled or marked clearly with any one of the following phrases: "Universal Waste—Mercury Thermostat(s)," or "Waste Mercury Thermostat(s)," or "Used Mercury Thermostat(s)."

(c) Each lamp or a container or package in which such lamps are contained shall be labeled or marked clearly with any one of the following phrases: "Universal Waste—Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)."

(d) Each universal waste electronic device or container or pallet in or on which universal waste electronic devices are contained, including containers or pallets that also contain devices that are not waste, shall be labeled or marked clearly with one of the following phrases: "Universal Waste—Electronic Device(s)" or "UW—Electronic Device(s)."

(1) In lieu of labeling individual universal waste electronic devices or containers or pallets, a large quantity handler may accumulate universal waste electronic devices within a designated area demarcated by bound-

aries that are clearly labeled with one of the following phrases: "Universal Waste Electronic Device(s)" or "UW Electronic Device(s)."

(e) Universal waste mercury switches and thermometers or a container in which the switches are contained, shall be labeled or marked clearly with any one of the following phrases: "Universal Waste—Mercury Switch(es)," or "Waste Mercury Switch(es)," or "Used Mercury Switch(es);"

(f) Dental amalgam. A container in which universal waste dental amalgam is contained shall be labeled or marked clearly with any one of the following phrases: "Universal Waste—Dental Amalgam," or "Waste Dental Amalgam" or "Scrap Dental Amalgam;"

(g) Pressure or vacuum gauges.

(1) A container in which universal waste gauges are contained shall be labeled or marked clearly with any one of the following phrases: "Universal Waste—Gauge(s)," or "Waste Mercury Gauge(s)" or "Used Mercury Gauge(s);"

(2) A container in which mercury drained from one or more universal waste pressure or vacuum gauges is contained shall be labeled or marked clearly with any one of the following phrases, as appropriate: "Universal Waste—Drained Mercury," or "Universal Waste—Mercury from Gauges;"

(h) Universal waste novelties or a container in which the novelties are contained shall be labeled or marked clearly with any one of the following phrases: "Universal Waste—Novelty(ies)," or "Waste Mercury Novelty(ies)" or "Used Mercury Novelty(ies);"

(i) Universal waste counterweights and dampers, a product that contains one or more counterweights and/or dampers, or a container in which the counterweights and/or dampers are contained, shall be labeled or marked clearly with any one of the following phrases, as appropriate: "Universal Waste—Counterweight(s)," or "Universal Waste—Damper(s);" "Waste Mercury Counterweight(s)" or "Waste Mercury Damper(s);" "Used Mercury Counterweight(s)," or "Used Mercury Damper(s);"

(j) Universal waste dilators and weighted tubing or a container in which the dilators and weighted tubing are contained shall be labeled or marked clearly with any one of the following phrases, as appropriate: "Universal Waste—Dilator(s)," "Waste Mercury Dilator(s)" "Used Mercury Dilator(s)," "Universal Waste—Mercury-Weighted Tubing," "Waste Mercury-Weighted Tubing," or "Used Mercury-Weighted Tubing;"

(k) Universal waste rubber flooring or a container in which the flooring is contained shall be labeled or marked clearly with any one of the following phrases: "Universal Waste—Rubber Flooring," or "Waste Mercury-Containing Flooring" or "Used Mercury-Containing Flooring;"

(*l*) Gas flow regulators. A waste gas meter that contains a mercury gas flow regulator or a container in which a universal waste gas flow regulator is contained shall be labeled or marked clearly with any one of the following phrases: "Universal Waste—Gas Flow Regulator," or "Waste Mercury Gas Flow Regulator" or "Used Mercury Gas Flow Regulator."

NOTE: Authority cited: Sections 25141, 25150, 25201, 25214.6, 25214.9, 25214.10.2, 25219.1 and 58012, Health and Safety Code; and Sections 42475.1 and 42475.2, Public Resources Code. Reference: Sections 25141, 25150, 25159.5, 25201, 25212, 25214.6, 25214.9, 25219, 25219.1 and 25219.2, Health and Safety Code; 40 CFR Section 273.34.

HISTORY

1. New section filed 3-6-2000 as an emergency; operative 3-6-2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by 7-5-2000 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6-29-2000 as an emergency; operative 7-6-2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 11-3-2000 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11-1-2000 as an emergency; operative 11-4-2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 3-5-2001 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 3-6-2001 as an emergency; operative 3-6-2001 (Register 2001, No. 10). A Certificate of Compliance must be transmitted to OAL by 7-5-2001 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 6-26-2001 as an emergency; operative 7-5-2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 11-2-2001 or emergency language will be repealed by operation of law on the following day.
6. New section refiled 11-2-2001 as an emergency; operative 11-3-2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3-4-2002 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 11-2-2001 order transmitted to OAL 12-27-2001 and filed 2-8-2002 (Register 2002, No. 6).
8. New subsection (d) and amendment of NOTE filed 2-3-2003; operative 2-3-2003 (Register 2003, No. 6).
9. Amendment of subsection (b), new subsections (e)-(*l*) and amendment of NOTE filed 2-13-2003; operative 3-15-2003 (Register 2003, No. 7).
10. Amendment of subsection (d), new subsection (d)(1) and amendment of NOTE filed 6-7-2004 as an emergency; operative 6-7-2004 (Register 2004, No. 24). Pursuant to Public Resources Code section 42475.2, a Certificate of Compliance must be transmitted to OAL by 6-7-2006 or emergency language will be repealed by operation of law on the following day.
11. Amendment of subsection (d), new subsection (d)(1) and amendment of NOTE refiled 6-5-2006 as an emergency, including further amendment of NOTE; operative 6-5-2006 (Register 2006, No. 23). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.
12. Amendment of subsection (d), new subsection (d)(1) and amendment of NOTE refiled 5-8-2008 as an emergency; operative 5-8-2008 (Register 2008, No. 19). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.

§ 66273.35. Accumulation Time Limits.

(a) A large quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated, or received from another handler, unless the requirements of subsection (b) of this section are met.

(b) A large quantity handler of universal waste may accumulate universal waste for longer than one year from the date the universal waste is generated, or received from another handler, if such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal. However, the handler bears the burden of proving that such activity was solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal.

(c) A large quantity handler of universal waste shall be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. The handler may make this demonstration by:

(1) Placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received;

(2) Marking or labeling the individual item of universal waste (e.g., each battery or thermostat) with the date it became a waste or was received;

(3) Maintaining an inventory system on-site that identifies the date the universal waste being accumulated became a waste or was received;

(4) Maintaining an inventory system on-site that identifies the earliest date that any universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received;

(5) Placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or

(6) Any other method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

NOTE: Authority cited: Sections 25141, 25150, 25150.6, 25219.1 and 58012, Health and Safety Code. Reference: Sections 25141, 25150, 25159.5, 25219, 25219.1 and 25219.2, Health and Safety Code; 40 CFR Section 273.35.

HISTORY

1. New section filed 3-6-2000 as an emergency; operative 3-6-2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by

7–5–2000 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 6–29–2000 as an emergency; operative 7–6–2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–3–2000 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11–1–2000 as an emergency; operative 11–4–2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–5–2001 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 3–6–2001 as an emergency; operative 3–6–2001 (Register 2001, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2001 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 6–26–2001 as an emergency; operative 7–5–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–2–2001 or emergency language will be repealed by operation of law on the following day.
6. New section refiled 11–2–2001 as an emergency; operative 11–3–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–4–2002 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 11–2–2001 order, including amendment of NOTE, transmitted to OAL 12–27–2001 and filed 2–8–2002 (Register 2002, No. 6).

§ 66273.36. Employee Training.

A large quantity handler of universal waste shall ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relative to their responsibilities during normal facility operations and emergencies.

NOTE: Authority cited: Sections 25141, 25150, 25219.1 and 58012, Health and Safety Code. Reference: Sections 25141, 25150, 25159.5, 25219, 25219.1 and 25219.2, Health and Safety Code; 40 CFR Section 273.36.

HISTORY

1. New section filed 3–6–2000 as an emergency; operative 3–6–2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2000 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6–29–2000 as an emergency; operative 7–6–2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–3–2000 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11–1–2000 as an emergency; operative 11–4–2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–5–2001 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 3–6–2001 as an emergency; operative 3–6–2001 (Register 2001, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2001 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 6–26–2001 as an emergency; operative 7–5–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–2–2001 or emergency language will be repealed by operation of law on the following day.
6. New section refiled 11–2–2001 as an emergency; operative 11–3–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–4–2002 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 11–2–2001 order transmitted to OAL 12–27–2001 and filed 2–8–2002 (Register 2002, No. 6).

§ 66273.37. Response to Releases.

(a) A large quantity handler of universal waste shall immediately contain all releases of universal wastes and other residues from universal wastes.

(b) A large quantity handler of universal waste shall determine whether any material resulting from the release is hazardous waste, and if so, shall manage the hazardous waste in compliance with all applicable requirements of this division. The handler is considered the generator of the material resulting from the release, and is subject to chapter 12.

(c) Waste consisting only of residues of leaking, broken, or otherwise damaged universal waste may be managed as universal waste provided that the leaking, broken, or otherwise damaged universal waste is repackaged according to the standards of section 66273.33.

NOTE: Authority cited: Sections 25141, 25150, 25219.1 and 58012, Health and Safety Code. Reference: Sections 25141, 25150, 25159.5, 25219, 25219.1 and 25219.2, Health and Safety Code; 40 CFR Section 273.37.

HISTORY

1. New section filed 3–6–2000 as an emergency; operative 3–6–2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2000 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6–29–2000 as an emergency; operative 7–6–2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–3–2000 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11–1–2000 as an emergency; operative 11–4–2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–5–2001 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 3–6–2001 as an emergency; operative 3–6–2001 (Register 2001, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2001 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 6–26–2001 as an emergency; operative 7–5–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–2–2001 or emergency language will be repealed by operation of law on the following day.
6. New section refiled 11–2–2001 as an emergency; operative 11–3–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–4–2002 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 11–2–2001 order, including new subsection (c), transmitted to OAL 12–27–2001 and filed 2–8–2002 (Register 2002, No. 6).

§ 66273.38. Off–Site Shipments.

(a) A large quantity handler of universal waste is prohibited from sending or taking universal waste to a place other than another universal waste handler, a destination facility, or a foreign destination.

(b) If a large quantity handler of universal waste self–transports universal waste off–site, the handler becomes a universal waste transporter for those self–transportation activities and shall comply with the transporter requirements of article 4 of this chapter while transporting the universal waste.

(c) If a universal waste being offered for off–site transportation meets the definition of hazardous materials under 49 CFR parts 171 through 180, a large quantity handler of universal waste shall package, label, mark and placard the shipment, and prepare the proper shipping papers in accordance with the applicable Department of Transportation regulations under 49 CFR parts 172 through 180;

(d) Prior to sending a shipment of universal waste to another universal waste handler, the originating handler shall ensure that the receiving handler agrees to receive the shipment.

(e) If a large quantity handler of universal waste sends a shipment of universal waste to another handler or to a destination facility and the shipment is rejected by the receiving handler or destination facility, the originating handler shall either:

(1) Receive the waste back when notified that the shipment has been rejected, or

(2) Agree with the receiving handler on a destination facility to which the shipment will be sent.

(f) A large quantity handler of universal waste may reject a shipment containing universal waste, or a portion of a shipment containing universal waste that he has received from another handler. If a handler rejects a shipment or a portion of a shipment, he shall contact the originating handler to notify him of the rejection and to discuss reshipment of the load. The handler shall:

(1) Send the shipment back to the originating handler, or

(2) If agreed to by both the originating and receiving handler, send the shipment to a destination facility.

(g) If a large quantity handler of universal waste receives a shipment containing hazardous waste that is not a universal waste, the handler shall immediately notify the Department of the illegal shipment, and provide the name, address, and phone number of the originating shipper. The Department will provide instructions for managing the hazardous waste.

(h) If a large quantity handler of universal waste receives a shipment of non–hazardous, non–universal waste, the handler may manage the

waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

NOTE: Authority cited: Sections 25141, 25150, 25150.6, 25219.1, 25219.2 and 58012, Health and Safety Code. Reference: Sections 25141, 25150, 25159, 25159.5, 25219, 25219.1 and 25219.2, Health and Safety Code; 40 CFR Section 273.38.

HISTORY

1. New section filed 3–6–2000 as an emergency; operative 3–6–2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2000 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6–29–2000 as an emergency; operative 7–6–2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–3–2000 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11–1–2000 as an emergency; operative 11–4–2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–5–2001 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 3–6–2001 as an emergency; operative 3–6–2001 (Register 2001, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2001 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 6–26–2001 as an emergency; operative 7–5–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–2–2001 or emergency language will be repealed by operation of law on the following day.
6. New section refiled 11–2–2001 as an emergency; operative 11–3–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–4–2002 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 11–2–2001 order, including amendment of NOTE, transmitted to OAL 12–27–2001 and filed 2–8–2002 (Register 2002, No. 6).

§ 66273.39. Tracking Universal Waste Shipments.

(a) Receipt of shipments. A large quantity handler of universal waste shall keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, or other shipping document. The record for each shipment of universal waste received shall include the following information:

(1) The name and address of the originating universal waste handler or foreign shipper from whom the universal waste was sent;

(2) The quantity of each type of universal waste received (e.g., batteries, thermostats, lamps);

(3) The date of receipt of the shipment of universal waste.

(b) Shipments off–site. A large quantity handler of universal waste shall keep a record of each shipment of universal waste sent from the handler to other facilities. The record may take the form of a log, invoice, manifest, bill of lading or other shipping document. The record for each shipment of universal waste sent shall include the following information:

(1) The name and address of the universal waste handler, destination facility, or foreign destination to whom the universal waste was sent;

(2) The quantity of each type of universal waste sent (e.g., batteries, thermostats, lamps);

(3) The date the shipment of universal waste left the facility.

(c) Record retention.

(1) A large quantity handler of universal waste shall retain the records described in subsection (a) of this section for at least three years from the date of receipt of a shipment of universal waste.

(2) A large quantity handler of universal waste shall retain the records described in subsection (b) of this section for at least three years from the date a shipment of universal waste left the facility.

NOTE: Authority cited: Sections 25141, 25150, 25150.6, 25219.1, 25219.2 and 58012, Health and Safety Code. Reference: Sections 25141, 25150, 25159.5, 25219, 25219.1 and 25219.2, Health and Safety Code; 40 CFR Section 273.39.

HISTORY

1. New section filed 3–6–2000 as an emergency; operative 3–6–2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2000 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6–29–2000 as an emergency; operative 7–6–2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–3–2000 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11–1–2000 as an emergency; operative 11–4–2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–5–2001 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 3–6–2001 as an emergency; operative 3–6–2001 (Register 2001, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2001 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 6–26–2001 as an emergency; operative 7–5–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–2–2001 or emergency language will be repealed by operation of law on the following day.
6. New section refiled 11–2–2001 as an emergency; operative 11–3–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–4–2002 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 11–2–2001 order, including amendment of NOTE, transmitted to OAL 12–27–2001 and filed 2–8–2002 (Register 2002, No. 6).

§ 66273.40. Exports.

A large quantity handler of universal waste who sends universal waste, not including universal waste electronic devices, to a foreign destination other than to those OECD countries specified in section 66262.58(a)(1) (in which case the handler is subject to the requirements of article 8 of chapter 12) shall:

(a) Comply with the requirements applicable to a primary exporter in section 66262.53, 66262.56(a)(1) through (4), (6), and (b) and 66262.57;

(b) Export such universal waste only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent as defined in article 5 of chapter 12; and

(c) Provide a copy of the EPA Acknowledgement of Consent for the shipment to the transporter transporting the shipment for export.

(d) A large quantity handler of universal waste who sends universal waste electronic devices to any foreign destination shall notify the Department and concurrently send a copy of that notification to the CUPA, or, if there is no CUPA, to the agency authorized pursuant to subdivision (f) of Health and Safety Code section 25404.3, of an intended export before such universal waste electronic device is scheduled to leave the United States. A completed notification shall be submitted four weeks before the initial shipment is intended to be shipped offsite. This notification shall cover export activities extending over a twelve (12) month or lesser period.

(e) The notification submitted pursuant to subsection (d) of this section shall be in writing, signed by the universal waste handler, and include the following information:

(1) name, mailing address, and telephone number of the universal waste handler;

(2) the foreign destination, for each type of universal waste electronic device:

(A) the amount of universal waste electronic devices (by count or by weight);

(B) the estimated frequency or rate at which the universal waste electronic device is to be exported and the period of time over which the universal waste electronic device is to be exported;

(C) all points of entry to and departure from each foreign country through which the universal waste electronic device will pass;

(D) a description of the means by which each shipment of universal waste electronic devices will be recycled at the foreign destination; and

(E) the name and site address of the consignee or any alternate consignee.

(f) Notifications submitted under subsection (d) of this section shall be sent to the following address by certified mail, return receipt requested: Department of Toxic Substances Control, Hazardous Waste Management Program, Regulatory and Program Development Division, P.O. Box 806, Sacramento, CA 95812–0806, with "Attention: Notification to Export Universal Waste Electronic Devices" prominently displayed on the front of the envelope.

(g) A person who exports covered electronic wastes shall also comply with the applicable export requirements of Public Resources Code, division 30, part 3, chapter 8.5.

NOTE: Authority cited: Sections 25141, 25150, 25150.2, 25150.6, 25201, 25214.9, 25214.10.2, 25219.1 and 58012, Health and Safety Code; and Sections 42475.1 and 42475.2, Public Resources Code. Reference: Sections 25141, 25150, 25159.5, 25201, 25214.9, 25219, 25219.1 and 25219.2, Health and Safety Code; Section 42476.5, Public Resources Code; and 40 CFR Section 273.40.

HISTORY

1. New section filed 3–6–2000 as an emergency; operative 3–6–2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2000 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6–29–2000 as an emergency; operative 7–6–2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–3–2000 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11–1–2000 as an emergency; operative 11–4–2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–5–2001 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 3–6–2001 as an emergency; operative 3–6–2001 (Register 2001, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2001 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 6–26–2001 as an emergency; operative 7–5–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–2–2001 or emergency language will be repealed by operation of law on the following day.
6. New section refiled 11–2–2001 as an emergency; operative 11–3–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–4–2002 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 11–2–2001 order transmitted to OAL 12–27–2001 and filed 2–8–2002 (Register 2002, No. 6).
8. Amendment of first paragraph, new subsections (d)–(f) and amendment of NOTE filed 2–3–2003; operative 2–3–2003 (Register 2003, No. 6).
9. Amendment of section and NOTE filed 6–7–2004 as an emergency; operative 6–7–2004 (Register 2004, No. 24). Pursuant to Public Resources Code section 42475.2, a Certificate of Compliance must be transmitted to OAL by 6–7–2006 or emergency language will be repealed by operation of law on the following day.
10. Amendment of section and NOTE refiled 6–5–2006 as an emergency, including further amendment of NOTE; operative 6–5–2006 (Register 2006, No. 23). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.
11. Amendment of section and NOTE refiled 5–8–2008 as an emergency; operative 5–8–2008 (Register 2008, No. 19). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.

§ 66273.41. Accumulation of Mercury–Containing Universal Wastes Received from Other Universal Waste Handlers.

(a) A large quantity handler of universal waste may accumulate the following universal wastes received from other handlers only at a location where accumulation of universal waste is consistent with local land use zoning or land use patterns:

(1) Mercury–containing motor vehicle switches (including, but not limited to M001 Wastes), and motor vehicles that contain such switches (M001 Wastes), as described in section 66273.7.1;

(2) Non–automotive mercury switches and products that contain such switches (including, but not limited to, M002 Wastes), as described in section 66273.7.2;

(3) Dental amalgam wastes, as described in section 66273.7.3;

(4) Pressure or vacuum gauges, as described in section 66273.7.4;

(5) Mercury–added novelties (including, but not limited to, M004 Wastes), as described in section 66273.7.5;

(6) Mercury counterweights and dampers, as described in section 66273.7.6;

(7) Mercury thermometers, as described in section 66273.7.7;

(8) Mercury dilators and weighted tubing, as described in section 66273.7.8;

(9) Mercury containing rubber flooring, as described in section 66273.7.9; and

(10) Mercury gas flow regulators, as described in section 66273.10.

(b) A large quantity handler of universal waste who accumulates any of the universal wastes listed in subsection (a) received from other handlers shall:

(1) Comply with all applicable requirements for handlers of hazardous materials;

(2) Disclose that mercury is being handled in all applicable business and use permitting applications;

(3) Comply with the location standards in section 66265.18;

(4) Comply with the seismic precipitation design standards in section 66265.25;

(5) Accumulate universal wastes listed in subsection (a) only in areas that are zoned for commercial or industrial uses; and

(6) Accumulate universal wastes listed in subsection (a) in a location that does not pose site specific land use hazards or contain sensitive habitat area, based on a review of state and local planning documents and constraints mapping.

NOTE: Authority cited: Sections 25141, 25150, 25214.6, 25219.1, 25219.2 and 58012, Health and Safety Code. Reference: Sections 25141, 25150, 25159.5, 25212, 25214.6, 25219, 25219.1 and 25219.2, Health and Safety Code.

HISTORY

1. New section filed 2–13–2003; operative 3–15–2003 (Register 2003, No. 7).

Article 4. Standards for Universal Waste Transporters

§ 66273.50. Applicability.

This article applies to universal waste transporters (as defined in section 66273.9).

NOTE: Authority cited: Sections 25141, 25150, 25219.1 and 58012, Health and Safety Code. Reference: Sections 25141, 25150, 25159.5, 25219, 25219.1 and 25219.2, Health and Safety Code; 40 CFR Section 273.50.

HISTORY

1. New article 4 (sections 66273.50–66273.56) and section filed 3–6–2000 as an emergency; operative 3–6–2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2000 or emergency language will be repealed by operation of law on the following day.
2. New article 4 (sections 66273.50–66273.56) and section refiled 6–29–2000 as an emergency; operative 7–6–2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–3–2000 or emergency language will be repealed by operation of law on the following day.
3. New article 4 (sections 66273.50–66273.56) and section refiled 11–1–2000 as an emergency; operative 11–4–2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–5–2001 or emergency language will be repealed by operation of law on the following day.
4. New article 4 (sections 66273.50–66273.56) and section refiled 3–6–2001 as an emergency; operative 3–6–2001 (Register 2001, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2001 or emergency language will be repealed by operation of law on the following day.
5. New article 4 (sections 66273.50–66273.56) and section refiled 6–26–2001 as an emergency; operative 7–5–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–2–2001 or emergency language will be repealed by operation of law on the following day.
6. New article 4 (sections 66273.50–66273.56) and section refiled 11–2–2001 as an emergency; operative 11–3–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–4–2002 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 11–2–2001 order transmitted to OAL 12–27–2001 and filed 2–8–2002 (Register 2002, No. 6).

§ 66273.51. Prohibitions.

A universal waste transporter is:

(a) Prohibited from disposing of universal waste;

(b) Prohibited from diluting or treating universal waste, except by responding to releases as provided in section 66273.54 and;

(c) Prohibited from transporting more than five CRTs and CRT devices at any one time unless the CRT materials are contained as described in subsection 66273.83(a)(1).

(d) Prohibited from transporting more than 100 kilograms or 220 pounds universal waste electronic devices at any one time unless the uni-

versal waste electronic devices are contained as described in subsection 66273.13(d)(1) or 66273.33(d)(1).

NOTE: Authority cited: Sections 25141, 25150, 25150.6, 25201, 25214.9, 25214.10.2, 25219.1 and 58012, Health and Safety Code; and Sections 42475.1 and 42475.2, Public Resources Code. Reference: Sections 25141, 25150, 25159.5, 25201, 25214.9, 25219, 25219.1 and 25219.2, Health and Safety Code; and 40 CFR Section 273.51.

HISTORY

1. New section filed 3–6–2000 as an emergency; operative 3–6–2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2000 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6–29–2000 as an emergency; operative 7–6–2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–3–2000 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11–1–2000 as an emergency; operative 11–4–2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–5–2001 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 3–6–2001 as an emergency; operative 3–6–2001 (Register 2001, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2001 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 6–26–2001 as an emergency; operative 7–5–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–2–2001 or emergency language will be repealed by operation of law on the following day.
6. New section refiled 11–2–2001 as an emergency; operative 11–3–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–4–2002 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 11–2–2001 order transmitted to OAL 12–27–2001 and filed 2–8–2002 (Register 2002, No. 6).
8. New subsection (c) and amendment of NOTE filed 2–3–2003; operative 2–3–2003 (Register 2003, No. 6).
9. New subsection (d) and amendment of NOTE filed 6–7–2004 as an emergency; operative 6–7–2004 (Register 2004, No. 24). Pursuant to Public Resources Code section 42475.2, a Certificate of Compliance must be transmitted to OAL by 6–7–2006 or emergency language will be repealed by operation of law on the following day.
10. New subsection (d) and amendment of NOTE refiled 6–5–2006 as an emergency, including further amendment of NOTE; operative 6–5–2006 (Register 2006, No. 23). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.
11. New subsection (d) and amendment of NOTE refiled 5–8–2008 as an emergency; operative 5–8–2008 (Register 2008, No. 19). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.

§ 66273.52. Waste Management.

(a) A universal waste transporter shall comply with all applicable U.S. Department of Transportation regulations in 49 CFR part 171 through 180 for transport of any universal waste that meets the definition of hazardous material in 49 CFR 171.8. For purposes of the Department of Transportation regulations, a material is considered a hazardous waste if it is subject to the Hazardous Waste Manifest Requirements of the U.S. Environmental Protection Agency specified in 40 CFR part 262. Because universal waste does not require a hazardous waste manifest, it is not considered hazardous waste under the Department of Transportation regulations.

(b) Some universal waste materials are regulated by the Department of Transportation as hazardous materials because they meet the criteria for one or more hazard classes specified in 49 CFR 173.2. As universal waste shipments do not require a manifest under chapter 12 and are conditionally exempt from classification as a hazardous waste, they may not be described by the DOT proper shipping name "hazardous waste, (*l*) or (s), n.o.s.", nor may the hazardous material's proper shipping name be modified by adding the word "waste".

NOTE: Authority cited: Sections 25141, 25150, 25150.6, 25219.1 and 58012, Health and Safety Code. Reference: Sections 25141, 25150, 25159.5, 25219, 25219.1 and 25219.2, Health and Safety Code; 40 CFR Section 273.52.

HISTORY

1. New section filed 3–6–2000 as an emergency; operative 3–6–2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2000 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6–29–2000 as an emergency; operative 7–6–2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–3–2000 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11–1–2000 as an emergency; operative 11–4–2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–5–2001 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 3–6–2001 as an emergency; operative 3–6–2001 (Register 2001, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2001 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 6–26–2001 as an emergency; operative 7–5–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–2–2001 or emergency language will be repealed by operation of law on the following day.
6. New section refiled 11–2–2001 as an emergency; operative 11–3–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–4–2002 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 11–2–2001 order, including amendment of NOTE, transmitted to OAL 12–27–2001 and filed 2–8–2002 (Register 2002, No. 6).

§ 66273.53. Storage Time Limits.

(a) A universal waste transporter or a CRT material transporter may only store the universal waste or CRT materials at a universal waste transfer facility for ten days or less in an area zoned "industrial" and for six days or less in all other areas.

(b) If a universal waste transporter or a CRT material transporter stores universal waste or CRT material for more than ten days in an area zoned "industrial" or for more than six days in any other area, the transporter becomes a universal waste handler or a CRT material handler and shall comply with the applicable requirements of article 2 or 3 or 7 of this chapter while storing the universal waste.

NOTE: Authority cited: Sections 25141, 25150, 25214.9, 25214.10.2, 25219.1 and 58012, Health and Safety Code; and Sections 42475.1 and 42475.2, Public Resources Code. Reference: Sections 25141, 25150, 25159.5, 25214.9, 25219, 25219.1 and 25219.2, Health and Safety Code; and 40 CFR Section 273.53.

HISTORY

1. New section filed 3–6–2000 as an emergency; operative 3–6–2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2000 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6–29–2000 as an emergency; operative 7–6–2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–3–2000 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11–1–2000 as an emergency; operative 11–4–2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–5–2001 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 3–6–2001 as an emergency; operative 3–6–2001 (Register 2001, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2001 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 6–26–2001 as an emergency; operative 7–5–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–2–2001 or emergency language will be repealed by operation of law on the following day.
6. New section refiled 11–2–2001 as an emergency; operative 11–3–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–4–2002 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 11–2–2001 order transmitted to OAL 12–27–2001 and filed 2–8–2002 (Register 2002, No. 6).
8. Amendment of section and NOTE filed 6–7–2004 as an emergency; operative 6–7–2004 (Register 2004, No. 24). Pursuant to Public Resources Code section 42475.2, a Certificate of Compliance must be transmitted to OAL by 6–7–2006 or emergency language will be repealed by operation of law on the following day.
9. Amendment of section and NOTE refiled 6–5–2006 as an emergency, including further amendment of NOTE; operative 6–5–2006 (Register 2006, No. 23). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.

10. Amendment of section and NOTE refiled 5–8–2008 as an emergency; operative 5–8–2008 (Register 2008, No. 19). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.

§ 66273.54. Response to Releases.

(a) A universal waste transporter shall immediately contain all releases of universal wastes and other residues from universal wastes.

(b) A universal waste transporter shall determine whether any material resulting from the release is hazardous waste, and if so, it is subject to all applicable requirements of this division. If the waste is determined to be a hazardous waste, the transporter is subject to chapter 12.

(c) Waste consisting only of residues of leaking, broken, or otherwise damaged universal waste may be managed as universal waste provided that the leaking, broken, or otherwise damaged universal waste is repackaged according to the standards of section 66273.13 or 66273.33.

NOTE: Authority cited: Sections 25141, 25150, 25219.1 and 58012, Health and Safety Code. Reference: Sections 25141, 25150, 25159.5, 25219, 25219.1 and 25219.2, Health and Safety Code; 40 CFR Section 273.54.

HISTORY

1. New section filed 3–6–2000 as an emergency; operative 3–6–2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2000 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6–29–2000 as an emergency; operative 7–6–2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–3–2000 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11–1–2000 as an emergency; operative 11–4–2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–5–2001 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 3–6–2001 as an emergency; operative 3–6–2001 (Register 2001, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2001 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 6–26–2001 as an emergency; operative 7–5–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–2–2001 or emergency language will be repealed by operation of law on the following day.
6. New section refiled 11–2–2001 as an emergency; operative 11–3–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–4–2002 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 11–2–2001 order, including new subsection (c), transmitted to OAL 12–27–2001 and filed 2–8–2002 (Register 2002, No. 6).

§ 66273.55. Off–Site Shipments.

(a) A universal waste transporter is prohibited from transporting the universal waste to a place other than a universal waste handler, a destination facility, or a foreign destination.

(b) If the universal waste being shipped off–site meets the Department of Transportation's definition of hazardous materials under 49 CFR section 171.8, the shipment shall be properly described on a shipping paper in accordance with the applicable Department of Transportation regulations under 49 CFR part 172.

NOTE: Authority cited: Sections 25141, 25150, 25150.6, 25219.1 and 58012, Health and Safety Code. Reference: Sections 25141, 25150, 25159.5, 25219, 25219.1 and 25219.2, Health and Safety Code; 40 CFR Section 273.55.

HISTORY

1. New section filed 3–6–2000 as an emergency; operative 3–6–2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2000 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6–29–2000 as an emergency; operative 7–6–2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–3–2000 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11–1–2000 as an emergency; operative 11–4–2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–5–2001 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 3–6–2001 as an emergency; operative 3–6–2001 (Register 2001, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2001 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 6–26–2001 as an emergency; operative 7–5–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–2–2001 or emergency language will be repealed by operation of law on the following day.
6. New section refiled 11–2–2001 as an emergency; operative 11–3–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–4–2002 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 11–2–2001 order, including amendment of NOTE, transmitted to OAL 12–27–2001 and filed 2–8–2002 (Register 2002, No. 6).

§ 66273.56. Exports.

A universal waste transporter transporting a shipment of universal waste to a foreign destination other than to those OECD countries specified in section 66262.58(a)(1) (in which case the transporter is subject to the requirements of article 8 of chapter 12) may not accept a shipment if the transporter knows the shipment does not conform to the EPA Acknowledgment of Consent. In addition the transporter shall ensure that:

(a) A copy of the EPA Acknowledgment of Consent accompanies the shipment; and

(b) The shipment is delivered to the facility designated by the person initiating the shipment.

(c) A person who exports covered electronic wastes shall also comply with the applicable export requirements of Public Resources Code, division 30, part 3, chapter 8.5.

NOTE: Authority cited: Sections 25141, 25150, 25150.2, 25150.6, 25201, 25214.9, 25214.10.2, 25219.1 and 58012, Health and Safety Code; and Sections 42475.1 and 42475.2, Public Resources Code. Reference: Sections 25141, 25150, 25159.5, 25201, 25214.9, 25219, 25219.1 and 25219.2, Health and Safety Code; and 40 CFR Section 273.56.

HISTORY

1. New section filed 3–6–2000 as an emergency; operative 3–6–2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2000 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6–29–2000 as an emergency; operative 7–6–2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–3–2000 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11–1–2000 as an emergency; operative 11–4–2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–5–2001 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 3–6–2001 as an emergency; operative 3–6–2001 (Register 2001, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2001 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 6–26–2001 as an emergency; operative 7–5–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–2–2001 or emergency language will be repealed by operation of law on the following day.
6. New section refiled 11–2–2001 as an emergency; operative 11–3–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–4–2002 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 11–2–2001 order transmitted to OAL 12–27–2001 and filed 2–8–2002 (Register 2002, No. 6).
8. Amendment of first paragraph and amendment of NOTE filed 2–3–2003; operative 2–3–2003 (Register 2003, No. 6).
9. New subsection (c) and amendment of NOTE filed 6–7–2004 as an emergency; operative 6–7–2004 (Register 2004, No. 24). Pursuant to Public Resources Code section 42475.2, a Certificate of Compliance must be transmitted to OAL by 6–7–2006 or emergency language will be repealed by operation of law on the following day.
10. New subsection (c) and amendment of NOTE refiled 6–5–2006 as an emergency, including further amendment of NOTE; operative 6–5–2006 (Register 2006, No. 23). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.
11. New subsection (c) and amendment of NOTE refiled 5–8–2008 as an emergency; operative 5–8–2008 (Register 2008, No. 19). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.

Article 5. Standards for Destination Facilities

§ 66273.60. Applicability.

(a) The owner or operator of a destination facility (as defined in section 66273.9) is subject to all applicable requirements of chapters 14, 15, 16, 18, 20, and 22 of this chapter, and the notification requirement under Health and Safety Code section 25153.6.

(b) The owner or operator of a destination facility that recycles universal waste shall comply with the applicable provisions of chapter 14 or 15 and the applicable provisions of chapter 20.

NOTE: Authority cited: Sections 25141, 25150, 25150.6, 25219.1 and 58012, Health and Safety Code. Reference: Sections 25141, 25150, 25159.5, 25219, 25219.1 and 25219.2, Health and Safety Code; 40 CFR Section 273.60.

HISTORY

1. New article 5 (sections 66273.60–66273.62) and section filed 3–6–2000 as an emergency; operative 3–6–2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2000 or emergency language will be repealed by operation of law on the following day.
2. New article 5 (sections 66273.60–66273.62) and section refiled 6–29–2000 as an emergency; operative 7–6–2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–3–2000 or emergency language will be repealed by operation of law on the following day.
3. New article 5 (sections 66273.60–66273.62) and section refiled 11–1–2000 as an emergency; operative 11–4–2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–5–2001 or emergency language will be repealed by operation of law on the following day.
4. New article 5 (sections 66273.60–66273.62) and section refiled 3–6–2001 as an emergency; operative 3–6–2001 (Register 2001, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2001 or emergency language will be repealed by operation of law on the following day.
5. New article 5 (sections 66273.60–66273.62) and section refiled 6–26–2001 as an emergency; operative 7–5–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–2–2001 or emergency language will be repealed by operation of law on the following day.
6. New article 5 (sections 66273.60–66273.62) and section refiled 11–2–2001 as an emergency; operative 11–3–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–4–2002 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 11–2–2001 order transmitted to OAL 12–27–2001 and filed 2–8–2002 (Register 2002, No. 6).
8. Amendment of subsection (a) and amendment of NOTE filed 2–3–2003; operative 2–3–2003 (Register 2003, No. 6).

§ 66273.61. Off–Site Shipments.

(a) The owner or operator of a destination facility is prohibited from sending or taking universal waste to a place other than a universal waste handler, another destination facility or foreign destination.

(b) The owner or operator of a destination facility may reject a shipment containing universal waste, or a portion of a shipment containing universal waste. If the owner or operator of the destination facility rejects a shipment or a portion of a shipment, he shall contact the shipper to notify him of the rejection and to discuss reshipment of the load. The owner or operator of the destination facility shall:

(1) Send the shipment back to the original shipper, or

(2) If agreed to by both the shipper and the owner or operator of the destination facility, send the shipment to another destination facility.

(c) If the a owner or operator of a destination facility receives a shipment containing hazardous waste that is not a universal waste, the owner or operator of the destination facility shall immediately notify the Department of the illegal shipment, and provide the name, address, and phone number of the shipper. The Department will provide instructions for managing the hazardous waste.

(d) If the owner or operator of a destination facility receives a shipment of non–hazardous, non–universal waste, the owner or operator may manage the waste in any way that is in compliance with applicable federal or state solid waste regulations.

NOTE: Authority cited: Sections 25141, 25150, 25150.6, 25219.1 and 58012, Health and Safety Code. Reference: Sections 25141, 25150, 25159.5, 25219, 25219.1 and 25219.2, Health and Safety Code; 40 CFR Section 273.61.

HISTORY

1. New section filed 3–6–2000 as an emergency; operative 3–6–2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2000 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6–29–2000 as an emergency; operative 7–6–2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–3–2000 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11–1–2000 as an emergency; operative 11–4–2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–5–2001 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 3–6–2001 as an emergency; operative 3–6–2001 (Register 2001, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2001 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 6–26–2001 as an emergency; operative 7–5–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–2–2001 or emergency language will be repealed by operation of law on the following day.
6. New section refiled 11–2–2001 as an emergency; operative 11–3–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–4–2002 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 11–2–2001 order, including amendment of NOTE, transmitted to OAL 12–27–2001 and filed 2–8–2002 (Register 2002, No. 6).

§ 66273.62. Tracking Universal Waste Shipments.

(a) The owner or operator of a destination facility shall keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, or other shipping document. The record for each shipment of universal waste received shall include the following information:

(1) The name and address of the universal waste handler, destination facility, or foreign shipper from whom the universal waste was sent;

(2) The quantity of each type of universal waste received (e.g., batteries, thermostats, lamps);

(3) The date of receipt of the shipment of universal waste.

(b) The owner or operator of a destination facility shall retain the records described in subsection (a) of this section for at least three years from the date of receipt of a shipment of universal waste.

NOTE: Authority cited: Sections 25141, 25150, 25150.6, 25219.1 and 58012, Health and Safety Code. Reference: Sections 25141, 25150, 25159.5, 25219, 25219.1 and 25219.2, Health and Safety Code; 40 CFR Section 273.62.

HISTORY

1. New section filed 3–6–2000 as an emergency; operative 3–6–2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2000 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6–29–2000 as an emergency; operative 7–6–2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–3–2000 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11–1–2000 as an emergency; operative 11–4–2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–5–2001 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 3–6–2001 as an emergency; operative 3–6–2001 (Register 2001, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2001 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 6–26–2001 as an emergency; operative 7–5–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–2–2001 or emergency language will be repealed by operation of law on the following day.
6. New section refiled 11–2–2001 as an emergency; operative 11–3–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–4–2002 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 11–2–2001 order, including amendment of NOTE, transmitted to OAL 12–27–2001 and filed 2–8–2002 (Register 2002, No. 6).

Article 6. Import Requirements

§ 66273.70. Imports.

Persons managing universal waste that is imported from a foreign country into the United States are subject to the applicable requirements of this chapter, immediately after the waste enters the United States, as indicated in subsections (a) through (c) of this section:

(a) A universal waste transporter is subject to the universal waste transporter requirements of article 4.

(b) A universal waste handler is subject to the small or large quantity handler of universal waste requirements of article 2 or 3, as applicable.

(c) An owner or operator of a destination facility is subject to the destination facility requirements of article 5.

(d) Persons managing universal waste that is imported from an OECD country as specified in section 66262.58(a)(1) are subject to subsections (a) through (c) of this section, in addition to the requirements of article 8 of chapter 12.

NOTE: Authority cited: Sections 25141, 25150, 25219.1 and 58012, Health and Safety Code. Reference: Sections 25141, 25150, 25159.5, 25219, 25219.1 and 25219.2, Health and Safety Code; 40 CFR Section 273.70.

HISTORY

1. New article 6 (section 66273.70) and section filed 3–6–2000 as an emergency; operative 3–6–2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2000 or emergency language will be repealed by operation of law on the following day.
2. New article 6 (section 66273.70) and section refiled 6–29–2000 as an emergency; operative 7–6–2000 (Register 2000, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–3–2000 or emergency language will be repealed by operation of law on the following day.
3. New article 6 (section 66273.70) and section refiled 11–1–2000 as an emergency; operative 11–4–2000 (Register 2000, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–5–2001 or emergency language will be repealed by operation of law on the following day.
4. New article 6 (section 66273.70) and section refiled 3–6–2001 as an emergency; operative 3–6–2001 (Register 2001, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–5–2001 or emergency language will be repealed by operation of law on the following day.
5. New article 6 (section 66273.70) and section refiled 6–26–2001 as an emergency; operative 7–5–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 11–2–2001 or emergency language will be repealed by operation of law on the following day.
6. New article 6 (section 66273.70) and section refiled 11–2–2001 as an emergency; operative 11–3–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–4–2002 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 11–2–2001 order transmitted to OAL 12–27–2001 and filed 2–8–2002 (Register 2002, No. 6).

Article 7. Standards for CRT Material Handlers

§ 66273.80. Applicability.

This article applies to CRT material handlers (as defined in section 66273.9) except for households and conditionally exempt small quantity universal waste generators, as provided in section 66273.8.

NOTE: Authority cited: Sections 25141, 25150, 25150.6 and 58012, Health and Safety Code. Reference: Sections 25141, 25150 and 25159.5, Health and Safety Code.

HISTORY

1. New article 7 (sections 66273.80–66273.90) and section filed 8–3–2001 as an emergency; operative 8–3–2001 (Register 2001, No. 31). A Certificate of Compliance must be transmitted to OAL by 12–3–2001 or emergency language will be repealed by operation of law on the following day.
2. New article 7 (sections 66273.80–66273.90) and section refiled 11–30–2001 as an emergency; operative 11–30–2001 (Register 2001, No. 48). A Certificate of Compliance must be transmitted to OAL by 4–2–2002 or emergency language will be repealed by operation of law on the following day.
3. New article 7 (sections 66273.80–66273.90) and section refiled 3–26–2002 as an emergency; operative 4–12–2002 (Register 2002, No. 13). A Certificate of Compliance must be transmitted to OAL by 8–12–2002 or emergency language will be repealed by operation of law on the following day.
4. New article 7 (sections 66273.80–66273.90) and section refiled 8–6–2002 as an emergency; operative 8–6–2002 (Register 2002, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–4–2002 or emergency language will be repealed by operation of law on the following day.
5. New article 7 (sections 66273.80–66273.90) and section refiled 11–25–2002 as an emergency; operative 12–5–2002 (Register 2002, No. 48). A Certificate of Compliance must be transmitted to OAL by 4–4–2003 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 11–25–2002 order, including amendment of section and NOTE, transmitted to OAL 12–24–2002 and filed 2–3–2003 (Register 2003, No. 6).

§ 66273.81. Prohibitions.

A CRT material handler is:

(a) Prohibited from disposing of the CRT material; and

(b) Prohibited from diluting or treating the CRT material, unless the handler is responding to a release as provided in section 66273.87 or the handler is managing specific wastes as provided in section 66273.83.

NOTE: Authority cited: Sections 25141, 25150, 25150.6 and 58012, Health and Safety Code. Reference: Sections 25141, 25150 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 8–3–2001 as an emergency; operative 8–3–2001 (Register 2001, No. 31). A Certificate of Compliance must be transmitted to OAL by 12–3–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 11–30–2001 as an emergency; operative 11–30–2001 (Register 2001, No. 48). A Certificate of Compliance must be transmitted to OAL by 4–2–2002 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 3–26–2002 as an emergency; operative 4–12–2002 (Register 2002, No. 13). A Certificate of Compliance must be transmitted to OAL by 8–12–2002 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 8–6–2002 as an emergency; operative 8–6–2002 (Register 2002, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–4–2002 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 11–25–2002 as an emergency; operative 12–5–2002 (Register 2002, No. 48). A Certificate of Compliance must be transmitted to OAL by 4–4–2003 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 11–25–2002 order, including amendment of NOTE, transmitted to OAL 12–24–2002 and filed 2–3–2003 (Register 2003, No. 6).

§ 66273.82. Notification and Reporting Requirements for CRT Material Handlers.

(a) Notification: A CRT material handler who intends to handle any CRT materials from any offsite source shall notify the Department at least 30 days prior to accepting any CRT materials. This notification shall include the information specified below.

(1) Name of CRT material handler;

(2) Telephone number of CRT material handler;

(3) Type of handler for purposes of Public Resources Code, division 30, part 3, chapter 8.5 (collector, recycler, dual entity);

(4) Mailing address of CRT material handler, and physical address if different;

(5) Name of the contact person

(6) Telephone number of the contact person;

(7) An e–mail address of the contact person or organization, if available.

(8) The types of CRT materials expected to be handled;

(9) The sources of CRT materials (i.e., residential collections, business asset recovery, other collectors, etc.);

(b) Annual Report

(1) A CRT material handler that accepts five or less CRTs, five or less CRT devices, or 100 kilograms or less of CRT glass per calendar year from offsite sources is not required to submit an annual report to the Department for those universal waste handling activities.

(2) A CRT material handler that accepts more than five CRTs or more than five CRT devices or more than 100 kilograms of CRT glass per calendar year from any offsite source shall, by February 1 of each calendar year, submit a written annual report containing the information specified

in subparagraph (4) to the Department. The information submitted under this subsection shall cover CRT material handling activities during the previous calendar year.

(3) A CRT material handler that generates 5,000 kilograms (about 200 CRTs) or more of CRT material (CRTs, CRT devices and CRT glass calculated collectively) per calendar year shall, by February 1 of each calendar year, submit a written annual report containing the information specified in subparagraph (4) to the Department. The information submitted under this subsection shall cover CRT material handling activities during the previous calendar year.

(4) This annual report shall include:

(A) The CRT material handler's name and mailing address;

(B) The name and business telephone number of the person at the CRT material handler's site who should be contacted regarding universal waste management activities;

(C) The address or physical location including the county of the CRT material management activities;

(D) The total quantity of CRTs (count), the total quantity of CRT devices (count) and the total quantity of CRT glass (weight) handled during the previous year;

(E) A list including the names, addresses, and phone numbers of each location that the handler shipped CRTs to during the previous year and the total quantity of CRTs (count) shipped to each location;

(F) A list including the names, addresses, and phone numbers of each location that the handler shipped CRT devices to during the previous year and the total quantity of CRT devices (count) shipped to each location;

(G) A list including the names, addresses, and phone numbers of each location that the handler shipped CRT glass to during the previous year and the total quantity of CRT glass (weight) shipped to each location.

(c) Whenever necessary, handlers who use mass based inventory systems may convert mass data to count data through application of an appropriate conversion factor (e.g., 30 pounds per CRT) to fulfill this notification requirement. Handlers who perform data conversions shall indicate that the count data was derived from mass data and shall include the conversion factor(s) used in their notification.

(d) Written notifications and reports shall be submitted to the Department by certified mail, return receipt requested to: Department of Toxic Substances Control, Hazardous Waste Management Program, Regulatory and Program Development Division, P.O. Box 806, Sacramento, CA 95812–0806, with "Attention: CRT Materials Handling Activities" prominently displayed on the front of the envelope.

(e) Electronic notifications submitted under this section shall be submitted to www.dtsc.ca.gov.

NOTE: Authority cited: Sections 25141, 25150, 25150.6, 25201, 25214.9, 25214.10.2 and 58012, Health and Safety Code; and Sections 42475.1 and 42475.2, Public Resources Code. Reference: Sections 25141, 25150, 25159.5, 25201 and 25214.9, Health and Safety Code.

HISTORY

1. New section filed 8–3–2001 as an emergency; operative 8–3–2001 (Register 2001, No. 31). A Certificate of Compliance must be transmitted to OAL by 12–3–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 11–30–2001 as an emergency; operative 11–30–2001 (Register 2001, No. 48). A Certificate of Compliance must be transmitted to OAL by 4–2–2002 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 3–26–2002 as an emergency; operative 4–12–2002 (Register 2002, No. 13). A Certificate of Compliance must be transmitted to OAL by 8–12–2002 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 8–6–2002 as an emergency; operative 8–6–2002 (Register 2002, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–4–2002 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 11–25–2002 as an emergency; operative 12–5–2002 (Register 2002, No. 48). A Certificate of Compliance must be transmitted to OAL by 4–4–2003 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 11–25–2002 order, including amendment of section and NOTE, transmitted to OAL 12–24–2002 and filed 2–3–2003 (Register 2003, No. 6).
7. Amendment of section heading, section and NOTE filed 6–7–2004 as an emergency; operative 6–7–2004 (Register 2004, No. 24). Pursuant to Public Resources Code section 42475.2, a Certificate of Compliance must be transmitted to OAL by 6–7–2006 or emergency language will be repealed by operation of law on the following day.
8. Amendment of section heading, section and NOTE refiled 6–5–2006 as an emergency, including further amendment of NOTE; operative 6–5–2006 (Register 2006, No. 23). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.
9. Amendment of section heading, section and NOTE refiled 5–8–2008 as an emergency; operative 5–8–2008 (Register 2008, No. 19). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.

§ 66273.83. Waste Management.

(a) Containment.

A CRT material handler shall manage CRT materials in a manner that prevents release of any CRT material or component of a CRT material to the environment, as follows:

(1) A CRT material handler shall contain any CRT materials in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the container (CRTs, CRT devices and CRT glass). Such containers and packages shall lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions. A CRT material handler who manages whole CRT devices in a manner that prevents breakage of the CRT and release of CRT glass (e.g, shrink–wrapped on a pallet) shall be considered to comply with this requirement.

(2) A CRT material handler shall immediately clean up and place in a container any CRTs, CRT devices and CRT glass that is broken and shall place in a container any CRTs, CRT devices and CRT glass that shows evidence of breakage, leakage, or damage that could cause the release of lead or other hazardous constituents to the environment. Containers shall be structurally sound, and compatible with the contents of the container (CRTs, CRT devices and CRT glass) and shall lack evidence of leakage, spillage or damage that could cause the release of glass or other hazardous constituents to the environment under reasonably foreseeable conditions.

(b) CRT removal.

(1) A CRT material handler may remove CRTs from CRT devices provided the handler:

(A) Removes the CRTs in a manner designed to prevent breakage of the CRTs;

(B) Removes the CRTs only over or in a containment device (e.g., a tray, a box, or an enclosed machine) sufficient in size and construction to contain any CRT glass that may be released in the event of breakage;

(C) Ensures that persons removing CRTs are thoroughly familiar with the techniques and safety precautions required to safely remove CRTs (e.g., releasing the vacuum, discharging the tube);

(D) Packages the removed CRTs in a container with sufficient packing materials to prevent breakage during handling, storage and transportation.

(2) A CRT material handler who removes CRTs from CRT devices shall determine whether any of the remaining portion of the CRT device or any other waste generated during the removal process exhibits any characteristic of a hazardous waste identified in article 3 of chapter 11 and, if so, shall manage the hazardous waste in compliance with all applicable requirements of this division.

(c) Yoke removal.

A CRT material handler may treat or recycle CRTs (conduct yoke removal) provided the handler:

(1) Does not break the CRT glass.

(2)(A) Submits a notification to the Department pursuant to subparagraphs 1 and 2.

1. For a facility that treats or recycles CRT material by yoke removal, the CRT material handler at that facility shall submit to the Department, by certified mail, with return receipt requested, a notification containing

the information specified in subparagraph 2 no later than 30 days prior to treating or recycling any CRT material.

2. This notification shall include:

a. The information specified in subsections 66273.82(b)(4)(A), (b)(4)(B), and (b)(4)(C);

b. The name, mailing address and telephone number of the owner of the facility;

c. A description of the type of CRT material treated (CRTs or CRT devices);

d. A description of the treatment processes used;

e. Documentation that the facility operator has notified the facility property owner (if different from the operator of the facility) that the operator is conducting CRT waste treatment or recycling operations at the facility;

(B) Completes, signs and dates the notification required by this paragraph in accordance with the requirements of section 66270.11 as those requirements apply to permit applications;

(3) Maintains on file the documents specified in subparagraphs (3)(A) and (3)(B) at the facility by no later than 30 days prior to recycling or treating any CRT material. The CRT material handler shall make these documents available upon demand at the facility to any representative of the Department, the U. S. EPA or a local governmental agency having jurisdiction over the facility. A copy of these documents shall be delivered in person or by certified mail, return receipt requested, to the Department when requested in writing. The written request from the Department shall specify the documents that are required, where and how to submit those documents and the date by which those documents shall be submitted.

(A) A copy of the most recent notification submitted as required by subsection (c).

(B) A copy of any local air district permit and other permits required for the facility.

(4) Prepares and submits annual report to the Department. The annual report shall be delivered by certified mail, return receipt requested, to the Department by February 1 of each calendar year. The report shall be dated and signed according to the requirements of section 66270.11 as those requirements apply to permit applications, and shall include the following information for each CRT material handler who treated CRT materials during the previous calendar year:

(A) The name, address, physical location and a description of the facility;

(B) The mailing address of the business entity that owns and operates the facility;

(C) The name, title and telephone number of the person at the facility who should be contacted regarding universal waste management activities at the facility;

(D) The facility EPA Identification number, if required;

(E) The number of days each facility operated;

(F) The total quantity (count or weight) of CRTs treated or recycled by the handler during the previous year;

(G) A list including the names, addresses, and phone numbers of each location to which the handler shipped CRTs and yokes to during the previous year and the total quantity of CRTs and yokes (weight) shipped to each location;

(H) The treatment or recycling method used for each CRT material treated by the facility;

(5) Does not accept any CRTs or CRT devices that are managed, or are required to be managed, as hazardous waste under chapters 10 through 22 of this division;

(6) Conducts the treatment for the purpose of recycling the CRTs or the CRT devices and the CRTs or CRT devices are transported to an authorized destination facility;

(7) Ensures all treatment is conducted over or in a containment device (e.g., a tray, box, workbench, table or enclosed machine) sufficient in size and construction to contain any CRT glass that may accidentally be released during yoke removal;

(8) Utilizes only treatment methods that employ mechanical removal of the yoke;

(9) Ensures the treatment is conducted without the use or application of heat or chemicals, including water;

(10) Ensures that all persons that perform treatment or recycling are thoroughly familiar with the associated hazards and have access to the proper procedures and protective equipment necessary to safely conduct the treatment and to comply with the requirements of this section;

(11) Ensures that the facility is operated in compliance with all applicable local and state air pollution control laws and regulations;

(12) Ensures that the facility is operated in compliance with all applicable worker health and safety laws and regulations [i.e., California Code of Regulations, title 8];

(13) Ensures that all materials generated as a result of the treatment processes are properly classified and managed in accordance with the applicable requirements of this division;

(14) Ensures that the activities conducted at the facility are consistent with local zoning or land use requirements for that site;

(15) Maintains compliance with the requirements of sections 66265.18 and 66265.25 of chapter 15 as those requirements apply to facility location and design standards.

(d) CRT material treatment and recycling.

A CRT material handler may treat or recycle CRTs, CRT devices or CRT glass provided the handler:

(1)(A) Submits notifications to the Department pursuant to subparagraphs 1 and 3.

1. For a facility that treats or recycles CRT material, the CRT material handler at that facility shall submit to the Department, by certified mail, with return receipt requested, a notification containing the information specified in subparagraph 2 no later than 30 days prior to treating or recycling any CRT material.

2. This notification shall include:

a. The information specified in subsections 66273.82(b)(4)(A), (b)(4)(B), and (b)(4)(C);

b. The name, mailing address and telephone number of the owner of the facility;

c. A description of the type of CRT material treated;

d. A description of the treatment processes used;

e. Documentation that the facility operator has notified the facility property owner (if different from the operator of the facility) that the operator is conducting CRT waste treatment or recycling operations at the facility;

3. For a facility that treated or recycled CRT material pursuant to this subsection, the CRT material handler at that facility shall submit to the Department, by certified mail, with return receipt requested, a notification containing the information specified in subparagraph 4 no later than 30 days prior to ceasing treatment or recycling activities at the facility, and shall submit to the Department, by certified mail, with return receipt requested, a notification containing the information specified in subparagraph 5 no later than 30 days after ceasing treatment or recycling activities at the facility.

4. This notification shall include:

a. The date when the CRT material handler expects to complete CRT material treatment or recycling activities;

b. The date when the CRT material handler expects to complete CRT material handling activities at the facility, if applicable; and

c. The date when the CRT material handler expects to close or vacate the facility.

5. This notification shall include:

a. The date of the last day on which the CRT material handler conducted CRT material treatment or recycling activities;

b. The date of the last day on which the CRT material handler conducted CRT material handling activities at the facility, if applicable; and

c. The date the CRT material handler closed or vacated the facility.

(B) Completes, signs and dates each notification required by this paragraph in accordance with the requirements of section 66270.11 as those requirements apply to permit applications;

(2) Submits to the Department, by certified mail, with return receipt requested, a cost estimate for closure pursuant to section 66265.142 by no later than 30 days prior to recycling or treating any CRT material;

(3) Submits to the Department, by certified mail, with return receipt requested, documentation demonstrating financial assurance for closure pursuant to section 66265.143 no later than 30 days prior to recycling or treating any CRT material;

(4) Submits to the Department, by certified mail, with return receipt requested, documentation demonstrating financial responsibility for liability pursuant to section 66265.147 no later than 30 days prior to recycling or treating any CRT material;

(5) Maintains on file the documents specified in subparagraphs (5)(A) and(5)(B) at the facility by no later than 30 days prior to recycling or treating any CRT material. The CRT material handler shall make these documents available upon demand at the facility to any representative of the Department, the U. S. EPA or a local governmental agency having jurisdiction over the facility. A copy of these documents shall be delivered in person or by certified mail, return receipt requested, to the Department when requested in writing. The written request from the Department shall specify the documents that are required, where and how to submit those documents and the date by which those documents shall be submitted.

(A) A copy of the most recent notification submitted as required by subsection (d).

(B) A copy of any local air district permit and other permits required for the facility.

(6) Prepares and submits an annual report to the Department. The annual report shall be delivered by certified mail, return receipt requested, to the Department by February 1 of each calendar year. The report shall be dated and signed according to the requirements of section 66270.11 as those requirements apply to permit applications, and shall include the following information for each CRT material handler who treated CRT materials during the previous calendar year:

(A) The name, address, physical location and a description of the facility;

(B) The mailing address of the business entity that owns and operates the facility;

(C) The name, title and telephone number of the person at the facility who should be contacted regarding universal waste management activities at the facility;

(D) The facility EPA Identification number, if required;

(E) The number of days each facility operated;

(F) The total quantity (count or weight) of CRT devices treated or recycled by the handler during the previous year;

(G) The total quantity (count or weight) of CRTs treated or recycled by the handler during the previous year;

(H) A list including the names, addresses, and phone numbers of each location to which the handler shipped CRT glass to during the previous year and the total quantity of CRT glass (weight) shipped to each location;

(I) The treatment or recycling method used for each CRT material treated by the facility;

(7) Does not accept any CRTs, CRT devices or CRT glass that are managed, or are required to be managed, as hazardous waste under chapters 10 through 22 of this division;

(8) Conducts the treatment for the purpose of recycling one or more types of CRT glass and the CRT glass is reclaimed at a CRT glass manufacturer or at a primary or secondary lead smelter;

(9) Ensures all treatment is conducted over or in a containment device (e.g., a tray, box or enclosed machine) sufficient in size and construction to contain any CRT glass that may be released;

(10) Utilizes only treatment methods that employ one or more of the following technologies:

(A) physical processes that change only the physical properties of the waste such as cutting, sawing, breaking, shredding, crushing, or compacting; and/or

(B) separation based on differences in physical properties such as size, color, or density; and/or

(C) screening to separate components based on size;

(11) Ensures the treatment is conducted without the use or application of:

(A) chemicals, including water, other than recirculated coolant used in CRT cutting machines; or

(B) external heat, other than the use of a pinpoint torch to thermally check (crack) the CRT glass for separation;

(12) Ensures that all persons that perform treatment or recycling are thoroughly familiar with the associated hazards and have access to the proper procedures and protective equipment necessary to safely conduct the treatment and to comply with the requirements of this section;

(13) Ensures that the facility is operated in compliance with all applicable local and state air pollution control laws and regulations.

(14) Ensures that the facility is operated in compliance with all applicable worker health and safety laws and regulations [i.e., California Code of Regulations, title 8, subchapter 7 (General Industry Safety Orders), group 16 (Control of Hazardous Substances), article 107 (Dusts, Fumes, Vapors and Mists) and article 109 (Hazardous Substances and Processes), and section 5198 (Lead)].

(15) Ensures that all materials generated as a result of the treatment processes are properly classified and managed in accordance with the applicable requirements of this division.

(16) Ensures that the activities conducted at the facility are consistent with local zoning or land use requirements for that site.

(17) Maintains compliance with the requirements of sections 66265.18 and 66265.25 of chapter 15 as those requirements apply to facility location and design standards.

(e) A handler that treats or recycles CRT materials pursuant to subsections (c) and (d) of this section shall not be deemed to be operating pursuant to a permit–by–rule, conditional authorization, or conditional exemption.

NOTE: Authority cited: Sections 25141, 25150, 25150.6, 25201, 25214.9, 25214.10.2 and 58012, Health and Safety Code; and Sections 42475.1 and 42475.2, Public Resources Code. Reference: Sections 25141, 25150, 25159.5, 25201 and 25214.9, Health and Safety Code.

HISTORY

1. New section filed 8–3–2001 as an emergency; operative 8–3–2001 (Register 2001, No. 31). A Certificate of Compliance must be transmitted to OAL by 12–3–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 11–30–2001 as an emergency; operative 11–30–2001 (Register 2001, No. 48). A Certificate of Compliance must be transmitted to OAL by 4–2–2002 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 3–26–2002 as an emergency; operative 4–12–2002 (Register 2002, No. 13). A Certificate of Compliance must be transmitted to OAL by 8–12–2002 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 8–6–2002 as an emergency; operative 8–6–2002 (Register 2002, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–4–2002 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 11–25–2002 as an emergency; operative 12–5–2002 (Register 2002, No. 48). A Certificate of Compliance must be transmitted to OAL by 4–4–2003 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 11–25–2002 order, including amendment of section and NOTE, transmitted to OAL 12–24–2002 and filed 2–3–2003 (Register 2003, No. 6).

7. Amendment of section and NOTE filed 6–7–2004 as an emergency; operative 6–7–2004 (Register 2004, No. 24). Pursuant to Public Resources Code section 42475.2, a Certificate of Compliance must be transmitted to OAL by 6–7–2006 or emergency language will be repealed by operation of law on the following day.
8. Editorial correction of subsection (d)(1)(A)2.a. (Register 2004, No. 30).
9. Amendment of section and NOTE refiled 6–5–2006 as an emergency, including further amendment of NOTE; operative 6–5–2006 (Register 2006, No. 23). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.
10. Amendment of section and NOTE refiled 5–8–2008 as an emergency; operative 5–8–2008 (Register 2008, No. 19). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.

§ 66273.84. Labeling/Marking.

Each container or pallet in or on which CRTs, CRT devices or CRT glass are contained, including pallets that also contain items that are not waste, shall be labeled or marked clearly with one of the following phrases:

(a) For CRTs, "Universal Waste—CRT(s)" or "UW—CRT(s);"

(b) For CRT Devices, "Universal Waste—CRT Device(s)" or "UW—CRT Device(s);"

(c) For CRT Glass, "Universal Waste—CRT Glass" or "UW—CRT Glass."

(d) In lieu of labeling individual CRTs or CRT devices, a CRT material handler may accumulate CRTs and CRT devices within a designated area demarcated by boundaries that are clearly labeled as described above provided no other materials are stored within that area.

NOTE: Authority cited: Sections 25141, 25150, 25150.6 and 58012, Health and Safety Code. Reference: Sections 25141, 25150 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 8–3–2001 as an emergency; operative 8–3–2001 (Register 2001, No. 31). A Certificate of Compliance must be transmitted to OAL by 12–3–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 11–30–2001 as an emergency; operative 11–30–2001 (Register 2001, No. 48). A Certificate of Compliance must be transmitted to OAL by 4–2–2002 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 3–26–2002 as an emergency; operative 4–12–2002 (Register 2002, No. 13). A Certificate of Compliance must be transmitted to OAL by 8–12–2002 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 8–6–2002 as an emergency; operative 8–6–2002 (Register 2002, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–4–2002 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 11–25–2002 as an emergency; operative 12–5–2002 (Register 2002, No. 48). A Certificate of Compliance must be transmitted to OAL by 4–4–2003 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 11–25–2002 order, including repealer and new section and amendment of NOTE, transmitted to OAL 12–24–2002 and filed 2–3–2003 (Register 2003, No. 6).

§ 66273.85. Accumulation Time Limits.

(a) A CRT material handler may accumulate CRT material for no longer than one year from the date the universal waste is generated, or received from another handler.

(b) A CRT material handler who accumulates CRT material shall be able to demonstrate the length of time that the universal waste has been accumulated from the date it became a waste or was received. The handler may make this demonstration by:

(1) Placing the CRT material in a container and marking or labeling the container with the earliest date that any CRT material in the container became a waste or was received;

(2) Marking or labeling each individual item of CRT material (e.g., each CRT or CRT device) with the date it became a waste or was received;

(3) Maintaining an inventory system on–site that identifies the date each CRT material became a waste or was received;

(4) Maintaining an inventory system on–site that identifies the earliest date that any CRT material in a group of CRT material items or a group of containers of CRT material became a waste or was received;

(5) Placing the CRT material in a specific accumulation area and identifying the earliest date that CRT material in the area became a waste or was received; or

(6) Any other method that clearly demonstrates the length of time that the CRT material has been accumulated from the date it became a waste or was received.

NOTE: Authority cited: Sections 25141, 25150, 25150.6 and 58012, Health and Safety Code. Reference: Sections 25141, 25150 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 8–3–2001 as an emergency; operative 8–3–2001 (Register 2001, No. 31). A Certificate of Compliance must be transmitted to OAL by 12–3–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 11–30–2001 as an emergency; operative 11–30–2001 (Register 2001, No. 48). A Certificate of Compliance must be transmitted to OAL by 4–2–2002 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 3–26–2002 as an emergency; operative 4–12–2002 (Register 2002, No. 13). A Certificate of Compliance must be transmitted to OAL by 8–12–2002 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 8–6–2002 as an emergency; operative 8–6–2002 (Register 2002, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–4–2002 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 11–25–2002 as an emergency; operative 12–5–2002 (Register 2002, No. 48). A Certificate of Compliance must be transmitted to OAL by 4–4–2003 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 11–25–2002 order, including amendment of subsection (a) and NOTE, transmitted to OAL 12–24–2002 and filed 2–3–2003 (Register 2003, No. 6).

§ 66273.86. Employee Training.

(a) A CRT material handler shall inform all employees who handle or have responsibility for managing CRT material of the proper handling and emergency procedures appropriate for the waste handled at the facility.

(b) Employees who manage or handle waste CRT materials shall receive initial training on:

(1) the hazards associated with handling CRT materials (i.e., leaded glass);

(2) the requirements contained in this chapter; and

(3) the proper procedures for responding to and managing releases of CRT glass.

(c) Employees shall take part in an annual review of the initial training required in subsection (b) of this section.

(d) The CRT material handler shall maintain records of employee training received under subsection (b) of this section for at least three years from the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company.

NOTE: Authority cited: Sections 25141, 25150, 25150.6 and 58012, Health and Safety Code. Reference: Sections 25141, 25150 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 8–3–2001 as an emergency; operative 8–3–2001 (Register 2001, No. 31). A Certificate of Compliance must be transmitted to OAL by 12–3–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 11–30–2001 as an emergency; operative 11–30–2001 (Register 2001, No. 48). A Certificate of Compliance must be transmitted to OAL by 4–2–2002 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 3–26–2002 as an emergency; operative 4–12–2002 (Register 2002, No. 13). A Certificate of Compliance must be transmitted to OAL by 8–12–2002 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 8–6–2002 as an emergency; operative 8–6–2002 (Register 2002, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–4–2002 or emergency language will be repealed by operation of law on the following day.

5. New section refiled 11–25–2002 as an emergency; operative 12–5–2002 (Register 2002, No. 48). A Certificate of Compliance must be transmitted to OAL by 4–4–2003 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 11–25–2002 order, including amendment of section and NOTE, transmitted to OAL 12–24–2002 and filed 2–3–2003 (Register 2003, No. 6).

§ 66273.87. Response to Releases.

(a) A CRT material handler shall immediately contain all releases of CRT material and residues from CRT material.

(b) A CRT material handler shall determine whether any material resulting from a release is hazardous waste and, if so, shall manage the hazardous waste in compliance with all applicable requirements of this division. The CRT material handler is considered the generator of material resulting from a release, and shall manage it in compliance with chapter 12.

(c) Waste consisting only of residues of leaking, broken, or otherwise damaged CRT material may be managed as universal waste provided that the leaking, broken, or otherwise damaged universal waste is repackaged according to the standards of section 66273.83.

NOTE: Authority cited: Sections 25141, 25150, 25150.6 and 58012, Health and Safety Code. Reference: Sections 25141, 25150 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 8–3–2001 as an emergency; operative 8–3–2001 (Register 2001, No. 31). A Certificate of Compliance must be transmitted to OAL by 12–3–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 11–30–2001 as an emergency; operative 11–30–2001 (Register 2001, No. 48). A Certificate of Compliance must be transmitted to OAL by 4–2–2002 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 3–26–2002 as an emergency; operative 4–12–2002 (Register 2002, No. 13). A Certificate of Compliance must be transmitted to OAL by 8–12–2002 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 8–6–2002 as an emergency; operative 8–6–2002 (Register 2002, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–4–2002 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 11–25–2002 as an emergency; operative 12–5–2002 (Register 2002, No. 48). A Certificate of Compliance must be transmitted to OAL by 4–4–2003 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 11–25–2002 order, including new subsection (c) and amendment of NOTE, transmitted to OAL 12–24–2002 and filed 2–3–2003 (Register 2003, No. 6).

§ 66273.88. Off–Site Shipments.

(a) A CRT material handler is prohibited from sending or taking CRT material to a place other than another CRT material handler, a destination facility, or a foreign destination.

(b) If a CRT material handler transports CRT material off–site, the handler is a universal waste transporter for those transportation activities and shall comply with the transporter requirements of article 4 of this chapter while transporting the CRT material.

(c) If a CRT material being offered for off–site transportation meets the definition of a hazardous material under 49 CFR parts 171 through 180, a CRT material handler shall package, label, mark and placard the shipment, and prepare the proper shipping papers in accordance with the applicable Department of Transportation regulations under 49 CFR parts 172 through 180;

(d) Prior to sending a shipment of CRT material to another CRT material handler, the originating handler shall obtain an agreement from the receiving handler that it will receive the shipment.

(e) If a CRT material handler sends a shipment of CRT material to another handler or to a destination facility and the shipment is rejected by the receiving handler or destination facility, the originating handler shall either:

(1) Receive the waste back when notified that the shipment has been rejected, or

(2) Agree with the receiving handler on a destination facility to which the shipment will be sent.

(f) A CRT material handler may reject a shipment containing CRT material, or a portion of a shipment containing CRT material that is received from another handler. If a handler rejects a shipment or a portion of a shipment, the handler shall contact and notify the originating handler of the rejection. The receiving handler shall:

(1) Send the shipment back to the originating handler, or

(2) Send the shipment to a destination facility (if agreed to by both the originating and receiving handler).

(g) If a CRT material handler receives a shipment of CRT material containing hazardous waste that is not a CRT material, the handler shall immediately notify the Department, in writing, of the shipment, and provide the name, address, and phone number of the originating shipper. The Department will provide instructions for managing the hazardous waste.

(h) If a CRT material handler receives a shipment of non–hazardous, non–universal waste, the handler shall manage the waste in compliance with applicable federal, state and local solid waste regulations.

NOTE: Authority cited: Sections 25141, 25150, 25150.6 and 58012, Health and Safety Code. Reference: Sections 25141, 25150 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 8–3–2001 as an emergency; operative 8–3–2001 (Register 2001, No. 31). A Certificate of Compliance must be transmitted to OAL by 12–3–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 11–30–2001 as an emergency; operative 11–30–2001 (Register 2001, No. 48). A Certificate of Compliance must be transmitted to OAL by 4–2–2002 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 3–26–2002 as an emergency; operative 4–12–2002 (Register 2002, No. 13). A Certificate of Compliance must be transmitted to OAL by 8–12–2002 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 8–6–2002 as an emergency; operative 8–6–2002 (Register 2002, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–4–2002 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 11–25–2002 as an emergency; operative 12–5–2002 (Register 2002, No. 48). A Certificate of Compliance must be transmitted to OAL by 4–4–2003 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 11–25–2002 order, including amendment of subsection (h) and amendment of NOTE, transmitted to OAL 12–24–2002 and filed 2–3–2003 (Register 2003, No. 6).

§ 66273.89. Tracking Universal Waste Shipments of CRT Materials.

(a) Receipt of shipments.

A CRT material handler shall keep a record of each shipment of CRT materials received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, or other shipping document. The record for each shipment of CRT material received shall include the following information:

(1) The name and address of the originating handler or foreign shipper;

(2) The quantity (count or weight) of each type of CRT material received (e.g., CRTs, CRT devices or CRT glass); and

(3) The date of receipt of the shipment.

(b) Shipments off–site.

A CRT material handler shall keep a record of each shipment of CRT material sent from the handler to other facilities. The record may take the form of a log, invoice, manifest, bill of lading or other shipping document. The record for each shipment of CRT material sent shall include the following information:

(1) The name and address of the CRT material handler, destination facility, or foreign destination to whom the CRT material was sent;

(2) The quantity (count or weight) of each type of CRT material sent (e.g.,CRTs, CRT devices, CRT glass);

(3) The date the shipment of CRT material left the facility.

(c) Record retention.

A CRT material handler shall retain the records described in this section for at least three years from the date of receipt or date of shipment of each shipment of CRT material.

NOTE: Authority cited: Sections 25141, 25150, 25150.6 and 58012, Health and Safety Code. Reference: Sections 25141, 25150 and 25159.5, Health and Safety Code..

HISTORY

1. New section filed 8–3–2001 as an emergency; operative 8–3–2001 (Register 2001, No. 31). A Certificate of Compliance must be transmitted to OAL by 12–3–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 11–30–2001 as an emergency; operative 11–30–2001 (Register 2001, No. 48). A Certificate of Compliance must be transmitted to OAL by 4–2–2002 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 3–26–2002 as an emergency; operative 4–12–2002 (Register 2002, No. 13). A Certificate of Compliance must be transmitted to OAL by 8–12–2002 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 8–6–2002 as an emergency; operative 8–6–2002 (Register 2002, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–4–2002 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 11–25–2002 as an emergency; operative 12–5–2002 (Register 2002, No. 48). A Certificate of Compliance must be transmitted to OAL by 4–4–2003 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 11–25–2002 order, including amendment of NOTE, transmitted to OAL 12–24–2002 and filed 2–3–2003 (Register 2003, No. 6).

§ 66273.90. Exports.

(a) A CRT material handler who sends CRT material to any foreign destination shall concurrently notify the Department and send a copy of that notification to the CUPA, or, if there is no CUPA, to the agency authorized pursuant to subdivision (f) of Health and Safety Code section 25404.3, of an intended export before such CRT material is scheduled to leave the United States. A completed notification shall be submitted four weeks before the initial shipment is intended to be shipped offsite. This notification shall cover export activities extending over a twelve (12) month or lesser period.

(b) The notification submitted pursuant to subsection (a) shall be in writing, signed by the CRT material handler, and include the following information:

(1) name, mailing address, and telephone number of the CRT material handler;

(2) the foreign destination, for each type of CRT material (i.e., CRTs, CRT device, or CRT glass):

(A) the amount of CRT material (by count or by weight);

(B) the estimated frequency or rate at which the CRT material is to be exported and the period of time over which the CRT material is to be exported;

(C) all points of entry to and departure from each foreign country through which the CRT material will pass;

(D) a description of the means by which each shipment of CRT materials will be recycled at the foreign destination; and

(E) the name and site address of the consignee or any alternate consignee.

(c) Notifications submitted under this section shall be sent to the following address by certified mail, return receipt requested: Department of Toxic Substances Control, Hazardous Waste Management Program, Regulatory and Program Development Division, P.O. Box 806, Sacramento, CA 95812–0806, with "Attention: Notification to Export CRT Materials" prominently displayed on the front of the envelope.

(d) A person who exports covered electronic wastes shall also comply with the applicable export requirements of Public Resources Code, division 30, part 3, chapter 8.5.

NOTE: Authority cited: Sections 25141, 25150, 25150.2, 25150.6, 25201, 25214.9, 25214.10.2 and 58012, Health and Safety Code; and Sections 42475.1 and 42475.2, Public Resources Code. Reference: Sections 25141, 25150, 25159.5, 25201 and 25214.9, Health and Safety Code; and Section 42476.5, Public Resources Code..

HISTORY

1. New section filed 8–3–2001 as an emergency; operative 8–3–2001 (Register 2001, No. 31). A Certificate of Compliance must be transmitted to OAL by 12–3–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 11–30–2001 as an emergency; operative 11–30–2001 (Register 2001, No. 48). A Certificate of Compliance must be transmitted to OAL by 4–2–2002 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 3–26–2002 as an emergency; operative 4–12–2002 (Register 2002, No. 13). A Certificate of Compliance must be transmitted to OAL by 8–12–2002 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 8–6–2002 as an emergency; operative 8–6–2002 (Register 2002, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–4–2002 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 11–25–2002 as an emergency; operative 12–5–2002 (Register 2002, No. 48). A Certificate of Compliance must be transmitted to OAL by 4–4–2003 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 11–25–2002 order, including repealer and new section and amendment of NOTE, transmitted to OAL 12–24–2002 and filed 2–3–2003 (Register 2003, No. 6).
7. Amendment of section and NOTE filed 6–7–2004 as an emergency; operative 6–7–2004 (Register 2004, No. 24). Pursuant to Public Resources Code section 42475.2, a Certificate of Compliance must be transmitted to OAL by 6–7–2006 or emergency language will be repealed by operation of law on the following day.
8. Amendment of section and NOTE refiled 6–5–2006 as an emergency, including further amendment of NOTE; operative 6–5–2006 (Register 2006, No. 23). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.
9. Amendment of section and NOTE refiled 5–8–2008 as an emergency; operative 5–8–2008 (Register 2008, No. 19). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.

Chapter 29. Standards for the Management of Used Oil

Article 1. Definitions

§ 66279.1. Definitions.

(a) "Exempt used oil" means used oil, in liquid form, which does not require treatment to achieve the minimum standards of purity set forth in Health and Safety Code section 25250.1(a)(3)(B), and which meets all of the requirements of Health and Safety Code section 25250.1(b)(1). Only the generator of the used oil may claim it is exempt used oil. The generator shall comply with the notification, testing, certification and recordkeeping requirements of Health and Safety Code sections 25250.1(b)(2), 25250.18 and 25250.19.

(b) "Household do–it–yourselfer used oil" means oil that is derived from households, such as used oil generated by individuals who generate used oil through the maintenance of their personal vehicles. Household do–it–yourselfer used oil does not include used oil generated by service stations, lube oil shops, or similar businesses.

(c) "Recycled oil" means any oil, in liquid form, produced from used oil, which has been prepared for reuse, which achieves the minimum standards of purity set forth in Health and Safety Code sections 25250.1(a)(3)(B) and 25250.1(b)(1).

(d) "Synthetic oil" means oil derived from coal, oil shale, or polymers, and water–soluble petroleum–based oils. Vegetable or animal oil used as a lubricant, hydraulic fluid, heat transfer fluid or for other similar industrial purposes shall be managed as used oil if it is identified as a non–RCRA hazardous waste. Used vegetable or animal oil identified as RCRA hazardous waste is not used oil.

(e) "Used oil collection center" means:

(1) a used oil collection center defined in Public Resources Code section 48622; or

(2) a recycle–only household hazardous waste collection facility as defined in Health and Safety Code section 25218.1(n); or

(3) a household hazardous waste collection facility as defined in Health and Safety Code section 25218.1(f) and operating pursuant to a permit by rule; or

(4) a collection facility operating pursuant to Health and Safety Code section 25250.11.

(f) "Used oil transfer facility" means a transfer facility as defined in subdivision (a) of Health and Safety Code section 25123.3 that either stores used oil for periods greater than six days, or greater than 10 days for transfer facilities in areas zoned industrial by the local planning agency, or that transfers used oil from one container to another. Used oil transfer facilities are not deemed to be generators of used oil.

NOTE: Authority cited: Sections 25150, 25159, 58004 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5, 25218.8, 25250.1 and 25250.11, Health and Safety Code; and 40 CFR Section 279.1.

HISTORY

1. New chapter 23, article 1 (section 66279.1) and section filed 6–22–95 as an emergency; operative 6–22–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–20–95 or emergency language will be repealed by operation of law on the following day.
2. New chapter 23, article 1 (section 66279.1) and section refiled 10–20–95 as an emergency; operative 10–20–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–17–96 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of HISTORIES 1 and 2 (Register 96, No. 11).
4. Repealed by operation of Government Code section 11346.1(g) (Register 96, No. 44).
5. New chapter 23, article 1 (section 66279.1) and section refiled 3–14–96 as an emergency; operative 3–14–96 (Register 96, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–12–96 or emergency language will be repealed by operation of law on the following day.
6. New chapter 23, article 1 (section 66279.1) and section refiled 7–9–96 as an emergency; operative 7–9–96 (Register 96, No. 28). A Certificate of Compliance must be transmitted to OAL by 11–6–96 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction adding new HISTORY 4 and renumbering HISTORIES (Register 96, No. 44).
8. New chapter 23, article 1 (section 66279.1) and section refiled 11–1–96 as an emergency; operative 11–1–96 (Register 96, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–3–97 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 11–1–96 order transmitted to OAL 12–23–96 and disapproved 2–6–97 (Register 97, No. 6).
10. New chapter 23, article 1 (section 66279.1) and section filed 2–7–97 as an emergency; operative 2–7–97 (Register 97, No. 6). A Certificate of Compliance must be transmitted to OAL by 6–9–97 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 2–7–97 order transmitted to OAL 6–6–97 and disapproved 7–22–97 (Register 97, No. 30).
12. New chapter 29, article 1 (section 66279.1) and section filed 7–22–97 as an emergency; operative 7–22–97 (Register 97, No. 30). A Certificate of Compliance must be transmitted to OAL by 11–19–97 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 7–22–97 order transmitted to OAL 11–19–97 and filed 1–5–98 (Register 98, No. 2).

Article 2. Applicability

§ 66279.10. Applicability.

(a) Rebuttable presumption. Used oil containing more than 1,000 ppm total halogens is presumed to be a RCRA hazardous waste because it has been mixed with halogenated hazardous waste listed in Subpart D of Part 261, Title 40, Code of Federal Regulations (commencing with section 261.30).

(1) Generators of used oil shall determine whether used oil managed by them contains more than 1,000 ppm total halogens by:

(A) testing each shipment of used oil for total halogens as specified in section 66279.90(a); or,

(B) applying knowledge of the halogen content of the used oil in light of the materials or processes used. A generator who elects to apply knowledge in lieu of testing to determine if used oil exceeds 1,000 ppm total halogens shall do all of the following:

1. Determine the halogen content of the used oil due to the presence of halogenated substances in the unused product oil. This estimation shall be based upon a review of the product oil label, the material safety data sheet for the product oil if available, the manufacturer's specification for the product oil, consultation with the manufacturer of the product oil, or by other means verifiable by the Department.

2. Determine the halogen content of the used oil due to use. This estimation shall be based on an assessment of whether the equipment or process generating the used oil ordinarily results in the introduction of any halogenated substances into the used oil. Unusual occurrences such as, but not limited to, a break in the seal that ordinarily keeps the oil separated from halogenated substances also be taken into account in making this estimation.

3. Determine the halogen content of the used oil resulting from mixture of the used oil with halogenated substances. (Separate layers, abnormal viscosity, unusual colors, or unusual odors are indicators that mixing has occurred.) In making this determination, the possibility and likelihood that mixture of the used oil with halogenated substances has occurred shall be evaluated. This evaluation may include, but is not limited to, discussions with persons handling the used oil.

4. Add the individual halogen contents in subsections (a)(1)(B)1. through (a)(1)(B)3. to determine if the total halogens in the used oil exceeds 1,000 ppm.

(2) Records of analyses conducted or information used to comply with subsections (a)(1)(A) or (B) above shall be maintained by the generator for at least three years.

(3) Transporters of used oil shall determine, prior to accepting used oil for transport and prior to placing used oil on or in the transport vehicle, whether the used oil contains more than 1,000 ppm total halogens by:

(A) testing each shipment of used oil for total halogens as specified in section 66279.90(a); or,

(B) applying knowledge of the halogen content of the used oil in light of the materials or processes used. A transporter of used oil who elects to apply knowledge in lieu of testing to determine if used oil exceeds 1,000 ppm total halogens may follow the procedures in subsection 66279.10(a)(1)(B) as they apply to generators, or obtain a written certification from each generator of the used oil stating that the generator has determined the used oil does not contain more than 1,000 ppm total halogens by testing the used oil for halogens as specified in subsection 66279.90(a), or by applying knowledge of the halogen content of the used oil, as specified in subsection 66279.10(a)(1)(B).

(4) Used oil transfer facilities shall determine, prior to accepting used oil, whether the used oil contains more than 1,000 ppm total halogens by testing each shipment of used oil for total halogens as specified in section 66279.90(a).

(5) Used oil recycling facilities shall determine, prior to accepting used oil, whether the used oil contains more than 1,000 ppm total halogens by testing each shipment of used oil for total halogens as specified in section 66279.90(a).

(6) Used oil collection centers shall determine whether each shipment of used oil prepared for off-site transport from the collection center location contains more than 1,000 ppm total halogens by testing the used oil for total halogens as specified in section 66279.90(a) or by applying knowledge of the halogen content of the used oil in light of the materials or processes used. An owner or operator of a used oil collection center who elects to apply knowledge in lieu of testing to determine if the used oil contains more than 1,000 ppm total halogens shall follow the procedures in subsection 66279.10(a)(1)(B) as they apply to generators, or obtain a written certification from each generator of the collected used oil stating that the generator has determined the used oil does not contain more than 1,000 ppm total halogens by testing the used oil for halogens as specified in subsection 66279.90(a), or by applying knowledge of the halogen content of the used oil, as specified in subsection 66279.10(a)(1)(B).

(b) Rebutting the rebuttable presumption. Persons may rebut the presumption that used oil containing more than 1,000 ppm total halogens is a hazardous waste because it has been mixed with halogenated hazardous waste in Subpart D of Part 261, Title 40, Code of Federal Regulations (commencing with section 261.30) by demonstrating through analytical testing or other means of demonstration that the used oil does not contain such hazardous waste.

(1) The rebuttable presumption is not rebutted if the used oil contains significant concentrations of any of the individual halogenated hazardous constituents listed as a hazardous spent solvent (i.e., EPA Hazardous Waste Numbers F001 or F002) in Appendix VIII of Part 261, Title 40, Code of Federal Regulations. A significant concentration of any individual halogenated constituent listed as a hazardous spent solvent (i.e., EPA

Hazardous Waste Numbers F001 or F002) in section 261.31 of Title 40, Code of Federal Regulations is 100 ppm or greater.

(2) The rebuttable presumption is not rebutted if the used oil contains significant concentrations of any non–solvent individual halogenated hazardous constituents listed in Appendix VIII of Part 261, Title 40, Code of Federal Regulations. Unless the generator demonstrates to the Department that contamination of the used oil occurred solely as a result of use of the oil, Used oil containing any detectable concentrations of non–solvent individual halogenated hazardous constituents listed in Ap-

[The next page is 758.306(m).]

pendix VIII of Part 261, Title 40, Code of Federal Regulations, shall be deemed a significant concentration.

(3) The rebuttable presumption is rebutted if it is demonstrated that the used oil is metalworking oil/fluid containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in Title 40, Code of Federal Regulations section 279.24(c), to reclaim metalworking oil/fluid. However, the rebuttable presumption is not rebutted if such metalworking oil/fluid is recycled in any other manner, is disposed, or has been mixed with other hazardous wastes, including used oil from other sources. Metalworking oil/fluid for which the rebuttable presumption is rebutted remains otherwise subject to regulation as used oil.

(4) The rebuttable presumption is rebutted if it is demonstrated that the used oil is contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. However, the rebuttable presumption is not rebutted if the used oil contaminated with CFCs is from sources other than refrigeration units or if the used oil contaminated with CFCs removed from refrigeration units has been mixed with other hazardous wastes, including used oil from other sources. Used oil contaminated with CFCs for which the rebuttable presumption is rebutted remains otherwise subject to regulation as used oil.

(5) The rebuttable presumption is rebutted if it is demonstrated that the used oil is exclusively household do–it–yourselfer used oil or used oil collected from a conditionally exempt small quantity generator as defined in section 261.5(a) of Title 40, Code of Federal Regulations.

(A) If the used oil is not exclusively household do–it–yourselfer used oil or used oil collected from a conditionally exempt small quantity generator as defined in section 261.5(a) of Title 40, Code of Federal Regulations, but also contains used oil collected from other sources, then the rebuttable presumption is not rebutted unless it is demonstrated, by testing all sources of oil contained in the collected used oil for total halogens as specified in section 66279.90(a), that the source of the total halogens exceeding 1,000 ppm is solely from household do–it–yourselfer used oil or used oil collected from a conditionally exempt small quantity generator as defined in section 261.5(a) of Title 40, Code of Federal Regulations.

(c) Used oil shall not be intentionally mixed with other hazardous waste, including household hazardous waste and hazardous waste from a conditionally exempt small quantity generator as defined in section 261.5(a) of Title 40, Code of Federal Regulations.

NOTE: Authority cited: Sections 25150, 25159, 58004 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5, 25218, 25218.3, 25218.8, 25250.1, 25250.4 and 25250.7, Health and Safety Code; and 40 CFR Sections 279.1, 279.10(b)(ii), 279.11, 279.20, 279.21, 279.30, 279.40, 279.44 and 279.53.

HISTORY

1. New article 2 (section 66279.10) and section filed 6–22–95 as an emergency; operative 6–22–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–20–95 or emergency language will be repealed by operation of law on the following day.
2. New article 2 (section 66279.10) and section refiled 10–20–95 as an emergency; operative 10–20–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–17–96 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of HISTORIES 1 and 2 (Register 96, No. 11).
4. Repealed by operation of Government Code section 11346.1(g) (Register 96, No. 44).
5. New article 2 (section 66279.10) and section refiled 3–14–96 as an emergency; operative 3–14–96 (Register 96, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–12–96 or emergency language will be repealed by operation of law on the following day.
6. New article 2 (section 66279.10) and section refiled 7–9–96 as an emergency; operative 7–9–96 (Register 96, No. 28). A Certificate of Compliance must be transmitted to OAL by 11–6–96 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction adding new HISTORY 4 and renumbering HISTORIES (Register 96, No. 44).
8. New article 2 (section 66279.10) and section refiled 11–1–96 as an emergency; operative 11–1–96 (Register 96, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–3–97 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 11–1–96 order transmitted to OAL 12–23–96 and disapproved 2–6–97 (Register 97, No. 6).
10. New article 2 (section 66279.10) and section filed 2–7–97 as an emergency; operative 2–7–97 (Register 97, No. 6). A Certificate of Compliance must be transmitted to OAL by 6–9–97 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 2–7–97 order transmitted to OAL 6–6–97 and disapproved 7–22–97 (Register 97, No. 30).
12. New article 2 (section 66279.10) and section filed 7–22–97 as an emergency; operative 7–22–97 (Register 97, No. 30). A Certificate of Compliance must be transmitted to OAL by 11–19–97 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 7–22–97 order, including amendment of subsection (a)(1)(B), new subsections (a)(1)(B)1.–(a)(2), subsection renumbering, and amendment of newly designated (a)(3)(B) and (a)(6), transmitted to OAL 11–19–97 and filed 1–5–98 (Register 98, No. 2).

Article 3. Standards for Used Oil Generators

§ 66279.20. Applicability.

(a) Except as provided in subsection (b) of this section, the requirements of this article apply to all used oil generators. A used oil generator is any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation.

(b) Individuals who generate household do–it–yourselfer used oil are not subject to regulation under this article.

NOTE: Authority cited: Sections 25150, 25159, 58004 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5, 25218.5, 25250.4, 25250.11 and 25250.15, Health and Safety Code; and 40 CFR 279.1, 40 CFR Part 279 Subpart C.

HISTORY

1. New article 3 (sections 66279.20–66279.21) and section filed 6–22–95 as an emergency; operative 6–22–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–20–95 or emergency language will be repealed by operation of law on the following day.
2. New article 3 (sections 66279.20–66279.21) and section refiled 10–20–95 as an emergency; operative 10–20–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–17–96 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of HISTORIES 1 and 2 (Register 96, No. 11).
4. Repealed by operation of Government Code section 11346.1(g) (Register 96, No. 44).
5. New article 3 (sections 66279.20–66279.21) and section refiled 3–14–96 as an emergency; operative 3–14–96 (Register 96, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–12–96 or emergency language will be repealed by operation of law on the following day.
6. New article 3 (sections 66279.20 and 66279.21) and section refiled 7–9–96 as an emergency; operative 7–9–96 (Register 96, No. 28). A Certificate of Compliance must be transmitted to OAL by 11–6–96 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction adding new HISTORY 4 and renumbering HISTORIES (Register 96, No. 44).
8. New article 3 (sections 66279.20 and 66279.21) and section refiled 11–1–96 as an emergency; operative 11–1–96 (Register 96, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–3–97 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 11–1–96 order transmitted to OAL 12–23–96 and disapproved 2–6–97 (Register 97, No. 6).
10. New article 3 (sections 66279.20 and 66279.21) and section filed 2–7–97 as an emergency; operative 2–7–97 (Register 97, No. 6). A Certificate of Compliance must be transmitted to OAL by 6–9–97 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 2–7–97 order transmitted to OAL 6–6–97 and disapproved 7–22–97 (Register 97, No. 30).
12. New article 3 (sections 66279.20 and 66279.21) and section filed 7–22–97 as an emergency; operative 7–22–97 (Register 97, No. 30). A Certificate of Compliance must be transmitted to OAL by 11–19–97 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 7–22–97 order transmitted to OAL 11–19–97 and filed 1–5–98 (Register 98, No. 2).

§ 66279.21. Used Oil Generators.

(a) Generators of used oil shall comply with the requirements of chapter 12 of this division (commencing with Section 66262.10).

(b) Containers and aboveground tanks used to store used oil and fill pipes used to transfer used oil into underground storage tanks shall be marked or clearly labeled with the words "USED OIL."

NOTE: Authority cited: Sections 25150, 25250.4, 58004 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5 and 25250.4, Health and Safety Code; and 40 CFR Part 279 Subpart C.

HISTORY

1. New section filed 6–22–95 as an emergency; operative 6–22–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–20–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 10–20–95 as an emergency; operative 10–20–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–17–96 or emergency language will be repealed by operation of law on the following day.
3. Repealed by operation of Government Code section 11346.1(g) (Register 96, No. 44).
4. New section refiled 3–14–96 as an emergency; operative 3–14–96 (Register 96, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–12–96 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 7–9–96 as an emergency; operative 7–9–96 (Register 96, No. 28). A Certificate of Compliance must be transmitted to OAL by 11–6–96 or emergency language will be repealed by operation of law on the following day.
6. Editorial correction adding new HISTORY 3 and renumbering HISTORIES (Register 96, No. 44).
7. New section refiled 11–1–96 as an emergency; operative 11–1–96 (Register 96, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–3–97 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 11–1–96 order transmitted to OAL 12–23–96 and disapproved 2–6–97 (Register 97, No. 6).
9. New section filed 2–7–97 as an emergency; operative 2–7–97 (Register 97, No. 6). A Certificate of Compliance must be transmitted to OAL by 6–9–97 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 2–7–97 order transmitted to OAL 6–6–97 and disapproved 7–22–97 (Register 97, No. 30).
11. New section filed 7–22–97 as an emergency; operative 7–22–97 (Register 97, No. 30). A Certificate of Compliance must be transmitted to OAL by 11–19–97 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 7–22–97 order transmitted to OAL 11–19–97 and filed 1–5–98 (Register 98, No. 2).

Article 4. Standards for Used Oil Collection Centers

§ 66279.31. Used Oil Collection Centers.

(a) Applicability. This section applies to owners or operators of used oil collection centers as defined in section 66279.1(e).

(b) Used oil collection center requirements. Owners or operators of used oil collection centers shall:

(1) Comply with the generator standards in article 3 of this chapter (commencing with Section 66279.20).

(2) Obtain any registrations, licenses or permits required by law for the operation of the used oil collection center.

NOTE: Authority cited: Sections 25150, 25159, 58004 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5, 25250.4, 25218.8 and 25250.11, Health and Safety Code; and 40 CFR Part 279 Subpart D.

HISTORY

1. New article 4 (section 66279.31) and section filed 6–22–95 as an emergency; operative 6–22–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–20–95 or emergency language will be repealed by operation of law on the following day.
2. New article 4 (section 66279.31) and section refiled 10–20–95 as an emergency; operative 10–20–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–17–96 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of section heading and HISTORIES 1 and 2 (Register 96, No. 11).
4. Repealed by operation of Government Code section 11346.1(g) (Register 96, No. 44).
5. New article 4 (section 66279.31) and section refiled 3–14–96 as an emergency; operative 3–14–96 (Register 96, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–12–96 or emergency language will be repealed by operation of law on the following day.
6. New article 4 (section 66279.31) and section refiled 7–9–96 as an emergency; operative 7–9–96 (Register 96, No. 28). A Certificate of Compliance must be transmitted to OAL by 11–6–96 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction adding new HISTORY 4 and renumbering HISTORIES (Register 96, No. 44).
8. New article 4 (section 66279.31) and section refiled 11–1–96 as an emergency; operative 11–1–96 (Register 96, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–3–97 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 11–1–96 order transmitted to OAL 12–23–96 and disapproved 2–6–97 (Register 97, No. 6).
10. New article 4 (section 66279.31) and section filed 2–7–97 as an emergency; operative 2–7–97 (Register 97, No. 6). A Certificate of Compliance must be transmitted to OAL by 6–9–97 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 2–7–97 order transmitted to OAL 6–6–97 and disapproved 7–22–97 (Register 97, No. 30).
12. New article 4 (section 66279.31) and section filed 7–22–97 as an emergency; operative 7–22–97 (Register 97, No. 30). A Certificate of Compliance must be transmitted to OAL by 11–19–97 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 7–22–97 order transmitted to OAL 11–19–97 and filed 1–5–98 (Register 98, No. 2).

Article 5. Standards for Used Oil Transporters and Transfer Facilities (66279.40) [Reserved]

Article 6. Standards for Used Oil Recycling Facilities (66279.50) [Reserved]

Article 7. [Reserved]

Article 8. [Reserved]

Article 9. [Reserved]

Article 10. Testing Standards and Recordkeeping Requirements

§ 66279.90. Testing for Total Halogens and Testing for Rebutting the Presumption That Used Oil Has Been Mixed with Hazardous Waste.

(a) One or more of the following approved test methods in the United States Environmental Protection Agency "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW–846 [Third Edition, 1986 as amended by Update I (July, 1992), Update II (September, 1994), Update IIA (August, 1993), and Update IIB (January, 1995)] (SW–846) (incorporated by reference, see section 66260.11) shall be used to demonstrate that used oil does not contain above 1,000 ppm total halogens:

(1) Method 9075, Test Method for Total Chlorine in New and Used Petroleum Products by X–Ray Fluorescence Spectrometry (XRF).

(2) Method 9076, Test Method for Total Chlorine in New and Used Petroleum Products by Oxidative Combustion and Microcoulometry.

(3) Method 9077, Test Methods for Total Chlorine in New and Used Petroleum Products (Field Test Kit Methods). Method 9077 including the following:

Method A, Fixed End Point Test Kit Method

Method B, Reverse Titration Quantitative End Point Test Kit Method

Method C, Direct Titration Quantitative End Point Test Kit Method

(b) One or more of the following approved test methods in the United States Environmental Protection Agency "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW–846 [Third Edition, 1986 as amended by Update I (July, 1992), Update II (September, 1994), Update IIA (August, 1993), and Update IIB (January, 1995)] (SW–846) (incorporated by reference, see section 66260.11) shall be used for rebutting the rebuttable presumption in section 66279.10(b) when testing for any of the individual halogenated hazard-

ous constituents listed as a hazardous spent solvent (i.e., EPA Hazardous Waste Numbers F001 or F002) in Appendix VIII of Part 261, Title 40, Code of Federal Regulations:

(1) Method 8010B, Halogenated Volatile Organics by Gas Chromatography.

(2) Method 8021A, Halogenated Volatiles by Gas Chromatography Using Photoionization and Electrolytic Conductivity Detectors in Series: Capillary Column Technique.

(3) Method 8240B, Volatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS).

(4) Method 8260A, Volatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS): Capillary Column Technique.

NOTE: Authority cited: Sections 25150, 25159, 58004 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5, 25250.1, 25250.4, 25250.18 and 25250.19, Health and Safety Code; and 40 CFR Part 279 Sections 279.10(b)(1)(ii), 279.11, 279.21(b), 279.44, 279.53, 279.72 and 279.74.

HISTORY

1. New article 10 (sections 66279.90 and 66279.91) and section filed 2–7–97 as an emergency; operative 2–7–97 (Register 97, No. 6). A Certificate of Compliance must be transmitted to OAL by 6–9–97 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 2–7–97 order transmitted to OAL 6–6–97 and disapproved 7–22–97 (Register 97, No. 30).
3. New article 10 (sections 66279.90 and 66279.91) and section filed 7–22–97 as an emergency; operative 7–22–97 (Register 97, No. 30). A Certificate of Compliance must be transmitted to OAL by 11–19–97 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–22–97 order transmitted to OAL 11–19–97 and filed 1–5–98 (Register 98, No. 2).

§ 66279.91. Recordkeeping Requirements for Total Halogens Testing and Rebutting the Presumption That Used Oil Has Been Mixed with Hazardous Waste.

(a) Used oil recycling facilities and used oil transfer facilities shall maintain records of analyses conducted to meet the requirements of section 66279.10 for at least 3 years.

(b) Used oil generators, used oil transporters and used oil collection centers shall maintain records of analyses conducted or information used to meet the requirements of section 66279.10 for at least 3 years.

(c) In addition to the recordkeeping requirements of Health and Safety Code section 25250.1(b) and 25250.19(b), generators claiming that used oil is exempt used oil shall maintain records of analyses conducted or information used to meet the requirements of section 66279.10 for at least 3 years.

NOTE: Authority cited: Sections 25150, 25159, 58004 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5, 25250.1, 25250.4, 25250.18 and 25250.19, Health and Safety Code; and 40 CFR Part 279 Sections 279.10(b)(1)(ii), 279.11, 279.21(b), 279.44, 279.53, 279.72 and 279.74.

HISTORY

1. New section filed 2–7–97 as an emergency; operative 2–7–97 (Register 97, No. 6). A Certificate of Compliance must be transmitted to OAL by 6–9–97 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 2–7–97 order transmitted to OAL 6–6–97 and disapproved 7–22–97 (Register 97, No. 30).
3. New section filed 7–22–97 as an emergency; operative 7–22–97 (Register 97, No. 30). A Certificate of Compliance must be transmitted to OAL by 11–19–97 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–22–97 order transmitted to OAL 11–19–97 and filed 1–5–98 (Register 98, No. 2).

§ 66300. Applicability.

NOTE: Authority cited: Sections 208, 25141, 25150 and 25157.3, Health and Safety Code. Reference: Sections 25141, 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Amendment of subsection (b) and new subsection (c) filed 2–30–83 as an emergency; effective upon filing (Register 84, No. 3). A Certificate of Compliance must be transmitted to OAL within 20 days or emergency language will be repealed on 4–29–84.
2. Certificate of Compliance transmitted to OAL 4–30–84 and withdrawn 5–30–84 (Register 84, No. 24).
3. Amendment of subsection(b) and new subsection(c) filed 5–30–84 as an emergency; effective upon filing (Register 84, No. 4). A Certificate of Compliance must be transmitted to OAL within 20 days or emergency language will be repealed on 9–27–84.
4. Amendment of subsections (a) and (b) and new subsection (g) filed 9–27–84; effective thirtieth day thereafter (Register 4, No. 41).
5. Certificate of Compliance as to 5–30–84 order transmitted to OAL 9–26–84 and filed 10–16–84 (Register 84, No. 41).
6. New subsections(d), (e) and (f) filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
7. Repealer of subsection (g) filed 2–28–91 as an emergency; operative 2–28–91 (Register 91, No. 14). A Certificate of Compliance must be transmitted to OAL by 6–28–91 or emergency language will be repealed by operation of law on the following day.
8. No Certificate of Compliance transmitted to OAL by 6–28–91; subsection (g) as it existed prior to 2–28–91 filing of emergency repeal reinstated. Renumbering and amendment of former section 66300(g) to section 66261.4(b)(2) and repeal of subsections (a) through (f) filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66305. Classification of a Waste as Hazardous or Nonhazardous.

NOTE: Authority cited: Sections 208, 25141 and 25150, Health and Safety Code. Reference: Section 25141, Health and Safety Code.

HISTORY

1. Amendment filed 1–18–85; effective upon filing pursuant to Government Code section 11346.2(d) (Register 85, No. 6).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66310. Variances.

NOTE: Authority cited: Sections 208, 25141 and 25150, Health and Safety Code. Reference: Section 25141, Health and Safety Code.

HISTORY

1. Amendment filed 9–27–84; effective thirtieth day thereafter (Register 84, No. 41).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66315. Other Requirements.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66316. Application Procedures.

NOTE: Authority cited: Section 15376, Government Code; and Sections 5150 and 25165, Health and Safety Code. Reference: Section 15376, Government Code; and Sections 25163 and 25200, Health and Safety Code.

HISTORY

1. New section filed 2–26–85; effective thirtieth day thereafter (Register 85, No. 9).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66316.1. Determination of Completeness.

NOTE: Authority cited: Sections 25150, 25159.5 and 25165, Health and Safety Code; and Section 15376, Government Code. Reference: Section 15376, Government Code; Section 124.3, Title 40, Code of Federal Regulations; and Sections 25159.5, 25163 and 25200, Health and Safety Code.

HISTORY

1. New section filed 2–26–85; effective thirtieth day thereafter (Register 85, No. 9).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66316.2. Notice to Applicant.

NOTE: Authority cited: Sections 25150, 25159.5 and 25165, Health and Safety Code; and Section 15376, Government Code. Reference: Section 15376, Government Code; and Sections 25163 and 25200, Health and Safety Code.

HISTORY

1. New section filed 2–26–85; effective thirtieth day thereafter (Register 85, No. 9).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66316.3. Application Time Periods for Processing a Permit Based on Actual Performance.

NOTE: Authority cited: Section 15376, Government Code; and Sections 5150 and 25165, Health and Safety Code. Reference: Section 15376, Government Code; and Sections 25163 and 25200, Health and Safety Code.

HISTORY

1. New section filed 2–26–85; effective thirtieth day thereafter (Register 85, No. 9).
2. Editorial correction filed 4–15–85; effective thirtieth day thereafter (Register 85, No. 16).

3. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66320. Enforcement.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 2).

§ 66328. Inspections.

NOTE: Authority cited: Section 25191.7, Health and Safety Code. Reference: Section 25191.7, Health and Safety Code; and Sections 254 and 6255, Government Code.

HISTORY

1. New section filed 2–29–84; effective upon filing pursuant to Government Code section 11346.2 (d) (Register 84, No. 9).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66336. Orders of the Director.

HISTORY

1. Repealer filed 5–25–91; effective 7–1–91 (Register 91, No. 22).

§ 66344. Appeal.

HISTORY

1. Repealer filed 5–25–91; effective 7–1–91 (Register 91, No. 22).

§ 66352. Records of Hearings.

HISTORY

1. Repealer filed 5–25–91; effective 7–1–91 (Register 91, No. 22).

§ 66360. Delegation of Enforcement Authority.

HISTORY

1. Repealer filed 5–25–91; effective 7–1–91 (Register 91, No. 22).

§ 66362. Rewards for Enforcements.

NOTE: Authority cited: Section 25191.7, Health and Safety Code. Reference: Section 25191.7, Health and Safety Code; and Sections 6254 and 6255, Government Code.

HISTORY

1. New section filed 2–29–84; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 84, No. 9).
2. Repealer filed 5–25–91; effective 7–1–91 (Register 91, No. 22).

§ 66364. Award and Payment of Reward Claims.

NOTE: Authority cited: Section 25191.7, Health and Safety Code. Reference: Section 25191.7, Health and Safety Code.

HISTORY

1. New section filed 2–29–84; effective upon filing pursuant to Government Code section 11346.2(d) (Register 84, No. 9).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66370. Requirement for Hazardous Waste Facility Permit.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150 and 25159, Health and Safety Code.

HISTORY

1. Amendment of subsection(d) filed 12–30–83 as an emergency; effective upon filing (Register 84, No. 3). A Certificate of Compliance must be transmitted to OAL within 120 ays or emergency language will be repealed on 4–29–84.
2. Certificate of Compliance transmitted to OAL 4–30–84 and withdrawn 5–30–84 (Register 84, No. 24).
3. Amendment of subsection(d) filed 5–30–84 as an emergency; effective upon filing (Register 84, No. 24). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9–27–84.
4. Certificate of Compliance transmitted to OAL 9–26–84 and filed 10–16–84 (Register 84, No. 41).
5. Repealer filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
6. Editorial correction deleting former HISTORY 6 (Register 95, No. 21).

§ 66371. Scope of Permit Requirement.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25150 and 25200.2, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. New subsection(b)(4) filed 4–19–88 as an emergency; operative 4–19–88 (Register 88, No. 18). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–17–88.
3. New subsection(b)(4) refiled 8–17–88 as an emergency; operative 8–17–88 (Register 88, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12–15–88.
4. Certificate of Compliance including amendment of subsection(b)(4) transmitted to OAL 12–15–88 and filed 1–17–89 (Register 89, No. 6).
5. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66372. Application for a Permit.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66373. Signatories to Permit Applications and Reports.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66374. Conditions Applicable to All Permits.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66376. Establishing Permit Conditions.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer and new section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66377. Duration of Permits.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66378. Schedules of Compliance.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66379. Requirements for Recording and Reporting of Monitoring Results.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer and new section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66381. Transfer of Permits.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer and new section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66382. Modification or Revocation and Reissuance of Permits.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66383. Termination and Denial of Permits.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).

2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66384. Procedures for Modification, Revocation and Reissuance, or Termination of Permits.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer and new section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66385. Minor Modifications of Permits.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66387. Confidentiality of Information.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer and new section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66388. Time Frames for Applications for a Permit.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66389. Interim Status.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
3. Editorial correction of section heading (Register 95, No. 21).

§ 66390. Contents of Part A of the Application.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer and new section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66391. Contents of Part B of the Application.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Subsection(a) of Section 25150, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66392. Permits by Rule.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25150 and 25200.2, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No 2).
2. New subsection (d) filed 4–19–88 as an emergency; operative 4–19–88 (Register 88, No. 18). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–17–88.
3. New subsection (d) refiled 8–17–88 as an emergency; operative 8–17–88 (Register 88, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12–15–88.
4. Certificate of Compliance including amendment of subsection (d) transmitted to OAL 12–15–88 and filed 1–17–89 (Register 89, No. 6).
5. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66393. Short–Term and Phased Permits.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer and new section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. New subsection (d) filed 12–21–88; operative 1–20–89 (Register 88, No. 53).
3. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66393.1. Emergency Permits and Grants of Authorization to Handle, Treat, Store, Transport, or Dispose of Hazardous Waste.

NOTE: Authority cited: Section 25201, Health and Safety Code. Reference cited: Section 25150, Health and Safety Code.

HISTORY

1. New section filed 10–23–89 as an emergency; operative 10–23–89 (Register 89, No. 44). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–20–90.
2. Repealed by operation of Government Code section 11346.1(g) filed 1–22–91 (Register 91, No. 19).
3. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66394. Draft Permits.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66395. Fact Sheet.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66396. Public Notice of Permit Actions and Public Comment Period.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer and new section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66397. Public Comments and Requests for Public Hearings.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66398. Public Hearings.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66399. Response to Comments.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer and new section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66402. Modification of Processing Methods or Proposed Closure by Operator.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150 and 25159, Health and Safety Code.

HISTORY

1. Repealer filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).

§ 66405. Change of Operator.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150 and 25159, Health and Safety Code.

HISTORY

1. Repealer filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).

§ 66408. Transfer of Hazardous Waste Facility Permit.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150 and 25159, Health and Safety Code.

HISTORY

1. Repealer filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).

§ 66420. Registration of Haulers of Hazardous Waste.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150 and 25159, Health and Safety Code.

HISTORY

1. Repealer filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).

§ 66428. Application for Registration as a Hazardous Waste Transporter.

NOTE: Authority cited: Sections 208, 25150 and 25168.1, Health and Safety Code. Reference: Sections 25159, 25163, 25168, 25168.2, 5169 and 25186, Health and Safety Code.

HISTORY

1. New section filed 10–6–81 as an emergency; effective upon filing (Register 81, No. 42). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–3–82.
2. Certificate of Compliance including amendment of subsections (a) (1) (B) and (a) (2) (A) and (B) transmitted to OAL 2–2–82 and filed 3–8–82 (Register 82, No. 11).
3. Amendment filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
4. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66432. Term of Registration.

NOTE: Authority cited: Sections 208, 25150 and 25168.1, Health and Safety Code. Reference: Sections 25159, 25163, 25165, 25166 and 5167, Health and Safety Code.

HISTORY

1. New section filed 10–6–81 as an emergency; effective upon filing (Register 81, No. 42). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–3–82.
2. Certificate of Compliance transmitted to OAL 2–2–82 and filed 3–8–82 (Register 82, No. 11).
3. Amendment filed 1–3–85; effective thirtieth day thereafter Register 85, No. 2).
4. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66434. Inspection of Transporter.

NOTE: Authority cited: Sections 208, 25150 and 25168.1, Health and Safety Code. Reference: Sections 25159, 25168, 25168.2, 25169.1, 5185 and 25186, Health and Safety Code.

HISTORY

1. New section filed 10–6–81 as an emergency; effective upon filing (Register 81, No. 42). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–3–81.
2. Certificate of Compliance including amendment of subsection (a)(1) transmitted to OAL 2–2–82 and filed 3–8–82(Register 82, No. 11).
3. Amendment filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
4. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66436. Liquid Waste Haulers Registered by the State Water Resources Control Board.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150 and 25159, Health and Safety Code.

HISTORY

1. Amendment filed 5–10–79; effective thirtieth day thereafter (Register 79, No. 19).
2. Repealer filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).

§ 66444. Issuance of Registration as a Hazardous Waste Hauler.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150 and 25159, Health and Safety Code.

HISTORY

1. Amendment filed 5–10–79; effective thirtieth day thereafter (Register 79, No. 19).
2. Repealer filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).

§ 66448. Certificate of Compliance.

NOTE: Authority cited: Sections 208, 25150 and 25168.1, Health and Safety Code. Reference: Sections 25159, 25168.3 and 25169.1, Health and Safety Code.

HISTORY

1. New section filed 10–6–81 as an emergency; effective upon filing (Register 81, No. 42). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–3–82.
2. Certificate of Compliance transmitted to OAL 2–2–82 and filed 3–8–82 (Register 82, No. 11).
3. Amendment filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
4. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

[The next page is 758.307.]

§ 66450. *Transporter* Registration Reporting Requirements.

NOTE: Authority cited: Sections 208, 25150 and 25168.1, Health and Safety Code. Reference: Sections 25159, 25163, 25168.2, 25169 and 5186, Health and Safety Code.

HISTORY

1. New section filed 10–6–81 as an emergency; effective upon filing (Register 81, No. 42). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–3–82.
2. Certificate of Compliance including amendment of subsections (a) (1)–(2) and (b) transmitted to OAL 2–2–82 and filed 3–8–82 (Register 82, No. 11).
3. Amendment filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
4. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66452. Suspension or Revocation of Registration as a Hazardous Waste Hauler.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150 and 25159, Health and Safety Code.

HISTORY

1. Amendment of subsections (d) and (e) filed 5–10–79; effective thirtieth day thereafter (Register 79, No. 19).
2. Repealer filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).

§ 66460. Petition for Reinstatement as a Registered Hazardous Waste Hauler.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150 and 25159, Health and Safety Code.

HISTORY

1. Repealer filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).

§ 66465. Hazardous Waste Containers.

NOTE: Authority cited: section 25168.1, Health and Safety Code. Reference: Section 25168.1, Health and Safety Code.

HISTORY

1. New section filed 3–27–85; effective thirtieth day thereafter (Register 85, No. 13).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66470. Scope and Applicability.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer and new section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66471. Hazardous Waste Determination Requirement for the Generator.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66472. EPA Identification Numbers for the Generator.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66475. Manifest Procedures for Producer.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150 and 25159, Health and Safety Code.

HISTORY

1. Repealer filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).

§ 66480. General Requirements for Manifest Use by the Generator.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer and new section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66481. Hazardous Waste Manifest.

NOTE: Authority cited: Sections 208 and 25161, Health and Safety Code. Reference: Sections 25150 and 25159, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66482. Information Required on the Manifest.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–82; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66484. Generator Use of the Manifest.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66485. Manifest Procedures for Operator of Off–Site Facility.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150 and 25159, Health and Safety Code.

HISTORY

1. Amendment of subsection (d) filed 5–10–79; effective thirtieth day thereafter (Register 79, No. 19).
2. Repealer filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).

§ 66490. Disposal of Hazardous Waste on Land.

NOTE: Authority cited: Sections 208, 2510 and 25159, Health and Safety Code. Reference: Sections 25150 and 25159, Health and Safety Code.

HISTORY

1. Amendment of subsection (d) filed 5–10–79; effective thirtieth day thereafter (Register 79, No. 19).
2. Repealer filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).

§ 66492. Recordkeeping Requirements for the Generator.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66493. Biennial Reporting Requirements for the Generator.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Sections 25155.5, 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Relettering of former subsection (b) to subsection (c), and new subsection (b) filed 12–11–89; operative 1–1–90 (Register 9, No. 50).
3. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66495. Special Measures Required by Department.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150 and 25159, Health and Safety Code.

HISTORY

1. Repealer filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).

§ 66500. Incompatible Wastes.

NOTE: Authority cited: Sections 208, 25210 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).

§ 66504. Packaging, Labeling, Placarding and Marking Requirements for the Generator.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66505. Operation Requirements for Producer.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150 and 25159, Health and Safety Code.

HISTORY

1. Repealer filed 1–3–85; effective thirtieth day thereafter Register 85, No. 2).

§ 66508. Accumulation Time for the Generator.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66510. Operation Requirements for Hauler.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150 and 25159, Health and Safety Code.

HISTORY

1. Amendment of subsection (a) filed 5–10–79; effective thirtieth day thereafter (Register 79, No. 19).
2. Amendment filed 10–6–81 as an emergency; effective upon filing (Register 81, No. 42). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–3–82.
3. Certificate of compliance including amendment of subsection (h) transmitted to OAL 2–2–82 and filed 3–8–82 (Register 82, No. 11).
4. Renumbering and amendment of Section 66510 to Section 6545 filed 1–3–85; effective thirtieth day thereafter (Register 5, No. 2).
5. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66515. International Shipments.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66520. Personnel Requirements for Operator.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150 and 25159, Health and Safety Code.

HISTORY

1. Repealer filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).

§ 66525. Equipment Requirements for Operator.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150 and 25159, Health and Safety Code.

HISTORY

1. Repealer filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).

§ 66530. Applicability.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer and new section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Editorial correction of Article 6.5 heading (Register 85, No. 9).
3. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66531. EPA Identification Number for Transporters.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66532. Transfer Station Exemption.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66535. Storage of Hazardous Waste.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150 and 25159, Health and Safety Code.

HISTORY

1. Amendment of subsection (g) filed 5–10–79; effective thirtieth day thereafter (Register 79, No. 18).
2. Repealer filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).

§ 66540. Operation Requirements for Operator of a Disposal Site.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150 and 25159, Health and Safety Code.

HISTORY

1. Amendment of subsection (d) filed 5–10–79; effective thirtieth day thereafter (Register 79, No. 19).
2. Repealer filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).

§ 66541. Manifest Procedures for the Transporter.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66543. Transporter Compliance with the Manifest.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66544. Recordkeeping Requirements for the Transporter.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66545. Operation Requirements for the Transporter.

NOTE: Authority cited: Sections 208, 25150 and 25168.1, Health and Safety Code. Reference: Sections 25163, 25168, 25168.2, 25169.1 and 25186, Health and Safety Code.

HISTORY

1. Repealer of former Section 66545 and renumbering and amendment of former Section 66510 to Section 66545 filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2). For History of former Section 66510, see Register 82, No. 11.
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66550. Monthly Reports by Operator of Off–Site Hazardous Waste Facility.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150 and 25159, Health and Safety Code.

HISTORY

1. Repealer filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).

§ 66555. Monthly Reports by Operator of On-Site Hazardous Waste Facility.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150 and 25159, Health and Safety Code.

HISTORY

1. Repealer filed 1-3-85; effective thirtieth day thereafter (Register 85, No. 2).

§ 66560. Accident Reports.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150 and 25159, Health and Safety Code.

HISTORY

1. Repealer filed 1-3-85; effective thirtieth day thereafter (Register 85, No. 2).

§ 66563. Immediate Action by the Transporter in the Case of a Hazardous Waste Discharge.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1-3-85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 66564. Discharge Cleanup.

NOTE: Authority cited: section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New section filed 1-3-85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 66565. General Requirements.

NOTE: Authority cited: Sections 208, 25143, 25150 and 25161, Health and Safety Code. Reference: Sections 25143, 25160, 25168, 25169 and 5169.1, Health and Safety Code.

HISTORY

1. New section filed 1-31-90; operative 3-2-90 (Register 90, No. 5).
2. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 66566. Requirements for Milkrun Transporters.

NOTE: Authority cited: Sections 208, 25143, 25150 and 25161, Health and Safety Code. Reference: Sections 25117.9, 25143, 25160, 25168, 5169 and 25169.1, Health and Safety Code.

HISTORY

1. New section filed 1-31-90; operative 3-2-90 (Register 90, No. 5).
2. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 66567. Requirements for Emergency Response Incident Transporters.

NOTE: Authority cited: Sections 208, 25143, 25150 and 25161, Health and Safety Code. Reference: Sections 25143, 25160, 25168, 25169 and 5169.1, Health and Safety Code.

HISTORY

1. New section filed 1-31-90; operative 3-2-90 (Register 90, No. 5).
2. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 66568. Requirements for PCB Waste Transporters.

NOTE: Authority cited: Sections 208, 25143, 25150 and 25161, Health and Safety Code. Reference: Sections 25143, 25160, 25168, 25169 and 5169.1, Health and Safety Code.

HISTORY

1. New section filed 1-31-90; operative 3-2-90 (Register 90, No. 5).
2. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 66569. Requirements for Consolidation Transporters.

NOTE: Authority cited: Sections 208, 25143, 25150 and 25161, Health and Safety Code. Reference: Sections 25143, 25160, 25168, 25169 and 5169.1, Health and Safety Code.

HISTORY

1. New section filed 1-31-90; operative 3-2-90 (Register 90, No. 5).
2. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 66569.5. Requirements for Small Load Transporters.

NOTE: Authority cited: Sections 208, 25143, 25150 and 25161, Health and Safety Code. Reference: Sections 25143, 25160, 25168, 25169 and 5169.1, Health and Safety Code.

HISTORY

1. New section field 1-31-90; operative 3-2-90 (Register 90, No. 5).
2. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 66570. Requirement for Extremely Hazardous Waste Disposal Permit.

HISTORY

1. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 66595. Application for Extremely Hazardous Waste Disposal Permit.

HISTORY

1. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 66596. Emergency Waiver.

NOTE: Authority cited: Section 25201, Health and Safety Code. Reference cited: Section 25150, Health and Safety Code.

HISTORY

1. New section filed 10-23-89 as an emergency; operative 10-23-89 (Register 89, No. 44). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2-20-90.
2. Repealed by operation of Government Code Section 11346.1(g) (Register 91, No. 22).

§ 66620. Removal of Spilled or Improperly Deposited Waste.

HISTORY

1. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 66645. Recurring Disposal of Extremely Hazardous Waste.

HISTORY

1. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 66670. Fees for Off-Site Disposal.

NOTE: Authority and reference cited: Section 208, Health and Safety Code.

HISTORY

1. Amendment of subsection (a) (2) filed 5-10-79; effective thirtieth day thereafter (Register 79, No. 19).
2. Amendment filed 7-8-83 as an emergency; effective upon filing (Register 83, No. 30).
3. Order of Repeal of 7-8-83 emergency order filed 7-18-83 by OAL pursuant to Government Code Section 11349.6 (Register 83, No. 30).
4. Amendment filed 4-30-84 as an emergency; designated effective 7-1-84 (Register 84, No. 19).
5. Order of Repeal of 4-30-84 emergency order filed 5-7-84 by OAL pursuant to Government Code Section 11349.6 (Register 84, No. 9).
6. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 66672. Fees for On-Site Disposal.

HISTORY

1. Amendment filed 7-8-83 as an emergency; effective upon filing (Register 83, No. 30).
2. Order of Repeal of 7-8-83 emergency order filed 7-18-83 by OAL pursuant to Government Code Section 11349.6 (Register 83, No. 30).
3. Amendment filed 4-30-84 as an emergency; designated effective 7-1-84 (Register 84, No. 19).
4. Order of Repeal of 4-30-84 emergency order filed 5-7-84 by OAL pursuant to Government Code Section 11349.6 (Register 84, No. 9).
5. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 66674. Payment of Fees.

NOTE: Authority cited: Sections 208 and 25174, Health and Safety Code. Reference: section 25174, Health and Safety Code.

HISTORY

1. Repealer filed 4-30-84 as an emergency; designated effective 7-1-84 (Register 84, No. 19). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10-29-84.
2. Repealer transmitted to OAL 4-30-84 and approved for refiling on 5-29-84; filed 11-20-84 due to an inadvertent technical error; designated effective 7-1-84 (Register 84, No. 7).
3. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).
4. Editorial correction of HISTORY 1 (Register 95, No. 50).

§ 66676. Waiver of Fee.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66680. Lists of Chemical Names and Common Names.

NOTE: Authority cited: Sections 208, 25141 and 25150, Health and Safety Code. Reference: Sections 25140 and 25141, Health and Safety Code.

HISTORY

1. Amendment filed 9–27–84; effective thirtieth day thereafter (Register 84, No. 41).
2. Editorial correction of subsection (d) and NOTE filed10–5–84; designated effective 10–27–84 (Register 84, No. 41)
3. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66685. List of Extremely Hazardous Wastes.

NOTE: Authority cited: Sections 208, 25141 and 25150, Health and Safety Code. Reference: Section 25141, Health and Safety Code.

HISTORY

1. Repealer of Article 10 (Section 66685) filed 9–27–84; effective thirtieth day thereafter (Register 84, No. 41).

§ 66693. Applicability of Hazardous Waste Criteria.

NOTE: Authority cited: Sections 208, 25141 and 25150, Health and Safety Code. Reference: Section 25141, Health and Safety Code.

HISTORY

1. New Article 11 (Sections 66693–66723, not consecutive) filed 9–27–84; effective thirtieth day thereafter (Register 84, No. 41).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66694. Sampling and Sample Management.

NOTE: Authority cited: Sections 208, 25141 and 25150, Health and Safety Code. Reference: Section 25141, Health and Safety Code.

HISTORY

1. Editorial correction filed 10–5–84; designated effective 10–27–84 (Register 84, No. 41).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66696. Toxicity Criteria.

NOTE: Authority cited: Sections 208, 25141 and 25150, Health and Safety Code. Reference: Section 25141, Health and Safety Code.

HISTORY

1. Editorial correction filed 10–5–84; designated effective 10–27–84 (Register 84, No. 41).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).
3. Editorial correction of HISTORY 1. (Register 91, No. 30).

§ 66699. Persistent and Bioaccumulative Toxic Substance.

NOTE: Authority cited: Sections 208, 25141 and 25150, Health and Safety Code. Reference: Section 25141, Health and Safety Code.

HISTORY

1. Editorial correction filed 10–5–84; designated effective 10–27–84 (Register 84, No. 41).
2. Editorial correction of printing error incorrectly stating weights for cobalt and silver substances (Register 90, No. 41).
3. Repealer filed 5–24–91; effective 7–1–90 (Register 91, No. 22).

§ 66700. Waste Extraction Test (WET).

NOTE: Authority cited: Sections 208, 25141 and 25150, Health and Safety Code. Reference: Section 25141, Health and Safety Code.

HISTORY

1. Editorial correction filed 10–5–84; designated effective 10–27–84 (Register 84, No. 41).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66702. Ignitability Criteria.

NOTE: Authority cited: Sections 208, 25141 and 25150, Health and Safety Code. Reference: Section 25141, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66705. Reactivity Criteria.

NOTE: Authority cited: Sections 208, 25141 and 25150, Health and Safety Code. Reference: Section 25141, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66708. Corrosivity Criteria.

NOTE: Authority cited: Sections 208, 25141 and 25150, Health and Safety Code. Reference: Section 25141, Health and Safety Code.

HISTORY

1. Editorial correction filed 10–5–84; designated effective 10–27–84 (Register 84, No. 41).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66717. Applicability of Extremely Hazardous Waste Criteria.

NOTE: Authority cited: Sections 208, 25141 and 25150, Health and Safety Code. Reference: Section 25141, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66720. Extremely Hazardous Criteria.

NOTE: Authority cited: Sections 208, 25141 and 25150, Health and Safety Code. Reference: Section 25141, Health and Safety Code.

HISTORY

1. Editorial correction filed 10–5–84; designated effective 10–27–84 (Register 84, No. 41).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66723. Total Threshold Limit Concentration Values of Persistent and Bioaccumulative Toxic Substances in Extremely Hazardous Wastes.

NOTE: Authority cited: Sections 208, 25141 and 25150, Health and Safety Code. Reference: Section 25141, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66730. Contaminated Containers.

NOTE: Authority cited: Sections 208, 25140, 25143 and 25150, Health and Safety Code. Reference: Sections 25117, 25140 and 25143, Health and Safety Code.

HISTORY

1. New section filed 4–30–85; effective thirtieth day thereafter (Register 85, No. 18).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66740. List of Special Wastes.

NOTE: Authority cited: Sections 208, 25140, 25143 and 25150, Health and Safety Code. Reference: Sections 25117, 25140 and 25143, Health and Safety Code.

HISTORY

1. New section filed 4–30–85; effective thirtieth day thereafter (Register 85, No. 18).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66742. Criteria and Requirements of a Special Waste.

NOTE: Authority cited: Sections 208, 25141, 25143 and 25150, Health and Safety Code. Reference: Sections 25117 and 25143, Health and Safety Code.

HISTORY

1. New section filed 4–30–85; effective thirtieth day thereafter (Register 85, No. 18).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66744. Classification of a Waste as a Special Waste.

NOTE: Authority cited: Sections 208, 25143 and 25150, Health and Safety Code. Reference: Section 25143, Health and Safety Code.

HISTORY

1. New section filed 4–30–85; effective thirtieth day thereafter. (Register 85, No. 18).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66746. Management of Special Wastes.

NOTE: Authority cited: Sections 208, 25143, 25150 and 25245, Health and Safety Code. Reference: Sections 25150, 25200, 25200.5, 25201, 25245 and 25246, Health and Safety Code.

HISTORY

1. New section filed 4–30–85; effective thirtieth day thereafter (Register 85, No. 18).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66747. List of Approved Treatment Processes, Influent Waste Streams.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25150 and 25200.2, Health and Safety Code.

HISTORY

1. New section filed 4–19–88 as an emergency; operative 4–19–88 (Register 88, No.). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–17–88.
2. New section refiled 8–17–88 as an emergency; operative 8–17–88 (Register 88, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12–15–88.
3. Certificate of Compliance including amendment transmitted to OAL 12–15–88 and filed 1–17–89 (Register 89, No. 6).
4. Amendment of subsection (a)(5) filed 6–1–89; operative 7–1–89 (Register 89, No. 32).
5. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66763. Recyclable Hazardous Waste Disposal Statement.

NOTE: Authority cited: Section 25175, Health and Safety Code. Reference: Sections 25175 and 27159.5, Health and Safety Code.

HISTORY

1. New Article 12 (Sections 66763 and 66796) filed 5–16–79; effective thirtieth day thereafter (Register 79, No. 19).
2. Amendment filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
3. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66796. List of Recyclable Hazardous Waste Types.

NOTE: Authority cited: Section 25175, Health and Safety Code. Reference: Section 25175, Health and Safety Code.

HISTORY

1. Amendment of subsection (b)(2)(A) filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66798. Requirements for Generator of Recyclable Material.

NOTE: Authority cited: Sections 208, 25143, 25150 and 25170, Health and Safety Code. Reference: Sections 25153, 25154 and 25170, Health and Safety Code.

HISTORY

1. New section filed 7–29–85; effective thirtieth day thereafter (Register 85, No. 31).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66800. Requirements for Transporter of Recyclable Material.

NOTE: Authority cited: Sections 208, 25150 and 25170, Health and Safety Code. Reference: Sections 25154 and 25170, Health and Safety Code.

HISTORY

1. New section filed 7–29–85; effective thirtieth day thereafter (Register 85, No. 31).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66802. Requirements for Operator of a Resource Recovery Facility.

NOTE: Authority cited: Sections 208, 25143, 25150, 25170, 25200 and 25201, Health and Safety Code. Reference: Sections 25153, 25154, 25170, 25200 and 25201, Health and Safety Code.

HISTORY

1. New section filed 7–29–85; effective thirtieth day thereafter (Register 85, No. 31).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66804. Exclusions.

NOTE: Authority cited: Sections 208, 25143, 25150 and 25170, Health and Safety Code. Reference: Sections 14551 and 15051, Food and Agricultural Code; and Section 25170, Health and Safety Code.

HISTORY

1. New section filed 7–29–85; effective thirtieth day thereafter (Register 85, No. 31).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66806. Series 'A' Resource Recovery Facility Permit.

NOTE: Authority cited: Sections 208, 25143, 25150, 25159.5, 25170, 25200 and 25201, Health and Safety Code. Reference: Sections 25159.5, 25170, 25200 and 25201, Health and Safety Code.

HISTORY

1. New section filed 7–29–85; effective thirtieth day thereafter (Register 85, No. 31).
2. Editorial correction of printing error of subsection (b)(1)(C) (Register 86, No. 24).
3. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66808. Series B Resource Recovery Facility Permit.

NOTE: Authority cited: Sections 208, 2513, 25150, 25159.5, 25170, 25200, 25201 and 25246, Health and Safety Code. Reference: Sections 25159.5, 25170, 25200 and 25201, Health and Safety Code.

HISTORY

1. New section filed 7–29–85; effective thirtieth day thereafter (Register 85, No. 31).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66810. Series C Resource Recovery Facility Permit.

NOTE: Authority cited: Sections 208, 25143, 25150, 25170, 25200 and 25201, Health and Safety Code. Reference: Sections 25159.5, 25170, 25200 and 25201, Health and Safety Code.

HISTORY

1. New section filed 7–29–85; effective thirtieth day thereafter (Register 85, No. 31).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66812. Criteria for Compliance.

NOTE: Authority cited: Sections 208, 25143, 25150 and 25170, Health and Safety Code. Reference: Section 25170, Health and Safety Code.

HISTORY

1. New section filed 7–29–85; effective thirtieth day thereafter (Register 85, No. 31).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66814. General Provisions for Resource Recovery Facilities.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Section 25170, Health and Safety Code.

HISTORY

1. New section filed 7–29–85; effective thirtieth day thereafter (Register 85, No. 31).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66816. Agricultural Use of Recyclable Material: Generator Requirements.

NOTE: Authority cited: Sections 208, 24143, 25150, 25154, 25155, 25159.5 and 25170, Health and Safety Code. Reference: Sections 25143, 25159.5 and 25170, Health and Safety Code.

HISTORY

1. New section filed 7–29–85; effective thirtieth day thereafter (Register 85, No. 31).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66818. Agricultural Use of Recyclable Material: Transporter Requirements.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Sections 25160, 25163 and 25170, Health and Safety Code.

HISTORY

1. New section filed 7–29–85; effective thirtieth day thereafter (Register 85, No. 31).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66820. Agricultural Use of Recyclable Material: Operator Requirements.

NOTE: Authority cited: Sections 208, 25143, 25150 and 25170, Health and Safety Code. Reference: Section 25170, Health and Safety Code.

HISTORY

1. New section filed 7–29–85; effective thirtieth day thereafter (Register 85, No. 31).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66822. Management of Spent Lead–Acid Storage Batteries.

NOTE: Authority cited: Sections 208, 25143, 25150 and 25170, Health and Safety Code. Reference: Sections 25123.3, 25160, 25163, 25170 and 25201, Health and Safety Code; and Section 173.260, Title 49, Code of Federal Regulations.

HISTORY

1. New section filed 7–29–85; effective thirtieth day thereafter (Register 85, No. 31).
2. Amendment of subsections (a)(1) and (a)(9), repealer of subsections (a)(5)(D) and (a)(6)(E), and new subsections (b)–(d) filed 4–25–89 as an emergency; operative 4–25–89 (Register 89, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–23–89.
3. Certificate of Compliance as to 4–25–89 order transmitted to OAL 7–14–89 and filed 8–14–89 (Register 89, No. 33).
4. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66823. Management of Waste Elemental Mercury.

NOTE: Authority cited: Sections 208, 25143, 25150 and 25170, Health and Safety Code. Reference: Sections 25160, 25163, 25170 and 25201, Health and Safety Code.

HISTORY

1. New section filed 7–29–85; effective thirtieth day thereafter (Register 85, No. 31).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66824. Samples.

NOTE: Authority cited: Sections 208, 25143, 25150, 25159.5 and 25201, Health and Safety Code. Reference: Sections 25159.5 and 25170, Health and Safety Code.

HISTORY

1. New section filed 7–29–85; effective thirtieth day thereafter (Register 85, No. 31).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66826. Exemption from the Use–Constituting–Disposal Restriction.

NOTE: Authority cited: Sections 208, 25143.2(e), 25150, 25159, 25170 and 25179.6, Health and Safety Code. Reference: Sections 25143.2, 25150, 25159, 25163, 25170 and 25179.6, Health and Safety Code.

HISTORY

1. New section filed 4–23–90 as an emergency; operative 5–8–90 (Register 90, No. 20). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 9–6–90.
2. New section refiled 9–6–90 as an emergency; operative 9–6–90 (Register 90, No. 44). A Certificate of Compliance must be transmitted to OAL by 1–4–91 or emergency language will be repealed by operation of law on the following day.
3. New section filed 12–31–90 as an emergency; operative 1–4–91 (Register 91, No. 11). A Certificate of Compliance must be transmitted to OAL by 5–6–91 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 5–6–91 as an emergency; operative 5–6–91 (Register 91, No. 22). A Certificate of Compliance must be transmitted to OAL by 9–3–91 or emergency language will be repealed by operation of law on the following day.
5. Renumbering and amendment of former section 66826 to section 66261.1, subsection (a)(5), filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 66828. Management of Used Oil Filters.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Sections 25150, 25159.5, and 25175, Health and Safety Code.

HISTORY

1. New section filed 3–29–91 as an emergency; operative 3–29–91 (Register 91, No. 16). A Certificate of Compliance must be transmitted to OAL by 7–29–91 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of operative date and Certificate of Compliance transmittal date in HISTORY 1. (Register 91, No. 22).
3. Amendment and renumbering of former section 66828 to section 66266.130 filed 6–25–91 as an emergency; operative 7–1–91 (Register 91, No. 42). A Certificate of Compliance must be transmitted to OAL by 10–29–91 or emergency language will be repealed by operation of law on the following day.

§ 66835. Requirements for Producers of Infectious Waste.

NOTE: Authority cited: Sections 208, 25150 and 25157.3, Health and Safety Code. Reference: Sections 1204, 1250, 25118 and 25143, Health and Safety Code.

HISTORY

1. New Article 13 (Sections 66835–66865, not consecutive) filed 12–30–83 as an emergency; effective upon filing (Register 84, No. 3). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–29–84.
2. Certificate of Compliance transmitted to OAL 4–30–84 and withdrawn 5–30–84 (Register 84, No. 24).
3. New Article 13 (Sections 66835–66865, not consecutive) filed 5–30–84 as an emergency; effective upon filing (Register 84, No. 24). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9–27–84.
4. Certificate of Compliance transmitted to OAL 9–26–84 and filed 10–16–84 (Register 84, No. 41).
5. Amendment of subsections (a) and (b) filed 10–16–84; effective thirtieth day thereafter (Register 84, No. 41).
6. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66840. Storage and Containment of Infectious Waste.

NOTE: Authority cited: Sections 208, 25150 and 25157.3, Health and Safety Code. Reference: Sections 25117.11, 25117.12, 25123.3 and 25201, Health and Safety Code; and Section 4143, Business and Professions Code.

HISTORY

1. Amendment of subsections (d), (j) and (k) filed 10–16–84; effective thirtieth day thereafter (Register 84, No. 41).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66845. Treatment and Disposal of Infectious Waste.

NOTE: Authority cited: Sections 208, 25150 and 25157.3, Health and Safety Code. Reference: Sections 7054.3, 7054.4, 25143, 25170 and 25957, Health and Safety Code.

HISTORY

1. Amendment of subsection (a) filed 10–16–84; effective thirtieth day thereafter (Register 84, No. 41).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66850. Transfer of Infectious Waste to Off–Site Treatment and Disposal Facilities.

NOTE: Authority cited: Sections 208, 25150 and 25157.3, Health and Safety Code. Reference: Sections 25143, 25163 and 25168.1, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66855. Infectious Waste Treatment, Storage and Disposal Facility Requirements.

NOTE: Authority cited: Sections 208, 25150 and 25157.3, Health and Safety Code. Reference: Sections 25143, 25200, 25200.5, 25201 and 25202, Health and Safety Code.

HISTORY

1. Amendment of subsections (b)(4) and (b)(7) filed 10–16–84; effective thirtieth day thereafter (Register 84, No. 41).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66860. Manifest Requirements for Infectious Waste Transport and Disposal.

NOTE: Authority cited: Sections 208, 25150 and 25157.3, Health and Safety Code. Reference: Sections 25143 and 25160, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66865. Enforcement and Inspections.

NOTE: Authority cited: Sections 208, 25150 and 25157.3, Health and Safety Code. Reference: Sections 25153 and 25180, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66880. Prohibition of Sale.

NOTE: Authority cited: Section 25210, Health and Safety Code. Reference: Section 25210, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66883. Prohibition of Use.

NOTE: Authority cited: Section 25210, Health and Safety Code. Reference: Section 25210, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66886. Criteria for Identifying a Toxic Chemical Substance.

NOTE: Authority cited: Section 25210, Health and Safety Code. Reference: Section 25210, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66889. Criteria for Identifying a Nonbiodegradable Toxic Chemical Substance.

NOTE: Authority and reference cited: Section 208, Health and Safety Code.

HISTORY

1. Amendment of subsection (a)(2) filed 5–10–79; effective thirtieth day thereafter (Register 79, No. 19).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66892. Disclosure of Identity, Composition, and Properties.

NOTE: Authority cited: Section 25210, Health and Safety Code. Reference: Section 25210, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66895. Enforcement and Inspections.

NOTE: Authority cited: Section 25210, Health and Safety Code. Reference: Section 25210, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66898. Applicability of Other Requirements of This Chapter.

NOTE: Authority and reference cited: Section 208, Health and Safety Code.

HISTORY

1. Amendment filed 5–10–79; effective thirtieth day thereafter (Register 79, No. 19).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66900. List of Restricted Hazardous Wastes.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25140, 25150, 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New Article 15 (Sections 66900–66935, not consecutive) filed 12–23–82; effective thirtieth day thereafter (Register 82, No. 52).
2. Editorial correction of subsections (a) and (b) filed 12–28–82 (Register 82, No. 52).
3. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66905. Land Disposal Restrictions and Schedule.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Editorial correction of subsections (b), (c) and (d) filed 12–28–82 (Register 82, No. 52).
2. Amendment of subsection(a)(4) filed 7–2–85; effective on filing pursuant to Government Code Section 11346.2(d) (Register 85, No. 27).
3. Amendment of subsection (a)(4) filed 7–8–87 as an emergency; operative 7–8–87 (Register 87, No. 29). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–5–87.
4. Certificate of Compliance transmitted to OAL 10–30–87 and filed 11–20–87 (Register 87, No. 48).
5. Amendment of subsection (a)(4) changing July 8, 1989 to July 8, 1992 filed 5–30–89 as an emergency; operative 5–30–89 (Register 89, No. 22). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9–27–89.
6. Certificate of Compliance transmitted to OAL 8–22–89 and filed 9–20–89 (Register 89, No. 38).
7. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66910. Land Disposal of Lab Packs Containing Restricted Hazardous Wastes.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25179.6, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5, 25179.6 and 25179.9, Health and Safety Code.

HISTORY

1. Editorial correction of subsections (a), (b) and (c) filed 12–28–82 (Register 82, No. 52).
2. Redesigning former subsections (a)–(d) to subsections (a)(2)–(a)(5) and new subsections (a)(1) and (b) filed 5–24–89; operative 6–23–89 (Register 89, NO. 22).
3. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66915. Dilution of Restricted Hazardous Wastes.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Sections 25150 and 25154, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66920. Permit Conditions.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Sections 25150 and 25202, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66925. Categorical Exemptions from Land Disposal Restrictions.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Section 25150, Health and Safety Code.

HISTORY

1. Editorial correction of subsection (a)(2) filed 12–28–82 (Register 82, No. 52).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66930. Variances from Land Disposal Restrictions.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25152, 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Editorial correction of subsection (d) filed 12–28–82 (Register 82, No. 52).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66935. Emergency Variances.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25150, 25152, 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66940. Hazardous Waste with Heating Values Greater Than 3,000 British Thermal Units per Pound of Waste.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Section 25155.5, Health and Safety Code.

HISTORY

1. New section filed 12–11–89; operative 1–1–90 (Register 89, No. 50).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66941. Hazardous Waste Containing More Than One Percent of Volatile Organic Compounds.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Sections 25123.6 and 25155.5, Health and Safety Code.

HISTORY

1. New section filed 12–11–89; operative 1–1–90 (Register 89, No. 50).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66942. Treatment Capacity Exemption.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Section 25155.5, Health and Safety Code.

HISTORY

1. New section filed 12–11–89; operative 1–1–90 (Register 89, No. 50).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66944. Emergency Variance from Sections 66940 and 66941.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Section 25155.7, Health and Safety Code; and Section 15376, Government Code.

HISTORY

1. New section filed 12–11–89; operative 1–1–90 (Register 89, No. 50).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66951. Selection Criteria.

NOTE: Authority cited: Section 25356(a), Health and Safety Code. Reference: Section 25356(a), Health and Safety Code.

HISTORY

1. New section filed 12–28–84; effective thirtieth day thereafter (Register 84, No. 52).
2. Editorial correction adding Article heading filed 3–6–85 (Register 85, No. 9).
3. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 66953. Site Ranking Criteria.

NOTE: Authority cited: Section 25356(a), Health and Safety Code. Reference: Section 25356(a), Health and Safety Code.

HISTORY

1. New section filed 12–28–84; effective thirtieth day thereafter (Register 84, No. 52).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67001. Applicability.

NOTE: Authority cited: Sections 208, 25143, 25150, 25159 and 25245, Health and Safety Code. Reference: Sections 25159.5, 25245 and 25246, Health and Safety Code.

HISTORY

1. New Article 17 (Sections 67001–67033) filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67002. Cost Estimate for Closure.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25245, Health and Safety Code. Reference: Sections 25159.5, 25245 and 25246, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67003. Financial Assurance for Closure.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25245, Health and Safety Code. Reference: Sections 25159.5 and 25245, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67004. Closure Trust Fund.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25245, Health and Safety Code. Reference: Sections 25159.5, 25245 and 25246, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67005. Surety Bond Guaranteeing Payment into a Closure Trust Fund.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25245, Health and Safety Code. Reference: Sections 25159, 25245 and 25246, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67006. Surety Bond Guaranteeing Performance of Closure.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25245, Health and Safety Code. Reference: Sections 25159, 25245 and 25246, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67007. Closure Letter of Credit.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25245, Health and Safety Code. Reference: Sections 25159, 25245 and 25246, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67008. Closure Insurance.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25245, Health and Safety Code. Reference: Sections 25159, 25245 and 25246, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67009. Financial Test and Corporate Guarantee for Closure.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25245, Health and Safety Code. Reference: Sections 25159, 25245 and 25246, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67010. Alternative Financial Mechanism for Closure Costs.

NOTE: Authority cited: Sections 208, 25150 and 25245, Health and Safety Code. Reference: Sections 25245 and 25246, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67011. Use of Multiple Financial Mechanisms for Closure Costs.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25245, Health and Safety Code. Reference: Sections 25159, 25245 and 25246, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67012. Use of One Financial Mechanism for Multiple Facilities for Closure Costs.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25245, Health and Safety Code. Reference: Sections 25159, 25245 and 25246, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67013. Release from Financial Assurance Requirements for Closure Costs.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25245, Health and Safety Code. Reference: Sections 25159, 25245 and 25246, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67014. Cost Estimate for Post–Closure Care and Maintenance.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25245, Health and Safety Code. Reference: Sections 25159, 25245 and 25246, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67015. Financial Assurance for Post–Closure Care.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25245, Health and Safety Code. Reference: Sections 25159, 25245 and 25246, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67016. Post–Closure Trust Fund.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25245, Health and Safety Code. Reference: Sections 25159, 25245 and 25246, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67017. Surety Bond Guaranteeing Payment into a Post–Closure Trust Fund.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25245, Health and Safety Code. Reference: Sections 25159, 25245 and 25246, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67018. Surety Bond Guaranteeing Performance of Post–Closure Care.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25245, Health and Safety Code. Reference: Sections 25159, 25245 and 25246, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67019. Post–Closure Letter of Credit.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25245, Health and Safety Code. Reference: Sections 25159, 25245 and 25246, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67020. Post–Closure Insurance.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25245, Health and Safety Code. Reference: Sections 25159, 25245 and 25246, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67021. Financial Test and Corporate Guarantee for Post–Closure Care.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25245, Health and Safety Code. Reference: Sections 25159, 25245 and 25246, Health and Safety Code.

HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67022. Alternative Financial Mechanism for Post–Closure Care.

NOTE: Authority cited: Sections 208, 25150 and 25245, Health and Safety Code. Reference: Sections 25245 and 25246, Health and Safety Code.
HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67023. Use of Multiple Financial Mechanisms for Post–Closure Care.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25245, Health and Safety Code. Reference: Sections 25159, 25245 and 25246, Health and Safety Code.
HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67024. Use of Single Financial Mechanism for Multiple Facilities for Post–Closure Care.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25245, Health and Safety Code. Reference: Sections 25159, 25245 and 25246, Health and Safety Code.
HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67025. Release from Financial Assurance Requirements for Post–Closure Care.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25245, Health and Safety Code. Reference: Sections 25159, 25245 and 25246, Health and Safety Code.
HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67026. Use of a Mechanism for Financial Assurance of Both Closure and Post–Closure Care.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25245, Health and Safety Code. Reference: Sections 25159, 25245 and 25246, Health and Safety Code.
HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67027. Liability Requirements: Coverage for Sudden Accidental Occurrences.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25245, Health and Safety Code. Reference: Sections 25159, 25245 and 25246, Health and Safety Code.
HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67028. Liability Requirements: Coverage for Nonsudden Accidental Occurrences.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25245, Health and Safety Code. Reference: Sections 25159, 25245 and 25246, Health and Safety Code.
HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67029. Liability Insurance.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25245, Health and Safety Code. Reference: Sections 25159, 25245 and 25246, Health and Safety Code.
HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67030. Financial Test for Liability Coverage.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25245, Health and Safety Code. Reference: Sections 25159, 25245 and 25246, Health and Safety Code.
HISTORY
1. Amendment of subsections (b) and (c)(1)(A) filed 1–17–89; operative 1–17–89 (Register 89, No. 6).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67031. Liability Coverage—Alternative Mechanism.

NOTE: Authority cited: Sections 208, 25150 and 25245, Health and Safety Code. Reference: Sections 25245 and 25246, Health and Safety Code.
HISTORY
1. Amendment of subsections (b), (c) and (e) filed 1–17–89; operative 1–17–89 (Register 89, No. 6).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67032. Period of Coverage.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25245, Health and Safety Code. Reference: Sections 2519, 25245 and 25246, Health and Safety Code.
HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67033. Incapacity of Owners or Operators, Guarantors or Financial Institutions.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25245, Health and Safety Code. Reference: Sections 25159, 5245 and 25246, Health and Safety Code.
HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67034. Financial Assurance for Closure of Transportable Treatment Units Which Are Permitted by Rule.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25150, 25200.2 and 25245, Health and Safety Code.
HISTORY
1. New section filed 4–19–88 as an emergency; operative 4–19–88 (Register 88, No. 18). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–17–88.
2. New section refiled 8–17–88 an emergency; operative 8–17–88 (Register 88, No. 34). A Certificate of Compliance must transmitted to OAL within 120 days or emergency language will be repealed on 12–15–88.
3. Certificate of Compliance including amendment of subsection (a)(1) transmitted to OAL 12–15–88 and filed 1–17–89 (Register 89, No. 6).
4. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67035. Liability Requirements: Coverage for Sudden Accidental Occurrences for Transportable Treatment Units Which Are Permitted by Rule.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25150, 25200.2 and 25245, Health and Safety Code.
HISTORY
1. New section filed 4–19–88 as an emergency; operative 4–19–88 (Register 88, No.). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–17–88.
2. New section refiled 8–17–88 as an emergency; operative 8–17–88 (Register 88, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12–15–88.
3. Certificate of Compliance transmitted to OAL 12–15–88 and filed 1–17–89 (Register 89, No. 6).
4. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67100. EPA Identification Number.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.
HISTORY
1. New Article 18 (Sections 67100–67108, not consecutive) filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

Chapter 31. Waste Minimization

Article 1. Hazardous Waste Source Reduction and Management Review

§ 67100.1. Definitions.

For the purpose of this article, the following definitions shall apply:

(a) "Appropriate local agency" means a county, city, or regional association which has adopted a hazardous waste management plan pursuant to Article 3.5, Chapter 6.5, Division 20, Health and Safety code (commencing with section 25135).

(b) "Baseline year" is any of the following, whichever is applicable:

(1) For a generator's initial report, the baseline year is the calendar year, selected by the generator, for which substantial hazardous waste generation, or onsite or offsite management data is available, except the generator may select the current reporting year as the baseline year for the initial report.

(2) For all subsequent reports, the baseline year is the reporting year of the immediately preceding report.

(c) "Concentration" means the amount of a given substance in a stated unit of mixture, solution or waste. For purposes of this article it also means the range of components typically found in the waste.

(d) "Hazardous waste management approaches" means methods and techniques of controlling the generation and handling of hazardous waste, including source reduction, recycling, and treatment of hazardous waste.

(e) "Hazardous waste management performance report" or "report" means the report required by section 67100.7(a) of these regulations to document and evaluate the results of hazardous waste management practices.

(f) "Laboratory" means a facility where the "laboratory use of hazardous chemicals" occurs. It is a workplace where relatively small quantities of hazardous chemicals are used on a non-production basis.

(g) "Laboratory scale" means work with substances in which the containers used for reactions, transfers, and other handling of substances are designed to be easily and safely manipulated by one person. "Laboratory scale" excludes those workplaces whose function is to produce commercial quantities of material.

(h) "Laboratory use of hazardous chemicals" means handling or use of such materials in which all of the following conditions are met:

(1) Chemical manipulations are carried out on a "laboratory scale";

(2) Multiple chemical procedures or chemicals are used; and

(3) The procedures involved are not part of a production process, nor in any way simulate a production process.

(i) "Motor vehicle fluids" includes all fluids associated with the operation of a vehicle that is self propelled, for example, transmission oil, hydraulic fluid, brake fluid, antifreeze, power steering fluid, and gasoline.

(j) "Numerical Goal" means a single numerical percentage reflecting an estimate of the source reduction the generator could optimally strive to achieve over a four-year period.

(k) "Reporting year" is the calendar year immediately preceding the year in which plans, reports, and compliance checklist are to be prepared.

(*l*) "Routinely generated" means:

(1) Hazardous and extremely hazardous wastes that result from ongoing processes or operations.

(2) Hazardous wastes generated from regularly scheduled maintenance or production activities performed less frequently than once a year.

(m) "Small business" means "small business" as defined in Government Code, section 11342(e).

(n) "Source reduction" means one of the following:

(1) Any action which causes a net reduction in the generation of hazardous waste.

(2) Any action taken before the hazardous waste is generated that results in lessening of the properties which cause it to be classified as a hazardous waste.

(o) "Source reduction evaluation review and plan" or "review and plan" or "plan" means a review conducted by the generator of the processes, operations, and procedures in use at a generator's site, required pursuant to section 67100.4(a) completed according to the format established by the Department of Toxic Substances Control in section 67100.5. Plans do both of the following:

(1) Determine any alternatives to, or modifications of, the generator's processes, operations, and procedures that may be implemented to reduce the amount of hazardous waste generated.

(2) Include a plan to document and implement source reduction measures for the hazardous wastes specified in paragraph (1) which are technically feasible and economically practicable for the generator, including a reasonable implementation schedule.

NOTE: Authority cited: Sections 25150, 25244.15 and 58012, Health and Safety Code. Reference: Sections 25205.1, 25244.12 et seq., 25244.14, 25244.19, 25244.20 and 25501, Health and Safety Code; and Section 11342, Government Code.

HISTORY

1. New section filed 8-27-91; operative 9-26-91 (Register 92, No. 13).
2. Editorial correction amending subsection designators from (*l*)(A)-(B) to (*l*)(1)-(2) (Register 92, No. 49).
3. Repealer of subsections (c)(1) and (h) and renumbering, new subsections (d), (i) and (j) and subsection relettering, and amendment of newly designated subsections (c)(1)-(2), (k), (o) and (p) and NOTE filed 9-27-93 as an emergency; operative 9-27-93 (Register 93, No. 40). A Certificate of Compliance must be transmitted to OAL by 1-25-94 or emergency language will be repealed by operation of law on the following day.
4. Repealer of subsections (c)(1) and subsection renumbering, new subsections (d), (i) and (j), repealer of subsection (h), subsection relettering, and amendment of new designated subsections (c)(1)-(2), (k), (o) and (p) and NOTE refiled 1-25-94 as an emergency; operative 1-25-94 (Register 94, No. 4). A Certificate of Compliance must be transmitted to OAL by 5-25-94 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-25-94 order including amendment of NOTE transmitted to OAL 4-21-94 and filed 6-3-94 (Register 94, No. 22).
6. Change without regulatory effect repealing subsections (h) and (p), relettering subsections, and amending newly designated subsection (j) filed 6-19-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 25).
7. Amendment of section and NOTE filed 5-3-99; operative 6-2-99 (Register 99, No. 19).

§ 67100.2. Applicability.

(a) This article applies to generators who, by site, routinely generate, through ongoing processes and operations, more than 12,000 kilograms of hazardous waste in the reporting year, or more than 12 kilograms of extremely hazardous waste in a reporting year.

(b) A generator may petition the Department of Toxic Substances Control in writing to exempt a hazardous waste stream. The generator shall provide documentation to demonstrate that no source reduction opportunities exist for the requested waste stream exemption. The Department shall public notice the proposed acceptance of any exemption petition. A minimum of 45 days shall be provided for public review and comment prior to the Department of Toxic Substances Control rendering any determination on a petition.

(c) The following hazardous wastes shall not be included in calculating the volume, or comparable weight of waste produced and are not subject to this article:

(1) The following exempted hazardous waste streams:

(A) Motor vehicle fluids and motor vehicle filters.

(B) Lead acid batteries.

(C) Household hazardous wastes, wastes from household collection events and wastes separated at community landfills.

(D) Waste pesticides and pesticide containers collected by County agricultural commissioners.

(E) Spent munitions and ordnance.

(F) Decommissioned utility poles.

(G) Oil generated from decommissioned refrigeration units.

(H) Mercury relays and low-level radioactive tubes generated from removal of telephone equipment.

(I) Lighting wastes including ballasts and fluorescent tubes.

(2) The following hazardous waste streams that are not routinely generated:

(A) Waste from site cleanup and mitigation activities including remedial investigations.

(B) Samples and evidence from enforcement actions.

(C) Asbestos.

(D) PCBs

(E) Formation fluids and solids from oil, gas and geothermal exploration and field development.

(F) Demolition waste/major renovation waste.

(G) Waste generated from emergency response actions.

(H) Waste generated from laboratory scale research.

(3) Medical Waste.

(d) When there is a change in ownership of the business, institution, or facility, the new owner shall have six months from the date of purchase to amend or rewrite the plan and the report. If the new owner fails to revise the plan and report during this time, the existing plan and report shall remain in effect.

(e) When there is a change in the state or federal analysis and testing criteria which causes additional materials to be classified as hazardous waste, these newly classified hazardous wastes shall be considered in cal-

culating the volume, or comparable weight of hazardous waste produced at the generator's site starting the next reporting year.

(f) Any generator that is a small business may complete the forms contained in the documents listed below and include sections 1, 3, 4, 5, and 6 of the Compliance Checklist Form, September 1993, or January 1997, as the plan. Documents for specific industries are available from the Department of Toxic Substances Control. The generator's most recent biennial report, as required by section 66262.41 can be used as the report required by this article. The following are available from the Department of Toxic Substances Control and are hereby incorporated by reference:

(1) Waste Audit Study — Automotive Repairs, May, 1987

(2) Waste Audit Study — Automotive Paint Shops, January, 1987

(3) Waste Audit Study — General Medical and Surgical Hospitals, August, 1988

(4) Waste Audit Study — Paint Manufacturing Industry, April, 1987

(5) Waste Audit Study — Drug Manufacturing and Processing Industry, May, 1989

(6) Waste Audit Study — Metal Finishing Industry, May, 1988

(7) Waste Audit Study — Pesticide Formulating Industry, November, 1987

(8) Waste Audit Study — Research and Educational Institutions, August, 1988

(9) Waste Audit Study — Photoprocessing Industry, April, 1989

(10) Waste Audit Study — Fiberglass-Reinforced and Composite Plastic Products, April, 1989

(11) Waste Audit Study — Marineyards for Maintenance and Repair, August, 1989

(12) Waste Audit Study — Building Construction Industry, May, 1990

(13) Waste Audit Study — Fabricated Metal Products Industry, August, 1989

(14) Waste Audit Study — Gold, Silver, Platinum and Other Precious Metals Product and Reclamation, June, 1990

(15) Waste Audit Study — Mechanical Equipment Repair Shops, May, 1990

(16) Hazardous Waste Reduction Assessment Handbook — Auto Repair Shops, October, 1988

(17) Hazardous Waste Reduction Checklist — Auto Repair Shops, October, 1988

(18) Hazardous Waste Reduction Checklist & Assessment Manual for the Metal Finishing Industry, September, 1989

(19) Waste Audit Study — Printed Circuit Board Manufacturers, June, 1987

(20) Waste Audit Study — Commercial Printing Industry, May, 1989

(21) Waste Audit Study — Thermal Metal Working Industry, December, 1990

(22) Hazardous Waste Reduction Checklist & Assessment Manual for Pesticide Formulators, June, 1990

(23) Facility Pollution Prevention Guide, EPA/600/R-92/088, May, 1992

(g) Any generator that is a small business may alternatively complete the Compliance Checklist Form, September 1993, or January 1997, developed by the Department of Toxic Substances Control as the plan.

(h) If a generator owns or operates multiple sites with similar processes, operations, and wastes the generator may prepare a single multisite review and plan, report, or compliance checklist addressing all of these sites.

(i) If a generator owns a large site with multiple operations that are managed as independent businesses, the generator may prepare a separate review and plan, report, or compliance checklist for each independently managed business at the site.

(j) Generators subject to the requirements of this article pursuant to sections 67100.4(a) and 67100.7(a) may prepare a single document combining the requirements for the plan and the report.

NOTE: Authority cited: Sections 25150, 25244.15 and 58012, Health and Safety Code. Reference: Sections 25177.5, 25244.12 et seq., 25244.15, 25244.16, 25244.19 and 25244.20, Health and Safety Code.

HISTORY

1. New section filed 8–27–91; operative 9–26–91 (Register 92, No. 13).
2. Editorial correction amending subsection designators from (c)(1)(a)–(c)(2)(g) to (c)(1)(A)–(c)(2)(G) (Register 92, No. 49).
3. Amendment of subsections (a), (c)(1)(A) and (g), repealer and new subsections (d) and (g)(23), new subsections (h), (k) and (*l*) and relettering, and amendment of newly designated subsections (i) and (j) and NOTE filed 9–27–93 as an emergency; operative 9–27–93 (Register 93, No. 40). A Certificate of Compliance must be transmitted to OAL by 1–31–94 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsections (c)(1)(A) and (g), repealer and new subsections (d) and (g)(23), new subsections (h), (k) and (*l*) and subsection relettering, and amendment of newly designated subsections (a)(1)–(2), (i) and (j) and NOTE refiled 1–25–94 as an emergency; operative 1–25–94 (Register 94, No. 4). A Certificate of Compliance must be transmitted to OAL by 5–25–94 or emergency language will be repealed by operation of law on the following day.
5. *Certificate of Compliance as to* 1–25–94 order including new subsections (c)(1)(G)–(L) and amendment of subsections (g) and (g)(23)–(j) transmitted to OAL 4–21–94 and filed 6–3–94 (Register 94, No. 22).
6. Editorial correction of subsection (c)(1)(I) (Register 95, No. 50).
7. Change without regulatory effect amending and redesignating former subsection (a)(1) as subsection (a), repealing subsections (a)(2), (d) and (*l*), relettering subsections, amending newly designated subsections (d), (f) and (g)–(i), and amending NOTE filed 6–19–98 pursuant to *section 100, title 1, California* Code of Regulations (Register 98, No. 25).
8. Amendment of section and NOTE filed 5–3–99; operative 6–2–99 (Register 99, No. 19).

§ 67100.3. Availability Requirements.

(a) Every generator shall retain a copy of the current review and plan, report, summary progress report and compliance checklist at each site, or, for a multisite at a central location, and upon request, shall make it available to any authorized representative of the Department of Toxic Substances Control and any other officer or agency conducting an inspection pursuant to Section 25185 of the Health and Safety Code.

(b) A copy of the plan, report and summary progress report and compliance checklist shall be made available locally for public review. This may be accomplished by making documents available at the generator's facility, at a public library or at the offices of any local governmental agency which is willing to act as a repository for this information. If any of the above documents contain trade secrets, then a copy which excludes trade secrets shall be made available locally for public review.

NOTE: Authority cited: Sections 25150, 25244.15 and 58012, Health and Safety Code. Reference: Sections 25185, 25244.12 et seq., 25244.13, 25244.18, 25244.21 and 25244.23, Health and Safety Code.

HISTORY

1. New section filed 8–27–91; operative 9–26–91 (Register 92, No. 13).
2. Amendment of section and NOTE filed 9–27–93 as an emergency; operative 9–27–93 (Register 93, No. 40). A Certificate of Compliance must be transmitted to OAL by 1–25–94 or emergency language will be repealed by operation of law on the following day.
3. Amendment of section and NOTE refiled 1–25–94 as an emergency; operative 1–25–94 (Register 94, No. 4). A Certificate of Compliance must be transmitted to OAL by 5–25–94 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 1–25–94 order transmitted to OAL 4–21–94 and filed 6–3–94 (Register 94, No. 22).
5. Change without regulatory effect amending section filed 6–19–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 25).
6. Amendment of section and NOTE filed 5–3–99; operative 6–2–99 (Register 99, No. 19).

§ 67100.4. Plan.

(a) On or before September 1, 1991 and every four years thereafter that hazardous or extremely hazardous waste generation exceeds the thresholds in section 67100.2(a) of these regulations, each generator shall conduct a source reduction evaluation review and plan pursuant to section 67100.5 of these regulations.

(b) Except as provided in sections 67100.2(h) and 67100.2(i) of these regulations, a source reduction evaluation review and plan shall be prepared for each site.

(c) At the time a review and plan is submitted to the Department, the generator shall certify that the generator has implemented, is implementing, or will be implementing, the source reduction measures identified in the review and plan according to the implementation schedule contained

in the review and plan. A generator may determine not to implement a source reduction measure selected in section 67100.5(m) of these regulations only if the generator determines, upon conducting further analysis or due to unexpected circumstances, that the selected measure is not technically feasible or economically practicable, or if attempts to implement that measure reveal that the measure would result in, or has resulted in, any of the following:

(1) An increase in the generation of hazardous waste.

(2) An increase in release of hazardous chemicals to other environmental media.

(3) Adverse impacts on product quality.

(4) A significant increase in the risk of an adverse impact to human health or the environment.

(d) If the generator elects not to implement the review and plan, including, but not limited to, a selected measure pursuant to section 67100.5(m) of these regulations, the generator shall amend its review and plan within 90 days to reflect this rejection and include in the review and plan proper documentation identifying the rationale for this rejection.

NOTE: Authority cited: Sections 25150 and 25244.15, Health and Safety Code; and section 58012, Governor's Reorganization Plan, No. 1 of 1991. Reference: Section 25244.19, Health and Safety Code.

HISTORY

1. New section filed 8–27–91; operative 9–26–91 (Register 92, No. 13).
2. Amendment of section heading, subsection (a) and NOTE filed 9–27–93 as an emergency; operative 9–27–93 (Register 93, No. 40). A Certificate of Compliance must be transmitted to OAL by 1–25–94 or emergency language will be repealed by operation of law on the following day.
3. Amendment of section heading, subsection (a) and NOTE refiled 1–25–94 as an emergency; operative 1–25–94 (Register 94, No. 4). A Certificate of Compliance must be transmitted to OAL by 5–25–94 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 1–25–94 order including amendment of subsection (b) transmitted to OAL 4–21–94 and filed 6–3–94 (Register 94, No. 22).
5. Change without regulatory effect amending section heading and section filed 6–19–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 25).

§ 67100.5. Plan Format.

Except as provided in section 67100.2(f) of these regulations, generators subject to the requirements of this article pursuant to section 67100.2(a), shall prepare a plan with sufficient detail to convey an understanding of the source reduction evaluation review and analysis performed, using narratives, photographs, illustrations, figures or data as necessary, which includes, but is not limited to, all of the following:

(a) Name and location of the site, telephone number and Identification Number.

(b) Four digit SIC codes applicable to activities at the site.

(c) Type of business or activity conducted at each site.

(d) Length of time the company has been in business at the present site.

(e) Major products manufactured or services provided and, if necessary to convey an understanding of the business, their general applications or examples of their applications or end use.

(f) Number of employees.

(g) A general description of site operations with corresponding block diagrams focusing on quantity and type of hazardous wastes, raw materials, and final products produced at the site.

(h) Identification of all routinely generated hazardous waste streams in the current reporting year which result from ongoing processes or operations that have a yearly volume, or comparable weight exceeding five percent of the total yearly volume, or comparable weight of hazardous waste generated at the site, or, for extremely hazardous waste, five percent of the total yearly volume, or comparable weight generated at the site. Similar industrial processes or institutional activities generating similar wastes (with the same California Waste Codes) shall be considered a single waste stream for purposes of this subsection.

(i) All of the following information for each hazardous waste stream identified in subsection (h) of this section:

(1) An estimate of the weight, in pounds of hazardous waste generated.

(2) The applicable California waste code.

(3) The processes, operations and activities generating the waste(s), with corresponding block diagrams to illustrate the basis of generation including a listing of all input materials which contribute to the generation of hazardous or extremely hazardous waste (this is not meant to be a mass balance).

(j) An evaluation of source reduction measures available to the generator which are potentially viable. The evaluation shall consider at least all of the following approaches:

(1) Input changes.

(2) Operational improvement.

(3) Production process changes.

(4) Product reformulation.

(5) Administrative steps taken to reduce hazardous waste generation including but not limited to:

(A) Inventory control;

(B) Employee award programs;

(C) Employee training;

(D) In–house policies;

(E) Corporate or management commitment; and

(F) Other programs or measures.

(k) Consideration of the following factors for each measure evaluated in accordance with subsection (j) of this section (where a specific factor does not apply identify as N/A):

(1) Expected change in the amount of hazardous waste generated;

(2) Technical feasibility;

(3) Economic evaluation:

(A) Capital cost, operating cost, waste management cost;

(B) Return on investment (ROI), breakdown point, avoided cost, pretax payback period, or any other economic comparison method;

(4) Effects on product quality;

(5) Employee health and safety implications;

(6) Permits, variances, compliance schedules or applicable state local and federal agencies;

(7) Releases and discharges.

(*l*) Any pertinent information, such as waste stream constituents and concentration of constituents, needed to evaluate and implement source reduction measures.

(m) A specification of, and a rationale for, the technically feasible and economically practicable source reduction measures which will be taken by the generator with respect to each hazardous waste stream identified in subsection (h) of this section. The specification should include at a minimum, a narrative description of the factors in subsection (k) of this section and also address system capacity and efficiency. Photographs, illustrations, figures or data should be used to convey an understanding of the source reduction measure in sufficient detail to allow transfer of the measure to other generators with similar processes or procedures.

(n) An evaluation, and, to the extent practicable, a qualification of the effects of any source reduction measure selected in subsection (m) on emissions and discharges to air, water, or land.

(o) A list of each measure considered but not selected for a detailed evaluation as a potentially viable source reduction measure. For each measure rejected, explain the generator's rationale. This list shall be supplemented for waste streams where no measures were identified with a narrative demonstrating the good faith efforts undertaken to identify measures.

(p) A timetable for making reasonable and measurable progress towards implementation of the selected source reduction measures specified in subsection (m) of this section. It shall also include an implementation schedule for completing the evaluation of potentially viable source reduction measures and it shall prioritize processes and wastes for future research, development and source reduction analysis.

(q) All plans prepared after January 1, 1993 shall contain a four–year numerical goal for reducing the generation of hazardous waste streams through the selected source reduction measures specified in subsection (m) of this section.

NOTE: Authority cited: Sections 25150, 25244.15, 25244.16 and 58012, Health and Safety Code. Reference: Sections 25244.12 et seq. and 25244.19, Health and Safety Code.

HISTORY

1. New section filed 8–27–91; operative 9–26–91 (Register 92, No. 13).
2. Amendment of first paragraph and NOTE and new subsection (q) filed 9–27–93 as an emergency; operative 9–27–93 (Register 93, No. 40). A Certificate of Compliance must be transmitted to OAL by 1–25–94 or emergency language will be repealed by operation of law on the following day.
3. Amendment of first paragraph and NOTE, and new subsection (q) refiled 1–25–94 as an emergency; operative 1–25–94 (Register 94, No. 4). A Certificate of Compliance must be transmitted to OAL by 5–25–94 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 1–25–94 order including amendment of subsection (q) transmitted to OAL 4–21–94 and filed 6–3–94 (Register 94, No. 22).
5. Change without regulatory effect amending first paragraph filed 6–19–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 25).
6. Amendment of subsection (a) and NOTE filed 5–3–99; operative 6–2–99 (Register 99, No. 19).

§ 67100.6. Plan Summary Format.

NOTE: Authority cited: Sections 25150, 25244.15, 25244.16 and 58012, Health and Safety Code. Reference: Section 25244.19, Health and Safety Code.

HISTORY

1. New section filed 8–27–91; operative 9–26–91 (Register 92, No. 13).
2. Change without regulatory effect repealing section filed 6–19–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 25).

§ 67100.7. Report.

(a) On or before September 1, 1991, and every four years thereafter that hazardous or extremely hazardous waste generation exceeds the thresholds in section 67100.2(a) of these regulations, each generator shall prepare a hazardous waste management performance report pursuant to section 67100.8 of these regulations.

(b) Except as provided in sections 67100.2(h) and 67100.2(i) of these regulations, the hazardous waste management performance report shall be prepared for each site.

NOTE: Authority cited: Sections 25150 and 25244.15, Health and Safety Code; and section 58012, Governor's Reorganization Plan, No. 1 of 1991. Reference: Section 25244.20, Health and Safety Code.

HISTORY

1. New section filed 8–27–91; operative 9–26–91 (Register 92, No. 13).
2. Amendment of section heading, text and NOTE filed 9–27–93 as an emergency; operative 9–27–93 (Register 93, No. 40). A Certificate of Compliance must be transmitted to OAL by 1–25–94 or emergency language will be repealed by operation of law on the following day.
3. Amendment of section heading, section and NOTE refiled 1–25–94 as an emergency; operative 1–25–94 (Register 94, No. 4). A Certificate of Compliance must be transmitted to OAL by 5–25–94 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 1–25–94 order transmitted to OAL 4–21–94 and filed 6–3–94 (Register 94, No. 22).
5. Change without regulatory effect amending section heading and section filed 6–19–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 25).

§ 67100.8. Report Format.

(a) Except as provided in section 67100.2(f) of these regulations and in subsection (b) of this section, each generator shall prepare a report with sufficient detail to convey an understanding of the hazardous waste management approaches used at the site, using narratives, photographs, illustrations, figures or data as necessary, which includes, at a minimum, all of the following:

(1) Name and location of the site

(2) Four digit SIC code(s) for the site

(3) All of the following information for each waste stream identified pursuant to section 67100.5(h) of theses regulations:

(A) An estimate, in pounds, of the quantity of hazardous waste generated and the quantity of hazardous waste managed, both onsite and offsite, during the current reporting year and the baseline year.

(B) A description of current hazardous waste management approaches and identification of all approaches implemented since the baseline year.

(C) An assessment of the effect, since the baseline year, of each implemented hazardous waste management approach on the weight of hazardous waste generated, the properties which cause it to be classified as a hazardous waste and/or the onsite and offsite management of hazardous waste. The report shall consider, but shall not be limited to all of the following approaches:

1. Source reduction;
2. Onsite or offsite recycling;
3. Onsite or offsite treatment.

(D) A description of factors during the current reporting year that have affected hazardous waste generation and onsite and offsite hazardous waste management since the baseline year, including, but not limited to, any of the following:

1. Changes in business activity;
2. Changes in waste classification;
3. Natural phenomena and;
4. Other factors that have affected either the quantity of hazardous waste generated or onsite and offsite hazardous waste management requirements.

(b) If the generator selects the current reporting year as the baseline year, the information required pursuant to subsection (a)(3) of this section shall be provided for the reporting year only.

NOTE: Authority cited: Sections 25150, 25244.15, 25244.16 and 58012, Health and Safety Code. Reference: Sections 25244.12 et seq. and 25244.20, Health and Safety Code.

HISTORY

1. New section filed 8–27–91; operative 9–26–91 (Register 92, No. 13).
2. Change without regulatory effect amending subsection (a) filed 6–19–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 25).
3. Amendment of NOTE filed 5–3–99; operative 6–2–99 (Register 99, No. 19).

§ 67100.9. Summary Progress Report.

(a) Generators subject to the requirements of this article shall prepare a summary progress report and submit it to the Department of Toxic Substances Control on or before September 1, 1999 and every four years thereafter.

(b) Generators shall complete the Department of Toxic Substances Control's Form # 1262 (3/99) titled, "Summary Progress Report" as their summary progress report. This document is incorporated by reference.

(c) The director, in consultation with the Secretary for Environmental Protection, shall, within five years of the effective date of the regulations in this section, determine whether the regulations should be retained, revised, or repealed.

NOTE: Authority cited: Sections 25150, 25244.15, 25244.16 and 58012, Health and Safety Code. Reference: Sections 25244.12 et seq. and 25244.19, Health and Safety Code.

HISTORY

1. New section filed 5–3–99; operative 6–2–99 (Register 99, No. 19). For prior history, see Register 98, No. 25.

§ 67100.10. Compliance Checklist.

NOTE: Authority cited: Sections 25150 and 25244.15, Health and Safety Code; and section 58012, Governor's Reorganization Plan, No. 1 of 1991. Reference: Section 25244.19, Health and Safety Code.

HISTORY

1. Renumbering of former section 67100.10 to section 67100.13 and new section 67100.10 filed 9–27–93 as an emergency; operative 9–27–93 (Register 93, No. 40). A Certificate of Compliance must be transmitted to OAL by 1–25–94 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of printing error in HISTORY 1 (Register 94, No. 4).
3. Renumbering of former section 67100.10 to section 67100.13 and new section 67100.10 refiled as an emergency; operative 1–25–94 (Register 94, No. 4). A Certificate of Compliance must be transmitted to OAL by 5–25–94 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 1–25–94 order including amendment of subsection (a) transmitted to OAL 4–21–94 and filed 6–3–94 (Register 94, No. 22).
5. Change without regulatory effect repealing section filed 3–28–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 13).

§ 67100.11. Compliance Checklist Format.

NOTE: Authority cited: Sections 25150 and 25244.15, Health and Safety Code; and section 58012, Governor's Reorganization Plan, No. 1 of 1991. Reference: Section 25244.19, Health and Safety Code.

HISTORY

1. Renumbering of former section 67100.11 to section 67100.14 and new section 67100.11 filed 9–27–93 as an emergency; operative 9–27–93 (Register 93, No.

40). A Certificate of Compliance must be transmitted to OAL by 1–25–94 or emergency language will be repealed by operation of law on the following day.

2. Editorial correction of printing error in HISTORY 1 (Register 94, No. 4).
3. Renumbering of former section 67100.11 to section 67100.14 and new section 67100.11 refiled as an emergency; operative 1–25–94 (Register 94, No. 4). A Certificate of Compliance must be transmitted to OAL by 5–25–94 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 1–25–94 order including amendments transmitted to OAL 4–21–94 and filed 6–3–94 (Register 94, No. 22).
5. Change without regulatory effect repealing section filed 3–28–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 13).

§ 67100.12. Progress Report.

NOTE: Authority cited: Sections 58012 (Governor's Reorganization Plan, No. 1 of 1991), 25150, 25244.15 and 25244.16, Health and Safety Code. Reference: Section 25244.19, Health and Safety Code.

HISTORY

1. New section filed 9–27–93 as an emergency; operative 9–27–93 (Register 93, No. 40). A Certificate of Compliance must be transmitted to OAL by 1–25–94 or emergency language will be repealed by operation of law on the following day.
2. New section refiled as an emergency; operative 1–25–94 (Register 94, No. 4). A Certificate of Compliance must be transmitted to OAL by 5–25–94 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 1–25–94 order transmitted to OAL 4–21–94 and filed 6–3–94 (Register 94, No. 22).
4. Change without regulatory effect amending subsection (a) filed 6–19–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 25).
5. Change without regulatory effect repealing section and amending NOTE filed 3–10–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).

§ 67100.13. Certification Requirements.

(a) The review and plan, report, and compliance checklist, completed pursuant to this article shall be reviewed by an engineer who is registered as a professional engineer pursuant to section 6762 of the Business and Professions Code, by an individual who is responsible for the processes and operations of the site, or by an environmental assessor who is registered pursuant to section 25570 Health and Safety Code.

(b) The engineer, individual, or environmental assessor shall certify the review and plan only if the review and plan meet all of the following requirements:

(1) The review and plan addresses each hazardous waste stream identified pursuant to section 67100.5(h) of these regulations.

(2) The review and plan addresses the source reduction approaches specified in section 67100.5(j) of these regulations.

(3) The plan clearly sets forth the measures to be taken with respect to each hazardous waste stream for which source reduction has been found to be technically feasible and economically practicable, with timetables for making reasonable and measurable progress, and documents the rationale for rejecting available source reduction measures.

(4) The plan does not merely shift hazardous waste from one environmental medium to another environmental medium by increasing emissions or discharges to air, water, or land.

(c) The engineer, individual, or environmental assessor shall certify that compliance checklist has been completed.

(d) The engineer, individual, or environmental assessor shall certify the report only if the report meets the following requirement:

(1) The report identifies factors that affect the generation and onsite and offsite management of hazardous wastes and summarizes the effect of those factors on the generation and onsite and offsite management of hazardous wastes.

(e) The plan, report, and compliance checklist shall contain the following language signed and dated by either the owner, the operator, or the responsible corporate officer of the site or an authorized individual; who is capable of committing financial resources necessary to implement the source reduction measures:

"I certify that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or the persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for making false statements or representations to the Department, including the possibility of fines for criminal violations."

NOTE: Authority cited: Sections 25150 and 25244.15, Health and Safety Code; and section 58012, Governor's Reorganization Plan, No. 1 of 1991. Reference: Sections 25189.2, 25244.19, 25244.20 and 25570.3, Health and Safety Code.

HISTORY

1. Renumbering of former section 67100.10 to section 67100.13, including amendment of section heading and text filed 9–27–93 as an emergency; operative 9–27–93 (Register 93, No. 40). A Certificate of Compliance must be transmitted to OAL by 1–25–94 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of printing error in HISTORY 1 (Register 94, No. 4).
3. Renumbering of former section 67100.10 to section 67100.13 including amendment of section heading and text refiled as an emergency; operative 1–25–94 (Register 94, No. 4). A Certificate of Compliance must be transmitted to OAL by 5–25–94 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 1–25–94 order including amendment of NOTE transmitted to OAL 4–21–94 and filed 6–3–94 (Register 94, No. 22).
5. Change without regulatory effect amending section filed 6–19–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 25).

§ 67100.14. Trade Secrets.

(a) Any information submitted to the Department pursuant to this article may be claimed as confidential by the generator. Any such claim shall be asserted at the time of submission by placing the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, the Department shall make the information available to the public without further notice. If a claim is asserted, the information shall be treated in accordance with 40 CFR part 2 and the Health and Safety Code, sections 25173 and 25244.23.

(b) If a claim of confidentiality is asserted, two versions of the document shall be submitted: one version with the confidential pages and one version without the confidential pages but with a clear indication of which pages are removed as confidential.

NOTE: Authority cited: Sections 25150, 25244.15 and 25244.23, Health and Safety Code; and section 58012, Governor's Reorganization Plan, No. 1 of 1991. Reference: Section 25244.23, Health and Safety Code.

HISTORY

1. Renumbering of former section 67100.11 to section 67100.14, including amendment of section heading and NOTE, filed 9–27–93 as an emergency; operative 9–27–93 (Register 93, No. 40). A Certificate of Compliance must be transmitted to OAL by 1–25–94 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of printing error in HISTORY 1 (Register 94, No. 4).
3. Renumbering of former section 67100.11 to section 67100.14 including amendment of section heading and NOTE refiled as an emergency; operative 1–25–94 (Register 94, No. 4). A Certificate of Compliance must be transmitted to OAL by 5–25–94 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 1–25–94 order transmitted to OAL 4–21–94 and filed 6–3–94 (Register 94, No. 22).

§ 67101. Required Notices.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67102. General Waste Analysis.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Sections 25155.5, 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Editorial correction of subsection (a)(1) printing error (Register 86, No. 44).
2. Amendment of subsection (a)(1) filed 12–11–89; operative 1–1–90 (Register 89, No. 50).
3. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67103. Security.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY
1. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 67104. General Inspection Requirements.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY
1. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 67105. Personnel Training.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY
1. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 67106. General Requirements for Ignitable, Reactive or Incompatible Wastes.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY
1. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 67108. Seismic and Precipitation Design Standards.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY
1. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 67120. Design and Operation of Facility.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY
1. New Article 19 (Sections 67120–67126, not consecutive) filed 1-3-85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 67121. Required Equipment.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY
1. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 67122. Testing and Maintenance of Equipment.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY
1. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 67123. Access to Communications or Alarm Systems.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY
1. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 67124. Required Aisle Space.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY
1. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 67126. Arrangements with Local Authorities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY
1. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 67140. Purpose and Implementation of Contingency Plan.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY
1. New Article 20 (Sections 67140–67145) filed 1-3-85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 67141. Content of Contingency Plan.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY
1. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 67142. Copies of Contingency Plan.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY
1. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 67143. Amendment of Contingency Plan.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY
1. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 67144. Emergency Coordinator.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY
1. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 67145. Emergency Procedures.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY
1. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 67160. Applicability.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY
1. New Article 21 (Sections 67160–67169) filed 1-3-85; effective upon filing (Register 85, No. 2).
2. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 67161. Use of Manifest System.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY
1. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 67162. Manifest Discrepancies.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY
1. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 67163. Operating Record.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY
1. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 67164. Availability, Retention and Disposition of Records.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY
1. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 67165. Annual Report.

NOTE: Authority cited: Sections 208, 25150, Health and Safety Code. Reference: Sections 25155.5, 25159 and 25159.5, Health and Safety Code.

HISTORY
1. Amendment filed 12-11-89; operative 1-1-90 (Register 89, No. 50).
2. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 67166. Unmanifested Waste Report.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY
1. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 67167. Additional Reports.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67168. Disposal Reports by Owner or Operator of Off–Site Hazardous Waste Facility.

NOTE: Authority cited: Sections 208 and 25161, Health and Safety Code. Reference: Section 25150, Health and Safety Code; Section 43051, Revenue and Taxation Code.

HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67169. Monthly Reports by Operator of On–Site Hazardous Waste Facility.

NOTE: Authority cited: Sections 208 and 25161, Health and Safety Code. Reference: Section 25150, Health and Safety Code; Section 43151, Revenue and Taxation Code.

HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67180. Applicability to Permitted Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25150(a), 25159, 25159.5 and 25245, Health and Safety Code.

HISTORY
1. New Article 22 (Sections 67180–67195) filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67181. Required Programs.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25150(a), 25159, 25159.5 and 25245, Health and Safety Code.

HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67182. Environmental Protection Standard.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25150(a), 25159, 25159.5 and 25245, Health and Safety Code.

HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67183. Hazardous Constituents.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25150(a), 25159, 25159.5 and 25245, Health and Safety Code.

HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67184. Concentration Limits.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25150(a), 25159, 25159.5 and 25245, Health and Safety Code.

HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67185. Point of Compliance.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25150(a), 25159, 25159.5 and 25245, Health and Safety Code.

HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67186. Compliance Period.

NOTE: Authority cited, Section 208, Health and Safety Code. Reference: Sections 25150(a), 25159, 25159.5 and 25245, Health and Safety Code.

HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67187. General Ground Water Monitoring Requirements.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25150(a), 25159, 25159.5 and 25245, Health and Safety Code.

HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67188. Detection Monitoring Program.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25150(a), 25159, 25159.5 and 25245, Health and Safety Code.

HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67189. Compliance Monitoring Program.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25150(a), 25159, 25159.5 and 25245, Health and Safety Code.

HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67190. Corrective Action Program.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25150(a), 25159, 25159.5 and 25245, Health and Safety Code.

HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67191. Applicability to Interim Status Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25150(a), 25159, 25159.5 and 25345, Health and Safety Code.

HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67192. Environmental Monitoring System for Interim Status Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25150(a), 25159, 25159.5 and 25245, Health and Safety Code.

HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67193. Sampling and Analysis for Interim Status Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25150(a), 25159, 25159.5 and 25245, Health and Safety Code.

HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67194. Preparation, Evaluation and Response for Interim Status Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25150(a), 25159, 25159.5 and 25245, Health and Safety Code.

HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67195. Recordkeeping and Reporting at Interim Status Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25150(a), 25159, 25159.5 and 25245, Health and Safety Code.

HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67210. Applicability.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159, 25159.5, 25245 and 25246, Health and Safety Code.

HISTORY
1. New Article 23 (Sections 67210–67220, not consecutive) filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67211. Closure Performance Standard.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159, 25159.5 and 25245, Health and Safety Code.

HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67212. Closure Plan; Amendment of Plan.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159, 25159.5 and 25246, Health and Safety Code.

HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67213. Closure; Time Allowed for Closure.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159, 25159.5, 25245 and 25246, Health and Safety Code.

HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67214. Disposal or Decontamination of Equipment.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159, 25159.5, 25245 and 25246, Health and Safety Code.

HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67215. Certification of Closure.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67217. Post–Closure Care and Use of Property.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67218. Post–Closure Plan; Amendment of Plan.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67219. Notice to Local Land Authority.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67220. Notice in Deed to Property.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67240. Applicability.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New Article 24 (Sections 67240–67248) filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67241. Condition of Containers.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67242. Compatibility of Waste with Containers.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67243. Management of Containers.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67244. Inspections.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67245. Containment for Permitted Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25150(a), 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67246. Special Requirements for Ignitable or Reactive Waste.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67247. Special Requirements for Incompatible Wastes.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67248. Closure of Permitted Facilities That Store Containers of Hazardous Waste.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159, 25159.5 and 25245, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67250. Applicability.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New Article 25 (Sections 67250–67262, not consecutive) filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67251. Design of Tanks for Permitted Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25150(a), 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67252. General Operating Requirements for Permitted Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67254. Monitoring and Inspection for Permitted Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67257. General Operating Requirements for Interim Status Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67258. Waste Analysis and Trial Tests for Interim Status Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67259. Inspections for Interim Status Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67260. Closure for Both Permitted and Interim Status Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159, 25159.5 and 25245, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67261. Special Requirements for Ignitable or Reactive Waste for Both Permitted and Interim Status Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67262. Special Requirements for Incompatible Wastes for Both Permitted and Interim Status Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67280. Applicability.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New Article 26 (Sections 67280–67318, not consecutive) filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67281. Design and Operating Requirements for Permitted Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25150, 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67286. Monitoring and Inspection for Permitted Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67287. Emergency Repairs; Contingency Plans for Permitted Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67288. Closure and Post–Closure Care of Surface Impoundments at Permitted Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159, 25159.5 and 25245, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67310. General Operating Requirements for Interim Status Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67311. Containment System for Interim Status Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67312. Waste Analysis and Trial Tests for Interim Status Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67314. Inspections for Interim Status Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67316. Closure and Post–Closure Care for Surface Impoundments at Interim Status Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159, 25159.5 and 25245, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67317. Special Requirements for Ignitable or Reactive Waste for Permitted and Interim Status Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159, 25159.5, and 25250, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67318. Special Requirements for Incompatible Wastes for Permitted and Interim Status Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67340. Applicability.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New Article 27 (Sections 67340–67351, not consecutive) filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67341. Design and Operating Requirements for Waste Piles at Permitted Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25150(a), 25159 and 25159.5, Health and Safety code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67342. Double–Liners and Leak Detection System for Waste Piles at Permitted Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25150(a), 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67344. Monitoring and Inspection for Permitted Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67346. Protection from Wind for Interim Status Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67347. Waste Analysis for Interim Status Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67348. Containment for Interim Status Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67349. Special Requirements for Ignitable or Reactive Waste for Permitted and Interim Status Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67350. Special Requirements for Incompatible Wastes for Permitted and Interim Status Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67351. Closure and Post–Closure Care of Waste Piles at Permitted and Interim Status Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159, 25159.5 and 25245, Health and Safety Code.
HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67360. Applicability.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.
HISTORY
1. New Article 28 (Sections 67360–67382, not consecutive) filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67361. Treatment Program for Permitted Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.
HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67362. Treatment Demonstration for Permitted Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.
HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67363. Design and Operating Requirements for Permitted Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.
HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67368. Unsaturated Zone Monitoring for Permitted Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.
HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67369. Closure and Post–Closure Care of Land Treatment Units at Permitted Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159, 25159.5 and 25245, Health and Safety Code.
HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67371. General Operating Requirements for Interim Status Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.
HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67372. Waste Analysis for Interim Status Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.
HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67377. Unsaturated Zone Monitoring for Interim Status Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.
HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67378. Closure and Post–Closure Care of Land Treatment Units at Interim Status Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159, 25159.5 and 25245, Health and Safety Code.
HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67379. Recordkeeping for Both Permitted and Interim Status Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.
HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67381. Special Requirements for Ignitable or Reactive Waste at Both Permitted and Interim Status Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.
HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67382. Special Requirements for Incompatible Wastes for Both Permitted and Interim Status Facilities.

NOTE: Authority cited: Section 28, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.
HISTORY
1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

Chapter 32. Management of Tanks

§ 67383.1. Applicability.

(a) This chapter establishes minimum standards for the management of all underground and aboveground tank systems that held hazardous waste or hazardous materials, and are to be disposed, reclaimed or closed in place, except as provided in subsections (b), (c) and (d) of this section.

(b) The requirements of this chapter do not apply to tank systems regulated under a hazardous waste facility permit, other than a permit by rule, or to tank systems regulated under a grant of interim status.

(c) The requirements of this chapter do not apply to a tank system or any portion thereof that meets the definition of "scrap metal" in section 66260.10 and that is excluded from regulation pursuant to section 66261.6(a)(3)(B).

(d) The requirements of this chapter do not apply to any tank that is not a hazardous waste pursuant to chapter 11 of this division.

NOTE: Authority cited: Sections 25141, 25150, 25159 and 58012, Health and Safety Code. Reference: Section 25150, Health and Safety Code.
HISTORY
1. New chapter 32 (sections 67383.1–67383.5) and section filed 8–6–98; operative 8–6–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 32).

§ 67383.2. Definitions.

When used in this chapter, the following terms have the meanings given below:

"Closed in place" means left in place and closed without being removed.

"Disposal" has the same meaning as in section 66260.10, except that the term disposal does not include tanks that are closed in place pursuant to the requirements of this chapter or title 23, California Code of Regulations.

"LIA" means the "local implementing agency" or local agency responsible for the enforcement and regulatory oversight of hazardous material storage tanks pursuant to section 25283 of the Health and Safety Code.

"Tank" means a stationary device, designed to contain an accumulation of hazardous waste or hazardous material, which is constructed primarily of nonearthen materials (e.g., wood, concrete, steel, plastic) that provides structural support.

"Tank system" means a hazardous waste or a hazardous material transfer, storage or treatment tank and its associated ancillary equipment and containment system.

NOTE: Authority cited: Sections 25141, 25150, 25159 and 58012, Health and Safety Code. Reference: Sections 25117, 25124 and 25283, Health and Safety Code.

HISTORY

1. New section filed 8–6–98; operative 8–6–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 32).

§ 67383.3. General Standards for Tank Systems.

(a) Except as provided in subsections (b), (c), and (d) of section 67383.1, any tank system that is identified as a hazardous waste pursuant to chapter 11 of this division, and that is destined to be disposed, reclaimed or closed in place shall be exempt from regulation under this division if the tank system is managed in accordance with all of the requirements of this section:

(1) Prior to initiating cleaning, cutting, dismantling, or excavation of a tank system, the owner or operator of the tank system shall notify the appropriate CUPA in writing of the information specified below. If there is no CUPA, then the owner or operator shall notify the LIA and send a copy to the authorized agency. However, information already provided to the CUPA, authorized agency or LIA pursuant to compliance with another statutory or regulatory requirement need not be resubmitted:

(A) The location of the tank system;

(B) The date(s) the tank system will be cleaned and/or excavated, or closed in place;

(C) A brief description of the tank system;

(D) The identification of the hazardous material or hazardous waste last held in the tank supported by:

1. A statement signed by the tank operator certifying the identity of the material or waste last stored or accumulated in the tank; or

2. If residuals remain in the tank in sufficient quantity to be collected and analyzed, a chemical analysis of the residual in the tank;

(E) The name and credentials of the individual who will provide certification pursuant to subsection (f), when applicable; and

(F) The intended disposition and destination of the tank system.

(b) Except as provided in subsection (c), any of the following procedures may be used for the onsite cleaning and closure of a tank system:

(1) American Petroleum Institute, Recommended Practice for the Closure of Underground Petroleum Storage Tanks, API Publication 1604, Third Edition, American Petroleum Institute, 1220 L Street, N.W., Washington, DC 20005, March 1996;

(2) American Petroleum Institute, Safe Entry and Cleaning of Petroleum Storage Tanks, API Publication 2015, American Petroleum Institute, 1220 L Street, N.W., Washington, DC 20005, May 1994;

(3) National Fire Protection Association, Standard Procedures for Cleaning or Safeguarding Small Tanks and Containers Without Entry, NFPA 327, 1993 Edition;

(4) Procedures approved by the CUPA, authorized agency or LIA.

(c) Non–sparking, cold–cutting tools or a non–sparking cold–cutting process shall be used if the tank held a flammable or combustible material, and the tank, piping and/or appurtenances are to be cut onsite, unless an alternate method is approved by the CUPA, authorized agency or LIA.

(d) All sludge, scale, debris, residue, and rinseate generated during the tank closure process shall be managed in accordance with all applicable requirements of this division.

(e) At the completion of the cleaning process the tank system shall meet all of the following:

(1) All piping and appurtenances shall be free of product, sludge, rinseate and debris to the extent that no material can be poured or drained from them when held in any orientation (e.g., tilted, inverted, etc).

(2) The tank, upon inspection, shall be visually free of product, sludge, scale (thin, flaky residual of tank contents), rinseate and debris, except that residual staining caused by soil and waste consisting of light shadows, slight streaks, or minor discolorations, and soil and waste in cracks, crevices, and pits may be present.

(A) The inspection to verify that the requirements of subsection (e)(2) are met shall be conducted

1. through an existing manhole in the tank or one newly installed in the tank, or through holes cut into the tank wall in accordance with the requirements of this section so as to allow for visual inspection of the entire tank interior, without the need to enter the tank physically or

2. if the tank is not cut, following cleaning, by using a light with an internal inspection lamp approved for Class I, Division I locations, a mirror to reflect light into the container, or other appropriate device upon approval of the CUPA, authorized agency or LIA.

(B) If the tank held a hazardous material or hazardous waste that had the potential to generate flammable vapors, and the tank was cut onsite, a combustible gas indicator (CGI) which is properly calibrated shall be used to measure the concentration of flammable vapor at the top, center and bottom of the cut tank. The concentration of flammable vapor shall be zero percent of the Lower Explosive Limit (LEL) for the material that was contained in the tank; and the oxygen concentration shall be the same as that of the ambient air, approximately 20.8%;

(C) If the tank held a hazardous material or hazardous waste that had the potential to generate flammable vapors, is intended to be transported, and was not cut onsite, the tank shall be cleaned and inerted using one of the methods listed in subsection (b), inspected pursuant to subsection (e)(2)(A)2 and transported in accordance with the provisions of section 67383.5. (The tank shall be inspected to ensure that it meets the conditions of paragraph (2) of this subsection before it is inerted.)

(D) If a tank has been cut onsite, but it is not to be transported offsite or closed in place, it shall be cleaned using one of the methods specified in subsection (b) and inspected pursuant to subsection (e)(2)(A)1.

(f) The cleaned tank system shall be certified as meeting the standards of paragraphs (e)(1) and (2) of this section by the CUPA, authorized agency or LIA, or one of the following professionals, certified or registered in California:

(1) certified industrial hygienist;

(2) certified safety professional;

(3) certified marine chemist;

(4) registered environmental health specialist;

(5) registered professional engineer; or

(6) registered environmental assessor, Class II, as defined in section 25570.3, Health and Safety Code; or

(7) a contractor properly licensed by the Contractor's State License Board (CSLB) to contract for the removal of underground storage tanks and who holds a Hazardous Substance Removal Certification issued by the CSLB.

(g) The certificate issued pursuant to subsection (f) of this section shall be submitted on the Hazardous Waste Tank Closure Certification page of the Unified Program Consolidated Form (x/99)), Appendix E of Title 27 CCR, or an alternative version or a computer generated facsimile as allowed pursuant to Title 27, CCR, Sections 15610 and 15620. The submittal must include the Business Activities Page, and the Business Owner/Operator pages of the Unified Program Consolidated Form (x/99)). The certificate shall include the following:

(1) the tank owner's name and address;

(2) the address of tank closure site;

(3) the tank's State identification number, if applicable;

(4) the statement that the tank is visually free of product, sludge, scale, rinseate and debris;

(5) if applicable, the tank's interior atmosphere readings for concentrations of flammable vapor and oxygen;

(6) the name, professional classification, registration or certification number if applicable, signature, address and phone number of the certifying person; and

(7) the date and time of certification.

(h) Copies of the certificate shall be provided to the following:

(1) CUPA, authorized agency or LIA;

(2) owner and/or operator of the tank system;

(3) the contractor responsible for the removal of the tank system; and

(4) the recycling or disposal facility to which the tank is transported.

(i) A copy of the certificate shall accompany the tank to the recycling/disposal facility.

(j) A person who treats a tank by employing physical methods to satisfy the standard in subsection (e)(2) is authorized to perform such treatment for purposes of Health and Safety Code Section 25201.

NOTE: Authority cited: Sections 25141, 25150, 25159 and 58012, Health and Safety Code. Reference: Sections 25117, 25124 and 25201, Health and Safety Code.

HISTORY

1. New section filed 8–6–98; operative 8–6–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 32).
2. Amendment of subsections (a)(1), (b)(4), (c), (e)(2)(A)2., (g) and (h)(1) filed 1–8–99 as an emergency; operative 1–8–99 (Register 99, No. 2). A Certificate of Compliance must be transmitted to OAL by 5–10–99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsections (a)(1), (b)(4), (c), (e)(2)(A)2., (g) and (h)(1) refiled 5–7–99 as an emergency; operative 5–7–99 (Register 99, No. 19). A Certificate of Compliance must be transmitted to OAL by 9–7–99 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsections (a)(1), (b)(4), (c), (e)(2)(A)2., (g) and (h)(1) refiled 9–3–99 as an emergency; operative 9–3–99 (Register 99, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–3–2000 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsections (a)(1), (b)(4), (c), (e)(2)(A)2., (g) and (h)(1) refiled 12–29–99 as an emergency; operative 1–3–2000 (Register 99, No. 53). A Certificate of Compliance must be transmitted to OAL by 5–2–2000 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 12–29–99 order transmitted to OAL 2–29–2000 and filed 4–11–2000 (Register 2000, No. 15).

§ 67383.4. Management Procedure to Close Hazardous Material or Hazardous Waste Tank Systems in Place.

The owner or operator of a tank system to be closed in place shall do all of the following:

(a) Comply with Section 25298 of the Health and Safety Code, if applicable.

(b) Obtain CUPA, authorized agency or LIA approval to close the tank system pursuant to Title 23, CCR, section 2672(c), if applicable.

(c) Clean the tank and comply with all of the requirements of section 67383.3.

(d) After the provisions of section 67383.3 are met, fill the tank with a solid inert material.

NOTE: Authority cited: Sections 25141, 25150, 25159 and 58012, Health and Safety Code. Reference: Sections 25117 and 25124, Health and Safety Code.

HISTORY

1. New section filed 8–6–98; operative 8–6–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 32).
2. Amendment of subsection (b) filed 1–8–99 as an emergency; operative 1–8–99 (Register 99, No. 2). A Certificate of Compliance must be transmitted to OAL by 5–10–99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsection (b) refiled 5–7–99 as an emergency; operative 5–7–99 (Register 99, No. 19). A Certificate of Compliance must be transmitted to OAL by 9–7–99 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsection (b) refiled 9–3–99 as an emergency; operative 9–3–99 (Register 99, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–3–2000 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsection (b) refiled 12–29–99 as an emergency; operative 1–3–2000 (Register 99, No. 53). A Certificate of Compliance must be transmitted to OAL by 5–2–2000 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 12–29–99 order transmitted to OAL 2–29–2000 and filed 4–11–2000 (Register 2000, No. 15).

§ 67383.5. Transportation of Uncut Tanks that Contained Hazardous Material or Hazardous Waste.

Any tank intended to be transported, that is not cut onsite, has been cleaned pursuant to the provisions of section 67383.3, and has the potential to generate flammable vapors, shall be subject to the following requirements for transportation:

(a) The tank's interior atmosphere shall be inerted with carbon dioxide or with another inert gas approved by the CUPA, authorized agency or LIA to levels sufficient to preclude explosion or to lower levels as required by the local agency;

(1) If the tank will be inerted with carbon dioxide, dry ice may be used at a minimum of 1 pound of dry ice per 45 gallons of tank volume (22.2 pounds per 1000 gallons of tank capacity) or bottled CO_2 may be used to inert the tank until the tank meets the required levels.

(2) All LEL readings shall be taken with a CGI that has been properly calibrated. The readings shall be taken at the top, center and bottom of the tank before the tank is loaded onto the transport vehicle.

(b) All openings in the tank shall be plugged, except for a 1/8 inch vent.

(c) All cracks, holes, or other damaged sections shall be plugged. If holes or cracks in the tank walls, piping or appurtenances could allow the release of hazardous constituents, the tank, piping and/or appurtenances shall be wrapped in plastic sheeting or another appropriate barrier compatible with and capable of containing the release. If the barrier becomes contaminated during use, it shall be managed in accordance with the applicable requirements of this division.

State of California-California Environmental Protection Agency — Department of Toxic Substances Control

TANK CLOSURE CERTIFICATION FORM

Page ___ of ___

I. FACILITY IDENTIFICATION

BUSINESS NAME 3		FACILITY ID # 1	
SITE ADDRESS 104			
BUSINESS CITY 105		BUSINESS ZIP 106	
TANK OWNER NAME 500			
TANK OWNER ADDRESS 501			
TANK OWNER CITY 502	STATE 503	ZIP 504	

II. TANK CLOSURE INFORMATION

	Tank # (State Tank ID#, if applicable)	Flammable Vapor			Oxygen		
		Top	Center	Bottom	Top	Center	Bottom
Tank Interior Atmosphere Readings							

III. CERTIFICATION

On examination of the tank, I certify the tank is visually free from product, sludge, scale (thin, flaky residual of tank contents), rinseate and debris. I further certify that the information provided herein is true and accurate to the best of my knowledge.

CERTIFIER SIGNATURE

CERTIFIER NAME (PRINT) 506

CERTIFIER TITLE 507

ADDRESS

CITY

PHONE

DATE CERTIFIED 508 | CERTIFICATION TIME

STATUS OR AFFILIATION OF CERTIFYING PERSON 505

Certifier is a representative of the CUPA/LIA: YES ☐ NO ☐

Name of CUPA/LIA _____

If certifier is other than CUPA/LIA check appropriate box below:

- ☐ Certified Industrial Hygienist (CIH)
- ☐ Certified Safety Professional (CSP)
- ☐ Certified Marine Chemist (CMC)
- ☐ Registered Environmental Health Specialist (REHS)
- ☐ Professional Engineer (PE)
- ☐ Class II Registered Environmental Assessor
- ☐ CSLB licensed contractor (with hazardous substance certificate)

☐ Yes ☐ No This tank previously held flammable or combustible materials. If yes, the tank interior atmosphere shall be re-checked with a combustible gas indicator prior to work being conducted on the tank.

Certifier's tank management instructions for scrap dealer, disposal facility, etc:

A copy of this certificate shall accompany the tank to the recycling/disposal facility.

DTSC 1249 (6/98)

NOTE: Authority cited: Sections 25150, 25159 and 58012, Health and Safety Code. Reference: Section 25150, Health and Safety Code.

HISTORY

1. New section and new form filed 8–6–98; operative 8–6–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 32).
2. Amendment of subsection (a) filed 1–8–99 as an emergency; operative 1–8–99 (Register 99, No. 2). A Certificate of Compliance must be transmitted to OAL by 5–10–99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsection (a) refiled 5–7–99 as an emergency; operative 5–7–99 (Register 99, No. 19). A Certificate of Compliance must be transmitted to OAL by 9–7–99 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsection (a) refiled 9–3–99 as an emergency; operative 9–3–99 (Register 99, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–3–2000 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsection (a) refiled 12–29–99 as an emergency; operative 1–3–2000 (Register 99, No. 53). A Certificate of Compliance must be transmitted to OAL by 5–2–2000 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 12–29–99 order transmitted to OAL 2–29–2000 and filed 4–11–2000 (Register 2000, No. 15).

Chapter 33. Best Management Practices for Perchlorate Materials

Article 1. General

§ 67384.1. Scope.

(a) This chapter establishes the best management practices for perchlorate materials as described in section 67384.2.

(b) A person may not manage perchlorate materials unless the management complies with the best management practices of this chapter.

(c) Nothing in this chapter is a limitation on the power of any other governmental agency to adopt or enforce additional requirements related to the management of perchlorate materials.

NOTE: Authority cited: Sections 25210.6 and 58012, Health and Safety Code. Reference: Sections 25210.5 and 25210.7, Health and Safety Code.

HISTORY

1. New chapter 33 (article 1), article 1 (sections 67384.1–67384.11) and section filed 12–30–2005 as an emergency; operative 12–30–2005 (Register 2005, No. 52). Pursuant to Health and Safety Code section 25210.6(c), these emergency regulations shall remain in effect until revised by the Department of Toxic Substances Control.

§ 67384.2. Applicability.

(a) Effective July 1, 2006, the best management practice requirements of this chapter shall apply to all persons managing perchlorate materials as described in section 67384.3, except those listed in subsection (b) of this section.

(b) The requirements of this chapter do not apply to the following perchlorate materials:

(1) Perchlorate materials managed as a hazardous waste in compliance with all applicable requirements of California hazardous waste law;

(2) Perchlorate–contaminated media under the oversight of a regulatory agency with jurisdiction pursuant to applicable environmental statutes that address response, removal or remediation of the perchlorate contamination, except when disposed at a landfill;

(3) Perchlorate materials containing less than six (6) parts per billion (ppb) of perchlorate;

(4) Consumer goods manufactured in California prior to, but no later than December 31, 2006, and consumer goods transported into California prior to, but no later than to December 31, 2006;

(5) Food, crops, and irrigation water; and

(6) Combustion residuals of perchlorate materials.

NOTE: Authority cited: Sections 25210.6 and 58012, Health and Safety Code. Reference: Sections 25210.5 and 25210.6, Health and Safety Code.

HISTORY

1. New section filed 12–30–2005 as an emergency; subsection (a) operative 7–1–2006; remainder of section operative 12–30–2005 (Register 2005, No. 52). Pursuant to Health and Safety Code section 25210.6(c), these emergency regulations shall remain in effect until revised by the Department of Toxic Substances Control.

§ 67384.3. Definitions.

The definitions set forth in section 66260.10 of this division shall apply unless otherwise defined. The following definitions shall apply to the terms used in this chapter:

"Area of Interest" means the area immediately adjacent to the point of use within the site, but limited to that property under the control of the business.

"Business" means an employer, self–employed individual, trust, firm, joint stock company, corporation, partnership, or association. "Business" includes a business organized for profit, a nonprofit business and all of the following:

(a) The federal government, to the extent authorized by federal law.

(b) Any agency, department, office, board, commission, or bureau of state government, including, but not limited to, the campuses of the California Community Colleges, the California State University, and the University of California.

(c) Any agency, department, office, board, commission, or bureau of a city, county or district.

"Commercial" means used by a business to generate revenue or promote the sale of goods or services. "Commercial" does not include material or products used under federal, military, or space launch contract requirements.

"Commercial explosive" does not include fireworks or dangerous fireworks.

"Combustion residual" means any paper, ash, wire, or other physical material that remains after the perchlorate–containing material has been substantially consumed. "Combustion residual" does not include items that retain inherent explosive properties, or treatment residuals of perchlorate–containing waste.

"Consumer commodity" means a material that is packaged and distributed in a form intended or suitable for sale through retail sales agencies or instrumentalities for consumption by individuals for personal or household use.

"Consumer good" means a product or commodity used by a business that is packaged in a form similar to a consumer commodity.

"Crop" means an agricultural product grown and harvested for sale or consumption.

"Dangerous fireworks" means dangerous fireworks as defined in Health and Safety code sections 12505 and 12561 and the relevant sections of title 19, Code of Regulations, subchapter 6.

"Department" means the Department of Toxic Substances Control.

"Discharge" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying or dumping of waste into or on any land or water.

"End user" means the person who utilizes a product for the product's intended end use.

"EPA ID Number" means the identification number as defined in section 66260.10.

"Food" means any raw or processed substance, beverage, including water, or ingredient intended to be used as food, drink, confection, or condiment for human or other animal consumption.

"Household" means a single detached residence or a single unit of a multiple residence unit and all appurtenant structures. "Household" does not mean a hotel, motel, bunkhouse, ranger station, crew quarters, campground, picnic ground, or day–use recreation facility.

"Household waste" means any materials, including garbage or trash that is generated by residents through the use of a consumer commodity in a household.

"Managing perchlorate materials" means generation, storage, transportation, manufacture, processing, fabrication, packaging, use, reuse,

treatment, transfer, pumping, recovery, recycling, spill response, disposal, and discharge.

"Material Safety Data Sheet" means written or printed material concerning a hazardous chemical which is prepared in accordance with title 29 of the Code of Federal Regulations, section 1910.1200(g).

"Military munitions," as defined in title 40 of the Code of Federal Regulations, section 260.10, means all ammunition products and components produced or used by or for the U.S. Department of Defense (DOD) or the U.S. Armed Services for national defense and security, including military munitions under the control of the Department of Defense, the U.S. Coast Guard, the U.S. Department of Energy (DOE), and National Guard personnel. The term military munitions includes: confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. Military munitions do not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components thereof. However, the term does include non-nuclear components of nuclear devices, managed under DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, have been completed. "Military munitions" does not include dangerous fireworks.

"NAICS" means the North American Industry Classification System

"Net explosive weight" means the weight of all pyrotechnic compositions, explosives material, and fuse only.

"Non-hazardous waste" means a waste that does not meet the definition of hazardous waste as defined in both Health and Safety Code section 25117 and section 66261.3 of this division.

"Packaging" means a receptacle and any other components or materials necessary for the receptacle to perform its containment function in conformance with the minimum packing requirements of this chapter.

"Perchlorate-containing device" means a product that is constructed and maintained such that it meets the packaging requirement in section 67384.5(a) of this chapter.

"Perchlorate-contaminated media" means soil, sediment, surface water, groundwater contaminated with perchlorate.

"Perchlorate material" means all perchlorate-containing materials including perchloric acid and perchlorate compounds. "Perchlorate material" includes all forms of matter, goods, and products and shall not be limited by other statutory or regulatory definitions of "material."

"Pyrotechnic operator" means any licensed pyrotechnic operator, who by examination, experience, and training, has demonstrated the required skill and ability in the use and discharge of fireworks as authorized by the license granted.

"Public display of fireworks" means an entertainment feature where the public or a private group is admitted or permitted to view the display or discharge of fireworks.

"Public safety activity" means any activity intended to protect people or property, including, but not limited to, law enforcement services, fire protection and suppression, emergency medical care, tow operations, emergency services, public utility service and repair, homeland security, and highway maintenance and repair.

"RWQCB" means a California Regional Water Quality Control Board.

"Safe and sane fireworks" means state-approved fireworks defined in Health and Safety Code sections 12529 and 12562 and the relevant sections of Title 19, California Code of Regulations, subchapter 6.

"Spill" means unintentional release of perchlorate material. "Spill" does not include:

(a) perchlorate-contaminated media excluded under section 67384.2(b)(2) of this chapter; or

(b) perchlorate material remaining or resulting from the intended use of the product.

"Star" means a small pellet of composition that produces a pyrotechnic effect. A single aerial firework shell could contain several hundred stars.

"SWRCB" means the California State Water Resources Control Board.

"Storage" means the act of storing or holding perchlorate material.

"Wastewater" means a perchlorate-containing water that is a waste.

"Water-resistant package" means a package that when closed, under conditions incidental to handling, is substantially impervious to rain, spray, and run on.

NOTE: Authority cited: Sections 25210.6 and 58012, Health and Safety Code. Reference: Sections 25210.5 and 25210.6, Health and Safety Code.

HISTORY

1. New section filed 12-30-2005 as an emergency; operative 12-30-2005 (Register 2005, No. 52). Pursuant to Health and Safety Code section 25210.6(c), these emergency regulations shall remain in effect until revised by the Department of Toxic Substances Control.

§ 67384.4. Labeling Best Management Practice Requirements for Perchlorate Materials.

(a) Persons who manufacture perchlorate materials, repackage perchlorate materials, distribute perchlorate materials for sale, receive perchlorate materials for resale or use in California, or generate a perchlorate containing waste shall ensure that the perchlorate materials are properly labeled. Labels shall be applied conspicuously on the exterior of all outer shipping packages and on consumer packages. All perchlorate material, except those materials listed in subsection (b) of this section, shall be labeled or marked clearly with the following, "Perchlorate Material — special handling may apply, See www.dtsc.ca.gov/hazardouswaste/perchlorate."

(b) The best management practice requirements of this section do not apply to the following perchlorate materials:

(1) Household waste;

(2) Perchlorate-containing water resulting solely from treatment with a sanitizer, disinfectant, or bleach;

(3) Perchlorate materials used or maintained at a site where all personnel handling the perchlorate material have received instruction on and comply with the perchlorate Best Management Practice requirements of this chapter;

(4) Perchlorate materials while accompanied by a Material Safety Data Sheet, shipping document, or package insert that includes all the information required in the label pursuant to subsection (a);

(5) Finished products produced pursuant to federal, military or space launch contract requirements;

(6) Wastewaters that are discharged under the oversight of a regulatory agency with jurisdiction over discharges;

(7) Non-hazardous perchlorate wastes resulting from the use of safety flares during a public safety activity; and

(8) Perchlorate materials registered as pesticides pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act.

(c) The best management practice requirements of this section do not apply to the end user of any of the following:

(1) consumer goods;

(2) consumer commodities; and

(3) fertilizers.

NOTE: Authority cited: Sections 25210.6 and 58012, Health and Safety Code. Reference: Sections 25210.5 and 25210.6, Health and Safety Code.

HISTORY

1. New section filed 12-30-2005 as an emergency; operative 12-30-2005 (Register 2005, No. 52). Pursuant to Health and Safety Code section 25210.6(c), these emergency regulations shall remain in effect until revised by the Department of Toxic Substances Control.

§ 67384.5. Packaging Best Management Practices Requirement for Perchlorate Materials.

(a) Each package used for the containment of perchlorate materials under this section, unless contained as specified in section 67384.6, shall:

(1) be designed, constructed, maintained, filled, its contents so limited, and closed, so that under conditions normally incident to handling, there will be no identifiable release of perchlorate materials to the environment; and

(2) be contained in a water–resistant package.

(b) Perchlorate–containing products that are constructed and maintained such that they meet the packaging requirement of subsection (a) need not also comply with the containment requirements specified in section 67384.6.

NOTE: Authority cited: Sections 25210.6 and 58012, Health and Safety Code. Reference: Sections 25210.5 and 25210.6, Health and Safety Code.

HISTORY

1. New section filed 12–30–2005 as an emergency; operative 12–30–2005 (Register 2005, No. 52). Pursuant to Health and Safety Code section 25210.6(c), these emergency regulations shall remain in effect until revised by the Department of Toxic Substances Control.

§ 67384.6. Containment Best Management Practice Requirements for the Storage, Processing and Manufacturing of Perchlorate Materials.

(a) Unless listed in subsection (b) of this section, perchlorate materials not packaged or constructed as specified in section 67384.5 during storage, processing and manufacturing, shall be contained in weather–resistant structures with floors that:

(1) are adequately water–resistant to prevent seepage into or out of the containment structure;

(2) do not have drains that release to the environment unless the discharge complies with section 67384.10; and

(3) are of adequate strength to support the loads.

(b) Containment requirements specified in this section shall not apply to the following:

(1) Perchlorate–containing water resulting solely from treatment with a sanitizer, disinfectant, or bleach;

(2) Manufacturing processes, which because of explosion risk, are not conducted within a weather–resistant structure, but meet all other requirements of subsection (a) above;

(3) Fertilizers stored by end users for less than thirty (30) days on the site of intended application;

(4) Consumer commodities used or stored at a household; and

(5) Safe and sane fireworks sold or offered for sale at a permitted temporary retail outlet.

NOTE: Authority cited: Sections 25210.6 and 58012, Health and Safety Code. Reference: Sections 25210.5 and 25210.6, Health and Safety Code.

HISTORY

1. New section filed 12–30–2005 as an emergency; operative 12–30–2005 (Register 2005, No. 52). Pursuant to Health and Safety Code section 25210.6(c), these emergency regulations shall remain in effect until revised by the Department of Toxic Substances Control.

§ 67384.7. One–Time Notification Best Management Practice Requirements for Perchlorate Materials.

(a) On or before September 1, 2007 a business managing perchlorate materials in the course of its operations in an amount greater than 500 pounds of solids or 55 gallons of liquids, at any one time, shall submit to the Department a one–time notification regarding perchlorate materials. The notification shall cover activities occurring between July 1, 2006 and June 30, 2007 and shall include the following:

Business Name _____

Location Address _____

Mailing Address _____

Business NAICS _____

Nature of Business _____

EPA ID Number (if available) _____

Environmental Contact Name _____

Title of Contact Person _____

Mailing Address _____

E–mail Address _____

Phone Number _____

List of Perchlorate Materials Handled: _____

_____

_____

_____

Has the business plan has been updated to include perchlorate–containing materials pursuant to Health and Safety Code section 25504.1? Yes or No

	Check the appropriate boxes to identify if the quantity is:		
How much perchlorate materials...	*None*	*Less than or equal to 500 pounds of solids or 55 gallons of liquids a year*	*Greater than or equal to 500 pounds of solids or 55 gallons of liquid a year*
does your business manufacture or process?			
does your business use to manufacture or produce a product?			
are used or combusted?			
are stored?			
are offered for sale or procurement?			
are generated as waste?			
are treated or recycled onsite?			
are treated or recycled offsite?			
are discharged under a permit or waiver issued by the SWRCB or a RWQCB?			
are sent for offsite disposal?			

(b) A material meeting the definition of perchlorate material solely because it contains one or more perchlorate–containing devices shall include only the weight of the perchlorate–containing devices in determining the notification threshold weight of subsection (a).

(c) A business shall not include the following perchlorate–containing materials in determining the notification threshold of subsection (a):

(1) Military munitions managed in accordance with Department of Defense regulations;

(2) Water resulting solely from treatment with a sanitizer, disinfectant, or bleach;

(3) Sanitizer, disinfectant, or bleach that is packaged as a consumer commodity;

(4) Wastewater that is discharged under the oversight of a regulatory agency with jurisdiction over discharges;

(5) Fertilizer that has been reported pursuant to Food and Agriculture Code sections 14621–14623; and

(6) Safe and sane fireworks sold or offered for sale at a permitted temporary retail outlet.

(d) Information on how to submit an electronic notification under subsection (a) is available at www.dtsc.ca.gov/hazardouswaste/perchlorate.

(e) Written notifications submitted under subsection (a) shall be submitted to: Department of Toxic Substances Control, Hazardous Waste Management Program, Regulatory and Program Development Division, P.O. Box 806, Sacramento, CA 95812–0806, with "Attention: Perchlorate Materials BMPs" prominently displayed on the front of the envelope.

(f) A business submitting notification under section (a) may request a business confidentiality claim that part or all of the notification information be withheld from public disclosure by the Department pursuant to the California Public Records Act, Government Code section 6250 et seq.

NOTE: Authority cited: Sections 25210.6 and 58012, Health and Safety Code. Reference: Sections 25210.5, 25210.6 and 25504.1, Health and Safety Code; and Sections 14231–14623, Food and Agricultural Code.

HISTORY

1. New section filed 12–30–2005 as an emergency; operative 12–30–2005 (Register 2005, No. 52). Pursuant to Health and Safety Code section 25210.6(c), these emergency regulations shall remain in effect until revised by the Department of Toxic Substances Control.

§ 67384.8. Special Best Management Practices for Flares and Pyrotechnic Perchlorate Materials.

(a) Road safety flares shall be used in a manner that minimizes releases of perchlorate to the environment. The following practices shall be implemented to the extent practical without impeding immediate safety considerations:

(1) Flares should be allowed to burn completely;

(2) Flares used in an emergency incident shall be limited in number and duration necessary to ensure safety; and

(3) All personnel who routinely use flares in the normal course of employment should receive instruction on the potential environmental hazards associated with the use of perchlorate materials and on the perchlorate Best Management Practice requirements of this chapter.

(b) Marine safety flares shall be used in a manner that minimizes releases of perchlorate to the environment.

(c) Within twenty–four (24) hours of a public display of fireworks or the use of dangerous fireworks, the pyrotechnics operator, in addition to complying with title 19 of the California Code of Regulations, section 1003, shall, to the extent practical, collect any stars and un–ignited pyrotechnic material found during the required inspection of the entire firing range.

NOTE: Authority cited: Sections 25210.6 and 58012, Health and Safety Code. Reference: Sections 25210.5 and 25210.6, Health and Safety Code.

HISTORY

1. New section filed 12–30–2005 as an emergency; operative 12–30–2005 (Register 2005, No. 52). Pursuant to Health and Safety Code section 25210.6(c), these emergency regulations shall remain in effect until revised by the Department of Toxic Substances Control.

§ 67384.9. Spill Response Best Management Practices for Non–Hazardous Perchlorate Materials.

(a) For spills of non–hazardous perchlorate materials to the environment, a handler of perchlorate materials:

(1) Shall immediately take action to stop and contain all spills of perchlorate material;

(2) Shall determine whether any material resulting from the spill is hazardous waste, and if so, shall manage the hazardous waste in compliance with all applicable requirements of this division. The handler is considered the generator of the material resulting from the release, and shall manage it in compliance with chapter 12 of this division;

(3) Shall collect to the extent practical any material resulting from the spill; and

(4) Shall prevent or minimize releases to storm drains.

NOTE: Authority cited: Sections 25210.6 and 58012, Health and Safety Code. Reference: Sections 25210.5 and 25210.6, Health and Safety Code.

HISTORY

1. New section filed 12–30–2005 as an emergency; operative 12–30–2005 (Register 2005, No. 52). Pursuant to Health and Safety Code section 25210.6(c), these emergency regulations shall remain in effect until revised by the Department of Toxic Substances Control.

§ 67384.10. Discharge/Disposal Best Management Practices for Perchlorate Materials.

(a) When solid non–hazardous perchlorate containing waste is land disposed in California, it shall be disposed of in either:

(1) a hazardous waste landfill; or

(2) a composite–lined portion of a non–hazardous waste landfill that meets all requirements applicable to disposal of municipal solid waste in California after October 9, 1993. If a release is indicated by the landfill's Detection Monitoring Program, the landfill shall include perchlorate as a Constituent of Concern in the Evaluation Monitoring Program.

After the initial evaluation monitoring, monitoring requirements imposed pursuant to this subsection may be modified or terminated by the RWQCB if deemed appropriate.

(b) When non–hazardous liquid perchlorate–containing wastewater is discharged in California, the discharger shall:

(1) notify the overseeing regulatory agency and the appropriate RWQCB of the perchlorate discharge; and

(2) upon initial issuance or renewal of the existing authorization for discharge, shall include perchlorate in the required monitoring program, if deemed necessary by the overseeing regulatory agency.

(c) The POTWs receiving wastewater from a business that has identified perchlorate–containing discharges, shall:

(1) notify the appropriate RWQCB of the acceptance of perchlorate–containing waste by the POTW; and

(2) upon initial issuance or renewal of the existing authorization for discharge, shall include perchlorate in the required monitoring and reporting plan, if deemed necessary by the RWQCB.

Monitoring requirements imposed pursuant to this subsection may be modified or terminated by the RWQCB if deemed appropriate.

(d) The requirements of subsections (a) and (b) do not apply to:

(1) Perchlorate–containing water resulting solely from treatment with a sanitizer, disinfectant, or bleach;

(2) Household non–hazardous perchlorate–containing waste; and

(3) Non–hazardous perchlorate wastes resulting from the use of safety flares during a public safety activity.

NOTE: Authority cited: Sections 25210.6 and 58012, Health and Safety Code. Reference: Sections 25210.5 and 25210.6, Health and Safety Code.

HISTORY

1. New section filed 12–30–2005 as an emergency; operative 12–30–2005 (Register 2005, No. 52). Pursuant to Health and Safety Code section 25210.6(c), these emergency regulations shall remain in effect until revised by the Department of Toxic Substances Control.

§ 67384.11. Pollution Prevention Best Management Practices for Perchlorate Materials.

(a) On or before January 1, 2008 and every 5 years thereafter, a business that uses perchlorate–containing fertilizers, road safety flares, commercial explosives, or commercial blasting agents, in an amount greater than 500 pounds in any month, shall:

(1) Review the use of these perchlorate–containing products to determine if a non–perchlorate–containing alternative is available and equivalent; and

(2) Review and implement as appropriate pollution prevention measures to prevent releases of perchlorate.

Fertilizers that are substances allowed by the United States Department of Food and Agriculture pursuant to the Organic Foods Production Act of 1990, are exempt from this subsection. Other fertilizers that are perchlorate materials solely because the source of the perchlorate is from an allowed substance pursuant to the Organic Foods Production Act are also exempt from this subsection.

(b) On or before January 1, 2008, a business that uses dangerous fireworks in amounts greater than 4,000 pounds net explosive weight, or conducts public display of fireworks in amounts greater than 4,000 pounds net explosive weight, or uses solid rocket motors, in amounts greater than 8,000 pounds gross weight, at the same location, in a calendar year, except as specified in subsection (c), shall submit to the Department the following data regarding the Area of Interest:

(1) Perchlorate analytical results of existing storm water monitoring, in the Area of Interest, mandated by a storm water permit authorized by the SWRCB or an applicable RWQCB that requires monitoring for perchlorate; or

(2) Existing environmental monitoring of the Area of Interest for perchlorate in the soil and/or water.

(c) A business subject to subsection (b) above is exempt from the data submittal of subsection (b)(1) and (b)(2), if the perchlorate-contaminated media in the Area of Interest is exempted under section 67384.2(b)(2).

NOTE: Authority cited: Sections 25210.6 and 58012, Health and Safety Code. Reference: Sections 25210.5 and 25210.6, Health and Safety Code.

HISTORY

1. New section filed 12–30–2005 as an emergency; operative 12–30–2005 (Register 2005, No. 52). Pursuant to Health and Safety Code section 25210.6(c), these emergency regulations shall remain in effect until revised by the Department of Toxic Substances Control.

Chapter 34. Alternative Management Standards for Treated Wood Waste

§ 67386.1. Scope and Applicability.

(a) This chapter provides an alternative set of management standards in lieu of the requirements for hazardous waste pursuant to articles 6, 6.5, and 9, chapter 6.5, division 20, Health and Safety Code, and chapter 12, 13, 14, 15, 16, 18, and 20 of this division for a person managing treated wood waste (TWW). All other chapters of this division, and section 66264.101, chapter 14, division 4.5, title 22, apply to persons managing TWW.

(b) Nothing in this chapter is a limitation on the power of this or any other governmental agency to adopt or enforce additional requirements related to the management of TWW.

NOTE: Authority cited: Sections 25150, 25150.7 and 58012, Health and Safety Code. Reference: Sections 25150.7 and 25150.8, Health and Safety Code.

HISTORY

1. New chapter 34 (sections 67386.1–67386.4) and section filed 12–27–2006 as an emergency; operative 1–1–2007 (Register 2006, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2007 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of HISTORY 1 (Register 2007, No. 17).
3. New chapter 34 (sections 67386.1–67386.4) and section refiled 4–23–2007 as an emergency; operative 4–30–2007 (Register 2007, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–28–2007 or emergency language will be repealed by operation of law on the following day.
4. Repealer and new section and amendment of NOTE filed 6–18–2007; operative 7–1–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 25).

§ 67386.2. Applicability.

(a) The alternative management standards of this chapter apply only to wood waste that meets all of the following:

(1) is a hazardous waste pursuant to chapter 11 of this division;

(2) is a hazardous waste solely due to the presence of a preservative in or on the wood that is registered in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use as a wood preservative; and

(3) is not subject to regulation as a hazardous waste under the federal Resource Conservation and Recovery Act (RCRA).

(b) The alternative management standards of this chapter do not apply to wood waste exempted from hazardous waste management standards pursuant to Health and Safety Code section 25143.1.5.

(c) The following wood wastes are not eligible for the alternative management standards of this chapter:

(1) wood waste that is hazardous due to the presence of coatings, paint, or other treatments that are not registered in accordance with FIFRA for use as a wood preservative; or

(2) wood waste when designated to be burned.

NOTE: Authority cited: Sections 25150, 25150.7 and 58012, Health and Safety Code. Reference: Sections 25143.1.5, 25150.7 and 25150.8, Health and Safety Code.

HISTORY

1. New section filed 12–27–2006 as an emergency; operative 1–1–2007 (Register 2006, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2007 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of HISTORY 1 (Register 2007, No. 17).
3. New section refiled 4–23–2007 as an emergency; operative 4–30–2007 (Register 2007, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–28–2007 or emergency language will be repealed by operation of law on the following day.
4. Amendment of section heading, repealer and new section and amendment of NOTE filed 6–18–2007; operative 7–1–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 25).

§ 67386.3. Prohibited Activities.

(a) TWW managed in accordance with the alternative management standards of this chapter shall not be:

(1) burned;

(2) scavenged;

(3) commingled with other waste prior to disposal, if previously segregated;

(4) stored in contact with the ground;

(5) recycled, with or without treatment, except as provided for in subsection (c)

(6) treated except in compliance with section 67386.10; and

(7) disposed to land except in compliance with section 67386.11.

(b) Any label or mark that identifies the wood waste as TWW shall not be intentionally removed, obliterated, defaced, or destroyed prior to disposal in a landfill.

(c) TWW may be recycled only by reuse pursuant to conditions specified in (1)–(3) of this subsection. During reuse, the TWW is not subject to sections 67386.5 through 67386.11. TWW may only be reused when all of the following apply:

(1) reuse is onsite;

(2) at the time of reuse, reuse is consistent with a FIFRA approved use of the preservative with which the TWW has been treated; and

(3) prior to reuse, the TWW is handled in compliance with all applicable management standards of this chapter.

NOTE: Authority cited: Sections 25150, 25150.7 and 58012, Health and Safety Code. Reference: Sections 25150.7 and 25150.8, Health and Safety Code.

HISTORY

1. New section filed 12–27–2006 as an emergency; operative 1–1–2007 (Register 2006, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2007 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of HISTORY 1 (Register 2007, No. 17).
3. New section refiled 4–23–2007 as an emergency; operative 4–30–2007 (Register 2007, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–28–2007 or emergency language will be repealed by operation of law on the following day.
4. Amendment of section heading, repealer and new section and amendment of NOTE filed 6–18–2007; operative 7–1–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 25).

§ 67386.4. Definitions.

The definitions set forth in section 66260.10 of this division shall apply unless otherwise defined. The following definitions shall apply to the terms used in this chapter:

"Agent" means a person hired by a generator for the removal, collection, or transportation of TWW.

"Class 1 hazardous waste landfill" means a landfill as defined in section 66260.10, which is also authorized as part of a permitted facility as defined in section 66260.10.

"Composting Facility" means a facility that produces compost as defined in Public Resources Code, section 40116 and is authorized to operate pursuant to division 30 of Public Resources Code (commencing with § 40000).

"Gasification Facility" means a facility that utilizes a gasification process as defined in Public Resources Code, section 40117 and is authorized to operate pursuant to division 30 of Public Resources Code (commencing with § 40000).

"Limited Volume Transfer Operation" means an operation that receives less than 60 cubic yards, or 15 tons of solid waste per operating day for the purpose of storing the waste prior to transferring the waste to another solid waste operation or facility and which does not conduct processing activities, but may conduct limited salvaging activities and volume reduction by the operator and is authorized to operate pursuant to division 30 of Public Resources Code (commencing with § 40000).

"Resizing" means the minimal cutting, breaking, or sawing, but does not include planing, grinding, chipping, sanding, shredding, mulching, or other mechanical handling or any other treatment.

"Small Volume Construction and Demolition/Inert (CDI) Debris Processing Operation" means a site that receives less than 25 tons of any combination of construction and demolition debris and Type A inert debris per operating day for the purposes of storage, handling, transfer, or processing that is authorized to operate pursuant to division 30 of Public Resources Code (commencing with § 40000).

"Solid Waste Landfill" means a facility as defined in Public Resources Code, section 40195.1 that is authorized to operate pursuant to division 30 of Public Resources Code (commencing with § 40000).

"Transfer or Processing Station" means a facility as defined in Public Resources Code, section 40200 that is authorized to operate pursuant to division 30 of Public Resources Code (commencing with § 40000).

"Transformation Facility" means a facility that utilizes a transformation process as defined in Public Resources Code, section 40201 and is authorized to operate pursuant to division 30 of Public Resources Code (commencing with § 40000).

"Treated wood" means wood that has been treated with a chemical preservative for purposes of protecting the wood against attacks from insects, microorganisms, fungi, and other environmental conditions that can lead to decay of the wood and the chemical preservative is registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § 136 and following).

"Treated Wood Waste" means a waste that meets the requirements of section 67386.2(a).

"TWW" means "Treated Wood Waste."

"TWW approved landfill" means either a class 1 hazardous waste landfill, or a composite-lined portion of a solid waste landfill unit that meets all requirements applicable to disposal of municipal solid waste in California after October 9, 1993, and that is regulated by waste discharge requirements issued pursuant to division 7 (commencing with § 13000) of the Water Code for discharges of designated waste, as defined in section 13173 of the Water Code, or treated wood waste and that is in compliance with this chapter.

"TWW facility" means either:

(a) a solid waste landfill, as defined in this section, that is in compliance with this chapter; or

(b) a transfer or processing station, as defined in this section, that is in compliance with this chapter; or

(c) a gasification facility, as defined in this section, that is in compliance with this chapter; or

(d) a TWW approved landfill, as defined in this section, that is in compliance with this chapter; or

(e) a class 1 hazardous waste landfill; or

(f) Small Volume Construction and Demolition/Inert (CDI) Debris Processing Operation, as defined in this section, that is in compliance with this chapter; or

(g) Limited Volume Transfer Operation, as defined in this section, that is in compliance with this chapter.

TWW Facility shall not include composting facilities, or transformation facilities.

"TWW handler" means a person who generates, handles, collects, processes, accumulates, stores, transfers, transports, treats, recycles, or disposes of TWW.

"Unit" means a pile, stack, container, bundle, or other discernable aggregation of TWW for purposes of this chapter.

"Wood waste" means all waste timber products and failed timber products including solid sawn lumber and engineered wood products, offcuts, shavings and sawdust that meet the definition of "waste" pursuant to Health and Safety Code section 25124. "Wood Waste" does not mean forest residues, green waste, or garden waste materials such as branches, bushes and tree stumps.

NOTE: Authority cited: Sections 25150, 25150.7 and 58012, Health and Safety Code. Reference: Sections 25150.7 and 25150.8, Health and Safety Code; Sections 40116, 40117, 40195.1, 40200 and 40201, Public Resources Code; and Section 13173, Water Code.

HISTORY

1. New section filed 12-27-2006 as an emergency; operative 1-1-2007 (Register 2006, No. 52). A Certificate of Compliance must be transmitted to OAL by 5-1-2007 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of HISTORY 1 (Register 2007, No. 17).
3. New section refiled 4-23-2007 as an emergency; operative 4-30-2007 (Register 2007, No. 17). A Certificate of Compliance must be transmitted to OAL by 8-28-2007 or emergency language will be repealed by operation of law on the following day.
4. Amendment of section heading, repealer and new section and amendment of NOTE filed 6-18-2007; operative 7-1-2007 pursuant to Government Code section 11343.4 (Register 2007, No. 25).

§ 67386.5. Labeling.

(a) TWW generated, accumulated, stored, or transported within California shall be clearly marked and visible for inspection. The person managing the TWW shall ensure that each unit and/or area designated for accumulation of TWW is labeled. The area designated for accumulation of TWW shall be clearly identified and used solely for the accumulation of TWW.

(b) In order to clearly identify the nature of the waste to the receiving party and/or any observer, the TWW shall be labeled or marked with the following:

"TREATED WOOD WASTE —Do not burn or scavenge.

TWW Handler Name and Address: _____

_____

Accumulation Date: _____".

(c) The TWW handler shall ensure that labels are maintained in compliance with the requirements of subsections (a) and (b) during transport.

(d) TWW accumulated for a period not to exceed thirty (30) days by a household at the site of generation in compliance with the requirements of section 67386.6 is exempt from the labeling requirements of this section.

(e) TWW, generated by a household, while being self-transported to an approved TWW facility is exempt from the labeling requirements of this section if the TWW is identified to the TWW facility as TWW.

NOTE: Authority cited: Sections 25150, 25150.7 and 58012, Health and Safety Code. Reference: Sections 25150.7 and 25150.8, Health and Safety Code.

HISTORY

1. New section filed 6-18-2007; operative 7-1-2007 pursuant to Government Code section 11343.4 (Register 2007, No. 25).

2. Amendment of subsection (e) filed 10–3–2007; operative 11–2–2007 (Register 2007, No. 40).

§ 67386.6. Accumulation.

(a) TWW shall be maintained in a manner that prevents unauthorized access and minimizes release to the environment.

(1) Unauthorized access shall be prevented by means of visual control or a physical barrier when not under the direct control of the person responsible for the TWW.

(2) The TWW shall be accumulated in a manner that is protected from run–on and run–off, and placed on a surface sufficiently impervious to prevent, to the extent practical, contact with and leaching to soil or water, which may be accomplished by one of the following:

(A) Block and Tarp:

The TWW may be accumulated when all the following requirements are met;

1. TWW is elevated to prevent contact with the soil and to protect from reasonably foreseeable run–on;

2. TWW is covered to protect from precipitation; and

3. TWW is accumulated no longer than 90 days from the date the TWW is generated or received from another handler.

(B) Containerize:

The TWW may be accumulated in containers no longer than one year from the date the TWW is generated or received from another handler. The containers shall be;

1. designed, constructed, maintained, filled, its contents so limited, and closed, so that under conditions normally incidental to handling, there will be no identifiable release of TWW materials or its constituents to the environment;

2. water–resistant if exposed to precipitation, run–on or run–off under reasonably foreseeable conditions; and

3. transported to a TWW facility within 90 days of being filled to capacity.

(C) Storage Building:

The TWW shall be accumulated no longer than one year from the date the TWW is generated or received from another handler in a structurally sound building with a water–resistant floor designed to prevent the movement of water into or out of the building.

(D) Containment Pad:

The TWW may be accumulated no longer than 180 days from the date the TWW is generated or received from another handler on a containment surface and all the following requirements are met;

1. TWW does not contact soil;

2. TWW is protected from reasonably foreseeable run–on;

3. TWW is covered to protect from precipitation; and

4. TWW managed in accordance with this subsection may be accumulated uncovered if the containment surface is designed and operated to contain all precipitation and the resulting water is managed in accordance with all applicable laws and regulations.

(E) Other:

The TWW may be accumulated no longer than 90 days from the date the TWW is generated or received from another handler in any other manner in which the TWW handler can clearly demonstrate that the TWW is protected from run–on and run–off, and placed on a surface sufficiently impervious to prevent, to the extent practical, contact with and leaching to soil or water.

(b) Except as provided in subsection (c), in no case shall TWW be accumulated for more than one year from the date of generation or the date received from another handler.

(c) A handler may accumulate TWW for longer than one year from the date the TWW is generated or received from another handler, if the accumulation is solely for the purpose of accumulation of quantities of TWW necessary to facilitate disposal pursuant to section 67386.11. However, the handler bears the burden of proving that the accumulation was solely for the purpose of accumulation of quantities of TWW necessary to facilitate proper disposal.

(d) A person who accumulates TWW shall be able to demonstrate the length of time the TWW has been accumulated from the date it becomes a waste or is received.

(e) TWW generated incidental to the maintenance of a household and accumulated by the resident of the household at the site of generation is exempt from the accumulation requirements of this section if all of the following requirements are met;

(1) TWW is not physically altered except as provided in section 67386.10; and

(2) TWW is accumulated no longer than thirty (30) days.

(f) TWW generated incidental to the operation of a business accumulated at the site of generation for a period not to exceed thirty (30) days is exempt from the accumulation requirements of this section if:

(1) TWW is not physically altered except as provided in section 67386.10; and

(2) the business accumulates no more than 1,000 pounds of TWW.

NOTE: Authority cited: Sections 25150, 25150.7 and 58012, Health and Safety Code. Reference: Sections 25150.7 and 25150.8, Health and Safety Code.

HISTORY

1. New section filed 6–18–2007; operative 7–1–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 25).
2. Amendment of subsections (a)(2)(B)1.–2. and new subsection (a)(2)(B)3. filed 10–3–2007; operative 11–2–2007 (Register 2007, No. 40).

§ 67386.7. Offsite Shipments.

(a) Except as provided in subsection (c), a TWW handler is prohibited from sending or taking TWW to a place other than a TWW facility, or a TWW approved landfill.

(b) Prior to sending a shipment of TWW to another TWW handler, the originating handler shall ensure that the receiving handler agrees to receive the shipment.

(c) A TWW handler who initially collects TWW at a remote site may transport that TWW to a consolidation site operated by the generator if all the following conditions are met;

(1) the TWW is transported by the generator, employees of the generator or by the generator's agent;

(2) a shipping document containing all of the following information accompanies the TWW while in transport;

(A) the quantity, by weight or volume, of TWW being transported;

(B) the location of the remote site where the TWW was initially collected;

(C) the date that the generator first began to accumulate the TWW at the remote site, the date that the shipment leaves the remote site, and the date that the shipment arrives at the consolidation site;

(D) the name, address, and telephone number of the generator, and, if different, the address and telephone number of the consolidation site to which the TWW is being transported; and

(E) the name of the individual or individuals who transport the TWW from the remote site to the consolidation site; and

(3) the TWW handler shall retain the shipping document described in subsection (c)(2) of this section for at least three years from the date the TWW leaves the TWW consolidation site.

(d) TWW shall be shipped and/or transported in a manner that prevents unauthorized access; protects the TWW from precipitation; and prevents loss, dispersion, and leaching of TWW constituents.

NOTE: Authority cited: Sections 25150, 25150.7 and 58012, Health and Safety Code. Reference: Sections 25150.7 and 25150.8, Health and Safety Code.

HISTORY

1. New section filed 6–18–2007; operative 7–1–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 25).

§ 67386.8. Tracking Shipments.

(a) Shipments off–site. A TWW handler shall keep a record of each shipment of TWW sent from the handler to TWW facilities. The record may take the form of a log, invoice, manifest, bill of lading, shipping document, or receipt from a TWW facility. The record for each shipment of TWW shall include the following information:

(1) name and address of the TWW facility to which the TWW was sent;

(2) weight of TWW, the estimated weight of TWW, or the weight of the TWW as measured by the receiving TWW facility (An estimated weight may be used when a scale is unavailable or weighing is impractical. Assumptions required for weight estimates shall be recorded in the shipment records.); and

(3) date the shipment of TWW left the handler.

(b) Receipt of shipments. A TWW handler shall keep a record of each shipment of TWW received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, or other shipping document. The record for each shipment of TWW received shall include the following information:

(1) name and address of the originating TWW generator from whom the TWW was sent;

(2) weight of TWW or the estimated weight of TWW (An estimated weight may be used when a scale is unavailable or weighing is impractical. Assumptions required for weight estimates shall be recorded in the shipment records.); and

(3) date of receipt of the shipment of TWW.

(c) Reporting receipt of shipments. A TWW facility or a TWW approved landfill that receives TWW shall submit, to the department, semi annual reports for the periods ending June 30 and December 31 of each year. Reports shall be required beginning December 31, 2007 and shall be submitted in an electronic format provided by the department within 30 days of the end of each reporting period. Each semi annual report shall include the following information:

(1) reporting facility information;

1. Facility name, location address, contact person's name, and telephone number; and

2. Identification Number.

(2) for all TWW shipments received, other than those reported under subsections (3), (4), and (5) the TWW facility shall report the following information;

1. generator's Identification Number, or, if the generator does not have an Identification Number, the name, address, contact person's name, mailing address, and telephone number of the generator;

2. dates of shipments; and

3. weight of TWW per shipment.

(3) TWW household information;

1. weight summary of all TWW quantities received that were generated by households.

(4) TWW load check information;

1. Weight summary of all TWW quantities discovered and separated from solid waste as part of an on–site load checking program.

(5) for shipments received from another TWW facility the following information shall be reported by the receiving TWW facility;

1. TWW facility's Identification Number or the name, address, contact person's name, mailing address, and telephone number of the TWW facility;

2. dates of shipments; and

3. weight of TWW per shipment.

(d) The department shall make all of the information in the semi annual reports submitted pursuant to this subdivision available to the public, through its usual means of disclosure, except the department shall not disclose the association between any specific TWW handlers and specific facilities. The list of TWW handlers served by a facility shall be deemed to be a trade secret and confidential business information for purposes of Health and Safety Code section 25173 and section 66260.2 of title 22 of the California Code of Regulations.

(e) Record retention.

(1) a TWW handler shall retain the records described in subsection (a) of this section for at least three years from the date the shipment left the handler; and

(2) a TWW facility shall retain the records described in subsection (b) of this section for at least three years from the date of receipt of a shipment.

(f) Households are exempt from the recordkeeping requirements of this section when the TWW is generated incidental to that household.

NOTE: Authority cited: Sections 25150, 25150.7 and 58012, Health and Safety Code. Reference: Sections 25150.7, 25150.8 and 25173, Health and Safety Code.

HISTORY

1. New section filed 6–18–2007; operative 7–1–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 25).

§ 67386.9. Notification.

(a) In any calendar year that a TWW handler generates more than 10,000 pounds of TWW, the TWW handler shall obtain or maintain an Identification Number within 30 days of exceeding the weight threshold.

(b) In any calendar year that a TWW handler generates more than 10,000 pounds of TWW the handler shall send written notification to the Department within 30 days of exceeding the 10,000 pound limit.

(c) The notification shall include;

(1) TWW handler's name and mailing address;

(2) generator's Identification Number;

(3) name and business telephone number of the person at the TWW handler's site who should be contacted regarding TWW management activities;

(4) address or physical location of the TWW management activities;

(5) date the TWW handler exceeded the 10,000 pound limit; and

(6) a statement indicating that the handler is generating more than 10,000 pounds of TWW per calendar year.

NOTE: Authority cited: Sections 25150, 25150.7 and 58012, Health and Safety Code. Reference: Sections 25150.7 and 25150.8, Health and Safety Code.

HISTORY

1. New section filed 6–18–2007; operative 7–1–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 25).

§ 67386.10. Treatment.

(a) Treatment, as defined in Health and Safety Code section 25123.5, of treated wood waste managed in accordance with the alternative management standards of this chapter is prohibited except as provided in subsections (b) and (c).

(b) Resizing is exempt from the permitting requirements of this division when resized to facilitate transport or reuse and the following requirements are met;

(1) TWW shall be handled in a manner that prevents the uncontrolled release of hazardous constituents to the environment; and

(2) if size reduction of the TWW results in sawdust, particles, or other material smaller than one cubic inch, the material shall be captured and managed as TWW.

(c) Sorting and segregating are both exempt from the permitting requirements of this division. The TWW shall be handled in a manner that prevents the uncontrolled release of hazardous constituents to the environment.

(d) An employer resizing, sorting, or segregating TWW shall provide training for all employees handling TWW and all employees that may reasonably be expected to contact TWW. A record of the training shall be maintained for a period of three years and available for review. The training shall include:

(1) all applicable requirements of the California Occupational Safety and Health Act of 1973 (ch. 1, part 1, div. 5 (commencing with § 6300) of the Labor Code), including all rules, regulations, and orders relating to hazardous waste;

(2) procedures for identifying and segregating TWW;

(3) safe handling practices;

(4) requirements of the alternative management standards; and

(5) proper disposal methods.

NOTE: Authority cited: Sections 25150, 25150.7 and 58012, Health and Safety Code. Reference: Sections 25150.7 and 25150.8, Health and Safety Code.

HISTORY

1. New section filed 6–18–2007; operative 7–1–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 25).

§ 67386.11. Disposal.

(a) When disposed to land, TWW shall be disposed in either a Class I hazardous waste landfill, or in a composite-lined portion of a solid waste landfill unit that meets all requirements applicable to disposal of municipal solid waste in California after October 9, 1993, and that is regulated by waste discharge requirements issued pursuant to division 7 (commencing with § 13000) of the Water Code for discharges of designated waste, as defined in section 13173 of the Water Code, or TWW.

(b) A solid waste landfill that accepts TWW shall:

(1) comply with the prohibitions in section 67386.3 for handling TWW;

(2) ensure that any management of the TWW at the solid waste landfill prior to disposal complies with the applicable requirements of this chapter;

(3) monitor the composite-lined portion of a landfill unit at which TWW has been disposed. When a release is verified, cease discharge of TWW to that landfill unit until corrective action results in cessation of the release. The landfill shall notify the department that TWW is no longer being discharged to that landfill unit and when corrective action results in cessation of the release; and

(4) handle TWW in a manner consistent with all applicable requirements of the California Occupational Safety and Health Act of 1973 (ch. 1, part 1, div. 5 (commencing with § 6300) of the Labor Code), including all rules, regulations, and orders relating to hazardous waste.

NOTE: Authority cited: Sections 25150, 25150.7 and 58012, Health and Safety Code. Reference: Sections 25150.7 and 25150.8, Health and Safety Code; and Section 13173, Water Code.

HISTORY

1. New section filed 6-18-2007; operative 7-1-2007 pursuant to Government Code section 11343.4 (Register 2007, No. 25).
2. Amendment of subsection (b)(3) filed 10-3-2007; operative 11-2-2007 (Register 2007, No. 40).

§ 67386.12. Training.

(a) An employer managing TWW shall provide training for all employees handling TWW and all employees that may reasonably be expected to contact TWW. A record of the training shall be maintained for a period of three years and available for review. The training shall include:

(1) all applicable requirements of the California Occupational Safety and Health Act of 1973 (ch. 1, part 1, div. 5 (commencing with § 6300) of the Labor Code), including all rules, regulations, and orders relating to hazardous waste;

(2) procedures for identifying and segregating TWW;

(3) safe handling practices;

(4) requirements of the alternative management standards; and

(5) proper disposal methods.

NOTE: Authority cited: Sections 25150, 25150.7 and 58012, Health and Safety Code. Reference: Sections 25150.7 and 25150.8, Health and Safety Code.

HISTORY

1. New section filed 6-18-2007; operative 7-1-2007 pursuant to Government Code section 11343.4 (Register 2007, No. 25).

Chapter 39. Hazardous Waste Property and Border Zone Property

§ 67390.2. Information Required for a Determination.

(a) Upon receipt of a request made pursuant to Health and Safety Code sections 25221, 25222.1, 25233 and 25234, the Department shall review all available documents and other written information with regard to the property concerned and notify the requester whether sufficient evidence exists for the Department to proceed with a hazardous waste property or border zone property designation, variance from such designation, or removal of such designation.

(b) In determining whether sufficient evidence exists for the Department to proceed with a determination pursuant to Health and Safety Code sections 25221, 25222.1, 25233 and 25234, the Department shall take into account:

(1) the hazardous characteristics of the wastes, such as, but not limited to, toxicity, reactivity, corrosivity, flammability, persistence, bioaccumulative characteristics, and infectiousness;

(2) factors affecting the potential for movement of any waste constituents away from the site through air, water, or soil, such as, but not limited to, the quantity of the wastes, physical state of the wastes, volatility of the wastes, solubility of the wastes, soil binding characteristics of the wastes, soil permeability, geological characteristics, hydrological characteristics, meteorological characteristics, flood potential and site terrain;

(3) factors affecting the potential for exposure of any population within 2,000 feet of the wastes such as, but not limited to, containment of the wastes, accessibility of the wastes, ground water use, wells, surface water use, existing and potential land use, sensitive environments, and critical habitats.

NOTE: Authority cited: Section 25156, Health and Safety Code. Reference: Sections 25221, 25222, 25222.1, 25233 and 25234, Health and Safety Code.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).

§ 67391.1. Requirements for Land Use Covenants.

(a) Except as provided in subsections (e)(2) and (f) of this section, a land use covenant imposing appropriate limitations on land use shall be executed and recorded when:

(1) Facility closure, corrective action, remedial or removal action, or other response actions are undertaken pursuant to division 20 of the Health and Safety Code; and

(2) Hazardous materials, hazardous wastes or constituents, or hazardous substances will remain at the property at levels which are not suitable for unrestricted use of the land.

(b) The Department shall not approve or concur in a response action decision document which includes limitations on land use or other institutional controls, unless the limitations or controls are clearly set forth and defined in the response action decision document. Except as provided in subsections (e)(2) and (f) of this section, any response action decision document shall (1) specify that the limitations or controls will be incorporated into an appropriate land use covenant as required by this section and (2) include a description of the implementation and enforcement provisions, including but not limited to frequency of inspections and reporting requirements, necessary to ensure the integrity and long-term protectiveness of the land use covenant. The Department shall provide public notice of the response action decision document in a manner that meets the requirements of Health and Safety Code section 25356.1(e)(2) or section 25398.6(i). The Department will consult with local agencies, including local reuse authorities, as appropriate.

(c) Except as provided in subsections (e)(2) and (f) of this section,

(1) The Department shall not certify that a response action has been satisfactorily completed, with the exception of any necessary long-term operation and maintenance activities, until such land use covenants required by this section have been signed and recorded in the county where the property is located, or

(2) The Department shall not acknowledge final certification of closure of a hazardous waste disposal unit until such land use covenants required by this section also meet the requirements of sections 66264.119 or 66265.119 as applicable.

(d) All land use covenants pursuant to this section shall be executed by the Department and the landowner and shall be recorded in the county where the land is located. All land use covenants shall run with the land pursuant to Civil Code section 1471 and/or Health and Safety Code sections 25202.5, 25222.1, 25355.5, 25395.99 or 25398.7 and 25396(*l*) and shall continue in perpetuity unless modified or terminated in accordance with applicable law.

(e) Federal Property.

(1) The Department shall not consider property owned by the federal government to be suitable for transfer to nonfederal entities pursuant to 42 United States Code section 9620(h)3-4 where hazardous materials, hazardous wastes or constituents, or hazardous substances remain at the property at levels which are not suitable for unrestricted use of the land,

unless an appropriate land use covenant, except as provided in subsection (e)(2), will be executed by the Department and the federal government or the successor-in-interest to the federal government during the initial property transfer process, and recorded in the county where the land is located in accordance with this section.

(2) Whenever the Department determines that it is not feasible to record a land use covenant for property owned by the federal government, such as transfers from one federal agency to another, the Department and federal government shall use other mechanisms to ensure that future land use will be compatible with the levels of hazardous materials, hazardous wastes or constituents, or hazardous substances which remain on the property. Examples include: amendments to the federal government facility master plan, physical monuments, or agreements between the federal government facility and the Department.

(f) Whenever the Department determines that it is not feasible to establish a land use covenant as a component of a remedy for a site, it may use other institutional control mechanisms to ensure that future land use will be compatible with the levels of hazardous materials, hazardous wastes or constituents, or hazardous substances which remain on the property.

(1) Examples include, but are not limited to, publicly owned tidelands trust property: such mechanisms may include physical monuments, or a memorandum of agreement or consent agreement between the Department and the trustee for the tideland trust property.

(2) If the Department subsequently determines that it is feasible to record land use covenants for such sites, the Department shall ensure that the land use covenants are recorded in accordance with (d).

(g) Modification and Termination. The Department may modify or terminate land use covenants if it determines such modification or termination is protective of public health and safety and the environment.

(h) The Department shall require responsible parties, facility owners or operators, or project proponents involved in land use covenants to pay all costs associated with the administration of such controls.

(i) For purposes of this section:

(1) "Department" means the Department of Toxic Substances Control.

(2) "Federal property" means that property found in the Federal Property and Administrative Services Act of 1949, as amended, 40 United States Code sections 471 et seq.

(3) "Land use covenants" include easements, servitudes, covenants and restrictions which run with the land and restrict uses to protect public health and safety and the environment.

(4) "Response action decision document" means a remedial action plan, removal action workplan, record of decision, closure plan, documents written pursuant to a corrective action order or corrective action consent agreement, or other similar documents which formally select an action to be taken in response to the release or threatened release of hazardous materials, hazardous wastes or constituents, or hazardous substances.

(5) "Unrestricted use of the land" means that the land may be used for any purpose.

NOTE: Authority cited: Sections 25351.5 and 25150, Health and Safety Code. Reference: Sections 25202.5, 25222.1, 25223, 25355.5, 25395.99, 25398.6 and 25398.7, Health and Safety Code.

HISTORY

1. New section filed 3-20-2003; operative 4-19-2003 (Register 2003, No. 12).
2. Change without regulatory effect amending subsection (g) filed 1-13-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 2).
3. Amendment of section and Note filed 10-18-2007; operative 11-17-2007 (Register 2007, No. 42).

Chapter 40. Selection and Ranking Criteria for Hazardous Waste Sites Requiring Remedial Action

§ 67400. Applicability.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New Article 29 (Sections 67400-67424, not consecutive) filed 1-3-85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 67400.1. Selection Criteria.

Candidate sites shall be selected for hazardous waste site ranking if:

(a) the site is presently not owned by the Federal Government; and

(b) the release or threatened release of a hazardous substance (as defined in Health and Safety Code section 25316) at the site has been confirmed by the Department by means of on-site sampling conducted by the Department or other parties of the waste, soils, sediments, ground water, surface water or air.

NOTE: Authority cited: Section 25356(a), Health and Safety Code. Reference: Section 25356(a), Health and Safety Code.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).

§ 67400.2. Site Ranking Criteria.

Hazardous waste sites shall be ranked for remedial action according to the "Uncontrolled Hazardous Waste Site Ranking System, A User's Manual" (1982) MTR—82W111, except that the "Hazardous Chemicals Data" NFPA 49-1975 as contained in either the 1977 or 1984 edition of the "Fire Protection Guide on Hazardous Materials" published by the National Fire Protection Association may be used instead of the National Fire Protection Association's National Fire Codes, Vol. 13, No. 49 (1977).

NOTE: Authority cited: Section 25356(a), Health and Safety Code. Reference: Section 25356(a), Health and Safety Code.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).

§ 67401. Definitions.

NOTE: Authority cited: Sections 208 and 25150, Stats. 1994, c. 435 (S.B. 923), Section 3, Health and Safety Code. Reference: Sections 208 and 25150, Stats. 1994, c. 435 (S.B. 923), Section 3, Health and Safety Code.

HISTORY

1. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).
2. New section filed 6-30-95 as an emergency; operative 6-30-95 (Register 95, No. 26). A Certificate of Compliance must be transmitted to OAL by 12-27-95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 12-26-95 as an emergency; operative 12-26-95 (Register 95, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-24-96 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 4-24-96 as an emergency; operative 4-24-96 (Register 96, No. 17). A Certificate of Compliance must be transmitted to OAL by 8-22-96 or emergency language will be repealed by operation of law on the following day.
5. Repealed by operation of Government Code section 11346.1(g) (Register 96, No. 35).
6. New section filed 8-26-96 as an emergency; operative 8-26-96 (Register 96, No. 35). A Certificate of Compliance must be transmitted to OAL by 12-24-96 or emergency language will be repealed by operation of law on the following day.
7. Repealer filed 12-10-96; operative 12-10-96 (Register 96, No. 50).

§ 67401.1. Definitions.

(a) When used in this article, unless otherwise defined in Health and Safety Code (H&SC) Section 25396, the following terms have the meanings given below:

(1) "Community benefit" means an equitable factor that will be used in conjunction with other equitable factors listed in H&SC Section 25398.8 that DTSC shall consider when conducting its apportionment of liability. Community benefit may consider protection of public health and the benefit to the environment that may be realized by members of the public and the affected community by implementation of the response action.

(2) "Department" means the Department of Toxic Substances Control.

(3) "Expedited Remedial Action Program" means the program that was created pursuant to H&SC Section 25396 et seq. of the Expedited Remedial Action Reform Act of 1994.

(4) "Fiscal Year" is the period of the year beginning July 1 and ending the following calendar year on June 30.

(5) "National Priorities List" means the list, compiled by the United States Environmental Protection Agency pursuant to the Comprehensive Environmental Response, Compensation, Liability Act of 1980 (42 U.S.C. Section 9605), of uncontrolled hazardous releases in the United States that are priorities for long-term remedial evaluation and response.

NOTE: Authority cited: Stats. 1994, c. 435 (S.B. 923), Section 3. Reference: Section 25396, Health and Safety Code.

HISTORY

1. New section filed 6-30-95 as an emergency; operative 6-30-95 (Register 95, No. 26). A Certificate of Compliance must be transmitted to OAL by 12-27-95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 12-26-95 as an emergency; operative 12-26-95 (Register 95, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-24-96 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4-24-96 as an emergency; operative 4-24-96 (Register 96, No. 17). A Certificate of Compliance must be transmitted to OAL by 8-22-96 or emergency language will be repealed by operation of law on the following day.
4. Repealed by operation of Government Code section 11346.1(g) (Register 96, No. 35).
5. New section filed 8-26-96 as an emergency; operative 8-26-96 (Register 96, No. 35). A Certificate of Compliance must be transmitted to OAL by 12-24-96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 8-26-96 order, including repealer and new section, transmitted to OAL 10-30-96 and filed 12-10-96 (Register 96, No. 50).

§ 67401.2. Response Costs.

(a) Response costs are all costs described in subdivision (t) of H&SC Section 25396 including, but not limited to:

(1) The cost of preparing and reviewing a Preliminary Endangerment Assessment (PEA) including, but not limited to, the cost of collecting, reviewing, and analyzing data or any activities necessary to complete the PEA.

(2) Costs associated with the Department's preparation of a recommendation to the Site Designation Committee pursuant to subdivision (b) of H&SC Section 25396.5.

(b) Response costs do not include:

(1) Fees and costs incurred by any responsible person associated with an arbitration or litigation.

(2) Fees and costs not directly related to and necessary to perform a response action.

(c) Subdivision (t) of H&SC Section 25396 shall not limit the Department's ability to recover past costs under Chapter 6.8 of the Health and Safety Code.

NOTE: Authority cited: Stats. 1994, c. 435 (S.B. 923), Section 3. Reference: Section 25396(t), Health and Safety Code.

HISTORY

1. New section filed 6-30-95 as an emergency; operative 6-30-95 (Register 95, No. 26). A Certificate of Compliance must be transmitted to OAL by 12-27-95 or emergency language will be repealed by operation of law on the following day.
2. New section, including amendment of subsection (b), refiled 12-26-95 as an emergency; operative 12-26-95 (Register 95, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-24-96 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4-24-96 as an emergency; operative 4-24-96 (Register 96, No. 17). A Certificate of Compliance must be transmitted to OAL by 8-22-96 or emergency language will be repealed by operation of law on the following day.
4. Repealed by operation of Government Code section 11346.1(g) (Register 96, No. 35).
5. New section filed 8-26-96 as an emergency; operative 8-26-96 (Register 96, No. 35). A Certificate of Compliance must be transmitted to OAL by 12-24-96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 8-26-96 order, including repealer and new section, transmitted to OAL 10-30-96 and filed 12-10-96 (Register 96, No. 50).

§ 67401.3. Requirements for a Completed Preliminary Endangerment Assessment.

(a) In making its recommendation to the Site Designation Committee pursuant to Health and Safety Code section 25396.5, the Department shall consider the condition set forth in H&SC section 25396.6(b) to be satisfied if the responsible person or persons requesting selection of the site have submitted documents that the Department determines constitute a completed Preliminary Endangerment Assessment (PEA) and the PEA:

(1) provides sufficient information for the Department to determine that current or past waste management practices have resulted in the release or a threatened release of hazardous substances which pose a threat to public health or the environment; and

(2) provides sufficient information for the Department to conclude that significant response actions are necessary at the site; and

(3) includes an analysis of the scope and identity of the affected community.

NOTE: Authority cited: Stats. 1994, c. 435 (S.B. 923), Section 3. Reference: Sections 25319.5 and 25396.6(b), Health and Safety Code.

HISTORY

1. New section filed 6-30-95 as an emergency; operative 6-30-95 (Register 95, No. 26). A Certificate of Compliance must be transmitted to OAL by 12-27-95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 12-26-95 as an emergency; operative 12-26-95 (Register 95, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-24-96 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4-24-96 as an emergency; operative 4-24-96 (Register 96, No. 17). A Certificate of Compliance must be transmitted to OAL by 8-22-96 or emergency language will be repealed by operation of law on the following day.
4. Repealed by operation of Government Code section 11346.1(g) (Register 96, No. 35).
5. New section filed 8-26-96 as an emergency; operative 8-26-96 (Register 96, No. 35). A Certificate of Compliance must be transmitted to OAL by 12-24-96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 8-26-96 order, including repealer and new section, transmitted to OAL 10-30-96 and filed 12-10-96 (Register 96, No. 50).

§ 67401.4. Site Eligibility for the National Priorities List (NPL).

The Department may not recommend that a site be selected for remediation pursuant to the Expedited Remedial Action Program if the site is proposed to be listed or is listed on the National Priorities List pursuant to the procedures specified in 40 Code of Federal Regulations, Part 300.425.

NOTE: Authority cited: Stats. 1994, c. 435 (S.B. 923), Section 3. Reference: Section 25396.6(c)(1), Health and Safety Code.

HISTORY

1. New section filed 6-30-95 as an emergency; operative 6-30-95 (Register 95, No. 26). A Certificate of Compliance must be transmitted to OAL by 12-27-95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 12-26-95 as an emergency; operative 12-26-95 (Register 95, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-24-96 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4-24-96 as an emergency; operative 4-24-96 (Register 96, No. 17). A Certificate of Compliance must be transmitted to OAL by 8-22-96 or emergency language will be repealed by operation of law on the following day.
4. Repealed by operation of Government Code section 11346.1(g) (Register 96, No. 35).
5. New section filed 8-26-96 as an emergency; operative 8-26-96 (Register 96, No. 35). A Certificate of Compliance must be transmitted to OAL by 12-24-96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 8-26-96 order, including repealer and new section, transmitted to OAL 10-30-96 and filed 12-10-96 (Register 96, No. 50).

§ 67401.5. Termination of Agreements and Site Stabilization.

(a) In the event that a responsible person who has entered into an enforceable agreement with the Department pursuant to H&SC Section 25398.2(b)(1) fails to comply with the agreement, the Department may terminate the agreement and remove the site from eligibility for response actions pursuant to the Expedited Remedial Action Program, and may direct that any further response actions at that site be taken pursuant to Chapter 6.8, Division 20, of the H&SC, unless one or more of any other responsible person agree to assume the noncomplying responsible person's responsibilities under the agreement.

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(b) A responsible person who has entered into an enforceable agreement with the Department and who fails to comply with the agreement, shall take any action necessary to stabilize the site in order to protect public health and the environment, unless one or more of any responsible persons agree to assume the noncomplying responsible person's responsibilities the site under the agreement. Actions which are necessary to stabilize the site include, but are not limited to, the following:

(1) Action to preclude the possibility that the public can come in direct contact with hazardous substances either through ingestion, dermal absorption, or inhalation.

(2) Actions to prevent offsite migration of hazardous substances.

(c) Site stabilization activities shall be maintained by the responsible person to ensure protection of public health and the environment until the response action is complete.

NOTE: Authority cited: Stats. 1994, c. 435 (S.B. 923), Section 3. Reference: Sections 25398.3(a) and 25398.2(b)(1)(D), Health and Safety Code.

HISTORY

1. New section filed 6–30–95 as an emergency; operative 6–30–95 (Register 95, No. 26). A Certificate of Compliance must be transmitted to OAL by 12–27–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 12–26–95 as an emergency; operative 12–26–95 (Register 95, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–24–96 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–24–96 as an emergency; operative 4–24–96 (Register 96, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–22–96 or emergency language will be repealed by operation of law on the following day.
4. Repealed by operation of Government Code section 11346.1(g) (Register 96, No. 35).
5. New section filed 8–26–96 as an emergency; operative 8–26–96 (Register 96, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–24–96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 8–26–96 order, including repealer and new section, transmitted to OAL 10–30–96 and filed 12–10–96 (Register 96, No. 50).

§ 67401.6. Financial Assurance.

(a) Any agreement entered into pursuant to H&SC Section 25398.2 shall require a responsible person to demonstrate to the Department the availability of adequate forms of financial assurance for response costs that will or may be assigned to the orphan share.

(b) Any responsible person who must comply with operation and maintenance requirements as part of a response action must demonstrate the availability of adequate forms of financial assurance prior to issuance of a certificate of completion.

(c) For the purposes of complying with subdivisions (a) or (b) of this section, the responsible person shall choose from one or more of the following options as specified below.

(1) Establish a trust fund as described in Section 66265.143(a).

(2) Obtain a surety bond as described in Section 66265.143(b).

(3) Obtain a letter of credit as described in Section 66265.143(c).

(4) Obtain insurance as described in Section 66265.143(d).

(5) Submit to the financial test and corporate guarantee as described in Section 66265.143(e).

(6) Or any other form of financial assurance deemed acceptable by the Department.

NOTE: Authority cited: Stats. 1994, c. 435 (S.B. 923), Section 3. Reference: Sections 25396.6(c)(2) and 25398.2(b)(1)(B), Health and Safety Code.

HISTORY

1. New section filed 6–30–95 as an emergency; operative 6–30–95 (Register 95, No. 26). A Certificate of Compliance must be transmitted to OAL by 12–27–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 12–26–95 as an emergency; operative 12–26–95 (Register 95, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–24–96 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–24–96 as an emergency; operative 4–24–96 (Register 96, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–22–96 or emergency language will be repealed by operation of law on the following day.
4. Repealed by operation of Government Code section 11346.1(g) (Register 96, No. 35).
5. New section filed 8–26–96 as an emergency; operative 8–26–96 (Register 96, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–24–96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 8–26–96 order, including repealer and new section, transmitted to OAL 10–30–96 and filed 12–10–96 (Register 96, No. 50).

§ 67401.7. Information Gathering and Access.

(a) The Department may require any person identified to furnish and provide access to, upon reasonable notice, information or documents relating to the following matters:

(1) The identification, nature, and quantity of materials which have been, or are, generated, treated, stored, or disposed of at a site or which have been, or are, transported to a site.

(2) The nature or extent of a release or threatened release of a hazardous substance at or from a site.

(3) The identification of any person who may be responsible or have knowledge relating to a release or threatened release of a hazardous substance.

(b) The Department may require any responsible person to furnish, upon reasonable notice, information or documents relating to the following matter:

(1) Ability of a person to pay for or to perform a response action.

NOTE: Authority cited: Stats. 1994, c. 435 (S.B. 923), Section 3. Reference: Sections 25185.6, 25358.1, 25398(b)(1) and 25398.9(c), Health and Safety Code.

HISTORY

1. New section filed 6–30–95 as an emergency; operative 6–30–95 (Register 95, No. 26). A Certificate of Compliance must be transmitted to OAL by 12–27–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 12–26–95 as an emergency; operative 12–26–95 (Register 95, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–24–96 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–24–96 as an emergency; operative 4–24–96 (Register 96, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–22–96 or emergency language will be repealed by operation of law on the following day.
4. Repealed by operation of Government Code section 11346.1(g) (Register 96, No. 35).
5. New section filed 8–26–96 as an emergency; operative 8–26–96 (Register 96, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–24–96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 8–26–96 order, including repealer and new section, transmitted to OAL 10–30–96 and filed 12–10–96 (Register 96, No. 50).

§ 67401.8. Engineering Design

(a) Pursuant to H&SC Section 25398.14, upon completion of an engineering design to implement an approved remedial action plan, the responsible person for the site shall submit the engineering design to the Department for approval. The Department shall approve, modify, request information, or deny in writing the engineering design within 60 days from the date of receipt.

(b) The Department shall approve an engineering design if the Department determines that the engineering design is consistent with the selected remedial alternative outlined in the approved Remedial Action Plan (RAP). If the engineering design is consistent with the technical and operational plans in the approved RAP and there is compliance with all federal, state, and local statutes, regulations, and ordinances then the Department will grant an approval.

(c) The Department shall request that the responsible person modify the engineering design if the Department determines that the engineering design does not contain sufficient information necessary to ensure that the engineering design is consistent with the approved remedial alternative selected in the RAP and compliance with all federal, state, and local statutes, regulations, and ordinances. The Department shall identify in writing deficiencies that must be addressed in the engineering design. A

responsible person shall not implement the response action until the responsible person has made the modifications to the engineering design required by the Department.

(d) The Department shall not approve an engineering design if the Department determines that the engineering design is inconsistent with the selected remedial alternative outlined in the approved RAP.

(e) Any responsible person whose engineering design has been disapproved may request a meeting with the Department to discuss the reasons for the disapproval.

NOTE: Authority cited: Stats. 1994, c. 435 (S.B. 923), Section 3. Reference: Section 25398.14, Health and Safety Code.

HISTORY

1. New section filed 6–30–95 as an emergency; operative 6–30–95 (Register 95, No. 26). A Certificate of Compliance must be transmitted to OAL by 12–27–95 or emergency language will be repealed by operation of law on the following day.
2. New section, including newly designated subsection (a)(2) and subsection renumbering, refiled 12–26–95 as an emergency; operative 12–26–95 (Register 95, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–24–96 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–24–96 as an emergency; operative 4–24–96 (Register 96, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–22–96 or emergency language will be repealed by operation of law on the following day.
4. Repealed by operation of Government Code section 11346.1(g) (Register 96, No. 35).
5. New section filed 8–26–96 as an emergency; operative 8–26–96 (Register 96, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–24–96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 8–26–96 order, including repealer and new section, transmitted to OAL 10–30–96 and filed 12–10–96 (Register 96, No. 50).

§ 67401.9. Orphan Share Determination.

The Department's recommendation as to whether a site should be selected for the Expedited Remedial Action Program shall include a determination of whether the site has an orphan share. For those sites already selected for the Expedited Remedial Action Program, the Department shall make a determination as to whether sites are an orphan share site within 30 days of the effective date of this regulation, unless that determination already has been made by the Department or the Site Designation Committee. No more than ten sites may be determined to have an orphan share.

NOTE: Authority cited: Stats. 1994, c. 435 (S.B. 923), Section 3. Reference: Section 25396.5(b), Health and Safety Code.

HISTORY

1. New section filed 6–30–95 as an emergency; operative 6–30–95 (Register 95, No. 26). A Certificate of Compliance must be transmitted to OAL by 12–27–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 12–26–95 as an emergency; operative 12–26–95 (Register 95, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–24–96 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–24–96 as an emergency; operative 4–24–96 (Register 96, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–22–96 or emergency language will be repealed by operation of law on the following day.
4. Repealed by operation of Government Code section 11346.1(g) (Register 96, No. 35).
5. New section filed 8–26–96 as an emergency; operative 8–26–96 (Register 96, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–24–96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 8–26–96 order, including repealer and new section, transmitted to OAL 10–30–96 and filed 12–10–96 (Register 96, No. 50).

§ 67401.10. Modification of Orphan Share Determination.

(a) At the time the Department proposes an apportionment of liability for response costs at a site, it may change its determination regarding whether a site has an orphan share under the following circumstances:

(1) The Site was determined to have an orphan share pursuant to Section 67401.9 and the Department finds that no orphan share actually exists.

(2) The Site was determined not to have an orphan share pursuant to Section 67401.9 and the Department makes the following findings:

[A] An orphan share actually exists;

[B] Not more than ten sites, for which response actions are being conducted pursuant to the Expedited Response Action Program, have been determined to have an orphan share pursuant to Section 67401.9; and

[C] There are funds available in the trust fund to cover all response costs that will be assigned to the orphan share after payment of any claims already received for response costs that have been allocated to an orphan share at other sites in the Expedited Remedial Action Program.

NOTE: Authority cited: Stats. 1994, c. 435 (S.B. 923), Section 3. Reference: Sections 25396(m), 25396.5(b) and 25398.8(a), Health and Safety Code.

HISTORY

1. New section filed 6–30–95 as an emergency; operative 6–30–95 (Register 95, No. 26). A Certificate of Compliance must be transmitted to OAL by 12–27–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 12–26–95 as an emergency; operative 12–26–95 (Register 95, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–24–96 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–24–96 as an emergency; operative 4–24–96 (Register 96, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–22–96 or emergency language will be repealed by operation of law on the following day.
4. Repealed by operation of Government Code section 11346.1(g) (Register 96, No. 35).
5. New section filed 8–26–96 as an emergency; operative 8–26–96 (Register 96, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–24–96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 8–26–96 order, including repealer and new section, transmitted to OAL 10–30–96 and filed 12–10–96 (Register 96, No. 50).

§ 67401.11. Allocation of Orphan Share.

(a) The following factors shall be used by the Department to determine when a responsible person cannot be located or identified, or when a responsible person is considered insolvent. The factors that shall guide the Department in allocating response costs to an orphan share shall include, but are not limited to, the following:

(1) A responsible person cannot be located when the Department determines that the responsible person is deceased and there are no assets remaining in the estate of the deceased, and there is no successor in liability.

(2) A responsible person shall be considered insolvent if the Department makes a finding pursuant to H&SC Section 25396(j).

(b) When allocating response costs to an orphan share, the Department shall apply a community benefit factor in conjunction with the established equitable factors listed in H&SC Section 25398.8(c). The community benefit factor includes consideration of the following:

(1) The relative threat posed by the site to public health and the environment.

(2) The community benefit realized by members of the public and the affected community as a result of the implementation of the response action.

NOTE: Authority cited: Section 25396(m), Health and Safety Code; Stats. 1994, c. 435 (S.B. 923), Section 3. Reference: Sections 25396(m) and 25398.8(c), Health and Safety Code.

HISTORY

1. New section filed 6–30–95 as an emergency; operative 6–30–95 (Register 95, No. 26). A Certificate of Compliance must be transmitted to OAL by 12–27–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 12–26–95 as an emergency; operative 12–26–95 (Register 95, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–24–96 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–24–96 as an emergency; operative 4–24–96 (Register 96, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–22–96 or emergency language will be repealed by operation of law on the following day.
4. Repealed by operation of Government Code section 11346.1(g) (Register 96, No. 35).
5. New section filed 8–26–96 as an emergency; operative 8–26–96 (Register 96, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–24–96

or emergency language will be repealed by operation of law on the following day.

6. Certificate of Compliance as to 8–26–96 order, including repealer and new section, transmitted to OAL 10–30–96 and filed 12–10–96 (Register 96, No. 50).

§ 67401.12. Procedures for Filing Claims Against the Expedited Site Remediation Trust Fund.

(a) Within 3 months after the Department has approved a request for a certificate of completion pursuant to H&SC Section 25398.15, responsible persons who entered into and are in compliance with an enforceable agreement with the Department pursuant to H&SC Section 25398.2(b)(1) may file a claim with the Department for reimbursement of the portion of the response action allocated to an orphan share pursuant to H&SC Section 25398.8. For purposes of this section, the Department will only accept one consolidated claim for a reimbursement of response costs allocated to an orphan share from responsible persons who have signed an enforceable agreement pursuant to H&SC Section 25398.2(b)(1). Responsible persons filing such a claim shall comply with the following claims procedures for reimbursement by the Expedited Site Remediation Trust Fund:

(1) The responsible person shall file a written claim with the Department. All claims must be filed with the Department by March 1 of each year to be considered for distribution of funds appropriated for that fiscal year.

(2) All claims filed by the responsible person shall include copies of the following: the enforceable agreement entered into pursuant to H&SC Section 25398.2(b)(1), the Department's apportionment of liability conducted pursuant to H&SC Section 25398.8, and an accounting of response costs defined in subdivision (t) of H&SC Section 25396 and Section 67401.2, and any other information requested by the Department deemed appropriate in determining the legitimacy of the claim.

NOTE: Authority cited: Sections 25298.8(b) and 25399.1, Health and Safety Code; Stats. 1994, c. 435 (S.B. 923), Section 3. Reference: Sections 25396(m), 25398.8(b) and 25399.1, Health and Safety Code.

HISTORY

1. New section and appendix filed 6–30–95 as an emergency; operative 6–30–95 (Register 95, No. 26). A Certificate of Compliance must be transmitted to OAL by 12–27–95 or emergency language will be repealed by operation of law on the following day.
2. New section and appendix refiled 12–26–95 as an emergency; operative 12–26–95 (Register 95, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–24–96 or emergency language will be repealed by operation of law on the following day.
3. New section and appendix refiled 4–24–96 as an emergency; operative 4–24–96 (Register 96, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–22–96 or emergency language will be repealed by operation of law on the following day.
4. New section and appendix repealed by operation of Government Code section 11346.1(g) (Register 96, No. 35).
5. New section and appendix filed 8–26–96 as an emergency; operative 8–26–96 (Register 96, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–24–96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 8–26–96 order, including repealer and new section, transmitted to OAL 10–30–96 and filed 12–10–96 (Register 96, No. 50).

§ 67401.13. Distribution of Orphan Share.

(a) Distribution of funds from the Expedited Site Remediation Trust Fund will be conducted annually. The distribution will only occur to the extent funds are available in the Expedited Site Remediation Trust Fund to pay claims received for response costs that have been allocated to an orphan share.

(b) No orphan share funds for a site shall be disbursed until all Department response costs incurred for that site have been paid.

(c) If the total of all approved claims for response costs that have been allocated to an orphan share for a fiscal year does not exceed the amount available in the Expedited Site Remediation Trust Fund, then each claim shall be fully funded.

(d) If the total of all approved claims for response costs that have been allocated to an orphan share for a fiscal year exceeds the amount available in the Expedited Site Remediation Trust Fund, then each claim shall be paid in the following manner:

(1) Payment of claims for those response costs that have been allocated to an orphan share shall be prorated based on the total sum of all approved orphan share claims for that fiscal year, except that all claims for amounts under $50,000.00 shall be paid in full, if there is a sufficient amount available in the Expedited Site Remediation Trust Fund.

(2) The balance of claims not fully paid in a fiscal year shall be carried over to subsequent fiscal years and either paid in full if funds are available in the Expedited Site Remediation Trust Fund, or prorated with claims from each year.

NOTE: Authority cited: Stats. 1994, c. 435 (S.B. 923), Section 3. Reference: Section 25396(m), Health and Safety Code.

HISTORY

1. New section and repealer of appendix filed 12–10–96; operative 12–10–96 (Register 96, No. 50).

§ 67403. Monitoring and Inspection for Permitted Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67409. Closure and Post–Closure Care of Landfills at Permitted Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159, 25159.5 and 25245, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

Chapter 41. Prohibited Chemical Toilet Additives

§ 67410.1. Prohibition of Sale.

(a) On or after January 1, 1979, no person in the State of California shall manufacture, formulate, package, import or receive from outside the State and sell or offer for sale within the State a material for use as a chemical toilet additive, as indicated on a label on the container or by any other representation by said person, which contains a nonbiodegradable toxic chemical substance.

(b) On or after January 1, 1979, no person shall sell or offer for sale at retail or wholesale within the State a material for use as a chemical toilet additive, as indicated on a label on the container or by any other representation relating to the sale of the material, which contains a nonbiodegradable toxic chemical substance.

(c) The foregoing provisions of this section shall not prohibit a person from selling or shipping to a person outside of the State a material for use as a chemical toilet additive, as indicated on a label on the container or by other representation, which contains a nonbiodegradable toxic chemical substance, which is manufactured, formulated, or packaged within the State; imported or received from outside of the State.

NOTE: Authority cited: Section 25210, Health and Safety Code. Reference: Section 25210, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 67410.2. Prohibition of Use.

On or after January 1, 1979, no person shall use, or cause to be used, a material as a chemical toilet additive which contains a nonbiodegradable toxic chemical substance.

NOTE: Authority cited: Section 25210, Health and Safety Code. Reference: Section 25210, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 67410.3. Criteria for Identifying a Toxic Chemical Substance.

(a) A chemical substance shall be considered to be a toxic chemical for the purpose of this article if such substance satisfies any of the following criteria:

(1) the chemical substance has a 96–hour LC_{50} of 500 milligrams or less per liter as determined in soft water with fathead minnows (Pimephales promelas) or golden shiners (Notemigonus crysoleucas) by the method given in Part 810 of Standard Methods for the Examination of Water and Wastewater (14th Edition), or with another species of test fish or another test method approved by the Department.

(2) The chemical substance is regulated as a carcinogenicity hazard by the United States Occupational Safety and Health Administration pursuant to Title 29, Code of Federal Regulations.

(3) The chemical substance presents a hazard to public health or the environment through its bioaccumulative or chronic toxicity properties.

NOTE: Authority cited: Section 25210, Health and Safety Code. Reference: Section 25210, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 67410.4. Criteria for Identifying a Nonbiodegradable Toxic Chemical Substance.

a) A chemical substance shall be considered to be a nonbiodegradable toxic chemical substance for the purpose of this article if such chemical substance satisfies any of the following criteria:

(1) the chemical substance contains any of the following elements:

antimony	molybdenum
arsenic	nickel
barium	selenium
beryllium	silver
cadmium	thallium
chromium	titanium
cobalt	uranium
copper	vanadium
lead	zinc
mercury	

(2) the chemical substance satisfies at least one of the criteria established in section 67410.3 and either:

(A) under conditions of the Five–Day Biochemical Oxygen Demand test method, as given in Part 507 of Standard Methods for the Examination of Water and Wastewater (14th or 16th editions) or in a modification of the method approved by the Department, using unadapted settled domestic wastewater seed, is degraded to the extent that its initial concentration in the test medium is reduced by less than fifty (50) percent. The extent of degradation shall be determined by an analysis which establishes to the satisfaction of the Department the percent of the test substance which is undegraded at the completion of the test;

(B) under conditions of the Five–Day Biochemical Oxygen Demand test method, as given in Part 507 of Standard Methods for the Examination of Water and Wastewater (14th or 16th editions) or of a modification of the method approved by the Department is degraded to a residue which contains a toxic chemical substance.

NOTE: Authority cited: Sections 208 and 25210, Health and Safety Code. Reference: Section 25210, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 67410.5. Disclosure of Identity, Composition, and Properties.

(a) At the request of the Department, the seller of a chemical toilet additive shall provide the Department with the brand name or other designation and the name and address of the producer or other supplier of each chemical toilet additive that the seller offers for sale.

(b) At the request of the Department, a person in the State of California who manufactures, formulates, packages, imports or receives from outside the State a material for sale within the State for use as a chemical toilet additive, as indicated on a label on the container or by any other representation by said person, shall disclose to the Department the names of all of the ingredients of the material and provide toxicological and biodegradability data which establish to the satisfaction of the Department whether the material contains any ingredient which is a nonbiodegradable toxic chemical substance.

(c) At the request of the Department, the user of a chemical toilet additive for the user's household purpose shall disclose to the Department the brand name or other designation of the additive and the name and address of its producer or seller.

(d) At the request of the Department, a person who uses a chemical toilet additive for other than that person's household purpose, including a person who maintains or services chemical toilets or chemical toilet waste holding tanks or who collects, transports, or disposes of chemical toilet wastes as a commercial business, as part of or incidental to a commercial business, as a government agency, or for hire, shall disclose to the Department:

(1) the brand name or other designation of the chemical toilet additive used and the name and address of its producer or seller;

(2) the names of all ingredients of any material used as a chemical toilet additive which is not labeled on its container or in accompanying printed matter to indicate its use for such purpose, its brand name or other designation, and its producer or seller. At the request of the Department, the person shall also provide toxicological and biodegradability data which establish to the satisfaction of the Department whether the material contains any ingredient which is a nonbiodegradable toxic chemical substance.

(e) The chemical analyses and bioassay methods and procedures used in obtaining data and the quality and adequacy of the data which are submitted in compliance with this section shall be subject to approval of the Department.

NOTE: Authority cited: Section 25210, Health and Safety Code. Reference: Section 25210, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 67410.6. Enforcement and Inspections.

(a) The requirements of this article shall be enforced as provided for under chapter 22.

(b) Inspections may be made of and samples taken from any factory, plant or other place where chemical toilet additives are manufactured, stored, sold, or used.

NOTE: Authority cited: Section 25210, Health and Safety Code. Reference: Section 25210, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 67410.7. Applicability of Other Requirements of This Chapter.

Nothing in this article shall be construed to relieve a person from handling and managing a chemical toilet waste as a hazardous waste in accordance with the requirements of this chapter if the chemical toilet waste contains a hazardous material or is a hazardous waste as defined in section 66260.10, respectively, or is listed in either Appendix X to chapter 11, except that a person who produces, hauls, or disposes of chemical toilet waste shall be exempt from the requirements of section 66260.10 and chapters 12, 13, 14, 15, and 43 of this division if disposal of the waste is in accordance with the requirements of chapter 6, division 20, Health and Safety Code commencing with section 25000 and article 3, chapter 1, division 7.5, Water Code commencing with section 14040.

NOTE: Authority cited: Sections 208, 25150 and 25210, Health and Safety Code. Reference: Sections 25150 and 25210, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 67411. General Operating Requirements for Interim Status Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67418. Closure and Post-Closure Care of Landfills at Interim Status Landfills.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159, 25159.5 and 25245, Health and Safety Code.

HISTORY

1. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 67419. Surveying and Recordkeeping at Landfills at Permitted and Interim Status Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 67420. Special Requirements for Ignitable or Reactive Waste at Landfills at Permitted and Interim Status Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 67421. Special Requirements for Incompatible Wastes at Permitted and Interim Status Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 67422. Special Requirements for Liquid Waste at Permitted and Interim Status Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 67423. Special Requirements for Containers at Permitted and Interim Status Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 67424. Disposal of Small Containers of Hazardous Waste in Overpacked Drums (Lab Packs) at Landfills at Permitted and Interim Status Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§ 67425. Special Requirements for Nonliquid Waste at Permitted and Interim Status Facilities.

NOTE: Authority cited: Sections 208 and 25179.5, Health and Safety Code. Reference: Sections 25159, 25159.5, 25179.5(b) and 25179.9, Health and Safety Code.

HISTORY

1. New section filed 9-11-89; operative 10-11-89 (Register 89, No. 38).
2. Repealer filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

Chapter 42. Requirements for Management of Fluorescent Light Ballasts which Contain Polychlorinated Biphenyls (PCBs)

§ 67426.1. Generator Requirements.

(a) A generator of fluorescent light ballasts which contain PCBs who transports off-site no more than two fifty-five gallon drums per transportation vehicle shall be exempt from the standards set forth in Article 1, Article 2, and Article 4 of Chapter 12 of this division. The regulations in this chapter apply only to the management of light ballasts which contain PCBs.

(b) The generator of fluorescent light ballasts shall retain for three years a legible copy of each manifest or shipping document to document the transportation of hazardous waste consisting of fluorescent light ballasts which contain PCBs.

NOTE: Authority cited: Section 25150, Health and Safety Code. Reference: Section 25155, Health and Safety Code.

HISTORY

1. New chapter 42 (sections 67426.1-67429.1) filed 4-23-93 as an emergency; operative 4-23-93 (Register 93, No. 17). A Certificate of Compliance must be transmitted to OAL 8-23-93 or emergency language will be repealed by operation of law on the following day.
2. Repealer of chapter 42 (sections 67426.1-67429.1) and section by operation of Government Code section 11346.1(g) (Register 93, No. 43).
3. New chapter 42 (sections 67426.1-67429.1) and section filed 10-20-93; operative 10-20-93 pursuant to Government Code section 11343.4(d) (Register 93, No. 43).
4. Editorial correction amending HISTORY 2 and adding HISTORY 3 (Register 97, No. 7).

§ 67427.1. Exemption From Requirement for Extremely Hazardous Waste Disposal Permit.

Generators of fluorescent light ballasts which contain PCBs shall be exempt from filing for an Extremely Hazardous Waste Disposal Permit required by § 67430.1.

NOTE: Authority cited: Section 25150, Health and Safety Code. Reference: Section 25155, Health and Safety Code.

HISTORY

1. New section filed 4-23-93 as an emergency; operative 4-23-93 (Register 93, No. 17). A Certificate of Compliance must be transmitted to OAL 8-23-93 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 93, No. 43).
3. New section filed 10-20-93; operative 10-20-93 pursuant to Government Code section 11343.4(d) (Register 93, No. 43).
4. Editorial correction amending HISTORY 2 and adding HISTORY 3 (Register 97, No. 7).

§ 67428.1. Transportation Requirements.

(a) A transporter of twelve or fewer non-leaking fluorescent light ballasts which contain PCBs shall be exempt from Chapter 13 of this division provided that the containers which contain the ballasts do not include any other hazardous waste.

(b) A transporter of more than twelve non-leaking light ballasts which contain PCBs shall be exempt from Article 1 and Article 2 of Chapter 13 of this division pertaining to the transportation of a hazardous waste provided all of the following conditions are met:

(1) The transporter shall use a shipping paper which contains all the information required pursuant to Title 49, Code of Federal Regulations, Part 172, Subpart C to document the transportation of the fluorescent light ballasts. The shipping paper must accompany the shipments of fluorescent light ballasts.

(2) The total amount of fluorescent light ballasts which contain PCBs being transported is no more than two 55 gallon drums of non-leaking fluorescent light ballasts per load.

(3) The containers used for transportation of fluorescent light ballasts which contain PCBs meet all applicable federal and state regulations.

(4) When transporting hazardous waste consisting of fluorescent light ballasts which contain PCBs, the containers which contain the ballasts shall not include any other hazardous waste.

(5) Any discharges or spills of hazardous waste consisting of fluorescent light ballasts which contain PCBs shall be reported and cleaned up as required in Article 3, Chapter 13 of this division.

(6) The transporter of light ballasts shall retain for three years a legible copy of each manifest or shipping documents to document the transportation of hazardous waste consisting of fluorescent light ballasts which contain PCBs.

(c) Transfer of hazardous waste consisting of fluorescent light ballasts which contain PCBs from one container to another container is not subject to the requirements of this division provided the containers hold no other hazardous waste.

NOTE: Authority cited: Section 25150, Health and Safety Code. Reference: Section 25155, Health and Safety Code.

HISTORY

1. New section filed 4–23–93 as an emergency; operative 4–23–93 (Register 93, No. 17). A Certificate of Compliance must be transmitted to OAL 8–23–93 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 93, No. 43).
3. New section filed 10–20–93; operative 10–20–93 pursuant to Government Code section 11343.4(d) (Register 93, No. 43).
4. Editorial correction amending HISTORY 2 and adding HISTORY 3 (Register 97, No. 7).

§ 67429.1. Disposal Requirements.

(a) Disposal of fluorescent light ballasts which contain PCBs shall be in accordance with § 66268.110.

NOTE: Authority cited: Section 25150, Health and Safety Code. Reference: Section 25155, Health and Safety Code.

HISTORY

1. New section filed 4–23–93 as an emergency; operative 4–23–93 (Register 93, No. 17). A Certificate of Compliance must be transmitted to OAL 8–23–93 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 93, No. 43).
3. New section filed 10–20–93; operative 10–20–93 pursuant to Government Code section 11343.4(d) (Register 93, No. 43).
4. Editorial correction amending HISTORY 2 and adding HISTORY 3 (Register 97, No. 7).

Chapter 43. Additional Requirements for Management of Extremely Hazardous Wastes

§ 67430.1. Requirement for Extremely Hazardous Waste Disposal Permit.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Section 25150, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect repealing section filed 4–1–96 pursuant to section 100, title 1, California Code of Regulations; operative 5–1–96 (Register 96, No. 14).

§ 67430.2. Application for Extremely Hazardous Waste Disposal Permit.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Section 25150, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect repealing section filed 4–1–96 pursuant to section 100, title 1, California Code of Regulations; operative 5–1–96 (Register 96, No. 14).

§ 67430.3. Removal of Spilled or Improperly Deposited Waste.

The Department may require the operator to remove from the disposal site and properly dispose of any extremely hazardous waste disposed of or applied on land, and any soil contacted by the waste, if the disposal or application of the waste was not consistent with the requirements of this chapter and the conditions of the Extremely Hazardous Waste Disposal Permit issued by the Department.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Sections 25150 and 25187, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 67430.4. Recurring Disposal of Extremely Hazardous Waste.

The Department may grant a producer of an extremely hazardous waste an Extremely Hazardous Waste Disposal Permit, valid up to 12 months, that specifies approved methods for the handling and disposal of a specific extremely hazardous waste that is routinely produced.

NOTE: Authority cited: Sections 208 and 25150, Health and Safety Code. Reference: Section 25150, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

Chapter 44. Hazardous Waste Testing Laboratory Certification

§ 67440.1. Certification of Laboratories.

NOTE: Authority cited: Sections 25173 and 25198.2(a), Health and Safety Code and Section 15376, Government Code. Reference: Sections 25198.3, 25198.5(a)(1) and (c) and 25198.7(a) and (b), Health and Safety Code and Section 15376, Government Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect repealing chapter 44 (sections 67440.1–67440.7) and Section filed 3–26–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 13).

§ 67440.2. Test Categories.

NOTE: Authority cited: Section 25198.2(a), Health and Safety Code. Reference: Section 25198.2(b)(1), Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect repealing section filed 3–26–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 13).

§ 67440.3. Quality Assurance Program.

NOTE: Authority cited: Section 25198.2(a), Health and Safety Code. Reference: Section 25198.2(b)(2), Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect repealing section filed 3–26–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 13).

§ 67440.4. Laboratory Equipment.

NOTE: Authority cited: Section 25198.2(a), Health and Safety Code. Reference: Section 25198.2(b)(3), Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect repealing section filed 3–26–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 13).

§ 67440.5. Analytical Procedures.

NOTE: Authority cited: Section 25198.2(a), Health and Safety Code. Reference: Section 25198.2(b)(4), Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect repealing section filed 3–26–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 13).

§ 67440.6. Personnel Qualifications.

NOTE: Authority cited: Section 25198.2(a), Health and Safety Code. Reference: Section 25198.2(b)(5), Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect repealing section filed 3–26–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 13).

§ 67440.7. Proficiency Testing.

NOTE: Authority cited: Section 25198.2(a), Health and Safety Code. Reference: Section 25198.5(c), Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Change without regulatory effect repealing section filed 3–26–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 13).

Chapter 45. Requirements for Units and Facilities Deemed to Have a Permit by Rule

Article 1. Permit By Rule

§ 67450.1. Permit Requirement.

Permits are required for treatment of hazardous wastes using a Transportable Treatment Unit (TTU) or a Fixed Treatment Unit (FTU). How-

ever, the owner or operator of a TTU shall be deemed to have a permit to operate the TTU when the owner or operator complies with the requirements of section 67450.2(a). The owner or operator of a FTU shall be deemed to have a permit to operate the FTU when the owner or operator complies with the requirements of section 67450.2(b).

NOTE: Authority cited: Sections 208 and 25200.2, Health and Safety Code. Reference: Section 25150, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment filed 10–23–91; operative 1–1–92 (Register 92, No. 12).
3. Amendment of chapter 45 heading filed 11–7–96; operative 11–7–96 (Register 96, No. 45).
4. New article 1 heading filed 1–30–2002; operative 1–30–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 5).

§ 67450.2. Permit by Rule for TTUs and FTUs.

(a) The owner or operator of a TTU that treats hazardous waste shall be deemed to have a permit when the owner or operator complies with subsections (a)(1), (a)(2) and (a) (4) of this section and receives an acknowledgement from the Department authorizing operation of the TTU pursuant to the subsection (a)(3) of this section.

(1) The owner or operator of a TTU that treats hazardous waste shall submit, in person or by certified mail with return receipt requested, four (4) complete initial Transportable Treatment Unit Permit by Rule/Conditional Exemption Unit–Specific Notifications (DTSC Form 1199, (1/96)) for each TTU to the Department of Toxic Substances Control, Unified Program Section, 400 "P" Street, P.O. Box 806, Sacramento, California 95812–0806. The initial notifications shall be submitted a minimum of forty–five (45) days prior to beginning the first treatment of waste with the TTU. Upon good cause shown by the owner or operator, the Department shall shorten the notification period.

(2) Each notification required by subsection (a) (1) of this section shall be completed, dated and signed according to the requirements of Section 66270.11 as those requirements apply to permit applications and shall be submitted with all of the following:

(A) Owner, operator and unit–specific information including: the name of the person(s) which own(s) and/or operate(s) the TTU, if different, the physical address or legal description of the location of each person which owns and/or operates the TTU, the mailing address and telephone number of each person which owns or operates the TTU, if different, TTU owner and operator contact person(s) and telephone number(s), TTU owner or operator identification number and Board of Equalization account number, identification of the specific waste type(s) to be treated, TTU serial number, identification of the treatment process(es) to be used, and a description of how the treatment unit operates (i.e. continuous, batch, intermittent, etc.)

(B) Financial assurance certification forms as required by section 67450.13; and

(C) The certifications specified in sections 66265.191(a) and 66265.192(a), if applicable.

(D) A statement documenting any convictions, judgments, settlements, or orders resulting from any action by any local, State, or federal environmental or public health enforcement agency concerning the operation of the facility within the last three years, as the documents would be available under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Part 1 of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of the Civil Code);

(3) The Department, within thirty (30) calendar days of receipt of unit–specific notifications submitted pursuant to subsection (a)(1) of this section, shall acknowledge, in writing, receipt of the notifications. The Department shall, in conjunction with the acknowledgement, authorize operation of the TTU subject to the requirements and conditions specified in sections 67450.3, 67450.9(b) and 67450.9(c), deny authorization to operate under a permit by rule pursuant to section 67450.9(a) or notify the owner or operator that the notifications are incomplete or inaccurate. If the notifications are incomplete or inaccurate, the Department shall specify what additional information or correction is needed. The Department shall authorize or deny authorization to operate as specified in this subsection within thirty (30) calendar days of receipt of the requested information or corrected notifications. The Department shall reject the notifications of any owner or operator who fails to provide the information or correction requested in the acknowledgement within ten (10) days of receipt of the acknowledgement. Upon good cause shown by the owner or operator, the Department shall grant the owner or operator additional time to provide the information or correction requested. An owner or operator whose notifications are rejected may submit new initial notifications.

(4) Each TTU owner or operator who is required to submit an initial notification to the Department pursuant to subsection (a)(1) of this section shall pay the initial notification fee established by Health and Safety Code section 25205.14, for each such notification within thirty (30) days after the date the fee is assessed by the Board of Equalization as specified in Revenue and Taxation Code Section 43152.10. For purposes of fee assessment, each set of four (4) notifications required by subsection (a)(1) of this section shall be considered a single notification.

(b) The owner or operator of a FTU that treats hazardous waste shall be deemed to have a permit when the owner or operator complies with subsections (b)(1), if applicable, (b)(2), (b)(3) and (b)(5) of this section, and receives an acknowledgement from CUPA or authorized agency authorizing operation of the FTU pursuant to subsection (b)(4) of this section.

(1) The owner or operator of a FTU that treats hazardous waste on or before January 1, 1992 and who intends to continue the treatment under permit by rule after January 1, 1992 shall submit, in person or by certified mail with return receipt requested, a Fixed Treatment Unit Permit by Rule Initial Notification of Intent to Operate (DTSC Form 1772 (1/96)) to the Department at the address specified in subsection (a)(1) of this section. The Initial Notification of Intent to Operate shall be submitted by February 1, 1992 and shall contain the following information:

(A) Name, mailing address, and telephone number of the owner and operator;

(B) Facility name and address or legal description of the facility location, identification number and Board of Equalization account number;

(C) A description of the specific waste type(s) treated; and

(D) A description of the treatment process(es) used;

(2) The owner or operator of a FTU that treats hazardous waste shall submit, in person or by certified mail with return receipt requested, the Onsite Hazardous Waste Treatment Notification–Facility page, the Business Activities Page, and the Business Owner/Operator Page of the Unified Program Consolidated Form (x/99)), an alternative version or a computer generated facsimile as allowed pursuant to Title 27, CCR, sections 15610 and 15620 to the CUPA or authorized agency. The Onsite Hazardous Waste Treatment Notification–Facility Page, Business Activities Page, and the Business Owner/Operator Page of the Unified Program Consolidated Form (x/99)), an alternative version or a computer generated facsimile as allowed pursuant to Title 27, CCR, sections 15610 and 15620 shall be submitted by a minimum of sixty (60) days prior to beginning the first treatment of waste pursuant to a permit–by–rule. The Onsite Hazardous Waste Treatment Notification–Facility Page, the Business Activities Page, and the Business Owner/Operator Page of the Unified Program Consolidated Form (x/99)), an alternative version or a computer generated facsimile as allowed pursuant to Title 27, CCR, sections 15610 and 15620 shall contain the information required in sections 66270.13(a), 66270.13(c), 66270.13(d), 66270.13(f), 66270.13(g) and 66270.13(m), as those sections apply to permit applications, and all of the information specified in subsection (b)(3) of this section. Businesses may report this information electronically, if the CUPA or authorized agency agrees and the business complies with Title 27, CCR, section 15187.

(3) Each notification required by subsection (b)(2) of this section shall be completed, dated, and signed according to the requirements of section 66270.11 as those requirements apply to permit applications, and shall be submitted with all of the following:

(A) A certification signed by the owner or operator specifying the local authorities that have been notified of the intended operation. At a minimum, the owner or operator shall notify the agency operating the POTW, if the treatment results in discharge to a POTW, and any other agency that requires notification for the operation of the FTU(s) at that facility;

(B) Treatment facility information including: name, mailing address, and telephone number of each owner and operator, facility name, address or legal description of the facility location, facility identification number and Board of Equalization account number, facility contact person(s) and telephone number(s), FTU contact person(s) and telephone number(s), plot plan detailing where the hazardous waste treatment(s) will occur, identification of the specific waste type(s) to be treated, and a description of the treatment process(es) to be used;

(C) Documentation that the facility operator has notified the property owner, if different, of the operation of the FTU(s);

(D) Financial assurance certification forms as required by section 67450.13;

(E) The documentation specified in section 67450.7;

(F) A statement documenting any convictions, judgments, settlements, or orders resulting from any action by any local, State, or federal environmental or public health enforcement agency concerning the operation of the facility within the last three years, as the documents would be available under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Part 1 of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of the Civil Code);

(G) The Onsite Hazardous Waste Treatment Notification–Unit page of the Unified Program Consolidated Form (x/99)), an alternative version or a computer generated facsimile as allowed pursuant to Title 27, CCR, sections 15610 and 15620. The Onsite Hazardous Waste Treatment Notification–Unit page of the Unified Program Consolidated Form (x/99)), an alternative version or a computer generated facsimile as allowed pursuant to Title 27, CCR, sections 15610 and 15620 shall be completed, dated and signed according to the requirements of section 66270.11 as those requirements apply to permit applications and shall include the FTU serial number, identification of the waste treatment process(es) to be used, the quantity of influent waste, the quantity and disposition of treatment effluents or residuals, a description of how the treatment unit operates (i.e., continuous, batch, intermittent, etc.), the hours of operation of the treatment unit, identification of whether the unit is a tank or container, the basis for determining that a hazardous waste facility permit is not required under the federal act, and the certification specified in sections 66262.45(c), 66264.175(c), 66265.191(a) and 66265.192(a), if applicable. Businesses may report this information electronically, if the CUPA or authorized agency agrees and the business complies with Title 27, CCR, section 15187. For the purposes of the notification required under this subsection, if the owner or operator of the FTU is unable to complete the certifications required by sections 66264.175(c), 66265.191(a), or 66265.192(a) before April 1, 1993 because of a need to complete physical construction, then the owner or operator shall submit a schedule of compliance in writing, signed according to the requirements of section 66270.11, by April 1, 1993. Construction must be completed and the required certifications submitted to the Department on or before July 1, 1993 unless the owner or operator is granted a variance from this requirement pursuant to Health and Safety Code section 25143 on or before April 1, 1993. During construction persons treating hazardous waste in tanks must maintain compliance with section 66265.196. The schedule of compliance shall specify the following information:

1. The reasons why the owner or operator cannot comply with the certification requirements by April 1, 1993; and

2. The actions the owner or operator will take to obtain the required certifications and submit those certifications to the Department; and

3. A schedule setting forth dates for key actions such as executing contracts for services, obtaining local permits for construction activities, executing contracts for construction, and completion of physical construction.

(4) The Department, within forty–five (45) calendar days of receipt of a notification submitted pursuant to subsection (b)(2) of this section, shall acknowledge, in writing, receipt of the notification. The Department shall, in conjunction with the acknowledgement, authorize operation of the FTU subject to the requirements and conditions specified in sections 67450.3, 67450.7 and 67450.9(b) and 67450.9(c), deny authorization to operate under a permit by rule pursuant to section 67450.9(a) or notify the owner or operator that the notification is incomplete or inaccurate. If the notification is incomplete or inaccurate, the Department shall specify what additional information or correction is needed. The Department shall authorize or deny authorization to operate as specified in this subsection within forty–five (45) days of receipt of the requested information or corrected notification. The Department shall reject the notification of any owner or operator who fails to provide the information or correction requested in the acknowledgement within ten (10) days of receipt of the acknowledgement. Upon good cause shown by the owner or operator, the Department shall grant the owner or operator additional time to provide the information or correction requested. An owner or operator whose notification is rejected may submit a new initial notification.

(5) Each FTU owner or operator who is required to submit a notification to the Department pursuant to subsection (b)(1) of this section shall pay the notification fee established by Health and Safety Code section 25205.14 for each such notification within thirty (30) days after the date the fee is assessed by the Board of Equalization, except as provided in (b)(6) of this section, as specified in Revenue and Taxation Code Section 43152.10. For purposes of fee assessment, the Unit–Specific Notification(s) required by subsection (b)(3)(F) of this section shall be considered part of the Facility–Specific Notification required by subsection (b)(2) of this section.

NOTE: Authority cited: Sections 25150, 58004 and 58012, Health and Safety Code. Reference: Sections 25112.5, 25150, 25185.6, 25186, 25200, 25200.2, 25200.10, 25202.9, 25205.1, 25205.7 and 25205.14, Health and Safety Code.

HISTORY

1. Amendment filed 10–23–91; operative 1–1–92 (Register 92, No. 12).
2. Amendment of subsections (b)(2) and (b)(3)(H) and adoption of subsections (b)(3)(H)1.–3. filed 3–26–92 as an emergency; operative 3–30–92 (Register 92, No. 18). A Certificate of Compliance must be transmitted to OAL 7–30–92 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsections (b)(2), (b)(3)(H), and (b)(6) filed 6–16–92 as an emergency; operative 6–16–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL 10–14–92 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsections (b)(2), (b)(3)(H), and (b)(6) refiled 10–13–92 as an emergency; operative 10–12–92 (Register 92, No. 42). A Certificate of Compliance must be transmitted to OAL 2–11–93 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsections (b)(2), (b)(3)(H), (b)(3)(H)1. and (b)(6), and new subsection (b)(7) filed 2–9–93 as an emergency; operative 2–9–93 (Register 93, No. 7). A Certificate of Compliance must be transmitted to OAL 6–9–93 or emergency language will be repealed by operation of law on the following day.
6. Amendment of subsections (b)(2), (b)(3)(H), (b)(3)(H)1, and (b)(6) refiled 6–8–93 as an emergency; operative 6–8–93 (Register 93, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–6–93 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 6–8–93 order including amendment of section and NOTE transmitted to OAL 10–5–93 and filed 11–18–93 (Register 93, No. 47).
8. Change without regulatory effect amending section and NOTE filed 3–26–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 13).
9. Amendment of subsections (b), (b)(2), (b)(3)(A) and (b)(3)(G) and repealer of subsection (b)(6) filed 1–8–99 as an emergency; operative 1–8–99 (Register 99, No. 2). A Certificate of Compliance must be transmitted to OAL by 5–10–99 or emergency language will be repealed by operation of law on the following day.
10. Amendment of subsections (b), (b)(2), (b)(3)(A) and (b)(3)(G) refiled 5–7–99 as an emergency; operative 5–7–99 (Register 99, No. 19). A Certificate of Compliance must be transmitted to OAL by 9–7–99 or emergency language will be repealed by operation of law on the following day.

11. Amendment of subsections (b), (b)(2), (b)(3)(A) and (b)(3)(G) refiled 9–3–99 as an emergency; operative 9–3–99 (Register 99, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–3–2000 or emergency language will be repealed by operation of law on the following day.

12. Amendment of subsections (b), (b)(2), (b)(3)(A) and (b)(3)(G) refiled 12–29–99 as an emergency; operative 1–3–2000 (Register 99, No. 53). A Certificate of Compliance must be transmitted to OAL by 5–2–2000 or emergency language will be repealed by operation of law on the following day.

13. Certificate of Compliance as to 12–29–99 order transmitted to OAL 2–29–2000 and filed 4–11–2000 (Register 2000, No. 15).

§ 67450.3. Requirements Applicable to Fixed and Transportable Treatment Units Deemed to Have a Permit by Rule.

(a) The owner or operator of a transportable treatment unit (TTU) deemed to hold a permit by rule pursuant to section 67450.2(a) shall do all of the following:

(1) Submit, in person or by certified mail with return receipt requested, four (4) complete annual Transportable Treatment Unit (TTU) Permit by Rule/Conditional Exemption Unit–Specific Notifications (DTSC Form 1199, (1/96)) to the Department at the address specified in section 67450.2(a)(1), by March 1 of each year following the year in which the initial unit–specific notifications required by section 67450.2(a)(1) are submitted unless the Department notifies the owner or operator, in writing, of an alternate submittal date. Each annual notification shall be completed, dated and signed according to the requirements of section 66270.11 as those requirements apply to permit applications and shall contain all of the information specified in section 67450.2(a)(2).

(2) Submit, in person or by certified mail with return receipt requested, four (4) complete amended TTU Permit by Rule/Conditional Exemption Unit–Specific Notifications (DTSC Form 1197, (1/96)) to the Department at the address specified in section 67450.2(a)(1), within thirty (30) days of any change to the information contained in the most recent unit–specific notification. Each amended notification shall be completed, dated and signed according to the requirements of section 66270.11 as those requirements apply to permit applications and shall contain all of the information specified in section 67450.2(a)(2).

(3) Submit, in person or by certified mail with return receipt requested, a Transportable Treatment Unit (TTU) Permit by Rule Site–Specific Notification (DTSC Form 1197 (1/96)) to the Department at the address specified in section 67450.2(a)(1) for each site where the TTU will perform treatment. The site–specific notification shall be submitted at least twenty–one (21) days prior to each site visit. Upon good cause shown by the owner or operator, the Department shall shorten the notification period. Each site–specific notification shall be completed, dated and signed according to the requirements of section 66270.11 as those requirements apply to permit applications, and shall contain all of the following:

(A) The name, physical address and telephone number of the owner and operator, if different, the mailing address of the owner and operator, if different, the TTU serial number, owner or operator identification number and Board of Equalization account number, site or facility name, address or legal description of the site or facility location, site or facility identification number, site or facility contact person(s) and telephone number(s), the information required by section 66270.13(c), identification of the influent waste(s), identification of the type of business generating waste(s) to be treated by the TTU, a plot plan detailing where the hazardous waste treatment will occur, the anticipated time periods(s) the unit will be at the site or facility, the anticipated date(s) and hour(s) the unit will be in operation, a description of the hazardous waste(s) to be treated, and an estimate of the quantity or volume of hazardous waste(s) to be treated, an estimate of the quantity or volume of treatment effluents or residuals that will be discharged to a POTW, an estimate of the volume or quantity of treatment effluents or residuals that will not be discharged to a POTW, an explanation of how all treatment effluents or residuals will be managed, and the basis for determining that a hazardous waste facility permit is not required under the federal act.

(B) A certification, signed by the owner or operator, specifying the local authorities that have been notified of the intended date(s) of operation. At a minimum, the owner or operator shall notify the Certified Unified Program Agency (CUPA) or authorized agency, the agency operating the POTW, if the treatment results in discharge to a POTW, and any other agency that requires notification for the operation of the TTU at that site or facility;

(C) A copy of any local Air District permit and other permits required for the operation of the TTU;

(D) Documentation that the property owner, if different from the facility operator, has been notified of the operation of the TTU;

(E) The certifications specified in sections 66262.45 and 66264.175(c), if applicable; and

(F) The documentation specified in section 67450.7, if applicable.

(4) Submit, in person or by certified mail with return receipt requested, an amended TTU Permit by Rule Site–Specific Notification (DTSC Form 1197, (1/96)) to the Department at the address specified in section 67450.2(a)(1) whenever there is any change to information contained in the preceding Site–Specific Notification for the site or facility where the TTU is operating or proposing to operate. An amended notification shall not be required when the change to information contained in a preceding notification is limited to a change in the period of operation specified pursuant to subsection (a)(3)(A) of this section and the Department has granted an extension pursuant to subsection (a)(8)(A) or (a)(8)(B) of this section. Each amended notification submitted pursuant to this subsection shall be completed, dated and signed according to the requirements of section 66270.11 as those requirements apply to permit applications and shall contain all of the information specified in subsection (a)(3) of this section.

(5) Submit the notification fee required by Health and Safety Code section 25205.14. Each TTU owner or operator who is required to submit a notification to the Department pursuant to this section shall pay 100 percent of the initial notification fee established by Health and Safety Code section 25205.14, for each notification required pursuant to subsection (a)(1) of this section within thirty (30) days after the date the fee is assessed by the Board of Equalization as specified in Revenue and Taxation Code section 43152.10. For purposes of fee assessment each set of notifications required by subsections (a)(1) and (a)(2) of this section shall be considered a single notification.

(6) Restrict treatment to those processes and wastes listed in section 67450.11;

(7) Discharge any effluent or treatment residual as follows:

(A) To a publicly owned treatment works (POTW) in accordance with all applicable industrial waste discharge requirements issued by the agency operating the POTW. Hazardous wastes shall not be discharged to a POTW unless the POTW is authorized to receive the hazardous waste and the discharge of hazardous waste is specifically approved in writing by the agency operating the POTW. The facility owner or operator shall inform the agency operating the POTW of the time, volume, content, characteristics and point of the discharge; or

(B) In accordance with waste discharge requirements issued by a Regional Water Quality Control Board; or a National Pollutant Discharge Elimination System (NPDES) permit; or

(C) To a treatment, storage or disposal facility authorized to receive the waste; or

(D) In accordance with any other applicable state law allowing alternative disposition of the effluent or treatment residual.

(8) Treat only waste which is generated onsite. A residual material from treatment of a hazardous waste generated offsite is not a waste that has been generated onsite. Limit the operation of the TTU as specified in subsection (a)(8)(A) or subsection (a)(8)(B) of this section.

(A) TTUs may be stationed and operated at an on–site facility, or at an off–site facility if the following conditions are met:

1. TTUs shall not be operated at any single on–site or off–site facility for more than one year. Upon good cause shown by the owner or operator, the Department shall grant up to two extensions, of six months dura-

tion, to the period of operation specified pursuant to subsection (a)(3)(A) of this section.

2. A TTU operating under a permit by rule shall only treat waste at an off–site facility if that off–site facility has a permit or other grant of authorization to manage the same wastestream with the treatment process to be used by the TTU.

3. When operating at an off–site facility, the total processing rate for any wastestream, including all approved fixed units and all TTUs, shall not exceed, at any time, the capacity stated in the off–site facility's permit or other grant of authorization.

(B) A TTU may be stationed and operated at a hazardous substance release site or on–site or off–site facility as part of a site remediation, corrective action or closure activity for a maximum of one (1) calendar year. Upon good cause shown by the owner or operator, the Department shall grant up to two extensions, of six months duration each, to the period of operation specified pursuant to subsection (a)(3)(A) of this section.

(9) Permanently mark the exterior of each TTU with the name of the person which owns or operates the TTU, owner or operator identification number and an individual serial number;

(10) Maintain the documents specified below at the site or facility where the TTU is operating. The owner or operator shall make these documents available upon demand at the site or facility to any representative of the Department, the U.S. Environmental Protection Agency (EPA) or a local governmental agency. A copy of these documents shall be delivered in person or by certified mail with return receipt requested to the Department when requested in writing by the Department. Any request from the Department shall specify the documents which are required, where and how to submit the required documents and the date by which the documents shall be submitted. The documents include:

(A) A waste analysis plan for the treatment operation as specified in section 66265.13(b);

(B) A written inspection schedule as specified in section 66265.15(b);

(C) Training documents as specified in section 66265.16(d)(3) as they pertain to the operator(s);

(D) A contingency plan which contains the information specified in section 66265.52;

(E) A copy of the most recent Unit–Specific Notification submitted as required by sections 67450.2(a)(1), 67450.3(a)(1) and 67450.3(a)(2), a copy of the most recent acknowledgement received from the Department pursuant to sections 67450.2(a)(3) and 67450.3(b), a copy of the most recent Site–Specific Notification as specified in sections 67450.3(a)(3) and 67450.3(a)(4), and a copy of the most recent corresponding acknowledgement received from the Department pursuant to section 67450.3(b);

(F) A copy of the closure plan required by subsection (a)(13)(B) of this section;

(G) A copy of documents related to the environmental investigation and any cleanup, abatement or other necessary remedial action taken pursuant to section 67450.7, if applicable.

(H) Documentation of any convictions, judgments, settlements, or orders resulting from any action by any local, State, or federal environmental or public health enforcement agency concerning the operation of the facility within the last three years, as the documents would be available under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Part 1 of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of the Civil Code);

(11) Maintain compliance with sections 66264.175, 66265.148, 67450.7, 67450.13 and and with the following regulations in chapter 15 of this division, including those referring to permit applications:

(A) Article 2. General Facility Standards (except for section 66265.25);

(B) Article 3. Preparedness and Prevention;

(C) Article 4. Contingency Plan and Emergency Procedures;

(D) Article 5. Manifest System, Recordkeeping and Reporting (except for sections 66265.73(b)(2), 66265.73(b)(6), 66265.73(b)(7), 66265.73(b)(15) and 66265.75);

(E) Article 9. Use and Management of Containers;

(F) Article 10. Tank Systems (except that the contingent plan for post–closure required by section 66265.197(c)(2) shall be maintained with the closure plan required by subsection (a)(13)(B) of this section);

(G) Article 16. Thermal Treatment;

(H) Article 17. Chemical, Physical, and Biological Treatment.

(12) Prepare and submit an annual report to the Department when requested by the Department. The annual report shall be delivered in person or by certified mail with return receipt requested to the Department when requested in writing by the Department. The request from the Department shall specify where and how to submit the annual report and the date by which the annual report shall be submitted. The report shall be dated, and signed according to the requirements of section 66270.11 as those requirements apply to permit applications, and shall include the following information for each site or facility where treatment was performed during the calendar year preceding the Department's request:

(A) The serial number(s) of the TTU(s) involved in the treatment;

(B) The physical and mailing address of the person which owns or operates the TTU(s) and the TTU owner's or operator's identification number;

(C) The name, title and phone number of each TTU contact person;

(D) The name and address or legal description of each site or facility;

(E) The site or facility identification number(s), when applicable;

(F) The number of days each TTU was operated;

(G) The quantity of hazardous waste(s) treated by each TTU;

(H) The composition and hazardous characteristics of the influent hazardous waste(s);

(I) The treatment method(s) used for each hazardous waste treated by each TTU;

(J) The quantity, composition and hazardous characteristic(s) of any treatment effluent or residual discharged from each TTU to a POTW, if applicable; and

(K) The quantity, composition, hazardous characteristic(s) and disposition of any TTU treatment effluent or residual that was not discharged to a POTW, if applicable.

(13) Maintain compliance with the following requirements regarding closure:

(A) Sections 66264.178, 66265.111(a) and 66265.111(b), in the same manner as those sections apply to facilities and section 66265.114;

(B) The TTU owner or operator shall have a written closure plan. The closure plan shall include:

1. A description of how and when each TTU will be closed. The description shall identify the maximum extent of the operation during the life of the TTU(s), and how the applicable requirements of sections 66264.178, 66265.114, 66265.197 and 66265.404 will be met;

2. A description of the steps needed to decontaminate the treatment equipment during closure; and

3. An estimate of the expected year of closure and a schedule for final closure. The schedule for final closure shall include, at a minimum, the total time required to close the TTU(s).

(C) The TTU owner or operator shall amend the closure plan at any time during the active life of the TTU(s) (the active life of a TTU is that period during which wastes are periodically treated) when changes in operating plans or TTU design affect the closure plan, or whenever there is a change in the expected year of closure.

(D) Within ninety (90) days after treating the final volume of hazardous waste, the TTU owner or operator shall treat or remove from the TTU(s), all hazardous waste in accordance with the closure plan and the applicable requirements of this chapter unless the owner or operator demonstrates to the Department that the activities required to treat and/or remove all hazardous waste from the TTU(s) will require longer than ninety (90) days.

(E) The TTU owner or operator shall complete closure activities in accordance with the closure plan within 180 days after treating the final volume of hazardous waste unless the owner or operator demonstrates to the Department that the activities required to complete the closure will require longer than 180 days to complete.

(F) The TTU owner or operator shall notify the Department, the Certified Unified Program Agency (CUPA) or if there is no CUPA, then the officer or agency authorized pursuant to subdivision (f) of Health and Safety Code Section 25404.3 to implement and enforce the requirements of Health and Safety Code Section 25404(c)(1), and any other agencies having jurisdiction over the closure project at least fifteen (15) days prior to completion of closure; and

(G) The TTU owner or operator shall remain in compliance with the applicable requirements of this section until the owner or operator submits to the Department a certification signed by the owner or operator and by an independent, professional engineer registered in California, that closure has been completed in accordance with the closure plan and that the closure plan meets or exceeds the applicable requirements of this chapter.

(14) If treatment will be conducted in containers, the containment requirements of section 66264.175 applicable to transfer and storage areas shall be complied with for areas where treatment occurs.

(b) The Department, within thirty (30) calendar days of receipt of an annual or amended notification submitted pursuant to subsection (a)(1) or (a)(2) of this section, or within ten (10) calendar days of receipt of a site–specific notification submitted pursuant to subsection (a)(3) or (a)(4) of this section, shall acknowledge, in writing, receipt of the notification. The Department shall, in conjunction with the acknowledgement, authorize or reauthorize operation of the TTU subject to the requirements of this section and sections 67450.7, 67450.9(b) and 67450.9(c), terminate or deny authorization or reauthorization to operate under a permit by rule pursuant to section 67450.9(a) or notify the owner or operator that the notification is incomplete or inaccurate. If the notification is incomplete or inaccurate, the Department shall specify what additional information or correction is needed. The Department shall authorize or reauthorize, or deny authorization or reauthorization to operate as specified in this subsection within thirty (30) calendar days of receipt of the requested information or correction for notifications submitted pursuant to subsections (a)(1) and (a)(2) of this section, and within ten (10) calendar days of receipt of the requested information or correction for notifications submitted pursuant to subsections (a)(3) or (a)(4) of this section. The Department shall reject the notification of any owner or operator who fails to provide the information or correction requested within ten (10) days of receipt of the acknowledgement. Upon good cause shown by the owner or operator, the Department shall grant the owner or operator additional time to provide the information or correction requested. An owner or operator whose notification is rejected may submit a new notification.

(c) The owner or operator of a fixed treatment unit (FTU) deemed to hold a permit by rule pursuant to section 67450.2(b) shall do all of the following:

(1) Submit, in person or by certified mail with return receipt requested, the annual Onsite Hazardous Waste Treatment Notification page, Business Activities Page, and the Business Owner/Operator Page of the Unified Program Consolidated Form (x/99), an alternative version or a computer generated facsimile as allowed pursuant to Title 27, CCR, Sections 15610 and 15620 to CUPA or authorized agency, by January 1, 1994, or by January 1 of each year following the first treatment of waste with the FTU, and by January 1 of each subsequent year unless CUPA or authorized agency notifies the owner or operator, in writing, of an alternate submittal date. Each annual notification shall be completed, dated and signed according to the requirements of Section 66270.11 as those requirements apply to permit applications and, except as provided by subsection (c)(9) of this section, shall contain all of the information specified in Section 67450.2(b)(3). Businesses may report this information electronically, if the CUPA or authorized agency agrees and the business complies with Title 27, CCR, Section 15187.

(2) Submit, in person or by certified mail with return receipt requested, an amended Onsite Hazardous Waste Treatment Notification page, Business Activities Page, and the Business Owner/Operator Page of the Unified Program Consolidated Form (x/99), an alternative version or a computer generated facsimile as allowed pursuant to Title 27, CCR, Sections 15610 and 15620 to CUPA or authorized agency, within thirty (30) days of any change to the information contained in the most recent notification. Each amended notification shall be completed, dated and signed according to the requirements of section 66270.11 as those requirements apply to permit applications and, except as provided by subsection (c)(9) of this section, shall contain all of the information specified in section 67450.2(b)(3). Businesses may report this information electronically, if the CUPA or authorized agency agrees and Title 27, CCR, Section 15187 is complied with.

(3) Submit the notification fee required by Health and Safety Code section 25205.14(a). Each FTU owner or operator who is required to submit a notification to the Department pursuant to this section shall pay 100 percent of the notification fee established by Health and Safety Code section 25205.14(a) for each notification required by subsection (c)(1) of this section within thirty (30) days after the date the fee is assessed by the Board of Equalization, except as provided in section 67450.2(b)(7), as specified in Revenue and Taxation Code section 43152.10.

(4) Restrict treatment to those processes and wastes listed in section 67450.11;

(5) Discharge any effluent or treatment residual as follows:

(A) To a publicly–owned treatment works (POTW) in accordance with all applicable industrial waste discharge requirements issued by the agency operating the POTW. Hazardous waste shall not be discharged to a POTW unless the POTW is authorized to receive the hazardous waste and the discharge of the hazardous waste is specifically approved in writing by the agency operating the POTW. The FTU owner or operator shall inform the agency operating the POTW of the time, volume, content, characteristics and point of the discharge; or

(B) In accordance with waste discharge requirements issued by a Regional Water Quality Control Board or a National Pollutant Discharge Elimination System (NPDES) permit; or

(C) To a treatment, storage or disposal facility authorized to receive the waste; or

(D) In accordance with any other applicable state law allowing alternative disposition of the effluent or treatment residual.

(6) Operate the FTU at the same facility where the waste being treated is generated. A facility which accepts waste which is not generated on–site for treatment, storage or disposal is not eligible to operate a FTU pursuant to a permit by rule.

(7) Permanently mark the exterior of each FTU with the name of the person which owns or operates the FTU, facility identification number and an individual serial number.

(8) Maintain the documents specified below at the facility where the FTU is operating. The owner or operator shall make these documents available upon demand at the facility to any representative of the CUPA or authorized agency, Department, the EPA or a local governmental agency. A copy of these documents shall be delivered in person or by certified mail with return receipt requested to the Department, CUPA or authorized agency when requested in writing by the Department, CUPA or authorized agency. The request from the Department, CUPA or authorized agency shall specify the documents which are required, where and how to submit the required documents and the date by which the documents shall be submitted. The documents include:

(A) A waste analysis plan for the treatment operation as specified in section 66265.13(b)

(B) A written inspection schedule as specified in section 66265.15(b);

(C) Training documents as specified in section 66265.16(d)(3);

(D) A contingency plan which contains the information specified in section 66265.52;

(E) A copy of the most recent notification submitted as required by sections 67450.2(b)(2), 67450.3(c)(1) and 67450.3(c)(2) and a copy of the most recent acknowledgement received from the Department, CUPA or authorized agency pursuant to sections 67450.2(b)(2) and 67450.3(d);

(F) A copy of any local Air District permit and other permits required for the operation of the FTU;

(G) A copy of the closure plan required by subsection (c)(11)(B) of this section;

(H) A copy of documents related to the environmental investigation and any cleanup, abatement or other necessary remedial action taken pursuant to section 67450.7;

(I) Documentation of any convictions, judgments, settlements, or orders resulting from any action by any local, State, or federal environmental or public health enforcement agency concerning the operation of the facility within the last three years, as the documents would be available under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Part 1 of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of the Civil Code);

(9) Maintain compliance with sections 66264.175, 66265.148, 67450.7, 67450.13, and 66265.404 and with the following regulations in chapter 15 of this division, including those referring to permit applications:

(A) Article 2. General Facility Standards;

(B) Article 3. Preparedness and Prevention;

(C) Article 4. Contingency Plan and Emergency Procedures;

(D) Article 5. Manifest System, Recordkeeping and Reporting (except sections 66265.73(b)(2), 66265.73(b)(6), 66265.73(b)(7), 66265.73(b)(15) and 66265.75);

(E) Article 9. Use and Management of Containers;

(F) Article 10. Tank Systems (except that the contingent plan for post–closure required by section 66265.197(c)(2) shall be maintained with the closure plan required by subsection (b)(12)(B) of this section);

(G) Article 16. Thermal Treatment;

(H) Article 17. Chemical, Physical, and Biological Treatment.

(10) Prepare and submit an annual report to CUPA or authorized agency when requested by CUPA or authorized agency. The annual report shall be delivered in person or by certified mail with return receipt requested to CUPA or authorized agency when requested in writing by CUPA or authorized agency. The request from CUPA or authorized agency shall specify where and how to submit the annual report and the date by which the annual report shall be submitted. The report shall be dated, and signed according to the requirements of section 66270.11 as those requirements apply to permit applications, and shall include the following information for each FTU which performed treatment during the calendar year preceding CUPA or authorized agency's request:

(A) The serial number(s) of the FTU(s) involved in treatment;

(B) The physical and mailing address of the business entity which owns or operates the FTU(s);

(C) The name, title and telephone number of each FTU contact person;

(D) The name and address or legal description of the facility;

(E) The facility identification number;

(F) The number of days each FTU was operated;

(G) The quantity of hazardous waste(s) treated by each FTU;

(H) The composition and hazardous characteristics of the influent hazardous waste(s);

(I) The treatment method(s) used for each hazardous waste treated by each FTU;

(J) The quantity, composition and hazardous characteristic(s) of any treatment effluent or residual discharged from each FTU to a POTW, if applicable; and

(K) The quantity, composition, hazardous characteristic(s) and disposition of any FTU treatment effluent or residual that was not discharged to a POTW, if applicable.

(11) Maintain compliance with the following requirements regarding closure:

(A) Sections 66264.178, 66265.111(a) and 66265.111(b), in the same manner as those sections apply to facilities and section 66265.114;

(B) The FTU owner or operator shall have a written closure plan. The closure plan shall include:

1. A description of how and when each FTU will be closed. The description shall identify the maximum extent of the operation during the life of the FTU(s), and how the applicable requirements of sections 66264.178, 66265.114, 66265.197(a), 66265.197(b), (c)(1) and (c)(2) and 66265.404 will be met;

2. An estimate of the maximum inventory of waste in storage and in treatment at any time during the operation of the FTU(s) at the facility;

3. A description of the steps needed to decontaminate the treatment equipment during closure; and

4. An estimate of the expected year of closure and a schedule for final closure. The schedule for final closure shall include, at a minimum, the total time required to close each FTU.

(C) The FTU owner or operator shall maintain the closure plan in compliance with section 66265.112(c);

(D) Within ninety (90) days after treating the final volume of hazardous waste, the FTU owner or operator shall treat, remove from the facility, or dispose of on–site, all hazardous waste in accordance with the closure plan and the applicable requirements of this chapter unless the owner or operator demonstrates to CUPA or authorized agency that the activities required to complete the closure will require longer than ninety (90) days, or the FTU has the capacity to treat additional wastes, or there is a reasonable likelihood that a person other than the owner or operator will recommence operation of the FTU(s), and closure of the FTU(s) would be incompatible with the operation of the facility, and the owner or operator has taken and will continue to take all steps necessary to prevent threats to human health and the environment;

(E) The FTU owner or operator shall complete closure activities in accordance with the closure plan within 180 days after treating the final volume of hazardous waste unless the owner or operator demonstrates to CUPA or authorized agency that the activities required to complete the closure will require longer than 180 days to complete, or the FTU has the capacity to treat additional wastes, or there is a reasonable likelihood that a person other than the owner or operator will recommence operation of the FTU(s), and closure of the FTU(s) would be incompatible with the operation of the facility, and the owner or operator has taken and will continue to take all steps necessary to prevent threats to human health and the environment;

(F) The FTU owner or operator shall notify the CUPA or authorized agency and any other agencies having jurisdiction over the closure project at least fifteen (15) days prior to completion of closure; and

(G) The FTU owner or operator shall remain in compliance with all applicable requirements of this section until the owner or operator submits to CUPA or authorized agency a certification signed by the owner or operator and by an independent, professional engineer registered in California, that closure has been completed in accordance with the closure plan and that the closure plan meets or exceeds the applicable requirements of this chapter.

(12) If treatment will be conducted in containers, the containment requirements of sections 66264.175 applicable to transfer and storage areas shall be complied with for areas where treatment occurs.

(d) CUPA or authorized agency, within forty–five (45) calendar days of receipt of an annual or amended notification submitted pursuant to subsection (c)(1) or (c)(2) of this section, shall acknowledge in writing receipt of the notification. CUPA or authorized agency shall, in conjunction with the acknowledgement, reauthorize operation of the FTU subject to the requirements of this section and sections 67450.7 and 67450.9(b) and (c), terminate or deny reauthorization to operate under permit by rule pursuant to section 67450.9(a) or notify the owner or operator that the notification is incomplete or inaccurate. If the notification is incomplete or inaccurate, CUPA or authorized agency shall specify what additional information or correction is needed. CUPA or authorized agency shall reauthorize or deny reauthorization to operate as specified in this subsection within forty–five (45) calendar days of receipt of the requested information or corrected notifications. CUPA or authorized agency shall reject the notification of any owner or operator who fails to provide the information or correction requested within ten (10) days of receipt of the acknowledgement. Upon good cause shown by the owner or operator, CUPA or authorized agency shall grant the owner or operator additional time to provide the information or correction requested. An owner or operator whose notification is rejected may submit a new notification.

NOTE: Authority cited: Sections 25150, 58004 and 58012, Health and Safety Code. Reference: Sections 25112.5, 25150, 25185.6, 25186, 25200, 25200.2, 25202.9, 25205.1 and 25245.4, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Renumbering of former section 67450.3 to section 67450.11 and new section filed 10–23–91; operative 1–1–92 (Register 92, No. 12).
3. Amendment of subsection (c)(1) filed 6–16–92 as an emergency; operative 6–16–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL 10–14–92 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsection (c)(1) refiled 10–13–92 as an emergency; operative 10–12–92 (Register 92, No. 42). A Certificate of Compliance must be transmitted to OAL 2–11–93 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsections (c)(1) and (c)(3) filed 2–9–93 as an emergency; operative 2–9–93 (Register 93, No. 7). A Certificate of Compliance must be transmitted to OAL 6–9–93 or emergency language will be repealed by operation of law on the following day.
6. Amendment of subsections (c)(1) and (c)(3) refiled 6–8–93 as an emergency; operative 6–8–93 (Register 93, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–6–93 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 6–8–93 order including amendment of section and NOTE transmitted to OAL 10–5–93 and filed 11–18–93 (Register 93, No. 47).
8. Editorial correction of subsection (b) (Register 95, No. 50).
9. Amendment of subsection (c)(11)(B)1. filed 2–13–96 as an emergency; operative 2–13–96 (Register 96, No. 7). A Certificate of Compliance must be transmitted to OAL by 6–12–96 or emergency language will be repealed by operation of law on the following day.
10. Reinstatement of subsection (c)(11)(B)1. as it existed prior to emergency amendment filed 2–13–96 by operation of Government Code section 11346.1(f) (Register 96, No. 25).
11. Amendment of subsection (c)(11)(B)1. filed 6–17–96 as an emergency; operative 6–17–96 (Register 96, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–15–96 or emergency language will be repealed by operation of law on the following day.
12. Amendment of subsection (c)(11)(B)1. refiled 10–15–96 as an emergency; operative 10–15–96 (Register 96, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–97 or emergency language will be repealed by operation of law on the following day.
13. Reinstatement of section as it existed prior to 10–15–96 emergency amendment by operation of Government Code section 11346.1(f) (Register 97, No. 9).
14. Editorial correction of HISTORY 12 (Register 97, No. 9).
15. Amendment of subsection (c)(11)(B)1. filed 2–24–97 as an emergency; operative 2–24–97 (Register 97, No. 9). A Certificate of Compliance must be transmitted to OAL by 6–24–97 or emergency language will be repealed by operation of law on the following day.
16. Change without regulatory effect amending section and NOTE filed 3–26–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 13).
17. Certificate of Compliance as to 2–24–97 order, including amendment of NOTE, transmitted to OAL 6–24–97 and filed 8–6–97 (Register 97, No. 32).
18. Amendment filed 1–8–99 as an emergency; operative 1–8–99 (Register 99, No. 2). A Certificate of Compliance must be transmitted to OAL by 5–10–99 or emergency language will be repealed by operation of law on the following day.
19. Amendment refiled 5–7–99 as an emergency; operative 5–7–99 (Register 99, No. 19). A Certificate of Compliance must be transmitted to OAL by 9–7–99 or emergency language will be repealed by operation of law on the following day.
20. Amendment refiled 9–3–99 as an emergency; operative 9–3–99 (Register 99, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–3–2000 or emergency language will be repealed by operation of law on the following day.
21. Amendment refiled 12–29–99 as an emergency; operative 1–3–2000 (Register 99, No. 53). A Certificate of Compliance must be transmitted to OAL by 5–2–2000 or emergency language will be repealed by operation of law on the following day.
22. Certificate of Compliance as to 12–29–99 order transmitted to OAL 2–29–2000 and filed 4–11–2000 (Register 2000, No. 15).
23. Change without regulatory effect amending subsection (c)(11)(D) filed 6–7–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 24).

§ 67450.4. Requirements Applicable to Temporary Household Hazardous Waste Collection Facilities Deemed to Have a Permit by Rule.

(a) The operator of a temporary household hazardous waste collection facility (THHWCF) deemed to have a permit by rule pursuant to Section 66270.60(d)(5) may accept only the classifications of wastes listed in subsections (a)(1) through (a)(4) of this section. The operator of a THHWCF may choose not to accept any given classification of waste (such as but not limited to compressed gas cylinders, explosives, infectious or radioactive wastes). If wastes are accepted which, in addition to being regulated as hazardous wastes, are otherwise regulated, they must be managed in accordance with the regulations of all appropriate federal, state and local agencies.

(1) Household hazardous waste;

(2) Pursuant to Health and Safety Code Section 25158.1(a), hazardous waste that is generated by small quantity commercial sources;

(3) Extremely hazardous wastes if they are managed in accordance with the requirements of Chapter 43 of this division. Additionally, participating small quantity commercial source generators must themselves comply with the requirements of Chapters 12, 13 and 43 of this division for the transport of extremely hazardous wastes to the THHWCF; and

(4) Unidentified household hazardous wastes if upon receipt they are analyzed to determine the hazardous characteristics of the waste for subsequent sorting and packaging as appropriate.

(b) The operator of a THHWCF shall prepare, maintain at the facility, and operate in compliance with an operation plan as specified below. The operator shall make the operation plan available upon demand to any representative of the Department, the U.S. EPA or local governmental agency including the CUPA or authorized agency. A copy of the operation plan shall also be delivered in person or by certified mail with return receipt requested to CUPA or authorized agency when requested by CUPA or authorized agency. Any request from CUPA or authorized agency shall specify the documents which are required, where and how to submit the required documents, and the date by which the documents shall be submitted. The operation plan shall include:

(1) a description of the location and the address of the THHWCF;

(2) a copy of a map showing the general THHWCF perimeters and traffic pattern. The map shall include all of the information as specified in Sections 66270.14(b)(18)(A), (F), (G), (H), (J) and (L);

(3) a list of the days and hours of operation including alternate dates as appropriate;

(4) the name, address and identification number of the THHWCF;

(5) the name, address and telephone number of the contact person for the THHWCF,

(6) the agency or contractor which will be providing the site supervisor(s) for the THHWCF(s). The name(s) of the individual site supervisor(s) for each THHWCF session must be recorded in the operation plan on or before the date of that session.

(7) a description of the length of time the waste will be held at the THHWCF;

(8) a description of the procedure to be followed to ensure that the facility will be managed in an environmentally safe manner in the event of inclement weather;

(9) if wastes from small quantity commercial sources will be accepted, a description of the measures which will be taken to handle the acceptance of the small quantity commercial source wastes separately from the household wastes. These measures shall include:

(A) directing small quantity commercial source generators to a receiving area of the THHWCF separate from the receiving area for household waste, or

(B) limiting small quantity commercial source waste acceptance to different hours than household waste acceptance.

(10) a description of the measures to be taken to ensure that all waste is removed from the facility and all contaminated facility structures, equipment and soil are either decontaminated or removed following termination of the THHWCF;

(11) training documents as specified in Section 66264.16(d);

(12) a contingency plan which contains the information specified in Section 66264.52. Additionally, the contingency plan shall include identification of an offsite contingency storage location where wastes could temporarily be stored pending resolution of any delay in final waste acceptance by the receiving facility identified on the manifest(s);

(13) a copy of the documents as specified in Section 66264.17(c) if applicable;

(14) if solvents, oil–based paints or gasoline will be bulked at the THHWCF, a copy of the written protocol approved by the local fire and air pollution prevention agencies in which the THHWCF is located;

(15) copies of all local permits obtained for the operation of the facility;

(16) a copy of the written agreement between the property owner and the operator or the THHWCF; and

(17) if the facility is to be managed by a contractor, a copy of the written agreement between the contractor and the operator of the THHWCF.

(c) The operator of a THHWCF shall maintain compliance with Sections 66264.16 and 66264.17 and the following regulations:

(1) Chapter 12. Requirements for Generators of Hazardous Waste;

(2) Chapter 14, Article 3. Preparedness and Prevention; and

(3) Chapter 14, Article 4. Contingency Plan and Emergency Procedures.

(d) The operator of a THHWCF shall operate the THHWCF in a location that:

(1) is clearly marked to control public access;

(2) has a buffer zone which has the written approval of the appropriate local agencies;

(3) is large enough to accommodate all of the necessary equipment, personnel and anticipated number of vehicles for safe operation;

(4) is paved with asphalt or concrete in good repair. Additionally, all waste handling areas (with the exception of traffic lanes) must be covered with contiguous plastic sheeting of at least 6 mil thickness. Any punctured or torn plastic must be repaired or replaced immediately.

(5) has a physical barrier such as cones, tape or tables to delineate the perimeter of the handling and storage areas;

(6) has an area(s) or structure(s) that has the written approval of the appropriate local agencies to store all containers holding ignitable and/or reactive waste;

(7) has a canopy or other roof structure, when necessary, to prevent exposure to excessive heat or precipitation, that covers waste handling area(s) designated for sorting, bulking and packaging;

(8) has signs posted warning that the receiving, handling and storage areas contain hazardous waste and with the legend "Danger! Hazardous Waste Area—Unauthorized Personnel Keep Out". Additionally, signs shall be posted that prohibit food, beverages and smoking in the receiving, handling and storage areas. All signs shall be:

(A) in English and any other language predominant in the area surrounding the facility; and

(B) legible from a distance of at least 25 feet.

(9) has a storage area that:

(A) is surrounded by a fence constructed in a manner to prevent access by unauthorized persons; or

(B) is contained within a secured area with controlled access; or

(C) is monitored by a 24–hour surveillance system (e.g., television monitoring or surveillance by guards or facility personnel) which continuously monitors and controls entry into the storage area; and

(D) has artificial lighting to ensure safe, effective management of the waste if the THHWCF operates or stores wastes during hours of darkness; and

(E) has a separate storage area for wastes which are ready to be transported off–site; and

(10) provides traffic control which is:

(A) approved by the appropriate local agency;

(B) directed by staff and/or volunteers authorized by the operator, fire department or law enforcement agency;

(C) routed in a one–way direction to minimize backing up or turning around; and

(D) controlled to assure that persons delivering the wastes remain in their vehicles while in the waste acceptance area of the facility.

(e) The operator of a THHWCF shall handle the waste received at the facility as follows:

(1) assure that bulking of wastes shall be performed:

(A) in a manner which prevents the mixing of incompatible wastes; and

(B) in a secured area away from the receiving area;

(2) limit bulking and filtering of wastes at the THHWCF to water–based paints, oil–based paints, compatible solvents, gasoline, antifreeze, used oil and roofing tar. If solvents, oil–based paints or gasoline are to be bulked, the operator shall observe the following restrictions:

(A) the bulking of solvents, oil–based paints or gasoline shall not occur during hours when wastes are being accepted at the THHWCF; and

(B) the bulking of solvents, oil–based paints or gasoline shall be conducted in compliance with written protocol approved by local fire and air pollution prevention agency jurisdictions in which the THHWCF is located;

(3) bulk, package and ship used oil to a facility authorized to receive used oil pursuant to Section 25200, Health and Safety Code;

(4) package and label the properly sorted waste in accordance with Department of Transportation (DOT) requirements pursuant to Subchapter C, Title 49, Code of Federal Regulations (CFR);

(5) assure that personnel who sort, bulk or package waste meet the personnel training requirements specified in Section 66264.16(a) and the requirements of the Occupational Safety and Health Administration (California Code of Regulations, Title 8 Sections 3380 and 5192);

(f) The operator of a THHWCF shall assure that removal and/or decontamination of structures, equipment, soil and all collected materials and wastes shall be completed within 144 hours after termination of the session and shall assure that all contaminated materials and wastes are removed by a registered hazardous waste transporter or other authorized person.

(g) The operator of a THHWCF shall establish a separate record which identifies the name, address, and identification number of the small quantity commercial source generator (if any), the type(s) and quantity(ies) of hazardous wastes accepted from small quantity commercial sources, and the fees paid to the THHWCF for the management of those wastes.

(h) The operator of a THHWCF shall assure that copies of the following reports and records pertaining to the THHWCF operations are maintained and available upon demand to CUPA, or authorized agency by the operator of the THHWCF for a period of at least three years from the commencement of the THHWCF:

(1) the operation plan required by subsection (a)(2) of this section;

(2) the notification submitted as required by Section 66270.60(e); and

(3) all records which identify receipts and shipments of hazardous wastes from household and small quantity commercial sources.

(i) The operator of a THHWCF shall submit a written report to the appropriate CUPA or authorized agency of any incidents of noncompliance with these regulatory requirements that may have occurred within 15 days of such an occurrence. The report shall include all of the following:

(1) the name, address and telephone number of the operator;

(2) the location and address of the THHWCF;

(3) the days and hours of operation;

(4) a description of the incident and the reason for the occurrence; and

(5) the procedures to be implemented to prevent a recurrence of the incident if applicable.

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25112.5, 25150, 25159, 25159.5, 25185.6, 25186, 25200, 25200.2, 25205 and 25205.1, Health and Safety Code; and Title 40, Section 262.41, Code of Federal Regulations.

HISTORY

1. New section filed 4–12–93; operative 4–12–93 (Register 93, No. 16). For prior history see Register 92, No. 12.
2. Editorial correction of subsection (e)(2) (Register 95, No. 50).
3. Amendment of subsection designator (c) filed 11–7–96; operative 11–7–96 (Register 96, No. 45).
4. Amendment of subsections (b), (h) and (i) filed 1–8–99 as an emergency; operative 1–8–99 (Register 99, No. 2). A Certificate of Compliance must be transmitted to OAL by 5–10–99 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsections (b), (h) and (i) refiled 5–7–99 as an emergency; operative 5–7–99 (Register 99, No. 19). A Certificate of Compliance must be

transmitted to OAL by 9–7–99 or emergency language will be repealed by operation of law on the following day.

6. Amendment of subsections (b), (h) and (i) refiled 9–3–99 as an emergency; operative 9–3–99 (Register 99, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–3–2000 or emergency language will be repealed by operation of law on the following day.
7. Amendment of subsections (b), (h) and (i) refiled 12–29–99 as an emergency; operative 1–3–2000 (Register 99, No. 53). A Certificate of Compliance must be transmitted to OAL by 5–2–2000 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 12–29–99 order transmitted to OAL 2–29–2000 and filed 4–11–2000 (Register 2000, No. 15).
9. Change without regulatory effect amending subsection (b)(6) filed 6–7–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 24).
10. Change without regulatory effect repealing subsection (b)(15) and renumbering subsections filed 7–14–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 29).

§ 67450.5. Liability Requirements: Coverage for Sudden Accidental Occurrences for Transportable Treatment Units Which Are Permitted by Rule.

NOTE: Authority cited: Sections 208, 25200.2 and 25425, Health and Safety Code. Reference: Section 25150, Health and Safety Code.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Renumbering and amendment of former section 67450.5 to section 67450.14 filed 10–23–91; operative 1–1–92 (Register 92, No. 12).

§ 67450.7. Corrective Action Requirements for Facilities Operating Under Permit by Rule.

(a) An owner or operator of a facility who operates a transportable treatment unit (TTU) or fixed treatment unit (FTU) under a permit by rule pursuant to section 67450.2(a) or section 67450.2(b) shall complete a corrective action program at the facility. Corrective action shall consist of a phase 1 environmental assessment developed pursuant to Health and Safety Code section 25200.14 and subsequent corrective action conducted in accordance with the requirements in section 68400.16 as necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid or hazardous waste management unit at the facility, regardless of the time at which waste was placed in the unit.

(1) For purposes of this section, a "facility" shall include the entire site that is under the control of the owner or operator of the facility who is operating or proposing to operate a TTU or FTU under a permit by rule.

(2) For purposes of this section, a phase I environmental assessment means a preliminary site assessment based on reasonably available knowledge of the facility, including, but not limited to, historical use of the property, prior releases, visual and other surveys, records, consultant reports, and regulatory agency correspondence. The phase 1 environmental assessment shall consist of completion of the Phase 1 Environmental Assessment Checklist developed by DTSC pursuant to HSC Section 25200.14.

(3) The phase 1 environmental assessment shall be conducted and submitted to the Department or the UPA authorized by the Department within one year of the initial notification submitted to the Department or authorized UPA pursuant to section 67450.2(b)(2).

(b) The notifications required pursuant to sections 67450.2(b)(2) and 67450.3(a)(3), and any subsequent notifications required by sections 67450.3(a)(4), 67450.3(c)(1) or 67450.3(c)(2) shall specify whether a phase I environmental assessment has been completed. The owner or operator of the FTU(s) or TTUs shall submit the Phase I Environmental Assessment Checklist to the Department at the address specified on form DTSC 1772 (1/96) or to the authorized UPA. The certification shall be signed as required by Health and Safety Code section 25200.14(d).

NOTE: Authority cited: Sections 25150, 58004 and 58012, Health and Safety Code. Reference: Sections 25150, 25187, 25200, 25200.10 and 25404.1, Health and Safety Code.

HISTORY

1. New section filed 10–23–91; operative 1–1–92 (Register 92, No. 12).
2. Change without regulatory effect amending subsection (a), adding new subsections (a)(2)–(3), renumbering subsections, amending subsections (b), (c) and (e) and amending NOTE filed 3–26–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 13).
3. Amendment of subsection (a) and repealer of subsections (a)(1)–(g) filed 11–19–98 as an emergency; operative 11–19–98 (Register 98, No. 47). A Certificate of Compliance must be transmitted to OAL by 3–19–99 or emergency language will be repealed by operation of law on the following day.
4. Reinstatement of subsections (a)–(g) as they existed prior to 11–19–98 emergency amendment by operation of Government Code section 11346.1(f) (Register 99, No. 12).
5. Amendment of subsection (a) and (a)(3), repealer of subsection (a)(4), amendment of subsection (b), repealer of subsections (b)(1)–(g) and amendment of NOTE filed 7–20–2006; operative 8–19–2006 (Register 2006, No. 29).

§ 67450.9. Termination, Suspension and Denial of Authorization or Reauthorization, and Operating Restrictions for Units and Facilities Operating Under Permit by Rule.

(a) Notwithstanding the provisions of Chapter 21 of this division, the Department may revoke or suspend authorization or reauthorization for any TTU, FTU or facility operating or proposing to operate under a permit by rule as provided in this section. The Department may also deny authorization or reauthorization for any TTU operating or proposing to operate under a permit by rule as provided in this section. The Department shall base a decision on any one of the factors set forth in section 66270.43(a) or (b) or on Health and Safety Code section 25186 or on a finding that operation of the unit(s) or facility in question will endanger human health, domestic livestock, wildlife, or the environment.

(1) Notice of revocation or suspension shall be provided to the applicant or permittee by certified mail with return receipt requested or by personal service;

(2) An owner or operator whose authorization or reauthorization to operate a unit or facility under a permit by rule is revoked or suspended and who wishes to appeal the revocation or suspension shall appeal by submitting a letter to the Department, within ten (10) days of receipt of notice of denial, requesting a hearing.

(3) Proceedings to appeal the Department's decision concerning revocation or suspension of authorization to operate under a permit by rule shall be conducted in accordance with chapter 5 (commencing with section 11500) of part 1 of division 3 of title 2 of the Government Code.

(b) Notwithstanding the provisions of Chapter 21 of this division, the CUPA or authorized agency including the Department, may deny authorization or reauthorization for any unit or facility operating or proposing to operate under a permit by rule as provided in this section. The CUPA or authorized agency shall base a decision on any one of the factors set forth in section 66270.43(a) or (b) or on Health and Safety Code section 25186 or on a finding that operation of the unit(s) or facility in question will endanger human health, domestic livestock, wildlife, or the environment.

(1) Notice of denial shall be provided to the applicant or permittee by certified mail with return receipt requested or by personal service;

(2) An owner or operator who is denied authorization or reauthorization to operate a unit or facility under a permit by rule and who wishes to appeal the denial shall appeal by submitting a letter to the CUPA or authorized agency, within ten (10) days of receipt of notice of denial, requesting a hearing.

(3) Proceedings to appeal a CUPA or authorized agency's decision concerning denial of authorization reauthorization to operate under a permit by rule shall be conducted in accordance with chapter 5 (commencing with section 11500) of part 1 of division 3 of title 2 of the Government Code.

(c) No treatment process which establishes an unpermitted waste pile, land treatment facility, surface impoundment, injection well, landfill or storage facility is eligible to operate under a permit by rule.

(d) Any authorization to operate granted pursuant to section 67450.2(a), section 67450.2(b), section 66270.60(d)(5) or section 66270.60(d)(6) or reauthorization granted pursuant to section 67450.3(b) or section 67450.3(d) is contingent upon the accuracy of information contained in the notifications required by sections 67450.2(a) and (b), sections 67450.3(a) and (c), section 66270.60(d)(5)(A), and sec-

tion 66270.60(d)(6)(A). Any misrepresentation or any failure to fully disclose all relevant facts shall render the authorization or reauthorization to operate null and void.

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25186, 25186.1, 25186.2 25200, 25218.2 and 25218.3, Health and Safety Code; and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

HISTORY

1. New section filed 10–23–91; operative 1–1–92 (Register 92, No. 12).
2. Amendment of section heading and subsections (a)–(a)(2), newly designated subsection (a)(3) and amendment of NOTE filed 7–19–95; operative 8–18–95 (Register 95, No. 29).
3. Amendment of subsection (c) and NOTE filed 11–7–96; operative 11–7–96 (Register 96, No. 45).
4. Amendment of section heading and subsections (a)–(a)(3), new subsections (b)–(b)(3) and subsection relettering filed 1–8–99 as an emergency; operative 1–8–99 (Register 99, No. 2). A Certificate of Compliance must be transmitted to OAL by 5–10–99 or emergency language will be repealed by operation of law on the following day.
5. Amendment of section heading and subsections (a)–(a)(3), new subsections (b)–(b)(3) and subsection relettering refiled 5–7–99 as an emergency; operative 5–7–99 (Register 99, No. 19). A Certificate of Compliance must be transmitted

to OAL by 9–7–99 or emergency language will be repealed by operation of law on the following day.

6. Amendment of section heading and subsections (a)–(a)(3), new subsections (b)–(b)(3) and subsection relettering refiled 9–3–99 as an emergency; operative 9–3–99 (Register 99, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–3–2000 or emergency language will be repealed by operation of law on the following day.

7. Amendment of section heading and subsections (a)–(a)(3), new subsections (b)–(b)(3) and subsection relettering refiled 12–29–99 as an emergency; operative 1–3–2000 (Register 99, No. 53). A Certificate of Compliance must be transmitted to OAL by 5–2–2000 or emergency language will be repealed by operation of law on the following day.

8. Certificate of Compliance as to 12–29–99 order transmitted to OAL 2–29–2000 and filed 4–11–2000 (Register 2000, No. 15).

§ 67450.11. List of Influent Waste Streams and Treatment Process(es) for Influent Waste Streams Eligible for Treatment Pursuant to Permit by Rule.

(a) The following hazardous wastes are eligible for treatment by TTUs operating pursuant to section 67450.2(a) or by FTUs operating pursuant to section 67450.2(b) provided treatment of the waste is not regulated under the federal Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C., section 6901 et seq.), the waste is not reactive pursuant to section 66261.23 or extremely hazardous pursuant to sections 66261.107 or 66261.110, the waste to be treated is a hazardous waste only because it contains one or more constituents listed in this section, the only treatment technologies used are the ones listed in this section for the waste stream(s) eligible to be treated, the treatment is conducted only for the purpose of treating eligible constituent(s), all treatment is conducted in tanks or containers, and all discharges to air comply with applicable federal, state and local air pollution control statutes and regulations:

(1) Aqueous wastes containing hexavalent chromium may be treated by the following process:

(A) Reduction of hexavalent chromium to trivalent chromium with sodium bisulfite, sodium metabisulfite, sodium thiosulfate, ferrous sulfate, ferrous sulfide or sulfur dioxide, provided both pH and addition of the reducing agent are automatically controlled.

(2) Aqueous wastes containing metals listed in section 66261.24(a)(2) and/or fluoride salts may be treated by the following technologies:

(A) pH adjustment or neutralization.

(B) Precipitation or crystallization.

(C) Phase separation by filtration, centrifugation or gravity settling.

(D) Ion exchange.

(E) Reverse osmosis.

(F) Metallic replacement.

(G) Plating the metal onto an electrode.

(H) Electrodialysis.

(I) Electrowinning or electrolytic recovery.

(J) Chemical stabilization using silicates and/or cementitious types of reactions.

(K) Evaporation.

(L) Adsorption.

(3) Aqueous wastes with total organic carbon less than ten percent as measured by EPA Method 9060 described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", SW–846, 3rd Edition, U.S. Environmental Protection Agency, 1986 and less than one percent total volatile organic compounds as measured by EPA Method 8240 described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", SW–846, 3rd Edition, U.S. Environmental Protection Agency, 1986 may be treated by the following technologies:

(A) Phase separation by filtration, centrifugation or gravity settling, but excluding super critical fluid extraction.

(B) Adsorption.

(C) Distillation.

(D) Biological processes conducted in tanks or containers and utilizing naturally occurring microorganisms.

(E) Photodegradation using ultraviolet light, with or without the addition of hydrogen peroxide or ozone, provided the treatment is conducted in an enclosed system:

(F) Air stripping or steam stripping.

(4) Sludges, dusts, solid metal objects and metal workings which contain or are contaminated with metals listed in section 66261.24(a)(2) and/or fluoride salts, may be treated by the following technologies:

(A) Chemical stabilization using silicates and/or cementitious types of reactions.

(B) Physical processes which change only the physical properties of the waste such as grinding, shredding, crushing, or compacting.

(C) Drying to remove water.

(D) Separation based on differences in physical properties such as size, magnetism or density.

(5) Alum, gypsum, lime, sulfur or phosphate sludges may be treated by the following technologies:

(A) Chemical stabilization using silicates and/or cementitious types of reactions.

(B) Drying to remove water.

(C) Phase separation by filtration, centrifugation or gravity settling.

(6) Wastes listed in section 66261.120 which meet the criteria and requirements for special waste classification in section 66261.122 may be treated by the following technologies:

(A) Chemical stabilization using silicates and/or cementitious types of reactions.

(B) Drying to remove water.

(C) Phase separation by filtration, centrifugation or gravity settling.

(D) Screening to separate components based on size.

(E) Separation based on differences in physical properties such as size, magnetism or density.

(7) Wastes, except asbestos, which have been classified by the Department as special wastes pursuant to section 66261.124, may be treated by the following technologies:

(A) Chemical stabilization using silicates and/or cementitious types of reactions.

(B) Drying to remove water.

(C) Phase separation by filtration, centrifugation or gravity settling.

(D) Magnetic separation.

(8) Inorganic acid or alkaline wastes may be treated by the following technology:

(A) pH adjustment or neutralization.

(9) Soils contaminated with metals listed in section 66261.24(a)(2) may be treated by the following technologies:

(A) Chemical stabilization using silicates and/or cementitious types of reactions.

(B) Screening to separate components based on size.

(C) Magnetic separation.

(10) Used oil as defined in Health and Safety Code section 25250.1, unrefined oil waste, mixed oil, oil mixed with water and oil/water separation sludges may be treated by the following technologies:

(A) Phase separation by filtration, centrifugation or gravity settling, but excluding super critical fluid extraction.

(B) Distillation.

(C) Neutralization.

(D) Separation based on differences in physical properties such as size, magnetism or density.

(E) Reverse osmosis.

(F) Biological processes conducted in tanks or containers and utilizing naturally occurring microorganisms.

(11) Containers of 110 gallons or less capacity which are not constructed of wood, paper, cardboard, fabric or any other similar absorptive material, which have been emptied as specified in Title 40 Code of Federal Regulations section 261.7 revised July 1, 1990) or inner liners removed from empty containers that once held hazardous waste or hazardous material and which are not excluded from regulation pursuant to this chapter may be treated by the following technologies provided the treated con-

tainers and rinseate are managed in compliance with the applicable requirements of this chapter:

(A) Rinsing with a suitable liquid capable of dissolving or removing the hazardous constituents which the container held.

(B) Physical processes such as crushing, shredding, grinding or puncturing, that change only the physical properties of the container or inner liner, provided the container or inner liner is first rinsed as provided in subsection (a)(11)(A) of this section and the rinseate is removed from the container or inner liner.

(12) Multi–component resins may be treated by the following process:

(A) Mixing the resin components in accordance with the manufacturer's instructions.

(13) A waste stream technology combination certified by the Department pursuant to Section 25200.1.5 of the Health and Safety Code as appropriate for authorization under Permit by Rule.

(b) For purposes of this section an aqueous waste is defined as a waste containing water, and less than or equal to one percent of suspended solids, as measured by Method 209C described in "Standard Methods for Examination of Water and Wastewater," 16th Edition, published jointly by the American Public Health Association, the American Water Works Association, and the American Pollution Control Federation, 1985.

(c) Treatment residuals and effluents generated from the operation of a TTU or FTU shall be subject to the requirements of chapter 6.5 of division 20 of the Health and Safety Code and of this division, and shall be the responsibility of the generator of the waste influent treated by the TTU or FTU. Treatment residuals and effluents generated during closure of a TTU or FTU shall be subject to the requirements of chapter 6.5 of division 20 of the Health and Safety Code and of this division and shall be the responsibility of the TTU or FTU owner or operator.

(d)(1) Notwithstanding subsection (a), cyanide–containing aqueous wastes listed in subsection (d)(2) are eligible for treatment by TTUs operating pursuant to section 67450.2 subsection (a) or FTUs operating pursuant to section 67450.2 subsection (b) provided that:

(A) treatment of the waste is not regulated under the federal Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C., section 6901 et seq.);

(B) the waste is not extremely hazardous pursuant to sections 66261.107 or 66261.110 (except for waste identified in paragraphs 2(F) and (G) of subsection (d));

(C) notwithstanding any other basis for a determination that the waste to be treated is a hazardous waste, said waste is hazardous because it contains cyanide or a combination of cyanide and metals listed in section 66261.24 subsection (a)(2);

(D) the treatment is conducted solely for the purpose of treating cyanide–containing waste in accordance with processes listed in subsection (d)(3), or (d)(7); or the purpose of treating spent process solutions by electrowinning pursuant to subsection (d)(6);

(E) the owner or operator of the TTU and/or FTU is in compliance with the requirements of subsection (d)(4);

(F) all treatment is conducted in tanks or containers; and

(G) all discharges to air comply with applicable federal, state, and local air pollution control and worker safety statutes and regulations.

(2) Cyanide–containing wastes eligible for treatment pursuant to this subsection are:

(A) aqueous wastes generated by rinsing workpieces and fixtures holding workpieces that were processed in cyanide–containing solutions;

(B) aqueous wastes generated by reverse osmosis or the regeneration of demineralizer (ion exchange) columns that were used for recycling of wastewaters at facilities that maintain zero discharge of wastewaters derived from the treatment of cyanide–containing aqueous waste;

(C) aqueous wastes generated by rinsing containers, pumps, hoses, and other equipment used to transfer cyanide solutions onsite;

(D) aqueous wastes generated by the following onsite recycling activities:

1. rinsing spent anode bags prior to onsite reuse; or

2. rinsing empty containers prior to onsite reuse;

(E) aqueous wastes generated by onsite laboratories conducting analyses and testing;

(F) spent process solutions managed in accordance with the requirements of subsection (d)(6); and

(G) spent process solutions managed in accordance with the requirements of subsection (d)(7).

(3) The following processes may be used to treat the wastes described in subsections (d)(2)(A)–(E):

(A) oxidation by addition of hypochlorite;

(B) oxidation by addition of peroxide or ozone, with or without the use of ultraviolet light;

(C) alkaline chlorination;

(D) electrochemical oxidation;

(E) ion exchange; or

(F) reverse osmosis.

(4) The owners or operators of all sites or facilities subject to subsection (d) shall implement the following to reduce waste generation, and minimize or eliminate releases to work areas and the environment:

(A) use holding racks and/or drain boards between all process and rinse tanks to contain plating drag–out, rinse solution drag–out, and return drag–out solutions to process tanks;

(B) use countercurrent rinsing to reduce water use and wastewater generation when multiple sequential rinse tanks are used;

(C) at a minimum, every four (4) years, review the use of cyanide–containing process baths to determine if a non–cyanide alternative with equivalent results is available as part of:

1. the Source Reduction Evaluation Review and Plan pursuant to Health and Safety Code section 25244.19,

2. an Environmental Management System, or

3. an environmental performance evaluation plan;

(D) provide initial and annual training to employees, who handle cyanide process solutions, cyanide–containing rinse waters, or manage cyanide–containing aqueous waste, on how to reduce wastes in the production area, including, but not limited to, procedures to:

1. reduce drag–out of plating baths,

2. minimize contaminants in process baths,

3. extend process bath life,

4. minimize chemical spills and splashes from process and rinse solutions handling practices, and

5. respond to chemical spills to reduce waste and minimize releases from process and rinse solutions handling practices.

(5) Non–aqueous cyanide–containing wastes may not be treated under the authority of subsection (d).

(6) Spent process solutions containing recoverable amounts of metal may be treated by electrowinning in order to recover those metals provided that the owner or operator is in compliance with the requirements of subsection (d). Incidental treatment of cyanide contained in the spent process solution by the electrowinning process is also authorized by subsection (d)(6). For the purposes of subsection (d), electrowinning means the electrodeposition of metals from spent process solution.

(7) Spent cyanide–containing process solutions may be treated by slow addition to the aqueous waste identified in paragraphs (2)(A) and (C) of subsection (d) for the purpose of reducing cyanide processing hazards, provided that the owner or operator is in compliance with the following requirements. Solutions resulting from the mixing authorized in subsection (d)(7) shall be further treated by processes listed in subsection (d)(3) in accordance with the other provisions of subsection (d). Owners or operators managing cyanide–containing spent process solutions shall ensure the following:

(A) the concentration of cyanide in solutions treated in accordance with subsection (d)(3) shall not exceed 5000 milligrams per liter or parts per million (ppm) of total cyanide;

(B) residual solids generated by any treatment process allowed in section 67450.11, such as filtercakes and sludges from clarifiers, are either:

1. recycled by a facility that recovers metals from the residual solids, or are partially reclaimed for further processing by another metal recovery facility; or

2. determined not amenable for recycling due to technological or economic reasons in accordance with paragraph (7)(C), and;

(C) a justification statement is prepared when any residual solids are not recycled in accordance with subparagraph (7)(B)1. in a calendar year. Owners or operators shall complete this justification statement by January 30, for any shipment of residual solids not recycled in the previous calendar year. The justification statement shall include all the following:

1. chemical composition of the residual solids, including but not limited to, the concentration and type of metals present, cyanide concentration, and water content; and the total weight or volume of the residual solid not recycled during the previous calendar year.

2. chemical composition of the spent process solutions, including but not limited to, the concentration and type of metals present, and cyanide concentration; and the total weight or volume of the spent process solution treated during the previous calendar year.

3. current year cost estimates expressed in dollars per pound or dollars per gallon for the following hazardous waste management options, including transportation:

a. offsite disposal of the residual solids including treatment;

b. offsite recycling of the residual solids;

c. offsite treatment of process solutions; and

d. onsite treatment of process solutions.

4. a basis for the decision to not recycle the residual solids as either:

a. technological and provide the chemical, physical, hazardous characteristics, or other properties that affect recycling the residual solids; or

b. economic and provide a comparison of the hazardous waste management costs including, but be not limited to, all costs listed in subparagraph (7)(C)1. and (7)(C)2. for both managing the residual solids and managing the spent process solutions;

(D) the justification statement may include any other information that influenced or formed the basis of the generator's decision to not recycle the residual solids. This supplemental information may include the availability of suitable processing technology and facilities; or the marketability of the residual solid or its reclaimed components; and

(E) the following records are maintained at the facility for a minimum of three years from the last date of any activity authorized pursuant to this paragraph of this subsection and made available to authorized representatives of the Department, the CUPA, or the U.S. EPA upon request:

1. written approval from the agency operating the POTW receiving the facility's discharges required by section 67450.3 subsections (a)(7)(A) or (c)(5)((A);

2. written method documented in the waste analysis plan required by section 67450.3 subsections (a)(10)(A) and (c)(8)(A) for ensuring that the concentration of total cyanide does not exceed 5000 milligrams per liter in the aqueous waste resulting from the mixing authorized in subsection (d)(7); and

3. documentation that the residual solids generated by the treatment pursuant to paragraph (7)(B) of this subsection have been either:

a. sent offsite for metals recovery or reclamation; or

b. determined to be not amenable for recycling in accordance with paragraph (7)(C).

NOTE: Authority cited: Sections 25150, 58004 and 58012, Health and Safety Code. Reference: Sections 25150, 25200 and 25200.2, Health and Safety Code.

HISTORY

1. Renumbering and amendment of former section 67450.3 to section 67450.11 filed 10–23–91; operative 1–1–92 (Register 92, No. 12).

2. Change without regulatory effect amending subsections (a), (a)(6), (a)(7) and (a)(12)(A), adding new subsection (a)(13) and amending NOTE filed 3–26–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 13).

3. New subsections (d)(1)–(d)(7)(E)3.b. filed 7–7–2008; operative 8–6–2008 *(Register 2008, No. 28).*

§ 67450.13. Financial Assurance for Closure of Transportable Treatment Units and Fixed Treatment Units Which Are Authorized Under Permit by Rule and Generators Who Are Authorized Under Conditional Authorization.

(a) Notwithstanding any other requirements of this article, this section shall apply to all owners or operators of transportable treatment units (TTUs) (as defined in section 66260.10) deemed to have a permit by rule pursuant to section 67450.2, subsection (a), with owners or operators of fixed treatment units (FTUs) (as defined in section 66260.10) deemed to have a permit by rule pursuant to section 67450.2, subsection (b), and generators operating pursuant to a grant of Conditional Authorization (CA) (as defined in Health & Safety Code section 25110.9.1, subdivision (a)). Agencies of the State and Federal governments are exempt from the requirements of this section. For purposes of this section, state government shall not include municipal, local, city, county, city–county special district government or any subdivisions thereof.

(1) The TTU owner or operator, FTU owner or operator, or a generator operating pursuant to a grant of Conditional Authorization shall prepare a written estimate of the cost of closing each unit. The estimate shall equal the actual cost or the costs estimated by an owner or operator or a generator that would be incurred for closing a treatment unit when using the owner or operator or generator's own staff and/or personal equipment. The closure cost estimate may take into account any salvage value that may be realized from the sale of wastes, facility structure or equipment, land or other facility assets. This estimate shall be submitted as an attachment to the Certification of Financial Assurance for Permit by Rule and Conditionally Authorized Operations page(s) of the Unified Program Consolidated Form (x/99)).

(2) The TTU owner or operator, FTU owner or operator, or a generator operating pursuant to a grant of Conditional Authorization shall adjust the closure cost estimate for inflation by March 1 of each year. The adjustment shall be made as specified in subsections (a)(2)(A) and (a)(2)(B) of this section, using an inflation factor derived from the annual Implicit Price Deflator for Gross National Product as published by the U.S. Department of Commerce in its Survey of Current Business. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator of the previous year.

(A) The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.

(B) Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

(3) The TTU owner or operator or FTU owner or operator shall revise the closure cost estimate whenever a change in the closure plan increases the cost of closure. The revised closure cost estimate shall be adjusted for inflation as specified in subsection (a)(2) of this section. The owner or operator shall maintain the following at the facility during the operating life of the facility: the latest closure cost estimate prepared in accordance with subsection (a)(1) of this section, and the latest closure cost estimate adjusted in accordance with subsection (a)(2) of this section.

(4) A generator operating pursuant to a grant of Conditional Authorization shall revise the closure cost estimate whenever a change occurs that increases the cost of closure. The revised closure cost estimate shall be adjusted for inflation as specified in subsection (a)(2) of this section. The owner or operator shall maintain the following at the facility during the operating life of the facility: the latest closure cost estimate prepared in accordance with subsection (a)(1) of this section, and the latest closure cost estimate adjusted in accordance with subsection (a)(2) of this section.

(5) On or after October 1, 1996, financial assurance for closure of a TTU, FTU, or treatment unit operated by a generator authorized pursuant to a grant of Conditional Authorization shall be obtained by one of the following methods:

(A) a closure trust fund, as described in section 66265.143, subsection (a);

(B) a surety bond guaranteeing payment into a closure trust fund, as described in section 66265.143, subsection (b);

(C) a closure letter of credit, as described in section 66265.143, subsection (c);

(D) closure insurance, as described in section 66265.143, subsection (d);

(E) a financial test and corporate guarantee for closure, as described in section 66265.143, subsection (e);

(F) Use of multiple financial mechanisms for closure costs as described in section 66265.143, subsection (f); or

(G) an alternative financial mechanism for closure costs, as described in sections 66265.143, subsection (h), or subsection (c) of this section. A certificate of deposit, as described in section 3–104(2)(c) of the Uniform Commercial Code, or a savings account as described in section 4–104(a) of the Uniform Commercial Code, are examples of alternative financial mechanisms.

(6) A FTU owner or operator, or a generator operating pursuant to a grant of Conditional Authorization may request permission to fund the financial mechanism over a period not to exceed five (5) years from the CUPA or the authorized agency. The request to the CUPA or authorized agency, shall contain the reason(s) and information as specified in subsections (c)(1) and (c)(2) of this section. A CUPA or the authorized agency, shall evaluate and respond to each request in writing within sixty (60) days of receipt.

(7)(A) Notwithstanding any other provision of regulation, financial assurance for closure of a FTU, operated pursuant to permit by rule, or treatment unit operated by a generator authorized pursuant to a grant of Conditional Authorization shall establish the CUPA, or the authorized agency, as the beneficiary of any financial documents to be submitted to comply with the requirements of this section.

(B) Financial assurance for closure of a TTU shall establish the Department as the beneficiary of any financial documents to be submitted to comply with the requirements of this section.

(8)(A) On and after January 1, 1997, a financial assurance mechanism shall be submitted with the certification required in subsection (b) to the CUPA or the authorized agency, unless the FTU owner or operator, operating pursuant to permit by rule, or a generator operating pursuant to a grant of Conditional Authorization is exempt by subsection (e) of this section.

(b) The FTU owner or operator, operating pursuant to permit by rule, or a generator operating pursuant to a grant of Conditional Authorization shall submit a Certification of Financial Assurance for Permit by Rule and Conditionally Authorized Operations page(s) of the Unified Program Consolidated Form (x/99)) for each FTU facility that has one or more FTUs, or CA treatment location documenting compliance with the closure cost assurance requirements of subsection (a) of this section. The TTU owner or operator, operating pursuant to permit by rule, shall submit a Certification of Financial Assurance for Permit by Rule and Conditionally Authorized Operations [DTSC 1232 (8/96)] for each TTU, documenting compliance with the closure cost assurance requirements of subsection (a) of this section. The certification for TTU operations shall accompany each initial notification required in sections 67450.2(a), 67450.3(a)(1) and 67450.3(a)(2) unless the notification was previously submitted to the Department before January 1, 1997. The certification for PBR fixed treatment unit operations shall accompany each initial notification required in sections 67450.2(b)(2), 67450.2(b)(3)(G), 67450.3(c)(1) and 67450.3(c)(2) unless the notification was previously submitted to the Department before January 1, 1997. The certification for a Conditionally Authorized treatment location shall accompany each initial notification required in Health and Safety Code section 25200.3(e) unless notification was previously submitted to the Department before January 1, 1997. The FTU owner or operator, operating pursuant to permit by rule, or a generator operating pursuant to a grant of Conditional Authorization who has previously submitted a notification to the Department before January 1, 1997, shall submit a copy of certification as identified in this subsection along with a copy of financial assurance mechanism as specified in subsection (a), paragraph (5), subparagraphs (A) through (G) of this section to the CUPA or the authorized agency. The TTU owner or operator operating pursuant to permit by rule, who has submitted a notification to the Department before January 1, 1997, shall submit a copy of certification as identified in this subsection along with a copy of financial assurance mechanism as specified in subsection (a), paragraph (5), subparagraphs (A) through (G) of this section to the Department.

(1) This certification shall contain the following information:

(A) The current closure cost estimate of each unit as determined in subsection (a) of this section.

(B) The mechanism(s) established to provide the closure cost assurance for each unit, as described in subsection (a)(5) of this section, and the original document(s) used to satisfy the requirements of the mechanism(s).

(C) The name and location of the financial institution, insurance company, surety company, or other appropriate organization used to establish the closure assurance for each unit.

(D) The effective date of the closure assurance for the unit(s).

(2) The certification shall be signed according to the requirements of section 66270.11 as those requirements apply to permit applications.

(c) Alternative Financial Mechanisms for Closure Costs.

(1)(A) The FTU owner or operator, or a generator operating pursuant to a grant of Conditional Authorization may establish financial assurance for closure by means of a financial mechanism other than those specified in subsection (a), paragraph (5), subparagraphs (A) through (G) of this section provided that, prior to its use, the mechanism has been submitted to and approved by a CUPA or the authorized agency. The mechanism shall be at least equivalent to the financial mechanisms specified in subsection (a), paragraph (5), subparagraphs (A) through (G) of this section. A CUPA or the authorized agency, shall respond in writing within sixty (60) days of receipt and shall evaluate the equivalency of a mechanism principally in terms of:

1. Certainty of the availability of the funds for the required closure activities; and

2. The amount of funds that will be made available. A CUPA or the authorized agency, shall also consider other factors deemed to be appropriate, and shall require the owner or operator, or a Conditionally Authorized generator to submit additional information as is deemed necessary to make the determination.

(B) The TTU owner or operator may establish financial assurance for closure by means of a financial mechanism other than those specified in subsection (a), paragraph (5), subparagraphs (A) through (G) of this section provided that, prior to its use, the mechanism has been submitted to and approved by the Department. The mechanism shall be at least equivalent to the financial mechanisms specified in subsection (a), paragraph (5), subparagraphs (A) through (G) of this section. The Department shall respond in writing within sixty (60) days of receipt and shall evaluate the equivalency of a mechanism principally in terms of:

1. Certainty of the availability of the funds for the required closure activities; and

2. The amount of funds that will be made available.

(2) The owner or operator, or a Conditionally Authorized generator shall submit to a CUPA or the authorized agency, the proposed mechanism together with a letter requesting that the proposed mechanism be considered acceptable for meeting the requirements of this section. The submission shall include the following information:

(A) Name, address and telephone number of issuing institution; and

(B) Hazardous waste facility identification number, name, address and closure cost estimate for each TTU, FTU facility or a generator who is operating pursuant to Conditional Authorization intended to be covered by the proposed mechanism; and

(C) The amount of funds for closure to be assumed for each TTU, FTU facility or a generator who is operating pursuant to Conditional Authorization intended to be covered by the proposed mechanism; and

(D) The terms of the proposed mechanism (period covered, renewal/extension, cancellation).

(3) The CUPA or the authorized agency, shall respond in writing to the FTU owner or operator, or a generator operating pursuant to a grant of Conditional Authorization of the determination made regarding the acceptability of the proposed mechanism in lieu of the financial mechanisms specified in subsection (a), paragraph (5), subparagraphs (A) through (G) of this section. This written request shall be provided within sixty (60) days.

(4) If a proposed mechanism is found acceptable, the FTU owner or operator, operating pursuant to permit by rule, or a generator operating pursuant to a grant of Conditional Authorization shall submit a fully executed financial assurance document to the CUPA or the authorized agency. The document shall contain original signatures and shall be accompanied by a formal certification of acknowledgment. The TTU owner or operator, shall submit a fully executed financial assurance document to the Department.

(5) If a proposed mechanism is found acceptable, except for the amount of the funds, the TTU owner or operator, FTU owner or operator, or a generator operating pursuant to a grant of Conditional Authorization shall either increase the amount of mechanisms or obtain other financial assurance mechanisms as specified in subsection (a), paragraph (5), subparagraphs (A) through (G) of this section. The amount of the funds available through the combination of mechanisms shall at least equal the current closure cost estimate.

(6) If a proposed mechanism is found acceptable by the CUPA, or the authorized agency, the FTU owner or operator, or a generator operating pursuant to a grant of Conditional Authorization may request permission to fund the financial mechanism over a period not to exceed five (5) years as part of the request for an alternative mechanism described in subsection (c)(1) of this section.

(d) If the closure cost estimate as specified in subsections (a)(1) and (a)(2) of this section is not more than $10,000.00, the TTU owner or operator or FTU owner or operator operating pursuant to permit by rule, or a generator operating pursuant to a grant of Conditional Authorization may comply with this section by submitting a certification signed in accordance with section 66270.11. The FTU owner or operator operating pursuant to permit by rule, or a generator operating pursuant to a grant of Conditional Authorization shall submit the certification to its CUPA or the authorized agency, that the FTU owner or operator operating pursuant to permit by rule, or a generator operating pursuant to a grant of Conditional Authorization has sufficient financial resources to meet the closure cost requirements. Entities authorized to operate as of the effective date of these regulations who meet the conditions of this subdivision shall submit the signed original certification to the pertinent CUPA or the authorized agency, by January 1, 1997. The TTU owner or operator operating pursuant to permit by rule shall submit to the Department certification that the TTU owner or operator has sufficient financial resources to meet the closure cost requirements. The certification for FTU operations which have not yet submitted their initial notifications shall accompany each initial notification required by sections 67450.2(a), 67450.3(a)(1) and 67450.3(a)(2). The certification for FTU operations which have not yet submitted their initial notifications shall accompany each initial notification required by sections 67450.2(b)(3), 67450.3(c)(1) and 67450.3(c)(2). The certification for a Conditionally Authorized generator which has not yet submitted its initial notification shall accompany each initial notification required by Health and Safety Code section 25200.3(e).

(e) Notwithstanding the provisions of Chapter 45, a TTU or a facility operating pursuant to a permit by rule who meets the conditions of this section is not required to obtain financial assurance as specified in subsection (a), paragraph (5), subparagraphs (A) through (G) for the costs of closure of such a treatment unit. A facility who meets the conditions of this section shall maintain a Certification (of Financial Assurance for Permit by Rule and Conditionally Authorized Operations page(s) of the Unified Program Consolidated Form (x/99) with a copy of the original signature of the owner or operator at the facility containing the reason(s) why the owner or operator is eligible for this exemption. The FTU owner or operator who meets the conditions of this section shall submit the signed original Certification of Financial Assurance for Permit by Rule and Conditionally Authorized Operations page(s) of the Unified Program Consolidated Form (x/99) to the CUPA or the authorized agency, by January 1, 1997. If the submittal is independent of PBR notification required by Sections 67450.2(b) or 67450.3(c), then the submittal must include the Business Activities Page, and the Business Owner/Operator pages of the Unified Program Consolidated Form (x/99)). The TTU owner or operator who meets the conditions of this section shall submit the signed original Certification of Financial Assurance for Permit by Rule and Conditionally Authorized Operations (DTSC Form 1232) to the Department by January 1, 1997. The TTU owner or operator or FTU owner or operator operating pursuant to permit by rule shall meet the following condition on or after October 1, 1996, in order to be exempt from financial assurance requirements:

(1) Operated no more than thirty days in any calendar year.

(f)(1) The CUPA or the authorized agency, shall agree to the termination of the closure financial mechanisms as specified in subsection (a), paragraph (5), subparagraph (A) through (G), when:

(A) The FTU owner or operator, or a generator operating pursuant to a grant of Conditional Authorization substitutes alternate financial assurance as specified in this section; or

(B) The CUPA or the authorized agency, releases FTU owner or operator, or a generator operating pursuant to a grant of Conditional Authorization from the requirements in accordance with subsection (g) of this section.

(2) The Department shall agree to the termination of the closure financial mechanisms as specified in subsection (a), paragraph (5), subparagraph (A) through (G) for TTU owners or operators, when:

(A) The TTU owner or operator substitutes alternative financial assurance as specified in this section; or

(B) The Department releases the TTU owner or operator from the requirements in accordance with subsection (g) of this section.

(g) Release of the TTU owner or operator, FTU owner or operator operating pursuant to permit by rule, or a generator operating pursuant to a grant of Conditional Authorization from the requirements of this section:

(1) Within 60 days after receiving certifications from the owner or operator of a FTU operating pursuant to permit by rule, and an independent professional engineer, registered in California, that a final closure has been completed in accordance with the prepared closure plan, the CUPA or the authorized agency, shall notify the owner or operator in writing that he or she is no longer required by this section to maintain financial assurance for final closure of the regulated unit(s) or the facility, unless the CUPA or the authorized agency, has reason to believe that final closure has not been conducted in accordance with the prepared closure plan. The CUPA or the authorized agency shall provide the owner or operator a detailed written statement of any such reason to believe that closure has not been conducted in accordance with the closure plan or any other closure performance standards.

(2) Within 60 days after receiving notification from the generator operating pursuant to a grant of Conditional Authorization that final closure has been completed, the CUPA or the authorized agency, shall notify the generator in writing that he or she is no longer required by this section to maintain financial assurance for final closure of the regulated unit(s) or the facility, unless the CUPA or the authorized agency has reason to believe that final closure has not been conducted in accordance with the proper closure standards. The CUPA or the authorized agency shall provide the generator a detailed written statement of any such reason to believe that closure has not been conducted in accordance with the closure performance standards.

(3) When transfer of ownership or operational control of a facility occurs, and the new owner or operator of a FTU operating pursuant to permit by rule, or a generator operating under a Conditional Authorization, has demonstrated to the satisfaction of the CUPA or the authorized agency, that he or she is complying with the financial requirements of this section, the CUPA or the authorized agency shall notify the previous owner or operator, or a generator in writing that they are no longer required to maintain financial assurance for closure of that particular facility.

(4) Within 60 days after receiving certifications from the owner or operator of a TTU operating pursuant to permit by rule, and an independent professional engineer, registered in California, that a final closure has been completed in accordance with the prepared closure plan, the Department shall notify the owner or operator in writing that he or she is no longer required by this section to maintain financial assurance for final closure of the regulated unit(s). If the Department has reason to believe that final closure has not been conducted in accordance with the prepared closure plan, then prior to releasing the financial assurance mechanism the Department shall provide the owner or operator with a detailed written statement of any such reason to believe that closure has not been conducted in accordance with the closure plan or any other closure performance standards.

(5) When transfer of ownership or operational control of a TTU occurs, and the new owner or operator of TTU operating pursuant to permit by rule has demonstrated to the satisfaction of the Department that he or she is complying with the financial requirements of this section, the Department shall notify the previous owner or operator in writing that it is no longer required to maintain financial assurance for closure of that particular facility.

NOTE: Authority cited: Sections 25150 and 25245, Health and Safety Code. Reference: Sections 25150, 25200.2, 25245 and 25245.4, Health and Safety Code.

HISTORY

1. Renumbering and amendment of former section 67450.4 to section 67450.13 filed 10–23–91; operative 1–1–92 (Register 92, No. 12).
2. Amendment of section heading and section filed 2–13–96 as an emergency; operative 2–13–96 (Register 96, No. 7). A Certificate of Compliance must be transmitted to OAL by 6–12–96 or emergency language will be repealed by operation of law on the following day.
3. Reinstatement of section heading and section as they existed prior to emergency amendment filed 2–13–96 by operation of Government Code section 11346.1(f) (Register 96, No. 25).
4. Amendment of section heading and section filed 6–17–96 as an emergency; operative 6–17–96 (Register 96, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–15–96 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsection (a)(8), new subsection (d) and subsection relettering, and amendment of newly designated subsection (e) filed 8–29–96 as an emergency; operative 8–29–96 (Register 96, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–27–96 or emergency language will be repealed by operation of law on the following day.
6. Amendment of section heading and section refiled 10–15–96 as an emergency; operative 10–15–96 (Register 96, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–97 or emergency language will be repealed by operation of law on the following day.
7. Reinstatement of section as it existed prior to 10–15–96 emergency amendment by operation of Government Code section 11346.1(f) (Register 97, No. 9).
8. Editorial correction of HISTORY 6 (Register 97, No. 9).
9. Amendment of section heading and section filed 2–24–97 as an emergency; operative 2–24–97 (Register 97, No. 9). A Certificate of Compliance must be transmitted to OAL by 6–24–97 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 2–24–97 order, including further amendments, transmitted to OAL 6–24–97 and filed 8–6–97 (Register 97, No. 32).
11. Amendment filed 1–8–99 as an emergency; operative 1–8–99 (Register 99, No. 2). A Certificate of Compliance must be transmitted to OAL by 5–10–99 or emergency language will be repealed by operation of law on the following day.
12. Amendment refiled 5–7–99 as an emergency; operative 5–7–99 (Register 99, No. 19). A Certificate of Compliance must be transmitted to OAL by 9–7–99 or emergency language will be repealed by operation of law on the following day.
13. Amendment refiled 9–3–99 as an emergency; operative 9–3–99 (Register 99, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–3–2000 or emergency language will be repealed by operation of law on the following day.
14. Amendment refiled 12–29–99 as an emergency; operative 1–3–2000 (Register 99, No. 53). A Certificate of Compliance must be transmitted to OAL by 5–2–2000 or emergency language will be repealed by operation of law on the following day.
15. Certificate of Compliance as to 12–29–99 order transmitted to OAL 2–29–2000 and filed 4–11–2000 (Register 2000, No. 15).
16. Change without regulatory effect renumbering and relettering subsections (c)(1)(i)–(c)(1)(ii)(B) to subsections (c)(1)(A)–(c)(1)(B)2. filed 7–1–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 27).
17. Change without regulatory effect amending subsections (a) and (a)(5)(A)–(G)) and amending NOTE filed 12–19–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 51).

§ 67450.14. Liability Requirements: Coverage for Sudden Accidental Occurrences for Transportable Treatment Units Which Are Permitted by Rule.

NOTE: Authority cited: Sections 208, 25200.2 and 25425, Health and Safety Code. Reference: Section 25150, Health and Safety Code.

HISTORY

1. Renumbering and amendment of former section 67450.5 to section 67450.14 filed 10–23–91; operative 1–1–92 (Register 92, No. 12).
2. Change without regulatory effect repealing section, filed 3–15–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 11).

§ 67450.15. Liability Requirements: Coverage for Sudden Accidental Occurrences for Facilities with Fixed Treatment Units Which Are Permitted by Rule.

NOTE: Authority cited: Section 25200.2 and 25245, Health and Safety Code. Section 58012, Governor's Reorganizational Plan #1 of 1991. Reference: Section 25150, Health and Safety Code.

HISTORY

1. New section filed 10–23–91; operative 1–1–92 (Register 92, No. 12).
2. Amendment of subsection (d) filed 6–16–92 as an emergency; operative 6–16–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL 10–14–92 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsection (d) refiled 10–13–92 as an emergency; operative 10–12–92 (Register 92, No. 42). A Certificate of Compliance must be transmitted to OAL 2–11–93 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsection (d) filed 2–9–93 as an emergency; operative 2–9–93 (Register 93, No. 7). A Certificate of Compliance must be transmitted to OAL 6–9–93 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsection (d) refiled 6–8–93 as an emergency; operative 6–8–93 (Register 93, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–6–93 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 6–8–93 order including amendment of subsection (d) and NOTE transmitted to OAL 10–5–93 and filed 11–18–93 (Register 93, No. 47).
7. Editorial correction of subsection (d) (Register 95, No. 50).
8. Change without regulatory effect repealing section, filed 3–15–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 11).

§ 67450.16. Liability Requirements: Coverage for Sudden Accidental Occurrences for Temporary Household Hazardous Waste Collection Facilities Which Are Permitted by Rule.

NOTE: Authority cited: Sections 25150, 25245 and 58012, Health and Safety Code. Reference: Sections 25150, 25200.2 and 25245, Health and Safety Code; and Section 66798.9, Government Code.

HISTORY

1. New section filed 4–12–93; operative 4–12–93 (Register 93, No. 16).
2. Change without regulatory effect repealing section filed 7–14–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 29).

§ 67450.20. Conditionally Exempt Specified Waste Streams.

(a) The treatment activities listed in subdivision (b) may occur under a grant of conditional exemption for specified waste streams. The generator conducting such treatment must comply with the requirements of subdivisions (d) through (i) of Health and Safety Code Section 25201.5.

(b) The following treatment activities are authorized for operation under a grant of conditional exemption for specified waste streams:

(1) The treatment of formaldehyde or glutaraldehyde solutions using any technology that is certified as effective for that purpose by the depart-

ment, pursuant to Health and Safety Code Section 25200.1.5. The treatment must be operated pursuant to all of the conditions imposed on the certification.

NOTE: Authority cited: Sections 25150, 25159.5, 25200.1.5, 25200.17, 58004 and 58012, Health and Safety Code. Reference: Sections 25201.5 and 25200.1.5, Health and Safety Code.

HISTORY

1. New section filed 7–5–96 as an emergency; operative 7–5–96 (Register 96, No. 27). A Certificate of Compliance must be transmitted to OAL by 11–4–96 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 11–12–96 as an emergency; operative 11–12–96 (Register 96, No. 46). A Certificate of Compliance must be transmitted to OAL by 3–12–97 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 3–14–97 as an emergency; operative 3–14–97 (Register 97, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–15–97 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 3–14–97 order, including amendment of section and NOTE, transmitted to OAL 7–2–97 and filed 8–14–97 (Register 97, No. 33).

§ 67450.25. Requirements Applicable to Permanent Household Hazardous Waste Collection Facilities Deemed to Have a Permit by Rule.

(a) The operator or contractor who operates a PHHWCF deemed to have a permit by rule pursuant to section 66270.60 shall do all of the following:

(1) Maintain compliance with sections 66262.10 through 66262.57, (except section 66262.41), 66264.175, and 66265.148, except as follows:

(A) the engineering certification required by section 66264.175(c) shall be provided by a manufacturer, an independent professional engineer registered in the State of California or a professional engineer employed by the local government entity and from a different division or agency than the operator.

(2) Maintain compliance with the following regulations in Chapter 15 of this division, including those referring to permit applications:

(A) Article 2 commencing with section 66265.10. General Facility Standards (except sections 66265.12(b), and 66265.13). However, the operator or contractor shall prepare and maintain a written waste analysis plan describing the procedures which the operator or contractor will carry out to characterize unidentified wastes received at the facility. Field analysis methods such as Hazardous Category (HAZCAT) analysis may be used to characterize unidentifiable wastes into Federal Department of Transportation (DOT) hazard classes;

(B) Article 3 commencing with section 66265.30. Preparedness and Prevention;

(C) Article 4 commencing with section 66265.50. Contingency Plan and Emergency Procedures (except section 66265.53(b));

(D) Article 5 commencing with section 66265.70. Manifest System, Recordkeeping and Reporting (except that sections 66265.73(b)(2), 66265.73(b)(6), 66265.73(b)(7), 66265.73(b)(15) and 66265.75 and sections 66265.71, 66265.72, and 66265.76 shall not apply to operators of facilities that do not receive manifested waste);

(E) Article 7 sections 66265.110 through 66265.115. Closure and Post–Closure

(F) Article 9 commencing with section 66265.170. Use and Management of Containers (except that the minimum distance specified in section 66265.176 may, at the discretion of the operator or contractor, be less than 15 meters (50 feet) from the facility's property line if the shorter distance minimizes the possibility of migration of contaminants to any adjacent property should a release occur, meets the Uniform Fire Code or local fire code requirements (whichever are more stringent), and the operator or contractor has written approval from all the appropriate local agencies to use the shorter distance);

(G) Article 10 commencing with section 66265.190. Tank Systems (except that the contingency plan for post–closure required by section 66265.197(c)(2) shall be maintained with the closure plan required by section 66265.112, and the engineering certification required by section 66265.192(g) shall be provided by a manufacturer, an independent professional engineer registered in the State of California or a professional engineer employed by the local government entity and from a different division or agency than the operator).

(3) Prepare and maintain at the facility an operation plan comprising a copy of the notification submitted pursuant to section 66270.60(d)(6)(A), copies of the financial assurance documents required by section 67450.30, a copy of the acknowledgement from CUPA or authorized agency specified in section 66270.60(d)(6)(B), copies of the documents required by subsection (a)(2) of this section, and the items specified in subparagraphs (A) and (B) of this paragraph.

(A) a written plan addressing the procedures to be followed whenever the PHHWCF meets or exceeds its maximum storage capacity, so that the appropriate storage conditions may be maintained. This plan shall be implemented when necessary.

(B) the information required by sections 67450.4(b)(6), (b)(8), (b)(9), (b)(13), (b)(14) if applicable, (b)(16), (b)(17), and (b)(18).

(C) The operator or contractor shall make the operation plan available upon request to any representative of the Department, the U.S. EPA, or a local governmental agency having jurisdiction over the operation of the PHHWCF. A copy of the operation plan shall also be delivered in person or by certified mail with return receipt requested to CUPA or authorized agency when requested by CUPA or authorized agency.

(4) Maintain compliance with sections 67450.4(d), (e), (g), (h)(3), and (i) as those sections apply to THHWCFs, except as modified below:

(A) 67450.4(d)(4). The waste handling and storage areas of the PHHWCF shall have a continuous base that meets the requirements of section 66264.175(b)(1);

(B) 67450.4(d)(9)(E). Does not apply to PHHWCFs.

(C) 67450.4(d)(10)(D). The operator shall assure that persons delivering the waste remain in their vehicles while in the waste acceptance area of the facility and shall assure that no unauthorized persons enter waste handling and storage areas.

(D) 67450.4(e)(2). The operator of a PHHWCF may consolidate the following wastes: water–based paints, oil–based paints, compatible solvents, gasoline, antifreeze, used oil, organic resins including but not limited to roofing tar, caulking and patching compounds, and adhesives, photofinishing finishing solutions and miscellaneous compatible solvent–containing wastes. If solvents, oil–based paints or gasoline are consolidated, the operator shall conduct these operations in an area approved by the local fire department and air quality management district.

(5) Maintain compliance with Health and Safety Code section 25200.14, except as specified below:

(A) Complete and file a Phase I environmental assessment with the Department within one year of commencing operation pursuant to section 66270.60 or by June 6, 1997, whichever date is later. A PHHWCF previously authorized to operate that completed the Phase I environmental assessment required by Health and Safety Code section 25200.14 is not required to complete a new Phase I environmental assessment for the purpose of this subparagraph.

1. The Phase I environmental assessment required by Health and Safety Code section 25200.14 shall be limited to the area defined by the operational boundary of the PHHWCF. The assessment shall be conducted only on the area directly affected by the operations of the PHHWCF. Corrective action, if any, taken pursuant to Health and Safety Code section 25200.14(f), shall be limited to releases from regulated units at the PHHWCF.

2. The certification required by Health and Safety Code section 25200.14(c) may be obtained from the owner, operator, or their designee, a professional engineer registered in the State of California, a registered geologist, or a registered environmental assessor.

3. The Phase I environmental assessment and certification required by this section shall be submitted to the Department at the same address specified in section 66270.60(d)(6)(A). A copy of the Phase I environmental assessment and the certification shall be made part of the operation plan required by subsection (a)(4) of this section.

(6) The operator of a PHHWCF may store wastes at the facility for up to one year from the date of collection.

NOTE: Authority cited: Sections 25150 and 25218.3(d), Health and Safety Code. Reference: Sections 25150, 25185.6, 25186, 25200, 25200.14, 25202.9 and 25218.3, Health and Safety Code.

HISTORY

1. New section filed 8–30–95 as an emergency; operative 8–30–95 (Register 95, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–28–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 12–26–95 as an emergency; operative 12–26–95 (Register 95, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–24–96 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–25–96 as an emergency; operative 4–25–96 (Register 96, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–23–96 or emergency language will be repealed by operation of law on the following day.
4. New section, including amendment of subsection (a)(5)(A), refiled 8–23–96 as an emergency; operative 8–23–96 (Register 96, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–23–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–23–96 order, including amendment of section, transmitted to OAL 9–27–96 and filed 11–7–96 (Register 96, No. 45).
6. Amendment of subsections (a)(3) and (a)(3)(C) filed 1–8–99 as an emergency; operative 1–8–99 (Register 99, No. 2). A Certificate of Compliance must be transmitted to OAL by 5–10–99 or emergency language will be repealed by operation of law on the following day.
7. Amendment of subsections (a)(3) and (a)(3)(C) refiled 5–7–99 as an emergency; operative 5–7–99 (Register 99, No. 19). A Certificate of Compliance must be transmitted to OAL by 9–7–99 or emergency language will be repealed by operation of law on the following day.
8. Amendment of subsections (a)(3) and (a)(3)(C) refiled 9–3–99 as an emergency; operative 9–3–99 (Register 99, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–3–2000 or emergency language will be repealed by operation of law on the following day.
9. Amendment of subsections (a)(3) and (a)(3)(C) refiled 12–29–99 as an emergency; operative 1–3–2000 (Register 99, No. 53). A Certificate of Compliance must be transmitted to OAL by 5–2–2000 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 12–29–99 order transmitted to OAL 2–29–2000 and filed 4–11–2000 (Register 2000, No. 15).
11. Change without regulatory effect amending subsection (a)(5)(A) filed 6–7–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 24).

§ 67450.30. Financial Assurance for Closure for Permanent Household Hazardous Waste Collection Facilities Permitted by Rule.

(a) This section applies to all PHHWCFs, as defined in section 66260.10, deemed to have a permit pursuant to section 66270.60, subsection (d)(6).

(b) Financial assurance for closure: The operator shall prepare and submit to CUPA or authorized agency a written estimate, in current dollars, of the cost of closing the PHHWCF. The estimate shall be based on the maximum projected closure cost: however, the closure cost estimate may take into account any salvage value that may be realized from the sale of wastes, facility structures or equipment, land, or other facility assets at the time of closure. The closure cost estimate may also take into account reduced costs that may be incurred by employing the operator's own staff and/or equipment for actual closure activities.

(1) The operator shall adjust annually the closure cost estimate for inflation within sixty (60) days prior to the anniversary date of the original establishment of the financial mechanism(s). The adjustment shall be made as specified in sections 67450.13, subsections (a)(2)(A) and (a)(2)(B) using an inflation factor derived from the annual Implicit Price Deflator for Gross National Product as published by the U.S. Department of Commerce in its Survey of Current Business. The inflation factor is obtained by dividing the latest published annual Deflator by the Deflator of the previous year.

(A) The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.

(B) Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

(2) The operator shall revise the closure cost estimate no more than thirty (30) days after a change in the closure plan increases the cost of closure. The revised closure cost estimate shall be adjusted for inflation as specified in subsection (b)(1) of this section.

(3) The most current closure plan and the most current closure cost estimate shall be keep on file at the PHHWCF during the operating life of the facility.

(4) The operator shall submit to CUPA or authorized agency, a copy of each revised closure cost estimate prepared pursuant to paragraphs (1) and (2) of this subdivision.

(c) On or before October 1, 1996, financial assurance for closure of a PHHWCF shall be established by one of the following methods and submitted with the certification required in subsection (d) of this section:

(1) a closure trust fund, as specified in section 66265.143, subsection (a);

(2) a surety bond guaranteeing payment into a closure trust fund, as specified in section 66265.143, subsection (b);

(3) a closure letter of credit, as specified in section 66265.143, subsection (c);

(4) closure insurance, as specified in section 66265.143, subsection (d),

(5) a financial test and corporate guarantee for closure, as specified in section 66265.143, subsection (e);

(6) multiple financial mechanisms for closure costs, as specified in section 66265.143, subsection (f),

(7) an alternate financial mechanism, as specified in section 66265.143, subsection (h); or

(8) self–insurance for public agencies (for public agencies)

(A) A public agency operating a PHHWCF may satisfy the requirements of this section by submitting a certificate of self–insurance to CUPA or authorized agency. The public agency shall submit DTSC Form 1220 (2/96), which may be obtained from CUPA or authorized agency. The certificate of self–insurance shall contain original signatures.

(B) The public agency shall guarantee that funds shall be available to close the facility whenever final closure occurs. The public agency shall also guarantee that once final closure begins, the public agency shall, at the direction of CUPA or authorized agency, provide funding up to an amount equal to the full amount of the most recent closure cost estimate, to a party or parties specified by CUPA or authorized agency.

(d) On or before October 1, 1996, the operator of a PHHWCF in operation prior to October 1, 1996 shall submit a certification to CUPA or authorized agency which documents compliance with the closure cost assurance requirements of subsection (b) of this section. For those PHHWCFs commencing operation after October 1, 1996, the certification shall be submitted with the notification required by section 662670.60(d)(6)(A).

(1) The certification shall contain the following information:

(A) The current closure cost estimate of the PHHWCF as determined in subsection (b) of this section.

(B) The mechanism(s) established to provide the closure cost assurance for the PHHWCF, as described in subsection (b).

(C) The name and location of the financial institution, insurance company, surety company, or other appropriate organization used to establish the closure assurance for the PHHWCF.

(D) The effective date of the closure assurance for the PHHWCF.

(E) The certification shall be signed according to the requirements of section 66270.11 as those requirements apply to permit applications.

(e) On or after October 1, 1996, a PHHWCF operating pursuant to a permit by rule not more than thirty (30) days in any calendar year, or a PHHWCF whose current closure cost estimate, as specified in this section, is less than $10,000.00, is not required to provide financial assurance as specified in section 67450.30 for the cost of closure. A PHHWCF exempt from financial assurance for closure pursuant to this subsection shall maintain at the facility, an amended copy of the certification required by subsection (d) of this section stating the reasons why the PHHWCF is eligible for this exemption. A copy of the amended certification required by this section, signed according to the requirements of sec-

tion 66270.11 as those requirements apply to permit applications, shall be submitted to CUPA or authorized agency ten (10) days prior to the date upon which the operator operates pursuant to this exemption.

NOTE: Authority cited: Sections 25150, 25218.3(d) and 25245, Health and Safety Code. Reference: Sections 25150, 25218.3(d) and 25245, Health and Safety Code.

HISTORY

1. New section filed 8–30–95 as an emergency; operative 8–30–95 (Register 95, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–28–95 or emergency language will be repealed by operation of law on the following day.
2. New section, including new forms, refiled 12–26–95 as an emergency; operative 12–26–95 (Register 95, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–24–96 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–25–96 as an emergency; operative 4–25–96 (Register 96, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–23–96 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 8–23–96 as an emergency; operative 8–23–96 (Register 96, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–23–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–23–96 order, including amendment of section, new instructions for completing Form DTSC 1094B, and amendment of Form DTSC 1094B transmitted to OAL 9–27–96 and filed 11–7–96 (Register 96, No. 45).
6. Amendment of subsections (b), (b)(4), (c)(8)(A)–(d) and (e) filed 1–8–99 as an emergency; operative 1–8–99 (Register 99, No. 2). A Certificate of Compliance must be transmitted to OAL by 5–10–99 or emergency language will be repealed by operation of law on the following day.
7. Amendment of subsections (b), (b)(4), (c)(8)(A)–(d) and (e) refiled 5–7–99 as an emergency; operative 5–7–99 (Register 99, No. 19). A Certificate of Compliance must be transmitted to OAL by 9–7–99 or emergency language will be repealed by operation of law on the following day.
8. Amendment of subsections (b), (b)(4), (c)(8)(A)–(d) and (e) refiled 9–3–99 as an emergency; operative 9–3–99 (Register 99, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–3–2000 or emergency language will be repealed by operation of law on the following day.
9. Amendment of subsections (b), (b)(4), (c)(8)(A)–(d) and (e) refiled 12–29–99 as an emergency; operative 1–3–2000 (Register 99, No. 53). A Certificate of Compliance must be transmitted to OAL by 5–2–2000 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 12–29–99 order transmitted to OAL 2–29–2000 and filed 4–11–2000 (Register 2000, No. 15).
11. Change without regulatory effect amending subsections (a), (a)(1) and (c)(1)–(5), and repealing and adding new subsections (c)(6)–(7) filed 12–19–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 51).

INSTRUCTIONS FOR COMPLETING PERMANENT HOUSEHOLD HAZARDOUS WASTE COLLECTION FACILITY STANDARDIZED PERMIT NOTIFICATION FOR PROPOSED FACILITIES FORM DTSC 1094B

For use by public agencies proposing to operate a permanent household hazardous waste collection facility (PHHWCF).

EACH SECTION OF THIS FORM MUST BE COMPLETED.
INCOMPLETE FORMS WILL NOT BE PROCESSED.

Please check at the top of the form whether this in an initial or a revised notification. If this is a revision to an existing notification, place an asterisk (*) in the left margin next to the revised information. The notification must be revised whenever there is a significant change to the information required in this notification.

Please enter the name of the facility and the facility identification number at the top of each page.

I. GENERAL INFORMATION

ID NUMBER:
Enter your facility's 12–character California identification number. This number will begin with the letters "CAH". If you don't know your identification number or do not have an identification number, please contact the Department of Toxic Substances Control (DTSC) Manifest Unit at (916) 324–1781. The Manifest Unit will provide you with your number or send you an application form (Notification of Regulated Waste Activity (EPA Form 8700–12)).

FACILITY NAME:
Enter the name of the permanent household hazardous waste collection facility.

ADDRESS:
Enter the physical address of the collection facility.

LOCATION:
Describe how to locate or get to the facility. If the facility lacks a street name, give the most accurate alternative geographic information (e.g. section number or quarter section number from county records or at intersection of Rts. 425 and 22). Also enter the latitude and longitude of the facility in degrees, minutes and seconds. You may use the map you provide for Item K to determine latitude and longitude. Latitude and longitude information is also available from Regional Offices of the U.S. Department of Interior, Geological Survey and from State Natural Resources Agencies.

II. OPERATOR (PUBLIC AGENCY)

NAME:
Enter the name of the public agency that will be the legal operator of the PHHWCF.

ADDRESS:
Enter the mailing address of the public agency.

[The next page is 758.338(c).]

CONTACT PERSON:
Enter the name of the contact person (last name first) in the public agency who is knowledgeable about the notification and the PHHWCF.

TELEPHONE:
Enter the area code and telephone number of the contact person.

III. CONTRACTOR INFORMATION (IF APPLICABLE):

Complete this item only if the operator has contracted with another entity (e.g. private contractor) to do the actual management of the PHHWCF.

NAME:
Enter the name of the contractor company.

ADDRESS:
Enter the mailing address of the contractor company.

CONTACT PERSON:
Enter the name of a contact person (last name first) in the contractor company who is knowledgeable about the operation of the PHHWCF.

TELEPHONE NUMBER:
Enter the telephone number of the contact person.

IV. LOCAL AND STATE PERMITS REQUIRED FOR THE OPERATION OF FACILITY

List all local and state permits required for the operation of the facility. If no permits are required, state "no (local/state) permits are required" on the form. Please indicate whether the required permits have been obtained.

V. PROPERTY OWNERSHIP

PROPERTY:
Please indicate the legal ownership of the property on which the PHHWCF will be located. If applicable, include the property owner's name and telephone number. Note that if the property owner and the facility operator are different entities, a written agreement must exist between the property owner and the PHHWCF operator allowing operation of the facility.

VI. ACCEPTANCE OF AND MANAGEMENT OF SPECIFIC WASTE TYPES

WASTE FROM CONDITIONALLY EXEMPT SMALL QUANTITY GENERATORS:
Indicate whether the PHHWCF will accept wastes from conditionally exempt small quantity generators as defined by Health and Safety Code section 25218.

NON–ACCEPTANCE OF CERTAIN WASTES:
Please indicate if the PHHWCF will categorically exclude any certain types of waste. Use descriptive terms such as "compressed gas cylinders larger than 20 pounds".

CONSOLIDATION OF RECYCLABLES:

Please indicate which recyclable wastes will be consolidated at the PHHWCF.

VII. WASTE VOLUME

VOLUME COLLECTED:

Please indicate the approximate total volume of hazardous wastes you estimate will be brought to the PHHWCF in an average month. Please indicate this figure in either gallons or pounds.

STORAGE CAPACITY:

Please indicate the total capacity of each separate container storage area and specify gallons or pounds. A storage area would usually be a bermed area with an impervious base or some other type of secondary containment. Then for individual tanks, please indicate the maximum capacity of the tank and the type of waste which is stored in that tank.

VIII. DAY AND HOURS OF OPERATION

Enter the average number of days per month during which the PHHWCF will accept wastes. Indicate also the hours the PHHWCF will be in operation on the days waste is being accepted. Show the hours using a 24–hour clock (for example: 8 am should be shown as 0800 and 1 pm should be shown as 1300).

IX. FACILITY DESCRIPTION

Please provide a detailed description of the physical components of the facility in enough detail that a person not familiar with the facility would be able to enter the facility and be able to understand the facility design. Include fencing, gates, traffic flow, waste removal area, waste sorting areas, and waste storage areas, etc.

X. REQUIRED ATTACHMENTS

A. FACILITY PLOT PLAN:

Each facility must include a drawing showing the general layout of the facility. This drawing should be approximately to scale and fit on an 81/2″ by 11″ sheet of paper. This drawing should show the following:

1. Map scale and date.
2. The property boundaries of the facility.
3. Wind rose orientation.
4. The areas occupied by all storage and treatment units that will be used during operation of the PHHWCF.
5. The name and location of each operation area (Example: used oil storage tank, consolidation area, etc.).
6. The approximate dimensions of the property boundaries and each storage and treatment area.
7. Security provisions (fencing, gates, etc.).
8. Internal roads; on and off site traffic flow.

B. CERTIFICATION OF FINANCIAL RESPONSIBILITY FOR CLOSURE:

Attach certification required by Title 22, CCR, section 67450.30(b).

C. **WRITTEN AGREEMENT BETWEEN PROPERTY OWNER AND FACILITY OPERATOR:** Please submit a signed agreement by the property owner acknowledging an allowing the operation of the facility if the property owner is different from the legal operator (Public Agency).

XI. OPERATOR CERTIFICATION

This section must be completed by a chief executive officer or elected official of the public agency operating the PHHWCF, as specified in Title 22, CCR, section 66270.11. **All copies must have original signatures.**

INSTRUCTIONS FOR SUBMITTAL OF NOTIFICATION

Do not send this notification to the DTSC's Regional Office. After completing the form, retain one copy for your records and submit two copies with **original signatures** to the Department of Toxic Substances Control.

Submit this notification to:

Department of Toxic Substances Control
State Regulatory Programs Division
Northern California Branch
700 Heinz Avenue, Building F, Suite 200
Berkeley, California 94710

State of California — California Environmental Protection Agency Department of Toxic Substances Control

For DTSC Use Only
Region _____

PERMIT BY RULE NOTIFICATION FORM FOR PERMANENT HOUSEHOLD HAZARDOUS WASTE COLLECTION FACILITIES

Please refer to the attached Instructions before completing this form.

Initial Notification ☐ Revised Notification ☐

I. GENERAL INFORMATION

ID NUMBER: CA_ _ _ _ _ _ _ _ _ _

FACILITY NAME _____

FACILITY ADDRESS _____

_____

CITY _____ CA ZIP _____-_____

COUNTY _____

LOCATION
(Legal Description) _____

_____

(Latitude & Longitude) _____

II. OPERATOR (PUBLIC AGENCY)

NAME _____

ADDRESS _____

_____

CITY _____ STATE ZIP _____-_____

CONTACT PERSON _____ _____
(Last Name) (First Name)

TELEPHONE NUMBER (___) _____-_____

III. CONTRACTOR INFORMATION (if applicable)

NAME _____

ADDRESS _____

_____

CITY _____ STATE ___ ZIP _____-_____

CONTACT PERSON _____ _____
(Last Name) (First Name)

TELEPHONE NUMBER (___) _____-_____

ID NUMBER_____

PERMIT BY RULE NOTIFICATION FORM FOR PERMANENT HOUSEHOLD HAZARDOUS WASTE COLLECTION FACILITIES

IV. THE FOLLOWING LOCAL AND/OR STATE PERMITS ARE REQUIRED FOR OPERATION OF THE PHHWCF:

	OBTAINED			OBTAINED	
_____	YES ☐	NO ☐	_____	YES ☐	NO ☐
_____	YES ☐	NO ☐	_____	YES ☐	NO ☐
_____	YES ☐	NO ☐	_____	YES ☐	NO ☐

V. PROPERTY OWNERSHIP

A. Is the property on which the PHHWCF is located owned by the operator? Yes ☐ No ☐
If not, a written agreement between the operator and the property owner is required.

Property Owner's Name _____ Phone (___)____-_____

Contact Person_____

VI. ACCEPTANCE AND MANAGEMENT OF SPECIFIC WASTE TYPES

A. Will your facility accept wastes from conditionally exempt small quantity generators? Yes ☐ No ☐

B. Will your facility accept waste from any of the following programs, facilities, or transporters?

1. Curbside household hazardous waste collection program? Yes ☐ No ☐
2. Door–to–door household hazardous waste collection program? Yes ☐ No ☐
3. Temporary household hazardous waste collection facility? Yes ☐ No ☐
4. Recycle–only household hazardous waste facility? Yes ☐ No ☐
5. Mobile household hazardous waste collection facility? Yes ☐ No ☐
6. Registered HW transporter carrying hazardous waste generated by a CESQG? Yes ☐ No ☐
7. Registered HW transporter carrying waste from a loadcheck program? Yes ☐ No ☐
8. Registered HW transporter carrying abandoned waste under public agency oversight? Yes ☐ No ☐
9. Other? Please explain _____

C. Does your facility categorically exclude any type of waste (e.g. explosives, infectious waste, compressed gas cylinders, etc.)? If so, please list those categories:

_____

_____

D. Will your facility consolidate any of the following wastes?

☐ used oil ☐ antifreeze ☐ solvents
☐ water–based paint ☐ miscellaneous wastes contaminated with solvents ☐ roofing tar
☐ oil–based paint ☐ gasoline ☐ adhesives
☐ photographic solutions

ID NUMBER_____

PERMIT BY RULE NOTIFICATION FORM FOR

PERMANENT HOUSEHOLD HAZARDOUS WASTE COLLECTION FACILITIES

VII. WASTE VOLUME

A. Please indicate the approximate total volume of hazardous waste brought to the facility in an average month.

_____Gallons or _____ Pounds

B. What is the capacity of the container storage area (i.e., drums, roll off bins, etc.) at the facility?

1. Individual storage area total capacity _____ gallons/pounds
2. Individual storage area total capacity _____ gallons/pounds
3. Individual storage area total capacity _____ gallons/pounds
4. Individual storage area total capacity _____ gallons/pounds
5. Individual storage area total capacity _____ gallons/pounds
6. Individual storage area total capacity _____ gallons/pounds

What is the total number of tank storage areas? _____

1. Individual tank volume _____ gallons. Waste stored _____
2. Individual tank volume _____ gallons. Waste stored _____
3. Individual tank volume _____ gallons. Waste stored _____
4. Individual tank volume _____ gallons. Waste stored _____

VIII. DAYS/HOURS OF OPERATION

On the average, how many days each month is the facility open to accept wastes?

____ Days per month

What are the hours of operation on the days that the facility accepts wastes from households and CESQGs?

Example: Facility accepts CESQG wastes from 0900–1300 on the first Friday of each month and accepts household wastes Monday through Thursday of each week from 1000–1600

_____

_____

_____

ID NUMBER_____

PERMIT BY RULE NOTIFICATION FORM FOR PERMANENT HOUSEHOLD HAZARDOUS WASTE COLLECTION FACILITIES

IX. FACILITY DESCRIPTION: Please describe the facility in enough detail that a person not familiar with the facility will be able to understand the facility design. Include a description of the lighting, fencing, secondary containment for storage areas, etc.

ID NUMBER_____

PERMIT BY RULE NOTIFICATION FORM FOR PERMANENT HOUSEHOLD HAZARDOUS WASTE COLLECTION FACILITIES

X. REQUIRED ATTACHMENTS

A. ☐ A plot of plan of the facility

B. ☐ Certification of financial responsibility for closure
(Due October 1, 1996 for facilities in operation prior to October 1, 1996, and with this notification (DTSC Form 1094B) for those facilities commencing operation after that date.)

C. ☐ Copy of a written agreement between the property owner and facility operator allowing operation of the PHHWCF (if applicable)

XI. OPERATOR CERTIFICATION (PUBLIC AGENCY)

"I certify that the unit or units described in these documents meet the eligibility and operating requirements of state statutes and regulations for the permit by rule tier. I understand that I am required to provide financial assurance for the costs of closing this facility. I also understand that I am required to file a Phase I Environmental Assessment at a later date as part of the permit by rule application."

"I certify under penalty of perjury under the laws of the State of California that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those directly responsible for gathering the information, the information is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

_____ _____
Name (Print or Type) Title

_____ _____
Signature (Principal executive officer or ranking elected official), CCR, Title 22, Section 66270.11. Date Signed

[The next page is 758.338(g).]

State of California-California Environmental Protection Agency Department of Toxic Substances Control

CERTIFICATE OF SELF-INSURANCE

TO BE USED BY PUBLIC AGENCIES OPERATING PERMANENT HOUSEHOLD HAZARDOUS WASTE COLLECTION FACILITIES

(If additional space is needed, add attachments)

Public Agency:	Address:
Public Agency Official:	Address: (If different from above)

Please indicate if Certificate of Self-Insurance is for closure, liability or both.

☐ Closure ☐ Liability

Liability Coverage for Household Hazardous Waste Collection Facilities:

(Enter Information for Each Facility. If additional space is needed, add attachments)

Facility Name	Address	Facility ID Number	Limits of Liability * Per Occurrence	Limits of Liability * Annual Aggregate
		TOTALS:		

*Excluding Legal Defense Costs

This Agreement demonstrates financial assurance for the following cost estimate(s) for the Permanent Household Hazardous Waste Collection Facility(ies) listed below:

Facility Name	Address	ID Number	Closure Cost Estimate: Date of Adjustment:
			Closure Cost Estimate: Date of Adjustment:
			Closure Cost Estimate: Date of Adjustment:

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State of California-California Environmental Protection Agency Department of Toxic Substances Control

CERTIFICATION:

LIABILITY:

1. The public agency official named below hereby certifies that the facility(ies) listed above are self-insured for third party bodily injury and property damage in connection with the operator's obligation to demonstrate financial responsibility per California Code of Regulations, Title 22, Section 67450.30. The coverage applies to the above-listed facility(ies) for accidental occurrences arising from the operations of the facility(ies).

2. The limits of liability are the amounts stated above for "per occurrence" and annual aggregate", exclusive of legal defense costs.

3. Indicate whether this coverage is ___ primary or ___ excess coverage.

CLOSURE AND LIABILITY:
4. Upon request by the Department of Toxic Substances Control (DTSC), the public agency agrees to furnish the DTSC any documents pertinent to this coverage.

5. Termination of this coverage will be effective only upon written notice, sent by certified mail, and only after the expiration of 60 days after a copy of such written notice is received by the DTSC as evidenced by the return receipts.

CLOSURE:

6. The public agency official named below hereby certifies that funds shall be available to close the facility(ies) listed above whenever final closure occurs. The public agency also certifies that once final closure begins, the public agency shall be responsible for paying out funds, up to an amount equal to the full amount of the most recent closure cost estimate, upon direction from the DTSC, to such party(ies) as the DTSC specifies.

Public Agency Official:	Title:
Typed or Printed name of Person Signing:	Date:
Public Agency Official:	Title:
Typed or Printed Name of Person Signing:	Date:

PRIVACY STATEMENT

This information is requested by the Department of Toxic Substances Control under Health and Safety Code Section 25245 in order to verify adequate financial assurance for household hazardous waste collection facilities. Completion of the form is mandatory. The consequence of not completing the form is denial of a permit to operate a household hazardous waste collection facility. Information may be provided to U.S. Environmental Protection Agency(EPA, State Attorney General, Air Resources Board, California Integrated Waste Management Board, Energy Resources Conservation and Development Commission, Water Resources Control Board, and California Regional Water Quality Control Boards. For more information or access to your records, contact the appropriate Regional Office of the Department of Toxic Substances Control.

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Article 2. [Reserved]

Article 3. [Reserved]

Article 4. [Reserved]

Article 5. Requirements Applicable to the Operation of K–12 Schools Hazardous Waste Collection, Consolidation, and Accumulation Facilities (SHWCCAF) Deemed to Have a Permit by Rule

§ 67450.40. Scope and Purpose.

(a) Scope. This article applies to:

(1) Any school district, or other school organization or agency, that operates a K–12 schools hazardous waste collection, consolidation, and accumulation facility (SHWCCAF) deemed to have a permit by rule pursuant to section 66270.60(d)(7); and

(2) Hazardous waste generated by K–12 schools if the waste will be managed at a SHWCCAF deemed to have a permit by rule.

(b) Purpose: This article provides for an alternative offsite hazardous waste management regulatory option that:

(1) Establishes the mechanisms and requirements for offsite collection, consolidation, and accumulation under permit by rule of hazardous wastes generated by the routine operation and maintenance of K–12 schools;

(2) Establishes the requirements for hazardous wastes generated by K–12 schools that are to be sent to an authorized offsite SHWCCAF operated in accordance with this article; and

(3) Establishes the requirements for transportation of eligible hazardous wastes generated by K–12 schools to an authorized offsite SHWCCAF operated in accordance with this article.

NOTE: Authority cited: Sections 25150, 25150.6 and 25200, Health and Safety Code. Reference: Sections 25150, 25150.6, 25161 and 25200, Health and Safety Code.

HISTORY

1. New article 5 (sections 67450.40–67450.50) and section filed 1–30–2002; operative 1–30–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 5).

§ 67450.41. Definitions.

(a) For the purpose of this article, the following definitions apply:

(1) "Certified Unified Program Agency (CUPA)" means the agency certified pursuant to the requirements of Chapter 6.11 of the Health and Safety Code (commencing with section 25404) and Title 27, CCR, Division 1, Subdivision 4, Chapter 1 (sections 15100 through 15170).

(2) "Consolidation" means the bulking or combining of the same type of waste into a single container.

(3) "Contributing school" means a K–12 school that sends hazardous wastes generated by the school to a SHWCCAF.

(4) "Facility" means the area defined by the operational boundary of the SHWCCAF, including all tanks, containers, or other equipment used to manage hazardous waste.

(5) "K–12 schools" means all public or private schools in which instruction is given through grade 12, or in any one or more of those grades.

(6) "Lab pack" means small containers of hazardous waste placed in a sorbent–filled outer drum or container in accordance with the requirements of section 66264.316.

(7) "Offsite" means non–schoolyard property in direct control of the SHWCCAF owner or operator that is not accessible to school students or the general public.

(8) "Owner or operator" means the school district or other school organization or entity that owns or operates a SHWCCAF deemed to have a permit by rule.

(9) "School district" means the entity recognized as the governing entity for a public or private elementary or secondary school, or group of public or private elementary or secondary schools.

NOTE: Authority cited: Section 25150, Health and Safety Code. Reference: Sections 25123.7(b), 25117.1, 25150, 25200 and 25200.10, Health and Safety Code.

HISTORY

1. New section filed 1–30–2002; operative 1–30–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 5).

§ 67450.42. Eligible Wastes and Waste Management Restrictions.

(a) The following hazardous wastes are eligible for management by SHWCCAFs operating pursuant to section 67450.44:

(1) Non–RCRA hazardous waste as defined in section 66261.101; and

(2) RCRA hazardous waste as defined in section 66261.100 if transportation and management of that waste at the SHWCCAF is exempt from, or is not otherwise regulated pursuant to, the federal act.

(b) Notwithstanding paragraph (a), the following hazardous wastes or management activities are prohibited from authorization under permit by rule pursuant to this article:

(1) Treatment of hazardous waste at the SHWCCAF;

(2) Acceptance at the SHWCCAF of hazardous wastes that exhibit the characteristic of reactivity pursuant to section 66261.23 (including, but not limited to, shock–sensitive or explosive chemical wastes).

(3) Acceptance at the SHWCCAF of hazardous wastes not generated by the routine operation or maintenance of a contributing K–12 school (such as non–routine demolition, construction, or renovation wastes); and

(4) Uncontained storage, storage in waste piles and surface impoundments, and land disposal of hazardous waste at the SHWCCAF.

(c) Except as provided in subsection (d), hazardous wastes generated from school science laboratories, including chemistry, physics, and biology classes, may be managed at a SHWCCAF only if all of the following conditions are met:

(1) At contributing schools:

(A) Science laboratory hazardous wastes, except laboratory specimens preserved in formalin and formaldehyde solutions, are lab packed in accordance with the requirements of section 66264.316 prior to transport to prevent reactions with the contained waste and ensure that incompatible wastes are not placed within the same outer container.

(B) Lab packs containing science laboratory hazardous wastes are marked with the types and volumes of wastes contained in the lab pack and the lab packs are not reopened during transportation to the SHWCCAF.

(2) At the SHWCCAF:

(A) Reopened lab packs containing science laboratory hazardous wastes are repackaged in accordance with the requirements of section 66264.316 to prevent reactions with the contained waste and ensure that incompatible wastes are not placed within the same outer container.

(B) Repackaged lab packs containing science laboratory hazardous wastes are marked with the types and volumes of wastes contained in the lab pack and the lab packs are not reopened during transportation to authorized recycling or disposal facilities.

(C) All lab pack reopening/repackaging shall be conducted within an appropriate spill containment system.

(D) Only the outer lab pack may be reopened/repackaged. Reopening or repackaging of the sealed primary container in which the waste was received is prohibited, unless a waste is eligible for consolidation according to subsection (d), or the primary container is damaged or leaking.

(E) Leaking or damaged lab packs and primary waste containers shall be immediately managed in accordance with the contingency plan and spill response and cleanup procedures required by section 67450.44.

(F) Personnel reopening or repackaging lab packs at the SHWCCAF are trained and work practices are managed in accordance with applica-

ble requirements of the Occupational Safety and Health Administration, California Code of Regulations, title 8, sections 3380 and 5192.

(3) Personnel handling the laboratory hazardous wastes at the contributing school, in transit to the SHWCCAF, or at the SHWCCAF are trained in hazardous waste management and transport in accordance with sections 66265.16 and 67450.47.

(d) Only the following hazardous wastes may be consolidated with wastes of the same type into a single container at a SHWCCAF. Consolidation of these wastes shall be conducted only at the SHWCCAF and not during transport to the SHWCCAF. Each waste or wastestream listed shall be consolidated only with wastes or wastestreams of the same type.

(1) Duplicating fluid;

(2) Compatible formalin or formaldehyde solutions (that meet the conditions of subsection (c) above if generated in association with a school science laboratory);

(3) Compatible laboratory specimens (that meet the conditions of subsection (c) above if generated in association with a school science laboratory);

(4) Compatible solvents;

(5) Water–based or latex paints;

(6) Oil–based paints;

(7) Antifreeze;

(8) Gasoline;

(9) Used oil;

(10) Compatible organic resins, including, but not limited to, roofing tar, caulking and patching compounds, and adhesives; and

(11) Photoimaging solutions that are hazardous wastes solely due to the presence of silver.

(e) A SHWCCAF shall be established only at an offsite, non–schoolyard location where operation of the SHWCCAF is consistent with local land use zoning or land use patterns (e.g., a school district corporation yard).

(f) Wastes shall be accepted at the SHWCCAF only when personnel designated by the SHWCCAF owner or operator are present to accept and sign for the waste.

NOTE: Authority cited: Sections 25150 and 25200, Health and Safety Code. Reference: Sections 25150 and 25200, Health and Safety Code.

HISTORY

1. New section filed 1–30–2002; operative 1–30–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 5).
2. Amendment of subsections (c)(1)–(3) and amendment of NOTE filed 9–23–2003; operative 9–23–2003 pursuant to Government Codes section 11343.4 (Register 2003, No. 39).

§ 67450.43. Notification Requirements.

(a) The owner or operator of a SHWCCAF shall be deemed to have a permit by rule when the owner or operator complies with subsections (b), (c), (d), (f) and (h) of this section, as applicable, and receives an acknowledgment from the CUPA or authorized agency authorizing operation of the SHWCCAF as required by subsection (e) or (g).

(b) The owner or operator of a SHWCCAF shall submit to the CUPA or authorized agency, in person or by certified mail with return receipt requested, a notification of intent to operate a SHWCCAF. The notification shall consist of the Business Activities page and the Business Owner/Operator Page of the Unified Program Consolidated Form (UPCF)(1/99 revised) found in Title 27, CCR, Division 1, Subdivision 4, Chapter 1, Appendix E (after section 15620), and all of the facility information listed below.

(1) The name, mailing address and telephone number of the SHWCCAF owner or operator;

(2) The facility name, address, legal description of the facility location, and identification number issued by the Department;

(3) The name, title, address, telephone number, facsimile number, and pager number, if applicable, of the facility contact person;

(4) The name, address, and telephone number of the legal owner of the property where the SHWCCAF is located, and a copy of a signed agreement by the property owner acknowledging and allowing operation of the SHWCCAF, if the property owner is different from the SHWCCAF owner or operator,

(5) A listing of all schools that will contribute hazardous waste to the SHWCCAF.

(6) An estimate of the total volume (in gallons or pounds) of hazardous wastes to be received at the SHWCCAF in an average month.

(7) A description of how waste is to be managed at the SHWCCAF, including the number of waste storage containers, volumes of each container, and total waste storage capacity of the SHWCCAF.

(8) A description of the operational hours and safety precautions to be taken at the SHWCCAF.

(9) A detailed description of the SHWCCAF. The description shall include, but not be limited to, fencing, gates, traffic flow, waste transfer areas, waste sorting areas, waste storage areas, containment features, and uses of the property surrounding the SHWCCAF and the SHWCCAF site property.

(10) Certification of financial responsibility for closure as required by section 67450.49(d).

(11) A facility plot map showing the general layout of the SHWCCAF. The drawing shall fit on an 8 1/2″ by 11″ sheet of paper, and include the following:

(A) Map scale, north arrow, and date;

(B) The boundaries of the SHWCCAF;

(C) The name and location of each operation area and waste management unit (Example: consolidation area, storage area, used oil tank, etc.);

(D) The approximate location of the SHWCCAF site property boundaries with respect to the SHWCCAF;

(E) Security provisions (fencing, gates, etc.); and

(F) Internal roads, and onsite and offsite traffic flow.

(c) The notification shall be submitted a minimum of 45 days in advance of the planned commencement of operation of the SHWCCAF, and every five (5) years thereafter, or every five (5) years from the notification revision submitted pursuant to subsection (f). Each notification required by this subsection shall be completed, dated, and signed according to the requirements of section 66270.11 as those requirements apply to permit applications.

(d) The owner or operator of a SHWCCAF accepting waste from schools located within different CUPA or authorized agency jurisdictions shall submit copies of the notification, with a brief explanation indicating the copies are for information only, to each CUPA within whose jurisdiction a contributing school is located. The CUPA or authorized agency in whose jurisdiction the SHWCCAF is located shall coordinate with any other CUPAs or authorized agencies having jurisdiction over contributing schools on issues affecting those contributing schools.

(e) Within thirty (30) calendar days of receipt of a notification submitted pursuant to subsections (b) or (c) of this section, the CUPA or authorized agency shall acknowledge in writing receipt of the notification. The CUPA or authorized agency shall, in conjunction with the acknowledgment, authorize operation of the SHWCCAF subject to the requirements and conditions of this article; revoke, suspend, or deny authorization or reauthorization to operate under a permit by rule pursuant to section 67450.50; or notify the owner or operator that the notification is incomplete or inaccurate and inform the operator that additional information or correction(s) is needed. The CUPA or authorized agency shall deny the notification of any owner or operator who fails to provide the information or correction(s) requested within ten (10) calendar days of receipt of the acknowledgment. Upon good cause shown by the owner or operator, the CUPA or authorized agency shall grant the owner or operator additional time to provide the information or correction(s) requested. An owner or operator whose notification is rejected may submit a new or revised notification. The CUPA or authorized agency shall submit copies of any letter modifying or revoking authorization of the SHWCCAF to all CUPAs or authorized agencies in whose jurisdiction contributing schools are located.

(f) Forty–five (45) calendar days prior to implementing any change in the operation of the SHWCCAF as described in the notification required

by subsections (b) or (c) of this section, the owner or operator shall send a revised notification to the CUPA or authorized agency. The CUPA or authorized agency shall notify the operator if the information is incomplete or inaccurate within thirty (30) calendar days of receipt of the revised notification. Upon good cause shown by the owner or operator, the CUPA or authorized agency shall allow the owner or operator to submit the revised notification within a shorter period of time prior to implementing the change.

(g) Within thirty (30) calendar days of receipt of a revised notification submitted pursuant to paragraph (f) of this section, the CUPA or authorized agency shall acknowledge in writing receipt of the revised notification. The CUPA or authorized agency shall, in conjunction with the acknowledgment, authorize continued operation of the SHWCCAF subject to the requirements and conditions of this article; deny authorization to operate under the revised notification specifications pursuant to section 67450.50; or notify the operator that the revised notification is incomplete or inaccurate and inform the owner or operator of the additional information or correction(s) needed. The CUPA or authorized agency shall deny the revised notification of any operator who fails to provide the information or correction(s) requested within ten (10) calendar days of receipt of the acknowledgment. Upon good cause shown by the owner or operator, the CUPA or authorized agency shall grant the operator additional time to provide the information or correction(s) requested. An owner or operator whose revised notification is rejected may submit a new revised notification. The owner or operator whose revised notification is rejected may continue to operate the SHWCCAF under the conditions of the previous authorization until authorization is received to oper-

[The next page is 758.338(k).]

ate under a revised notification, unless the previous authorization is revoked, suspended, denied, or voided pursuant to section 67450.50. The CUPA or authorized agency shall submit copies of any letter accepting or rejecting the revised notification to all CUPAs or authorized agencies in whose jurisdiction contributing schools are located.

(h) The owner or operator of a SHWCCAF shall remain in compliance with the requirements specified in this article between the time the SHWCCAF commences operation and the time the applicable facility closure performance standard requirements of section 67450.48 are met.

NOTE: Authority cited: Section 25150, Health and Safety Code. Reference: Sections 25150, 25158, 25185.6, 25186, 25200, 25245.4 and 25404.1, Health and Safety Code.

HISTORY

1. New section filed 1–30–2002; operative 1–30–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 5).

§ 67450.44. Requirements Applicable to K–12 Schools Hazardous Waste Collection, Consolidation, and Accumulation Facilities Deemed to Have a Permit by Rule.

(a) The owner or operator who operates a SHWCCAF deemed to have a permit by rule shall do all of the following:

(1) Maintain compliance with sections 66262.10 through 66262.57 (Generator Standards) for any hazardous wastes generated at the SHWCCAF, except section 66262.41.

(2) Maintain compliance with sections 66264.175 (Containment) and 66265.148 (Incapacity of Owners or Operators, Guarantors, or Financial Institutions) except as follows:

(A) The engineering certification required by section 66264.175(c) shall be provided by the manufacturer of the containment system, an independent professional engineer registered in the State of California, or a registered professional engineer employed by a local government entity associated with the owner or operator of the SHWCCAF but not reporting to the SHWCCAF owner or operator.

(3) Maintain compliance with the following regulations in chapter 15 of this division:

(A) Article 2, General Facility Standards, commencing with section 66265.10 (except sections 66265.12(b), 66265.13, and 66265.19).

(B) Article 3, Preparedness and Prevention, commencing with section 66265.30.

(C) Article 4, Contingency Plan and Emergency Procedures, commencing with section 66265.50 (except section 66265.53(b));

(D) Section 66265.71(c) of Article 5, Manifest System, except as specified in section 66262.20(a)(1).

(E) Article 9, Use and Management of Containers, commencing with section 66265.170. Except that the minimum distance specified in section 66265.176 may, at the discretion of the owner or operator, be less than 15 meters (50 feet) from the facility's property line if the shorter distance minimizes the possibility of migration of contaminants to any adjacent property should a release occur, meets the Uniform Fire Code or local fire code requirements (whichever is more stringent), and the owner or operator has written approval from all the appropriate local agencies to use the shorter distance.

(F) Article 10, Tank Systems, commencing with section 66265.190 (except section 66265.197(c)(2)).

(4) Prepare, maintain at the facility, and operate in compliance with an operating record comprised of the items specified in sections 67450.44(a)(6)(A)3 and 67450.45(a) of this article, and the items specified below in subsections (A), (B), (C), and (D) as follows:

(A) Procedures to be followed to ensure that the SHWCCAF does not exceed the maximum hazardous waste volumes and accumulation time limits established in subsections (a)(8) and (a)(9) of this section. At a minimum, the plan shall include procedures to address the following:

1. A system for identifying and marking wastes with the waste volume and date received at the SHWCCAF. The system shall address tracking the location of wastes according to the waste volume and date received at the SHWCCAF and establishment of procedures for removal of the oldest wastes as necessary to maintain compliance with both the maximum waste volume provisions of subsection (a)(8) and waste accumulation time limit provisions of subsection (a)(9).

2. Assessment of whether and when the volume of wastes being brought to the SHWCCAF may cause the SHWCCAF to approach or exceed the established facility maximum waste volumes;

3. Arrangements for immediate transportation of wastes by a registered hazardous waste transporter to an authorized treatment, storage or disposal facility, such that the established maximum facility waste volumes and accumulation time limits shall not be exceeded.

(B) Procedures to be followed to ensure that the facility will be managed in an environmentally safe manner in the event of inclement weather.

(C) A copy of the written protocol when required by section 67450.44(a)(7)(B)3 for consolidation at the SHWCCAF of solvents, oil–based paints, or gasoline.

(D) Procedures for segregating and immediately removing from the SHWCCAF wastes prohibited from management at the SHWCCAF. The owner or operator of the SHWCCAF shall remove prohibited wastes from the SHWCCAF and transport them to an authorized treatment, storage or disposal facility, in accordance with all applicable regulations, within ten (10) days of receipt of the wastes at the SHWCCAF. The owner or operator shall document these actions in the facility operating log required by section 67450.45(a)(1).

(5) Maintain compliance with the transportation requirements established in section 67450.46 of this article.

(6) Maintain compliance with Health and Safety Code section 25200.14, except as specified below:

(A) Complete and file a Phase I environmental assessment with the Department, or with a CUPA authorized to implement Health and Safety Code section 25200.14 pursuant to Health and Safety Code section 25404.1, within one year of commencing operation pursuant to section 66270.60 and article 5 of chapter 45.

1. The Phase I environmental assessment required by Health and Safety Code section 25200.14 shall be limited to the area defined by the operational boundary of the SHWCCAF. The assessment shall be conducted only on the area directly affected by the operations of the SHWCCAF.

2. The certification required by Health and Safety Code section 25200.14(d) may be obtained from the owner, operator, or his or her designee, a professional engineer registered in the State of California, a registered geologist, or a registered environmental assessor.

3. The Phase I environmental assessment and certification required by this section shall be submitted to the Department, or CUPA authorized to implement Health and Safety Code section 25200.14 pursuant to Health and Safety Code section 25404.1. A copy of the Phase I environmental assessment and the certification shall be made part of the operating record required by subsection (a)(4) of this section.

(7) Consolidation of hazardous wastes at the SHWCCAF shall be conducted in compliance with section 67450.42(d) of this article, and as specified below:

(A) Consolidation shall be conducted in a manner that prevents mixing of incompatible wastes.

(B) Consolidation shall be conducted in compliance with any applicable air quality management district or air pollution control district requirements and any applicable local fire agency requirements. In addition, consolidation shall be conducted to include the following:

1. Every reasonable effort shall be made to minimize the loss of volatile organic compounds during any consolidation activities.

2. Emission of nuisance odors shall be prevented during any consolidation activities.

3. If solvents, oil–based paints, or gasoline are to be consolidated at the SHWCCAF and local air district or fire agency requirements specific to that activity apply, the owner or operator of the SHWCCAF shall develop, and operate in compliance with, written consolidation procedures ap-

proved by the local fire and air quality management district or air pollution control district having jurisdiction over the SHWCCAF.

(C) All consolidation shall be conducted within an area with secondary containment in accordance with section 66264.175 if containers are used for consolidation of the wastes, and section 66265.193 if tank systems are used for the consolidation of wastes.

(8) The maximum quantity of hazardous wastes accumulated at the SHWCCAF at any one time, including hazardous waste generated by the SHWCCAF, shall not exceed 1,080 gallons or 8,800 pounds, whichever is greater. If the volume of hazardous wastes being transported to the SHWCCAF is such that the quantity limit will be exceeded, the owner or operator shall immediately make arrangements for a registered hazardous waste transporter to pick up wastes from the facility, such that the maximum quantity of hazardous waste allowed at the SHWCCAF shall not be exceeded.

(9) Notwithstanding section 66262.34, the owner or operator of a SHWCCAF may accumulate and store non–RCRA or RCRA hazardous waste, if management of that waste at the SHWCCAF is exempt from or is not otherwise regulated pursuant to the federal act, at the facility for up to one year from the date of collection from contributing schools or the date of generation at the SHWCCAF, as long as the maximum quantity of hazardous waste allowed at the SHWCCAF is not exceeded.

NOTE: Authority cited: Sections 25150 and 25150.6, Health and Safety Code. Reference: Sections 25150, 25185.6, 25200, 25200.14 and 25404.1, Health and Safety Code.

HISTORY

1. New section filed 1–30–2002; operative 1–30–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 5).

§ 67450.45. Recordkeeping Requirements.

(a) The owner or operator of a SHWCCAF deemed to have a permit by rule shall maintain at the facility an operating record consisting of the following documents and the items specified in section 67450.44(a)(4).

(1) A continuous hazardous waste inventory and facility operating log of the hazardous wastes accepted, generated, stored, or consolidated at the facility, along with hazardous wastes transported from the facility.

(2) A list of the specific personnel designated by the SHWCCAF owner or operator to operate the SHWCCAF, transport contributing school wastes to the SHWCCAF, or accept waste at the SHWCCAF.

(3) A written inspection schedule, in accordance with section 66265.15(b).

(4) Personnel training documents, in accordance with section 66265.16(d).

(5) A contingency plan, in accordance with section 66265.53(a).

(6) A copy of the most recent notification submitted as required by sections 67450.43(b), (c) and (f) and a copy of the most recent acknowledgment received from the Department, CUPA or authorized agency pursuant to sections 67450.43(e) and (g).

(7) Copies of any local land use permits or other permits that may be necessary for the operation of the facility, and documentation that the operation of the SHWCCAF is consistent with local land use zoning or land use patterns.

(8) A copy of the closure plan required by section 67450.48(c).

(9) A copy of documents related to the environmental investigation and any cleanup, abatement or other necessary remedial action taken in response to a release of hazardous waste at the SHWCCAF.

(10) Documentation of any convictions, judgments, settlements, or orders resulting from any action by any local, State, or federal environmental or public health enforcement agency concerning the operation of the facility within the last three years, as the documents would be available under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Part 1 of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of the Civil Code).

(b) The owner or operator shall make the documents specified in subsection (a) available upon demand at the facility to any representative of the Department, the CUPA or authorized agency. A copy of these documents shall also be delivered in person or by certified mail with return receipt requested to the Department, CUPA or authorized agency when requested in writing by the Department, CUPA or authorized agency. The request from the Department, CUPA or authorized agency shall specify the documents which are required, where and how to submit the required documents, and the date by which the documents shall be submitted.

(c) The owner or operator of a SHWCCAF shall keep all records required by this section for a minimum period of three years. The record retention period is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Department, CUPA, or authorized agency.

NOTE: Authority cited: Section 25150, Health and Safety Code. Reference: Sections 25150, 25185.6, 25200 and 25404.1, Health and Safety Code.

HISTORY

1. New section filed 1–30–2002; operative 1–30–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 5).

§ 67450.46. Transportation Requirements.

(a) Wastes may be transported to the SHWCCAF from contributing schools without use of a hazardous waste manifest or registered hazardous waste transporter only as provided in subsections (a)(1) or (a)(2). Transportation of hazardous waste from contributing schools to the SHWCCAF not done in accordance with subsections (a)(1) or (a)(2) is subject to all applicable hazardous waste transportation requirements.

(1) Wastes are transported in accordance with Health and Safety Code section 25163(c) and all of the following conditions are met:

(A) The contributing school is the waste generator and generates not more than 100 kilograms of hazardous waste in any month;

(B) The contributing school transporting the waste does not accumulate more than a total of 1,000 kilograms of hazardous waste onsite at any one time;

(C) The total volume of hazardous waste transported does not exceed five gallons or the total weight does not exceed 50 pounds;

(D) The hazardous wastes are transported in closed containers and packed in a manner that prevents the containers from tipping, spilling, or breaking during the transporting;

(E) Different hazardous waste materials are not mixed within a container during the transporting (except wastes lab packed prior to transport in accordance with the requirements of section 66264.316 and the physical properties of the wastes);

(F) If the hazardous waste is extremely hazardous waste or acutely hazardous waste, the extremely hazardous waste or acutely hazardous waste was not generated in the course of any business, and is not more than 2.2 pounds.

(2) Wastes are transported in a manner that all of the following conditions are met:

(A) The hazardous waste is a non–RCRA hazardous waste, or the hazardous waste or its transportation is otherwise exempt from, or is not otherwise regulated pursuant to the federal act.

(B) The hazardous waste is transported by trained employees of the contributing school generating the waste, by trained contractors under the control of the contributing school, or by trained employees of the owner or operator of the SHWCCAF, in vehicles which are owned or operated by the contributing school or the owner or operator of the SHWCCAF, or by registered hazardous waste transporters. The contributing school shall assume liability for a spill of hazardous waste being transported under this subsection by the contributing school, or a contractor of the contributing school in a vehicle owned or operated by the contributing school. The owner or operator of the SHWCCAF shall assume liability for a spill of hazardous waste being transported under this subsection by an employee or contractor of the SHWCCAF owner or operator in a vehicle owned or operated by the SHWCCAF owner or operator. Nothing in this subsection bars any agreement to insure, hold harmless, or indemnify a party to the agreement for any liability under this section or otherwise bars any cause of action a generator would otherwise have against any other party.

(C) The hazardous waste is not held at any interim location, other than the SHWCCAF, for more than eight hours, unless that holding is required by other provisions of law.

(D) Not more than 135 gallons or 1,100 pounds, whichever is greater, of hazardous waste is transported in any shipment.

(E) A shipping paper containing all of the following information accompanies the hazardous waste while in transport.

1. A list of the hazardous waste being transported.

2. The type and number of containers being used to transport each type of hazardous waste.

3. The quantity, by weight or volume, of each type of hazardous waste being transported.

4. The physical state, such as solid, powder, liquid, semi-solid, or gas, of each type of hazardous waste being transported.

5. The name, location, and EPA Identification Number, if applicable, of the contributing school where the hazardous waste was generated.

6. The name and signature of the contributing school representative offering the waste for transport to the SHWCCAF.

7. The name and signature of the individual(s) who transport the hazardous waste from the contributing school to the SHWCCAF.

8. The date that the hazardous waste leaves the contributing schools and the date that the hazardous waste arrives at the SHWCCAF.

9. The name, address, telephone number, and EPA Identification Number of the SHWCCAF to which the hazardous waste is being transported.

10. The name, telephone number, and pager number if available, of an emergency response contact, for use in the event of a spill or other release.

11. The name and signature of the personnel designated by the SHWCCAF owner or operator who accepts the waste at the SHWCCAF.

(F) All shipments of hazardous waste conform with all applicable requirements of the United States Department of Transportation for hazardous materials shipments.

(b) The owner or operator of the SHWCCAF shall keep records in accordance with section 67450.45, including the shipping papers required pursuant to subsection (a)(2)(E) of this section, of all wastes transported to the SHWCCAF from contributing schools and all wastes transported from the SHWCCAF. The records for wastes transported to and from the SHWCCAF for the last three years shall be kept onsite at the SHWCCAF and be available for immediate inspection by the Department, the CUPA or authorized agency, or other federal or local agency with jurisdiction over the transport of hazardous wastes. The records retention period is automatically extended during the course of any pending enforcement action regarding the regulated activity or as requested by the Department, CUPA, or authorized agency.

(c) All hazardous wastes transported from the SHWCCAF shall be managed and transported as follows:

(1) Managed in accordance with the pre-transport requirements established in sections 66262.30 (Packaging), 66262.31 (Labeling), 66262.32 (Marking), and 66262.33 (Placarding); and

(2) Transported in accordance with sections 66262.20 through 66262.23 (Manifest), using a hazardous waste manifest and registered hazardous waste transporter, as applicable, only to an authorized treatment, storage, or disposal facility.

NOTE: Authority cited: Sections 25150, 25150.6 and 25161 Health and Safety Code. Reference: Sections 25150, 25150.6, 25160 and 25163, Health and Safety Code.

HISTORY

1. New section filed 1-30-2002; operative 1-30-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 5).

§ 67450.47. Training Requirements.

(a) Hazardous waste transported to the SHWCCAF from contributing schools and hazardous waste managed at the SHWCCAF shall be handled only by personnel trained in hazardous waste management procedures in accordance with section 66265.16 and authorized by the contributing school or SHWCCAF owner or operator to handle the waste. The required personnel training shall be in an amount and frequency sufficient to ensure protection of human health, safety, and the environment, and shall address, in addition to the emergency response training requirements of section 66265.16(a)(3), the following areas as they relate to K-12 school waste and the positions held by personnel:

(1) Hazardous waste identification;

(2) Hazardous waste management, including waste storage and consolidation considerations (especially with respect to chemical compatibility, reactivity, and temperature sensitivity);

(3) Non-emergency hazardous waste spill or release response procedures; and

(4) Hazardous waste regulatory requirements applicable to the transportation and management of hazardous wastes pursuant to this article.

(b) Pre-transport packaging (including lab packing of eligible science laboratory hazardous wastes), labeling, marking, or other transportation related management of contributing school hazardous waste shall be performed only by contributing school or SHWCCAF personnel trained in hazardous waste transportation and management procedures pursuant to subsection (a) of this section.

(c) Personnel training documents shall be maintained at each contributing school in accordance with section 66265.16(d) and at each SHWCCAF in accordance with the SHWCCAF recordkeeping and reporting requirements established in section 67450.45 of this article.

NOTE: Authority cited: Section 25150, Health and Safety Code. Reference: Sections 25150 and 25185.6, Health and Safety Code.

HISTORY

1. New section filed 1-30-2002; operative 1-30-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 5).

§ 67450.48. SHWCCAF Closure.

(a) The owner or operator of a SHWCCAF deemed to have a permit by rule shall close the SHWCCAF in a manner that:

(1) Removes all hazardous wastes accumulated and stored at the SHWCCAF;

(2) Minimizes the need for further maintenance; and

(3) Controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, potential or actual escape of hazardous waste, hazardous constituents, leachate, contaminated rainfall or runoff, or waste decomposition products to the ground or surface waters or to the atmosphere from wastes managed at the SHWCCAF in accordance with this article.

(b) During closure periods, all contaminated equipment, structures, and soil shall be properly disposed of, or decontaminated by removing all hazardous waste and residues, unless specified otherwise in section 66265.197. All hazardous waste generated as a function of disposal or decontamination shall be handled in accordance with the requirements of section 67450.44(a)(1) for hazardous wastes generated at the SHWCCAF.

(c) The SHWCCAF owner or operator shall, within 6 months after authorization under PBR, prepare a written closure plan that identifies the steps necessary to perform partial or final closure at any point during the active life of the SHWCCAF and to perform final closure at the end of the active life of the SHWCCAF. The SHWCCAF owner or operator shall amend the closure plan whenever changes in the SHWCCAF operating record or facility design or operation affect the closure plan. The SHWCCAF closure plan shall:

(1) Describe how and when the SHWCCAF will be closed. At a minimum, the description shall identify how the owner or operator will:

(A) Remove all hazardous waste from the site;

(B) Classify and properly manage contaminated container systems, tank systems, soils, structures, and equipment; and

(C) Determine when the site meets the closure criteria specified in subsection (a) above.

(2) Be maintained in accordance with the SHWCCAF recordkeeping requirements established in section 67450.45 of this article.

(d) Within ninety (90) days after receipt of the final load of hazardous waste, the SHWCCAF owner or operator shall remove from the facility

all hazardous waste in accordance with the closure plan and the applicable requirements of this chapter unless the owner or operator demonstrates to the CUPA or authorized agency that the activities required to remove the hazardous wastes will require longer than ninety (90) days, or there is a reasonable likelihood that the facility will accept additional wastes, and the owner or operator has taken and will continue to take all steps necessary to prevent threats or harm to human health and the environment.

(e) The SHWCCAF owner or operator shall complete closure activities in accordance with the closure plan within 180 days after removal of the final volume of hazardous waste from the facility unless the owner or operator demonstrates to the CUPA or authorized agency that the activities required to complete will require longer than 180 days to complete, or there is a reasonable likelihood that the owner or operator will recommence operation of the facility, and the owner or operator has taken and will continue to take all steps necessary to prevent threats or harm to human health and the environment.

(f) The SHWCCAF owner or operator shall notify the CUPA or authorized agency, and any other agencies having jurisdiction over the closure of the facility, at least fifteen (15) days prior to completion of closure.

(g) The SHWCCAF owner or operator shall remain in compliance with all applicable requirements of this article until the owner or operator submits to the CUPA or authorized agency a certification signed by the owner or operator and by a professional engineer registered in California, that closure has been completed in accordance with the closure plan and that the closure plan meets or exceeds the applicable requirements of this article. The certification shall be submitted to the CUPA or authorized agency within 60 days of final closure of the SHWCCAF. The required professional engineer certification shall be provided by an independent, registered professional engineer, or a registered professional engineer employed by a local government entity associated with the owner or operator of the SHWCCAF but not reporting to the SHWCCAF owner or operator.

NOTE: Authority cited: Section 25150, Health and Safety Code. Reference: Sections 25150, 25185.6, 25200 and 25404.1, Health and Safety Code.

HISTORY

1. New section filed 1–30–2002; operative 1–30–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 5).

§ 67450.49. Financial Assurance for SHWCCAF Closure.

(a) This section applies to all SHWCCAFs deemed to have a permit by rule pursuant to section 66270.60, subsection (d)(7).

(b) The owner or operator of a SHWCCAF shall prepare and submit to the CUPA or authorized agency a written estimate, in current dollars, of the cost of closing the SHWCCAF. The estimate shall be based on the maximum projected closure cost. However, the closure cost estimate may take into account any salvage value that may be realized from the sale of wastes, facility structures or equipment, land, or other facility assets at the time of closure. The closure cost estimate may also take into account reduced costs that may be incurred by employing the operator's own personnel and/or equipment for actual closure activities.

(1) The owner or operator of a SHWCCAF shall adjust annually the closure cost estimate for inflation within sixty (60) days prior to the anniversary date of the original establishment of the financial mechanism(s). The adjustment shall be made as specified below using an inflation factor derived from the annual Implicit Price Deflator for Gross National Product as published by the U.S. Department of Commerce in its Survey of Current Business. The inflation factor is obtained by dividing the latest published annual Deflator by the Deflator for the previous year.

(A) The first adjustment is made by multiplying the closure cost estimate by the inflation factor developed as specified in subsection (b)(1) of this section. The result is the adjusted closure cost estimate.

(B) Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor developed as specified in subsection (b)(1) of this section.

(2) The owner or operator of a SHWCCAF shall revise the closure cost estimate no more that thirty (30) days after a change in the closure plan increases the cost of closure. The revised closure cost estimate shall be adjusted for inflation as specified in subsection (b)(1) of this section.

(3) The most current closure plan and the most current closure cost estimate shall be kept on file at the SHWCCAF during the operating life of the facility.

(c) Financial assurance for closure of a SHWCCAF shall be established by one of the following methods and submitted with the certification required in subsection (d) of this section:

(1) a closure trust fund, as specified in section 66265.143, subsection (a);

(2) a surety bond guaranteeing payment into a closure trust fund, as specified in section 66265.143, subsection (b);

(3) a closure letter of credit, as specified in section 66265.143, subsection (c);

(4) closure insurance, as specified in section 66265.143, subsection (d);

(5) a financial test and corporate guarantee for closure, as specified in section 66265.143, subsection (e);

(6) multiple financial mechanisms for closure costs, as specified in section 66265.143, subsection (f),

(7) an alternate financial mechanism, as specified in section 66265.143, subsection (h); or

(8) self–insurance (for public agencies).

(A) A public agency operating a SHWCCAF may satisfy the requirements of this section by submitting a certificate of self–insurance to the CUPA or authorized agency. The public agency shall submit DTSC Form 1220 (2/96) that may be obtained from the CUPA or authorized agency. The certificate of self–insurance shall contain original signatures.

(B) The public agency shall guarantee that funds shall be available to close the facility whenever final closure occurs. The public agency shall also guarantee that once final closure begins, the public agency shall, at the direction of the CUPA or authorized agency, provide funding up to an amount equal to the full amount of the most recent closure cost estimate, to a party or parties specified by the CUPA or authorized agency.

(d) The owner or operator of a SHWCCAF shall submit a financial assurance certification to the CUPA or authorized agency that documents compliance with the closure cost estimate and financial assurance requirements of subsections (b), (c), and (d) of this section, as necessary. The certification shall be submitted with the notification required by sections 67450.43(b), (c), or (f), as appropriate, or annually in years where notification is not required.

(1) The certification shall contain the following information:

(A) The current closure cost estimate of the SHWCCAF as determined in subsection (b) of this section.

(B) The mechanism(s) established to provide the closure cost assurance for the SHWCCAF, as described in subsection (d), including:

1. The name and location of the financial institution, insurance company, surety company, or other appropriate organization used to establish the closure assurance for the SHWCCAF.

2. The effective date of the closure assurance for the SHWCCAF.

(C) The certification shall be signed according to the requirements of section 66270.11 as those requirements apply to permit applications.

(2) The CUPA or authorized agency may require the owner or operator of a SHWCCAF to submit the Certification of Financial Assurance Page of the Unified Program Consolidated Form (UPCF) (1/99 revised) found in Title 27, CCR, Division 1, Subdivision 4, Chapter 1, Appendix E (after section 15620), as the certification required by the section.

NOTE: Authority cited: Sections 25150 and 25245, Health and Safety Code. Reference: Sections 25150, 25200, 25245 and 25404.1, Health and Safety Code.

HISTORY

1. New section filed 1–30–2002; operative 1–30–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 5).

2. Change without regulatory effect amending subsections (a) and (c)(1)–(5) and repealing and adding new subsections (c)(6)–(7) filed 12–19–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 51).

§ 67450.50. Revocation, Suspension and Denial of Authorization or Reauthorization, and Operating Restrictions for SHWCCAFs Operating Under Permit by Rule.

(a) Notwithstanding the provisions of Chapter 21 of this division, the Department, CUPA or authorized agency may revoke or suspend authorization or reauthorization for any SHWCCAF operating or proposing to operate under a permit by rule as provided in this section. The Department, CUPA or authorized agency may also deny authorization or reauthorization for a SHWCCAF operating or proposing to operate under a permit by rule as provided in this section. The Department, CUPA or authorized agency shall base a decision on any one of the factors set forth in section 66270.43(a) or (b) or on Health and Safety Code section 25186 or on a finding that operation of the SHWCCAF in question will endanger human health, domestic livestock, wildlife, or the environment.

(1) Notice of revocation, suspension, or denial shall be provided to the owner or operator of a SHWCCAF by certified mail with return receipt requested or by personal service.

(2) An owner or operator of a SHWCCAF whose authorization or reauthorization is revoked or suspended or who is denied authorization or reauthorization to operate a SHWCCAF under a permit by rule and who wishes to appeal the revocation, suspension, or denial shall appeal by submitting a letter requesting a hearing to the agency revoking, suspending, or denying authorization within ten (10) days of receipt of notice of revocation, suspension, or denial.

(3) Proceedings to appeal a CUPA or authorized agency's decision concerning revocation, suspension, or denial of authorization or reauthorization to operate under permit by rule shall be conducted in accordance with Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) Any authorization or reauthorization to operate a SHWCCAF granted pursuant to this article is contingent upon the accuracy of information contained in the notifications required by sections 67450.43(b), (c), and (f). Any misrepresentation or any failure to fully disclose all relevant facts shall render the authorization or reauthorization to operate null and void.

(c) The Department, CUPA or authorized agency, when denying or revoking authorization for a SHWCCAF, shall send a copy of the letter sent pursuant to subsection (a)(1) to each CUPA or authorized agency with a contributing school in its jurisdiction.

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25186, 25186.1, 25186.2, 25200, 25404.1 and 25404.2, Health and Safety Code; and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

HISTORY

1. New section filed 1–30–2002; operative 1–30–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 5).

§ 67451. Waste Analysis for Permitted Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67452. Principal Organic Hazardous Constituents (POHCs) for Permitted Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67453. Performance Standards for Permitted Facilities.

NOTE: Authority cited: Sections 208, 39002, 40702, 41982 and 42300, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67454. Hazardous Waste Incinerator Permits.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67455. Operating Requirements for Permitted Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67457. Monitoring and Inspections for Permitted Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

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§ 67461. Waste Analysis for Interim Status Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67462. General Operating Requirements for Interim Status Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67464. Monitoring and Inspections for Interim Status Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67468. Closure for Both Interim Status and Permitted Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67490. Applicability.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New Article 31 (Sections 67490–67497, not consecutive) filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67493. General Operating Requirements.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67495. Waste Analysis.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67497. Monitoring and Inspections.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67520. Applicability.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New Article 32 (Sections 67520–67526) filed 1–3–85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67521. General Operating Requirements.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67522. Waste Analysis and Trial Tests.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67523. Inspections.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67524. Closure of Interim Status Facilities Which Treat Hazardous Waste Other Than in Tanks, Surface Impoundments, Land Treatment Units or Incinerator or Other Thermal Treatment Units.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67525. Special Requirements for Ignitable or Reactive Waste.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67526. Special Requirements for Incompatible Wastes.

NOTE: Authority cited: Section 208; Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67600. Certification of Laboratories.

NOTE: Authority cited: Sections 25173 and 25198.2(a), Health and Safety Code. Reference: Sections 25198.3, 25198.5(a)(1) and (c) and 25198.7(a) and (b), Health and Safety Code.

HISTORY

1. New Article 33 (Sections 67600–67606) filed 3–12–85; effective thirtieth day thereafter (Register 85, No. 11).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67601. Test Categories.

NOTE: Authority cited: Section 25198.2(a), Health and Safety Code. Reference: Section 25198.2(b)(1), Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67602. Quality Assurance Program.

NOTE: Authority cited: Section 25198.2(a), Health and Safety Code. Reference: Section 25198.2(b)(2), Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67603. Laboratory Equipment.

NOTE: Authority cited: Section 25198.2(a), Health and Safety Code. Reference: Section 25198.2(b)(3), Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67604. Analytical Procedures.

NOTE: Authority cited: Section 25198.2(a), Health and Safety Code. Reference: Section 25198.2(b)(4), Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67605. Personnel Qualifications.

NOTE: Authority cited: Section 25198.2(a), Health and Safety Code. Reference: Section 25198.2(b)(5), Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67606. Proficiency Testing.

NOTE: Authority cited: Section 25198.2(a), Health and Safety Code. Reference: Section 25198.5(c), Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67650. Request As to Whether Property Should Be Designated As Hazardous Waste Property or Border Zone Property; Granted a Variance from a Designation of Property As Hazardous Waste Property or Border Zone Property; or Have a Designation of Property As Hazardous Waste Property or Border Zone Property Removed.

NOTE: Authority cited: Section 25156, Health and Safety Code. Reference: Sections 25221, 25222, 25233 and 25234, Health and Safety Code.

HISTORY

1. New Article 34 (Sections 67650 and 67651) filed 6–13–84; effective thirtieth day thereafter (Register 84, No. 24).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67651. Ascertainment of Sufficient Evidence for a Proceeding to Designate Property As Hazardous Waste Property or Border Zone Property; to Grant a Variance from Such Designation; or to Remove Such Designation.

NOTE: Authority cited: Section 25156, Health and Safety Code. Reference: Sections 25221, 25222, 25233 and 25234, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67700. Purpose, Scope and Applicability.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25179.6, Health and Safety Code. Reference: Sections 25159, 25159.5, 25179.6, 25179.11, 25179.12 and 25208.16, Health and Safety Code.

HISTORY

1. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67702. List of Restricted Hazardous Wastes.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25179.6, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5, 25179.3 and 25179.6, Health and Safety Code.

HISTORY

1. New section filed 5–24–89; operative 6–23–89 (Register 89, No. 22).
2. Renumbering and amendment of former subsections (a) and (b) to subsections (a)(1) and (a)(2), new subsection (b) and amendment of NOTE filed 12–27–89; operative 1–26–90 (Register 90, No. 2).
3. New subsection (b)(2) filed 12–28–89; operative 1–27–90 (Register 90, No. 2).
4. New subsections (b)(7), (b)(10) and (b)(11) filed 4–23–90 as an emergency; operative 5–8–90 (Register 90, No. 20). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 9–6–90.
5. Editorial correction of printing error in HISTORY note 2 (Register 90, No. 44).
6. Amendment refiled 9–6–90 as an emergency; operative 9–6–90 (Register 90, No. 44). A Certificate of Compliance must be transmitted to OAL by 1–4–91 or emergency language will be repealed by operation of law on the following day.
7. New subsections (b)(8) and (b)(9) filed 12–4–90; operative 1–1—91 (Register 91, No. 3).
8. Amendment of subsection (b) filed 12–6–90; operative 1–1–91 pursuant to Government Code section 11346.2(d) (Register 91, No. 5).
9. Readoption of 9–6–90 order filed 12–31–90 as an emergency; operative 1–4–91 (Register 91, No. 11). A Certificate of Compliance must be transmitted to OAL by 5–6–91 or emergency language will be repealed by operation of law on the following day.
10. New subsection (b)(3) filed 1–2–91; operative 2–1–91 (Register 91, No. 11).
11. New subsection (b)(4) filed 2–25–91; operative 3–27–91 (Register 91, No. 13).
12. Readoption of 12–31–90 order filed 5–6–91 as an emergency; operative 5–6–91 (Register 91, No. 22). A Certificate of Compliance must be transmitted to OAL by 9–3–91 or emergency language will be repealed by operation of law on the following day.
13. Renumbering and amendment of former section 66702 to section 66268.29, filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 67706. Waste Prohibitions—General.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25179.6, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5, 25179.3 and 25179.6, Health and Safety Code.

HISTORY

1. New section filed 4–23–90 as an emergency; operative 5–8–90 (Register 90, No. 20). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 9–6–90.
2. New section refiled 9–6–90 as an emergency; operative 9–6–90 (Register 90, No. 44). A Certificate of Compliance must be transmitted to OAL by 1–4–91 or emergency language will be repealed by operation of law on the following day.
3. New section filed 12–31–90 as an emergency; operative 1–4–91 (Register 91, No. 11). A Certificate of Compliance must be transmitted to OAL by 5–6–91 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 5–6–91 as an emergency; operative 5–6–91 (Register 91, No. 22). A Certificate of Compliance must be transmitted to OAL by 9–3–91 or emergency language will be repealed by operation of law on the following day.
5. Renumbering and amendment of former section 66706, subsections (a), (b) and (c) to section 66268.1, subsections (g), (h) and (i) filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 67710. Waste Specific Prohibitions—Solvent Wastes.

NOTE: Authority cited: Section 208, 25150, 25159 and 25179.6, Health and Safety Code. Reference: Sections 25159, 25159.5 and 251790.6, Health and Safety Code.

HISTORY

1. New section filed 5–24–89; operative 6–23–89 (Register 89, No. 22).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67711. Waste Specific Prohibitions—Dioxin-Containing Wastes.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25179.6, Health and Safety Code. Reference: Sections 25259, 25159.5 and 25179.6, Health and Safety Code.

HISTORY

1. New section filed 5–24–89; operative 6–23–89 (Register 89, No. 22).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67715. Waste Specific Prohibitions—Non-RCRA Wastes.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25179.6, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5, 25179.6, and 15179.7, Health and Safety Code.

HISTORY

1. New section filed 12–27–89; operative 1–26–90 (Register 90, No. 2).
2. New subsection (a)(2) filed 12–28–89; operative 1–27–90 (Register 90, No. 2).
3. New subsections (a)(7), (a)(10) and (a)(11) filed 4–23–90 as an emergency; operative 5–8–90 (Register 90, No. 20). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 9–6–90.
4. Editorial correction of printing error (Register 90, No. 44).
5. New section refiled 9–6–90 as an emergency; operative 9–6–90 (Register 90, No. 44). A Certificate of Compliance must be transmitted to OAL by 1–4–91 or emergency language will be repealed by operation of law on the following day.
6. New subsections (a)(8) and (a)(9) filed 12–4–90; operative 1–1—91 (Register 91, No. 3).
7. Amendment of subsection (a) filed 12–6–90; operative 1–1–91 pursuant to Government Code section 11346.2(d) (Register 91, No. 5).
8. Readoption of 9–6–90 order filed 12–31–90 as an emergency; operative 1–4–91 (Register 91, No. 11). A Certificate of Compliance must be transmitted to OAL by 5–6–91 or emergency language will be repealed by operation of law on the following day.
9. New subsection (a)(3) filed 1–2–91; operative 2–1–91 (Register 91, No. 11).
10. New subsection (a)(4) filed 2–25–91; operative 3–27–91 (Register 91, No. 13).
11. Readoption of 12–31–90 order filed 5–6–91 as an emergency; operative 5–6–91 (Register 91, No. 22). A Certificate of Compliance must be transmitted to OAL by 9–3–91 or emergency language will be repealed by operation of law on the following day.
12. Renumbering and amendment of former section 67715 to section 66268.100, filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 67720. Dilution of Restricted Hazardous Wastes Prohibited as a Substitute for Treatment.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25179.6, Health and Safety Code. Reference: Sections 25159, 25159.5 and 25179.6, Health and Safety Code.

HISTORY

1. New section filed 5–24–89; operative 6–23–89 (Register 89, No. 22).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67721. Prohibitions on Storage of Restricted Wastes.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159, 25159.5 and 25179.6, Health and Safety Code.

HISTORY

1. New section filed 5–24–89; operative 6–23–89 (Register 89, No. 22).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67732. Procedures for Case–by–Case Extensions to an Effective Date.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25179.68 Health and Safety Code. Reference: Sections 15374–15378, Government Code, and Sections 25159, 25159.5, 25179.6 and 25179.8, Health and Safety Code.

HISTORY

1. New section filed 5–24–89; operative 6–23–89 (Register 89, No. 22).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67740. Waste Analysis and Recordkeeping.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25179.6, Health and Safety Code. Reference: Sections 25159, 25159.5 and 25179.6, Health and Safety Code.

HISTORY

1. New section filed 5–24–89; operative 6–23–89 (Register 89, No. 22).
2. Amendment filed 4–23–90 as an emergency; operative 5–8–90 (Register 90, No. 20). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 9–6–90.
3. Amendment refiled 9–6–90 as an emergency; operative 9–6–90 (Register 90, No. 44). A Certificate of Compliance must be transmitted to OAL by 1–4–91 or emergency language will be repealed by operation of law on the following day.
4. Readoption of 12–31–90 order filed 5–6–91 as an emergency; operative 5–6–91 (Register 91, No. 22). A Certificate of Compliance must be transmitted to OAL by 9–3–91 or emergency language will be repealed by operation of law on the following day.
5. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67750. Applicability of Treatment Standards.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25179.6, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5, 25179.3 and 25179.6, Health and Safety Code.

HISTORY

1. New section filed 5–24–89; operative 6–23–89 (Register 89, No. 22).$$p
2. Amendment of subsection (b) and NOTE filed 12–27–89; operative 1–26–90 (Register 90, No. 2).
3. New subsection (d) filed 12–28–89; operative 1–27–90 (Register 90, No. 2).
4. New subsections (e) and (f) filed 4–23–90 as an emergency; operative 5–8–90 (Register 90, No. 20). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 9–6–90.
5. Amendment refiled 9–6–90 as an emergency; operative 9–6–90 (Register 90, No. 44). A Certificate of Compliance must be transmitted to OAL by 1–4–91 or emergency language will be repealed by operation of law on the following day.
6. Readoption of 9–6–90 order adding subsections (e) and (f) filed 12–31–90 as an emergency; operative 1–4–91(Register 91, No. 11). A Certificate of Compliance must be transmitted to OAL by 4–30–91 or emergency language will be repealed by operation of law on the following day.
7. Amendment of subsection (a) filed 1–2–91; operative 2–1–91 (Register 91, No. 11).
8. Readoption of 12–31–90 order adding subsection (e) and (f) filed 5–6–91 as an emergency; operative 5–6–91 (Register 91, No. 22). A Certificate of Compliance must be transmitted to OAL by 9–3–91 or emergency language will be repealed by operation of law on the following day.
9. Renumbering and amendment of former section 67750 to section 66268.105, filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
10. Editorial correction of HISTORY 6. to reflect correct Certificate of Compliance transmission date (Register 91, No. 22).

§ 67755. Treatment Standards Expressed as Concentrations in Waste Extract.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25179.6, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5 and 25179.6, Health and Safety Code.

HISTORY

1. New section filed 5–24–89; operative 6–23–89 (Register 89, No. 22).
2. Amendment filed 4–23–90 as an emergency; operative 5–8–90 (Register 90, No. 20). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 9–6–90.
3. Amendment refiled 9–6–90 as an emergency; operative 9–6–90 (Register 90, No. 44). A Certificate of Compliance must be transmitted to OAL by 1–4–91 or emergency language will be repealed by operation of law on the following day.
4. New subsections (b)(4) and (b)(5) filed 12–4–90; operative 1–1–91 (Register 91, No. 3).
5. Amendment of subsection (b) filed 12–6–90; operative 1–1–91 pursuant to Government Code section 11346.2(d) (Register 91, No. 5).
6. Editorial correction of subsection (b) (Register 91, No. 5).
7. Readoption of 9–6–90 order filed 12–31–90 as an emergency; operative 1–4–91 (Register 91, No. 11). A Certificate of Compliance must be transmitted to OAL by 5–6–91 or emergency language will be repealed by operation of law on the following day.
8. Amendment filed 1–2–91; operative 2–1–91 (Register 91, No. 11).
9. Editorial correction of printing error inadvertently omitting text from subsections (b)(4) and (5) (Register 91, No. 18).
10. Readoption of 12–31–90 order filed 5–6–91 as an emergency; operative 5–6–91 (Register 91, No. 22). A Certificate of Compliance must be transmitted to OAL by 9–3–91 or emergency language will be repealed by operation of law on the following day.
11. Renumbering and amendment of former section 67755 to section 66268.106, filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 67760. Treatment Standards Expressed As Waste Concentrations.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25179.6, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5, 25179.3 and 25179.6, Health and Safety Code.

HISTORY

1. New section filed 5–24–89; operative 6–23–89 (Register 89, No. 22).
2. Amendment of subsection (a), relettering of former subsection (b) to subsection (c), and new subsection (b) filed 12–27–89; operative 1–26–90 (Register 90, No. 2).
3. New subsections (b)(2) and (c)(2), and amendment and renumbering of subsection (c) to subsection (c)(1) filed 2–25–91; operative 3–27–91 (Register 91, No. 13).
4. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67770. Variance from a Treatment Standard.

NOTE: Authority cited; Sections 208, 25150, 25159 and 25179.8, Health and Safety Code. Reference: Sections 15374–15378, Government Code, and Sections 25159, 25159.5 and 25179.6 and 25179.8, Health and Safety Code.

HISTORY

1. New section filed 5–24–89; operative 6–23–89 (Register 89, No. 22).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67780. Treatment Standard for PCB Wastes.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25179.6, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5, 25179.3 and 25179.6, Health and Safety Code.

HISTORY

1. New section filed 12–28–89; operative 1–27–90 (Register 90, No. 2).
2. Repealer filed 5–24–91; effective 7–1–91 (Register 91, No. 22).

§ 67785. Treatment Standards for Non–RCRA Aqueous and Liquid Organic Wastes.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25179.6, Health and Safety Code. Reference: Sections 25159, 25159.5 and 25179.6, Health and Safety Code.

HISTORY

1. New section filed 4–23–90 as an emergency; operative 5–8–90 (Register 90, No. 20). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 9–6–90.
2. New section refiled 9–6–90 as an emergency; operative 9–6–90 (Register 90, No. 44). A Certificate of Compliance must be transmitted to OAL by 1–4–91 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 12–31–90 as an emergency; operative 1–4–91 (Register 91, No. 11). A Certificate of Compliance must be transmitted to OAL by 5–6–91 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 5–6–91 as an emergency; operative 5–6–91 (Register (91, No. 22). A Certificate of Compliance must be transmitteed to OAL by 9–3–91 or emergency language will be repealed by operation of law on the following day.
5. Renumbering and amendment of former section 67785 to section 66268.112, filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 67786. Treatment Standards for Non–RCRA Solid Hazardous Waste Containing Organics.

NOTE: Authority cited: Sections 208, 25150, 25159 and 25179.6. Health and Safety Code. Reference: Sections 25159, 25159.5 and 25179.6, Health and Safety Code.

HISTORY

1. New section filed 4–23–90 as an emergency; operative 5–8–90 (Register 90, No. 20). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 9–6–90.
2. New section refiled 9–6–90 as an emergency; operative 9–6–90 (Register 90, No. 44). A Certificate of Compliance must be transmitted to OAL by 1–4–91 or emergency language will be repealed by operation of law on the following day.
3. New section filed 12–31–90 as an emergency; operative 1–4–91 (Register 91, No. 11). A Certificate of Compliance must be transmitted to OAL by 5–6–91 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 5–6–91 as an emergency; operative 5–6–91 (Register (91, No. 22). A Certificate of Compliance must be transmitteed to OAL by 9–3–91 or emergency language will be repealed by operation of law on the following day.
5. Renumbering and amendment of former section 67786 to section 66268.113, filed 5–24–91; operative 7–1–91 (Register 91, No. 22).

§ 67800.1. Requirements for Standardized Permit Facilities. [Renumbered]

NOTE: Authority cited: Sections 25150, 25201.6, 58004 and 58012, Health and Safety Code. Reference: Sections 25150, 25201.6 and 25250.1, Health and Safety Code.

HISTORY

1. New section filed 9–29–93 as an emergency; operative 9–29–93 (Register 93, No. 40). A Certificate of Compliance must be transmitted to OAL by 1–27–94 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of printing errors in subsections (c)(1), (e)(5), (h) and NOTE (Register 94, No. 3).
3. New section refiled 1–19–94 as an emergency; operative 1–19–94 (Register 94, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–19–94 or emergency language will be repealed by operation of law on the following day.
4. Editorial correction adding HISTORY 3 (Register 94, No. 9).
5. New section refiled 5–23–94 with amendment of section and NOTE as an emergency; operative 5–23–94 (Register 94, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–20–94 or emergency language will be repealed by operation of law on the following day.
6. New section refiled 9–19–94 with amendment of section and NOTE as an emergency; operative 9–19–94 (Register 94, No. 38). A Certificate of Compliance must be transmitted to OAL by 1–17–95 or emergency language will be repealed by operation of law on the following day.
7. Repealed by operation of Government Code section 11346.1(g) (Register 95, No. 10).
8. New section filed 3–8–95; operative 3–8–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 10).
9. Change without regulatory effect amending section heading, section and NOTE filed 4–4–2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 14).
10. Renumbering of former section 67800.1 to new section 66270.69.3 filed 9–6–2007; operative 10–6–2007 (Register 2007, No. 36).

§ 67800.5. Financial Responsibility for Facilities Operating Under a Standardized Permit. [Renumbered]

NOTE: Authority cited: Sections 25143.13, 25150, 25200.1, 25201.6, 25245, 58004 and 58012, Health and Safety Code. Reference: Sections 25143.13, 25150, 25200.1, 25200.5, 25200.9 and 25201.6, Health and Safety Code.

HISTORY

1. New section filed 9–29–93 as an emergency; operative 9–29–93 (Register 93, No. 40). A Certificate of Compliance must be transmitted to OAL by 1–27–94 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of NOTE (Register 94, No. 3).
3. New section refiled 1–19–94 as an emergency; operative 1–19–94 (Register 94, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–19–94 or emergency language will be repealed by operation of law on the following day.
4. Editorial correction adding HISTORY 3 (Register 94, No. 9).
5. New section refiled 5–23–94 with amendment of NOTE as an emergency; operative 5–23–94 (Register 94, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–20–94 or emergency language will be repealed by operation of law on the following day.
6. New section refiled 9–19–94 with amendment of NOTE as an emergency; operative 9–19–94 (Register 94, No. 38). A Certificate of Compliance must be transmitted to OAL by 1–17–95 or emergency language will be repealed by operation of law on the following day.
7. Repealed by operation of Government Code section 11346.1(g) (Register 95, No. 10).
8. New section filed 3–8–95; operative 3–8–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 10).
9. Amendment of subsections (a)–(d), new subsections (e)–(h) and amendment of NOTE filed 10–19–98; operative 11–18–98 (Register 98, No. 43).
10. Change without regulatory effect repealing subsections (e)–(e)(2), relettering subsections and amending NOTE filed 11–15–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 47).
11. Change without regulatory effect amending first paragraph and subsections (e)–(g) filed 4–4–2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 14).
12. Renumbering of former section 67800.5 to new section 66270.69.4 filed 9–6–2007; operative 10–6–2007 (Register 2007, No. 36).

Chapter 45.5. Procurement of Site or Facility Cleanup Services

Article 1. Selection Process for Private Architectural and Engineering Services for Sites or Facilities

§ 67900.1. Purpose and Scope.

This article establishes the applicable criteria and procedures for procurement, by the Department of Toxic Substances Control, of architectural and engineering services related to response actions at hazardous substance sites and corrective actions at hazardous waste facilities. These criteria and procedures shall apply to the extent such response actions are not exempted from State contract requirements under Health and Safety Code section 25358.5 or covered by Health and Safety Code section 25358.6.1 and shall be in compliance with Government Code section 19130.

NOTE: Authority cited: Section 4526, Government Code. Reference: Sections 4525, 4526 and 19130, Government Code; and Sections 25358.5 and 25358.6.1, Health and Safety Code.

HISTORY

1. New chapter 45.5 (article 1), article 1 (sections 67900.1–67900.12) and section filed 11–8–2001 as an emergency; operative 11–8–2001 (Register 2001, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–8–2002 or emergency language will be repealed by operation of law on the following day.
2. New chapter 45.5 (article 1), article 1 (sections 67900.1–67900.12) and section refiled 3–7–2002 as an emergency; operative 3–9–2002 (Register 2002, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–8–2002 or emergency language will be repealed by operation of law on the following day.
3. New chapter 45.5 (article 1), article 1 (sections 67900.1–67900.12) and section refiled 6–19–2002 as an emergency; operative 7–9–2002 (Register 2002, No. 25). A Certificate of Compliance must be transmitted to OAL by 11–6–2002 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 6–19–2002 order, including amendment of section and NOTE, transmitted to OAL 11–6–2002 and filed 12–23–2002 (Register 2002, No. 52).

§ 67900.2. Definitions.

As used in these regulations:

(a) "Architectural, landscape architectural, engineering, environmental and land surveying services" includes those professional services of an architectural, landscape architectural, engineering, environmental, or land surveying nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform. Such services need to be procured pursuant to these regulations

only if they are of the type which would lead to, or result in, instruments of service for the construction of a "project" as that term is used in the State Contract Act (commencing at section 10105 of the Public Contract Code).

(b) "Construction project management" means those services provided by a licensed architect, registered engineer or licensed general contractor which meet the requirements of section 4529.5 of the Government Code for management and supervision of work performed on State construction projects.

(c) "Department" means the Department of Toxic Substances Control.

(d) "Director" means the Director of the Department of Toxic Substances Control or his/her designee.

(e) "Environmental services" means those services performed in connection with project development and permit processing in order to comply with Federal and State environmental laws. "Environmental services" also includes the processing and awarding of claims pursuant to chapter 6.75 (commencing with section 25299.10) of division 20 of the Health and Safety Code.

(f) "Firm" means any individual, firm, partnership, corporation, association, joint venture or other legal entity permitted by law to practice the professions of architecture, landscape architecture, engineering, environmental services, land surveying or construction project management services.

NOTE: Authority cited: Section 4526, Government Code. Reference: Sections 4525, 4526 and 4529.5, Government Code; and Section 10105, Public Contract Code.

HISTORY

1. New section filed 11–8–2001 as an emergency; operative 11–8–2001 (Register 2001, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–8–2002 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–7–2002 as an emergency; operative 3–9–2002 (Register 2002, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–8–2002 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 6–19–2002 as an emergency; operative 7–9–2002 (Register 2002, No. 25). A Certificate of Compliance must be transmitted to OAL by 11–6–2002 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 6–19–2002 order, including amendment of subsection (d), transmitted to OAL 11–6–2002 and filed 12–23–2002 (Register 2002, No. 52).

§ 67900.3. Publication of Announcement.

(a) When a project requiring architectural, landscape architectural, engineering, environmental or land surveying services of a value of over $1 million is identified by the Department, an announcement shall be made by the Director through the State Contracting Register. In addition, the Director may selectively advertise to reach providers of services within the appropriate trade or profession by publishing the announcement through electronic communications media which support bulletin boards or Internet Web sites that have demonstrated statewide accessibility and are regularly maintained at established addresses by professional organizations which are representative of the services to be procured.

(b) For projects where such services in each instance shall not exceed $1 million, the Director may make annual announcements, published as above, which identify the general needs of the State.

(c) The announcement shall contain the following minimal information: The nature of the work, the criteria upon which the award shall be made, and the time within which statements of interest, qualification and performance data must be received by the Director.

NOTE: Authority cited: Section 4526, Government Code. Reference: Sections 4526 and 4527, Government Code; and Sections 25358.6.1, Health and Safety Code.

HISTORY

1. New section filed 11–8–2001 as an emergency; operative 11–8–2001 (Register 2001, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–8–2002 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–7–2002 as an emergency; operative 3–9–2002 (Register 2002, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–8–2002 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 6–19–2002 as an emergency; operative 7–9–2002 (Register 2002, No. 25). A Certificate of Compliance must be transmitted to OAL by 11–6–2002 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 6–19–2002 order transmitted to OAL 11–6–2002 and filed 12–23–2002 (Register 2002, No. 52).

§ 67900.4. Establishment of Criteria.

The Director shall establish criteria, on a case by case basis, which will comprise the basis for selection for each project which shall include such factors as professional excellence, demonstrated competence, specialized experience of the firm, education and experience of key personnel, staff capability, workload, ability to meet schedules, principals to be assigned, nature and quality of completed work, reliability and continuity of the firm, location, professional awards and other considerations deemed relevant. Such factors shall be weighted by the Director according to the nature of the project, the needs of the State and complexity and special requirements of the specific project.

NOTE: Authority cited: Section 4526, Government Code. Reference: Sections 4526 and 4527, Government Code.

HISTORY

1. New section filed 11–8–2001 as an emergency; operative 11–8–2001 (Register 2001, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–8–2002 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–7–2002 as an emergency; operative 3–9–2002 (Register 2002, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–8–2002 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 6–19–2002 as an emergency; operative 7–9–2002 (Register 2002, No. 25). A Certificate of Compliance must be transmitted to OAL by 11–6–2002 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 6–19–2002 order transmitted to OAL 11–6–2002 and filed 12–23–2002 (Register 2002, No. 52).

§ 67900.5. Selection of Architects, Engineers or Land Surveyors.

After expiration of the announcement period stated in the publications, the Director shall evaluate statements of qualifications and performance data on file in the Department. The Director shall conduct discussions with no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required service. From the firms with which discussions are held, the Director shall select no less than three, in order of preference, based upon the established criteria, who are deemed to be the most highly qualified to provide the services required.

NOTE: Authority cited: Section 4526, Government Code. Reference: Sections 4526 and 4527, Government Code.

HISTORY

1. New section filed 11–8–2001 as an emergency; operative 11–8–2001 (Register 2001, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–8–2002 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–7–2002 as an emergency; operative 3–9–2002 (Register 2002, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–8–2002 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 6–19–2002 as an emergency; operative 7–9–2002 (Register 2002, No. 25). A Certificate of Compliance must be transmitted to OAL by 11–6–2002 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 6–19–2002 order transmitted to OAL 11–6–2002 and filed 12–23–2002 (Register 2002, No. 52).

§ 67900.6. Estimate of Value of Services.

Before any discussion with any firm concerning fees, the Director shall cause an estimate of the value of such services to be prepared. Such estimates shall be, and remain, confidential until award of contract or abandonment of any further procedure for the services to which it relates.

NOTE: Authority cited: Section 4526, Government Code. Reference: Sections 4526 and 4528, Government Code.

HISTORY

1. New section filed 11–8–2001 as an emergency; operative 11–8–2001 (Register 2001, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–8–2002 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–7–2002 as an emergency; operative 3–9–2002 (Register 2002, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–8–2002 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 6–19–2002 as an emergency; operative 7–9–2002 (Register 2002, No. 25). A Certificate of Compliance must be transmitted to OAL by 11–6–2002 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 6–19–2002 order transmitted to OAL 11–6–2002 and filed 12–23–2002 (Register 2002, No. 52).

§ 67900.7. Abandonment of Estimate.

At any time the Director determines the State's estimate to be unrealistic due to rising costs, special conditions, or for other relevant considerations, the Director may require that the estimate be reevaluated.

NOTE: Authority cited: Section 4526, Government Code. Reference: Sections 4526 and 4528, Government Code.

HISTORY

1. New section filed 11–8–2001 as an emergency; operative 11–8–2001 (Register 2001, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–8–2002 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–7–2002 as an emergency; operative 3–9–2002 (Register 2002, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–8–2002 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 6–19–2002 as an emergency; operative 7–9–2002 (Register 2002, No. 25). A Certificate of Compliance must be transmitted to OAL by 11–6–2002 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 6–19–2002 order transmitted to OAL 11–6–2002 and filed 12–23–2002 (Register 2002, No. 52).

§ 67900.8. Negotiation.

(a) The Director shall, in accordance with section 6106 of the Public Contract Code, attempt to negotiate a contract with the best qualified firm. Should the Director be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at fair and reasonable compensation, negotiations with that firm shall be terminated.

(b) The Director shall then undertake negotiations with the second most qualified firm. Failing accord, negotiations shall be terminated.

(c) The Director shall then undertake negotiations with the third most qualified firm. Failing accord, negotiations shall be terminated.

(d) Should the Director be unable to negotiate a satisfactory contract with any of the selected firms, the Director may select additional firms in the manner prescribed and continue the negotiation procedure.

NOTE: Authority cited: Section 4526, Government Code; and Section 6106, Public Contract Code. Reference: Sections 4526 and 4528, Government Code.

HISTORY

1. New section filed 11–8–2001 as an emergency; operative 11–8–2001 (Register 2001, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–8–2002 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–7–2002 as an emergency; operative 3–9–2002 (Register 2002, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–8–2002 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 6–19–2002 as an emergency; operative 7–9–2002 (Register 2002, No. 25). A Certificate of Compliance must be transmitted to OAL by 11–6–2002 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 6–19–2002 order transmitted to OAL 11–6–2002 and filed 12–23–2002 (Register 2002, No. 52).

§ 67900.9. Amendments.

In instances where the State effects a necessary change in the project during the course of performance of the contract, the firm's compensation may be adjusted by mutual written agreement in a reasonable amount where the amount of work to be performed by the firm is changed from that which existed previously in the scope of work agreed to by both parties.

NOTE: Authority cited: Section 4526, Government Code. Reference: Sections 4526 and 4528, Government Code.

HISTORY

1. New section filed 11–8–2001 as an emergency; operative 11–8–2001 (Register 2001, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–8–2002 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–7–2002 as an emergency; operative 3–9–2002 (Register 2002, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–8–2002 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 6–19–2002 as an emergency; operative 7–9–2002 (Register 2002, No. 25). A Certificate of Compliance must be transmitted to OAL by 11–6–2002 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 6–19–2002 order transmitted to OAL 11–6–2002 and filed 12–23–2002 (Register 2002, No. 52).

§ 67900.10. Contracting in Phases.

(a) Should the Director determine that it is necessary or desirable to have a given project performed in phases, it will not be necessary to negotiate the total contract price in the initial instance, provided that the Director shall have determined that:

(1) The firm is best qualified to perform the whole project at reasonable cost, and;

(2) The contract contains provisions that the State, at its option, may utilize the firm for other phases and that the firm will accept a fair and reasonable price for subsequent phases to be later negotiated, mutually agreed upon and reflected in a subsequent written instrument.

(b) The procedure with regard to estimates and negotiation shall otherwise be applicable.

NOTE: Authority cited: Section 4526, Government Code. Reference: Sections 4526 and 4528, Government Code.

HISTORY

1. New section filed 11–8–2001 as an emergency; operative 11–8–2001 (Register 2001, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–8–2002 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–7–2002 as an emergency; operative 3–9–2002 (Register 2002, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–8–2002 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 6–19–2002 as an emergency; operative 7–9–2002 (Register 2002, No. 25). A Certificate of Compliance must be transmitted to OAL by 11–6–2002 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 6–19–2002 order transmitted to OAL 11–6–2002 and filed 12–23–2002 (Register 2002, No. 52).

§ 67900.11. Small Business Participants.

(a) The Director shall endeavor to provide to all small business firms who have indicated an interest in receiving such, a copy of each announcement for projects for which the Director concludes that small business firms could be especially qualified. The Director shall assist firms in attempting to qualify for small business status.

(b) A failure of the Director to send a copy of an announcement to any firm shall not operate to invalidate any contract.

NOTE: Authority cited: Section 4526, Government Code. Reference: Section 4526, Government Code.

HISTORY

1. New section filed 11–8–2001 as an emergency; operative 11–8–2001 (Register 2001, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–8–2002 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–7–2002 as an emergency; operative 3–9–2002 (Register 2002, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–8–2002 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 6–19–2002 as an emergency; operative 7–9–2002 (Register 2002, No. 25). A Certificate of Compliance must be transmitted to OAL by 11–6–2002 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 6–19–2002 order transmitted to OAL 11–6–2002 and filed 12–23–2002 (Register 2002, No. 52).

§ 67900.12. Conflict of Interest/Unlawful Activity.

Any unlawful practice or activity is prohibited including, but not limited to rebates, kickbacks or any other unlawful activity. Department employees are specifically prohibited from participating in the contractor selection process when those employees have a relationship with a person or business entity seeking a contract under this section, as specified in Government Code section 87100.

NOTE: Authority cited: Sections 4526 and 87100, Government Code. Reference: Section 4526, Government Code.

HISTORY

1. New section filed 11-8-2001 as an emergency; operative 11-8-2001 (Register 2001, No. 45). A Certificate of Compliance must be transmitted to OAL by 3-8-2002 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-7-2002 as an emergency; operative 3-9-2002 (Register 2002, No. 10). A Certificate of Compliance must be transmitted to OAL by 7-8-2002 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 6-19-2002 as an emergency; operative 7-9-2002 (Register 2002, No. 25). A Certificate of Compliance must be transmitted to OAL by 11-6-2002 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 6-19-2002 order transmitted to OAL 11-6-2002 and filed 12-23-2002 (Register 2002, No. 52).

Chapter 46. Hazardous Waste Environmental Technology Certification Program

§ 68000. Purpose and Scope.

(a) These regulations establish provisions for certification of hazardous waste environmental technologies. Hazardous waste environmental technologies include, but are not limited to, hazardous waste management technologies, site mitigation technologies, and waste minimization and pollution prevention technologies.

(b) The regulations in the chapter set forth basic certification requirements, including, but not limited to technology eligibility, certification application requirements, and certification procedures.

NOTE: Authority cited: Sections 25150, 25200.1.5, 58004 and 58012, Health and Safety Code. Reference: Sections 25200.1.5, 25200.3 and 25201.5, Health and Safety Code.

HISTORY

1. New chapter 46 (sections 68000–68100) and section filed 10-5-98; operative 11-4-98 (Register 98, No. 41).

§ 68010. Technology Eligibility Criteria.

A hazardous waste environmental technology is eligible for certification by the Department if the technology (1) does not pose a significant potential hazard to human health and safety or to the environment if operated in compliance with specified conditions, and (2) the technology relates to hazardous waste. Hazardous waste incineration technologies are excluded from eligibility for certification.

NOTE: Authority cited: Sections 25150, 25200.1.5, 58004 and 58012, Health and Safety Code. Reference: Sections 25200.1.5, 25200.3 and 25201.5, Health and Safety Code.

HISTORY

1. New section filed 10-5-98; operative 11-4-98 (Register 98, No. 41).
2. Change without regulatory effect amending section filed 7-1-2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 27).

§ 68020. Certification Elements.

(a) A certification is a technical evaluation of the technology which shall include all of the following.

(1) A statement of the technical specifications applicable to the technology.

(2) A determination of the composition of the hazardous wastes or chemical constituents for which the technology may appropriately be used.

(3) An estimate of the efficacy and efficiency of the technology in regard to the hazardous wastes or chemical constituents for which it is certified.

(4) A specification of the minimal operational standards the technology is required to meet to ensure that the certified technology is managed properly and used safely.

NOTE: Authority cited: Sections 25150, 25200.1.5, 58004 and 58012, Health and Safety Code. Reference: Sections 25200.1.5, 25200.3 and 25201.5, Health and Safety Code.

HISTORY

1. New section filed 10-5-98; operative 11-4-98 (Register 98, No. 41).

§ 68030. Application Requirements.

(a) All applicants seeking a hazardous waste technology certification evaluation shall submit the following information to the Department, unless the Department indicates to the applicant in writing that a particular item is inapplicable and need not be submitted:

(1) Name of applicant, contact person, mailing address, and telephone number.

(2) A technology description including but not limited to a discussion of the unit processes or specific steps by which the technology operates, process flow diagrams, piping and instrumentation diagrams, and equipment specifications.

(3) The underlying scientific and engineering principles of the technology supported by technical literature, patents, and other documentation, if available.

(4) A description of the commercial status of the technology.

(5) Proposed certification statement, including performance claims and the hazardous waste streams or materials for which the applicant wants the technology to be certified.

(6) An estimate of the efficacy and efficiency of the technology in regard to those hazardous waste streams/materials for which certification is desired and bases for arriving at the estimates.

(7) Recommended operating conditions and limits.

(8) Supporting data and documentation necessary to verify the efficacy and efficiency of the technology for the recommended operating limits. Where existing data are insufficient, the applicant shall provide a description of new studies and experiments needed to generate the necessary data.

(9) Description of all potential environmental impacts, including but not limited to emissions, discharges, and residuals from use of the technology.

(10) Quality control/quality assurance procedures.

(11) Critical operating parameters and conditions.

(12) Monitoring and control of operating parameters and conditions.

(13) Operator training, education, and experience requirements to safely and effectively operate the technology, if any.

(14) Operation and maintenance procedures (including installation, inspection, and emergency and upset instructions), supported by documents such as standard operational procedures, users manuals, operational and maintenance manuals.

(15) Documents which address worker health and safety issues and requirements related to the use of the technology, including but not limited to material safety data sheets and health and safety plans.

(16) The hazards to health, safety, or to the environment posed by those hazardous wastes and materials and their constituents for which the technology is designed to manage.

(17) The complexity and degree of difficulty of operating the technology in regards to the hazardous waste streams and materials for which certification is desired.

(18) The chemical or physical hazards that are associated with the use of the technology, and the hazards associated with the process which produced the hazardous waste or wastes.

(19) The levels of specialized operator training, technology maintenance, and monitoring that are required to ensure that the technology is operated safely and effectively.

(20) The types of accidents or system upsets which may occur during use of the technology in managing those hazardous waste streams and materials for which certification is desired, the likely consequences of those accidents, and the actual accident history associated with the use of the technology.

(21) Any additional information deemed necessary by the Department in order for it to make a determination regarding suitability for certification.

NOTE: Authority cited: Sections 25150, 25200.1.5, 58004 and 58012, Health and Safety Code. Reference: Sections 25200.1.5, 25200.3 and 25201.5, Health and Safety Code.

HISTORY

1. New section filed 10–5–98; operative 11–4–98 (Register 98, No. 41).

§ 68040. Confidentiality of Information.

(a) An applicant or holder of a technology certification may assert a claim of business confidentiality by following the procedures set forth in Title 22 of the California Code of Regulations, section 66260.2. Information submitted to the Department pursuant to this chapter may be claimed as business confidential. Such a claim shall be asserted at the time of submission by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, the Department may make the information available to the public without further notice to the applicant. If a claim of confidentiality is asserted, the information will be evaluated and treated in accordance with the procedures set forth in section 66260.2.

(b) Claims of confidentiality for the name and address of any certification applicant will be denied.

NOTE: Authority cited: Sections 25150, 25200.1.5, 58004 and 58012, Health and Safety Code. Reference: Section 25200.1.5, Health and Safety Code; and 40 CFR Section 260.2.

HISTORY

1. New section filed 10–5–98; operative 11–4–98 (Register 98, No. 41).

§ 68050. Certification Procedures.

(a) The Department shall use the following procedures to determine if a certification should be granted or denied. The Department shall:

(1) Review the certification application and any other pertinent information to make a preliminary determination whether or not the proposed technology is eligible for certification as a hazardous waste environmental technology pursuant to section 68010, and shall notify the applicant of its decision. If rejected as ineligible, the Department shall provide the applicant the reasons for the rejection.

(2) Estimate its costs to evaluate the technology and to make a certification decision in accordance with sections 68010 and 68020.

(3) Prepare an agreement for services containing the estimated costs of evaluating the technology for a certification decision.

(4) Negotiate the agreement and have the applicant and the Department sign the agreement.

(5) Receive payment of fees, pursuant to section 68080.

(6) If the Department determines that additional data are needed, the Department shall request that the applicant provide additional existing data, and perform field testing to collect new data, if necessary. The Department shall review such data when making the certification decision.

(7) Prepare an evaluation report and proposed certification decision.

(8) Publish in the California Regulatory Notice Register, the Department's proposed decision on an application for certification of a hazardous waste environmental technology, which shall be subject to a 30–day comment period. The Department shall review any comments received and complete the final certification decision.

(9) The final certification decision shall be published in the California Regulatory Notice Register, and shall become effective not sooner than 30 days after its publication.

NOTE: Authority cited: Sections 25150, 25200.1.5, 58004 and 58012, Health and Safety Code. Reference: Section 25200.1.5, Health and Safety Code.

HISTORY

1. New section filed 10–5–98; operative 11–4–98 (Register 98, No. 41).
2. Change without regulatory effect amending subsection (a)(1) filed 7–1–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 27).

§ 68060. Duration of Certification.

Unless amended pursuant to section 68100, the duration of a hazardous waste environmental technology certification is three (3) years. The duration of the certification shall be specified in each instance within the certification statement published in the California Regulatory Notice Register. Technologies can be re–evaluated and, if appropriate, re–certified pursuant to the certification application requirements and procedures specified in this chapter.

NOTE: Authority cited: Sections 25150, 25200.1.5, 58004 and 58012, Health and Safety Code. Reference: Section 25200.1.5, Health and Safety Code.

HISTORY

1. New section filed 10–5–98; operative 11–4–98 (Register 98, No. 41).

§ 68070. Revocation of Certification.

The Department may revoke a hazardous waste environmental technology certification if it determines, on the basis of any reliable information, that the hazardous waste environmental technology may pose a significant potential or actual hazard to human health and safety or to the environment, or that the technology does not perform as certified, or that any information submitted to the Department related to the certification is inaccurate, has been misrepresented, or that any pertinent information was omitted. The recipient of the certification shall maintain the quality of the manufactured materials and equipment at a level equal to or better than was provided to obtain this certification and shall be subject to quality monitoring by the Department as is required by section 25200.1.5 of the Health and Safety Code. The Department may revoke the hazardous waste environmental technology certification in accordance with the procedures set forth in Health and Safety Code section 25200.1.5(d).

NOTE: Authority cited: Sections 25150, 25200.1.5, 58004 and 58012, Health and Safety Code. Reference: Section 25200.1.5, Health and Safety Code.

HISTORY

1. New section filed 10–5–98; operative 11–4–98 (Register 98, No. 41).

§ 68080. Fees.

(a) The Department shall recover the actual costs to the Department for evaluating hazardous waste environmental technologies, and making certification decisions. An estimate of these costs and a scope of work, including a summary delineating the activities that will be conducted, shall be part of the technology evaluation and certification services agreement. A dispute resolution process, to address conflicts between the applicant and the Department regarding the terms of the services agreement, shall be part of the agreement.

(b) Each applicant for a technology certification shall submit a non–refundable fee of two–hundred fifty dollars ($250) with the application. This fee will cover the Department's cost for the preliminary determination of eligibility for certification as described in section 68050(a)(1). The remainder of the costs to evaluate the technology shall be due according to the terms of the negotiated agreement as specified in section 68050(a)(3).

NOTE: Authority cited: Sections 25150, 25200.1.5, 58004 and 58012, Health and Safety Code. Reference: Section 25200.1.5, Health and Safety Code.

HISTORY

1. New section filed 10–5–98; operative 11–4–98 (Register 98, No. 41).

§ 68090. Certification Reference.

(a) The holder of a valid hazardous waste environmental technology certification is authorized to use the certification seal (Registered Service Mark Number 046720) and shall cite the technology certification number and date of issuance in conjunction with the certification seal whenever it is used.

(b) When providing information on the certification to an interested party, the holder of a hazardous waste environmental technology certification shall at a minimum provide the full text of the final certification decision as published in the California Regulatory Notice Register.

NOTE: Authority cited: Sections 25150, 25200.1.5, 58004 and 58012, Health and Safety Code. Reference: Section 25200.1.5, Health and Safety Code.

HISTORY
1. New section filed 10–5–98; operative 11–4–98 (Register 98, No. 41).
2. Change without regulatory effect amending subsection (b) filed 7–1–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 27).

§ 68100. Amendments to Certifications.

The Department on its own initiative or upon receipt of an application from the holder of the certification may amend a hazardous waste environmental technology certification.

(a) In the case of a Department initiated amendment, the Department will:

(1) Inform the applicant of the Department's intent to amend the certification.

(2) Prepare an evaluation report and proposed certification decision.

(3) Publish in the California Regulatory Notice Register, the Department's proposed decision regarding the amendment, which shall be subject to a 30–day comment period. The Department shall review any comments received and complete the final certification decision.

(4) Publish the final certification decision in the California Regulatory Notice Register, which shall become effective not sooner than 30 days after its publication.

(b) During the time periods specified in subdivision (a), paragraphs (3) and (4), the existing certification shall remain valid.

(c) In the case of an amendment applied for by the holder, the Department will follow the procedures set forth in section 68050. During the time periods specified in section 68050(a)(8) and (a)(9), the existing certification shall remain valid.

(d) In the case of an amendment applied for by the holder, the applicant shall reimburse the Department for its costs in amending the certification.

NOTE: Authority cited: Sections 25150, 25200.1.5, 58004 and 58012, Health and Safety Code. Reference: Section 25200.1.5, Health and Safety Code.

HISTORY
1. New section filed 10–5–98; operative 11–4–98 (Register 98, No. 41).

Chapter 47. Loan Programs

Article 1. Cleanup Loans and Environmental Assistance to Neighborhoods Revolving Loan Fund

§ 68200. Purpose.

The purpose of the Cleanup Loans and Environmental Assistance to Neighborhoods Revolving Loan Fund is to finance the performance of actions necessary to respond to the release or threatened release of a Hazardous Material on a Brownfield, as defined, or Eligible Underutilized Property. The Program supports two programs: the Investigating Site Contamination Program (ISCP) and the Cleanup Loans and Environmental Assistance to Neighborhoods (CLEAN) Loan Program.

NOTE: Authority cited: Sections 25150, 25351.5, 25395.29 and 58012 Health and Safety Code. Reference: Sections 25395.21 and 25395.22, Health and Safety Code.

HISTORY
1. New chapter 47 (articles 1–2), article 1 (sections 68200–68213 and appendix 1) and section filed 1–18–2001 as an emergency; operative 1–18–2001 (Register 2001, No. 3). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 7–17–2001 or emergency language will be repealed by operation of law on the following day.
2. New chapter 47 (articles 1–2), article 1 (sections 68200–68213 and appendix 1) and section refiled 7–6–2001 as an emergency; operative 7–18–2001 (Register 2001, No. 27). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 1–14–2002 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7–6–2001 order transmitted to OAL 1–14–2002; Certificate of Compliance withdrawn from review 2–27–2002. Repealed by operation of Government Code section 11346.1(g) (Register 2002, No. 9).
4. New chapter 47 (articles 1–2), article 1 (sections 68200–68213 and appendix 1) and section filed 3–1–2002 as an emergency; operative 3–1–2002 (Register 2002, No. 9). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 8–28–2002 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 3–31–2002 order, including amendment of section, transmitted to OAL 6–21–2002 and filed 8–5–2002 (Register 2002, No. 32).

§ 68201. Overview; Administering Agency.

(a) The Department will be the Administering Agency for all Properties that are the subject of an ISCP Loan.

(b) As provided under section 68207, the Department, the State Board, a Regional Board, or a Local Oversight Program Agency under contract with the State Board will be the Administering Agency for a site that is the subject of a Loan from the CLEAN Loan Program.

(c) An Applicant for a Loan may not request that a different agency be designated as the Administering Agency by the Site Designation Committee created by section 25260 of the Health and Safety Code.

(d) Investigating Site Contamination Program (ISCP):

(1) The ISCP provides Loans to Eligible Applicants for the purpose of conducting Preliminary Endangerment Assessments (PEAs) of Brownfields, as defined, or Eligible Underutilized Properties;

(2) Loan funds will not be disbursed until execution of an ISCP Environmental Oversight Agreement under section 68211;

(3) Loan recipients shall agree to provide any and all PEA site assessment results to the Department if the Loan recipient does not proceed with the Project under section 68211; and

(4) Loans from the ISCP may not be used to pay for Ineligible Costs as defined in section 68202(r);

(e) Cleanup Loans and Environmental Assistance to Neighborhoods (CLEAN) Program:

(1) The CLEAN Loan Program provides Loans to Eligible Applicants for the purpose of performing actions necessary to Respond to the release or threatened release of a Hazardous Material including, but not limited to, site characterization, preparation of feasibility studies, public participation, preparation of remedy selection documents, actual construction and other cleanup activities on an Eligible Property. The CLEAN Loan Program does not include activities deemed Operation and Maintenance as determined by the Administering Agency;

(2) As a condition of obtaining a Loan, Loan recipients who are responsible parties as defined in section 25323.5 of the Health and Safety Code or are Persons subject to regulation under chapter 6.7 (commencing with section 25280) or chapter 6.75 (commencing with section 25299.10 of the Health and Safety Code) are required to complete all actions necessary to Respond to releases or threatened releases of a Hazardous Material on the Property as approved by the Administering Agency even if the Loan amount does not finance the full cost of such actions;

(3) Work undertaken using funds from the CLEAN Loan Program must be conducted by a qualified Project Coordinator with expertise in Hazardous Materials site investigation and cleanup. All engineering and geological work must be conducted in conformance with applicable State laws including, but not limited to, Business and Professions Code sections 6735 and 7835;

(4) Loan funds shall not be disbursed until execution of a CLEAN Loan Program Response Action Agreement with the Department or other enforceable agreement with another Administering Agency under section 68211; and

(5) Loans from the CLEAN Loan Program may not be used to pay for Ineligible Costs under section 68202(r).

NOTE: Authority cited: Sections 25150, 25260, 25351.5, 25395.29 and 58012, Health and Safety Code. Reference: Sections 25395.21, 25395.22, 25395.27 and 25395.28, Health and Safety Code.

HISTORY
1. New section filed 1–18–2001 as an emergency; operative 1–18–2001 (Register 2001, No. 3). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 7–17–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–6–2001 as an emergency; operative 7–18–2001 (Register 2001, No. 27). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 1–14–2002 or emergency language will be repealed by operation of law on the following day.

3. Certificate of Compliance as to 7–6–2001 order transmitted to OAL 1–14–2002; Certificate of Compliance withdrawn from review 2–27–2002. Repealed by operation of Government Code section 11346.1(g) (Register 2002, No. 9).
4. New section filed 3–1–2002 as an emergency; operative 3–1–2002 (Register 2002, No. 9). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 8–28–2002 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 3–31–2002 order, including amendment of section heading, section and NOTE, transmitted to OAL 6–21–2002 and filed 8–5–2002 (Register 2002, No. 32).

§ 68202. Definitions.

Unless the context indicates otherwise and except as provided in this section, the definitions set forth in chapter 6.8 of division 20 of the Health and Safety Code govern interpretation of this article. For the purposes of this article, the following definitions apply:

(a) "Account" means the Cleanup Loans and Environmental Assistance to Neighborhoods Account established pursuant to subdivision (b) of section 25395.20 of the Health and Safety Code.

(b) "Administering Agency" means either the Department, a Regional Board, the State Board, or a Local Oversight Program Agency that oversees all aspects of a site investigation and Response Action conducted on a Property that is the subject of a CLEAN Loan Program Loan. Under section 25395.27 of the Health and Safety Code, the Administering Agency has jurisdiction over all activities required to carry out a site investigation and Response Action necessary to Respond to the Hazardous Materials release at the Property;

(c) "Applicant" means a Person, as defined in subdivision (ff) that is applying for a Loan under section 68206;

(d) "Application" means the information an Applicant provides to the Department when seeking a Loan under section 68206;

(e) "Borrower" means an Applicant whose Application has been approved and who has executed a Loan Agreement under section 68210;

(f) "Brownfield" means a Property that meets all of the following conditions:

(1) It is located in an Urban Area;

(2) It was previously the site of an Economic Activity that is No Longer In Operation at that location;

(3) It has been vacant or has had no occupant engaged in year–round economically productive activities for a period of not less than the 12 months previous to the date of Application for a Loan pursuant to this article.

(g) "CLEAN Loan Program Response Action Agreement" means the agreement executed under section 68211 authorizing the Department's oversight of the actions necessary to Respond to the release or threatened release of a Hazardous Material on an Eligible Property for the CLEAN Loan Program;

(h) "Cleanup and Abatement Order" means an order issued by a Regional Board pursuant to section 13304 of the Water Code;

(i) "Cleanup Loans and Environmental Assistance to Neighborhoods Loan Program" or "CLEAN Loan Program" means the program established by the Department under section 25395.22 of the Health and Safety Code to provide Loans to finance the performance of any action necessary to respond to a release or threatened release at an Eligible Property.

(j) "Department" means the Department of Toxic Substances Control;

(k) "Director" means the Director of the Department of Toxic Substances Control;

(*l*) "Economic Activity" means a governmental activity, or a commercial, agricultural, industrial, or not–for–profit enterprise, or other economic or business concern;

(m) "Eligible Applicant" means an Applicant that has an interest in or Economic Activity within the boundaries of an Eligible Property and that is not an Ineligible Applicant as defined under subdivision (q);

(n) "Eligible Contiguous Expansion" means the expansion onto contiguous property of an operating industrial or commercial facility owned or operated by one of the following:

(1) A Small Business;

(2) A nonprofit corporation formed under the Nonprofit Public Benefit Corporation Law (part 2 (commencing with section 5110) of division 2 of title 1 of the Corporations Code) or the Nonprofit Religious Corporation Law (part 4 (commencing with section 9110) of division 2 of title 1 of the Corporations Code); or

(3) A Small Business Incubator.

(o) "Eligible Property" means a Property that is any of the following:

(1) A Brownfield;

(2) An Underutilized Property, as defined in subdivision (rr) of this section, that is any of the following:

(A) A Property described in subparagraph (E) of paragraph (4) of subdivision (rr) of this section;

(B) A Property located in an Enterprise Zone established pursuant to the Enterprise Zone Act (chapter 12.8 (commencing with section 7070) of division 7 of title 1 of the Government Code), in a project area for which a redevelopment plan has been approved pursuant to article 4 (commencing with section 33300) of chapter 4 of part 1 of division 24 of the Health and Safety Code, or in an eligible area, as determined by the Technology, Trade and Commerce Agency pursuant to paragraph (2) of subdivision (c) of section 7072 of the Government Code;

(C) A Property, the redevelopment of which will result in any of the following:

1. An increase in the number of full–time jobs that is at least 100 percent greater than the number of jobs provided by the Economic Activity located on the Property before redevelopment occurred;

2. An increase in Property taxes paid to the local government that is at least 100 percent greater than the Property taxes paid by the Property owner before redevelopment occurred;

3. Sales tax revenues to the local government that are sufficient to defray the costs of providing municipal services to the Property after the redevelopment occurs;

4. Housing for very low, low–, or moderate–income households, as defined in paragraph (2) of subdivision (h) of section 65589.5 of the Government Code; or

5. The construction of new or expanded school facilities, public day care centers, parks, open space and habitat area, or community recreational facilities.

(3) A Brownfield or an Underutilized Property described in subparagraph (B) of paragraph (2) that will be the site of an Eligible Contiguous Expansion.

(p) "Hazardous Material" means a substance or waste that, because of its physical, chemical, or other characteristics, may pose a risk of endangering human health or safety or of degrading the environment. Hazardous Material includes, but is not limited to, all of the following:

(1) A hazardous substance, as defined in section 25281 or section 25316 of the Health and Safety Code, including the substances specified in section 25317 of the Health and Safety Code;

(2) A hazardous waste, as defined in section 25117 of the Health and Safety Code;

(3) A waste, as defined in section 101075 of the Health and Safety Code, or as defined in section 13050 of the Water Code.

(q) "Ineligible Applicant" means any of the following:

(1) A Person who has been convicted of a felony or misdemeanor involving Hazardous Materials, including, but not limited to, a conviction of a felony or misdemeanor under section 25395.13 of the Health and Safety Code;

(2) A Person who has been convicted of a felony or misdemeanor involving moral turpitude, including, but not limited to, the crimes of fraud, bribery, the falsification of records, perjury, forgery, conspiracy, profiteering, or money laundering;

(3) A Person who the Department determines is in violation of an administrative order or agreement that:

(A) Is issued by or entered into with any federal, State, or Local Agency and

(B) Requires Response Action;

(4) A Person who knowingly made a false statement regarding a material fact or knowingly failed to disclose a material fact in connection with an Application submitted under this article; and

(5) Any Person determined to be ineligible by the Department under section 68206.

(r) "Ineligible Costs" means any of the following:

(1) Costs of Phase I Environmental Site Assessments;

(2) Costs of Operation and Maintenance as defined in subdivision (dd);

(3) Costs associated with oversight by the Department of the preparation and approval of a PEA, or oversight by the Administering Agency of the response action on the Property; and

(4) Costs to conduct a PEA for CLEAN Loan Program Loans only.

(s) "Ineligible Property" means any of the following:

(1) Property currently listed or proposed for listing on the National Priorities List pursuant to subparagraph (B) of paragraph (8) of subdivision (a) of section 9605 of the Comprehensive Environmental Response Compensation and Liability Act, as amended (42 U.S.C. § 9605(a)(8)(B));

(2) Property that is, or has ever been, owned or operated by a department, agency, or instrumentality of the United States;

(3) Property that will be the site of a contiguous expansion or improvement of an operating industrial or commercial facility, unless the Property is a Brownfield or Underutilized Property described in subparagraph (B) of paragraph (2) of subdivision (o) that will be the site of an Eligible Contiguous Expansion as defined in subdivision (n); or

(4) Any Property determined to be ineligible by the Department under section 68206.

(t) "Infrastructure" means basic service systems such as sewer, water, transportation, and utilities;

(u) "Investigating Site Contamination Program" or "ISCP" means the program established by the Department under section 25395.21 of the Health and Safety Code to provide Loans to conduct PEAs of Eligible Properties;

(v) "ISCP Environmental Oversight Agreement" means the agreement executed under section 68211 that governs the preparation of a PEA for an Eligible Property under the ISCP Loan program;

(w) "Leaking Underground Fuel Tank" means a leaking underground fuel tank that is a "tank" as defined in section 25299.24 of the Health and Safety Code;

(x) "Loan" means a Loan from the Account that is either an ISCP Loan or a CLEAN Loan Program Loan;

(y) "Loan Agreement" means the written agreement between a Borrower and the Department made in accordance with section 68210;

(z) "Loan Committee" means representatives of those agencies specified under subdivision (a) of section 25395.23 of the Health and Safety Code: the Secretary of the California Environmental Protection Agency, the Secretary of the Technology, Trade and Commerce Agency, the Secretary of the Business, Transportation and Housing Agency, and the Director of the Office of Planning and Research or their appointed representatives, and up to three other members selected by the Department who have public or private sector experience or expertise in commercial lending, environmental, or economic development issues;

(aa) "Local Government Agency" or "Local Agency" means a county, city, city and county, redevelopment agency or district of any type including a school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing;

(bb) "Local Oversight Program Agency" means a Local Agency that is under contract with the State Board in accordance with chapter 6.7 (commencing with section 25280 of the Health and Safety Code) and chapter 6.75 (commencing with section 25299.10 of the Health and Safety Code) as specified in section 25395.28(a)(1) of the Health and Safety Code;

(cc) "No Longer In Operation" describes an Economic Activity that has ceased to function or to conduct operations of the type usually associated with the Economic Activity on the Property;

(dd) "Operation and Maintenance" means those activities initiated or continued at a site following completion of a Response Action that are deemed necessary by the Administering Agency in order to protect public health or safety or the environment, to maintain the effectiveness of the Response Action at the site, or to achieve or maintain the Response Action standards and objectives established by the approved remedial action plan or approved removal action work plan applicable to the site;

(ee) "PEA-equivalent" means an environmental assessment submitted with a CLEAN Loan application that provides basic information to determine if there is or has been a release or threatened release of a Hazardous Material at the Property at concentrations that may pose a risk to public health and safety and the environment, and that includes all of the activities specified in subdivision (hh)-(1-3);

(ff) "Person" means an individual, trust, firm, joint stock company, business concern, corporation, partnership, limited liability company, association, redevelopment agency, sole proprietorship, joint venture, non-profit organization, or any Local Government Agency or Local Agency;

(gg) "Phase I Environmental Site Assessment" or "Phase I" means an assessment of a Property to determine whether there has been, or may have been, a release of a Hazardous Material based on reasonably available information about the Property and general vicinity. A Phase I may include, but is not limited to, a review of public and private records, current and historical land uses, prior releases of a Hazardous Material, database searches, reviews of relevant files of federal, State, and Local Agencies, visual and other surveys of the Property and general vicinity, interviews with current and previous owners and operators, and review of regulatory correspondence and environmental reports. Sampling or testing is not required as part of a Phase I Environmental Site Assessment. A Phase I shall be performed in compliance with the licensing and educational requirements in subdivision (d) of section 68205;

(hh) "Preliminary Endangerment Assessment" or "PEA" means an activity that is performed to determine if there is or has been a release or threatened release of a Hazardous Material that poses a threat to the public health or the environment and is conducted in a manner that complies with the guidelines published by the Department entitled "Preliminary Endangerment Assessment: Guidance Manual," (June 1999, or as later amended by the Department, which is incorporated by reference). A Preliminary Endangerment Assessment includes all of the following activities:

(1) Sampling of a Property, and laboratory analysis of those samples;

(2) A preliminary determination of the type and extent of Hazardous Material contamination of a Property;

(3) A preliminary evaluation of the risks of Hazardous Material contamination of a Property may pose to public health or the environment.

(ii) "Project" means any Response Action and the planned future development of the Property included in an Application;

(jj) "Project Coordinator" means the Person or Persons that possess the requisite qualifications to manage the Response Action at the Property and who have been identified as intended to manage the Response Action;

(kk) "Property" means the Property within the boundaries described as the Property boundaries in the Application submitted under section 68206. A Property may be all or a portion of a site where there is a known or suspected release or threatened release of a Hazardous Material;

(ll) "Regional Board" means a California Regional Water Quality Control Board;

(mm) "Response," "Respond," or "Response Action" have the same meanings as defined in section 9601(25) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. § 9601(25)). The enforcement and oversight activities of the

Administering Agency are included within the meaning of "Response," "Respond," or "Response Action";

(nn) "Secured Creditor Insurance" has the same meaning as defined in subdivision (k) of section 25395.40 of the Health and Safety Code;

(oo) "Small Business" means an independently owned or operated business, that is not dominant in its field of operation that together with affiliates, has 100 or fewer employees, and that has average annual gross receipts of ten million dollars ($10,000,000) or less over the previous three years, or a business that is a manufacturer, as defined in section 14837 of the Government Code, with 100 or fewer employees;

(pp) "Small Business Incubator" means a Small Business Incubator that is undertaking a contiguous expansion of an operating industrial or commercial facility with the assistance of a grant authorized by section 15339.3 of the Government Code or a loan guarantee provided pursuant to section 14090 of the Corporations Code.

(qq) "State Board" means the State Water Resources Control Board;

(rr) "Underutilized Property" means Property that meets all of the following conditions:

(1) It is located in an Urban Area;

(2) An Economic Activity is conducted on the Property;

(3) It is the subject of a proposal for development pursuant to this article; and

(4) At least one of the following applies:

(A) The Economic Activity on the Property is irregular or intermittent in nature and uses the Property for productive purposes less than four months in any calendar year;

(B) The Economic Activity on the Property employs less than 25 percent of the area of the Property (as measured in square feet) for productive purposes;

(C) The structures, Infrastructure, and other facilities on the Property are antiquated, obsolete, or in such poor repair that they cannot be used for the purposes for which they were originally constructed and require replacement in order to implement the redevelopment proposal;

(D) The Economic Activity conducted on the Property is a parking facility or another activity that offers a similar marginal economic service and the facility or activity will be replaced when the Property is redeveloped; or

(E) The Property is adjacent to one or more Brownfields that are the subject of a Project under this article and its inclusion in the Project is necessary in order to ensure that the redevelopment of the Brownfield or Brownfields occurs.

(ss) "Urban Area" means either of the following:

(A) A central city or a group of contiguous cities with a combined population of 50,000 or more, together with adjacent densely populated areas having a population density of at least 1,000 persons per square mile; or

(B) An urbanized area as defined in paragraph (2) of subdivision (b) of section 21080.7 of the Public Resources Code. Urbanized areas are listed in Appendix 1.

NOTE: Authority cited: Sections 25150, 25351.5, 25395.29 and 58012, Health and Safety Code. Reference: Sections 25395.20, 25395.21, 25395.22, 25395.27, 25395.28 and 25395.40, Health and Safety Code.

HISTORY

1. New section filed 1–18–2001 as an emergency; operative 1–18–2001 (Register 2001, No. 3). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 7–17–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–6–2001 as an emergency; operative 7–18–2001 (Register 2001, No. 27). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 1–14–2002 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7–6–2001 order transmitted to OAL 1–14–2002; Certificate of Compliance withdrawn from review 2–27–2002. Repealed by operation of Government Code section 11346.1(g) (Register 2002, No. 9).
4. New section filed 3–1–2002 as an emergency; operative 3–1–2002 (Register 2002, No. 9). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 8–28–2002 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 3–31–2002 order, including amendment of section and NOTE, transmitted to OAL 6–21–2002 and filed 8–5–2002 (Register 2002, No. 32).

[The next page is 758.346(c).]

§ 68203. Loan Amounts; Interest.

(a) Investigating Site Contamination Program Loans: An ISCP Loan may not be for more than $100,000;

(b) Cleanup Loans and Environmental Assistance to Neighborhoods Loan Program Loans: A CLEAN Loan Program Loan may not be for more than $2,500,000;

(c) The interest rate for ISCP and CLEAN Loan Program Loans shall be the same rate as earned on investments in the State's Surplus Money Investment Fund (Government Code section 16475). The rate earned on investments in the Surplus Money Investment Fund in effect on the date of Loan approval shall be retained for the life of the Loan;

(d) If a Borrower defaults on a Loan, the rate of interest from the date of default will be either 10 percent or the default interest rate specified in the Loan Agreement executed under section 68210, whichever is greater;

(e) A Loan shall not be used to pay for Ineligible Costs as defined under subdivision (r) of section 68202;

(f) Interest on the Loan amount for an ISCP Loan shall accrue from the date of each disbursement of ISCP Loan funds by the Department; and

(g) Interest on the Loan amount of a CLEAN Loan Program Loan shall accrue from the date of each disbursement of CLEAN Loan Program funds by the Department.

NOTE: Authority cited: Sections 25150, 25351.5, 25395.29 and 58012, Health and Safety Code. Reference: Sections 25395.21, 25395.24 and 25395.31, Health and Safety Code.

HISTORY

1. New section filed 1–18–2001 as an emergency; operative 1–18–2001 (Register 2001, No. 3). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 7–17–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–6–2001 as an emergency; operative 7–18–2001 (Register 2001, No. 27). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 1–14–2002 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7–6–2001 order transmitted to OAL 1–14–2002; Certificate of Compliance withdrawn from review 2–27–2002. Repealed by operation of Government Code section 11346.1(g) (Register 2002, No. 9).
4. New section filed 3–1–2002 as an emergency; operative 3–1–2002 (Register 2002, No. 9). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 8–28–2002 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 3–31–2002 order, including amendment of section, transmitted to OAL 6–21–2002 and filed 8–5–2002 (Register 2002, No. 32).

§ 68204. ISCP Waivers of Loan Repayment.

(a) A recipient of an ISCP Loan may request, in writing, a partial waiver of Loan repayment under the following conditions:

(1) If after completion of the PEA, a Borrower who is not the owner of the Property believes that the sum of the cost of the Response Action and the current appraised fair market value of the Property is greater than the projected fair market value of the Property after all necessary Response Actions have been completed and thus renders the redevelopment Project not economically feasible, the Borrower may request a waiver of Loan repayment of up to 75 percent of the Loan amount;

(2) In support of a written waiver request, the Borrower shall submit the following to the Department:

(A) A report that estimates the cost of the Response Action prepared for the Property by any of the following who are licensed or registered to practice in California and who have demonstrated expertise in Hazardous Material remediation and cost estimation: Class II environmental assessor, engineering geologist, licensed hazardous substance contractor, or licensed professional engineer. An affidavit may be submitted in lieu of the report if the affidavit is signed by a person who is authorized under this subparagraph to prepare a cost estimation report;

(B) A real estate appraisal that provides an appraised value based on the estimated value of the Property after all necessary Response Actions have been taken, and performed by a licensed Real Estate appraiser appropriately and currently certified by the State of California Office of Real Estate Appraisers. The appraisal shall include a copy of the appraiser's current certificate; and

(C) An affidavit in support of the written waiver request that sets forth the information and documentation required under this section.

(b) The Department will present the written waiver request to the Loan Committee for its determination to approve or deny;

(c) The amount of repayment waived shall be deemed a grant to the Borrower. The Borrower shall repay the remaining portion of the Loan within one year of the approval date of the waiver; and

(d) A Borrower who has received a partial waiver of Loan repayment under subdivision (a) may not apply for a CLEAN Loan Program Loan for the same Property until the full amount of the ISCP Loan initially disbursed has been repaid.

NOTE: Authority cited: Sections 25150, 25351.5, 25395.29 and 58012, Health and Safety Code. Reference: Sections 25395.20, 25395.21, 25395.22, 25395.24 and 25395.31 Health and Safety Code.

HISTORY

1. New section filed 1–18–2001 as an emergency; operative 1–18–2001 (Register 2001, No. 3). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 7–17–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–6–2001 as an emergency; operative 7–18–2001 (Register 2001, No. 27). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 1–14–2002 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7–6–2001 order transmitted to OAL 1–14–2002; Certificate of Compliance withdrawn from review 2–27–2002. Repealed by operation of Government Code section 11346.1(g) (Register 2002, No. 9).
4. New section filed 3–1–2002 as an emergency; operative 3–1–2002 (Register 2002, No. 9). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 8–28–2002 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 3–31–2002 order, including amendment of section, transmitted to OAL 6–21–2002 and filed 8–5–2002 (Register 2002, No. 32).

§ 68205. Loan Application Content.

(a) An Applicant shall submit an ISCP Loan Application, (DTSC Form 1290, dated 10/01, which is incorporated by reference), or a CLEAN Loan Program Loan Application, (DTSC Form 1291, dated 10/01, which is incorporated by reference), as applicable, to the Department;

(b) The Application shall contain, at a minimum, all of the following:

(1) Description of the Property that is the subject of the Loan and upon which a PEA or Response Action will be performed. The description shall include a legal description of the Property boundaries, Assessor's Parcel Number, or other identification sufficient to identify the areal extent of the Property. If the Property is a portion of a larger site where there is known or suspected release or threatened release of a Hazardous Material, the Application shall include a description of the entire site, including the boundaries of the known or suspected release or threatened release of a Hazardous Material;

(2) Documentation that demonstrates the Property is an Eligible Property;

(3) Documentation of appropriate security interest in the Property and source of Loan repayment;

(4) Documentation of the Applicant's credit–worthiness, including a description of the Applicant's bank relationships, to include but not limited to existing bank loans and other debts;

(5) If the Department has made a determination under subdivision (g) of section 68206 that sufficient funding to meet the demand for Loans will not be available, sufficient information to enable the Department to determine the priority ranking of the Property under subdivision (g) of section 68206;

(6) For a CLEAN Loan Program Loan, description of the intended redevelopment Project and its projected benefits, if known, and the name, address, and resume of the project coordinator;

(7) Documentation that the Applicant has control of the Property or the right to enter the Property and conduct a PEA or Response Actions as necessary;

(8) For a CLEAN Loan Program Loan for a Property that is part of a larger site, documentation that the planned future development of the Property is consistent with the current and reasonably foreseeable future land uses of the larger site;

(9) For a CLEAN Loan Program Loan, general description of the Response Action to be performed on the Property;

(10) For a CLEAN Loan Program Loan for a Property that is part of a larger site, description of any Response Action that is currently being performed or that will be performed on the larger site;

(11) For a CLEAN Loan Program Loan, description of all past and current administrative orders, agreements, judicial orders, and consent decrees that

(A) Relate to any of the following:

1. the Property,

2. the Applicant,

3. the Applicant under any previous name or names, or

4. if the Applicant is a business concern, any officer, director, or partner of the business concern and any previous names of the business concern;

(B) were issued by or entered into with any federal, State, or local agency including the State Board, or a Regional Board; and

(C) require Response Action at a site;

(12) For a CLEAN Loan Program Loan, documentation of the total debt against the Property on which the Response Action will be taken;

(13) For a CLEAN Loan Program Loan, estimated value of the Property after all necessary Response Actions are complete;

(14) Disclosure of any and all information demonstrating that the Applicant is an Ineligible Applicant under paragraphs (1)–(5) of subdivision (q) of section 68202;

(15) Certification Statement and signature of the Applicant; and

(16) Any other information the Department deems necessary to evaluate whether the Application meets the intent of the ISCP or the CLEAN Loan Program.

(c) For ISCP and CLEAN Loan Program Loans, if the Applicant is not the owner of the Property, the Application shall also contain one of the following:

(1) For an ISCP Loan, documentation that demonstrates that the owner consents to the performance of the PEA of the Property;

(2) A copy of an agreement between the Property owner and the Applicant that gives the Applicant an option to purchase the Property;

(3) For a CLEAN Loan Program Loan, documentation that the owner of the Property agrees to use the Property as a security interest for the Loan to finance necessary Response Action at the Property, or agrees to provide another form of security that the Department determines will adequately protect the State's interest. The Department will obtain an appropriate security interest in the Property or other alternative form of security approved by the Department;

(4) If the Applicant is a Local Government Agency, or a developer or prospective purchaser acting together with a Local Government Agency pursuant to an enforceable agreement, a demonstration to the Department that the Local Government Agency, or developer or prospective purchaser acting together with the Local Government Agency pursuant to an enforceable agreement, has legal access to perform the PEA or Response Action as determined by the Department at the Property, or will have legal access, prior to receiving Loan funds.

(d) An ISCP Application shall include a Phase I that has been completed within three (3) years, provided that the information is current and accurate. An addendum may be submitted with the Phase I to provide current information.

(1) The Phase I shall be performed by, or under the supervision of, any of the following:

(A) A Class II environmental assessor registered pursuant to chapter 6.98 (commencing with section 25570) of division 20 of the Health and Safety Code;

(B) A professional engineer registered in California;

(C) A geologist registered in California;

(D) A certified engineering geologist registered in California; or

(E) A licensed hazardous substance contractor certified pursuant to chapter 9 (commencing with section 7000) of division 3 of the Business and Professions Code. A licensed hazardous substance contractor shall hold the equivalent of a degree from an accredited public or private college or university or a private postsecondary educational institution approved by the Bureau for Private Postsecondary and Vocational Education with at least 60 units in environmental, biological, chemical, physical, or soil science; engineering; geology; environmental or public health; or a directly related science field.

(2) Any Person who conducts or supervises a Phase I under paragraph (1) shall have at least two years experience in the preparation of those assessments;

(3) The Phase I shall be performed in accordance with the American Society for Testing and Materials (ASTM), "Standard Practice for Phase I Environmental Site Assessments: Phase I Environmental Site Assessment Process," (Designation: E 1527–00, dated May 10, 2000, which is incorporated by reference).

(e) A CLEAN Loan Program Loan Application shall include a PEA, or PEA–equivalent as determined by the Department.

(1) The PEA or PEA–equivalent shall be performed by, or under the supervision of, any of the following:

(A) A Class II environmental assessor registered pursuant to chapter 6.98 (commencing with section 25570) of division 20 of the Health and Safety Code;

(B) A professional engineer registered in California;

(C) A geologist registered in California;

(D) A certified engineering geologist registered in California; or

(E) A licensed hazardous substance contractor certified pursuant to chapter 9 (commencing with section 7000) of division 3 of the Business and Professions Code. A licensed hazardous substance contractor that conducts or supervises a PEA under paragraph (1), shall hold the equivalent of a degree from an accredited public or private college or university or a private postsecondary educational institution approved by the Bureau for Private Postsecondary and Vocational Education with at least 60 units in environmental, biological, chemical, physical, or soil science; engineering; geology; environmental or public health; or a directly related science field.

(2) Any Person who conducts or supervises a PEA or PEA–equivalent under subdivision (1) shall have at least three (3) years experience in conducting those assessments; and

(3)(A) The PEA or PEA–equivalent shall demonstrate the presence of any known or suspected release or threatened release of a Hazardous Material at the Property at concentrations that may pose a risk to public health and safety and the environment.

(B) The Department will review the PEA or PEA–equivalent to determine whether it is adequate.

(f) An Applicant shall provide any further information or documentation deemed necessary by the Department to determine the creditworthiness of the Applicant or the Applicant's ability to secure and repay the Loan, or the eligibility of the Property;

(g) An Application from a Local Government Agency or Local Agency, or from a Joint Powers Authority formed pursuant to chapter 5 of division 7 of title 1 of the Government Code (commencing with section 6500) or pursuant to other California statutory authority, shall also contain the following additional information:

(1) A description of the activities and responsibilities of the Local Government Agency or Local Agency or the Joint Powers Authority;

(2) The annual financial operating statements for the previous three years of the Local Government Agency or Local Agency or the Joint Powers Authority;

(3) A governing body resolution, or other documentation granting the Applicant authority to apply to the Department for a Loan; and

(4) For a Joint Powers Authority, documentation that the Applicant is authorized to act on the behalf of the Joint Powers Authority.

(h) If the Department determines that any document submitted in the Application, including a PEA, PEA–equivalent, or Phase I, is not adequate, the Application shall be deemed incomplete.

NOTE: Authority cited: Sections 25150, 25351.5, 25395.29 and 58012, Health and Safety Code. Reference: Sections 25395.21 and 25395.22, Health and Safety Code.

HISTORY

1. New section filed 1–18–2001 as an emergency; operative 1–18–2001 (Register 2001, No. 3). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 7–17–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–6–2001 as an emergency; operative 7–18–2001 (Register 2001, No. 27). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 1–14–2002 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7–6–2001 order transmitted to OAL 1–14–2002; Certificate of Compliance withdrawn from review 2–27–2002. Repealed by operation of Government Code section 11346.1(g) (Register 2002, No. 9).
4. New section filed 3–1–2002 as an emergency; operative 3–1–2002 (Register 2002, No. 9). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 8–28–2002 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 3–31–2002 order, including amendment of section, transmitted to OAL 6–21–2002 and filed 8–5–2002 (Register 2002, No. 32).

§ 68206. Loan Application Process.

(a) An Application may be submitted to the Department at any time;

(b) Upon receipt of an Application, the Department will review the Application for completeness and eligibility. Upon receipt of an Application, the Department will determine whether the Application is complete, whether the Applicant is an Eligible Applicant, and whether the Property is an Eligible Property. The Applicant will be notified by certified letter of one of the following:

(1) The Application is incomplete, with identification of the information to be included for a complete Application; or

(2) The Applicant is ineligible or the Applicant's Property is an Ineligible Property, with identification of the steps to take to correct identified deficiencies; or

(3) The Applicant and Applicant's Property are eligible for a Loan, and the Application is complete.

(c) The Department may request additional information from the Applicant in order to determine whether the Applicant or the Property is eligible;

(d) Upon determination that an Application is complete and the Applicant and Applicant's Property are eligible, Department staff will prepare an evaluation of the Application. An Application that meets all the following criteria will be recommended for approval to the Loan Committee:

(1) The Applicant is found creditworthy, as determined by considering the following elements:

(A) Character — the complex mental and ethical traits marking and often individualizing a Person or group; includes history of the business, work experience of key managers, and credit reports;

(B) Capacity — the ability of the Applicant to operate the business successfully and generate the cash needed to repay obligations as they come due;

(C) Capital — Applicant's other assets on which to rely if the primary source of income is interrupted or reduced;

(D) Collateral — appropriate security interest in the Property pledged by the Applicant; and

(E) Conditions — economic and environmental influences on the Applicant's financial condition and performance. Includes the general economy, business climate, business environment, and the legal and regulatory situation.

(2) The collateral and the source of repayment are appropriate for the Loan amount;

(3) For a CLEAN Loan Program Loan, the Applicant has adequately demonstrated that the Response Action to be performed on the Property is necessary to address a release or threatened release of a Hazardous Material on the Property;

(4) For a CLEAN Loan Program Loan, the Applicant has adequately demonstrated the need of the requested Loan amount for use in the project; and

(5) For a CLEAN Loan Program Loan, the Applicant has adequately demonstrated that the total debt against the Property on which the Response Action will be taken, including the requested CLEAN Loan Program Loan, does not exceed 80 percent of the estimated value of the Property after all necessary Response Actions are complete.

(e) If prior to making a recommendation to the Loan Committee, the Department determines that the Application does not meet the criteria in subsection (d) above, the Department may disapprove the Application and notify the Applicant in writing of the Department's determination;

(f) An Applicant may request the Loan Committee's review of the Department's determination under subsection (e);

(g) If the Department determines that sufficient funding to meet the demand for CLEAN Loan Program Loans and ISCP Loans will not be available in a given fiscal year, the Department shall calculate a priority score to rank each Loan Application using scales that measure the following factors:

(1) Twenty–five (25) percent of the priority score is based on the potential for the proposed Project to provide additional protection of public health and safety and the environment.

(2) Twenty–five (25) percent of the priority score is based on the potential for proposed Project to enhance strategic community development including:

(A) Creation of new jobs;

(B) Generation of additional tax revenue;

(C) Likelihood that the proposed Project will stimulate additional redevelopment in adjacent areas as measured by improvement of local property values;

(D) Degree to which implementation of the proposed Project will result in the development of new parks;

(E) Degree to which implementation of the proposed Project will result in the development of new schools;

(F) Degree to which implementation of the proposed Project will result in the development of affordable inner city housing and regional Infrastructure or projected regional Infrastructure needs, or otherwise promote infill development;

(G) Economic viability of the proposed Project, including, but not limited to an analysis of the current value of the Property as compared to its projected value after all necessary Response Actions have been completed;

(H) Ability of the Loan Applicant to successfully perform the proposed Project;

(I) Ability of the Loan Applicant to repay the Loan;

(J) Consideration of the number and amounts of Loans approved for the Projects located in the same area;

(K) Likelihood that the proposed Project would be completed if the CLEAN Loan Program Loan is not made;

(L) Ability to obtain conventional financing absent a Loan under this program.

(3) Twenty–five (25) percent of the priority score is based on community support as demonstrated by letters of support from city, county, or other Local Agencies, residents or citizen groups, state or local elected officials, the general public, or other community groups;

(4) Twenty–five (25) percent of the priority score is based on financial support as demonstrated by approved loans, letters of commitments from other financial sources, and commitments for in–kind support from Local Agencies and citizen groups, or funding as set fort in paragraph (2) of subdivision (c) of section 25395.23 of the Health and Safety Code.

(h) The Department staff may recommend that the amount of Loan funding requested in an Application be approved in whole or in part.

NOTE: Authority cited: Sections 25150, 25351.5, 25395.29 and 58012, Health and Safety Code. Reference: Sections 25395.21, 25395.22, 25395.23, 25395.27 and 25395.28, Health and Safety Code.

HISTORY

1. New section filed 1–18–2001 as an emergency; operative 1–18–2001 (Register 2001, No. 3). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 7–17–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–6–2001 as an emergency; operative 7–18–2001 (Register 2001, No. 27). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 1–14–2002 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7–6–2001 order transmitted to OAL 1–14–2002; Certificate of Compliance withdrawn from review 2–27–2002. Repealed by operation of Government Code section 11346.1(g) (Register 2002, No. 9).
4. New section filed 3–1–2002 as an emergency; operative 3–1–2002 (Register 2002, No. 9). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 8–28–2002 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 3–31–2002 order, including amendment of section and NOTE, transmitted to OAL 6–21–2002 and filed 8–5–2002 (Register 2002, No. 32).

§ 68207. Administering Agency.

(a) The Department will be the Administering Agency for all Properties that are the subject of an ISCP Loan. For Properties that are the subject of a CLEAN Loan Program Loan Application, the following apply:

(1) For Applications for CLEAN Loan Program Loans, the Department will provide written notice of the receipt of the Application to the State Board for any Application that indicates the Property contains a Leaking Underground Fuel Tank and to the Regional Board for any Property within the Regional Board's jurisdiction.

(2) For an Application for a CLEAN Loan Program Loan for a Property that is subject to a release from a Leaking Underground Fuel Tank and the release is the principal threat at that Property as determined by the Department, the State Board and the Regional Board, the Department will be the Administering Agency unless one of the following occurs:

(A) The State Board responds in writing to the Department within 20 working days of receipt of the notice under paragraph (1) and indicates that a Local Oversight Program Agency intends to oversee the Response Action on the Property because the site was subject to oversight by the Local Oversight Program Agency prior to the date the Application was submitted or;

(B) The Regional Board responds in writing to the Department within 20 working days of receipt of the notice under paragraph (1) and indicates that the Regional Board intends to oversee the Response Action on the Property because the site was not subject to oversight by a Local Oversight Program Agency prior to the date the Application was submitted;

(3) For an Application for a CLEAN Loan Program Loan for a Property that is subject to one or more of the orders or agreements specified in subdivision (b)(1) of section 25395.28 of the Health and Safety Code prior to the date the Application was submitted, the Department will be the Administering Agency unless the Regional Board responds in writing to the Department within 20 working days of receipt of the notice under paragraph (2) and indicates that the Regional Board intends to oversee the Response Action on the Property because the site is subject to one or more of the orders or agreements specified in subdivision (b)(1) of section 25395.28 of the Health and Safety Code.

(b) The State Board and a Regional Board, in consultation together with the Department, may request the Department to be the Administering Agency for a Property subject to section 25395.28 of the Health and Safety Code.

(c) Notwithstanding paragraph (3) of subdivision (a), if a Regional Board has issued a Cleanup and Abatement Order or other cleanup order or has entered into a written voluntary agreement for a site and the Department has issued an order or entered into an enforceable agreement under chapter 6.5 (commencing with section 25100) of the Health and Safety Code or chapter 6.8 (commencing with section 25300) of the Health and Safety Code) for the same site, the Regional Board and the Department will determine whether the Regional Board or the Department will be the Administering Agency.

NOTE: Authority cited: Sections 25150, 25351.5, 25395.29 and 58012, Health and Safety Code. Reference: Sections 25395.21, 25395.22, 25395.23, 25395.27 and 25395.28, Health and Safety Code.

HISTORY

1. New section filed 1–18–2001 as an emergency; operative 1–18–2001 (Register 2001, No. 3). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 7–17–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–6–2001 as an emergency; operative 7–18–2001 (Register 2001, No. 27). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 1–14–2002 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7–6–2001 order transmitted to OAL 1–14–2002; Certificate of Compliance withdrawn from review 2–27–2002. Repealed by operation of Government Code section 11346.1(g) (Register 2002, No. 9).
4. New section filed 3–1–2002 as an emergency; operative 3–1–2002 (Register 2002, No. 9). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 8–28–2002 or emergency language will be repealed by operation of law on the following day.
5. Renumbering of former section 68207 to section 68208 and new section filed 8–5–2002; operative 8–5–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 32).

§ 68208. Loan Committee Review Process.

(a) The Loan Committee will meet monthly or as needed to act on Applications submitted under section 68206 and requests submitted under subdivision (f) of section 68206;

(b) The Loan Committee will recommend approval or disapproval of the Application based on:

(1) The Applicant's financial soundness; and

(2) The Applicant's ability to meet the criteria of subdivision (d) of section 68206.

(c) The Loan Committee may recommend that the amount of Loan funding requested in an Application be approved in whole or in part;

(d) The Loan Committee will forward its recommendation to the Director for a final determination under section 68209; and

(e) The Loan Committee will review a written request for partial waiver of ISCP Loan repayment under section 68204 and will make a recommendation to the Director or the Director's designated representative determine whether to approve or disapprove the request for waiver. Program staff will notify the Borrower submitting the request for waiver whether the request for waiver is approved or disapproved.

NOTE: Authority cited: Sections 25150, 25351.5, 25395.29 and 58012, Health and Safety Code. Reference: Sections 25395.21, 25395.22 and 25395.23, Health and Safety Code.

HISTORY

1. New section filed 1–18–2001 as an emergency; operative 1–18–2001 (Register 2001, No. 3). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 7–17–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–6–2001 as an emergency; operative 7–18–2001 (Register 2001, No. 27). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 1–14–2002 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7–6–2001 order transmitted to OAL 1–14–2002; Certificate of Compliance withdrawn from review 2–27–2002. Repealed by operation of Government Code section 11346.1(g) (Register 2002, No. 9).
4. New section filed 3–1–2002 as an emergency; operative 3–1–2002 (Register 2002, No. 9). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 8–28–2002 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 3–31–2002 order, including renumbering of former section 68208 to section 68209 and renumbering and amendment of former section 68207 to section 68208, transmitted to OAL 6–21–2002 and filed 8–5–2002 (Register 2002, No. 32).

§ 68209. Approval of Loan Applications.

(a) The Loan Committee will submit its recommendation for approval or disapproval of the Application to the Director or the Director's designated representative. The Department's Director or the Director's designated representative may:

(1) Approve the Application for the full or partial amount of funding, or

(2) Disapprove the Application if the Director, or the Director's designated representative, determines that the Application does not meet one or more of the requirements of this article or article 8.5 of chapter 6.8 of division 20 of the Health and Safety Code;

(b) Upon final approval, the Department and the Applicant shall enter into a Loan Agreement meeting the requirements of section 68210. The amount of funds disbursed and the schedule for disbursement shall be specified in the Loan Agreement. Loan funds shall not be disbursed until a Loan Agreement with the Department is executed in accordance with section 68210 and the appropriate oversight agreement with the Administering Agency is executed; and

(c) Upon the initial disbursement of funds, the Department will notify the Site Designation Committee which agency is the Administering Agency for a Property that is the subject of a CLEAN Loan Program Loan;

(d) The Department's approval of a Loan Application under subdivision (a) will be in effect for a period of 90 days. The Department may extend the Loan approval period for good cause for an additional 90 days or for a different time period as agreed in writing by the Department and the Applicant.

NOTE: Authority cited: Sections 25150, 25351.5, 25395.29 and 58012, Health and Safety Code. Reference: Sections 25395.21, 25395.22, 25395.23, 25395.27 and 25395.28, Health and Safety Code.

HISTORY

1. New section filed 1–18–2001 as an emergency; operative 1–18–2001 (Register 2001, No. 3). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 7–17–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–6–2001 as an emergency; operative 7–18–2001 (Register 2001, No. 27). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 1–14–2002 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7–6–2001 order transmitted to OAL 1–14–2002; Certificate of Compliance withdrawn from review 2–27–2002. Repealed by operation of Government Code section 11346.1(g) (Register 2002, No. 9).
4. New section filed 3–1–2002 as an emergency; operative 3–1–2002 (Register 2002, No. 9). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 8–28–2002 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 3–31–2002 order, including renumbering of former section 68209 to section 68210 and renumbering of former section 68208 to section 68209 with amendment of section heading, section and NOTE, transmitted to OAL 6–21–2002 and filed 8–5–2002 (Register 2002, No. 32).

§ 68210. Loan Agreement.

(a) The Department and Applicant shall execute a Loan Agreement upon final approval of the Loan Application and before fund disbursement;

(b) Each Loan Agreement shall include, at a minimum, the following:

(1) The amount of the Loan;

(2) Payment and prepayment information;

(3) The interest rate and default rate of the Loan as specified in section 68203;

(4) The terms of repayment as specified in subdivision (e):

(5) For a CLEAN Loan Program Loan, a description of the Eligible Property securing the Loan or alternative form of security approved by the Department;

(6) Verification that an ISCP Environmental Oversight Agreement or a CLEAN Loan Program Response Action Agreement or other enforceable agreement with the State Board or a Regional Board, as appropriate, has been fully executed in accordance with section 68211 before fund disbursement;

(7) For a CLEAN Loan Program Loan, agreement regarding completion of Response Actions in accordance with subdivision (f);

(8) For an ISCP Loan, agreement that the Borrower shall provide any and all PEA results to the Department.

(9) Timeframes for complying with the conditions of the Loan Agreement and any special conditions that must be satisfied prior to, or covenants that must be complied with after, the disbursement of funds;

(10) Provision that any remaining unpaid amount of the Loan, with accrued interest, shall be immediately due and payable upon determination by the Department that:

(A) There has been a default, including that the Borrower has failed to comply with the Loan Agreement or other condition of default;

(B) Any information provided by the Borrower is found to be untrue. The Department may agree to a schedule for repayment under this paragraph (10);

(11) Provision that the Borrower agrees to waive any claims against, and to indemnify and hold harmless, the State of California, including the Department, the State Board or a Regional Board, from and against any and all claims, costs, and expenses stemming from Operation and Maintenance or environmental degradation at the Property;

(12) Proof of adequate liability insurance for the Borrower, including coverage for personal injury and property damage, naming the Department as loss payee, and when appropriate, naming the Department as additional insured, up to the amount of the Loan;

(13) Proof of secured creditor insurance as required under subdivision (c) of section 25395.25 of the Health and Safety Code.

(14) Provision that if the Borrower is not the owner of the Property, but intends to purchase the Property before the Loan is satisfied, the purchase price of the Property shall not exceed its estimated current fair market value, which is based on the estimated value of the Property in a cleaned up state, not taking into consideration any necessary Response Action that may be conducted on the Property;

(15) For a CLEAN Loan Program Loan, provision that the Loan is secured by the Property, or is secured by an alternative form of security approved by the Department, and in accordance with the provisions of section 25395.26 of the Health and Safety Code;

(16) Provision that if the Borrower recovers from a responsible party any costs incurred in taking a Response Action at the Property, any money so recovered shall be used first to repay the ISCP and CLEAN Loan Program Loans and to repay monies waived under subdivision (c) of section 68204. A Borrower is not required to first use the money recovered to repay the Loan if the Borrower can demonstrate to the satisfaction of the Department that the recovered money is necessary to, and is being applied to, the total environmental remediation of the Property, and that the total of the recovered money and the Loan amount does not exceed the cost of remediation;

(17) Identification of the Property owner and any options to purchase the Property held by any party;

(18) For a CLEAN Loan Program Loan, if the Borrower uses Loan funds to pay the premium for environmental insurance products approved by the Department to facilitate development of the site, provision describing the type and limits of insurance coverage and demonstration that the insurance products meet the requirements of subdivision (a) of section 25395.22 of the Health and Safety Code.

(19) Provision that the Loan shall not be used to pay Ineligible Costs; and

(20) Any other provision to which the parties agree.

(c) The Department may foreclose on Property or on the alternative to a security interest. Any funds received through a foreclosure or through the enforcement of any other security interest shall be deposited in the Account.

(d) Except as specified in section 25395.28 of the Health and Safety Code, any Response Action carried out at a Property under the CLEAN Loan Program shall be conducted in accordance with the requirements of chapters 6.65 and 6.8 of division 20 of the Health and Safety Code.

(e) The terms of Loan repayment are as follows:

(1) The repayment period for an ISCP Loan shall begin six (6) months after disbursement of the ISCP Loan funds. The repayment period shall not exceed three (3) years;

(2) The repayment period for a CLEAN Loan Program Loan shall begin upon certification or completion of the Response Action or two (2) years after initial disbursement of the CLEAN Loan Program Loan

funds, whichever comes first. The repayment period shall not exceed seven (7) years;

(3) If the Loan is to a Local Government Agency or Local Agency, or to a developer or prospective purchaser acting together with a Local Government Agency or Local Agency pursuant to an enforceable agreement, the Department may delay the beginning of the Loan repayment period for not more than the maximum allowable length of the Loan;

(4) If the Administering Agency, or Department if the Department is not the Administering Agency, determines that the Borrower is not making sufficient progress in completing the PEA or Response Action, as appropriate, the Department may require Loan repayment to begin immediately or may determine that the Borrower is in default;

(5) If the Borrower of an ISCP Loan decides not to complete the PEA, the Borrower shall notify the Department in writing of that decision and shall submit to the Department all data, documents, reports, and other information regarding the PEA performed prior to the notification. Repayment of the disbursed Loan amount shall begin immediately. A Borrower that does not complete a PEA is not eligible for a partial waiver of Loan repayment under section 68204.

(f) For CLEAN Loan Program Loans, the Loan Agreement provision regarding completion of Response Actions shall include the following:

(1) For a Borrower of a CLEAN Loan Program Loan that is a responsible party as defined in section 25323.5 of the Health and Safety Code or a Person subject to regulation under chapter 6.7 (commencing with section 25280) or chapter 6.75 (commencing with section 25299.10) of the Health and Safety Code, agreement to complete all Response Actions as approved by the Administering Agency, even if the Loan amount does not cover the full cost of the Response Action;

(2) For a Borrower of a CLEAN Loan Program Loan that is not a responsible party as defined in section 25323.5 of the Health and Safety Code, agreement to immediately notify the Administering Agency and the Department, if the Department is not the Administering Agency, if:

(A) New information shows that the cost of completing the Response Action will exceed the cost originally projected by the Borrower, and

(B) The Borrower has determined that the Project is no longer economically feasible because the sum of the cost of the Response Action and the current appraised fair market value of the Property is greater than the projected fair market value of the Property after all necessary Response Actions have been completed.

(3) If the Borrower notifies the Administering Agency and the Department under paragraph (2), the Borrower shall:

(A) Provide to the Administering Agency documentation of the cost of Response Action and the current and projected appraised fair market values under paragraph (2);

(B) Begin repayment of the Loan or the Loan amount disbursed to date immediately;

(C) Submit to the Administering Agency all data, documents, reports and other information regarding the Response Action activities on the Property; and

(D) Perform those actions required by the Administering Agency to ensure that the Property will pose no immediate public health or environmental risks and that the Property will not remain in a condition that is visually less attractive than its original condition.

(4) Documentation of the cost of the Response Action submitted by a Borrower under subparagraph (3)(A) shall be prepared by any of the following who are licensed or registered to practice in California and who have demonstrated expertise in Hazardous Material remediation and cost estimation: Class II environmental assessor, engineering geologist, licensed hazardous substance contractor, or licensed professional engineer. An affidavit may be submitted in lieu of a cost documentation report if the affidavit is signed by a person authorized under this subparagraph to prepare a cost documentation report.

NOTE: Authority cited: Sections 25150, 25351.5, 25395.29 and 58012, Health and Safety Code. Reference: Sections 25395.20, 25395.21, 25395.22, 25395.25, 25395.28 and 25395.31, Health and Safety Code.

HISTORY

1. New section filed 1–18–2001 as an emergency; operative 1–18–2001 (Register 2001, No. 3). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 7–17–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–6–2001 as an emergency; operative 7–18–2001 (Register 2001, No. 27). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 1–14–2002 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7–6–2001 order transmitted to OAL 1–14–2002; Certificate of Compliance withdrawn from review 2–27–2002. Repealed by operation of Government Code section 11346.1(g) (Register 2002, No. 9).
4. New section filed 3–1–2002 as an emergency; operative 3–1–2002 (Register 2002, No. 9). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 8–28–2002 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 3–31–2002 order, including renumbering of former section 68210 to section 68211 and renumbering of former section 68209 to section 68210 with amendment of section and NOTE, transmitted to OAL 6–21–2002 and filed 8–5–2002 (Register 2002, No. 32).

§ 68211. ISCP Environmental Oversight Agreements; CLEAN Loan Program Response Action Agreements or Equivalent Agreements.

(a) ISCP Environmental Oversight Agreements, CLEAN Loan Program Response Action Agreements, and enforceable agreements with the State Board or a Regional Board under subdivision (h) of section 25395.28 of the Health and Safety Code, shall contain, at a minimum, the following:

(1) Identification of parties entering into the agreement;

(2) Description of the Property subject to the agreement, and description of any environmental assessment or other Response Action activities previously performed on the Property;

(3) If the Property is part of a larger site where there is known or suspected release or threatened release of a Hazardous Material, description of the site and nature and extent of any known or suspected release or threatened release of a Hazardous Material on the site;

(4) Description of the work that will be performed using Loan funds, including a detailed scope of work, schedules, public participation activities, quality assurance/quality control plans, and health and safety plans;

(5) Provision that the Borrower shall reimburse the Administering Agency's costs for oversight of the preparation and approval of a PEA or PEA–equivalent site assessment, or Response Action, as appropriate and as specified under section 25395.28 of the Health and Safety Code, on any portion of the Property where the work that is performed is not funded by Loan funds;

(6)(A) For ISCP Loans, provision for the Department's approval of the PEA, and any reports, plans, schedules, or other documents submitted under the agreement, including provisions regarding any Department–required modifications to submittals;

(B) For CLEAN Loan Program Loans, provision for the Administering Agency's approval of any Response Actions and any reports, plans, schedules, or other documents submitted under the agreement, including provisions regarding any modifications to submittals required by the Administering Agency;

(7) Provision regarding actions to be taken in the event of endangerment during implementation of work on the Property;

(8) Provision regarding Administering Agency and Department, if the Department is not the Administering Agency, access to the Property;

(9) Provision regarding sampling, data, and document availability and preservation;

(10) Provision regarding notifications of field activities and any condition posing an immediate threat to public health or safety or the environment on the Property;

(11) Provision regarding the Borrower's liability related to activities on the Property;

(12) For ISCP Loans, provision regarding the Department's oversight costs for the preparation and approval of a PEA on the Property required by the Department, and for CLEAN Loan Program Loans, provision re-

garding the Administering Agency's costs for oversight of any Response Action on the Property;

(A) A Borrower is liable for paying the Administering Agency's oversight costs pursuant to section 25395.28 of the Health and Safety Code, associated with the oversight of the preparation and approval of the PEA or the Response Action unless the Department determines there are sufficient funds in the Account to reimburse the Administering Agency for that oversight;

(B) If the Department determines that the Account has insufficient funds to pay for the oversight costs associated with the oversight of the preparation and approval of the PEA or the Response Action, the Borrower shall pay the Administering Agency's costs as specified under section 25395.28 of the Health and Safety Code. If the Department makes a determination that the Account has insufficient funds to pay for the oversight costs after a Loan Agreement has been executed, the Department will notify the Borrower that the Borrower will be billed for the Administering Agency's oversight costs as specified under section 25395.28 of the Health and Safety Code, that are not reimbursed from the Account;

(C) The Department shall reimburse the State Board or Regional Board only if the conditions in 25395.28(g) are met; and

(13) Any other provisions as agreed by the parties determined to be necessary by the Administering Agency.

(b) An ISCP Environmental Oversight Agreement shall also include, at a minimum, the following:

(1) Requirement to conduct the PEA in accordance with the Department's guidelines as specified in paragraphs (1)–(3) of subdivision (d) of section 68205;

(2) Requirement that the Borrower shall complete the PEA for the Property even if the Loan amount does not finance the complete cost of the PEA or shall meet the requirements of paragraph (5) of subdivision (e) of section 68210 if the Borrower decides not to complete the PEA;

(3) Agreement by the Borrower to provide any and all PEA results to the Department if the Borrower does not proceed with the Project.

(c) A CLEAN Loan Program Response Action Agreement shall also include, at a minimum, the following:

(1) Identification of the Project Coordinator and description of the Project Coordinator's qualifications;

(2) Scope of work that includes tasks needed to complete all Response Actions for the Property including Operation and Maintenance and land use restrictions, if applicable;

(3) Requirement that work undertaken on the Property shall be conducted by a qualified Project Coordinator with expertise in Hazardous Materials site investigation and cleanup and that all engineering and geological work shall be conducted in conformance with applicable State laws including, but not limited to, Business and Professions Code sections 6735 and 7835;

(4) In order to provide for the possibility that the Loan amount may not cover the full cost of the Response Action:

(A) For a Borrower that is a responsible party as defined in section 25323.5 of the Health and Safety Code, a requirement to complete all Response Actions for the Property even if the Loan amount does not finance the complete cost of the Response Action; or

(B) For a Borrower that is not a responsible party as defined in section 25323.5 of the Health and Safety Code or a Person subject to regulation under chapter 6.7 (commencing with section 25280) or chapter 6.75 (commencing with section 25299.10) of the Health and Safety Code, a provision regarding the requirements of paragraph (2) of subdivision (f) of section 68210 if the Borrower notifies the Administering Agency and the Department the Borrower has determined the Project is no longer economically feasible;

(5) Provision for all removal actions, remedial actions, California Environmental Quality Act documentation, remedial design and implementation, and any other activities necessary for the Administering Agency's approval of the Response Action.

NOTE: Authority cited: Sections 25150, 25351.5, 25395.29 and 58012, Health and Safety Code. Reference: Sections 25395.21, 25395.25, 25395.27, 25395.28 and 25395.31, Health and Safety Code.

HISTORY

1. New section filed 1–18–2001 as an emergency; operative 1–18–2001 (Register 2001, No. 3). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 7–17–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–6–2001 as an emergency; operative 7–18–2001 (Register 2001, No. 27). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 1–14–2002 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7–6–2001 order transmitted to OAL 1–14–2002; Certificate of Compliance withdrawn from review 2–27–2002. Repealed by operation of Government Code section 11346.1(g) (Register 2002, No. 9).
4. New section filed 3–1–2002 as an emergency; operative 3–1–2002 (Register 2002, No. 9). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 8–28–2002 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 3–31–2002 order, including renumbering of former section 68211 to section 68212 and renumbering of former section 68210 to section 68211 with amendment of section heading, section and NOTE, transmitted to OAL 6–21–2002 and filed 8–5–2002 (Register 2002, No. 32).

§ 68212. Compliance.

(a) The Borrower shall comply with all federal, State, and local laws, ordinances, regulations and permits that apply to the procurement and management of consultant services and contracts related to correcting existing or possible non–compliance problems;

(b) Administering Agency and Department, if the Department is not the Administering Agency, staff may conduct field inspections during the Project to verify compliance with the approved plans, specifications, and terms of the Loan Agreement, the ISCP Environmental Oversight Agreement, the CLEAN Loan Program Response Action Agreement, or other enforceable agreements with the State Board or a Regional Board;

(c) The Borrower shall provide quarterly site reports indicating work completed on the Property, work in process, and Project expenditures;

(d) The Borrower shall maintain records in accordance with generally accepted accounting standards and with the CLEAN Loan Program Response Action Agreement and ISCP Environmental Oversight Agreement, including all Project expenditures and disbursements; and

(e) The Borrower shall comply with all terms and conditions of the CLEAN Loan Program Response Action Agreement and ISCP Environmental Oversight Agreement or other enforceable agreement with the State Board or a Regional Board.

NOTE: Authority cited: Sections 25150, 25351.5, 25395.29 and 58012, Health and Safety Code. Reference: Sections 25395.21, 25395.22, 25395.23, 25395.27 and 25395.28, Health and Safety Code.

HISTORY

1. New section filed 1–18–2001 as an emergency; operative 1–18–2001 (Register 2001, No. 3). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 7–17–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–6–2001 as an emergency; operative 7–18–2001 (Register 2001, No. 27). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 1–14–2002 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7–6–2001 order transmitted to OAL 1–14–2002; Certificate of Compliance withdrawn from review 2–27–2002. Repealed by operation of Government Code section 11346.1(g) (Register 2002, No. 9).
4. New section filed 3–1–2002 as an emergency; operative 3–1–2002 (Register 2002, No. 9). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 8–28–2002 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 3–31–2002 order, including renumbering of former section 68212 to section 68213 and renumbering of former section 68211 to section 68212 with amendment of section and NOTE, transmitted to OAL 6–21–2002 and filed 8–5–2002 (Register 2002, No. 32).

§ 68213. Program Administration.

Condition of the Loan, Loan Processes, Repayment, and Loan Closing Functions will be governed and administered by the Department.

NOTE: Authority cited: Sections 25150, 25351.5, 25295.29 and 58012, Health and Safety Code. Reference: Sections 25395.21 and 25395.22, Health and Safety Code.

HISTORY

1. New section and appendix 1 filed 1–18–2001 as an emergency; operative 1–18–2001 (Register 2001, No. 3). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 7–17–2001 or emergency language will be repealed by operation of law on the following day.
2. New section and appendix 1 refiled 7–6–2001 as an emergency; operative 7–18–2001 (Register 2001, No. 27). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 1–14–2002 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7–6–2001 order transmitted to OAL 1–14–2002; Certificate of Compliance withdrawn from review 2–27–2002. Repealed by operation of Government Code section 11346.1(g) (Register 2002, No. 9).
4. New section and appendix 1 filed 3–1–2002 as an emergency; operative 3–1–2002 (Register 2002, No. 9). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 8–28–2002 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 3–31–2002 order, including renumbering of former section 68213 and Appendix 1 to section 68214 and renumbering and amendment of former section 68212 to section 68213, transmitted to OAL 6–21–2002 and filed 8–5–2002 (Register 2002, No. 32).

§ 68214. Auditing of Expenditure of Loan Proceeds.

(a) The Department, Department of Finance, State Controller or State Auditor, or their designated representatives, may audit the expenditure of the proceeds of any Loan disbursed under this article; and

(b) The Borrower shall allow the Administering Agency and the Department, if the Department is not the Administering Agency, and other State agencies, including the State Controller and the State Auditor, or their designated representatives, absolute right of access to all of the Borrower's records pertaining to the Loan Agreement. Any portion of the Borrower's records requested shall be made available to the designated auditors upon request. The Borrower shall retain all relevant financial records for at least three (3) years after termination of the Loan Agreement, or until completion of actions and resolution of all issues that may arise as a result of any litigation, claim, negotiation or audit concerning the Loan Agreement, ISCP Environmental Oversight Agreement, or CLEAN Loan Program Response Action Agreement or other enforceable agreement required by the Administering Agency, whichever is later.

NOTE: Authority cited: Sections 25150, 25351.5, 25395.29 and 58012, Health and Safety Code. Reference: Sections 25395.21, 25395.22, 25395.27 and 25395.28, Health and Safety Code.

HISTORY

1. Certificate of Compliance as to 3–31–2002 order, including renumbering and amendment of former section 68213 and Appendix 1 to section 68214, transmitted to OAL 6–21–2002 and filed 8–5–2002 (Register 2002, No. 32).

Appendix 1 to Chapter 47, Article 1

"Urbanized Areas"

Subdivision (ss) of section 68202 defines "Urban Area" to include urbanized areas as defined in paragraph (2) of subdivision (b) of section 21080.7 of the Public Resources Code. This Appendix further describes urbanized areas in California.

On March 9, 1992, the United States Census Bureau published in the Federal Register the list of urbanized areas that qualified based on the results of the 1990 Census. (57 Fed. Reg. 8386 (1992))

According to the United States Census Bureau, an urbanized area comprises one or more places and the adjacent densely settled surrounding territory that together have a minimum of 50,000 people. A central place and an urban fringe together make up an urbanized area. The urban fringe generally consists of contiguous territory with a density of at least 1,000 people per square mile. Additional territory may qualify as urban fringe (e.g. if there is a road connection from a densely populated area to a central place). The complete criteria are available from the Chief, Geography Division, U.S. Bureau of the Census, Washington, DC 20233.

There are 38 urbanized areas in California. These are:

Antioch–Pittsburg
Bakersfield
Chico
Davis
Fairfield
Fresno
Hemet–San Jacinto
Hesperia–Apple Valley–Victorville
Indio–Coachella
Lancaster–Palmdale
Lodi
Lompoc
Los Angeles
Merced
Modesto
Napa
Oxnard–Ventura
Palm Springs
Redding
Riverside–San Bernardino
Sacramento
Salinas
San Diego
San Franciso–Oakland
San Jose
San Luis Obispo
Santa Barbara
Santa Cruz
Santa Maria
Santa Rosa
Seaside–Monterey
Simi Valley
Stockton
Vacaville
Visalia
Watsonville
Yuba City
Yuma AZ–CA (California portion only)

Article 2. Groundwater Remediation Loan Program

§ 68300. Definitions.

Unless the context indicates otherwise and except as provided in this section, the definitions set forth in Chapter 6.8, Division 20, of the Health and Safety Code (commencing with section 25300) govern the interpretation of this Article. For purposes of this Chapter, the following definitions apply:

(a) "Applicant" means one of the following that has submitted an application package for a loan (1) a city, town, district, county, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created under State law, or (2) an Indian tribe or authorized Indian tribal organization having jurisdiction over disposal of sewage, industrial wastes, or other waste, or (3) a designated and approved management agency under section 208 of the Federal Clean Water Act applying for a State Revolving Fund (SRF) loan, or (4) a local public agency with specific authority to conduct groundwater remediation projects.

(b) "EPA" means the United States Environmental Protection Agency.

(c) "Department" means the Department of Toxic Substances Control.

(d) "Groundwater Remediation Project" means actions that are necessary to prevent, minimize, or mitigate damage that may result from a release or threatened release of a hazardous substance to groundwater and that, when carried to completion, allows the groundwater to be permanently used for its planned use without any significant risk to human health or significant potential for future environmental damage or for designated beneficial uses.

(e) "Loan" means a loan from the State Revolving Fund Loan Subaccount for the purposes of providing loans under Article 3, section 79133 of the Water Code.

(f) "Loan Agreement" means the written agreement between the applicant and the Department made in accordance with Section 68305.

(g) "Site Coordinator" means the person or persons with demonstrated expertise and experience in planning, designing, constructing, and operating groundwater remediation projects and who have been identified as responsible for managing the groundwater remediation project.

NOTE: Authority cited: Sections 25150 and 25351.5, Health and Safety Code; and Section 79133, Water Code. Reference: Section 79133, Water Code.

HISTORY

1. New article 2 (sections 68300–68309) and section filed 6–25–2001 as an emergency; operative 6–25–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 10–23–2001 or emergency language will be repealed by operation of law on the following day.
2. New article 2 (sections 68300–68309) and section refiled 10–2–2001 as an emergency; operative 10–24–2001 (Register 2001, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–21–2002 or emergency language will be repealed by operation of law on the following day.
3. New article 2 (sections 68300–68309) and section refiled 2–13–2002 as an emergency; operative 2–13–2002 (Register 2002, No. 7). A Certificate of Compliance must be transmitted to OAL by 6–13–2002 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 2–13–2002 order transmitted to OAL 2–28–2002 and filed 4–8–2002 (Register 2002, No. 15).

§ 68301. Loan Eligibility.

The applicant must demonstrate, through the loan application process, that the groundwater in the area of the proposed groundwater remediation project poses a risk or potential risk to public health and the environment due to the release of hazardous substances.

Additionally, the applicant will need to show repayment ability based on the historical financial statements and/or income tax returns.

NOTE: Authority cited: Sections 25150 and 25351.5, Health and Safety Code; and Section 79133, Water Code. Reference: Section 79133, Water Code.

HISTORY

1. New section filed 6–25–2001 as an emergency; operative 6–25–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 10–23–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 10–2–2001 as an emergency; operative 10–24–2001 (Register 2001, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–21–2002 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 2–13–2002 as an emergency; operative 2–13–2002 (Register 2002, No. 7). A Certificate of Compliance must be transmitted to OAL by 6–13–2002 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 2–13–2002 order transmitted to OAL 2–28–2002 and filed 4–8–2002 (Register 2002, No. 15).

§ 68302. Priority Ranking Criteria.

The Department shall prioritize projects for each fiscal year using the following criteria:

(a) The Groundwater Remediation Loan Program application package is received by August 30 and deemed complete.

(b) Sites listed pursuant to section 25356 of the Health and Safety Code.

(c) Sites listed on the State Water Resources Control Board's Statewide Project Priority List.

(d) The readiness of the loan applicant to proceed with the groundwater remediation project.

(e) Scope of project including (1) the degree to which the groundwater supply has been impacted, such as being taken out of service, and (2) the extent to which remediation will prevent migration of contaminants.

(f) Number of users affected.

(g) Effectiveness of the groundwater remediation project, including the amount of water to be treated and made available for use.

NOTE: Authority cited: Sections 25150 and 25351.5, Health and Safety Code; and Section 79133, Water Code. Reference: Section 79133, Water Code.

HISTORY

1. New section filed 6–25–2001 as an emergency; operative 6–25–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 10–23–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 10–2–2001 as an emergency; operative 10–24–2001 (Register 2001, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–21–2002 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 2–13–2002 as an emergency; operative 2–13–2002 (Register 2002, No. 7). A Certificate of Compliance must be transmitted to OAL by 6–13–2002 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 2–13–2002 order transmitted to OAL 2–28–2002 and filed 4–8–2002 (Register 2002, No. 15).

§ 68303. Application Content.

Application packages shall contain the following information:

(a) Applicant /Site Coordinator Information:

(1) The applicant's name, address, and phone number.

(2) The site coordinator's name, address, and phone number, if it is different from the applicant's. Also attach resume of the applicant's site coordinator.

(3) A certified copy of a resolution adopted by the governing authority of the applicant agency that authorizes a representative (by title) to act on behalf of the applicant agency to sign documents such as contracts, disbursement requests, as well as assure compliance with applicable state statutory and regulatory requirements.

(4) A certified copy of a resolution adopted by the governing authority of the applicant agency that specifies the authorized loan amount for the applicant agency.

(5) Applicant's relationship to the project site.

(6) Description of local government or agency's activities and responsibilities.

(7) Current property owner's name, addresses and phone number.

(8) List technical support personnel (by classification) who will be working on the project.

(9) A letter requesting consideration for available loan funds with the signature of the applicant/authorized representative.

(b) Project/Site Information:

(1) Proposed location of the remediation work, including a legal description of the property boundaries and assessor's parcel number(s).

(2) Description of current project site use.

(3) Project description of overall areas impacted and Statement of Work. If the treated groundwater is to be returned to aquifers, the application shall include a list of public water systems that use the affected aquifers as sources of drinking water, and the means by which the applicant shall inform those water systems of the project.

(4) Brief analysis of engineering/project alternatives considered and an explanation of why the proposed project description was chosen.

(5) List of previous uses of the project site.

(6) Applicant's prior experience in implementing similar groundwater remediation projects.

[The next page is 758.346(i).]

(7) Applicant's ability to obtain the necessary permits if treated groundwater is reused for drinking water supply. (If the treated groundwater is to be directly used for drinking water supply, then the applicant must comply with the requirements of the Department of Health Services and seek the appropriate permits.)

(8) Information regarding the impacts that the project site conditions or the proposed response actions may have on: the geological features of the project site; land use planning; public health and safety; the local population and housing in the vicinity of the project site; water quality; air quality; traffic and transportation; ecological and biological resources; energy and mineral resources; noise levels; public service systems and utilities; local aesthetics; cultural resources; and recreation. The proposed groundwater remediation project must comply with the California Environmental Quality Act (CEQA) in accordance with section 21000–21178 of the Public Resources Code and the State CEQA guidelines (14 CCR 15000–15387).

(9) A proposed project timeline with dates that show the beginning and ending date for the various phases of work identified in the Statement of Work.

(c) Financial Information/Project Costs:

(1) Supporting documentation concerning source of loan repayment, including but not limited to annual financial operating statements.

(2) Information on existing bank loans and other types of debt, including names of bank officers and officials and contact information as appropriate. Provide documentation indicating the ability of the applicant to repay the loan and to obtain conventional financing absent a loan under this program.

(3) An ordinance or resolution committing a source or sources of funds for repayment. The ordinance or resolution shall contain language equivalent to the following: "The (name of agency) hereby dedicates the following source of revenue (list source or sources) for repayment of any and all groundwater remediation loans on the project (identify the project name) to be funded through the Groundwater Remediation Loan Program."

(4) Estimate of project costs.

(d) Any further information or documentation deemed necessary by the Department to determine the credit worthiness of the applicant or the applicant's ability to secure and repay the loan.

NOTE: Authority cited: Sections 25150 and 25351.5, Health and Safety Code; and Section 79133, Water Code. Reference: Section 79133, Water Code.

HISTORY

1. New section filed 6–25–2001 as an emergency; operative 6–25–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 10–23–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 10–2–2001 as an emergency; operative 10–24–2001 (Register 2001, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–21–2002 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 2–13–2002 as an emergency; operative 2–13–2002 (Register 2002, No. 7). A Certificate of Compliance must be transmitted to OAL by 6–13–2002 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 2–13–2002 order transmitted to OAL 2–28–2002 and filed 4–8–2002 (Register 2002, No. 15).

§ 68304. Application Process.

(a) An applicant may apply for a loan for a groundwater remediation project by submitting a completed Groundwater Remediation Loan package to the Department by August 30 of any fiscal year. The Department may disburse loans until the approximately seven million dollars ($7,000,000) of Water Bond Act funding, less administrative costs, is expended.

(b) The Department will make a determination by August 30 of each fiscal year whether Water Bond Act funds are available under section 79133 of the Water Code. The determination will also include the funding level available.

(c) The Groundwater Remediation Loan package sets forth the information required by the Department to determine if the groundwater remediation project is eligible for funding under section 79133 of the Water Code. The Department will not consider the application complete until all required information is received.

(d) The Groundwater Remediation Loan package shall be signed by a legally authorized representative of the applicant and submitted to the California Environmental Protection Agency, Department of Toxic Substances Control. Application packages may be mailed to the Department at P.O. Box 806, Sacramento, California 95812–0806. The applicant shall provide the Department with three (3) copies of the application package with original signatures and all accompanying support documentation.

(e) Staff will review each application package for completeness and determine whether the applicant and the applicant's project are eligible to receive loan funding under section 79133 of the Water Code, including credit worthiness of the applicant. Within sixty (60) days of receiving an application, Department staff will notify the applicant by letter of one of the following:

(1) The applicant or the applicant's project is ineligible for a loan. If the applicant or the applicant's project is determined to be ineligible, the reasons for the Department's determination will be provided in writing to the applicant. The applicant will have 10 days to submit additional information needed, if such information may make the project eligible; or

(2) The application package is incomplete. If the package is determined to be incomplete, the Department will specify the steps in writing, if any, that the applicant may take to correct identified deficiencies. The applicant will have 10 days to submit additional information needed to complete the application package, or

(3) The applicant and applicant's project are eligible for a loan.

(f) Upon the Department's determination that the loan application package is complete, the package will be considered for prioritization with other eligible projects. The eligible loan application packages will be ranked each fiscal year based on criteria established in Section 68302, Priority Ranking Criteria.

(g) Applicants will be notified in writing when their projects are approved for loan funding.

NOTE: Authority cited: Sections 25150 and 25351.5, Health and Safety Code; and Section 79133, Water Code. Reference: Section 79133, Water Code.

HISTORY

1. New section filed 6–25–2001 as an emergency; operative 6–25–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 10–23–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 10–2–2001 as an emergency; operative 10–24–2001 (Register 2001, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–21–2002 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 2–13–2002 as an emergency; operative 2–13–2002 (Register 2002, No. 7). A Certificate of Compliance must be transmitted to OAL by 6–13–2002 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 2–13–2002 order transmitted to OAL 2–28–2002 and filed 4–8–2002 (Register 2002, No. 15).

§ 68305. Loan Agreement.

The Department and the applicant shall enter into a loan agreement after approval of the loan. Each loan agreement shall include at a minimum the following terms and conditions:

(a) The interest rate of the loan as specified in Section 68307.

(b) The term of repayment for a loan as specified in Section 68308.

(c) The legal description of the property(ies) where the groundwater remediation project is to occur.

(d) Agreement that the applicant shall complete all activities outlined in the applicant's Statement of Work, as determined to be appropriate by the Department.

(e) Time frames for complying with the conditions of loan closing:

(1) Any special conditions that must be satisfied prior to closing, and

(2) Any covenants that must be complied with after the disbursement of funds.

(f) Identification of what is considered an event of default, including the provisions in subsections (1) and (2) below. A default will result in

any remaining unpaid amount of the loan, with accrued interest, to be immediately due and payable, upon determination by the Department that:

(1) The applicant has failed to comply with the loan agreement.

(2) Any information provided by the applicant is untrue.

(g) A provision that the applicant agrees to waive any claims against, and hold harmless, the State of California, including the Department and the State Water Resources Control Board, from and against any and all claims, costs, and expenses stemming from operation, maintenance, or environmental degradation at the site.

(h) Proof of insurance for the applicant, naming the Department and the State Water Resources Control Board as loss payee, up to the amount of the loan.

NOTE: Authority cited: Sections 25150 and 25351.5, Health and Safety Code; and Section 79133, Water Code. Reference: Section 79133, Water Code.

HISTORY

1. New section filed 6–25–2001 as an emergency; operative 6–25–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 10–23–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 10–2–2001 as an emergency; operative 10–24–2001 (Register 2001, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–21–2002 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 2–13–2002 as an emergency; operative 2–13–2002 (Register 2002, No. 7). A Certificate of Compliance must be transmitted to OAL by 6–13–2002 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 2–13–2002 order transmitted to OAL 2–28–2002 and filed 4–8–2002 (Register 2002, No. 15).

§ 68306. Loan Administration.

Condition of the loan, loan processes, repayment, and loan closing functions shall be governed and administered by the Department or the State Water Resources Control Board through a memorandum of understanding.

NOTE: Authority cited: Sections 25150 and 25351.5, Health and Safety Code; and Section 79133, Water Code. Reference: Section 79133, Water Code.

HISTORY

1. New section filed 6–25–2001 as an emergency; operative 6–25–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 10–23–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 10–2–2001 as an emergency; operative 10–24–2001 (Register 2001, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–21–2002 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 2–13–2002 as an emergency; operative 2–13–2002 (Register 2002, No. 7). A Certificate of Compliance must be transmitted to OAL by 6–13–2002 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 2–13–2002 order transmitted to OAL 2–28–2002 and filed 4–8–2002 (Register 2002, No. 15).

§ 68307. Interest Rate.

To the extent permitted by federal law, the interest rate shall be set at a rate equal to 50 percent of the interest rate paid by the State on the most recent sale of State general obligation bonds and the interest rate shall be computed according to the true interest cost method.

NOTE: Authority cited: Sections 25150 and 25351.5, Health and Safety Code; and Section 79133, Water Code. Reference: Sections 13480 and 79133, Water Code.

HISTORY

1. New section filed 6–25–2001 as an emergency; operative 6–25–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 10–23–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 10–2–2001 as an emergency; operative 10–24–2001 (Register 2001, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–21–2002 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 2–13–2002 as an emergency; operative 2–13–2002 (Register 2002, No. 7). A Certificate of Compliance must be transmitted to OAL by 6–13–2002 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 2–13–2002 order transmitted to OAL 2–28–2002 and filed 4–8–2002 (Register 2002, No. 15).

§ 68308. Loan Repayment.

The Department's Groundwater Remediation Loan Program will provide loans for groundwater remediation projects that meet the priority ranking criteria in Section 68302 of these regulations until all funds in the account have been loaned or otherwise expended. All loan repayments shall require annual payments of principal and any interest, with repayment commencing not later than one year after completion of the project for which the loan is made and full amortization not later than 20 years after project completion in accordance with Water Code section 13480(b)(1)(B), and payments will be deposited in the State Revolving Fund Loan Subaccount, Clean Water Program, as administered by the State Water Resources Control Board. Loan repayments may be used by the State Water Resources Control Board to fund other projects or activities as specified by the Clean Water Program.

NOTE: Authority cited: Sections 25150 and 25351.5, Health and Safety Code; and Section 79133, Water Code. Reference: Section 13480(b)(1)(B) and 79133, Water Code.

HISTORY

1. New section filed 6–25–2001 as an emergency; operative 6–25–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 10–23–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 10–2–2001 as an emergency; operative 10–24–2001 (Register 2001, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–21–2002 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 2–13–2002 as an emergency; operative 2–13–2002 (Register 2002, No. 7). A Certificate of Compliance must be transmitted to OAL by 6–13–2002 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 2–13–2002 order transmitted to OAL 2–28–2002 and filed 4–8–2002 (Register 2002, No. 15).

§ 68309. Auditing Expenditures of Loan Proceeds.

The Department or the Department of Finance may audit the expenditures of the proceeds of any loan disbursed under this Article. Specific audit requirements shall be part of the loan agreement. The State reserves the right to call for a program audit or a financial audit at any time between the execution of the loan agreement and the completion or termination of the project.

NOTE: Authority cited: Sections 25150 and 25351.5, Health and Safety Code; and Section 79133, Water Code. Reference: Section 79133, Water Code.

HISTORY

1. New section filed 6–25–2001 as an emergency; operative 6–25–2001 (Register 2001, No. 26). A Certificate of Compliance must be transmitted to OAL by 10–23–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 10–2–2001 as an emergency; operative 10–24–2001 (Register 2001, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–21–2002 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 2–13–2002 as an emergency; operative 2–13–2002 (Register 2002, No. 7). A Certificate of Compliance must be transmitted to OAL by 6–13–2002 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 2–13–2002 order transmitted to OAL 2–28–2002 and filed 4–8–2002 (Register 2002, No. 15).

Chapter 50. Corrective Action

Article 1. Department of Toxic Substances Control

§ 68400. Applicability.

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25173.6, 25187, 25200.10, 25200.14, 58009 and 58010, Health and Safety Code.

HISTORY

1. New chapter 50, article 1 (sections 68400–68400.2) and section filed 3–19–99 as an emergency; operative 3–20–99 (Register 99, No. 12). A Certificate of Compliance must be transmitted to OAL by 7–19–99 or emergency language will be repealed by operation of law on the following day.

[The next page is 758.347.]

2. Editorial correction implementing repeal of chapter 50, article 1 (sections 68400–68400.2) and repeal of section by operation of Government Code section 11346.1(g) (Register 2005, No. 26).

§ 68400.1. Definitions.

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25173.6, 25187, 25200.10, 25200.14, 58009 and 58010, Health and Safety Code.

HISTORY

1. New section filed 3–19–99 as an emergency; operative 3–20–99 (Register 99, No. 12). A Certificate of Compliance must be transmitted to OAL by 7–19–99 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction implementing repeal of section by operation of Government Code section 11346.1(g) (Register 2005, No. 26).

§ 68400.2. Corrective Action Requirements.

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25173.6, 25187, 25200.10, 25200.14, 58009 and 58010, Health and Safety Code.

HISTORY

1. New section filed 3–19–99 as an emergency; operative 3–20–99 (Register 99, No. 12). A Certificate of Compliance must be transmitted to OAL by 7–19–99 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction implementing repeal of section by operation of Government Code section 11346.1(g) (Register 2005, No. 26).

Article 1.5. Unified Program Agency Qualification

§ 68400.11. Applicability.

(a) The provisions of this chapter establish criteria and procedures for determining whether or not a unified program agency is qualified to implement environmental assessment and corrective action pursuant to Health and Safety Code sections 25187, 25187.1, and 25404.1. Except as otherwise specified in this chapter, the provisions of this chapter are not intended to, and shall not be construed to, preclude any other state or local agency from exercising its enforcement or regulatory authority.

(b) The corrective action authority granted to a unified program agency (UPA) pursuant to this chapter is limited to a release or threatened release of a hazardous waste or hazardous constituent occurring at a facility within the jurisdiction of a qualified UPA.

(c) A qualified UPA shall comply with all applicable state laws and regulations and local ordinances pertaining to environmental assessment and corrective action.

(d) The authority granted pursuant to this chapter does not limit an UPA's authority to take enforcement action authorized by or in accordance with local ordinances or resolutions, to the extent that local ordinances or resolutions are not inconsistent with the provisions of this chapter.

(e) Upon discovering a release or threatened release at a hazardous waste facility that is, or was, required to obtain a hazardous waste facility permit, standardized permit or interim status, a qualified UPA shall immediately notify the Department. If a release occurs at such a facility and the facility also contains units that are or were subject to generator requirements, or Permit By Rule or Conditional Authorization or Conditionally Exempt requirements, a qualified UPA shall notify and coordinate with the Department.

(f) The Department and a qualified UPA are the only agencies authorized to implement and enforce the environmental assessment and corrective action requirements of Health and Safety Code section 25404.1.

(1) If the Department determines that a qualified UPA has not adequately implemented or enforced environmental assessment or corrective action requirements in accordance with this chapter, the Department may issue an order pursuant to Health and Safety Code section 25187 or section 25187.1.

(2) A qualified UPA may refer sites for corrective action to the Department.

(g) If at any time, an UPA determines that a site requires corrective action that is beyond the activities delegated to the agency or the expertise of the agency, the UPA shall refer the site to the Department.

(h) A qualified UPA shall comply with the California Environmental Quality Act (CEQA), Public Resources Code section 21000 et seq, whenever any activity or action required by this chapter is a project subject to CEQA.

(i) A qualified UPA shall not implement and enforce environmental assessment or corrective action requirements when any of the following applies:

(1) Environmental assessment or corrective action is required at any hazardous waste facility that is or was required to obtain a permit or other forms of authorization pursuant to the Resource Conservation and Recovery Act (RCRA).

(2) The Department has issued an order or agreement for corrective action at the site pursuant to Health and Safety Code section 25187 or section 25187.1.

(3) The site has been determined to be the responsibility of the Department pursuant to an agreement entered into between the Department and the UPA.

(4) The source of the release or threatened release is a facility or hazardous waste management unit or an activity that is, or was, regulated by the Department pursuant to Health and Safety Code, Division 20, Chapter 6.5 (commencing with section 25100), unless the source meets the conditions of paragraph (b) of this section.

(5) The Department is conducting, or has conducted, oversight of the corrective action at the site at the request of the responsible party.

(6) A site is subject to a Cease and Desist Order issued pursuant to Water Code section 13301 or a Cleanup and Abatement Order issued pursuant to Water Code section 13304.

(7) The Site Designation Committee has determined the administering agency for a site to be either the Department, a Regional Water Quality Control Board, or the Department of Fish and Game, pursuant to Health and Safety Code section 25262.

(j) The Department, qualified UPA, or responsible party conducting or requiring corrective action shall ensure that all engineering and geological interpretations, conclusions and recommendations are developed in accordance with applicable state law, including, but not limited to, Business and Professions Code sections 6735 and 7835. The Department, qualified UPA, or responsible party shall ensure that all risk assessment and toxicological interpretations, conclusions and recommendations are conducted by a professional with one of the following:

(1) Certification as a Diplomate of the American Board of Toxicology, or

(2) Possession of a Master's Degree in Toxicology, Biochemistry, Pharmacology or a closely related specialty from an accredited college or university and three years of experience following the receipt of the Master's Degree in designing and managing toxicological studies, interpreting results, and conducting hazard and safety evaluations; or

(3) Possession of a Doctoral Degree in Toxicology, Biochemistry or Pharmacology, or a closely related specialty, and one year of experience following the receipt of the Doctoral Degree in designing and managing toxicological studies, interpreting results, and conducting hazard and safety evaluations.

NOTE: Authority cited: Sections 25150, 25404.1 and 58012, Health and Safety Code. Reference: Section 25187, 25187.1, 25200.3, 25200.10, 25200.14, 25356.1 and 25404.1, Health and Safety Code.

HISTORY

1. New article 1.5 (sections 68400.11–68400.16) and section filed 7–20–2006; operative 8–19–2006 (Register 2006, No. 29).

§ 68400.12. Definitions Applicable to this Chapter.

Unless otherwise defined herein, the definitions of terms used in this chapter shall be those in Division 20 of the Health and Safety Code and section 66260.10 of this division. For the purposes of this chapter, the following definitions apply:

"Administrative enforcement order" means an order or consent agreement issued pursuant to Health and Safety Code section 25187.

"Administrative record file" means a record maintained by the UPA that consists of all documents the UPA relied upon or considered when selecting, taking or requiring corrective action pursuant to this chapter.

"Application" means a request submitted by a Unified Program Agency to the Department for a determination of qualification to implement the environmental assessment and corrective action portions of the unified program pursuant to Health and Safety Code section 25404.1.

"Certified Unified Program Agency" or "CUPA" means an agency as defined in Title 27, California Code of Regulations, subsection 15110(a), that has been certified by the secretary to implement the Unified Program.

"Corrective action" means activities taken to investigate, characterize, evaluate, correct, remove, or remediate a release or threatened release of a hazardous waste or constituent, as necessary to protect public health and/or the environment.

"Department" means the Department of Toxic Substances Control.

"Hazardous constituent" has the meaning set forth in section 66260.10 of this division.

"Hazardous waste" has the meaning set forth in Health and Safety Code section 25117.

"Less complex site" means a site at which all of the following conditions apply:

(1) the site characterization, performed as part of the site investigation required pursuant to subsection 68400.16(d)(3), indicates the presence of only those chemicals listed in Appendix I of this chapter. The chemicals listed in Appendix I are among the chemicals for which advisory screening numbers have been developed by the California Environmental Protection Agency pursuant to Health and Safety Code section 57008;

(2) the selected remediation alternative at the site consists only of removal of no more than 60 cubic yards of contaminated soil, as measured *in situ*;

(3) the human health screening evaluation, performed as part of the preliminary endangerment assessment required pursuant to subsection 68400.16(d)(2), indicates that the remaining contamination at the site does not pose a significant threat to human health, as determined by a risk estimation greater than or equal to 10^{-6} or a hazard index greater than one resulting from the summation of risk/hazard for all media, and

(4) the release has been adequately characterized as determined by the Department or qualified UPA.

"Local oversight program" means the program in which local agencies oversee corrective actions at underground storage tank sites through a contract with the State Water Resources Control Board pursuant to Health and Safety Code section 25297.1.

"Phase I environmental assessment" has the meaning set forth in Health and Safety Code section 25200.14.

"Preliminary endangerment assessment" has the meaning set forth in Health and Safety Code section 25319.5.

"Qualified UPA" means an agency delegated by the Department to implement and enforce the environmental assessment and corrective action pursuant to Health and Safety Code section 25404.1.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment, including the abandonment or discarding of barrels, containers, and other closed receptacles containing hazardous waste, hazardous constituents, hazardous substances or hazardous materials.

"Risk assessment" means a risk–based system of analysis used to characterize the current and potential threats to human health and the environment that may be posed by contaminants migrating to groundwater or surface water, releasing to air, leaching through soil, remaining in the soil and bioaccumulating in the food chain.

"Site" means any site, area or facility, including, but not limited to, any building, structure, installation, equipment, pipe or pipeline, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock or aircraft, where any hazardous waste, hazardous constituent, hazardous substance or hazardous material has been treated, stored, transferred, disposed of, deposited, placed, released, or has otherwise come to be located.

"Technical staff" means staff assigned to oversee environmental assessments and corrective action.

"Unified Program Agency" or "UPA" means the agency as defined in Health and Safety Code subsection 25404(a)(1)(C).

NOTE: Authority cited: Sections 25150, 25404.1 and 58012, Health and Safety Code. Reference: Sections 25187, 25187.1, 25200.3, 25200.10, 25200.14, 25356.1 and 25404.1, Health and Safety Code.

HISTORY

1. New section filed 7–20–2006; operative 8–19–2006 (Register 2006, No. 29).

§ 68400.13. Qualification Tiers.

Except as provided in section 68400.11(i) of this chapter, a qualified UPA may implement and enforce only those parts of the environmental assessment and corrective action program that have been delegated by the Department pursuant to Health and Safety Code section 25404.1, as described below:

(a) A qualified UPA with a Tier 1 level of qualification, as defined in section 68400.14, shall be qualified to do the following at a facility within the jurisdiction of the UPA:

(1) Review phase I environmental assessments, as defined in Health and Safety Code section 25200.14 (Phase I) for completeness and accuracy;

(2) Inspect permit–by–rule facilities and facilities with conditional authorization for Phase I compliance;

(3) Enforce compliance with Phase I requirements;

(4) Review further investigation schedule, as defined in Health and Safety Code section 25200.14, to determine if a release from solid waste management unit or hazardous waste management unit requires corrective action;

(5) Implement and enforce the corrective action program at applicable less complex sites, as defined in subsection 68400.12 of this chapter;

(6) Issue an order specifying corrective action pursuant to Health and Safety Code section 25187 only for less complex sites to be conducted in accordance with applicable state laws and regulations and section 68400.16 of this chapter;

(b) A qualified UPA with a Tier 2 level of qualification, as defined in section 68400.14, is qualified to conduct the following activities at a facility within the jurisdiction of the UPA:

(1) All of Tier I activities;

(2) Implement and enforce corrective action at applicable sites in addition to less complex sites, except as provided in subsection 68400.11(i);

(3) Issue an order under Health and Safety Code section 25187 for corrective action in accordance with applicable state laws and regulations and section 68400.16 of this chapter.

NOTE: Authority cited: Sections 25150, 25404.1 and 58012, Health and Safety Code. Reference: Sections 25187, 25187.1, 25200.3, 25200.10, 25200.14, 25356.1 and 25404.1, Health and Safety Code.

HISTORY

1. New section filed 7–20–2006; operative 8–19–2006 (Register 2006, No. 29).

§ 68400.14. Unified Program Agency Qualification Criteria.

(a) A qualified UPA with Tier 1 level of qualification shall meet the following Tier 1 criteria:

(1) Personnel Expertise Requirements.

(A) UPA personnel designated to perform the activities of Tier 1 as described in subsection 68400.13(a) and section 68400.16 shall have educational background and technical expertise sufficient to perform the activities of Tier 1 as described in subsection 68400.13(a) and section 68400.16 in accordance with all applicable state laws and regulations, including the requirements of either subparagraph 1 or subparagraph 2, and subparagraph 3 and subparagraph 4 below:

1. Educational background shall consist of a degree from a college or university with a minimum of 60 semester units in the following areas of study:

a. environmental, biological, chemical, physical, or soil science;

b. environmental or public health;

c. environmental, civil or chemical engineering; or

d. directly related scientific field;

2. As an alternative to the requirements of subparagraph 1 above, the UPA personnel may satisfy the educational background requirements by possessing qualifications, knowledge and abilities that are equivalent to those for the Hazardous Substances Scientist, Hazardous Substances Engineer, or Engineering Geologist Classes defined by the California State Personnel Board in the following documents, incorporated herein by reference:

a. Hazardous Substances Scientist, Series Specification, established July 1, 1994;

b. Hazardous Substances Engineer, Series Specification, established June 21, 1994 and revised January 19, 2000;

c. Engineering Geologist, Series Specification, established September 24, 2002.

3. Technical expertise shall include two consecutive years of experience in hazardous materials management, regulation, analysis, or research, environmental research, monitoring, surveillance or enforcement, or resource recovery.

4. Technical expertise shall also consist of documented training or proficiency in the fields of hydrogeology, fate and transport, environmental chemistry, toxicology, preliminary endangerment assessment, quality assurance and quality control for analytical results, and statistics. Additional training in other technical disciplines related to site characterization and cleanup activities will be considered for its applicability to this requirement. This training shall be sponsored by a credible program, including, but not limited to a state or federal agency, university extension, community college, or qualified UPA.

(B) Documentation of UPA Personnel Expertise. An UPA shall submit with its application documentation demonstrating that UPA personnel meet the educational and technical expertise requirements as described in subsection (a)(1)(A).

(2) UPA Past Experience.

(A) An UPA qualified in Tier 1 shall have the ability to issue administrative enforcement orders, and at least two years of experience conducting hazardous waste generator inspections. The required experience shall have been acquired in the two years prior to the date the application is submitted to the Department. A Tier 1 UPA shall also have one of the following:

1. Participation in a Site Designation program pursuant to Health and Safety Code section 25262;

2. At least three years of experience participating in a Local Oversight Program; or

3. At least three years of experience conducting response actions.

(B) Documentation of Past Experience. An UPA shall submit with its application documentation demonstrating that it has experience, as described in paragraph (2)(A) as follows:

1. Most recent UPA triennial final Evaluation Report as required by California Code of Regulations, title 27, section 15530.

2. A certification that indicates an UPA has the ability to issue an administrative enforcement order, if not included in the most recent UPA triennial final Evaluation Report; and

3. Narrative descriptions of three relevant projects completed in the last three years or in progress that most clearly demonstrate the UPA's experience, specifying responsible staff and their expertise, a description of relevant project tasks and methods for overcoming technical obstacles.

(3) A qualified UPA shall have the ability to implement environmental assessment and corrective action for the tier delegated, pursuant to Health and Safety Code section 25404.1 in accordance with this chapter.

(A) An UPA shall submit with its application a narrative description of how it shall implement and enforce the environmental assessment and corrective action program and delegated responsibilities in accordance with all applicable state laws and regulations. This description shall specify the following:

1. The policies, procedures, approach and process the UPA will use to conduct environmental assessment and corrective action and the guidance documents the UPA relied upon to develop and implement the policies, procedures, approach and process.

2. If the description of relevant projects provided pursuant to subparagraph (2)(B)3. includes cleanup activities, include in the description details of the process used to conduct the cleanup. Include details regarding public participation, CEQA compliance, site characterization, remedy evaluation and selection, selection of cleanup objectives, remedy implementation, and any long-term activities, such as operation and maintenance.

(4) Adequacy of Staff Resources.

(A) If additional staff resources are needed to implement corrective action, beyond the resources described in the original CUPA application, an UPA shall submit with its application documentation demonstrating that it has the personnel resources needed to conduct the following activities:

1. File reviews;

2. Ongoing training of personnel;

3. Non-technical support for personnel; and

4. Management of any other applicable daily operations needed to support environmental assessment activities or corrective action.

(5) Recordkeeping and accounting systems. If additional recordkeeping and accounting systems are needed to implement corrective action, beyond the systems described in the original CUPA application, the UPA shall submit the following:

(A) An UPA shall submit with its application a description of its budget and accounting processes. Such processes shall include an accounting of expenditures made and revenues received for environmental assessment activities and corrective action at all unified program facilities.

(B) An UPA shall submit with its application a description of tracking systems to be used for monitoring the progress of environmental assessment activities and corrective action at all unified program facilities.

(C) An UPA shall submit with its application a description of how files will be maintained for environmental assessment and corrective action activities associated with unified program facilities within its jurisdiction. These files shall include, but not be limited to, all documents that comprise the administrative record file as defined in section 68400.12.

(6) An UPA shall submit with its application a copy of a local ordinance that shall be enacted that authorizes the UPA to recover the costs of implementing and enforcing the environmental assessment and corrective action program within its jurisdiction. An UPA may be determined to be qualified if it demonstrates to the Department that such an ordinance will be adopted within 60 days of the determination.

(b) A qualified UPA with Tier 2 level of qualifications shall meet all of the following Tier 2 criteria:

(1) An applicant UPA shall submit in its application all the required information as specified in subsection (a) of this section, which shall demonstrate that the applicant meets the Tier 1 qualifications.

(2) Personnel Expertise Requirements. UPA personnel designated to perform the activities of Tier 2 as described in subsection 68400.13(b) and section 68400.16 shall have educational and technical expertise sufficient to perform the activities of Tier 2 as described in subsection 68400.13(b) and section 68400.16 in accordance with all applicable state laws and regulations. In addition to the requirements for personnel expertise in Tier 1, an UPA qualified in Tier 2 shall also demonstrate documented training or proficiency in the fields of risk assessment, introduction to groundwater and remedy selection. Additional training in other technical disciplines related to site characterization, cleanup activities and health risk assessment will be considered for its applicability to this requirement. This training shall be sponsored by a credible program, including, but not limited to a state or federal agency, university extension, community college or qualified UPA.

(3) Specialized Personnel Expertise. An UPA qualified in Tier 2 shall demonstrate that it has the following specialized expertise:

(A) technical expertise necessary for the review and approval of engineering and geological interpretations, conclusions and recommendations that are conducted by registered professionals in conformance with applicable state law, including, but not limited to, Business and Professions Code sections 6735 and 7835 as required by subsection 68400.11(j). This specialized expertise may be provided by UPA personnel, a contractor, or otherwise pursuant to an agreement with a state or local agency; and

(B) technical expertise necessary to review, comprehend and implement all toxicological interpretations, conclusions and recommendations conducted by a professional with the qualifications as required by subsection 68400.11(j). This specialized expertise may be provided by UPA personnel, a contractor, or otherwise pursuant to an agreement with a state or local agency.

(4) Documentation of UPA Personnel Expertise. In addition to the documentation provided for Tier 1, an UPA shall submit with its application documentation specifying detailed information regarding the specialized technical expertise outlined in subparagraphs (b)(2) and (b)(3) of this section, including the following:

1. If an UPA staff member or other personnel working under an agreement with a state or local agency is providing specialized expertise, specify the names of persons with specialized technical expertise; a summary of education, technical training and related experience; and time availability or commitment to Tier 2 activities.

2. If a contractor is providing the specialized expertise, specify the qualifications of the contractor, related experience, time availability or commitment to Tier 2 activities, and the terms and duration of the contract.

(5) UPA Past Experience.

(A) A Tier 2 UPA shall have the past experience of a Tier 1 UPA and one of the following:

1. At least five years of total experience participating in a Local Oversight Program and documentation of experience overseeing 10 tank removals with full-time participation of two staff members, including one supervisor; or

2. At least five years of experience conducting response actions.

(B) Documentation of Past Experience. An UPA shall submit with its application documentation demonstrating that it has the experience required for Tier 1 and the experience described in subparagraph (b)(5)(A) of this section as follows:

1. Demonstration of UPA past experience required for Tier 1, as described in subparagraph (a)(2)(B) of this section;

2. Narrative descriptions of five relevant projects completed in the last five years or in progress that most clearly demonstrate the UPA's experience, specifying responsible staff and their expertise, a description of relevant project tasks, methods for overcoming technical obstacles, and the process used to conduct cleanups or tank removals. Include details regarding public participation, CEQA compliance, site characterization, remedy evaluation and selection, selection of cleanup objectives, remedy implementation, and any long-term activities, such as operation and maintenance.

NOTE: Authority cited: Sections 25150, 25404.1 and 58012, Health and Safety Code. Reference: Sections 25187, 25187.1, 25200.3, 25200.10, 25200.14, 25356.1 and 25404.1, Health and Safety Code.

HISTORY

1. New section filed 7-20-2006; operative 8-19-2006 (Register 2006, No. 29).

§ 68400.15. Determination of Qualification.

(a) To be considered for determination of qualification, an UPA shall submit an application to the Department pursuant to this section. An UPA shall indicate in its application the Tier for which it seeks qualification.

(b) The Department, within 60 days of receipt of the application, shall inform the UPA, in writing, that either the application is complete and accepted for determination of qualification, or that the application is deficient and identify the information that is required to complete the application pursuant to this section.

(c) The Department shall complete the review, within 90 days from the receipt of a completed application, to determine whether the UPA is qualified to implement and enforce the requirements for environmental assessments and corrective action portions of the unified program under Health and Safety Code section 25404.1(a)(3)(C).

(d) The Department, upon completion of the review of the application, shall in writing either approve or disapprove the application for qualification. Within 30 days of approving the application, the Department shall issue a letter of qualification to the UPA (Notice of Approval). Within 45 days of disapproving the application, the Department shall issue a denial letter identifying the areas of deficiency pursuant to this section (Notice of Denial).

(e) Qualification Decision Appeal Process.

(1) The UPA, within 60 days of receipt of the Notice of Denial, may comment to the Department on the deficiencies and provide additional information to address the deficiencies.

(2) The Department, within 60 days of the receipt of the UPA's comments on the Notice of Denial, shall respond, in writing, to approve or disapprove the application based on the review of the information provided by the UPA in subparagraph (e)(1). The UPA, within 45 days of receipt of this decision, may appeal in writing to the Director. Within 45 days of receipt of the appeal, the Director shall, in writing, issue a final decision.

(f) Withdrawal of Determination of Qualification.

(1) The Department may periodically review its determination of any UPA's qualification. The UPA shall make available to the Department all documents and records the Department deems necessary to conduct its review. The Department may withdraw its determination of qualification if an UPA fails to maintain compliance with this chapter.

(A) If the Department determines an UPA is no longer qualified, it will issue a Notice of Withdrawal to the UPA. Within 45 days of receipt of a Notice of Withdrawal, the UPA may comment to the Department in writing on the reasons for withdrawal and may correct the deficiencies and/or provide additional information for consideration by the Department.

(B) Within 60 days of the receipt of the UPA's comments, the Department will respond, in writing, with a decision on withdrawal.

(C) Pursuant to subparagraph (f)(1)(B) of this section, if the Department's decision is to withdraw the determination of qualification, the UPA within 45 days of receipt of this decision, may appeal to the Director. Within 45 days of receipt of the appeal, the Director shall, in writing, issue a final decision to confirm or rescind the withdrawal.

(2) Following a determination of qualification, if resources available to a UPA changed such that the UPA can no longer conduct or oversee environmental assessment and/or corrective action, the UPA shall notify the Department within 15 days of the change. Following receipt of the notice or upon its own determination that the UPA can no longer conduct or oversee environmental assessment and/or corrective action, the Department shall:

(A) Withdraw its determination of qualification; or

(B) If the Department determines that adequate resources will be in place within six months of the date of notice or determination, the UPA may maintain its determination of qualification as long as the UPA otherwise maintains the minimum qualifications for authorization and can continue to conduct or oversee environmental assessment and/or corrective action during the six month period.

NOTE: Authority cited: Sections 25150, 25404.1 and 58012, Health and Safety Code. Reference: Sections 25187, 25187.1, 25200.3, 25200.10, 25200.14, 25356.1 and 25404.1, Health and Safety Code.

HISTORY

1. New section filed 7-20-2006; operative 8-19-2006 (Register 2006, No. 29).

§ 68400.16. General Provisions.

(a) Any corrective action taken pursuant to this chapter shall be consistent with the corrective action provisions of Health and Safety Code, division 20, chapter 6.5 and its implementing regulations.

(b) The nature, extent and scope of corrective action taken or required by this chapter shall be based upon the conditions at the site, the current and reasonably anticipated future land uses of the site and impacts and threatened impacts to waters of the state.

(c) The responsible party shall implement corrective action beyond property boundaries, as necessary to address the breadth and depth of contamination caused by the release.

(d) An UPA shall establish a corrective action process that fulfills all of the following conditions. A description of this process, and a list of all guidance documents the UPA used to develop this process, shall be submitted to the Department pursuant to section 68400.14(a)(3)(A). A qualified UPA's corrective action process shall provide:

(1) opportunities for full and meaningful public involvement.

(A) For a less complex site, public involvement shall include, but not be limited to, providing the public with an agency contact's name, address, email, and phone number; distribution of fact sheets or other information regarding conditions at the site, if warranted given the level of interest expressed in the site; notification before decisions are made regarding corrective action at the site; and the opportunity to participate in decisions, submit comments and receive responses to comments before final UPA approval of activities at the site, such as a final corrective action plan or a certification of corrective action completion.

(B) For all other corrective action, public involvement shall include, but not be limited to an assessment of community interest and preparation of a community profile; based on the level of community interest, distribution of fact sheets regarding conditions at the site; placement of a public notice in a local newspaper of general circulation announcing a 30–day comment period on a proposed corrective action plan; based on the level of community interest, a public meeting, if appropriate, to collect public comment on the proposed corrective action; a written response to public comments; and providing the public with an agency contact's name, address, email, and phone number.

(2) a requirement for site screening using a preliminary endangerment assessment, performed as defined in Health and Safety Code section 25319.5.

(3) a requirement for a site investigation that adequately evaluates and characterizes a release or threat of release at the site of hazardous waste or constituents and determines whether the release or threatened release poses an unreasonable risk to human health and safety or the environment. This investigation shall include, but not be limited to:

(A) adequate characterization and documentation of the release or threat of release;

(B) a risk assessment, where appropriate, that evaluates the risk posed by the release or threatened release;

(C) if the release has affected groundwater, a reasonable characterization of underlying groundwater, including present and anticipated beneficial uses of that water; and

(D) if volatile organic compounds are present, a reasonable characterization and evaluation of risk associated with exposure to indoor air.

(4) specification of corrective action that is protective of human health and the environment. Such corrective action shall attain final cleanup levels determined using a site–wide cumulative carcinogenic risk range of 10^{-4} to 10^{-6} and a site–wide cumulative systemic toxicity, including sensitive subgroups, health hazard index of <1, unless lower concentrations are necessary to protect ecological receptors or meet applicable water quality objectives in applicable water quality control plans, as determined by a water quality assessment that evaluates whether constituents are migrating to waters of the state and meet state policies for water quality adopted pursuant to Article 3 (commencing with section 13140) of Chapter 3 of Division 7 of the Water Code. The 10^{-6} carcinogenic risk level shall be used as a point of departure in establishing cleanup levels for known or suspected carcinogens. Under these conditions, final cleanup levels shall be based upon the following:

(A) Background or non–detectable concentrations, or

(B) Site–specific cleanup levels based on a risk assessment(s), which may include a human health risk assessment and/or an ecological risk assessment, as needed, if the following requirements are met:

1. the risk assessment approach is approved by the Department. To be approved, the risk assessment approach shall meet the following criteria: evaluate exposure to all chemicals present at the site from all sources at the site, and evaluate that exposure for all affected and potentially affected human populations, considering all affected media at the site and all pathways appropriate for the site. The pathways shall be approved by the UPA and shall be based on the contaminants present at the site, the media contaminated, fate and transport of the contaminants through the environment, the routes of exposure and the receptors.

2. The ecological risk assessment shall consider species representing the ecosystems present or potentially present at the site. It shall consider the fate and transport of the contaminants present at the site, including movement through the food web.

(5) adequate resources and oversight to ensure that corrective action is conducted in an appropriate and timely manner and that technical assistance and streamlined procedures, when appropriate, are available.

(6) mechanisms for written documentation of screening, investigation, and selection of corrective action, the written approval of corrective action plans; and a certification of similar documentation indicating that corrective action is complete.

(7) enforcement of the completion of corrective action if the responsible party fails to complete the necessary corrective action, including operation and maintenance or long–term monitoring.

(8) a requirement for financial assurance for corrective action implementation, operation, maintenance and monitoring, if implementation of corrective action is scheduled to take more than one year or if long–term maintenance or monitoring of corrective action is required.

(A) Financial assurance mechanisms shall be consistent with the provisions in section 66264.143, and shall be reviewed and approved by the UPA.

(B) Financial assurance mechanisms that may be used to fulfill this section include a trust fund; a surety bond guaranteeing payment into a trust fund; a surety bond guaranteeing performance of corrective action implementation, operation, maintenance and monitoring; a letter of credit; insurance; or a financial test and guarantee.

(9) a requirement for a land use control that imposes appropriate conditions, restrictions and obligations on land use or activities if, after completion of the corrective action, a hazardous waste or constituents remain at the site at a level that is not suitable for unrestricted land use.

(A) The UPA shall notify the local land use planning authority in which any site is located that corrective action has been proposed. The UPA shall provide the local land use planning authority with notice of the time, date, and place of all public meetings regarding the corrective action and shall involve the local land use planning authority in any deliberation concerning land use conditions or actions. The UPA shall request the local land use planning authority to provide the UPA with the local land use planning authority's assessment of the planned use of the site, including the current and future zoning and general plan designations for the site and the local land use planning authority's determination regarding the appropriate planned use designation in the corrective action plan prepared for the site.

(B) Any land use condition shall be executed by the owner of the land, shall run with the land, and is binding upon all of the owners of the land, their heirs, successors and assignees, and their agents, employees or lessees. All executed land use conditions shall be recorded by the site owner in the county in which the site is located within ten days of execution. The site owner shall provide the UPA with a copy of the land use conditions, which have been appropriately recorded.

(C) If a corrective action plan requires the use of a land use control, the UPA shall not certify that the corrective action is complete until the UPA receives a certified copy of the recorded land use control.

(e) Any corrective action taken pursuant to this chapter shall be consistent with all applicable regulations adopted by the State Water Resources Control Board, all applicable water quality control plans adopted pursuant to section 13170 of the Water Code and Article 3 (commencing with section 13240) of Chapter 4 of Division 7 of the Water Code, and all applicable state policies for water quality control adopted pursuant to Article 3 (commencing with section 13140) of Chapter 3 of Division 7 of the Water Code, to the extent the administering agency determines that those regulations, plans, and policies are not less stringent than this chapter.

NOTE: Authority cited: Sections 25150, 25404.1 and 58012, Health and Safety Code. Reference: Sections 25187, 25187.1, 25200.3, 25200.10, 25200.14, 25356.1 and 25404.1, Health and Safety Code.

HISTORY

1. New section filed 7–20–2006; operative 8–19–2006 (Register 2006, No. 29).

Appendix I

Chemicals for Less Complex Sites

Organic Acidic Chemicals
2,4–D
2,4,5–T
Pentachlorophenol

Organic Neutral Chemicals
Aldrin
Benzo(a)pyrene
Chlordane
DDD
DDE
DDT
Dieldrin
1,4–Dioxane
Dioxin (2,3,7,8–TCDD)
Endrin
Heptachlor
Lindane
Kepone
Methoxychlor
Mirex
PCBs
Toxaphene

Inorganic Chemicals
Antimony and compounds
Arsenic
Barium and compounds
Beryllium and compounds
Cadmium and compounds
Chromium III
Chromium VI
Cobalt
Copper and compounds
Fluoride
Lead and lead compounds
Mercury and compounds
Molybdenum
Nickel and compounds
Selenium
Silver and compounds
Thallium and compounds
Vanadium and compounds
Zinc

Volatile Chemicals
Benzene
Carbon Tetrachloride
1,2–Dichloroethane
cis–1,2–Dichloroethylene
trans–1,2–Dichloroethylene
Mercury (elemental)
Methyl *tert*–Butyl Ether
Naphthalene
Tetrachloroethylene
Tetraethyl Lead
Toluene
1,1,1–Trichloroethane
Trichloroethylene
Vinyl Chloride
m–Xylene
o–Xylene
p–Xylene

§ 68500.1. Applicability.

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25173.6, 25187, 25200.10, 25200.14, 58009 and 58010, Health and Safety Code.

HISTORY

1. New chapter 50 (articles 1–2), article 1 (sections 68500.1–68500.5) and section filed 11–19–98 as an emergency; operative 11–19–98 (Register 98, No. 47). A Certificate of Compliance must be transmitted to OAL by 3–19–99 or emergency language will be repealed by operation of law on the following day.
2. Repealer of chapter 50 (articles 1–2), article 1 (sections 68500.1–68500.5) and section by operation of Government Code section 11346.1(g) (Register 99, No. 12).

§ 68500.2. General Provisions.

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25173.6, 25187, 25200.10, 25200.14, 58009 and 58010, Health and Safety Code.

HISTORY

1. New section filed 11–19–98 as an emergency; operative 11–19–98 (Register 98, No. 47). A Certificate of Compliance must be transmitted to OAL by 3–19–99 or emergency language will be repealed by operation of law on the following day.
2. Repealer by operation of Government Code section 11346.1(g) (Register 99, No. 12).

§ 68500.3. Definitions.

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25173.6, 25187, 25200.10, 25200.14, 58009 and 58010, Health and Safety Code.

HISTORY

1. New section filed 11–19–98 as an emergency; operative 11–19–98 (Register 98, No. 47). A Certificate of Compliance must be transmitted to OAL by 3–19–99 or emergency language will be repealed by operation of law on the following day.
2. Repealer by operation of Government Code section 11346.1(g) (Register 99, No. 12).

§ 68500.4. Public Participation.

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25173.6, 25187, 25200.10, 25200.14, 58009 and 58010, Health and Safety Code.

HISTORY

1. New section filed 11–19–98 as an emergency; operative 11–19–98 (Register 98, No. 47). A Certificate of Compliance must be transmitted to OAL by 3–19–99 or emergency language will be repealed by operation of law on the following day.
2. Repealer by operation of Government Code section 11346.1(g) (Register 99, No. 12).

§ 68500.5. Determination of CUPA Qualification.

NOTE: Authority cited: Section 25404.1(a), Health and Safety Code. Reference: Section 25404.1(a), Health and Safety Code.

HISTORY

1. New section filed 11–19–98 as an emergency; operative 11–19–98 (Register 98, No. 47). A Certificate of Compliance must be transmitted to OAL by 3–19–99 or emergency language will be repealed by operation of law on the following day.
2. Repealer by operation of Government Code section 11346.1(g) (Register 99, No. 12).

Article 2. Corrective Action Approach

§ 68500.10. Site Assessment.

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25173.6, 25187, 25200.10, 25200.14, 58009 and 58010, Health and Safety Code.

HISTORY

1. New article 2 (sections 68500.10–68500.35) and section filed 11–19–98 as an emergency; operative 11–19–98 (Register 98, No. 47). A Certificate of Compliance must be transmitted to OAL by 3–19–99 or emergency language will be repealed by operation of law on the following day.
2. Repealer of article 2 (sections 68500.10–68500.35) and section by operation of Government Code section 11346.1(g) (Register 99, No. 12).

§ 68500.20. Remedial Action Plan.

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25173.6, 25187, 25200.10, 25200.14, 58009 and 58010, Health and Safety Code.

HISTORY

1. New section filed 11–19–98 as an emergency; operative 11–19–98 (Register 98, No. 47). A Certificate of Compliance must be transmitted to OAL by 3–19–99 or emergency language will be repealed by operation of law on the following day.
2. Repealer by operation of Government Code section 11346.1(g) (Register 99, No. 12).

§ 68500.24. Remedy Design and Implementation.

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25173.6, 25187, 25200.10, 25200.14, 58009 and 58010, Health and Safety Code.

HISTORY

1. New section filed 11–19–98 as an emergency; operative 11–19–98 (Register 98, No. 47). A Certificate of Compliance must be transmitted to OAL by 3–19–99 or emergency language will be repealed by operation of law on the following day.
2. Repealer by operation of Government Code section 11346.1(g) (Register 99, No. 12).

§ 68500.25. Interim Measures.

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25173.6, 25187, 25200.10, 25200.14, 58009 and 58010, Health and Safety Code.

HISTORY

1. New section filed 11–19–98 as an emergency; operative 11–19–98 (Register 98, No. 47). A Certificate of Compliance must be transmitted to OAL by 3–19–99 or emergency language will be repealed by operation of law on the following day.
2. Repealer by operation of Government Code section 11346.1(g) (Register 99, No. 12).

§ 68500.29. Financial Assurance.

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25173.6, 25187, 25200.10, 25200.14, 58009 and 58010, Health and Safety Code.

HISTORY

1. New section filed 11–19–98 as an emergency; operative 11–19–98 (Register 98, No. 47). A Certificate of Compliance must be transmitted to OAL by 3–19–99 or emergency language will be repealed by operation of law on the following day.
2. Repealer by operation of Government Code section 11346.1(g) (Register 99, No. 12).

§ 68500.30. Determination of No Further Action.

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25173.6, 25187, 25200.10, 25200.14, 58009 and 58010, Health and Safety Code.

HISTORY

1. New section filed 11–19–98 as an emergency; operative 11–19–98 (Register 98, No. 47). A Certificate of Compliance must be transmitted to OAL by 3–19–99 or emergency language will be repealed by operation of law on the following day.
2. Repealer by operation of Government Code section 11346.1(g) (Register 99, No. 12).

§ 68500.35. Land Use Conditions.

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25173.6, 25187, 25200.10, 25200.14, 58009 and 58010, Health and Safety Code.

HISTORY

1. New section filed 11–19–98 as an emergency; operative 11–19–98 (Register 98, No. 47). A Certificate of Compliance must be transmitted to OAL by 3–19–99 or emergency language will be repealed by operation of law on the following day.
2. Repealer by operation of Government Code section 11346.1(g) (Register 99, No. 12).

Chapter 51. Site Remediation

Article 1. Private Site Management Performance Standards

§ 69000. Purpose.

This article sets forth minimum standards of performance for the activities and conduct of Private Site Managers and members of Private Site Management Teams that conduct site investigations and response actions pursuant to this article and Article 8, as administered by the Department of Toxic Substances Control.

NOTE: Authority cited: Sections 25351.5 and 25395.15, Health and Safety Code. Reference: Sections 25395.1–25395.15, Health and Safety Code.

HISTORY

1. New chapter 51, article 1 (sections 69000–69013) and section filed 3–26–2003; operative 4–25–2003 (Register 2003, No. 13).

§ 69000.5. Definitions.

Except as otherwise specified, the terms used in this article have the same meaning as the definitions specified in Chapter 6.8. For purposes of this article, the following definitions apply:

(a) "Administrative Record" means the record or file of all documents relied upon or considered by the Private Site Manager or members of the Private Site Management Team when selecting the response action for a site under this article. These documents may include, but are not limited to: engineering and technical reports; verified sampling data; quality control and quality assurance documentation; policy and guidance documents; statutes and regulations; correspondence; CEQA documents; technical journals, workplans for remedial investigations and feasibility studies; analyses of factual information and data that may have formed the basis for the selection of the response action at the site, and all documents that show the public was notified of site activity and had an opportunity to participate in the response selection process.

(b) "Administrative Record List" means the list of all documents in the Administrative Record. The Administrative Record List shall be included in each RAW and RAP required under this article.

(c) "Application Package" means the Private Site Management Program Application Package submitted under section 69003 that contains a request to the Department that a response action be conducted under the Private Site Management Program.

(d) "Article 8" means article 8, Private Site Management Program, of chapter 6.8 of division 20 of the Health and Safety Code (commencing with section 25395.1).

(e) "CEQA" means the California Environmental Quality Act (Public Resources Code sections 21000–21178) and the State CEQA Guidelines contained in the California Code of Regulations, title 14, sections 15000–15387.

(f) "Chapter 6.5", "Chapter 6.66," "Chapter 6.8," and "Chapter 6.85" mean chapter 6.5, chapter 6.66, chapter 6.8 and chapter 6.85 respectively of division 20 of the Health and Safety Code.

(g) "Department" means the Department of Toxic Substances Control.

(h) "EIR" means an environmental impact report prepared under CEQA.

(i) "FS" means Feasibility Study.

(j) "Independent" means that a Private Site Manager or a member of a Private Site Management Team meets all of the following requirements:

(1) The Private Site Manager or Private Site Management Team member is not an employee of the Project Proponent, a known responsible party, or a prospective buyer of the site or portion of the site;

(2) The Private Site Manager or Private Site Management Team member is not a general partner or a limited partner with any Project Proponent, known responsible party, or prospective buyer of the site or portion of the site;

(3) The Private Site Manager or Private Site Management Team member is not a shareholder in the Project Proponent entity, a known responsible party, or a prospective buyer of the site or portion of the site;

(4) The Private Site Manager or Private Site Management Team member does not receive any source of income from the Project Proponent, a known responsible party, or a prospective buyer of the site or portion of the site, other than the payment of fees for professional services, and;

(5) The Private Site Management Team member does not accept, or agree to accept, any payment that is in any way contingent upon the completion of a response action of the site under the Private Site Management Program.

(k) "Initial Study" means an Initial Study prepared under CEQA.

(*l*) "Land Use Controls" means recorded instruments restricting the present and future uses of the site as defined in subsection (*l*) of section 25396 of the Health and Safety Code.

(m) "Material Deviation" means a significant change in physical conditions at a site or previously unknown information about physical conditions at a site that may cause the Department to rescind its approval of an Application Package, PEA report, draft or final RAW, draft or final RAP, remedial design, certification request, or certification.

(n) "O&M" means operation and maintenance.

(o) "PEA" means preliminary endangerment assessment.

(p) "Private Site Management Program" means the program under this article and Article 8 in which Private Site Managers and Private Site Management Teams conduct investigations of potential hazardous sub-

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stance release sites and response actions on sites where a significant release of a hazardous substance has occurred or is likely to have occurred.

(q) "Private Site Management Program Agreement" means the agreement under section 69007 between the Department and a Project Proponent for performance of all necessary response actions at a site.

(r) "Private Site Management Team" means a group coordinated by a Private Site Manager as defined under subsection (b) of section 25395.1 of the Health and Safety Code.

(s) "Private Site Manager" means an individual who is a California Registered Environmental Assessor — Class II as defined under California Code of Regulations, title 14, section 19030, subsection (r), and is conducting a response action under this article.

(t) "Project Proponent" means a person who has submitted an Application Package under section 69003 requesting that a response action be conducted under the Private Site Management Program.

(u) "Remedial Action Plan" or "RAP" means the remedial action plan prepared by the Private Site Management Team in accordance with all the requirements of sections 25356.1 and 25395.5 of the Health and Safety Code.

(v) "RAW" means removal action work plan.

(w) "Reasonable Costs" means costs that are incurred by the Department under this article in accordance with Chapter 6.5, Chapter 6.66, Chapter 6.8, or Chapter 6.85 including all costs incurred in complying with CEQA, all costs incurred in investigating, remediating and certifying a site, and all costs incurred in performing audits.

(x) "RI" means remedial investigation.

NOTE: Authority cited: Sections 25351.5 and 25395.15, Health and Safety Code. Reference: Sections 25356.1, 25395.1–25395.15 and 25396, Health and Safety Code.

HISTORY

1. New section filed 3–26–2003; operative 4–25–2003 (Register 2003, No. 13).

§ 69001. Performance Standards.

(a) In the performance of actions under this article and Article 8, a Private Site Manager shall select Private Site Management Team members who possess the necessary qualifications, work experience, licenses, registrations, professional skills, and appropriate insurance in accordance with section 69004, for properly performing response actions at the site based upon specific site conditions.

(b) In the performance of actions under this article and Article 8, a Private Site Manager and members of a Private Site Management Team shall:

(1) Comply with the requirements of Chapter 6.8 or, for sites selected pursuant to section 25396.6 of the Health and Safety Code, the requirements of Chapter 6.85;

(2) Conduct all activities in compliance with all applicable federal, State, and local laws and regulations, including but not limited to, requirements to obtain permits and to assure worker safety;

(3) Make a good faith and reasonable effort to identify the level of community concern and identify and obtain all material, data, reports, and other information that may relate to site conditions. The Private Site Manager and members of the Private Site Management Team shall comply with the requirements of sections 25358.7 and 25358.7.1 of the Health and Safety Code in implementing or taking action under this article and Article 8. Any public participation requirements specifically set forth in this article are in addition to those requirements otherwise imposed by sections 25358.7 and 25358.7.1 of the Health and Safety Code;

(4) Identify and obtain any additional data and other information necessary to comply with the requirements of this article and Article 8; and

(5) Comply with the requirements of section 25355.8 of the Health and Safety Code, when the Project Proponent is not the current record owner of fee title to the property.

(c) Each report, plan, design, or other document that contains a finding, opinion, determination or decision related to a response action at the site and that is prepared by a Private Site Manager or Private Site Management Team and submitted to the Department under this article shall include all of the following:

(1) Description of the methods, data, assumptions, models, risk assessments, and conditions used to support the finding, opinion, determination, or decision;

(2) Describe any data, assessments, assumptions, qualifications or limitations regarding alternative findings, opinions, determinations or decisions that were considered and rejected;

(3) A statement verifying that the finding, opinion, determination, or decision submitted to the Department is in conformance with all requirements of this article, Article 8, and Chapter 6.8 or, for sites selected pursuant to section 25396.6 of the Health and Safety Code, Chapter 6.85;

(4) A list of any State and federal technical guidance documents and manuals used to prepare the report, plan, design or other document;

(5) To the extent feasible, use appropriate formatting similar to the Department prepared or approved reports, plans, designs or other documentation;

(6) The signature, and if appropriate the seal or stamp, of the Private Site Manager, and the date the document was signed; and

(7) The signatures of all Private Site Management Team members who prepared or helped to prepare the report, plan, design or other document being submitted by the Private Site Manager.

(d) In addition to the performance standards set forth in subsections (a) through (c), the Private Site Manager or a member of the Private Site Management Team shall immediately notify the Project Proponent when site conditions or an incident at the site poses an imminent or substantial endangerment to the public health, welfare, or environment. The Private Site Manager shall notify the Department within 24 hours of discovery of the site condition or incident unless the Private Site Manager knows the Project Proponent has already notified the Department of that site condition or incident.

(e) Private Site Managers and members of a Private Site Management Team are subject to the requirements and prohibitions of section 25395.13 of the Health and Safety Code.

NOTE: Authority cited: Sections 25351.5 and 25395.15, Health and Safety Code. Reference: Sections 25358.7, 25358.7.1, 25395.1, 25395.2, 25395.3, 25395.4, 25395.10, 25395.13 and 25395.15, Health and Safety Code.

HISTORY

1. New section filed 3–26–2003; operative 4–25–2003 (Register 2003, No. 13).

§ 69002. Preliminary Endangerment Assessment Report.

(a) A Private Site Manager shall use the Department's PEA Guidance Manual (January 1994 and reprinted in June 1999), which is incorporated by reference, to conduct an investigation of a potential hazardous substance release site and to prepare a PEA report that determines if there has been a hazardous substance release or threatened release at the site.

(b) If a Private Site Manager determines, based on the PEA results, that a significant hazardous substance release has not occurred and is not likely to occur at the site and therefore site conditions do not require any further investigation or remedial action, the Private Site Manager may submit a PEA report to the Department certifying that no further action is required at the site. If the Private Site Manager submits a PEA report under this subsection, the Private Site Manager shall do either of the following:

(1) Submit a signed statement indicating that the Private Site Manager agrees to pay all of the Department's Reasonable Costs for reviewing the PEA report upon receipt of the Department's invoice; or

(2) Submit a statement, signed by the Project Proponent, indicating that the Project Proponent agrees to pay all of the Department's Reasonable Costs for reviewing the PEA report upon receipt of the Department's invoice.

(c) If a Private Site Manager determines, based on the PEA results, that a significant hazardous substance release has occurred or is likely to occur at the site, the Private Site Manager may submit the PEA report and the determination to the Department for review and concurrence under section 69011.

NOTE: Authority cited: Sections 25351.5 and 25395.15, Health and Safety Code. Reference: Sections 25395.2 and 25395.14, Health and Safety Code.

HISTORY

1. New section filed 3–26–2003; operative 4–25–2003 (Register 2003, No. 13).

§ 69003. Private Site Management Program Application Package

(a) If the PEA report prepared by the Private Site Manager under subsection (a) of section 69002 determines that a significant hazardous substance release has occurred or is likely to have occurred at the site, and if the Department concurs with this determination under subsection (b) of section 69011, the Private Site Manager may do either of the following:

(1) Assist the Project Proponent in submitting an Application Package; or

(2) Prepare and submit an Application Package that has been signed by the Project Proponent.

(b) The Application Package shall include the following:

(1) Names of the designated members of the Private Site Management Team;

(2) Statement of the professional qualifications of each Private Site Management Team member;

(3) Description of how each Private Site Management Team member's experience and expertise will address specific site conditions;

(4) PEA report prepared under subsection (a) of section 69002, including a community profile report;

(5) RI report, if one has been prepared, or other investigative reports;

(6) Name and professional qualifications of the Private Site Management Team member with the experience or training in public participation, risk communication, and community involvement required by section 25395.4 of the Health and Safety Code;

(7) Sufficient information for the Department to determine that the Private Site Manager and members of the Private Site Management Team possess appropriate insurance, as specified in section 69004;

(8) Information that demonstrates that the site meets all the conditions set forth in subsection (a) of section 25395.3 of the Health and Safety Code; and

(9) Information that demonstrates that the Private Site Manager meets all the requirements of subsection (b) of section 25395.3 of the Health and Safety Code.

(c) The Application Package shall contain CEQA documentation including sufficient information to allow the Department to determine whether site conditions or any proposed response actions may require the preparation of an EIR. A site will not be automatically disqualified if an EIR is required. The Application Package shall include information regarding the impacts that site conditions or any proposed response actions may have on: the geologic features of the site; land use planning; public health and safety; local population and housing in the vicinity of the site; water quality; air quality; traffic and transportation; ecological and biological resources; energy and mineral resources; noise levels; public service systems and utilities; local aesthetics; cultural resources; and recreation. The Department may be the lead agency for CEQA compliance for sites participating in the Private Site Management Program. If another public agency is the lead agency for the site or a portion of the site, the Application Package shall identify the lead agency and shall include any CEQA documents prepared by the lead agency. If the Application Package does not contain sufficient information to allow the Department to determine whether an EIR may be required, the Department may request the Private Site Manager to provide additional information. If the Department determines a subsequent or supplemental EIR is required and that the CEQA documentation is insufficient, the Department may prepare additional documentation in accordance with section 21166 of the Public Resources Code and section 15162 of title 14 of the California Code of Regulations and may request the Private Site Manager to provide additional CEQA documentation.

(d) The Application Package shall include a description of the public participation activities proposed for the site.

(e) If the Department determines that there is a substantial likelihood that further significant environmental damage or human exposure may occur as the response action is implemented, the site is not appropriate for the Private Site Management Program, and the Department will disapprove the Application Package.

(f) If the Department determines that the Application Package does not include the information and documentation required by this section, the Department may disapprove the Application Package. The Department will describe the actions needed to correct identified deficiencies.

(g) Sites listed pursuant to section 25356 of the Health and Safety Code are not appropriate for the Private Site Management Program.

(h) If the Department approves an Application Package, a Private Site Management Team may be designated for the site.

NOTE: Authority cited: Sections 25351.5 and 25395.15, Health and Safety Code. Reference: Sections 25395.2, 25395.3, 25395.4 and 25395.10, Health and Safety Code.

HISTORY

1. New section filed 3–26–2003; operative 4–25–2003 (Register 2003, No. 13).

§ 69004. Insurance Requirements.

(a) The Private Site Manager shall ensure that the Private Site Manager and each member of the Private Site Management Team maintains appropriate insurance. All insurance policies maintained under this article shall provide for 120–day advance written notice of cancellation to the Project Proponent and to the Department. In the event the Private Site Manager or a member of the Private Site Management Team fails to keep in effect the insurance coverage specified in this section, the Department may terminate the Private Site Manager's participation in the Private Site Management Program. If the Department terminates the Private Site Manager's participation in the Private Site Management Program, the Project Proponent may submit a new Application Package for the site. Upon request by the Department, the Private Site Manager and each member of the Private Site Management Team shall provide certificates of the insurance and copies of each insurance policy required under subsections (b) through (h).

(b) The Private Site Manager shall maintain comprehensive general liability insurance with limits of not less than $1,000,000 per occurrence for bodily injury and property damage liability combined, with an annual aggregate of no less than $2,000,000. The policy shall include coverage for liabilities arising out of the site premises and operations, independent contractor activities at the site, products used or produced at the site, completed site operations, personal and advertising injury, and liability assumed under an insured contract.

(c) The Private Site Manager shall maintain motor vehicle liability insurance with limits of not less than $1,000,000 per accident, with an annual aggregate of no less than $2,000,000. This motor vehicle liability insurance shall cover liability arising out of operation of a motor vehicle including owned, hired, and non–owned motor vehicles.

(d) The Private Site Manager shall maintain statutory workers' compensation and employer's liability coverage for all of its employees who will be engaged in activities under the Private Site Management Program, including special coverage extensions where applicable.

(e) In addition to the minimum insurance requirements in subsections (b) through (d), a Private Site Manager and each member of the Private Site Management Team who performs consulting services shall provide evidence of Professional Liability/Errors and Omissions Coverage, with policy limits of at least $1,000,000 per claim, with an annual aggregate of no less than $2,000,000, for liabilities arising out of errors, omissions or negligent acts related to or in connection with activities under the Private Site Management Program.

(f) The Private Site Manager who performs response actions shall provide evidence of Pollution/Environmental Impairment Liability Coverage with policy limits of at least $1,000,000 per occurrence, with an annual aggregate of no less than $2,000,000, for bodily injury and property damage liability combined.

(g) The Private Site Manager shall obtain appropriate environmental insurance coverage under article 8.7 (commencing with section 25395.40) of Chapter 6.8 if insurance coverage under article 8.7 is available.

(h) The Private Site Manager shall maintain any other types of insurance appropriate for conditions at the site, as required by the Project Proponent or as required by any statute, regulation, or ordinance of a state or local governmental agency.

(i) If the Private Site Manager or a member of the Private Site Management Team demonstrates by evidence satisfactory to the Department that any contractor or subcontractor maintains insurance covering activities at the site that is equivalent to the insurance described in subsections (b)–(h), or insurance covering the same risks but in lesser amount, then the Private Site Manager or member of the Private Site Management Team need provide only that portion of the insurance that is not maintained by the contractor or subcontractor.

NOTE: Authority cited: Sections 25351.5 and 25395.15, Health and Safety Code. Reference: Sections 25355.2, 25395.3, 25395.4, 25395.10 and 25395.40, Health and Safety Code.

HISTORY

1. New section filed 3–26–2003; operative 4–25–2003 (Register 2003, No. 13).

§ 69005. Compliance with the California Environmental Quality Act.

(a) The Department may be the lead agency for CEQA actions for sites in the Private Site Management Program or another public agency may be the lead agency for a site or a portion of the site. If the Department is not the lead agency, the Department, as a responsible agency, will review the lead agency's CEQA documents.

(b) If the Private Site Management Team determines the site requires a removal action, the Private Site Manager shall submit the following to the Department: draft RAW, PEA report, RI report, draft CEQA information, and any other investigative documents pertaining to the site. The Department will consider the draft RAW technically complete if the draft RAW meets the requirements of this article, Article 8, and Chapter 6.8 or, for sites selected pursuant to section 25396.6 of the Health and Safety Code, Chapter 6.85.

(c) If the Department is the lead agency, the Department will determine whether an Initial Study is required for the RAW. For the Department's determination regarding an Initial Study, the Private Site Manager shall submit to the Department all information necessary for making a determination of the potential for significant effects on the environment from the removal action. The Department will consider the CEQA information technically complete if the Department determines that all information necessary to prepare an Initial Study has been submitted. If the Department determines the removal action is not exempt from CEQA, the Department will prepare an Initial Study. When the Department determines that all applicable CEQA documents have been completed, a 30–day comment period will commence on the Department's proposed CEQA determination. Public review of the CEQA documents and the draft RAW will be held concurrently.

(d) If the Private Site Management Team determines the site requires a RAP, the Private Site Manager shall submit the following to the Department: draft RAP, RI report, FS report, draft CEQA information, and any other investigative documents pertaining to the site. The Department will consider the draft RAP technically complete if the draft RAP meets the requirements of this article, Article 8, and Chapter 6.8 or, for sites selected pursuant to section 25396.6 of the Health and Safety Code, Chapter 6.85.

(e) If the Department is the lead agency, for the Department's preparation of the Initial Study for the RAP, the Private Site Manager shall submit all information necessary for making a determination of the potential for significant effects on the environment. The Department will consider the CEQA information technically complete if the Department determines that all information necessary to prepare an Initial Study has been submitted. If the Department determines the response action is not exempt from CEQA, an Initial Study will be prepared. When the Department determines all applicable CEQA documents have been completed, a 30–day comment period will commence on the Department's proposed CEQA determination. Public review of the CEQA documents and the draft RAP will be held concurrently.

(f) If the Department determines the CEQA documentation is insufficient, the Department will prepare additional documentation in accordance with section 21166 of the Public Resources Code and section 15162 of title 14 of the California Code of Regulations. The Department may request the Private Site Manager to provide additional CEQA documentation.

NOTE: Authority cited: Sections 25351.5 and 25395.15, Health and Safety Code. Reference: Sections 25395.3, 25395.4, 25395.5 and 25395.11, Health and Safety Code.

HISTORY

1. New section filed 3–26–2003; operative 4–25–2003 (Register 2003, No. 13).

§ 69006. Project Proponent.

(a) The purpose of this section is to establish minimum requirements for Project Proponents.

(b) A Project Proponent shall do all of the following:

(1) Provide the Private Site Manager with all information regarding the site known to the Project Proponent or in the Project Proponent's possession;

(2) Sign and submit an Application Package or sign and have the Private Site Manager submit the Application Package;

(3) Enter into a Private Site Management Program Agreement with the Department as specified under section 69007;

(4) Notify the Department whenever any known condition or incident at the site poses an emergency or an imminent or substantial endangerment to human health or the environment. The Project Proponent shall provide written notification to the Department within 24 hours of discovery of the site condition or incident;

(5) Reimburse the Department for its costs based on the level of oversight requested by the Project Proponent and consistent with the requirements of Article 8, including the cost of reviewing and commenting on documents submitted.

(6) Cooperate with the Department in its performance of any audit of a site conducted under section 69012.

(c) The Project Proponent shall be Independent of the Private Site Manager and all Private Site Management Team members.

NOTE: Authority cited: Sections 25351.5 and 25395.15, Health and Safety Code. Reference: Sections 25395.1, 25395.3, 25395.4, 25395.12, 25395.14 and 25359.15, Health and Safety Code.

HISTORY

1. New section filed 3–26–2003; operative 4–25–2003 (Register 2003, No. 13).

§ 69007. Private Site Management Program Agreement.

(a) A Project Proponent shall enter into a Private Site Management Program Agreement with the Department for the performance of all necessary response actions at the site. The Project Proponent shall agree to pay all Reasonable Costs incurred by the Department at the site and the Project Proponent shall also agree to perform all response actions at the site in accordance with the requirements of Chapter 6.8, or for sites selected under section 25396.6 of the Health and Safety Code, Chapter 6.85. The Project Proponent may elect to have minimal Department oversight as provided by this article.

(b) The Department will meet and confer with the Project Proponent in accordance with section 25269.5 of the Health and Safety Code. The Department will provide the following:

(1) An estimate of the cost of the Department's oversight of the response actions at the site, including a list of estimated personnel labor rates;

(2) An estimate of the total hours the Department expects its staff to incur in implementing the terms of the Private Site Management Program Agreement entered into under subsection (a) to the extent that the Department can project its time and costs in advance; and

(3) A discussion and thorough review of the services the Department will provide to the Project Proponent and Private Site Manager.

(c) The Agreement may provide for the Department's oversight of preparation of a draft RAW or draft RAP, preparation of a remedial design or implementation of the response action. Department oversight of this preparation or implementation is not required.

(d) The Project Proponent may terminate the Private Site Management Program Agreement for any reason by providing 30–day advance written notice of the termination to the Department.

(e) The Department may terminate the Private Site Management Program Agreement if the Department (1) determines that any grounds for withdrawal exist as set forth in section 69013 or any grounds for rescission exist as set forth in section 69009, and (2) provides 30–day advance written notice to the Project Proponent.

NOTE: Authority cited: Sections 25269.5, 25351.5 and 25395.15, Health and Safety Code. Reference: Sections 25395.3, 25395.5, 25395.6, 25395.7, 25395.14 and 25396.6, Health and Safety Code.

HISTORY

1. New section filed 3–26–2003; operative 4–25–2003 (Register 2003, No. 13).

§ 69008. Guidance Documents.

(a) The Department will provide an advisory list of technical guidance manuals, relevant State and federal laws, regulations and other types of guidance documents that the Department believes would be useful for conducting PEAs, site assessments, investigations, site cleanups, remedial designs, O&M agreements, and site certifications. A copy of this list will be provided to the Private Site Manager upon approval of a Private Site Management Application Package or upon request.

(b) At the request of a Private Site Manager, the Department may suggest other appropriate technical guidance documents and manuals on a case–by–case basis for the site.

NOTE: Authority cited: Sections 25351.5 and 25395.15, Health and Safety Code. Reference: Sections 25395.5, 25395.6 and 25395.11, Health and Safety Code.

HISTORY

1. New section filed 3–26–2003; operative 4–25–2003 (Register 2003, No. 13).

§ 69009. Change in Site Conditions or Site Information.

(a) If the documented physical conditions at a site change, or a change in physical conditions becomes known to the Private Site Manager, to the extent that the site no longer meets the conditions in subsection (a) of section 25395.3 of the Health and Safety Code, the Private Site Manager shall notify the Department and the Project Proponent. The Private Site Manager shall provide notification in writing no later than seven (7) calendar days after identifying a physical change in conditions or identifying new information about physical conditions.

(b) If a Private Site Manager or a member of a Private Site Management Team becomes aware of facts, data, or information that are a Material Deviation from the facts, data, or information used to prepare a PEA report, draft or final RAW, draft or final RAP, or remedial design, the Private Site Manager shall:

(1) Determine whether a selected response action is protective of public health and safety or the environment, considering the new facts, data, or information; and

(2) Notify the Department and the Project Proponent in writing within seven (7) calendar days of becoming aware of the Material Deviation. The written notification shall include the determination required under paragraph (1).

(c) If, at any time, a Material Deviation becomes known to the Department, the Department may (1) rescind approval of the Application Package, PEA report, draft or final RAW, draft or final RAP, remedial design, certification request, or certification, or (2) require the Private Site Management Team to include additional professional staff members with expertise appropriate to the changed physical conditions or to the new information about physical conditions at the site. Any proposed additional professional staff members are subject to approval by the Department.

NOTE: Authority cited: Sections 25351.5 and 25395.15, Health and Safety Code. Reference: Sections 25395.2, 25395.3, 25395.4, 25395.5, 25395.6 and 25395.11, Health and Safety Code.

HISTORY

1. New section filed 3–26–2003; operative 4–25–2003 (Register 2003, No. 13).

§ 69010. Material Deviation from Department Approved Report, Workplan, or Remedial Design.

(a) If a Private Site Manager or a member of a Private Site Management Team knows, or has reason to know, that any proposed action or decision of the Project Proponent or the Private Site Management Team is based on a Material Deviation from information in a Department–approved PEA report, draft or final RAW, draft or final RAP, or remedial design, the Private Site Manager or a member of the Private Site Management Team shall notify the Department and the Project Proponent. The notification shall be made in writing seven (7) calendar days prior to taking the action or making the decision that is based on a Material Deviation from the Department–approved PEA report, draft or final RAW, draft or final RAP, or remedial design.

(b) The written notice required by subsection (a) shall include a description of how the proposed action or decision is based on a Material Deviation from the Department–approved PEA report, draft or final RAW, draft or final RAP, or remedial design.

(c) If the proposed action or decision of the Project Proponent or Private Site Management Team would require a significant change in an approved draft or final RAW because of a Material Deviation that is the subject of a notification under subsection (a), the Department may either:

(1) publish a public notice that describes the proposed changes and explains the reasons for the differences in the revised draft or final RAW; or

(2) reject the proposed action or decision.

(d) Any public notice under subsection (c) will be published in a newspaper of general circulation, with a 30–day public comment period. Based on the level of community interest, the Department may hold a community meeting during the public comment period.

(e) If the proposed action or decision of the Project Proponent or Private Site Management Team would require a significant change in the selected remedy in an approved draft or final RAP because of a Material Deviation that is the subject of a notification under subsection (a), the Department may either:

(1) publish a public notice that describes the proposed action or decision and solicits public comment; or

(2) reject the proposed action or decision.

(f) Any public notice under subsection (e) will be published in a newspaper of general circulation, with a 30–day public comment period. The Department will hold a community meeting during the public comment period.

NOTE: Authority cited: Sections 25351.5 and 25395.15, Health and Safety Code. Reference: Sections 25395.2, 25395.4, 25395.5, 25395.6, 25395.8 and 25395.13, Health and Safety Code.

HISTORY

1. New section filed 3–26–2003; operative 4–25–2003 (Register 2003, No. 13).

§ 69011. Department Review and Approval of Submittals by the Private Site Manager or Private Site Management Team.

(a) Within 60 days of receipt of a PEA report submitted by a Private Site Manager under section 69002 certifying that site conditions do not require any further investigation or remedial action at a site, the Department will review the PEA report.

(1) If the Department does not provide a written notice of disagreement to the Private Site Manager within 60 days of the Department's receipt of the PEA report, the Department shall be deemed to be in agreement with the PEA report and will designate the site as a site that requires no further action.

(2) If the Department disagrees with the certification in the PEA report, the Department will issue a written notice of disagreement to the Private Site Manager within 60 days of the Department's receipt of the PEA report describing the deficiencies of the PEA report and the reasons for the Department's disagreement with the certification in the PEA report.

(3) The Department will not designate the site as a site that requires no further action if the release of hazardous substances has caused, or threatens to cause, discharges to waters of the State.

(b) Within 60 days of receipt of a PEA report submitted by a Private Site Manager under section 69002 that determines that a significant haz-

ardous substance release has occurred or is likely to have occurred at a site, the Department will review the PEA report.

(1) If the Department concurs with the determination under subsection (b), the Private Site Manager may submit an Application Package under the provisions of section 69003.

(2) If the Department does not concur with the determination under subsection (b), the Department will issue a written notice of disagreement to the Private Site Manager within 60 days of the Department's receipt of the PEA report describing the deficiencies of the PEA report and the reasons for the Department's disagreement with the Private Site Manager's determination.

(c) Within 60 days of receipt of both a draft or final RAW and technically complete draft CEQA information submitted by a Private Site Manager under section 69005, the Department will approve or reject the draft or final RAW and draft CEQA information. To be approved, the draft or final RAW shall include a description of past community involvement efforts, recommendations for future public participation activities, and the Administrative Record List for the site, and shall be prepared in accordance with all of the requirements of Chapter 6.8 or, for sites selected pursuant to section 25396.6 of the Health and Safety Code, Chapter 6.85, and applicable regulations and guidance documents. The draft or final RAW may be prepared without Department oversight.

(1) If the Department rejects a draft RAW and draft CEQA information, the Department will state the reasons for rejecting the draft RAW and draft CEQA information and describe the actions needed to correct identified deficiencies.

(2) If the Department rejects a draft RAW and draft CEQA information, the Private Site Manager or a member of the Private Site Management Team may submit a revised draft RAW and draft CEQA information. The Department will have an additional 60 days from receipt of a revised submittal to review any new documents, reports, or workplans provided with the revised submittal.

(3) If the Department considers the draft RAW and draft CEQA information to be technically complete and if the Department approves the draft RAW and draft CEQA information, the Department will release the draft RAW and the draft CEQA determination for a 30–day public comment period. The draft RAW and draft CEQA determination will be noticed in a newspaper of general circulation at the beginning of the comment period.

(4) The Department may approve or reject the final RAW. If the Department approves the final RAW, the Private Site Management Team shall implement the response action set forth in the approved final RAW. The implementation may be conducted without Department oversight.

(d) Within 60 days of receipt of a draft RAP and technically complete draft CEQA information submitted by a Private Site Manager under section 69005, the Department will approve or reject the draft RAP and draft CEQA information. To be approved, the draft RAP shall include a description of past community involvement efforts, recommendations for future public participation activities, and the Administrative Record List and shall be prepared in accordance with all the requirements of Chapter 6.8 or, for sites selected pursuant to section 25396.6 of the Health and Safety Code, Chapter 6.85, and applicable regulations and guidance documents. The draft RAP may be prepared without Department oversight.

(1) If the Department rejects a draft RAP and draft CEQA information, the Department will state the reasons for rejecting the draft RAP and draft CEQA information and describe the actions needed to correct identified deficiencies.

(2) If the Department rejects a draft RAP and draft CEQA information, the Private Site Manager or a member of the Private Site Management Team may submit a revised draft RAP and draft CEQA information. The Department will have an additional 60 days from receipt of a revised submittal to review any new documents, reports, or workplans provided with the revised submittal.

(3) If the Department considers the draft RAP and draft CEQA information to be technically complete and if the Department approves the draft RAP and draft CEQA information, the Department will release the draft RAP and the draft CEQA determination for a 30–day public comment period. During that period, at least one community meeting will be held to solicit public comment. The draft RAP and draft CEQA determination will be noticed in a newspaper of general circulation at the beginning of the public comment period. Following the public comment period, the Department will comply with subsection (f) of section 25356.1 of the Health and Safety Code, prepare a written notice that informs the community of the final selected remedy, and file a Notice of Determination under section 21108 of the Public Resources Code.

(e) The Private Site Manager shall prepare and submit to the Department for the Department's approval a final RAP in accordance with Chapter 6.8 or, for sites selected pursuant to section 25396.6 of the Health and Safety Code, Chapter 6.85, and applicable regulations and guidance documents. The Department may approve or reject a final RAP. If the Department approves a final RAP, the Private Site Management Team shall implement the approved final RAP. The implementation may be conducted without Department oversight.

(f) The Private Site Management Team shall prepare a remedial design for implementation of the response action selected in the approved final RAP and submit the remedial design to the Department for approval. Within 60 days of receipt of the remedial design submitted by the Private Site Management Team, the Department will approve or reject the remedial design. The Department will review the remedial design to ensure that it is consistent with implementation of the final RAP approved by the Department under subsection (e).

(1) If the Department rejects the final remedial design, it will state the reasons for rejecting the document and describe the actions needed to correct the identified deficiencies.

(2) If the Department rejects the final remedial design, the Private Site Management Team may submit a revised remedial design. The Department will have an additional 60 days from receipt of a revised submittal to review any new documentation provided.

(3) If the Department approves the final remedial design, the Private Site Manager will prepare a fact sheet describing pertinent activities associated with the remedial action including, but not limited to hours of operation, noise, traffic, and duration of work. Upon the Department's approval, the Private Site Manager will issue the fact sheet to the public and, if appropriate, the Private Site Manager will conduct a public meeting.

(4) The Private Site Management Team shall implement the approved remedial design. The implementation may be conducted without Department oversight.

(g) The Private Site Manager shall submit a request for a certificate of completion to the Department upon completion of the response action. Except as provided under paragraph (7), within 30 days from receipt of a request for a certificate of completion submitted by a Private Site Manager, the Department will review the request and will approve or reject it.

(1) Requests for a certificate of completion shall include all information specified in subsection (a) of section 25395.8 of the Health and Safety Code, documentation that any required Land Use Controls have been recorded as specified in subsection (b)(4) of section 25395.8 of the Health and Safety Code, documentation that all necessary response actions have been satisfactorily completed and that the information contained in the certification request is accurate to the best of the Private Site Manager's knowledge, and any other documentation required by the Department to demonstrate the response action was completed in accordance with the requirements of Chapter 6.8 or, for sites selected pursuant to section 25396.6 of the Health and Safety Code, Chapter 6.85.

(2) For sites that require O&M, the Private Site Manager shall submit a plan for implementation of any O&M measures required by the approved RAW or approved final RAP, including periodic submittal of reports and data to document the effectiveness of the O&M, documentation that any long–term monitoring, maintenance, and abatement systems are functioning as designed, and documentation that the O&M will achieve and maintain the abatement goals established by the approved final RAP.

The Private Site Manager shall submit documentation demonstrating that financial assurance requirements for O&M have been met as specified under section 25355.2 of the Health and Safety Code.

(3) The Department will evaluate a certification request to ensure that response actions have been completed in accordance with the approved RAW or the approved final RAP for the site. The Department will determine if there is sufficient documentation to support the RAW or final RAP. The Department may request the Private Site Manager to provide additional documentation to support the RAW or final RAP. The Department will also determine if appropriate Land Use Controls have been recorded as specified in subsection (b)(4) of section 25395.8 of the Health and Safety Code.

(4) If the Department approves the certification request, the Department will prepare a certification that includes a certificate of completion, requirements for ongoing reporting and O&M, and a description of applicable Land Use Controls. The Department will provide the certification to the Project Proponent, all known responsible parties, and owners of properties located adjacent to the site, and will make the certification available to the community where the site is located.

(5) If the Department rejects the certification request, it will state the reasons for rejecting the request and describe the actions needed to correct the identified deficiencies.

(6) If the Department rejects the certification request, the Private Site Manager or a member of a Private Site Management Team may submit a revised certification request. The Department will have an additional 30 days from its receipt of a revised certification request to review any new documentation provided by the Private Site Manager or member of a Private Site Management Team and to approve or reject the revised certification request.

(7) If the site is selected for an audit under section 69012, the Department will not approve or reject a certification request until the audit is completed.

(h) After a site has been certified, the Department may determine that the site no longer qualifies for certification under the Private Site Management Program, if the Department makes one or more of the following findings:

(1) Subsequent monitoring, testing, or analysis indicates that the remedial action standards and objectives were not achieved or are not being maintained;

(2) One or more of the conditions, restrictions or limitations imposed on the site as part of the remedial action or certification are violated;

(3) Site monitoring or O&M activities that are required as part of the response action or certification are not adequately funded or are not properly performed;

(4) A hazardous substance release is discovered at the site that was not the subject of the site investigation and response action for which the site certification was issued;

(5) A Material Deviation from the conditions known at the time the Department issued a certification, or the discovery of new information, causes the Department to require further site investigation and response action in order to prevent a significant risk to human health and safety or to the environment; or

(6) The Private Site Manager or a member of the Private Site Management Team induced the Department to issue the site certification by means of misrepresentation, fraud, negligence, or intentional nondisclosure of information.

(i) After a site has been certified, if the Department determines that the site no longer qualifies for certification under subsection (g), the Department will withdraw its approval for the response action conducted at the site and will provide the Private Site Manager with written notification setting forth the reasons for the Department's determination.

NOTE: Authority cited: Sections 25351.5 and 25395.15, Health and Safety Code. Reference: Sections 25355.2, 25395.2, 25395.3, 25395.4., 25395.5, 25395.6, 25395.7, 25395.8, 25395.11, 25395.12, 25395.13 and 25396.6, Health and Safety Code; and Sections 21108 and 21166, Public Resources Code.

HISTORY

1. New section filed 3–26–2003; operative 4–25–2003 (Register 2003, No. 13).

§ 69012. Department Audits.

(a) The Department will conduct audits of the sites subject to the Private Site Management Program as specified in section 25395.12 of the Health and Safety Code.

(b) A Project Proponent, Private Site Manager, and members of a Private Site Management Team shall cooperate fully with a Department audit by providing complete access to information, records, technical data, reports, sampling data, photographs, maps, and files related to a response action conducted by a Private Site Manager or a member of a Private Site Management Team.

(c) The Project Proponent shall retain all data, reports, the Administrative Record, and any other relevant documents prepared by the Private Site Manager or a member of a Private Site Management Team for a minimum of ten (10) years after the conclusion of all site activities, including ongoing O&M, under this article and Article 8.

(d) If the Department requests that some or all of these documents be preserved for a longer period of time, the Project Proponent shall: (1) comply with that request; (2) deliver the documents to the Department, or (3) permit the Department to copy the documents prior to destruction. The Project Proponent shall notify the Department in writing at least six (6) months prior to destroying any documents prepared under this article or Article 8.

(e) If a Department audit finds that the performance of a Private Site Manager failed to meet the minimum performance standards set forth in this article, Article 8, Chapter 6.8 or, for sites selected pursuant to section 25396.6 of the Health and Safety Code, Chapter 6.85, or if the Department makes any of the findings set forth in subsection (*l*) of section 25570.3, of the Health and Safety Code, the Department may take appropriate action to do any one or more of the following: (1) deny, suspend or rescind the Environmental Assessor — Class II registration of the Private Site Manager; (2) reject the request for a certificate of completion under subsection (g) of section 69011; (3) withdraw its approval for the response action under subsection (i) of section 69011.

(f) If a site for which a request for a certificate of completion has been submitted under section 69011 is selected for audit, the Department will notify the Project Proponent in writing within twenty–one (21) working days of submittal of the certification request that the site has been selected for audit.

(g) The Department will complete an audit within forty–five (45) working days of sending the audit notification to the Project Proponent. The Department will submit the audit findings to the Project Proponent in writing.

(h) If a site for which a certificate of completion has been submitted under section 69011 is selected for an audit, the Department's time to act on the certification request will be extended to forty–five (45) working days from sending the audit notification to the Project Proponent or until the audit is completed, whichever comes first. If the audit reveals facts or information that would require additional response action, the Department will reject the certification request.

NOTE: Authority cited: Sections 25351.5 and 25395.15, Health and Safety Code. Reference: Sections 25395.12, 25395.13, 25395.15 and 25570.3, Health and Safety Code.

HISTORY

1. New section filed 3–26–2003; operative 4–25–2003 (Register 2003, No. 13).

§ 69013. Withdrawal of Department Approval.

(a) The Department may withdraw approval of an Application Package or may terminate a Private Site Management Program Agreement under subsection (e) of section 69007 if any of the following apply:

(1) The Department determines that a Private Site Manager, a member of a Private Site Management Team, or a Project Proponent has failed to comply with any of the requirements of this article, Article 8, Chapter 6.8 or, for sites selected under section 25396.6 of the Health and Safety Code, Chapter 6.85;

(2) The Department determines that the Project Proponent has failed to comply with the Private Site Management Program Agreement for the site;

(3) At any time the Department determines that there is a substantial likelihood that further significant environmental damage or human exposure may occur as the response action is implemented;

(4) The Department determines that the site is no longer appropriate for the Private Site Management Program because the conditions set forth in subsection (a) of section 25395.3 of the Health and Safety Code do not exist or because the site is placed on the list created pursuant to section 25356 of the Health and Safety Code; or

(5) An action or decision of the Project Proponent or Private Site Management Team is based on a Material Deviation from information in a Department-approved PEA report, RAW, RAP, or remedial design.

(b) If the Department determines that grounds for withdrawal of approval or termination exist under subsection (a), the Department will withdraw its approval of the Application Package in writing or will terminate the Private Site Management Program Agreement in writing and state the reasons for the withdrawal or termination. If the Department withdraws its approval of the Application Package, the site is no longer appropriate for conducting a response action under the Private Site Management Program.

(c) The Department may withdraw its approval for conducting a response action under subsection (i) of section 69011.

NOTE: Authority cited: Sections 25351.5 and 25395.15, Health and Safety Code. Reference: Sections 25395.2, 25395.3, 25395.4, 25395.10, 25395.11, 25395.12, 25395.15 and 25396.6, Health and Safety Code.

HISTORY

1. New section filed 3-26-2003; operative 4-25-2003 (Register 2003, No. 13).

Chapter 51.5. Assessment of School Sites

Article 1. Phase I Environmental Site Assessments (Proposed New and Expanding School Sites)

§ 69100. Purpose.

The purpose of these regulations is to provide guidelines for a Phase I Environmental Site Assessment (Phase I) conducted prior to acquisition of a school site, or where the school district owns or leases a school site, prior to the construction of a project (hereinafter referred to as "Proposed School Site") under title 1, division 1, part 10.5, chapter 1 of the Education Code (commencing with section 17210). This article contains guidelines for completion of a Phase I and a Phase I Addendum. Procedures are included for sampling and submitting analytical results for lead in soil from lead-based paint, organochlorine pesticides in soil from termiticide application, and/or polychlorinated biphenyls in soil from electrical transformers in Phase I Addendum reports to the Department of Toxic Substances Control.

NOTE: Authority cited: Section 58012, Health and Safety Code; and Section 17210(g), Education Code. Reference: Sections 17210(g) and 17213.1, Education Code.

HISTORY

1. New chapter 51.5 (sections 69100-69107) and section filed 9-3-2002 as an emergency; operative 9-3-2002 (Register 2002, No. 36). A Certificate of Compliance must be transmitted to OAL by 1-2-2003 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 9-3-2002 order transmitted to OAL 12-26-2002 and filed 2-10-2003 (Register 2003, No. 7).
3. Amendment of chapter 51.5 heading, new article 1 heading and amendment of section filed 11-27-2006 as an emergency; operative 11-27-2006 (Register 2006, No. 48). A Certificate of Compliance must be transmitted to OAL by 3-27-2007 or emergency language will be repealed by operation of law on the following day.
4. Amendment of chapter 51.5 heading, new article 1 heading and amendment of section refiled 3-20-2007 as an emergency; operative 3-20-2007 (Register 2007, No. 12). A Certificate of Compliance must be transmitted to OAL by 7-18-2007 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 3-20-2007 order, including further amendment of section, transmitted to OAL 6-15-2007 and filed 7-18-2007 (Register 2007, No. 29).

§ 69101. Applicability.

This article applies to the preparation of a Phase I pursuant to section 17213.1 of the Education Code.

NOTE: Authority cited: Section 58012, Health and Safety Code; and Section 17210(g), Education Code. Reference: Sections 17210(g) and 17213.1, Education Code.

HISTORY

1. New section filed 9-3-2002 as an emergency; operative 9-3-2002 (Register 2002, No. 36). A Certificate of Compliance must be transmitted to OAL by 1-2-2003 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 9-3-2002 order transmitted to OAL 12-26-2002 and filed 2-10-2003 (Register 2003, No. 7).
3. Amendment filed 11-27-2006 as an emergency; operative 11-27-2006 (Register 2006, No. 48). A Certificate of Compliance must be transmitted to OAL by 3-27-2007 or emergency language will be repealed by operation of law on the following day.
4. Amendment refiled 3-20-2007 as an emergency; operative 3-20-2007 (Register 2007, No. 12). A Certificate of Compliance must be transmitted to OAL by 7-18-2007 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 3-20-2007 order transmitted to OAL 6-15-2007 and filed 7-18-2007 (Register 2007, No. 29).

§ 69102. Definitions.

The definitions set forth in this section govern interpretation of this article. Unless the context requires otherwise and except as provided in this section, definitions contained in title 1, division 1, part 10.5, chapter 1 of the Education Code (commencing with section 17210) or in division 20, chapter 6.8 of the Health and Safety Code (commencing with section 25300) apply to the terms used in this article. If a definition appears in both title 1, division 1, part 10.5, chapter 1 of the Education Code and in division 20, chapter 6.8 of the Health and Safety Code, the definition in the Education Code governs interpretation of this article.

(a) "Department" means the Department of Toxic Substances Control.

(b) "Lead" means lead from lead-based paint only, for purposes of this article.

(c) "OCPs" means organochlorine pesticides from termiticide application only, for purposes of this article.

(d) "PCBs" means polychlorinated biphenyls from electrical transformers only, for purposes of this article.

(e) "Phase I" means a Phase I Environmental Site Assessment which is a preliminary assessment of a site to determine whether there has been or may have been a release of a hazardous material, or whether a naturally occurring hazardous material is present, based on reasonably available information about the site and the area in its vicinity.

(f) "Phase I Addendum" means a report containing results of sampling and analysis, limited to results of lead in soil from lead-based paint, organochlorine pesticides in soil from termiticide application, and/or polychlorinated biphenyls in soil from electrical transformers, for sites where these contaminants are the only potential release or presence of hazardous materials identified in the Phase I. A Phase I Addendum is submitted to the Department along with or after the submittal of the Phase I.

(g) "USEPA Test Methods" means "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" as referenced in section 69103, subsection (a)(2).

NOTE: Authority cited: Section 58012, Health and Safety Code; and Section 17210(g), Education Code. Reference: Sections 17210(g) and 17213.1, Education Code.

HISTORY

1. New section filed 9-3-2002 as an emergency; operative 9-3-2002 (Register 2002, No. 36). A Certificate of Compliance must be transmitted to OAL by 1-2-2003 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 9-3-2002 order, including amendment of first paragraph, transmitted to OAL 12-26-2002 and filed 2-10-2003 (Register 2003, No. 7).
3. Amendment of first paragraph and subsection (a), new subsection (c) and subsection relettering filed 11-27-2006 as an emergency; operative 11-27-2006 (Register 2006, No. 48). A Certificate of Compliance must be transmitted to OAL by 3-27-2007 or emergency language will be repealed by operation of law on the following day.

4. Amendment of first paragraph and subsection (a), new subsection (c) and subsection relettering refiled 3–20–2007 as an emergency; operative 3–20–2007 (Register 2007, No. 12). A Certificate of Compliance must be transmitted to OAL by 7–18–2007 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 3–20–2007 order, including further amendment of section, transmitted to OAL 6–15–2007 and filed 7–18–2007 (Register 2007, No. 29).

§ 69103. References.

(a) When used in this article, the following publications are incorporated by reference:

(1) "American Society for Testing and Materials (ASTM) Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process," ASTM Standard E–1527–05, approved November 1, 2005; available from American Society for Testing and Materials, 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428–2959, (610) 832–9585; website http://www/astm.org

(2) "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846 Third Edition, November 1986, as amended by Updates I (July, 1992), II (September, 1994), IIA (August, 1993), IIB (January, 1995), III (December, 1996), IIIA (April, 1998), IIIB (June, 2005), draft IVA (May, 1998) and draft IVB (November, 2000); available from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402, (202) 512–1800; website http://www.epa.gov/epaoswer/hazwaste/test/sw846.htm

(3) "USEPA Contract Laboratory Program National Functional Guidelines for Organic Data Review," EPA 540/R–99/008; October 1999, available from National Technical Information Service (NTIS), United States Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161; (703) 487–4650; website http://www.epa.gov/superfund/programs/clp/guidance.htm

(4) "USEPA Contract Laboratory Program National Functional Guidelines for Inorganic Data Review," EPA 540/R–04/004, October 2004, available from the United States Environmental Protection Agency website http://www.epa.gov/superfund/programs/clp/guidance.htm

(5) "Guidance on Environmental Data Verification and Data Validation," EPAQA/G–8; EPA 240/R–02/004; November 2002 available from United States Environmental Protection Agency, Quality Staff (2811 R), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; (202) 564–6830; website http://www.epa.gov/quality/qa_docs.html

NOTE: Authority cited: Section 58012, Health and Safety Code; and Section 17210(g), Education Code. Reference: Sections 17210(g) and 17213.1, Education Code.

HISTORY

1. New section filed 9–3–2002 as an emergency; operative 9–3–2002 (Register 2002, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–2–2003 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending subsection (a)(5) filed 11–18–2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 47).
3. Certificate of Compliance as to 9–3–2002 order, including amendment of subsections (a)(3) and (a)(4), transmitted to OAL 12–26–2002 and filed 2–10–2003 (Register 2003, No. 7).
4. Amendment filed 11–27–2006 as an emergency; operative 11–27–2006 (Register 2006, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–2007 or emergency language will be repealed by operation of law on the following day.
5. Amendment refiled 3–20–2007 as an emergency; operative 3–20–2007 (Register 2007, No. 12). A Certificate of Compliance must be transmitted to OAL by 7–18–2007 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–20–2007 order, including further amendment of section, transmitted to OAL 6–15–2007 and filed 7–18–2007 (Register 2007, No. 29).

§ 69104. Preparation of a Phase I and Phase I Addendum.

(a) A Phase I shall be prepared for the Proposed School Site pursuant to this article and section 17213.1, subdivision (a), of the Education Code. The Phase I shall be submitted to the Department for review and approval.

(b) The Phase I shall be conducted in accordance with the ASTM Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process cited in section 69103, subsection (a)(1).

(c) The Phase I shall include, but is not limited to, the following:

(1) a site map describing the boundary of the project and the current development on the property;

(2) a description of the intended use of the property that includes whether the school district intends to use all or a portion of the parcel, the type of site (new or expanding), type of school proposed (grade levels of students), and the disposition of any existing structures;

(3) past and existing land uses, including but not limited to, easements; adjacent properties; former governmental use; residential, industrial, or commercial uses; and

(4) recommendations consistent with section 69108 of this article.

(d) In addition to the contaminants and sources identified in the ASTM Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process cited in section 69103, subsection (a)(1), the Phase I shall identify and evaluate all sources for the potential release or presence of hazardous material on the Proposed School Site, including, but not limited to, the following:

(1) agricultural use,
(2) debris or stockpiles,
(3) fill material,
(4) electrical transformers, oil filled electrical equipment, or hydraulic systems,
(5) government use or ownership,
(6) grading activities
(7) illegal drug manufacturing,
(8) lead–based paint application,
(9) mines,
(10) naturally occurring hazardous materials,
(11) petroleum deposits or use,
(12) railroad use or easements,
(13) residential use,
(14) surface drainage pathways,
(15) termiticide application, and
(16) utility easements.

(e) If a Phase I Addendum is submitted more than 180 days subsequent to the date that the Phase I was conducted, or if a Phase I was conducted for the Proposed School Site more than 180 days prior to its submittal to the Department, information to verify current site conditions shall be submitted to the Department. Verification activities include, but are not limited to, the following: (1) document any changes to site conditions or site boundaries; and (2) update interviews, searches, reviews, visual inspections, and declarations as described in the ASTM Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process cited in section 69103, subsection (a)(1).

(f) A Phase I Addendum shall be submitted to the Department for review and approval along with or after submittal of the Phase I for the site. The Phase I Addendum shall include recommendations consistent with section 69109 of this article and may contain results of sampling and analysis as follows:

(1) lead in soil performed in accordance with the sampling protocols described in section 69105 of these regulations,

(2) OCPs in soil performed in accordance with the sampling protocols described in section 69106 of these regulations, and/or

(3) PCBs in soil performed in accordance with the sampling protocol described in section 69107 of these regulations.

NOTE: Authority cited: Section 58012, Health and Safety Code; and Section 17210(g), Education Code. Reference: Sections 17210(g) and 17213.1, Education Code.

HISTORY

1. New section filed 9–3–2002 as an emergency; operative 9–3–2002 (Register 2002, No. 36). A Certificate of Compliance must be transmitted to OAL by

1–2–2003 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 9–3–2002 order, including amendment of subsection (e), transmitted to OAL 12–26–2002 and filed 2–10–2003 (Register 2003, No. 7).

3. Amendment of subsections (a)–(c) filed 11–27–2006 as an emergency; operative 11–27–2006 (Register 2006, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–2007 or emergency language will be repealed by operation of law on the following day.

4. Amendment of subsections (a)–(c) refiled 3–20–2007 as an emergency; operative 3–20–2007 (Register 2007, No. 12). A Certificate of Compliance must be transmitted to OAL by 7–18–2007 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 3–20–2007 order, including amendment of section heading and further amendment of section, transmitted to OAL 6–15–2007 and filed 7–18–2007 (Register 2007, No. 29).

§ 69105. Sampling for Lead in Soil.

(a) The school district may choose to submit sampling data for lead in soil in one of the following reports: (1) the Phase I Addendum; or (2) the Preliminary Endangerment Assessment, in accordance with subsections (b) through (h) below:

(b) Lead–based paint evaluation. Unless the Department determines that lead in soil is not a concern based on review of the Phase I, soil samples shall be collected for any structures on the Proposed School Site with paint or surface coatings, with the exception of residential structures constructed on or after January 1, 1979, and schools constructed on or after January 1, 1993, to evaluate possible lead in soil.

(c) Prior to demolition of structures or removal of foundations or slabs, or movement of soils on the Proposed School Site, pre–demolition sampling for lead in soil shall be implemented in accordance with the following protocols:

(1) Sample collection. Surface soil samples (zero to six inches) shall be collected from around the perimeter of the structures, in areas with the highest potential for lead deposits (such as under windows, doors, porches, fences and stairs, and in drainage areas). If concrete or asphalt borders a structure, surface soil samples (zero to six inches) shall be collected from the nearest unpaved areas where associated run off may collect. The Department may require collection of samples from underneath existing paved areas, based upon the history of the site. The Department shall be consulted to determine the number and location of samples necessary to adequately evaluate possible lead in soil at the Proposed School Site.

(2) Additional sample collection. If lead is detected in soil samples, the Department may require additional step–out samples on the Proposed School Site to determine the horizontal and vertical extent of contamination.

(d) If demolition of structures has occurred, but foundations or slabs are present and the site has not been graded, post–demolition sampling for lead in soil shall be implemented in accordance with the following protocols:

(1) Sample collection. Surface soil samples (zero to six inches) shall be collected from two sets of sampling locations around the perimeter of the former structures. The first set should be collected in areas with the highest potential for lead deposits (such as under pre–existing windows, doors, porches, doors, fences and stairs, and in drainage areas). The second set should be collected at the extent of soil disturbed by removal of demolition debris. If concrete or asphalt borders a structure, surface soil samples (zero to six inches) shall be collected from the nearest unpaved areas where associated run off may collect. If soil is exposed within the footprints of former structures, surface soil samples (zero to six inches) shall be collected within the footprints. The Department may require collection of samples from underneath existing paved areas, based upon the history of the site. The Department shall be consulted to determine the number and location of samples necessary to adequately evaluate possible lead in soil at the Proposed School Site.

(2) Additional sample collection. If lead is detected in soil samples, the Department may require additional step–out samples on the Proposed School Site to determine the horizontal and vertical extent of contamination.

(e) If demolition of structures, removal of foundations or slabs, or movement of soil on the Proposed School Site has occurred, post–demolition sampling for lead in soil shall be implemented in accordance with the following protocols:

(1) Sample collection. The Proposed School Site shall be divided into grids as determined in consultation with the Department, and surface (zero to six inches) and subsurface (two to three feet) soil samples shall be collected from the center of each grid.

(2) Additional sample collection. If lead is detected in soil samples, the Department may require additional step–out samples on the Proposed School Site to determine the horizontal and vertical extent of contamination.

(f) Sample analysis. Soil samples shall be analyzed for lead using USEPA Test Methods, and may include laboratory and on–site field analyses for lead in soil using portable X–Ray Fluorescence (XRF) instrumentation. The uppermost soil from the core (closest to ground surface) shall be analyzed.

(g) Laboratory quality control. Quality Control (QC) procedures specified in USEPA Test Methods shall be followed. The data shall be qualified in accordance with the National Functional Guidelines cited in section 69103, subsection (a)(4) and USEPA guidance cited in section 69103, subsection (a)(5).

(h) Data Submission. Data identifying concentrations of lead detected in soil samples collected from the Proposed School Site shall be submitted to the Department.

NOTE: Authority cited: Section 58012, Health and Safety Code; and Section 17210(g), Education Code. Reference: Sections 17210(g) and 17213.1, Education Code.

HISTORY

1. New section filed 9–3–2002 as an emergency; operative 9–3–2002 (Register 2002, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–2–2003 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 9–3–2002 order, including amendment of subsection (a), transmitted to OAL 12–26–2002 and filed 2–10–2003 (Register 2003, No. 7).

3. Amendment of section heading and section filed 7–18–2007; operative 7–18–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 29).

§ 69106. Sampling for OCPs in Soil.

(a) The school district may choose to submit sampling data for OCPs in soil in one of the following reports: 1) the Phase I Addendum; or 2) the Preliminary Endangerment Assessment, in accordance with subsections (b) through (h) below:

(b) OCP evaluation. Unless the Department determines that OCPs in soil are not a concern based on review of the Phase I, soil samples shall be collected for any structures on the Proposed School Site with wood components constructed prior to January 1, 1989, to evaluate possible OCPs in soil.

(c) Prior to demolition of structures or removal of foundations or slabs, or movement of soil on the Proposed School Site, pre–demolition sampling for OCPs in soil shall be implemented in accordance with the following protocols:

(1) Sample collection. Surface (zero to six inches) and subsurface (two to three feet) soil samples shall be collected from around the perimeter of the structures, in areas with the highest potential for OCPs (such as near footings). If the structures have raised floors or porches, surface soil samples (zero to six inches) shall be collected beneath these areas. If concrete or asphalt borders a structure, the Department shall require collection of surface (zero to six inches) and subsurface (two to three feet) soil samples underneath existing paved areas. The Department shall be consulted to determine the number and location of samples necessary to adequately evaluate possible OCPs in soil at the Proposed School Site.

(2) Additional sample collection. If OCPs are detected in soil samples, the Department may require additional step–out samples on the Proposed

School Site to determine the horizontal and vertical extent of contamination.

(d) If demolition of structures has occurred, but foundations or slabs are present and the site has not been graded, post–demolition sampling for OCPs in soil shall be implemented in accordance with the following protocols:

(1) Sample collection. Surface (zero to six inches) and subsurface (two to three feet) soil samples shall be collected from two sets of sampling locations around the perimeter of the structures. The first set should be collected in areas with the highest potential for OCPs (such as near footings). The second set should be collected at the extent of soil disturbed by removal of demolition debris. If soil is exposed within the footprints of former structures, surface (zero to six inches) and subsurface (two to three feet) soil samples shall be collected within the footprints. If concrete or asphalt borders a structure, the Department shall require collection of surface (zero to six inches) and subsurface (two to three feet) soil samples underneath existing paved areas. The Department shall be consulted to determine the number and location of samples necessary to adequately evaluate possible OCPs in soil at the Proposed School Site.

(2) Additional sample collection. If OCPs are detected in soil samples, the Department may require additional step–out samples on the Proposed School Site to determine the horizontal and vertical extent of contamination.

(e) If demolition of structures, removal of foundations or slabs, or movement of soil on the Proposed School Site has occurred, post–demolition sampling for OCPs in soil shall be implemented in accordance with the following protocols:

(1) Sample collection. The Proposed School Site shall be divided into grids as determined in consultation with the Department, and surface (zero to six inches) and subsurface (two to three feet) soil samples shall be collected from the center of each grid.

(2) Additional sample collection. If OCPs are detected in soil samples, the Department may require additional step–out samples on the Proposed School Site to determine the horizontal and vertical extent of contamination.

(f) Sample analysis. Soil samples shall be analyzed for OCPs using USEPA Test Methods.

(g) Laboratory quality control. Quality Control (QC) procedures specified in USEPA Test Methods shall be followed. The data shall be qualified in accordance with the National Functional Guidelines cited in section 69103, subsection (a)(3) and USEPA guidance cited in section 69103, subsection (a)(5).

(h) Data submission. Data identifying concentrations of OCPs detected in soil samples collected from the Proposed School Site shall be submitted to the Department.

NOTE: Authority cited: Section 58012, Health and Safety Code; and Section 17210(g), Education Code. Reference: Sections 17210(g) and 17213.1, Education Code.

HISTORY

1. New section filed 9–3–2002 as an emergency; operative 9–3–2002 (Register 2002, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–2–2003 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 9–3–2002 order, including amendment of subsections (a) and (d), transmitted to OAL 12–26–2002 and filed 2–10–2003 (Register 2003, No. 7).
3. Renumbering of former section 69106 to section 69107 and new section 69106 filed 11–27–2006 as an emergency; operative 11–27–2006 (Register 2006, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–2007 or emergency language will be repealed by operation of law on the following day.
4. Renumbering of former section 69106 to section 69107 and new section 69106 refiled 3–20–2007 as an emergency; operative 3–20–2007 (Register 2007, No. 12). A Certificate of Compliance must be transmitted to OAL by 7–18–2007 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 3–20–2007 order, including further amendment of section, transmitted to OAL 6–15–2007 and filed 7–18–2007 (Register 2007, No. 29).

§ 69107. Sampling for PCBs in Soil.

(a) The school district may choose to submit data for PCBs in soil in one of the following reports: (1) the Phase I Addendum; or (2) the Preliminary Endangerment Assessment, in accordance with subsections (b) through (f) below.

(b) Electrical transformer evaluation. Soil samples shall be collected for any historical (even if removed or replaced by a newer transformer) or current transformers on or adjacent to the Proposed School Site that were installed before January 1, 1979, to evaluate possible PCBs in soil on the Proposed School Site.

(c) Sample collection. Surface (zero to six inches) and subsurface (two to three feet) soil samples shall be collected in close proximity to the base of each pole or pad–mounted electrical transformer. If PCBs are detected in soil samples, the Department may require additional step–out samples on the Proposed School Site to determine the horizontal and vertical extent of contamination.

(d) Sample analysis. Initially, only surface soil samples (zero to six inches) shall be analyzed for PCBs using USEPA Test Methods. If PCBs are detected in surface soil samples (zero to six inches), the subsurface soil samples (two to three feet) that were collected at depth shall also be analyzed.

(e) Laboratory quality control. QC procedures specified in USEPA Test Methods shall be followed. The data shall be qualified in accordance with the National Functional Guidelines cited in section 69103, subsection (a)(3) and USEPA guidance cited in section 69103, subsection (a)(5).

(f) Data submission. Data identifying concentrations of PCBs detected in soil samples collected from the Proposed School Site shall be submitted to the Department.

NOTE: Authority cited: Section 58012, Health and Safety Code; and Section 17210(g), Education Code. Reference: Sections 17210(g) and 17213.1, Education Code.

HISTORY

1. New section filed 9–3–2002 as an emergency; operative 9–3–2002 (Register 2002, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–2–2003 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 9–3–2002 order, including amendment of subsections (a) and (d), transmitted to OAL 12–26–2002 and filed 2–10–2003 (Register 2003, No. 7).
3. Renumbering of former section 69107 to section 69108 and renumbering of former section 69106 to section 69107 filed 11–27–2006 as an emergency; operative 11–27–2006 (Register 2006, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–2007 or emergency language will be repealed by operation of law on the following day.
4. Renumbering of former section 69107 to section 69108 and renumbering of former section 69106 to section 69107 refiled 3–20–2007 as an emergency; operative 3–20–2007 (Register 2007, No. 12). A Certificate of Compliance must be transmitted to OAL by 7–18–2007 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 3–20–2007 order, including amendment of section heading and section, transmitted to OAL 6–15–2007 and filed 7–18–2007 (Register 2007, No. 29).

§ 69108. Phase I Recommendations.

The Phase I shall contain one of the following recommendations:

(a) A further investigation of the Proposed School Site is not required since the Phase I demonstrates that neither a release of hazardous material nor the presence of a naturally occurring hazardous material, which would pose a threat to public health or the environment, was indicated at the site.

(b) Lead in soil from lead–based paint, OCPs in soil from termiticide application, and/or PCBs in soil from electrical transformers are the only potential sources of contamination at a Proposed School Site and an evaluation is recommended but has not yet been completed. Results of this evaluation will be submitted to the Department in a Phase I Addendum.

(c) A Preliminary Endangerment Assessment is needed, including sampling or testing to determine one or more of the following:

(1) If a release of hazardous material has occurred and, if so, the extent of the release.

(2) If there is the threat of a release of hazardous materials.

(3) If a naturally occurring hazardous material is present.

NOTE: Authority cited: Section 58012, Health and Safety Code; and Section 17210(g), Education Code. Reference: Sections 17210(g) and 17213.1, Education Code.

HISTORY

1. Renumbering of former section 69107 to new section 69108, including amendment of subsection (a), filed 11-27-2006 as an emergency; operative 11-27-2006 (Register 2006, No. 48). A Certificate of Compliance must be transmitted to OAL by 3-27-2007 or emergency language will be repealed by operation of law on the following day.
2. Renumbering of former section 69107 to section 69108, including amendment of subsection (a), refiled 3-20-2007 as an emergency; operative 3-20-2007 (Register 2007, No. 12). A Certificate of Compliance must be transmitted to OAL by 7-18-2007 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 3-20-2007 order, including further amendment of section, transmitted to OAL 6-15-2007 and filed 7-18-2007 (Register 2007, No. 29).

§ 69109. Phase I Addendum Recommendations.

The Phase I Addendum shall contain one of the following recommendations:

(a) A further investigation of the Proposed School Site is not required. A Phase I Addendum that contains data from evaluation of lead, OCPs, or PCBs in soil may recommend that further investigation of the site is not required if all of the following apply:

(1) the Phase I Addendum demonstrates that lead in soil from lead-based paint, OCPs in soil from termiticide application, and/or PCBs in soil from electrical transformers are the only potential sources of contamination at a Proposed School Site; and

(2) concentrations of lead, OCPs, and/or PCBs in soil do not exceed concentrations determined by the Department on a case-by-case basis to be protective of public health and the environment.

(b) A Preliminary Endangerment Assessment is needed, including sampling or testing, to determine one or more of the following:

(1) If a release of hazardous material has occurred and, if so, the extent of the release.

(2) If there is the threat of a release of hazardous materials.

(3) If a naturally occurring hazardous material is present.

NOTE: Authority cited: Section 58012, Health and Safety Code; and Section 17210(g), Education Code. Reference: Sections 17210(g) and 17213.1, Education Code.

HISTORY

1. New section filed 7-18-2007; operative 7-18-2007 pursuant to Government Code section 11343.4 (Register 2007, No. 29).

Chapter 52. Voluntary Registration of Environmental Assessors

§ 69200. Definitions.

For purposes of this Chapter, definitions in Health and Safety Code section 25570.2 shall apply unless further specified in this section:

(a) "Corrective Action Plan" means a workplan that details the actions to be taken to achieve the required corrective action.

(b) "Department" means the Department of Toxic Substances Control.

(c) "Director" means the Director of the Department of Toxic Substances Control or designee.

(d) "Environmental quality assessment" or "assessment" means a systematic, documented, periodic, and objective review of the operations and practices, used by any commercial or industrial business or individual whose activities are regulated or conducted under Chapter 6.5 (commencing with section 25100), Chapter 6.8 (commencing with section 25300), or Chapter 6.95 (commencing with section 25500) of the Health and Safety Code, to achieve, monitor, maintain, and where feasible exceed, compliance with state environmental, worker health and safety, and public health requirements for the manufacture and use of hazardous substances and the generation and disposal of hazardous wastes. A complete environmental assessment includes a number of different components related to hazardous substance and hazardous waste management and requires the expertise of a variety of assessors. An environmental assessment includes technical or managerial recommendations or actions, of a general or specific nature, in one or more of the following areas:

(1) Recommendations or specific actions for complying with, and where feasible, exceeding legal requirements in areas related to hazardous substance and hazardous waste management, including, but not limited to, air quality, water quality, emergency preparedness and response, hazard communications, and occupational safety and health.

(2) A qualitative review, or where feasible, a quantitative review, of the risks resulting from occupational, public or environmental exposure to hazardous substances.

(3) Recommendations or actions for anticipating and minimizing the risks specified in paragraph (2), including any potential liability, associated with regulated and unregulated hazardous substances, and any suggested management procedures or practices.

(e) "Feasibility Study" means the identification and evaluation of technically feasible and effective remedial action alternatives to protect public health and the environment at a hazardous waste or hazardous substance release site, or other activities deemed necessary by the lead agency for the development of a remedial action plan, corrective action plan, removal action workplan or equivalent. A feasibility study shall include treatability studies as necessary to evaluate potential performance and the cost of treatment and/or remedial work.

(f) "Hazardous Substance or Hazardous Waste Site Cleanup Opinion" means the opinion of a Registered Environmental Assessor (REA) II of the need for further investigation or remedial work at a site.

(g) "Lead Agency" means the Department of Toxic Substances Control, the State Water Quality Control Board, Regional Water Quality Control Boards, Certified Unified Program Agency, as defined in Health and Safety Code section 25281(c)(1), Participating Agency, as defined in Health and Safety Code section 25281(c)(2), Unified Program Agency, as defined in Health and Safety Code section 25281(c)(3), or the local, authorized administering agency, overseeing the assessment or mitigation activities at a site, and pursuant to these regulations.

(h) "Multi-media investigations" means hazardous waste or hazardous substance site assessment and characterization work requiring serious evaluation of pathways of exposure in two or more of the environmental media consisting of air, water and soil.

(i) "Operation and Maintenance" means those activities initiated or continued following completion of a remedial or removal action that are deemed necessary by the lead agency to protect the public health and the environment and achieve or maintain the abatement goals established by the final remedial action plan, corrective action plan, removal action workplan, or equivalent.

(j) "Phase I Environmental Assessment" or "Phase I" means a preliminary site assessment based on reasonably available knowledge of a site, including, but not limited to, historical use of the property, prior releases, visual and other surveys, records, consultant reports, and regulatory agency correspondence. Sampling or testing is not required as part of the Phase I survey. The Phase I survey shall be certified by an REA and shall indicate whether the REA believes that further investigation, including sampling and analysis is necessary to determine whether a release has occurred, or to determine the extent of a release.

(k) "Physical Sciences" means any of the sciences, such as physics and chemistry, that analyze the nature and properties of energy and non-living matter.

(l) "Preliminary Endangerment Assessment" means an activity which is performed to determine whether current or past waste management practices have resulted in the release or threatened release of hazardous substances which pose a threat to human health or the environment. A Preliminary Endangerment Assessment shall include a review of the Phase I Environmental Assessment, sampling, data evaluation, public participation (as required by section 69211(a)(2), human health screening, ecological screening and a report of the findings of the assessment.

(m) "Professional–level environmental experience" means all of an REA II's professional experience that is determined by the Department to be experience applying scientific or engineering principles in a physical or biological science, engineering or related field. This experience includes instances where the REA II's conclusions formed the basis for reports, studies and other similar documents. Professional–level environmental experience shall be in positions in which scientifically supportable technical decision–making, as well as professional responsibility and integrity are demonstrated with minimal supervision.

(n) "Professional–level site mitigation experience" means supervisory or project management related experience obtained through managing or supervising scientific or engineering staff who are conducting multimedia investigations, assessments, and cleanup work at hazardous substance and hazardous waste sites. Such experience shall be of a professional–level and indicative of an REA II's competence to conduct investigations, assessments, and remedial work and/or to render opinions regarding investigations, assessments, and remedial work at response action sites. Professional–level site mitigation experience shall be in positions in which the applicant evaluated and selected scientific or technical methodologies for conducting assessments, containments, or removals at sites; supervised or coordinated other professionals in the conduct of scientific and technical tasks necessary to complete assessments, containments, or removals; and drew scientifically supportable technical conclusions, made recommendations, and issued opinions based on the results of assessments, containments, or removals.

(o) "REA I Applicant" means any person applying for registration or renewal of registration as a California Registered Environmental Assessor — Class I (REA I).

(p) "REA II Applicant" means any person applying for registration or renewal of registration as a California Registered Environmental Assessor — Class II (REA II).

(q) "Registered Environmental Assessor — Class I (REA I) means an individual registered by the State of California pursuant to California Code of Regulations, title 22, sections 69200 through 69202, who, through academic training, occupational experience, and reputation, is qualified to objectively conduct one or more aspects of an environmental assessment. REA Is may include, but shall not be limited to, specialists trained as analytical chemists, professional engineers, epidemiologists, geologists, hydrologists, attorneys with expertise in hazardous substance law, physicians, industrial hygienists, toxicologists, and environmental program managers. The work of an REA I includes, but is not limited to, Phase I assessments and waste reduction plans and reports prepared pursuant to the Hazardous Waste Source Reduction and Management Review Act of 1989, commencing with section 25244.12 of the Health and Safety Code.

(r) "Registered Environmental Assessor — Class II (REA II)" means an individual registered by the State of California pursuant to California Code of Regulations, title 22, sections 69203 through 69214. An REA II issues hazardous substance and hazardous waste site cleanup opinions which describe whether contamination is present at a site, the work needed to reduce the risk from that contamination and whether that work has been completed. These opinions are based upon careful study of a site, including, but not limited to, preliminary endangerment assessments, remedial investigations, feasibility studies, remedial design, remedial actions, corrective action plans, remedial action plans and other work associated with the investigation, assessment and remediation of hazardous waste and hazardous substance release sites.

(s) "Registrant" means any person registered as an REA I or REA II.

(t) "Remedial Action" means those actions which are:

(1) consistent with a permanent remedy, that are taken instead of, or in addition to, removal actions in the event of a release or threatened release of a hazardous waste or hazardous substance into the environment;

(2) necessary to monitor, assess, and evaluate a release or a threatened release of a hazardous substance or hazardous waste; and

(3) Site operation and maintenance.

(u) "Remedial Action Plan" means a workplan which shall include the following:

(1) Health and safety risks posed by the conditions at the site. When considering these risks, the lead agency shall consider scientific data and reports which may have a relationship to the site,

(2) The effect of contamination or pollution levels upon the present, future, and probable beneficial uses of contaminated, polluted or threatened resources.

(3) The effect of alternative remedial action measures on the reasonable availability of groundwater resources for present, future, and probable beneficial uses.

(4) Site specific characteristics, including the potential for offsite migration of hazardous substances, the surface or subsurface soil, and the hydrogeologic conditions, as well as preexisting background contamination levels.

(5) Cost effectiveness of alternative remedial action measures.

(6) The potential environmental impacts of alternative remedial action measures including the reduction of toxicity, mobility and volume.

(7) A statement of reasons setting forth the basis for the removal or remedial actions selected, including an evaluation of each proposed alternative, and reasons for the rejection of alternative remedial or removal actions.

(v) "Remedial Design" means the detailed engineering plan to implement the remedial action alternative or initial remedial measure approved by the lead agency.

(w) "Remedial Investigation" means those actions deemed necessary by the lead agency to characterize the nature, full extent and risks posed by a hazardous substance and/or hazardous waste release at a site, identify the public health and environment threat posed by the release, collect data on possible remedies, and otherwise evaluate the site for purposes of developing a remedial action plan, corrective action plan, removal action workplan or equivalent. Characterization of the nature, full extent and risks shall include:

(1) Gathering information sufficient to support an informed risk management decision regarding which remedy appears to be most appropriate for a given site; and

(2) Data gathering shall be adequate to characterize site conditions, determine the nature and extent of wastes, determine whether there has been a groundwater discharge or a threat to surface or groundwater, assess exposure pathways and risks to public health and the environment.

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(3) The risk characterization and assessment shall be performed in a manner consistent with scientifically acceptable risk assessment practices and shall take into consideration guidance published by the Department.

(x) "Removal Action" means the cleanup or removal of released hazardous substances from the environment or the taking of other actions as may be necessary to prevent, minimize, or mitigate damage which may otherwise result from a release or threatened release of hazardous substances or hazardous wastes.

(y) "Removal Action Workplan" means a workplan which is developed to carry out a removal action, in an effective manner, which is protective of the public health and safety and the environment. The removal action workplan shall include a detailed engineering plan for conducting the removal action, a description of the onsite contamination, the goals to be achieved by the removal action, and any alternative removal options that were considered and rejected and the basis for that rejection.

(z) "Rescind" or "rescission" means to suspend or revoke an REA registration.

NOTE: Authority cited: Sections 25570.3 and 58004.5, Health and Safety Code. Reference: Sections 25570–25570.4, Health and Safety Code.

HISTORY

1. Change without regulatory effect adding new chapter 52 heading, renumbering title 14, division 8, chapter 3 (sections 19030–19044) to title 22, division 4.5, chapter 52 (sections 69200–69214) and renumbering and amending title 14, section 19030 to title 22, section 69200 filed 7–27–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 30).

§ 69201. REA I Critiera for Registration.

The applicant for registration as an REA I shall:

(a) Demonstrate a minimum of five (5) years full time experience in the REA I applicant's general field of expertise, acquired within the last eight (8) years.

(b) Demonstrate a minimum of two (2) years substantial experience in performing environmental assessments relating to hazardous substances and hazardous wastes acquired within the last four (4) years.

(c) Possess a bachelor's or higher degree from an accredited college or university in a physical or biological science, engineering or law. State certification, licensing or registration, or certification by a nationally recognized professional association in a physical or biological science, engineering or law shall be considered equivalent to such training. Five (5) years substantial experience performing environmental assessments relating to hazardous wastes or hazardous substances acquired within the last eight (8) years shall also be considered equivalent to such training.

(d) Provide the names, addresses, telephone numbers and professional affiliations of three or more references who as employers, supervisors, co–workers at equal or higher level or clients can attest to the accuracy of the evidence provided by the applicant, to the applicant's professional competence and character, or both.

(e) Apply using a form provided by the Director entitled "Registered Environmental Assessor (REA I) Application Form."

(f) An REA I applying for REA II registration shall also follow the application procedures in sections 69204 through 69205.

(g) Forward a $50 (fifty dollar) non–refundable application fee by check, credit card, or money order made payable to the Department of Toxic Substances Control, Registered Environmental Assessor Program, or DTSC/REA I Program, along with the application.

NOTE: Authority cited: Sections 25570.3 and 58004.5, Health and Safety Code. Reference: Sections 25570–25570.4, Health and Safety Code.

HISTORY

1. Change without regulatory effect renumbering title 14, section 19031 to title 22, section 69201, including amendment of section heading, section and NOTE, filed 7–27–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 30).

§ 69202. REA I Application, Renewal, and Denial or Rescission of Registration.

(a) The Director shall compile and update a directory of REA Is, based on the application information, and other relevant information brought to the Director's attention.

(b) Upon notice of acceptance, and annually thereafter, the REA I applicant shall forward the sum of $100 (one hundred dollars) by check, credit card, or money order made payable to the DTSC/REA I Program. When submitting the annual renewal fee, REA Is may also update the application information they previously submitted.

(c) Each REA I shall apply for renewal of registration every five (5) years following the date of initial registration by completing a renewal application form provided by the Director and paying the application renewal fee of $50.00 (fifty dollars).

(d) For cause, the Director may revoke or suspend the registration of any REA I and delete that assessor's name from the directory.

NOTE: Authority cited: Sections 25570.3 and 58004.5, Health and Safety Code. Reference: Sections 25570–25570.4, Health and Safety Code.

HISTORY

1. Change without regulatory effect renumbering title 14, section 19032 to title 22, section 69202, including amendment of section heading, section and NOTE, filed 7–27–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 30).

§ 69203. REA II Criteria for Registration.

(a) If an REA II applicant is not already registered as an REA I, then the REA II application will be considered an application for both an REA I and an REA II.

(b) Minimum Educational Requirements

(1) REA II applicants for registration shall have graduated from an accredited college or university and possess a bachelor of science degree, in a physical or biological science, engineering or a related field.

(2) The Department shall consider a United States (U.S.) college or university to be an accredited college or university when it is accredited by Middle States Association of Colleges and Schools, New England Association of Schools and Colleges, North Central Association of Colleges and Schools, Southern Association of Colleges and Schools, or Western Association of Schools and Colleges. A college or university which is located outside of the U.S. shall be considered an accredited college or university on the basis of its accreditation status in the education system which has jurisdiction. REA II applicants with a foreign degree may be required to submit a report by a member of the National Association of Credential Evaluation Services, Inc., or other qualified credential evaluation service.

(c) Minimum Experience Requirements.

(1) Each REA II applicant shall possess a minimum of eight (8) years of professional–level environmental experience, acquired within the last ten (10) years, of which four (4) years shall be professional–level site mitigation experience acquired in the last six (6) years. Professional–level environmental experience and professional–level site mitigation experience performed for less than an average minimum of thirty (30) hours per week will be applied toward the satisfaction of these requirements on a pro rata basis.

(d) Professional–Level Environmental Experience

(1) Professional–level environmental experience shall be determined by the REA II applicant's professional experience in positions in which the REA II applicant demonstrated scientifically supportable technical decision–making, as well as professional responsibility and integrity with minimal supervision.

(e) Professional–Level Site Mitigation Experience

(1) Professional–level site mitigation experience shall be determined by the REA II applicant's professional experience in positions in which:

(A) More than 50% of the REA II applicant's professional–level site mitigation position included assessment, containment, or removal action responsibilities;

(B) An REA II applicant evaluated and selected scientific or technical methodologies for conducting assessments, containments, or removals at sites;

(C) An REA II applicant supervised or coordinated other professionals in the conduct of scientific and technical tasks necessary to complete assessments, containments, removals; and,

(D) An REA II applicant drew scientifically supportable technical conclusions, made recommendations, and issued opinions based on the results of assessments, containments, or removals.

(2) Professional-level site mitigation experience shall be determined in part by at least four references, named by the REA II applicant, with professional-level site mitigation experience. At least one reference shall be from a qualified representative of a lead agency with regulatory authority over the cleanup work at a hazardous substance or hazardous waste release site at which the REA II applicant acted as project manager. None of the references shall be related to the REA II applicant by birth or marriage.

(3) Professional-level site mitigation experience shall be gained through exercising a broad range of responsibilities with assessments, containments, or removals, and may not be gained through exercising a narrow spectrum of responsibilities for parts and/or components of assessments, containments, or removals. Professional-level site mitigation experience may consist of work which includes the contributions of others in reaching decisions on waste site cleanup activities; however, REA II applicants must demonstrate to the Department that they have been an active participant and a principal decision maker, including but not limited to a team leader, project leader or principal scientist.

(f) All eligibility requirements contained herein shall be applied without regard to the race, creed, color, gender, religion, or national origin of the individual.

NOTE: Authority cited: Sections 25570.3 and 58004.5, Health and Safety Code. Reference: Sections 25570–25570.4, Health and Safety Code.

HISTORY

1. Change without regulatory effect renumbering title 14, section 19033 to title 22, section 69203, including amendment of section and NOTE, filed 7–27–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 30).

§ 69204. REA II Application for Registration.

(a) An REA II applicant shall complete the Application Form titled "Application for Registration, Registered Environmental Assessor II, August 1998 (Form REA 3, revised 9/98 or electronic Form REA 4, revised 9/98), hereby incorporated by reference, and file the form, together with the REA II application fee, with the Department.

(b) Incomplete REA II applications, and applications that are not legible, not typed or printed, not completed according to the instructions, or not accompanied by the requisite fee and references, may be rejected by the Department if the REA II applicant fails to correct identified deficiencies within 30 days of notification of the deficiency. The Department may require the REA II applicant, at any time during the review period, to submit references and information related to the REA II applicant's employment history, education, experience, and any other information necessary to clarify an REA II application.

(c) If requested, the REA II applicant shall submit copies of transcripts from the appropriate educational institution or other documentation issued by educational institutions from which the REA II applicant earned the degree to demonstrate the minimum education requirement for registration. If an REA II applicant is requested to provide official transcripts for a degree, the REA II application will not be considered complete and will not be reviewed until official transcripts of the degree have been received by the Department.

(d) The Department shall consider each REA II application and the REA II applicant's eligibility for registration. The Department shall review each REA II application and supporting evidence to determine the completeness of the REA II application. Within 30 days of receipt, the Department shall inform the REA II applicant, in writing, that the REA II application is complete and accepted for review, or that the REA II application is deficient and what additional information is necessary.

(e) All fees required by provisions of Health and Safety Code section 25570.3(e)(2) as implemented by the Department shall be transmitted by money order, bank draft, credit card, or check, payable to: "DTSC/REA II."

(1) The following are the fees:
$125 nonrefundable application fee
$275 annual fee

Total initial REA II application and annual fees are $400.

NOTE: Authority cited: Sections 25570.3 and 58004.5, Health and Safety Code. Reference: Sections 25570–25570.4, Health and Safety Code.

HISTORY

1. Change without regulatory effect renumbering title 14, section 19034 to title 22, section 69204, including amendment of section and NOTE, filed 7–27–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 30).

§ 69205. DTSC's Review of Application.

Within 60 days of the Department's determination that an REA II's application is complete under section 69204, the Department shall determine if the REA II applicant meets the minimum criteria in section 69203 and is eligible for registration.

(a) The Department shall review the application for registration of an REA II for current REA I registration. If the applicant for REA II is not registered as an REA I, he or she shall become registered as an REA I pursuant to section 69201.

(b) The Department shall review REA II applications meeting the requirements of section 69204, to determine if the applicant's experience and education qualify the applicant to perform the tasks required of an REA II. In order to make this determination, the Department shall consider all relevant information pertaining to the REA II applicant's education and experience as required by Health and Safety Code section 25570.3(c), including, but not limited to, information concerning:

(1) The knowledge, skill, and expertise of the REA II applicant;

(2) The duration of the REA II applicant's relevant employment;

(3) The previous performance of the REA II applicant with regard to various investigative methods used, including but not limited to, whether such experience includes work at sites where subsurface investigations have occurred;

(4) The previous performance of the REA II applicant with regard to the various types of remedial systems designed and monitored;

(5) The performance of the REA II applicant with regard to risk and exposure assessments;

(6) The number of individuals and disciplines of other professionals supervised or coordinated by the REA II applicant;

(7) The scientific defensibility of conclusions reached and recommendations and opinions presented by the REA II applicant; and

(8) The degree to which the REA II applicant relied upon other environmental consultants and the degree to which the REA II applicant's decision-making responsibilities were differentiated from others.

(c) Within 120 days of determining that an REA II application is complete under section 69204, the Department shall notify the REA II applicant, in writing, if registration is approved or denied.

(d) The determinations in sections 69203 and 69205 are made by reviewing evidence, including but not limited to references, reports prepared by the REA II applicant, time sheets, affidavits, comments, the REA II Application Form titled "Application for Registration, Registered Environmental Assessor II, August 1998 (Form REA 3, revised 9/98 or electronic Form REA 4, revised 9/98), hereby incorporated by reference, and other sources the Director deems appropriate.

NOTE: Authority cited: Sections 25570.3 and 58004.5, Health and Safety Code. Reference: Sections 25570–25570.4, Health and Safety Code.

HISTORY

1. Change without regulatory effect renumbering title 14, section 19035 to title 22, section 69205, including amendment of section heading, section and NOTE, filed 7–27–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 30).

§ 69206. REA II Denial of Registration.

(a) The Department may deny the registration of an REA II applicant for the following reasons:

(1) Failure to meet the minimum criteria in sections 69203 or 69204.

(2) Any of the grounds listed in Health and Safety Code section 25570.3 (*l*)(1) through (8).

(3) Knowingly making any materially false or inaccurate statement in any application, record, or report.

(b) Conviction of a felony or misdemeanor involving an act of moral turpitude, as used in Health and Safety Code section 25570.3(*l*)(7) includes, but is not limited to, fraud, bribery, the falsification of records, perjury, forgery, conspiracy, profiteering or money laundering.

(c) Conviction of a felony or misdemeanor as used in Health and Safety Code sections 25570.3(*l*)(6) and (7) means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

(d) An REA II applicant who is denied registration as an REA II may appeal to the Department for re-evaluation of their REA II application pursuant to section 69209. An appeal shall be filed within sixty (60) days after the date of the denial notice.

(e) The Director has final authority with respect to the denial of the registration of an REA II applicant.

NOTE: Authority cited: Sections 25570.3 and 58004.5, Health and Safety Code. Reference: Sections 25570–25570.4, Health and Safety Code.

HISTORY

1. Change without regulatory effect renumbering title 14, section 19036 to title 22, section 69206, including amendment of section and NOTE, filed 7–27–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 30).

§ 69207. REA II Renewal of Registration.

(a) Registration shall be renewed within five (5) years of the anniversary date of the initial registration or renewed registration.

(b) The Department may deny a renewal for any of the following:

(1) The Registrant fails to demonstrate that his or her experience during the prior five (5) years did not consist of more than 50% of professional-level site mitigation or professional-level environmental experience.

(2) The Director determines, pursuant to Health and Safety Code section 25570.3 (i), that factual complaints regarding the work of the REA II warrant denying renewal; or

(3) Any of the grounds listed in section 69206.

NOTE: Authority cited: Sections 25570.3 and 58004.5, Health and Safety Code. Reference: Sections 25570–25570.4, Health and Safety Code.

HISTORY

1. Change without regulatory effect renumbering title 14, section 19037 to title 22, section 69207, including amendment of section and NOTE, filed 7–27–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 30).

§ 69208. REA II Rescission of Registration.

(a) The Director may rescind, temporarily or permanently, the registration of an REA II, or take other disciplinary action for any of the following reasons:

(1) The grounds specified in Health and Safety Code section 25570.3(*l*); or

(2) any of the grounds for denial of registration specified in sections 69206(a) or 69211.

(3) The REA II knowingly makes any materially false or inaccurate statement in any record, report, plan, file, log, or register that the REA II keeps, or is required to keep, pursuant to any law.

(4) The REA II knowingly and materially falsifies, tampers with, alters, destroys, or disturbs any mechanism, recovery, or control system, or any monitoring device or method that the REA II maintains, or that is required to be maintained pursuant to any law, regulation, or order for the protection of the public health and safety or the environment.

(5) The REA II knowingly makes any materially false or inaccurate statement in any application, record, report, certification, plan, design, or statement signed by the REA II.

(6) The REA II knowingly allows or orders others to do any of the actions specified in paragraphs (3) to (5).

(7) The REA II knowingly, or with reckless disregard for the risk, treats, handles, transports, disposes of, or stores any hazardous substance in a manner that causes any unreasonable risk of fire, explosion, serious injury, or death.

(8) The REA II knowingly, while performing the work of an REA, places another person in imminent danger of death or serious bodily injury.

(9) The REA II makes a false statement of fact required to be revealed in the application for registration.

(10) The REA II accepts, or agrees to accept, any payment that is in any way contingent upon the completion of a response action.

(11) The REA II accepts or agrees to accept any payment that is in any way contingent upon a specified finding, opinion or result of the services rendered.

(12) The REA II fails to comply with Health and Safety Code sections 25570.3 through 25570.4; and California Code of Regulations, title 22, sections 69200 through 69214.

(13) The REA II lends his or her registration to any other person or knowingly permits the use by another person.

NOTE: Authority cited: Sections 25570.3 and 58004.5, Health and Safety Code. Reference: Sections 25570–25570.4, Health and Safety Code.

HISTORY

1. Change without regulatory effect renumbering title 14, section 19038 to title 22, section 69208, including amendment of section and NOTE, filed 7–27–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 30).

§ 69209. REA II Appeal Procedures.

(a) The following procedures shall govern the appeal of decisions made under sections 69206, 69207, and 69208.

(1) An appeal shall be filed within sixty (60) days after the date of the rescission or denial notice.

(2) An appeal shall be made in writing and shall state the reason therefore. An appeal shall be supported by additional evidence, more references, affidavits, and supplemental information.

(3) The Director may reject an appeal which is not filed within the time period provided in subsection (a)(1).

(4) The Director shall notify, in writing and within 120 days of receipt of the appeal, each REA II applicant or registrant who appeals under this section of the Director's decision to either:

(A) Affirm the prior administrative decision and the reasons for the decision, or

(B) Reverse the prior administrative decision.

(5) If the Director affirms the prior administrative decision, the Director shall notify the REA II applicant or registrant of his or her right to a hearing under the Administrative Procedure Act (Government Code sections 11500 through 11530). A hearing shall be scheduled if the REA II applicant or registrant makes a written request for a hearing within 60 days after service of the notice of denial.

NOTE: Authority cited: Sections 25570.3 and 58004.5, Health and Safety Code. Reference: Sections 25570–25570.4, Health and Safety Code.

HISTORY

1. Change without regulatory effect renumbering title 14, section 19039 to title 22, section 69209, including amendment of section and NOTE, filed 7–27–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 30).

§ 69210. REA II Audits.

(a) The Department may perform periodic audits of work performed and certified by an REA II in order to ensure the work of the REA II meets the desired standard of performance specified in Health and Safety Code section 25570.3(*l*).

(b) The Department may perform periodic audits of work performed outside the Private Site Management Act (Health and Safety Code, Division 20, Chapter 6.8, Article 9), commencing with section 25395.1) and certified by an REA II to ensure the work of the REA II meets the desired standard of performance specified in Health and Safety Code section 25570.3(k) and described in section 69211.

(c) Deficiencies found during an audit, not severe enough to fall below the desired standard of performance shall be reported to the REA II and the lead agency.

(d) If, as the result of an audit, the Department finds that the work of an REA II is not in compliance with the provisions of sections 69208 and 69211, the registration of the REA II may be rescinded.

NOTE: Authority cited: Sections 25570.3 and 58004.5, Health and Safety Code. Reference: Sections 25570–25570.4, Health and Safety Code.

HISTORY

1. Change without regulatory effect renumbering title 14, section 19040 to title 22, section 69210, including amendment of section and NOTE, filed 7–27–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 30).

§ 69211. Performance Standards.

(a) When conducting audits pursuant to section 69210 and when determining whether an REA II meets the desired standard of performance, the Department will consider the following:

(1) Gross Negligence

Gross negligence means the REA II's failure to comply with the following:

(A) In conducting a Preliminary Endangerment Assessment, as defined in section 69200(*l*) or a Phase I assessment as defined in section 69200(j), the REA II shall establish and document whether a release or threatened release of hazardous substances and hazardous wastes has occurred and whether that release or threatened release poses a threat to public health or the environment.

(B) The Preliminary Endangerment Assessment shall include a community survey of residents, businesses, local officials and property owners surrounding the site to determine if there is significant community interest or controversy concerning the site. The REA II may use or employ an alternative mechanism to make this determination if it is approved by the lead agency.

(C) While conducting a Remedial Investigation as defined in section 69200(w) and a Feasibility Study as defined in section 69200(d) the REA II shall efficiently and effectively characterize the nature and extent of risks posed by hazardous substances and hazardous wastes and evaluate remedial options. Characterization of the nature and extent of risks shall include:

1. The gathering of information sufficient to support an informed risk management decision regarding which remedy appears to be most appropriate for a given site; and,

2. Data gathering that is adequate to characterize site conditions, determine the nature and extent of wastes, determine whether there has been a groundwater discharge or a threat to surface or groundwater, assess exposure pathways and risks to public health and the environment, conduct treatability studies as necessary and evaluate potential performance and evaluate the cost of treatment and/or remedial work.

3. The risk characterization and assessment shall be performed in a manner consistent with scientifically acceptable risk assessment practices, and shall take into consideration guidance published by the Department.

(D) In conducting a Remedial Design as defined in section 69200(v), a Remedial Action as defined in section 69200(t), and/or a Removal Action as defined in section 69200(x), the REA II shall detail the steps to be taken to meet the remedial objectives outlined in the Remedial Action Plan as defined in section 69200(u), Corrective Action Plan as defined in section 69200(a), Removal Action Workplan as defined in section 69200(y) or equivalent plan required by a Lead Agency.

(E) When conducting remedial work that results in ongoing operations and maintenance as defined in section 69200(i), the REA II shall prepare an operations and maintenance (O&M) plan which includes the O&M schedule, cost estimate, and provides for periodic value engineering and review.

(2) Inexcusable Neglect of Duty

(A) An inexcusable neglect of duty means the failure of the REA II to comply with the following:

1. Hold paramount the public health, safety and welfare, comply with all applicable laws and regulations and;

a. Apply the knowledge and skill referenced in sections 69203 and 60205, and required of an REA II practicing in California;

b. Act in a manner that protects the health and safety of the public, the health and safety of workers, and the environment;

c. Provide proof of insurance to each client, prior to beginning work for that client.

2. Exercise independent professional judgment and objectivity in any professional statement, testimony or report issued by the REA II.

3. Make a good faith and reasonable effort to identify and obtain relevant material, data, reports and other information, regarding conditions at the site upon which an REA II shall render a cleanup opinion. The Remedial Action Plan as defined in section 69200(u), Removal Action Workplan as defined in section 69200(y) or Corrective Action Plan as defined in section 69200(a), prepared by the REA II shall describe the efforts of the REA II to obtain relevant material, data, reports, and other information.

4. Evaluate and select sound scientific or technical methodologies for conducting investigations, assessments, and remedial work at hazardous substance and hazardous waste sites;

5. Develop sound technical conclusions, well–founded and documented recommendations and competent opinions based upon the results of multi–media investigations and assessments;

6. Have an understanding of relevant and applicable laws, regulations and guidance related to the investigation, assessment and remediation of hazardous substances and hazardous wastes; and

7. Render a hazardous substance or hazardous waste site cleanup opinion only when the REA II possesses the necessary education, training, and experience to render such an opinion, and the REA II has:

a. Managed, supervised or actually performed the work which is required to render a hazardous substance or hazardous waste site cleanup opinion; and,

b. Relied on personal professional experience, expertise, education or training; or,

c. Relied, in part, upon the advice of one or more professionals whom the REA II determines are qualified and possess the necessary education, training, expertise and experience in other areas, outside the registered professional's area of professional practice.

8. In rendering a hazardous substance or hazardous waste site cleanup opinion, the REA II shall disclose and explain the relevant facts, data, and other information which support the opinion. The opinion shall include all qualifications and limitations of the opinion.

9. If an REA II identifies an imminent hazard or a condition of imminent or substantial endangerment at a property at which the REA II is providing professional services, the REA II shall:

a. Immediately notify the client, and when necessary, an agency with authority to respond to an emergency, of the imminent hazard or the imminent and substantial endangerment, and of the need to notify the lead agency.

b. As soon as possible, but within 24 hours, the REA II shall orally notify the lead agency. Written confirmation of such notice shall be submitted electronically, by personal delivery or mail within 72 hours.

10. An REA II shall notify the client and lead agency, within 10 calendar days of learning of material facts, data or other information, which existed at the time a previous opinion was rendered by the assessor or a predecessor assessor, that:

a. Supports a hazardous waste site cleanup opinion contrary to his or her previously rendered opinion, or;

b. Supports a hazardous waste site cleanup opinion contrary to a previous opinion by a predecessor REA II.

(3) Intentional misrepresentation of laboratory data or other intentional fraud.

(4) Charging for services not rendered, or for performing services that are not reasonably necessary.

(5) Abandonment of any client, except for instances involving the nonpayment of fees for services rendered.

(6) Conviction of a felony or misdemeanor involving the regulation of hazardous wastes, hazardous substances, or hazardous materials, including, but not limited to, a conviction of a felony or misdemeanor under section 25395.13.

(7) Conviction of a felony or misdemeanor involving moral turpitude.

(8) Knowingly making a false statement regarding a material fact or knowingly failing to disclose a material fact in connection with an application for registration.

(b) Upon request or referral by the Department, by any lead agency, or by any person, the Department shall investigate complaints regarding the REA II's failure to meet applicable performance standards. The Department may conduct or arrange for the conduct of a preliminary investigation to determine the truth and validity of the allegations set forth in a complaint.

(c) To facilitate disposition of a complaint, (at any time prior to the commencement of an adjudicatory proceeding), the Department may request the person filing the complaint, the REA II who is the subject of the complaint, or any other person to attend an informal conference to discuss the complaint, and any associated technical data, report, records, environmental samples, photographs, maps and files.

(d) An REA II shall provide the Director's authorized representative with complete access at any reasonable hour of the day to all requested information including, but not limited to, technical data, reports, records, environmental samples, photographs, maps, and files used in the preparation of certified reports, contracts, invoices, payment schedules and accounting records, with the exception of proprietary or other confidential information related to implementation and compliance with the requirements of the REA II Program.

(e) An REA II shall not submit a report or render a hazardous substance or hazardous waste site cleanup opinion in a report which does not include the signature and registration number of the REA II. If other registered professionals perform engineering, geologic or other professional services which are included in, or form the basis of the report or opinion, the signature and registration number of each shall be included in the report or opinion.

(f) All engineering or geologic work shall be performed by a registered professional in compliance with the requirements of the Professional Engineers Act, Business and Professions Code sections 6700–6799 and the Geologist and Geophysicist Act, Business and Professions Code sections 7800–7887.

NOTE: Authority cited: Sections 25570.3 and 58004.5, Health and Safety Code. Reference: Sections 25570–25570.4, Health and Safety Code.

HISTORY

1. Change without regulatory effect renumbering title 14, section 19041 to title 22, section 69211, including amendment of section and NOTE, filed 7–27–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 30).

§ 69212. State Licensing Match System.

(a) The Department shall take action regarding the registration of any Registered Environmental Assessor when appropriate pursuant to the Welfare and Institutions Code, section 11350.6. Such action may include, but is not limited to, the issuance of a temporary registration, rescission of a registration, denial of an REA application for renewal, or any other action authorized or required pursuant to section 11350.6 of the Welfare and Institutions Code.

NOTE: Authority cited: Sections 25570.3 and 58004.5, Health and Safety Code; section 11350.6, Welfare and Institutions Code. Reference: Sections 25570–25570.4, Health and Safety Code.

HISTORY

1. Change without regulatory effect renumbering title 14, section 19042 to title 22, section 69212, including amendment of section and NOTE, filed 7–27–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 30).

§ 69213. Limitations on Registration for Aliens.

(a) All eligibility requirements contained herein shall be applied without regard to the race, creed, color, gender, religion, or national origin of the individual applying for the public benefit.

(b) Pursuant to section 411 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. No. 104–193 (PRWORA), (8 U.S.C. § 1621), and notwithstanding any other provision of this division, aliens who are not qualified aliens, nonimmigrant aliens under the Immigration and Nationality Act (INA)(8 U.S.C. § 1101 et seq.), or aliens paroled into the United States under section 212 (d)(5) of the INA (8 U.S.C. § 1182 (d)(5)) for less than one year, are not eligible for registration as an REA II as set forth in section 25570.2 of the Health and Safety Code, except as provided in 8 U.S.C. § 1621(c)(2).

(c) A qualified alien is an alien who, at the time he or she applies for, receives, or attempts to receive an REA II registration, is, under section 431(b) and (c) of the PRWORA (8 U.S.C. § 1641(b) and (c)), any of the following:

(1) An alien who is lawfully admitted for permanent residence under the INA (8 U.S.C. § 1101 et seq.).

(2) An alien who is granted asylum under section 208 of the INA (8 U.S.C. § 1158).

(3) A refugee who is admitted to the United States under section 207 of the INA (8 U.S.C. § 1157).

(4) An alien who is paroled into the United States under section 212(d)(5) of the INA (8 U.S.C. § 1182 (d)(5)) for a period of at least one year.

(5) An alien whose deportation is being withheld under section 243 (h) of the INA (8 U.S.C. § 1253(h))(as in effect immediately before the effective date of section 307 of division C of Public Law 104–208) or section 241(b)(3) of such Act (8 U.S.C. § 1251(b)(3)) as amended by section 305 (a) of division C of Public Law 104–208.

(6) An alien who is granted conditional entry pursuant to section 203 (a)(7) of the INA as in effect prior to April 1, 1980, (8 U.S.C. § 1153(a)(7)) (See editorial note under 8 U.S.C. § 1101, "Effective Date of 1980 Amendment.")

(7) An alien who is a Cuban or Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980 (8 U.S.C. § 1522 note)).

(8) An alien who meets all of the conditions of subparagraphs (A), (B), (C), and (D) below:

(A) The alien has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse's or parent's family residing in the same household as the alien, and the spouse or parent of the alien consented to, or acquiesced in, such battery or cruelty. For purposes of this subsection, the term "battered or subjected to extreme cruelty" includes, but is not limited to being the victim of any act or threatened act of violence including any forceful detention, which results or threatens to result in physical or mental injury. Rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence.

(B) There is a substantial connection between such battery or cruelty and the need for the benefits to be provided in the opinion of the Department. For purposes of this subsection, the following circumstances demonstrate a substantial connection between the battery or cruelty and the need for the benefits to be provided:

1. The benefits are needed to enable the alien to become self–sufficient following separation from the abuser.

2. The benefits are needed to enable the alien to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the alien from the abuser.

3. The benefits are needed due to a loss of financial support resulting from the alien's separation from the abuser.

4. The benefits are needed because the battery or cruelty, separation from the abuser, or work absences or lower job performance resulting from the battery or extreme cruelty or from legal proceedings relating thereto (including resulting child support, child custody, and divorce actions) cause the alien to lose his or her job or to earn less or to require the alien to leave his or her job for safety reasons.

5. The benefits are needed because the alien requires medical attention or mental health counseling, or has become disabled, as a result of the battery or extreme cruelty.

6. The benefits are needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the alien's ability to care for his or her children (e.g., inability to

house, feed or clothe children or to put children into a day care for fear of being found by the abuser).

7. The benefits are needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser.

8. The benefits are needed to provide medical care during a pregnancy resulting from the abuser's sexual assault or abuse of, or relationship with, the alien and/or to care for any resulting children.

9. Where medical coverage and/or health care services are needed to replace medical coverage or health care services the alien had when living with the abuser.

(C) The alien has a petition that has been approved or has a petition pending which sets forth a prima facie case for:

1. status as a spouse or child of a United States citizen pursuant to clause (ii), (iii), or (iv) of section 204 (a)(1)(A) of the INA (8 U.S.C.§ 1154 (a)(1)(A)(ii), (iii) or (iv)),

2. classification pursuant to clause (ii) or (iii) of section 204 (a)(1)(B) of the INA (8 U.S.C. § 1154 (a)(1)(B)(ii) or (iii)),

3. suspension of deportation and adjustment of status pursuant to section 244(a)(3) of the INA (8 U.S.C. § 1254, as in effect prior to April 1, 1997 [Pub.L. 104–208, sec. 501 (effective September 30, 1996 pursuant to sec. 591); Pub.L. 104–208, sec 304 (effective April 1, 1997, pursuant to sec. 309); Pub.L. 105–33, sec. 5581 (effective pursuant to sec 5582)] (incorrectly codified as "Cancellation of removal under section 240A of such Act [8 U.S.C. § 1229 b] (as in effect prior to April 1, 1997)."

4. status as a spouse or child of a United States citizen pursuant to clause (i) of section 204 (a)(1)(A) of the INA (8 U.S.C. § 1154 (a)(1)(A)(i)) or classification pursuant to clause (i) of section 204(a)(1)(B) of the INA (8 U.S.C. § 1154 (a)(1)(B)(i)), or

5. cancellation of removal pursuant to section 240A (b)(2) of the INA (8 U.S.C. § 1229b (b)(2)).

(D) For the period for which benefits are sought, the individual responsible for the battery or cruelty does not reside in the same household or family eligibility unit as the individual subjected to the battery or cruelty.

(9) An alien who meets all of the conditions of subparagraphs (A), (B), (C), (D), and (E) below:

(A) The alien has a child who has been battered or subjected to extreme cruelty in the United States by a spouse or a parent of the alien (without the active participation of the alien in the battery or cruelty), or by a member of the spouse's or parent's family residing in the same household as the alien, and the spouse or parent consented or acquiesced to such battery or cruelty. For purposes of this subsection, the term "battered or subjected to extreme cruelty" includes, but is not limited to being the victim of any act or threatened act of violence including any forceful detention, which results or threatens to result in physical or mental injury. Rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence.

(B) The alien did not actively participate in such battery or cruelty.

(C) There is a substantial connection between such battery or cruelty and the need for the benefits to be provided in the opinion of the Department. For purposes of this subsection, the following circumstances demonstrate a substantial connection between the battery or cruelty and the need for the benefits to be provided:

1. The benefits are needed to enable the alien's child to become self–sufficient following separation from the abuser.

2. The benefits are needed to enable the alien's child to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the alien's child from the abuser.

3. The benefits are needed due to a loss of financial support resulting from the alien's child's separation from the abuser.

4. The benefits are needed because the battery or cruelty, separation from the abuser, or work absences or lower job performance resulting from the battery or extreme cruelty or from the legal proceedings relating thereto (including resulting child support, child custody, and divorce actions) cause the alien's child to lose his or her job or to earn less or to require the alien's child to leave his or her job for safety reasons.

5. The benefits are needed because the alien's child requires medical attention or mental health counseling, or has become disabled, as a result of the battery or extreme cruelty.

6. The benefits are needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the alien's child's ability to care for his or her children (e.g., inability to house, feed, or clothe children or to put children into day care for fear of being found by the abuser).

7. The benefits are needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser.

8. The benefits are needed to provide medical care during a pregnancy resulting from the abuser's sexual assault or abuse of, or relationship with, the alien's child and/or to care for any resulting children.

9. Where medical coverage and/or health care services are needed to replace medical coverage or health care services the alien's child had when living with the abuser.

(D) The alien meets the requirements of subsection (c)(8)(C) above.

(E) For the period for which benefits are sought, the individual responsible for the battery or cruelty does not reside in the same household or family eligibility unit as the individual subjected to the battery or cruelty.

(10) An alien child who meets all of the conditions of subparagraphs (A), (B), and (C) below:

(A) The alien child resides in the same household as a parent who has been battered or subjected to extreme cruelty in the United States by that parent's spouse or by a member of the spouse's family residing in the same household as the parent and the spouse consented or acquiesced to such battery or cruelty. For purposes of this subsection, the term "battered or subjected to extreme cruelty" includes, but is not limited to being the victim of any act or threatened act of violence including any forceful detention, which results or threatens to result in physical or mental injury. Rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence.

(B) There is a substantial connection between such battery or cruelty and the need for the benefits to be provided in the opinion of the Department. For purposes of this subsection, the following circumstances demonstrate a substantial connection between the battery or cruelty and the need for the benefits to be provided:

1. The benefits are needed to enable the alien child's parent to become self–sufficient following separation from the abuser.

2. The benefits are needed to enable the alien child's parent to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the alien child's parent from the abuser.

3. The benefits are needed due to a loss of financial support resulting from the alien child's parent's separation from the abuser.

4. The benefits are needed because the battery or cruelty, separation from the abuser, or work absences or lower job performance resulting from the battery or extreme cruelty or from the legal proceedings relating thereto (including resulting child support, child custody, and divorce actions) cause the alien child's parent to lose his or her job or to earn less or to require the alien child's parent to leave his or her job for safety reasons.

5. The benefits are needed because the alien child's parent requires medical attention or mental health counseling, or has become disabled, as a result of the battery or extreme cruelty.

6. The benefits are needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the alien child's parent's ability to care for his or her children (e.g., inability to house, feed, or clothe children or to put children into a day care for fear of being found by the abuser).

7. The benefits are needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser.

8. The benefits are needed to provide medical care during a pregnancy resulting from the abuser's sexual assault or abuse of, or relationship with, the alien child's parent and/or to care for any resulting children.

9. Where medical coverage and/or health care services are needed to replace medical coverage or health care services the alien child's parent had when living with the abuser.

(C) The alien child meets the requirements of subsection (c)(8)(C) above.

(d) For purposes of this section, "nonimmigrant" is defined the same as in section 101 (a)(15) of the INA (8 U.S.C. § 1101(a)(15)).

(e) For purposes of establishing eligibility for the REA II registration, Health and Safety Code section 25570 et seq., all of the following must be met:

(1) The applicant must declare himself or herself to be a citizen of the United States, a qualified alien under subsection (c), a nonimmigrant alien under subsection (d), or an alien paroled into the United States for less than one year under section 212(d)(5) of the INA (8 U.S.C. § 1182 (d)(5)). The applicant shall declare that status through use of the "Statement of Citizenship, Alienage, and Immigration Status for State Public Benefits," (Form REA 5, Revised 9/98 or electronic Form REA 6, Revised 9/98) which is incorporated by reference.

(2) The applicant must present documents of a type acceptable to the Immigration and Naturalization Services (INS) which serve as reasonable evidence of the applicant's declared status.

(3) The applicant must complete and sign Form REA 5 or electronic Form REA 6.

(4) Where authorized by the INS, the documentation presented by an alien as reasonable evidence of the alien's declared immigration status must be submitted to the INS for verification through the Systematic Alien Verification for Entitlements (SAVE) system procedures as follows:

(A) Unless the primary SAVE system is unavailable for use, the primary SAVE system verification must be used to access the biographical/immigration status computer record contained in the Alien Status Verification Index maintained by the INS. Subject to subparagraph (B), this procedure must be used to verify the status of all aliens who claim to be qualified aliens and who present an INS-issued document that contains an alien registration or alien admission number.

(B) In any of the following cases, the secondary SAVE system verification procedure must be used to forward copies of original INS documents evidencing an alien's status as a qualified alien, as a nonimmigrant alien under the INA, or as an alien paroled into the United States under section 212 (d)(5) of the INA (8 U.S.C. § 1182 (d)(5)) for less than one year:

1. The primary SAVE system is unavailable for verification.

2. A primary check of the Alien Status Verification Index instructs the Department to "institute secondary verification."

3. The document presented indicates immigration status but does not include an alien registration or alien admission number.

4. The Alien Status Verification Index record includes the alien registration or admission number on the document presented by the alien but does not match other information contained in the document.

5. The document is suspected to be counterfeit or to have been altered.

6. The document includes an alien registration number on the A60 000 000 (not yet issued) or A80 000 000 (illegal border crossing) series.

7. The document is a fee receipt from INS for replacement of a lost, stolen, or unreadable INS document.

8. The document is one of the following: an INS Form I-181b notification letter issued in connection with an INS Form I-181 Memorandum of Creation of Record of Permanent Residence, an Arrival-Departure Record (INS Form I-94) or a foreign passport stamped "PROCESSED FOR I-551, TEMPORARY EVIDENCE OF LAWFUL PERMANENT RESIDENCE" that INS issued more than one year before the date of application for the REA II registration.

(5) Where verification through the SAVE system is not available, if the documents presented do not on their face reasonably appear to be genuine or to relate to the individual presenting them, the government entity that originally issued the document should be contacted for verification. With regard to naturalized citizens and derivative citizens presenting certificates of citizenship and aliens, the INS is the appropriate government entity to contact for verification. The Department should request verification by the INS by filing INS Form G-845 with copies of the pertinent documents provided by the applicant with the local INS office. If the applicant has lost his or her original documents, or presents expired documents or is unable to present any documentation evidencing his or her immigration status, the applicant should be referred to the local INS office to obtain documentation.

(6) If the INS advises that the applicant has citizenship status or immigration status which makes him or her a qualified alien, a nonimmigrant, or an alien paroled for less than one year under section 212(d)(5) of the INA, the INS verification should be accepted. If the INS advises that it cannot verify that the applicant has citizenship status or an immigration status that makes him or her a qualified alien, a nonimmigrant, or an alien paroled for less than one year under section 212(d)(5) of the INA, benefits should be denied and the applicant notified pursuant to the REA II appeal procedures (Cal. Code Regs., tit. 22 § 69209), of his or her rights to appeal the denial of benefits.

(7) Provided that the alien has completed and signed Form REA 5, revised 9/98 or electronic form REA 6, revised 9/98, under penalty of perjury, eligibility for REA registration shall not be delayed, denied, reduced or terminated while the status of the alien is verified.

(f) Pursuant to section 432 (d) of the PRWORA (8 U.S.C. § 1642 (d)), a nonprofit charitable organization that provides federal, state, or local public benefits shall not be required to determine, verify, or otherwise require proof of eligibility of any applicant or beneficiary with respect to his or her immigration status or alienage.

(g) Nothing in this section shall be construed to withdraw eligibility for those programs described under section 411 (b) of the PRWORA, (8 U.S.C. § 1621 (b)).

(h) Pursuant to section 434 of the PRWORA (8 U.S.C. § 1644), where the Department reasonably believes that an alien is unlawfully in the State based on the failure of the alien to provide reasonable evidence of the alien's declared status, after an opportunity to do so, said alien shall be reported to the Immigration and Naturalization Service.

(i) Any applicant who is determined to be ineligible for the REA II registration, whose services are terminated, suspended, or reduced pursuant to subsections (b), and (e), is entitled to a hearing, pursuant to section 69209.

NOTE: Authority cited: Sections 25570.3 and 58004.5, Health and Safety Code. Reference: Sections 25570–25570.4, Health and Safety Code; 8 U.S.C. Sections 1621, 1641 and 1642.

HISTORY

1. Change without regulatory effect renumbering title 14, section 19043 to title 22, section 69213, including amendment of section and NOTE, filed 7–27–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 30).

§ 69214. Sunset Review.

(a) The Director in consultation with the Secretary for Environmental Protection, shall conduct a sunset review, within five years of the effective date of the regulations in sections 69200 through 69213, to determine whether the regulations should be retained, revised, or repealed.

NOTE: Authority cited: Sections 25570.3 and 58004.5, Health and Safety Code. Reference: Sections 25570–25570.4, Health and Safety Code.

HISTORY

1. Change without regulatory effect renumbering title 14, section 19044 to title 22, section 69214, including amendment of section and NOTE, filed 7–27–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 30).

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